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JURISDICTIONAL STATEMENT

At the conclusion of the penalty phase of relator Barry Baker's first degree murder trial in the underlying criminal case, the jury returned a verdict stating it was unable to agree on punishment. Before the date set for sentencing, this Court issued *State v. Whitfield*, 107 S.W.3d 253 (2003). Relying on *Whitfield*, Mr. Baker contended that Judge Kendrick must impose a sentence of life imprisonment without probation or parole. On September 11, 2003, more than 90 days after Mr. Baker's motion for new trial was filed, and over Mr. Baker's objection, Judge Kendrick ordered a new penalty phase trial.

On October 30, 2003, Mr. Baker filed in this Court a petition for writ of prohibition or, in the alternative, for writ of mandamus. On November 25, 2003, the Court issued a Preliminary Writ of Prohibition.

The Court has jurisdiction of this matter under Article V, Section 4 of the Missouri Constitution (granting authority to the Court to "issue and determine original remedial writs") and under Article V, Section 3 of the Missouri Constitution because it involves the question of whether the circuit court may order a retrial at which the state may seek the death penalty. *State ex rel. Westfall v. Mason*, 594 S.W.2d 908 (Mo.banc 1980) *rev'd on other grounds*, *Bullington v. Missouri*, 451 U.S. 430 (1981).

STATEMENT OF FACTS

At the penalty phase of relator Barry Baker's trial for first degree murder in his underlying criminal case, the jury returned a verdict stating they had unanimously found four statutory aggravating circumstances beyond a reasonable doubt but were "unable to decide or agree upon punishment" (Exhibit 2: E4; Exhibit 3: E12).¹ The trial court, respondent Judge Kendrick, granted Mr. Baker an additional ten days in which to file a motion for new trial making the motion due April 18th; Mr. Baker timely filed his motion for new trial on April 16th (Exhibit 1: E1; Exhibit 3: E13).

One month later, on May 19th, Judge Kendrick set Mr. Baker's new trial motion for hearing on June 12th and set sentencing for June 19th (Exhibit 1: E2; Exhibit 4: E6). In the interim, on April 24th, the 30-day period following the jury's verdict – during which the trial court on its own initiative, with defendant's consent, could have ordered a new trial – expired. Rule 29.13(b): "The court may, with the consent of the

¹ The Exhibits cited are, unless otherwise indicated, those accompanying relator's petition. Rule 84.24(g). Unless otherwise indicated, the events discussed in appellant's brief occurred in 2003. These events are graphically presented, *infra*, in the "Baker Time Line."

defendant, order a new trial of its own initiative before the entry of judgment and imposition of sentence but not later than thirty days after the verdict of the jury is returned” (A); see Baker Time Line, *infra*.

Two days before the date set for sentencing, this Court issued *State v. Whitfield*, 107 S.W.3d 253 (Mo.banc 2003). Mr. Baker filed a motion directing Judge Kendrick’s attention to *Whitfield* (Exhibit 6: E18). In particular, Mr. Baker argued: 1) *Whitfield* held that *Ring v. Arizona*, 536 U.S. 584 (2002) was retroactive, 2) his trial was unconstitutional ‘because the state did not have to prove the second ... “warranting” step or the third “weighing” step beyond a reasonable doubt...,” and 3) under *Whitfield*, when the jury is unable to agree on punishment, the trial court has only one sentencing option: to sentence the defendant to life imprisonment without possibility of probation or parole” (Exhibit 6: E18-21). On the date set for sentencing, June 19th, Mr. Baker filed an amended “*Whitfield*” motion renewing and supplementing his argument that under *Whitfield*, he must be sentenced to life imprisonment without probation or parole (Exhibit 7: E22-27).

On the day set for sentencing, June 19th, Judge Kendrick did not rule on Mr. Baker’s two *Whitfield* motions or proceed with sentencing. On his own motion, Judge Kendrick ordered the amended *Whitfield* motion to be argued on August 13th (Exhibit 8: E28).

