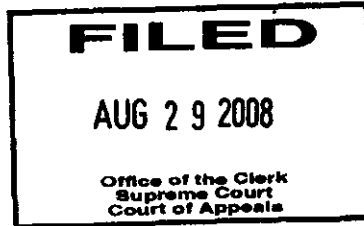


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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2007-KA-01426-COA**



**GREGORY DEON JONES**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF THE  
1<sup>ST</sup> JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

---

**BRIEF ON THE MERITS BY THE APPELLANT**

---

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*Gregory Deon Jones v. State of Mississippi*

Cause No. 2007-KA-01426-COA

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of the Court of Appeals may evaluate possible disqualification or recusal.


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So certified, this the 29<sup>th</sup> day of August, 2008.

  
Virginia L. Watkins,  
Certifying Attorney

*Gregory Deon Jones v. State of Mississippi*

**2007-KA-01426-COA**

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## STATEMENT OF THE ISSUE

**I. The trial court erred when it dismissed the *pro se* Motion to Dismiss for Failure to Grant a Speedy Trial of Mr. Jones, as he suffered the prejudice of inability to locate a critical witness who could establish his innocence.**

## STATEMENT OF THE CASE

### **A. Disposition of the Proceedings Below**

Gregory Deon Jones was arrested February 6, 2005 in connection with the February 5, 2005 robbery of Super Saver No. 7, a convenience store in south Jackson. CP 5. Mr. Jones was indicted April 12, 2005 by a grand jury of the 1<sup>st</sup> Judicial District of Hinds County for violating MISS. CODE ANN. § 97-3-79 (1972) (armed robbery). The indictment also sought enhanced sentencing under Miss. Code Ann. § 99-19-83 (1972) due to Mr. Jones' conviction for two discrete, prior felonies for which he served separate terms in excess of one (1) year. CP 5.

Mr. Jones proceeded to trial on July 24, 2006 and was convicted by a jury of his peers on July 26, 2005. CP 64; T. 339; RE 14. At the conclusion of a bifurcated proceeding to fulfill the evidentiary requirements of MISS. CODE ANN. § 99-19-83, the trial court sentenced Mr. Jones to life imprisonment in the custody of the Mississippi Department of Corrections without possibility of parole. CP 60; T. 350; RE 15.

Upon exhaustion of post-trial motions, all of which were denied, Mr. Jones filed notice of appeal of his conviction, which has been assigned to this honorable Court. CP 78; 43; RE 16.

### **B. STATEMENT OF THE FACTS**

Shortly before 9 A.M. Saturday, February 5, 2005, store clerk Betty Thomas was alone in the Super Saver convenience store at 380 East McDowell Road. T. 147.

A customer wearing a dark blue sweatshirt and multi-color "pajama pants" entered and went straight to the drink cooler at the rear of the store. T. 147; 151. The patron came to the front of the store, which had six continuously recording cameras stationed throughout the sales area. T. 147; 154. He laid the Hawaiian punch drink down, then asked for a tobacco product, Swissel [Swisher's] Sweets. T. 147. Thomas testified she turned to her right, a blind spot in the store's recording system; when she turned back around, her customer was standing beside her with a

knife upright in his hand. T. 147-148; 160; 164. He demanded Thomas open the cash register. T. 148. Thomas was unsure how much the register contained but believed it was less than \$100 because she had recently done a "safe drop" to prevent the theft of large amounts of cash. The store never kept more than \$200 in the drawer, she testified. T. 169.

After giving the robber all the cash, he demanded she open the register again, to see if any money was in the bottom, beneath the register cash tray. T. 160 Before leaving, the robber also took several packages of Newport cigarettes. T. 148; 160 He then left, telling her that it was only "the white man's money." T. 148. Understandably shaken, Thomas immediately locked the door, telephoned "911" and the store owner. T. 151.

Officer Jackie Watson, the first officer on the scene, testified that Thomas, 5' 4," told her the robber was between 5'6" and 5'7" and weight about 160 pounds or more. T. 142. Thomas at trial however, testified she told police he was about six (6) feet tall and weighed about 200 pounds. T. 143. Det. Ford Hayman, who took her statement later that afternoon at the Jackson Police Department Robbery-Homicide Division, also testified that Thomas described the robber as about six feet tall and around 200 pounds. T. 248.

Hayman testified he arrived at the Super Saver about 9:30 A.M. Feb. 5 and watched a videotape of the robbery, produced by the store manager from recording equipment in his office. T.243. Based on this view of events and the robber's movements through the store, Hayman directed a crime scene technician on where to dust for possible identifying fingerprints. T. 185; 243.

At the same interview with detectives in which she gave her handwritten statement, Thomas also identified the robber from a photo line-up prepared earlier by police. *Exhibit 6*; T.156. The man she identified, Gregory Deon Jones, was the *only* one among the six individuals

on the photographic array who appeared to be dressed in a hood or clothing with a large collar. T. 167.

