



IN AND FOR THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA) S.S.

STATE OF OKLAHOMA

FILED In The Office of the Court Clerk

JUN 21 2007

STATE OF OKLAHOMA,

Plaintiff,

vs.

KEVIN RAY UNDERWOOD,

Defendant.

DOCKET PAGE RECORDED Rhenda Hall, Court Clerk DEPUTY

Case No. CF-2007-513

RESPONSE TO STATE'S MOTION TO DISSOLVE PROTECTIVE ORDER AND ALLOW CONSUMPTIVE DNA TESTING AND REQUEST FOR ORDER COMPELLING ATTENDANCE OF RELEVANT PERSONNEL

Comes now the Defendant Kevin Ray Underwood, through counsel and provides the following response to the State's pending Motion to Dissolve Protective Order and Allow Consumptive DNA Testing. Defendant objects to having a hearing on this matter unless and until certain relevant personnel are present. It is Defendant's position that this Court probably cannot effectively rule on this issue without clear information from those having specific knowledge of what samples will be analyzed, their location and source, what type of testing will occur, and what measures will be taken to afford Defendant a meaningful opportunity to participate and/or observe any consumptive testing if he chooses to have a representative present for any analysis authorized by this Court.

Defendant also contends that this Court is entitled to a clear answer and explanation concerning the need for such consumptive testing considering the State's announcement on June 6, 2007, that no DNA testing was being requested at all. Unambiguous answers to these questions will require the presence, at a minimum, of the case agent, the laboratory personnel who will presumably

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conduct such analysis, and the person(s) who have power to implement or set policies that would allow a defense representative the opportunity to at least observe the testing procedures utilized if Defendant chooses to do so.

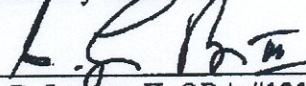
Therefore, Defendant specifically requests this Court order the presence of the following people at any hearing on the present motion:

Lydia Williams, OSBI
Andrew Moreland, OSBI
Erin Henry, OSBI

Defendant also asks that any other relevant personnel be present who can give this Court solid, unambiguous answers regarding testing protocol, detailed information about what will be tested and how it will be tested, and the extent to which the defense may be able to participate in consumptive analysis if counsel decides that such representative is necessary.

Furthermore, Defendant asks that this Court order the presence of the District Attorney and all assistant district attorneys who have been or will be associated with this case as it is unclear at this point who is handling this matter.

Respectfully submitted



Silas R. Lyman, II, OBA #13165
G. Lynn Burch, OBA #14986
Matthew Haire, OBA #14916
Capital Trial Division
Oklahoma Indigent Defense System
P.O. Box 926
Norman, OK 73070
405/801-2700

ATTORNEYS FOR KEVIN RAY UNDERWOOD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was delivered to Greg Mashburn, District Attorney, David Brockman, First Assistant District Attorney, Dave Batton, Assistant District Attorney, Richard Sitzman, Assistant District Attorney, and/or Susan Caswell, Assistant District Attorney, Cleveland County Courthouse, 200 South Peters, Norman, OK 73069, on this 2nd day of June, 2007.



Silas R. Lyman, II, OBA #13165

G. Lynn Burch, OBA #14986

Matthew Haire, OBA #14916



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA
Office of the Court Clerk

STATE OF OKLAHOMA, JUN 20 2007
Plaintiff,)
-VS-) CF-07-513
KEVIN RAY UNDERWOOD, Rhonda Hall, Court Clerk
Defendant,) DEPUTY

ORIGINAL

MOTION TO DISSOLVE PROTECTIVE ORDER AND ALLOW CONSUMPTIVE DNA TESTING

COMES NOW the State of Oklahoma, this 20th day of June, 2007, and states as follows, to-wit:

WHEREAS, the Court has previously, at the request of the Defendant, entered its Order staying and prohibiting any consumptive DNA testing of materials in this cause of action until further order of the Court, and;

