

Original

1 Case No. CR-1201004
2 Dept. No. 2

FILED
2013 JUL -3 PM 4:26
LUCILLE F. BROWN, CLERK
WHITE PINE COUNTY CLERK
BY *[Signature]*
DEPUTY

5 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WHITE PINE

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

MOTION TO CONTINUE TRIAL

11 JAMES OFELDT,

12 Defendant.
13 _____ /

14
15 The Defendant JAMES OFELDT, by and through his attorneys, KARIN L.
16 KREIZENBECK, ESQ., Nevada State Public Defender and CHARLES H. ODGERS,
17 Deputy Nevada State Public Defenders, moves this Court for an Order Continuing Trial
18 in this matter to allow time to continue the investigation into the facts of this case. The
19 basis for this request lies in the fact that this office recently conducted interviews of four
20 inmates at the Nevada Department of Corrections, Lovelock, NV and during those
21 interviews, the inmates indicated that they had been interviewed at least twice
22 concerning the facts of this case. More importantly when the matter was addressed to
23 the Attorney General's Office, it was alleged that no additional interviews were in fact
24 held and those interviews were not taped. Further, the Attorney General's Office
25 informed this office that there were no audio or notes taken regarding one of those
26 interviews which is highly suspicious as the interviewee was the number one leader of
27 the gang that the Defense has learned did in fact sanction and arranged for the murder
28 of the Defendant in this case.

1 DATED this 3 day of July, 2013.

2 KARIN L. KREIZENBECK, ESQ.
3 Nevada State Public Defender

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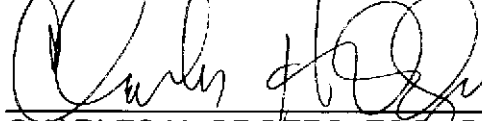
5 CHARLES H. ODGERS, ESQ., Deputy
6 Nevada State Public Defender
7 P.O. Box 151690
8 Ely, Nevada 89315

9 **NOTICE OF HEARING**

10 PLEASE TAKE NOTE THAT the Defendant in this matter respectfully requests a
11 hearing pursuant to Local Rules. The Defendant recommends the Court allow one and
12 one half hours for argument. A court reporter is not required.

13
14 DATED this 3 day of June, 2013.

15 KARIN L. KREIZENBECK, ESQ.
16 Nevada State Public Defender

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18 CHARLES H. ODGERS, ESQ., Deputy
19 Nevada State Public Defender
20 P.O. Box 151690
21 Ely, Nevada 89315
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1 **POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION/STATEMENT OF FACTS**

4 The Defendant herein is charged with Open Murder, a Felony, in violation of NRS
5 200.010 and NRS 200.030. The allegation contained in the charging document alleges
6 that he "willfully, unlawfully, and feloniously, with malice aforethought, either express or
7 implied, and with premeditation and deliberation, killed another human being."

8 On or about June 7, 2013 the investigator, employed by the State Public
9 Defender's Office and one of the attorney's assigned to defend this case, conducted
10 four interviews of witnesses identified through the investigation as having potential
11 information material to the defense of this case.

12 In three of the four interviews, the witnesses informed Mr. Bovard that they had
13 been interviewed at least two times by the Office of the Inspector General's Office
14 regarding the facts and circumstances of this case. Further, these same individuals
15 informed Mr. Bovard that their interviews were in fact tape recorded.

16 Upon receiving this information, the undersigned and Mr. Bovard met with the
17 Deputy Attorney General to discuss this issue. In that meeting, held on or about June
18 11, 2013, the Deputy Attorney General called the Office of the Inspector General to try
19 to locate these audio tapes and or notes of these interviews. A couple of days after the
20 meeting in the Attorney General's Office, this office was informed that there were no
21 tapes or notes of any second interviews on three of the inmates or of the debriefing of
22 one of the gang leaders. A couple of days after that discussion, the Deputy Attorney
23 General informed this office that there was in fact a tape recording of the debriefing and
24 that the Office of the Inspector General was preparing notes of that interview. A request
25 was made for the audio taped recording of these four individuals.

26 As of the filing of this motion, neither the audio taped interviews have been
27 received, nor has any notes of the interview been provided. However, based on the
28 interviews completed by this office, during the debriefing of the gang leader, it was

1 confirmed that the gang leader informed the Office of the Inspector General that in fact
2 a "hit" was placed on Mr. Ofeldt's life and that Mr. Hauser was in fact sent to cell up with
3 Mr. Ofeldt for the express purpose of murdering Mr. Ofeldt. Upon information and
4 belief, the Office of the Inspector General did nothing with this information, but in fact,
5 purposefully withheld this exculpatory evidence even when this office met with the
6 Office of the Inspector General as previously ordered by this Court to review the entire
7 file of the Office of the Inspector General. Just as important, the Office of the Inspector
8 General withheld this information from the Deputy Attorney General prosecuting this
9 case. If the gang leader's testimony was that Mr. Hauser was in fact sent in to kill Mr.
10 Ofeldt and the State has this information, then this prosecution is tainted and this is a
11 malicious prosecution by the State.