On Sunday, February 6, 2005, investigating police checking convenience stores in the north Jackson area, near the intersection of Ridgewood and County Line roads, spotted a man who appeared to be wearing the distinctive dark blue sweatshirt with a lighter blue "G" on the chest, just as the Super Saver robber had worn. T. 210. Det. Reginald Cooper pulled into the convenience store parking lot and hailed the man to come speak with him. T. 212. Cooper testified he was wearing a hat marked "Police" and a black vest marked "Police" in yellow lettering back and front. T. 212-213.

The man Cooper hailed turned and ran from the store parking lot, around a fence, into the parking lot of the Hilton Hotel and finally into the Hilton itself, where he was found hiding in a small anteroom near the hotel restaurant. T. 213; 215. Cooper chased the man, who identified himself as Gregory Jones upon arrest, and during the pursuit, noticed something drop from Jones' pants. T. 213. Cooper testified he radioed for someone to find and secure the dropped object, which turned out to be a black-handled knife. T. 220; 233. Upon booking, police also had Jones remove his dark blue sweatshirt, which was logged into evidence. T. 251.

On February 7, 2005, police searched a Jackson hotel room registered to the girlfriend of Jones, Laverne Williams. Jones also stayed there, Det. David Domino testified. T. 228; 229. Inside, police recovered several packages of Newport cigarettes and a pair of black pajama pants with red and white writing on them. T. 229; *Exhibit 13*. At trial, Mr. Jones was permitted to walk before the jury wearing the pants in order to judge the credibility of his identification by Thomas and from the store surveillance tape. T. 287.

Only two partial latent fingerprints were recovered from the Super Saver No. 7; only one was readable. T. 180-181; 199; 201. Jackson Police Department analyst Melvin Jones ran the



partial print through a national fingerprint database to no avail. T. 204. The readable print also failed to match the defendant, Gregory Jones. T. 204.

### SUMMARY OF THE ARGUMENT

The trial court denied to Mr. Jones his fundamental right under the Sixth and Fourteenth amendments to a speedy trial. Delays in holding the trial resulted in his inability to locate Laverne Williams, his girlfriend. While Williams remained in the area for several months after his arrest, she eventually moved and stymied all efforts of defense counsel to communicate with her to glean exculpatory information. Mr. Jones submits this satisfies the prejudice prong of the traditional speedy trial “test” as outlined in *Barker v. Wingo*, 407 U.S. 514 (1972).

## ARGUMENT

**I. The trial court erred when it dismissed the *pro se* Motion to Dismiss for Failure to Grant a Speedy Trial of Mr. Jones, as he suffered the prejudice of inability to locate a critical witness who could establish his innocence.**

Under *Klopfer v. North Carolina*, 386 U.S. 213 (1967), the Sixth Amendment right to a speedy trial is applicable to the states through the due process clause of the Fourteenth Amendment. Unlike MISS. CODE ANN. § 99-17-1 (1972), which requires all indicted matters be brought to trial within 270 days of *arraignment*, the speedy trial guarantee attaches at the point of accusation. In this case, Mr. Jones's point of "accusation" began with his arrest on Feb. 6, 2005.

The case of *Barker v. Wingo*, 407 U.S. 514 (1972) spells out the traditional four-prong test to measure whether or not the right of a criminal defendant to a speedy trial right has been violated. The factors to consider include (1) length of delay; (2) reason for delay; (3) defendant's assertion of his right and (4) prejudice to the defendant. It is the burden of the prosecution to demonstrate good cause for delays in prosecution; improper motives weigh heavily in the balancing conducted for violation of speedy trial rights. An eight-month delay under Mississippi law is presumptively prejudicial. *Jenkins v. State*, 607 So.2d 1137, 1138 (1992). Furthermore, when the record is silent as the reason, such time is counted against the state. *Jenkins*, at 1139. The test is quite carefully applied, for the only remedy once violation is found is dismissal of the charges. *Strunk v. White*, 412 U.S. 434, 439-440 (1973).

In this case, the record clearly shows Mr. Jones was arrested Feb. 6, 2005. He was indicted April 12, 2005. CP 5. Mr. Jones was arraigned May 13, 2005. CP 1; RE 4. Mr. Thomas Fortner, Hinds County Public Defender until Sept. 30, 2005, when he retired, was originally counsel for Mr. Jones. Fortner filed an agreed order of continuance regarding the initial trial date

of August 25, 2005 to Feb. 6, 2006. The date of trial was “bumped” twice more; once for trial of the older case of *Eric Moffett v. State*, on appeal to the state Supreme Court on Feb. 6, and again on May 8, 2006, when a *newer* case (*Jeffrey Jackson v. State*, again, now pending appeal to this honorable Court), took precedence. T. 24. The only order to which counsel for Mr. Jones agreed was the August 25, 2005 date, due to the impending retirement of his assigned counsel, Mr. Fortner, and re-assignment of another public defender.

