

NO. 416-81913-2015; NO. 416-82148-2015; NO. 416-82149-2015

THE STATE OF TEXAS § IN THE DISTRICT COURT

V. § COLLIN COUNTY, TEXAS

WARREN KENNETH PAXTON, JR. § 416TH JUDICIAL DISTRICT

STATE'S MOTION FOR CONTINUANCE

TO THE HONORABLE GEORGE GALLAGHER, PRESIDING JUDGE:

The Special Prosecutors, BRIAN WICE, KENT SCHAFFER, and NICOLE DEBORDE, acting on behalf of the State of Texas in these matters as Collin County District Attorneys *Pro Tem*, have not been paid since January 14, 2016. They are owed significant amounts of money for the work they have performed and expenses they have incurred, and it would be manifestly unfair, unjust, and unconscionable for the Court to expect, let alone, order them to work for free. Accordingly, pursuant to TEX. CODE CRIM. PROC. Art. 29.03,¹ the State files its Motion for Continuance.

INTRODUCTION

Most criminal defendants don't have millionaire pals, supporters,

1. Art. 29.03 provides that, “A criminal action may be continued on the written motion of the State or of the Defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion. A continuance may be only for as long as is necessary.”

and donors with the time and the money to defund their prosecutions for two first-degree felonies and one third-degree felony by filing suit against the Special Prosecutors sworn to bring the accused to justice. Warren Kenneth Paxton Jr., most certainly does.

Most citizens would be unwilling or unable to spend hundreds of thousands of dollars of their own money, not to mention a King's Ransom of taxpayer money,² to shut down the prosecution of a good friend. Jeffory Blackard most certainly is. And, that good friend just happens to be the Attorney General of Texas.

Blackard, a vocal supporter,³ good friend, and political donor to the Defendant, not to mention one of his wealthiest supporters, has sued the Special Prosecutors twice, "on behalf of the taxpayers of Collin County." His motivation could not be more clear: to keep the Special Prosecutors

2. Blackard's lawsuits have already cost Collin County some \$106,000 in attorneys fees and court costs. McGaughey, "Ken Paxton donor sues Collin County over prosecution's price tag ...again," Dallas Morning News, January 20, 2017.

3. This Court can take judicial notice that at the January 11, 2016 session of Commissioners Court, Blackard made sure to allude to *not one, but "two"* corrupt Collin County judges," making the absurd claim that Judge Scott Becker budgeted \$2,000,000 to pay the three Democratic Special Prosecutors from Houston who were in over their heads. Blackard's wife also took the podium to rant about the "true corruption" in Collin County, lamenting it was outrageous that "millions of dollars" were being spent, ostensibly by the Special Prosecutors, on this "witch hunt."

from being compensated pursuant to this Court's lawful orders for the countless hours they have expended and expenses they have incurred. In other words, Blackard hopes that he will be able to ultimately derail this prosecution by defunding it. His initial suit was quickly tossed by the trial judge, a ruling quickly affirmed by the court of appeals.⁴ Blackard's second lawsuit has somehow resulted in the court of appeals issuing a stay that prohibits enforcement of this Court's lawful order compensating the Special Prosecutors for the work they have performed in 2016.⁵ Blackard is now one appellate court ruling away from doing what the State believes no one before him has ever done: shutting down a lawfully-constituted criminal prosecution by cutting off funding to the Special Prosecutors.

Regardless of whether Blackard prevails in the court of appeals, he has already succeeded in shutting down this prosecution, at least for the time being. Although they knew there was no guarantee they would be paid for their work in 2016, not to mention 2017, the Special Prosecutors

4. *Jeffory Blackard v. Attorney Pro Tem Kent A. Schaffer, in his official capacity, Attorney Pro Tem Brian W. Wice, in his official capacity, Attorney Pro Tem Nicole DeBorde, in her official capacity, et al.* The trial court's order dismissing this suit was affirmed by the court of Appeals. 2017 WL 343597, Tex.App. No. 05-16-00408-CV, January 18, 2017, no pet.

