IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAWN VANLIER,	)	
	)	No. 287, 2001
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
STATE OF DELAWARE,	)	Cr. No. 98090815, 98090816,
	)	98090817, 98100193, 9809006423,
Plaintiff Below,	)	
Appellee.	)	

Submitted: December 10, 2002
Decided: December 27, 2002

Before **VEASEY**, Chief Justice, **WALSH, HOLLAND, STEELE** and **HARTNETT,**[1] Justices:

O R D E R

This 27th day of December 2002, it appears to the Court that:

(1) In October 1998, the New Castle County Grand Jury returned an indictment against the appellant, Shawn Vanlier. The indictment charged Vanlier with Attempted Rape in the First Degree, Kidnapping First Degree, Reckless Endangering Second Degree and Assault Third Degree. In March 2001, a Superior Court jury found Vanlier guilty on all counts. Vanlier contends that the delay between the indictment and trial violated his right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 7 of

[1] Designated pursuant to Art. IV § 12, of the Delaware Constitution and Supreme Court Rules 2 and 4.

the Delaware Constitution. In the alternative, Vanlier contends that the trial judge abused his discretion when he failed to dismiss the indictment *sua sponte* pursuant to Superior Court Criminal Rule 48(b).

(2) Police arrested Vanlier on September 9, 1998, the same day the rape occurred. Despite the swift pace of the investigation leading to Vanlier's arrest and indictment in October 1998, pretrial proceedings lasted two and one-half years. Vanlier remained incarcerated from arrest to trial. On November 23, 1998, the Superior Court assigned the case to the "problem list" as a result of expectations of delay inherent in awaiting the completion of FBI laboratory testing. The FBI forwarded an initial "Report of Examination" to the State on September 30, 1999. The FBI then sent a second report, revealing an exculpatory mitochondrial DNA test result to the State on November 15, 1999.

(3) The discovery process continued for another four months until March 6, 2000, when the trial judge considered discovery complete. In May of 2000, Vanlier, despite being represented by counsel, wrote a letter to the trial judge, requesting that his case be dismissed on the theory that he had been denied his right to a speedy trial. The trial judge wrote Vanlier that he could not act on the motion because Vanlier had counsel of record. The trial judge did, however, forward a copy of the letter to Vanlier's counsel. A similar exchange occurred in June and July of 2000 when Vanlier wrote two similar letters to the trial judge.

(4) The trial judge set a "firm" trial date for August 22, 2000. Two months before the scheduled trial date, the State filed a motion *in limine* requesting a *Daubert*[2] hearing challenging the admissibility of its own expert's testimony on mitochondrial DNA analysis. Both the State and Vanlier's counsel requested a continuance. Vanlier's counsel ostensibly wished a continuance to retain its own expert in light of the State's apparent repudiation of its expert's testimony. While the record falls well short of documenting the parties' position, counsel's argument before us suggests that the State sought a *Daubert* hearing to validate mitochondrial DNA as a relevant and credible form of identification. Ironically, the test the State wished validated in Vanlier's case resulted in an expert opinion helpful to the defense. The trial judge postponed the trial to schedule a *Daubert* hearing to assess the validity of the DNA tests. As best we can tell from the record and argument, Vanlier's counsel did not object to further delay. The trial judge then set a new date of March 13, 2001.

(5) Vanlier wrote two additional letters to the trial judge in August 2000 and October 2000 asking that his case be dismissed because of the continuances and the length of his incarceration. On November 15, 2000, Vanlier sent another letter to the trial judge soliciting the Court's permission to appear *pro se*. Vanlier later retracted the request.

[2] *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993).

(6) The trial proceeded on March 14, 2001. The *Daubert* hearing that caused the rescheduling of the August 22, 2000 "firm" trial date never took place. The State and Vanlier's counsel agreed to a stipulation that would be read to the jury stating that no forensic evidence implicated Vanlier as the rapist. The jury convicted Vanlier nonetheless on March 16, 2001. This is Vanlier's direct appeal.

(7) Courts should assess four factors in determining whether a defendant has been deprived of the right to a speedy trial: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) prejudice to the defendant.[3] Although none of the factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial,"[4] we conclude that a discussion of all four factors is unnecessary because the record clearly shows that Vanlier suffered no prejudice to his defense as a result of the delay.

(8) Prejudice to the defendant should be considered in light of three of the defendants' interests that the speedy trial right was designed to protect: (1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) limiting the possibility that the defense will be

[3] *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).
[4] *Id.*

impaired.[5] Vanlier cannot point to any specific harm that he has suffered or presented any evidence to demonstrate his defense was impaired by the delay. In fact, Vanlier arguably benefited from the delay because Vanlier ultimately obtained a favorable stipulation as exculpatory as any expert testimony could have produced as a result of the FBI DNA testing. Vanlier argues that the delay prevented him from seeking his own DNA expert at trial. The fact he did not or could not retain his "own" expert is of no consequence. The best Vanlier could have hoped for from his own expert was a finding that the hair sample tested did not match his DNA. The FBI expert came to this conclusion. As a result, Vanlier obtained a stipulation heard by the jury that the forensic evidence did not implicate him.

(10) Vanlier also contends that the trial judge should have dismissed the charges against him, *sua sponte,* pursuant to Superior Court Criminal Rule 48(b). Rule 48(b) provides that "[i]f there is unnecessary delay … in bringing a defendant to trial, the Court may dismiss the indictment, information or complaint." For a criminal complaint to be dismissed pursuant to Superior Court Criminal Rule 48 because of unnecessary delay, we have held that the delay, unless of constitutional dimensions, must be attributable to the prosecution and have prejudiced the

[5] *Middlebrook*, 802 A.2d at 276 (citing *Barker*, 407 U.S. at 532).

defendant.[6] As discussed above, Vanlier suffered no prejudice as a result of the delay. Accordingly, the trial judge did not abuse his discretion when he failed to dismiss the charges *sua sponte* pursuant to Superior Court Criminal Rule 48(b).

NOW, THEREFORE, IT IS SO ORDERED that the judgment of the Superior Court be **AFFIRMED**.

BY THE COURT:

_/s/ Myron T. Steele_____
Justice

[6] *Clark v. State*, 2002 Del. LEXIS 208 (Del. Supr.) (citing *State v. Harris*, 616 A.2d 288, 291 (Del. 1992)).