



MAR 9 2017

IN THE COURT OF CRIMINAL APPEALS
MICHAEL S. RICHIE, OF THE STATE OF OKLAHOMA
CLERK

DANIEL K. HOLTZCLAW,)	Case No. F-2016-62
<i>Appellant,</i>)	
)	District Court of Oklahoma County
v.)	Case No. CF-2014-5869
)	
THE STATE OF OKLAHOMA,)	
<i>Appellee.</i>)	

**MOTION OF PROF. RANDALL T. COYNE and J. CHRISTIAN ADAMS
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF APPELLANT DANIEL K. HOLTZCLAW**

Amici Curiae Prof. Randall T. Coyne and J. Christian Adams, by and through the undersigned counsel and pursuant to Rule 3.4(F)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), respectfully file this motion seeking leave to submit an *Amicus Curiae* brief in support of Proposition III raised by Appellant Daniel K. Holtzclaw in his brief on appeal. In support of their motion, *Amici* state:

1. Appellant Holtzclaw was convicted by an Oklahoma County District Court jury of 18 of 36 sex-related charges, and sentenced to 263 years in prison. Through his appointed appellate counsel, Holtzclaw timely filed his brief on appeal on Feb. 1, 2017 and raised seven issues. Among them is Proposition III, arguing that the circus atmosphere in which he was tried in late 2015 deprived him of his rights to due process and a fair trial. Brief, pp. 31-34.

2. Prior to his retirement in 2014, *Amicus Curiae* Randall T. Coyne was the Frank and Edna Asper Elkouri Professor of Law at the University of Oklahoma College of Law, and he is a past President of the Oklahoma chapter of the American Civil Liberties Union and two-time member of the ACLU's National Board of Directors. Prof. Coyne's scholarship and teaching

have focused on constitutional law, criminal law and procedure, capital punishment, civil liberties, and terrorism. He has written extensively on issues of constitutional law and the death penalty, and served on the defense team in *United States v. Timothy James McVeigh*, and in 2005 led a team of lawyers representing two Muslim prisoners confined indefinitely as enemy combatants at Camp X-ray Guantanamo, Cuba; both were released in 2007. He also has served as Vice-Chair of the Committee on the Death Penalty of the American Bar Association's Section on Individual Rights and Responsibilities.

3. *Amicus Curiae* J. Christian Adams served as an attorney in the Voting Section of the Department of Justice's Civil Rights Division from 2005 to 2010. In that capacity, he brought a wide range of election cases to protect African-American, Asian, and other minorities in states throughout the South, in matters involving vote-dilution, redistricting, and other issues. Mr. Adams also has litigated cases involving military voting protections and voter intimidation, including the case against the New Black Panther Party in Philadelphia, and participated in the successful Voting Rights Act prosecution in *United States v. Ike Brown*. He is the author of *Injustice: Exposing the Racial Agenda of the Obama Justice Department* (Regnery, 2011).

4. Thus, *Amici* have extensive experience as practitioners in some of the highest-profile cases in Oklahoma and/or the nation, and in the case of Prof. Coyne, academic experience. Both *Amici* have frequently appeared and given legal commentary on a wide variety of nationwide cable-news programs. Yet while they come from divergent political backgrounds, they share a belief that the troubling circumstances under which Holtzclaw's case was tried to the jury violated his fundamental constitutional right to due process and a fair trial. They wish to provide this Court with the benefit of their insight.

5. Specifically, *Amici's* proposed brief of no more than 20 pages will provide the Court with a concise discussion of the development of Supreme Court jurisprudence, from *Frank v. Mangum*, 237 U.S. 309 (1915) and *Moore v. Dempsey*, 261 U.S. 86 (1923), through *In re Murchison*, 349 U.S. 133 (1955) and *Sheppard v. Maxwell*, 384 U.S. 333 (1966), defining the contours of the due-process and Sixth Amendment requirement that an accused receive a fair trial by an impartial jury that is free from outside influence. The brief discusses *Nichols v. Dist. Court of Oklahoma Cty.*, 2000 OK CR 12, 6 P.3d 506, in which this Court applied *In re Murchison* and noted that “[t]he atmosphere essential to the preservation of a fair ‘public’ trial – the most fundamental of all freedoms – must be maintained.” *Id.*, ¶ 8.

