

“Twas the Week Before Christmas-By Robert Pelton

In the spirit of the Christmas season and to remind our members never to give up on any motion, we want to share this motion with you and discuss some points on Motions for Continuances in State court. In the case of this motion, three other motions had already been filed and denied. In an act of frustration and desperation, we filed this one below, which was granted. In the motion, only the defendant names and case number have been changed. This has been published previously, but for those who may have missed it, I hope it brings a smile to your face at the end of a hard fought year for your clients.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION**

UNITED STATES OF AMERICA	§	
	§	
V.	§	CR. NO. MO 12/25/2014
RUDOLPH A/K/A RED NOSED REINDEER,	§	
DASHER, DANCER, PRANCER, VIXEN,	§	
CUPID, COMET, DONNER A/K/A DONDER	§	
AND BLITZEN A/K/A BLITEM	§	

DEFENDANT’S FOURTH MOTION FOR CONTINUANCE

Now comes Robert Pelton, counsel for Defendant, Rudolph a/k/a Red Nosed Reindeer, and respectfully requests the above styled case be continued for the following reasons:

TWAS THE WEEK BEFORE CHRISTMAS

T’was the week before Christmas and all through the land;
The courts are all quiet except in Mid-land;
In all the high courts it’s as quiet as a mouse;
Judge Thomas and Scalia are both at their house;

My grandkids say Paw Paw, where will you be?
It’s up to Judge Platt., I’ll just wait and see;

Santa is loaded and waiting to go;
When will he leave...I really don’t know;

National security is not at stake;

Please, your honor, Give us a break;

Since taking this case, I've tried my best;
Please give me your honor, a much needed rest;
We've been here three times and never been late;
Please reset this case until March of '08.

Respectfully Submitted,

Robert Pelton
1610 Richmond Avenue
Houston, Texas 77006
(713) 524-8471 Telephone
(888) 834-3696 Fax
SBOT 15733500

VERIFICATION

STATE OF TEXAS §

COUNTY OF HARRIS §

ON THIS DAY, personally appeared ROBERT PELTON, who after being placed under oath, stated the following:

"My name is Robert Pelton and I am the attorney of record for Rudolph a/k/a/ Red Nosed Reindeer and have been so at all material times relevant to this proceeding.

"I have read the attached pleading and every statement is within my personal knowledge and is true and correct."

Robert Pelton
ROBERT PELTON

Sworn to and subscribed before me on December 19, 2007.

Robyn R. Harlin
ROBYN R. HARLIN

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Epilogue: Once this motion was granted, it gave us sufficient time to complete our preparation of the case in a proper manner. Because we had additional time, we were able to adhere to our duty bound ethical oath: to zealously defend our client.

Facts helpful to the defense are always hidden at the bottom of the well. That digging takes time and tenacity.

Time is the most valuable commodity to lawyer. Abraham Lincoln said that “A lawyer’s time and advice are his stock in trade.” If time is used wisely, our clients benefit. We all need time to work on our cases and explore all possible defenses or punishment options. We never have enough time.

On the flip side, judges and prosecutors want to move the docket. Prosecutors’ caseloads are huge and the statistics of open cases in their court are ever present on the mind of our judges. As defense counsel, we must be the gatekeepers to ensure our clients receive their right to effective assistance of counsel based on a thorough investigation of the facts. Without those facts our client cannot make his or her decision to move to trial or prepare for mitigation. This takes time. It is your job to get that time.

One Harris county judge who has since departed, bragged that if a judge was still in court after twelve noon, he was not doing a good job. I was in court the day he made the statement to a local television reporter named Wayne Dolcefino. I told the judge to remain silent; but he like many let his alligator mouth override his humming bird ass. It was on the 6 o’clock news. He told me the next day he would listen to me the next time. The next time never came because he was defeated in the next election and his comments made great propaganda for his opponent. An arbitrary “rocket docket-- move it along mentality” goes against the grain of our justice system to the detriment of the citizen accused.

All lawyers know that a continuance usually works in favor of a defendant, but it is routinely used by the defense as well as the state in accord with Article 29.03 of the Texas Code of Criminal Procedure¹. By and large, most continuances are reached by agreement with the State. When necessary, a well drafted Motion for Continuance should contain exhibits. If the exhibits involve personal or

¹ Texas Code of Criminal Procedure-Article 29.03 Sufficient Cause

Art. 29.03 FOR SUFFICIENT CAUSE SHOWN. A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown, which cause shall be fully set forth in the motion. A continuance may only be as long as is necessary.

confidential information, request an in camera inspection by the Judge in your motion. **Never** underestimate the power of demonstrative exhibits. A picture is worth a thousand words. Don't be shy. In the event your motion is objected to, and a controverting motion is submitted by the state, pursuant to Article 29.09² of the Texas Code of Criminal Procedure, your motion and your exhibits must stand alone to win the day. Do not rely on a stellar oral argument to get you by. Article 29.10³ makes it clear the testimony shall be made by affidavit. If the continuance has become the 900 pound gorilla in the courtroom, use technology readily at hand. It is amazing how fast a motion for continuance will be granted when you have a photo of a swollen, bruised, battered or bleeding body part.

Happy Holidays and Best Wishes for the New Year.

² Texas Code of Criminal Procedure-Article 29.09 Controverting Motion

Art. 29.09. CONTROVERTING MOTION. Any material fact stated, affecting diligence, in a motion for a continuance, may be denied in writing by the adverse party. The denial shall be supported by the oath of some credible person, and filed as soon as practicable after the filing of such motion.

³ Texas Code of Criminal Procedure-Article 29.10 When Denial is Filed

Art. 29.10. WHEN DENIAL IS FILED. When such denial is filed, **the issue shall be tried by the judge, and he shall hear testimony by affidavits**, and grant or refuse continuance, according to the law and facts of the case.