The 90-day period that began on April 16th, during which Judge Kendrick could have “passed on” Mr. Baker’s motion for new trial, expired July 17th. Rule 29.11(g) (“If the motion for new trial is not passed on within ninety days after the motion is filed, it is denied for all purposes...”); see Baker Time Line, *infra*. Judge Kendrick did not grant, deny, or otherwise rule on Mr. Baker’s motion for new trial during that period.

Judge Kendrick heard oral arguments on Mr. Baker’s post-verdict motions on August 13th (Exhibit 1: E3; Exhibit 9: E29-40). Mr. Baker reiterated his argument that under *Whitfield*, *supra*, Judge Kendrick’s only option was to sentence him to life imprisonment without the possibility of probation or parole (Exhibit 9: E5-6).

The state argued that Judge Kendrick was not required to impose a sentence of LWOP because

[t]he Court in *Whitfield* narrowed its application of *Ring* only to all future death penalty cases and to those not yet final or still on direct appeal. It further limited *Ring* and its decision to five certain listed cases, only those few Missouri death penalty cases that are no longer on direct appeal and in which the jury was unable to reach a verdict and the judge made the

required factual determinations and imposed the death penalty.

(Exhibit 9: E36). Further, the state argued, *Whitfield* relied on §565.040.2, and neither that statutory section “nor *Whitfield* nor *Ring*” required Judge Kendrick to sentence Mr. Baker to LWOP because Judge Kendrick had not made any factual determinations and had not imposed a sentence of death (Exhibit 9: E36). The state pointed to “an instructional error ... specifically, the verdict form, with regards to steps one, two, and three” and argued that “the proper remedy” would be to deny a new guilt phase trial and order a new penalty phase trial because of the verdict form error (Exhibit 9: E37).

Responding to the state, Mr. Baker argued that the Court in *Whitfield* relied on §565.040.2 “because Mr. Whitfield had been sentenced” (Exhibit 9: E37). In the instant case, however, “an individual has been ... convicted but not sentenced, and that [§565.040.1] directly impacts the situation which we find ourselves in” (Exhibit 9: E37).

The state answered that §565.040.1 applied only when “the death penalty provided for in this chapter is held to be unconstitutional” and that the death penalty had not been held unconstitutional in either *Whitfield* or *Ring* (Exhibit 9: E38). Mr. Baker replied that §565.040.1

addressed the “death penalty scheme” provided in Chapter 565 – “the death penalty scheme under which this individual has been convicted” (Exhibit 9: E39).

Mr. Baker requested that Judge Kendrick proceed with sentencing (Exhibit 9: E38). Judge Kendrick announced that the matter was “under submission” and continued the case until September 11th “for sentencing or a scheduling conference” (Exhibit 9: E40-41).

On September 11th, Judge ordered a new penalty phase trial (Exhibit 3: E7; Exhibit 11: E44-46). In his written “Order, Judgment and Decree,” Judge Kendrick found that “[i]n its analysis [in *Whitfield*] this Court:

narrowed its application of Ring to “all future death penalty cases and to those not yet final or still on direct appeal.” The Court stated that it was limiting its application of Ring and its decision [*Whitfield*] to five listed cases, “only those few Missouri death penalty cases that are no longer on direct appeal and in which the jury was unable to reach a verdict and the judge made the required factual determinations and imposed the death penalty... .” Ultimately, the Court, in ordering the trial court to resentence the defendant to life imprisonment ... relied on ... Section 565.040.2... .

In this case, neither the plain language of ... Section 565.040.2, nor Whitfield or Ring, require this Court to sentence the defendant to life ... because this Court has not made any factual determinations in sentencing and has not *imposed* a death sentence. Moreover, neither Whitfield nor Ring prohibit a trial court from ordering a new penalty phase trial or sentencing a defendant to death in a case where a jury deadlocks at step 4. Nevertheless, there appears to have been an instructional error in this case regarding the requisite findings of fact in steps 1, 2, 3, and 4 on the verdict forms during the penalty phase of the trial.

