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GEORGE CAJIGA/PD0056  
PUBLIC DEFENDER  
COUNTY OF FRESNO  
2220 Tulare Street, Suite 300  
Fresno, California 93721  
Telephone: (559) 488-3546

RECEIVED  
FRESNO COUNTY  
SUPERIOR COURT

2004 APR -5 PM 3:58

April 7, 2004; 8:30 a.m.  
Department Sixty

Attorney for Defendant Wesson  
Peter M. Jones / PD0024  
jd11152.mtn

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF FRESNO**

THE PEOPLE of the )  
State of California, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MARCUS WESSON, )  
 )  
Defendant. )

**CASE NO. F049017856**

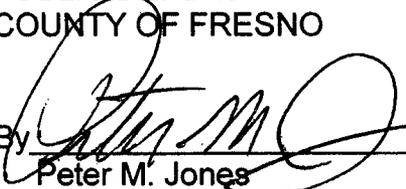
**MOTION TO CONTINUE AND  
DECLARATION OF PETER M. JONES**

TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT AND  
TO THE DISTRICT ATTORNEY OF FRESNO COUNTY:

PLEASE TAKE NOTICE that on April 7, 2004, in Department 60, at 8:30  
a.m., or as soon thereafter as the matter may be heard, the defendant will move  
that the court order a continuance in the above-noted case, pursuant to Penal  
Code section 1050, until April 28, 2004.

Dated: April 5, 2004.

Respectfully submitted,  
GEORGE CAJIGA  
PUBLIC DEFENDER  
COUNTY OF FRESNO

By   
Peter M. Jones  
Chief Defense Attorney

Public Defender  
County of Fresno  
Fresno, California

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **DEFENDANT IS ENTITLED TO A CONTINUANCE ON A**  
3 **SHOWING OF GOOD CAUSE**

4 Penal Code section 1050(b) provides that:

5 To continue any hearing in a criminal proceeding, including the trial, a  
6 written notice shall be filed and served on all parties to the proceeding  
7 at least two court days before the hearing sought to be continued,  
8 together with affidavits or declarations detailing specific facts showing  
9 that a continuance is necessary. . .

10 Penal Code section 1050(e) further provides that "Continuances shall be  
11 granted only upon a showing of good cause. . ." The request must be supported by  
12 declarations, unless the court first finds good cause to excuse the notice and  
13 declaration requirement. The declaration must be executed under penalty of  
14 perjury. (*Brown v Superior Court* (1987) 189 CA3d 260, 265, 234 CR 416.)

15 The grant or denial of a motion for continuance is an act within the Court's  
16 discretion (*Ungar v Sarafite* (1964) 376 US 575, 589, 84 S Ct 841, 11 L Ed 2d 921),  
17 but this discretion is not without bounds:

18 While the determination of whether in any given case a continuance  
19 should be granted normally rests in the discretion of the trial court,  
20 that discretion may not be exercised in such a manner as to deprive  
21 the defendant of a reasonable opportunity to prepare his defense.  
22 (*Jennings v Superior Court* (1967) 66 C2d 867, 59 CR 440.)

23 Although the Court must consider the welfare of witnesses (Pen C §1050(g))  
24 and the right of the People to a speedy disposition (Pen C §1050(a)), it must also  
25 consider the defendant's right to a fair trial. (*People v Courts* (1985) 37 C3d 784,  
26 794, 210 CR 193. See also *People v Murphy* (1963) 59 C2d 818, 31 CR 306 (error  
27 to deny continuance to prepare following last-minute amendment by prosecution).

28 The right to counsel (United States Constitution, Amendment VI; California  
Constitution article I, section 15) includes the right to adequately prepare a defense  
(*People v Maddox* (1967) 67 C2d 647, 652, 63 CR 371), including the right to  
prepare and argue motions and objections before, during, and after trial. (*Cooper v*  
*Superior Court* (1961) 55 C2d 291, 302, 10 CR 842; *People v Sarazzawski* (1945)

1 27 C2d 7, 17, 161 P2d 934. See also Pen C §1049 (five-day period to prepare for  
2 trial required after plea.)

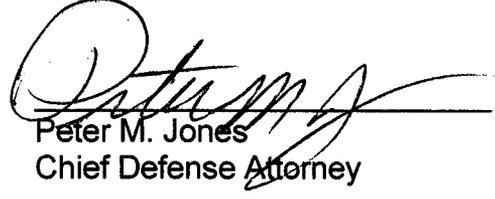
3 **CONCLUSION**

4 For the above reasons, defendant Marcus Wesson requests a continuance  
5 of the preliminary hearing.

6 Date: April 5, 2004.

7 Respectfully submitted,

8 GEORGE CAJIGA  
9 PUBLIC DEFENDER  
10 COUNTY OF FRESNO

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12 Peter M. Jones  
13 Chief Defense Attorney

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DECLARATION OF PETER M. JONES

I, Peter M. Jones, the lead attorney designated in the Office of the Public Defender to represent the defendant, Marcus Wesson, declare as follows:

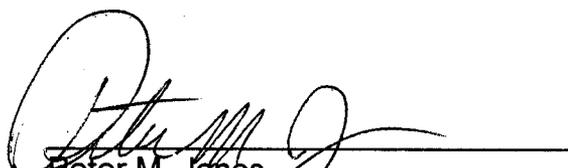
1. The preliminary hearing is set for Wednesday, April 7, 2004. I request that this matter be continued to hear the attached discovery motion.

2. Due Process of Law and effective assistance of counsel require that the defendant have a hearing on his discovery motion prior to the commencement of his preliminary hearing.

3. No defense witness will be prejudiced by this continuance and the defendant knows of no prejudice to the prosecution.

4. This motion for continuance is not being interposed for delay, but is made in good faith for the purposes stated.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Fresno, California on April 5, 2004.

  
Peter M. Jones  
Chief Defense Attorney