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| DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. 2nd Ave., Durango, CO 81301 Phone Number : (970) 247-2304 Plaintiff: PEOPLE OF THE STATE OF COLORADO Defendant: MARK ALLEN REDWINE | DATE FILED: August 9, 2019 COURT USE ONLY |
| | Case Number: 17CR343 |
| Order Regarding the Motion to Continue the Trial and the Implied Motion to Withdraw (D-145 and D-146) | |

A hearing was held regarding D-145 and D-146 on August 5, 2019. After hearing the arguments of the parties, the Court makes the following findings and enters the following orders.

At this time the defendant has two Court-appointed attorneys who have entered appearances on his behalf, Justin Bogan and John Moran. Due to the recent arrest of attorney John Moran in La Plata County case 18M354, and Mr. Moran’s actions (and lack of action) after Mr. Moran’s arrest, the Court finds that a conflict has developed between Mr. Moran and Mr. Redwine. The Court specifically rejects the conflict proposed by Mr. Bogan as stated on the record at the status conference held on July 25, 2019. Mr. Bogan argued that, because the jury pools for this case and for Mr. Moran’s case will be drawn from La Plata County, that Mr. Moran will have an incentive to provide an inadequate defense to the defendant. The Court sees no merit in this argument. The undersigned has recused the entire bench of the Sixth Judicial District from hearing 19M354. The District Attorney has had a special prosecutor from a different judicial district appointed to prosecute the case against Mr. Moran. There are ways to

find out if the jury in this case is aware of Mr. Moran's criminal case without informing the jury of the existence of that case against Mr. Moran. Similarly, the same techniques can be used in Mr. Moran's criminal case to determine if the jury is aware of Mr. Moran's involvement in this case while not informing that jury as to Mr. Moran's role in this case. There is no reason to inform either the jury in this case or the jury in Mr. Moran's case of the existence of the other case. The Court finds that the conflict articulated by Mr. Bogan at the July 25, 2019, status conference does not exist.

Despite the Court's finding in the preceding paragraph, the Court finds that a conflict has developed between Mr. Moran and the defendant herein. Since Mr. Moran's arrest, there have been two hearings in this case. Mr. Moran has not appeared at either hearing. The Court was not provided with an explanation as to his lack of appearance at the July 25, 2019, status conference. The Court only received a vague explanation that Mr. Moran was on approved FMLA leave. The Court takes judicial notice that Mr. Moran was arrested on July 21, 2019. The Court takes further notice that it is very unlikely that, if Mr. Moran's case goes to trial, his trial date would conflict with the defendant's trial as currently set.

Mr. Moran has not filed a motion to withdraw in this case. The Court takes judicial notice that in 19M354 Mr. Moran asked for and received permission to travel to the state of California. Mr. Bogan has informed the Court that Mr. Moran's leave is scheduled to last until sometime in October of 2019. The defendant's trial is scheduled to begin on September 19, 2019, and conclude approximately four weeks later. Based upon the limited information the Court received at the last two hearings, it appears that all the information the defendant has received from his attorneys regarding Mr. Moran's status has been provided to him by Mr. Bogan. While the Court can speculate as to the reason for the FMLA leave, the Court has no

actual information as to the reason the leave was requested or the reason the leave was granted. Mr. Moran's apparent unilateral decision to take leave and not be available to defend the defendant at his upcoming trial clearly demonstrates that Mr. Moran has placed his personal needs ahead of the defendant's right to have competent prepared counsel represent the defendant at his trial. While the Court is making no findings as to whether Mr. Moran's decisions are justified because of his personal situation, the defendant has a constitutional right to an attorney who is willing and able provide an effective and vigorous defense regardless of the personal problems the defense attorney may be experiencing. By his actions, Mr. Moran has demonstrated that he is either unwilling or unable to do so. The Court finds that, because of the events since July 22, 2019, a conflict has developed between Mr. Moran and the defendant.