Accordingly, this Court hereby orders, adjudges and decrees that a new trial is granted herein as to the penalty phase only.

(Exhibit 11: E45-46).

Mr. Baker renewed his objections to a new penalty phase trial and again asked that Judge Kendrick impose a sentence of life imprisonment (Exhibit 3: E8-9). Mr. Baker objected further on the grounds that since 90 days had passed since the motion for new trial had been filed, under Rule 29.11(g), that motion was “denied for all purposes,” the court no longer had jurisdiction to grant a new trial, and the “only option would be to sentence Barry Baker to life” (Exhibit 3: E9-10). Judge Kendrick overruled the objection (Exhibit 3: E10).

On October 30, 2003, Mr. Baker filed his petition for a writ of prohibition ordering Judge Kendrick not to proceed with a penalty phase retrial in Mr. Baker's criminal case and a writ of mandamus ordering Judge Kendrick to vacate his order granting a penalty phase retrial, to remove Mr. Baker's case from the trial docket, and to sentence Mr. Baker to life imprisonment without the possibility of probation or parole.

On November 25, 2003, the Court issued its preliminary writ of prohibition.

POINTS RELIED ON

Point One: Relator Barry Baker is entitled to a writ of prohibition ordering respondent not to proceed with a new penalty phase trial and not to do anything other than sentence Mr. Baker to life imprisonment without the possibility of probation or parole. *State v. Whitfield*, 107 S.W.3d 253 (Mo.banc 2003), issued while Mr. Baker's case was pending, applies to his case and precludes Judge Kendrick from taking any action regarding sentencing other than sentencing Mr. Baker to life imprisonment without the possibility of probation or parole. Under *Whitfield*, when a jury hangs, the trial court cannot impose a sentence of death, and Missouri's statutes do not provide that the state may attempt to obtain a sentence of death for a second time by subjecting the defendant to a second penalty phase trial.

State v. Whitfield, 107 S.W.3d 253 (Mo.banc 2003);

Ring v. Arizona, 536 U.S. 584 (2002);

Griffith v. Kentucky, 479 U.S. 314 (1987);

State ex rel. Proctor by Bryson, 100 S.W.3d 775 (Mo.banc 2003);

U.S.Const., Amend. VI;

U.S.Const., Amend. XIV;

§565.030.4, RSMo. 2000.

Point Two: Relator, Barry Baker, is entitled to a writ of prohibition ordering respondent, Judge Kendrick, not to proceed with a new penalty phase trial and not to do anything other than sentence Mr. Baker to life imprisonment without the possibility of probation or parole. Because Judge Kendrick did not order a new trial within the thirty-day period provided by Rule 29.13(b) in which he could have ordered a new trial with the consent of Mr. Baker, or within the ninety-day period provided by Rule 29.11(g), after which the motion was “denied for all purposes,” Judge Kendrick lost jurisdiction and had no authority to order a new penalty trial. Judge Kendrick may not circumvent the Supreme Court Rules by claiming a) that Mr. Baker’s timely filed motion for new trial was not “filed” because it was “withdrawn” by his subsequent motions, or b) that ordering a new penalty phase trial was a “sua sponte” act under *Whitfield*, not a ruling on Mr. Baker’s motion for new trial, and therefore not subject to the Supreme Court Rules.

State ex rel. Parks v. Barker, 567 S.W.2d 130 (Mo.banc 1978);

State v. Davis, 698 S.W.2d 600 (Mo.App.E.D. 1985);

Rule 29.11(g);

Rule 29.13(b).

