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**FILED AUG 20 2012**

SHIRLEY E. FAUST Clerk  
By Nicole Barone Deputy  
*fax*

**MONTANA FOURTH JUDICIAL DISTRICT COURT,  
MISSOULA COUNTY**

STATE OF MONTANA,  
  
Plaintiff,

vs

JORDAN TODD JOHNSON,  
  
Defendant.

Cause No. DC-12-352  
Dept. 4  
Hon. Karen S. Townsend

**DEFENDANT'S MOTION TO  
COMPEL DISCOVERY AND  
BRIEF IN SUPPORT**

Comes Now Jordan Johnson, by and through his attorney's, David R. Paoli and Kirsten Pabst and moves this Court to compel the State of Montana to produce previously requested discovery and all discovery that has not already been produced relating to this matter. On Friday, August 17, 2012 Paoli left a

message for Ms. Boylan to call him and for Tina Phillips the discovery assistant to call him. Neither have returned his call.

Johnson requests that if the State does not produce all discovery immediately, this Court dismiss the charges filed by the State against him based on the disadvantage that has been created by the State's failure to produce.

Johnson is charged with sexual intercourse without consent, one of the most serious offenses under Montana law. Considering the seriousness of this charge, it is absolutely imperative that Johnson have all relevant resources available in preparing his defense.

On August 9, 2012, the undersigned sent Assistant Chief Deputy County Attorney Suzy Boylan a letter outlining the initial discovery requests to help encourage the discovery process. The following requests were made and to date have not been produced:

- Transcripts of Detective Connie Brueckner's interviews with:
  - Jane Doe
  - All Bierer's
  - Kelli Froland
  - Neil Sauer
  - Brian O'Day
  - Kelsie Hanson
  - Stephen Green
  - Alex Bieneman
  - Any other individual interviewed in connection with this investigation.
- Video of interviews conducted by Connie Brueckner with:
  - All Bierer
  - Kelli Froland
  - Jordan Johnson
  - Jane Doe
  - Neil Sauer

- Brian O'Day
  - Stephen Green
  - Alex Bieneman
  - Lori Morin
  - Hana Delaney
  - Any other individual interviewed and videotaped in connection with this investigation.
- Copy of Jane Doe's medical records back to age 5, five, years including all medical reports or records, hospital records, reports of attending physicians, reports of examining physicians including any information from physicians, psychiatrists, psychologists, pharmacists, counselors, rehabilitation specialists or any other healthcare or mental health provider consulted, examined or seen by Jane Doe. This request also includes Jane Doe's records from the University of Montana Counseling and Psychological Services (CAPS) program as well as the University of Montana Sexual Assault Resource Center (SARC).
  - Copy of Jane Doe's school records including Kindergarten through the present. These records should include any school psychologist or counselor records.
  - List of names and contact information for every person who was with Jane Doe the night of February 3, 2012 prior to, during and after the Forrester's Ball.
  - Also, I would like to reiterate my request for any and all text messages and email between Jane Doe and all witnesses.

After receiving some information after the August 9, 2012 discovery request letter the undersigned sent a follow-up letter on August 15, 2012 requesting and reiterating previous requests for discovery. These requests were as follows:

1. The First Step videos. You haven't gotten back to me on the status of us being able to obtain these. Please let me know right away what the status is on obtaining these videos. As I have said previously, we need them as soon as possible.

