

CAUSE # 2012-2235-C1

STATE OF TEXAS,	§	IN THE 19th JUDICIAL
	§	
Plaintiff,	§	DISTRICT COURT OF
	§	
-against-	§	MCCLENNAN COUNTY
	§	
JUAN FRANCISCO MEDINA ORTIZ	§	
	§	
Defendant.	§	

MOTION IN LIMINE

**TO THE HONORABLE JUDGE OF SAID COURT:**

Now comes JUAN FRANCISCO MEDINA ORTIZ, Defendant, by and through undersigned counsel, and files this motion in limine, and shows the following:

1. It is anticipated that at trial the State will introduce into evidence various medical records of the child purported to be the victim, and will seek to introduce testimony of expert witnesses concerning diagnosis and treatment of the child. Further, it is anticipated that the State will seek to introduce testimony and reports from law enforcement agents and agents of Child Protective Services.

2. Defendant seeks to limit testimony and evidence as follows at trial: In the instant case, there are voluminous medical records which can be accurately characterized as layers to an onion. The first layer occurred on August 27, 2012, when the Defendant and his child’s mother brought the child to the first hospital for a possible broken arm. After examining the child, medical professionals decided to conduct further testing and referred the child to other doctors, hospitals and clinics. At each layer of testing, the examining doctors, nurses and other medical professionals incorporated and relief upon the findings of their predecessors, incorporating the medical opinions and analyses of their predecessors into their own reports. The same

phenomenon occurred with each report generated by law enforcement and the Department of Child Protective Services – each report built into it the findings, opinions, and conclusions of others from various individuals and agencies. The net effect of this practice was to incorporate various levels of hearsay within the reports and medical records, incorporating conclusions and results of investigation and testing that was not completed, or even witnessed by, the author.

3. In Bullcoming v. New Mexico, \_\_\_ U.S. \_\_\_, 131 S.Ct. 2705 (2011), the defendant was charged with driving while intoxicated after laboratory blood tests showed the presence of alcohol in his blood. At trial, the prosecution called an expert witness who did not conduct the blood testing, and introduced the laboratory report which was relied upon by the expert. The United States Supreme Court held that this testimony violated the defendant’s right to confrontation under the Sixth Amendment because a “surrogate” analyst, rather than the analyst who prepared the report, testified from the report at trial. This rule has been recently upheld by the Texas Criminal Court of Appeals in Burch v. State, 401 S.W.3d 634 (2013).

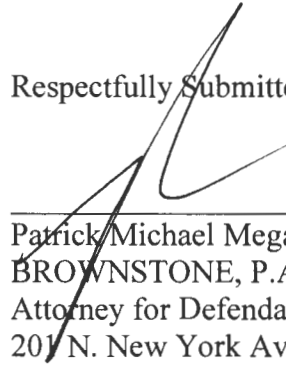
4. Because admission of such evidence would violate the Defendant’s right to confront the witnesses against him, Defendant seeks to preclude that testimony and to redact any such references from any exhibit to be introduced as evidence.

5. Additionally, Defendant seeks to preclude the State from introducing evidence of any uncharged bad acts – specifically, any testimony or evidence of any alleged acts of domestic violence against the child’s mother, Taylor Garcia. Defendant has not been arrested for or charged with, or even convicted of, any such alleged acts. Introduction of any such evidence would therefore violate the Defendant’s fundamental Due Process rights, and unfairly prejudice the jury with a collateral issue that is not material or relevant to the issues to be tried herein.

**WHEREFORE, PREMISES CONSIDERED**, Defendant prays that the Court suppress such matters at trial of this cause, and for such other and further relief in connection therewith that is proper.

Dated: Winter Park, Florida  
December 12, 2013

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that on December 13, 2013, a true and correct copy of the above and foregoing document was served by United States Mail upon:

Assistant District Attorney Hillary Laborde, Esq.  
McClennan County District Attorney's Office  
219 N. 6<sup>th</sup> Street, Suite 200  
Waco, Texas 76701



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Patrick Michael Megaro, Esq.

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STATE OF TEXAS,

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-against-

JUAN FRANCISCO MEDINA ORTIZ

Defendant.

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DISTRICT COURT OF

MCCLENNAN COUNTY

**ORDER**

On \_\_\_\_\_, 201\_\_, came on to be considered JUAN FRANCISCO MEDINA ORTIZ' Motion in limine, and said motion is hereby

(Granted) (Denied)

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JUDGE PRESIDING