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FRESNO COUNTY
SUPERIOR COURT

May 27, 2004, 9:00 A.M.
Department 53
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Def. is in custody.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

MARCUS DELON WESSON,
Defendant

Case No.: F049017856

**Request that the Court Find Good
Cause to Continue the Trial
For About 60 Days From the
Last Day of the "1382" Deadline.**

The current deadline for trial under Penal Code section 1382, subdivision (a), is 60 days from arraignment. Arraignment was on April 27, 2004. Sixty days after that is Saturday, June 26, 2004, and the next court day, which is therefore the last day of the "1382" deadline, is June 28, 2004. (Trial is currently set for June 21, 2004). Sixty days after June 28 is Friday, August 27; Monday August 30 is the date actually being sought.

1
2 **I. The Reason for This Motion.**
3

4 Defense counsel have received, since the last court hearing, last Thursday, May
5 20, 2004, about 5000 pages of discovery, plus, for the first time, extensive forensic
6 results, as well as 57 audio tapes, five video tapes, and five CD-ROMs. Defense counsel
7 had, at the time of the preliminary hearing, only 467 pages of discovery. To date,
8 however, the defense has now received a grand total of about 8000 pages of discovery,
9 the above audio-visual material, plus 15 CD-ROMs with hundreds of photographs.
10

11 I, Peter M. Jones, the lead attorney for this case, have determined that the defense
12 attorneys cannot be ready for a full death penalty trial in this case on the date set, June 21,
13 2004, nor by the first court day that is 60 days from arraignment, which is June 28, 2004.
14

15 Mr. Wesson, from the day public defender was appointed, March 25, 2004, has
16 declined to waive any time. See, e.g., Transcript of March 25, 2004, page 11, line 19 to
17 page 12, line 9, and Court Minutes of April 7, 2004, text paragraph 8 and related
18 Transcript. As of this writing, Mr. Wesson still declines to waive time.
19

20 But, if the full trial proceeds as currently scheduled (motions in limine June 14,
21 2004, trial June 21, 2004, 60th day June 28, 2004), Wesson would be deprived of the
22 effective assistance of counsel. Defense counsel has not yet been able to even read, view
23 and analyze all of the material provided in the last week, nor been able to undertake all of
24 the responsive work that this volume of material obviously requires, and related tasks.
25

1 Defense counsel have diligently worked to prepare this case. Lead counsel Peter
2 M. Jones, as well as second counsel Ralph Torres, and motions attorney Garrick Byers,
3 have devoted major portions of their time since the public defender's office was
4 appointed on March 25, 2004, to the preparation of this case.

5
6 Moreover, essential prosecution discovery has still not been completed. For
7 example, the gunshot residue test results for Sebhrenah April Wesson, and Elizabeth
8 Breani Kina Wesson, have not yet been disclosed to the defense. (Gunshot residue test
9 results for Defendant Marcus Wesson have been disclosed; they were negative.)

10 For another example, the defense has not received a statement in aggravation as
11 required by Penal Code section 190.3, paragraph 4, nor any discovery related to the
12 penalty phase, as required by Penal Code section 1054.1 and *People v. Mitchell* (1993) 5
13 Cal.4th 1229.

14 In addition, on information and belief, the prosecution investigation is very
15 actively ongoing, so an unknown amount of additional material remains to be disclosed.

16
17 The logistics of preparing and presenting an effective defense in this case have
18 been explained to Mr. Wesson. He still declines to waive time.

19 This motions follows.

20
21
22 **II. Defense Counsel Requests the Court To Find Good Cause to Continue**
23 **the Case Approximately 60 Days From the Current Trial Date, to About**
24 **August 30, 2004.**

1 During this time defense counsel will prepare for the case, and also investigate,
2 and, if necessary prepare and submit a change of venue motion.

3 This amount of time is the minimum that will be needed for trial preparation.
4 Presently, only approximately 60 days from the current statutory last day is requested
5 because, since Mr. Wesson declines to waive time, the court should not find good cause
6 for any longer period of time then is necessary.¹ The defense will make diligent efforts to
7 be prepared in this time frame.

8 It is settled law that defense counsel can consent to setting the trial beyond the 60-
9 day statutory time limit of Penal Code section 1382, so long as this is done for the benefit
10 of the defendant, and "[except] where representation by counsel is so ineffective that it
11 can be described as a 'farce and a sham'" *Townsend v. Superior Court* (1975) 15
12 Cal.3d 774, 781.²

13 Accordingly, defense counsel requests the court to find good cause to continue the
14 case under Penal Code section 1382, subdivision (a), first sentence.
15
16
17
18

19
20 ¹ See also Penal Code section 1050, subdivision (i): "A continuance shall be granted
21 only for that period of time shown to be necessary by the evidence considered at the
22 hearing on the motion."

23 ² See also *New York v. Hill* (2000) 528 U.S. 110 [120 S.Ct. 659, 145 L.Ed.2d 560]
24 holding that defense counsel may waive the defendant's right to trial within the time
25 limits of the Interstate Agreement on Detainers, even though the defendant does not
expressly assent, pointing out, *inter alia*, at 528 U.S. at 115, that "only [defense]
counsel is in a position to assess whether the defense would even be prepared to
proceed any earlier." See generally, Witkin & Epstein, *California Criminal Law* (3d
ed. 2000), Ch. XIV, Sec. 321 "Waiver [of the Defendant's statutory speedy trial rights]
By Counsel."

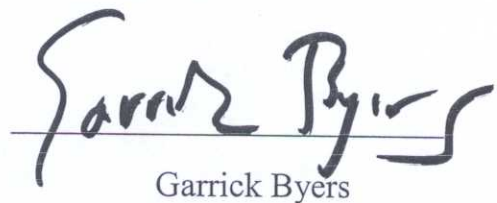
1 **III. Conclusion.**

2
3 The court should find good cause to continue the trial, and set new dates
4 approximately as follows: (1) pretrial motions on July 16, 2004, (2) trial confirmation
5 August 12, 2004, (3) in limine motions August 16, 2004, and (4) jury trial August 30,
6 2004. Defense counsel hereby consents to those dates.

7
8
9 Respectfully Submitted,

10 5/26/04
11
12 Date

13
14 
15
16 Peter M. Jones

17 
18
19 Garrick Byers

20
21 Attorneys for Marcus Wesson
22
23
24
25

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 REQUEST THAT THE COURT FIND GOOD CAUSE TO CONTINUE THE TRIAL FOR ABOUT 60 DAYS FROM THE LAST DAY OF THE "1382" DEADLINE 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: _____

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DOCUMENT IS ACKNOWLEDGED.

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