

NO. 2305212

THE STATE OF TEXAS } IN THE COUNTY CRIMINAL
v. } COURT AT LAW NO. 8
CHRISTOPHER BALES } HARRIS COUNTY, TEXAS

MOTION TO RECUSE

COMES NOW, THE STATE OF TEXAS, by and through the undersigned assistant district attorney, and asks the judge of the Court to recuse himself in this case, based on the following behavior that has demonstrated bias against the victims in this case and partiality toward the defendant:

- On March 18, 2020, Judge Bynum, outside of court and with no prosecutor present, found no probable cause on the case, cause number 2141543, despite the fact the defendant had been arrested on a “to be” warrant for which a magistrate had already found the arrest warrant affidavit provided sufficient probable cause to justify issuance of the arrest warrant.
- Judge Bynum issued his “no probable cause” finding after determining the defendant could not be released on a personal bond, because of an out-of-state fugitive warrant from the state of Michigan (cause number 2305043).
- When the State refused to dismiss the case, Judge Bynum ordered the case set for trial on Monday, March 23, 2020, over the State’s objection and refusal to consent to a jury waiver. Jury call had previously been canceled, due to the coronavirus pandemic and attendant emergency orders.

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Marilyn Burgess - District Clerk
Harris County
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BY: I GOMEZ

- At the time Judge Bynum set this case for trial, with 5 days' notice, the defendant was not represented by counsel. Defense counsel was appointed by Hon. Sherman Ross, at the State's request, on March 20, 2020, the last weekday before the trial setting.
- A grand jury indicted this case on March 19, 2020, cause number 2305212, and the State subpoenaed its witnesses to appear for trial on March 23, 2020.
- Friday, March 20, 2020, at approximately 3:00 p.m., Judge Bynum conducted a video conference with Chief Prosecutor Michael Eber. This video conference was then posted on YouTube at <https://youtu.be/vup7pbtyMk>.
- On the video, Judge Bynum chastised Mr. Eber for indicting the case after the judge's *sua sponte* dismissal, and expressed his opinion that indicting the case was a waste of resources, repeatedly mentioning that the case was from 2017, and "a minor, non-violent misdemeanor theft."
- Also on video, Judge Bynum canceled the trial setting because, as he said, defense counsel had found a way to have the defendant released from jail, despite the fugitive hold. Judge Bynum implied it was the State's job to secure the defendant's release from jail, and indicated it had not been the State's responsibility to ensure the defendant was represented by counsel or to be concerned with the preparedness of that counsel.
- Judge Bynum accused Mr. Eber of being the one who risked everyone's health by refusing to dismiss the case, although it was Judge Bynum who demanded the trial setting five days after the defendant's first court appearance, even before the appointment of counsel, and over the State's objection and refusal to consent to a jury waiver.

Relevant Background

Although Judge Bynum tried to make it appear as if his actions were solely dictated by his concern for the defendant's health and safety inside the Harris County Jail, this posture does not survive scrutiny. Long before the advent of the COVID-19 pandemic, Judge Bynum engaged in conduct designed to achieve only one result: The release of defendants from custody.

Judge Bynum has publicly proclaimed his belief that most law violators should not be arrested, imprisoned, or prosecuted for committing criminal offenses. See, e.g., <https://www.thenation.com/podcast/politics/franklin-bynum-next-left> (Judge Bynum's July 2, 2019, interview with *The Nation*; also attached as *State's Exhibit A*.) Judge Bynum said the federal bail reform lawsuit, *O'Donnell v. Harris County*, motivated him to seek the bench:

“And at that point I saw an opportunity because I never wanted to be a judge, but I saw that the system as it was, was going to be destroyed. And I knew that there would be a new system built in its place. And I saw that I had the opportunity to try to see the demolition through, and see the design of something different through also. And so that's ultimately why I did it.”

State's Exhibit A at 12. Indeed, Judge Bynum proudly campaigned on a platform of “telling people that I was a socialist, that I was a prison abolitionist, and that I was trying to end pretrial detention.” *Id. at 13*. He did

not consider the bail lawsuit to be “disrupting” enough; he “knew that we had to build a political and an organizing . . . we had to build a base of power and follow through on the disruption.” *Id. at 16-17.*

Judge Bynum views the present criminal justice system as “an outgrowth of chattel slavery.” *Id. at 22.* The courts should consider crime a social problem and address the root causes of that problem. *Id.* He thinks police and prosecutors are ill-equipped to handle these social problems and society should stop deploying them to do so. *Id. at 22-23.* Judge Bynum desires a process that will not be a prison system, but rather, “a far better society.” *Id. at 23.* However, Judge Bynum is not interested in reshaping the system through a legislative role. *Id.*

If Judge Bynum’s worldview was confined to meaningless campaign promises, that would be one thing. However, now that he is on the bench, he has taken an oath to uphold the laws of Texas and of the United States. Those laws do not permit a sitting judge to force the dismissal of cases or to otherwise manipulate court proceedings to ensure the acquittal or immediate release of a defendant. Building “a base of power” to “follow through on the disruption,” via politics and organizing, is within the realm of the legislative branch of government, not the judiciary.

The YouTube Video

Of greater import is Judge Bynum's conduct as specifically related to the instant case, as evidenced in the court proceedings captured in the YouTube video cited above. <https://youtu.be/vup7pbtyMk>.

After introductory remarks, Judge Bynum began the proceedings by asking defense counsel, Cheryl Brown, for her view of the case, and she explained the defendant's situation with regard to the pending fugitive case, based on a felony warrant for domestic violence out of Michigan. The pending local theft case would essentially toll the deadline by which Michigan would normally have to either pick up the defendant or allow him to be released on bond, rendering him "not transportable." When Ms. Brown was discussing how the defendant could be released on different bonds, Judge Bynum advised that the defendant had repeatedly "declined" a personal bond. Ms. Brown expressed surprise at that, and said she had not known the defendant had done so.¹

Judge Bynum advised that he would have signed a personal bond the previous day, but the defendant would have been "still stuck in jail for fourteen days." He wanted to know "how fast" Ms. Brown could get things

¹ Ms. Brown did not represent the defendant on the fugitive case; he had been appointed other counsel on March 19, 2020. See *State's Exhibit B (order appointing Jeff Ludwig)*. Mr. Ludwig did not appear on video at the March 20 proceedings.

done, and when she said that was contingent upon clerk availability and willingness of Judge Fleischer (the judge of the court where the fugitive case was pending) to sign a low bond or a personal bond, Judge Bynum told her not to be concerned about that, and that, if necessary, he would have the fugitive case transferred to Court 8. Judge Bynum said he would find a clerk supervisor to facilitate the filing that afternoon, stating, “This is what should have happened earlier in the week.”

Judge Bynum then turned to the State, but he quickly cut off Assistant District Attorney Michael Eber, who is chief prosecutor in Court 8. The judge recapped his own actions in the case, noting that he had spent the previous weekend, as he had “every night of this crisis,” monitoring people in jail for misdemeanors. The defendant’s case came to his attention on either March 16 or March 17; he saw he had been arrested pursuant to a warrant signed in March of 2017.² Judge Bynum then “re-reviewed” the facts presented to the magistrate who signed the warrant, and decided there was no probable cause.³ According to the judge, it was for this reason he set the case for trial as soon as possible: Monday, March 23, 2020.

² See *State’s Exhibit C (copy of original information with probable cause statement)*.

³ Judge Bynum failed to mention that he only set the case for trial after the State refused to dismiss the case. See *State’s Exhibit D (email between Judge Bynum and Michael Eber, dated March 18, 2020)*. Had the State dismissed the case, there would have been nothing for the judge to try.

