

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

City of Columbus, :  
Appellee, :  
 : Case No. 2010-2143  
v. :  
 :  
Timothy H. Cooper, :  
Appellant. :

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**MOTION FOR RECONSIDERATION**

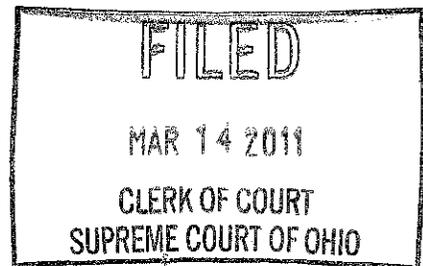
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Columbus, Ohio 43215-4530

COUNSEL FOR APPELLEE CITY OF COLUMBUS



## MOTION FOR RECONSIDERATION

Pursuant to S. Ct. Prac. R. 11.2(B)(1), Appellant Timothy Cooper hereby asks that the Court reconsider his Notice of Appeal and Memorandum in Support of Jurisdiction in this case.

The Sixth Amendment constitutional right to a speedy trial is a fundamental cornerstone of our system of justice. The issue for review in this case is narrow and has a wide application to thousands of traffic and criminal cases in Ohio courts each week. How and when does an accused make an effective waiver of his constitutional and statutory rights to a speedy trial? This Court has answered this question in *State v. O'Brien* [1987], 34 Ohio St.3d 7, 516 N.E.2d 218, applied and followed; *State v. Mincy* [1982], 2 Ohio St.3d 6, 2 OBR 282, 441 N.E.2d 571; and *State v. King* (1994), 70 Ohio St.3d 158. Yet, in this case, the trial court, the city prosecutor, and the appeals court have all ignored the law as set forth by the Ohio Supreme Court. The Sixth Amendment constitutional implications of this case are important and are ripe for review.

**Exhibit 1** to Appellant Cooper's Memorandum in Support of Jurisdiction is a copy of the actual trial court entry from January 5, 2010 that is at issue in this case. Exhibit 1 is also attached to this Motion for Reconsideration.

The City of Columbus and the Court of Appeals assert "that absent a transcript of proceedings, an appeals court must presume the regularity of proceedings surrounding the trial court's decision to issue a continuance". The Ohio Supreme Court has not ruled that a transcript of proceedings is the only way to show a waiver or non-waiver of one's constitutional and statutory rights to a speedy trial.

What is "regular" about the trial court's January 5<sup>th</sup> entry (i.e. Exhibit 1)? How do individuals "regularly" waive their constitutional and statutory rights to a speedy trial? Do they waive the rights in writing? Do they waive the rights in open court on the record? **In viewing Exhibit 1, how can the trial court establish and conclude that the accused waived of his constitutional and statutory rights to a speedy trial?** Did Cooper expressly waive rights to a speedy trial in writing? Look at Exhibit 1. **"Waiver of Right to Speedy Trial" is blank and unsigned.** Clearly, and unequivocally, there is no written waiver.

Did Appellant Cooper waive his rights to a speedy trial in open court on the record? No. And, the trial court did not record the proceedings. However, the absence of a transcript does not absolve the trial court from making a record of **an effective waiver** of an accused's constitutional and statutory rights to a speedy trial. See, *State v. O'Brien* [1987], 34 Ohio St.3d

7, 516 N.E.2d 218, applied and followed; *State v. Mincy* [1982], 2 Ohio St.3d 6, 2 OBR 282, 441 N.E.2d 571; and *State v. King* (1994), 70 Ohio St.3d 158. The trial court could make such a record by requiring, and having filed in the case, a written waiver of speedy trial that has been signed by the accused.

Exhibit 1

**IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO**

STATE OF OHIO/CITY OF COLUMBUS, :  
Plaintiff, :  
vs. :  
Timothy Cooper :  
Defendant. :

CASE NO. 09-21577

FILED  
JAN 5 A 10 11  
CLERK OF COURT  
FRANKLIN COUNTY  
OHIO

**ENTRY**

Pretrial held. Reassign for \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Continue CT to 2-12-10 at 9:00 a.m./p.m. at request of A

Defendant given oral and written instructions to contact the Public Defender's Office.

Enter to substitute \_\_\_\_\_ as counsel of record (\_\_\_\_\_).

Defendant instructed that no further continuances will be granted to obtain counsel.

Other Motion to dismiss O/A

**WAIVER OF RIGHT TO SPEEDY TRIAL**

I, \_\_\_\_\_, knowingly and voluntarily waive my right to a speedy trial the time provided by law.

Date \_\_\_\_\_ Defendant/Attorney for Defendant \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NEXT COURT DATE**

I acknowledge that this is the only notice of the next court date I or my client will receive. I also understand that no notice will be mailed to me or my client.

