

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

SHERRY ELLIS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. CIV-16-0019-HE
	)	
DANIEL HOLTZCLAW, <i>et al.</i> ,	)	
	)	
Defendants.	)	

-----

TABATHA BARNES, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. CIV-16-0184-HE
	)	
CITY OF OKLAHOMA CITY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

-----

ADAIRA GARDNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CIV-16-0349-HE
	)	
DANIEL HOLTZCLAW, <i>et al.</i> ,	)	
	)	
Defendants.	)	

-----

ROSETTA GRATE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CIV-16-412-HE
	)	
CITY OF OKLAHOMA CITY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

The court conducted a hearing this date on plaintiffs’ joint motion to compel the Oklahoma Department of Corrections to produce defendant Daniel Holtzclaw for deposition. Plaintiffs were represented by multiple counsel of record in the four cases. Defendants City of Oklahoma City, City, and Gregory appeared by counsel, as did the Oklahoma Department of Corrections, a non-party. Defendant Holtzclaw’s counsel did not appear.

The Court notes its concern that defendant Holtzclaw’s counsel did not appear. Beyond a general duty to participate in cases in which counsel has entered an appearance, the subject matter of this hearing involved, in substantial part, the physical safety of Mr. Holtzclaw. Surely that matter was worthy of counsel’s time and attention.

As stated more fully from the bench at the conclusion of the hearing, the court concludes that ODOC’s concerns with potential threats to the physical safety of defendant Holtzclaw are legitimate and that maintaining the confidentiality of defendant’s identity and location is an appropriate response to that circumstance.<sup>1</sup> The court also concludes

---

<sup>1</sup> *Defendant Holtzclaw has apparently had, and encouraged, multiple contacts by family and supporters with him under circumstances where those persons necessarily knew*

that, in light of the potential for defendant Holtzclaw to respond to substantive matters outside the scope of any Fifth Amendment privilege, plaintiffs' preferences for an in-person deposition are appropriate and should be accommodated to the extent consistent with security concerns. The court further concludes that, given the number of persons involved, the level of public attention, and other factors, the entry of a protective order would not address security issues to a sufficient degree to warrant authorizing an in-person deposition at the facility where Holtzclaw is located.

Plaintiffs' motion to compel deposition [Doc. #202] is therefore **GRANTED** as follows:

1. The Department of Corrections is directed to produce defendant Holtzclaw for in-person deposition at a secure location reasonably convenient to Oklahoma City. Within seven days, the Department shall advise the court and parties, by an appropriate filing, of the date, time, and location of the deposition. The Department should designate a contact person for counsel to coordinate with as to the deposition.

2. Plaintiffs or their counsel shall reimburse the Department of Corrections for the additional costs of presenting Holtzclaw for deposition, which the court finds to be \$6000. Unless otherwise agreed by plaintiffs, the costs shall be allocated based on a proportionate share per plaintiff. The \$6000 shall be paid by the date of the deposition.

3. Only counsel for the parties will be allowed to attend the deposition, with the number of plaintiffs' counsel limited to two per case. Plaintiffs counsel are directed to

---

*where he was located. However, it does not appear that his whereabouts are known to the various inmate populations which might be a threat to him.*

designate by agreement one of their number to serve as lead plaintiffs' counsel for purposes of conducting the deposition. Lead counsel shall conduct the substantial bulk of the examination of Mr. Holtzclaw, with other plaintiff's counsel retaining the right to ask limited supplemental questions if appropriate. Plaintiffs are directed to identify the agreed lead counsel by an appropriate filing at least seven days prior to the date designated for deposition.

4. All objections to questions other than those based on Fifth Amendment or other privileges are reserved until later and need not be made contemporaneously.

5. No question shall be asked which seeks, directly or indirectly, information as to where defendant Holtzclaw is incarcerated or any assumed name he may be being held under.

6. All counsel and their agents/employees, and the court report, videographer, and any other person involved in accomplishing the deposition are ordered to not disclose any information learned as to the location or any assumed name of Mr. Holtzclaw.

7. Any deposition transcript and video shall be maintained under seal pending further order of the court, except that counsel may receive a transcript of the deposition for their case preparation purposes.

**IT IS SO ORDERED.**

Dated this 24th day of September, 2019.

  
\_\_\_\_\_  
JOE HEATON  
UNITED STATES DISTRICT JUDGE