



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,)
Appellant,)
v.)
THE STATE OF OKLAHOMA,)
Appellee.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
AUG - 2 2017

Case No. F-2016-62

MOTION FOR ORDER TO PRESERVE EVIDENCE

Appellant, Daniel K. Holtzclaw, by and through his undersigned appellate counsel, respectfully requests that this Court to enter an Order to the Oklahoma County District Attorney's Office and to the Oklahoma City Police Department to preserve all evidence, documentation, and correspondence pertaining in any way to the investigation and prosecution of Daniel K. Holtzclaw in Oklahoma County District Court Case No. CF-2014-5869. In support of this request, Appellant states:

1. As detailed more fully in the accompanying Motion to Unseal Proceedings, it has come to undersigned counsel's attention that all of Oklahoma City Police Chemist Elaine Taylor's e-mails have been deleted.1 Ms. Taylor's work in this is the subject of claims raised in the Brief of Appellant and accompanying Application for Evidentiary Hearing on Sixth Amendment Claims, as well as an ex parte hearing held in district court on June 26 and 27, 2017. Any correspondence she may have had about her analysis of evidence in this case are pertinent to these inquiries - indeed, they may be critical.

2. The State's obligations regarding evidence that may be of exculpatory or impeachment value do not end with a conviction, but continue throughout the legal proceedings. See Douglas v. Workman, 560 F.3d 1156, 1173 (10th Cir. 2009);

1
<http://okcfox.com/news/local/emails-show-dna-lab-concerns-related-to-Holtzclaw-case>
(embedded video) (last visited Aug. 1, 2017).

Smith v. Roberts, 115 F.3d 818, 820 (10th Cir. 1997). It is unacceptable that potential *Brady*² material may already have already been destroyed, and undersigned counsel is concerned that additional evidence may be destroyed if swift action is not taken.

3. Appellant requests that an Order be entered in this case directing both the Oklahoma County District Attorney's Office and the Oklahoma City Police Department to preserve any and all evidence, documentation, and correspondence generated in this case, either previously or at any future time during the pendency of Mr. Holtzclaw's appeals, including but not limited to:

- a. Any e-mails or other correspondence involving any employee or agent of either the Oklahoma County District Attorney's Office and the Oklahoma City Police Department regarding the investigation and prosecution of Mr. Holtzclaw, including the recovery, if possible, of any e-mails that have already been deleted;
 - b. Items #1 to #53 and any remaining DNA extracts under Laboratory Number SD-14-273 (Jannie Ligons);
 - c. Items #1 to #3 and any remaining DNA extracts under Laboratory Number SD-14-399 (Rosetta Grate);
 - d. Raw data files for all DNA analysis conducted in this case, including the electronic copy of all the Gene Mapper files and the appropriate Matrix files used to analyze the data; and
 - e. the Oklahoma City Police Department Complete Lab Manual, including the Serology Manual, that was used in 2014 and 2015.
4. All of this material may be relevant in the event of a remanded

² *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).


evidentiary hearing on the claims raised by Appellant in his appeal or in the event of either a retrial or further appeals beyond the direct appeal. Until this litigation is concluded, it is absolutely critical that all evidence, documentation, and correspondence developed in this case be preserved.

5. Appellant therefore requests this Court to exercise its appellate jurisdiction over this case to enter an Order to Preserve Evidence until all litigation in this matter is concluded.

Respectfully submitted,
DANIEL K. HOLTZCLAW

By:


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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that on the date of filing of the above and foregoing instrument, a true and correct copy of the same was delivered to the Clerk of this Court with instructions to deliver said copy to the Office of the Attorney General of the State of Oklahoma.


JAMES H. LOCKARD