12 Because the defense does not have the information previously requested in the
13 care and custody of the Office of the Inspector General, a division of the Attorney
14 General's Office, working specifically for the Nevada Department of Corrections, the
15 willful withholding of this material evidence is in fact a violation of the discovery rules.
16 As an intentional violation of the discovery rules, and the exculpatory nature of the
17 interviews, a continuance of this case is respectfully requested to allow the defense
18 team the time necessary to investigate the statements and attempt to obtain the
19 information to corroborate these statements to present to the jury. ¹

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28 ¹ It should be noted that the Defense team does not allege that the Deputy Attorney General prosecuting this case, was aware of the contents of the interviews at issue, and that the Deputy Attorney General may not even been aware that the interviews had been conducted by the Office of the Inspector General.

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II.

LEGAL ARGUMENT

A. A CONTINUANCE OF THE TRIAL SET IN THIS CASE IS NECESSARY TO ALLOW THE DEFENSE TIME TO OBTAIN THE AUDIO TAPED INTERVIEWS AND NOTES OF THE OFFICE OF THE INSPECTOR GENERAL REGARDING THESE INTERVIEWS.

NRS 174.235 states:

1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:

(a) Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the state, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; and

(c) Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the state and which are within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.

2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

(b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the constitution or laws of this state or the Constitution of the United States.

3. The provisions of this section are not intended to affect any

1 obligation placed upon the prosecuting attorney by the constitution of this
2 state or the Constitution of the United States to disclose exculpatory
3 evidence to the defendant.

4 The requirement that the State produce its information for trial is not limited to
5 the evidence it intends to introduce at trial, but rather includes all evidence the State
6 has in its possession that is exculpatory. NRS 174.235(3).

7 Based on the interviews conducted by Mr. Guy Bovard, Investigator with the
8 State Public Defenders Office, three of the four witnesses interviewed by Mr. Bovard
9 informed Mr. Bovard that they had in fact been interviewed more than once by the
10 Office of the Inspector General and that these interviews contained information
11 regarding Mr. Ofeldt's case. Further, three of the four individuals informed Mr. Bovard
12 that these interviews had been taped.

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14 A request for these tapes has been made, but not received. As late as the week
15 of July 24, 2013 contact with the Attorney General's Office seems to imply that reports
16 were not done when the interviews were conducted, but that in fact there may be at
17 least one tape involving the interview of one of the interviewees that may or may not
18 have had information pertinent to this case, but that the Deputy Attorney General has
19 not had access to this tape held in the sole care and custody of the Office of the
20 Inspector General for the Department of Prisons.

21
22 The Court and the State are well aware that Mr. Ofeldt is putting forward a self
23 defense case. Further, the Court and the State are well aware of the fact that as part of
24 that defense Mr. Ofeldt is intending on showing that there was a plot to kill him put into
25 motion when the deceased was housed with Mr. Ofeldt. The information sought to be
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1 obtained directly relates to these allegations, which were confirmed, by the interviews
2 conducted by this office.

3 On July 2, 2013 pursuant to an agreement between the Attorney General's
4 Office and the Public Defender's Office, interviews of Mr. Fonoimoana and Mr. Ortiz
5 from the Office of the Inspector General were conducted with the Deputy Attorney
6 General and his supervisor present for both interviews. During those interviews it was
7 confirmed that multiple interviews were conducted by various staff of the Office of the
8 Inspector General of at least one of the witnesses in custody. It was also learned that
9 one of the interviews, the final interview according to the information provided, was
10 conducted by someone other than the two individuals from the OIG that were
11 interviewed on July 2, 2013. This office has attempted to reach that employee and the
12 Deputy Attorney General is setting up that interview as well.

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15 Further, during the interview of Mr. Ortiz it was learned that there was an
16 interview conducted of a corrections officer at ESP named Jessie Fikes, which was
17 recorded and for which no report was prepared by the investigator and for which the
18 tape has not been produced by the Office of the Inspector General to the Attorney
19 General's Office.
20

21 On July 2, 2013 this office again received additional information regarding the
22 Security Threat Group assignment of the deceased. The Court will recall that this
23 information was requested a year ago in a subpoena and ruled on by the Court in
24 March 2013. When the information was obtained a call was placed to the Deputy
25 Attorney General and he is attempting to schedule an interview of the case worker
26 involved in that case, but upon information and belief, that individual is retired. Further,
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1 upon information and belief, the policy of ESP is that hearings on Security Threat Group
2 Due Process hearings are recorded, another request that had previously been made in
3 a subpoena that was not and has not been received from Ely State Prison.
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5 The State also on July 2, 2013 presented another report of an interview
6 conducted of an alleged former leader of the Aryan Warriors. This interview was
7 conducted on or about June 14, 2011. Based upon a follow-up conversation on July 3,
8 2013 with the investigator involved indicates that even though they have presented that
9 information, there is little information if any that the former leader has regarding this
10 incident. Further it was learned that this interview was not taped. However, the
11 Defense Team has no ability between now and trial to interview this individual to learn
12 what information he may possess regarding the incident.
13

