

**Summary of SC90833, *State ex rel. David T. Garcia v. The Honorable Steven H. Goldman***  
Writ proceeding arising in the St. Louis County circuit court, Judge Steven H. Goldman  
Argued and submitted May 18, 2010; opinion issued July 16, 2010

**Attorneys:** Garcia was represented by Joseph F. Yeckel of the Law Office of Joseph F. Yeckel LLC in St. Louis, (314) 227-2430, and Grant J. Shostak of Shostak & Shostak LLC in St. Louis, (314) 725-3200. The state was represented by Robert P. McCulloch, David R. Truman and John Quarenghi of the St. Louis County prosecuting attorney's office in Clayton, (314) 615-2600. The Missouri Association of Criminal Defense Lawyers, which filed a brief as a friend of the Court, was represented by John L. Davidson of John L. Davidson PC in St. Louis, (314) 725-2898.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man indicted in February 2002 for an April 1998 shooting assault but not arrested until February 2009 seeks a writ of mandamus requiring the trial court to dismiss the indictment for a violation of his federal constitutional right to a speedy trial. In a 4-3 decision written by Judge Michael A. Wolff, the Supreme Court of Missouri makes permanent its writ mandating that the trial court dismiss the indictment. The state is unable to carry its burden of rebutting the presumption of prejudice caused by the seven-year delay between the indictment and arrest did not prejudice the man. Although he left the state, there is no evidence he knew about the indictment, and he was living openly, using his real identification information. The state made no effort to locate him, and witnesses and evidence have disappeared during the intervening years. In a dissenting opinion, Chief Justice William Ray Price Jr. would hold that, because the man deliberately fled the state, he is the principal cause of the police's delay in finding him, and he cannot show actual prejudice resulted from the delay. As such, the man is not entitled to the relief he seeks.

**Facts:** A restaurant employee in Kirkwood, was shot while on the job by an intruder, whom he identified as David Garcia, in April 1998. He survived the attack. Another employee, who followed the assailant after the shooting, identified the assailant as Garcia. A third restaurant employee also identified Garcia as the assailant. The police were told Garcia shot the employee because he had been talking about Garcia's girlfriend two days earlier. Police obtained Garcia's date of birth, driver's license number, social security number and address; searched his apartment; and were told that, if Garcia were to leave St. Louis, he might go to California or Illinois. Police were unable to locate Garcia. In February 2002, the state indicted Garcia on a charge of first-degree assault. Police made no effort to look for Garcia during the next seven years. In early 2009, a Kirkwood police detective entered Garcia's social security number into a computer database and received a Chicago address for him. The detective contacted Chicago police, who determined that Garcia was working at a Chicago hotel and arrested him in February 2009. Garcia moved to dismiss the indictment against him, alleging a violation of his right to a speedy trial under the Sixth Amendment to the United States Constitution. He had been living openly in Chicago since at least 2002, using his actual name, date of birth and social security number; he filed tax returns from 2000 to 2008 using his real information; and he opened several credit card accounts and obtained a Missouri driver's license using his St. Louis address. The

trial court found that the social security number could have been used to locate Garcia in 2002 or before, that police did not use reasonable diligence to find Garcia, and that there was no evidence Garcia was aware of the indictment or arrest warrant. It also found Garcia knew that there were witnesses at the scene of the shooting, that the police would be searching for him and that he fled his home address. After balancing the factors and evidence, the trial court overruled Garcia's motion to dismiss. Garcia seeks this Court's writ mandating that the trial court dismiss the indictment.

### **PRELIMINARY WRIT MADE PERMANENT.**

**Court en banc holds:** The state violated Garcia's right to a speedy trial, which accrued in February 2002 when he was indicted. In determining whether the seven-year period between his indictment and his arrest violated his speedy trial rights, this Court must consider and balance all the circumstances and weight the factors of length of delay, reason for the delay, the defendant's assertion of his right and prejudice to the defendant. Missouri courts have found that a delay of more than eight months is presumptively prejudicial. The fact that the police made no effort to locate Garcia from the time of the grand jury indictment in February 2002 until February 2009 is a lack of diligence and negligence on the state's behalf that weighs against the state. Although Garcia left the state after the shooting, he was living openly during the entire post-indictment period, and the fact that he did not know about the indictment against him makes the factor of reason for the delay weigh against the state. Garcia asserted his right to a speedy trial 10 months after he first found out about the indictment and was arrested; this is a reasonable period of time, and so this factor weighs in favor of Garcia. Finally, the state has not proven that Garcia's ability to defend himself was not impaired by the delay. Four witnesses to the shooting have disappeared. Only the victim and another employee are available to testify, although their testimony will be about events that occurred more than 12 years ago. As such, the state cannot carry its burden to rebut the presumption of prejudice caused by the delay.

**Dissenting opinion by Chief Justice Price:** The author would hold that because Garcia deliberately fled the state, he is the principal cause of the police's delay in finding him, and he cannot show that actual prejudice resulted from the delay. Garcia was more to blame for the delay than the government: he knew there were witnesses at the shooting and that police would be looking for him, but he fled the jurisdiction. There is no evidence the police acted in bad faith in not locating Garcia sooner, and there is no requirement the government use its limited resources to make "heroic efforts" to locate a defendant who purposely is avoiding apprehension. Because this factor weighs against Garcia, he is not entitled to a presumption of prejudice when the Court considers the fourth factor. Garcia made no attempt to show actual prejudice, and given that the state must prove its case beyond a reasonable doubt, it is difficult to see how the disappearance of four witnesses will prejudice Garcia. Because Garcia has not shown he has a clear and unequivocal right to relief, the author would quash (undo) the preliminary writ.