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GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

2011 MAY 20 PM 3 47

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DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY
THE STATE OF MONTANA,

Plaintiff,

No. DC-09-33AX

v.

MOTION TO DISMISS

SHANARA ANDERSON,

Defendant.

* * * * *

Comes now Marty Lambert, County Attorney, and moves this Court for its order dismissing the Information charging the Defendant with Deliberate Homicide, a Felony. This motion is made for the reasons set forth below.

On March 31, 2010, this Court entered an order suppressing the statement made by the Defendant to law enforcement. Defendant's statement contained admissions probative of Defendant's knowledge of how Vanyel Anderson-Colbeth died.

After consulting with the Attorney General's Office, pursuant to §46-20-103, MCA, the State was authorized to appeal this Order.

On April 2, 2010, this Court entered an Order precluding the State from introducing most all the evidence listed in the

affidavit of probable cause, Just Notice and Amended Just Notice.

On April 9, 2010, the State filed a motion to dismiss the information stating that "if the State cannot present evidence of the Defendant's statement to law enforcement and the Defendant's history of violence towards Vanyel, as evidenced by Vanyel's multiple rib fractures, the State cannot prove beyond a reasonable doubt that the Defendant committed the offense of Deliberate Homicide." (emphasis in original)

This Court denied the State's Motion to Dismiss. The State subsequently withdrew its Motion to Dismiss and the Attorney General filed a Petition for Writ of Supervisory Control with the Montana Supreme Court seeking reversal of this Court's Order regarding the evidence set forth in the affidavit of probable cause, Just Notice and Amended Just Notice.

The Attorney General dismissed, however, the State's Notice of Appeal regarding this Court's Order suppressing the Defendant's statement. This Court's order suppressing the Defendant's statement to law enforcement is the law of this case and Defendant's statement cannot be used as evidence at trial in this case.

On December 14, 2010 the Montana Supreme Court issued an Order granting a Writ of Supervisory Control, essentially

reversing this Court's Order regarding the evidence set forth in the affidavit of probable cause, Just Notice and Amended Just Notice. *State of Montana v. Eighteenth Judicial District Court*, 2010 MT 263. Although the Supreme Court permitted the State to introduce evidence of the repeated injuries to Vanyel, the State is still without the evidence of the Defendant's statement to law enforcement.

The evidence gathered by law enforcement in this case clearly established that Vanyel was physically present in Gallatin County for less than 15 hours prior to her death. Two forensic experts have reviewed this case. Neither expert can conclusively opine that Vanyel suffered abuse in Gallatin County. Further, as discussed above, the State cannot offer evidence of Defendant's statements made to law enforcement after Vanyel's death. The State cannot prove the crime of deliberate homicide.

The matter of whether Defendant should be charged with any crime committed in Dawson County, Montana or with any crime committed elsewhere in the State of Montana, has been referred to the Office of the Montana Attorney General for its consideration.

Based on the foregoing, movant respectfully requests that the charge of Deliberate Homicide be dismissed.

Dated this 20 day of May, 2011.

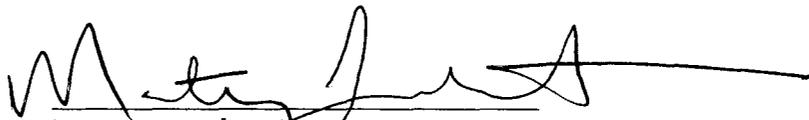


Marty Lambert
County Attorney

CERTIFICATE OF SERVICE

I hereby certify on May 20, 2011 I mailed a true and correct copy of the foregoing to the following attorney of record:

Mr. Christopher Abbott
Officer of the Public Defender
139 Last Chance Gulch
Helena, MT 59601



Marty Lambert
Gallatin County Attorney

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Attorneys for Defendant

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

9	STATE OF MONTANA,)	Cause No. DC-09-33AX
10	Plaintiff,)	
11	v.)	DEFENDANT'S RESPONSE TO
12	SHANARA ROSE ANDERSON,)	THE STATE'S MAY 20, 2011
13	Defendant.)	MOTION TO DISMISS

14 Defendant Shanara Rose Anderson (Anderson), through counsel, respectfully
 15 submits the following brief in response to the State's "Motion to Dismiss," dated May 20,
 16 2011. In short, the State's motion does not clarify whether dismissal is to be with or
 17 without prejudice. It is Anderson's position that this dismissal should be with prejudice.

ARGUMENT

The following provision governs motions to dismiss on the State's motion:

The court may, either on its own motion or upon the application of the prosecuting attorney and in furtherance of justice, order a complaint, information, or indictment to be dismissed. However, the court may not order a dismissal of a complaint, information, or indictment, or a count contained in a complaint, information, or indictment, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

MCA § 46-13-401(1). The standard for granting a State's motion to dismiss is a generous one, *see State ex rel. Fletcher v. Dist. Court*, 260 Mont. 410, 417, 859 P.2d 992 (1993) (characterizing the State's burden of showing "good cause" and "furtherance of justice" as minimal), and Anderson agrees the State's explanation that it cannot prove the

1 crime of deliberate homicide, particularly without Anderson's suppressed statement to
2 law enforcement, meets that standard.

3 The State's motion, however, does not specify whether dismissal should be with or
4 without prejudice. When addressing Federal Rule of Criminal Procedure 48(a)¹, the
5 federal analogue to § 46-13-401, the federal courts have observed that the purpose of
6 requiring permission from the court to dismiss a case "is to prevent harassment of a
7 defendant by a prosecutor's charging, dismissing, and recharging the defendant with a
8 crime." See *United States v. Derr*, 726 F.2d 617 (10th Cir. 1984). This includes
9 dismissals without prejudice calculated to permit the State to dismiss charges and re-file
10 at a more favorable time and place to the prosecution. See *United States v. Ammidown*,
11 497 F.2d 615, 620 (D.C.Cir. 1973). To avoid successive, harassing prosecutions, the
12 federal courts have recognized authority to enter a dismissal with prejudice on a
13 prosecution motion, for instance, where the prosecution moved to dismiss without
14 prejudice because they were simply unprepared for trial. See *Derr*, 726 F.2d at 619.

15 In this case, dismissal should be with prejudice. The factors cited by the State as
16 justification for dismissal will not change. It will remain the case that medical experts
17 cannot conclusively determine a cause of death. It will likewise remain the case that, in
18 light of the Attorney General's abandonment of its appeal of the suppression motion, that
19 Anderson's statements to law enforcement will not be admissible in court. The case was
20 investigated for a year before the State filed charges and has now been pending for over
21 two years, and yet the State's evidence has not changed. Anderson should not have to
22 spend the rest of her life looking over her shoulder because of a case the State cannot
23 prove. Given the delay that has already accrued in the case, it is hard to believe that any
24 delay occasioned by a re-filing of this charge in the future would survive a speedy trial or
25 preaccusation delay challenge. Accordingly, because the State has indicated it lacks
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¹ The text of Rule 48(a) follows: "The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent."

1 sufficient evidence to proceed in the case despite the passage of years, the Court should
2 order dismissal with prejudice.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should dismiss this matter with prejudice.

5 DATED this 24th day of May, 2011.

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8 Christopher D. Abbott
9 Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing, postage prepaid, by U.S. mail, to the following:

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SHANARA ANDERSON
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Dated: May 24, 2011 Wes Stewart

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