NO. 2015-CR-4203

EX PARTE	)	IN THE DISTRICT COURT
	)	437TH JUDICIAL DISTRICT
MIGUEL MARTINEZ	)	BEXAR COUNTY, TEXAS

PRETRIAL APPLICATION
FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE LORI I. VALENZUELA, JUDGE OF THE 437TH JUDICIAL DISTRICT COURT:

Miguel Martinez files this Pretrial Application for Writ of Habeas Corpus pursuant to articles 11.01, 11.05, 11.08 and 11.23 of the Texas Code of Criminal Procedure, and Article V, § 8 of the Texas Constitution, and moves to bar trial on this indictment because it is prohibited by the Double Jeopardy Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 14 of the Texas Constitutions..

I.
Summary Of Argument

More than two years ago, the first chair prosecutor learned that his second chair prosecutor had once had a sexual encounter with the star witness in this case. Despite the considerable and obvious exculpatory value of this information, the prosecutor intentionally told no one, because, he said, he wanted to protect the reputation of his colleague. Finally, a week before the trial began, the prosecutor told his boss and trial partner, Nicholas LaHood, and the two of them consulted with the chiefs of their ethical disclosure and appellate divisions.

The prosecution team caucused for the rest of that week and into the next, and, when it came time to select the jury, they deliberately elected to do so without disclosing the exculpatory information to the defense. The following day they disclosed the information to the Court *ex parte*; later that day, and only after being ordered to do so, did the state make a full disclosure to the defense. Full disclosure came after the jury was sworn, and after the prosecutor had made his opening statement and begun the direct examination of the first witness.

During a meeting the next day, District Attorney LaHood told the Court that the state would agree to a mistrial, and that when the case was retried he would pick a better jury and would be more prepared for trial. The defense responded that it was still contemplating the appropriate remedy, and that one option would be to move for a mistrial and then seek to bar retrial because of intentional prosecutorial misconduct. Mr. LaHood became enraged and threatened that if that was done he would "destroy" and "shut down" the defense lawyers's practices and make sure they never got hired on another case again in Bexar County. He said he would go to the media and do whatever it took, and that he did not care what happened to him. He could always go back to private practice, he said, and he would make more money as a defense attorney. The District Attorney's tactic appeared to be designed to frighten the defense away from investigating and pursuing a lawful remedy on behalf of their client. The defense assured Mr. LaHood they would not be intimidated.

The trial was recessed so the parties could investigate, and after learning more the defense did move for a mistrial, asserting that, although it was not desired, it was the only remedy available to address the prosecutors's failure to timely disclose exculpatory evidence. The prosecution denied that it had done anything wrong, but did not object to the mistrial, and the motion was granted by the Court. A new trial date was scheduled and the defense made it clear that retrial would be challenged.

This application objects to a retrial because it is barred by the Double Jeopardy Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, § 14 of the Texas Constitution. Specifically, retrial is prohibited because the prosecutor intentionally goaded the defense into moving a mistrial; because the prosecutor intentionally failed to disclose exculpatory evidence with the specific intent to avoid the possibility of an acquittal; and because the prosecutor intentionally failed to disclose exculpatory evidence with intent to protect the reputation of a colleague. The indictment against Miguel Martinez should be dismissed with prejudice.

II.
The Constitutional Bases Of Our Claims

Miguel Martinez is unlawfully restrained of his liberty by the Sheriff of Bexar County, where he is charged by bill of indictment in cause number 2015-CR-4203. The restraint against Mr. Martinez is illegal because his prosecution under this indictment is barred by the Double Jeopardy Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and by Article I, § 14 of the Texas Constitution.

III.
A Pretrial Application For Writ Of Habeas Corpus Is The Preferred Way Of Litigating Jeopardy Issues

When a person asserts that further prosecution would constitute double jeopardy the proper, indeed, the preferred vehicle for litigating that matter is with a pretrial application for writ of habeas corpus. The concept of double jeopardy is meant to protect a person, not only from multiple convictions or punishments for the same crime, but also from being subjected to the hazards that result from multiple trials. "The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." *Green v. United States*, 355 U.S. 184, 187-88 (1957); *accord*, *Ex parte Chaddock*, 369 S.W.3d 880, 885-86 (Tex. Crim. App. 2012). The only way to avoid the danger of a second illegal trial is to bar that trial before it occurs. That is the purpose of the pretrial application for writ of habeas corpus, and that is why the procedure is recognized under both state and federal law. *See Ex parte Robinson*, 641 S.W.2d 552, 555 (Tex. Crim. App. 1982)(a pretrial writ of habeas corpus is the proper procedure to assert the "Fifth Amendment right not to be exposed to double jeopardy and [to insure that it is] reviewable before that exposure occurs"); *see also Abney v. United States*, 431

U.S. 651, 660-61 (1977)("the rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence); *Headrick v. State*, 988 S.W.2d 226, 228 (Tex. Crim. App. 1999)("the right not to be tried twice for the same offense would be meaningless if it could not be raised before the commencement of the second trial") .

IV.
The Factual Basis Of This Application

A. What the police knew in 2015.

The indictment alleges that Miguel Martinez committed the offense of murder on or about January 11, 2015. [Exhibit A, attached] On January 19, 2015, San Antonio Police Detective Duke contacted Gregory Dalton and asked him to come to the homicide office. [Exhibit B, attached][1] Although "very reluctant . . . he ultimately agreed." As they were about to drive away, Dalton ran off and discarded some marijuana, which caused Duke to arrest him. At the homicide office Duke read Dalton his *Miranda* warning based on the marijuana charge, and began to question him about the murder. As soon as the conversation turned to his vehicle, Dalton said, "I want an attorney." The homicide detective then explained to Dalton that "he is jammed up in a murder case and he could be charged with murder." Dalton continued to deny knowing anything about a

[1] Exhibit B is an excerpt from Detective Dukes's prosecution guide, the source for the facts asserted in § IV.A of this Application.

murder, but as the detective elaborated, he changed his story and began to implicate Miguel Martinez. Eventually, Dalton claimed that Mr. Martinez had admitted his guilt to him. Dalton changed his story frequently and told a number of lies during this six hour interview, and he continued to insist that he himself had not committed the murder, that he had merely picked up Mr. Martinez from the murder scene, thinking it had been a "drug drop."

Duke summoned Dalton back to the homicide office on February 9, 2015 "to clarify some points in his original statement." When confronted with his lies, Dalton admitted, among other things, that, after Mr. Martinez had allegedly confessed to the murder, he (Dalton) told him to "take the battery out and get rid of [the complainant's Iphone)."

On January 21, 2015, Detective Duke interviewed Mr. Martinez, who denied committing the murder. After their conversation, the detective "walked a warrant," and Mr. Martinez was arrested the same day. He has been incarcerated in the Bexar County Adult Detention Center since that time. On March 1, 2015, Detective Duke completed his prosecution guide and delivered it to the Bexar County District Attorney's Office.

B. The second-chair properly disclosed her relationship, but the first-chair made a conscious choice not to.

Assistant district attorney Jason Goss, first-chair prosecutor in the 437th Judicial District Court, remembers first getting the file in this case in January or February, 2015. It was his responsibility to do intake on all murder cases in the Court, and he did so here.

Shortly after receiving the prosecution guide, Mr. Goss asked his second-chair prosecutor to help on the case, gave her the case file, and instructed her to read it to familiarize herself with the case. The next day she came into his office and shut the door. She was "embarrassed" and "mortified" and explained that three years before she had had a sexual encounter with Gregory Dalton. She and Mr. Goss agreed she could not do anything further on the case. [In Chambers Hearing, February 9, 2017, p. 33] She asked that, if possible, no one else be notified, and Mr. Goss agreed. Acting unilaterally and motivated, he says, by a desire to protect his colleague, he constructed what he called a "firewall" and instructed her to have nothing more to do with the case. He had no further conversations with his colleague about the case.

As his colleague had requested, Mr. Goss told no one else of the relationship for almost two years. At some point, District Attorney Nicholas LaHood, while conducting a review of cases in his office, learned of this case and, according to him, it "caught [his] attention because of the sheer callousness and cold bloodedness of the defendant's actions."[2] Mr. LaHood decided he would prosecute the case with Mr. Goss.

C. The defense's motion for exculpatory evidence.

The effective date of the Michael Morton Act is January 1, 2014. It governs this case, which allegedly occurred on January 11, 2015. Texas prosecutors are obligated to disclose to the defense any exculpatory, impeachment, or mitigating information in its

[2] Elizabeth Zavala, *San Antonio's LaHood Prosecuting 2015 Murder Case Himself*, SAN ANTONIO EXPRESS-NEWS, February 8, 2017.

possession that "tends to negate the guilt of the defendant," and there is no requirement that the defense make a request for such evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 39.14(h).

But even assuming the defense were required to request disclosure, it did so here, far in advance of trial, on July 29, 2015, with its Motion For Discovery Of Exculpatory And Mitigating Evidence that relied on *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Bagley*, 473 U.S. 667 (1985); the Due Process of Law Clause of the Fourteenth Amendment to the United States Constitution; the Due Course of Law provisions of Article I, §§ 13 and 19 of the Texas Constitution; and Rule 309(d) of the Texas Disciplinary Rules of Professional Conduct. This motion was granted on January 19, 2017.

D. The District Attorney, the Appellate Section, and the Chief of the Ethical Disclosure Unit conferred and consciously decided to select the jury without disclosing the sexual relationship to either the Court or the defense.

