



IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
ROGERS COUNTY OKLAHOMA

MAR 03 2023

THE STATE OF OKLAHOMA,)

Plaintiff,)

-vs-)

ROBERT KENT KRAFT,)

Defendant.)

CATHI EDWARDS, COURT CLERK

DEPUTY

Case No.: CF-2018-0465

JUDGE: STEPHEN R. PAZZO

MOTION FOR A MISTRIAL ON BEHALF OF THE DEFENDANT

COMES NOW the Defendant, Robert Kraft, by and through his attorney, M. J. Denman, Esq., and moves this Honorable Court to grant a mistrial and attach prejudice to the jury trial held in the above-styled matter.

Defendant so moves for the following grounds:

1. On July 1st, 2022, the Jury in this matter were sequestered to deliberate after closing arguments by the State and Defense Counsel.
2. The Jury had been sitting next to each in the jury box during the trial.
3. For deliberations, the Jury was placed in the adjoining courtroom for social distancing concerns.
4. Unknown to the Defense, the Courtroom where the Jury was placed had active video monitoring and apparently the ability to listen to audio.
5. The Jury issued a notice stating they were incapable of reaching a verdict at that time and requested information as to whether the State would get another opportunity to re-try the matter. There was no indication from that note as to how they were split numerically.

6. They were given the standard instruction of having all the evidence and law.
7. The Defense left the Courthouse to have a break.
8. Several hours later, after receiving dinner provided by the Court, the Jury returned with a guilty verdict on Murder in the First Degree and a Life sentence.
9. Sentencing was continued for a Presentence Investigation Report.
10. The following Thursday, Defense Counsel was informed by a phone call from Judge Pazzo that a Rogers County Sheriff's Deputy had informed him Isaac Shields and George Gibbs, Jr., the State Assistant District Attorneys prosecuting this matter, had observed the jurors deliberating from the security room in the courthouse.
11. On the 14th of July, 2022, a status hearing was held in which the State, now represented by First Assistant Joy Thorp and District Attorney Matt Ballard, notified the Court and Defense Counsel that apparently, after an internal investigation, prosecutorial misconduct had occurred by their prosecutors, Isaac Shields and George Gibbs, Jr. They were removed from this matter and placed on suspension. Furthermore, the Rogers County District Attorney's Office was recusing from further investigation after that internal investigation and turning the matter over to OSBI and the Attorney General of Oklahoma. The Rogers County District Attorney's Office apologized to the Court and the Defendant on behalf of their Office. This alleged misconduct, if true, is a felony

offense under Title 21 O.S. §588 punishable by up to two years in prison and a \$1,000.00 fine.

12. Isaac Shields and George Gibbs, Jr. gained entry to this locked security room with the help of a Rogers County Sheriff's Deputy. It is unknown whether they were invited to watch, simply asked to open the door to the secure room, or coerced or threatened the Deputy to gain entry after the note of a hung jury occurred. These two officers of the Court gained entry to a secured area of the Courthouse they would normally never have access to. Unless, of course, that is only an assumption by the Defense.
13. Based on information provided by the First Assistant Joy Thorpe, Isaac Shields spied on the Jury deliberating for over three hours including the moment in which the verdict form was signed by the Foreman. During these three hours he manipulated the cameras zooming in on particular jurors and pieces of evidence they were handling.
14. Based on information provided by First Assistant Joy Thorpe, George Gibbs, Jr. also committed a felony as he entered the security room and spied on the Jury invading the most sanctimonious process of a jury trial.
15. While Isaac Shields and George Gibbs, Jr. were spying on the Jury, one of them were apparently in contact with District Attorney Matt Ballard. This conclusion is derived from a series of text messages between Matt Ballard and Joy Thorpe provided to the Defense which

indicate District Attorney Matt Ballard was told there was "...a holdout" and "...it only takes one." Text messages between Isaac Shields, George Gibbs, Jr, and District Attorney Matt Ballard are also referenced in an email sent September 6th, 2022 at 4:34pm from Matt Ballard to Brian Hermanson. (Exhibit 2). The Defense has no evidence as to whether Matt Ballard questioned either of his prosecutors as to how they knew there was only one holdout. (Exhibit 3).

16. First Assistant Joy Thorpe sent a text message on July 1st, at 7:37pm to Isaac Shields and 1 more individual asking "Are y'all doing ok? Can I bring y'all anything?" to which Isaac Shields responds, "We are fine. Just patiently waiting. Annalisa went to get pizza". Not really a lie. Simply not telling his First Assistant that he is breaking the law, gaining an unfair advantage, and violating his oath of office spying on the jury.

