

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA,)
 Plaintiff,)
 vs.) CF-2009-1670
 RANDALL DAVID ARNOLD)
 Defendant.)

STATE OF OKLAHOMA
 STATE OF OKLAHOMA S.S.
 CLEVELAND COUNTY)
FILED In The
 Office of the Court Clerk
 MAR 2 5 2011
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 Rhonda Hall, Court Clerk
 DEPUTY

**STATE OF OKLAHOMA'S MOTION TO RECUSE JUDGE
and BRIEF IN SUPPORT**

COMES NOW THE STATE OF OKLAHOMA, by and through Greg Mashburn, duly elected and acting District Attorney for the Twenty-First District, and respectfully moves the Honorable Tom A. Lucas, District Judge, assigned judge in the above captioned matter, to disqualify and remove himself from all cases prosecuted by the Cleveland County District Attorney's Office, pursuant to Rule 15 of the Rules for the District Courts of the State of Oklahoma, Article II § 6 of the Oklahoma Constitution, Title 20 § 1403 of the Oklahoma Statutes, and Canons 2 and 3 of the Code of Judicial Conduct as adopted in the State of Oklahoma.

This Motion is based upon the following grounds relating to the said Defendant, and other similarly placed defendants prosecuted by the Cleveland County District Attorney's office.

1. On or about July 29, 2010, at the request of Norman Police Department, the Cleveland County District Attorney's office made a referral to the Oklahoma State Bureau of Investigation regarding an allegation of a possible molestation involving T. L., the 4 year old great-granddaughter of Judge Lucas. The alleged perpetrator was Thomas Lambert, an adult grand-son of Judge Lucas. Judge Lucas has adamantly denied the allegations both to the Department of Human Services and law enforcement. Following the referral to OSBI, Judge Lucas has

found the evidence in a child abuse murder case was ambiguous as to who actually killed the child, reversing his previous position and ignoring a Court of Criminal Appeals opinion finding the defendant committed the murder, and suspended all but 17 years of a life jury verdict. In addition, Judge Lucas has publicly stated the District Attorney's office could twist the law to come after good guys apparently inferring that the District Attorney's office come after judges and their families if the DA's office did not like what the judges did, and he has stated that female attorneys were liars and that he hated the Major Crimes prosecutors.

2. Judge Lucas has stated on the record that he has an objection to the child abuse murder laws and complained about the limited sentencing range for child abuse murder. Judge Lucas suspended all but 17 years of a life jury verdict on a child abuse murder case, stating that he believed that was appropriate on an abuse case, ignoring the fact that the abuse caused a death. Judge Lucas has recused himself from a child abuse murder case stating that he did not believe the accused was guilty of the crime charged, i.e. child abuse murder.

Before filing this Motion, the State first requested District Judge Lucas to recuse from this and other criminal cases pending on his docket based on his bias and prejudice against the District Attorney's Office following the referral to OSBI in regards to his family, and in addition specifically to child abuse murder cases based on his public comments objecting to the child abuse murder laws and range of punishments, during an *in camera* hearing on March 21, 2011, which request was denied.

FACTUAL RECITATION

PROPOSITION I

JUDGE LUCAS IS BIASED AND PREJUDICED AGAINST THE CLEVELAND COUNTY DISTRICT ATTORNEY'S OFFICE AS A RESULT OF THE OSBI INVESTIGATION

District Judge Tom A. Lucas was first elected to the bench in 1994 and has served as a District Judge in Cleveland County continuously since his election. Judge Lucas presides over both civil and criminal cases. During the calendar year 2010, Judge Lucas was the Chief Judge of Cleveland County.