As shown by an email from prosecutor Goss, he and Mr. LaHood interviewed Gregory Dalton on Tuesday, January 31, 2017. [Exhibit C, attached] According to Mr. Goss, sometime during this interview or shortly after it, he concluded Dalton was more than "just somebody who is a witness to the case. . . . I kind of get an idea of what the defensive theory might be. I kind of get an idea of the importance of all this. . . . But at the time, with all that information, and that's when I said I don't need to keep quiet about this. This is something that we need to at least talk to about with other people because I

can see now how there can be an issue, and that's when we talked." " [In Chambers Hearing, February 9, 2017, p. 34] Apparently the "we" Mr. Goss meant was his boss, District Attorney LaHood. In any event, this conversation very clearly did not include anyone on the defense team.

Although Mr. Goss has said the *Brady/Morton* issue regarding the relationship between Dalton and his colleague was not clear,[3] he did feel obligated on February 1 to notify the defense in writing about information that Dalton had kept from Detective Duke, and had only revealed in his interview the day before, namely that Mr. Martinez had allegedly solicited Dalton's assistance a month before the murder and offered him $1,000.00 to help. Dalton claimed he declined, but did request the opportunity to have sex with the intended victim before she was killed. [Exhibit D, attached] At the time this written notice was provided, defense lawyer Christian Henricksen asked Mr. Goss if he had any other exculpatory information to disclose. Mr. Goss said he did not.

Sometime on or after Wednesday, February 1, Mr. Goss and Mr. LaHood spoke to

---

[3] At other times, Mr. Goss seemed to recognize and admit very clearly that "there is impeachment value." [In Chambers Hearing, February 8, 2017, p. 12] "I'm trying to avoid her reputation being impugned while also keeping in mind *the fact the defendant has the right, as the Court has pointed out, to impeach a witness for that relationship*." [In Chambers Hearing, February 8, 2017, p. 12] [emphasis supplied] "It's never been our position that it's not possible to impeach." [In Chambers Hearing, February 9, 2017, p. 12] "And then once I realized the importance, you know, obviously we do whatever we can to do our ethical duty to make sure you guys know about it. And like we've said, *there's no argument about your need to investigate*." [In Chambers Hearing, February 9, 2017, p. 35][emphasis supplied]

"appeals," whose response was, "I don't know."[4] The law, according to Mr. Goss, was "not actually clear . . . that that is even Brady or can be impeached." [In Chambers Hearing, February 9, 2017, p. 35] Next, input from the "Ethical Disclosure Unit" was sought.[5] The prosecution team caucused for the rest of that week and into the next, but continued to disclose nothing to the defense about the sexual relationship..

On Tuesday, February 7, 2017, Court convened at 10:15 am to consider certain pretrial matters. Despite having now had a team of lawyers, including the District Attorney himself, considering the issue for a week, the prosecutors said nothing about their colleague's relationship with star witness Dalton. Jury selection commenced at 11:44 am, and concluded at 7:48 pm, and still, no mention was made of the relationship.

E. Finally, after the jury was selected, the prosecutors first made an *ex parte* disclosure to the Court, and then a partial disclosure to the defense; later, after being ordered by Court to do so, full disclosure was made, but only after the jury was sworn, an opening statement was made, and the first witness was called.

Court convened the next day, Wednesday, February 8, at 10:00 am. Prosecutor Goss filed the State's Motion For Ex Parte Communication And In Camera Consideration Of Potential Conflict Issue and presented same in chambers to this Court. The *ex parte* hearing concluded at 10:23 am, after which Mr. Goss disclosed to the defense, for the very first time, that an unnamed person in the District Attorney's Office had formerly had a

---

[4] We believe that, by "appeals," Mr. Goss is referring to the Chief of the Appellate Section, Enrico Valdez.

[5] We believe that the person consulted was assistant district attorney Patrick Ballantyne.

sexual relationship with its witness Gregory Dalton. Mr. Goss did not divulge the name of the prosecutor, or, despite its obvious relevance, that she had once prosecuted in the 437th, and that she had actually been given access to the prosecutor's file in this case. Not knowing the name of the prosecutor, or that she had been assigned to the 437th and had access to the case file, the defense was not overly concerned.

At 11:33 am the jury was sworn, and at 11:40 am, Mr. Goss commenced his lengthy, detailed opening statement. The defense did not make an opening statement. The state called it's first witness, Luis Castillo, at 12:18 pm, and conducted direct examination until 12:42 pm, when the Court recessed for lunch. At this time, for the first time, and only after being ordered to do so by the Court, the prosecution finally disclosed to the defense what it had known for almost two years — that a certain prosecutor who had formerly been the second-chair prosecutor in this Court and who had actually worked on the case for at least one day with full access to the file, had once been sexually involved with Gregory Dalton, a star witness for the state against Miguel Martinez.

F. The District Attorney said he would pick a better jury, would get more prepared, and then threatened to "destroy" and "shut down" the practices of members of the defense team if they pursued a lawful remedy.

Court recessed for the day at 4:10 pm on February 8. The defense was concerned about the latest disclosure from Mr. Goss and sent an email to the Court and the prosecution that evening requesting a continuance to further consider this issue, and the Court granted the request. [Exhibit E, attached]

The next day, February 9, Mr. Goss texted Mr. Henricksen and requested a meeting in the Court's chambers. During that meeting District Attorney LaHood told the Court that the state would agree to a mistrial. He said that if given the opportunity to choose another jury, he would pick a better jury than the one then in the box. And he promised that the prosecutors would be better prepared for trial the next time. Joe Gonzales, lead counsel for Mr. Martinez, responded that the defense was unwilling to agree to a mistrial at that time, that the defense was still investigating and considering its options, and that if the defense believed after investigation that requisite prosecutorial misconduct had been committed, it would challenge a retrial as constitutionally prohibited. Mr. LaHood became enraged and directly threatened Mr. Gonzales and Mr. Henricksen. Looking at first one, then the other, the District Attorney said that he would "destroy" and "shut down" their practices and would make sure they never got hired on another case again in Bexar County. He said he would go to the media and do whatever it took, and that he did not care what happened to him. He could always go back to private practice, he said, and make more money as a defense attorney. Mr. Martinez's lawyers assured Mr. LaHood they would not be intimidated, and that they would seek any remedies supported by the law and the evidence. Soon thereafter the in-chambers meeting ended and the defense and prosecution teams continued their discussion in the Court's jury room.

On February 13, 2017, the defense and prosecution jointly met and interviewed the second-chair prosecutor and she did not deny the relationship with Gregory Dalton.

Efforts were also made to interview Mr. Dalton, but he refused to cooperate.

G. The defense was forced to move for a mistrial.

On February 14, 2017, the Court convened and established that all jurors would be able to continue on with the trial. On February 16, 2017, Court convened again, and the defense moved for a mistrial. Counsel for Mr. Martinez made it clear that they did not want to move for a mistrial, but felt forced to do so, to protect Mr. Martinez's constitutional rights to effective assistance of counsel, in light of the prosecution's untimely disclosure of exculpatory evidence. The prosecution refused to agree that it had made an untimely disclosure, or that it had done anything to cause the defense to move for a mistrial, but it did not object to the motion for mistrial. The motion was granted and trial was scheduled for May 15, 2017. The defense announced on the record that it would file before that date an objection to the retrial.

H. There is no question that the undisclosed evidence is exculpatory.

The prosecution is *constitutionally* obligated to disclose all information in its possession that is favorable to the defendant and material either to guilt or to punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This includes impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 675-78 (1985).

Texas has enacted a *statutory* rule that is even more comprehensive, requiring the prosecutor to "disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state *that tends*

to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged." TEX. CODE CRIM. PROC. ANN. art. 39.14(h)(emphasis supplied). This requires disclosure without regard to materiality or the "the anticipated impact of the information on the outcome of a trial." *Schultz v. Commission For Lawyer Discipline Of The State Bar Of Texas*, 2015 WL 9855916 *10-11 (State Board of Disciplinary Appeals 2015. Texas Disciplinary Rule of Professional Conduct 3.09(d) imposes the same duties on prosecutors as does article 39.14(h). As the Board in *Schultz* recognized, "Rule 3.09(d)'s "clarity . . . is a safeguard for prosecutors and citizens alike: if there is any way a piece of information could be viewed as exculpatory, impeaching, or mitigating—*err on the side of disclosure*." *Schultz*, *11(emphasis supplied).

This Court immediately recognized the exculpatory nature of evidence in question. Not only is the evidence exculpatory when one focuses on the second-chair's involvement in this case. It also has independent significance because of Gregory Dalton, the state's key witness, and "[t]he six hundred rules."

> Because [the prosecutor] may not have even remembered his name. But if Mr. Dalton fell in love with [her] on the night in question and . . . these rules we are talking about and that ultimately will govern my decision-making apply to Mr. Dalton. We may never get to this relationship because that is a specific instance of conduct that may or may not ever come out. *But how we get there matters from Mr. Dalton's perspective and whether or not Mr. Dalton had a particular bias or motive, et cetera. So I'm looking at it from both directions.* The [prosecutor] issue is one thing. . . . But there's a whole other issue that the Court has to contend with and I can't ignore that. I can't ignore what Mr. Dalton is

> coming to the table with. And he's coming, in my mind, with some pretty good information for the State.

[In Chambers Hearing, February 9, 2017, pp. 23-24][emphasis supplied]; s*ee Hammer v. State*, 296 S.W.3d 555, 563 (Tex. Crim. App. 2009) ("generally speaking, the Texas Rules of Evidence permit the defendant to cross-examine a witness for his purported bias, interest, and motive without undue limitation or arbitrary prohibition."). Under the Sixth Amendment, "[t]he partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony.'" *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *see also Daywood v. State*, 248 S.W. 2d 479, 484 (Tex. Crim. App. 1952)(prosecutor was properly allowed to show the personal relationship between the witness and the appellant because "it was relevant for the purpose of showing her bias and friendship and close relationship to appellant, and her interest in testifying in his behalf, and consequently as touching her credibility").

