



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

APR 05 2016

STATE OF OKLAHOMA

Plaintiff,

vs.

ROBERT BATES

Defendant.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CF-2015-1817

OBJECTION TO DEFENDANT’S WITNESSES AND EXHIBIT LIST

COMES NOW the State of Oklahoma by and through its duly elected and acting District Attorney, Steve Kunzweiler, through Kevin Gray, Assistant District Attorney, and respectfully objects to the Defendant’s Witnesses and Exhibit List for the following reasons:

Defendant’s Witnesses

1. Witnesses 1-41- no objection by the State as these are all witnesses originally endorsed by the State.
2. Andre Harris- Mr. Harris’ proposed testimony revolves entirely around character, in this particular case the character of the Victim, Eric Harris. The Defendant proposes to call Mr. Harris to “testify regarding his relationship with his brother and his brother’s character and reputation.” According to 12 O.S. § 2404, “Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1. Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same;
2. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character

trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections 2607, 2608 and 2609 of this Code.”

The only possible exception to this rule applicable for the proposed testimony is found in #2, where the accused is seeking to offer a “pertinent trait.” There is no substantive dispute between the State and the Defendant that the Victim had a criminal history, information that is relevant to this case. Beyond that, however, any evidence of the Victim’s “character and reputation” is irrelevant and should not be admissible. Furthermore, the only relevance of the Victim’s criminal history would be to the extent that it had an impact on the undercover operations of the Tulsa County Sheriff’s Drug Task Force (DTF). Mr. Harris’ opinions on his brother’s reputation in the community is not relevant at all.

2. I.S., Tulsa County Assistant District Attorney- The Defendant proposes to have this witness testify “regarding his communication with the TCSO Drug Task Force members concerning this operation and is (sic) involvements and advice and his involvement and advice o (sic) the sheriff’s office prior to the operation.” Pursuant to 12 O.S. § 2402, the State objects on the grounds that the exhibit is irrelevant to this proceeding. Any and all communication of this witness with the DTF prior to the operation is not relevant to the question of what transpired that morning, and how those events transpired. Even if this Court were to find it relevant, the State further objects pursuant to 12 O.S. § 2403 in that

this evidence only serves to confuse the issues in front of the jury. How and why this undercover operation was put together is not for the jury to determine, nor is it for the jury to determine whether or not the operation was necessary. Introducing this testimony to the jury will only serve to confuse the jury as to its ultimate duty, to determine whether or not the Defendant's conduct on April 2, 2015 was culpably negligent. The participation (or lack of participation) of any ADA in the operation's planning or even that that ADA knew ahead of time that the operation was planned should not be for the jury's consideration.

3. Gregory Meyer- The Defendant proposes to have Mr. Meyer testify regarding police tactics and use of force issues, and to "provide analysis concerning the events leading up to and including the April 2, 2015 operation to arrest Eric Harris." 22 O.S. § 2002 (B) 1 requires the Defendant to provide "significant summaries" of the proposed testimony of his witnesses. At this juncture, the State has no idea what Mr. Meyer's analysis might be. The State has no knowledge whether or not Mr. Meyer might propose any particular theory, such as the "Slips and Capture" theory so often evangelized by the founder of the Force Science Institute from which Mr. Meyer claims his credential. Without such information, which the State believes should be included in any "significant summary" of his testimony, the State cannot adequately prepare for this witness.
4. Dr. Charles Morgan- The Defendant proposes to have Dr. Morgan testify "regarding the psycho-neurological effects of stress on cognitive decision-making and human performance under stress. He will also testify regarding the physiological and psychological effects of methamphetamine use." The state objects to all of this witness'

testimony pursuant to 22 O.S. § 2002 (B) 1 as an insufficient summary. Furthermore, the State objects to the second line of the witness' proposed testimony as completely irrelevant.