17. Isaac Shields and George Gibbs, Jr. were interviewed within the Rogers County District Attorney's Office. The Defense is unaware as to whom were present. However, the Defense is aware the First Assistant Joy Thorpe was present and asked a direct question to Isaac Shields. "How long did you watch the Jury?" To which he looked her in the eyes and replied that it was probably thirty minutes max. He lied.

18. The District Attorney knew Isaac Shields had committed a criminal act while practicing law directly connected to doing his job representing Rogers County District Attorney's Office. Knowing Isaac Shields lied to his immediate superior. He was allowed to resign. It is not clear if this

information was shared with Brian Hermanson to aid him in deciding how to handle the criminal prosecution of Isaac Shields.

19. The District Attorney for Rogers County knew George Gibbs, Jr. had committed a criminal act while practicing law directly connected to doing his job representing Rogers County District Attorney's Office. Knowing his actions violated a public trust in the criminal justice system that all the people of Rogers County rely on, George Gibbs, Jr. was allowed to resign.
20. Besides being a felony offense punishable by two years in prison and the probable loss of their ability to practice law in Oklahoma, in this matter, it was an offense that occurred while the attorneys were actually trying their case! The unfair advantages of this unscrupulous behavior are easily identified by any person who has ever tried a jury trial.
21. On the 18th of August, a status hearing was set where First Assistant Thorp was unavailable and the matter continued by agreement until September 15th, 2022.
22. On the 15th of September, 2022, a motion was filed by the Defendant requesting the Court to pay for a private investigator. This motion was filed after Defense Counsel had made numerous attempts to contact Brian Hermanson, the District Attorney of the Eighth District to whom this matter was assigned, in order to learn the identity of the investigator from the OSBI assigned to this matter. Defense Counsel has since spoken with Mr. Hermanson. The only information shared is that

deferred prosecution agreements are being made available to prospective Defendants Isaac Shields and George Gibbs, Jr with no admission of guilt required.

23. Defense Counsel discovered through alternative means that Lt. Brandon Lane of the OSBI had been assigned to this case, completed his investigation, and turned over his case file to Mr. Hermanson. Defense Counsel does not have this case file. Rogers County District Attorney's Office does.

24. Defense Counsel was ill on November 3rd, 2022. The Court was informed and the matter passed to the 8th of December, 2022 without objection.

25. It is regrettable this miscarriage of justice has occurred. However, independent investigation by Defense Counsel has revealed this is not a solitary event. On the 4th of November, Defense Counsel received an affidavit from Brian Boenheim stating that Mr. Isaac Shields, during a jury trial in Tulsa County in which he was the prosecutor, had listened outside the door of their shared jury while they were deliberating. (Exhibit 1). An argument ensued between Mr. Boenheim and Mr. Shields that was so heated two Tulsa County Deputies came into the courtroom. This occurred on the 4th of December, 2017. Title 21 O.S. §588 has been the law since 1957. An apparent felony occurred at that time. This felony indicates two points on a timeline between December 4th, 2017 and July 1st, 2022 in which the same behavior has occurred. The Defense has no

evidence at this time whether this is an ongoing behavior of Isaac Shields with every jury trial he has been in or simply two times in which Isaac Shields has been caught committing this felony.

26. At the time of this motion, evidence has been obtained through an email exchange between Attorney Josh Lee and District Attorney Brian Hermanson after an Open Records Request that there is currently no *signed* Deferred Prosecution Agreement by either Isaac Shields or George Gibbs, Jr. (Exhibit 2).
27. From that exchange, it is of interest to note there are none of the text messages between Mr. Ballard and Ms. Thorp although they are referenced in the email from Mr. Ballard to Brian (Hermanson).
28. Within those materials, it is noted that Mr. Shields and Mr. Gibbs resigned. There is an interview of Mr. Shields and Mr. Gibbs by either Wayne Stinnett or Matt Ballard or both or others that appears to have been recorded but has not been shared with Defense Counsel.
29. Lt. Brandon Lane of the OSBI refuses to cooperate with Defense Counsel's investigation into this matter.

