

Defense attorney files for mistrial after Rogers Co. jury was spied on last July

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CLAREMORE, Okla. — "This has never happened before," was a phrase said and written repeatedly by both sides and the judge trying to determine how to move forward in a case that has already cost two Rogers County prosecutors their jobs.

Monday, Defense Attorney MJ Denman and Rogers County First Assistant District Attorney Joy Thorpe met with Judge Linda Thomas to find a way forward on the murder case against Robert Kraft that has been in limbo ever since the two prosecutors on the case were caught observing jury deliberations through a security camera last July.

Kraft was and still is facing a first-degree murder charge in the stabbing death of a Chouteau man back in 2018 when now Former Assistant District Attorney Isaac Shields and Former Assistant District Attorney George Gibbs, Jr. were caught in a security side room watching deliberations play out, Shields for more than two hours, Gibbs for under half an hour, court documents filed by Kraft's attorney state.

Oklahoma law prohibits listening or observing a jury during deliberations or even attempting to do so, and it is classified as a felony offense that can come with jail time and fines.

In new court filings, the Rogers County District Attorney's Office said Shields and Gibbs Jr. had spied on the jury, but the two had no influence or played a role in the outcome of their deliberations and argued a mistrial is not needed.

Because of COVID-19 protocols in place during the trial and the need to social distance, instead of being sent to their traditional deliberation room, a neighboring courtroom that is larger was opened up for the jurors to deliberate on Kraft's case. That courtroom had video and surveillance equipment that allowed for it to be observed by outside parties.

Denman said in court Monday that it now appears that there is a cell phone app that could also allow other outside parties to access the same video feed remotely without the need to enter the room Shields and Gibbs Jr. used to observe the jury. Denman and Thorpe will meet with the Rogers County Sheriff's Office within the month to see how the app works and who else could have possibly violated state law.

In text messages obtained by Denman and submitted to the court as part of his initial arguments for a mistrial, Denman argues that prosecutors gave themselves an unfair advantage and, at one point, were concerned a certain juror was going to lead to a mistrial.

In text messages between Shields and Rogers County District Attorney Matt Ballard, there is a thread showing Shields said there appeared to be a holdout on the jury, but he didn't state why he thought that.

Denman also presented a signed affidavit from a Tulsa attorney who said he witnessed Shields trying twice to listen through the crack of a jury deliberation room door during a trial back in 2017 when he was an assistant district attorney in Tulsa County at the time. According to those new court documents, attorney Brian Boenheim said he told Shields to stop attempting to listen in on deliberations twice, and the two became so heated in an argument that Tulsa County deputies had to get involved.

What is not clear at this moment is whether the state's appointed outside counsel to investigate the matter has moved forward with disciplinary action on Shields and Gibbs Jr. So far, the only actions against the men were they were allowed to resign from their jobs in the Rogers County D.A.'s Office. When Denman asked Brian Hermanson, district attorney for Kay and Noble Counties, if he had reached any conclusions on the incident yet, court records show Hermanson had not at this time. Hermanson was appointed by then-Attorney General John O'Connor last summer to look into possible criminal charges in the matter after Ballard recused himself to avoid accusations of there being a conflict of interest in how the spying incident was being looked into.

FOX23 has attempted multiple times to contact Hermanson's office on the matter, and our calls have not been returned.

Washington County District Judge Linda Thomas was recently brought in to help preside over the case after two Rogers County judges recused themselves.

Thomas ordered the Rogers County D.A.'s Office, the Oklahoma State Bureau of Investigation, the Rogers County Sheriff's Office, and Hermanson's office to hand over specific requests for new evidence in the case as she, Denman and Thorpe try to find a path forward in a situation that has never before happened in Oklahoma. Denman said in court Monday that he believes the evidence could not only show there were more people involved but his client's rights were violated deeper than what is currently known.

Thomas said in court Monday that what happens in this case and how the spying is handled could set a precedent for years to come because there is no other case law to look back on as to how things should proceed. In court filings, Thorpe stated she had to look at case law in other jurisdictions to find any kind of guidance on how to move forward, and even then, the circumstances don't entirely line up to what happened last summer in Claremore.

Robert Kraft remains in the Rogers County Jail, while the validity of his trial remains in limbo because of the spying incident.

