



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,	)	APPROVED FOR
	)	PUBLIC FILING
Appellant,	)	
	)	
v.	)	No. F-2016-62
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

ORDER DENYING MOTION TO PRESERVE EVIDENCE

On August 2, 2017, Appellant Holtzclaw, by and through counsel James H. Lockard and Michael D. Morehead, Oklahoma Indigent Defense System (OIDS) filed a Motion for Order to Preserve Evidence. The State's response to the motion was filed with this Court on September 15, 2017 and Holtzclaw filed a reply to that response on September 20, 2017. Holtzclaw's Motion for Order to Preserve Evidence is **DENIED** as **MOOT**.

Holtzclaw's Motion to Preserve Evidence alleges, based upon a media report, that "...all of Oklahoma City Police Chemist Elaine Taylor's e-mails have been deleted." Holtzclaw states that Taylor's work is the subject of his motion for evidentiary hearing, claims raised in his Brief in Chief in the direct appeal of his conviction and the *in camera* hearing conducted in this matter in June 2017. The motion also claims that potential evidence may have already been destroyed and that counsel is concerned that additional evidence may be destroyed if "swift action is not taken." Holtzclaw requests issuance of an order directing the Oklahoma County District Attorney's Office and the Oklahoma

City Police Department to "...preserve any and all evidence, documentation, and correspondence generated in this case, either previously or at any future time..." during the pendency of Holtzclaw's appeal. The motion contains a list of documents which Holtzclaw specifically requests be preserved, while noting that the preservation request is not limited to those specific items. Holtzclaw alleges that all of this "evidence" may be relevant in the event this case is remanded for an evidentiary hearing, re-trial or further appeals beyond his direct appeal.

The State's response to the motion was filed with this Court on September 15, 2017. The State acknowledges its ongoing duty to provide Holtzclaw with potential exculpatory or impeachment evidence that is material. The State argues that Holtzclaw's motion requests that this Court order the preservation of items which may or may not exist, and which may or may not be useful, for use at some unspecified point in time. In addressing Holtzclaw's concerns regarding specific items of evidence, listed at ¶ 3(b) – (e) of his motion, the State responds that all of those items have been accounted for and preserved. According to the State, none of the specified items have been lost misplaced or are in any danger of destruction. Addressing the question of Elaine Taylor's e-mails, the State acknowledges that although Taylor's e-mail *account* was deleted, according to long-standing Oklahoma City policy upon an employee's retirement, some of Taylor's e-mails were captured on the accounts of current Oklahoma City employees. Those accounts are now subject to "holds" which will prevent deletion of those e-mails, regardless of their

relevance to Holtzclaw's case, and a search is currently being conducted to locate and recover any remaining e-mails. Taylor's personal work station has been identified, imaged and secured, even though it appears that no e-mail relevant to Holtzclaw's case seems to be present on that workstation. E-mail concerning Holtzclaw's case has been preserved by the Oklahoma County District Attorney's office, the case files have been pulled from safe storage to ensure that they are intact, and all evidence used in the prosecution of Holtzclaw's case has been accounted for.

The State alleges that issuance of the order requested in Holtzclaw's motion is unnecessary. Attached to the State's response are affidavits executed by those whose responsibility it is to safeguard and preserve the evidence related to Holtzclaw's prosecution. Oklahoma City Deputy Police Chief Johnny Khulman, who oversees the Investigations Bureau, investigated the status of physical evidence from Holtzclaw's case and directed another related inquiry of the Oklahoma City Police Department (OCPD) Crime Laboratory, and assisted information technology (IT) personnel in identifying individuals involved in investigating Holtzclaw's offenses. Chief Kuhlman's affidavit affirms that all evidence within his control in Holtzclaw's case is secure and will continue to be preserved, and there is no factual basis for concluding that any of the evidence in this case has been lost, misplaced or mishandled.

Ron Williams, Director of the Crime Laboratory for OCPD stated in his affidavit that the OCPD Crime Laboratory currently has and will maintain the Complete Lab Manuals referenced in Holtzclaw's motion. Williams further

affirms that he has no evidence of any lost, missing, destroyed or mishandled evidence or related forensic files relating to Holtzclaw's case. Campbell Ruddock, OCPD DNA Manager attests in his affidavit that all forensic files and data generated in Holtzclaw's case are accounted for, archived, and documented with a chain of custody. DNA extracts in Holtzclaw's case remain properly and securely preserved in the custody of the OCPD DNA Laboratory, are fully accounted for and remain properly preserved. An affidavit from prosecuting Assistant District Attorney Gayland Gieger affirms that the Holtzclaw case files are intact and have not been tampered with, appearing as they did when placed in storage following Holtzclaw's trial. The files are currently maintained in a secure storage facility.