2. You indicated that you would produce to us the text messages from Jane Doe's cell phone on Friday the 24<sup>th</sup>. I understand that you are redacting some information and will provide full copies to the Court for its review. However, you need to provide a privilege log describing the content of the redactions so that we may have an opportunity to fully address and argue those issues to the Court? I think that would be the most efficient way to deal with these. Please let me know your thoughts.
3. The name, CV, statement and report of the person who provided you with information regarding Rape Trauma Syndrome that you included in your affidavit of probable cause AND the name, CV, statement and report of the person you intend to call as an expert on Rape Trauma Syndrome.
4. The name of the First Step doctor who reviewed Clair Francoure's work in this case and all internal First Step correspondence, including e-mail, about this case. This includes conversations between the date of the exam and the present and would include all e-mails directed to Detective Brueckner and to you.
5. As requested on August 1, 2012, we need the names and addresses of all persons with whom you have spoken to about this case—publicly or privately—and/or persons who have participated in the investigation and/or evaluation of the case—within the County Attorney's Office and outside of the County Attorney's Office. See MCA 46-15-322 (4);
6. As requested on August 1, 2012, we need to interview Jane Doe as soon as possible. I am assuming that you would like to arrange that rather than have our investigator arrange it so please set that up at your very earliest convenience and let us know by the omnibus hearing when the interview is scheduled. Additionally, if Jane Doe wants to have independent counsel present, it should be an attorney other than Mr. Van De Wetering since he is listed as a witness in the case.
7. Just so we are clear, I understand that you have obtained, through the Great Falls Police Department text messages between Jane Doe and various of her friends. However, as I indicated at the arraignment and in a previous email to you, there are other individuals we believe who will have pertinent text messages with Jane Doe. In this regard, we also believe that there will be critical evidence contained in email transmissions between Jane Doe and/or others involved with the case. Accordingly, we ask for you to preserve and produce not only text messages but email messages between Jane Doe and the following individuals:
  1. Brian O'Day
  2. Loy Bink
  3. Stephen Green
  4. Neil Sauer
  5. Kelsie Hanson
  6. Hannah Delaney

7. Lori Morin
8. Ali Bierer
9. Any other of Jane Doe's professors or friends that she communicated facts or information to regarding this case or incident.
10. Claire Francoeur
11. Drew Colling
12. Stephanie White
13. The initial counselor Jane Doe began treating with before switching to Ms. Colling.
14. Jane Doe's friend who was her support at the Campus Court Hearing
15. Nurse who accompanied Jane Doe to the Missoula Police Department
15. Charles Couture
16. David Aronofsky
17. Reggie McRay

The State has affirmatively placed Jane Doe's symptoms at issue by claiming in its affidavit that as a result of the alleged act on February 4, 2012, Jane Doe suffers Post Traumatic Stress Disorder (PTSD) and Rape Trauma Syndrome (RTS). The affidavit presents these claimed symptoms as evidence to prove the elements of the crime charged. As a result, Johnson has specific need for Jane Doe's medical and school records. By her own admission, Jane Doe asserts she was bullied and has had panic attacks and PTSD preexisting by many years this alleged incident. Further, the State has not responded at all regarding Johnson's specific requests for the First Step videos. This is critical evidence Johnson must have and provide to his experts. All the discovery Johnson has requested is necessary and required for Johnson's defense. These

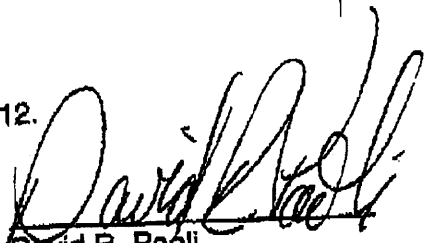
two specific areas of discovery so far denied highlights the denial and delay the State has imposed.

Not only is the State jeopardizing Johnson's defense by failing to produce discovery, but the State is jeopardizing this Court's deadlines. Because the State has failed to produce discovery in this matter, defense counsel is working with an incomplete file and cannot possibly anticipate all motions that will need to be filed based on all the available evidence. Therefore, Johnson respectfully requests that this Court compel the State to produce the requested discovery and any other discoverable materials it has in its possession immediately. Further, if the State does not immediately produce all discovery materials, Johnson requests that the charges against him be dismissed based on the disadvantage that has been created by the State's failure to produce the requested discovery.

### **CONCLUSION**

For the stated reasons, Jordan respectfully request the Court dismiss the charge against him for the prejudice the State has caused or for its Order compelling the State to produce all information and evidence requested.

Respectfully submitted this 20<sup>th</sup> day of August, 2012.

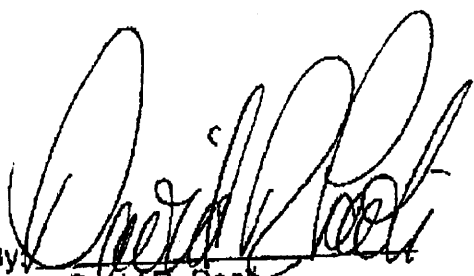
By: 

David R. Paoli

**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Paoli Kutzman, P.C., hereby certify that a true and correct copy of the foregoing was delivered to the following on this 20<sup>th</sup> day of August, 2012.

Suzy Boylan  
Assistant Chief Deputy County Attorney  
Fred Van Valkenburg  
Missoula County Attorney  
Missoula County Courthouse  
Missoula, MT 59802

By: 

David R. Paoli