

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

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Judge William Kellough

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LaDonna Summers (Garcia), William Green, Kim Walker, Kervin Washington, Melanie Lee (Holmes), Sharon Lee (Elliott), Pat Jarnigan (Dill), John Pojman, Tony Patterson, Fawn Ingram, Eli Botello, Israel Botello, Steve Bollinger, Calvin McKee, Ann Morris, Ann Reed, Mary Long, Jerry Poplin, the Hon. Pete Messler, Tom Bryan, Shelly Bryan, Michelle Bryan, and Susan Jones. Very few of these witnesses were contacted by the state. The state made no real effort to determine whether it had an ability to “reproduce” evidence from these witnesses. The state never found a murder weapon so it never had an ability to produce or “reproduce” that evidence. Further, any witness no longer living, such as William Lee, was available through a previous transcript. In 1995, William Lee was dead and the state presented Lee’s preliminary hearing transcript at trial. Accordingly, the state’s assertion that it dismissed the murder charge due to its “inability” to reproduce evidence is patently false and contemptuous. The state moved to dismiss the murder charge because Tim Harris and Mike Cook were subpoenaed to testify and had an “inability” to testify truthfully without admitting a criminal conspiracy to wrongfully convict an innocent person. The state’s pleading is contemptuous and Ms. Murphy is requesting appropriate relief;

2. That on May 29, 2014, District Attorney Tim Harris and Det. Mike Cook were under subpoena to testify at a hearing scheduled for May 30, 2014. On May 29, 2014, in an apparent attempt to avoid testifying, Tim Harris filed a motion confessing Ms. Murphy’s post-conviction relief application. In his motion, Tim Harris wrote that his argument to the jury in 1995, “that there was AB blood

which was not the victim's" was made "in good faith based upon forensic testing provided by the Tulsa Police Department Laboratory." In fact, the forensic testing by the TPD laboratory contained incorrect, false and misleading findings on every single blood sample allegedly tested. In his May 29<sup>th</sup> filing, Mr. Harris added, "[s]ubsequent DNA testing . . . resulted in finding that the two samples of blood, one being AB blood, belonged to the victim, Travis Woods, contrary to the argument made at the time of trial." Mr. Harris further wrote, "[t]his evidence of material facts [were] not previously presented or known by the parties . . . " Mr. Harris's assertions are patently false and contemptuous. In fact, Tim Harris knew prior to trial in 1995, that these blood samples were not blood type AB. Mr. Harris did not argue "in good faith"; rather, he purposefully and willfully misled the jury in order to gain a wrongful conviction, and falsely described his behavior in his May 29<sup>th</sup> court pleading. The "subsequent DNA testing" Mr. Harris referred to in his May 29<sup>th</sup> pleading was a DNA test performed by Reliagene in 2005. Nevertheless, Mr. Harris allowed Ms. Murphy to languish in the penitentiary for nearly ten additional years. Prior to Ms. Murphy's trial in 1995, Tim Harris sent the forensic evidence to the OSBI who performed a DNA test on the victim and Ms. Murphy. In 1995, three days before Tim Harris falsely suggested to the jury that type AB blood at the scene came from Ms. Murphy, Tim Harris and Mike Cook received the OSBI report which stated Ms. Murphy is blood type A. Documents supplied by the OSBI reveal Tim Harris falsely claimed the defense intended to stipulate to the OSBI report, which indicates Mr. Harris read the OSBI report. There was no stipulation. Instead, Tim Harris suppressed this



exculpatory report. Accordingly, Tim Harris's pleading submitted to this Court on May 29, 2014, is contemptuous and Ms. Murphy seeks appropriate relief;

3. That on June 17, 2014, this Court signed an agreed order disqualifying District Attorney Tim Harris from serving as an advocate in this case because he was a necessary fact witness. Tim Harris violated this Order by continuing to serve as an advocate. For example, Mr. Harris remained involved with the discovery process. On June 20, 2014, in response to Ms. Murphy's request that the state's discovery be verified, ADA Jimmy Dunn wrote in an email, "[u]nfortunately I cannot agree to that. Until Tim has an opportunity to review everything that has been turned over and had an opportunity to compare it to the file, he cannot verify that I 'included everything the state possess.'" Further, sometime after June 17, 2014, Tim Harris contacted Tom Bryan, the adoptive father of Ms. Murphy's biological daughter, in his investigative and prosecutorial capacity. Finally, on September 12, 2014, Tim Harris advocated in open court. This conduct is contemptuous and Ms. Murphy seeks appropriate relief;
4. That on May 8, 2014, this Court signed an order requiring the state to produce "any and all documents, logs and reports relating to Michelle Dawn Murphy, Travis Eugene Woods, and William Michael Lee." This Court ordered the state to comply by July 7, 2014. On September 2, 2014, Ms. Murphy filed a motion to compel production. To date, the state is in contempt for failing to produce. On numerous occasions, Ms. Murphy provided the state with lists of dozens of unprivileged documents known to exist, yet never produced. A hearing was scheduled on September 12, 2014, to address these discovery violations.