The judge complained that, “on a week we were all working on this crisis,” the D.A.’s office took the instant case to grand jury; he then demanded to know who had taken in the case. When Mr. Eber advised it had been him, Judge Bynum queried, “Why?” Mr. Eber responded that the State believed there is probable cause on the offense. Judge Bynum then wanted to know if the State’s witnesses were ready, or when they would be ready, and Mr. Eber replied that Assistant District Attorney Al Valdez had been in constant communication with them throughout the week, and that they had been subpoenaed for the Monday trial setting.

Judge Bynum stated that the defendant’s release “frees up the urgency” that caused the Monday trial setting, so the case would not be tried that date. He continued to perplexedly muse over why a “laptop employer/employee relation” theft deserved the time and resources devoted by the State. He noted the State was the only entity using the resources of the court, and that the “problem in this case from the beginning” was the defendant’s detention in jail.

Judge Bynum further opined that convening a grand jury was likely a “violation of instructions,”⁴ although it could possibly qualify for an exception.

⁴ The judge was apparently referring to either the Emergency Orders issued by the Texas Supreme Court and the Court of Criminal Appeals on March 13 and March 19, 2020, since Harris County Judge Lina Hidalgo did not issue hers until March 24, 2020. Of

He told Mr. Eber that, “when I look at what you’ve been up to this week,” he questioned Mr. Eber’s judgment and his plan to deal with the crisis. The judge again bemoaned that the State “took a 3-year-old, minor, non-violent theft case to a Harris County grand jury.” He referred to “frivolous invocations of rights,” proclaimed that “emergency orders do not confer rights,” and said the “name alone indicates the frivolity of the filing.”⁵ The judge said he “was not going to tolerate an abuse of the court’s resources.”

Judge Bynum again referred to the case as a “2017 minor Class B theft you found so important to take to the grand jury.” He lauded defense counsel for figuring out a way to free the defendant, and lectured the prosecutor on how his duty to seek justice should be focused on getting people out of jail. Judge Bynum accused Mr. Eber of “failing your statutory obligation as prosecutors,” and said, “I’m not going to tolerate it.” The judge reiterated that taking a 3-year-old theft case to grand jury was not a good use of resources.

course, the misdemeanor court prosecutors did not convene the grand jury, and had no authority to either convene or disband a grand jury.

⁵ The judge’s reference is unclear; there are no motions filed by the State in DEEDS that are titled “emergency” or that invoke “rights;” the State filed a motion requesting an ankle monitor as a condition of bond, due to the fact the defendant had a fugitive case pending. The judge is perhaps referring to the State’s oral objection to proceeding to a bench trial without its consent to a jury waiver (which had not even been obtained from the then-unrepresented defendant). Judge Bynum has indicated he believes the Courts’ Emergency Orders conferred upon him the right to suspend any provisions of the Code of Criminal Procedure with which he disagrees or finds inconvenient to his purposes.

Mr. Eber sought to verify that the case was not going to trial on Monday, March 23, 2020, especially considering that defense counsel was not appointed until March 20. Judge Bynum announced that he was sure Ms. Brown “can try a 3-year-old theft case with a few days’ notice,” and stated that “the code” doesn’t contemplate longer time for preparation,⁶ so the State needs to be ready to try cases in less time. The judge sarcastically commended Mr. Eber for his concern that the defendant have counsel, but instructed, “do more to mind your own shop” and “stay in your lane.”

Judge Bynum then stated, rather contradictorily, “I will not put people in harm’s way” [to try the case on Monday], but if the defendant was still in detention, “we would go to trial Monday.” The judge concluded by advising Mr. Eber to be “more like Ms. Brown and work collaboratively to solve the community’s problems.”

As of March 20, 2020, the YouTube video had received 2,072 views. Both the named complainant in this case and the Vice President of the company from which the computer was allegedly stolen were among those

⁶ Judge Bynum seems unfamiliar with Tex. Code Crim. Proc. art. 1.051(e), requiring the defense be given a minimum of ten days to prepare for trial. *Marin v. State*, 891 S.W.2d 267, 272 (Tex. Crim. App. 1994) (Art. 1.051 is a mandatory statute and if it is violated, the violation is not subject to harmless error analysis on appeal). See also, art. 27.11, Tex. Code Crim. Proc., allowing defendant “ten entire days” to file written pleadings, which is also a mandatory statute. *Oliver v. State*, 646 S.W.2d 242, 245 (Tex. Crim. App. 1983).

viewers. *State's Exhibits E and F (affidavit of Shane Merz and unsworn declaration⁷ of Natalie [formerly James] Drew)*. Mr. Merz, Vice President of MRE-Consulting, concluded after watching the video that Judge Bynum “has already decided to acquit Mr. Bales, since he does not consider this case to be important or worthy of the court’s time. This is why he did not want a jury trial – he wanted to be sure the verdict was ‘not guilty’.” *State's Exhibit E at 2*. Judge Bynum’s conduct “has certainly taken away a lot of my faith in the criminal justice system.” *Id. at 3*. Mr. Merz has “no confidence in Judge Bynum’s ability to be fair and impartial.” *Id. at 4*.

Ms. Drew, after watching the YouTube video, said, “I was surprised at the immediately hostile tone that Judge Bynum took with the ADA’s office. I was also surprised that he seemed to already have a determined course of action that he preferred before ever talking with Mr. Eber and Mr. Valdez.” *State's Exhibit F at 2*. “Judge Bynum seemed grossly unprofessional, at least compared to what I’d expect from someone in his position.” *Id. at 3*. “It is clear, to me at least, that Judge Bynum seems far more interested in letting Mr. Bales go (ironic given he’s facing a fugitive case in another state) than he is in upholding the laws that he took an oath to uphold.” *Id.*

⁷ Ms. Drew was unable to have her statement notarized due to the “stay-at-home” order presently in effect in Harris County due to the COVID-19 pandemic.

Ms. Drew believes Judge Bynum “made it clear throughout the 21 minute video that his decision has already been made, and he diminishes the importance of the case repeatedly. Given the importance of the case for MRE-Consulting and their client, it became clear that any witness on behalf of MRE will be viewed almost hostilely by Judge Bynum.” *Id.* Judge Bynum “diminishes the importance of the case repeatedly,” even though “sensitive client and company data could have been compromised by Mr. Bales’ theft.” *Id.*

After noting how Judge Bynum appeared to “coordinate” with defense counsel to get the defendant released, Ms. Drew says,

“I have no doubt that a bench trial with Judge Bynum will result in an acquittal for Mr. Bales, regardless of the substantial evidence against him. I have no doubt that Judge Bynum will treat the ADA and MRE Consulting witnesses in a hostile fashion in order to achieve his desired result . . . which is clearly the release of Mr. Bales regardless of the facts of the case.”

Id. at 3-4.

Argument and Authorities:

The Law

One of the most fundamental components of a fair trial is “a neutral and detached judge.” See, *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972). A judge should be fair and impartial and not act as an advocate for

any party. *Metzger v. Sebek*, 892 S.W. 2d, 38 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (internal cites omitted). A judge should not be any party's adversary. *Id.* The impartiality of the judge is not only a matter of constitutional law, but of public policy, as well:

Public policy demands that a judge who tries a case act with absolute impartiality. It further demands that a judge appear to be impartial so that no doubts or suspicions exist as to the fairness or the integrity of the court. Judicial decisions rendered under circumstances that suggest bias, prejudice or favoritism undermine the integrity of the courts, breed skepticism and distrust, and thwart the principles on which the judicial system is based.

