



ORIGINAL

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
SEP 15 2017

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,)
)
 APPELLANT,)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 APPELLEE.)

Case No. F-2016-62

RESPONSE TO DEFENDANT'S MOTION FOR ORDER TO PRESERVE EVIDENCE

Comes now the State of Oklahoma, by and through Attorney General Mike Hunter, and responds to the defendant's Motion for Order to Preserve Evidence. The State respectfully requests that this Court deny the defendant's Motion for the reasons stated herein. In support of this Response, the State provides the following:

1. On August 2, 2017, the defendant filed under seal with this Court a *Motion for Order to Preserve Evidence* (hereafter "Motion"). That Motion was unsealed by Order of this Court on August 24, 2017, and is now publicly available.
2. On the same day the defendant's Motion was unsealed, this Court entered an *Order Directing Response* (hereafter "Order") from the State within ten (10) days (Order, p. 7). Upon motion of the State, this Court granted additional time, or until September 15, 2017, to file the response.

DISCUSSION

The defendant asks this Court for “an Order . . . 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 [his] appeals” (Motion, p. 2). The defendant reasons that this Court’s intervention is necessary because “Ms. Taylor’s work in this [case] 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” (Motion, p. 1). According to the defendant, “[a]ny correspondence [Taylor] may have had about her analysis of evidence in this case are pertinent to these inquiries – indeed, they may be critical” (Motion, p. 1). As discussed herein, even though the State has no constitutional duty to preserve every piece of evidence the defendant believes might be of value to him at a later date, the Order requested by the defendant is not necessary because everything in ¶ 3(b)-(e) that he fears might be destroyed has been accounted for and preserved; none of it has ever been lost, misplaced, or in danger of destruction. Further, although Taylor’s email *account* was deleted following her retirement according to long-standing Oklahoma City policy, some of Taylor’s email was captured on the accounts of current Oklahoma City employees whose accounts are now subject to “holds” which will prevent any

deletion of those emails (even those that may have nothing to do with the defendant's case), and a search is underway to locate and recover any remaining email. Taylor's personal work station has also been identified, imaged, and secured. Even though at this point it appears no email pertinent to the defendant's case seems to be present on that work station, the City has nonetheless taken the extraordinary steps to preserve it. Email concerning the defendant's case has also been preserved by the Oklahoma County District Attorney's office, and his case files pulled from safe storage to ensure they are intact. Finally, all evidence used in the prosecution of this case has been accounted for.

The State recognizes its ongoing duty to turn over potential exculpatory or impeachment evidence that is material. *See Frederick v. State*, 2001 OK CR 34, ¶ 207, 37 P.3d 908, 958. But the defendant now seeks to impose a different and more stringent obligation upon the State, one that this Court has expressly rejected. The defendant's present Motion asks not that *material exculpatory/impeachment evidence of which he has knowledge* is being destroyed in bad faith be preserved; rather, he asks this Court to speculate that there *might* be some item somewhere that may be useful in the future of which he knows nothing about that must be preserved lest he be deprived of being able to use it for some reason unknown at this point. The law does not grant him such a broad

right based upon mere conjecture without showing more.

“Due process does not impose on the State or its agents ‘an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution.’” *Martinez v. State*, 2016 OK CR 3, ¶ 27, 371 P.3d 1100, 1110 (quoting *Ochoa v. State*, 1998 OK CR 41, ¶ 26, 963 P.2d 583, 595 (quoting *Youngblood v. Arizona*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988) (internal quotes omitted))). “[U]nless a defendant can show bad faith, the State’s destruction of potentially useful evidence does not constitute a due process violation.” *Martinez*, 2016 OK CR 3, ¶ 27, 371 P.3d at 1110. Here, the defendant does not even show there is “potentially useful evidence” being destroyed, much less that bad faith is involved. Even so, as discussed below, local officials have investigated the defendant’s concerns in order to show him that all the evidence used in his case remains intact and properly preserved; strong efforts are underway to seek any email correspondence by chemist Elaine Taylor; and any and all email correspondence by those known to have worked on his case (including any existing email found by Taylor) is now being preserved.¹

¹ The email holds placed on the current employees are the longest possible under Oklahoma City policy – one year – but are renewable. The City has decided to keep these holds in place indefinitely in the defendant’s case. Further, the State has been advised by the Oklahoma City Municipal Counselor’s Office that the defendant’s appellate counsel is being notified in writing by the Municipal Counselor’s Office of these indefinite email account holds.