5. *In re Jeffory Blackard*, No. 05-17-00093-CV.

spent considerable time, effort, and expense preparing for and litigating the issues in connection with the most recent pre-trial hearing last month in Collin County. But no one in a democratic society should be expected to work for free, and it would be fundamentally unfair for this Court, or, for that matter, the defense, to require the Special Prosecutors to work for free. As set forth below, the unique exigencies this case presents provide more than “sufficient cause shown” for the Court to continue this case until the court of appeals vacates the stay freezing the compensation lawfully ordered to the Special Prosecutors by the Court.

“SUFFICIENT CAUSE SHOWN”

This case involves a series of immutable, time-sensitive deadlines:

- The State must meet all discovery requirements on or before March 21, 2017.
- The State must provide the defense with notice of all prior bad acts it intends to elicit pursuant to Tex. R. Evid. 404(b) and Tex. R. Evid. 609 and TEX. CODE CRIM. PROC. Art. 37.07 on or before March 21, 2017.
- The State must designate any expert witnesses it intends to call on or before March 21, 2017.
- The initial stage of jury selection will commence on April 21, 2017

when the venire fills out jury questionnaires.⁶

- Final jury selection will be conducted beginning on April 27, 2017.
- Trial will begin on May 1, 2017.

It will take the Special Prosecutors hundreds of hours to adequately prepare for this litany of events. Moreover, they will be expected to pay their own expenses, including airfare and, given that trial will apparently be held in Collin County, considerable bills for lodging and food. It would be manifestly unfair, unreasonable, and unconscionable for the Court to expect, let alone order the Special Prosecutors to spend hundreds of hours and thousands of dollars in expenses to prepare for, and conduct the trial in this matter. Even if the Special Prosecutors had been compensated for their work and expenses for 2016 – which they have not – this Court could not, indeed, should not expect or order them to work for free.

If the roles were reversed, and the State had obtained a court order freezing any fees that had been paid or would be paid to Paxton's cadre of high-priced legal talent, would the Court expect, let alone, order any of them to work pro bono? Certainly not. If the county commissioners in

6. On information and belief, the State has been notified that the jury summonses to the venire will likely be mailed three to four weeks before this setting.

Tarrant County suddenly decided without rhyme or reason to defund the District Attorney's Office, would the Court expect, let alone order, any of Sharen Wilson's assistants to work for free? Of course not. The reality of the narrative that informs the Court's decision to grant the State's motion for continuance makes its decision as easy as these two similar scenarios. At some point in their legal careers, the Special Prosecutors have taken on pro bono cases where the facts, circumstances, and client compelled the conclusion that it was a worthy endeavor. This is not such a case. Unlike any of those pro bono cases, the Special Prosecutors' interest in seeking justice in this case is business –not personal.

While the defense will no doubt oppose this request on the grounds, *inter alia*, that Paxton has the right to a speedy trial so that he can clear his good name, this assertion rings hollow on multiple levels. First, there has been no state statutory right to a speedy trial in Texas for the past 30 years. *See Meshell v. State*, 739 S.W.2d 246, 257-58 (Tex.Crim.App. 1987) (declaring the Texas Speedy Trial Act unconstitutional). Second, while Paxton has the federal constitutional right to a speedy trial, this case is nowhere near the age at which this right has been violated. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972)(setting out the quartet of factors that

inform a claim of the denial of a speedy trial). Third, for Paxton to argue that this motion should be denied because he wants a speedy trial is, with all due respect, disingenuous; Paxton, after all, spent the better part of a year litigating a series of pre-trial writs of habeas corpus that the court of appeals quickly found not to be cognizable, *Ex parte Paxton*, 493 S.W.3d 292 (Tex.App.— Dallas 2016, pet. ref'd)(en banc), and which the Court of Criminal Appeals declined to review. Fourth, while Paxton may think he has the right to a speedy trial so that he can clear his good name because he is a public official, he has no greater right to a speedier trial than any other accused felon awaiting trial.