Id., citing *CNA Ins. Co. v. Scheffey*, 828 S.W.2d 785, 792 (Tex. App. – Texarkana 1992, writ denied).

In both criminal and civil cases, motions to recuse a trial judge are governed by Rules 18a and 18b of the Texas Rules of Civil Procedure. *Arnold v. State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993). At least ten days before the date set for trial or other hearing, any party may file a motion stating grounds why the judge before whom the case is pending should not sit in the case. Tex. R. Civ. P. 18a. The instant case is next scheduled for a non-trial setting on April 28, 2020, so this motion is timely filed.

A judge shall be recused if, among other reasons, the judge's "impartiality might reasonably be questioned," or the judge "has a personal

bias or prejudice concerning the subject matter or a party.” Tex. R. Civ. P. 18b(2). As the Court of Criminal Appeals has explained, “A trial judge ruling on a motion alleging bias as a ground for disqualification must decide whether the movant has provided facts sufficient to establish that a reasonable [person], knowing all the circumstances involved, would harbor doubts as to the impartiality of the trial judge.” *Kemp v. State*, 846 S.W.2d 289, 305 (Tex. Crim. App. 1992) (citations omitted); *see also, Wesbrook v. State*, 29 S.W.3d 103, 121 (Tex. Crim. App. 2000).

Partiality, bias, and prejudice are antithetical to due process, which requires that a judge be neutral and detached. *Abdygapparova v. State*, 243 S.W.3d 191, 208 (Tex. App. – San Antonio 2008, pet. ref’d); *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1983). “Partiality” refers to favoritism that is “wrongful or inappropriate.” *Liteky v. United States*, 510 U.S. 540, 552 (1994). “Bias” and “prejudice” have been construed to “connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved . . . or because it is excessive in degree.” *Id.* The inquiry into whether recusal is appropriate centers on objective criteria using a “reasonable person” standard. *Abdygapparova*, 243 S.W.3d at 198.

A movant need not prove that a judge is actually partial or biased to merit recusal; rather, it is the “appearance” that matters. *Liteky*, 510 U.S. at 558. Indeed, due process requires recusal when “there is a serious risk of actual bias – based on objective and reasonable perceptions.” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 884 (2009).

Unlike criminal defendants, the State is not entitled to due process. *See, Collier v. Poe*, 732 S.W.2d 332, 344 (Tex. Crim. App. 1987). Nevertheless, the legislature has made clear that it “shall be the primary duty of all prosecuting attorneys . . . not to convict, but to see that justice is done.” Tex. Code Crim. Proc. art. 2.01. In that capacity, “the Government, as a litigant, has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before a tribunal which the Constitution regards as most likely to produce a fair result.” *Singer v. United States*, 380 U.S. 24, 36 (1965); *Ex Rel. Turner v. McDonald*, 676 S.W.2d 371, 374 (Tex. Crim. App. 1984). Therefore, the State has been provided with mechanisms to assure a fair trial. “This recognition of the Government’s interest as a litigant has an analogy in . . . rules, which permit the Government to challenge jurors peremptorily.” *Id.* Rules regarding recusal of a judge for partiality, bias, or prejudice fall in this same category of mechanisms to ensure a fair trial.

Likewise, although the State technically has no “right” to a jury trial, the State “has legitimate interests, representing the collective citizenry as it does, in the method of trial of criminal accusations. Thus, if the prosecutor believes that it is essential to the interest of doing justice that a particular accused be tried by a fair and impartial jury of his peers, our Legislature has provided the means for vindicating that interest [Art. 1.13, Tex. Code Crim. Proc.], and we hold nothing in our constitution is contravened thereby.” *McDonald*, 676 S.W.2d at 373-74.

Art. 1.13, Tex. Code Crim. Proc., provides in pertinent part that a defendant’s ability to waive a jury trial is conditioned upon him or her making that waiver in writing and in open court “with the consent and approval of the court, **and the attorney representing the state.**” (Emphasis supplied.) The consent and approval of the attorney representing the state “shall be in writing, signed by that attorney, and filed in the papers of the cause before the defendant enters the defendant’s plea.” *Id.*

A defendant’s only constitutional right concerning the method of trial is to an impartial jury; “we find no constitutional impediment to conditioning a waiver of this right on the consent of the prosecuting attorney and the trial judge when, if either refuses to consent, *the result is simply that the defendant is subject to an impartial trial by jury – the very thing that the*

Constitution guarantees him.” Singer, 380 U.S. at 36 (emphasis original).

The trial court does not have the authority to become the factfinder when the State refuses to consent to the defendant’s jury waiver. *State v. Fisher*, 212 S.W.3d 378, 381 (Tex. App. – Austin 2006, pet. ref’d) (trial court’s dismissal without State’s consent after State refused to waive jury trial did not bar retrial because trial court had no authority to dismiss; bench trial conducted without State’s consent to jury waiver was a nullity).

“[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till [*sic*] it is narrowed to a filament. We are to keep the balance true.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991), *citing Snyder v. Massachusetts*, 291 U.S. 97 (1934). As laudable as Judge Bynum’s love and concern for the defendant might be, it is not a judge’s role to act as his advocate and guardian, to the exclusion of any concern for the victim of the crime. It is the judge’s job to preside over proceedings in a fair and impartial manner.

Also, a trial judge may not instruct the district attorney not to proceed with future charges arising from the same offense after dismissing a case. *See, State ex rel. Holmes v. Densen*, 671 S.W.2d 896, 900 (Tex. Crim. App. 1984) (judge granted defense motion to dismiss indictments, then forbade the prosecution from refiling the cases). A judge who attempts to do so

usurps his or her authority by invading the exclusive province of the district attorney, and will be subject to mandamus. *Id.* Therefore, Judge Bynum had no authority to prevent the State from obtaining an indictment against the defendant, after he *sua sponte* found no probable cause on the case.

Application of Law to the Facts

From the foregoing, it is clear that, not only can Judge Bynum's impartiality reasonably *be* questioned, it *is* questioned by the victims of the offense. Tex. R. Civ. Proc. 18b(a)(1) and 18b(a)(2); *State's Exhibits E and F (affidavit of Shane Merz and unsworn declaration of Natalie Drew)*. Judge Bynum's single-minded focus on the defendant, dictated by his expressed personal and political opinions concerning the criminal justice system as a whole, prevents him from the slightest consideration of factors other than the defendant's interests. So determined was he to set the defendant free, he set the case for trial even before the defendant had a lawyer; apparently, the outcome was so fixed in his mind he considered that basic prerequisite to be unnecessary. Because the judge himself was the defendant's most zealous advocate, he saw no need for a "straw lawyer" to at least give lip service to the role.

The State acknowledges that a motion to recuse should not be based solely on the judge's rulings in the case. See Tex. R. Civ. P. 18a(a)(3).

