

**IN THE RED LODGE CITY COURT OF RECORD OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF CARBON
BEFORE RAPHAEL J. HE DOES IT, JUDGE
1 PLATT AVENUE SOUTH, P.O. BOX 9, RED LODGE, MT 59068
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IN RE CRIMINAL JURY TRIALS AND
CORONAVIRUS COVID-19 PUBLIC
EMERGENCY

ORDER

The President of the United States and the Governor of the State of Montana have each declared national and statewide public health emergencies in response to the novel coronavirus and the disease it causes known as COVID-19. The Centers for Disease Control and Prevention (CDC) and other public health authorities have advised certain precautions designed to slow the spread of the virus. While the CDC does not have a specific recommendation as to limiting the number of people in gatherings, it does direct that event organizers “*should also check state, county, and city rules regarding any current restrictions limiting the number of attendees at events*” and “*the number that is chosen should allow individuals to remain at least 6 feet apart from each other.*” On March 13, 2020, and again on March 17, 2020, Montana Supreme Court Chief Justice McGrath issued guidelines and instructions for all Montana courts to follow, which incorporates the CDC recommendations regarding event gatherings and maintaining physical distance between attendees. Additionally, Carbon County Public Health has limited local gatherings to 50 people.

Criminal jury trials within the Red Lodge City Court require at least 12 people: 6 jurors, 1 prosecutor, 1 representative for the state, 1 defendant, 1 defense attorney, 1 judge, and 1 bailiff. Of course, certain trials may also require additional witnesses or co-counsel, and should also be open to public observation.

The Red Lodge City Courtroom is small and does not allow for at least 12 individuals to maintain 6 feet of physical distance during a jury trial. The only other option for the Court is to

hold the jury trial in another location. Unfortunately, there are few locations within Red Lodge that can accommodate the needs of a jury trial while also allowing a minimum 6-foot distance between every attendee. The Red Lodge Area Community Foundation has generously offered to the Red Lodge City Court the use of the Roosevelt Center for jury trials. However, due to the recent increase in COVID-19 cases within Carbon County, the Community Foundation has limited gatherings within its facilities to 10 people, which cannot accommodate a criminal jury trial.

The Red Lodge City Court is dedicated to ensuring access to justice for all parties before the Court. The Court must maintain this access by conducting all jury trials with the same legal protections in place; that is, with the appropriate number of parties, legal counsel, jurors, and court staff, within a facility that is safe for all attendees to participate meaningfully. Additionally, criminal defendants undoubtedly have the right to a speedy trial, which exists even in times of emergency.

The rights of individual criminal defendants and parties must be weighed against the extraordinary circumstances our community currently finds itself in. Weighing these rights and legal requirements against prevailing local and national public health guidance, the Court finds that it would be impossible to conduct a criminal jury trial within the City of Red Lodge without potentially endangering the health and safety of attendees and undermining the local, national, and even worldwide efforts to slow the spread of the novel coronavirus and the deadly effects of COVID-19. The unwavering advice from public health experts at a local, state, and national level is to engage in “social distancing” (i.e., maintaining a minimum 6-foot physical distance between people) as a vital method of mitigating the risk of viral spread.

The Court finds that its inability to conduct a criminal jury trial without ignoring the current guidance of public health officials poses a substantial risk to the health and safety of the Red Lodge community. Further, mitigating the risk to public health and protecting the health and lives of jury trial participants, including criminal defendants, outweighs the rights and requirements of

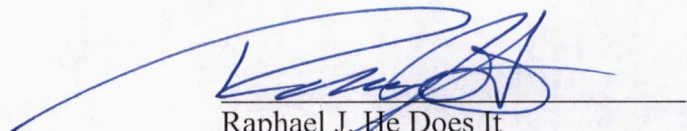
conducting a speedy criminal trial. There are currently no defendants being held in custody who are scheduled for an upcoming jury trial. Thus, the Court also finds that delaying a criminal jury trial for the sake of public health is unlikely to prejudice a defendant by prolonging their incarceration.

It is worth noting that this is not a deliberate attempt by the State to delay trial, and the prosecution has not requested any specific or general delay in holding jury trials. Nor does this arise from understaffing, overly full dockets, or the whims of the Court. Instead, it is the Court's intent to do its part to protect the health and safety of the jurors, the court staff, the parties, and our community as a whole.

Therefore, the Court finds that good cause exists under Mont. Code Ann. § 46-13-401(2) (2019) to continue all cases currently scheduled for a criminal jury trial with a pretrial conference set on or before December 31, 2020. Individual orders setting new dates for impacted cases will be issued separately.

In the event a party believes the individual facts of a case warrant a reassessment of the delay in trial scheduling, a motion should be brought as soon as those facts are known. The party making such a motion will bear the burden of overcoming a heavy presumption in favor of protecting our community during this time. As such, the moving party must articulate specific facts and supporting law to establish that their trial should not be delayed, and that such a delay would prejudice the moving party.

DATED: October 28, 2020



Raphael J. He Does It
City Judge