

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

JANNIE LIGONS, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
vs.)	Case Nos.: CIV-16-19-HE
)	CIV-16-184-HE
CITY OF OKLAHOMA CITY,)	CIV-16-349-HE
a municipal corporation, <i>et al.</i> ,)	CIV-16-412-HE
)	
<i>Defendants.</i>)	

DEFENDANT HOLTZCLAW’S MOTION TO COMPEL

Defendant Daniel Holtzclaw, through the undersigned counsel, and pursuant to Rule 37(a)(1), moves this Court for an Order compelling his co-Defendant City of Oklahoma as well as the Plaintiffs to produce discovery.

Counsel came into this litigation late in the process. The record in this case consists of the voluminous pleadings in the four civil cases filed in this Court, the thousands of pages of depositions, the thousands of pages of trial transcripts and pleadings from the state criminal trial, and a thousands-of-pages data dump produced to Holtzclaw by the City in electronic form, including over 8,000 e-mails, which we are reviewing now.

Counsel has also had three eye-surgery procedures since early July, 2021, for

a detached retina, the latest of which was the most severe on August 13, 2021, which has hampered his ability to move the discovery process along, but most of it has been processed and analyzed.

Despite this difficulty and the state of the record, there is a modest amount of discovery material still at issue, almost all of which is in the physical custody of the City or involve records of the Plaintiffs that are easily accessible and do not involve any material intrusion upon parties unrelated to this litigation.

Rule 37 Conference: Counsel had previously sent Requests for Production to the City which resulted in the City producing a voluminous amount of documents on a flash drive and a CD. However, the five items below were not produced and still remain a bone of contention. Counsel had a telephone conference with counsel for the City on Friday, August 27, 2021, at which the parties were not able to agree on the discovery items below and the City objects to producing them at this point.

Similarly, counsel had a phone conference on Friday, August 27, 2021, with attorney Mark Hammons regarding the requests to Plaintiffs Ellis and Raines. The parties were not able to reach an agreement on those requested items.

Counsel has attempted to contact counsel for the remaining Plaintiffs, but has been unable to do so at this point, but must file this renewed motion in light of the discovery deadline.

THE CITY

Holtzclaw tendered Requests for Production to the City and the City responded with alternative objections, but a willingness to produce the requested evidence “if still available.” Since the discovery cut-off is tomorrow, and the City has indicated that it will object to producing the items below, Holtzclaw seeks an order from the Court to compel production, specifically:

1. The DNA Evidence, Pants and Belt: The primary physical evidence at the criminal trial was the DNA evidence extracted from the pants and belt of Holtzclaw’s uniform. Holtzclaw seeks access to the pants, belt and DNA extracts in order to review the results of the State DNA tests and to perform such tests by his own experts.

Holtzclaw requested the pants and DNA extracts in his Requests for Production to the City as Requests Number 3, 4, 5, 6, 7, 8, 9, 10, 11, 24 (the pants), and 25 (the belt). In the requests for DNA extracts, the City asserted boilerplate objections, but responded, “Subject to the foregoing objection, the City will produce, if still available.” As to the pants and belt, the City responded with boilerplate objections, but stated, “Subject to the foregoing objection, the City will produce, if available, with a court order.”

Holtzclaw requests an Order from the Court directing the City to state whether these items are “still available” and if so, to make them available to Holtzclaw’s experts; and also a court Order for production of the pants and his uniform belt so that Holtzclaw’s experts may examine/test them.

2. Det. Rocky Gregory’s DNA: Holtzclaw requested the DNA profile of Det. Rocky Gregory as Request Number 21. The City responded by objection and refused to produce the requested profile “without a Court Order.” Holtzclaw now seeks a court order for the profile.

Holtzclaw requests the profile of Det. Gregory to examine the possibility that he caused DNA contamination on the fly of Holtzclaw’s pants through non-intimate DNA indirect transfer.

The DNA evidence showed the presence of “unknown male” DNA. Det. Gregory reached into the evidence bag containing the pants with his bare hand prior to the pants and belt being placed inside the bag on June 18, 2014. Det. Gregory also handled a pen and gave it to Holtzclaw, who wrote with the pen and then wiped his pant leg several times before unzipping the fly of his pants and removing them for evidence collection.

