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 ANNA PINSON SPEARS
 10/21/2025 09:38:32 AM
 OCT 20 2025
 PIKE CIRCUIT/DISTRICT COURT
 BY _____ D.C.

COMMONWEALTH OF KENTUCKY
 PIKE CIRCUIT COURT
 CASE NO. 25-CR-00223

COMMONWEALTH OF KENTUCKY,

PLAINTIFF,

VS.

MOTION TO
 CONTINUE TRIAL DATE
 FOR COMPLETION OF FORENSIC TESTING

MICHAEL "M.K." MCKINNEY, III,

DEFENDANT

COMES the Commonwealth and for its motion states as follows:

1. This case is set for trial on December 1, 2025. When this date was set, the Commonwealth had concerns about our ability to be ready because there were multiple rounds of forensic testing that had yet to be completed. Our hope was that it could be completed far enough in advance of the trial date that the parties could be ready.
2. The Kentucky State Police forensic laboratory has made every effort to complete all of the testing. Their goal was to complete it by mid November, but the Commonwealth has been advised that the last submission of evidence, which includes at least 33 items to be analyzed for DNA, will not be completed prior to the December 1st trial date.
3. Obviously, the Commonwealth cannot be ready for trial until all forensic testing is completed with appropriate time to review and digest the results. It would also not be in the

interest of any defendant to go to trial with such a large number of items still untested. There is always the possibility that some of the test results could be exculpatory to one or more defendants. And this does not even take into account the fact that there are experts for both sides who would not be able to render an informed opinion without all of the test results.

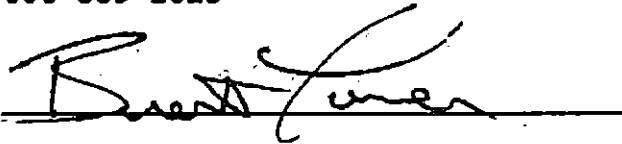
4. Continuing the trial in order to allow the completion of forensic testing of the evidence in the case does not violate the Defendant's speedy trial rights. The Commonwealth would refer the Court to our previous response to the Defendant's Motion for Speedy Trial, a copy of which is attached. The courts have consistently held that a valid reason for a continuance justifies appropriate delay. McDonald v Commonwealth, 569 S.W.2d 137 (KY 1978). It's hard to imagine a more valid reason for delaying the trial than to allow completion of critical DNA testing. It is not prejudicial to any Defendant and would instead be to their benefit for the testing to be completed.
5. The Commonwealth has consulted with the victim's family, and they are in agreement with this request as they understand that it is more important to get it right than to meet any particular deadline for trial. As the Court knows, the Commonwealth only gets one shot at this, and we have no ability to appeal an adverse outcome at trial. We simply cannot be ready for trial

on December 1st, and it would be prejudicial to the Commonwealth, the victim, and the victim's family if we were required to go to trial on that date. It is in the interest of justice and fairness for all parties that this case not be tried until all of the evidence has been tested and the parties have had sufficient opportunity to prepare. Accordingly, the Commonwealth is asking that the December 1st trial date be continued, and that a Status Conference be scheduled in December to see where the testing is at that point and to select a more appropriate trial date.

Respectfully submitted this 20 day of October,

2025.

HON. ARNOLD BRENT TURNER
140 SOUTH LAKE DRIVE
PRESTONSBURG, KY 41653
606-889-1825



Brent Turner


CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was e-mailed or FAXED on this the 20 day of October, 2025 to the following:

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NOTICE OF ENTRY TO COURTROOM 13/20/25 11:45:33 AM FILED DOUGLAS R. HALL 3/27/2025 09:38:32 AM KENTUCKY BROADCASTING

COMMONWEALTH OF KENTUCKY
FLOYD CIRCUIT COURT
CASE NO. 24-CR-326

MAR 27 2025
BY [Signature] CIRCUIT COURT DC.

COMMONWEALTH OF KENTUCKY,

PLAINTIFF

VS.

COMMONWEALTH'S RESPONSE TO
DEFENDANT'S MOTION FOR SPEEDY TRIAL

MICHAEL K. MCKINNEY, III,

DEFENDANT.

*** **

COMES the Commonwealth and for its response to the Defendant's Motion for Speedy Trial, states as follows:

The Defendant has filed a Motion for Speedy Trial, dated March 12, 2025. At a hearing the following day, the Defendant asked that the trial be scheduled as soon as possible. In anticipation of that hearing, the Commonwealth conferred with the Kentucky State Police Forensic Laboratory to get an estimated timeframe for completion of the remaining testing. After doing so, the Commonwealth advised the Court at this hearing that we believe all of the testing would be completed later this year and that we believed we could be ready for trial by February or March, 2026. This timeframe takes into consideration, not only completion of all testing, but allowing appropriate time for all parties to review the results from these tests and plan their trial strategy accordingly. Obviously, this may include retaining experts on both sides that will need time to review these results as well.

