

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUN 21 1999
JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, FILED
GARFIELD COUNTY, OKLA.

Petitioner,
v.

JUN 22 1999

SHARON MELROSE No. P-99-660
COURT CLERK

THE HONORABLE J. BRUCE HARVEY, DEPUTY COURT CLERK CF-98-564
SPECIAL JUDGE, GARFIELD COUNTY, OKLAHOMA,)
)
)

Respondent.)

ORDER DENYING REQUEST FOR WRIT OF PROHIBITION

On May 14, 1999, Petitioner, the State of Oklahoma, by and through counsel Tim S. Braley, filed a Petition for Writ of Prohibition seeking relief from an order of the District Court of Garfield County, entered April 21, 1999, by the Honorable J. Bruce Harvey, Special Judge, requiring the State to provide copies of law enforcement reports to the defendant, Lloyd Eugene Black, Jr., in Case No. CF-98-564.

On September 30, 1998, defendant Black was charged with 3 counts of lewd molestation and 2 counts of rape by instrumentation in the above-referenced case. On February 8, 1998, the State alleges it filed its Notice of Availability of Law Enforcement Reports for Inspection, pursuant to Title 22 O.S. § 258 and this Court's directive in *LaFortune v. District Court of Tulsa County*, 1998 OK CR 65, 972 P.2d 868. On February 26, 1999, attorney Jim Hankins

was appointed to represent defendant Black, and preliminary hearing was set for April 22, 1999. On April 16, 1999, counsel Hankins requested the State "make and provide copies" of all law enforcement reports within its possession or control prior to the preliminary hearing. The State declined to make copies, but made available for inspection by defense counsel the law enforcement reports. After inspecting the reports, Hankins again requested copies of the reports be provided to him. The State refused, citing 22 O.S. §§ 258 and 2001, and *LaFortune*.

On April 20, 1999, defense counsel filed a Response to the State's Notice of Availability of Law Enforcement Reports for Inspection and Motion to Compel the State to Provide Photo Copies of Law Enforcement Reports Five Days Prior to the Preliminary Hearing. On April 21, 1999, after hearing arguments of the parties, the District Court, Special Judge J. Bruce Harvey, entered an order over the State's objection, ruling as follows:

1. The defendant should not be required to undertake preliminary hearing without copies of all law enforcement reports provided to defense counsel by the State prior to commencement of preliminary hearing;
2. 22 O.S. § 258 and *LaFortune v. The District Court of Tulsa County* require the State to use its staff and equipment to make copies of all law enforcement reports within the prosecuting attorney's knowledge or possession at the time and provide said copies to the defendant within 5 working days prior to the date of preliminary hearing; and
3. The State shall provide a statement detailing its time and expense to the defendant who will in turn bill the Oklahoma Indigent Defense System for reimbursement.

It is from this order that the State appeals.

In its application the State argues that the District Court's ruling is contrary to 22 O.S. § 258 and *LaFortune* in that neither the statute nor this Court's decision require that defense counsel be provided *copies* of law enforcement reports. The State alleges it is sufficient to allow defense counsel to view the documents, and that the words "make available for inspection", as used in both § 258 and *LaFortune*, do not encompass providing copies of the law enforcement reports to a defendant. The State then argues that requiring production of the documents in every case set for preliminary hearing "creates a burdensome, expensive, and legally unsupported system not provided for by State statute or judicial precedent." The State requests this Court prohibit the District Court of Garfield County from "forcing" the State to make and provide copies of the law enforcement reports in question, from "forcing" the State to provide a statement of expense to defense counsel for reimbursement from the Oklahoma Indigent Defense System (OIDS), and direct Judge Harvey to immediately commence the preliminary hearing in this matter.

For a writ of prohibition, Petitioner must establish (1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. Rule 10.6(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App.

(1998). The State has not established that the exercise of judicial power in this case is either unauthorized by law, or that the exercise of power will result in injury for which there is no adequate remedy.

As we noted in *LaFortune*, all criminal defendants need the law enforcement reports the Legislature has made available in order to prepare for cross-examination of the State's witnesses and to ensure that the preliminary hearing is not terminated when evidence material to the 2 issues in a preliminary hearing is not contained in the State's presentation of evidence. *LaFortune*, 1998 OK CR 65, ¶ 15. Thus, the State is required to "make available" the law enforcement reports to the defendant five (5) working days prior to the preliminary hearing in all criminal cases, so magistrates can utilize the cut-off rule contained in § 258, and defendants can prepare and ensure evidence material to the 2 issues in preliminary hearing is presented. *Id.* To argue that the phrase "make available" means only to allow defense counsel to look, but not copy, the law enforcement reports in question, is nonsensical. Such an interpretation would make impossible the very preparation and presentation of evidence *LaFortune* contemplated being presented at the preliminary hearing phase of prosecution. In addition, 22 O.S. § 2002 (D) provides that the court may specify the time, place and manner of making discovery and may prescribe such terms and conditions as are just, while § 2002 (F) provides that reasonable costs of copying, duplicating or any other costs associated with provided requested items shall be paid, upon a

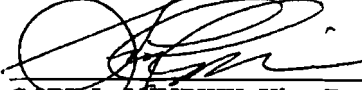
determination that the defendant is indigent, by OIDS. We find nothing unreasonable or unjust in the District Court's order requiring the State to produce copies of the documents in question and seeking, as provided by statute, reimbursement from OIDS. As the State has not shown that it is entitled to the relief requested, its request for a writ of prohibition is **DENIED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 21st day of June, 1999.

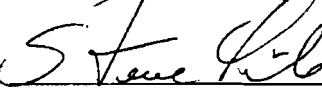
NOT PARTICIPATING

RETA M. STRUBHAR, Presiding Judge


GARY L. LUMPKIN, Vice Presiding Judge *Consent in Rights based on separate writing in letter.*


CHARLES A. JOHNSON, Judge


CHARLES S. CHAPEL, Judge

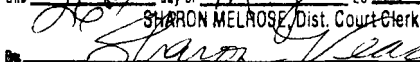

STEVE LILE, Judge

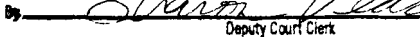
ATTEST:


Clerk

I, SHARON MELROSE, District Court Clerk of Garfield County Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the above named Court of the Court Clerk's Office of Garfield County, Okla.

this 21st day of May 20 05


SHARON MELROSE, Dist. Court Clerk

By 
Deputy Court Clerk