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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 OPENING BRIEF

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DATE: March 16, 2017

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NATURE AND STAGE OF THE PROCEEDINGS

On May 13, 2016, David M. Hazelton ("Hazelton") was arrested for Vehicular Assault Third Degree,[1] Leaving the Scene of a Collision Resulting in Injury,[2] Driving a Vehicle under the Influence of Alcohol ("DUI"),[3] Failure to Have Insurance Identification in Possession,[4] Failure to Report a Collision Involving Alcohol or Drugs,[5] and Failure to Stop at a Red Light.[6] The warrant was approved by the Justice of the Peace Court #3 and, once Hazelton was sober for presentment, he was presented to the Magistrate who set bail and transferred the case to the Court of Common Pleas as a matter of course under case number 1605009428. A-12-15.

On May 17, 2016, the Sussex County Court of Common Pleas ("CCP") accepted the case and scheduled arraignment for the following day. A1. On May 18, 2016, Hazelton was arraigned in CCP, entered a plea of not guilty, and demanded a jury trial, which was scheduled for September 14, 2016. (A1). On May 27, 2016, Hazelton's counsel filed an entry of appearance, a motion to suppress evidence, a discovery request and a request for supplemental discovery,

[1] 11 *Del. C.* § 628
[2] 21 *Del. C.* § 4202
[3] 21 *Del. C.* § 4177
[4] 21 *Del. C.* § 2118
[5] 21 *Del. C.* § 4203
[6] 21 *Del. C.* § 4108

and a jury trial waiver. A1-2. On May 31, 2016, Hazelton, through counsel, filed a letter including a copy of an insurance card. Additionally, on May 31, 2016, it is noted on the docket that the case was to remain on the jury trial calendar, but proceed as non-jury. A2.

The State did not file an Information in CCP. Instead, on September 2, 2016, the State entered a *nolle prosequi* in CCP, reason code #5 – Disposition Other Court. A2. The State, after reviewing the case, indicted Hazelton in the Superior Court on the charges of Vehicular Assault Second Degree,[7] DUI,[8] Leaving the Scene of a Collision Resulting in Injury,[9] Failure to Have Insurance Identification in Possession,[10] Failure to Report a Collision Involving Alcohol or Drugs,[11] and Failure to Stop at a Red Light.[12] This case was given case number 1606000313. The Sussex County Superior Court accepted the case, an indictment, and application for a Rule 9 warrant was issued on June 20, 2016. A3 at DI 1-5.

On September 14, 2016, Hazelton's Rule 9 warrant was returned. Hazelton pleaded not guilty and was given a case review date of October 3, 2016. A3 at DI 6. On September 20, 2016, the State provided Hazelton with discovery. A3 at DI

[7] 11 *Del. C.* § 628A

[8] 21 *Del. C.* § 4177

[9] 21 *Del. C.* § 4202

[10] 21 *Del. C.* § 2118

[11] 21 *Del. C.* § 4203

[12] 21 *Del. C.* § 4108

7. One week later, on September 27, 2016, Hazelton's CCP counsel filed an entry of appearance and discovery request on Hazelton's behalf with the Superior Court. A3-4 at DI 8,9. The court rescheduled the first case review, as well as second case review, to December 5, 2016 at Hazelton's request. A4 at DI 15.

On November 15, 2016, Hazelton filed a motion to dismiss his Superior Court case, which was heard on November 18, 2016. The Superior Court granted Hazelton's motion to dismiss the same day. A4 at DI 16, 17. The State filed a motion to reargue on November 23, 2016, which the Superior Court denied on December 1, 2016. A4 at DI 19, 21.

The State now appeals. This is the State's Opening Brief.

SUMMARY OF ARGUMENT

I. It was an abuse of discretion of discretion for the Superior Court to dismiss Hazelton's criminal charges relying on *State v. Pruitt*, as there was no manipulation of the system at play here and the State had properly chosen its forum in the Superior Court.

STATEMENT OF FACTS[13]

On May 13, 2016, at approximately 9:17 p.m., Hazelton was on John J. Williams Highway in Millsboro, Delaware, when he pulled out in front of one vehicle, ran the red light at John J. Williams Highway and Mt. Joy Road, and crashed into the front passenger side of Gena Dagostino's car, after which Hazelton jumped a curb. Instead of stopping at the scene, Hazelton continued on and drove to the back of Oak Orchard Diner in Millsboro. A9. Cpl. Powell of the Millsboro Police Department located Hazelton in that back parking lot of Oak Orchard Diner, where he was held until Cpl. Buchert arrived and took over the investigation. A9.

