

NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
97 CrS 39580; 97 CrS 23654

STATE OF NORTH CAROLINA, )  
 )  
 vs. )  
 )  
 RONNIE LEE KIMBLE, )  
 )  
 Defendant. )

MOTION TO CONTINUE

COMES NOW the defendant, through the undersigned, and respectfully shows the court the following:

1. This matter has been tentatively set for trial before the Honorable Preston Cornelius at his August 3, 1998 term of Superior Court subject to Judge Cornelius' ruling upon the State's motion for joinder and each defendant's motion for severance.

2. On May 7, 1998, the defendant's cases came before the Honorable Michael E. Beale. Judge Beale ruled upon the State's motion for reciprocal discovery but directed that the pending motions for severance and various motions *in limine* should be heard by Judge Cornelius. Although Assistant District Attorney R. E. Panosh obviously knew on May 7, 1998 that he intended to seek an additional indictment against Ronnie Lee Kimble within two weeks, he did not apprise Judge Beale or opposing counsel of his intentions.

3. On or about May 18, 1998 the defendant Ronnie Lee Kimble was indicted in 98 CrS 23399 for conspiracy to violate G.S. 14-27.7. The conduct underlying the indictment allegedly occurred between November 1 and November 19, 1997. The indictment was signed by R. E. Panosh.

4. When the additional indictment was made public on May 18, 1998, a substantial amount of unjustified and distorted publicity resulted, including extravagant claims by the Sheriff of Guilford County, B. J. Barnes, that Ronnie Lee Kimble and a Guilford County Sheriff's Department custodial officer had engaged in sexual relations in the jail.

5. The defendant is informed and believes that supervisors within the Guilford County Sheriff's Department were aware of and had observed inappropriate behavior by Janet Smith toward Ronnie Lee Kimble in September of 1997, almost nine months prior to the indictments that were issued against Officer Smith and Mr. Kimble. During September and October and the first two weeks of November, supervisors of the Guilford County Sheriff's Department had knowledge, or in the reasonable exercise of their duties should have had knowledge, that Janet Smith had become enamored of Mr. Kimble, writing and delivering love letters to him and planning to remove him from his cell so that she could fondle and embrace him. Officer Smith has written that her every move within the jail was observed and logged by her supervisors during this period of time.

6. Officer Janet Smith's supervisors apparently permitted her blatantly inappropriate behavior toward Mr. Kimble because they anticipated that if letters were exchanged between Smith and Kimble, Kimble might write something that the State could use against him in his first degree murder trial.

7. On December 17, 1997, almost thirty days after Officer Smith admitted wrongdoing to Internal Affairs' officers and turned over letters written to her by Ronnie Lee Kimble, Assistant District Attorney R. E. Panosh advised attorney John B. Hatfield, Jr. that he was in possession of letters containing substantial, impeaching material that would be used against Ronnie Lee Kimble in the event that he testified in his own behalf in the murder trial.

8. G.S. 153A-221 requires the Secretary of the North Carolina Department of Human Resources to establish standards for the care and custody of inmates in county jails that include provisions for their "safekeeping" and "privacy." Thus every prisoner awaiting trial has some privacy rights. Ronnie Lee Kimble had a right to be protected from the improper attentions that were directed against him by Officer Smith. On November 19, 1997 six deputies of the Guilford County Sheriff's Department forced Ronnie Lee Kimble to turn over letters written to him by Officer Janet Smith which he had put among his legal papers so that he could give the letters to his attorney. Ronnie Lee Kimble was beaten to unconsciousness and bled on the bed and wall. Photographs were taken of the blood stains.

The violence administered to Ronnie Lee Kimble on November 19, 1997 was entirely unnecessary. Janet Smith gave Mr. Kimble a letter at approximately 6:50 a.m. on November 19, 1997. Between 7:00 and 8:00 a.m. Mr. Kimble was allowed outside his cell for recreation. His cell could have been searched then or he could have been placed in another cell and a search warrant or consent to search could have been requested. Instead, Kimble was returned to his cell where he was confronted by six deputies, some of whom were wearing gloves in apparent anticipation of violence. The beating inflicted upon Mr. Kimble was deliberate and unnecessary.

9. The five month delay in issuing indictments against Officer Smith and Ronnie Lee Kimble was obviously calculated to prejudice Kimble.

Ronnie Lee Kimble's right to trial by an impartial jury has been damaged by misleading pretrial publicity orchestrated by Sheriff Barnes. In the *Greensboro News & Record* on May 19, 1998, this phrase appeared in large type: "**An inmate is also indicted on charges of having sex in the Greensboro jail.**" Sheriff Barnes has no credible evidence that Smith and Kimble had sex in the Greensboro jail. Officer Janet Smith has repeatedly stated that at no time did she engage in sexual intercourse or a sexual act with Ronnie Lee Kimble.

The misleading and inflammatory language employed by Sheriff Barnes was apparently also intended to drive a wedge between Ronnie Lee Kimble and his wife and her family.

10. The five month delay by R. E. Panosh in seeking an indictment is plainly calculated to prejudice Ronnie Lee Kimble by chilling his constitutional right to take the stand on his own behalf and challenge his accusers.

On December 17, 1997 Panosh stated that he was in possession of substantial, impeaching material that he intends to use against Kimble in the event he takes the stand.

If statements made by Kimble in letters to Smith are introduced against him, Kimble may elect to have Smith testify about letters and other statements that she made to him.

Because of the delay in bringing the indictment against Smith, she has a potential Fifth Amendment right to refuse to testify while her case is pending.

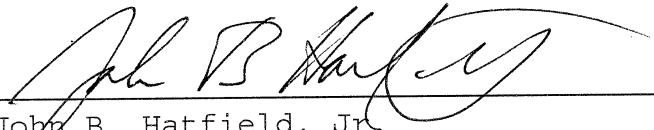
Assuming Smith invokes the Fifth Amendment, her letters to Kimble can be introduced in Kimble's murder trial but her live testimony cannot be compelled by Kimble. Thus Panosh's delay in bringing the indictment prejudices Kimble.

11. The solution to this significant constitutional problem is to delay Kimble's murder trial until **after** Kimble and Smith are tried for their alleged violations of G.S. 14-27.7.

12. Because the State has asked for the death penalty against Ronnie Lee Kimble there is a compelling reason to allow Kimble the latitude for him to demand a speedy trial of the new indictment and to have a motion to dismiss, a motion to suppress and other constitutionally based motions heard by the court before any statements made to or by Janet Smith are used against him.

WHEREFORE, the defendant Ronnie Lee Kimble respectfully prays that the court continue the murder, arson and conspiracy to murder charges until the new conspiracy charges can be tried in the Superior Court of Guilford County.

This the \_\_\_\_\_ day of June, 1998.

  
\_\_\_\_\_  
John B. Hatfield, Jr.  
Attorney for Defendant  
219 W. Washington Street  
Greensboro, NC 27401  
(336) 273-0589


\_\_\_\_\_  
W. David Lloyd  
Attorney for Defendant  
101 S. Elm Street  
Greensboro, NC 27401

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Continue was served upon the State by hand-delivering a copy thereof to:

Mr. R. E. Panosh  
Assistant District Attorney  
Guilford County Courthouse  
Greensboro, NC

This the \_\_\_\_\_ day of June, 1998.

  
\_\_\_\_\_  
John B. Hatfield, Jr.