However, this is not a situation where the judge has simply overruled an objection, or expressed personal hostility to the prosecutors (although he has done that). Instead, Judge Bynum has displayed a deep-seated favoritism and antagonism that makes fair judgment impossible. See, *Liteky*, 510 U.S. at 555. *To wit*:

- On his own motion, Judge Bynum “re-reviewed” previously-found probable cause, revoked the original finding, and substituted his own, which is not supported by the facts or the law. See *State’s Exhibit C (original information with probable cause statement)*.
- When the State refused to dismiss the case, Judge Bynum immediately set the case for a bench trial, with no jury waiver from the then-unrepresented defendant and the State’s notice that it would not consent to a jury waiver, should one be filed. See, Art. 1.13, Tex. Code Crim. Proc.; *Fisher*, 212 S.W.3d at 381.
- Judge Bynum expressly stated on the YouTube video that he was only rescinding the trial setting because the defendant was “free,” and had he still been in custody, the judge was willing to “put people in harm’s way” by going to trial; Judge Bynum’s heart bled for the defendant’s possible safety risk, but he had no tears to spare for the other trial participants, including civilian victims.
- The complainant, Natalie Drew, declares, “I had never imagined I’d see a judge, such as Judge Bynum, behave in such an unprofessional manner. I have never seen such bias and pettiness on such unfiltered open display . . . It was shocking, to say the least. It came across as a personal grievance he has with the ADA office, instead of legitimate professional differences.” Also, “I do not believe that a fair trial is remotely possible if Judge Bynum presides over this case.” *State’s Exhibit F at 4-5*.

On the one hand, Judge Bynum criticizes the prosecutors for not trying to get the defendant released from jail; for utilizing a lawfully empaneled grand jury; for not solving the jail population/COVID-19 situation; and for not “working collaboratively” to solve “the community’s” problems. These activities all fit Judge Bynum’s perception of the prosecutors’ statutory duty to seek justice. On the other hand, Judge Bynum chastises the prosecutor for ensuring the defendant was represented by counsel prior to trial, telling him to “mind your own shop,” when it is of course within the State’s purview not to proceed to trial against an unrepresented defendant.

The judge does not consider anyone other than the defendant to be “the community.” Apparently, the harm inflicted on the victims by the theft of the computer is inconsequential, merely a correction of the ongoing class struggle between those with earned property and those who feel they are more deserving of it. The victims and prosecutors are not valued, and therefore may be easily sacrificed to contagious disease for daring to deny the defendant a free pass for his alleged illegal behavior. This type of bias and favoritism is insurmountable.

In keeping with his expressed desire to see the current criminal justice system disrupted or dismantled, Judge Bynum makes it clear that he does not consider the very cases over which he is authorized to preside to be

worthy of his consideration. He is only interested in releasing defendants from jail and otherwise ensuring they are not prosecuted for the offenses they are alleged to have committed. Judge Bynum's antagonism toward the State and the interests it represents is so deep-seated, he is incapable of presiding over this matter in a fair and impartial manner.

WHEREFORE, PREMISES CONSIDERED, the State prays this Motion to Recuse be granted in its entirety, that Judge Bynum either voluntarily remove himself from this case, or that he refer this motion to Hon. Susan Brown, Presiding Judge of the Eleventh Administrative Judicial Region of Texas, for disposition and reassignment of the case accordingly.

Respectfully submitted,

/s/ Kim Ogg

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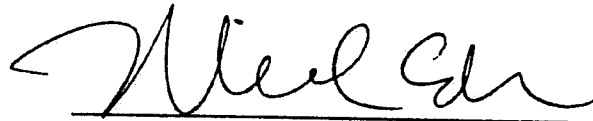
/s/ Michael Eber

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VERIFICATION

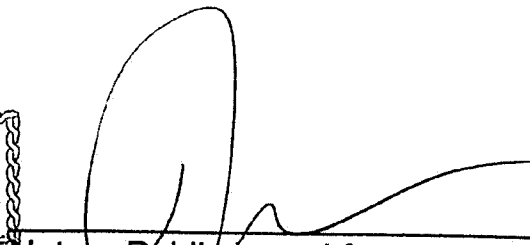
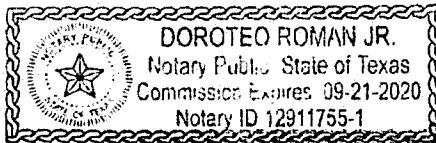
BEFORE ME, THE UNDERSIGNED AUTHORITY, did personally appear Michael Eber, who upon being duly sworn, did state upon his oath the following:

"I, Michael Eber, the undersigned Assistant District Attorney, Harris County District Attorney's Office, have read the foregoing Motion to Recuse and the facts alleged therein are true and correct."



Michael Eber, Affiant

SUBSCRIBED AND SWORN this 14 day of April, 2020.



Notary Public in and for
The State of Texas

NO. 2305212

THE STATE OF TEXAS } IN THE COUNTY CRIMINAL
v. } COURT AT LAW NO. 8
CHRISTOPHER BALES } HARRIS COUNTY, TEXAS

ORDER

On this the ____ day of _____, 2020, came on to be heard the State's Motion to Recuse, and having duly considered same, this Court is of the opinion said motion should be:

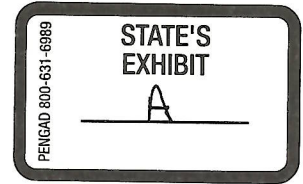
_____ **GRANTED**

_____ Denied

SIGNED and **ENTERED** this ____ day of _____, 2020.

JUDGE PRESIDING

N



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Franklin Bynum Is a Texas Judge Who Wants to Abolish Prisons

This week on Next Left, meet a judge who believes our incarceration complex is “not a defensible system.”

By [John Nichols](#)

JULY 2, 2019



Franklin Bynum is a judge. Sometimes, he even wears the black robes associated with the job. But the title and the robes don't begin to tell his story. What distinguishes Bynum, a 37-year-old democratic socialist from Houston, Texas, who was elected last fall to serve on the Harris County Criminal Court bench, is his determination to unravel and replace the "oppressive punishment bureaucracies" that define our criminal justice system.

An able lawyer, who has served as a public defender and a defense attorney, he knows his way around the courts and the jails of Texas. And Bynum has reached the logical conclusion, as his Twitter profile announces, that "people need care not cages."

Bynum ran for a court post last year, mounting a campaign that proposed radical reforms. He framed his advocacy with facts, figures, and humanity. It was so impressive that the conservative *Houston Chronicle* endorsed Bynum, along with the local chapter of Democratic Socialists of America, and he won along with a group of progressive jurists who promised to make real the promise of justice.

00:09 / 00:30



Bynum's now on the bench and he has already taken the lead in proposing dramatic changes that would end the cash-bail system and other abuses. He's our guest this week for a exciting conversation on *Next Left*.

[Subscribe to *Next Left* on Apple Podcasts or wherever you get your podcasts.](#)

* * *

NOTES

[A Socialist in Every District, *Jacobin*, Nathan J. Robinson](#)

[Democratic Socialist Franklin Bynum is ready to get to work on the Harris County bench, *Houston Chronicle*, Erica Greider](#)

For County Criminal Court No. 8: Franklin Bynum,
Houston Chronicle, Editorial Board

At Least 17 Democratic Socialists Seek Office in
Texas, *Texas Observer*, Gus Bova

What is Prison Abolition? *The Nation*, John
Washington

The End of Policing, Alex S. Vitale

Group Therapy, Above & Beyond

“You’re Gonna Miss Me,” 13th Floor Elevators

This episode of *Next Left* was produced and edited by Sophia Steinert-Evoy. Our executive producers are Frank Reynolds, Erin O’Mara, and Katrina vanden Heuvel. Our theme song is “Deli Run,” by Ava Luna.

* * *

FULL TRANSCRIPT

John Nichols introduction: *Welcome to Next Left, I’m John Nichols of The Nation, and I’ve got a question for you. Can one judge, in one local court, change the future of criminal justice policy, not just in his hometown, but nationwide? That’s a tall order, but Texas judge Franklin Bynum is doing his part to upend the prison-industrial*

complex from Houston's Harris County Court bench. He's a Democratic Socialist and a modern day abolitionist.

