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2 PUBLIC DEFENDER
3 COUNTY OF FRESNO
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FRESNO COUNTY
SUPERIOR COURT

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FRESNO SUPERIOR COURT

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

DEPUTY

11 **IN AND FOR THE COUNTY OF FRESNO**

12 THE PEOPLE of the)
13 State of California,)
14 Plaintiff,)
15 v.)
16 MARCUS WESSON,)
17 Defendant.)

CASE NO. F049017856

MOTION TO CONTINUE AND
DECLARATION OF PETER M. JONES

Date: August 12, 2004

Time: 9:00 a.m.

Department: 53

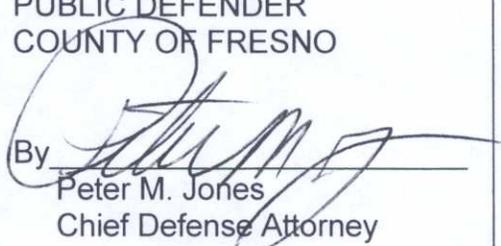
18 TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT AND
19 TO THE DISTRICT ATTORNEY OF FRESNO COUNTY:

20 PLEASE TAKE NOTICE that on August 12, 2004, in Department 53, at
21 9:00 a.m., or as soon thereafter as the matter may be heard, the defendant will
22 move that the court order a continuance in the above-noted case, pursuant to
23 Penal Code section 1050, until December 14, 2004.

24 Dated: August 9, 2004.

Respectfully submitted,

GEORGE CAJIGA
PUBLIC DEFENDER
COUNTY OF FRESNO

By 
Peter M. Jones
Chief Defense Attorney

Public Defender
County of Fresno
Fresno, California

ORIGINAL

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.
(*Jennings v Superior Court* (1967) 66 C2d 867, 59 CR 440.)

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

27 The right to counsel (United States Constitution, Amendment VI; California
28 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

1 prepare and argue motions and objections before, during, and after trial. (*Cooper v*
2 *Superior Court* (1961) 55 C2d 291, 302, 10 CR 842; *People v Sarazzawski* (1945)
3 27 C2d 7, 17, 161 P2d 934. See also Pen C §1049 (five-day period to prepare for
4 trial required after plea).)

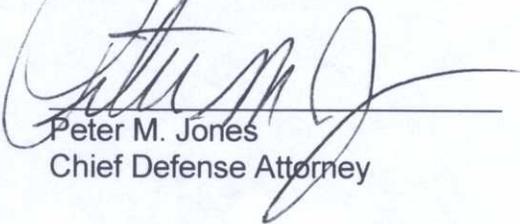
5 **CONCLUSION**

6 For the above reasons, defendant Marcus Wesson requests a continuance
7 of the preliminary hearing.

8 Date: August 9, 2004.

9 Respectfully submitted,

10 GEORGE CAJIGA
11 PUBLIC DEFENDER
12 COUNTY OF FRESNO

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14 Peter M. Jones
15 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. On March 25, 2004, the Fresno County Public Defender's Office was appointed to represent the defendant, Marcus Delon Wesson, and he was arraigned on that day. From that date forward, Mr. Wesson has asserted his right to a speedy trial.¹

2. On a complaint charging nine counts of First-Degree Murder with Multiple Murder Special Circumstances, amended to include 33 counts of forcible rape, forcible oral copulation and continuous lewd and lascivious acts with children under the age of 14, Mr. Wesson asserted his right to a Preliminary Hearing within ten court days of his arraignment. Said hearing was held on April 8 through April 12, 2004.

3. On April 26, 2004, Mr. Wesson was arraigned on an Information alleging nine counts of First-Degree Murder with Multiple Murder Special Circumstances and 14 counts of forcible rape, forcible oral copulation and continuous lewd and lascivious acts with children under the age of 14. A jury trial date was set for June 21, 2004.

4. Upon my representation that thousands of pages of police reports, dozens of tapes, videotapes and compact discs had to be reviewed to effectively prepare the defense for our client, the trial date was moved to August 31, 2004 over Mr. Wesson's opposition on the record.

5. A full review of the evidence has now led to the employment of various experts to examine all presently available information relevant to the guilt phase and potential penalty phase of Mr. Wesson's trial. (Wiggins v. Smith (2003) 123 S.Ct. 2527; In re Larry Douglas Lucas (S050142, Jul. 26, 2004)

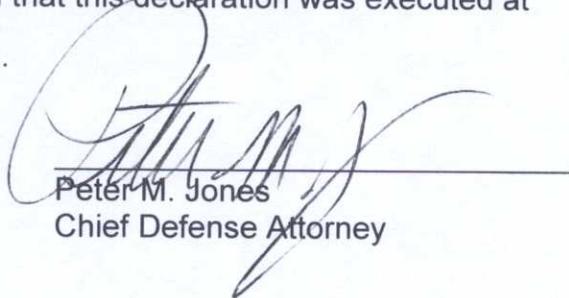
1 _____ Cal.4th _____, <http://www.courtinfo.ca.gov/opinions>.

2 6. Relying upon representations of experienced professionals, a
3 minimum of 90 additional days, from the present trial date of September 14,
4 2004, is required to properly prepare Mr. Wesson's defense.

5 7. I have experience handling complex cases where the death penalty
6 is being sought and I am convinced that a further continuance of at least three
7 months is necessary to provide constitutionally adequate and effective
8 assistance of counsel.

9 8. I, co-counsel Rafael Torres, and the support staff of our office, have
10 worked diligently on Mr. Wesson's case and will continue to do so to provide him
11 with professionally responsible representation and a trial at the earliest possible
12 time under the circumstances.

13 I declare under penalty of perjury of the laws of the State of California that
14 the foregoing is true and correct, and that this declaration was executed at
15 Fresno, California on August 9, 2004.

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18 Peter M. Jones
19 Chief Defense Attorney

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¹ The one possible exception occurred on July 28, 2004, when Mr. Wesson agreed to trail his jury trial from August 31, 2004 to September 14, 2004 (ten court days).

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 9th day of August, 2004, I served a copy of the attached MOTION TO CONTINUE AND DECLARATION OF PETER M. JONES on the office of the District Attorney of Fresno County, by delivering and depositing a true copy thereof with an employee of said office.

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

Dated: August 9, 2004.

Judy Sluzonski

RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____

RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____

RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____