Date JAN 05 2010 Defendant's Attorney for Defendant \_\_\_\_\_

Date JAN 05 2010 \_\_\_\_\_

JUDGE H. WILLIAM POLLITT, JR.

71-EB  
DEPT. OF PROBATION  
FRANKLIN COUNTY  
OHIO  
JAN 21 PM 2:30  
RECORDS OF COURT

The trial court, the city prosecutor, and the appeals court have ignored the law as clearly stated by this Court in the cases of *State v. O'Brien* [1987], 34 Ohio St.3d 7, 516 N.E.2d 218, applied and followed; *State v. Mincy* [1982], 2 Ohio St.3d 6, 2 OBR 282, 441 N.E.2d 571; and *State v. King* (1994), 70 Ohio St.3d 158.

Specifically, an accused individual's right to a speedy trial is guaranteed by the Sixth Amendment to the Constitution of the United States of America and Ohio statutory law. The

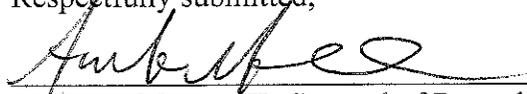
Ohio Supreme Court has ruled that "[t]o be effective, an accused's waiver of his or her constitutional and statutory rights to a speedy trial must be expressed in writing or made in open court on the record. See, (*State v. O'Brien* [1987], 34 Ohio St.3d 7, 516 N.E.2d 218, applied and followed; *State v. Mincy* [1982], 2 Ohio St.3d 6, 2 OBR 282, 441 N.E.2d 571, followed.)" *State v. King* (1994), 70 Ohio St.3d 158, syllabus.

**Is there an effective waiver of an accused's constitutional and statutory rights where there is no written waiver of speedy trial and no record to show that speedy trial rights were waived in open court on the record?** The Trial Court did not record the hearing. As a result, there is no transcript available of the alleged speedy trial waiver or non-waiver? Appellant had requested a transcript to support his argument on appeal that he did not waive his right to a speedy trial. He could not show it to the Court of Appeals because the Trial Court failed to record the proceedings. **Most importantly, the Trial Court used a pre-printed entry that included a section for waiver of speedy trial rights. The waiver of speedy trial section was blank and unsigned.** See, Exhibit 1.

Appellant Cooper incorporates herein, by reference, his Notice of Appeal and his Memorandum in Support of Jurisdiction that were previously filed in this case.

**WHEREFORE**, Appellant Cooper respectfully asks that the Court reconsider his Notice of Appeal and Memorandum in Support of Jurisdiction and allow his appeal to go forward.

Respectfully submitted,

  
Ambrose Moses, III, Counsel of Record  
COUNSEL FOR APPELLANT,  
TIMOTHY H. COOPER

**Certificate of Service**

I certify that a copy of this Memorandum In Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees, Melanie R. Tobias, Assistant City Prosecutor, City of Columbus Prosecutor's Office, 375 South High Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215-4530 on March 14, 2011.

  
Ambrose Moses, III, Counsel of Record  
COUNSEL FOR APPELLANT,  
TIMOTHY H. COOPER

Exhibit 1

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

STATE OF OHIO/CITY OF COLUMBUS, :  
Plaintiff, :

vs. :  
Timothy Cooper :  
Defendant. :

CASE NO. 09-215875

FILED  
2010 JAN -5 A 10:17  
FRANKLIN COUNTY  
MUNICIPAL COURT  
LOUISIANA, MOORE

ENTRY

- Pretrial held. Reassign for \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
- Continue CT to 2-12-10 at 9<sup>00</sup> a.m./p.m. at request of A.
- Defendant given oral and written instructions to contact the Public Defender's Office.
- Enter to substitute \_\_\_\_\_ as counsel of record (\_\_\_\_\_).
- Defendant instructed that no further continuances will be granted to obtain counsel.
- Other Motion to dismiss O/R

WAIVER OF RIGHT TO SPEEDY TRIAL

I, \_\_\_\_\_, knowingly and voluntarily waive my right to trial within the time provided by law.

Date \_\_\_\_\_ Defendant/Attorney for Defendant \_\_\_\_\_

ACKNOWLEDGEMENT OF RECEIPT OF NEXT COURT DATE

I acknowledge that this is the only notice of the next court date I or my client will receive. I also understand that no notice will be mailed to me or my client.

Date JAN 05 2010  
Date JAN 05 2010

[Signature]  
Defendant/Attorney for Defendant  
[Signature]  
JUDGE H. WILLIAM POLLITT, JR.

FILED  
2010 JAN 21 PM 2:26  
FRANKLIN COUNTY, OHIO  
COURT OF APPEALS

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