JOHN NICHOLS: Judge Franklin Bynum. Thanks for joining us on *Next Left*.

FRANKLIN BYNUM: Thanks, it's good to be here.

JN: I want to start by taking you back to your roots a little bit. Did you dream of becoming a judge when you were a kid?

FB: No, no. Far from it. It was never anything that I actually considered, it was really just kind of time and place and circumstance that brought me to it.

JN: But your dad was a lawyer?

FB: Yeah, I grew up in a small law firm, in a little law shack. My dad grew up in a small town, kind of taught himself math on public television and he himself was the son of a USDA geologist and a public school teacher, they would travel around the state. So, really a service-minded kind of person. And eventually my dad moved to Houston, went to Rice and then was charging hard trying to make it, I guess working for an insurance company. But then dropped out and became a psychedelic rock producer, and produced the 13th Floor Elevators and some other stuff that was happening down here

around that time. And then eventually I guess went to law school and started up a small law shack as I call it where he was basically helping poor people, working people kind of get some walking-around money after they got hurt. And, but the law to me was always a thing that helped people. And so that's the environment I grew up in.

JN: You grew up in a neighborhood called Montrose, is that right?

FB: Right.

JN: And you said in one of the interviews along the way, that one of the things that kind of shaped your thinking about the law, obviously in addition to your dad's work, was seeing people you knew, friends even, getting busted. And really having a hard time with the law.

FB: Yeah. It was friends of mine growing up and it was also my neighbors. I mean, the Houston Police Department was notorious for targeting gay people for being gay, right. Targeting gay clubs. The *Lawrence v. Texas* Supreme Court decision was actually organized in my neighborhood at a gay bar: There were some closeted sheriff's department employees drinking after work saying, "You wouldn't believe what came through today. It was arrested for sodomy, and I haven't seen one of

those, ever.” And so they started talking, and there happened to be a lawyer from [LGBTQ rights organization] Lambda [Legal] nearby who I think might have been working at the bar. And so they organized this Supreme Court litigation that for the first time recognized gay rights, just here at a gay bar in the neighborhood I grew up in. So it was always a pretty radical neighborhood. It’s a neighborhood where if you were different, and the world was less than kind outside of the walls a few blocks, away so to speak, it was a place you could be.

JN: So you grew up in a pretty progressive neighborhood. But it wasn’t far away that you saw the impact of law and the impact of the criminal justice system. Another thing you said, that as a young man, you were particularly struck by your local district attorney going for death penalty cases.

FB: Right. Here in Houston, we sent more people—in what’s called the “modern era” of the death penalty starting about in the ’70s—we’ve sent more people here in Harris County to death row than, I think any of the other states. And it was just a machine down here and it was really hard to miss if you were paying attention at all. And it was a very oppressive environment to be in. And when I was a senior or so in high school, we had a death row exoneree come in and tell us his story. And I

remember sitting on the front row just really enthralled. His name was Clarence Brandley, and it was really listening to Clarence that led me on a path to ultimately be a criminal defense lawyer and be a capital defense lawyer.

It all kind of came full circle in my last capital trial before I became a judge, during jury selection, I stood up and told the jury my story, my origin story. The prosecutor had told her story about being on the softball team and how “being on the jury, it’s like being picked for the jury team.” And I got up and I said, “Clarence Brandley came and spoke to me in high school and I actually will miss his funeral this week to try this case, and I think that’s what he would’ve wanted.” And then the prosecutor objected to my story, right. Even though it’s really no different than her story except for the substance of it, and the judge sustained the objection. And so sometimes I like to tell that story and say, “Well, I get to tell the story now, because I’m the judge.”

JN: That is a twist on it, and also it’s interesting that your story was the one with substance.

FB: Right, exactly. That was relevant to the case at hand, right?

JN: Did you do a number of capital cases?

FB: Here and there. I mean, the thing is thankfully they are more rare, and so I worked on death capital teams both at trial and appellate and post-conviction. I handled capital trials, but the thing is that, capital litigation in Harris County these days is far less death capital litigation and far more what's called non-death capital litigation, even though you die in prison. So it's kind of a strange way in which a reform has had this really kind of perverse outcome where, because you get an automatic sentence at the end of a non-death capital, if they elect not to seek the death penalty, in some ways the trial is shorter and there's less process for the most severe punishment because the trial's over and there's no punishment phase, right?

JN: You just go for life in prison.

FB: Right. And they can overcharge the cases, right. If they charge that many death cases, they just wouldn't have the capacity to do it these days. But they can charge all these non death capital cases and then just to try to hammer people down for high sentences.

JN: And you were in LA and in Houston, is that right?

FB: I went to UT in Austin and then I moved to New York, and actually one of my first jobs out of college was being a civilian complaint review board investigator in New York. So I learned early on that that particular model of police oversight was not a very good model. And I tell people that, because they're still, I run into people that say, "We need a civilian review board." And I'm like, "Well, let's talk about that because those have never worked." And, yeah, then I did, I moved to LA, I put all my stuff in a truck. I moved to New York when I wrecked my car the last couple of weeks in Austin and got a check for more money I'd ever seen, about 2,500 bucks. And I was like, "Well, all right, great. I'll get out of town with this." And somehow made it work, and the trip to LA was something like that too.

At a certain point I realized that the problem of my lifetime, the problem I cared most about was in my hometown. And even though I might rather live somewhere else, this is the place I needed to be. And so yeah, I came back in late 2008, early 2009, and started a solo practice, because I knew I could do it, because I grew up watching my dad do it in a different kind of way. But it's a hustle being a solo lawyer and I knew that I could do it. But there was no public defender's office in Houston when I moved here. We were the largest city in the country without one. So finally they got one funded, right. It was after the economic collapse, and finally the

county needed the money from the state for indigent defense. And so they got a public defender's office and I was one of the first ones and helped kind of build the office up.

JN: And then you went back into private practice after being there for a while.

FB: Yeah, about three years. And I'm a lousy desk employee.

JN: And at some point along, you after going back into private practice, it hit you to run for a judgeship. What made you decide to run for judge?

FB: There was a huge civil rights class action filed here in federal court called *O'Donnell v. Harris County* where this woman, Miranda O'Donnell, was found by an organization called civil rights court that is bringing similar cases across the country, but this was the biggest one. And the county really... And now I had been working in this system for many, many years, right. Just like pleading people to get out, pleading with judges and prosecutors to show some restraint, which they wouldn't, right. They were extracting guilty pleas from people in full holdover cells, right? The holdover cell is the jail cell attached to the courtroom. And every morning I would go in there and there'll be about 40 or 50 people, usually black and brown people, always poor

people, because the reason they're there is because they're poor. Because if they weren't poor, they would have paid to get out like the people sitting on the benches in the courtroom. Who were also afflicted by this misery, but none more than the people in the holdover.

So I walked in and battled in these full holdover cells for many years, and then this lawsuit comes along. And the county really digs in and a really indefensible way. And the federal court judge sees the problem and the issues, this really strong relief. And at that point I saw an opportunity because I never wanted to be a judge, but I saw that the system as it was, was going to be destroyed. And I knew that there would be a new system built in its place. And I saw that I had the opportunity to try to see the demolition through, and see the design of something different through also. And so that's ultimately why I did it.

JN: And you were running for what is best described as a low-level judgeship, not some super-powerful Supreme Court position or something like that. But you felt that just coming in as an individual or as perhaps part of a group of individuals—new judges—that you could have a real impact.

