

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 25CI1:16-cr-00836-LER

ROBERT SHULER SMITH

DEFENDANT

**DEFENDANT'S MOTION TO DIRECT JUDGE WEILL'S COURT REPORTER
TO PROVIDE TRANSCRIPTS OF SEALED HEARINGS**

Defendant Robert Smith (hereinafter "Smith") moves the Court to require Judge Weill's court reporter, Tesa Barrett, to provide defense counsel with transcripts of:

- A) Sealed hearing of Motion to Recall Grand Jury and To Appoint Mississippi Attorney General as Pro Temp Prosecutor in Cause No. 251-16-120 held on or about March 22, 2016; and
- B) Sealed hearing of Motion to Quash Grand Jury Subpoena filed by Attorney Knott in Cause No. 16-543, held on or about June 21, 2016.

Defendant shows the Court as follows:

1. Circuit Judge Weill has sealed the hearings in both of the above cases. Judge Weill sealed the hearing on Motion to Quash Grand Jury Subpoena on his own motion. He sealed the hearing on the Motion to Recall Grand Jury and to Appoint Mississippi Attorney General as Pro Temp Prosecutor on request of Assistant Attorney General Stanley Alexander. However, at a hearing before this Court on September 12, 2016, Assistant Attorney Generals Johnson and Baker announced that the Mississippi Attorney General does not oppose the opening of any of the sealed files.

2. The hearing held on March 22, 2016 in Cause No. 251-16-120 involves allegations by Assistant Attorney General Stanley Alexander – supported by a letter from FBI Agent Homer Culpepper – “that several cases, both violent and non-violent, had not been prosecuted by the Hinds County District Attorney’s office. . . .” Further, this motion charges that “the agents of the FBI have worked with local and state law enforcement agencies to provide cases to this office in which there is an apparent conflict which precludes the DA’s office from having involvement in the prosecution of said case.” See, Motion to Recall Grand Jury and to Appoint Mississippi Attorney General as Pro Temp Prosecutor, Exhibit “A.” This motion lists numerous cases, which the district attorney allegedly failed to prosecute.

3. The hearing of March 22, 2016 discredits the Attorney General’s claim that Smith has improperly failed to prosecute cases. The indictments of many of the persons whom Smith had allegedly failed to prosecute were produced for the Court at the March 22, 2016 hearing.

3. The hearing of June 21, 2016 before Circuit Judge Weill in Cause No. 16-543 concerns a motion to quash filed by Christopher Butler’s former attorney, Sanford Knott. This hearing demonstrates that Smith’s motivation for subpoenaing Christopher Butler’s former attorney, Sanford Knott, was to learn about whether the Mississippi Assistant Attorneys General had made threats to Attorney Knott to the effect that Butler could get out of jail on bail, only by telling the Assistant Attorneys General “something that [he] just don’t know,” about Smith. See, letter from Butler, attached hereto as Exhibit “B.” Whether Assistant Attorneys General made such statements is relevant to Smith’s defense that his contact with Butler was for the legitimate purposes of investigating threats allegedly made against Butler by Assistant Attorneys General.

4. On September 21, 2016, this Court entered an Omnibus Order unsealing documents in sealed cases assigned to this Court. A copy of this Order is attached hereto as Exhibit “C.” The

Omnibus Order provides, “(3) That the entirety of said files should be and hereby are declared unsealed for all purposes, including the ordering of transcripts of hearings which were held but have not yet been transcribed.”

5. Despite the clarity of this Court’s Order of September 21, 2016, Circuit Judge Weill, on September 30, 2016, transmitted to this Court, and to undersigned counsel, an email requesting “clarification” as to whether the court reporter is to provide the transcripts. Judge Weill states that he will “promptly contact any recipient approved by Judge Roberts with information concerning cost and payment,” if the Court intends “dissemination of these sealed transcripts.”

6. The defendant in a criminal case is entitled to any evidence favorable to him. *Brady v. Maryland*, 373 U.S. 83, 87 (1983). This rule applies whether the evidence is “exculpatory” or “because it is impeaching.” *Banks v. Dretke* 540 U.S. 668, 691 (2004). The constitutional requirement that Smith be given evidence that is either “exculpatory” or “impeaching,” has been implemented by Uniform Circuit and County Court Rule 9.04(6) which requires the State to produce “any exculpatory material concerning the defendant.”

7. Judge Weill’s email references an individual who has been indicted, but not served. No party objected, however, to this Court’s unsealing of all files at the oral hearing held on September 12, 2016. Furthermore, no party filed any objections before this Court entered its formal Order on September 21, 2016, even though Judge Weill’s clerk was in the courtroom during the September 12, 2016 hearing.

8. The individual referenced by Judge Weill was indicted on December 24, 2015, and the Sheriff’s Department has had time to serve him. Failing to disclose the name of this individual harms Smith, since the referenced individual is one of the persons whom Smith is falsely accused of not prosecuting.

9. Judge Weill's email indicates he wants the Court to redact any "contentions made by DA Smith concerning Tomie Green." This refers to discussions of Judge Green's releasing pretrial detainees to the supervision of a private company without notice to the district attorney. Whether pretrial detainees are being released without notice to the district attorney, and whether a private company is being paid for supervising pretrial detainees without statutory authority are matters of public interest. Hiding such matters of public interest from the public raises First Amendment concerns. "Public confidence cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive items to the interested public, with the record supporting the court's decision sealed from public view." *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 430 (1979). "The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of the American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste" *Bridges v. State of California*, 314 U.S. 252, 270 (1941).

10. To seal any portion of these transcripts disobeys *Gannett River States Publishing Co. v. Hand*, 571 So.2d 941, 945 (Miss. 1980). *Gannett River* found that any motion for closure of proceedings "must be docketed as notice to the press and public, in the court clerk's office for at least 24 hours before any hearing on such submission, with the usual notice to all parties." Further, at the closure hearing, it must shown that there is an "overriding interest that is likely to be prejudiced" by open proceedings, and "the disclosure must be no broader than necessary to protect that interest." *Id.* In sealing the hearings, Judge Weill did not follow the procedures that the Mississippi Supreme Court directed in *Gannett River, supra*.

11. Furthermore, as a party, Smith is entitled to access to proceedings in which he participated. *Ewing v. Neese*, 2016 WL 4399733 *23 (Miss. 2016) held that even where a civil case

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

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SO CERTIFIED, this the 3rd day of October, 2016.

/s/ Jim Waide

JIM WAIDE