

William M. Windsor  
PO Box 16181  
Missoula, Montana 59808  
Telephone: 770-578-1094  
windsorinmontana@yahoo.com  
Defendant, Pro Se

**MONTANA FOURTH JUDICIAL DISTRICT COURT  
MISSOULA COUNTY**

State of Montana,	§	Dept. No. 3
Plaintiff,	§	Cause No. DC-14-509
v.	§	
William Michael Windsor,	§	
Defendant.	§	<b>MOTION FOR SANCTIONS</b>

COMES NOW William M. Windsor, Defendant, and files this “Motion for Sanctions,” and shows the Court as follows:

**INTRODUCTION**

1. William M. Windsor has received only 14 pages of “evidence” from the State. The State has ignored discovery requests served by William M. Windsor, has failed to respond with requested dates for when witnesses will be available, has failed to meet the clear requirements of the Omnibus Memorandum, and has ignored its responsibilities pursuant to Montana Code (“MCA”) 46-15-322 and the United States Constitution and Bill of Rights.

2. The Pre-Trial Conference is only 10 days away, and William M. Windsor does not have the most basic information that he needs. An appropriate sanction pursuant to MCA 46-15-329 is for this Court to declare that the State may not introduce any evidence other than the 14 pages provided to William M. Windsor through Christopher Daly of the Missoula County Public Defender’s Office.

## **FACTUAL BACKGROUND**

3. On October 3, 2014, William M. Windsor was charged with five counts of violation of an alleged protective order.

4. On October 28, 2014, William M. Windsor was taken into custody in Ellis County Texas.

5. On October 29, 2014, William M. Windsor was arraigned on the charges, and he pled not guilty. Exhibit 1 hereto is a true and correct copy of the document signed at the Arraignment.

6. On October 28, 2014 and for the next 57 days in Ellis County Texas, William M. Windsor asked to receive an explanation of what exactly he was charged with and evidence to support the charges. He was shown only the Bench Warrant, nothing more. Exhibit 2 hereto is a true and correct copy of the Bench Warrant. He was not shown the Information or anything else.

7. On December 19, 2014, the State had failed to produce a Governor's Warrant for the extradition of William M. Windsor, so Judge Cindy Ermatinger released William M. Windsor with the understanding that he would travel in his own by car and surrender in Missoula County Montana.

8. On December 29, 2014, William M. Windsor requested evidence from Deputy County Attorney Jennifer Clark by email. Exhibit 3 hereto is a true and correct copy of this email.

9. Jennifer Clark responded that the evidence would be given to William M. Windsor when he appeared in Missoula Montana. Exhibit 4 hereto is a true and correct copy of this email.

10. On March 27, 2015, William M. Windsor appeared in the Fourth Judicial District Court in Missoula Montana, but the State did not provide any evidence.

11. Shortly thereafter, William M. Windsor sent a discovery request to Jennifer Clark. There has been no response.

12. On March 31, 2015, Public Defender Christopher Daly filed a "Notice of Appearance and Request for Discovery" pursuant to MCA 46-15-322 and 327. This is DC-14-509 Docket #22. There has been no response to this request.

13. On April 21, 2015, Jennifer Clark and William M. Windsor signed an Omnibus Memorandum. This is Docket #37. It provides that the State was to have provided evidence "immediately," but nothing was provided. William M. Windsor provided a list of witness names and addresses on April 21, 2015.

14. On April 27, 2015, Tyler Dugger sent a letter to William M. Windsor stating that the discovery was sent to Christopher Daly. Exhibit 5 hereto is a true and correct copy of the letter.

15. On May 4, 2015, William M. Windsor received 14 pages of documents provided by the State to Christopher Daly. Exhibit 6 hereto is a true and correct copy of the 14 pages of evidence.

16. On May 5, 2015, William M. Windsor sent another letter to Jennifer Clark stating that he had not received evidence from the State. Exhibit 7 hereto is a true and correct copy of the letter.

17. On May 7, 2015, William M. Windsor sent a letter to Jennifer Clark with the names of additional witnesses. Exhibit 8 hereto is a true and correct copy of the letter.

18. On May 9, 2015, William M. Windsor was released from the Missoula County Detention Center on bond. He had been denied access to his evidence for 46 days in the jail. He immediately began organizing and printing the evidence to present to the State.

19. In April and May 2015, William M. Windsor sent multiple requests for evidence to Jennifer Clark. There was no response until May 11, 2015, when she emailed to reply to an email from William M. Windsor to say “I am out this week. We can meet next week to review discovery. You are not entitled to depositions in criminal cases but we can discuss setting up witness interviews. thank you.” This was in response to William M. Windsor’s email that said: “I will be at the courthouse at 10 am for the jury drawing. If there is more than 14 pages of ‘evidence,’ please provide it at that time. I will file a motion asking the court to restrict your evidence to only those 14 pages. I’d like to depose all of your witnesses this week or early next week. Please provide dates so I may submit the requests to the court.” Exhibit 9 hereto is a true and correct copy of the email exchange. William M. Windsor sent several previous requests for this information, but only Jennifer Clark has copies of those handwritten jail letters.

20. On May 11, 2015, Tyler Dugger, Missoula County Attorney Legal Intern, and an attorney for the State attended the jury drawing but did not speak to William M. Windsor and did not provide any discovery to him.

