

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.) **Case No.: 1007027205**
)
 NICHOLAS W. MANTYLA,)
)
 Defendant.)

TO:

Periann Doko, Deputy Attorney General
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Date Submitted: March 18, 2011

Date Decided: March 23, 2011

MEMORANDUM OPINION ON
STATE'S MOTION TO VACATE DISMISSAL

A hearing was held in this Court on Defendant's Motion to Suppress, Dismiss and Motion to Compel Discovery ("the Motions") in the Court of Common Pleas, New Castle County, State of Delaware on February 24, 2011. Following brief oral argument on the Motions, the Court granted Defendant's Motion to Suppress and/or Dismiss the instant matter. On or about March 4, 2011 the Attorney General filed a Motion to Vacate Dismissal. This is the Court's Final Opinion and Order.

For the reasons which follow, this Court makes several findings. First, based upon this Court's inherent power to vacate, modify or set aside its respective judgment or orders, the Court clarifies that the instant dismissal was entered pursuant to *CCP Crim. R.* 48(b). This finding is based upon the prosecutor's unequivocal representations in the Court transcript and at the hearing that the Attorney General was not prepared to defend the pending motions.¹ Second, because the State never presented or timely filed or presented a Motion to Dismiss under 10 *Del.C.* §9902(b) and the Court has already

¹ See, *State v. Guthman*, 659 A.2d 1175 (Del.1993) (citing Del.Const.Art.IV, §1 (1997))

granted Defendant's Motions, and dismissed the case under *CCP Crim. R. 48(b)* the Motion to Vacate is hereby Denied.² Nor did the State certify at the time of the Motion to Suppress, at the time of the hearing or before the dismissal, that the suppressed evidence was essential to its case and note a dismissal was necessary on that ground.³ Nor has the State submitted a Form of Order to this date after the dismissal of the Informations.

I. The Facts.

a) State's Motion to Vacate Dismissal.

According to the State's Motion to Vacate Dismissal ("Motion to Vacate"), the instant criminal action was set forth on the Criminal Motions calendar on February 24, 2011. At that time the Court was to address defendant's Motions. According to the State, after the first call of the calendar by the Judge, the Court recessed briefly to allow the State to discuss the merits of the Motion to Suppress with opposing counsel. The State asserts it had "some communications" and the State told defense counsel that it would be requesting a continuance because... "[I]t did not have the opportunity to read the Motions and call and prepare the appropriate witnesses". In addition, the State "explained that the Deputy Attorney General received the calendar only a few hours before it had just completed a morning non-jury trial calendar." Third, according to the Motion to Vacate ... "[t]he State's case file for this particular matter was not with other calendar materials." *Id.* In other words, the State had no file.

The State does not assert good cause in its presentation of the Motion to Vacate, but asserts the State requested a one-time continuance "because the Deputy Attorney General candidly admitted she was not prepared to handle the Motions and gave the above explanation." The State does not also assert that it timely filed or requested a timely continuance with the Criminal Office Judge in accordance with the Court of Common Pleas of Delaware "Criminal Trial Continuance Policy." According to paragraph

² See, *State v. Johnson*, 2004 Del.Super. LEXIS 382 (Del.Super.Ct., Nov. 16, 2004).

³ *Id.*

(d) of that policy, the State may ask that the Court should waive the three (3) day requirement for a continuance because there was “exceptional or emergency situations in the continuance request”. (Exhibit “A” to Opinion). As defendant noted in his response to the Motion to Vacate, and in his filing, defendant’s counsel had discussed this matter with the supervisor of the Misdemeanor Unit within the last thirty (30) days.

b) Defendant’s Response.

The defendant has a filed formal opposition to the State’s Motion to Vacate the Court’s Order granting the defendant’s Motion to Suppress.

Defendant asserts that the State has not “even attempted to show, and “cannot show good cause for its failure to be prepared to proceed with the hearing on Defendant’s Motion to Suppress and Dismiss which was properly noticed on the Criminal Motions calendar for January 24, 2011”. Second, defendant asserts the Court acted “well within its discretion” in granting the defendant’s motion and dismissing the case when the defendant appeared in court with his witnesses and two American Sign-Language Interpreters and the State was not prepared to go forward. Hence, defendant argues that the Court’s Order granting the Motion to Suppress and Dismiss should not be disturbed.

II. Procedural History.

As defendant points out in his Answer at paragraph 1, the defendant, Nicholas Mantyla is deaf and cannot speak; allegedly has no criminal history and no history of violence and has been charged with resisting arrest, offensive touching, and menacing on July 30, 2010. Defendant noticed, through counsel, his Motion to Suppress, Dismiss and Motion to Compel on January 18, 2011 with the Criminal Clerk. On January 24, 2011 the Court noticed the hearing on Defendant’s Motions to be heard on the Criminal Motions Calendar February 24, 2011 at 2:00 p.m. The State admits it was properly served with a Notice of the hearing and that defendant was present in Court and prepared to proceed with the

Motions hearing for all three (3) Motions on February 24, 2011. Defendant was accompanied by his retained counsel; his potential witnesses; as well as two American Sign-Language Interpreters. The original call of the calendar on this Motion was at 2:00 p.m. and was passed. Argument was then heard at 3:13 p.m. on February 24, 2011 at 2:00 p.m. As will be set forth below, the Court took a recess and enabled the State to prepare for the hearing and contact the necessary witnesses, but the State was unwilling or unable to do so.