CONCLUSION: THIS CASE WILL BE TRIED SOONER RATHER THAN LATER

Because the Court cannot predict when the court of appeals will set or decide the Blackard matter, the State proposes this solution: set this matter for trial 60 days from the date the court of appeals issues a ruling ordering commissioner's court to pay the Court's order compensating the Special Prosecutors for the work they performed in 2016 and the work they will perform in 2017. If the past is prologue, this case could be tried sooner rather than later, certainly no later than September 1, 2017.

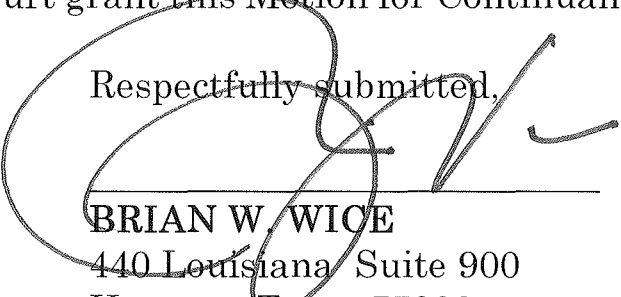
Because no individual in a free society – prosecutor, defense lawyer,

or truck driver – should be expected or ordered to work for free, the State has clearly shown that this motion for continuance should be granted for “sufficient cause shown.” Justice, fairness, and equity demand no less.

PRAYER FOR RELIEF

The State prays that this Court grant this Motion for Continuance.

Respectfully submitted,



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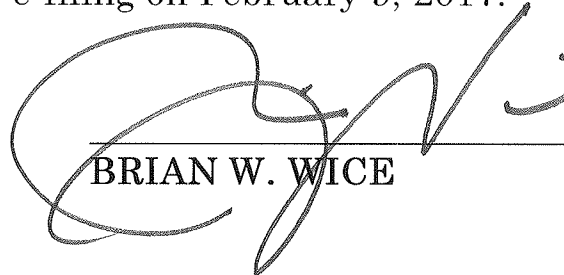
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CERTIFICATE OF SERVICE

Pursuant to Tex. R. App. P. 9.5(d), a copy of this motion was served upon all counsel and the Court by e-filing on February 9, 2017.

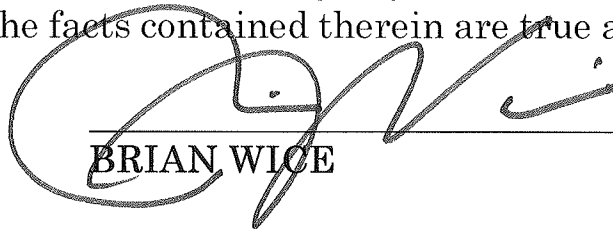


BRIAN W. WICE

AFFIDAVIT OF BRIAN WICE

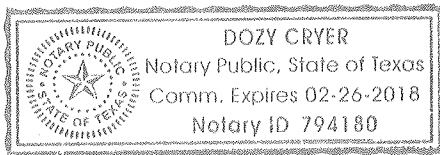
BEFORE ME, the undersigned authority this date personally appeared Brian Wice, who after being sworn by me did state upon his oath the following:

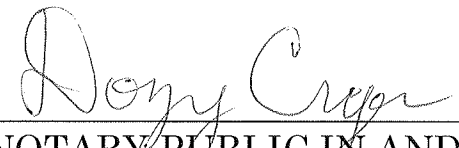
“My name is Brian Wice. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated. I have reviewed the foregoing document and state under oath that the facts contained therein are true and correct.”



BRIAN WICE

SUBSCRIBED AND SWORN TO before me on March 9, 2017.





**NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS**

MY COMMISSION EXPIRES: 2/26/18