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**IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA AND FOR THE COUNTY OF FLATHEAD**

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| STATE OF MONTANA, Plaintiff, vs. Cory Robert Franklin, Defendant(s). | Case No: DC-13-465 MOTION FOR ORDER TO RESET OMNIBUS HEARING; AND GRANT RELIEF FOR ANY DEFENSE MOTION WAIVER |
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COMES NOW the Defendant, by and through his counsel, Timothy Baldwin, and moves the court for an order to reset this matter for Omnibus Hearing and grant relief for any waiver of defense motions, pursuant to Section 46-13-202 AND Section 46-13-101(3), MCA and offers the following in support of his motion.

FACTS

The Defendant was represented by Sean Hinchey and then briefly by John "Jack" Quatman before this attorney was appointed by the Court and Office of Public Defender. The reason for the motion is that the State has not provided full discovery in this case and the facts of the case warrant a motion to suppress and dismiss. For the Defendant to fully assess the case and file any relevant motions, the State must disclose to the Defendant evidence in its possession and the Defendant must conduct witness interviews, namely, police officers.

The Defendant was arrested on December 5, 2013. The State filed an Information against the on December 6, 2013. The Defendant was arraigned on December 23, 2013. The Defendant had his first omnibus hearing with Sean Hinchey as his attorney on January 15, 2014, only three weeks after his arraignment. The Defendant's attorney, Sean Hinchey, and Deputy County Attorney signed the omnibus hearing form. But the Defendant did not state at that time that he wanted to file defense motions. The State indicated on page one of the

Omnibus Hearing Form that discovery was “ongoing,” meaning it was not complete at that time.

The matter was set for a pretrial hearing on January 29, 2014, only five weeks after the Defendant’s arraignment. The Defendant moved to continue the case on February 6, 2014 because, as Sean Hinchey indicated, the Defendant was looking for a new attorney. The Court granted that motion and set a pretrial hearing for May 21, 2014.

Attorney Jack Quatman filed a notice of appearance on the Defendant’s behalf but quickly withdrew on March 24, 2014 because the Defendant was not able to afford his services. Jack Quatman did not represent the Defendant long enough to file any motions on his behalf, including a motion to reset the Omnibus Hearing or defense motions. So, the Office of Public Defender reassigned this attorney to represent the Defendant on April 16, 2014.

Even though the Defendant did not state he had defense motions to file at his one and only Omnibus Hearing, the facts clearly show that the Defendant did not have enough time from his arraignment to file defense motions and that discovery was not complete. Shortly after his first Omnibus Hearing, the Defendant indicated he needed another attorney. This matter should have been reset for a new Omnibus Hearing to allow the Defendant’s new attorney to review the discovery and file any necessary defense motions on the Defendant’s behalf, but for unknown reasons to this attorney, said motions were not filed.

This attorney was assigned to this case by the Office of Public Defender on April 16, 2014, only 5 months after the Defendant’s arraignment. The Defendant has caused delay of this case on his initiative, so he has effectively waived his right to a speedy trial, but he has expressly waived his right to a speedy trial, which was filed contemporaneously with this motion.

This case is relatively new, and discovery is not complete. This attorney has reviewed what discovery he has been provided and already sees that there are legitimate and even strong grounds to file defense motions, including a motion to suppress and dismiss. In an effort to expedite this matter, his attorney has sent a letter to the Deputy County Attorney requesting outstanding discovery.

BRIEF

Section 46-13-101, MCA states,

- (1) Except for good cause shown, any defense, objection, or request that is capable of determination without trial of the general issue must be raised at or before the omnibus hearing unless otherwise provided in Title 46.

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court, constitutes a waiver of the defense, objection, or request.

(3) The court, *for cause shown*, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

(4) Unless the court provides otherwise, all pretrial motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made. The motion must state with particularity the grounds for the motion and the order or relief sought.

(emphasis added). In addition to the Court's power to grant relief of any waiver to file defense motions, the Court has the power to grant continuances where the interest of justice requires. Section 46-13-202, MCA states as follows:

(1) The defendant or the prosecutor may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the *interests of justice so require*.

(3) All motions for continuance are addressed to the discretion of the trial court and must be considered in the light of the diligence shown on the part of the movant. This section must be construed to the end that criminal cases are tried with due diligence consonant with the *rights of the defendant* and the prosecution to a speedy trial.

(emphasis added) (for discussion, see *State v. Borchert*, 281 Mont. 320, 934 P.2d 170, 1997 Mont. LEXIS 33, 54 Mont. St. Rep. 191 (Mont. 1997)). Based on the above statutes, the "interests of justice" in this case require that the Court reset the Omnibus Hearing, and good cause exists to grant relief from any waiver by the Defendant to file defense motions.

The Defendant is not ready for trial, the case is relatively new, the State has not completed discovery disclosures, the Defendant needs to interview witnesses, and the Defendant needs to file defense motions, which would be dispositive of the case; the Defendant has waived his right to a speedy trial, and the State will not be prejudiced by the Court granting this motion.

The Defendant has not had an attorney to consistently represent him since his arraignment. After the Defendant's first omnibus hearing, when he was represented by Sean Hinchey and which was held very shortly after his arraignment, the case was continued for

the Defendant to find a new attorney. The Defendant was not able to successfully do this, and during that time, Sean Hinchey was not representing him. Jack Quatman, though he filed an appearance, did not have meaningful opportunity to represent the Defendant because the Defendant could not afford his services.

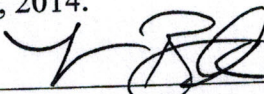
Now that this attorney represents the Defendant and has taken meaningful steps to represent the Defendant, there are defense motions that need to be filed on the Defendant's behalf. To deny him the opportunity at this stage in the criminal litigation would be to effectively deny the Defendant's right of due process and to defend himself against the State's allegations, which carry significant penalties. In addition, the State has not completed discovery, and this attorney has sent a letter requesting the same to the Deputy County Attorney in this case.

The Defendant recognizes that the "Court 'consistently has affirmed a district court's denial of an untimely motion to suppress under both current and predecessor statutes setting time requirements for such motions.'" *State v. Vonbergen*, 2003 MT 265, P13, 317 Mont. 445, 449, 77 P.3d 537, 541, 2003 Mont. LEXIS 446, 7-8 (Mont. 2003). However, given the circumstances of this case, the Defendant never had a meaningful opportunity to file defense motions given that his one and only Omnibus Hearing was set only three weeks after his arraignment, that the Defendant has not had continual representation since the Office of Public Defender sought to rescind its appointment of the Defendant on January 16, 2014, and that discovery is well short of being complete and was so at the Omnibus Hearing. The Defendant has waived his right to a speedy trial, so there are no prejudices caused to the State.

Therefore, good cause exists to and the interest of justice requires that this Court reset the Omnibus hearing to permit the Defendant to file any defense motions and obtain outstanding discovery to prepare the Defendant's defense and that this Court grant relief to any waiver of defense motions.

WHEREFORE, for the foregoing reasons, the Defendant moves this Court to reset his Omnibus Hearing.

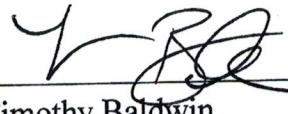
Respectfully submitted this 2nd day of May, 2014.



Timothy Baldwin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand deliver to the Flathead County Attorney, 920 S. Main St., 2nd Fl, Kalispell, MT 59901, on May 2, 2014.



Timothy Baldwin