On July 23, 2010, the Norman Police Department received a referral from the Department of Human Services regarding an alleged sexual abuse of 4 year-old T. L. As a result of that referral an investigation was began into the allegations. It was determined that T.L. was the great-granddaughter of District Judge Tom A. Lucas. During the course of the ongoing investigation, Norman Police Department was repeatedly thwarted in their attempts to interview witnesses and suspects. Investigators were repeatedly informed that witnesses were told not to discuss family matters with police. Exhibit A, pp. 8, 9, 10, 13. (Sealed confidential report). It was determined that Thomas Lambert was the alleged perpetrator. At the time of the OSBI investigation, Thomas Lambert was living with Judge Lucas and is the grandson of Judge Lucas. Exhibit A, p. 13. (Sealed confidential report).

During the course of the investigation NPD investigators determined that the safety of the victim was an issue and it was necessary to contact the District Attorney's office regarding the necessity of taking the victim into state custody for protection. Information was provided to an assistant district attorney who began the process of obtaining a temporary emergency order of custody for the victim. Exhibit A, p. 14. (Sealed confidential report). A special judge, who handles a juvenile docket, was contacted by law enforcement and an assistant district attorney and provided information regarding the allegations and a temporary emergency order was requested to take the child into custody. Exhibit A, p. 14. (Sealed confidential report). It was determined later that the special judge was contacted by District Judge Tom Lucas approximately 45 minutes to an hour after the DA's office requested the temporary emergency order and Lucas inquired into the substance of why she issued the order and he was advised the basis for the

temporary emergency order. Exhibit A, pp. 65-66. (Sealed confidential report). The special judge and Chief Judge Tom Lucas had a second conversation the following day regarding the possibility of a conflict and the need to recuse all the Cleveland County judges from the case. Exhibit A, p. 66. (Sealed confidential report). The case was later reassigned to an out-of- county judge. During later interviews of family members, statements were made that were word for word comments of information provided to the special judge in the closed temporary hearing attempting to obtain the temporary emergency order including using initials of the child involved rather than the name. Exhibit A, p. 1. (Sealed confidential report).

As a result of the involvement of District Judge Lucas, Norman Police Department requested that the District Attorney's office refer the investigation to the Oklahoma State Bureau of Investigation on July 28, 2010. On July 29, 2010, the District Attorney's Office made a referral of the investigation to OSBI requesting an investigation into the underlying allegations of molestations and an investigation into the allegations of interference of District Judge Tom Lucas. Exhibit A, pp. 16, 19. (Sealed confidential report).

During the course of the investigation, OSBI attempted to interview Judge Lucas. Judge Lucas refused to answer any questions without an attorney present and stated he "disagreed" that any crimes were committed against his great-granddaughter. Exhibit A, p. 67. (Sealed confidential report). OSBI determined there was insufficient evidence to prove beyond a reasonable doubt the allegations of improper interference by District Judge Lucas. A juvenile deprived case was filed, and remains open, by the Cleveland

County District Attorney to protect the minor child and the investigation is ongoing regarding possible criminal charges on the underlying allegation of sexual molestation.

Prior to the referral to OSBI of the case involving Judge Lucas's family, the DA's office represented the State of Oklahoma in a murder case in which Judge Lucas presided. The case involved a charge of Murder in the First Degree involving the child abuse murder of the daughter of a husband and wife, with the State alleging the murder was committed in the alternative by each defendant either permitting child abuse or committing child abuse. The husband was tried first, with the jury finding him guilty of murder and sentencing him to life in prison.

Prior to the co-defendant wife's trial in pre-trial motions, the wife filed a Motion to Preclude State from Arguing Alternative Theories of Guilt at Trial. Judge Lucas found;

Under the state's evidence in [the co-defendant's] case, it's my conclusion that the state's evidence showed that the Defendant Jonathan Trask was the committer - - that is, the person who administered the fatal blow as to the child, Mackenzie Trask.

(State v. Trask, CF-2007-185, Tr. April 8th and 9th, 2009, p. 70)

The Court went on to find;

I think it would be a violation of Defendant Heather Trask's right to a fair trial as guaranteed by due process and the 14th Amendment or any other notion of fair play that we have in the law - - in criminal law - - that the State should be precluded from arguing at her trial that she was the one that actually administered the fatal blows.