APPLICABLE LAW

THE FELONY COMMITTED

Spying on a Jury while they are deliberating is a felony under Title 21. Crimes and Punishment, Chapter 19. Other Crimes against Public Justice, Section 588-Grand or Petit Juries-Recording of or Listening to Proceedings-Penalty:

If any person, firm or corporation shall knowingly and willfully, *by means of any device whatsoever*, records or attempts to record the proceedings of any grand or petit jury in any court of the State of Oklahoma *while such jury is deliberating* or voting or *listens to or observes, or attempts to listen to or observe, the proceedings of any grand or petit jury of which he is not a member in any court of the State of Oklahoma while such jury is deliberating or voting shall be guilty of a felony and shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than two (2) years, or both*. Provided, however, that nothing in this section shall be construed to prohibit the taking of notes by a grand juror in any court of the State of Oklahoma in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.(emphasis added).

Historical Data

Laws 1957, HB 553, p. 160, § 1, emerg. eff. April 17, 1957; Amended by Laws 1997, HB 1213, c. 133, § 215 (effective date amended to July 1, 1999, by Laws 1998, 1st Extr. Sess., HB 1002, c. 2, §§ 23-26, emerg. eff. June 19, 1998) (superseded document available); Amended by Laws 1999, 1st Extr. Sess., HB 1009, c. 5, § 123, emerg. eff. July 1, 1999 (superseded document available).

Citationizer® Summary of Documents Citing This Document

Cite	Name Level
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None Found.	

Defense Counsel would point out that statute has been in existence since 1957. In its entire history, there are no documents in OSCN citing this law. As a result, there is no case law in Oklahoma to rely on to apply this statute under these facts. However, Defense would point out that this statute does not require the jury have an awareness they are being observed in order to commit this felony.

CONSTITUTIONAL GUARANTEES

An accused person in a criminal trial has constitutional rights of due process. These

rights are both procedural and substantive.

The Fifth Amendment to the United States Constitution declares:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (emphasis added).

The Fourteenth Amendment to the United States Constitution states:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis added).

The three factors to be considered regarding application of these Constitutional Due Process rights were addressed in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

(a) *"[D]ue process is flexible and calls for such procedural protections as the particular situation demands," Morrissey v. Brewer*, 408 U.S. 471, 481 . Resolution of the issue here involving the constitutional sufficiency of administrative procedures prior to the initial termination of benefits and pending review, requires consideration of three factors: (1) *the private interest that will be affected by the official action*; (2) *the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards*; and (3) *the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail*. Pp. 332-335. (emphasis added).

HOW SHOULD ATTORNEYS BEHAVE?

Attorneys must follow the Oklahoma Rules of Professional Conduct. In Chapter 1, App. 3-A, Attorneys are given guidelines in order to maintain the integrity of the

profession. This section refers to what constitutes misconduct as described below in Rule 8.4 in part relevant to the case at hand:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

Comment

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, ...*Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.* (emphasis added).

Isaac Shields and George Gibbs, Jr. were representing the Rogers County District Attorney's Office as prosecutors and, as a result, have specific rules applied to them under Title 5, Chapter 1, app. 3-A, as an Article Advocate and Rule 3.8 in the Comments which states in part relevant to the case at hand:

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. *This responsibility carries with it specific obligations to see that the defendant* .and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standard of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor,

and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4. (emphasis added).

WHAT IS THE IMPACT OF SUCH BEHAVIOR?

When a prosecutor deprives a defendant of his Constitutional Due Process Rights through his conduct during any portion of the trial, including deliberations by the jury, there are consequences. In *McDaniel v. State*, 1979 OK CR 149, 604 P.2d 147, a defendant, Bob Dale McDaniel, misrepresented himself to be one James Alfred Donald, Jr., standing trial for an armed robbery before Judge Margaret Lamm and prosecuted by Clifford Hopper.

Mr. Hopper learned of the deception, asked for a continuance to the next day, told a reporter from the Tulsa World about the issue and it showed up in the morning edition of the May 13, 1976 paper.

Judge Lamm granted a mistrial sua sponte. The defendant claimed he was not subject to retrial because of the Double Jeopardy Clause claiming the mistrial was caused by prosecutorial misconduct.

The Court ruled Mr. McDaniel's attempt to perpetrate a fraud on the trial court was the proximate cause of the conduct of the prosecuting attorney which resulted in the mistrial. "To dispense with any ambiguity that might exist *we expressly hold that in the absence of evidence of bad faith conduct by the prosecutor or trial court, intended to harass or prejudice the rights of an accused*, a defendant will not be heard to complain of the proximate result of his own misconduct at trial. See *Pierce v. State*, Okl.Cr., 383 P.2d 699 (1963). See also *Shimley v. State*, 87 Okl.Cr. 179, 196 P.2d 526 (1948). "(emphasis added).

