

1 Case No. CR-1201004

2 Dept. No. 2

FILED  
2013 JUL 18 PM 2:43  
WHITE PINE COUNTY CLERK  
BY [Signature] DEPUTY

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6 **IN THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA,**  
7 **IN AND FOR THE COUNTY OF WHITE PINE**

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 JAMES OFELDT,

13 Defendant.

**NOTICE OF NON-OPPOSITION AND  
JOINDER IN MOTION TO CONTINUE**

14  
15 THE STATE OF NEVADA, through legal counsel, CATHERINE CORTEZ MASTO, Attorney  
16 General of Nevada, Thom Gover and Michael J. Bongard, Deputies Attorney General, does hereby file  
17 its notice of non-opposition and joins in Defendant's motion to continue trial filed with this Court on  
18 July 15, 2013.

19 This Motion is based and premised on the accompanying Memorandum of Points and  
20 Authorities.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 Defendant James Ofeldt, ("Ofeldt"), is charged by Criminal Information with one count of Open  
23 Murder filed on January 12, 2012. The case is currently set for trial on July 30, 2013.

24 The 21-day cut-off for expert witness designations was July 10, 2013. Ofeldt filed and served  
25 his notice of expert witness on the 11th. While only a day late, the notice fails to include any report  
26 from a Mr. Ayers, and more relevant to the State's instant notice, fails to include any report from Dr.  
27 Fabian, a Forensic & Clinical Neuropsychologist. In the description of Dr. Fabian's proposed  
28 testimony, Ofeldt references "testing" that was performed and a diagnosis of "organic brain injury."


1 The State has since requested a copy of any report from Dr. Fabian and, pursuant to NRS  
2 174.245(1)(b), requested the defendant to allow the State to inspect and copy any results or reports of  
3 physical or mental examinations performed by Dr. Fabian; including any raw test data (case notes,  
4 clinical interview notes, results of any objective and subjective testing). The State obviously requires  
5 the report and information to review the proposed opinion with a potential state rebuttal expert witness.  
6 Counsel for Ofeldt has expressed his willingness to comply with the State's statutory request, but has  
7 informed that Dr. Fabian has yet to provide Ofeldt a copy of any report and is currently out of the  
8 country.

9 The State does not wish to speculate what are Dr. Fabian's findings. Nevertheless, they could  
10 potentially be relevant to issues of intent and also for mitigation in any penalty hearing that may be  
11 required if Ofeldt is found guilty of First Degree Murder. As Ofeldt is now putting his mental health  
12 condition in issue, the State, upon consultation with a rebuttal expert witness, may potentially wish  
13 Ofeldt to submit to an independent psychiatric and/or psychological examination. At a minimum, the  
14 State needs time to consult with its expert witness.

15 While the State initially felt inclined to move the Court to exclude Ofeldt's expert for a failure  
16 to comply with NRS 174.234(2), and due to the expert's unavailability, the State also recognizes  
17 Ofeldt's desire to interview and investigate the statements of recently added inmate witnesses to the  
18 State's list of endorsed witnesses; the basis for Ofeldt's Motion to Continue filed on July 15, 2013.  
19 While the parties have been preparing for trial to commence as scheduled, it is apparent that some  
20 additional work is needed to be done by both sides. As such, the State joins in Ofeldt's motion to  
21 continue the July 30, 2013 trial date.

22 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of July 2013.

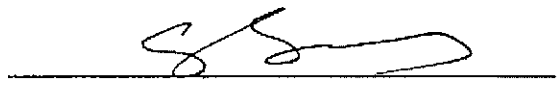
23  
24 CATHERINE CORTEZ MASTO  
Attorney General

25  
26 By:   
MICHAEL J. BONGARD  
Nevada Bar No. 007997  
Deputy Attorney General  
Criminal Justice Division  
1539 Ave F  
Ely, Nevada 89301

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General and that on this 18<sup>th</sup>  
3 day of July 2013, I served a copy of the foregoing Notice of Non-opposition and Joinder in Motion to  
4 Continue, by placing said document in the Public Defender's Box at the White Pine County  
5 Courthouse, addressed to:

6 Charles Odgers  
7 Deputy Public Defender  
8 PO Box 151690  
9 Ely NV 89315



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13 **AFFIRMATION**


14 **Pursuant to NRS 239B.030**

15 The undersigned does hereby affirm that the preceding Notice of Non-opposition and Joinder in  
16 Motion to Continue filed in the Seventh Judicial District Court Case Number CR-1201004 does not  
17 contain the social security number of any person.

18 DATED this 17<sup>th</sup> day of July 2013.

19 CATHERINE CORTEZ MASTO  
20 Attorney General

21  
22 By:

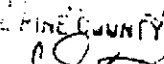
  
MICHAEL J. BONGARD  
Nevada Bar No. 007997  
Deputy Attorney General  
Criminal Justice Division  
1539 Ave F  
Ely, Nevada 89301

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WHITE PINE COUNTY CLERK  
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Case No. WM-1304992  
6002  
Dept. No. 01

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE  
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LINDA BURLEIGH,  
Petitioner,

vs.

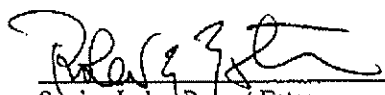
ORDER TO RESPOND

WHITE PINE COUNTY, a political  
subdivision of the State of Nevada,  
ex. rel. its BOARD OF COUNTY  
COMMISSIONERS, KELLY  
BROWN in his official capacity as  
District Attorney for White Pine  
County,  
Respondents.

Petitioner filed a Petition for Writ of Mandate and Prohibition and Complaint for Injunctive Relief and Damages Petition on the 13<sup>th</sup> day of June, 2013. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is entitled to the relief requested therein.

IT IS HEREBY ORDERED that the District Attorney shall on or before August 13th, 2013, answer or otherwise respond to the Petition and file a return in accordance with the provisions in NRS 34.180, inclusive.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

  
Senior Judge Robert Estes