5. Dr. Mark A. Brandenburg- The Defendant proposes to have Dr. Brandenburg testify “regarding the medical condition of Eric Harris before and after the gunshot wound he sustained on April 2, 2015 and the medical factors that contributed to and caused Mr. Harris’ death. He will also testify regarding the physiological effects of methamphetamine use.” If the Defendant is proposing that Dr. Brandenburg will actually provide an opinion of the Cause of Death and Manner of Death of the Victim, the State is in the dark. No such opinion has yet been identified by the Defendant in his discovery materials, and pursuant to 22 O.S. § 2002 (B) 1 this is an insufficient summary.
6. Dr. Robert A. Skib- The Defendant proposes to have Dr. Skib testify “regarding the radiology records of Eric Harris and offer opinions in how those records pertain to Mr. Harris’ medical diagnoses and cause of death.” No such opinions have yet been identified by the Defendant in his discovery materials, and pursuant to 22 O.S. § 2002 (B) 1 this is an insufficient summary.
7. Dr. John L. Farber- The Defendant proposes to have Dr. Farber testify “regarding his review of the medical records, facts and circumstances regarding the death of Eric Harris and offer opinions concerning forensic pathology, medical diagnoses and cause of death.” No such opinions have yet been identified by the Defendant in his discovery materials, and pursuant to 22 O.S. § 2002 (B) 1 this is an insufficient summary.
8. Dr. James Higgins- The Defendant proposes to have Dr. Higgins testify “regarding his

review of Eric Harris' medical records and express opinions concerning the cardiological medical condition of Mr. Harris." No such opinions have yet been identified by the Defendant in his discovery materials, and pursuant to 22 O.S. § 2002 (B) 1 this is an insufficient summary.

Defendant's Exhibits

1. Photographs of Mr. Bates and his family.

Pursuant to 12 O.S. § 2402, the State objects on the grounds that the proposed exhibits are completely irrelevant to this proceeding.

2. Manufacturer's literature and other articles regarding the Taser carried on Mr. Bates' person on April 2, 2015

Pursuant to 12 O.S. § 2402, the State objects on the grounds that the proposed exhibits are irrelevant to this proceeding.

3. Exemplar of the Taser carried on Mr. Bates' person on April 2, 2015- No objection by the State

4. Manufacturer's literature and other articles regarding the handgun carried on Mr. Bates' person on April 2, 2015

Pursuant to 12 O.S. § 2402, the State objects on the grounds that the proposed exhibits are irrelevant to this proceeding.

5. Exemplar of the handgun carried on Mr. Bates' person on April 2, 2015

The State objects as the original gun will be in evidence, and is the best evidence for the jury to evaluate.

6. Drone video and photographs taken at the scene

As yet, the State has not received any of this from the Defendant.

7. 2A Shooting Center records for Mr. Bates

Pursuant to 12 O.S. § 2402, the State objects on the grounds that the proposed exhibits are irrelevant to this proceeding.

As yet, the State has not received these records from the Defendant.

8. Pen Pack for Eric Harris from the Oklahoma Department of Corrections

Pursuant to 12 O.S. § 2402, the State objects on the grounds that the proposed exhibits are irrelevant to this proceeding.

As yet, the State has not received these records from the Defendant.

9. OSBI records, police reports and court documents concerning Eric Harris

Pursuant to 12 O.S. § 2402, the State objects on the grounds that the proposed exhibits are irrelevant to this proceeding.

As yet, the State has not received these records from the Defendant.

10. Documents produced by EMSA pursuant to subpoena

No objection by the State

11. Photographs and videos taken at the scene on April 2, 2015, photographs taken of Eric

Harris by law enforcement

No objection by the State

12. Documents produced by St. John Medical Center pursuant to subpoena

No objection by the State

13. Documents produced by the Medical Examiner pursuant to Agreed Order

No objection by the State

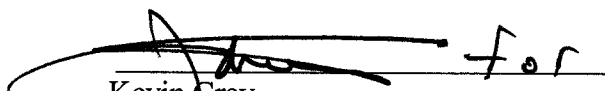
As yet, the State has not received these records from the Defendant

14. Literature and Learned Treatise materials pursuant to 12 O.S. § 2803 (18)

As yet, the State has not received any of these materials from the Defendant

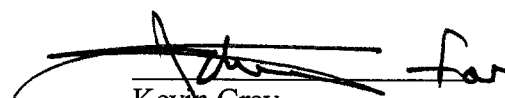
Until the State receives additional discovery materials from the Defendant, the State is unable to produce appropriate motions or to determine whether or not objections need to be lodged with this court on grounds other than a lack of discovery. Once more substantial summaries are obtained from the Defendant, the State anticipates filing additional objections to the Defendant's witnesses.

Respectfully submitted,
STEVE KUNZWEILER, DISTRICT ATTORNEY


Kevin Gray
ASSISTANT DISTRICT ATTORNEY
Oklahoma Bar # 22823

CERTIFICATE OF MAILING/DELIVERY

I do hereby certify that on this 5th day of April, 2016, I mailed and/or delivered by other means a full, true and correct copy of the above and foregoing motion and brief in support to Clark Brewster, counsel for the Defendant.


Kevin Gray