Hazelton's breath exhibited a strong odor of alcoholic beverages and, when he was asked to perform field sobriety tests, he refused. Specifically, Hazelton stated, when asked to do the Walk and Turn test, that he "cannot perform that test sober." A9. He refused the remainder of the tests, stating that he was "told not to" do them. A9. He also refused to submit to a portable breath test (hereinafter "PBT") on scene, and upon transport to the police station, he refused the intoxilyzer and refused to consent to a blood draw. A9. Cpl. Buchert obtained a search warrant for Hazelton's blood and transported him to Beebe Medical center

[13] The facts were taken exclusively from the Affidavit of Probable Cause in the arrest warrant filed with the Justice of the Peace Court #3. A6.

for a blood draw. A9.

Hazelton was too intoxicated to be presented to the Justice of the Peace Court Magistrate that evening for arrest, as the PBT given following his arrest for presentment purposes registered a .36 blood alcohol content. A12. The following day, May 14, 2016, Hazelton was presented to the Magistrate, where bail was set and his case was transferred to the Court of Common Pleas. A12-14.

I. THE SUPERIOR COURT ABUSED ITS DISCRETION IN GRANTING HAZELTON'S MOTION TO DISMISS BASED ON A MISAPPLICATION OF LEGAL PRECEDENT.

Question Presented

Whether the Superior Court abused its discretion when it granted Hazelton's motion to dismiss, where the State entered a *nolle prosequi* on the charges against him in the Court of Common Pleas and subsequently filed an indictment in the Superior Court? A86; Ex. A.

Scope and Standard of Review

This Court reviews the decision of the Superior to grant or deny a motion under Superior Court Rule 48(b) for an abuse of discretion.[14]

Argument

On November 5, 2016, after final case review, Hazelton moved to dismiss the indictment against him on the grounds that because Hazelton, at one time, had charges pending against him in the Court of Common Pleas based upon the same facts, the State had already chosen their forum to prosecute under *State v. Pruitt*.[15] The State argued that because no Information was filed in the Court of Common Pleas, the State had not chosen its forum, that this case is distinguishable from *Pruitt* in that there was no misconduct on the part of the State and that the charges

[14] *State v. Fischer*, 285 A.2d 417, 419 (Del. 1971).

[15] 805 A.2d 177 (Del. 2002).

were different when indicted in Superior Court, and that Hazelton has suffered no prejudice as a result of the indictment in the new case in Superior Court. (A93, 96). On November 18, 2016, the Superior Court granted Hazelton's motion, finding that the State had chosen its forum when the Court of Common Pleas accepted Hazelton's case and that the State could not prosecute the case simultaneously in two courts. A111; Ex. B. The Superior Court relied upon this Court's decision in *Pruitt* to support dismissal of Hazelton's charges. But this case is not like *Pruitt*, and the Superior Court erred in relying on that case.

In *Pruitt*, a DUI charge was ultimately dismissed by Superior Court due to a due process violation that occurred when the case was originally dismissed and subsequently reopened *ex parte* by the Justice of the Peace Court.[16] Pruitt's initial DUI charge in Justice of the Peace Court was dismissed when the court erroneously thought the arresting officer did not file the charging paperwork by the time of arraignment. A few days later, when the court located the paperwork, the court then reinstated the charges *ex parte*, without notice or a hearing given to Pruitt. The case was then transferred to the Court of Common Pleas, where the State entered a *nolle prosequi* on the charges and indicted the case, with identical charges, in the Superior Court. Finding that the State indicted the case to avoid the due process violation that occurred below, the Superior Court dismissed the

[16] *Id*. at 180.

case under Superior Court Rule 48(b). This Court affirmed that decision.[17]

Here, no such due process violation occurred. The State took no meaningful steps in the prosecution without providing Hazelton notice and opportunity to be heard. The Superior Court reasoned: "this defendant was being prosecuted in two courts at the same time, which Pruitt is not fond of unless you have some good reason. I haven't heard good reason yet." A111. The State articulated its interest in prosecuting DUI cases in the Superior Court because there is an allegation of physical injury, where there are more experienced prosecutors who can give these serious cases more attention than the caseload allows for in the Court of Common Pleas. A86. While *Pruitt* states its "distaste for the State's practice of voluntarily dismissing charges in a lower court and commencing a new prosecution on *those same charges* in a higher court with concurrent jurisdiction,"[18] that is not what happened here.

