IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	**ID NO. 1107013054**
_____v._____	:	
	:	
AREON GIBBS,	:	
	:	
Defendant.	:	

Submitted: December 6, 2012
Decided: February 19, 2013

Upon Defendant's Motion to
Strike the Death Penalty
DENIED

ORDER

Kathleen A. Dickerson, Esq., and Christopher R. Parker, Esq., Deputy Attorneys General, Department of Justice, Dover, Delaware for the State of Delaware.

Patrick J. Collins, Esq., Collins & Roop, Wilmington, Delaware, and Natalie S. Woloshin, Esq., Woloshin, Lynch, Natalie & Gagne, P.A., Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Areon Gibbs ("Gibbs") and two co-defendants have been charged with Murder in the First Degree and several other serious offenses. These charges relate to the homicide of Quinton Dorsey ("Victim" or "Dorsey") which occurred on March 24, 2010. It is alleged that the victim was shot to death either as a result of a drug deal gone bad, or a drug deal set-up to allow for a robbery. Gibbs has filed this Motion to Strike the Death Penalty claiming that it violates his rights under the 8th Amendment for the State to pursue a capital case against him. This claim is based on his interpretation of the facts, pressing the assertion that he did not himself kill, attempt to kill, or intend for the killing of or lethal force to be employed against the Victim. Defendant's argument requires the Court to make a determination regarding the facts and credibility of testimony before a trial has been held. At this stage in the proceedings, the State has demonstrated that evidence will be presented supporting Gibbs' culpability as a major participant in a violent felony under circumstances with reckless indifference to human life. Accordingly, Defendant's Motion to Strike the Death Penalty is **DENIED.**

FACTS

Areon Gibbs has been charged with two counts of Murder in the First Degree, Robbery in the First Degree, Conspiracy in the First Degree, and additional charges, along with Co-Defendants Dion Hicks ("Hicks") and David Johnson ("Johnson"). These charges arose out of the homicide of Quinton Dorsey, occurring on March 24, 2010. The State alleges that Gibbs asked a fourth man, Leroy Stratton ("Stratton"), to participate in a robbery disguised as a drug deal.

Stratton allegedly then arranged for the Victim and Thomas Daniels to come from Wilmington, Delaware to sell him a kilogram of cocaine. After the drug deal was completed, this version goes, Johnson and Hicks were to rob the Victim of the money paid to him for the cocaine. The events in question occurred at the White Oak condominiums in Dover, Delaware.

Police were called to the scene to investigate a shooting. When they arrived, police found the victim, Quinton Dorsey, in the parking lot. He had sustained gunshot wounds, ultimately resulting in his death, at Christiana Hospital, from his injuries. Witnesses told the police they had seen two black males jump a fence behind "Building M." Police searched the area, locating a cell phone belonging to Stratton. One of the phone numbers in Stratton's cell phone belonged to Areon Gibbs.

On March 25, 2010 Stratton was arrested. At that time he gave a statement claiming he knew nothing about the murder. However, Stratton later changed his story, admitting that he had witnessed the shooting. Then, on July 14, 2011, Stratton gave yet another statement, in the form of a proffer to the State in exchange for favorable plea treatment and a substantial assistance motion. In that statement, Stratton admitted that he was involved in the drug transaction along with Gibbs. He said that twenty seconds after the drug deal, he went to the window, and saw Hicks shoot the victim. Stratton also identified David Johnson as a second shooter. According to Stratton, Johnson picked up Dorsey's gun and shot him with it. Johnson then took Dorsey's backpack containing cash from the drug deal. Johnson is the third co-defendant in this case.

The State claims that witness testimony and evidence will show Gibbs to be the motivating factor behind the entire course of events. Gibbs, on the other hand, claims that, even if he were a participant in the drug deal, he was not at all a part of the robbery/murder that occurred after it. For this reason, Gibbs has filed a Motion to Strike the Death Penalty, claiming that the 8th Amendment and relevant case law should preclude his being subjected to the death penalty.

STANDARD OF REVIEW

This Motion raises issues that have not often been dealt with by Delaware's courts. It raises constitutional violations as grounds for precluding the death penalty. The State's responses have raised a variety of opposing arguments, most notably: ripeness; prosecutorial discretion; citations to case law of alleged relevance; and questions with regard to the court's authority to convert a capital case into a non-capital case after a proof positive determination has been made. This is Motion of Defendant Gibbs, on whom the burden of sustaining the legal argument rests.

DISCUSSION

The Defendant contends that even if we assume *arguendo* that he was a participant in the drug deal, there is no credible evidence linking him to the robbery/murder occurring afterwards. He claims that the Delaware Supreme Court's holding in *Whalen v. State* makes clear that each defendant must be given consideration based on his personal guilt and moral responsibility.[1] On that basis,

[1] *Whalen v. State,* 492 A.2d 552 (Del. 1985).

