

At 07/15/22 11:00am SC
Velva L. Price, District Clerk

From: [Brenda Kennedy](#)
To: [Sylvia Castillo](#)
Subject: Fwd: Motion for Speedy Trial.
Date: Friday, July 15, 2022 10:37:52 AM
Attachments: [image004.png](#)
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Sylvia,
Please file the entirety of this document and these communications, from the attorneys' email to the Court including my response to them, with all of the other papers related to this case.

See below:

Judge Kennedy

Begin forwarded message:

From: [REDACTED]
Date: July 13, 2022 at 10:44:00 AM CDT
To: [REDACTED]
Subject: RE: Motion for Speedy Trial.

Counsel,

Thanks for your communication. Let me state to all involved that neither party has discussed any settings or legal strategies or plans for this case. The defendant has been in our jail for a little short of two weeks now, and the setting that she now has is one that is automatic and a designation setting. That setting is normally for the purpose of counsel informing the Court of what type of setting they are seeking next. This Court has not, to date, been requested to set the case for any other purpose. I did see that motions were filed, and my coordinator informed me that there was a request for the Defendant to be transported. In the 403rd, and as a matter of course, we have both in-person and virtual settings, as requested by counsel. Now that the speedy trial motion has been filed, the Court will provide an immediate trial setting along with an arraignment of the Defendant. On another note, the in-person settings are not for the purpose of mere conversation, as counsel needs to do that on their own as a part of their responsibilities. Currently, and going forward in all of our cases, when requesting an in-person setting, the coordinator will ask counsel if it is for the purpose of a hearing; motions needing to be presented and urged; or, legal processes that require or warrant that the Defendant be present before the Court. This case is no different than any other in that regard, and perhaps even a bit more concerning from a practical standpoint, as there are security and other considerations involving prisoner transport that need to be considered. So, the question posed to you by me via e-mail was to determine what type of proceeding before the Court would be held so that I could allow appropriate time for scheduling purposes; and, be able to plan accordingly, from a legal and practical standpoint, providing notice to all parties of what the timing and course of the proceedings would be.

The next communication that this Court was made aware of, after that inquiry, was the email below that was sent to the Court on last night referencing speedy trial concerns. By filing and presenting this motion, the defense is representing that they are ready and requesting an immediate trial setting as soon as the Court's schedule would allow. Of note, is that no trial setting has been requested to date. Now, with the motion being filed, the Court will set the trial accordingly. If, at the setting on the 20th, and with this motion having been filed, the Court is ready to provide that setting and pleased that you are ready to go to trial. I will arraign the defendant on the 20th and set the case for trial expeditiously, with all discussion in that regard being had on the record with the court reporter present. With the defendant having been here for such a short period of time, it is refreshing that we will be able to move efficiently and have a trial sooner than later since the defense is prepared to announce ready for trial and present and urge their filed speedy trial motion. We have no backlog of jury trials in the 403rd and can offer a trial setting as soon as this fall (September/October, 2022). I am pleased to say that I have no problem at all bringing the defendant; arraigning her; and, setting her for trial as soon as we are able to do so.

By the way, the Boyer case that counsel referenced in the below email is a decision from 2013. The case was actually dismissed by SCOTUS as improvidently granted. In a concurring opinion to the dismissal, Alito wrote about the background of the case, explaining that many of the delays in the case were caused by the defendant. However, having said that, I do now believe I understand what the defense is requesting,—that they want to have a record of sincere assertions of Armstrong's right to a speedy trial, even though I am not aware of any caselaw that requires this assertion be made only from live testimony from the defendant. In that vein, I do believe it better for the defendant to be present when that motion is presented to the Court; announcement of ready for trial made; and, jury setting in requested, especially since the announcement of ready for trial is being made without any pre-trial or other settings having been requested. We will ensure that we have a complete record in this regard.

Any agreement between the parties, contrary to the first available setting provided by the Court, as to a date, (whether granted or not) will be memorialized on the record, particularly in light of the fact that the defense is concerned about the D's speedy-trial rights and the preservation of the record for appeal purposes. The motion itself demands a trial and asks for a preferential setting. It also opposes any hypothetical continuances requested by the State. Taken at face value and if the motion is not merely perfunctory, we should all be excited with a fall trial date. If the parties are not actually ready for the case to be set for trial, then that fact will speak for itself on the record as well. If you have any further concerns or questions, please do not hesitate to contact the Court.