FB: And I know that I can because I saw it happen every. And this is something... Texas is a strange place about judges, because Republicans in Texas have long understood that judicial positions are political positions here. They are elected in partisan elections. They use judge positions as a way of getting into politics and building a base. And so John Cornyn was a judge. Greg Abbott was a judge. Louie Gohmert was a judge in Texas.

JN: **The US senator, the governor and a prominent member of Congress...**

FB: Right. Like all pretty reactionary people. And so I think that a lot of the fictions that we tell ourselves about judges, particularly federal judges across the country, in Texas [they] are a little bit exposed by the partisan nature of the elections and the elections themselves. There are still rules, but it's a different kind of place down here. And so I ran a different kind of campaign. I decided that I would campaign in front of the county jail during visitation hours and tell people that I was a socialist, that I was a prison abolitionist, and that I was trying to end pretrial detention. So the level of court that I ran for this level of court where the lawsuit was pending, it's cases above a traffic ticket and below a felony. But that's a lot of cases, and it's a lot of the cases where the worst stuff happens. People being locked up for driving while license invalid, just straight-up

poverty offenses. Because the reason their licenses suspended is 'cause they owe these surcharges. Low-level stuff where people are spending way too much time in jail. Like the misdemeanor system is really the part of the system that is the least defensible. I mean it's all not defensible, but the misdemeanor system in particular. And I think it also is where something is really illustrated and that is what this system actually is.

The system defends itself, the greater kind of what I call, what many call the punishment bureaucracy. It kind of defends itself by saying, "Oh, what about the murders, right?" But really the system is really bad at solving those cases and bringing them to a fair resolution. It's actually like abysmal at it. And the bulk of the system is the stuff that falls into my level of court. Where police are used as private security basically for every gas station, parking lot, and Walmart self-checkout and on and on. Where police force is deployed against social problems that the state has decided for one reason or another, that we are going to deploy police and prosecutors at and not actually solve any underlying problems or even addressing their underlying problems. We're just going to cycle masses and masses of people through. That's actually what the system is, while it says it is something completely different that it's really bad at.

JN: And in this case, being a socialist actually helps you to kind of see the whole picture, I would think, as regards criminal justice as it fits into all the other injustices.

FB: Right. In the sense that I can see root causes and I want to talk about root causes and I don't have the magic kind of power to make it all go away and redirect all of these resources that are directed to police and prosecutors to care. But every day it's something that I am trying to do, kind of on a person-by-person basis, which kind of is the job of judge. It's a really powerful job and it's a really human job, a really humanist kind of job. As much as I don't really have a whole lot of warm and fuzzy kind of like liberal feelings about process and democracy in the way that some people do—in the sense that those things alone are going to save us—I do really doing the job see the value of at the end point of power, that there is this individual determination. And the great ones are the ones that are fair and merciful and kind and caring and all of those things and righteous. I mean, what are the things you want in a judge? It's a great character in a democratic society. To, at the last moment be like, "No, you're not going to do this. No, police, you're not going to do this. No, this is wrong." It's a great, really underappreciated feature of our system.

JN: One of the things you've done is to kind of amplify attention to this level of judgeship, and show a different way to run for it. You started your campaign, more or less, collecting signatures (to get on the ballot) outside of the courtrooms, or around outside the courthouse. As opposed to the way that so many judges do, which would be passing their papers among other lawyers and among the elites.

FB: Because that, yeah that was the whole reason I was doing it. It was really more of an organizing job, but we were organizing around electoral position, but an electoral position with a specific plan in mind. It's like, we have this opportunity to take this bench and do this. And I think that talking about how people on the left or liberals or however you want to characterize it, over the years have used and misused the judiciary. That also appears in this story too because the strategy of liberals over the years has been high-stakes civil rights litigation in federal courts, and then getting these pronouncements that something is wrong, and then there's no political follow through. And the federal courts are unwilling or unable—a little of both—to actually follow through and see that the problem is ultimately remedied. It was the problem of *Brown v. Board of Education*. It was the problem in all of these things. And so when I saw this bail lawsuit happening, I'm like, "Well it's not enough." Federal courts are great

at disrupting systems and I saw this system was disrupted, but I knew that we had to build a political and an organizing... we had to build a base of power and follow through on the disruption.

JN: And you ran on a very clear platform—you spelled it out on your website, campaigning, you even got attention in *The New York Times* and other places—of really a lot of radical interventions. And what’s interesting is that you took the time to spell it out, to have the discourse to such an extent that you got some very mainstream endorsements, including that of the *Houston Chronicle*.

FB: I think that what I want to do is ultimately, and what the greater movement wants to do, is ultimately a really popular thing. When I was campaigning around the county and when I was telling them what I wanted to do, I don’t think I found a single person who when they heard it didn’t like it, because nobody likes a system of wealth-based detention. I mean, it’s crazy: The median income of Houston is somewhere just south of 200 percent of the federal poverty guidelines. So any type of system that requires a payment is going to result in the detention of a whole lot of people. And that’s not the way anyone wants to live.

JN: And so you proposed a lot of interventions that begin, at the least, to undo a wealth-based system of justice. Tell us about a few of the things that you spelled out on the campaign trail and that you have continued to talk about as a judge.

FB: The main thing that we did was that we changed the local rules. Every court has local rules. Every court everywhere has local rules. And those local rules are kind of subordinate to the state laws and then whatever federal, constitutional, whatever higher, broader laws that people think of as the laws, the implementation of those is typically in a court, in local rules. And you can imagine that those are a real mess of some really bad practices put into writing.

So what we did is we came in and change the local rules to say that basically everyone arrested for a misdemeanor except for these four narrow categories shall be released, period. There's no risk assessment, there's no fancy algorithm—the algorithms aren't fancy by the way, they're ridiculous—but yeah, we dispense with all of the things that even kind of more moderate reformers in other places have put into place to try to replace the system before it and just said, "No." The law and the Constitution say that people charged are innocent, and so we want to treat them that way. We want them released right away. And so I've been

going to these meetings trying to tell people for weeks, and it's worked. That, no we really mean it, we really mean just turn them around. Get the information you need and turn it around.

And not just that, but we're going back into state law and saying, "How do we reduce arrests?" Because I campaigned on reducing arrests. And one of them is that state law authorized people to get tickets, instead of being arrested for certain levels of certain categories. And so we're working on implementing that. They always said it was a technology problem. And so I said, "Well, I'm really good at such things, so let's start a committee."

So we did, and the committee is basically been sitting in a room with high-ranking brass at different police agencies across the county telling me that they don't know how to write a ticket. They can't even fathom such a thing. "You want me to write the person's number, name and number down, and they're going to come answer for this? What are you talking about?" And to see it all in action has really been interesting. But it's worked because ultimately we control the rules and people follow them. And the rules now are people are automatically released for almost everything. The only people that aren't automatically released, are things like assault-of-a-family-member allegations and things like that. They are released, typically,

because the law requires it, but they just have to see a judge first—for entry of temporary orders, protective orders, things like that—just to make sure that when they are released, that we have a peaceful status quo for everyone to be in while the person resolves their business with the court.

When we first came into the system, what you would imagine taking over a system of massive illegal detention. We had masses of people illegally detained. And so we had these consolidated what were called “jail dockets.” And when I first did those, I couldn’t believe what I saw. People in jail on \$10,000 bail for marijuana possession. People being held in jail because they owed fines and fees and had a warrant out for their arrest. People who, I mean, just atrocious things. People were being held, I encountered someone who was in jail because she gave her maiden name to a police officer, or some married name, and since that didn’t match up with the police officer’s database, he was like, “Well, this is a failure to identify yourself.” And just cleaning all that up and dumping those cases and releasing those people, and telling people when they wanted to plead guilty to get out, which I did for many years. It was a battle.

