IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	**CASE NO. 22SC183572**
	)	
vs.	)	
	)	
DEAMONTE KENDRICK,	)	
Defendant.	)	
	)	

MOTION TO LIMIT WITNESSES DUE TO UNDUE DELAY, WASTE OF TIME, AND/OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE

The Defendant, Deamonte Kendrick, by and through his undersigned counsel, without waiving any other rights to which he is entitled, files this Motion To Limit Witnesses Due To Undue Delay, Waste Of Time, And/Or Needless Presentation Of Cumulative Evidence, stating the following:

As this Court has broad discretion to exercise reasonable control over the presentation of witnesses and evidence, the Court should use that discretion to prevent this trial from stretching into 2027 due to the presentation of cumulative evidence causing undue delay, poor decision making by the jury, as well as harm to Kendrick and other Defendants.

The U.S. Supreme Court has explained the critical role of the trial judge in a criminal case:

> Our cases have consistently recognized the important role the trial judge plays in the federal system of criminal justice. "[T]he judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law." A criminal trial does not unfold like a play with actors following a script; there is no scenario and can be none. The trial judge must meet situations as they arise and to do this must have broad power to cope with the complexities and contingencies inherent in the adversary process. To this end, he may determine generally the order in which parties will adduce proof; his determination will be reviewed only for abuse of discretion. **[The Judge] may refuse to allow cumulative, repetitive, or irrelevant testimony;**

> **and may control the scope of examination of witnesses.** If truth and fairness are not to be sacrificed, the judge must exert substantial control over the proceedings.

Geders v. United States, 425 U.S. 80, 86-87, 96 S. Ct. 1330, 1334-35 (1976) (internal citations omitted) (emphasis added).

The State, after originally proposing a witness list of over 700 witnesses, has a list of over 400 witnesses it intends to present at trial. To date, the State has presented approximately 40 witnesses since presentation of witnesses began at the end of November. At the present, representative rate, it will take until approximately October 2026 to complete the presentation of State's witnesses. Thus, the present trial will take well into at least mid-2027 to complete. This is simply untenable for the remaining 15 jurors or the Defendants who remain jailed and without bond, and the presentation of another 360 witnesses by the State would cause undue delay, would be a waste of time, and would amount to needless presentation of cumulative evidence.[1] As put so succinctly by the 3rd Circuit Court of Appeals, ". . .courts need not allow parties excessive time so as to turn a trial into a circus. After all, a court's resources are finite and a court must dispose of much litigation. In short, the litigants in a particular case do not own the court." *Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604, 610 (3d Cir. 1995).

---

[1] Here we have the situation described so clearly by Judge Bertelsman in his oft cited 1986 decsion on limitations imposed at trial. The Judge remarks with this insight: "It would seem that early in the career of every trial lawyer, he or she has lost a case by leaving something out, and thereupon resolved never again to omit even the most inconsequential item of possible evidence from any future trial. Thereafter, in an excess of caution the attorney tends to overtry his case by presenting vast quantities of cumulative or marginally relevant evidence. In civil cases, economics place some natural limits on such zeal. The fact that the attorney's fee may not be commensurate with the time required to present the case thrice over imposes some restraint. **In a criminal case, however, the prosecution, at least in the federal system, seems not to be subject to such fiscal constraints, and the attorney's enthusiasm for tautology is virtually unchecked.**" *United States v. Reaves*, 636 F. Supp. 1575, 1576 (E.D. Ky. 1986) (emphasis added).

Likewise, the prosecution here does not own this Honorable Court.

This Honorable Court has broad discretion on the presentation of evidence and should limit the introduction of duplicative or unnecessary witnesses by the State. As noted by the Georgia Supreme Court, "OCGA § 24-6-611 (a) (2) provides the trial court with broad discretion to exercise "reasonable control" over the presentation of witnesses and evidence "to avoid needless consumption of time[.]" *Neuman v. State*, 311 GA 83, 93 (2021) (citing Ga. Code Ann. § 24-6-611(a)(2)). The 5th Circuit, the predecessor to our 11th Circuit, has also recognized the ability of a trial court to limit the number of fact witnesses at a criminal trial where those witnesses' testimony would be cumulative. See, e.g., *Chapa v. United States*, 261 F. 775, 776 (5th Circuit 1919) (upholding the limitation of the number of fact witnesses a defendant was allowed to present to testify to the efficacy of his treatment methods).

