

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

NO. 16-624

ROBERT SHULER SMITH

DEFENDANT

\* \* \* \* \*  
TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE-STYLED AND  
NUMBERED CAUSE BEFORE THE HON. LARITA COOPER-STOKES,  
HINDS COUNTY JUDGE, ON THE 17TH DAY OF FEBRUARY 2015.

\* \* \* \* \*

APPEARANCES:

Representing the State:  
BOB ANDERSON, ESQ.  
LARRY BAKER, ESQ.  
MARVIN SANDERS, ESQ.  
Office of the Attorney General

Representing the Defendant:  
JIM WAIDE, ESQ.  
Attorney at Law

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1                   **THE COURT:** I want to thank everyone  
2 for coming this morning. We are going to  
3 do some introductions for the record. I'm  
4 County Court Judge Larita Cooper-Stokes.  
5 We have Hinds County Court Reporter,  
6 Ms. Pearlie Westmoreland; and Hinds County  
7 Staff Attorney, Dr. Natasha Woods; and our  
8 bailiff is Don Wells. I will let everyone  
9 introduce themselves.

10                   **MR. SMITH:** Robert Shuler Smith, Hinds  
11 County District Attorney.

12                   **MR. WAIDE:** Jim Waide.

13                   **MR. SANDERS:** Marvin Sanders,  
14 Mississippi Attorney General's office.

15                   **MR. ANDERSON:** Bob Anderson with the  
16 Attorney General's office.

17                   **MR. BAKER:** Larry Baker with the  
18 Attorney General's office.

19                   **THE COURT:** Again, thank you for being  
20 here. The Court on its own motion  
21 requested this conference this morning in  
22 chambers regarding the case of the State of  
23 Mississippi versus Robert Shuler Smith,  
24 case number 16-624. Is that correct? Is  
25 that the case number?

1                   **MR. ANDERSON:** That is, Your Honor.

2                   **THE COURT:** The conference was  
3 requested in accordance with Code of  
4 Judicial Conduct, specifically Canon 3,  
5 which states *A judge shall perform the duty*  
6 *of judicial office impartially and*  
7 *diligently.* With that in mind, the Court  
8 wanted to make a disclosure this morning of  
9 a personal knowledge of the Court. I have  
10 here a letter that was sent to my husband,  
11 who is a member of the Jackson City  
12 Council, and I believe I have enough copies  
13 for all of you. Let me give you a copy for  
14 the record.

15                   **(EXHIBIT 1)**

16                   **THE COURT:** The Canon requires that a  
17 judge who has personal knowledge will make  
18 a remittal of that knowledge, and then I  
19 should allow the parties out of the  
20 presence of the judge to consider the  
21 information you have been given and to  
22 consider a possible disqualification of  
23 this Court and this judge based on the  
24 knowledge that you have gained today.

25                   So we are going to take a brief recess

1 for you to consider the information I have  
2 given you. And once you have done that, we  
3 can come back together, and I can hear what  
4 you have to say.

5 **(BRIEF RECESS)**

6 **THE COURT:** We're going to go back on  
7 the record. Who would like to go first?

8 **MR. ANDERSON:** I will be glad to speak  
9 for the State. Based on the Court's  
10 disclosure of this letter and  
11 acknowledgment of your personal knowledge  
12 of this letter, we think under Canon 3 of  
13 the Code of Judicial Conduct that the Court  
14 should recuse herself from the case.

15 **THE COURT:** Thank you.

16 **MR. WAIDE:** I would have a rather  
17 detailed response to this, if I might, Your  
18 Honor, to give the Court some background,  
19 so it will be clear for the record about  
20 why we are here.

21 **THE COURT:** Absolutely.

22 **MR. WAIDE:** In the first case,  
23 regarding this letter, there was an article  
24 -- I don't have it. I didn't know this was  
25 the issue. But there was an article in the

1 Jackson Clarion Ledger that disclosed the  
2 substance of this letter, so anybody who  
3 reads the newspaper is going to have it.  
4 It's quite likely that if ever there is a  
5 hearing in this case, that this person,  
6 Mr. Butler, very well might be a witness.  
7 Not this letter because it obviously would  
8 be hearsay. But that is going to be the  
9 case.

10 It is inconceivable that any judge in  
11 Mississippi would not have some knowledge  
12 about the substance of what is going on  
13 here. Because all of the records for some  
14 reason are being sealed in this case, it  
15 has never been clear exactly what is going  
16 on, but the heart of it is this. I sent  
17 Your Honor a pleading that the Attorney  
18 General filed under seal with the  
19 Mississippi Supreme Court. I don't know  
20 whether Your Honor has read it, but the  
21 substance of it is that they are claiming  
22 Mr. Smith is inappropriately advising --  
23 illegally advising Mr. Butler.

24 The other side of this, which has  
25 never been disclosed, is Mr. Smith's

1 evidence that he has gathered and his  
2 assistants have gathered that drugs were  
3 possibly planted on Mr. Butler, a very  
4 serious matter, on two different occasions,  
5 once at his home and again in an Alvanche  
6 truck. I'm not going into the details of  
7 that, but that is the substance of what  
8 this is about.

