

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

**APPEAL FROM CHARLESTON COUNTY  
Trial Court Case Nos. 2004-GS-12-00571  
and 2004-GS-12-00572  
The Honorable Daniel F. Pieper**

**Christopher Frank Pittman, Appellant**

**v.**

**The State of South Carolina, Respondent**

**DEFENDANT'S MOTION FOR SUMMARY DISPOSITION ON  
PARTIAL TRANSCRIPT APPEAL**

Defendant/Appellant Christopher Frank Pittman hereby moves this Court, most respectfully, to summarily grant his appeal, based on the partial transcript on file herein, and to reverse and render his conviction because of the simple fact that the State of South Carolina adduced no evidence whatsoever to rebut the long-standing presumption in this state that a child under the age of 14 does not have the mental capacity to form criminal intent. This Motion was drafted based upon the partial trial transcript available at that time. However, as this Motion was being finalized for filing, the entire transcript became available (on January 25, 2006). Given the inordinate delay in production of the entire transcript, as well as the fact that there still remains a 60-day period in which to file our full Appellate Brief, we file this Motion immediately in order to expedite the just resolution of this case.

Therefore, in support of this Motion, Pittman would show the Court the following:

**Justice Delayed Is Justice Denied**

Christopher Pittman was 12 years old on November 28, 2001, when his grandparents were killed. He was held in the ostensible *parens patriae* custody of the juvenile court system for over a year and a half before he was “waived up” to Circuit Court. He was then held in continued pretrial custody for another two and a half years before trial.

Pittman was convicted on February 15, 2005. On August 29, 2005, this Court exercised its authority under Rule 204(b), S.C.App.Rules, to certify the case for direct appeal to this Court. Yet, as of the date of the filing of this Motion, i.e. January 27, 2006, nearly a year after his conviction for double murder, the complete transcript for this indigent child, one that is necessary for a full appeal to be heard, has just been completed. The extension requested by one of the two court reporters expired a month ago, and yet, the completed transcript has just now been received. This violates Rule 207, App.Ct.Rules.

On April 9, 2006, Chris Pittman will turn 17. Under the standard procedures of the Department of Corrections, he will be transferred to the general prison population to do “hard time.” All without meaningful review by this Court.

This Court has previously held that even civil litigants have the right to a speedy appeal, in part to avoid the “ancient reproach” that “justice delayed is justice denied.” *Maner v. Maner*, 278 S.C. 377, 379, 296 S.E.2d 533, 535 (1982). If this is true for civil litigants, then *a fortiori* should it not be true for criminal defendants, especially those (a) who are minors, (b) who are indigent, (c) who already have “speedy trial” grounds for appeal, and (d) who would be severely prejudiced, i.e. by “hard time” in the penitentiary, by further delay?

### **No Evidence to Rebut Presumption of Incapacity**

Although there are numerous important legal issues to be raised by this appeal, including several of constitutional magnitude, there is one issue (a) which can be addressed and resolved on the basis of the partial transcript upon which this Motion was drafted, and (b) which is totally dispositive of the case. Because of the compelling clarity of that issue, and the inexcusable delay in receipt of the full transcript, Pittman raises that issue via this Motion, rather than by the more traditional, full Brief.

This Court has long held that there is a graduated scheme of presumptions regarding a criminal<sup>1</sup> defendant’s capacity to form criminal intent and that it is based

---

<sup>1</sup> Civil cases have historically affirmed the same principle. *E.g.*, *Ghaner v. Leaphart Lumber Co.*, 85 S.C. 90, 67 S.E. 242 (1910)(“[T]he well-settled rule in this state is that there is a presumption of incapacity on the part of an infant over 7 and under 14 years of age.”); Under the current standard in civil cases, “[a] child under fourteen therefore may be, but is not necessarily, negligent for failure to obey an adult standard of care.” *Jones v. Carter*, 336 S.C. 110, 518 S.E.2d 619, 623 (1999). Moreover, in civil cases, “[a] child under the age of fourteen years is not required to conform to an adult standard of care.” Rather, his “conduct should be judged by the standard of

purely on chronological age. *State v. Blanden*, 177 S.C. 1, 180 S.E. 681 (1935)

summarizes the law succinctly:

[U]nder our law, where a person is under seven years of age, he is conclusively presumed not to be capable, mentally capable, of committing a crime. **Where a person is between seven and fourteen years of age, he is presumed not to have the mental capacity of committing a crime, but that is a rebuttable presumption**, and it may be shown that he was mentally capable of committing a crime, although he was between the age of seven and fourteen years.

180 S.E. at 689-90 (emphasis added).<sup>2</sup>

The Circuit Court below accepted this presumption as the law of South Carolina, and, without objection from the Solicitor, charged the Jury on it. Partial Tr. at p. 2496 - 500 and attached addendum (instruction on “Presumption of Incapacity”). However, this was too little/too late.

