

FILED
FRESNO COUNTY
SUPERIOR COURT

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5 Garrick Byers, SBN # PD #
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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF FRESNO
13 CENTRAL DIVISION

14 PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 v.

18 MARCUS DELON WESSON,
19 Defendant

Case No.: F049017856

Declaration of Peter M. Jones

Supporting Continuance of Trial.

20 1. I am the lead attorney in the Fresno County Public Defenders Office for Mr.
21 Wesson. I have extensive experience in death penalty cases.

22
23 2. I have, and, to my personal knowledge, associate counsel Ralph Torres and
24 Garrick Byers, also have, devoted major portions of our time since Public Defender was
25 appointed on March 25, 2004, to preparation of this case. To my personal knowledge,

1 others in the Public Defenders Office, including Michael O. Castro, have worked on this
2 case as well.

3
4 3. I have received, since the last court hearing on this case, last Thursday,
5 May 20, 2004, about 5000 pages of discovery, plus, for the first time, extensive forensic
6 results, as well as 57 audiotapes, five videotapes, and five CD-ROMs. I had, at the time
7 of the preliminary hearing, only 467 pages of discovery. To date I have now received a
8 grand total of about 8000 pages of discovery, the above audio-visual material, plus 15
9 CD-ROMs with with hundreds of photographs.

10
11 4. I have determined that the defense attorneys cannot be ready for a full death
12 penalty trial in this case on the date set, June 21, 2004, or by the first court day that is 60
13 days from arraignment, which is June 28, 2004.

14
15 5. Mr. Wesson, from the day public defender was appointed, March 25, 2004,
16 has declined to waive any time. See, e.g., Transcript of March 25, 2004, page 11, line 19
17 to page 12, line 9, and Court Minutes of April 7, 2004, text paragraph 8 and related
18 Transcript. I have explained the logistics of preparing and presenting an effective
19 defense in this case to Mr. Wesson. As of this writing, he still declines to waive time
20 beyond the 60 days specified in Penal Code section 1382, subdivision (a)(2), for his trial
21 to begin.

22
23 6. In my professional opinion, if the full trial proceeds as currently scheduled
24 (motions in limine June 14, 2004, trial June 21, 2004, 60th day June 28, 2004), Wesson
25 would be deprived of the effective assistance of counsel.

1
2 7. Defense counsel has not yet been able to even read, view and analyze all of
3 the material provided in the last week, nor been able to undertake all of the responsive
4 work that this volume of material obviously requires, and related tasks.
5

6 8. In addition, essential prosecution discovery has still not been completed.
7 For example, the gunshot residue test results for Sebhrenah April Wesson, and Elizabeth
8 Breani Kina Wesson, have not yet been disclosed to the defense. For another example,
9 the defense has not received a statement in aggravation as required by Penal Code section
10 190.3, paragraph 4, nor any discovery related to the penalty phase, as required by Penal
11 Code section 1054.1 and *People v. Mitchell* (1993) 5 Cal.4th 1229.
12

13 9. I have information and belief, and thereon allege, that the prosecution
14 investigation is very actively ongoing, and so a substantial, but unknown, amount of
15 additional material remains to be disclosed.
16

17 10. During this time defense counsel will prepare for the case, and also
18 investigate, and, if necessary prepare and submit a change of venue motion. This amount
19 of time is the minimum that will be needed for trial preparation. The defense will make
20 diligent efforts to be prepared in this time frame.

21 11. I am requesting the court to find good cause for continuance of the trial for
22 the purposes stated, and not for any purpose of delay or any unfair advantage
23
24
25

1 I declare that the foregoing is true and correct, except for those allegations made
2 on information and belief, and, as to those, I believe them to be true. The declaration was
3 executed at Fresno, California, on May 26, 2004.
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Peter M. Jones

9 Lead attorney for Marcus Wesson
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AFFIDAVIT OF PROOF OF SERVICE
(2009, 2015.5 C.C.P.)

State of California)
)
County of Fresno)

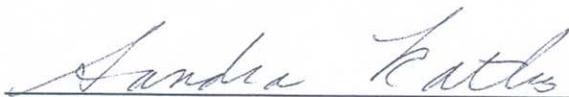
Comes now the undersigned, who hereby declares as follows:

I am a citizen of the United States of America and am employed in the county aforesaid. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is Public Defender's Office, County of Fresno, 2220 Tulare Street, Suite 300, Fresno, California 93721.

On the 26th day of May, 2004, I served a copy of the attached DECLARATION OF PETER M. JONES SUPPORTING CONTINUANCE OF TRIAL on the office of the District Attorney's Office of Fresno County, by delivering and depositing a true copy thereof with an employee of said office. A courtesy copy was also delivered to The Honorable R. L. Putnam, via his bailiff or clerk in Department 53 of the Fresno Superior Court, or to the department's mailbox at the courthouse, if Department 53 was dark at the time of delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 26, 2004.



RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____

RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____

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