WHAT IS A TRIAL COURT'S RESPONSIBILITY WHEN THESE TYPES OF BEHAVIOR BY PROSECUTORS OCCUR?

While there is no case law to provide guidance when Prosecutors commit felonies during a jury trial directly connected to a procedure-jury deliberations- integral to the criminal justice process, there is guidance to violations of the Defendant's right to Due Process found in *Mitchell v. State*, 2006 OK CR 20, 136 P.3d 671, ¶101, 102, 109 as stated:

¶101 We conclude that the manner in which the prosecutor presented his closing argument—yelling and pointing at the defendant as he addressed him directly—was highly improper and potentially prejudicial.²¹⁴ There can be little doubt that the content and presentation of this closing argument was carefully calculated to inflame the passions and prejudices of Mitchell's jury.²¹⁵ The prosecutor's conduct allowed him—perhaps more forcefully than words alone could do—to express the utter contempt and disdain that he personally felt toward the defendant and his crime. This Court concludes that prosecutors should not be allowed to do through their actions and demeanor what we have expressly forbidden them to do with their words, namely, assert their personal opinion about the defendant or the crime.²¹⁶ *While we continue to recognize the "liberal freedom of speech" that is appropriate to closing argument,²¹⁷ we also recognize that this freedom, like most, remains constrained by the rights of others, including the right to due process and to a reliable capital sentencing.*

¶102 Perhaps even more disturbing than the behavior of the prosecutor is the trial court's repeated refusal to in any way constrain or condemn this behavior. The trial court's stance was, essentially, that the court would allow the State to do as it willed unless defense counsel could produce a case, on the spot, specifically forbidding the challenged action.²¹⁸ This is not the proper role for a trial court judge. *Trial judges are responsible for protecting and upholding the honor, dignity, and integrity of the proceedings held before them.²¹⁹ They are not powerless to control the bad behavior of the parties and attorneys who come before them; nor must they await a specific ruling from an appellate court in order to find a particular behavior improper.²²⁰ The total failure to constrain this prosecutor, combined with the obvious annoyance displayed by the court that defense counsel was "interrupting the flow" of the State's argument, suggests that the trial judge may have forgotten, at least momentarily, where she was sitting and what she was wearing.*

¶109 Even beyond this aggravating circumstance, this Court has concluded that the trial court abused its discretion in denying defense counsel any opportunity to question prospective jurors who expressed reservations about the death penalty—particularly in light of the inconsistent approach taken by the court regarding jurors who expressed reservations about the "life" sentencing options. We have found that the court abused its discretion by failing to constrain the extent of graphic photograph and videotape evidence presented to the jury. We have found that the trial court violated Mitchell's constitutional right to present mitigating character evidence, when it excluded letters and other written materials sent by Mitchell to his younger brother. And we have concluded that the court

erred in allowing the victim's brother to testify as the "representative" of the victim's family, and then also allowing both of the victim's parents to testify as additional victim impact witnesses. In addition, *this Court has found that the resentencing prosecutor committed serious prosecutorial misconduct, particularly during his final closing argument, and that the trial court erred in failing to prevent or ameliorate this misconduct.*²²⁷(emphasis added)

HOW SACROSANCT ARE THE JURY DELIBERATIONS?

Again, while there is no case law governing the actions of the prosecutors Isaac Shields and George Gibbs, Jr., there is guidance from case law involving the fact that prejudice is presumed when the deliberative process is violated. It is not on point because no one before Isaac Shields and George Gibbs, Jr. have apparently been caught committing the felony invasion of the sanctity of jury deliberations.

However, in *Mooney v. State*, 1999 OK CR 34, 9909 P.2d 875, ¶63, guidance is given when the procedural code, 22 O.S. 1991, §857 is violated;

¶63 The bailiff's unauthorized and improper communication with the jury is the most troubling of the above listed factors. Pursuant to 22 O.S.1991, § 857, a jury must be sequestered between hearing the charge and returning a verdict. *If after deliberations have begun the jury is allowed to separate and commingle with people outside the jury panel, prejudice to the defendant is presumed. Bayliss v. State, 1990 OK CR 51, ¶ 4, 795 P.2d 1079, 1080; Howell v. State, 1994 OK CR 62, ¶ 39, 882 P.2d 1086, 1094-95, cert. denied, 514 U.S. 1113, 115 S.Ct. 1968, 131 L.Ed.2d 858 (1995).* (emphasis added)

There is no record as to what the Bailiff may have spoken to the Jury. This was a procedural code violation not a felony offense affecting a defendant's Constitutional Rights!