Moreover, as the Court also recognized, and as Mr. Goss reluctantly admitted when pressed by the Court, Dalton is not just any witness in this case; he is the state's "star witness." [In Chambers Hearing, February 8, 2017, pp. 10-12] Indeed, Dalton is not only a "star witness," there is substantial evidence that points to him as at least an accomplice in this case, and possibly as the actual murderer himself.[6] In light of Dalton's key role in

---

[6] Detective Duke warned Dalton that he was ,"jammed up in a murder case and he could be charged with murder." [Exhibit B, attached] Luis Castillo heard six gunshots and when he looked outside he saw a white Dodge Caravan minivan, possibly with a blue decal on it, departing the murder scene and Dalton drove a vehicle like this; Dalton admitted being at the murder scene in his Caravan, though he claimed that he was there to pick up Mr. Martinez from a

this case, it cannot seriously be argued that the disclosure that he had had a previous sexual relationship with a prosecutor in this Court who had also worked on this case, was not discoverable under both *Brady v. Maryland*, and article 39.14(h) of the Texas Code of Criminal Procedure.

"A prosecutor who errs on the side of withholding evidence from the defense runs the risk of violating *Brady* if the reviewing court ultimately decides that it should have been turned over." *Ex parte Temple*, 2016 WL 6903758 *3 (Tex. Crim. App. 2016)(not designated for publication). As the Board of Disciplinary Appeals recommended in *Schultz*, "if there is any way a piece of information could be viewed as exculpatory, impeaching, or mitigating—*err on the side of disclosure.*" Just a year ago, Harris County prosecutor Melissa Hervey gave similar advice to her fellow prosecutors: "Don't get burned—if there is any conceivable way in which information or evidence could be considered favorable to the defense for exculpation, impeachment, or mitigation purposes,

---

drug drop. Dalton says he told Mr. Martinez to get rid of his cell phone, and to take the battery out of the complainant's cell phone and destroy it. Dalton told the prosecutors that Mr. Martinez had offered him $1,000.00 to kill the complainant a month before she was killed, and that, although he declined, he asked if he could have sex with her before she was killed. And, according to Dalton, on the night of the murder, Mr. Martinez gave him only $400.00 because he had not done any of the actual work. As the prosecutor told this Court: "Dalton has information about the murder that no one else could know unless Dalton committed the murder, was present for the murder or was told by the defendant after the murder. And that's the State's theory." The prosecutor also believed he had figured out the defense's theory. "[W]e anticipate that the defense will be that Dalton committed the murder because of these . . . things that point to him." Given all this, it is not surprising that Mr. Goss would concede that "*yes, it is not wrong to say that Dalton is a star witness*." [In Chambers Hearing, February 8, 2017, p. 11-12][emphasis supplied]

don't stop to wonder whether the information or evidence is material and admissible. Just disclose it." Melissa Hervey, *Just Disclose It*, THE TEXAS PROSECUTOR, March-April 2016, Volume 46, No. 2. Had our prosecutors heeded this advice, Mr. Martinez's case would not be before this Court today.

V.
Argument And Authorities

A.
First Ground For Relief

It Violates The Double Jeopardy Clause of The Fifth and Fourteenth Amendments To The United States Constitution To Retry Miguel Martinez After The Prosecution Goaded The Defense Into Moving For A Mistrial

1. The Fifth and Fourteenth Amendments prohibit double jeopardy.

The Fifth Amendment's Double Jeopardy Clause says that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." The double jeopardy prohibition of the Fifth Amendment "represents a fundamental ideal in our constitutional heritage," that applies to the States through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969).

The Double Jeopardy Clause protects defendants from repeated prosecutions for the same offense. *United States v. Dinitz*, 424 U.S. 600, 606 (1976). Part of the protection guaranteed to a defendant against multiple prosecutions, is the "valued right to have his trial completed by a particular tribunal." *Wade v. Hunter*, 336 U.S. 684, 689 (1949).

2. *Oregon v. Kennedy* prevents the state from retrying a defendant after it has goaded him into moving for a mistrial.

In *Oregon v. Kennedy*, 456 U.S. 667 (1982), after the state's witness testified that he had never done business with the defendant, the prosecutor asked: "Is that because he is a crook?" The defense then moved for and received a mistrial. *Id*. at 669. When the state sought to retry him, Kennedy objected, asserting that retrial was barred under the Double Jeopardy Clause. The trial court denied the motion, finding that the prosecutor had not intended to cause a mistrial. The Oregon Court of Appeals reversed. A sharply divided decision by the United States Supreme Court reversed the Oregon court, holding that the Double Jeopardy Clause does not bar retrial in the absence of evidence of prosecutorial intent to goad the defense into moving for a mistrial. *Id*. at 679.

3. There is ample evidence of intent in Mr. Martinez's case.

Kennedy turned on the intent of the prosecutor. "Inferring the existence or nonexistence of intent from objective facts and circumstances is a familiar process in our criminal justice system." *Oregon v. Kennedy*, 456 U.S. at 675. In our case, in contrast to *Kennedy*, it cannot be denied that the prosecution intentionally failed to disclose the evidence in question, and there is ample evidence of a specific intent to cause a mistrial.

In *Kennedy*, there was a single instance of misconduct that happened in the middle of a trial. "[T]here was no sequence of overreaching prior to the single prejudicial question. . . . Moreover, it is evident from a colloquy between counsel and the court, out of the presence of the jury, that the prosecutor not only resisted, but also was surprised by,

the defendant's motion for a mistrial." *Oregon v. Kennedy*, 456 U.S. at 680 (Powell, J., concurring).

In Mr. Martinez's case, the misconduct was much more than a single prejudicial question asked in the heat of trial. Instead, it comprised an undeniably intentional course of conduct extending for some two years prior to trial, and involved multiple members and specialized units of the Bexar County District Attorney's Office, – including the District Attorney himself – who consciously and deliberately decided not to disclose clearly exculpatory evidence for reasons having nothing whatsoever to do with the rights of the defendant.

Additionally – and crucially – unlike in *Kennedy*, there is no evidence that the prosecution was "surprised by" the motion for mistrial, or that the motion was "resisted." To the contrary, the District Attorney told the Court and the defense on February 9 that he welcomed a mistrial, predicted that he would pick a better jury next time, and promised that he would be more prepared for trial at that time. The State of Texas may not, consistently with the Constitution, intentionally withhold evidence that is obviously exculpatory for almost two years, select a jury, begin a trial, and then make an untimely disclosure of the evidence, thereby forcing the defense to move for a mistrial, with an end-result that"afford[s] the prosecution a more favorable opportunity to convict." *Cf., Downum v. United States*, 372 U.S. 734, 736 (1963). But the only reasonable inference from the totality of facts and circumstances is that this is exactly what happened in Miguel

Martinez's case. Should there be any doubt that this is in fact what happened, the doubt must be resolved "in favor of the liberty of the citizen, rather than exercise what would be an unlimited, uncertain, and arbitrary judicial discretion." *Downum v. United States*, 372 U.S. at 738.

Retrying Mr. Martinez would violate the Double Jeopardy Clause of the Fifth and Fourteenth Amendments to the United States Constitution. The relief requested in this Application should be granted and the indictment should be dismissed with prejudice. *See State v. Yetman*, 2016 WL 7436645 *6 (Tex. App.–Houston [1st Dist.] 2016, no pet.)(not yet published)(affirming the trial court's decision to bar defendant's retrial where the evidence supported the trial court's findings that the prosecutor intended to goad the defense into moving for a mistrial).

B.
Second Ground For Relief

It Violates The Double Jeopardy Clause of Article I, § 14 of the Texas Constitution To Retry Miguel Martinez After The Prosecution Goaded The Defense Into Moving For A Mistrial

Article I, § 14 of the Texas Constitution provides: "No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction." Although it appears to be the present opinion of the Texas Court of Criminal Appeals that Article I, § 14 of the Texas Constitution provides no greater protection than

does the federal Double Jeopardy Clause,[7] that court recently cited the state constitutional provision in conjunction with its federal counterpart when granting relief to a petitioner. *Ex parte Masonheimer*, 220 S.W.3d 494, 509 (Tex. Crim. App. 2007). Retrial is also barred in this case under Article I, § 14 of the Texas Constitution because the prosecution intentionally failed to timely disclose exculpatory evidence, thereby goading Mr. Martinez into moving for a mistrial.

C.
Third Ground For Relief

It Violates The Double Jeopardy Clause of The Fifth and Fourteenth Amendments To The United States Constitution To Retry Miguel Martinez After The Prosecution Intentionally Failed To Disclose Exculpatory Evidence With The Specific Intent To Avoid The Possibility Of An Acquittal

1. The state may not retry a defendant where a mistrial was necessitated by an intentional failure to disclose exculpatory evidence with the specific intent to avoid the possibility of an acquittal.

Ex parte Masonheimer, 220 S.W.3d 494 (Tex. Crim. App. 2007), recognized the test established in *Oregon v. Kennedy* — that retrial is jeopardy-barred following a mistrial if the prosecutor goaded the defense into moving for a mistrial. The Court went on to find that *Kennedy* established an additional bar:

> [W]e are constrained to decide that the extensive portions of the record set out in this opinion support a finding that appellee's mistrial motions were necessitated primarily by the State's "intentional" failure to disclose exculpatory evidence that was available prior to appellee's first trial with the specific intent to avoid the possibility of an acquittal. Under *Oregon v. Kennedy*, this deliberate conduct, accompanied by this specific mens rea, bars a retrial. We are persuaded that, in a

---

[7] *Ex parte Lewis*, 219 S.W.3d 335, 337 (Tex. Crim. App. 2007).