3. Nathaniel John Davis DNA profile: Holtzclaw requested this DNA profile as Request Number 22. The City lodged boilerplate objections, but stated, “Subject to the foregoing objection, the City will produce, if available, with a court order.” Holtzclaw seeks such a court order.
4. Campbell Ruddock’s Review: In Request Number 23, Holtzclaw requested OCPD Lab manager Campbell Ruddock’s review of analyst Elaine Taylor’s trial testimony in the criminal case. The City responded with general objections, but stated, “Subject to these objections, non-privileged and non-work product documents will be produced upon court Order.” Holtzclaw requests such a Court Order.
5. Rosetta Grate: Per the attached police report, Holtzclaw requests all records related to her prior allegations of being sexually assaulted and the outcomes of those complaints, related to:
 - 1) OCPD Case Number 11-092590 (11/19/11)
 - 2) OCPD Case Number 10-030883 (04/17/10)
 - 3) OCPD Case Number 08-058158 (07/08/08)
 - 4) OCPD Case Number 07-091260 (10/19/07)
 - 5) OCPD Case Number 05-049197 (05/26/05)
 - 6) OCPD Case Number 95-082640 (unknown).

THE PLAINTIFFS

Holtzclaw seeks Medical/Mental Health Records from the Plaintiffs as set forth below because these records likely contain important impeachment information and other information material and relevant to Holtzclaw's theory of defense. Holtzclaw has tested negative for HIV, syphilis, chlamydia, gonorrhea, Hepatitis B, and Hepatitis C. Without divulging any private information about the Plaintiffs, Holtzclaw asserts that he has a good faith basis to believe this information would be material and relevant to his defense.

In particular, it is alleged that he raped Kala Lyles for approximately 25 minutes without a condom, just before he stopped Jannie Ligons. Adaira Gardner also alleged that she was raped by Holtzclaw without a condom for approximately 10 minutes.

Holtzclaw has been unable to acquire such records, in full, without either a court order or a release from the Plaintiffs.

1. Adaira Jazmanne Gardner: Holtzclaw has learned that on October 28, 2020, Gardner was charged by felony Information in Rogers County, State of Oklahoma, with being a prisoner and placing body fluid on a jailer by spitting in his face knowing that she has Hepatitis A and C. *See* attached Exhibit.

Holtzclaw requests information about her medical and mental health issues, specifically from: Shadow Mountain Behavioral Health System, Tulsa, OK (2009-present); Green County Behavioral Health Services, Inc., Muskogee, OK (2009-present); Grand Lake Mental Health Center, Pryor, OK (2009-present) (an article described a June, 2020, incident in which Gardner was “tearing apart the house with a hammer and cutting her own hair and gluing it to her face”); Grand Lake Mental Health Center, Miami, OK (2009-present); Hope Community Services, OKC, OK (2009-present); and Oklahoma Youth Center/Children’s Recovery Center of Oklahoma, Norman, OK (2009-present). Although she has provided some records in this lawsuit, her responses to requests from other counsel indicates that there are more.

2. Sherry Louise Michelle Ellis Smith: Holtzclaw requests records from: Red Rock Behavioral Health Services, OKC, OK (2009-present); Hope Community Services, OKC, OK (2009-present).
3. Jannie Pearl Ligons: Holtzclaw requests records from: YWCA, 2460 NW 39th St., OKC , OK (2009-present); Integris Southwest Medical, OKC, OK (2009-present). During her trial testimony, she testified to specific medical conditions she alleged were caused by the alleged

incident with Holtzclaw.

4. Tabitha Jean Barnes: Holtzclaw requests any records from Dr. Haisam Al-Khoury, OKC, OK (2009-present); SSM Health St. Anthony Hospital, OKC, OK (2009-present). These requests are based upon answers to questions given by Ms. Barnes during her deposition in this case.
5. Syrita Leslie Bowen: SSM Health St. Anthony Hospital, OKC, OK, (2009-present); Red Rock Behavioral Health Services, OKC, OK, (2009-present). Although Ms. Bowen is no longer a party to the this lawsuit, Holtzclaw requests court authorization to these records because she has accused Holtzclaw and her mental health condition was discussed in open court during the criminal trial.
6. Regina Ann Copeland: Holtzclaw requests medical/mental health records relating to Ms. Copeland, and specifically any records relating any issues she may have had with severe alcoholism at or prior to the events that she has alleged concerning Holtzclaw.
7. Carla Esther Johnson: Holtzclaw requests records pertaining to Ms. Johnson from: Norman Regional Hospital (1980-present); Eddie Warrior Correctional Center, Taft, OK (all); Mabel Bassett Correctional Center,

McLoud, OK (all); SSM Health St. Anthony Hospital, OKC, OK (all); and Red Rock Behavioral Health Services, OKC, OK (all).

8. Rosetta Ranee Grate: Holtzclaw requests records relating to Ms. Grate from: The Oklahoma Crisis Center, OKC, OK (all); and medical records from Tara Gamshagar, NorthCare, OKC, OK (all).