Gibbs argues that the imposition of the death penalty would constitute a violation of his 8th Amendment rights under the *Enmund/Tison* analysis.[2]

The State has filed a response, which contests the Defendant's position on the issue for a variety of reasons. First, the State argues that Defendant's view that there is a lack of credible evidence connecting him with the robbery/murder is without merit, as it is the jury's job to weigh evidence and credibility. The State also disputes Defendant's claims that it lacks evidence, as it has substantial evidence to support its theory that Gibbs was not only involved in the robbery/murder, he was behind it all.

The State's next argument is that existing Delaware case law has addressed this issue in the past. First, the State addresses *State v. Ward*, a Superior Court case in which the Court ruled on a similar motion.[3] The State also points to an additional case, *State v. DeShields*, in support of the argument that such a motion is premature.[4]

Finally, the state argues that even if the issue of whether the death penalty is appropriate in this case is ripe for decision, the Defendant's argument will still fail under application of the *Enmund/Tiso*n analysis. The state provides a thorough discussion of the standard set by *Enmund/Tison* and Delaware's application of the

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[2] *Enmund v. Florida*, 458 U.S. 782 (1982); *Tison v. Arizona*, 482 U.S. 137 (1987).

[3] *State v. Ward*, 1988 WL 116414 (Del. Super. Oct. 21, 1988).

[4] *State v. DeShields,* 1986 WL 3975 (Del. Super. Feb. 6, 1986).

standard in *Manley v. State*.[5] This discussion is followed by the State's belief that the evidence in this case will show that Defendant was not only a major participant in the felony committed, he was the principal organizer of the entire scheme.

The first and third arguments are interlaced. The second argument, because of the findings set forth below, need not be addressed.

Both parties have discussed the *Enmund/Tison* analysis in terms of its relevancy and applicability to the case at hand. This analysis arose from two United States Supreme Court opinions. The *Enmund* case involved a robbery resulting in a horrific homicide.[6] Enmund's co-defendants had gone to a home to rob the couple residing there, while Enmund waited in the car.[7] The robbery turned violent, resulting in the victims' being shot and killed by the co-defendants.[8] The Supreme Court held that the 8th Amendment does not permit "imposition of the death penalty on one...who aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed."[9] This holding was applied to Enmund's participation in the crime, resulting in the reversal of the

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[5] *Manley v. State,* 918 A.2d 321, (Del. 2007).

[6] *Enmund v. Florida*, 458 U.S. 782, 784 (1982).

[7] *Id.*

[8] *Id.*

[9] *Id.* at 797.

Florida Supreme Court's affirmation of the death penalty as to Enmund.[10]

The Supreme Court clarified the *Enmund* decision in *Tison v. Arizona.*[11] Gary Tison had been given a life sentence for killing a prison guard during a prior attempt to escape.[12] While serving the sentence, his wife and sons made plans for, and assembled weapons to facilitate, Tison's escape from prison.[13] His family showed up at the prison, remarkably transporting a CHEST of weapons.[14] After threatening the guards with the weapons, they eventually fled from the prison with Tison and his cellmate. [15]At some point during the getaway, they flagged down a passing motorist.[16] The family that stopped to help them was forced into the backseat, driven to a secluded area and killed by Tison and one other member of the group, while two of his sons were sent away for water.[17] That this was 1978 *Arizona*, and not 1928 *Missouri*, is almost impossible to fathom. In any event, though the two sons had not actually killed the victims, they were convicted of

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[10] *Id.* at 801.

[11] *Tison v. Arizona,* 481 U.S. 137 (1987).

[12] *Id.* at 139.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 139-40.

[16] *Tison v. Arizona*, 481 U.S. 137, 140 (1987).

[17] *Id.* at 141

murder and sentenced to death.[18] The Supreme Court held that "major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement."[19] The Court went on to note that "substantial participation in a felony under circumstances likely to result in the loss of innocent human life may justify the death penalty even absent an 'intent to kill.'"[20]

The parties to this case have presented disparate interpretations of the facts. According to Gibbs, two separate sets of events occurred at the White Oak condominiums on March 24, 2010. The first event was a large drug transaction. The second was the subsequent robbery and murder of Quinton Dorsey. On the other hand, the State claims evidence will show that Defendant Gibbs asked Stratton to participate in a robbery disguised as a drug deal. Stratton arranged for the Victim to come from Wilmington. Johnson and Hicks were recruited to rob the Victim after the drug deal was completed. According to the State, Gibbs was the inspiration behind both the drug deal and the robbery, characterizing them as one overall plan, creating a potential expectation of lethal violence.

Defendant's argument, that he was not a participant in the second, lethal, event, is based on his version of the facts. The State fundamentally disagrees with the interpretation of the facts as set out by Defendant's Motion. The facts in

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[18] *Id.* at 141-42.

[19] *Id.* at 158.

[20] *Id.* at 154

dispute go to the very heart and nature of the criminal events in question. To accept Defendant's position would be to accept the argument based on some facts proposed by Gibbs, and to reject the version of the facts to be presented by the State. That is, of course, the jury's province, not the Court's.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Strike the Death Penalty is **DENIED.**

IT IS SO ORDERED.

/s/ Robert B. Young
J.

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