APPLICATION OF LAW AND ARGUMENT

The Defendant would point out that in all the cases provided and the Fifth and Fourteenth Amendments make it clear that this is a case involving both substantive and procedural Constitutional Due Process Rights.

It is anticipated by the Defense that the State may present an argument that this

egregious violation of Robert Kraft's Constitutional Substantive and Procedural Due Process Rights are subject to a harmless error analysis.

That would be in error and intellectually inappropriate.

Applying that standard would be stating that unless the Prosecutor gets caught *during the act of committing the felony, going directly to the Judge, bringing the felonious behavior to the attention of the Court, and screaming for a mistrial*, meh, no harm, no foul, there is no grounds for a mistrial.

Applying this standard would actually reward a Prosecutor for committing the felony crime of observing the jury and violating Rule 8.4 (b) regarding his conduct.

In this particular case, where the Defense expects discovery from the State to prove Isaac Shields actually knew his actions were criminal when he lied-a form of dishonesty, fraud, and deceit or misrepresentation- to First Assistant Joy Thorpe about the hours he spent spying on the jury during deliberations and gaining intelligence should he have to try the case again, he would be rewarded while violating Rule 8.4 (c).

There can be no argument that the actions of Isaac Shields and George Gibbs, Jr. , when they were spying on the jury deliberations, were engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4 (d).

Applying the harmless error analysis to the acts of Isaac Shields is specifically chilling. This Court is now aware that Isaac Shields has been spying on juries since December 6th, 2017 as evidenced by Brian Boenheim's Affidavit. The logic would be that as long as the jury does not remain deadlocked, the court declaring a mistrial as a result, requiring a new trial, the defendant has suffered no harm since none of that intelligence gathered as to what evidence they handled will be of any use in a new trial. Or whether

the jury was tribalized in such a manner that the prosecutor learned they were very deadlocked- six on six- or not so much- ten against two- to convict, we'll get him next time, or eleven to one to acquit-maybe we should offer Manslaughter instead of trying this case again. Or whether the State gains an advantage should a "dynamite instruction" be requested by either party. These are just a few of many advantages over the defendant that can be gained from committing this felony crime of observing the jury.

That is why committing an offense against Title 21 O.S. 588, -Grand or Petit Juries- Recording of or Listening to Proceedings, does not require that the jury be aware they are being violated. It is offensive to our core values of the criminal justice system!

Even the recent televised trial of Alex Murdaugh in Walterboro, South Carolina, respects the sanctity of the jurors. Every other single participant in the trial is televised *except them!*

Applying the Fifth and Fourteenth Amendments to this matter, there is no question that in a criminal trial, the Defendant has expectations of Due Process Rights. He is subject to a loss of liberty (freedom) by an official act of a Government Actor. As stated in *Mathews v. Eldridge*, 424 U.S. 319 (1976):(a) "[D]ue process is flexible and calls for such procedural protections as the particular situation demands," *Morrissey v. Brewer*, 408 U.S. 471, 481 .

In this matter, the only protection Robert Kraft has comes from a Court willing to be "responsible for protecting and upholding the honor, dignity, and integrity of the proceedings held before them". *Mitchell v. State*, 2006 OK CR 20, 136 P.3d 671 ¶102.

That protection has to be granted because no one can deny that the actions of Isaac Shields and George Gibbs, Jr. were exactly the kind that impugn the honor, dignity and integrity of trial proceedings and cause the public at large to lose faith in the judicial

system when Prosecutors provide video recorded “evidence of bad faith conduct by the prosecutor or trial court, intended to harass or prejudice the rights of an accused.”

McDaniel v. State, 1979 OK CR 149, 604 P.2d 147 citing *Pierce v. State*, Okl.Cr., 383 P.2d 699 (1963). See also *Shimley v. State*, 87 Okl.Cr. 179, 196 P.2d 526 (1948).

Mitchell provides this Court the guidance on what to do when Prosecutors do things which shake the confidence of the public in the integrity of the criminal justice system.

Mooney guides the Court regarding how sacrosanct the jury is.

McDaniel dictates that when Prosecutors are bad actors, their behavior warrants consequences.

In final argument, the Defense would ask this Honorable Court to perform two considerations in reaching Its conclusion regarding a mistrial.

- 1) If this was a misdemeanor trial for simple drug possession would a mistrial be granted?
- 2) If Defense Counsel had committed the felony crime the Prosecutors did, and it was discovered later, after an acquittal of Robert Kraft, would the Court expect the State to demand a mistrial and would it be granted?

