

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: ss.	
COUNTY OF CHARLES MIX	)	FIRST JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA	)	11 Cri. 16-103
Plaintiff,	)	RESPONSE TO DEFENDANT
	)	GUERICKE'S MOTION TO
v.	)	CONTINUE JURY TRIAL
	)	
DANIEL GUERICKE,	)	
	)	
Defendant.	)	

The State of South Dakota, through its attorneys, Marty J. Jackley, Attorney General, and Brent K. Kempema, Assistant Attorney General, hereby files this State's Response to Defendant Guericke's Motion to Continue Jury Trial. For the reasons stated herein, the State objects to any further delays in this matter.

**Authority**

In State v. Beckley, the South Dakota Supreme Court laid forth the factors to consider when considering a motion for a continuance.

In deciding whether to grant a continuance, a trial court must consider: (1) whether the delay resulting from the continuance will be prejudicial to the opposing party; (2) whether the continuance motion was motivated by procrastination, bad planning, dilatory tactics or bad faith on the part of the moving party or his counsel; (3) the prejudice caused to the moving party by the trial court's refusal to grant the continuance; and, (4) whether there have been any prior continuances or delays." *In re J.G.R.*, 2004 SD 131, ¶ 15, 691 N.W.2d 586, 591.

2007 SD 122 ¶21, 741 N.W.2d 841.

## **Background**

On April 13, 2016, a Charles Mix County Grand Jury returned an Indictment charging Defendant Guericke with two counts of Falsification of Evidence and four counts of Conspiracy to Offer Fraudulent Evidence. Now, more than two years after the filing of the Indictment, Defendant seeks to delay the trial in this manner:

Defendant's sole basis for his request is that Defendant Guericke's trial counsel is scheduled to appear in a trial in Lake County on August 1, 2018. (It appears that Defendant Guericke's trial counsel filed his notice of appearance on the Lake County case on May 2, 2016.) The State would first note that on October 24, 2017, this Court entered its Scheduling Order and Order Setting Trial Date. According to the order, Defendant Guericke's trial was scheduled to commence on June 25, 2018 and to conclude on July 20, 2018. On March 29, 2018, this Court changed the trial dates for Defendants Guericke and Phelps to July 9, 2018 to July 20, 2018.

On January 29, 2018, Defendant Guericke's trial counsel sent an email to the Court and counsel inquiring as to whether or not the parties would be willing to move the Phelps/Guericke trials to September 2018. The State opposed that request because of scheduling conflicts and indicating that if the trial date did get moved, it would have to be until after November. Defendant Guericke's trial counsel informed the Court, "[t]his won't work. After November is too late. I appreciate your consideration."

On February 9, 2018, (more than three months after setting the Guericke trial) Defendant Guericke's trial counsel set the Lake County trial for August, 1, 2018. This date was agreed to by counsel in the Lake County case knowing that counsel would be in trial in the Guericke case until July 20, 2018. The end date of Guericke's trial has not changed. If anything, the March 29<sup>th</sup> change to trial's commencement date benefits trial counsel. By moving the commencement date of the trial, Defendant Guericke's trial counsel has additional time to prepare for this trial and the Lake County trial.

### **Argument**

#### **1. Prejudice to Opposing Party**

The State submits that further delays in this matter would prejudice the State. This matter has been pending for over two years. The State has arranged for witnesses to clear their schedules in order to be available to provide testimony. By continuing this matter, Defendant Guericke's request for further delay risks witness memory loss or potential unavailability of witnesses.

#### **2. The continuance motion is motivated by bad planning.**

As noted earlier, when Defendant's attorney scheduled the Lake County case he was well aware that Guericke's trial was scheduled to last until July 20, 2018. That has not changed. Defense's counsel's buyer's remorse in scheduling the two trials is not sufficient grounds for moving the trial dates for a matter that has been before this Court for over two years.

#### **3. Denying the motion would not prejudice Defendant.**

Defendant Guericke has failed to demonstrate that a denial of a motion to continue would prejudice Defendant. Defendant has failed to identify any issues in procuring witnesses or testimony. At best, Defendant Guericke's motion highlights how a failure to grant a continuance would inconvenience counsel. This matter has been before this Court for two years. Defense counsel has had plenty of time to prepare Guericke's defense.

#### 4. Prior delays

The State would concede that there have been no formal motions for continuances or delays in this matter. That being said, the record is clear that the State has been requesting a trial date since early on in this case. At the conclusion of the August 18, 2016 Motions Hearing, the State proposed an Order that contained a section for the commencement of trial dates. Those sections remained unfilled.

In addition during the Motion's Hearing on March 17, 2017, the State had requested a trial date in an effort to keep the case moving. Specifically, at that hearing Attorney General Jackley stated on the record that, "I'm asking for a trial date." *Motions Hearing Transcript p. 535*. More than six months later, the State's was granted a trial date on October 24, 2017. Without assigning blame or fault, it is clear, this matter has been significantly delayed and justice requires a resolution to this matter.

**Conclusion**

For the reasons stated herein, the State would request that Defendant Guericke's Motion to Continue Jury Trial be denied and that this matter proceed to jury trial as scheduled.

Dated this 27<sup>th</sup> day of April, 2018.

Respectfully submitted,



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