> case like this, a defendant suffers the same harm as when the State intentionally 'goads' or provokes the defendant into moving for a mistrial.

Id. at 507-09 (citations omitted).

Masonheimer was charged with murdering his daughter's boyfriend, and his defense was self-defense and defense of his daughter. Among other things, the defense told the court that the deceased's conduct had grown increasingly aggressive because of his use of anabolic steroids. Prior to trial, the court had ordered the state to turn over to the defense exculpatory evidence. After Masonheimer entered his plea in a bench trial, the prosecutor disclosed that friends of the deceased had found among his possessions steroids and syringes, and had thrown them away so that his ex-wife would not know about his usage of the substances. Masonheimer moved for a mistrial, and, after finding that the undisclosed evidence was exculpatory and that the prosecution recklessly failed to disclose it, the trial court granted the defense's motion. When the state attempted to retry Masonheimer he raised a double jeopardy objection and, after hearing evidence, the trial court sustained the objection and ordered the prosecution dismissed with prejudice. *Id*. at 505.

The state appealed, and the court of appeals reversed the dismissal. The Texas Court of Criminal Appeals, using the standard set forth above, then reversed the court of appeals and reinstated the dismissal. The high court ruled that the facts supported a finding that Masonheimer's mistrial motions were necessitated primarily by the state's intentional failure to disclose exculpatory evidence with the specific intent to avoid the

possibility of an acquittal. "Under *Oregon v. Kennedy*, this deliberate conduct, accompanied by this specific mens rea, bars a retrial. *Id*. at 507-08.

The parallels between *Masonheimer* and Mr. Martinez's case are strong and undeniable:

- Here, as in *Masonheimer*, the defense sought exculpatory evidence well in advance of trial (July, 29, 2015), and this Court ordered disclosure on January 19, 2017, several weeks before the trial began. Furthermore, unlike *Masonheimer*, our case arose after January 1, 2014, and was governed by TEX. CODE CRIM. PROC. art. 39.14(h), which is even more generous than the constitutional standard, requiring disclosure of "exculpatory, impeachment, or mitigating" evidence, without request, and without regard to its materiality or admissibility.

- Here, as in *Masonheimer*, there is no dispute that the prosecutors intentionally failed to disclose the evidence in question. Mr. Goss admits that he became aware that his prosecutor had a sexual relationship with Dalton two years ago, and that he initially decided on his own that it did not need to be disclosed. When he finally told others in the office – namely, Mr. LaHood, Mr. Valdez, and Mr. Ballantyne – they apparently agreed, and they sat on the evidence for a week before disclosing it, not to the defense, but to the Court, and only then after the jury had been selected. Whatever motivated this failure to disclose, there can be no question that it was done intentionally, and after conscious deliberation and discussion. *See also Ex parte Masonheimer*, 220 S.W.3d 494, 509-10 (Tex. Crim. App. 2007)(Meyers, J., concurring)("The prosecutors may say that they did not want a mistrial, but if their actions were intentional rather than accidental or careless, and they should have known that a mistrial would be granted, then the *Oregon v. Kennedy* standard is met and retrial is jeopardy-barred. Rather than trying to determine the subjective intent of the prosecutor, we can objectively look at the actions of the State to determine if the actions were intentional.").

- And, as in *Masonheimer*, there can be no legitimate question about the exculpatory value of the evidence in question, as we have previously demonstrated in §IV.H of this Application. Mr. Goss himself seems to have recognized his error by the time of the in chambers hearing: "I understand that you guys have an issue with - with the disclosure and I'm not going to argue with that. I understand it. *If I can do it over again, I might have disclosed it earlier because -- because of all of this*." [In chambers hearing, February 9, 2017, p. 34] Unfortunately the prosecutor's belated

realization comes too late to cure the constitutional errors in this case.

Based on very similar facts, the court of criminal appeals barred retrial in *Masonheimer*, concluding that his motions for mistrial had been necessitated by the state's intentional failure to disclose exculpatory evidence, done with the specific intent to avoid the possibility of an acquittal. This Court should make the same finding in Miguel Martinez's case. Retrial is barred by the Double Jeopardy Clause of the Fifth and Fourteenth Amendments to the United States Constitution, and the indictment should be dismissed with prejudice.

D.
Fourth Ground For Relief

It Violates The Double Jeopardy Clause Of Article I, § 14 Of The Texas Constitution To Retry Miguel Martinez After The Prosecution Intentionally Failed To Disclose Exculpatory Evidence With The Specific Intent To Avoid The Possibility Of An Acquittal

Retrial is also barred in this case under Article I, § 14 of the Texas Constitution because the prosecution intentionally failed to timely disclose exculpatory evidence, with the specific intent to avoid the possibility of an acquittal. *Ex parte Masonheimer*, 220 S.W. 3d 494, 509 (Tex. Crim. App. 2007).

E.
Fifth Ground For Relief

It Violates The Double Jeopardy Clause of The Fifth and Fourteenth Amendments To The United States Constitution To Retry Miguel Martinez After The Prosecution Intentionally Failed To Disclose Exculpatory Evidence With The Specific Intent To Protect A Colleague In The Bexar County District Attorney's Office From Personal Embarrassment

Mr. Goss told this Court that he believed disclosure of the information "could cause damage to [her] reputation . . . could harm her personally," and that he was "trying to avoid her reputation being impugned. . . ." [In Chambers Hearing, Feburary 8, 2017, pp 6, 12-13] The prosecutors may claim in this case that protecting their colleague was their only motivation for not making a timely disclosure, and that they had neither the specific intent to goad the defense into moving for a mistrial, or to avoid the possibility of an acquittal, and therefore retrial is not barred under either *Oregon v. Kennedy*, or *Masonheimer*. As we have shown above, though, there is ample evidence supporting relief under both cases.

And there is an additional reason to bar retrial that is based on unique facts in our case that were not found in either *Kennedy* or *Masonheimer*. Even if this Court were to accept the prosecutors's claims at face value – and despite the evidence and reasonable inferences that exist in this case to the contrary – that they were motivated solely by a desire to protect the reputation of a colleague, the Double Jeopardy Clause would still bar the reprosecution of Mr. Martinez. However noble their intent – if it was noble – an intent

to protect the reputation and standing of a friend and colleague demonstrably has absolutely nothing whatsoever to do with either the constitutional right of an accused to be free from multiple prosecutions, or a Texas prosecutor's duty to "see that justice is done."[8] It would be a strange rule if the prosecutors here could avoid the consequences of their intentional failure to timely disclose exculpatory evidence by claiming that they did it, not to goad the defendant into moving for a mistrial, and not to avoid an acquittal, but to protect a colleague. In *Masonheimer*, the court barred retrial believing, not that the prosecutor intended to goad the defense into moving for a mistrial, but instead that he specifically intended to avoid the possibility of an acquittal. To the court, this was a distinction without a difference. "We are persuaded that, in a case like this, a defendant suffers the same harm as when the State intentionally "goads" or provokes the defendant into moving for a mistrial." 220 S.W.3d at 508-09. That is also true here. Whatever the prosecutors's motivations, Miguel Martinez suffers the same harm. The "State with all its resources and power," should not be permitted, in the name of protecting one of its own, to intentionally withhold exculpatory evidence until after the first jury is selected, and then get another opportunity to pick a better jury, and get more prepared, and in that improved posture make another attempt "to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a

---

[8] TEX. CODE CRIM. PROC. ANN. art. 2.01. This statute concludes by reminding us all that prosecutors "shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused."

continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." *See Green v. United States*, 355 U.S. 184, 187-88 (1957). This application should be granted, and the indictment against Miguel Martinez should be dismissed with prejudice pursuant to the Double Jeopardy Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

F.
Sixth Ground For Relief

It Violates Article I, § 14 Of The Texas Constitution To Retry Miguel Martinez After The Prosecution Intentionally Failed To Disclose Exculpatory Evidence With The Specific Intent To Protect A Colleague In The Bexar County District Attorney's Office From Personal Embarrassment

Retrial is also barred in this case under Article I, § 14 of the Texas Constitution because the prosecution intentionally failed to timely disclose exculpatory evidence, with the specific intent to protect a fellow prosecutor.

PRAYER

Because it would violate federal and state constitutional prohibitions against double jeopardy to allow the state retry Miguel Martinez after intentionally failing to timely disclose exculpatory evidence, the relief we request in this application should be granted, and the indictment should be dismissed with prejudice.

Respectfully submitted:

MARK STEVENS
State Bar No. 19184200
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205
(210) 226-1433

JOE D. GONZALES
State Bar No. 08119125
1924 N Main Ave
San Antonio, TX 78212
(210) 472-3780

CHRISTIAN HENRICKSEN
State Bar No. 24048538
1924 N Main Ave
San Antonio, TX 78212
(210) 472-3780

Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that a copy of this Pretrial Application For Writ Of Habeas Corpus has been delivered to the Bexar County District Attorney's Office in San Antonio, Texas, on this the 6th day of March, 2017.

MARK STEVENS

THE STATE OF TEXAS)

AFFIDAVIT

COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared Miguel Martinez, who after being duly sworn stated:

My name is Miguel Martinez. I am the defendant and applicant in the above-entitled and numbered cause. I have read this Pretrial Application For Writ Of Habeas Corpus and swear that all of the allegations of fact contained therein are true and correct to the best of my knowledge and belief.