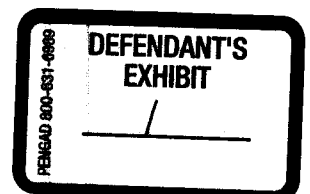
WHEREFORE, the Defendant prays this Court take into consideration that mistrials have been granted for events during trials which have never risen to the level of felony offenses during the practice of law. The Defendant prays to this Court that , although there has never been any prior case law addressing such egregious behavior, the Court considers the institutional protections the citizens of Oklahoma rely on. The Defendant prays that this Court send a clear message as to the gravity of the offense and grant Defendant’s Motion for

AFFIDAVIT - REGARDING ISSAC SHIELDS

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

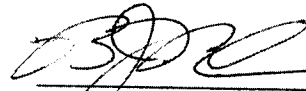
I, Brian J. Boeheim, OBA #31946, of lawful age and sound mind, being first duly sworn upon oath,

1. I am the above-named named affiant.
2. I was defense counsel for Dameon Lundy in case number CF-2016-4383.
3. On the 4th of December 2017, we began a trial that lasted three (3) days.
4. The State prosecutors were Isaac Shields and Mark Morgan.
5. Mark Morgan and I waited in the courtroom as the jury deliberated. Isaac Shields was in and out of the courtroom.
6. At one point, Isaac Shields came into the courtroom and began to tell Mark Morgan and myself what he had heard listening at the door of the deliberation room.
7. I immediately asked him to stop sharing what he had heard, and suggested to him that I believed it was unethical to listen to jury deliberations.
8. Mr. Shields waived me off and left the courtroom.
9. A little while later Mr. Shields re-entered the courtroom and started telling Mark Morgan that he went back to the jury deliberation room door. Mr. Shields then began to tell Mr. Morgan details regarding what he had heard through the door.
10. I confronted Isaac Shields once again about how I felt that his behavior was unethical. Voices were raised and the discussion became so heated that two deputies came into the courtroom concerned there might be an altercation.
11. At that time, I was unaware that Mr. Shields actions could be construed as a crime.



12. I did not make the Court aware of Mr. Shields actions, as I did not believe it had a negative impact on my client and I felt I made my point with Mr. Shields.

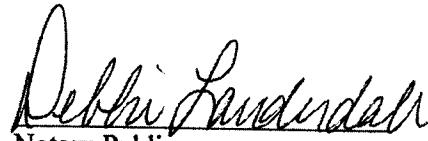
13. I truly believed Isaac Shields understood the ethical inappropriateness of listening to a jury deliberate, and I thought this was a one-time thoughtless indiscretion. I did not want to damage his career over a single incident of bad judgement.


Brian J. Boehm, Affiant
OBA# 31946

Subscribed and sworn before me on this 4th day of November 2022.

[Seal]




Notary Public



OKLAHOMA OPEN RECORDS REQUEST

September 29, 2022

Brian Hermanson
District 8 District Attorney
201 S. Main
Newkirk, OK 74647

Mr. Hermanson:

Pursuant to the Oklahoma Open Records Act (Okla. Stat. tit. 51, § 24A.1 et. seq.) and the Deferred Prosecution provisions of Oklahoma law (Okla. Stat. tit. 51, § 305.1 et. seq.) this letter is to serve as our official request for public records.

Records Requested:

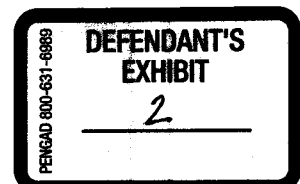
1. A copy of District 8's guidelines that indicate what factors shall be considered for offering an accused person the deferred prosecution program, as required by Okla. Stat. tit. 22, § 305.1.
2. Deferred Prosecution Agreements for the criminal accused Isaac Shields.
3. Deferred Prosecution Agreements for the criminal accused George Gibbs.
4. Any and all communication, including but not limited to emails, texts, letters, notes, etc, between your office and District Attorney Matt Ballard's office regarding the investigation and or possible prosecution of Isaac Shields and George Gibbs for the alleged illegal observation of jury deliberations.

Timing:

Oklahoma law requires that public bodies provide prompt access to public records requests and this time shall be limited solely to the time required for preparing the requested records. Furthermore, the Oklahoma Attorney General has defined this to be only the time required to locate and compile such public records. Therefore, we would ask that the requested records be provided to our office no later than 17 business days from the date of this letter. If a response will



339 S. Wilson, PO Box 352, Vinita, Oklahoma 74301
tel: 918.782.0000, fax: 918.782.0200
web: LeeCoats.com



require more time, please respond in writing indicating the anticipated time required to fulfill our records request.

