

**CAUSE NO. CR-1341-16-G**

**STATE OF TEXAS**

\*

**IN THE DISTRICT COURT**

\*

**v.**

\*

**370th JUDICIAL DISTRICT**

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**CARLOS ALEJANDRO ORTIZ**

\*

**HIDALGO COUNTY, TEXAS**

**DEFENDANT'S MOTION FOR LIST OF STATE'S WITNESSES**

TO THE HONORABLE JUDGE OF SAID COURT:

The above DEFENDANT moves saying:

1. The Defendant respectfully requests this trial court to instruct the prosecution to submit to defense counsel a written list of the names, work and home addresses and phone numbers of all witnesses and potential witnesses, whom the prosecution expects to or may call to testify during any phase of trial in this case, as to any matter, including but not limited to the following:

- a. Any fact connecting or tending to connect the Defendant to the commission of offense alleged herein;
- b. Any fact connecting or tending to connect the Defendant to the commission of any and all other offenses which the prosecution intends to prove up during this trial;
- c. Any expert opinion, including but not limited to opinions as to laboratory analysis as to narcotics and/or dangerous drugs, intoxication or sobriety of the accused and/or any other witness, mental capacity of the accused as to competency and/or sanity, physical condition at the relevant times of any witness or alleged deceased based upon a medical examination and/or medical report, handwriting comparisons, fingerprint examinations, fabric tests, blood type analysis, polygraph and/or hypnosis examinations, value, or the character and/or reputation of the defendant as to any character or habit trait including but not limited to reputation as to truth and veracity or being peaceful and law abiding;
- d. As to any fact, as a rebuttal witness, to refute the Defendant's defense of not guilty; and
- e. The character and/or reputation of any witness, including the accused or any alleged deceased.

2. This motion applies to each witness the State intends to describe in testimony or to call to testify, or could possibly call to testify during any phase of this case's trial, namely during:

- a. any hearing without the jury;
- b. the State's case-in-chief on the issue of whether the Defendant is guilty as alleged in the charging instrument;
- c. any rebuttal testimony of the State; and/or
- d. the punishment hearing, if any.

3. Under Article 20.20, VACCP, the prosecution is obligated to endorse upon the indictment the names of the witnesses upon whose testimony said indictment was found. No such endorsement has yet occurred. Thus defendant requests such endorsement be judicially required at this time so that the State will be in compliance with the law embodied in said Article 20.20.

4. Articles 35.15(b), VACCP, (1991), authorizes peremptory challenges and provides in part:

In non-capital felony cases and in capital cases in which the States does not seek the death penalty, the State and defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together each defendant shall be entitled to six peremptory challenges and the State to six for each defendant.

5. Article 35.16(a), VACCP (1991), authorizes challenges for cause and provides in part:

A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

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6. That he is a witness in the case;

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9. That he has a bias or prejudice in favor of or against the defendant;

10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as how his conclusion was formed, and the extent to which it will affect his actions; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumour or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the jurors shall be discharged;...

6. Article 35.16(c), VACCP (1991), also provides:

A challenge for cause may be made by the defense for any of the following reasons:

- (1) That he is related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes, to the person injured by the commission of the offense, or to any prosecutor in the case; and
- (2) that he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

7. In order to permit the defendant herein to exercise in an intelligent manner his peremptory challenges and his challenges for cause, it is necessary for the prosecution to submit a complete written list of the witnesses requested above in order that defense counsel may inquire of the prospective jurors as to whether or not, among other things, said prospective jurors know, are related to or have heard of any of said witnesses by name or reputation, and if so, whether this knowledge would affect his or her respective judgment and/or verdict in this cause. If the Defendant is not given a complete list of the names of said witnesses as requested, the Defendant will be precluded from determining whether or not any prospective juror has a bias or prejudice against the Defendant and/or in favor of the prosecution, and thus Defendant will be deprived of

intelligently exercising the peremptory challenges to which the Defendant is entitled, and further, the Defendant will be precluded from intelligently exercising his challenges for cause.

8. In the event the prosecution during the trial of this cause attempts to elicit testimony from a witness whose name has not been previously disclosed to the Defendant prior to the voir dire examination of the jury panel, the Defendant requests this Court to prohibit the prosecution from using the testimony of any such witness if the Court finds that the prosecution know or through the exercise of reasonable diligence should have known of the existence of such a witness prior to the jury selection beginning and thus should have included the name of such witness on the list of witnesses submitted to the Defendant prior to the voir dire examination.

WHEREFORE PREMISES CONSIDERED, DEFENDANT respectfully prays that the court will require the State to immediately provide defense counsel a complete written list of witnesses as requested above.

Respectfully submitted,

Law Office of Lennard K. Whittaker  
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 Carlos A. Ortiz

## 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 N. Closner  
Edinburg, TX 78539  
[hope.palacios@da.co.hidalgo.tx.us](mailto:hope.palacios@da.co.hidalgo.tx.us)  
[savannah.gonzalez@da.co.hidalgo.tx.us](mailto:savannah.gonzalez@da.co.hidalgo.tx.us)

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Lennard K. Whittaker

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**CARLOS ALEJANDRO ORTIZ**

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**HIDALGO COUNTY, TEXAS**

**ORDER ON DEFENDANT'S MOTION FOR LIST OF STATE'S WITNESSES**

After considering the above motion, it is ordered by the court that the above motion be and the same is hereby in all things \_\_\_\_\_. IT IS ALSO ORDERED that to defense counsel, the prosecutor shall tender all said requested information within \_\_\_\_ days of today.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
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 N. Closner  
Edinburg, TX 78539  
[hope.palacios@da.co.hidalgo.tx.us](mailto:hope.palacios@da.co.hidalgo.tx.us)  
[savannah.gonzalez@da.co.hidalgo.tx.us](mailto:savannah.gonzalez@da.co.hidalgo.tx.us)