In Hazelton's case, once the charges were received and reviewed by the Department of Justice, the State amended the initial charges. This was done without undue delay, as the original charges were brought to the attention of the Department of Justice on May 18, 2016, at the time of arraignment, and were indicted approximately one month later on June 20. A84. The *Pruitt* Court

[17] *Id.*

[18] *Id.* at 183.

commented on this practice by the State, citing to *State v. Guthman.*[19] In *Gutham*, this Court found that the Justice of the Peace Courts had the inherent power to ensure the proper administration of justice, and that power would be "undermined by a rule allowing the State to negate a decision of those courts by voluntarily dismissing a case and renewing it in a different court without the weight of the lower court's unfavorable decision."[20] *Pruitt* also relied on *State v. Evans*,[21] where the Superior Court held that the State could not file charges anew in the Court of Common Pleas following a dismissal of those same charges in the Justice of the Peace Court.[22] The *Evans* court noted that the State could have, but did not, appeal from the Justice of the Peace Court's final order dismissing the charges.[23] Neither case is applicable here.

This was neither a manipulation of the system, forum shopping nor a duplicative prosecution about which *Pruitt* was concerned. Here, the State reviewed the facts of the case and amended the initial charging decision in a timely manner. There was nothing the State was trying to avoid by indicting Hazelton in the Superior Court, such as a dismissal, voiding out a due process violation or any

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[19] *Id.* (citing *State v. Guthman*, 619 A.2d 1175, 1178 (Del. 1993)).

[20] *Id.* at 1178.

[21] 1996 WL 812841 (Del. Super. Nov. 25, 1996)

[22] *Id*. at *1-2.

[23] *Id*. at *1.

other negative event. The State was simply exercising its right to decide on appropriate charges in any given case, without causing prejudice to the defendant. The Department of Justice never filed a charging document in the Court of Common Pleas, and therefore never acquiesced to the prosecution in that forum.[24] Instead, the State presented the case, and different charges, to a Superior Court grand jury for prosecution. While there was some brief overlap in time from when the Court of Common Pleas and the Superior Court had open cases stemming from the same facts, there was never actually a dual prosecution here. Therefore, the *Pruitt* concerns are simply not present here.[25]

Pursuant to Superior Court Criminal Rule 48(b), the court may dismiss an indictment for "unnecessary delay."[26] "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

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[24] *See Rogers v. State*, 457 A.2d 727, 732-33 (Del. 1983) (finding the State's failure to file an Information in the Justice of the Peace Court following arrest for a driving under the influence charge was not seen as acquiescing to its jurisdiction, thus the State properly chose its forum when it entered a *nolle prosequi* in Justice of the Peace Court and an Information in the Court of Common Pleas).

[25] *See State v. Zickgraf*, 2005 WL 4858688, at *1 (Del. Super. Aug. 19. 2005) ("Key to the Supreme Court's analysis [in *Pruitt*] was that the Attorney General's Office re-filed the case in a court of concurrent jurisdiction in order to hide some defect in the indictment."), *aff'd Zickgraf*, 2006 WL 941969 (Del. Apr. 10, 2006)

[26] Super. Ct. Crim. R. 48(b).

complaint."[27] 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.[28]

Hazelton suffered no prejudice as a result of this decision to prosecute him in the Superior Court. In *Pruitt*, the prejudice to the defendant was analyzed under the assumption that there was a manipulation of the system, and the court found that due to the "unexplained commencement of a duplicative prosecution, the anxiety suffered by the defendant as a result of the delay and uncertainty … and the additional expenses attendant to the renewal of charges in a separate forum … are inherent where the State subjects any defendant to this type of *deliberate manipulation* of the judicial process."[29] Again, because here there was no manipulation of the process by the State, there is no inherent prejudice to Hazelton,

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[27] *Id.*

[28] *State v. McElroy*, 561 A.2d 154, 155–56 (Del. 1989) (citations omitted) (internal quotation marks omitted).

[29] *Pruitt*, 805 A.2d at 182-83.

as he argued below.[30] This is not an "unexplained commencement of a duplicative prosecution."

Hazelton, while indicted on different charges, was still facing misdemeanor offenses. Because the State elected to review the facts, appropriately amend the charges and to dedicate a more experienced prosecutor to a serious case, there is a logical explanation for the charges here, as opposed to the situation in *Pruitt*. Hazelton, at no point, was under a mistaken impression that the charges were dismissed, and later reinstated. In fact, the reason for the *nolle prosequi* of the charges was listed as "Disposition Other Court." A2. Moreover, once in the Superior Court, the first case review was continued at Hazelton's request, without mention of the change in venue. Hazelton's request for an extension demonstrates the lack of prejudice from any inherent delay caused by the indictment.

