

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

NOT ORIGINAL
FILED
DOUGLAS R. HALL
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MAR 27 2025
CIRCUIT COURT
BY *DM* D.C.

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

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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 continue the Barker analysis, does not necessarily create real prejudice to a Defendant."

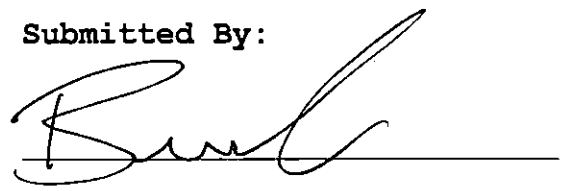
Under this analysis, there is absolutely no prejudice to the Defendant by having a trial eighteen (18) months from the date of his arrest. In fact, the opposite is more likely to be true. Because of the possibility that the additional forensic testing could result in exculpatory evidence, it is in the 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
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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:

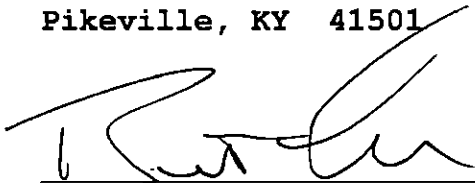
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