But actually, you know John, there’s a story that I kind of set up earlier, that I think might tie in. And it’s this right, that we basically, remember I told you

the holdover cells were full? But we were displaced because of the hurricane for two years. And we just moved back to the courthouse that has the holdover cells. We were in the courthouse without the holdover cells. But we just moved back in, and the first day that we went back, my holdover cell had three people in it. And I had seen them 50 people full for years. And I came home and cried because I had never seen in it in a way that made me understand so clearly that we had done it.

JN: When the *Houston Chronicle*—again, a relatively conservative newspaper, historically a pretty Republican paper—endorsed you for judge, one of the most interesting things they said was that, your courtroom could become a model for the state and even the nation. Do you embrace that concept that you may be in this one small court in Texas, perhaps spinning out ideas that could reshape criminal justice statewide and nationally?

FB: Yeah. I think that this is a hard place to be a socialist organizer down in Texas and we have the worst practices to face here in our criminal system, our criminal bureaucracy. And so in some way, it's not surprising to me that the biggest change comes from here because we have the farthest to go and we have the hardest activists to do it.

JN: Your people have been battle-hardened, so to

Speak.

FB: Yeah. Iron sharpens iron.

JN: And you make the distinction that you are not a reformer, you're an abolitionist, and you put that into the context of many struggles to abolish unjust practices and procedures. Talk about that a little bit.

FB: I was long ago inspired by great abolitionists minds. This is not a defensible system. It's an outgrowth of chattel slavery. This is not something that should exist. And yet it's not going to just disappear overnight probably. It's going to take work to take the thing apart and to stop the practices. Being a judge, something I see is that, I can say all day long that, "This actually is a bad way to address this social problem and we should address root causes." And yet people do expect the court to address the problem. Because that's the way it's worked. And so it's kind of an unwinding process and that process of changing expectations.

I have a lending library in my chambers. Alex Vitale left me a couple copies of *The End of Policing*, and they were right there front and center for anyone that walks in, including police officers. And they'll ask, "What's this all about?" And I'll be like, "Well, here's what it's all about: I think that we deploy

police and prosecutors for social problems that they're ill-equipped to handle. And I think that we should stop doing that. And what we'll reach at the end of that process is something that will not at all resemble the system we have now. And it won't be a prison system. It will be a far better society. So whatever we have now, it has to go."

JN: Do you imagine that you might run for a higher level judgeship or like many of the people you cited earlier in our conversation, perhaps run for a nonjudicial job to kind of take this message up the political food chain?

FB: Being in these committee meetings, I certainly do kind of see the power and the value of something that I never really was interested in, which was going to similar meetings but in a legislative context or a different kind of policy making context. But the thing is, the reason I love my job is that it is really pinned down to humans. People down here that are really affected, and looking at them, telling them I care about them. Every day in my court is a really emotional kind of experience, and my 10 years before this I was a trial lawyer, which is a very emotional kind of human practice. And so I really, I'm reluctant to walk away from this level of work.

JN: It does mean a lot to tell people you care about them. I think that's probably one of the most fundamental things that a good judge does. And also to show part of yourself. You mentioned just as we were starting this conversation that your dad was a rock and roll producer before he became a lawyer, with one of the really seminal psychedelic bands in American history, the 13th Floor Elevators. Is that a part of your growing up and your culture?

FB: It was, yeah, in the sense that we had people coming in and coming out of my life all the time. I grew up in a small law firm, my dad's small law firm where he was just doing small car wrecks, splitting the money up, giving people some walking-around money. But also just having all these characters from his past drift in and out. I mean, there was a guy that would come crash on my couch, we called him Peyote Bob. And Peyote Bob would show up and crash on the couch. And I think that what I learned from the whole process and from my dad who I recently lost was, he really believed in people, and he really would always give somebody a chance. And he always extended a helping hand even when he had been hurt by someone. I mean, to a fault, really. He cared about other people and just put it into action every day. And that's what I grew up with and I think that's the part of my dad that I carry into this job.

JN: What was the, were there particular 13th Floor Elevators songs that your dad produced?

FB: You mean the big one was “You’re Going To Miss Me.” He’s on the record. He’s on the big one that’s the beginning of *High Fidelity*, which I guess is how most people know it, but many people know it not from that. Yeah. It’s a big kind of deal recorded here at Sugar Hill Studios in Houston.

JN: It’s really big rock and roll stuff, brother. Do you or do you still listen to that at all? What do you listen to?

FB: Yeah. From time to time I do. What do I listen to the most? I listened to, when I’m not at work, I’m trying to... I have a desk job now. And I’m so sedentary, so I listened to a lot of electronic music. And just try to pump up BPMs and move my body down the street with my dogs or on my bike or something, because sitting around on a bench all day is hazardous to my health.

JN: Totally yes. I’m liking a judge that listens to electronic music. What’s in your headphones right now?

FB: So I listened to this weekly progressive trance show called Group Therapy. And it’s also really cool, because it has kind of a humanist touch to it. Where

they're people, there's a whole community around it. And the whole name of the show, I think talks about music as being important to feelings and moods and a way to connect with people. So I really do love that program.

JN: You haven't been thinking about wiring the courtroom, have you?

FB: I have been actually working on improving the audio in the courtroom because there's a microphone and people can't hear. So I'm a hack audio engineer. My first job in high school was that I worked at a radio station here. Actually, right after deregulation, Nationwide Insurance owned some radio stations here and I was an engineer at a radio station that got bought three times in the year and a half that I worked there after Clinton deregulation. And eventually I hated one of the owners and quit.

JN: Judge Franklin Bynum, I appreciate you joining us here on *Next Left*, telling us a little about your experience running for a judgeship and now serving as a judge.

FB: Thanks, John. It's nice to be here.

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JOHN NICHOLS John Nichols is *The Nation's* national-affairs correspondent and host of *Next Left*, *The Nation's* podcast where politics gets personal with rising progressive politicians. He is the author of *Horsemen of the Trumpocalypse: A Field Guide to the Most Dangerous People in America*, from Nation Books, and co-author, with Robert W. McChesney, of *People Get Ready: The Fight Against a Jobless Economy and a Citizenless Democracy*.

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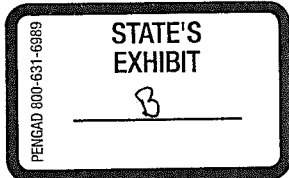
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CAUSE NO. 2305043

THE STATE OF TEXAS § IN THE COUNTY CRIMINAL
vs. § COURT AT LAW NO. 5
CHRIS BALES § HARRIS COUNTY, TEXAS

REQUEST AND ORDER FOR APPOINTMENT OR WAIVER OF COUNSEL

My name is _____ I am the defendant a witness in this case. Today the judge presiding advised me of my right to be represented by a lawyer, either one that I hire, or if I am indigent or the interests of justice require, a lawyer appointed by the judge as well as the procedure for making this request; and the right to represent myself.

I believe that I am indigent and I am requesting the Court appoint counsel to represent me. I understand that if there is a material change in my financial circumstances after a determination of my indigence is made, that I, my counsel, or the Assistant District Attorney representing the State may ask the judge to reconsider the judge's decision. In support of this request I am giving sworn testimony before the judge about my personal and financial circumstances. I understand this information may not be used for any purpose except to determine my indigency or to impeach any future testimony I may give in this case.