(State v. Trask, CF-2007-185, Tr. April 8th and 9th, 2009, p. 70)

The State appealed Judge Lucas and the Oklahoma Court of Criminal Appeals affirmed Judge Lucas and held the issue of who actually inflicted the fatal injuries was conclusive.

(State v. Trask, S-2009-363, unpublished summary opinion, attached hereto as Exhibit B).

In addition, the Court of Criminal Appeals later affirmed the conviction of the co-defendant husband, finding “the evidence was clearly sufficient to convict [co-defendant] of first degree murder by committing child abuse”. (*Trask v. State*, F-2009-262, *unpublished summary opinion*, attached hereto as Exhibit C).

Following the referral to OSBI of the case involving Judge Lucas’s family, on the same evidence previously considered by Judge Lucas in finding “it’s my conclusion that the state’s evidence showed that the Defendant Jonathan Trask was the committer,” on the co-defendant, Jonathon Trask’s, application for suspended sentence pursuant to 22 O.S. 2001, § 994, Judge Lucas found:

I think either you did it or you permitted it. I don’t know which, and I guess the State doesn’t know either...

(*State v. Trask*, CF-2007-184, Tr. February 24, 2001, p. 4). Judge Lucas went on to find:

Notwithstanding the Court of Criminal Appeals’ observation or holding that the evidence was conclusive and there was no ambiguity, the State has argued on more than one occasion in Heather’s case – Heather Trask case, that the evidence was not conclusive; that there was some ambiguity.

And, in fact, someone stated in open court – and, Ms. Austin, I don’t know if it was you or Ms. Caswell. You both are very good lawyers, and I can’t tell who said what. But from what I can remember is one of you said that there is an ambiguity, that we don’t know whether he killed the child or she did, but we’re going to offer evidence on her. You wanted to offer evidence on her that either she did or she permitted it, same as you did on him, as he did or permitted it.

At any rate, I think that – I think that I – and ordering as follows: That your life sentence will be suspended, all except the first 17 years. By that, I understand that you are going to serve 85 percent of 17 years, which I think is an appropriate sentence for a child abuse. This child was abused. There’s not any question about that. Who did it, I don’t know, and apparently,

nobody else knows. I've sat through two trials, and I don't know.

But the fact is somebody abused this child, and I think the facts show you knew it. You knew it or should have known it. And I think 17 years is a proper sentence for that. 85 percent of that will be about 15, I guess – in the neighborhood of 15, 15 – plus or 15 – minus.

(State v. Trask, CF-2007-184, Tr. February 24, 2001, pp. 7-8).

The evidence and the argument were the same during each hearing, in fact Judge Lucas referred to the State's argument, an argument that he ruled against and was affirmed, in the second hearing. In the second hearing, Judge Lucas revived, and agreed, with an argument that he had previously rejected and used that to now find the evidence was not clear, notwithstanding the Court of Criminal Appeals findings in two separate opinions. Judge Lucas used this now compelling argument to suspend all but 17 years of the co-defendant husbands' life sentence. The only difference between the first hearing and the second hearing was the State's referral of his great-granddaughters sex-abuse case to the OSBI, a case in which he disagreed with the allegations and the continuing investigation.

On multiple occasions, following the referral of T.L.'s case to OSBI, Judge Lucas has put into words his animosity toward the District Attorney's office. During a conversation about prosecutors, Judge Lucas stated he did not trust female attorneys because they will stretch the truth, there are three female attorneys in the Major Crimes unit. Exhibit D. (Sealed confidential document). During a conversation about the District Attorney's office, Judge Lucas stated he hated the Major Crime prosecutors, who are the primary prosecutors in child abuse cases, and seems to consider the District Attorney's office an enemy camp. Exhibit E. (Sealed confidential document). The assistant district attorneys

And in a public statement at the swearing in of the newest District Judge in Cleveland County, Judge Lucas warned the new District Judge to beware of prosecutors because they distort the truth and will try to force judges to do things and if the prosecutors are displeased “they will be coming after us next.” Exhibit F. (Sealed confidential document).