### ARGUMENT

**A. The State is required by law to provide all evidence to the Defendant in a criminal trial. It has been 196 days since William M. Windsor was arraigned, and he has only 14 pages. The State has failed to meet this fundamental requirement.**

21. William M. Windsor has been charged with two misdemeanors and three felonies, and he must plan a defense for trial. In order to plan the best defense, he needs to know certain information that is in the hands of the State. MCA 46-15-322 spells out the requirements that the State must meet. The State has provided the names of five witnesses but no addresses or

anything else. And the State has provided only 14 pages of so-called “evidence.”

**MCA 46-15-322. Disclosure by prosecution.** (1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

(a) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;

(b) all written or oral statements of the defendant and of any person who will be tried with the defendant;

(c) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

(d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

(3) The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under subsection (1)(d).

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion showing that the defendant has substantial need in the preparation of the case for additional material or information not otherwise provided for and that the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at a later time as the court may for good cause permit, together with their statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the defendant did not have a particular state of mind that is an element of the offense charged.

22. The Omnibus Memorandum states:

“In compliance with MCA 46-15-322, the State shall immediately and on a continuing basis:

- a. Disclose the names, addresses and statements of the State’s witnesses (including experts) that the State may call as witnesses in their case-in-chief.
- b. Disclose and make available for inspection all physical or documentary evidence in the State’s possession that the State may use at trial or which was obtained from or belonged to the Defendant.
- c. Disclose all oral, written or recorded statements made by Defendant to investigating officers or to third persons.
- d. Disclose all exculpatory evidence known to the State, including evidence that would tend to reduce the Defendant’s potential sentence.

23. The State has failed to meet this immediate and continuing obligation. MCA 46-15-329 provides for sanctions:

**“46-15-329. Sanctions.** If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of this part or any order issued pursuant to this part, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

- (1) ordering disclosure of the information not previously disclosed;
- (2) granting a continuance;
- (3) holding a witness, party, or counsel in contempt for an intentional violation;
- (4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or
- (5) declaring a mistrial when necessary to prevent a miscarriage of justice.

24. In *State v. Waters* (1987), 228 Mont. 490, 495, 743 P.2d 617, 620, the Montana Supreme Court stated that the purpose of Montana's discovery scheme is to enhance the search for truth. In addition, the Montana Supreme Court stated: “Such discretion allows the court to consider the reason why disclosure was not made, whether the noncompliance was willful, the amount of prejudice to the opposing party, and any other relevant circumstances.” *State v. Waters*, 228 Mont. at 495, 743 P.2d at 621.

25. The State willfully ignored the discovery requests of William M. Windsor. The prejudice to him is severe as he is burdened with the obligation to finalize his witness list and evidence list by May 22, 2015, and he has essentially nothing with which to work.

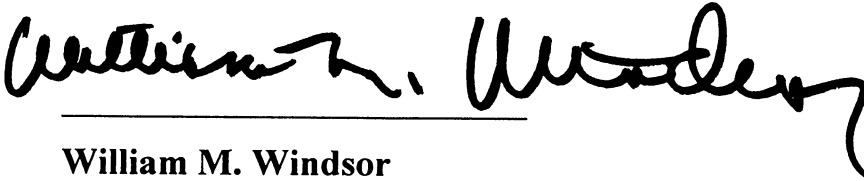
26. This Court must sanction the State. The State has nothing to lose in this case, but William M. Windsor could spend the last years of his life in the Montana State Prison. At age 66, the stakes for him could not be much higher.

27. This failure by the State has significantly violated William M. Windsor's right to due process.

WHEREFORE, William M. Windsor prays that this Court enter an order that:

- a. the State must immediately disclose all information not previously disclosed;
- b. the State may not use any documents as evidence other than the 14 pages provided to the Defendant prior to the filing of this Motion; and
- c. grant such other relief as the Court feels is appropriate.

Dated this 12th day of May 2015,

  
\_\_\_\_\_

**William M. Windsor**



**VERIFICATION**

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn deposes and states that he is authorized to make this verification on behalf of himself and that the facts alleged in the foregoing are true and correct based upon his personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

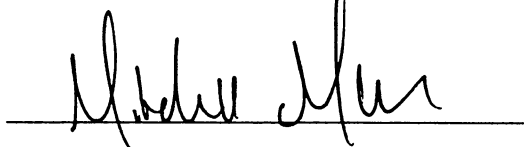
I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 12th day of May 2015.

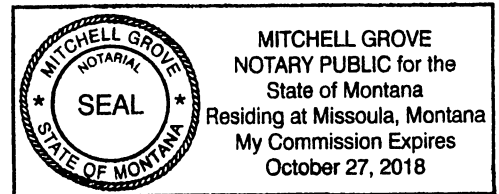


\_\_\_\_\_  
William M. Windsor

Sworn and subscribed before me this 12th day of May 2015.



\_\_\_\_\_  
Notary Public



**CERTIFICATE OF CONFERENCE**

I hereby certify that I emailed Jennifer Clark about this motion, but she did not respond.

This 12th day of May 2015,

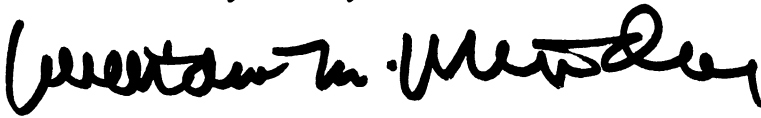


**William M. Windsor**

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Motion by United States Postal Service to Jennifer Clark, Deputy County Attorney, Missoula County Courthouse, 200 West Broadway Street, Missoula, Montana 59802.

This 12th day of May 2015,



**William M. Windsor**