

CAUSE NO. S-25-3791CR

|                     |   |                                    |
|---------------------|---|------------------------------------|
| STATE OF TEXAS      | § | IN THE DISTRICT COURT              |
|                     | § |                                    |
| vs.                 | § | 36 <sup>TH</sup> JUDICIAL DISTRICT |
|                     | § |                                    |
| SHAUN SCOTT SKIPPER | § | SAN PATRICIO COUNTY, TEXAS         |

DEFENDANT’S MOTION TO DISMISS FOR LACK OF  
LAWFUL AUTHORITY TO PROSECUTE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, and files this Motion to Dismiss for Lack of Lawful Authority to Prosecute, and respectfully shows this Court as follows:

**I. INTRODUCTION**

This prosecution proceeded for months without a lawful recusal of the elected District Attorney and without a valid appointment of an attorney pro tem in this criminal cause. During that time, prosecutorial actions were taken, including investigation, charging decisions, and presentation of the case to the grand jury.

Only after the Court ordered the unsealing of the alleged recusal and appointment documents – **documents which do not exist** – did the State file a motion to recuse and appoint an attorney pro tem at 4:52 p.m. on February 6, 2026, after the fact and without a signed order.

Because prosecutorial authority is statutory, case-specific, and jurisdictional, actions taken without that authority are void and cannot be retroactively cured. Dismissal is therefore required.

**II. RELEVANT FACTS**

- 1.) The elected District Attorney never filed a motion to recuse in this criminal case prior to February 6, 2026 in the late afternoon.
- 2.) No order appointing an attorney pro tem in this criminal cause existed at the time prosecutorial actions were taken.
- 3.) Despite the absence of a criminal recusal and appointment, the individual believed to be attorney pro tem participated in the investigation and charging the Defendant and coordinated and communicated with the San Patricio District Attorney’s Office.
- 4.) When Defendant sought the criminal motion and order of recusal and appointment, the Court ordered those documents unsealed. **The District Clerk confirmed no such motion or order existed.**

5.) Later that same day, at 4:52 p.m., defense counsel was notified via email that the State filed a motion to recuse and appoint an attorney pro tem in this criminal case. That motion remains unsigned and was filed only after Defendant raised the issue.

6.) The State's attempt to secure an appointment after prosecutorial actions had already occurred constitutes an impermissible effort to retroactively confer authority that did not exist at the time.

### **III. APPLICABLE LAW**

#### *A. Prosecutorial Authority Must Be Lawfully Conferred*

In Texas, a criminal prosecution may only be conducted by:

- The elected prosecutor with authority in that case, or
- An attorney pro tem lawfully appointed pursuant to Article 2.07 of the Texas Code of Criminal Procedure.

Absent a valid recusal and appointment, no other individual has authority to act on behalf of the State in a criminal prosecution.

#### *B. Authority Under Article 2.07 Is Case-Specific and Non-Retroactive*

Article 2.07 authorizes a court to appoint an attorney pro tem when the elected prosecutor is disqualified or recused from a particular case. The statute does not authorize blanket, prospective, or retroactive appointments.

An attorney pro tem derives authority solely from the court's appointment order. Until that order is signed, no authority exists.

#### *C. Acts Taken Without Prosecutorial Authority Are Void*

Texas courts have consistently recognized that acts taken by a prosecutor without lawful authority are void, not merely voidable. Jurisdictional defects cannot be cured by later compliance.

A subsequent appointment cannot sanitize prior unauthorized participation in investigation, charging, or grand jury proceedings.

### **IV. APPLICATION TO THIS CASE**

Here, the District Attorney was never lawfully recused at the time prosecutorial decisions were made, and the purported attorney pro tem was never lawfully appointed in this criminal cause.

As a result:

- The District Attorney acted despite an unresolved conflict;
- The purported attorney pro tem acted without authority; and
- Their joint participation infected the charging process and grand jury proceedings.

If the Court determines that the purported attorney pro tem must be disqualified, that ruling necessarily confirms that his prior involvement was unauthorized. Because the indictment is the product of those actions, it cannot stand.

The defect is structural and jurisdictional. It cannot be cured by a belated motion or retroactive appointment.

#### **V. REQUEST FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court:

- 1.) Dismiss the indictment for lack of lawful authority to prosecute; and
- 2.) Grant such other relief as justice requires.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, Lisa Greenberg, hereby certify that on the date it was filed, a true and correct copy of the foregoing motion has been delivered to the purported Pro-Tem District Attorney's Office via facsimile, email, hand-delivery or e-service.

*/s/Lisa Greenberg*  
Lisa Greenberg