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Case Number 594,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellant,	)	
	)	
v.	)	No. 594, 2016
	)	
DAVID M. HAZELTON,	)	
	)	
Defendant Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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DATE: May 10, 2017

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ARGUMENT

I. THE SUPERIOR COURT ABUSED ITS DISCRETION IN GRANTING HAZELTON'S MOTION TO DISMISS PURSUANT TO SUPERIOR COURT CRIMINAL RULE 48(b).

In its answering brief, Hazelton argues that the Superior Court did not abuse its discretion in granting Hazelton's motion to dismiss the indictment pursuant to Superior Court Criminal Rule 48(b). Ans. Br. at 8. The State disagrees.

Pursuant to Criminal Rule 48(b), the court may dismiss an indictment for "unnecessary delay."[1] Rule 48(b) states:

> If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer in Superior Court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.[2]

This Court has outlined the standard for determining whether a case should be dismissed pursuant to this Rule:

> For a criminal indictment to be dismissed under Rule 48 for unnecessary delay, the delay, unless extraordinary, *i.e.*, of constitutional dimensions, must, as a general rule, first be attributable to the prosecution and second, such delay must be established to have had a prejudicial effect upon defendant beyond that normally associated with a criminal justice system necessarily strained by a burgeoning case load.[3]

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[1] Superior Court Crim. R. 48(b).
[2] *Id.*
[3] *State v. McElroy*, 561 A.2d 154, 155–56 (Del. 1989) (citations and internal quotation marks omitted).

Hazelton concedes that although Rule 48(b) does not reference a need for a defendant to show prejudice as a result of the delay, that some showing of prejudice has been consistently required by the courts for relief to be granted. Ans. Brief at 9.

Hazelton alleges that his case incurred unnecessary delay based on conduct solely attributable to the State for two reasons. Ans. Brief at 10. First, Hazelton alleges that he had two prosecutions pending in two different courts simultaneously without a purpose or justification. Ans. Brief at 10. That is incorrect. On May 14, 2016, Hazelton was presented to a Magistrate in the Justice of the Peace Court #3. A1; AR1. Hazelton pled not guilty and the case was transferred as a matter of course to the Court of Common Pleas, at the request of Hazelton. A1; AR1.

On May 17, 2016, the case was accepted by the Sussex County Court of Common Pleas, where Hazelton was arraigned. A1. However, despite this and the fact that Hazelton's counsel entered an appearance, at no time had the State filed an Information in this case. As a result, the State had not chosen the forum of the Court of Common Pleas for this prosecution. The Court of Common Pleas can unilaterally arraign and schedule trials for defendants without any action from the State and without requiring the State to file a charging document, i.e., an Information. That is what occurred in this case.

Moreover, instead of filing an Information in the Court of Common Pleas, the State elected, as is its prerogative, to amend the charges and present an Indictment before the Grand Jury in the Superior Court. This was done in a timely fashion as Hazelton was indicted on June 20, 2016 - only thirty-four days after the Court of Common Pleas first accepted the case and thirty-eight days after the incident and arrest date. Once Hazelton was indicted, the Court of Common Pleas lost jurisdiction over Hazelton and the pending trial because of the intervening indictment.[4] The Superior Court has held that "[w]hen the Grand Jury returned the indictment against the defendant . . . the Superior Court gained exclusive jurisdiction over the charges contained therein. **The Court of Common Pleas was divested of jurisdiction the moment this Court obtained jurisdiction.**"[5] Therefore, Hazelton did not have two prosecution pending simultaneously in two different courts.

Hazelton also argues that the State did not provide a compelling reason for the case to be tied in the Superior Court instead of the Court of Common Pleas. Ans. Brief at 10. This is not correct. At the motion hearing, the State argued that while the prosecutor handling the case at the motion was not the one who indicted the case, it was the policy of the Department of Justice to prosecute cases in

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[4] *See State v. Strzalkowski*, 2010 WL 2961519, at *5 (Del. Super. July 28, 2010).
[5] *State v. Mayne*, 1991 WL 236992, at *1 (Del. Super. Oct. 18, 1991) (emphasis added).