9 Mr. Smith was arrested the day before  
10 he was about to make a presentation to the  
11 grand jury essentially concerning the  
12 Butler matter.

13 Getting to the instance at issue about  
14 recusal, Your Honor, two judges have  
15 already recused themselves, which results  
16 in a delay of the proceedings. Your Honor  
17 has given us a chance to respond, and I  
18 suspected that that was what this was  
19 about. I did some research on it, and  
20 there is a Ninth Circuit opinion which  
21 cites a United States Supreme Court opinion  
22 dealing with a very similar situation where  
23 the State can say, "Well, your husband" --  
24 In this case your husband, Mr. Stokes, is a  
25 city councilman. I'm not from here, but I

1 understand he is a very prominent citizen,  
2 and he is a very active citizen in the  
3 community. He was the recipient of this  
4 letter.

5 Well, the Ninth Circuit judge  
6 addressed this type of situation, with  
7 knowledge of your husband or even an  
8 opinion of your husband, and wrote a very  
9 detailed opinion about how it was  
10 inappropriate for a court to recuse  
11 themselves because of some involvement that  
12 the spouse might have. They cite in here a  
13 United States Supreme Court rule on it, and  
14 it talks about the delay that this  
15 inherently causes the parties.

16 If Your Honor recuses herself, what is  
17 going to happen is -- the Attorney General  
18 has already informed the Mississippi  
19 Supreme Court that you are going to recuse  
20 yourself in their pleading. But if Your  
21 Honor does in fact, then the Mississippi  
22 Supreme Court will have we don't know how  
23 much delay -- assuming they do appoint a  
24 special judge, there is no telling how much  
25 delay we'll have, and we won't get this



1 resolved.

2 I think it is also important, Your  
3 Honor, that I point out that a part of  
4 this, there is really no controversy about  
5 the immediate issue. That is, we said that  
6 Mr. Smith could not be proceeded against by  
7 a mere affidavit; there had to be an  
8 indictment. They have now conceded that.  
9 Surely whatever judge hears the case we  
10 believe will so rule since the Attorney  
11 General has now agreed that that is the  
12 case.

13 So the only reason that we're here or  
14 that there is a request about more recusal  
15 is to get more delay.

16 Mr. Smith is now in a situation that  
17 having been elected by the voters to be the  
18 district attorney -- elected by State of  
19 Mississippi to be the district attorney,  
20 and his primary duty of making presentation  
21 to the grand jury has been removed from  
22 him. So if Your Honor recuses, we get no  
23 ruling, the case stays here, and the case  
24 is delayed further. And there is no basis  
25 for it.

1           Before Your Honor makes any decision  
2           about this, I would respectfully invite  
3           Your Honor to take a look at this Ninth  
4           Circuit case. I have a copy for counsel.  
5           I'd like to ask that Your Honor looks at it  
6           because we believe it is prejudicial for  
7           Your Honor not to try to keep this case  
8           going.

9           **THE COURT:** Thank you.

10          **MR. WAIDE:** Your Honor, Mr. Smith  
11          wanted to point out that the judge in the  
12          Ninth Circuit points out that it is a  
13          disservice to the public for a judge to  
14          unnecessarily recuse themselves because of  
15          the inherent delay, and it points out the  
16          United States Supreme Court's rule on it.

17          I don't have this before me, but this  
18          came up with Justice Thomas, by the way.  
19          His wife is very politically active, and he  
20          has been the subject of claims that he  
21          should recuse himself, and they have all  
22          been rejected. And it is not proper to  
23          recuse because the letter was addressed to  
24          your husband.

25          **THE COURT:** Having heard from both

1 parties regarding the request for recusal  
2 by this Court, this Judge is of the opinion  
3 that the rules of judicial conduct require  
4 that both parties would agree to allow me  
5 to continue in the representation in this  
6 Court and this matter. Being that the  
7 State is requesting a recusal and the  
8 defense is requesting a non-recusal, that  
9 would put this Court at a disservice, and  
10 this Court is hereby going to declare  
11 itself disqualified to hear this matter  
12 based on the information that was provided  
13 to you today. So ordered. Who would like  
14 to prepare an order?

15 **MR. ANDERSON:** I will be glad to do  
16 that, Your Honor.

17 **THE COURT:** Thank you.

18 **MR. WAIDE:** Your Honor, I just ask  
19 that the order reflects that the defense  
20 objects to Your Honor recusing herself.

21 **MR. ANDERSON:** I will forward you a  
22 copy to look at.

23 **THE COURT:** Let him see it before you  
24 send it in.

25 **\* \* \* CONCLUDED \* \* \***

**COURT REPORTER'S CERTIFICATE****STATE OF MISSISSIPPI****COUNTY OF HINDS**

I, Pearlie Westmoreland, Official Court Reporter for Hinds County Court, do hereby certify that the foregoing pages constitute a true and correct transcript of the proceedings had in this entitled and numbered cause before the **Honorable Larita Cooper-Stokes, Hinds County Judge**, on the 27th day of July 2016.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

Witness my signature, this the 28th day of July 2016.

\_\_\_\_\_  
**PEARLIE WESTMORELAND**  
**Official Court Reporter**

CSR NO. 1134

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