As this Court noted from the outset in its Order, the defendant's vague concerns are based upon a single unsubstantiated news source that there might be "additional evidence" in his case that "may be destroyed if swift action is not taken" (Motion, p. 2; Order, pp. 2-3; *see also* Order, Lewis, V.P.J., concurring in result). The defendant lists several specific items he alleges "may be relevant in the event of a remanded evidentiary hearing on the claims raised by [the defendant] in his appeal or in the event of either a retrial or further appeals beyond the direct appeal" (Motion, pp. 2-3). The defendant seeks an Order from this Court in exercise of its appellate jurisdiction over his case "to [p]reserve [e]vidence until all litigation in this matter is concluded" (Motion, p. 3). In any case, as the State's attachments to this response demonstrate, the Court's initial skepticism about the general foundation forming the defendant's complaints was wise. Upon inquiry by the State, supported by sworn affidavits from those whose responsibility has been to guard and preserve the evidence pertaining to the defendant's prosecution, the defendant's allegations are not factually substantiated. One category of material identified by the defendant – emails and other correspondence – has never been considered "evidence" or even possible evidence in this case. But despite the defendant's failure to show how such email is or ever could be considered material to any type of present or future legal claim, Oklahoma City and County officials have worked hard to satisfy his ongoing

speculation by re-accounting for everything in his case – including that which he now questions without basis.

Because of the defendant's speculation, City and County officials have inquired into the items listed in his Motion. Oklahoma City Deputy Police Chief Johnny Kuhlman, who oversees the Investigations Bureau, investigated the status of physical evidence in the defendant's case, directed another related inquiry of the Oklahoma City Police Department (OCPD) Crime Laboratory, and assisted Information Technology (IT) personnel in identifying OCPD individuals involved in the investigation of the defendant's crimes (Exhibit 1, ¶¶ 4, 7). Chief Kuhlman provides an inventory of physical items stored by the Property Management Unit (Exhibit 1, Exhibit A). According to Chief Kuhlman, the evidentiary material in the defendant's case is safe and secure, and will remain so; nothing is, or has ever been "missing, lost, misplaced, or mishandled in any way by any OCPD officer since its collection up to this date" (Exhibit 1, ¶ 8).² Chief Kuhlman concludes there is no factual basis for drawing such a conclusion and that "[r]eports to the contrary are false" (Exhibit 1, ¶ 4). Chief Kuhlman affirms that all evidence within his control in the defendant's case will continue to be preserved (Exhibit 1, ¶ 8).

Similarly, there should be no concerns about evidence in the defendant's

² The lone exception, Item #2 on Chief Kuhlman's inventory, was checked out to the Oklahoma County District Attorney's Office and has been accounted for in their files. See Exhibit 6, ¶ 4.