Mr. Jones’ subsequent counsel, Mary Helen Wall, prosecuted the case in Mr. Jones’ behalf and filed a “Motion to Elect” to force the prosecution to tell her and Mr. Jones upon which charge the State planned to proceed on July 24, 2006. CP 22. Up until that time, the State apparently had not bothered to inform defense counsel of the charge they intended to try, but did so in a hearing conducted May 4, 2005. T. 3. Ms. Wall subsequently left the public defender’s office for a federal court position and Mr. McWilliams assumed representation of Mr. Jones about one week prior to trial. T. 17.

At a hearing pre-trial on Mr. Jones’ *pro se* Motion to Dismiss for Failure to Grant a Speedy Trial (filed March 24, 2006) Mr. McWilliams argued only one agreed continuance was in the record, covering the period from August 25, 2005 to February 6, 2006. T.13; CP 11-21. The silent record as to other continuances counts against the prosecution, although the Court does take notice of crowded dockets. In this case, however, the matter of *Jeffrey Jackson v. State*, was tried as a special setting for the convenience of the complaining witness. T. 29-30.

From Mr. Jones’ Feb. 6, 2005 arrest to trial beginning July 24, 2006, 506 days passed. Under the federal constitutional standard of *Barker v. Wingo*, the agreed continuance period of August. 25, 2005 to Feb. 6, 2006 was 164 days, still leaving almost 342 days between arrest and trial, a period Mr. Jones claims is “presumptively prejudicial” in this analysis. *Jenkins*, *supra*. The requirements of MISS. CODE ANN. § 99-17-1 (1972), however, were met as trial was held

within the 270-day limit, as that clock did not begin to run until the date of arraignment, May 13, 2005. The time covered by the agreed continuance (Aug. 25, 2005 to Feb. 6, 2006) is not counted against the state.

Nevertheless, Mr. Jones asserts the 342-day delay caused him irredeemable prejudice, as he was unable to secure the presence of Laverne Williams, his companion, whom Mr. Jones believed could corroborate that he was nowhere near the Super Saver No. 7 on the morning of Feb. 5, 2005. In the week he had the case before trial, Mr. McWilliams told the trial court he had tried to reach Ms. Williams, who left the Jackson area in March 2006 to move to Florida. Defense counsel's efforts to reach Ms. Williams in Florida were unsuccessful; he told the court that notations indicate a Jackson area telephone number for Williams in early 2005 and at least some contact with her on Mr. Jones' behalf. T. 17-19.

Considering the length of the delay in excess of eight months, 342 days, Mr. Jones believes this factor should be counted in his favor and less for the state. Defense counsel agreed to a continuance solely due to the impending retirement of his assigned counsel. As for the reasons for the delay, the second factor, subsequent continuances were, according to the prosecutor, for two other cases, *both* of which she represented to the trial court were older. T. 24. Nevertheless, the case of Jeffrey Jackson v. State (05-0-493) was newer than that of Mr. Jones, a factor which should be weighed against the State. Some of the delay was attributable to a crowded docket, but setting the Jackson case ahead of Mr. Jones was for the convenience of the complaining witness, a prominent businessman. T. 30.

The third factor, defendant's assertion of the right, was met, Mr. Jones submits, by the filing March 26, 2006, of his *pro se* Motion and supporting Memorandum. CP 11-21. This motion was apparently filed only with the court clerk. Defense counsel discovered it as he prepared for the July 24, 2006 trial. While it is true Mr. Jones does not mention in his motion the

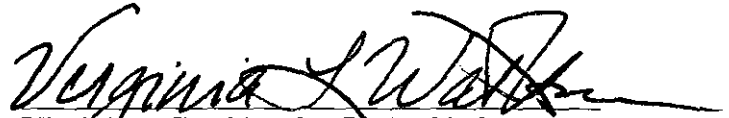
prejudice of inability to find a crucial witness, he filed his motion the month Ms. Williams, his key witness, left Mississippi for Florida. Had trial been held prior to that time, Mr. Jones believes he would have had a witness to affirm that he was not the robber of the Super Saver No. 7 on Feb. 5, 2005.

Mr. Jones believes he has met all four factors of the *Barker v. Wingo* test, necessitating vacation of his conviction and release. He now respectfully asks this honorable Court to so do.

CONCLUSION

For the foregoing reasons and supporting authority recited here, Mr. Jones respectfully requests this Court reverse and vacate his conviction due to denial of his right to a speedy trial.

Respectfully submitted,

  
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Assistant Public Defender

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Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be delivered via hand delivery a true and correct copy of the foregoing *Brief on the Merits by Appellant*, to the following:

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So certified, this the 29<sup>th</sup> day of August, 2008.

  
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Certifying Attorney