The State also addresses Holtzclaw's concerns regarding Taylor's e-mails. All e-mail correspondence involving the Oklahoma County District Attorney's office concerning Holtzclaw's case has been preserved and e-mails relating to Holtzclaw's prosecution are quarantined, as averred by Oklahoma County District Attorney David Prater in his affidavit. District Attorney Prater states that he has no reason to believe that anything collected by his office related to Holtzclaw's case has ever been mishandled.

Affidavits from Schad Meldrum, Director of IT for the City of Oklahoma City, and Jason Bussert, Captain for the OCPD, serving in the IT Department, assert that the city has identified current OCPD employees who assisted in the investigation of Holtzclaw's case. Litigation holds have been placed on all of these e-mail accounts and IT personnel are currently searching the OCPD

group server for any other recoverable e-mail sent to or received by Taylor relating to Holtzclaw's case. Results of those searches will be retained and preserved. Taylor's employment computer hard drive has been located and imaged, and all information from that imaging has been preserved. The State argues that the City has done more than is required to ensure that the evidence used in this case and any remaining communications related to Holtzclaw's case are secure, and requests that this Court deny Holtzclaw's motion.

On September 20, 2017, Holtzclaw filed a reply to the State's response. The reply acknowledges that Holtzclaw has no specific knowledge that any evidence has been lost or destroyed. Rather, the motion was filed over the "possibility that other information or evidence might inadvertently be destroyed" due to some unspecified and unidentified department policy. Holtzclaw alleges that while the State appears to have preserved the evidence in question, this preservation was apparently done as a result of his motion. Holtzclaw requests issuance of an order memorializing the State's "agreement that it is right and proper that the referenced material be preserved throughout the pendency of this case", opining that issuance of such an order would be "just and wise".

We find nothing in Holtzclaw's motion substantiating a claim that the State has ever or is now in the process of destroying evidence in his case. Holtzclaw's reply acknowledges that his motion was filed without any substantiated information that evidence had been or was being destroyed. We

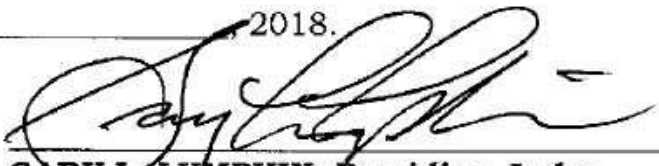
find nothing in Holtzclaw's motion or the State's response indicating that the State's actions in preserving evidence were taken as a result of Holtzclaw's motion and not as a result of the State's acknowledged on-going duty to preserve evidence in every criminal matter as required by law.

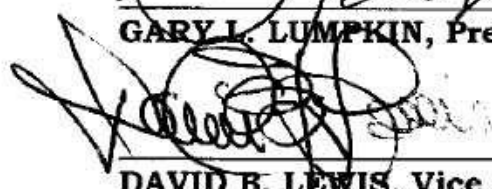
Holtzclaw's motion is **DENIED** as **MOOT**.

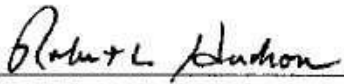
The Clerk of this Court is directed to transmit a copy of this order to the Court Clerk of Oklahoma County; the Attorney General of the State of Oklahoma; District Judge Timothy Henderson; and Appellate counsel of record.

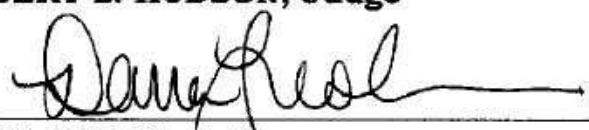
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 12th
day of June, 2018.


GARY L. LUMPKIN, Presiding Judge


DAVID B. LEWIS, Vice Presiding Judge

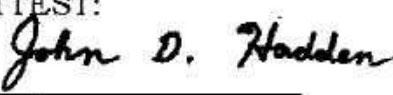

ROBERT L. HUDSON, Judge


DANA KUEHN, Judge

RECUSED


SCOTT ROWLAND, Judge

ATTEST:


Clerk