In contrast, should this dismissal be upheld, the State would suffer prejudice. Up until the point where the case was arraigned in the Court of Common Pleas, the Department of Justice did not have an opportunity to meaningfully review these charges. The practice is that driving under the influence charges are set for arraignment in Justice of the Peace Court #14, at which time a representative of the

[30] *C.f. State v. Fischer*, 285 A.2d 417 (Del. 1971) (upholding the dismissal of charges where the State, "without explanation," *nolle prossed* charges after defendants had appeared for trial three times in Municipal Court, and then two months later indicted on the same charges in Superior Court, reasoning there was "unnecessary delay" in bringing the defendants to trial).

Department of Justice reviews the files and make a determination as to which cases it will transfer to the Court of Common Pleas, or otherwise indict, within twenty days of that arraignment.[31] For some reason unexplained by the record, this case was sent directly to the Court of Common Pleas from Justice of the Peace Court #3, resulting in the case's appearance on the Court of Common Pleas' arraignment calendar without any review by the Department of Justice. Within one month of the Court of Common Pleas' arraignment, the case was indicted in the Superior Court. This is not an "unnecessary delay."[32] Because the process, and not the Department of Justice, moves the cases from Justice of the Peace Court to the Court of Common Pleas, there is simply no other opportunity for review of the case and for the Department of Justice to select the most appropriate forum. It is well settled that the State, "absent a manipulation of the judicial system that prejudices the Defendants … has the authority to elect the court in which it will prosecute. Under this right of election, Delaware courts recognize a long-standing practice whereby the State may voluntarily dismiss the prosecution in the lower court and commence a new prosecution on the same charges in a higher court with concurrent jurisdiction."[33] If a court were to grant a dismissal before the

[31] 21 *Del. C.* Section 4177(d)(13).

[32] *Id.*

[33] *State v. Gootee*, 2005 WL 1840253, *2 (Del. Comm. Pl. Aug. 4, 2005) (*citing State v. Pruitt*, 805 A.2d at 183; *Rogers v. State*, 457 A.2d 727 (Del. 1983); *State v.*

Department of Justice can reasonable make a forum selection, justice is not served.

Therefore, because there was a logical reason for the new and separate charges in the Superior Court, there was no manipulation of the system by the State to avoid any procedural or other violations, and there is no prejudice to Hazelton, the Superior Court's decision below was legally erroneous and the court abused its discretion by granting Hazelton's motion to dismiss the charges.

Hoffstein, 315 A.2d 594 (Del. 1974) and *State v. Fischer*, 285 A.2d 417, 420 (Del. 1971).

CONCLUSION

The judgment of the Superior Court should be reversed.

/s/ Danielle J. Brennan
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DATE: March 16, 2017

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	)	
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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time 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 3,031 words, which were counted by Microsoft Word 2016.

Dated: March 16, 2017

/s/ Danielle J. Brennan
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Court.

My guess is because of the crush that the CCP unit has in terms of trying to get through the volume of cases, that because these are serious cases that involve injury, we want to have them in Superior Court so they don't get lost in the shuffle. That's my understanding of what our office is trying to do.

THE COURT: Okay. I'm not sure it's better to indict while the case is in CCP than to drop the case and then indict. It strikes me as worse, not better. I haven't heard any compelling reason why we're now in the Superior Court. The Court of Common Pleas is certainly a competent court to handle injuries, and if you're willing and ready to go and you have your people you can pursue anything you want in the Court of Common Pleas regardless of how busy they are. You get your people there and go ahead. I will grant your motion, Mr. Mooney.

Ex. A

You didn't have a case there?

MS. NYMAN: I understand that it went from JP to Court of Common Pleas and then we indicted it. So I know that he appeared in the Court of Common Pleas, but the State took no action in the Court of Common Pleas.

THE COURT: I'm satisfied that this defendant was being prosecuted in two courts at the same time, which Pruitt is not fond of unless you have some good reason. I haven't heard good reason yet.

If for some reason JP Court is sending cases to the Court of Common Pleas that you don't want sent there, perhaps you need to talk to them so they don't do that in the future.

It would be good to figure out how it happened in this case so that I know a little bit more than what you're telling me. So I will not change my mind.

MR. MOONEY: Thank you, Your Honor.

MS. NYMAN: Thank you, Your Honor.

(Whereupon, the proceedings concluded.)

- - -

NICOLE J. SESTA, RPR
OFFICIAL COURT REPORTER

Ex. B

CERTIFICATE OF SERVICE

I, Danielle J. Brennan, being a member of the Bar of the Supreme Court of Delaware, hereby certify that on March 16, 2017, I caused the attached document to be served by File and Serve to:

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