PROPOSITION II:

JUDGE LUCAS HAS PUBLICLY STATED HIS DISLIKE OF THE CHILD ABUSE MURDER STATUTE AND THE LIMITED SENTENCING OPTIONS OF JURIES AND HAS SHOWN THAT HE IS UNABLE TO REMOVE HIS PERSONAL OPINIONS AND BE A FAIR AND IMPARTIAL JUDGE

In addition to his clear animosity toward the District Attorney’s office, Judge Lucas has voiced his dislike for the child abuse murder law and has repeatedly complained that a jury only has two sentencing options in a child abuse murder case. (*State v. Trask*, CF-2007-184, Tr. March 12, 2009, p. 86, Tr. February 24, 2001, pp. 2, 5, 8). Although the Court of Criminal Appeals found the evidence clear and the sentence appropriate in the child abuse murder conviction of Jonathon Trask, Judge Lucas decided unilaterally to find Jonathon Trask guilty of child abuse and sentenced him in accordance therewith to a term of incarceration of 17 years. (*State v. Trask*, CF-2007-184, Tr. February 24, 2001, p. 8).

Although this decision is within the discretion of Judge Lucas and is not an abuse of discretion, it is further evidence of bias and prejudice against prosecutors who zealously advocate for jurors to follow the law and the evidence and to sentence accordingly.

In a separate child abuse murder case, Judge Lucas *sua sponte* recused himself and stated the reason he was recusing was because the “Court believes def. is not guilty of crime charged.” Exhibit G. (Sealed confidential document). The crime charged is child

abuse murder. The case was recently tried to a jury before Judge Lucas and ended in a hung jury. The State believes Judge Lucas' *sua sponte* recusal is an indication that he cannot fairly preside over a trial in which he has a personal objection to the crime charged. This is a clear demonstration of Judge Lucas' inability to follow the law and allowing his personal bias effect his decisions.

Judge Lucas has stated that he believes intent is an element of all murders and the lack of intent in child abuse murder is problematic and lessens the gravity of the murder. As a result of his personal beliefs and his refusal to follow the law, the District Attorney's Office is put in a precarious position of overcoming Judge Lucas' bias and proving the elements of child abuse murder beyond a reasonable doubt. In addition, it puts the District Attorney's office in the position of having to guess at what other crimes Judge Lucas has a personal bias against, before the State can proceed on any particular case in his courtroom.

Judge Lucas's clear animosity toward the District Attorney's office following the referral of T.L.'s sexual abuse case to the OSBI constitutes an unambiguous bias and prejudice toward the District Attorney's office and his refusal to follow the law denies the State a hearing before a fair and impartial judge.

I. THE APPLICABLE LAW

"A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..." *Oklahoma Code of Judicial Conduct, Canon 3(E)(1)*. In Oklahoma, "every litigant is entitled to nothing less than the cold neutrality of an impartial judge." *State ex rel. Larecy v. Sullivan*, 248 P.2d 239 (Okla. Crim. App. 1952), *citing* OKLAHOMA CONSTITUTION ARTICLE II §6. This fundamental

right applies not only to private citizens, but to the State of Oklahoma as a party to criminal cases as well. *C.R.B. v. State*, 1978 OK CR 22, 575 P.2d 636. (“both the State and the accused are entitled to a hearing before an impartial judge.”) *See also, State v. Brown*, 125 P. 245 (Okla. Crim. App. 1912)(judge may be disqualified for prejudice in favor of a criminally accused); *Ingram v. Worten*, 1928 OK CR 135, 266 P 488. (State of Oklahoma and society in general have an interest in preserving the integrity and impartiality of courts).