_____
MIGUEL MARTINEZ

SUBSCRIBED AND SWORN to before me this ____ day of March, 2017 to certify which witness my hand and seal of office.

Notary Public, State of Texas

My commission expires:

THE STATE OF TEXAS)

AFFIDAVIT

COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared Mark Stevens, who after being duly sworn stated:

My name is Mark Stevens. I am one of the attorneys for the defendant and applicant, Miguel Martinez, in the above-entitled and numbered cause. I have read this Pretrial Application For Writ Of Habeas Corpus and swear that all of the allegations of fact contained therein are true and correct.

_____
MARK STEVENS

SUBSCRIBED AND SWORN to before me this ____ day of March, 2017 to certify which witness my hand and seal of office.

Notary Public, State of Texas

My commission expires:

THE STATE OF TEXAS)

AFFIDAVIT

COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared Joe Gonzales, who after being duly sworn stated:

My name is Joe Gonzales. I am one of the attorneys for the defendant and applicant, Miguel Martinez, in the above-entitled and numbered cause. I have read this Pretrial Application For Writ Of Habeas Corpus and swear that all of the allegations of fact contained therein are true and correct.

_____

JOE GONZALES

SUBSCRIBED AND SWORN to before me this ____ day of March, 2017 to certify which witness my hand and seal of office.

Notary Public, State of Texas

My commission expires:

THE STATE OF TEXAS)

AFFIDAVIT

COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared Christian Henricksen, who after being duly sworn stated:

My name is Christian Henricksen. I am one of the attorneys for the defendant and applicant, Miguel Martinez, in the above-entitled and numbered cause. I have read this Pretrial Application For Writ Of Habeas Corpus and swear that all of the allegations of fact contained therein are true and correct.

_____

CHRISTIAN HENRICKSEN

SUBSCRIBED AND SWORN to before me this ____ day of March, 2017 to certify which witness my hand and seal of office.

Notary Public, State of Texas

My commission expires:

ORDER OF SETTING

On this day of , 2017, came on to be heard the application of Miguel Martinez for a Pretrial Application For Writ of Habeas Corpus, and it appearing to the Court that defendant is entitled to a hearing on said application. It is therefore ordered that the Clerk of this Court issue a Writ of Habeas Corpus and that a hearing on this application for writ of habeas corpus be held in the courtroom of the , on the day of , 2017 at o'clock a.m., then and there to show cause why the said Miguel Martinez should not be released from restraint.

JUDGE PRESIDING

NO. 2015-CR-4203

EX PARTE	)	IN THE DISTICT COURT
	)	437TH JUDICIAL DISTRICT
MIGUEL MARTINEZ	)	BEXAR COUNTY, TEXAS

ORDER

On this the _____ day of _____, 2017, came on to be considered this Pretrial Application For Writ Of Habeas Corpus , and said Application is hereby

(GRANTED) (DENIED).

_____

PRESIDING JUDGE

Exhibits

Exhibit A

Defendant: MIGUEL MARTINEZ
JN #: 1672396-1
CLERK'S ORIGINAL

Address: 250 POLLYDALE AVE, SAN ANTONIO, TX 78223-2432

Complainant: Laura Carter

CoDefendants:

Offense Code/Charge: 090420 - MURDER

GJ: 604938 **PH Court:** 437

Court #: 437 **SID #:**710751 **Cause #:** 2015-CR-4203

Witness: State's Attorney

FILED
_____ O'CLOCK _____ M
APR 14 2015
DONNA KAY McKINNEY
DISTRICT CLERK
BEXAR COUNTY, TEXAS
BY Gilbert Campos DEPUTY

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS, the Grand Jury of Bexar County, State of Texas, duly organized, empanelled and sworn as such at the March term, A.D., 2015, of the 437 Judicial District Court of said County, in said Court, at said term, do present in and to said Court that in the County and State aforesaid, and anterior to the presentment of this indictment:

on or about the 11th Day of January, 2015, MIGUEL MARTINEZ, hereinafter called defendant, did intentionally or knowingly cause the death of an individual, namely, Laura Carter, hereinafter referred to as complainant, by SHOOTING THE COMPLAINANT WITH A DEADLY WEAPON, NAMELY, A FIREARM;

on or about the 11th Day of January, 2015, MIGUEL MARTINEZ, hereinafter called defendant, with intent to cause serious bodily injury to an individual, namely, Laura Carter, did commit an act clearly dangerous to human life that caused the death of Laura Carter, hereinafter referred to as complainant, by SHOOTING THE COMPLAINANT WITH A DEADLY WEAPON, NAMELY, A FIREARM;

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Foreman of the Grand Jury

04142015 VOL 1302 PG2561

INDICTMENT – CLERK'S ORIGINAL

Exhibit B

	PROSECUTION GUIDE		
		ASSIGNMENT NO:	SAPD15007427
PAGE 9 OF 48	PC 19.02 Murder	OFFENSE NO:	090420
		DATE REPORTED:	01/11/2015

ROUTING: HOMICIDE			
SAN ANTONIO POLICE DEPARTMENT			
Last name of Complainant.First.Middle Initial	Address of Complainant		Phone Number
[redacted]	[redacted], TX		[redacted]
Place of Occurrence-Street on- at or Number	Dist. Occurrence	Date & Time of Occurrence	Date & Time of this Report
300 Arrid	4210	01/11/15 1851	03/01/2015 1000 hours

Additional Detail of Offense-Progress of Investigation-Disposition of Evidence, Property, Etc...

WITNESSES

W1	Dalton, Gregory	SID #	0477751
W / M – [redacted] Home Address: [redacted] Home Phone: [redacted] Work Address: N/A Work Phone: N/A	Statement (DVD) Homicide Office – 01/19/15 – 1830 hrs Taken by Det. M. Duke # 2271 YES – Positive ID – Photo ID		

On 01/19/15, Detective Ramos and I attempted to make contact with Gregory Dalton at his residence on Nash. There appeared to be no one home so we decided to go to his mother's house about 2 blocks away. As we arrived at his mother's house, Dalton drove up in a white minivan that is used to transport handicapped individuals. I made contact with Dalton and asked him if he would come to the homicide office and speak with me. Dalton was very reluctant to go to the homicide office but he ultimately agreed. We got into the city assigned vehicle and as we were about to drive away, Dalton jumped out of the car and ran up to the white minivan and flicked something into it. I looked on the other side of the interior of the minivan and observed two hand rolled cigarettes. I retrieved the cigarettes being suspicious that they maybe marijuana. I recognized the two hand rolled cigarettes to have a green leafy substance inside them which I recognized by training and experience to be marijuana. I placed Dalton in handcuffs at this point and requested two patrol units to my location. One patrol unit transported Dalton to the homicide office and the other patrolman followed the wrecker and the white minivan to the 9th St pound.

Upon arrival at the homicide office I read Dalton his Miranda rights because he was detained for the marijuana possession. After reading Dalton his rights, I asked him to tell me why he has a van used to transport handicapped people and he replied by saying "I want an attorney." I explain to Dalton that he is jammed up in a murder case and he could be charged with murder. Dalton said he didn't know anything about a Murder and he didn't kill anyone. I made sure I understood Dalton correctly and made sure he didn't want to talk to me and he desired to have an attorney. Dalton agreed that he wanted an attorney so I walked out of the interview room. A few minutes later I reentered the room and told Dalton that I wanted to tell him some details about the murder case I was working. I did not want him to speak or answer any questions; I just wanted him to listen.

I explained to Dalton that a lady was killed and I was investigating her murder. I told him that I knew his van was near the crime scene at the time of the murder as was his cell phone. I also told Dalton that I knew he picked up the killer around the time of the murder near the murder scene. Dalton said he didnt know what I was talking about. I told Dalton that I didn't want him to speak to me because he had already asked for an attorney. Dalton said he had no knowledge of any murder and I responded by telling him he picked the murderer up just after he killed the victim. When Dalton heard me say he picked someone up, he became more interested and then wanted to speak with me about the murder. I asked Dalton if he wanted to tell me who he picked up on the day of the murder and he said yes. I asked him who he picked up on 01/11/15 between 6-7 pm. Dalton said he picked up a guy he knows as Mike or Miguel. Dalton said he buys marijuana from him. Dalton said he

UCR STATUS	UNFOUNDED REPORT ( )	CLEARED BY ARREST (X)	CLEARED BY JUVENILE ARREST ( )	CLEARED BY EXCEPTION OF OTHER MEANS ( )	CHANGE OF OFFENSE ( )	PROGRESS OF INVESTIGATION ( )

Officer Making Report (Badge No.)	Approving Authority	Unit Case No.	Unit Assigned to Follow -up
Detective M. Duke # 2271	Sergeant W. McCourt # 3266		Homicide

SAN ANTONIO POLICE DEPARTMENT — TYPE ONLY — SUPPLEMENTARY REPORT SAPD Form 3-L Rev. (9-90)

ROUTING: HOMICIDE

SAN ANTONIO POLICE DEPARTMENT

Last name of Complainant,First,Middle Initial	Address of Complainant	Phone Number
[redacted]	[redacted]	[redacted]

Place of Occurrence-Street on- at or Number	Dist. Occurrence	Date & Time of Occurrence	Date & Time of this Report
300 Arrid	4210	01/11/15 1851	03/01/2015 1000 hours

Additional Detail of Offense-Progress of Investigation-Disposition of Evidence, Property, Etc...

was at home all afternoon on that Sunday working on his girlfriend's truck and Miguel stopped by around 3-4pm. Miguel asked Dalton if he would pick him up later that day because he needed to drop his truck off to be worked on. Dalton said he would pick him up. A little later, Dalton received a text from Miguel asking him to pick him up at the address. I asked him what the pickup address was and he said he remembers the street started with an "A". The street that the murder occurred on is named Arrid. I asked Dalton to give me the route he took to get to Arrid and he gave me directions. Dalton said he arrived at the location given by Miguel but he didn't find Miguel. Dalton drove around the area looking for Miguel and then either Miguel called him or Dalton called Miguel and got directions to where Miguel was. Miguel was a street or two over from where Dalton was looking for him. Dalton found Miguel, who asked Dalton to give him a ride to Taco Cabana which he did. Dalton said he then went home. Dalton said he got 2 grams of marijuana from Miguel for picking him up.

