

IN THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CRIMINAL ACTION NO.: 16-624

ROBERT SHULER SMITH

DEFENDANT

**DEFENDANT’S RESPONSE TO STATE’S MOTION TO CONSOLIDATE
AND MOTION TO STAY PROCEEDINGS [23] AND
TO STATE’S SUPPLEMENTAL MOTION TO STAY PROCEEDINGS[25]**

Defendant Robert Shuler Smith (hereinafter “Smith”) opposes the State’s Motion to Consolidate and Motion to Stay Proceedings [Docket 23] and the State’s Supplemental Motion to Stay Proceedings [Docket 25]for the following reasons:

1. A stay would permit the Mississippi Attorney General to continue to intimidate a key witness, Christopher Butler. See letter from Butler addressed to WLBT, Exhibit “A,” and letter from Butler with addressee redacted, Exhibit “B.”

2. The Mississippi Attorney General cannot obtain a valid indictment because he is prejudiced against Smith. The accused is entitled to have a Grand Jury directed by a prosecutor whose advice is restricted to “matter of law, sufficiency of service and proper dispatch of the public business. Neither the court nor [a prosecutor] can say to the grand jury that the facts, as shown by the evidence, are sufficient to authorize them to find a bill.” *Blau v. State* 34 So. 153, 155 (Miss. 1903). The “duties and powers bestowed upon the District Attorney by law, vest that official with substantial control of grand jury proceedings, requiring the exercise of completely impartial judgment and discretion.” *People v. DiFalco*, 44 N.Y.2d 482, 487 (New York, 1978) (emphasis added). The Mississippi Attorney General arrested Smith and seeks to indict Smith not because of

any good-faith belief Smith has committed any crime, but because two Assistant Attorney Generals feared that they were about to be indicted. See, Affidavit of Jamie McBride, Exhibit “C.”

3. The State should be allowed only a reasonable time to obtain a valid indictment, and Smith requests a speedy trial, to which he is entitled by the Sixth Amendment to the United States Constitution.

4. The State’s request to “consolidate” all cases so as to assign them to Circuit Judge Larry Roberts, and away from County Court Judge Bell, conflicts with direction from the Mississippi Supreme Court. The Mississippi Supreme Court assigned the criminal case to Hinds County Court Judge James Bell, see Order, Exhibit “D,” and the other cases involving Smith to Circuit Judge Larry Roberts. See Order, Exhibit “E.” The Mississippi Attorney General then filed under seal a Motion for Clarification Regarding Appointment of Special Judges in the Mississippi Supreme Court. See, Exhibit “F.”¹ The Motion asks the Mississippi Supreme Court to reassign this criminal case to Judge Roberts. The Mississippi Supreme Court declined to follow the Attorney General’s request, and adhered to its decision to assign the criminal case to County Court Judge Bell and all other cases to Circuit Judge Larry Roberts. See Exhibits “G” and “H.”² “Where an appellate court has already decided a specific issues in a case on a prior appeal, the trial court is in error where, on remand, it refuses to follow the appellate court’s opinion and directions.” *Nelson v. Bonner*, 13 So.3d 880, 883 (Miss. 2009). Further, to ignore the Mississippi Supreme Court’s decision and to remove Judge Bell

¹ This Motion was also entered in a different Supreme Court Case - 2016-AP-01079. Because this Motion was filed under seal, Exhibit “F” is not filed electronically, but will be mailed to the clerk for filing. Defendant does not believe it is proper to file Exhibit “F” under seal because “the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978).

² Exhibit “G” was only entered in 2016-AP-01079.

from the criminal case would mean that the Mississippi Attorney General is choosing the judge whom he wants. This gives an appearance of impropriety. *See, White v. Malone Properties, Inc.*, 494 So.2d 576, 582 (Miss. 1986) (This state has a legitimate interest in discouraging forum shopping. . .); *Mississippi Commission on Judicial Performance v. Boland*, 975 So.2d 882, 894 (Miss. 2008) (“A judge must avoid all impropriety and appearance of impropriety.”)

ACCORDINGLY, Smith requests that rather than stay the proceedings, this Court:

- A. Set this case for a speedy trial;
- B. Allow thirty (30) additional days for the State to obtain a valid indictment, with this Court dismissing the case if a valid indictment is not obtained within that time; and
- C. Order the Mississippi Attorney General to respond immediately to the Smith’s request for discovery, with this response to specifically include the tape recording made by confidential informant Ivon Johnson, and to include all notes, materials, and documents evidencing the Attorney General’s and law enforcement’s contacts with Christopher Butler, and to include all recorded statements made by Smith and by his attorney Jim Waide.

Respectfully submitted this the 19th day of August, 2016.

ROBERT SMITH, Defendant

By: /s/ Jim Waide
Jim Waide, MS Bar No. 6857
waide@waidelaw.com

WAIDE & ASSOCIATES, P.A.
332 North Spring Street
Tupelo, MS 38802-3955
Post Office Box 1357
Tupelo, MS 38802-1357
(662) 842-7324 / Telephone
(662) 842-8056 / Facsimile

ATTORNEYS FOR ROBERT SMITH

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

Assistant Attorney General Robert Anderson
P. O. Box 220
Jackson, MS 39205
rande@ago.state.ms.us

Assistant Attorney General Larry Baker
P. O. Box 220
Jackson, MS 39205
lbake@ago.state.ms.us

VIA EMAIL:

Deenie L. Glass, Paralegal and
Court Administrator to Judge James D. Bell
BELL & ASSOCIATES, P.A.
318 S. State Street
Jackson, MS 39201
dglass@judgebell.com

VIA EMAIL:

Damon R. Stevenson, Esq.
Stevenson Legal Group, PLLC
1010 N. West Street
Jackson, MS 39202-2568
damon.steven@gmail.com
(Attorney for Christopher Butler)

SO CERTIFIED, this the 19th day of August, 2016.

/s/ Jim Waide

JIM WAIDE