ARGUMENT

Summary of Argument

A writ of prohibition is appropriate and necessary to correct respondent Judge Kendrick's unauthorized actions: actions that exceeded his jurisdiction and for which Mr. Baker has no adequate remedy at law. Judge Kendrick's unauthorized actions came about because he misinterpreted the law and this Court's opinion in *State v. Whitfield*, 107 S.W.3d 253 (Mo.banc 2003).

Further, a writ of prohibition is entirely appropriate and necessary for an entirely different reason: in ordering a new penalty phase trial, Judge Kendrick acted without jurisdiction, without authority, and in violation of the Rules of this Court – specifically, Rules 29.11(g) and 29.13(b) – in that he failed to order the new trial within the time mandated by the Rules.

Prohibition is a necessary and appropriate remedy for Judge Kendrick's unauthorized actions.

“The extraordinary remedy of a writ of prohibition is appropriate ... to prevent the usurpation of judicial power when the trial court lacks jurisdiction” and “to remedy an excess of jurisdiction or an abuse of discretion where the lower court lacks the power to act as intended...” *State ex rel. Proctor by Bryson*, 100 S.W.3d 775, 776 (Mo.banc 2003).

Prohibition is appropriate to compel a trial judge to comply with the rules of this Court where there is no adequate remedy by appeal.”

State ex rel. Williams v. Mauer, 722 S.W.2d 296, 297 (Mo.banc 1986).

A writ is appropriate here because no other remedy is available. Mr. Baker cannot appeal Judge Kendrick’s order granting a new penalty phase trial because it is not a final judgment. *State v. Harris*, 486 S.W.2d 227, 229 (Mo. 1972); *State v. Larson*, 79 S.W.3d 891, 892-93 (Mo.banc 2002) (“Appellate jurisdiction exists for civil and criminal cases only after final judgment... . In a criminal case, a final judgment occurs only when a sentence is entered”). Mr. Baker’s only avenue of relief from Judge Kendrick’s order of a new penalty phase trial is a writ.

Finally, a writ of prohibition is appropriate and may issue “to prevent [the] unnecessary, inconvenient and expensive litigation” that would otherwise occur as a result of Judge Kendrick’s unauthorized action ordering a new penalty phase trial. *State ex rel. Police Retirement System of St. Louis v. Mummert*, 875 S.W.2d 553, 555 (Mo. banc 1994).

As to Point One: Relator, Barry Baker, is entitled to a writ of prohibition ordering respondent, Judge Kendrick, not to proceed with a new penalty phase trial and not to do anything other than sentence Mr. Baker to life imprisonment without the possibility of probation or parole. *State v. Whitfield*, 107 S.W.3d 253 (Mo.banc 2003), issued while Mr. Baker's case was pending, applies to his case and precludes Judge Kendrick from taking any action regarding sentencing other than sentencing Mr. Baker to life imprisonment without the possibility of probation or parole. Under *Whitfield*, when a jury hangs, the trial court cannot impose a sentence of death, the trial court cannot impose a sentence of death, and Missouri's statutes do not provide that the state may attempt to obtain a sentence of death for a second time by subjecting the defendant to a second penalty phase trial.

In ordering a new penalty phase trial, Judge Kendrick acted beyond his authority and jurisdiction in that under *Whitfield*, Judge Kendrick's only option was to sentence Mr. Baker to life imprisonment without the possibility of probation or parole.

Under *Whitfield*, Judge Kendrick could not sentence Mr. Baker to death and he could not order a new penalty phase trial; Judge

Kendrick's only option was to sentence Mr. Baker to life imprisonment without the possibility of probation or parole.

What this Court did, and said, in *Whitfield* was misconstrued and misapplied in the present case. Resolution of the present case and correction of Judge Kendrick's actions require a careful look at *Whitfield*.

