

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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| TABATHA BARNES, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. CIV-16-184-HE |
| |) | |
| THE CITY OF OKLAHOMA CITY |) | |
| a municipal corporation, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT CITY’S OBJECTION TO DEFENDANT HOLTZCLAW’S
MOTION TO COMPEL AND BRIEF IN SUPPORT**

Defendant, the City of Oklahoma City (“City”), by and through counsel of record, Sherri R. Katz, respectfully objects to the Motion to Compel (Doc. 347) filed by Defendant Holtzclaw. In support hereof Defendant City states as follows:

Introduction and Background

These lawsuits have been on file since early 2016. Almost five years after these lawsuits were filed, Defendant Holtzclaw, through his current attorney, served Defendant City with Defendant Daniel Holtzclaw’s First Requests for Production of Documents and Tangible Things to Defendant City of Oklahoma City. This discovery request was received by Defendant City on September 28, 2020. See Defendant’s Exhibit 1. The City responded to this discovery request, and produced approximately 37,000 pages of documents to Defendant Holtzclaw, but maintained objections to others.

Several of the objectionable discovery requests are Holtzclaw’s request for Det. Rocky Gregory’s DNA, Nathaniel John Davis’ DNA profile, and Campbell Ruddock’s

Review.

Additionally, in his Motion to Compel, Holtzclaw requests OCPD police incident reports for Rosetta Grate “per the attached police report”. There is no “attached police report” or exhibit to his Motion to Compel, and this is the first time that the list of six police reports for Rosetta Grate have been requested. This request for six OCPD incident reports were NOT included in Exhibit 1. Therefore, Defendant City argues that this request is not proper in a motion to compel and such request should be denied.

Regarding the other objectionable requests, there is simply no valid basis for these requests, as there is no relevance to the claims or defenses in this matter, as this Court has already entered several orders making clear that this Court does not intend to let any of the parties re-try the criminal case.

Defendant City submits that the doctrine of collateral estoppel prevents Holtzclaw from re-litigating the facts of his criminal case in the civil lawsuits, which is what he is attempting to do with his requests to compel the production of DNA extracts, the pants and belt of Holtzclaw which were seized as evidence, and the compelled buccal DNA swab of a current OCPD detective. See *Benham v Plotner*, 795 P.2d 510 (Okla. 1990); *Lee v. Knight*, 771 P.2d 1003 (Okla. 1989); *Franklin v. Thompson*, 981 F.2d 1168,1170 (10th Cir. 1992).

In the current Ellis lawsuit, CIV-16-0019-HE, Plaintiff Copeland filed a Motion for Protective Order [Doc. 161] requesting this Court limit the scope of questioning in her deposition, arguing that Holtzclaw intended to elicit testimony regarding the criminal case from Copeland to use in his then forthcoming post-conviction relief motion in state court.

This Court entered an Order on September 21, 2020, [Doc. 167] granting Copeland's motion for protective order preventing Holtzclaw from inquiring into the specifics of the rape that was the subject of the state court conviction.

Also, on December 12, 2020, in the Ellis lawsuit, this Court entered an Order [Doc. 187] regarding Copeland's motion for partial summary judgment. In this Order, this Court states that principles of res judicata preclude Holtzclaw from re-litigating the issues of Holtzclaw's conviction in the state court criminal proceedings, citing *Migra v. Warren City School Dist. Bd. Of Educ.*, 465 U.S. 75, 81 (1984) ("It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered."). Likewise, it was also clear to this Court in that same Order that Oklahoma would give preclusive effect to the criminal case determination in these circumstances. See *Martin v. Phillips*, 422 P.3d 143, 145 (Okla. 2018). This Court entered a similar Order [Doc. 311] in the Barnes lawsuit, CIV-16-0184-HE in response to Plaintiffs Ligons and Johnson's motion for summary judgment.

Discussion

Under Rule 26 of the Federal Rules of Civil Procedure, parties may obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Discoverable information need not be admissible at trial. *Id.* Rule 26 provides six factors to consider regarding proportionality: (1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties' relative access to relevant information; (4) the parties'

resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit. *Id.*

“The scope of discovery is broad, but it is not all-encompassing.” *Quarrie v. Wells*, No. CV 17-350 MV/GBW, 2020 WL 1514798 at *5 (D.N.M. March 30, 2020), reconsideration denied, No. CV 17-350 MV/GBW, 2020 WL 2526629 (D.N.M. May 18, 2020). For instance, a court within the Tenth Circuit recently refused to “compel the discovery of Plaintiff’s personal family information in a suit for racial discrimination without some clearly demonstrated relevance to the litigation at hand.” *Id.* (citing *Coleman v. Starbucks*, 2015 WL 2449585, at *5 (M.D. Fla. May 22, 2015)(disallowing a similar discovery request and noting that “[t]he Court fails to see what relevance Plaintiff’s marital history has to this lawsuit alleging racial discrimination and retaliation in employment”).

In his Motion to Compel, Holtzclaw does not provide any case law supporting his requests for this Court to compel production of items that the City has lodged valid objections to.

No. 1: The DNA Evidence, Pants and Belt

Regarding Holtzclaw’s request for access to the pants, belt and DNA extracts, the City will produce upon order of the Court. However, the City would advise the Court of several factors. First, regarding requested items 3-11 according to information received from the OCPD Lab, all of the DNA extracts, reagent blanks can be provided, as well as the Genemapper ID data files. According to the Lab, these items can be put on a CD or USB and produced, if ordered by this Court. Further, the City understands from the Lab

that since the Lab did not open the sealed container which holds the DNA extracts, it is unknown how much extract remains for each. It is therefore possible that any external retesting of these DNA extracts may require consumption of the evidence.

