

NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
97 CrS 39581

STATE OF NORTH CAROLINA, )  
)  
vs. )  
)  
THEODORE KIMBLE, )  
)  
Defendant. )  
\_\_\_\_\_ )

**OBJECTION TO PROPOSED  
TRIAL DATE**

COMES NOW Theodore Mead Kimble, by and through counsel, Robert L. McClellan and John D. Bryson and upon having received correspondence from the District Attorney's Office for the Eighteenth Judicial District that the above captioned matter may be placed on the trial calendar for March 2, 1998, the Defendant does object to this scheduling and files this Objection, or in the alternative, a Motion to Continue, on the basis that inadequate time has been allowed for the defense in preparation of this matter for trial and in support thereof would show unto the Court the following:

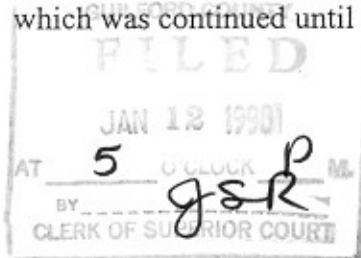
1. The Defendant, Theodore Mead Kimble, was charged with the offense of First Degree Murder on or about February 28, 1997 by a Warrant for Arrest alleging that he did with malice aforethought kill and murder Patricia Gale Kimble. The Defendant was arrested on the charges and taken into custody on or about April 1, 1997.

2. Patricia Kimble was killed as a result of an alleged gunshot at her home in Pleasant Garden, North Carolina on October 9, 1995. As a result of an 18 month investigation by the Guilford County Sheriff's Department, and other law enforcement agencies, the Defendant was charged, on a theory that he was not the perpetrator of the offense, but that he did solicit, engage or conspire with his brother, who was alleged to have actually committed the murder.

3. Subsequent to the arrest of the Defendant, he was shortly afterwards indicted and arraigned. Counsel did file a Request for Discovery and Inspection on April 23, 1997, asking for all relevant evidence available to or in the control of the State be furnished to the Defendant.

4. The Defendant did not receive any immediate discovery response from the State, other than representation that discovery would be forthcoming. As a result of not knowing the extent or course of the investigation of the State, or possible evidence, the Defendant was unable to engage in meaningful investigation or determine the need to retain an investigator for such purpose.

5. The State of North Carolina requested and received a Rule 24 Conference setting, which was continued until July 29 upon request of the Defendant, in hope that discovery could be



received or considered at the time of this hearing. On July 29, Defendant, co-Defendant, nor counsel had still received no discovery from the State and at the time of the Rule 24 Conference the lack of discovery was made this known to the trial court presiding, the Honorable William Freeman, Superior Court Judge. At that time, the defense told the Judge of information it had received that the State would set this matter for trial in a time frame of April to May of 1998. This information was not contradicted at the hearing by the State of North Carolina, nor was other information provided to the Court or to the defense as to a more recent time frame for trial. As a result, Judge Freeman ordered that the State provide discovery to the Defendant within 45 days of that date.

6. The Defendant did receive a portion of the discovery available to the State on or about Friday, September 19, 1997, approximately one week after the 45 day period had expired. The State acknowledged at that time that all discovery was not assembled and that further discovery would be forthcoming. The bulk of the remainder of discovery was received on or about November 3, 1997, approximately 95 days after the Rule 24 Conference, and over 45 days after disclosure was ordered to be produced by Judge Freeman.

7. The discovery provided by the State of North Carolina was rather voluminous, consisting of over 500 pages of a variety of documents including medical and forensic examinations, information from law enforcement agencies and investigators, over 100 separate interviews or alleged contacts, and statements attributed to the Defendant or co-Defendant which are purported to be incriminating. Certain statements that are offered by the State as incriminating are not consistent in factual allegation with other statements that are offered. With few exceptions, virtually all the evidence had been collected by the State prior to April 1, 1997, and could have been produced to the Defense at that time, had the State so chosen, or if time was of the essence..

8. On or about November 3, 1997, the Defendant, Theodore Kimble, was further charged with an unrelated series of breaking and enterings and larcenies to which counsel was further appointed. These matters consumed time that would have been otherwise allocated for investigation of the homicide case, and for which the prosecutor, Mr. Panosh, indicated there may be a first priority to the Breaking and Entering cases for hearing and disposal.