case submitted to the OCPD Crime Laboratory. The defendant specifically notes the preservation of “any remaining DNA extracts” regarding two of his victims, “[r]aw 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 the Oklahoma City Police Department Complete Lab Manual, including the Serology Manual, that was used in 2014 and 2015” (Motion, p. 2). As Ron Williams, Director of the Crime Laboratory for OCPD, attests, the OCPD Crime Laboratory currently has and will maintain the subject Complete Lab Manuals referenced by the defendant in his Motion (Exhibit 2, ¶ 3). Williams, too, is unaware of any lost, missing, destroyed, or mishandled evidence or related forensic files pertaining to the defendant’s case (Exhibit 2, ¶ 4). Campbell Ruddock, OCPD DNA Manager, has reviewed all of the forensic files and data generated in the defendant’s case, which includes all analyst notes, all electropherogram data, all control data, all raw data files, all matrix files and any electronic data used to generate any part of the case files (Exhibit 3, ¶ 3). Importantly, Ruddock notes, all such documentation in the DNA laboratory is backed up, archived, and a chain of custody is present for each file (Exhibit 3, ¶ 2). Ruddock also explored the defendant’s specific requests to preserve any DNA extracts. Ruddock attests that the DNA extracts in the defendant’s case remain properly and securely preserved within the custody of the OCPD DNA Laboratory

(Exhibit 3, ¶ 4). Thus, all such evidence referenced in ¶¶ 3(b)-(e) are fully accounted for and remain properly preserved.

Additionally, the Assistant District Attorney who prosecuted the defendant pulled the case files from secure storage. Assistant District Attorney Gayland Gieger requested the eight (8) boxes of case files and personally inspected them to ensure everything was still intact and in the state they were in when placed in storage following the defendant's trial (Exhibit 6, ¶¶ 3-4). According to Gieger, all of the exhibits are there, as well as the SANE report checked out from the Property Management Unit of the OCPD (Exhibit 6, ¶ 4). There is no sign anything is missing from the case file or that it has been tampered with or mishandled in any way, and those materials will be returned to secure storage for any future use (Exhibit 6, ¶ 5).

The defendant's only directly stated concern has to do with email of former Oklahoma City Police Department (OCPD) chemist Elaine Taylor. Based upon a single news source regarding Taylor's emails, the defendant apparently worries that "potential *Brady* material may already have already [sic] been destroyed" (Motion, p. 2). In relevant part, the report states that "[t]he city also said it deleted all of Taylor's emails after her resignation."³ Consistent with long-standing City policy, Taylor's email account was deleted from the City server approximately 60

³ This report was issued prior to this Court's recent unsealing order: <http://okcfox.com/news/local/emails-show-dna-lab-concerns-related-to-holtzclaw-case>.

days following her retirement because no hold was placed on it (Exhibit 4, ¶¶ 4, 6). City officials, however, have identified current OCPD employees who assisted in the investigation of the defendant's case (as well as their respective chains of command) and placed litigation holds on their email accounts (Exhibit 1, ¶ 7; Exhibit 4, ¶ 8). This action will prevent permanent deletion of any existing email correspondence between Taylor, if any, and those whose email accounts are covered by the holds (Exhibit 4, ¶ 8). Additionally, City Information Technology (IT) personnel are currently searching the OCPD group server for any other recoverable email sent to or received by Taylor relating to the defendant's case; a special detailed search covering the date range May 1, 2014 – February 1, 2017 (more than a month before defendant Holtzclaw was suspected of any criminal activity up to Taylor's retirement) including keywords pertaining to the defendant and Taylor for any potentially responsive documents (Exhibit 4, ¶ 8). All results of that search will be retained and preserved (Exhibit 4, ¶ 8). In an attempt to recover as much remaining data possible, OCPD IT personnel also located and imaged Taylor's hard drive that she was using when she left employment; all information from that effort has also been securely preserved (Exhibit 4, ¶ 7; Exhibit 5, ¶¶ 3-4). Even though there may be email that may now be unrecoverable from Taylor's account since it was deleted, the defendant has wholly failed to demonstrate that any such email ever existed that was pertinent

to his case, or that it was deleted in bad faith. There is thus no due process violation here, nor will there ever be. *Martinez*, 2016 OK CR 3, ¶ 27, 371 P.3d at 1110. To the contrary, the City has done more than is required to ensure that the evidence used in this case and any remaining communications related to it are secure.

