

GRIEVANCE FORM

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RETURN FORM TO: Office of the General Counsel  
Oklahoma Bar Association  
P.O. Box 53036  
Oklahoma City, OK 73152

**Complainant Information:**

Prefix: ☐ Mr. ☐ Mrs. ☐ Ms.

Name: Fraternal Order of Police, Lodge 93  
c/o Jerad Lindsey

Email: chairman.bod@tulsa93.org

Telephone:

Address: 12512 E. 21<sup>st</sup> Street

Home:

City: Tulsa

Business: (918) 234-6445

State: OK Zip code: 74129

Mobile:

**Attorney against whom you wish to file a grievance: (NO LAW FIRMS)**

Prefix: ☒ Mr. ☐ Mrs. ☐ Ms.

First Name: STEVE

Middle Name:

Telephone:

Last Name: KUNZWEILER

Business: (918) 596-4805

Address: Tulsa County Courthouse  
500 S. Denver Ave., Suite 900

Home:

City: Tulsa

Mobile:

State: OK Zip code: 74103

Email: DistrictAttorney@tulsacounty.org

1. Did you employ the attorney? Yes \_\_\_\_\_ No X
2. If you did not employ the attorney, what is your connection to him/her?

Mr. Kunzweiler is the Tulsa County District Attorney. He has filed criminal charges against Tulsa Police Officer Betty Shelby. The Fraternal Order of Police (FOP) represents the 1100 active and retired Tulsa Police Officers. I am the Chairman of the Board for the FOP.

3. Please furnish the following information, if available:

a. Name of Court/County: Tulsa



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- b. Case Number: CF-16-5138
- c. Title of Suit: State of Oklahoma vs. Betty Shelby
- d. Approximate Date case was filed: September 22, 2016
4. If you are or have been represented by any other attorney with regard to this same matter, state the name and address of the other attorney: N/A
5. If you have made a grievance about this same matter to any other Official or Agency, states its (their) name(s), and the approximate date you reported it: N/A
6. In the event a disciplinary hearing is held, would you be willing to appear and testify as a witness? Yes X No
7. Names and addresses of witnesses to this grievance:

A. Sgt. Dave Walker  
c/o Tulsa Police Department  
Tulsa, Oklahoma

B. Jerad Lindsey  
Complainant (see above)

8. Nature of grievance against the attorney explained in full detail. (Use a separate piece of paper if necessary). If you employed the attorney, state what you employed him/her to do. Include what the attorney did or did not do. Further information may be requested.

On September 16, 2016, Tulsa Police Officer Betty Jo Shelby made contact on duty with Terrence Crutcher, a man who had abandoned his running vehicle in the middle of the street. As a result of certain actions by Crutcher, Officer Shelby shot and killed Crutcher. To be sure-this is a tragedy for all involved. The Tulsa Police Department Homicide Unit immediately began an investigation that involved forensics, analysis, toxicology, and witness interviews as well as other normal investigatory procedures. Police Sgt. Dave Walker of the Tulsa Police Homicide Unit was in charge of the investigation.

On September 22, six days later, and before the Homicide Unit was finished with the investigation, Tulsa County District Attorney Steve Kunzweiler, in the FOP's opinion, rushed to charge Officer Shelby with manslaughter in the Tulsa County District Court. Upon information and our belief, Kunzweiler was told before he filed the charge that Sgt. Walker was of the opinion that the shooting was justified under the circumstances and his report would reflect that. A few days after Kunzweiler filed the criminal charge, Walker's report did find the shooting justified. Kunzweiler had done no other independent investigation.

Officer Shelby filed an "Offer of Proof" in the criminal case stating what Sgt. Walker's testimony would be if he were to testify in the Preliminary Hearing. (See Officer Shelby's Motion to Quash and Dismiss.)



detectives that, in his experience, there was insufficient evidence to support a criminal charge against Officer Shelby;

2. That Sgt. Walker intended to report to the D.A. that Officer Shelby acted within her right to use deadly force to defend herself;
3. That Sgt. Walker had not completed his investigative report when D.A. Kunzweiler charged Officer Shelby; and
4. That this was the first time in Sgt. Walker's experience that the D.A.'s office filed charges prior to having an investigative report from the Tulsa P.D.

All of the Tulsa Police duty-related shootings are reviewed by the District Attorney's Office, but only after the law enforcement investigation is completed. At present, there are several such cases in the DA's Office in which the investigation by the Police Department has been done for months without any resolution or conclusion by the D.A. In fact, some have gone on so long the Department has chosen to put officers back to work even though they have not yet been cleared by the D.A. However, in the Shelby case, D.A. Kunzweiler brought these charges against Officer Shelby **without**, in the FOP's opinion, the required probable cause—before a police investigation was concluded or the victim's toxicology reports were even complete.

Oklahoma Rule of Professional Conduct 3.8(A) prohibits a prosecutor from charging a defendant when the prosecutor knows that the charge is not supported by probable cause. (OK Rule Prof. Conduct 3.8(A): "The prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.")

According to the American Bar Association Comment regarding this rule, a "prosecutor has the responsibility of a minister of justice and not simply that of an advocate." In other words, the prosecutor in a criminal case is obligated **only** to see that justice is served. "This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence," the ABA comment states. The prosecutor's sole consideration should be whether the facts and circumstances surrounding an event provide enough evidence to believe a crime was committed—not what the public thinks, and not the "mood" of the local community.

Tulsa police officers understand the concept of probable cause and know the Constitution and laws prohibit them and the prosecutor from taking certain actions without it. In this case it is my opinion, that the D.A. did not have probable cause merely based on watching a video recording of part of the incident from a police camera.

On the Tulsa County District Attorney's own website, he explains "How Charges Are Filed at The Tulsa County District Attorney's Office":



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“Officers will investigate, interview witnesses, collect evidence, and may have evidence analyzed by a crime lab. If police determine a crime has been committed and there is cause to suspect who committed it, they submit that information to the district attorney for review. At that time, a prosecutor will review the police reports, examine the facts and the law and decide whether evidence is sufficient to file a charge.”

In our opinion, D.A. Kunzweiler did not adhere to his own procedures, in the Shelby case. We believe D.A. Kunzweiler seems to have unfairly and unethically rushed to charge Officer Shelby before all of the critical evidence had been provided and reviewed, contrary to the way he normally handles all other cases, including police related shootings.

This case has many similarities to other cases involving prosecutor violations of Rule 3.8:

<http://www.ncbar.gov/Nifong%20Final%20Order.pdf>

<http://archive.azcentral.com/ic/news/0410Thomas-Aubuchon.PDF>

The Complainant, on behalf of Tulsa FOP Lodge 93, hereby respectfully requests the Oklahoma Bar Association fully investigate the facts and circumstances surrounding the actions of D.A. Kunzweiler in filing and prosecuting this manslaughter charge.

I hereby certify that I have read the foregoing matters and that they are true and correct to the best of my knowledge.

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date

**This grievance form must be signed before it can be considered.  
It is imperative that you notify this office of an address change.  
If you are not available as a witness, your grievance may be dismissed.**