



**ORIGINAL**

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**  
**SEP 20 2017**

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

<b>DANIEL K. HOLTZCLAW,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. F-2016-62</b>
	)	
<b>THE STATE OF OKLAHOMA,</b>	)	
	)	
<b>Appellee.</b>	)	

**REPLY TO STATE’S RESPONSE TO APPELLANT’S  
MOTION FOR ORDER TO PRESERVE EVIDENCE**

On August 2, 2017, prompted by news reports, now confirmed in the State’s response to that motion, as well as in a letter to Appellant’s counsel by City Attorney Richard Smith, that all of Elaine Taylor’s e-mails had been deleted, Appellant filed the above referenced motion to ensure that no other material pertinent to this case be deleted, discarded, or destroyed during the pendency of this case, but preserved for this or any future appeals or in the event of a retrial. This motion was filed under seal to avoid violating to the protective order issued by this Court on May 30, 2017. On August 24, 2017, this Court ordered Appellant’s motion unsealed and directed the State of Oklahoma, by and through Attorney General Mike Hunter and Assistant Attorney General Matthew D. Haire, to respond to this motion. Appellee filed its response in this Court on September 15, 2017. Appellant reaffirms and reasserts all arguments advanced in his Motion for Order to Preserve Evidence and replies to the State’s response to said motion as follows.

Appellant had no knowledge, or any way of knowing, that Elaine Taylor had retired from the Oklahoma City Police Department until being alerted to this fact by opposing counsel shortly before Mr. Haire filed his motion to file information under seal on May 4, 2017. Appellant further had no knowledge, or any way of knowing, that Ms. Taylor’s e-mails would be, or by that time had been, permanently deleted following the termination of her employment. In light of recent disclosures

about Ms. Taylor's work, this caused Appellant grave concern. It should be noted that at the time of filing the motion, Appellant's counsel had no knowledge about what evidence or information was adduced at the secret *ex parte* hearing held in the district court on June 26 and 27, 2017, in response to this Court's May 30 order remanding cause.<sup>1</sup> Appellant never claimed that any other evidence, particularly any potential *Brady*<sup>2</sup> material, had in fact been lost or destroyed. In light of the recent revelations about Ms. Taylor's work and the inexplicable deletion of her entire e-mail account, Appellant was merely concerned about the possibility that other information or evidence might inadvertently be destroyed pursuant to the arcane internal policies of the Oklahoma City Police Department, of which Appellant had no knowledge.

Aside from briefly arguing that Appellant's motion exceeds constitutional mandate, the State's primary response seems to be that the requested order to preserve evidence "is not necessary because everything ... that he fears might be destroyed has been accounted for and preserved." As the motion itself notes, however, much of the effort to preserve this evidence and information was only done at the prompting of Appellant's motion. Indeed, as a result of this motion, as well as outside correspondence, Ms. Taylor's e-mails have been recovered from the personal computer assigned to her and will be preserved. See Exhibit A, Letter from Richard C. Smith, Assistant Municipal Counselor, *attached hereto*.

Ultimately, the State does not argue that this Court is without power to enter the requested order. The requested order would not require the affected parties or individuals to do anything more than they have indicated they have already done and will continue to do. Indeed, their actions indicate substantial

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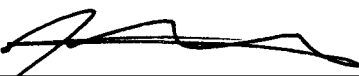
<sup>1</sup> The transcripts of that hearing were not filed in this Court until August 10, 2017, eight days after Appellant filed the above reference motion.


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

agreement that it is right and proper that the referenced material be preserved throughout the pendency of this case. An order to that effect memorializing such agreement would therefore be just and wise. Accordingly, Appellant respectfully requests that the requested order to preserve evidence be issued so as to give all parties due notice of what will be required of them *vis-a-vis* the delineated material for the remainder of this case.

Respectfully submitted,  
DANIEL K. HOLTZCLAW

By:

  
JAMES H. LOCKARD  
Oklahoma Bar No. 18099  
Deputy Division Chief

  
MICHAEL D. MOREHEAD  
Oklahoma Bar No. 18114  
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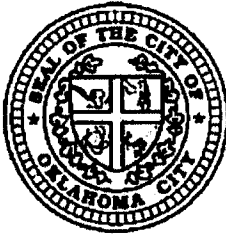
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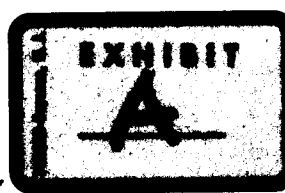
**CERTIFICATE OF SERVICE**

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



The City of  
**OKLAHOMA CITY**  
OFFICE OF THE MUNICIPAL COUNSELOR  
KENNETH JORDAN  
Municipal Counselor



**RECEIVED**

SEP 19 2017

OIDS  
APPELLATE DIVISION

September 15, 2017

James H. Lockard  
Michael D. Moreheard  
Homicide Direct Appeals Division  
Oklahoma Indigent Defense System  
P.O. Box 926  
Norman, OK 73070-0926

**Re:** Preservation of Correspondence Involving *State of Oklahoma v. Daniel Holtzclaw*  
Oklahoma County District Court Case No. CF-2014-5869

Dear Sirs:

As an update to my letter dated August 9, 2017, please be advised that the Oklahoma City Police Department has searched the personal computer that was assigned to Elaine Taylor and has found 5149 emails and 298 attachments. There are over 1500 of these emails that are read/unread receipts dating back to January 2011. There are emails from March 2016-February 2017 (when Ms. Taylor retired). All such emails will be preserved.

Please do not hesitate to contact me if you have any questions regarding my letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Smith".

Richard C. Smith  
Assistant Municipal Counselor