Exemptions:

If the records requested do not exist, please let us know. If, in your opinion, the requested records are exempt from the Open Records Act, please cite the specific statutory authority you rely upon to deny access to the public records. Oklahoma law requires "any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions." We would request that you provide access accordingly.

Delivery:

We would request that the records, to the extent possible, be delivered by e-mail to records@leecoats.com or by facsimile to 918.782.0200. In the case of audio and video recordings, please mail these records to our firm at the address above. You are advised to keep the originals of these records, for they may be used as evidence in a court of law.

Records Custodian:

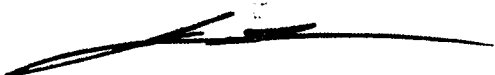
If there is a specific person designated to receive and process open records requests, please forward this request to that person, and let our office know in writing as soon as possible who it is, so that we may make sure all future requests from our office go to the proper person. If we do not hear otherwise, we will assume that our requests are to your satisfaction.

Questions:

Should you have any questions or confusion about this request, please do not hesitate to contact our office. If we do not hear from you by within the requested time period we will assume that you fully understand our request and have no questions or confusion about what is being requested. Furthermore, if we do not receive a response from you, in writing, by the above-listed deadline, we will take this as a refusal to comply with our request for public records.

Thank you in advance for your cooperation.

Sincerely,



Josh D. Lee



BRIAN T. HERMANSON
EIGHTH DISTRICT ATTORNEY

Kay County Courthouse
201 South Main
Newkirk, OK 74647
Phone (580)362-2571
Fax (580)362-2335

Noble County Courthouse
300 Courthouse Drive #6
Perry, OK 73077
Phone (580)336-4044
Fax (580)336-3024

October 21, 2022
Josh D. Lee
Lee/Coats Law
339 S. Wilson, P.O. Box 352
Vinita, OK, 74301

Re: Oklahoma Open Records Request

Pursuant to the Oklahoma Open Records Act (Okla. Stat. tit. 51, § 54A.1 et. seq) and the Deferred Prosecution provisions of Oklahoma law (Okla. Stat. tit. 51, § 305.1 et. seq) this letter is to serve as our official response for your request for public records.

Records Requested:

1. A copy of District Attorney's guidelines that indicate what factors shall be considered for offering an accused person the deferred prosecution program, as required by Okla. Stat. tit. 51, § 305.1.
Answer: *see attached*
2. Deferred Prosecution Agreements for the criminal accused Isaac Shields.
Answer: *No such Agreement has been signed*
3. Deferred Prosecution Agreements for the criminal accused George Gibbs.
Answer: *No such Agreement has been signed*

4. Any and all communication, including but not limited to emails, texts, letter, notes, etc., between your office and District Attorney Matt Ballard's office regarding the investigation and or possible prosecution of Isaac Shields and George Gibbs for the alleged illegal observation of jury deliberations.

Answer: ***See attached emails and text messages***

Sincerely,

A handwritten signature in black ink, appearing to read "B.T.H.", with a long horizontal flourish extending to the right.

Brian T. Hermanson
8th District Attorney

Hermanson, Brian

From: Ballard, Matt
Sent: Tuesday, September 6, 2022 4:34 PM
To: Hermanson, Brian
Subject: Shields/Gibbs investigation
Attachments: Isaac - George - Text #1.pdf; Isaac - George - Text #2.pdf; Joy - Text #1.pdf; Joy - Text #2.pdf

Brian—

Here are the text messages between myself and Shields and Gibbs (it was a text thread with both on the same thread). I also attached the texts between myself and Joy from the night of the verdict. I am checking on the audio of the interview with both and how to best get that to you. I think we may be able to send them via email, so we'll try that first. Let me know if you need anything else from me.

--MATT



Matthew J. Ballard
District Attorney
District 12 District Attorney's Office
Rogers County Courthouse
200 S. Lynn Riggs Blvd.
Claremore, OK 74017
(918) 923-4960
Fax: (918) 923-4345

Text exchanges from Brian Hermanson and Matt Ballard

Thu, July 14, 2:23 PM

Brian Hermanson: Do you have any time where we can talk about what happened in Claremore?

Thu, July 14, 2:41 PM

Matt Ballard: That's a conversation I would like to have. I'm about to start a court Proceeding to make a record regarding that issue, but I'll be available later this afternoon, if that works.

Thu, July 14, 3:08 PM

Brian: It will. Let me know when you would yo meet.

