

FILED  
AT 4:57 O'CLOCK P M

CAUSE NO. CR- [REDACTED]-G

JAN 18 2017

STATE OF TEXAS

\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF  
JUANINOJOSA, CLERK  
District Courts, Hidalgo County  
370th JUDICIAL DISTRICT Deputy#13  
HIDALGO COUNTY, TEXAS

v.

[REDACTED]

**MOTION FOR COURT TO DETERMINE POSSIBLE BRADY VIOLATIONS BY**

[REDACTED]

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES [REDACTED] Defendant herein, and files this motion for Court to Determine Possible Brady Violations pertaining to Jane Doe 10/19/16 "Outcry" and as grounds therefore would show the court the following:

1. On 10 January 2017, Assistant District Attorney [REDACTED] provided a copy of CPS Records which included updated records into December 2016.
2. On pages 326 and 327 of the 12/22/16 printout of CPS Records, attached hereto as Exhibit 1, CPS agents [REDACTED] and [REDACTED] document that "criminal investigator [REDACTED]" had interviews with Jane Doe. In one of those interviews, Jane Doe is alleged to have made a new allegation of sexual abuse against Defendant in October 2016.
3. On 31 October 2016, Assistant District Attorney [REDACTED] announced 'ready' for trial. Trial was set for 19 December 2016.
4. On 6 December 2016, Defendant's counsel received a copy of a letter from CPS stating that an allegation of abuse dated to 10/19/16 was 'ruled out'. Defendant's counsel sent a copy via email to Assistant District Attorney [REDACTED]. In the email thread, Ms. [REDACTED] expressed some surprise at the CPS letter.
5. On 7 December 2016, Assistant District Attorney [REDACTED] announced 'ready' for trial. By the afternoon, Assistant District Attorney [REDACTED] reported that she had spoken to CPS and the letter pertained to a new allegation involving a 'counselor'.
6. Defendant is requesting, in a separate instrument, for an order to obtain the Jane Doe's counselor's records.

7. Defendant has filed a subpoena for service upon Ms. [REDACTED] for her notes, calendars, voicemails, text messages, and emails pertaining to Jane Doe [REDACTED] of the months of October, November, and December 2016 to Court for possible in camera inspection.
8. Defendant has filed a 38.072 Notice of Assistant District Attorney [REDACTED] as a possible Outcry witness. Ms. [REDACTED] has objected to said notice of Outcry on the basis that the 10/19/16 allegation described in the notice and CPS record is neither indicted nor noticed as an extraneous act.
9. Defendant requests that Assistant District Attorney [REDACTED] be ordered to preserve all notes, calendars, voicemails, text messages, and emails pertaining to Jane Doe [REDACTED] of the months of October, November, and December 2016.
10. **Defendant requests that Assistant District Attorney [REDACTED] be placed under oath and examined on the matter of 10/19/16 allegation to assure that she is neither a witness nor withholding Brady information.** Without an examination of Ms. [REDACTED] on the matter of the 10/19/16 allegation, meaningful examination of the accuser/witness may not be had.
11. Defendant's request is based upon Texas Disciplinary Rules (3.02, 3.03, 3.04, 3.09, 4.01, 8.04), Texas Code of Criminal Procedure (2.01 and 39.14 (a)-(n)), and Procedural and Substantive Due Process under the Texas Constitution and U.S. Constitution.

WHEREFORE PREMISES CONSIDERED, DEFENDANT respectfully prays that the court grant this motion, order the State and Assistant District Attorney [REDACTED]'s notes, calendars, voicemails, text messages, and email pertaining to Jane Doe [REDACTED] of the months October, November, and December 2016 be preserved in the form that the Court finds reasonable, and allow for examination of Assistant District Attorney [REDACTED] under oath regarding the 10/19/16 allegation and subsequent disclosures to Defendant.

Respectfully submitted,

Law Office of Lennard K. Whittaker  
P.O.Box 720876  
McAllen, TX 78504  
956 821 9918  
fax: 866 596 6190  
teksus@mae.com

By:   
Lennard K. Whittaker

SBT 24008274

Attorney for [REDACTED]

**Certificate of Service**

I, Lennard K. Whittaker, affirm that a true and correct copy of the foregoing instrument has been delivered to:

Hidalgo County District Attorney

100 E. Cano

Edinburg, TX 78539

 [da.co.hidalgo.tx.us](mailto:da.co.hidalgo.tx.us)

 [@da.co.hidalgo.tx.us](mailto:da.co.hidalgo.tx.us)

  
Lennard K. Whittaker

CAUSE NO. CR [REDACTED] G

STATE OF TEXAS

\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT

v.

370th JUDICIAL DISTRICT

[REDACTED]

HIDALGO COUNTY, TEXAS

**ORDER ON DEFENDANT'S MOTION FOR COURT TO DETERMINE POSSIBLE  
BRADY VIOLATIONS BY [REDACTED]**

On this the \_\_\_ day of \_\_\_\_\_, 2017, came to be heard in the above-entitled and numbered cause Defendant's Motion for Court to Determine Possible Brady Violations by [REDACTED] and this court finds that Defendant's motion is hereby:

**GRANTED**, orders the District Attorney to preserve ALL District Attorney notes, calendar, voicemails, and text messages pertaining to Witness Jane Doe 10/19/16 'Outcry'.

The Court instructions on method of preservation: \_\_\_\_\_

**GRANTED**, Assistant District Attorney [REDACTED] is ordered to attend Court on \_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ a.m./p.m. to give testimony on the subject of possible Brady violations pertaining to 10/19/16 allegation.

**DENIED.**

Signed this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Judge Presiding

cc:

Law Office of Lennard K. Whittaker  
P.O. Box 720876  
McAllen, TX 78504  
956 821 9918  
fax 866 596 6190  
teksus@mac.com

Hidalgo County District Attorney  
100 E. Cano  
Edinburg, TX 78539

[REDACTED] da.co.hidalgo.tx.us  
[REDACTED] da.co.hidalgo.tx.us