All email correspondence involving the Oklahoma County District Attorney's Office concerning the defendant's case is preserved. District Attorney David W. Prater has averred that he has taken steps to ensure that all email relating to the defendant's prosecution has been quarantined (Exhibit 7, ¶ 3). IT systems at the County are backed up such that no email can be permanently deleted (Exhibit 7, ¶ 3). Therefore, any concerns the defendant may have about email traffic related to his case being inadvertently deleted or lost are unfounded. And, like Mr. Gieger, Mr. Prater has no reason to believe anything collected by his office related to the defendant's case has ever been mishandled (Exhibit 7, ¶ 4).

The defendant has not demonstrated that material evidence related to his case is being destroyed, or is about to be destroyed, in bad faith. Despite the fact he has no constitutional right at stake, the State, County, and City have gone to great lengths to show that no evidence material to his case is, has been, or is about to be, lost, mishandled, tampered with, or destroyed in bad faith. The material that forms the subject of the defendant's Motion, with the possible

exception of some email communication deleted pursuant to long-standing City policy, is complete and secure. Accordingly, the defendant's Motion for an Order to Preserve Evidence should be denied.

Respectfully submitted,

MIKE HUNTER
ATTORNEY GENERAL



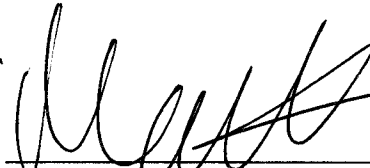
MATTHEW D. HAIRE, OBA #14916
ASSISTANT ATTORNEY GENERAL

313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-3921
(405) 522-4534 (FAX)

CERTIFICATE OF MAILING

On this 15th day of September, 2017, a true and correct copy of the foregoing was mailed to:

James H. Lockard, OBA # 18099
Michael D. Morehead, OBA # 18114
Homicide Direct Appeals Division
P.O. Box 926
Norman, OK 73070
ATTORNEYS FOR THE DEFENDANT



MATTHEW D. HAIRE

AFFIDAVIT

STATE OF OKLAHOMA,

ss:

COUNTY OF OKLAHOMA.

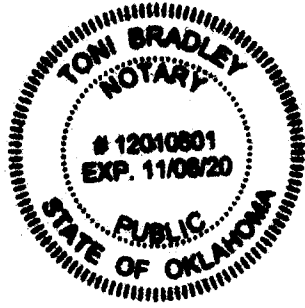
Johnny Kuhlman, being of legal age, sound mind, and first duly sworn, deposes and states:

1. I am currently a Deputy Chief for the Oklahoma City Police Department. I served in that capacity throughout the full course of prosecution in the case of *State of Oklahoma v. Daniel K. Holtzclaw*, Oklahoma County Case Number CF-2014-5869.
2. As Deputy Chief, I oversee the Oklahoma City Police Department's (OCPD) Investigations Bureau which includes personnel who are ultimately responsible for the management, testing, and preservation of physical evidence in cases prosecuted in Oklahoma County. That evidence includes items submitted to the OCPD Crime Laboratory for analysis, samples, and DNA extracts, as well as raw data files, gene mapping files, matrix files, and all other forensic files/data generated by the laboratory technicians while working with the evidence.
3. I have read and reviewed defendant Holtzclaw's *Motion for Order to Preserve Evidence* filed on August 2, 2017, in Oklahoma Court of Criminal Appeals Case No. F-2016-62. My statements herein specifically include reference to those items listed in 3(b)-(d) of that Motion. It is my understanding that information regarding defendant Holtzclaw's concerns raised in 3(a) of the Motion are being addressed by Oklahoma City Information Technology personnel at both the City and OCPD level and by the Oklahoma County District Attorney's Office.
4. As a result of defendant Holtzclaw's concerns, I was directed by the Oklahoma City Municipal Counselor's Office to inquire into the status and preservation of evidence in the *Holtzclaw* case maintained by the OCPD. Specifically, I was asked to inventory the physical evidence in the case that was currently stored in and maintained by the OCPD Property Management Unit, and to determine whether any items were missing, lost, or destroyed at any time following defendant Holtzclaw's trial. As part of this investigation into this matter, I directed the OCPD Crime Laboratory Director, Ron Williams, to make appropriate inquiries regarding specific types of analyses and the reports/data generated therefrom. The probe I conducted into whether any physical evidence in the custody of OCPD relating to defendant Holtzclaw's case, including that relating to DNA (including raw data files, gene mapping files, matrix files, and all other forensic files/data generated by the laboratory technicians in the OCPD Crime Laboratory), was lost, missing, had been mishandled in any way, or was being improperly preserved, was thorough. Based on my findings and those reported to me, the short answer to the question whether any evidence submitted to the OCPD Crime Laboratory has ever been missing, lost, destroyed, improperly preserved, or in any other way unaccounted for in defendant Holtzclaw's case, is negative. Reports to the contrary are false.