Thu, July 14, 5:29 PM

Matt Ballard: I just got free. I can talk now or later or tomorrow, whatever works for you.

Thu, July 14, 5:29 PM

Brian: Let's do it now.

Thu, July 14, 5:30 PM

Brian: Where do you want to meet?

Thu, July 14, 6:05 PM

Matt Ballard: "shares contact of Brandon Lane O.S.B.I."

Tue, Sep 6, 3:16 PM

Brian: I just heard that your office and the SO did an internal investigation in the Shield/Gibbs case. Would you be willing to share those investigations?

Tue, Sep 6, 3:20 PM

Matt Ballard: Sure, although we did not do a written report, as they both resigned. My investigator did it and the only thing you might not have is our interview of Shields and Gibbs. Primarily, we reviewed the video of the room showing them coming/going, talked to the deputies that were there and let them in, and then spoke with both Shields and Gibbs. I'll check with my investigator and see what we have that you might not.

**RESTITUTION AND DIVERSION PROGRAM &
DEFERRED PROSECUTION AGREEMENTS**

The Office of the 8th District Attorney will NOT use deferred prosecution agreements unless approved by the District Attorney.

However, certain crimes such as Violations of Compulsory Education and Larceny of Rental Property have prior approval to be filed in accordance with the District Attorney's current policy at the time.

Cases where the main goal is restitution that can reasonably be paid in less than 24 months the Assitant District Attorney may consider the Resitution Diversion Program. These cases are managed through the Restitution Advocate.

Tue, Sep 6, 5:15 PM

Matt Ballard: I emailed the texts we talked about and Wayne emailed the audio of the interviews. It showed they went through, but let me know if you didn't receive them. I really do appreciate your review of all this. I hate that my office put you in this position I will fully support whatever decision you arrive at. Thank you.

Tue, Sep 6, 5:50 PM

Brian: Got them. Thanks.

Tue, Sep 22, 12:53 PM

Matt Ballard: My sheriff's office talked to the US Attorney's office about their investigator Chris Buck and were told the feds would be declining any charges against him. So they are planning on putting Chris back to work. Now they're asking about Wes Jones. Have you made a final decision about Wes? They would like to get him back to work asap, if possible. On a selfish note, he's the investigator on a murder case we have coming up in a few weeks and we need him to do some follow up before the hearing. Not trying to put pressure, just trying to advise the sheriff's office about getting him back on duty.

Tue, Sep 22, 12:54 PM

Brian Hermanson: The only action we will be taking is entering into DPAs with Shields and Gibbs

Tue, Sep 22, 1:16 PM

Brian: The agreements were sent to them today.

Tue, Sep 22, 1:20 PM

Matt Ballard: Thank you.

3:01

5G

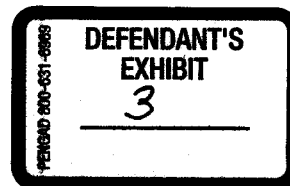


Matt >



I'm getting pity calls from my children to come meet them for dinner so I'm going to head out. They are still waiting on the jury. If they are still waiting when I get out of dinner I will come back!

Sounds good. We just picked my brother up from the airport. If they're still in after dinner, I may check on them as well.



iMessage





MB



Matt >

Enjoy your family! The jury asked to see some transcripts so they may just be arguing over something silly

Did you hear they said they were hung and the court told them to continue deliberating.

They said they thought they had a holdout.

Ugh. A hung jury is miserable.

I know. It's so awful be-



iMessage



3:02

5G



MB



Matt

tinue deliberating.

They said they thought
they had a holdout.

Ugh. A hung jury is mis-
erable.

I know. It's so awful be-
cause you have to do it
again.

I'm surprised too. I really
thought they had it. But
it only takes one.

Yes.... Sadly.



iMessage



3:59

New iMessage

Cancel

To: Isaac Shields & 1 more...

Fri, Jul 1 at 7:37 PM

Are y'all doing ok? Can I bring y'all anything?

Isaac Shields

We are fine. Just patiently waiting. Annalisa



iMessage



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123

space

return



3:59

New iMessage

Cancel

To: Isaac Shields & 1 more...

We are fine. Just pa-
tiently waiting. Annalisa
went to get pizza



I think you have one id-
iot juror... I am happy to
bring y'all snacks if



iMessage



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123

space

return



3:59

New iMessage

Cancel

To: Isaac Shields & 1 more...



I think you have one idiot juror... I am happy to bring y'all snacks if needed too. I've said a prayer of favor with the jury.



iMessage



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