6. The brief also relates the backdrop of inflamed relations between police and African-Americans in Ferguson, Missouri; Baltimore, Maryland; and various other places around the country at the time Holtzclaw was charged and tried, and places his prosecution in the larger context of local officials’ attempts to defuse racial tensions by inadvisedly rushing to charge and try police officers involved in incidents with racial minorities. Finally, it will provide the Court a detailed discussion, with specific citations to the record, of the many instances where this jury was exposed to outside influences deliberately seeking to taint its deliberations and verdict. Protesters acted with calculation to tamper with the trial process by a) overtly trying to tell a juror she must vote to convict, b) setting up shop directly below the second-story courthouse window and chanting “Give him life!” on cue, c) yelling “racist jury, racist cop” in the hallway as jurors exited, d) subjecting jurors to untold comments while they waited for courthouse elevators, and e) defying the courtroom camera ban and then lying about it. As the *Amicus* brief elaborates, the trial was so dominated by the protesting mob that there was actual interference with the course of justice, rendering the trial void. *Moore*, 261 U.S. at 91-92.

7. An *Amicus Curiae* brief that provides insightful analysis of the pertinent legal issues is helpful to the Court. See *Malone v. State (On Reh)*, 2002 OK CR 34, ¶ 3, fn. 1, 58 P.3d 208 (Lumpkin, P.J.); see also *State ex rel. Moss v. Couch*, 1992 OK CR 66, 841 P.2d 1154 (Order) (expressing Court’s appreciation for “the efforts and the quality of the input” of the parties and *amici*); *State v. Littlechief*, 1978 OK CR 2, 573 P.2d 263 (acknowledging “excellent brief” filed by *amicus* United Indian Tribes of Western Oklahoma and Kansas); *Ochoa v. Bass*, 2008 OK CR 11, ¶ 1, 181 P.3d 727 (commending counsel for parties and *amicus* for “their thorough and well-researched briefs”). Given the foregoing discussion in ¶¶ 5-6, *Amici* believe their proposed brief will assist this Court with regard to both the facts and the law in resolving the issue of whether Holtzclaw, under these unique and troubling circumstances, received a fair trial. Rule 3.4(F)(4).

8. Filing of the *Amici Curiae* brief will neither delay this Court’s resolution of the appeal nor prejudice the State, whose initial brief deadline is April 3, 2017, not counting any extensions. Further, the Court may accommodate the State by allowing it to file a supplemental brief responding to the brief of *Amici* by a separate deadline, as in *Malone, supra*, and in *Dutton v. Dixon*, 1988 OK CR 107, 757 P.2d 376 (1988), *overruled on other grounds, Cartwright v. State*, 1989 OK CR 41, 778 P.2d 479.

9. Given Rule 3.4(F)(4)’s admonition that an *Amicus* brief “shall not be filed unless leave is granted,” *Amici* have not attached the proposed brief to this motion. However, in the event the Court would like to review the brief before deciding whether to accept it, *Amici* through their counsel will provide it upon the Court’s request.

UPON THE FOREGOING and for just cause, *Amici Curiae* Prof. Randall T. Coyne and J. Christian Adams ask the Court to enter an Order granting this motion and allowing them to file

their proposed brief in this matter in support of Appellant Holtzclaw, within 7 days of the Order's entry.

Respectfully submitted,

RANDALL T. COYNE and
J. CHRISTIAN ADAMS

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Date: March 9, 2017

CERTIFICATE OF SERVICE

This is to certify that on March 9, 2017, a true and correct copy of the foregoing Motion for Leave to file *Amicus Curiae* Brief was served upon the Attorney General by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General pursuant to the Clerk's instructions and protocol, and served via United States Postal Service, first-class postage prepaid, to appellate defense counsel at the following address:

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