Furthermore, this Court can limit evidence under Rule 403 of our state's rules of evidence. "Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Ga. Code Ann. § 24-4-403. Thus, there is also a basis under either Rules 611(a)(2) or Rule 403 for this Court to exercise reasonable control and discretion in requiring the State to limit its witnesses to eliminate witnesses that would cause undue delay, waste of time, or be a needless presentation of cumulative evidence.[2] "It has never been supposed that a party has an

[2] Mr. Kendrick is not requesting that this Court limit the number of witnesses that are crucial to the State's case. Speaking to the Federal Rules of Evidence, "Rule 403 does not mean that a court may exclude evidence that will cause delay regardless of its probative value. If the evidence is crucial the judge would abuse his discretion in excluding it." Weinstein's Evidence, Para. 403[06] at 403-59-60 (1982).

absolute right to force upon an unwilling tribunal an unending and superfluous mass of testimony limited only by its own judgment and whim." *MCI Communications Corp. v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1171 (7th Cir. 1983) (internal citations omitted) (cert. denied, 464 U.S. 891 (1983)).

Analogous to the sought after relief of limiting the number of fact and expert witnesses brought by the State is the recognition by the U.S. Supreme Court and the 11th Circuit Court of Appeals of the ability of a trial court to limit the number of character witnesses that may be presented by a criminal defendant. "The Supreme Court has noted that the district courts are "invest[ed] with discretion to limit the number of [character] witnesses and to control cross-examination."" *United States v. Benefield,* 889 F.2d 1061, 1065 (11th Circuit 1989) quoting *Michelson v. United States*, 335 U.S. 469, 480 (1948). If a court is within its discretion to limit the number of character witnesses for a criminal defendant whose life and liberty are at risk, this Court can surely limit the presentation of witnesses by the State who would be cumulative or cause undue delay.

In exercising its reasonable control over the presentation of witnesses and testimony, Kendrick also urges this Court to consider the ramifications of the present pace of trial and its impact on the jury, the case, as well as the Defendants. While there is no doubt that the Court is moving this case along at the fastest pace possible given the Court's meritorious recognition of the limited, recognized right of the State to present its case in the manner it deems best, the prospect of another 360 plus witnesses leads to several undeniable conclusions. This trial will last into 2027 if the State is permitted to call all the witnesses on its list.

Courts outside of Georgia and the 11th Circuit have recognized the impact on a jury of a

lengthy trial merit consideration. For example, as the 7th Circuit has approvingly quoted,

> "Exceedingly lengthy trials lead to reduced concentration and recollection of events on the part of all participants, particularly witnesses and jurors. In very long cases, exhaustion may diminish everyone's performance. The quality and representative nature of the jury may be reduced by the fact that many citizens--often the most competent--are unable or unwilling to take the time to sit for cases lasting weeks or months."

United States v. Warner, 506 F.3d 517, 524 (7th Cir. 2007) quoting Gordon Van Kessel, "Adversary Excesses in the American Criminal Trial," 67 Notre Dame L. Rev. 403, 478-79 (1992). In *Warner* the court also notes that

> Jurors become overwhelmed by the volume of evidence and numbed by its repetitiousness. Their attention flags; their minds wander; the witnesses--there were more than a hundred in the trial of the two defendants--get mixed up in the jurors' minds, or forgotten; the profusion of exhibits . . .makes the documentary record unintelligible. The impressions created by the closing arguments are likely to wipe out everything that went before. Jury comprehension has been found to diminish after a mere 20 days of trial.