In *Whitfield*, as in the present underlying case, "a jury convicted Joseph Whitfield of first-degree murder, but couldn't agree on punishment during the penalty phase..." 107 S.W.3d at 256. Following the provisions of §565.030.4, the judge in *Whitfield* made the factual findings required by that statute for a sentence of death and imposed a sentence of death. *Id.* Years later, after exhausting his state and federal avenues of relief, Mr. Whitfield filed a motion to recall the mandate; relying on *Ring v. Arizona*, 536 U.S. 584 (2002), Mr. Whitfield contended that his rights under the Sixth and Fourteenth Amendments had been violated "because the judge rather than the jury made the factual determinations on which his eligibility for the death sentence was predicated." *Id.* This Court agreed that *Ring* required a jury to make the factual findings requisite for a sentence of death and recalled its mandate. *Id.* at 264-69.

In *Whitfield*, the Court undertook an in-depth analysis of §565.030.4

– the statutory provision establishing the death-eligibility requirements, or steps, prerequisite for a sentence of death. Particularly important to the present case was the Court’s determination that the provisions of §565.030.4 “required the judge to independently go through the four statutory steps and make his or her own determination whether the death penalty or life imprisonment should be imposed.” *Id.* at 261. The Court held that “process clearly violated the requirement of *Ring* that the jury rather than the judge determine the facts on which the death penalty is based.” *Id.* at 262.

Because the judgment in Mr. Whitfield’s case was “final,” it was necessary for the Court to determine whether to apply *Ring* retroactively. The Court did so, anticipating that “only those few Missouri death penalty cases that are no longer on direct appeal and in which the jury was unable to reach a verdict and the judge made the required factual determinations and imposed the death penalty will be affected by the retroactive application of *Ring*.” *Id.* at 268-69. Based on a “preliminary review of its records” the Court “identified” five cases that would “be affected by the retroactive application of *Ring*.” *Id.* at 269.

Finally, the Court in *Whitfield* addressed the “remedy” favored by the dissent – the very remedy ordered by Judge Kendrick in the present

case – was not acceptable:

The separate opinion of Judge Price suggests that this is not the case, and that, at least until Missouri's jury instructions require jurors to specify at what point they have deadlocked, by making separate written findings as to each step set out in section 565.030.4, the remedy will be to order a new trial and give the State a second opportunity to convince a different jury to find the facts necessary for imposition of the death penalty. *But, Missouri's statutes do not provide for this second bite at the apple... .*

[S]ection 565.030.4 provides that a defendant shall be sentenced to life imprisonment unless the jury finds steps 1, 2, 3, and 4 against him or her....

Therefore, had this case been tried after *Ring*, the proper course of action for the judge to follow would have been to sentence defendant to life imprisonment. The fact that the applicability of *Ring* was not determined until later does not change the remedy in the present case. It is still to enter the judgment the trial court should have entered – a sentence of life imprisonment without eligibility for probation or parole.

Id. at 270-71; emphasis added.

The above-quoted language was, evidently, misunderstood by Judge Kendrick. In anticipating that *Whitfield's* retroactive application of *Ring* would affect only a few cases, and, specifically, identifying “five cases” that would be affected, this Court never ‘stated that it was limiting its application of Ring and its decision [*Whitfield*] to five listed cases, “only those few Missouri death penalty cases that are no longer on direct appeal and in which the jury was unable to reach a verdict and the judge made the required factual determinations and imposed the death penalty... .” (Exhibit 11: E45). Rather, the Court was simply demonstrating that applying its decision in *Whitfield* retroactively would have minimal effect.

Contrary to what Judge Kendrick, evidently, believed, *Whitfield* and *Ring* both apply to Mr. Baker’s case because it was “pending” at the time of those decisions. “Pending” refers to “cases not yet reduced to a final, unappealable judgment.” *State ex rel. Faith Hospital v. Enright*, 706 S.W.2d 852, 854 (Mo.banc 1986). “[A] new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final... .” *Griffith v. Kentucky*, 479 U.S. 314, 321 (1987).

Missouri’s Statutes do not provide for a retrial when the jury hangs at penalty phase.

