

ENDORSED COPY

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

STATE OF NEW MEXICO
Plaintiff,

v.

MICHAEL MURPHY,
Defendant.

FILED

2011 OCT 17 PM 3:20

DISTRICT COURT
DONA ANA COUNTY, N.M.

Criminal Cause No. CR-2011-560
CR-2011-1046
Judge Leslie C. Smith

ORDER CONTINUING TRIAL

THIS MATTER comes before the Court *sua sponte*. For the reasons stated here, the Court finds the trial setting in this matter should be **VACATED**. The Court finds the following:

1. This matter is set to come before the Court for trial on October 31, 2011. Due to the reasoning herein, the Court finds that the trial set for October 31, 2011 should be vacated and reset at a later date.
2. "The Sixth Amendment of the United States Constitution provides that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.'" *State v. Parrish*, 149 N.M. 506, 252 P.3d 730, 735 (N.M. App. 2011) (quoting U.S. Const. amend. VI). "'The heart of the right to a speedy trial is preventing prejudice to the accused.' The right includes three core concerns: (1) preventing undue and oppressive pre-trial incarceration prior to trial, (2) minimizing the anxiety and concern associated with public accusation, and (3) limiting the possibilities that long delay will impair the defense of the accused." *Id.* (quoting *State v. Garza*, 146 N.M. 499, 505, 212 P.3d 387, 393 (N.M. 2009)).

3. To determine whether a defendant's speedy trial right is violated, courts balance four factors: "(1) the length of the delay in bringing the defendant to trial, (2) the reasons for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) the actual prejudice suffered by the defendant as a result of the delay."

Length of Delay in Bringing Defendant to Trial

4. Defendant was originally indicted on May 13, 2011. The Court is resetting the trial in this matter for **Monday, February 6, 2012**, less than nine months after the indictment.

Reasons for Delay

5. The primary reason that the trial is being reset in this case is due to the complexity of the case and the high amount of motions already heard by the Court. In the five months since I was appointed to this case on May 16, 2011, 34 motions have been filed. All in all, the Court has sifted through 63 briefs, addendums, supplements, and other assorted filings with respect to the 34 motions in the past five months. The Court has filed 37 orders and held 10 hearings on these and other matters. For purposes of several of these motions, the Court examined in detail over 1000 pages of material submitted by a witness in a privilege log.

Defendant's Assertion of His Right to a Speedy Trial

6. At the hearing on October 14, 2011, Defendant's attorney conceded that it would be "impractical" to hold the trial as originally scheduled on October 31, 2011. Defendant has not yet finished discovery related to at least one witness, and for this reason, Defendant's attorney asserted that he would be more comfortable with an early 2012 trial date.

Actual Prejudice to Defendant

7. Defendant is not currently incarcerated pending trial. Defendant asserted no claim of

prejudice, anxiety or concern, or potential impairment with respect to vacating the October 31, 2011 trial date and resetting it for some time in early 2012 (the Court specifically discussed a January or February setting). In fact, Defendant expressed *more* concern with moving forward as presently scheduled (for the October 31, 2011). See *Parrish*, 252 P.3d at 741.

WHEREFORE,

IT IS ORDERED that the trial set for October 31, 2011 is hereby **VACATED**.

IT IS FURTHER ORDERED that this matter shall come on for a **STATUS CONFERENCE** on **Friday, November 4, 2011 at 9:00 a.m.**

IT IS FURTHER ORDERED that this matter shall come on for a **PRETRIAL CONFERENCE** on **Monday, December 19, 2011 at 9:00 a.m.**

IT IS FURTHER ORDERED this matter shall come for **JURY SELECTION AND JURY TRIAL** beginning on **Monday, February 6, 2012 at 9:00a.m.**

IT IS FURTHER ORDERED that motions in limine shall be filed no later than **Monday, January 2, 2012**. All motions in limine shall be heard at the pretrial conference.

IT IS FURTHER ORDERED that counsel shall furnish the Court with proposed jury instructions on **Monday, January 2, 2012**. The State is responsible for including the relevant stock instructions in the proposed jury instructions.

IT IS FURTHER ORDERED that counsel shall file final witness lists with the Court no later than **Monday, January 2, 2012**.

IT IS FURTHER ORDERED that counsel shall submit two books of marked exhibits to the Court no later than **Monday, January 2, 2012**. The first book shall include exhibits that the parties stipulate to be admissible, and shall be labeled consecutively. The second book shall

include exhibits whose admissibility is contested, and shall be labeled consecutively beginning with the next sequential number after the final stipulated exhibit designation. For instance, if there are 50 stipulated exhibits, 20 contested State's exhibits, and 20 contested Defendant's exhibits, the first notebook shall contain stipulated exhibits numbered 1 to 50. The second notebook shall contain the State's contested exhibits numbered 51 through 70 and Defendant's contested exhibits numbered 71 through 90.

On the day of the trial, counsel shall furnish 14 copies of each notebook for the jurors and 1 copy of each notebook for the court reporter and 2 copies for the Court.

IT IS SO ORDERED.

Approved telephonically October 17, 2011
LESLIE C. SMITH
DISTRICT JUDGE PRO TEMPORE