III. Issue Pending in Motion to Vacate.

The issue pending in this Motion to Vacate is whether the State has shown good cause for its failure to be prepared and present the case and reopen the matter for a new suppression hearing and/or trial.

IV. The Law.

In order to succeed on a Motion to Vacate, the State must demonstrate good cause for its failure to be prepared at the hearing held before this Court on February 24, 2011.⁴ This Court addressed the State's Motion for Reargument in *Giordano* which was dismissed after prosecutors failed to show up for a hearing. The Court also noted in that Order that "the Court has power and authority, inherent, if not express to reopen a criminal proceeding on a timely application and for good cause show...".⁵

The Courts note in *Giordano* that there was, in fact, good cause presented by the State because the assigned prosecutor in that case was in the wrong courtroom for trial at the misdirection of the Court Bailiff. Therefore, the Court having held that the Deputy Attorneys General may reasonably rely on trained court personnel's representations about the courtroom assignments, the Court granted the State's Motion to Vacate in *Giordano* reopened the matter for good cause shown.⁶

⁴ See, *State v. Giordano*, 1999 WL 1876066, 1*Del.Com.Pl.

⁵ *Id.*

⁶ *Id.*

In the instant matter, the Motions were properly noticed and had been pending for approximately one month. Defense counsel noted in its argument that it had discussed the merits of the Motion with the supervisor of the Court of Common Pleas Misdemeanor Unit.

The sole reason in the State's Motion to Vacate is that the Deputy Attorney General received the calendar only a few hours before and had just completed a morning non-jury trial calendar, and "[I]n addition, the State's case file for this particular matter was not with other calendar materials." In other words, the State had no file after the Motions had been filed since January 24, 2011 with the Criminal Clerk and served properly on the Attorney General. In the instant matter, although the Court specifically did not reference Rule 48(b), the State certified it was unable to go forward and clearly the instant matter was dismissed for failure to prosecute. *See CCP Crim. R. 48(b)*.

As set forth in *State v. Adkins*,⁷ the Court articulated standards for dismissal pursuant to Rule 48(b) as follows:

An information may be dismissed when there is unnecessary delay in bringing a defendant to trial. *Court of Common Pleas Criminal Rule 48(b)*. The dismissal is within the discretion of the Court and is not governed by the established concepts of the Speedy Trial Clause of the Sixth Amendment. *State v. Fischer*, 285 A.2d 417, 418 (Del. 1971). Subdivision (b) of Rule 38 is a codification of the Court's inherent power to dismiss a case for want of prosecution. *Id.* The granting or denial of a motion to vacate a dismissal order is also discretionary. *State v. Kozak*, 1999 WL 19464659, at *2 (Del.Super.Ct. 1999).

As defendant correctly asserts in paragraph 11 of his Motion, the *Adkins* Court stated "the first criterion for dismissal under Rule 48(b) is that the unnecessary delay must be attributable to the State as prosecutor. 'If the delay is caused by the prosecution, then the Court should consider whether the prosecution had a valid reason for the delay.'"⁸

⁷ 2007 WL 5006608, 1-2, (Del.Com.Pl.).

⁸ *See, State v. Perkins*, 2005 WL 3194460 at 3 (Del.Super.Ct.).

As the defendant also asserts in paragraph 11 of his Motion, the *Adkins* Court held that the failure of the State to produce necessary witnesses with a delay attributed to the State.

According to paragraph 13 of defendant's Answer, the defendant noted "[T]he second criterion established by the Delaware Supreme Court, as a condition precedent to a dismissal for unnecessary delay, requires a finding that "the delay has been found to work some definable or measurable prejudice to the defendant."⁹ Defendant also asserts that ... "Prejudice may be any factor which causes or threatens legal harm or detriment to the defendant."¹⁰

Defendant correctly points out that the prejudice to the defendant in this case exceeds "minimal legal prejudice." Prejudice, as defendant argues, is satisfied not only by the postponement of the hearing date and delay of trial, but also costing him the convenience to the defendant having counsel prepare for and attend the hearing and then have the State not prepared to go forward on its own prosecution. As set forth in *State v. James Ragovich*, 1991 Del. Super LEXIS 63, No. IK90-12-0828-0846 (February 27, 1991) the following rules apply:

In order for a criminal indictment to be dismissed under *Rule 48(b)*, the delay must be attributable to the State. *State v. Budd*, Del. Supr., 447 A.2d 1186 (1982) (dismissal proper where State proceeds on original indictment after representing to Court, in response to defendant's motion to dismiss, its intention to reindict defendant); *State v. Glaindez*, Del. Supr., 346 A.2d 156 (1975) (State made no attempt to ascertain whether the witness had been served with a subpoena until the day before trial); *State v. Fischer*, Del. Supr., 417, 419 (1971) (court affirmed dismissal of indictments where the state engaged in unseemly practice of "transferring" cases from lower court to higher court after the lower court had taken jurisdiction and become involved with the case); cf. *State v. McElroy*, Del. Supr., 561 A.2d 154 (1989) (no dismissal where delay caused by lack of an available trial judge and not prosecutorial delay); *Hughes v. State*, Del. Supr., 522 A.2d 335 (1987) (no dismissal for unnecessary delay where the State made substantial efforts to ensure witness' appearance at trial); *State v. Johnson*, Del. Super., 564 A.2d 364 (1989) (no dismissal where State had no control over witness' disappearance and defendant knew of State's intention to reindict as soon as witness materialized); *State v. Mauthe*, Del. Super.,

⁹ See *Adkins* at *2 (quoting *McElroy*, 561 A.2d 154, 157 (Del. 1989)).

¹⁰*State v. Kozak*, 1999 WL 1846459 at 2 (Del. Super.).

C.A. Nos.: IN85-0501677-78, Taylor, J. (Apr. 4, 1986) (Dismissal appropriate where four successive prosecutorial efforts were made and not until the fourth attempt, 13 months after arrest, was a legally supportable charge made).

* * *

In addition, the delay must be prejudicial to the defendant. *State v. McElroy*, Del.Supr. 561 A.2d 154, 155 (1989). *Rule 48(b)* serves a broader purpose and is not governed by established concepts of the speedy trial clause of the Constitution. *Hughes v. State*, Del. Supr., 552 A.2d 1335, 1240 (1987). The types of prejudice recognized by *Rule 48(b)* include: “the unexplained commencement of a new prosecution long after a dismissal by the State of the same charge in another court; the anxieties suffered by a defendant as the result of delay and uncertainty in duplicative prosecutions against him; the notoriety suffered by a defendant and his family as the result of repeated commencement of prosecutions for the same offense; the expenses, legal and otherwise, attendant upon a subsequent renewal in another court of a dismissed prosecution.” *State v. Fischer*, *Del. Supr.*, 285 A.2d 417, 419 (1971).

The defendant correctly argues that *Adkins* applies because the Court exercises discretion and dismisses the case pursuant to *Rule 48(b)* after the State’s witnesses failed to appear, the Deputy Attorney General did not have its file and was not prepared to proceed.

The Court must note that since the State was not in the position to defend either the Motion to Suppress and/or the Motion to Dismiss, timely filed and docketed by the defendant; the State had no file, had no witnesses, and represented “... [A]gain, we are just unable to proceed, your Honor; I don’t have a case file, I don’t know why. Again, your Honor, I was given this calendar unfortunately on very short notice.” The Court therefore dismissed the case. The State was not in a position to defend the Motions to Suppress and Dismiss.

The factual basis for the granting of the Motion is clearly set forth in both Motions which were timely filed, served upon the Attorney General and presented in open court after being docketed with the Criminal Clerk. The State can’t dispute it didn’t have proper notice for all Motions, which were pending, had been docketed and even discussed with the supervisor of the Misdemeanor Unit. Clearly

prejudice exists on behalf of the defendant and the Attorney General has not shown good cause to reopen the matter or vacate, modify or set aside the judgment entered in favor of the defense on February 24, 2011.

The Court agrees with the Attorney General that, “[I]t is a basic principle of jurisprudence that Courts are generally afforded inherent powers to undertake whatever actions reasonably necessary to ensure the proper administration of justice.”¹¹

Clearly when the State is unprepared in any way to go forward on a prosecution and represent so in open court and pending motions are filed with the Court Clerk with due notice to the State, it is clearly within the Court’s sound discretion to sign and grant both Motions to Suppress and Dismiss pursuant to *CCP Crim. R. 48(b)*. Defendant is correct that State has not pled or set forth in its Motion, or the record, good cause to reopen the Motion to Suppress or Dismissal Order. In addition, the State has not followed the required statutory parameters or scheme set forth in *10Del.C. §9902(b)* to dismiss its own case and appeal to the Superior Court.

VI. Opinion and Order.

For all these reasons, the Court enters a DENIAL of the State’s Motion to Vacate. Each party shall bear their own costs.

IT IS SO ORDERED this 23rd day of March, 2011.

/S/ John K. Welch

John K. Welch

Judge

/jb

Encl. (Official CCP Transcript, CCP Continuance Policy)

cc: Juanette West, Case Manager, Scheduling
CCP, Criminal Division

¹¹ See, 20 Am.Jur.2d Courts, §79; *Guthman*, 619 A.2d at 1176