Superior Court where there is injury related to a driving under the influence crash, due to the serious nature of these offenses and to provide the Department of Justice the ability to devote a more experienced prosecutor and give the case the attention it deserves. A85-A86. *Id.* Hazelton argues that the State intended to manipulate the judicial process by deciding to indict. This argument is both unsupported and factually inaccurate. Ans. Brief at 18. The State made the decision to indict as is its right,[6] to charge Hazelton appropriately, with another misdemeanor, in a court of competent jurisdiction. The State routinely does this in most of these cases, when they are recognized.[7] The Court of Common Pleas was not the State's initial forum of choice; it was Hazelton's. The State indicted Hazelton in its chosen forum, the Superior Court, without unnecessary delay and without causing Hazelton any undue prejudice. The State never initiated charges in the Court of Common Pleas.

Hazelton next alleges that his case incurred unnecessary delay attributable to the State because the State failed to notice him or his counsel that an Indictment had been filed. Ans. Brief at 11. However, upon Indictment, the Superior Court attempted to notice Hazelton at his address of record to the charges, as is the

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[6] *See State v. Fischer*, 285 A.2d 417, 420 (Del. 1971); *State v. Pruitt*, 805 A.2d 177, 183 (Del. 2002).

[7] *See* 11 Del. C. §§ 2701(b) – (c) (describing the criminal jurisdiction of both Courts).

normal practice. Unfortunately, it appears that Hazelton did not update his address of record, because the notice was returned to the Superior Court, unbeknownst to the State. AR4. So while it is correct that the record does not show the State notified Hazelton's Court of Common Pleas counsel that an indictment was filed, an attempt was made to notify Hazelton at his address of record.

On June 22, 2016, just two days after the grand jury indicted Hazelton, Hazelton was mailed a notice to appear for his Rule 9 warrant. AR3-4. The letter was mailed to Hazelton's last known mailing address of 24776 Rivers Edge Road, Millsboro, Delaware. AR4. The letter itself, but not the envelope, was addressed to David M. Hazelton, Homeless, Millsboro, Delaware. AR4. Therefore, the court notified Hazelton that a Rule 9 warrant had been issued for his arrest. The letter was returned to the court with the notation "return to sender, moved left no address, unable to forward." AR4. Hazelton had a continuing duty to keep his address current with the court.[8] Hazelton did not do this and moved without leaving a forwarding address with the authorities. Had Hazelton provided the court with a correct address, he would have learned immediately about the indictment. As a result, Hazelton cannot blame the State or the court for not providing him with notice of his indictment and Hazelton's argument. His contention that the Superior Court itself further extended the unnecessary delay because Hazelton's

[8] *See Swift v. Leasure*, 285 A.2d 428, 430 (Del. Super. Ct. Dec. 2, 1971).

"Rule 9 warrant was left languishing for months in Superior Court without Hazelton's knowledge that there was an outstanding warrant for his arrest" is simply incorrect. Ans. Brief at 12.

CONCLUSION

The Superior Court's decision below was erroneous and should be reversed as an abuse of discretion. The State did not prosecute Hazelton in two different courts simultaneously without a purpose or justification. Rather, the State chose to indict Hazelton in the Superior Court and the Superior Court mailed Hazelton notice. The State chose its forum without unnecessary delay and without causing Hazelton any undue prejudice. Therefore, a dismissal of this case under Rule 48(b) was improper.

/s/ Danielle J. Brennan

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complied with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 1361 words, which were counted by Microsoft Word 2016.

DATED: May 10, 2017

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CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on this 10 day of May, 2017, she caused the attached ***STATE'S REPLY BRIEF*** to be served by Lexis-Nexis File and Serve upon:

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