Although this Court's recent application of *Whitfield* to a case "pending" at the time of that decision, *State v. Buchanan*, 115 S.W.3d 841 (Mo.banc 2003), should lay this matter to rest, Mr. Baker anticipates that respondent will argue that the instant case is different than *Whitfield*, the five cases mentioned in *Whitfield*, and *Buchanan* because the defendants in those cases had been sentenced to death by the judge. *Whitfield* answers this, too: "*Missouri's statutes do not provide for this second bite at the apple... .*" 107 S.W.3d at 270; emphasis added. Rather, Missouri's statutes provide, "that a defendant shall be sentenced to life imprisonment *unless* the jury finds steps 1, 2, 3, and 4 against him or her...." *Id.* at 271.

For the foregoing reasons, Mr. Baker is entitled to a writ of prohibition ordering Judge Kendrick not to proceed with a new penalty phase trial and not to do anything other than sentence Mr. Baker to life imprisonment without the possibility of probation or parole.

As to Point Two: Relator, Barry Baker, is entitled to a writ of prohibition ordering respondent, Judge Kendrick, not to proceed with a new penalty phase trial and not to do anything other than sentence Mr. Baker to life imprisonment without the possibility of probation or parole. Because Judge Kendrick did not order a new trial within the thirty-day period provided by Rule 29.13(b) in which he could have ordered a new trial with the consent of Mr. Baker, or within the ninety-day period provided by Rule 29.11(g), after which the motion was “denied for all purposes,” Judge Kendrick lost jurisdiction and had no authority to order a new penalty trial. Judge Kendrick may not circumvent the Supreme Court Rules by claiming a) that Mr. Baker’s timely filed motion for new trial was not “filed” because it was “withdrawn” by his subsequent motions, or b) that ordering a new penalty phase trial was a “sua sponte” act under *Whitfield*, not a ruling on Mr. Baker’s motion for new trial, and therefore not subject to the Supreme Court Rules.

Judge Kendrick failed to rule on the motion for new trial within the time prescribed by this Court's Rules, and the motion was denied by operation of law. As a result, Judge Kendrick lacked jurisdiction to order a new penalty phase trial. Further, because the motions that Mr. Baker filed in June were filed after the time prescribed for filing a motion for new trial, they were nullities and had no legal effect. Although Judge Kendrick claimed that he was ordering a new penalty phase trial pursuant to the motions filed by Mr. Baker on June 17th and June 19th, this was legally impossible.

A trial court's authority to grant a new trial is limited by Rules 29.11 and 29.13. Rule 29.11(a) authorizes a trial court to grant a new trial for "good cause shown." Rule 29.11(g) limits this authority: if the trial court fails to rule on a motion for new trial "within ninety days after the motion is filed, it is denied for all purposes."

In the present case, Judge Kendrick failed to rule on Mr. Baker's motion for new trial within ninety days after it was filed; by operation of law, the motion was "denied for all purposes."

Rule 29.13(b) provides additional, limited, authority for the trial court to order a new trial in the following circumstances: 1) the defendant consents, 2) the court acts no later than thirty days after the

jury returns its verdict, and 3) the court acts before entry of judgment and imposition of sentence.

In *State ex rel. Parks v. Barker*, 567 S.W.2d 130 (Mo.banc 1978), this Court addressed the jurisdictional consequences of the trial court's failure to act within 30 days of the jury's verdict and within 90 days after the motion for new trial was filed. Because the trial court failed to act within 30 days after the jury's verdict, Rule 75.01 – now Rule 29.13(b) – provided no authority for the court's belated order granting a new trial. *Id.* at 131-32. Further, because the trial court failed to act on the motion for new trial within 90 days after it was filed, the motion was “deemed overruled for all purposes.” *Id.* at 132-33. This Court held that the trial court's order granting a new trial exceeded its jurisdiction and was subject to a writ of prohibition: “[S]ince the granting of a new trial in this case was beyond the time given the trial court for such action, the action was beyond the court's jurisdiction and prohibition is a proper remedy.” *Id.* at 133.