Second, the OCPD property room is in possession of the pants and belt seized from Holtzclaw. Again, the City maintains its objection to the production of these items. The City has attempted contact with both the Oklahoma Attorney General's Office, and the Oklahoma County District Attorney's Office regarding the status of Holtzclaw's criminal case. It does not appear that the Oklahoma County District Attorney's Office has filed anything to release the evidence in the criminal case. It is the City's understanding that direct appeals by Holtzclaw have been exhausted. However, due to the recent events surrounding the removal of the Oklahoma County judge who tried the Holtzclaw criminal case, there is the possibility cases over which he presided may be relitigated.

Even if there is a remote possibility of this occurrence, the City would contend that the pants and belt of Holtzclaw not be ordered to be produced during this civil lawsuit, out of an abundance of caution, and the DNA also not be ordered to be produced, as there is the possibility that it may require consumption of the evidence and therefore it would not be available for any further criminal proceeding.

No. 2: Det. Rocky Gregory's DNA

Similar to the holding in *Coleman*, the Court should refuse to compel the production of DNA from OCPD Detective Rocky Gregory, who investigated and participated in the arrest, prosecution and conviction of Defendant Holtzclaw. Defendant Holtzclaw fails to advise the Court that he participated in depositions of OCPD Det. Rocky Gregory, OCPD

Chemist Elaine Taylor, and OCPD Chemist Campbell Ruddock, wherein he either did, or could have, questioned each witness regarding the possibility of DNA transfer to the pants of Holtzclaw by Det. Gregory during the questioning of Holtzclaw at OCPD headquarters when Holtzclaw's pants were taken and placed in a brown bag.

The request for the compelled production of Det. Gregory's DNA is irrelevant information that is not proportional to the case. This may be a different argument if OCPD already had a DNA profile of Det. Gregory related to the criminal prosecution of Holtzclaw. But what Defendant Holtzclaw is requesting at this point is for this Court to order Det. Gregory, who is currently an OCPD detective assigned to homicide, to submit to a compelled production of his DNA (Request 21). This should not be allowed.

No. 3: Nathaniel John Davis DNA profile

Regarding Holtzclaw's Request 22 for the DNA profile of Nathaniel John Davis, the City has confirmed that there was no DNA profile or buccal DNA reference swab taken by OCPD of Nathaniel John Davis.

No. 4: Campbell Ruddock's Review

Defendant City maintains its objection and refusal to produce any review by Campbell Ruddock of former OCPD Chemist Elaine Taylor. In response to this Request 23, the City objected and stated that "this Request seeks information which is protected from discovery and/or privileged because it is subject to the attorney-client privilege, the work product doctrine, or the privacy of a former City employee. This information is also part of a Sealed hearing conducted by Oklahoma County District Judge Henderson. Subject to these objections, non-privileged and non-work product documents will be

produced upon court Order.”

Judge Henderson entered an Order on June 8, 2018, sealing the transcripts and any evidence produced at an *in camera* hearing before him on June 26-27, 2017. Even throughout the appeal, the evidence or transcripts from that hearing have never been unsealed. In fact, on June 18, 2018, the Court of Criminal Appeals entered an Order Denying Motion to Unseal Proceedings, making it clear that some material in the criminal proceedings consists of personnel records protected by 51 O.S.Supp. 2014, §24A.7(A)(1), which are subject to disclosure only at the discretion of the City of Oklahoma City. See Defendant’s Exhibit 2. The Court of Criminal Appeals affirmed that it had previously held “that any such material presented to this Court will be preserved under seal or redacted as necessary, unless and until such time as it may be released by the City of Oklahoma City.” See Exhibit 2. The City has consistently maintained its objection to the release of this information. See Defendant City of Oklahoma City’s Response to Defendant Holtzclaw’s Second Set of Requests for Production of Documents, sent December 12, 2018, attached as Exhibit 3.

Since serving this objection on Holtzclaw, nothing has changed as far as the City’s position. Holtzclaw was able, to the extent it did not invade the Order of Judge Henderson, to question Campbell Ruddock regarding his supervision of former chemist Elaine Taylor. The “report” that Holtzclaw now seeks in this civil lawsuit is the same information that has been consistently under seal, and which the City continues to maintain is a part of a former City employee’s personnel records protected by 51 O.S.Supp. 2014, §24A.7(A)(1). The City does not authorize its disclosure and does not intend to release

any such personnel records. Therefore, the City requests this Court not order this report or any other portion of a personnel record produced to Holtzclaw, consistent with the holdings of Judge Henderson and the Court of Criminal Appeals.

No. 5: Rosetta Grate

Holtzclaw did not request the items he lists in No. 5 in his Requests for Production of Documents and Tangible Things. See Defendant's Exhibit 1. As proof of this, Holtzclaw does not identify which request number this information falls under in his Requests for Production. This request for six OCPD incident reports were NOT included in Exhibit 1. Therefore, Defendant City argues that this request is not proper in a motion to compel and such request should be denied. As these items have never been requested prior to their inclusion in Holtzclaw's Motion to Compel, the City objects to their production as part of Holtzclaw's Motion to Compel.

Wherefore, the Court should deny the Motion to Compel.

Respectfully Submitted,

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MUNICIPAL COUNSELOR

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2021, I electronically transmitted the above document to the Clerk of the Court using ECF filing system. Based on the records currently on file in this case, the Clerk of the Court will transmit Notice of Electronic filing to those registered participants of the Electronic Case Filing System.

/s/ Sherri R. Katz
Assistant Municipal Counselor