Ms. Grate has given conflicting statements about her medical/mental health history that Holtzclaw can document in a closed setting.

9. Terri Lynn Morris: Holtzclaw requests mental health/medical records relating to Ms. Morris from: Oklahoma Mental Hospital, Woodward, OK (2013); Grand Lake Mental Health Center, Vinita, OK (1997); and St. Anthony's Hospital, OKC, OK, (1991 and 1986). This is based upon inconsistent responses made by Ms. Morris concerning her mental health history.
10. Shardayreon Reqwantae Hill: Holtzclaw requests mental health/medical records relating to Ms. Hill from: Integris Southwest Medical Center, OKC, OK (2012-present); and SSM Health St. Anthony Hospital, OKC, OK (2007-present).
11. Carla O. Raines: Holtzclaw requests medical/mental health records

relating to Ms. Raines. Holtzclaw does not at this time have any information about her medical/mental health history.

These requests for mental health/medical records of the Plaintiffs are proper and would lead to discoverable and relevant information in this lawsuit. Holtzclaw asserts that he can show the Court in more detail, in a closed setting, if required, but that he has not included some of the reasons in this pleading to protect the privacy of the Plaintiffs and because some of it is work-product and trial strategy.

WHEREFORE, good cause having been shown, Defendant Holtzclaw moves for an Order compelling the above described discovery material from the named parties of this lawsuit.

Respectfully submitted,

s/ James L. Hankins

James L. Hankins, OBA# 15506
MON ABRI BUSINESS CENTER

2524 N. Broadway

Edmond, OK 73034

Phone: 405.753.4150

Facsimile: 405.445.4956

E-mail: jameshankins@ocdw.com

Counsel for Daniel Holtzclaw

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2021, I filed the foregoing document with the Clerk of this Court and that, based upon the records on file in this case, the Clerk of Court will transmit Notice of Electronic Filing to those registered participants of the Electronic Filing System.

s/ James L. Hankins

IN THE DISTRICT COURT OF THE TWELFTH JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA SITTING IN AND FOR ROGERS COUNTY

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 ADAIRA JAZMANNE GARDNER)
 ADDR: 809 Castle Row)
 Oklahoma City, OK 73106)
 DL: ****1694)
 SSN: ***-**-6810)
 DOB: January, 1997)
)
 Defendant(s).)

Case No. CF-2020-651

FILED IN THE DISTRICT COURT
ROGERS COUNTY OKLAHOMA

OCT 28 2020

PAITH EDWARDS, COURT CLERK
DEPUTY

INFORMATION

FOR:

COUNT 1: PRISONER PLACING BODY FLUID ON GOVERNMENT EMPLOYEE - 21 O.S. § 650.9, a FELONY

STATE OF OKLAHOMA, COUNTY OF ROGERS:

I, Matthew J. Ballard, the undersigned District Attorney of said County, in the name and by the authority of the State of Oklahoma, give information that in said County of Rogers and in the State of Oklahoma, ADAIRA JAZMANNE GARDNER did then and there unlawfully, willfully, knowingly and wrongfully commit the crime(s) of:

COUNT 1: PRISONER PLACING BODY FLUID ON GOVERNMENT EMPLOYEE - a FELONY, on or about the 16th day of October, 2020, by spitting into the face of DO Daniel Johnson Jr without justifiable or excusable cause, while said officer was performing his duties as an employee of the Rogers County Jail.

MATTHEW J. BALLARD
DISTRICT ATTORNEY

By: Sue Nigh
Sue Nigh
Assistant District Attorney

WITNESSES ENDORSED FOR THE STATE OF OKLAHOMA

Justin Book, Rogers County Sheriff, 114 S Missouri Ave., Claremore, OK 74017
Daniel Johnson Jr, Rogers County Jail,
Representative Property Custodian, Rogers County Sheriff, 114 S Missouri Ave., Claremore, OK 74017

CF-2020-651

State of Oklahoma, County of Rogers

Probable Cause Affidavit

DISTRICT COURT

MUNICIPAL, CITY OF CLAREMORE

LOCATION OF OCCURENCE
201 S CHEROKEE AVE; ROGERS COUNTY JAIL

LOCATION OF ARREST
201 S CHEROKEE AVE; ROGERS COUNTY JAIL

OCCURRED
21:50:00 10/16/20

ARRESTED
22:01:22 10/16/20

ARRESTEE NAME (LAST, FIRST MIDDLE)
GARDNER, ADAIRA JAZMANNE
STREET ADDRESS, CITY, STATE
809 CASTLE ROW, OKLAHOMA CITY, OK
EMPLOYER/SCHOOL