Dalton said he met Miguel about a year ago in the neighborhood. Dalton said his girlfriend Sylvia comes down every weekend to visit him and he was working on her black Ford F-150 on this day. I asked Dalton what kind of vehicle Miguel drives and he said different ones. Dalton said he has seen Miguel in a Suburban, a green Ford Focus. I asked Dalton where Miguel lives and he said he didn't know because he's never been to Miguel's house. I asked Dalton to tell me about Mike and he said he's in his late 20's. Dalton said Miguel borrowed his girlfriend's truck a day or two earlier while Dalton cleaned Miguel's white Ford King Ranch pickup. I asked Dalton where Miguel works and he said he's a cook at a restaurant owned by his family. One restaurant is on Southcross and one is on Dollarhide. I left Dalton in the room alone for a bit and returned again shortly. I went over some of the facts on the case with Dalton and he said he would tell me where Miguel lives. Dalton said Miguel lives on Pollydale. I asked Dalton what time he picked Miguel up and he said it was just around dusk on 01/11/15. Dalton went on to say he has cleaned Miguel's father's vehicle as well as his sisters. At 17:21 Dalton says he no longer feels like he needs an attorney and acts like he wants to cooperate with the case. Dalton said he drove Miguel to Taco Cabana at Southcross and IH37 where he dropped him off. He said it was just after dark and Dalton was driving the white Minivan. I asked Dalton what Miguel was wearing the night he picked him up and he said he didn't remember what he was wearing but he wasn't wearing a coat. Dalton said he did not see Miguel with a gun or cell phone. Dalton says he does not know Miguel's last name but he would recognize him by sight. Dalton said he would recognize Miguel's girlfriend by sight also but doesn't know her first or last name. Dalton gave me permission to look through his phone. I was looking to see if the number in Dalton's phone matched the number I had for Miguel. The numbers did not match and Dalton said Miguel got a new number effective last Wednesday, January 14, 2015. Dalton said Miguel told him he had to get a new number because he was having trouble with his phone. Dalton said Miguel's number will be on his earlier phone records before he changed his number. I showed Dalton a phone number on his call history ([redacted]) and told him that number communicated with him just before Laura's murder and just after and he said that had to be Miguel's number because he didn't talk to anyone else.

I showed Dalton a picture of a Latin male and he said he recognized the picture as Miguel, the same person he picked up on 01/11/15 and whose number is on his cell phone that called him. Dalton said he was with Miguel one time when he sold heroin to a lady. He said they met her at the Home Depot at Fair and IH37 to make the deal. I asked Dalton if he has ever saw Miguel with a gun and he said no. I showed Dalton a picture of Laura Carter and asked him if she looked familiar and he said no. I explained to Dalton that Laura was shot in the head 5 times by Miguel. Dalton seemed surprised by that information. I explained to Dalton that Miguel is capable of hurting people and he needs to be aware that he is at risk if Miguel finds out he spoke to me. I asked Dalton why the records of his cell phone communications are erased from his cell phone on the date of the murder. Dalton said the reason is because Miguel came to him and said he got rid of his phone and he wanted Dalton to

ROUTING: HOMICIDE

SAN ANTONIO POLICE DEPARTMENT

Last name of Complainant,First,Middle Initial	Address of Complainant	Phone Number
[redacted]	[redacted]	[redacted]

Place of Occurrence-Street no- at or Number	Dist. Occurrence	Date & Time of Occurrence	Date & Time of this Report
300 Arrid	4210	01/11/15 1851	03/01/2015 1000 hours

Additional Detail of Offense-Progress of Investigation-Disposition of Evidence, Property, Etc...

erase his records for that day so he would not get caught up in anything. I told Dalton that I had witnesses telling me that his white minivan picked the shooter up on Arrid right by Laura's car. Dalton replied by saying that wasn't true and went on to explain that he went down Arrid and turned around at the dead end but Miguel wasn't on that street. I asked Dalton if he saw Laura's car parked on Arrid and he said he didn't see any cars. Dalton said he got a text from Miguel that said he was on the next street. Dalton said he drove around several streets looking for Miguel and found him 4 streets over. I told Dalton that it was cold on the night of Laura's murder but he didn't remember Miguel wearing a coat when he picked him up. Dalton said Miguel gave him 2 grams of weed when he picked him up just as they had agreed on. Dalton said he then gave Miguel a ride to Taco Cabana and dropped him off. I asked Dalton if he saw the news story about Laura being murdered and he said he's not sure, he can't remember. Dalton explained to me that he is willing to speak with Miguel and confront him if I want him to but we decided that he should remain quiet about talking to the police around Miguel for the time being. I asked Dalton why Miguel was blowing his phone up after the murder and he responded that it was because he wasn't answering his phone because he was arguing with his girlfriend. I asked Dalton again why Miguel was trying so hard to get a hold of him by phone and he said he does not know. Dalton said he has no problem testifying in court about what he has told me. Dalton was left in the interview room alone for a bit.

When I came back into the room, Dalton said Miguel called him the day after the murder and asked him if he saw the news. Dalton said no and Miguel asked him to erase all the calls and texts from when he contacted him. Miguel told Dalton that something went down like a drug deal gone bad and if anyone asked, he didn't pick him up. Miguel said this occurred when and where Dalton picked Miguel up. I walked out of the room for a bit and left Dalton alone. At 19:27 on the time stamp, Dalton begins talking to what he believes is a hidden camera or microphone and begins saying the following. No way, I'm not going down for this, I got this girls back. Come back in here. I went back in the room and Dalton continued to say, no way am I going down for this. I got this girl's back. I asked Dalton to tell me what Miguel told him about the murder and he said the following. He said Miguel killed her. I asked him how he knows that and he said because you told me. I asked him again to tell me what Miguel told him about the murder. He said he didn't know anything about how it happened. He only knows that Miguel called him the next day and asked him if he saw the news and he said no. He told Dalton that something went down in the neighborhood he picked him up in last night and if anyone asks if he knows him, he is to say he doesn't know him. Dalton asked Miguel if he killed the girl and he said no. I continued to press Dalton about what Miguel told him and I stressed with him that I need to know his exact words. Dalton said old boy told me he was with this girl that had a heroin problem and she owed him some money and he shot and killed her (19:37). Dalton said he told Miguel, Oh my God, you shot her? And he said yes. And then you called me to come get you, is that why you were not on the street you said you would be at? Miguel said to Dalton, I was sitting in the car when you drove by, you didn't see me? Dalton told him, no I didn't see you. Miguel said, after you passed by I got out of the car and shot her and ran through the woods. (That explains why witnesses saw the passenger door open to Laura's car when they arrived). Dalton asked Miguel, is that why you texted me and said you were on the next street over. Dalton said Miguel told him he was standing outside the car door and he smoked her. Dalton said he asked Miguel if he knew the girl and he said yes, she was having her husband set up. Dalton said it was a murder for hire or something. Dalton went on to say that his knowledge of this murder has been eating at his conscience but he didn't know what to do about it. Dalton said he apologizes to Laura's parents for not telling the police right away. Dalton said he asked Miguel if he shot and killed the girl on the news last night and he said yes! Dalton said the news said you were in the car when you shot her and Miguel said no I was standing outside the car when he shot her. I asked

UCR STATUS	UNFOUNDED ( ) REPORT	CLEARED BY ARREST (X)	CLEARED BY JUVENILE ARREST ( )	CLEARED BY EXCEPTION OF OTHER MEANS ( )	CHANGE OF OFFENSE ( )	PROGRESS OF INVESTIGATION ( )

Officer Making Report (Badge No.)	Approving Authority	Unit Case No.	Unit Assigned to Follow -up
Detective M. Duke # 2271	Sergeant W. McCourt # 3266		Homicide

SAN ANTONIO POLICE DEPARTMENT — TYPE ONLY — SUPPLEMENTARY REPORT SAPD Form 3-L Rev. (9-90)

ROUTING: HOMICIDE

SAN ANTONIO POLICE DEPARTMENT

Last name of Complainant,First,Middle Initial	Address of Complainant	Phone Number
[redacted]	[redacted]	[redacted]

Place of Occurrence-Street or Number	Dist. Occurrence	Date & Time of Occurrence	Date & Time of this Report
300 Arrid	4210	01/11/15 1851	03/01/2015 1000 hours

Additional Detail of Offense-Progress of Investigation-Disposition of Evidence, Property, Etc...

Dalton what side Miguel said he was standing on when he shot her and he said he said he was standing on the passenger's side. Dalton said Miguel told him, I saw you drive by us and turn around while I was in the car. Dalton asked him, that was you in the car? Dalton said he saw people in the car but he didn't know it was Miguel because he was expecting him to be standing on the street. Dalton repeated again that Miguel told him that he smoked her and ran through the woods and that's when he picked him up on the next street over. Dalton said he then took Miguel to Taco Cabana and dropped him off. Dalton described how he pulled into the Taco Cabana parking lot and then drove away which matched the Taco Cabana video perfectly. Dalton tried to explain to me some more about what he believed to be a murder for hire plot against Laura's husband. Laura is not married so this portion of the story does not seem truthful. I'm not sure if Dalton or Miguel is being dishonest. Dalton volunteers to take a polygraph and says he has been honest with me at this point about all we have talked about. I asked Dalton if he has ever saw Miguel with a gun and he said no. I completed a polygraph questionnaire for Dalton who said he was willing to take the exam but he appeared to be very nervous about taking it and even said so.