Judge Brenda P. Kennedy
403rd District Court
Travis County, Texas

From: [REDACTED]
Sent: Tuesday, July 12, 2022 8:21 PM
To: [REDACTED]

Cc: [REDACTED]

Subject: [CAUTION EXTERNAL] Re: Motion for Speedy Trial.

CAUTION: This email is from OUTSIDE Travis County. Links or attachments may be dangerous. Click the Phish Alert button above if you think this email is malicious.


Your Honor,

Counsel for Kate Armstrong has filed The Accused's Assertion of Speedy Trial Right for which we need to build a record in court and have our client present to build that record.

I recently had a five-year old case in Harris County in which I risked further trial delay because I did not assert my client's speedy trial right from the beginning. Having better educated myself since then, and reviewed U.S. Supreme Court Justice Samuel Alito's opinion in *Boyer v. Louisiana*, I am concerned that we might be found ineffective if a court should later find that our "assertions of [our client's] speedy trial right were 'more perfunctory than aggressive.'" 569 U.S. 238, 240 (2013). In light of the *Boyer* standard for assertion of a speedy trial right, defense counsel needs to go on record in court with our client and assert Ms. Armstrong's speedy trial right and her agreement to proceed to trial. Unfortunately, Supreme Court precedent actually requires us to be aggressive in our assertion and a written pleading may be seen by an appellate court as a perfunctory assertion.

Whether we will have other motions to discuss with the Court on the 20th, I cannot say for certain. Although we are aware the Court values efficiency, so we will make every effort to consolidate motion hearings so that we do not waste the Court's time with multiple hearings. We may after, further discussions with the prosecution, find that one or both parties have other matters to put on the record on July 20th. Both the defense and the prosecution need fair opportunity to discuss with this Court how the case will be proceeding and what timeline the parties can expect so that all may adequately prepare to present their cases.

Thank you for your consideration. Please let us know if you have further questions. My law partners and I would like to make sure you have all the information you need to proceed. Thank you.



Naomi Howard
Partner
Cofer & Connelly, PLLC

Phone: 512-200-3801
Email: naomi@coferconnelly.com

f i in

Date: Tuesday, July 12, 2022 at 09:18
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Motion for Speedy Trial.

Counsel,
Are there motions filed that we will be addressing, Or, is a hearing being requested regarding any motion that has been filed?

Judge Kennedy

On Jul 12, 2022, at 8:15 AM, [REDACTED] wrote:

Good morning all,

I think you need to be more specific. I've added the Judge the email so you can brief her on what you all need to do on that setting.

From: [REDACTED]
Sent: Monday, July 11, 2022 7:16 PM
To: [REDACTED]
Subject: [CAUTION EXTERNAL] Re: Motion for Speedy Trial.

CAUTION: This email is from OUTSIDE Travis County. Links or attachments may be dangerous. Click the Phish Alert button above if you think this email is malicious.

Hi Kamala –

We need to put some items on the record with client present.

Thanks!
Rick



Rick Cofer
Partner
Cofer & Connelly, PLLC

Phone: 512-200-3801
Email: rick@
Office: 602 W. 11th Street, Austin, Texas, 78701

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From: [REDACTED]

Date: Monday, July 11, 2022 at 4:23 PM

To: [REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Motion for Speedy Trial.

Brought for what reason?

From: [REDACTED]

Sent: Monday, July 11, 2022 4:21 PM

To: Rick Cofer; [REDACTED]

[REDACTED]

Subject: RE: Motion for Speedy Trial.

Sure.

Kamala,

Rick asked me to ask you to order that his client, Kaitlin Armstrong, be brought for the setting on July 20.

I am on vacation next week so I will not be present, but I have included Guillermo Gonzalez and Rickey Jones on this.

Thanks

RSD

From: [REDACTED]

Sent: Monday, July 11, 2022 3:42 PM

To: [REDACTED]

[REDACTED]

[REDACTED]

CAUTION: This email is from OUTSIDE Travis County. Links or attachments may be dangerous. Click the Phish Alert button above if you think this email is malicious.

Hi Rob –

We're getting our ducks in a row over here. Let me circle back to you on scheduling.

Can you ping Kamala and request defendant to be brought on the 20th?