The analysis for what constitutes a Speedy Trial for purposes of complying with the Defendant's constitutional rights was set forth in

Barker v. Wingo, 407 U.S. 514 (1972). The factors to be considered are the length of the delay, the reason for the delay, the Defendant's assertion of his right, and prejudice to the Defendant. In this case, there is no question about the assertion of the right, so we only need to consider the other three (3) factors.

(1) THE LENGTH OF THE DELAY

In considering the length of any delay, you measure from the time of indictment, or arrest. In this case, the Defendant was indicted and arrested on July 30, 2024. If a trial were to be held in February or March of 2026, that would be approximately eighteen (18) months from the date of arrest to trial. In the case of **McLemore v Commonwealth**, 590 S.W.3d 229, (Ky. 2019) the Court explains that a delay, if considered long enough, only triggers the full analysis under **Barker**. The Court had previously found that eighteen (18) months was long enough to constitute presumptive prejudice, thereby triggering further analysis. **Bratcher v Commonwealth**, 151 S.W.3d 332, (Ky.2004). The **McLemore** Court went on to state that "a finding of presumptive prejudice does not establish actual prejudice; rather it serves to establish the delay was long enough to trigger further inquiry into the remaining three **Barker** factors."

(2) REASON FOR THE DELAY

When considering this part of the analysis, the Court must look to see if the cause of the delay is attributable to the Commonwealth or to the Defendant. The **McLemore** Court stated:

"Different weights should be assigned to different reasons" Barker, 407 U.S. 531. For example deliberate delays by the government in order to hamper the defense should be weighed more heavily against the government than neutral reasons for delay, such as overcrowded courts. "A valid reason for delay, such as a missing witness, should serve to justify appropriate delay".

In *Goben v Commonwealth* 503 S.W.3d 890, (Ky. 2016), the Court held that "neutral reasons for delay are not viewed as dimly by the Court as delays meant to hamper defense". *Goben* at 905. The Court further stated that delays in bringing Defendant to trial for "valid reasons" attributable to the state do not offend the right to Speedy Trial under the 6th Amendment and should justify appropriate delay. *Id.*

Based on the case law, it is very clear that the Commonwealth's need to complete all forensic testing in a complex murder case is certainly a "valid reason" that justifies a delay in any trial until this can be done.

(3) PREJUDICE TO DEFENDANT

The last factor to consider is whether a trial date approximately eighteen (18) months from the date of arrest in a multiple Defendant, extremely complex murder case prejudices the Defendant. In *McLemore*, the Court stated the following:

We have consistently held that the "possibility of prejudice alone is not sufficient to support the position that Speedy Trial rights have been violated. It is the burden of the Defendant to establish actual prejudice. Having a long delay while creating presumptive prejudice is sufficient to continue the Barker analysis, does not necessarily create real prejudice to a Defendant."

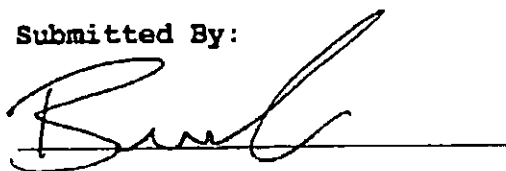
Under this analysis, there is absolutely no prejudice to the Defendant by having a trial eighteen (18) months from the date of his arrest. In fact, the opposite is more likely to be true. Because of the possibility that the additional forensic testing could result in exculpatory evidence, it is in the Defendant's best interest not to go to trial until all testing is complete. The other often cited consequence of delays in trials concerns the possibility of fading memory for potential witnesses. The Commonwealth does not believe that would be an issue in a case tried in the timeframe that we are proposing. But even if it were, that would be more prejudicial to the Commonwealth, as we have the burden of proof and it is our witnesses that would be most affected.

For all of the foregoing reasons, the Commonwealth requests the Court to schedule the trial no sooner than February or March of 2026. The completion of testing and time needed for the Commonwealth to properly prepare, are valid reasons to do so. The Commonwealth has the right to a fair trial, too, and scheduling it any earlier than that would be prejudicial to the Commonwealth.

Respectfully submitted this 27 day of March, 2025.

HON. ARNOLD BRENT TURNER
COMMONWEALTH'S ATTORNEY
140 SOUTH LAKE DRIVE
PRESTONSBURG, KY 41653

Submitted By:



CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was e-mailed on this the 27 day of March, 2025 to the following:

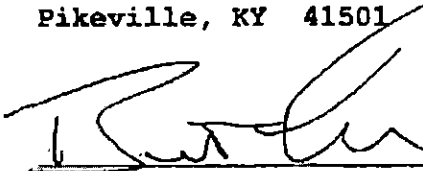
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