9. As a result of receiving information from the State of North Carolina regarding discovery, and determining that an investigator's assistance was necessary in order to appropriately examine the information, and to collect other relevant information, the services of Mr. Danny Carter, a private investigator, were secured by counsel and an Order allowing his services to be funded was signed by Judge Albright on October 2, 1997. Mr. Carter had begun his initial investigation when he suffered a serious and debilitating aneurism, for which he was hospitalized for several weeks, and may have long term care requirements. As a result of his mandatory withdrawal from this case, counsel had to seek and engage a different investigator, who would have no prior conflicts in his appointment and have adequate experience in order to serve as investigator in a capital case.

10. After considerable search, the services of a new investigator could not be obtained until the latter part of November, 1997. As a result of prior commitments and making adequate time available for investigation, the new investigator, Mr. Homer Young, indicated it may be mid-

December or later before he would be able to devote appreciable time to this matter. In that virtually no experienced investigator would be immediately available to devote all attention to this matter alone, and that the experience of Mr. Young is considerable, and more time would be necessary to secure the services of another investigator, the Defendant's counsel found his employment be prudent and necessary.


11. As a result of the information received by counsel until November, 1997 that the trial of this matter would possibly be scheduled for trial in an April or May, 1998 time frame, counsel had also communicated this information to other courts and judges, to bar other conflicts with trial matters. As a result, counsel did represent to several judges, and courts of the ability to complete and hear matters for trial or trial preparation in the February and March time frame, to avoid conflict with the Kimble trial matter anticipated in April or May. As a result, in the Fall of 1997, counsel did enter into several Orders requiring trial and trial preparation matters to be heard in the January through March time frame. To require counsel to be available for trial on March 2 would preclude the ability to complete these matters as previously ordered.

12. Furthermore, the District Attorney's office has also given counsel notice of the homicide trial of Mercy Hayes, in High Point Superior Court, which is also to commence on March 2, 1998. Mr. McClellan and Mr. Bryson each represent co-defendants who are material witnesses, and whose testimony may require advice or presence of counsel related to testimony, which would conflict with this time period.

13. On November 6, 1997, trial counsel met with Mr. Panosh to discuss scheduling of this case at a time of mutual convenience. Trial counsel established that a date in late April or May on, or after, would be suitable for trial. Mr. Panosh subsequently proposed March 2, 1998, approximately two (2) months before trial counsel indicated they would be prepared or able to schedule this case. The scheduling of this case, in a time purely of convenience to the prosecution, and no consideration of defense issues, is in direct violation of the Defendant's Right to Due Process as guaranteed by the 14<sup>th</sup> Amendment of the U.S. Constitution, and the North Carolina Constitution. This method of tactical scheduling is furthermore indication of purposeful avoidance of the inherent power of the court to schedule cases at a time suitable to all parties and without prejudice.

13. As a result of the delay by the State in furnishing discovery, the requirement of securing a new investigator who has not had adequate opportunity to complete material investigation, and conflicts by counsel with previously entered Orders of those courts, the Defendant does request that the Court continue this matter from the March 2 term of Court, should it be so scheduled, until such time as the investigation of this matter can be completed and in no event sooner than April or May of 1998, when counsel was led to believe this matter would come for trial. Counsel to date is aware of no material prejudice that would occur to the State of North Carolina by this continuance.

SO MOVED, this the 12 day of January, 1998.



Robert L. McClellan  
Attorneys for Ted Kimble  
NCSB # 8385



John D. Bryson

OF COUNSEL:

**Ivey, McClellan, Gatton & Talcott, L.L.P.**

P. O. Box 3324

Greensboro, NC 27402

Telephone: (910) 274-4658

Facsimile: (910) 274-4540

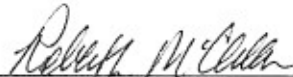
**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that on the day indicated below, the undersigned served a copy of the foregoing **OBJECTION TO PROPOSED TRIAL DATE AND MOTION TO CONTINUE** by depositing the same, enclosed in a postpaid wrapper, properly addressed to the following parties in interest, at their last known addresses as shown below, in a post office or official depository under the exclusive care and custody of the United States Postal Service, in the manner prescribed by law:

Jack Hatfield, Esq.  
HATFIELD & HATFIELD  
219 W. Washington Street  
Greensboro, NC 27401

Richard E. Panosh, Esq.  
District Attorney's Office  
Guilford County Courthouse  
P. O. Box 2378  
Greensboro, NC 27402

**THIS** the 12 day of January, 1998.



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Robert L. McClellan  
Attorney for Ted Kimble  
NCSB # 8385

OF COUNSEL:

**IVEY, McCLELLAN, GATTON & TALCOTT, L.L.P.**  
Attorneys and Counsellors at Law  
Post Office Box 3324  
Greensboro, NC 27402  
Telephone: (910) 274-4658