



**SCOTT BALLARD**  
**DISTRICT ATTORNEY**

GRIFFIN JUDICIAL CIRCUIT

ONE CENTER DRIVE  
P.O. Box 1498  
FAYETTE JUSTICE CENTER  
FAYETTEVILLE, GA 30214  
(770) 716-4250  
FAX (770) 716-4857

SUPERIOR COURTS  
FAYETTE COUNTY  
PIKE COUNTY  
SPALDING COUNTY  
UPSON COUNTY

writer's direct dial (770)716-4251

November 23, 2009

The Honorable Carol W. Hunstein, Chief Justice  
The Honorable George H. Carley, Presiding Justice  
The Honorable Robert Benham, Justice  
The Honorable Hugh P. Thompson, Justice  
The Honorable P. Harris Hines, Justice  
The Honorable Harold D. Melton, Justice  
The Honorable David E. Nahmias, Justice  
Supreme Court of Georgia  
244 Washington Street, Room 572  
Atlanta, Georgia 30334

RE: Jamie Ryan Weis v. State of Georgia (Case No. S09A1951)

Dear Members of the Court:

This case is about the State of Georgia's attempt to bring Catherine King's killer to justice. During the course of pre-trial motions, Appellant interrupted the proceedings yet again when he requested this Court overturn a determination that his right to a speedy trial pursuant to the Sixth Amendment of the United States Constitution had not been violated due to the passage of three years from his arrest.

This Court has adopted the four factor balancing test created by the United States Supreme Court. Barker v. Wingo, 407 U. S. 514, 530 (1972); Doggett v. United States, 505 U. S. 647, 652 (1992); Ruffin v. State, 284 Ga.

52, 55 (663 SE2d 189) (2008). In this balancing process, no one factor outweighs the other. Barker, 407 U. S. at 533. The four factors are the length of the delay; the reasons for the delay; the assertion of the right; and the prejudice to the defendant.

Appellant seeks to have this Court ignore that portion of Ruffin where this Court held “none of these four factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” Ruffin, 284 Ga. at 455-456. Without speaking to the three year delay in the assertion of the right, Appellant asks this Court to simply hold all of the delay against the State and end the inquiry.

There are other factors to consider though. This Court has held repeatedly where a defendant does not promptly exercise his right to a speedy trial, this factor is entitled to “strong evidentiary weight against the Defendant.” See Nelloms v. State, 274 Ga. 179 (2001) (51 month delay); Boseman v. State, 263 Ga. 730 (1994) (27 month delay); Haisman v. State, 242 Ga. 896 (1979) (20 month delay). Appellant has offered no reason for the delay and this factor must be balanced against him.

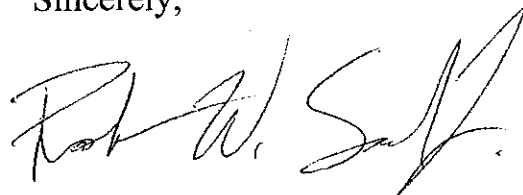
Appellant instead firmly places the balance of his argument into the notion that the fiscal decisions of the Legislative Branch of State Government should directly control the ability of the Executive and Judicial Branch to perform their lawful and constitutional duties. Appellant demands that his independently contracted attorneys be paid in full for their services prior to his trial. He refuses to participate in his defense while these private lawyers decline to perform their duties when a partial payment is made and state-funded counsel is available. It cannot be lost upon this Court that the sum sought for just this one case would provide the funds to employ a full-time attorney and investigator for the Georgia Capital Defenders who could then work on eight death penalty cases (while independent counsel can only handle four). Nor should it be ignored that these independent contractors were hired by the Capital Defenders to represent Appellant though no conflict existed and one of the attorneys had twice the number of allowed death penalty cases for a full time member of the Capital Defenders’ staff at that time.

Appellant's paid counsel undertook an obligation to represent Appellant. When they realized that what they considered complete funding for their fees was not going to be available prior to the trial they declined to fulfill their duty to their client. They went on strike until their fees could be deposited in the clerk's registry prior to trial. Instead of the State leaving Appellant without representation, it was the actions of the private attorneys that created this problem. The trial court correctly predicted that the specific issue currently before this Court would arise if the independently contracted lawyers stopped working. Further, when the State and the trial court tried to take steps to insure Appellant was provided counsel, these private lawyers filed a lawsuit further delaying this trial. The independently contracted lawyers opposed attempts by the trial court to appoint salaried, competent public defender attorneys to explicitly protect the defendant's right to a speedy trial.

Appellant's Letter Brief urges this Court to consider the actual prejudice the delay has caused Appellant. However, the record does not allow this Court to make a finding as to harm or prejudice at this time. The Federal Courts consider prejudice from the delay at the conclusion of the case, after a defendant has been tried, convicted, and sentenced. This is why Hubbard v. State, 254 Ga. 694 (1985) should be reconsidered. Federal courts recognize that the true measure of prejudice from a delay in time from arrest to trial cannot be measured prior to the conclusion of the case.

From the first motion argued in this case (a request from Appellant to continue the case indefinitely) to his opposition to expedite this appeal, Appellant has only *fought* a speedy resolution of the charges he is facing. This Court should affirm the trial court's ruling and allow the District Attorney to present this case to a jury in Pike County.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Smith, Jr.", written in a cursive style.

Robert W. Smith, Jr.  
Assistant District Attorney  
Griffin Judicial Circuit

CC: Stephen B. Bright  
Southern Center for Human Rights  
83 Poplar Street, NW  
Atlanta, GA 30303

Robert H. Citronberg  
303 Peachtree Street  
Atlanta, GA 30308

Thomas McKee West  
400 Colony Square, Suite 200  
Atlanta, GA 30361