

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE, :
 : I.D. No. 1203014788A
 v. :
 :
 HAREEM D. MITCHELL, :
 :
 Defendant. :

ORDER

On January 3, 2013, this Court heard a number of motions concerning this matter. The motions presented to the Court were resolved or deferred. The Court heard a motion to dismiss pursuant to Superior Court Criminal Rule 48(b) which was decided adversely to the Defendant. This written decision amplified the oral denial by the Court.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Hareem D. Mitchell (“Defendant”) was arrested on March 17, 2012, for the perpetration of an armed robbery at Dot Discount store in Dover and a shootout with Dover Police Cpl. Michael Wisniewski. Defendant was indicted on charges of Attempted Murder in the First Degree, Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm by a Person Prohibited, Reckless Endangering in the First Degree, Wearing a Disguise, and Resisting Arrest. Robert Harpster, a public defender, first entered an appearance on behalf of Defendant at his arraignment on May 14, 2012. Defendant elected to proceed *pro se* after this Court permitted Harpster to withdraw as counsel on October 10, 2012, after a lengthy colloquy with the Defendant.

On December 13, 2012, Defendant filed the present motion in which he moves

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to dismiss nine of the fourteen counts of the indictment pursuant to Superior Court Criminal Rule 48(b). Specifically, Defendant seeks dismissal of Count One (Attempted Murder in the First Degree); Counts Two and Three (Robbery First Degree); Counts Nine, Ten, Eleven and Twelve (Reckless Endangering First Degree); Count Thirteen (Wearing a Disguise During the Commission of a Felony); Count Fourteen (Resisting Arrest); and Counts Four and Six (Possession of a Firearm During the Commission of a Felony). Defendant's arguments with respect to each count will be reviewed below, along with the applicable law.

Standard of Review

Rule 48(b) is a codification of the inherent power of a court to dismiss a case for want of prosecution.¹ The Superior Court's power is discretionary, not governed by established concepts of the Speedy Trial Clause of the Sixth Amendment.² Rule 48 provides, in pertinent part:

(b) *By court.* 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 . . . the court may dismiss the indictment, information or complaint.³

A dismissal under Superior Court Criminal Rule 48(b) requires an unnecessary delay

¹ *State v. Fischer*, 285 A.2d 417, 418-19 (Del. 1971) (citing 8A Moore's Federal Practice (2d Ed.) P. 48-50).

² *Id.* at 418.

³ Super. Ct. Crim. R. 48(b) (emphasis in original).

attributable to the prosecution, and prejudice to the defendant.⁴

DISCUSSION

Defendant first contends that Count One of the indictment should be dismissed on the basis of a typographical error; specifically, the inadvertent omission of the word “at” following the word “shot.” This argument is misguided. This Court permitted the State to amend the first count of the indictment to change the language “shooting the victim” to “shooting *at* the victim.” Defendant now argues, for the first time, that he is somehow prejudiced by this amendment. This argument was not raised at the time that the State moved to amend the indictment, and thus deemed waived.

Defendant also alleges that Count One of the indictment should be dismissed on the ground that there is insufficient evidence to support the attempted murder charge. To convict for that offense, a jury must find beyond a reasonable doubt that the defendant “[i]ntentionally does ... anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of a crime” of first-degree murder.⁵ “A person is guilty of murder in the first degree when: “(1)[t]he person intentionally causes the death of another person”⁶ A person acts intentionally with respect to an element of an

⁴ Super. Ct. Crim. R. 48(b); *State v. McElroy*, 561 A.2d 154, 155-56 (Del. 1989).

⁵ 11 *Del. C.* § 531.

⁶ 11 *Del. C.* § 636(a).

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offense when: (1)[i]f the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that nature or to cause that result..."⁷ Whether the State has presented sufficient evidence to support an attempted murder conviction is a factual determination best left to the trier of fact. The Court therefore declines to dismiss Count One of the indictment on the grounds that the State has amassed insufficient evidence to support an attempted murder charge.

Defendant argues that the remaining counts should be dismissed on the grounds that the State has amassed insufficient evidence to support the charges alleged therein. Again, it is the role of the jury to determine whether, when viewing the evidence in the light most favorable to the State, a defendant is guilty beyond a reasonable doubt of all the elements of a particular crime.⁸

Defendant further argues that Counts 4 and 6 violate his Fifth Amendment right against double jeopardy. The principles of double jeopardy do not prohibit multiple punishments for two offenses arising out of the same occurrence if each offense requires proof of a fact which the other does not.⁹ To resolve a claim of double jeopardy, the Court must first look to whether the General Assembly intended to

⁷ 11 *Del. C.* § 213(b).

⁸ *Priest v. State*, 879 A.2d 575, 577 (Del. 2005).

⁹ *Jochao v. State*, Del. Supr., 604 A.2d 1351, 1361 (1992). *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

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impose more than one punishment for a single occurrence of criminal conduct.¹⁰ Furthermore, when a single or continuous act or transaction involves a crime of violence against different persons, separate charges are permissible.¹¹

Accordingly, Defendant's motion to dismiss is hereby **DENIED**. IT IS SO ORDERED.

/s/ William L. Witham, Jr. _____

Resident Judge

WLW/dmh

¹⁰ *Forest v. State*, Del. Supr., 721 A.2d 1271, 1277 (1999).

¹¹ *Glover v. State*, Del. Supr., 710 A.2d 218 (1998).