

CAUSE NO. 2015-2275-C2

THE STATE OF TEXAS

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IN THE DISTRICT COURT

VS.

JUDICIAL DISTRICT NO. 54

THOMAS PAUL LANDERS

MCLENNAN COUNTY, TEXAS

**DEFENDANT’S MOTION TO QUASH THE INDICTMENT
FOR PROSECUTORIAL MISCONDUCT**

Defendant Thomas Landers Moves this Court to Quash the Indictment, for prosecutorial misconduct that is so egregious that Landers cannot receive a fair trial and is being deprived of Due Process. *See Berger v. United States*, 295 U.S. 78, 88 (1935); *Giglio v. United States*, 405 U.S. 150, 153 (1972); Tex. Const. art. 1 §19; U.S. Const. amend. XIV, V.

1. Background & Procedural Posture

Landers is one of over 150 people indicted for the offense of engaging in organized criminal activity related to the shooting that occurred at the Twin Peaks restaurant in Waco, Texas on May 17, 2015. The State has refused to provide *Brady* material to the defense after repeated requests, and is obstructing the defense’s ability to subpoena the material from the police department. The State is engaging in this obstruction and obfuscation, months after this case was supposed

to have gone to a jury trial.

The State attempted to set Landers on an April 2017 trial docket back on February 16, 2017. Defense counsel had a scheduling conflict, and so the case was set for trial on the July 11, 2017 trial docket. Without notice to defense counsel, and after a speedy trial invocation, the case was removed from the July trial docket. No cases went to trial on July 11, 2017 in the 19th District Court – no jail cases, no defendants on bond, no cases went to trial that day.

While this case was still in the 19th District Court, it was set on the November 7, 2017 trial docket. After Judge Strother was ordered recused from this case, it was removed from the trial docket. Counsel for the defense asked the State's prosecutors to approach the 54th district court to set the case on the trial docket, but was told it was "premature" to do so by the State's prosecutor.

When the case was still set on the July 11th trial docket, Judge Strother ordered the State to complete discovery in this case by the end May of 2017 – sufficiently before the trial setting so that defense counsel could prepare.

The State, however, continues to provide discovery to this day. Defense counsel was notified that Round 10 was ready on June 20, 2017, and that an additional round – Round 11 – would be provided. To date, counsel has not received Round 11.

WPD Gang Unit Detective Jeff Rogers:

The discovery that the State has provided is missing the offense reports, supplements, other written material, and media created by, and/or used by, the lead detective on the Twin Peaks case up to the shooting – Jeff Rogers.

Detective Rogers was responsible for getting intelligence from members of the Cossack motorcycle club about their plan to go to Twin Peaks, as well as intelligence that some members of the Cossack motorcycle club planned to invade a party in Pflugerville, Texas held by non-Cossack support clubs (and was attended by grandmothers, women, and children). Detective Rogers coordinated with the Texas Department of Public Safety to set up the surveillance camera at Twin Peaks before the shooting. Detective Rogers informed DPS that there was a high likelihood for violence at Twin Peaks if the Cossacks went to that meeting, and he – along with DPS – knew that the Cossacks were at the Twin Peaks restaurant before anyone from any other motorcycle club appeared.

*The State's prosecutor held in their possession email communications from Jeff Rogers addressed to DPS agents and other law enforcement **and failed to provide them to the defense in discovery.*** Exhibit A – Response from DPS to Counsel's Subpoena – **not provided in discovery.**

State's prosecutor Michael Jarrett explicitly told the court on September 19, 2017 that the State had given EVERYTHING to defense attorneys that the State received from DPS. *Exhibit B – Transcript.* And, yet, on October 18, 2017, during

the trial of Christopher Jacob Carrizal, after Carrizal's attorney showed an email from Jeff Rogers that was received from DPS's responses to defense counsel's subpoena, then and only then, did the State show that they too possessed those emails.

Counsel for Landers has requested the offense reports and other discovery related to Gang Unit Detective Jeff Rogers on **multiple** occasions. *Exhibit C*. Counsel for Landers was forced to subpoena the material directly from the Waco Police Department, only to receive a Motion to Quash her subpoena, instigated by the State, but not signed by any prosecutors so that they do not look like they are withholding evidence. *Exhibit D*.

2. "Prosecutor may hide, defendant must seek?"

The United States Supreme Court has had many occasion to underscore the "special role played by the American prosecutor in the search for truth in criminal trials." *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (citing *Strickler*, 527 U.S., at 281). The State has an obligation "to refrain from improper methods to secure a conviction." *Id.* The Court should not approve of "dishonest conduct or unwarranted concealment." *Id.* (citing *See Kyles*, 514 U.S., at 440).

As this case stands today, the State is refusing to provide discovery about an essential witness in the case – Jeff Rogers. When the defense has attempted to get that evidence directly from the police department, the State responds with

obstruction. As the case stands today, Landers cannot get a fair trial because the State is obstructing his access to necessary, material, exculpatory, and impeachment evidence.

Respectfully submitted,

By: _____

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Certificate of Service

I, Millie Thompson, certify that on October 20, 2017, a true and correct copy of this Motion to Disqualify was served on the McLennan County District Attorney's Office by hand delivery.

Millie L. Thompson