Dalton said Miguel came to his house the day after the murder and asked him if he saw the news. While he was there, Miguel asked Dalton if an I phone can be tracked and he told him yes. I asked Dalton to describe the phone to me and he said it was an I phone and it was pink in color with gold on it. I asked Dalton what Miguel did with the phone and he said he smashed the phone and threw it out of his vehicle window while driving. Dalton said Miguel told him that he was in the car with Laura and he asked to borrow her phone. Laura handed Miguel her phone for him to use and that's how he got her phone from her. Dalton said Miguel said he needed to meet his family at Taco Cabana so he dropped him off there. Dalton told me that Miguel killed the girl (Laura) because she snitched him out. Dalton stated Miguel shot her and he used two guns. I left Dalton in the room alone for a while and then returned. When I returned I asked Dalton to tell me the whole truth and not to leave anything out. He begins by telling me the same story again. He says he's at his house working on his girlfriend's truck when Miguel asks him if he will give him a ride later around 6:00 pm. Dalton asks from where and to what location. Dalton asks what's in it for him and Miguel reminds Dalton that he owes him $50 and says he will give him some marijuana. Dalton agrees to pick Miguel up later that day. Dalton says Miguel texts him an address to pick him up at and he heads over there sometime after 6:00 pm. Dalton gives Miguel a ride to Taco Cabana and is told by Miguel not to tell anyone that he gave him a ride. Dalton says Miguel calls him over and over again. When Dalton finally answers the phone, Miguel asks him if he saw the news and he says no. Dalton said he asks Miguel if he killed the girl and Miguel answers by saying don't worry about it, nobody knows anything. Dalton said Miguel went to his house the following day after the murder and asked him what he knew about I phones. Dalton said he asked Miguel if he shot the girl and told him it was being said that he shot her from outside the vehicle. Dalton said Miguel told him that he was sitting inside the vehicle when Dalton drove by and watched him turn around at the end of the street and then drove back by. Miguel said he was inside the car when Dalton drove by. After Dalton drove by, Miguel said he stepped out of the vehicle and shot her. Dalton said Miguel threatened to kill him if he told anyone. I asked Dalton if Miguel gave him any money and he said Miguel gave him $500 to keep his mouth shut and not tell anyone. I asked Dalton if Miguel told him how much money he got from Laura and he said Miguel told him that he killed her because Miguel's cousin told Miguel that Laura snitched him out. Dalton said he thought he was picking Miguel up from a drug drop. Dalton said Miguel gave him the $500 later on the night of the murder. I asked Dalton where he picked Miguel up at after the murder and he said 4 streets over from the murder scene. Dalton said he was in the area to pick Miguel up and he heard several gunshots. Dalton said he believed he was helping Miguel with a drug drop and when he heard the gunshots he wanted to get out of there. As Dalton was contemplating on leaving without Miguel, Miguel called him and

UCR STATUS	UNFOUNDED ( ) REPORT	CLEARED BY ARREST (X)	CLEARED BY JUVENILE ARREST ( )	CLEARED BY EXCEPTION OF OTHER MEANS ( )	CHANGE OF OFFENSE ( )	PROGRESS OF INVESTIGATION ( )

Officer Making Report (Badge No.)	Approving Authority	Unit Case No.	Unit Assigned to Follow-up
Detective M. Duke # 2271	Sergeant W. McCourt # 3266		Homicide

SAN ANTONIO POLICE DEPARTMENT

TYPE ONLY

SUPPLEMENTARY REPORT
SAPD Form 3-L Rev. (9-90)

ROUTING: HOMICIDE

SAN ANTONIO POLICE DEPARTMENT

Last name of Complainant,First,Middle Initial	Address of Complainant	Phone Number
[redacted]	[redacted]	[redacted]

Place of Occurrence-Street on- at or Number	Dist. Occurrence	Date & Time of Occurrence	Date & Time of this Report
300 Arrid	4210	01/11/15 1851	03/01/2015 1000 hours

Additional Detail of Offense-Progress of Investigation-Disposition of Evidence, Property, Etc...

said "I see your taillights, come back!" Dalton said he turned around and picked Miguel up. I asked Dalton what he knew about the gun and he said he didn't know anything about the gun and never saw Miguel with a gun. I asked Dalton if he got out of the van or if he saw the girl dead and he said he never got out and he never saw that girl ever in his life. Dalton repeated again that Miguel told him that he shot her with 2 guns. I asked Dalton if he saw Miguel shoot Laura and he said no. I asked Dalton why he's telling me that Miguel shot her with 2 guns and he said I swear to God that's what he told me! Miguel said he shot her with 2 guns and then picked up the shell casings. Miguel told Dalton that he has the shell casings and no one knows anything!

I stepped out of the interview room and as I was leaving I told Dalton that Miguel was in another interview room and he has taken a polygraph. I informed Dalton that I know the whole story about the murder and I know what he has been truthful about and what he has not been truthful about. I went back inside the interview room and asked Dalton to start over from the beginning and tell me the truth about everything and he insisted that he has been truthful with me. I asked Dalton if he trusts Miguel and he said no he does not because of this incident and another incident that occurred on Halloween. Dalton told me the following: On Halloween Miguel asked Dalton to give him a ride to drop something off. Dalton agrees and as they are driving down the road, Miguel tells him to stop near a specific house and instructs him to turn his lights off. Dalton tells Miguel that the lights will not turn off unless the vehicle is in park. Dalton stops the vehicle and Miguel gets out of the van and walks up to the house and takes the Halloween decorations from the house. Dalton said he was angry because the van had Honorable Transportation written on it. I asked Dalton if Miguel was associated with any gangs and he said he thought there were people that he answers to but he's uncertain who they are. Dalton goes on to tell me that Miguel gave him a bunch of cokes and told him to sell them on the street corner and split the profit with him. Dalton said Miguel was a Hustler and he was always coming up with ways to make money. I asked Dalton why Miguel had so many Cokes and he said Miguel has a Coke machine in his garage. I talked to Dalton a bit more and he just continued to tell the same story and insist that he was telling the truth. Dalton gave me signed written consent to search his cell phone and the white minivan he was in possession of. Dalton and I agreed that he would not tell Miguel that he spoke to the police. I concluded the interview with Dalton and he was released and taken home by patrol. The interview lasted for approximately 6 hours.

02/09/2015

Gregory Dalton was asked to come back to the Homicide Office to clarify some points in his original statement. I asked Dalton why he was dishonest with me during the first interview and his response was he lied because he was scared. Dalton said he was afraid that Miguel might hurt him if he snitched him out. Dalton says he didn't tell me at the first interview that Miguel directed him to his residence located at 250 Pollydale after he picked him up near the murder scene. He said Miguel got out of the van for a few minutes and then returned to the van and asked him to take him to the Taco Cabana. Dalton said he did not think Miguel went inside his residence when they stopped. I asked Dalton what vehicles were at Miguel's house when they stopped and he said he wasn't sure but he was sure that Miguel truck was not there. Dalton then drove Miguel to the Taco Cabana and dropped him off. Dalton said Miguel told him several times that he needed to get some beans. I asked Dalton what that meant and he said he wasn't sure. I asked Dalton why Miguel is blowing his phone up and he says he doesn't know but he didn't answer because he was worried about everything that just happened. Dalton text Miguel back because he was stressing and wanted some weed to get high on. Dalton said Miguel came over to his house later that night and asked him to watch the news because he doesn't have cable. Miguel gave him some weed and about $380 in cash. Dalton said he owed Miguel some money and he deducted what he owed from $500 which came out to $380.

UCR STATUS	UNFOUNDED ( ) REPORT	CLEARED BY ARREST (X)	CLEARED BY JUVENILE ARREST ( )	CLEARED BY EXCEPTION OF OTHER MEANS ( )	CHANGE OF OFFENSE ( )	PROGRESS OF INVESTIGATION ( )

Officer Making Report (Badge No.)	Approving Authority	Unit Case No.	Unit Assigned to Follow -up
Detective M. Duke # 2271	Sergeant W. McCourt # 3266		Homicide

SAN ANTONIO POLICE DEPARTMENT

TYPE ONLY

SUPPLEMENTARY REPORT
SAPD Form 3-L Rev. (9-90)

	PROSECUTION GUIDE		
		ASSIGNMENT NO:	SAPD15007427
PAGE 14 OF 48	PC 19.02 Murder	OFFENSE NO:	090420
		DATE REPORTED:	01/11/2015

ROUTING: HOMICIDE

SAN ANTONIO POLICE DEPARTMENT

Last name of Complainant,First,Middle Initial	Address of Complainant	Phone Number
[redacted]	[redacted]	[redacted]

Place of Occurrence-Street on- at or Number	Dist. Occurrence	Date & Time of Occurrence	Date & Time of this Report
300 Arrid	4210	01/11/15 1851	03/01/2015 1000 hours

Additional Detail of Offense-Progress of Investigation-Disposition of Evidence, Property, Etc...