5. Regarding all twenty-two (22) items of physical evidence stored in the OCPD Property Management Unit as identified in Exhibit A attached hereto, with the exception of Item 2 (discussed below): Those items are now, have been, and will continue to be, preserved in the same state they were in at the time of trial. That evidence, with the exception of Item 2, is the total physical evidence submitted to the OCPD Property Management Unit in defendant Holtzclaw's case that was either not checked out to the Oklahoma County District Attorney's (DA) Office or checked out but returned to the OCPD Property Management Unit by the DA's Office after defendant Holtzclaw's trial. It is my understanding that physical evidence used at trial that did not require special laboratory storage, and that was checked out by the DA's Office, is still in that Office's possession. None of the physical evidence listed on Exhibit A (excepting Item 2) is missing, destroyed, or has been altered in any way. None of that evidence has ever been missing or lost. This evidentiary material will continue to be maintained and preserved under the custody of the OCPD Property Management Unit-under appropriate conditions unless and until ordered to do otherwise.
6. Item 2 on Exhibit A, identified as a "SANE report" and by Barcode number 2582352, was checked out from the OCPD Property Management Unit by Lieutenant Tim Muzny. That item is a copy of the original report and my understanding is that it was given to the Oklahoma County District Attorney's Office by Lieutenant Muzny for use at defendant Holtzclaw's trial. That item was not returned to the OCPD Property Management Unit and is not currently stored there.
7. Also as part of my inquiry into this matter, I helped identify all current OCPD employees who assisted in the investigation of defendant Holtzclaw's crimes, which would include those who might have had contact with Elaine Taylor. Those individuals were identified by reviewing the State's witness/endorsement lists filed by the prosecutors and by those employees who completed a report on the matter. It is my understanding that holds on the email accounts for all of those people, as well as the chain of command of the Investigations Bureau and Laboratory Supervisors, are currently in place which will preserve any existing email communication concerning defendant Holtzclaw's case.
8. I am unaware of any evidence collected in *State of Oklahoma v. Daniel K. Holtzclaw* by OCPD that has ever been missing, lost, misplaced, or mishandled in any way by any OCPD officer since its collection up to this date. All evidence under my control in defendant Holtzclaw's case, which includes that within the OCPD Property Management Unit, will continue to be preserved until and unless an order to do otherwise is received.

Further Affiant sayeth not.



A handwritten signature of Johnny Kuhlman written over a horizontal line.

Johnny Kuhlman

Subscribed and sworn to before me this 14th day of September, 2017.

Notary Public

My Commission Expires: 11/06/2020

A handwritten signature of Tom Bradley with the commission number # 12010601 written below it.