At the hearing on August 5, 2019, the prosecution argued that the Court should deny the request to allow Mr. Moran to withdraw and grant a short continuance to allow Mr. Moran to return from his FMLA leave and try the case. In the alternative, the prosecution requested that, if Mr. Moran was allowed to withdraw, that a continuance of no more than three months be allowed so that the jury would still be able to view the locations of Mr. Redwine's house and the two sites where Dylan's partial remains were recovered. Finally, the Prosecution argued that Mr. Bogan had potential conflicts of interest and that it wasn't clear that the defendant had been properly advised.

As stated above, the Court finds that a conflict exists between the defendant and Mr. Moran and the Court will not force Mr. Moran to represent the defendant after a brief continuance.

Despite the Court finding that Mr. Moran has a conflict with the defendant, the Court has no reason to believe that Mr. Bogan has any conflict in representing the defendant. The Court

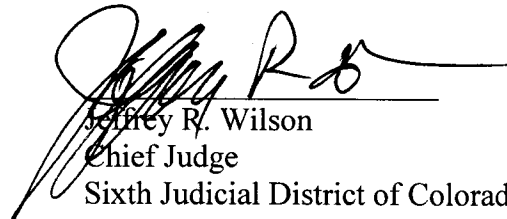
takes judicial notice that Mr. Bogan is the attorney who supervises the Durango Regional Office of the Colorado State Public Defender's Office and that Mr. Moran was assigned by the Public Defender's Office to the Durango Regional Office. Mr. Bogan, at the July 25, 2019, hearing, stated that he has a potential conflict with the defendant but initially did not articulate the nature of that potential conflict. Later in the hearing, when it appeared to Mr. Bogan that he might be required to disclose the reason that Mr. Moran was not appearing at the July 25, 2019, hearing, Mr. Bogan informed the Court that doing so might put him in a situation where he had conflicting duties to the defendant and to an employee that he supervises. The defendant was present in the courtroom when Mr. Bogan explained on the record why requiring Mr. Bogan to reveal the reason Mr. Moran had been granted FMLA leave would create a potential conflict with the defendant. To avoid creating a conflict between the defendant and Mr. Bogan, the Court has not required Mr. Bogan to inform it as to the exact reasons that Mr. Moran was placed on approved leave. The Court has worked with Mr. Bogan for many years, finds he is a competent criminal defense attorney, and finds that no reason exists other than the speculation of the prosecution to believe the advisement of Mr. Redwine was in any way deficient or that Mr. Bogan failed to inform Mr. Redwine of any conflicts¹ that may exist. The Court has advised Mr. Redwine at previous hearings about his rights regarding speedy trial and the conflict that right has with the ability of counsel to be prepared to represent him at trial. At the August 5, 2019, hearing, the Court advised Mr. Redwine as to the tension between his right to a speedy trial and his right to effective assistance of counsel and the importance of having an attorney who can give the appropriate attention to Mr. Redwine's case without being distracted by other issues. A recess was taken so Mr. Redwine could be further advised by Mr. Bogan. At the conclusion of

¹ The only potential conflict that the Court is able to perceive is the conflicting duties to a client and an employee that was discussed on the record in front of Mr. Redwine during the hearing on July 25, 2019.

the recess, Mr. Redwine informed the Court that he had enough time to consider how he wanted to proceed and knowingly, intelligently, and voluntarily waived his right to a speedy trial. He further informed the Court that he did not object to Mr. Moran being relieved of his responsibilities in this case.

Based upon everything that has happened in this case, the Court finds that, unless the Court grants the continuance and allows Mr. Moran to withdraw and new counsel to be substituted, Mr. Redwine's right to effective assistance of counsel will be violated. The Court accepts Mr. Redwine's waiver of speedy trial and orders that the trial be continued. The Court will reset the trial at the status conference set for August 13, 2019. Mr. Bogan shall identify the attorney who shall enter their appearance as co-counsel on this case as soon as possible and the Court hopes that new co-counsel will appear at the status conference for the resetting of the jury trial in this case.

Done and signed this 9th day of August, 2019.



Jeffrey R. Wilson
Chief Judge
Sixth Judicial District of Colorado