

No. 1622305

THE STATE OF TEXAS	§	IN THE 228th JUDICIAL
	§	
vs.	§	DISTRICT COURT OF
	§	
EARL DAVID WORDEN	§	HARRIS COUNTY, TEXAS

**MOTION IN LIMINE REGARDING DEFENDANT'S STATEMENT**

Comes now, Earl David Worden, and files this motion in limine related to the State's notice of intent to use his video taped statement. Mr. Worden request that the video in its entirety be excluded, or that multiple parts of the video be redacted because they are inadmissible in this criminal trial, and would show the Court as follows:

1. The only interview conducted with Mr. Worden in this case took place on December 11, 2017. At that time, Deer Park investigator Joshua Reed was "building a file" on Mr. Worden, in an attempt to charge him with the sexual assault of A.M., his biological daughter, an allegation which first surfaced in 1995. In the interview, Mr. Worden denied having sexually assaulted A.M. when she was three years old, noted that the case had previously been investigated and charges declined, explained that he had passed a police requested polygraph exam related to the charge, and continued to deny the

alleged conduct. It was also discussed that the case had been reconsidered in 2005, when the complainant became the complainant in another case, related to another man. Once again, charges were cleared in 2005 and no further investigation took place.

2. Although Mr. Worden's comments denying the allegations are not hearsay and he was not in custody when they were made, there are many comments made during the interview which are not admissible. These include (with approximate time stamp):

- References to Mr. Worden previously being in trouble, being in jail or prison, or his previous conviction in 1985 for sexual assault. (8:55-9:30, 36:59).
- Hearsay statements about what A.M. told the investigating officer or other officers, some of which were not actually told to the investigating officer. (19:00-19:26, 24:05,)
- References to Mr. Worden being a registered sex offender. (23:30).
- Alleged Statements made by other witnesses (some of which were not actually made by those witnesses). (25:55, 27:45, 27:58-28:30, 35:00-36:13)

- Statements meant to bolster alleged statements made by various witnesses (for example, false claims of consistency). (26:17, 29:02, 30:00-30:10, 30:25, 34:10-35:00)).
  - References to previous bad acts which are prejudicial, not probative of any issues in fact, and otherwise inadmissible. (26:53; 32:20-33:50).
3. This interview, in its entirety, is not relevant to any issue in this case, but is very prejudicial. It relates to a different complainant, of a different age, in an investigation that has been previously cleared twice. The evidence should be excluded under rules of evidence 401-403.
  4. Further, even if this evidence were relevant to this case, it should be noted that even the District Attorney's Office, on 09/06/2018, refused to accept charges on the A.M. allegation. This was after Investigator Reed had spent hundreds of hours on the case. The decision was based in part on the fact that in 2004 A.M. told a CPS worker that she "doesn't remember anything about it." Offense Report page 29. Further, her current memory was based on what "other family members told her that Earl had sexually abused her." *Id.* The evidence is inadmissible under rule of evidence 404(b) as no juror could find the alligations was proven beyond a reasonable doubt.

5. Bolstering evidence is inadmissible. *See Fuller v. State*, 224 S.W.3d 823, 832–33 (Tex. App.—Texarkana 2007, no pet.)(discussing the many evidentiary bases for the bolstering objection including Texas rules of evidence 401-403, 607, 608, and 701-703.).
6. Hearsay statements are inadmissible, including hearsay within other admissible statements. *See* Tex. R. of Evid. Article VIII.
7. Mr. Worden’s prior bad acts, prison or jail sentences, convictions, or sex offender registry status are also inadmissible under Texas rules of evidence 401-403, 404, and 609.

For these reasons, the video of Mr. Worden’s conversation with Investigator read should be inadmissible, or, in the alternative heavily redacted.

Respectfully submitted,

/s/ Jonathan Landers  
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**ATTORNEY FOR DEFENDANT**

## **CERTIFICATE OF SERVICE**

I certify that on 11/05/2021, a true and correct copy of the foregoing instrument was served on the district attorney's office via the e-file system to prosecutor OXFORD DANIELLE@dao.hctx.net.

/s/ Jonathan Landers

Jonathan D. Landers

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### ORDER

The Defendant's motion in limine is granted:

\_\_\_\_\_ The video in question is inadmissible at the trial in this case.

OR

\_\_\_\_\_ The video should be redacted so that only admissible evidence is contained  
in the video.

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**Judge Frank Aguilar**

### **Automated Certificate of eService**

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#### Case Contacts

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I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this December 1, 2021

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Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS