

THE STATE OF TEXAS,)	54 TH DISTRICT COURT
)	
Plaintiff,)	McLENNAN COUNTY,
)	TEXAS
v.)	
)	
MATTHEW ALAN CLENDENNEN,)	
)	
Defendant.)	
_____)	

EMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY THE STATE SHOULD NOT BE HELD IN CONTEMPT AND MOTION FOR SANCTIONS

Defendant, Matthew Alan Clendennen, hereby moves this Court to issue an order to show cause as to why the State should not be held in contempt in this matter and requests the Court to impose appropriate sanctions based on the State’s failure to comply with previous agreements and orders entered in this matter.

1. A September 15, 2017 pretrial hearing was held in this matter. At that hearing, based upon motions filed by Mr. Clendennen, the State agreed to and the Court ordered the State to: (1) provide the defense with a “realistic” exhibit and witness list by October 17, 2017¹ and (2) provide the defense with an expert witness list and to *specifically identify “gang experts”* by October 17, 2017. See Attachment A (Transcript pages 7-11 of September 15, 2017 hearing).

¹Previously, on or about February 26, 2016, in a response to a similar order, the State had produced a completely useless witness list containing more names than a population of Hallsburg, Texas.

2. As of the filing of this motion, the State has filed no exhibit list, realistic or otherwise, no “realistic” witness list, and has simply provided an expert list containing approximately **155 names** without specifically identifying *any* “gang experts.”²

3. Mr. Clendennen has repeatedly sought a speedy trial in this case³ and this right should not be able to be unilaterally defeated by the State’s non-compliance with its obligations. Indeed, the State should not be able to put Mr. Clendennen in a position where he has to choose between his long sought after trial and the State’s compliance with court orders which are designed to provide him a fair, if not speedy, trial.

4. This Court, of course, has the authority to issue an order to show cause as to why the State should not be held in contempt in order to vindicate the State’s disrespect for the orders previously entered in this case.

5. Nevertheless, a contempt finding, while appropriate, does nothing to vindicate Mr. Clendennen’s rights to a fair trial which the agreements and orders

²When the expert list was emailed to counsel on September 13, 2017, Mr. Clendennen responded, “Pursuant to the agreement from the September 15, 2017 pretrial hearing, please identify any “motorcycle gang” experts.” He received no response.

³Mr. Clendennen filed a Speedy Trial Demand on or about November 12, 2015—two days after he was indicted. Likewise, on or about January 27, 2016, he filed a pleading vigorously opposing the State’s First Motion for Continuance and renewing his Speedy Trial Demand. In addition, on September 7, 2017, he filed a motion to dismiss the case against him based upon the denial of his right to a speedy trial.

were designed to protect. Consequently, Mr. Clendennen seeks the following sanctions based on the three aspects of the State's non-compliance:

FAILURE TO SPECIFY “GANG EXPERTS”

Mr. Clendennen respectfully requests that the State be precluded from calling any “gang experts” at the trial in this matter.

FAILURE TO FILE A REALISTIC EXHIBIT LIST

Mr. Clendennen respectfully requests this Court limit the number of exhibits the State may use at trial and to impose sanctions of \$500 per day for the first one through seven days that a realistic exhibit list is not filed and \$1,0000 per day for any day a realistic exhibit list is not filed past the first seven days.⁴ Mr. Clendennen further requests that the jury in this matter be informed that any delays caused by the State's failure to provide a realistic exhibit list were caused by the State's non-compliance

FAILURE TO FILE A REALISTIC WITNESS LIST

⁴A court has the inherent power to impose monetary sanctions against a party. *See Chade v. Sate*, 2014 WL1007894 (Tex. App.-Waco 2014) (Court could impose “appropriate sanctions to include a requirement that Chade pay for the preparation of a duplicate record or dismissal of his appeal for impairing the State's ability to timely file a response and under our inherent authority to manage and control our docket.”). Indeed, “[e]ven in the absence of an applicable rule or statute, a court has the inherent authority to sanction parties for bad-faith abuses if it finds that to do so will ‘aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity.’” *Howell v. Texas Workers' Compensation Com'n*, 143 S.W.3d 416, 446 (Tex. App.–Austin 2004) (citations omitted)

Mr. Clendennen respectfully requests this Court limit the number of witnesses the State may use at trial and to impose sanctions of \$500 per day for the first one through seven days that a realistic witness list is not filed and \$1,0000 per day for any day a realistic witness list is not filed past the first seven days.

6. Mr. Clendennen realizes that the sanctions are strong. Nevertheless, he is an innocent man indicted for reasons of political opportunism by the elected district attorney and over the recommendations of all three assistant police chiefs and the lead detective on the scene at Twin Peaks. The State rushed this case to indictment and then, when Mr. Clendennen called its bluff and wanted a speedy trial, it moved for a continuance because it was still “investigating.” Now, as the reality of the trial gets closer, the State wants to put Mr. Clendennen to the Hobson’s choice of giving up his two year delayed trial date or timely obtaining the materials that the State agreed on the record to provide him and which the Court ordered to be provided to him.

Respectfully submitted,

/s/ F. Clinton Broden

F. Clinton Broden

TX Bar 24001495

Broden & Mickelsen

2600 State Street

Dallas, Texas 75204

214-720-9552

214-720-9594 (facsimile)

clint@texascrimlaw.com

Attorney for Defendant

Matthew Alan Clendennen

CERTIFICATE OF SERVICE

I, F. Clinton Broden, do hereby certify that, on this 18th day of October, 2017, I caused a copy of the foregoing document to be served on McLennan County District Attorney, 219 N. 6th St., Waco, TX 76701, by email:

/s/ F. Clinton Broden
F. Clinton Broden