WHEREAS, the serological testing in this case has been completed by Andrew Moreland, OSBI Criminalist, with preliminary memo report to the parties, indicating which samples are anticipated to be consumed by DNA testing, and;

WHEREAS, by correspondence dated the 19th of June, 2007, signed by Mr. Lynn Birch, co-counsel for the Defendant, it appears that there is no agreement as to immediate consumptive testing, and that the parties are at an impasse;

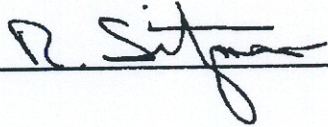
THEREFORE, it is the request of the State that the previously-entered stay on consumptive DNA testing be dissolved and lifted and that a hearing be set by the Court for the hearing of said request and discussion and decision as to protocol and procedures to be utilized.

Respectfully submitted,
GREG MASHBURN
DISTRICT ATTORNEY

By: R. Richard Sitzman
R. RICHARD SITZMAN OBA# 8281
Assistant District Attorney
201 S. Jones, Suite 3000
Norman, OK 73069 (405) 321-8268 (FAX) 360-7840

CERTIFICATE OF SERVICE:

I do hereby certify that I have, this 20th day of June, 2007, hand-delivered a true and correct copy of the attached Motion To Dissolve Protective Order, to the OIDS Capital Trial Division Office, Norman, OK, Attention: SILAS LYMAN II, LYNN BIRCH & MATTHEW HAIRE, co-counsel for the Defendant.





IN THE DISTRICT OF OKLAHOMA, S.S.
 STATE OF OKLAHOMA, CLEVELAND COUNTY, CLEVELAND COUNTY, STATE OF OKLAHOMA
 STATE OF OKLAHOMA, CLEVELAND COUNTY, CLEVELAND COUNTY, STATE OF OKLAHOMA
 Plaintiff, vs. Defendant
 Office of the Court Clerk

-vs-

JUN 25 2007

Case No. CF-07-513

KEVIN RAY UNDERWOOD

Defendant,

NOTICED
 COURT CLERK
 OF INTENT TO OFFER VICTIM IMPACT
 EVIDENCE PURSUANT TO 22 OKLA. STAT. SECTION
 701(B)(C) DURING PUNISHMENT STAGE
 (DEATH PENALTY)

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COMES NOW the State of Oklahoma, Plaintiff herein, and gives notice to the Defendant that, during the punishment stage at jury trial in the above-noted case, it is the intent of the State to offer testimony and/or written reports in the nature of Victim Impact evidence, which testimony and/or evidence shall address the financial, emotional, psychological and physical effects of the death of JAMIE ROSE BOLIN, upon a member of his/her immediate family, including information about the victim, the circumstances surrounding his/her death, the manner in which his/her death was perpetrated and why the victim should not have been killed.

Authority:

- Cargle v. State, 909 P.2d 806 (Okla. Crim. App. 1995)
- Parker v. State, 917 P.2d 980 (Okla. Crim. App. 1996)
- Hain v. State, 919 P.2d 1130 (Okla. Crim. App. 1996)
- Charm v. State, 924 P.2d 754 (Okla. Crim. App. 1996)

THAT, said evidence will be presented through the witness, CURTIS BOLIN, who is related to the victim, to-wit: FATHER.

THAT, the witness will be asked certain questions addressing the above-noted factors, including, but not necessarily limited to, those listed hereafter, and is expected to testify in conformity with the summary stated herein.