Thanks,

Rick



Rick Cofer
Partner
Cofer & Connelly, PLLC

Phone: 512-200-3801
[REDACTED]
Office: 602 W. 11th Street, Austin, Texas, 78701

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From: [REDACTED]

Date: Monday, July 11, 2022 at 11:31 AM

To: [REDACTED]

Subject: Motion for Speedy Trial.

Got your motion, I agree your timeline of 12-14 months is probably pretty realistic. Would you like to set an agreed date on that time frame now? I don't just love the idea of doing a trial when it's 105, but we could do late May or September. Let me know what you think about a date. RSD

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D-1-DC-22-301129

THE STATE OF TEXAS § IN THE **403RD JUDICIAL DISTRICT COURT**

VS. § OF

KAITLIN ARMSTRONG § TRAVIS COUNTY, TEXAS

APPLICATION FOR SUBPOENA DUCES TECUM

To the Judge of the **403rd Judicial District Court** of Travis County, Texas:

You will please issue subpoena *duces tecum* in accordance with the law in the above-styled and numbered cause for the following named witnesses whose testimony is material to the State of Texas:

Custodian of Records for: St. Joseph Medical Center
1401 St. Joseph Parkway
Houston, TX 77002

Please provide original or clear copy of all medical/surgical records, including emergency room records, EMS reports, photographs, blood tests, notes, ETOH, drug screening, and documentation regarding treatment and examination, lab tests and lab results, CAT scans, name of person drawing blood from patient, and BAC from admission date and any dates treated or admitted thereafter, including all notes, diagnosis/prognosis and if applicable, autopsy report, in file or otherwise pertaining to:

Patient Name: Kaitlin Armstrong, DOB: 11/21/1987; Date of Admission: On or about 07/02/22

These witnesses are to be and appear and produce original records **instanter**, at the Blackwell-Thurman Criminal Justice Center, 509 West 11th Street, **2nd** Floor, Austin, Texas, in the **403rd Judicial District Court** of Travis County, Texas to give testimony that is material to the State of Texas. I hereby certify, upon application from the District Attorney of Travis County, Texas, that said records are material and relevant and necessary to the above-titled criminal action currently pending in the **403rd Judicial District Court** of Travis County, Texas.

[YOU WILL NOT HAVE TO APPEAR and will be deemed substantial compliance with this subpoena by tendering the above requested records with the attached Business Records Affidavit completed and executed, **before or no later than August 19, 2022** to: Office of the Travis County District Attorney, P.O. Box 1748, Austin, TX 78767, ATTN: CECILEE WALKER].

DocuSigned by:

DF8C0D32FE76434

Rob Drummond
ATTORNEY FOR STATE

SUBPOENA

TO ANY SHERIFF OR PEACE OFFICER OF THE STATE OF TEXAS ----- GREETINGS:

Based upon the above application by the Travis County District Attorney, you are commanded to summon the above-named witnesses to be and appear **instanter**, and produce original records before the **403rd Judicial District Court** of Travis County, Texas, then and there to testify as a witness on behalf of the State in the above-styled and numbered cause, and there to remain from day to day and from term to term, until discharged. Herein fail not, and make due return hereof according to law.

Issued and given under my hand on this the ¹⁶ day of July, 2022.

DocuSigned by:

42059774CC044CC

Brenda Kennedy
JUDGE, **403rd Judicial District Court**

Compliance with this Subpoena authorizes (at the custodian's option) delivery of copies of the above-described records and a business records affidavit to the person serving the subpoena at the time of service.

D-1-DC-22-301129

THE STATE OF TEXAS

§ IN THE 403rd JUDICIAL DISTRICT COURT

VS.

§ OF

KAITLIN ARMSTRONG

§ TRAVIS COUNTY, TEXAS

BUSINESS RECORDS AFFIDAVIT

BEFORE ME the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of records of **St. Joseph Medical Center**. Attached hereto are _____ pages of records from **St. Joseph Medical Center**. These

[Enter: Actual # of pages]

records are kept by **St. Joseph Medical Center** in the regular course of business, and it was the regular course of business of **St. Joseph Medical Center** for an employee or representative of **St. Joseph Medical Center**, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter.

The records attached hereto are the original or exact duplicates of the original.

AFFIANT

SWORN TO AND SUBSCRIBED before me on the ____ day of _____, A.D. 2022.

Notary Public, State of Texas

My commission expires: _____

Patient Name: Kaitlin Armstrong, DOB: 11/21/1987; Date of Admission: On or about 7/02/2022