

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

TABATHA BARNES, <i>et al.</i> ,	)		
	)		
Plaintiffs,	)		
	)		
v.	)	Case Nos.	CIV-16-19-HE
	)		CIV-16-184-HE
	)		CIV-16-349-HE
THE CITY OF OKLAHOMA CITY	)		CIV-16-412-HE
a municipal corporation, <i>et al.</i> ,	)		
	)		
Defendants.	)		

**DEFENDANT CITY’S OBJECTION AND RESPONSE TO DEFENDANT  
HOLTZCLAW’S MOTION TO RECONSIDER DENIAL OF MOTION TO  
COMPEL DISCOVERY AND TO STAY PROCEEDINGS**

Defendant, the City of Oklahoma City ("City"), by and through counsel of record, Sherri R. Katz, respectfully objects to the Motion to Reconsider Denial of Motion to Compel (Docs. 266, 408, 219 and 198 respectively) filed by Defendant Holtzclaw. In support hereof Defendant City states as follows:

**INTRODUCTION**

The original Motions to Compel filed by Defendant Holtzclaw were fully brief and argued before this Court. This Court entered its Orders on November 10, 2021, denying Holtzclaw’s Motion to Compel. The City objects to Holtzclaw’s Motion to Reconsider Denial of Motion to Compel.

In his now famous letter to the Oklahoma Bar, retired United States District Judge Wayne Alley observed “with dismay the alarming practice and regularity with

which motions to reconsider are filed after a decision unfavorable to a party's case" and asked whether "there is some misapprehension widely held in the bar that our court, in ruling on a motion after it is fully briefed, is just hitting a fungo." Wayne Alley, *Letter and Attached Order*, 62 OKLA. B.J., 108, 109 (1991).

It is the City's position that this Court's November 10<sup>th</sup> Orders were not merely a first draft. This Court fully set out its reasoning and the law in its Orders. A motion to reconsider should be rare, is not mentioned in the Federal Rules of Civil Procedure, and there is a limited appropriateness of such a motion.

The City continues to object to the production of the items requested, and re-asserts that there is simply no valid basis for these requests, as there is no relevance to the claims or defenses in this matter. Further, 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 (10<sup>th</sup> 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 Plaintiffs 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 Plaintiffs marital history has to this lawsuit alleging racial discrimination and retaliation in employment").

In his Motion to Reconsider Denial of Motion to Compel Discovery, 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.

**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. These facts do not change in light of Holtzclaw's Motion to Reconsider. Further, a complete copy of all of the forensic testing, including a complete copy of the two lab files in the criminal prosecution of Holtzclaw were produced to Holtzclaw in response to a previous Request for Production. This included the DNA testing of all of the victims.

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 still has not received any indication that the either Oklahoma Attorney General's Office or 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. This fact has not changed between Holtzclaw's initial Motion to Compel, this Court's November 10<sup>th</sup> Orders, and Holtzclaw's Motion to Reconsider.

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. If the Court is inclined to conduct a second hearing on Holtzclaw's requests, the City supports the requirement of a representative from the Attorney General's Office, and/or the Oklahoma County District Attorney's Office being present for this hearing.

**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. Defendant Holtzclaw

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. Holtzclaw is free to argue transfer DNA as a defense in these civil lawsuits. Nothing has changed in this Motion to Reconsider.

The request for the compelled production of Det. Gregory's DNA is irrelevant information that is not proportional to the case, as this Court has previously ruled, and the City continues to object to this compelled production. The City does not have a DNA profile of Det. Gregory. Defendant Holtzclaw is requesting this Court 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, and the City continues to object to this request.

#### **Nathaniel John David 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. The City cannot produce what it does not have.

#### **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. These items have never been unsealed. As the City previously advised this Court, 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. The City continues to maintain its objection to the release of this information.

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.

Wherefore, the Court should deny the Motion to Reconsider the Denial of Holtzclaw's Motion to Compel.

Respectfully Submitted,

Kenneth Jordan  
MUNICIPAL COUNSELOR

/s/ Sherri R. Katz

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CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of January, 2022 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