Rather than comply with this Court's order, the state submitted documents under seal to the Court and claimed these documents are "privileged." Ms. Murphy never agreed that the documents should be sealed. In his pleading filed October 1, 2014, Tim Harris claims he did not request the Court to file the documents under seal. This statement is intentionally misleading. The state presented the documents to the Court under seal. The documents were filed in the condition the Court received them. Tim Harris's assertions in his pleading are contemptuous. Further, these "sealed" documents are not privileged as they were prepared in furtherance of a wrongful conviction. Finally, upon information and belief, these "sealed" documents are not even material. The state's purpose for producing them under seal was merely to serve as a distraction from the fact that relevant, material, and unprivileged documents remain contemptuously suppressed. As a result of the state's contemptuous conduct, Ms. Murphy's legal team has spent over 120 hours and several thousand dollars in expenses attempting to compel the state to comply with this Court's order to produce. Accordingly, Ms. Murphy seeks appropriate relief.

### **ARGUMENTS AND AUTHORITIES**

Ms. Murphy is entitled to relief for the state's contemptuous conduct throughout these post-conviction proceedings. The trial judge has the power to cite for direct contempt anyone who, in his presence in open court, willfully obstructs judicial proceedings. 21 O.S. § 565.1 (A), (B)(1). The Court of Criminal Appeals and the Oklahoma Supreme Court agree that direct contempt proceedings are to be considered neither civil nor criminal but *sui generis*. *Gilbert v. State*, 1982 OK CR 100 ¶ 19, 648



P.2d 1226. Consequently, a disobedient litigant in direct contempt is not entitled to a jury trial. *Id.* at ¶ 20. In addition, the trial judge has the power to cite for indirect contempt the willful disobedience of, or resistance to, any order lawfully made by the court. 21 O.S. §565. In cases of indirect contempt, the party charged with contempt is entitled to a trial by jury. 21 O.S. § 567 (A). Indirect contempt includes willful violation of a court order and contemptuous language in a court pleading. See *Gilbert v. State*, 1982 OK CR 100 at ¶ 38.

The judge before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. Judges are presumed impartial as to matters before them. *Pittman v. State*, 1986 OK CR 59 ¶ 7, 718 P.2d 366 (citing *United States v. Hall*, 536 F.2d 313 (10th Cir. 1976)). Only in rare cases where the judge's conduct was so integrated with the contempt that he or she contributed to it or was otherwise involved, or the judge's objectivity can reasonably be questioned, should the matter be referred to another judge. *Pittman*, 1986 OK CR 59 at ¶ 5(citing 21 O.S. §565.1). This standard is applicable in both direct and indirect contempt proceedings. *Id.* Even if the judge initiates an indirect contempt complaint, disqualification is not required where there is no evidence of bias, partiality or prejudice. *Id.* at ¶ 8 (affirming the contempt and finding the trial court was objective and impartial even though the judge initiated the indirect contempt action).

Notably, the trial court retains jurisdiction to impose sanctions for a party's contemptuous conduct even after the case has voluntarily been dismissed with prejudice. *Barnett v. Simmons*, 2008 OK 100 ¶ 13, 197 P.3d 12 (citing *Bentley v. Hickory Coal Corp.*, 1992 OK CIV APP 68, 849 P.2d 417). A dismissal does not deprive the trial court of jurisdiction to hold a contempt hearing and to sanction counsel for violations of the trial court orders committed before dismissal of the case. *Id.*

contemptuous and indirectly contemptuous. Mr. Harris advocated in open court in violation of this Court's order disqualifying him from serving as an advocate. In his professional capacity, Mr. Harris contacted Tom Bryan, the adoptive parent of Ms. Murphy's daughter, in spite of this Court's order disqualifying him from serving as an advocate. Mr. Harris willfully signed pleadings that contain false and misleading assertions which were designed to obstruct the judicial proceedings, to falsely misdirect the Court and the public from his own wrongful conduct, and to shift the blame for his own conduct. Mr. Harris willfully impeded the discovery process in violation of this Court's order to produce and in violation of this Court's order disqualifying him from serving as an advocate which obstructed the judicial proceedings. Ms. Murphy's legal team has spent over 120 hours and thousands of dollars in expenses contending with issues that resulted from Mr. Harris's contemptuous conduct. Accordingly, Ms. Murphy prays that this Court set this matter for a hearing, for appropriate sanctions, and for all other relief this Court deems equitable and proper.

#### SIGNATURE AND CERTIFICATE OF COUNSEL

- ◆ By my signature below, I swear or affirm that:  
the facts alleged in these motions are true and correct to the best of my  
knowledge and belief; and,
- ◆ these matters are raised in good faith, in the interests of justice, and not for the  
purposes of delay.

Respectfully submitted to the Court and delivered to:

James D. Dunn, OBA#16829  
Assistant District Attorney  
Tulsa County District Attorney's Office  
900 County Courthouse  
500 S. Denver  
Tulsa, OK 74103  
Attorney for Respondent

On October 2, 2014, by  
**Original Signed By:**  
**Richard O'Carroll**

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Richard O'Carroll, OBA #11947  
Sharisse O'Carroll, OBA #12946  
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2171 N. Vancouver Ave.  
Tulsa, OK 74127  
sloc@cox.net  
Attorneys for the Petitioner

### VERIFICATION

**Subscribed and Sworn** before me on October 2, 2014, by a person known to me as Richard O'Carroll.

**SALLY HOWE-SMITH**

  
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By Assistant Court Clerk