Of course no party is entitled to a judge of her choice and there exists at common law a presumption of impartiality on the part of judges. *Carter v. State*, 1994 OK CR 49, 879 P.2d 1234. In fact, a judge has as strong a duty to sit when there is no legitimate reason for disqualification as he does to recuse when law and facts require it. *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995). However, “It is to be regretted that a judge should try a case in which there is the least ground upon which to base a claim for his disqualification, and, **if an error is ever made as to disqualification, it should be in favor of the disqualification rather than against it.** An independent, unbiased, disinterested, fearless judiciary is one of the bulwarks of American liberty, and nothing should be suffered to exist that would cast a doubt or shadow of suspicion upon its fairness and integrity.” *State ex rel. Bennett v. Childers*, 1940 OK CR 389, 105 P.2d 762. *See also, Schulte v. Bolen*, 216 P. 928 (Okla. 1923)(“courts must be presided over by unbiased, impartial and disinterested judges, and **all doubt and suspicion to the contrary must be jealously guarded against.**”)(emphasis added)

Canon 2 of the Code of Judicial Conduct reads as follows: **A judge should avoid impropriety and the appearance of impropriety in all of the judge’s activities.**

Paragraph B goes on to explain that “[a] judge should not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment.”

The process for one seeking to disqualify a District Judge and have the case transferred to another courtroom is governed by Rule 15 of the Rules for the District Courts of Oklahoma, which reads as follows:

a. Before filing any motion to disqualify a judge, an *in camera* request shall first be made to the judge to disqualify or to transfer the cause to another judge. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial a motion to disqualify a judge or to transfer a cause to another judge may be filed and a copy delivered to the judge.

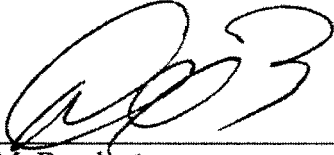
b. Any interested party who deems himself aggrieved by the refusal of a judge to grant a motion to disqualify or transfer a cause to another judge may re-present his motion to the Chief Judge of the county in which the cause is pending or, if the disqualification of a Chief Judge is sought, to the Presiding Judge of the administrative district by filing in the case within five (5) days from the date of said refusal a written request for re-hearing. A copy of the request shall be mailed or delivered to the Chief Judge or Presiding Judge, to the adverse party and to the judge who entered the original order. If the hearing before the second judge results in an order adverse to the movant, he shall be granted not more than five (5) days to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a writ of mandamus. Neither the Supreme Court nor the Court of Criminal Appeals will entertain an original proceeding to disqualify a judge or to direct a judge to transfer a cause to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was re-presented in accordance with this rule. An order favorable to the moving party may not be reviewed by appeal or other method.

II. CONCLUSION

The bias and prejudice of District Judge Lucas in regards to criminal cases prosecuted by the Cleveland County District Attorney’s office gives the appearance of impropriety and a conflict of interest and require the disqualification of District Judge Lucas in cases involving the Cleveland County District Attorney’s office.

WHEREFORE, the State of Oklahoma, by and through Greg Mashburn, duly elected and acting District Attorney for the Twenty-First District, respectfully requests the Honorable Tom A. Lucas, assigned judge in the above captioned matter, to disqualify and remove himself pursuant to Rule 15 of the Rules for the District Courts of the State of Oklahoma, Article II § 6 of the Oklahoma Constitution, Title 20 §1403 of the Oklahoma Statutes, and Canons 2 and 3 of the Code of Judicial Conduct as adopted in the State of Oklahoma on all cases involving the Cleveland County District Attorney's office.

Respectfully submitted,

By: 
David M. Brockman
First Assistant District Attorney

CERTIFICATE OF SERVICE

On this 25th day of March, 2011, a true and correct copy of the foregoing was hand delivered to:

The Honorable Tom A. Lucas
200 South Peters
Norman, OK 73069

Elton Jenkins
Attorney at Law
115 S. Peters Ave., Ste. 6
Norman, OK 73069


David M. Brockman
First Assistant District Attorney