IN THE DISTRICT COURT OF THE TWENTIETH JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA SITTING IN AND FOR CARTER COUNTY

THE STATE OF OKLAHOMA,)
Plaintiff,)
) Case No. CF-2020-222
Vs.)
)
BRANDON COL DINGMAN,)
Defendant.)

FILED
IN DISTRICT COURT
OCT 06 2021
RENEE BRYANT, Court Clerk
Carter County, Oklahoma

STATE'S RESPONSE TO DEFENDANTS' MOTION TO DISQUALIFY CARTER COUNTY DISTRICT ATTORNEY'S OFFICE AND FOR OTHER RELIEF INCLUDING DISMISSAL OF THE INFORMATION

COMES NOW District Attorney Craig Ladd and responds to Defendants' Motion to Disqualify Carter County District Attorney's Office and for Other Relief Including Dismissal of the Information as follows.

SUMMARY OF PERTINENT FACTS

D.A. Ladd met with David Duggan in June of 2020 with D.A. Investigator Marc Sanders as a witness to the same. The purpose of said meeting was for Ladd to tell Duggan that he (Ladd) didn't really believe that Duggan should be charged in the tasing death of Jared Lakey because it was apparent that Duggan had been misled by Dingman and Taylor about Lakey's degree of resistance and the number of times they (Dingman and Taylor) had tased Lakey prior to Duggan's arrival. Despite his belief that Duggan should not be held criminally responsible for Lakey's death, Ladd strongly encouraged Duggan to resign from his position as a deputy with the Carter County Sheriff's Department for his part in the arrest. Ladd characterized his viewing of the dash and body cam of the Lakey incident as "Its horrible"; "Its hard to watch"; "There's some extenuating circumstances on behalf of you (referencing Duggan), because I feel like you were misled and if you saw the tape, you would be pissed."; "Dingman and Josh were not honest with you (referencing Duggan), in my opinion, and I think that's enough to, to kind of get you off the hook criminally."; "They've (referencing Dingman and Taylor) put me in a spot where

I've got to do something to them. And frankly, after watching the video, I don't really have a problem doing something to them."; "It is hard to watch."; "its (referencing the video of the tasing incident) offensive to your sense of humanity to see them treat a human being like that."; and "Well, I'm not saying, Dave, you can't be serving somewhere else. These other two guys, I'm gonna try to make sure they're never cops again."

Due to a video/audio recording of the entire event in question, what was done to Jared Lakey on the night he was tased and arrested has never really been controverted. The issues in controversy are merely about whether the use of force exerted by Defendants against Lakey was excessive, and if so, whether it was a substantial factor in bringing about his death. On July 1, 2020, Ladd charged Dingman and Taylor (hereinafter "Defendants") with Murder in the Second Degree, of the "felony murder" type rather than the "depraved mind" variety. The predicate felony chosen for said felony murder charge was Assault and Battery with a Dangerous Weapon. The charges were based upon a report prepared by O.S.B.I. Agent Tony Navarro which listed the suspects as Joshua Taylor; Brandon Dingman; David Duggan; and Terry Miller. Special District Judge Carson Brooks presided over a preliminary hearing in the matter on October 20, 2020 and bound Defendants over for trial after making a probable cause determination. Ladd did not file charges on Duggan and Miller. Ladd made it clear to Defendants' attorneys or anyone else who cared to listen from day one that charges weren't filed against Duggan and Miller because he felt their involvement in the arrest of Lakey was of such a nature that a criminal prosecution of them for Lakey's death would be improper.

Ladd was e-mailed a copy of the "surreptitious recording" referenced in Defendants' brief on July 6, 2021, but was admonished by the sender that said recording had been "sealed" pursuant to an order of the federal judge in the civil suit pertaining to Lakey's death. Therefore, Ladd was concerned about the propriety of defying this alleged federal court order. In August, however, Ladd determined it would be better to violate such a federal court order rather than give counsel in the case at bar a tool to potentially further delay proceedings in the instant case or provide support to a claim that the prosecution in the instant case had intentionally withheld some sort of a discoverable or relevant communication with a State's witness.

On September 29, 2021, Defendants filed the aforementioned Motion to Disqualify Carter County District Attorney's Office and alleged in said Motion that Ladd had violated

several ethical rules, including prosecuting a matter he himself believed to not be supported by probable cause. It should be noted, as will be explained below, these contentions are extremely tenuous at best. On September 30, 2021, a very vocal Facebook critic of Ladd asked visitors to the Facebook page called "Southern Oklahoma Uncensored Scanner Feeds" to send her examples of Ladd behaving unethically by stating "I am going to write a book. Anything about Craig Ladd, the judges here, the police, anything. And please send any evidence you have to support your stories. Thank you for all your responses!" and followed this plea for dirty laundry with several false stories about Ladd's alleged nefarious endeavors. Counsel for Defendant Dingman actually responded to this post by encouraging said vocal critic to get a copy of the Motion to Disqualify knowing that this unhinged critic would likely disseminate the misinformation contained in the Motion to Disqualify on a Facebook page which is frequented by people who are likely from Carter County and could thus be prospective jurors in the upcoming jury trial in the above-entitled cause of action (see attachment). In other words, Counsel took this action while knowing that dissemination of said misinformation could very well taint a significant portion of the jury pool in this case.