State ex rel. Parks v. Barker is directly on point in the present case. Here, as in *State ex rel. Parks v. Barker*, by failing to act within ninety days after Mr. Baker filed his motion for new trial, or within thirty days of the jury's verdict, Judge Kendrick lost jurisdiction to order a new trial. Under *Ring v. Arizona*, *supra*, and this Court's opinion recalling

the mandate in *State v. Whitfield, supra*, Judge Kendrick could not make the factual findings required to sentence Mr. Baker to death. Legally, Judge Kendrick had no authority, and no jurisdiction, to take any action other than sentencing Mr. Baker to life imprisonment.

One final matter must be addressed. In ordering a new penalty phase trial, Judge Kendrick appeared to be predicating his order on Mr. Baker's June 17th and June 19th motions: "With regard to the defendant's June 17, 2003, second supplemental motion for judgment of acquittal or, in the alternative, motion for new trial or motion for the trial court to sentence Barry Baker to life without probation or parole, and June 19th 2003, amended second supplemental motion for the trial court to sentence Bary Baker to life in prison without the possibility of probation and parole, the Court hereby orders - enters its order, judgment, and decree that a new trial is granted herein as to the penalty phase only" (Exhibit 3: E7).

The problem with Judge Kendrick's order is that it was based on a nullity. A motion for new trial must be timely filed within the period prescribed by the Rules of this Court or it is a nullity and of no effect. *State v. Davis*, 698 S.W.2d 600, 602-03 (Mo.App.E.D. 1985). This applies also to amendments to the motion for new trial. *Id.*

As shown above, Judge Kendrick had no authority to order a new penalty phase trial. His only option was to sentence Barry Baker to life imprisonment without the possibility of probation or parole.

CONCLUSION

This Court must issue the writ of prohibition to which relator Barry Baker is entitled ordering Judge Kendrick to comply with *Whitfield* and sentence Barry Baker to life imprisonment without the possibility of probation or parole.

Respectfully submitted,

29351
Defender

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, the undersigned attorney, hereby certify as follows:

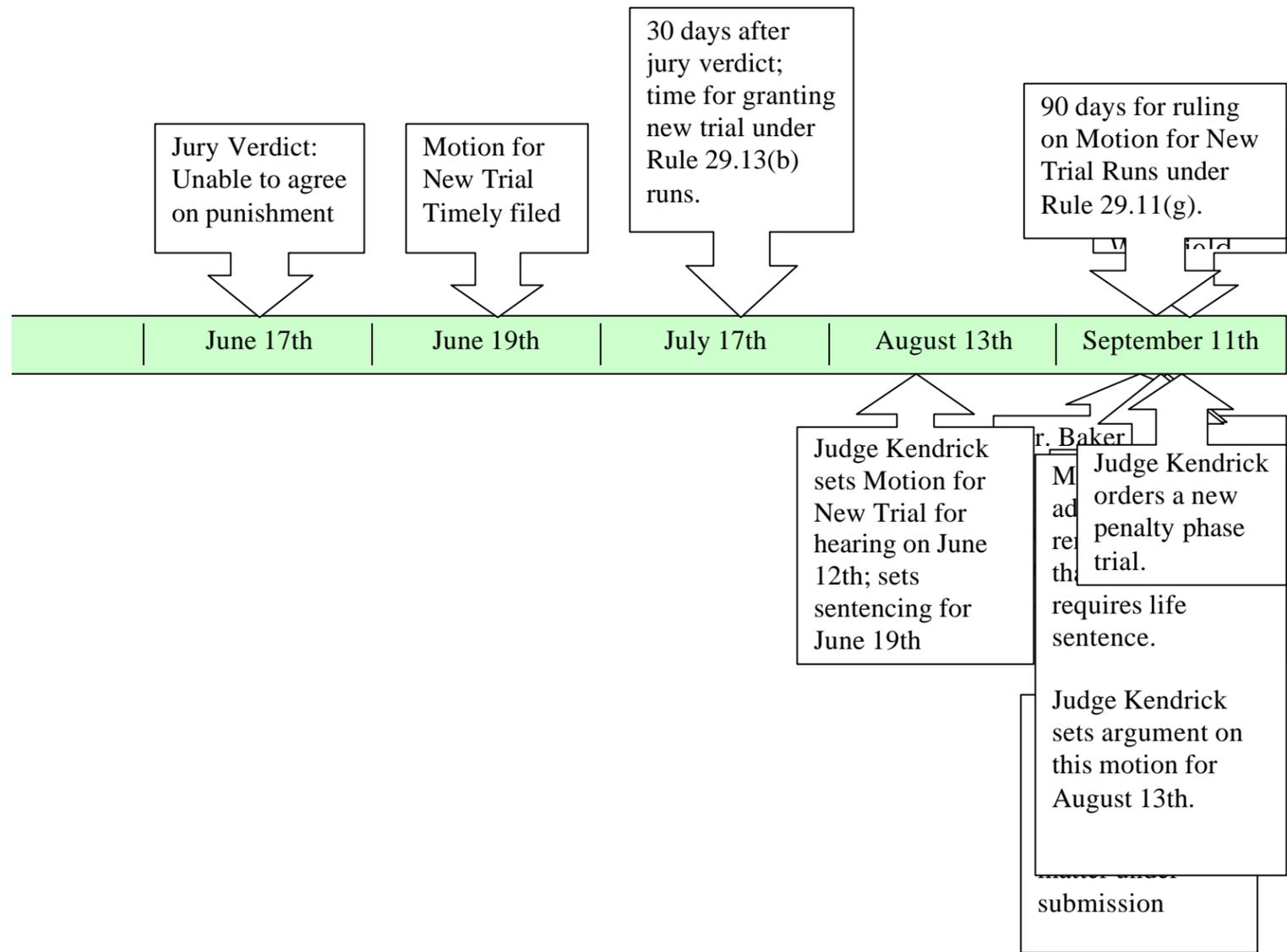
The attached brief complies with the limitations contained in this Court's 84.06(b). The brief comprises 5,224 words according to Microsoft word count.

The floppy disk filed with this brief contains a copy of this brief. It has been scanned for viruses by a McAfee VirusScan program and according to that program is virus-free.

A true and correct copy of the attached brief and a floppy disk containing a copy of this brief were mailed, this 22nd day of January, 2004, to the Joseph S. Dueker, Assistant Prosecuting Attorney, 100 South Central, Clayton, Missouri 63105, (314) 615-2600, and the Hon. Larry Kendrick, Circuit Judge, Division 17, St. Louis County courthouse, 7900 Carondelet, Clayton, Missouri 63105 (314) 615-8739.

Attorney for Appellant

Baker Time Line



CERTIFICATE OF COMPLIANCE AND SERVICE

I, the undersigned attorney, hereby certify as follows:

The attached brief complies with the limitations contained in this Court's 84.06(b). The brief comprises _____ words according to Microsoft word count.

The floppy disk filed with this brief contains a copy of this brief. It has been scanned for viruses by a McAfee VirusScan program and according to that program is virus-free.

A true and correct copy of the attached brief and a floppy disk containing a copy of this brief were mailed, this ___ day of _____, 20___, to the Joseph S. Dueker, Assistant Prosecuting Attorney, 100 South Central, Clayton, Missouri 63105, (314) 615-2600, and the Hon. Larry Kendrick, Circuit Judge, Division 17, St. Louis County courthouse, 7900 Carondelet, Clayton, Missouri 63105 (314) 615-8739.

Attorney for Appellant