

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA)
)
v.)
)
REBECCA MCINNIS HAYNIE,)
DONALD KIETH PHILLIPS)
Defendants)

CASE NO: SU2016CR002686

**ORDER ON DEFENDANTS' JOINT MOTION TO RECONSIDER AND AMENDED
PLEA IN BAR**

The object of all legal investigation is the discovery of truth. O.C.G.A. § 24-1-1. This bedrock rule is taught in Georgia's law schools; engraved on the walls of her courtrooms; and applied daily by juries across this state. Along with the paramount command to do justice, it is the guiding principle which motivates the daily work of prosecutors, judges, and others who labor in Georgia's courts. Seventeen years have passed since the death of Kirby Smith in Muscogee County, Georgia. During this time, three different district attorneys, numerous assistant district attorneys, multiple homicide detectives, and a series of other law enforcement professionals have sought the truth of this case from many different perspectives, guided by many different disciplines. Notwithstanding the elusive nature of the true facts of this case, the State moved forward with indicting these Defendants on August 30, 2016. The State has now advised the Court that evidence developed over the last seventeen years will not support a conviction of these Defendants.

The issue before the court is Defendants' Joint Motion to Reconsider and Amended Plea in Bar filed on November 10, 2021 and the State's Motion for Nolle Prosequi filed November 22, 2021.

Defendants filed on May 19, 2021, their present Plea in Bar for Speedy Trial Violations ("Plea in Bar") which came before the Court for hearing on September 9, 2021. On October 8,

2021, Defendants filed a Second Joint Motion to Compel Compliance with Court Order Granting Defendants' Particularized *Brady* Requests. On October 11, 2021, Defendants also filed an Amendment to their Plea in Bar of May 19, 2021. The Court entered an Order on October 28, 2021 which denied Defendants' Plea in Bar, as amended, and directed the State to produce specified discovery materials or explain the absence of such materials in writing by November 5, 2021. The Court references and incorporates herein this case's procedural history as recited in the Order entered in this matter on October 28, 2021.

The October 28, 2021 Order set forth a strict schedule for the State to remedy discovery issues that have been recurrent in this case since the undersigned judge assumed responsibility following retirement of the Honorable Frank J. Jordan, Jr. Following the State's failure to adhere to such schedule, Defendants filed their Joint Motion to Reconsider and Amended Plea in Bar on November 10, 2021. The State filed its Motion for Nolle Prosequi on November 22, 2021. Hearing on Defendants' Joint Motion to Reconsider and the State's Motion for Nolle Prosequi occurred on December 1, 2021. This Order results from such hearing.

In the Court's Order of October 28, 2021, the Court followed the analysis set forth in *Barker v. Wingo*, 92 S. Ct. 2182 (1972) and *Doggett v. U.S.*, 112 S. Ct. 2686 (1992) and denied dismissal as sought by Defendants. Instead, the Court set this case for trial on December 6, 2021 and ordered that the State "be ready for trial [on December 6, 2021] or show cause why this case should not be dismissed with prejudice." With its Order of October 28, 2021, the Court intended to bring about final resolution of this case and provided two pathways to bring about this outcome: trial or dismissal with prejudice. These remain the two options before the Court. At the December 1, 2021 hearing, the State failed to show satisfactory cause why this case should not be dismissed with prejudice and instead filed its Motion for Nolle Prosequi, arguing that the

current Acting District Attorney has no plans to prosecute these defendants, but a future District Attorney should not be forestalled from future prosecution. The State has also conceded that evidence developed thus far in this case cannot support conviction of these Defendants.

The Court does not deem it necessary to address the new or repeated legal arguments presented by the parties at the December 1, 2021 hearing. Instead, the Court finds that it has already ruled on these matters in its Order of October 28, 2021 which contemplated no resolution of this case other than acquittal or trial on December 6, 2021. The State has had available vast public resources and ample opportunity to bring this case to trial during the approximately seventeen years that have elapsed since the murder giving rise to these charges and seven years since Defendants were first arrested for this crime.

This Court's expectations for resolution of this case are hardly a surprise to either the State or Defendants. The Court notes that the State failed to comply with the Court's March 5, 2020 Order Granting Defendants' Particularized *Brady* Requests. This failure resulted in the Court's Order of June 4, 2021 which found the State in willful contempt and noted that the State's "failure to offer satisfactory excuses or explanations for its noncompliance" raised grave concerns. The State later failed to comply with such June 4, 2021 Order which required the State to produce the already specified discovery materials. Such failure resulted in exclusion of certain evidence. Now, the State seeks further delay and further uncertainty for all concerned in this case notwithstanding the Court's explicit expectations as set forth in its Order of October 28, 2021 and the State's own admissions about viability of this case for successful prosecution.

It is noteworthy, finally, that the State failed to indict this case for over twenty-six months after Defendants were arrested. Viewed from hindsight, this delay suggests equivocation, uncertainty, and a lack of confidence by the State that this case should have ever

been pursued. Notwithstanding such doubt and the ensuing thirty-three terms during which the State could have brought this case to trial, the State has delayed the case at every turn under an apparent strategy of “ready, fire, aim.” Even discounting the period of the recent judicial emergency during which jury trials were suspended, the State has still had ample opportunity to try this case. The State is not entitled to an infinite number of delays for endless reassessment of evidence that should have been brought before a jury long ago. All concerned in this case are entitled to finality, which the Court aimed to achieve with its Order of October 28, 2021 and will now bring about with this Order.

Neither the current acting District Attorney nor the prosecutors she has assigned to this case can be blamed for the events recited in this Order. They inherited a case badly compromised by the actions of their predecessors. Their involvement in this case is extremely recent following suspension by the Governor of the acting District Attorney’s immediate predecessor following his indictment for multiple felonies which has led, in turn, to his conviction by guilty plea and subsequent imprisonment.

The often-quoted legal maxim “*justice delayed is justice denied*” has particular significance in the present case. It is doubtful Defendants would have ever been charged based on the record of this case in the absence of interest from a California entertainment studio ten years after the crime was committed. This entertainment studio, which profits from scandalous allegations and has no burden of proof in a court of law, has since refused to cooperate with the Court in this case. This Order is the outcome that results naturally when forensic inquiry and the pursuit of truth are confused with entertainment.

For the foregoing reasons, Defendants' present claim for relief must be **granted** and this case SHALL BE AND IS HEREBY DISMISSED with prejudice.

SO ORDERED this 22nd day of December, 2021.

Bemon G. McBride III

The Honorable Bemon G. McBride, III
Chief Judge of Superior Court
Chattahoochee Judicial Circuit

CERTIFICATE OF SERVICE

I, Colleen Gottfried, Law Clerk to the Honorable Bemon G. McBride, III, hereby certify upon signature on this day, that I promptly filed the original forgoing **ORDER ON DEFENDANTS' JOINT MOTION TO RECONSIDER AND AMENDED PLEA IN BAR** in Case No. SU2016CR002686 with the Superior Court Clerk of Muscogee County and by sending a copy via electronic mail (email) to the parties below:

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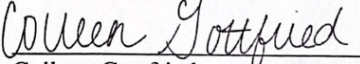
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This 22nd day of December, 2021.


Colleen Gottfried
Law Clerk to the
Honorable Bemon G. McBride, III
Chief Judge of the Superior Courts
Chattahoochee Judicial Circuit