Oklahoma City Police Department

701 Colcord
Oklahoma City, OK 73102

Ad hoc Report

Print Date: Wednesday, August 02, 2017

DR#	Item # Description	Location	Barcode	Lab #	Lab Barcode #	Entered
14-49050	1 1 Rape Kit	DNA DRY STORAGE	2582351			6/18/2014 9:20:15 AM
14-49050	2 Sane report	RTI	2582352			8/18/2014 9:20:26 AM
14-49050	3 1 E/E cont. swabs from smudges on SpringLake car #1313258, EI #1-13	DNA DRY STORAGE	2582498			6/19/2014 8:11:12 AM
14-49050	4 1 E/E cont. buccal swabs from Daniel Holtzclaw	DNA DRY STORAGE	2582586			6/19/2014 10:52:29 AM
14-49050	5 Black pants	SEX CRIMES	2582587			6/19/2014 10:52:40 AM
14-49050	6 Belt	SEX CRIMES	2582588			6/19/2014 10:52:46 AM
14-49050	7 1 E/E cont. swabs, EI #14-17	DNA DRY STORAGE	2582882			6/23/2014 10:47:14 AM
14-49050	8 1 E/E cont. swabs	DNA DRY STORAGE	2582883			6/23/2014 10:49:28 AM
14-49050	9 4 FI Cards, EI #18	SEX CRIMES	2583069			6/24/2014 7:18:18 AM
14-49050	10 1 EYE cont. buccal swabs & waiver from Kerrie Hunt	DNA DRY STORAGE	2584121			7/2/2014 8:59:48 AM
14-49050	11 1 E/E cont. buccal swabs and waiver from VI Morris	DNA DRY STORAGE	2585910			7/11/2014 10:56:17 AM
14-49050	12 Buccal Swabs	DNA DRY STORAGE	2589576			8/6/2014 1:32:13 PM
14-49050	13 1 E/E cont. buccal swabs & waiver from Horene Mathis	DNA DRY STORAGE	2591402			8/1 ⁸ /2014 1:49:10 PM
14-49050	14 1 E/E cont. buccal swabs & waiver from Carla Johnson	DNA DRY STORAGE	2591403			8/18/2014 1:49:20 PM
14-49050	15 1 E/E cont. buccal swabs/waiver for Grate, Rosetta	DNA DRY STORAGE	2592862			8/28/2014 7:53:46 AM
14-49050	16 1 E/E cont, buccal swabs & walver from Kala Lyles	DNA DRY STORAGE	2595293			9/17/2014 7:56:09 AM
14-49050	17 1 E/E cont. buccal swabs & waiver from Regina Copeland	DNA DRY STORAGE	2599067			10/14/2014 9:00:42 AM
14-49050	18 1 E/E cont, buccal swabs & swab waiver from Garoner, Adaira	DNA DRY STORAGE	2600831			10/2 ¹ /2014 2:04:51 PM
14-49050	19 1 E/E cont. buccal swabs and waiver from Syrita Bowen	DNA DRY STORAGE	2601814			11/4 ¹ /2014 8:42:03 AM



Oklahoma City Police Department

701 Colcord
Oklahoma City, OK 73102

Ad hoc Report

Print Date: Wednesday, August 02, 2017

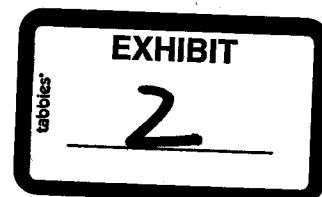
DR#	Item # Description	Location	Barcode	Lab #	Lab Barcode #	Entered
14-70895	1 Black leather wrapped chair back, EI #1	SEX CRIMES	2593732			9/5/2014 7:35:47 AM
14-70895	2 Pair of white underwear, EI #2	SEX CRIMES	2593733			9/5/2014 7:35:51 AM
14-70895	3 Pair of black underwear, EI #3	SEX CRIMES	2593734			9/5/2014 7:35:56 AM

AFFIDAVIT

STATE OF OKLAHOMA,)
)
COUNTY OF OKLAHOMA.) ss:

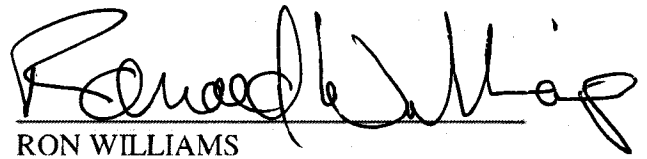
Ron Williams, being of legal age, sound mind, and first duly sworn, deposes and states:

1. I am currently the Director of the Crime Laboratory for the Oklahoma City Police Department (OCPD). I served in that capacity throughout the full course of prosecution in the case of *State of Oklahoma v. Daniel K. Holtzclaw*, Oklahoma County Case Number CF-2014-5869. I report to OCPD Deputy Chief Johnny Kuhlman in my chain of command.
2. As Director of the Crime Laboratory for the OCPD, it is my responsibility to oversee OCPD personnel who work directly with physical evidence that may be collected in a criminal cases for testing and, if necessary, preservation under optimum conditions to maintain the scientific integrity of that evidence and/or what is derived from it. The OCPD Crime Laboratory also conducts various types of analysis of evidence, including DNA testing. Depending upon the type of evidence submitted, technicians in the OCPD Crime Laboratory may generate raw data files, gene mapper files, matrix files, or other types of forensic files/data as they work with evidence submitted for analysis. The OCPD Crime Laboratory also keeps and maintains a Complete Lab Manual, which includes the Serology Manual. As Director of the OCPD Crime Laboratory, I am familiar with all of the types of technical analyses performed by our analysts, the forensic data/files that is generated by the work of those OCPD analysts, and the OCPD Complete Lab Manual that was in use during 2014 and 2015.
3. I have read and reviewed defendant Holtzclaw's *Motion for Order to Preserve Evidence* filed on August 2, 2017, in Oklahoma Court of Criminal Appeals Case No. F-2016-62. My statements herein specifically include reference to those items listed in ¶ 3(b)-(e) of that Motion. With regard to ¶ 3(e) of the Motion, I can state that the OCPD Crime Laboratory currently has both the OCPD Complete Lab Manuals that were in use during 2014 and 2015. Those Manuals will be retained and preserved unless and until I am directed by Chief Kuhlman or other authority to do otherwise.



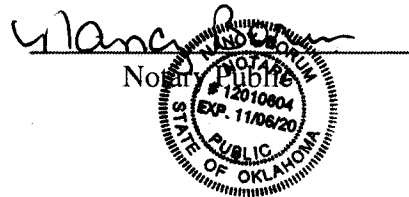
4. I am unaware of any evidence collected in *State of Oklahoma v. Daniel K. Holtzclaw* by OCPD and submitted to the OCPD Crime Laboratory that has ever been missing, lost, misplaced, or mishandled in any way up to this date. I am also unaware of any related raw data files, gene mapping files, matrix files, and any other related forensic files/data generated by the laboratory technicians in the OCPD Crime Laboratory pertaining to defendant Holtzclaw's case that has ever been missing, lost, misplaced, or mishandled in any way.

Further Affiant sayeth not.


RON WILLIAMS

Subscribed and sworn to before me this 14th day of September, 2017.

My Commission Expires: 11/06/2020



AFFIDAVIT

STATE OF OKLAHOMA,)
)
 COUNTY OF OKLAHOMA.) ss:

Schad Meldrum, being of legal age, sound mind, and first duly sworn, deposes and states:

1. I am currently the Director of Information Technology for the City of Oklahoma City ("City"). In this capacity, I ultimately oversee those responsible for maintaining the City's computer servers and central storage of electronic information. This includes the email system used by City employees. Currently, City email is maintained in server system "on premised" (local) using the Microsoft Exchange Server enterprise email system. To the best of my knowledge, and to which has been reported to me by expert managers and direct administrators of related systems discussed below, the following statements are accurate.