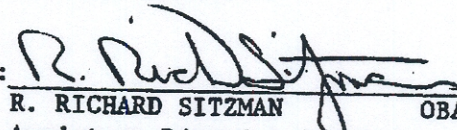
- 1) Have you sought or required any medical or psychological treatment, counseling or therapy in order to deal with the victim's death and, if so, what? I had to be taken to the hospital and sedated. When they told me that Jamie was gone I just totally lost it. I have been to seek counseling with a post-traumatic event counselor; it helps some but I still suffer from the nightmares; I also suffer from bouts of depression;
- 2) What will you miss most about the victim? What were his or her outstanding characteristics? What I'll miss most is her smile and infectious smile. Her most outstanding trait was her desire to make new friends and to make other people feel good. She was always polite and tried to show good manners and never tried to hurt the feelings of others or to make them feel bad.
- 3) What were your feelings on the day the victim was born? I was ecstatic over the birth of my baby girl but I was also scared due to her complications: a bad left kidney that required her to be mediflighted to the neo-natal ICU at Childrens where she stayed for 3 months. I quit my job so her mom and I could both be by her side.
- 4) Did you do things together? Such as.... We did everything together, especially after her mom and I separated. We would cook our evening meals together. I would help her with her homework or read books or just play with our dog. On the weekends we would watch movies together at home or at the movies.

- 5) Was the victim a valued companion or confidant? Were you friends?
She was my daughter, my friend, my companion at home. I cherished her beyond words.
- 6) Has there been, or do you expect that the victim's death will in the future have a negative financial effect upon you? If so, how?
I could not live in Purcell any longer, with all the thoughts and memories. I have had a hard time making it since then.
- 7) What did you look forward to the most in relation to the victim?
- 8) What achievements by the victim were you the most proud of and how does it now make you feel when you reflect upon his or her efforts to overcome the obstacles in his or her life?
- 9) How did you feel when you first learned of the victim's death?
I just lost it. I had to be taken to the hospital and sedated. I don't remember much about the next few days. I was out of it...except for the nightmares.
- 10) Why should this person not have been killed? What did he or she have to offer to others?
She had so much to learn. We had so many things to do and things to see and discover. She was just good and innocent.

Respectfully submitted,

GREG MASHBURN
DISTRICT ATTORNEY

By:


R. RICHARD SITZMAN OBA# 8281
Assistant District Attorney
201 S. Jones, Suite 210
Norman, OK 73069
(405) 321-8268 (FAX) 360-7840

CERTIFICATE OF SERVICE:

I do hereby certify that I have served and delivered a true and correct copy of the above and attached NOTICE OF VICTIM IMPACT TESTIMONY (CURTIS BOLIN) upon the Defendant this 25th day of June, 2007, in the following manner:

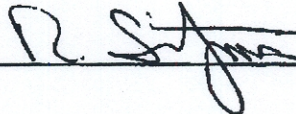
[] By personal service upon the Defendant at _____;

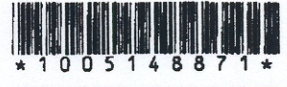
[XX] By personal service upon counsel for the Defendant, SILAS LYMAN II/ LYNN BURCH/MATTHEW HAIRE, at OWDS CAPITAL TRIAL DIV. in Norman, OK;

[] By regular U.S. Mail, full postage prepaid thereon, to counsel for the Defendant, _____ at, _____;

[XX] By electronic facsimile, to counsel for the Defendant _____, at FAX# _____;

Dated: 6-25-07





STATE OF OKLAHOMA } S.S.
IN THE DISTRICT COURT }
CLEVELAND COUNTY }

FILED IN THE DISTRICT COURT FOR CLEVELAND COUNTY, STATE OF OKLAHOMA
STATE OF OKLAHOMA, Office of the Court Clerk
Plaintiff,

-vs-

) Case No. CF- 07-513

KEVIN RAY UNDERWOOD
Defendant

RECORDED
NOTICE
Rhonda Hall, Clerk
BOOK PAGE

) NOTICE OF INTENT TO OFFER VICTIM IMPACT
) EVIDENCE PURSUANT TO 22 OKLA. STAT. SECTION
) 701.10(C) DURING PUNISHMENT STAGE
) (DEATH PENALTY)

ORIGINAL

COMES NOW the State of Oklahoma, Plaintiff herein, and gives notice to the Defendant that, during the punishment stage at jury trial in the above-noted case, it is the intent of the State to offer testimony and/or written reports in the nature of Victim Impact evidence, which testimony and/or evidence shall address the financial, emotional, psychological and physical effects of the death of JAMIE ROSE BOLIN, upon a member of his/her immediate family, including information about the victim, the circumstances surrounding his/her death, the manner in which his/her death was perpetrated and why the victim should not have been killed.

