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October 8, 2020

David Prater
Oklahoma County District Attorney
Oklahoma County District Attorney's Office
320 Robert S. Kerr
Room 505
Oklahoma City, OK 73102

RE: Request for Interview Notes Taken Prior to Glossip Trials

Dear Mr. Pater,

As you recall, this firm is part of the legal team representing Richard Glossip on his innocence litigation, which investigation is ongoing in advance of an anticipated execution date. In support of this investigation, we have previously requested all documents contained in your files on this case, and that request has been denied. With this letter, we renew that request. However, in an attempt to more specifically tailor our request, we ask here that your office provide Mr. Glossip's defense team with access to the notes taken by prosecutors and any investigators or staff members working with them during interviews with witnesses in preparation for Mr. Glossip's 1998 and 2004 trials. We specifically request access to such notes for all witnesses interviewed, including those the prosecutors chose *not* to call at either trial. We do not make this request without cause to do so.

Based on the prior practices of the Oklahoma County District Attorney's office, we have reason to believe that during the time interviews were conducted with witnesses prior to both trials, prosecutors and investigators routinely took notes during such interviews, and the information gathered was not always provided fully and fairly to the defense. Should those notes contain any information that could be construed as exculpatory or impeaching (for the witness him or herself if he or she testified, or for any other witness), their disclosure is constitutionally mandated under *Brady v. Maryland*, 373 U.S. 83 (1983) and *Giglio v. United States*, 405 U.S. 150 (1972). If, in fact, the witness said

only what the prosecutors had previously disclosed to Mr. Glossip's trial attorneys, then sharing these notes with Mr. Glossip's current defense team cannot possibly cause any problem for your office. Providing the notes will ensure that the process is, and appears to be, fair and will comply with one of the recommendations made by the bipartisan Oklahoma Death Penalty Review Commission in 2017.

By specific example of what we seek, and to avoid any thought that we are engaged in a "fishing expedition," Jackie Williams and her daughter, Kathryn Kay Timmons, were both interviewed by trial prosecutor Gary Ackley immediately prior to the 2004 trial. According to a typewritten document (attached hereto) that Mr. Ackley apparently provided to defense counsel Woodyard and Lyman on May 11, 2004 (i.e., the day trial began), on the evening of May 10, 2004, Mr. Ackley interviewed Kathryn Kay Timmons, who may have been an ear-witness to the murder. Ms. Timmons was *not* called to testify at trial. In the memo to the defense, Mr. Ackley reported Timmons' statements regarding her movements and observations on the night of the murder and the following day, which were largely consistent with the case that State prosecutors chose to put on in 2004. Also, at the time he interviewed Ms. Timmons, Mr. Ackley notes he spoke with Timmons' mother, Jackie Williams, who had been disclosed as a witness and did testify. The only information Mr. Ackley provided about this interview was an isolated statement that Ms. Williams now believed the statement she had previously given police in 1997 was mistaken, and her true recollection was instead consistent with the State's theory in 2004. The brief memo provided by Mr. Ackley is typewritten and dated the following day, indicating that it was not prepared contemporaneously with the interviews. We are asking for copies of the notes Mr. Ackley and/or any other prosecutor, investigator, or staff member took during these interviews, on which Mr. Ackley based the attached memo.

Our reason for believing such notes exist is that prior investigations of the Oklahoma County District Attorney's office's failures to disclose *Brady* material, both in federal court and by the State Bar, had revealed that it was indeed the practice for Assistant District Attorneys in that office during all times relevant hereto to take contemporaneous notes during witness interviews and that they did not consistently disclose those notes to defense counsel, even when they were clearly exculpatory. There are at least two documented instances of those in first-degree murder cases.

The first occurred in the 1995 and 1997 death penalty trials of Yancy Douglas and Paris Powell, under the leadership of Robert Macy while you were an Assistant District Attorney in his office. As Douglas's trial approached, one of the prosecutors from this office interviewed an ear-witness, who told him something contradictory to what the State's star witness was going to testify to. As summarized by the Oklahoma Supreme Court in that prosecutor's disciplinary proceedings, the prosecutor "left notes in his prosecutor's file that might have informed the defense at both the Douglas and Powell trials of the [witness] interview and corresponding evidence." *State of Oklahoma v. Robert Bradley Miller*, 2013 OK 49, at 17 (underlines added). Even though the office maintained an "open file" policy at that time, the prosecutor was *still* obligated to "expressly disclose the information to the defense," *id.*, and he had failed to do so.

The second incident, of which you are certainly aware, occurred in 2012 after you assumed office. One week before the first-degree murder trial of Billy Michael Thompson, two attorneys from your office interviewed an eyewitness they had previously been unable to find. Although he was inconsistent and, at times, incoherent during the interview, he told them an important fact about the crime that supported the defense and undercut the prosecution. As explained by the Oklahoma Supreme Court in their later disciplinary proceedings:

"The notes taken by both respondents record that [the witness] stated the victims were stabbed in a driveway or at the end of a driveway. . . . Respondent Kimbrough's notes did reflect that [the witness] recalled the victim and others 'left and went toward 41st toward home.' The notes taken by the respondents were not intended to be complete recitations of [the witness]'s statements, but after realizing [the witness]'s story was full of inconsistencies, both Kimbrough and Miller stopped taking notes."

State ex rel. Oklahoma Bar Association v. Miller & Kimbrough, 2015 OK 69, at ¶¶ 10-11 (underlines added). The Court then went on to note, apparently based on testimony during the disciplinary proceedings, that the prosecutors had shown the witness crime scene photos and "tried to clarify" his statements, and he eventually "affirmed the facts he told the police detectives immediately after the stabbing, which facts were consistent with the State's case." They then exploited this witness's absence during trial and represented his testimony as consistent with his initial police statement. The Court

confirmed that the prosecutors “should have timely presented this to the defense.” *Id.* at ¶ 28.

We are, of course, aware that you dismissed these two attorneys, but the proceedings confirmed what the Powell and Douglas cases had also shown: that during Robert Macy’s tenure as Oklahoma County District Attorney, continuing through the time of Mr. Glossip’s two trial in 1998 and 2004, and to as late as 2012, Oklahoma County Assistant District Attorneys, or their investigators or staff, routinely took notes during pretrial witness interviews. These proceedings also show that they did not always disclose the exculpatory or impeaching results of those interviews to the defense as they are required to do.

Considering this history, and the evidence we provide here that interviews were, in fact, conducted with witnesses prior to Mr. Glossip’s second trial (the notes of which were never disclosed to the defense), we request that you review your file and disclose to Mr. Glossip’s current defense team all such notes that were taken prior to both trials. Of course, if your review shows that these notes contain any information that could be construed as exculpatory or impeaching for another witness, their disclosure is constitutionally mandated under *Brady* and/or *Giglio*, even at this late date, as Mr. Glossip remains under a sentence of death. If your review of the notes is merely consistent with the information given to the defense in other documents, then there is simply no reason not to turn them over, in the interest of full disclosure, and again as recommended by the bipartisan Oklahoma Death Penalty Review Commission in 2017.

Thank you for your attention to this matter. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to be "DK", with a horizontal line extending to the right from the end of the signature.

Don Knight

encl.

cc: Mike Hunter, Richard Glossip