2. I am familiar with the City's IT Department policy regarding the retention of City email, which is covered under a section of the *Information Systems Acceptable Use Policy*, a long-standing policy for the acceptable use of City computing systems. This policy concerns only email and any attachments to such email and does not apply to other official papers, documents, or records, generated by City employees. Emails are retained indefinitely on the email server system until deleted by the user. Once a user deletes an email message, calendar item, contact, task or note the items will be automatically retained and discoverable for a period of 60 days. After 60 days, the email is permanently deleted. Also, there is no offline backup of the email data from the server systems; redundancy is achieved through a multiple server/multi-location system. eDiscovery management is achieved through inherent administrative options of Microsoft Exchange Server.

3. An approved "litigation hold" (Microsoft Exchange Server terminology), as set forth in the *Information Systems Acceptable Use Policy*, may be placed on a City employee's email account for up to one (1) year but those holds are reviewed monthly and extended as required. The "litigation hold" prevents email of a City employee from being deleted from the server. I am not part of the approval chain for litigation holds.

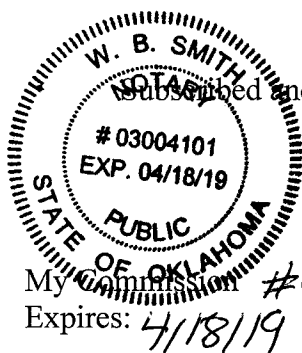
4. Email of terminated City employees is treated similarly to that of current City employees, with one significant exception. After a City employee's service is discontinued, the regular user account for that now-former City employee is deleted after 60 days. At this point the users email account is "orphaned" or effectively deleted. Terminated employee email is retained and discoverable for a period of sixty (60) days from that point. However, if the terminated employee's email account has a litigation hold then the email account is maintained in an inactive state to preserve the email record.

5. The Microsoft Outlook Exchange client allows the creation and storage of email in an offline/local/non-server based file called a "Personal Storage Table" (.pst). These PST files are an old Microsoft mechanism for email management. Because of the challenges they create with discoverability, City IT worked to eliminate them by providing abundant email server system storage and implementing system policies for PST files. In March 2015, the ability for users to create or add to PST files was prohibited through a system configuration citywide except for a few rare approved exceptions based on business requirements. City IT worked with department-level IT contacts to move users' email in PST files up to the central server. In some cases, PST files were abandoned and left on local machines or in server file shares. For most PST files, we can determine the associated user. Most of these PST files are password protected but can be obtained and searched by system administrators.
6. It was reported to me that Elaine Taylor's Exchange email was handled consistent with policy.
7. It was reported to me that Police IT looked to other email on local drives.
8. I have no direct knowledge or oversight of the work that was done on Elaine Taylor's former primary machine. I understand that additional searches are being executed by City IT staff against the City email system of current Police Department employee email accounts for emails to and from Elaine Taylor which meet the criteria of date range May 1, 2014 and February 1, 2017 and keyword "Holtzclaw". I am not overseeing the detailed execution of these searches. I am aware of current litigation holds placed on the email accounts of approximately forty-six (46) City employees in the OCPD as specifically requested by the City Municipal Counselor's Office. These holds will prevent the permanent deletion of any email sent or received (including blind copies) in those email accounts, and preserve such email for the duration of the hold.
9. Since Police IT is semi-autonomous for City IT, I can only verify efforts against the City central Exchange email server system.

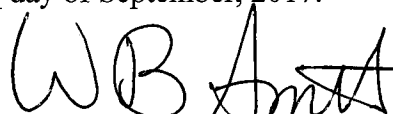
Further Affiant sayeth not.



 CHAD MELDRUM




Subscribed and sworn to before me this 14 day of September, 2017.




 Notary Public

6. I have no reason to believe that any information or material collected by the Oklahoma County District Attorney's Office for the prosecution in *State of Oklahoma v. Daniel K. Holtzclaw* has ever been mishandled in any way.

Further Affiant sayeth not.


GAYLAND GIEGER

Subscribed and sworn to before me this 14th day of September, 2017.


Notary Public

My Commission Expires:

