IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	
	)	
STEPHANIE WELCH,	)	Case No. 9903009464
	)	
Defendant.	)	

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ORDER

COMES NOW, this 20th day of February 2002, the Court in these proceedings finds as follows:

1. The Defendant, Stephanie Welch was issued a citation on March 5th 1999 for disregarding a traffic control device.

2. The initial proceedings were resolved pursuant to an Attorney General's probation. Thereafter, the State sought to reinstate the charges.

3. In an opinion issued by this Court on January 7, 2000, the charges were dismissed after briefing and oral argument.

4. The State filed a notice of appeal to the Superior Court on February 7. The defendant filed a cross motion to dismiss the appeal.

5. In an order issued by the Superior Court on June 5, 2000, the Superior Court held that the State was permitted to reinstate the charges against the defendant if it so elect. On June 13, 2000 the State, by letter to the Court Clerk's Office, indicated that it was refiling the information, which charged the defendant with disregarding a traffic control device on March 5, 1999.

6. The defendant in these proceedings moves the Court to dismiss the refiling of the Information on several bases. The defendant first argues that the letter of June 13, 2000 does not constitute a refiling of the information as contemplated by the Superior Court's opinion. Secondly, defendant argues that these proceedings constitute selective prosecution. Thirdly, defendant argues the State engaged in undue delay in refiling the notice to reinstitute the charge. Fourthly, the defendant argues there has been no subsequent rearraignment of the defendant; therefore, she is not put on notice with respect to these proceedings.

a. The defendant argues the State delayed in refiling the charge after the Superior Court decision and it should be dismissed pursuant to Court of Common Pleas Criminal Rule 48(b). However, review of the record indicates the State on June 13, 2000 notified the Clerk's Office that the information in these proceedings is to be refiled and the appropriate parties were to be notified for trial. While there may have been a period of time between the time when the State gave notice in its letter, and the alleged scheduling of

arraignment, there is no indication that the State was not diligent in bringing this matter forward. The period between the time when the State gave notice in its letter, and the time the arraignment is scheduled is not attributable to the State and cannot be calculated in any determination of whether there was a delay in bringing these proceedings expeditiously after the Superior Court decision. Therefore, I find no basis to dismiss these proceedings on that ground.

b. Defendant argues the State by reinstituting these charges has engaged in a process of selective prosecution and she is entitled to a hearing on the merits of this allegation. The defendant relies upon the State v. Holloway, Del. Super., 460 A.2d 976 (1983). The Court in that decision indicated that to support a defense of selective prosecution, the defendant bears the burden of establishing the following: (1) that other similarly situated have not been prosecuted for the same conduct, which form the basis for the charge she now face, and the defendant has been singled out; and (2) that the government's discriminatory selection of her for prosecution is invidious or in bad faith.

c. In these proceedings the State sought to reinstitute the driving violation on the basis that attorney general probation for this type of charge is a violation of the office policy and that it is was improperly offered in the first instance. More importantly, the Superior Court in its decision, while not found in this Court, which is an independent fact found by the appellate court, concluded that the defendant's attorney was informed by a previous deputy attorney general that such probation was not available. Accordingly, I do not find

that there is merit to this position and a basis for the Court to dismiss the charges, since the State prosecute this type of offense routinely.

d. Lastly, I find that the Attorney General's letter of June 13, 2000 is sufficient to cause the charge to be refiled in this Court. Such letter had attached with it a copy of the Information, with an original signature; certification of a need for a Rule 9 warrant; the accompanying witness list and the Court required form.

7. Based on the proceedings in the record, I find that the State has properly refiled the charges against defendant. The Clerk will schedule it for arraignment and subsequent trial by jury.

SO ORDERED this 20th day of February, 2002

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Alex J. Smalls
Chief Judge

Welch-OP