

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,
Plaintiff,

vs.

D-202-CR-2017-01625

SCOTT BACHICHA,
Defendant.

DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO COMPLY WITH SCIENTIFIC EVIDENCE DEADLINE

COMES NOW Defendant by and through the Law Offices of the Public Defender and moves this Court, pursuant to Local Rule 2-308(H)(1) to dismiss for failure to comply with LR2-308(F)(5)(c)(viii), NMRA. As grounds, Counsel states:

As of the date of filing of this motion, the State has failed to provide all scientific evidence, as required under LR2-308(F)(5)(c)(viii), NMRA. In its scheduling order, the Court set a scientific evidence deadline of December 18, 2017, which has long passed. This case, as the Court is likely aware, revolves around ballistics. The State has had the firearm and ammunition in its possession since the date of incident of April 16, 2017. As the Court heard from Mike Haag in sworn testimony at the hearing on Defendant's Motion to Extend Deadline for Defense's Scientific Evidence on January 18, 2018, no testing had been completed by that date and the case had not even been assigned to an examiner for analysis. Since that date, the State has informed defense counsel that the case was assigned to examiner Jay Stuart; however, to date, no reports or analysis have been disclosed to the defense. Furthermore, the State refuses to send the evidence to the Defendant's expert, as it wants APD to analyze it first.

Under Rule LR2-308(I), if a party fails to comply with any provision of this rule, including time limits imposed by the Court's scheduling order, the Court may impose sanctions as the Court deems appropriate. This includes but is not limited to dismissal of the case with or without prejudice, and suppression or exclusion of evidence. The New Mexico Supreme Court fashioned this rule due, among other things, to the multitude of cases indicted and prosecuted by the State without having or providing such discovery in a timely manner. The Supreme Court has set extremely tight and rigid requirements to accomplish the much more rapid resolution of cases in this district. It is impossible for the Defendant to meet these requirements without the State complying with its responsibilities under the Rule.

Absent the State's scientific evidence, Defendant has been unable to prepare for trial, and this case should be dismissed.

WHEREFORE, the Defendant moves this Court to dismiss this case for the State's failure to comply with the scientific evidence deadline or for any other and further relief as this Court deems appropriate.

This certifies that a copy of the foregoing was provided to opposing counsel on the date of filing.



Counsel for Defendant

Respectfully submitted,



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