

CAUSE NO. CR [REDACTED] G

STATE OF TEXAS

v.

[REDACTED]

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IN THE DISTRICT COURT

370th JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

MOTION TO PRECLUDE [REDACTED] FROM PROSECUTING TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, [REDACTED] DEFENDANT herein, and files this motion for the State to preclude Assistant District Attorney [REDACTED] from prosecuting trial and as grounds therefore would show the court the following:

1. In court's offices on 30 March 2017, Assistant District Attorney [REDACTED] stated that, on or about 18 October 2016, she heard the alleged victim [REDACTED] disclose a new allegation of abuse against the Defendant. (Ms. [REDACTED] emphasized the relevance of this new allegation by arguing that a delay in this case would lead to a superseding indictment based on this new allegation.)
2. Attached hereto is also a portion of the CPS reports indicating that a [REDACTED] [REDACTED] received a new allegation of abuse.
3. The 6-year old alleged victim/witness, if unable to recall the details of the 10/18/16 allegation, would present the possibility of Assistant District Attorney [REDACTED] being called to testify as to the details of the new allegation, by either the State or Defense.
4. If Assistant District Attorney [REDACTED] testifies without prosecutorial preclusion, she would be able to testify and then conduct argument in summation. If allowed to both testify and conduct argument, she would be able to bolster her own testimony and credibility. She would confuse the jury as to whether she is a witness under oath or an advocate making arguments.
5. If Assistant District Attorney [REDACTED] is allowed to be both witness and advocate for the State, her statements in summation could violate Defendant's state and federal right to confront the witnesses (because it is in summation). (6th Amendment US Constitution.)
6. If Assistant District Attorney [REDACTED] is allowed to be both witness and advocate for the State, her statements in summation would violate Defendant's state and federal Due

Process rights to a fair trial by confusing the jury. (Art. 1, Section 19 Texas Constitution and 14th Amendment of US Constitution)

WHEREFORE PREMISES CONSIDERED, DEFENDANT respectfully prays that the court grant this motion as a matter of substantive and procedural due process.

Respectfully submitted,

Lennard K. Whittaker, Attorney  
P.O.Box 720876  
McAllen, TX 78504  
956 821 9918  
fax: 866 596 6190  
teksus@mac.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

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

\_\_\_\_\_  
Lennard K. Whittaker

CAUSE NO. CR [REDACTED] G

STATE OF TEXAS

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IN THE DISTRICT COURT

v.

370th JUDICIAL DISTRICT

[REDACTED]

HIDALGO COUNTY, TEXAS

**ORDER ON DEFENDANT'S MOTION TO PRECLUDE [REDACTED]  
FROM PROSECUTING TRIAL**

On this \_\_\_\_\_ day of \_\_\_\_\_ 2017, came to be heard the foregoing Motion to Preclude [REDACTED] from Prosecuting Trial and upon consideration:

**It is ordered** that said Motion to Preclude [REDACTED] from Prosecuting Trial is hereby:

- GRANTED.** [REDACTED] is precluded from prosecuting trial.
- DENIED.**

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

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

cc:

Lennard K. Whittaker, Attorney  
P.O. Box 720876  
McAllen, TX 78504  
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