RACE SEX HGT WGT HAIR EYES SKIN
W F 5'07" 163 BRO BRO N
ZIP DOB SOC
73106 01/09/97

EMPLOYER ADDRESS

FILED IN THE DISTRICT COURT
ROGERS COUNTY OKLAHOMA

HOME PHONE

OLN/STATE
K999121694/OK

ADDR

PHONE

NEXT OF KIN

OCT 28 2020

RELATIONSHIP

SCARS, MARKS, AND TATTOOS

CATHI EDWARDS, COURT CLERK

CITY OF BIRTH

TAG#

DEPUTY

TAG STATE

TOWED BY

TOWED
VEHICLE

VEH YR

VEH MAKE

VEH MODEL

VEH STYLE

COLOR

ARRESTING OFFICER
BOOK, JUSTIN

BADGE#
P23

AGENCY
RC SO

BACKING OFFICER

BADGE#

AGENCY

STA	FEL	CRIME DESCRIPTION	TITLE	SECT	WARRANT#	BOND	COUNTS
MUN	MISD						
STA	F	PLACE BODY FLUID ON GOVT EMPLOYEE	21	650.9		2K	1
STA	F	Spreading Infectious Diseases	21	1192		2K	1

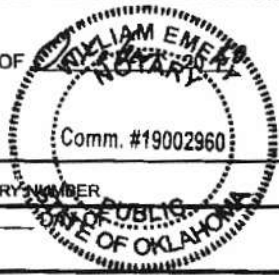
(PC STATEMENT)
On October 16, 2020, I was radio assigned to take an assault on an detention officer report at 201 S Cherokee Ave, at the Rogers County Jail, in the Claremore area of Rogers County. Upon arrival I met with a detention officer who stated they were in full uniform and carrying out their official duties as a corrections officer when Adaira Gardner spit directly in their face therefore placing bodily fluids on them. It was later discovered Gardner knew she had infectious diseases (Hepatitis A and C) when she willingly spit in the face of a detention officer. Adaira Gardner was then charged with placing bodily fluids on a government official while in detention and recklessly spreading infectious diseases (O.S. §, 21-1192).

COMES NOW THE UNDERSIGNED AFFIANT, OF LAWFUL AGE AND BEING DULY SWORN, UPON OATH, ALLEGES AND STATES THAT THE ABOVE FACTS UPON WHICH THE PROBABLE CAUSE WERE BASED FOR SUCH ARREST ARE TRUE AND CORRECT AND WERE BASIS FOR SUCH ARREST ARE TRUE AND CORRECT AND PRAYS THIS HONORABLE COURT TO FIND PROBABLE CAUSE TO DETAIN THE ARRESTEE PENDING FURTHER PROCEEDINGS.

FURTHER YOUR AFFIANT SAYETH NOT, Gustav Beck (officer's signature) THIS 17 DAY OF

SUBSCRIBED AND SWORN TO BEFORE ME THIS 17 DAY OF October, 2020
Whitney 3-21-23

NOTARY PUBLIC MY COMMISSION EXPIRES NOTARY NUMBER
A PROBABLE CAUSE DETERMINATION IS NOT NECESSARY, THE ARRESTEE BONDED OUT OF JAIL ON THE _____, 20____, AT _____ AM/PM. _____ (NAME OF JAILER)



PROBABLE CAUSE DETERMINATION

I, Steve Pazzo, JUDGE OF THE DISTRICT COURT/MUNICIPAL COURT, REVIEWED THIS PROBABLE CAUSE AFFIDAVIT ON THE 17 DAY OF October, 2020, AT 11:09 AM/PM. I MAKE THE FOLLOWING FINDINGS AND ORDER PURSUANT TO GERSTEIN V. PUGH, 420 U.S. 103(1975) AND COUNTRY OF RIVERSIDE V. McLAUGHLIN, NO.89-1817 (U.S. MAY 13, 1991)(LEXIS 2528):

THE AFFIDAVIT CONTAINS SUFFICIENT FACTS SHOWING PROBABLE CAUSE TO DETAIN THE ARRESTEE TO AWAIT FURTHER PROCEEDINGS.

THE COURT SETS AND APPEARANCE BOND IN THE AMOUNT OF \$ 4,000

THE COURT DENIES BOND AT THIS TIME.

NO APPEARANCE BOND SET - 48hr. Hold/Release on _____ of _____, 20____, AT _____ AM/PM

Steve Pazzo via email
Judge of the District Court/ Judge of the Municipal Court

10-28-2020 1:30 pm
Municipal / District Court Date