14 Trials are supposed to be fair. The Defense is supposed to be provided with all
15 information exculpatory and/or inculpatory to properly prepare for the case. To be
16 denied access to exculpatory and possibly inculpatory information held by the Office of
17 the Inspector General and/or Ely State Prison, even after this office went to Carson City
18 and reviewed the file of Mr. Fonoimoana can hardly be considered fair. From the
19 beginning of this case to present, the Office of the Inspector General has sought to
20 repress, hide and keep out of the hands of the Deputy Attorney General and this office,
21 pertinent information regarding the innocence of Mr. Ofeldt and the existence of the
22 murder plot.
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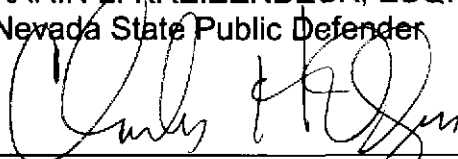
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25 In order to properly be prepared for trial, this Office seeks additional time for the
26 investigator to conduct interviews of the information recently received, as well as,
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1 provide time for the Defense team to either confirm or rebut the information provided.
2 In this way the trial will be fair to both the State and the Defendant.

3 In addition to a continuance of this case, it is likewise requested that this court
4 enter an order requiring the Office of the Inspector General and Ely State Prison
5 provide every document in its possession, every photograph in its possession, and
6 every compact disc in its possession pertaining to this case and every witness in this
7 case that the State intends to call at the time of trial, so that the Defense may properly
8 prepare for trial and can put on a cogent defense based on the actual admissible
9 evidence.
10

11
12 DATED this 3 day of July, 2013.

13 KARIN L. KREIZENBECK, ESQ.
14 Nevada State Public Defender

15 
16 _____
17 CHARLES H. ODGERS, ESQ., Deputy
18 Nevada State Public Defender
19 Nevada Bar No. 8596
20 P.O. Box 151690
21 Ely, Nevada 89315
22 Nevada State Public Defender
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1 AFFIDAVIT OF COUNSEL

2 STATE OF NEVADA)
3 WHITE PINE COUNTY)
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5 CHARLES H. ODGERS, being first duly sworn on oath, deposes and says:

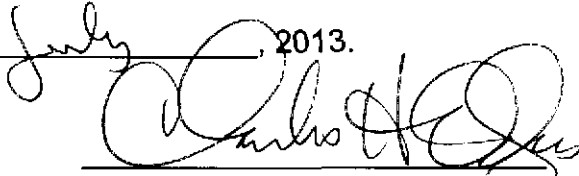
6 1. I am an attorney duly licensed to practice law in the State of Nevada and as
7 such am employed as a Deputy Nevada State Public Defender, assigned to represent
8 the defendant, James Ofeldt.

9 2. The information in this Motion is based upon the facts known to counsel
10 except for those made upon information and belief.

11 3. It is necessary to continue this trial in order to allow the defense an
12 opportunity to obtain the information identified herein and to allow the investigator for
13 this office time to validate and or invalidate the information in these reports and tape
14 recordings.

15 4. This motion is made in good faith and not made for purposes of delay.

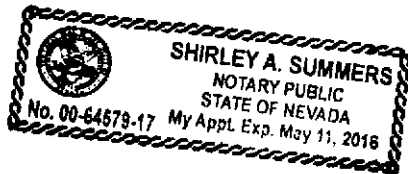
16 DATED this 3 day of July, 2013.

17 
18 CHARLES H. ODGERS, ESQ.
19
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21 SUBSCRIBED AND SWORN (or affirmed) to before me

22 this 3rd day of July, 2013.

23 
24 Notary Public
25



1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Nevada State Public Defender's Office and
3 that on this 3 day of July, 2013, I served the foregoing reply by
4 hand-delivering a true and correct copy of the same to:
5


6 MICHAEL BONGARD, Esq.
7 Deputy Attorney General
8 1539 Ave. F. #2
9 Ely, Nevada 89301

10 
11 _____
12 An employee of the Public Defenders Office

13 **AFFIRMATION Pursuant to NRS 239B.030**

14
15 The undersigned does hereby affirm that the preceding document, filed in this
16 Court in STATE V. OFELDT, does not contain the social security number of any
17 person.
18

19 DATED this 3 day of July, 2013.

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21 
22 _____
23 CHARLES H. ODGERS, ESQ.
24 Deputy Nevada State Public Defender
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