ISSUE #1: Does *Brady v. Maryland*, 373 U.S. 83 (1963), have any application to the case at bar?

Brady is a U.S. Supreme Court case relied upon by Defendants as authority for having Ladd disqualified from the prosecution of the case at bar. In *Brady*, two men named Brady and Boblit were found guilty of felony first degree Murder with the predicate felony offense being robbery. Brady admitted at trial from the witness stand as to his participation in the robbery but claimed that Boblit did the actual killing. After trial it was discovered that Boblit had previously confessed to the actual homicide, but this statement was never provided to Brady's counsel. The Supreme Court determined that the suppression of Boblit's confession by the prosecution had effectively denied Brady of his due process. The *Brady* Court held that "suppression by the prosecution of evidenced favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution." and then remanded the case back to District Court for a new trial. *Id* at 87.

The *Brady* opinion does not address the issue of when and under what circumstances a prosecutor should be disqualified from the prosecution of a particular charge. *Brady* addresses what should happen when evidence "favorable to an accused" is discovered after a trial has concluded. Discovery that Duggan had been given assurances by Ladd that he would not be prosecuted for the death of Jared Lakey is not evidence at all, and even if it was, it's not favorable to Defendants. It is no secret that Duggan isn't being prosecuted in the case at bar; it is self-evident. Furthermore, even if that fact is favorable to Defendants, they already know about it and have known about it for months. By Defendants' own recitation of the background in the case at bar, they concede Ladd provided them with a copy of the meeting between Duggan and Ladd months before trial was scheduled to commence and well before the discovery deadline. Given that *Brady* is about evidence favorable to an accused which wasn't discovered until after trial, *Brady* has absolutely no application to the case at bar.

ISSUE #2: Does *Giglio v. United States*, 405 U.S. 150 (1972), have any application to the case at bar?

Giglio is another U.S. Supreme Court case relied upon by Defendants as authority for having Ladd disqualified from the prosecution of the case at bar. Giglio was convicted of passing forged money orders. After trial it was discovered that the prosecution had failed to disclose an alleged promise made to its key witness, Taliento, that he would not be prosecuted if he testified for the government. Actually without this key witness, Giglio could not have been even linked to the crime for which he was convicted. The Court concluded that the prosecution's failure to disclose the deal it had made with Taliento in exchange for his testimony violated Giglio's due process and necessitated a new trial for Giglio. *Id* at 155.

As with *Brady*, the *Giglio* opinion does not address the issue of when and under what circumstances a prosecutor should be disqualified from the prosecution of a particular charge. *Giglio* addresses what should happen when evidence is discovered after a trial has concluded that the prosecution had reached an agreement with a key witness to not prosecute said witness in exchange for his testimony. Discovery that Duggan has been given assurances by Ladd that he would not be prosecuted for the death of Jared Lakey does not constitute some sort of *Giglio* agreement made to secure Duggan's testimony at all. In fact, there was no discussion of Duggan

testifying in the upcoming trial against Defendants whatsoever, much less any *Giglio* type of arrangement that "If you agree to testify, then I will agree not to prosecute you." The "key witness" in the case at bar as to what happened to Jared Lakey will come in the form of dash/body cam video and audio. Even if there was some variation of a *Giglio* agreement in the instant case, counsel for the Defendants in the case at bar, unlike Giglio's attorneys, learned about it months before trial is scheduled to commence and well before the Court imposed discovery deadline. Given that *Giglio* is about secret deals made with a key witness to secure his testimony which wasn't discovered until after trial, it has absolutely no application to the case at bar.

ISSUE #3: Does *U.S. v. Burke*, 571 F.3d 1048 (10th Cir. 2009), have any application to the case at bar?

Burke is a 10th Circuit case relied upon by Defendants as authority for having Ladd disqualified from the prosecution of the case at bar. *Burke* stands for the proposition that the prosecution should not be permitted to wait until trial commences before disclosing *Brady* type evidence to defendants' attorneys. The "evidence" in question in the case at bar was disclosed to Defendants months before trial was to commence and about six weeks prior to the discovery deadline in the case. Therefore, even if the so called "evidence" of Ladd strongly encouraging Duggan to resign from further duties with the Sheriff's Department could somehow be characterized as "*Brady* material", *Burke* would have no application because disclosure of said "evidence" occurred in a timely fashion.