Authority:

- Cargle v. State, 909 P.2d 806 (Okla. Crim. App. 1995)
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- Hain v. State, 919 P.2d 1130 (Okla. Crim. App. 1996)
- Charm v. State, 924 P.2d 754 (Okla. Crim. App. 1996)

THAT, said evidence will be presented through the witness, JENNIFER FOX, who is related to the victim, to-wit: MOTHER.

THAT, the witness will be asked certain questions addressing the above-noted factors, including, but not necessarily limited to, those listed hereafter, and is expected to testify in conformity with the summary stated herein.

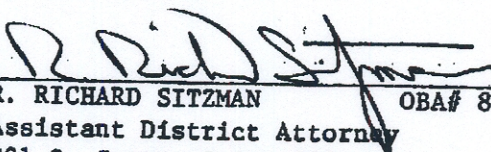
- 1) Have you sought or required any medical or psychological treatment, counseling or therapy in order to deal with the victim's death and, if so, what? Yes, I did seek medical attention. I think I still need to but I just can not afford it.
- 2) What will you miss most about the victim? What were his or her outstanding characteristics? I will miss everything about her. I find it hard not to think of her constantly; I find it hard to pay attention to my work and my thoughts drift off to when Jamie was alive and the plans we had for the coming Easter weekend. We were planning for her to make a trip with me in my truck.
- 3) What were your feelings on the day the victim was born? I was overjoyed but it was a very difficult day because she was born with left kidney problems and failure and the doctors could not explain why really.
- 4) Did you do things together? Such as.... It had been a difficult time, with me on the road and with her dad and me having separated...but we had plans.

- 5) Was the victim a valued companion or confidant? Were you friends?
Yes, she was my daughter. Yes, we were also friends.
- 6) Has there been, or do you expect that the victim's death will in the future have a negative financial effect upon you? If so, how?
I have had trouble with my job. I find it hard to pay attention to things and I drift off in thoughts of Jamie. My heart isn't there anymore.
- 7) What did you look forward to the most in relation to the victim?
Just being able to be with her more.
- 8) What achievements by the victim were you the most proud of and how does it now make you feel when you reflect upon his or her efforts to overcome the obstacles in his or her life?
She loved life and she was doing her best to deal with and overcome the problems and changes in her life.
- 9) How did you feel when you first learned of the victim's death?
- 10) Why should this person not have been killed? What did he or she have to offer to others? Jamie's dream was for her dad and I to work things out and to be a family again. We just never had time, I guess!

Respectfully submitted,

GREG MASHBURN
DISTRICT ATTORNEY

By:


R. RICHARD SITZMAN OBA# 8281
Assistant District Attorney
201 S. Jones, Suite 210
Norman, OK 73069
(405) 321-8268 (FAX) 360-7840

CERTIFICATE OF SERVICE:

I do hereby certify that I have served and delivered a true and correct copy of the above and attached NOTICE OF VICTIM IMPACT TESTIMONY (JENNIFER FOX) upon the Defendant this 25th day of June, 2007, in the following manner:

[] By personal service upon the Defendant at _____;

[XX] By personal service upon counsel for the Defendant, SILAS LYMAN II/ LYNN BURCH/MATTHEW HAIRE, at OLDS CAPITAL TRIAL DIV. in Norman, OK;

[] By regular U.S. Mail, full postage prepaid thereon, to counsel for the Defendant, _____ at, _____;

[XX] By electronic facsimile, to counsel for the Defendant _____, at FAX# _____;

Dated: 6-25-07

R. S. [Signature]