Dalton said Miguel told him that he got a call from someone after the murder and they were speaking Spanish. Dalton told Miguel to get rid of his cell phone and he said that no one knows who he is because he was using a Trac phone. This phone call that Dalton is speaking about was made by Detective Perez in an effort to see if the phone was still on and to try and identify who had possession of the phone. This is when Miguel told Dalton that he called him from Laura's phone at the murder scene but he didn't press send. Dalton said Miguel attempted to coach him in how he should respond to the police if they should question him. Miguel also told Dalton that Laura overdosed a few weeks earlier and was having trouble with her husband. Dalton said the outcome of this incident would have likely been different if he would have watched channel 4 instead of channel 12 because channel 4 talked about a white van being at the murder scene. Dalton said Miguel told him that his cousin told him that Laura snitched him out and that's why he killed her. Miguel told Dalton that he asked Laura if he could use her phone and then he stepped out of her car and he shot her. Miguel was thinking that if he took her phone and since he was using a Trac phone, there would be no record of their communication. Miguel told Dalton that he shot Laura with two guns. Dalton continues to talk and tells about a conversation he had with Miguel where he asked him if he killed Laura in a murder for hire scheme but Dalton didn't seem to be real sure about what was actually discussed related to this. I asked Dalton who Miguel's cousin is and he said he didn't know but was told he works at Cracker Barrel. Dalton goes on to say that Miguel told him "they don't have a gun and I have the casings." I believe "they" is referring to the police. Dalton said Miguel asked him what he should do with the Apple I-phone and Dalton told him to take the battery out and get rid of it. I asked Dalton what Miguel did with the phone he took from Laura and he said he got rid of it by noon the following day. I asked him how Miguel got rid of it and he said he broke it in 3 pieces and threw it out the window in 3 different places while driving down the road. I asked Dalton to describe the I-phone that he saw Miguel with and he said it was a Champaign color and also described it as the same color as cherry Sprite. I concluded the interview at approximately 59 minutes in length.

UCR STATUS	UNFOUNDED ( )	CLEARED BY ARREST (X)	CLEARED BY JUVENILE ARREST ( )	CLEARED BY EXCEPTION OF OTHER MEANS ( )	CHANGE OF OFFENSE ( )	PROGRESS OF INVESTIGATION ( )

Officer Making Report (Badge No.)	Approving Authority	Unit Case No.	Unit Assigned to Follow -up
Detective M. Duke # 2271	Sergeant W. McCourt # 3266		Homicide

SAN ANTONIO POLICE DEPARTMENT

TYPE ONLY

SUPPLEMENTARY REPORT
SAPD Form 3-L Rev. (9-90)

Exhibit C

From: "Goss, Jason" <Jason.Goss@bexar.org>
Date: February 1, 2017 at 11:03:26 AM CST
To: "joegonzales@satx.rr.com" <joegonzales@satx.rr.com>
Subject: Martinez Extraneous Offense Reports and Brady Notice

Joe and Christian,

Attached are the offense reports that connect to Miguel Martinez's prior conviction and one unadjudicated act. This serves as notice under 404(b) and 37.07 that the State intends to use these bad acts in the State's case in chief and in punishment where relevant. All witnesses named in these reports are subject to be called to prove up these bad acts where necessary.

Also, there is a Brady notice attached referencing the statements made to me last night by Gregory Dalton.

Jason Goss
Assistant Criminal District Attorney
Bexar County District Attorney's Office

Exhibit D

NICHOLAS "NICO" LAHOOD
BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY
PAUL ELIZONDO TOWER
101 W. NUEVA
SAN ANTONIO, TEXAS 78205
(210) 335-2311
78205

February 1, 2017

Re: Brady Notice for Defense – State v. Miguel Martinez – Murder – 2015-CR-4203

On February 1, 2017, I spoke to Gregory Dalton, Witness for the State, and he told me that he had kept something from Detective Duke in his interview, but wanted to tell me about it now. He stated that one month before the murder of Laura Carter, the defendant, Miguel Martinez, spoke to him and told him that there was a girl that was going to turn him in, and the defendant asked Dalton if the defendant could take this girl to Dalton's house and kill her there by tying her up and strangling her. Dalton stated that he thought Miguel was joking when he said it and Dalton told me that he asked Miguel, "If you're going to bring her here and kill her, can I fuck her first?" Dalton said that after he said this, the defendant told him that they could take her after he killed her in Dalton's van and dump her bbody and light it on fire. The defendant told Dalton that he would pay him $1,000.00 to help him kill this girl. Dalton said that he would not do that, and thought the defendant was joking. The night of the murder, the defendant paid Dalton $400.00 and told him that since the defendant had to do the actual work, Dalton was only getting half. Dalton told me that he still did not know at the time that the defendant had killed the girl, but believed later when the defendant told him that he had killed a girl right before Dalton picked him up, that this must be the same girl the defendant was talking about the month before.

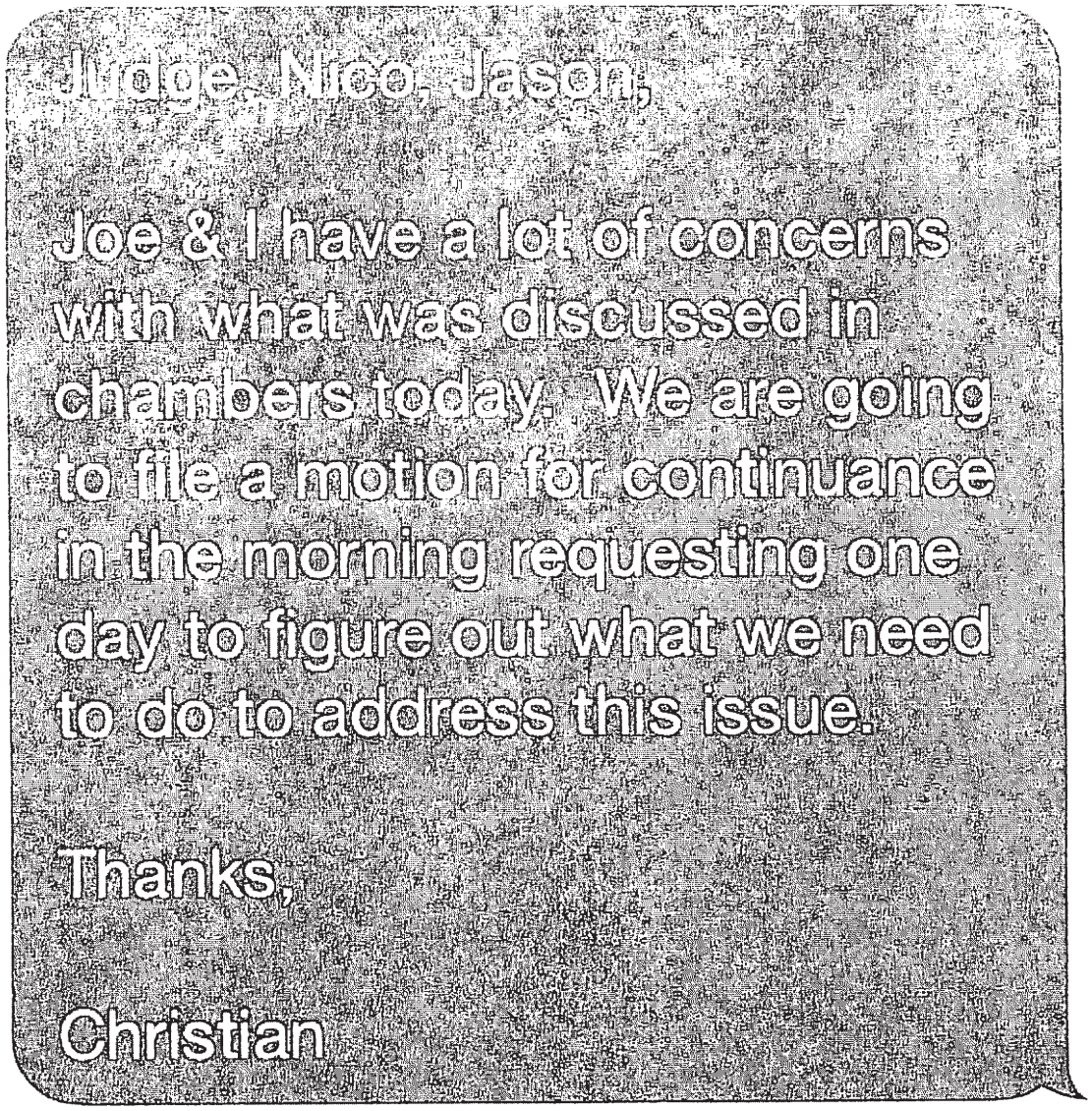
Sincerely,

Jason Goss
Assistant District Attorney
Bexar County Criminal District Attorney's Office

Exhibit E

To: Judge, Jason, Nico

iMessage
Wednesday 8:40 PM



Judge Valenzuela

Thank you for letting me know. Goodnight.

As a follow up----I am going to grant that request. I am inclined to have the deputies call the

To: Judge, Jason, Nico

As a follow up----I am going to grant that request. I am inclined to have the deputies call the jury tonight or tomorrow and have them return on Friday, rather than have them come in for nothing tomorrow.

Thank you. However you want to handle it is ok with us.

Jason Goss

We were planning on arranging for the defense investigator to meet with Dalton tomorrow. Should we still plan that or call Dalton off?

Our investigator is not available tomorrow.

Jason Goss

To: Judge, Jason, Nico

Jason Goss

Got it

Judge Valenzuela

Deputies have been instructed to have jury return on Friday. I will see the parties tomorrow at 9:45-10 (as planned) to formally hear Motion.

Nico

Judge, with your permission I will have Jason handle that hearing without me. I have a lot of office business to attend to since I have been out and will be out for the next couple of weeks. Of course I am available by text. Christian thank you for the heads up and I wish everyone a blessed and restful night

Judge Valenzuela