ISSUE #4: Did Ladd violate Oklahoma Rule 3.8(a) of Professional Conduct, and if so, then is the remedy to disqualify him from continuing as the prosecutor in the instant case?

Perhaps even more strangely than the three cases previously discussed which were relied upon by Defendants as authority for having Ladd disqualified from the prosecution of the case at bar, Defendants also rely upon Oklahoma's Professional Rules of Conduct as legal authority for his disqualification. Rule 3.8(a) prohibits a prosecutor from "prosecuting a charge that the prosecutor knows is not supported by probable cause." There was a finding of probable cause by the Honorable Carson Brooks in this case almost a year ago on October 20, 2020. Given that

there has been an official determination by a neutral and detached magistrate that probable cause exists of Defendants' guilt in the case at bar, then it seems clear that Ladd has not violated Rule 3.8(a). Even if Ladd did violate said rule, then there is nothing in Rules of Professional Conduct which provide he should be disqualified from further prosecution of the matter. In such a case, the only relief available would for the preliminary hearing magistrate to dismiss the case and for a bar complaint to be filed against the offending prosecutor.

In the portion of Defendants' brief pertaining to Rule 3.8(a), Defendants discuss OUJI-CR 4-91 and the principles of "depraved mind" second degree murder. It should be noted that Defendants are not being charged with "depraved mind" second degree murder but rather second degree felony murder, with the predicate felony being Assault and Battery with a Dangerous Weapon. Thus, the jury instruction which should be given in the case at bar will be OUJI-CR 4-92.

ISSUE #5: Did a statement made by Ladd in his meeting with Duggan make him a material witness?

Defendants contend that Ladd's alleged statement of "I don't know that these guys were trying to be malicious, they are very poorly trained." makes him a material witness. Counsel for Defendants have represented their collective belief that they do not believe their clients were being malicious. They have stated that the person who bears the most blame for what happened to Jared Lakey is David Duggan. Does that make them "material witnesses" too? This contention is nonsensical. If Ladd would have told Duggan that he (Ladd) believed Defendants to be cold blooded murderers, would that make Ladd a material witness for the State in the event of disqualification? Of course not. Ladd's words are being taken out of context and would only constitute opinion evidence for which there is no basis for admissibility.

ISSUE #6: Did Ladd violate Oklahoma Rule 1.8(b) of Professional Conduct, and if so, then is the remedy to disqualify him from continuing as the prosecutor in the instant case?

Defendants contend that Ladd violated Oklahoma Rule 1.8(b) of Professional Conduct, and thus, he should be disqualified from further prosecution of the case at bar. Rule 1.8(b) provides that "A lawyer shall not use information relating to representation of a client to the

disadvantage of the client unless the client gives informed consent." Assuming, arguendo, that Ladd was Duggan's attorney, there has been no reason to believe Ladd either obtained or intended to use any confidential information from said relationship to Duggan's disadvantage. Even if he did, there is nothing in the Rules of Professional Conduct that would indicate the proper remedy is to disqualify Ladd from being able to continue as the prosecutor on the case. The remedy under the Rules of Professional Conduct is for Duggan to file a bar complaint on Ladd. Defendant's speculation that Duggan must have felt like Ladd's client is difficult to reconcile with the uncontroverted fact that Duggan was secretly recording their meeting. It is laughable indeed to try to square that action of Duggan with the notion that he (Duggan) felt like he and Ladd were on the same team. As with all of their other contentions for why Ladd should be disqualified, this contention is also equally without merit.

SUMMARY

When one carefully peruses Defendants' Motion to Disqualify and Dismiss it becomes readily apparent that it is just an attempt, and frankly a very weak one at that, by Defendants to further delay proceedings by blatantly misstating facts and law in an effort to secure relief that is not even legally available. On the top of page 2 of Defendants' brief in one of its many sentence fragments, Defendants claim "Oklahoma common law, as well as the inherent supervisory powers of this Court, to file their First Motion to Disqualify Prosecutor (sic)." Although it is difficult to know exactly what Defendants are intending to convey by this incoherent sentence fragment, one could interpret said fragment to conclude it is criminal defense attorney jargon for "We were not able to actually find any legitimate legal authority which would allow the District Judge in the case at bar to kick Ladd off the case but given that you are the District Judge, why not do it anyway?" Defendants use, for lack of a better term, a "shot-gun approach" with more sentence fragments loaded with buzz phrases and words such as "Oklahoma Rules of Professional Conduct", "*Brady*", and "*Giglio*". In the first paragraph of its brief, for example, Defendants write "In the present matter the newly discovered evidence amounts not only to a *Brady* violation and under *Giglio v. United States*, 405 U.S. 150 (1972) (sic)". Defendants shouting "*Brady* violation" a hundred times does not a *Brady* violation make. The only potential ethical violation which has occurred in this case was by counsel for Defendant Dingman when

she tried to goad a Facebook Ladd naysayer into disseminating the misstatement of facts and law contained in her brief on a Facebook page which is likely frequented by folks who could be prospective Carter County jurors. Such action on her part could arguably constitute a violation of Oklahoma Rule 3.6(a) of Professional Conduct regarding Trial Publicity.