---

behavior to be expected of a child of like age, intelligence, and experience under like circumstances.” *Brown v. Smalls*, 325 S.C. 547, 481 S.E.2d 444 (S.C.Ct.App. 1997). *Accord Jones ex rel. Castor v. Carter*, 336 SC 110, 518 S.E.2d 619 (S.C.App. 1999). As with the presumption of incapacity, the trial judge also granted the defense request for an instruction on these basic principles of South Carolina law. Part. Tr. at p. 2497-500.

<sup>2</sup> *Accord State v. Fuller*, 229 S.C. 439, 93 S.E.2d 463, 466 (1956)(“[T]he presumption of incapacity to commit crime, arising from the evidence that the defendant had the **mentality** of one under fourteen years of age, obtains only when it has been shown that the defendant has **not lived fourteen years.**”); *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130, 135 (1951)(“The preliminary question is raised that in view of the finding of the staff at the State Hospital that appellant had only a **mental** age of ten or eleven years, he was entitled to the same presumption of incapacity which is given to a child between the ages of seven and fourteen. But it has been uniformly held that this **presumption refers to the physical age** of a child and does not extend to a person above the age of fourteen.”).

None of the writing courts have defined the kind or quantum of evidence that would be necessary to rebut the presumption, and, on the record before it, this Court need not do so. The reason is simple. As stated above, there is no evidence -- absolutely none -- to rebut the presumption in this case. The State's case in chief is contained on pages 143-867 of the partial transcript on file herein. Nowhere is there one whit of evidence to rebut the presumption. Indeed, the prosecution adduced no evidence to show that Chris Pittman was any different, mentally, from any other 12 year old boy.

The Solicitor had available witnesses, but he chose not to call them. One mental health professional had examined Chris at the behest of the State and testified at his waiver hearing. But she was not called. Two prosecution psychiatrists had examined him and, ultimately, during the prosecution's rebuttal case, they gave some "criminal responsibility" type testimony.<sup>3</sup>

But during its case in chief, the only evidence that the prosecution adduced was to the effect that he was "just a normal kid." Part. Tr. at p. 177-181 (testimony of

---

<sup>3</sup> Because it came during the rebuttal phase, the Court need not analyze it to determine whether it would suffice to rebut the presumption. However, even if the Court did so, it would see that neither psychiatrist focused on the question of whether Chris was any different from any other 12 year old.

Indeed, another prosecution rebuttal witness, Dr. Julian Sharman, describes the Chris Pittman he interviewed on November 29, 2001 as a "normal 12 year old." Part. Tr. at p. 2349.

The evidence before the trial court from the *Jackson v. Denno* hearing indicated that, in fact, Chris was academically behind other 12 year olds. Part. Tr. at 54-86 (testimony of child psychiatrist, Dr. Lanette Atkins).

James L. Weir, Chief of the Westchester Fire Department). A second State witness, Detective Duncan, testified that Chris was “a little scrawny little boy,” “just a young boy,” “a young juvenile,” and that he (Duncan) acted as Chris’ “baby-sitter” while in law enforcement custody. Part. Tr. at p. 323-24, 332, 336-39 (testimony of Darrell Duncan, Detective, Cherokee County Sheriff’s Department).

Surely if legal presumptions have any meaning whatsoever, it must be that, in the absence of any evidence to rebut them, they control. Thus, in these unique circumstances, the presumption governs and the conviction must be reversed and rendered. This can be done based on the partial transcript which has already been prepared and filed with the Court and, procedurally, can be done via a Motion to Dismiss the Charges. Indeed, a similar disposition was made by this Court in the case of *Rylee v. Marett*, 121 S.C. 366, 113 S.E. 483 (1922), once again, to avoid the self-same “ancient reproach” against delayed justice.

### **Conclusion**

For the foregoing reasons, namely the delayed receipt of the completed transcript and the lack of evidence whatsoever to rebut the presumption, Defendant/Appellant Pittman urges the Court to consider this partial appeal via Motion on a partial transcript, and, to reverse and render his conviction. In light of his age and the especial exigent circumstances of this case, we urge the Court to do so before April 9, 2006.

Respectfully submitted,

VICKERY & WALDNER, LLP

---

Andy Vickery  
Paul F. Waldner  
One Riverway, Suite 1150  
Houston, TX 77056-1920  
Telephone: 713-526-1100  
Facsimile: 713-523-5939  
*Counsel for Defendant*

OF COUNSEL:

Henry J. Mims  
100 East Poinsett Street  
Greer, SC 29651  
Telephone: 864-877-0463  
Facsimile: 864-877-6980  
*Lead Counsel for Defendant*

Karen Barth Menzies  
Baum Hedlund, A Professional Corporation  
12100 Wilshire Blvd., Suite 950  
Los Angeles, CA 90025  
Telephone: 800-827-0087  
Facsimile: 310-207-4204  
*Counsel for Defendant*

Certificate of Service

The undersigned hereby certifies that this pleading was served, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006, to all known counsel:

Warren B. Giese, Esq.  
John Meadors, Esq.  
Fifth Circuit Solicitor of South Carolina  
P. O. Box 192  
Columbia, SC 29202

\_\_\_\_\_  
Andy Vickery