Warner at 523. Finally, and not meaning to belabor the point, the court in *Warner* wisely notes

> So now imagine jurors' mental state after six months, bearing in mind that memory loss and the psychological or cognitive problems of jurors in a super-long trial compound the first problem, the difficulty of recruiting competent jurors for protracted trials: a less intelligible trial is heard by a less capable jury. The longer the trial, moreover, the likelier jury misconduct becomes. The jurors become bored, impatient, irritated; the judge's instruction against discussing the case before the jury retires to deliberate becomes increasingly irksome and likely to be disobeyed.

Warner at 524.

While the State puts on its case, witness by witness, Kenrick and the other Defendants sit in jail. Their lives on hold. The clock ticking on their lives. Second by second. Minute by minute. Hour by hour. Day by day. Month by month. Meanwhile, the risk of a confused jury unable to comprehend a years-long trial only grows.

Wherefore, Mr. Kendrick respectfully requests that this Honorable Court:

a) order the State to provide a detailed witness list by April 15, 2024, where for each witness the State provides a detailed explanation of the expected testimony of each respective witness and an explanation of how that witness's proposed testimony is not cumulative of proposed testimony of other witnesses, nor causing undue delay, nor a waste of time, and

b) make a finding of whether each witness on the detailed witness list will likely cause undue delay, a waste of time, or be cumulative and for those witnesses so determined to meet one or more of those three criteria be barred from testifying.

This the 19th day of March, 2024.

Respectfully submitted,

/s/ E. Jay Abt
E. Jay Abt, Esq.
GA Bar No. 001466

Douglas S. Weinstein, Esq.
GA Bar No. 746498

THE ABT LAW FIRM, LLC
2295 Parklake Dr. NE
Suite 525
Atlanta, GA 30345
Phone: 678.644.9757
Fax: 1.800.256.7054

Katie A. Hingerty, Esq.
GA Bar No. 140967

THE HINGERTY LAW FIRM
2295 Parklake Dr. NE
Suite 525

Atlanta, GA 30345
Phone: 770.851.5257
Fax: 1.800.256.7054

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	**CASE NO.**
	)	**22SC183572**
	)	
vs.	)	
	)	
DEAMONTE KENDRICK,	)	
Defendant.	)	
	)	

RULE NISI

WHEREFORE THE DEFENDANT having filed a Motion To Limit Witnesses Due To Undue Delay, Waste Of Time, And/Or Needless Presentation Of Cumulative Evidence in the above-captioned matter:

IT IS HEREBY ORDERED that the Defendant's above motion, shall be set down for hearing on a date certain, to wit: on the ____ day of _____ 2024, at _____ o'clock a.m./p.m. in courtroom_____ of the Superior Court of Fulton County, Georgia.

SO ORDERED THIS the ___ day of _____, 2024.

_____
The Honorable Ural Glanville
Judge, Superior Court of Fulton County, Georgia

Prepared by:
Douglas S. Weinstein, Esq.
GA Bar No. 746498
doug@abtlaw.com

THE ABT LAW FIRM, LLC
2295 Parklake Drive
Suite 525
Atlanta, GA 30345
Phone: 678.644.9757
Fax: 800.256.7054

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	**CASE NO.**
	)	**22SC183572**
	)	
vs.	)	
	)	
DEAMONTE KENDRICK,	)	
Defendant.	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document via electronic filing addressed as follows:

Clerk of Superior Court of Fulton County
136 Pryor Street SW
Atlanta, GA 30303

Fulton County District Attorney's Office
136 Pryor Street SW
Atlanta, GA 30303

The Chambers of the Honorable Ural Glanville
Judge, Fulton County Superior Court
185 Central Ave., S.W.
Atlanta, GA 30303-3695

This the 19th day of March, 2024.

/s/ Douglas S. Weinstein
Douglas S. Weinstein
GA Bar No. 746498
doug@abtlaw.com

THE ABT LAW FIRM, LLC
2295 Parklake Drive. Suite 525
Atlanta, GA 30345
Phone: 678.644.9757
Fax: 800.256.7054