

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

FILED
2017 DEC -1 PM 1:38
CLERK OF DISTRICT COURT
DONA ANA COUNTY, NM

STATE OF NEW MEXICO,

Plaintiff,

vs.

JOEL ARCINIEGA-SAENZ,

Defendant.

No. D-307-CR-201700437
Judge Fernando R. Macias

EMERGENCY MOTION TO RECONSIDER MOTION FOR CONTINUANCE

COMES NOW the State of New Mexico, by and through its Deputy District Attorney, Davis R. Ruark, and respectfully requests that the Court reconsider its ruling issued on November 30, 2017 in regard to the State's Motion for Continuance of the Jury trial now set for December 4, 2017, through December 8, 2017.

As grounds in support of this motion, counsel states:

1. On April 22, 2017, Defendant was arrested for Murder in the First Degree in reference to an incident that took place on the same date as Defendant's arrest;
2. On April 24, 2017, Defendant was scheduled for a first appearance at the Magistrate Court level, and was held without bond;
3. On May 4, 2017, Defendant was indicted on charges of Murder in the First Degree;
4. On May 5, 2017, Defendant's case was dismissed;
5. On May 5, 2017, Defendant was also served with an Arrest Warrant that was issued by this Court¹

¹It is unclear if Defendant was actually released, and then arrested, or if Defendant remained in custody at all times relevant hereto.

6. Defendant was then re-indicted on May 18, 2017, again for Murder in the First Degree;
7. At that point a \$500,000.00 secured bond was set by this Court;
8. This case is currently set for a Jury Trial to begin on December 4, 2017 at 8:30 a.m., and is scheduled to last five (5) days;
9. The December 4, 2017, jury trial setting is the first trial setting in this matter;
10. No previous continuances have been requested by either party in this matter;
11. For speedy trial purposes, as of the date of the currently-scheduled jury trial, this case has been pending for a mere 227 days: not even two-thirds of the presumptive threshold for a "simple" case under State v. Maddox; ²
12. Defendant is alleged, in short, to have killed Benjamin Montoya at the Town House Motel located in Las Cruces, NM, during the evening of April 22, 2017;
13. The State's case is almost entirely dependent on the testimony of Dakota Ocampo, who is alleged to have been an eye witness to the murder of Benjamin Montoya;
14. Rebecca Duffin, the prosecutor that is assigned to this matter is currently on bereavement leave from the Third Judicial District Attorney's Office;
15. Mrs. Duffin was appointed as the executrix of the estate of a close family relative, and has been in North Carolina managing the estate of her deceased relative since the

² The State notes Maddox to highlight the infancy of this case, and in no way stipulates or admits that this case would be categorized as a "simple" matter; much to the contrary, the State alleges that this case would be, at the very least, categorized as "intermediate", if not "complex".

Thanksgiving Holiday;

16. At a hearing on this matter on November 27, 2017, undersigned counsel appeared in place of Mrs. Duffin and indicated to the court that Mrs. Duffin was on bereavement leave, but should be returning to the office by Thursday November 29, 2017;
17. At the hearing on November 27, 2017, Defendant's bond was also decreased to \$10,000.00 secured;
18. On November 28, 2017, undersigned counsel received an email from Mrs. Duffin indicating that she would not be returning to New Mexico until, at the earliest, the late evening hours of December 1, 2017, due to her ongoing duties as executrix, and her need to drive cross-country to return home;
18. Mrs. Duffin is currently the only prosecutor assigned to this matter and therefore the only prosecutor that could reasonably be prepared to try this case at the current jury trial setting, even were all relevant evidence and witnesses available and ready to be presented to a jury;
19. Through no fault of her own, Mrs. Duffin will be severely hindered in her ability to prepare for a jury trial in less than two days, in a case involving charges of Murder in the First Degree;
20. Furthermore, as of November 28, 2017, the State believed that Ms. Ocampo was in custody in El Paso, TX;
21. On November 28, 2017, investigators with the Third Judicial District Attorney's Office learned that Ms. Ocampo was no longer in custody in El Paso, TX, and may

in fact be in Las Cruces, NM.

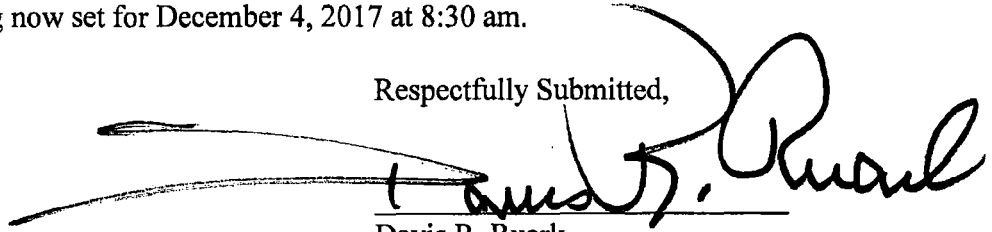
22. Since learning of this information, investigators with the Third Judicial District Attorney's Office have diligently searched for Ms. Ocampo, and have enlisted the help of the Las Cruces Police Department to locate Ms. Ocampo, all to no avail, as of the time of filing of this motion;
23. On November 30, 2017, investigators with the District Attorney's office learned that Ms. Ocampo was arrested by officers with the Las Cruces Police Department on an unrelated matter, and was found to be in possession of a .380 caliber handgun;
24. The caliber of this handgun is the same caliber as the weapon that fired the projectile that killed Benjamin Montoya;
25. The weapon that was used in the commission of the crime in question was never found by law enforcement, and was presumed discarded until recently;
26. The State intends to submit the gun found in the possession of Ms. Ocamp to the New Mexico Department of Public Safety Ballistics lab (hereinafter "DPS lab") for comparison to the projectile that killed Benjamin Montoya;
27. Upon information and belief the handgun found in the possession of Ms. Ocampo can be transported to the DPS lab as early as Monday December 4, 2017;
28. On November 29, 2017, the State submitted a Motion for Continuance of the currently-scheduled jury trial;
29. On November 30, 2017, this Court heard extremely truncated argument on the State's Motion for Continuance, and indicated that it would deny the State's Motion, citing

“discrepancies in what was represented to the Court” by undersigned counsel as to the availability of Mrs. Duffin;

30. This court did not address the other factual allegations contained in the State’s Motion for Continuance regarding the availability of Ms. Ocampo and other State’s witnesses;
31. Continued denial of the State’s Motion to Continue would both prejudice the State’s ability to adequately present all relevant facts in the most serious of criminal cases, and would constitute a miscarriage of justice; and
32. Due to the emergency nature of this Motion, Counsel for Defendant, George Harrison, has not been contacted and is presumed to object to the requested relief in the instant Motion.

WHEREFORE, the State respectfully requests that the Court enter an order vacating and continuing the hearing now set for December 4, 2017 at 8:30 am.

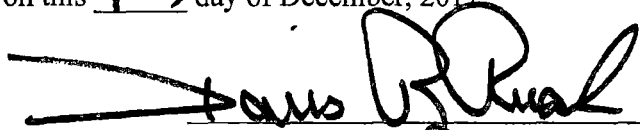
Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read "Davis R. Ruark", is written over a horizontal line.

Davis R. Ruark
Deputy District Attorney
District Attorney's Office
845 North Motel Blvd.
Second Floor, Suite D
Las Cruces, NM 88007
(575) 524-6370

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered a true and correct copy of the foregoing pleading to defense counsel, George Harrison, on this 15th day of December, 2017.

A handwritten signature in black ink, appearing to read "Andrew Apodaca", written over a horizontal line.

Andrew Apodaca
Assistant District Attorney