In closing, Defendants conveniently ignore the fact that even in the *Brady*, *Giglio*, and *Burke* decisions themselves, the prosecutors who violated those defendants' rights to due process were not disqualified from being involved in the new trials ordered in those cases. Defendants cannot find any legal authority to remove Ladd from the prosecution of this case because none exists. Given the lack of any legal authority for the Court to grant the relief requested by Defendants, their Motions to Disqualify and Dismiss should be denied.

Respectfully submitted,

Craig Ladd, Carter County District Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of October, 2021, I mailed a true and correct copy of the above and foregoing to Shannon McMurray, attorney for the Defendant, 6666 S. Sheridan, Tulsa, OK 74133, by United States Postal Service, with postage thereon prepaid.

Pam Boone,

Office of the District Attorney

< Tarrin's Post •••

Tarrin Nickolson ▸ Southern Oklahoma Uncensored Scanner Feeds
Thursday at 1:42 PM ·

Edited to add: several people have contacted me privately with their own stories. I would love to invite anyone with a story about the injustice system here to please type up all of the details and send them to me. I am going to write a book. Anything about Craig Ladd, the judges here, the police, anything. And please send any evidence you have to support your stories. Thank you all for your responses! Also, I have set up a fund to help with the legal defense of the man who hit Mrs. Milor. It is on my profile if anyone would like to help or share.

An open letter to District Attorney Craig Ladd:

What exactly does it take to be one of your "friends"? I'm sure everyone in this county would like to know. What does it take to have any charges brought up automatically dismissed by you? Does it take a wealthy parent like the daughter of the owners of Veggies who was caught passed out cold, after hours, in a city park, with open containers, drunk, high, and in possession of enough narcotics to receive an initial charge of possession with intent to distribute? Somehow she was in and out of jail in under an hour and in less than 24 hours her charges were reduced to a misdemeanor and she was given deferred adjudication. Or maybe the son of the late Charles Milor who had a hit and run while driving under the influence and faced zero charges after gifting you his Porsche. I wonder where exactly you are storing that? Is it, perhaps, in one of Mr. Byford's storage units? Maybe that's why he has no charges against him after waving a gun at his family and dozens of innocent bystanders? But of course, you don't just dismiss and reduce charges for your "friends" either. You also increase and add charges on other citizens at the request of

Attachment

and reduce charges for your "friends" either. You also increase and add charges on other citizens at the request of your "friends" as well. Like the man who had a medical emergency and accidentally hit your "friend" Reta Milor. I can understand her "friend" status, though. She is the widow of the late Charles Milor, and she personally worked in your office for over 20 years. I guess that is why you didn't hesitate when she asked you to increase the charges against the gentleman who accidentally hit her, to a felony, even though it was a genuine accident caused by a medical emergency, he called 911, rendered aid, flagged down the police himself, and his insurance fully paid all of her medical bills and paid to fix her car. That definitely sounds like a violent felon who deserves to spend 5 years in prison and never be allowed to vote or own a firearm again, right? So, again, I'm sure we would all love to know how we can get you in our pocket like that. How can the rest of us have you forgive us all of our sins and be able to ask you to unfairly punish those we believe to have sinned against us?

Sincerely,
A Genuinely Curious Citizen

P.S.
For any other curious citizens out there with similar stories, the Oklahoma Bar Association has a complaint form on their website. I urge you to join me in utilizing it!

Like Comment Share

102

132 Shares

All Comments

Shannon M. McMurray
I am an attorney who has information regarding Craig Ladd. Tarrin, you can look up on OSCN CF 2020-222. It is in my motion to disqualify Ladd and his office and motion to dismiss. It is shocking to me what he has done.

Shannon McMurray

5d Like Reply

6

Tarrin Nickolson
Shannon M. McMurray are you by chance a defense attorney? I would love to discuss a case with you!

5d Like Reply

Shannon M. McMurray
yes. my email is shannon@klgattorneys.com feel free to send me an email with your number and I will call you.

t
Thanks,

Shannon

5d Like Reply

1

Tarrin Nickolson
Shannon M. McMurray I will send you the email tomorrow. I want to make sure I get all of the details in