I received assistance in completing this request from _____
a court services officer, a court clerk, other

I understand my right to counsel and the procedure for hiring or requesting appointed counsel and I choose to waive counsel and represent myself.

Signature of Defendant: Chris Bales

Sworn to before me on _____
Personal Bond Office Employee/Deputy District Clerk, Harris County, Texas

ORDER DETERMINING RIGHT TO APPOINTMENT OF COUNSEL

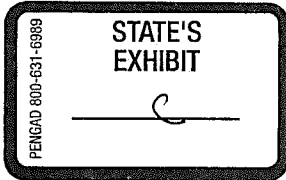
Today Defendant's request for appointment of counsel was heard in open court and evidence presented concerning the defendant's financial resources.

Form with checkboxes: The Court FINDS Defendant indigent appointment of counsel is in the interests of justice. The Court FURTHER FINDS Defendant IS IS NOT financially able to pay all or part of the cost of legal services and related expenses. The Court FURTHER FINDS there IS IS NO conflict preventing the Public Defender from representing Defendant. The Court APPOINTS the Attorney Public Defender named below to represent Defendant until charges are dismissed, the defendant is acquitted, judgment is entered and sentence pronounced, or the attorney is relieved of his duties by the court or replaced by other counsel. Attorney: Jeff Luvaglio, SPN/State Bar# 12870700, Address: 9940 MEMORIAL, City: Houston, Texas (Zip Code) 77024, Phone: 713 907-4030, Fax: _____

Form with checkboxes: The Court FINDS Defendant has the financial resources to employ counsel and the appointment of counsel in the interests of justice is not necessary; accordingly, the request is DENIED. The Court immediately advised Defendant of the right to a reasonable opportunity to hire a lawyer, or that Defendant could waive that right and speak with a prosecutor immediately after this hearing. Defendant knowingly and voluntarily waived a reasonable opportunity to hire a lawyer and after reading the following, and having it explained to him by the Court, sign his name. I have been advised by the judge of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. Date: _____ Defendant Signature: _____ Defendant refused to sign the waiver. Thereafter, I informed Defendant of the nature of the charge contained in the information and permitted him to speak with a prosecutor. Defendant's request for a reasonable opportunity to hire a lawyer was GRANTED.

MAR 19 2020

Judge Presiding: _____ Date Signed: _____



THE STATE OF TEXAS
VS.
CHRISTOPHER BALES

02897613

D.A. LOG NUMBER: 2337837
CJIS TRACKING NO.:
BY: EV DA NO: 002764817
AGENCY:HPD
O/R NO: 005545617
ARREST DATE: TO BE

SPN:
DOB: BM 6/13/1989
DATE PREPARED: 3/15/2017

NCIC CODE: 2301 51
MISDEMEANOR CHARGE: Theft
CAUSE NO:
HARRIS COUNTY CRIMINAL COURT AT LAW NO:
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2141543
8
to be

BAIL: \$1,000
PRIOR CAUSE NO:

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned Assistant District Attorney of Harris County, Texas this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, **CHRISTOPHER BALES**, hereafter styled the Defendant, heretofore on or about **DECEMBER 23, 2016**, did then and there unlawfully appropriate, by acquiring and otherwise exercising control over property, namely, ONE COMPUTER, owned by JAMES DREW, hereafter styled the Complainant, of the value of over seven hundred fifty dollars and less than two thousand five hundred dollars, with the intent to deprive the Complainant of the property.

Probable Cause

Affiant, Officer L.K. Buggs, is a certified peace officer employed by the Houston Police Department. Affiant has reason to believe and does believe that Christopher Bales (DOB 06/13/1989), hereafter the defendant, committed the Misdemeanor offense of Theft in Harris County, Texas on or about December 23, 2016. Affiant bases her belief on the following:

On March 13, 2017, Affiant received a Misdemeanor Theft case for follow up investigation and read the corresponding report 005545617 authored by B. Godoy, a certified peace officer employed with the Houston Police Department. Affiant learned that the theft occurred at 3800 Buffalo Speedway, Houston, Harris County, Texas. Affiant spoke with James Drew, hereafter the Complainant, a credible and reliable person. Complainant stated he knows Defendant by name and sight as Christopher Bales, an ex-employee. Complainant stated that the defendant had a computer issued to him at the time of his employment at MRE Consulting as a Help Desk Consultant. The complainant states the defendant was an employee until December 23, 2016 and, at that time, Defendant was told to turn over all property of MRE Consulting, including the laptop. The complainant states that MRE Consulting has made many attempts to call and email the defendant and has gone by the defendant's home, yet the defendant refuses to return the computer. The complainant states that the computer which the defendant was issued was a Dell Latitude E6430 serial number listed as CZEMGV1 priced at \$1,200.00.

Affiant made several attempts to contact the defendant but the calls were never returned.

Affiant spoke to the complainant on March 13, 2017 and was advised a demand letter was sent via certified mail on February 13, 2017, but the defendant still refuses to return the computer.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on March 15, 2017

AFFIANT
Probable Cause found 3-14-17
Date

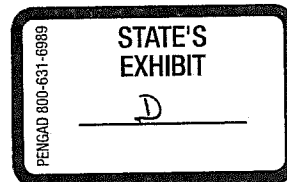
ASSISTANT DISTRICT ATTORNEY BAR NO. 74236649
OF HARRIS COUNTY, TEXAS.

Magistrate, Harris County, Texas

COMPLAINT

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

Certified Document Number 74236649 Page 1 of 1



-----Original Message-----

From: Bynum, Franklin (CCL) [mailto:Franklin_Bynum@ccl.hctx.net]

Sent: Wednesday, March 18, 2020 10:37 AM

To: Eber, Michael <EBER_MICHAEL@dao.hctx.net>; Valdez, Al <VALDEZ_AL@dao.hctx.net>; Hagerman, Charles

<HAGERMAN_CHARLES@dao.hctx.net>

Cc: Salazar, William (CCL) <William_Salazar@ccl.hctx.net>

Subject: 2141543 State v. Bales

I understand from my staff you will not dismiss this case after a finding of no probable cause.

We are in a public health crisis and in-custody cases are the highest priority: literally a matter of life and death for our community.

This matter will be scheduled for a court trial on Monday, March 23, 2020 at 10 a.m. in Court 8. You and your witnesses must be physically present. Failure to be ready for trial will result in a show cause order to the prosecutor responsible.

--

Franklin Bynum

Judge, Harris County Criminal Court at Law # 8

Courtroom: (832) 927-3288

On 3/18/20, 10:44, "Eber, Michael" <EBER_MICHAEL@dao.hctx.net> wrote:

Dear Judge Bynum,

Al brought this case to my attention earlier this morning and I reviewed the file. I could not find any entry in DEEDs showing No PC. I see a document on 3/18/20 that shows "Probable cause previously determined."

If I am mistaken about there being a finding of No PC. Could you please point me in the correct place?

In the alternative, if jail is the issue and not PC, I see that he has a \$100 bond. Is there another amount and appropriate conditions that would ensure he can leave jail and return to court at another date?

Sincerely,

Mike

From: Bynum, Franklin (CCL) [mailto:Franklin_Bynum@ccl.hctx.net]

Sent: Wednesday, March 18, 2020 10:54 AM

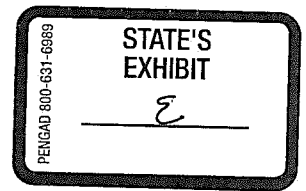
To: Eber, Michael <EBER_MICHAEL@dao.hctx.net>; Valdez, Al <VALDEZ_AL@dao.hctx.net>; Hagerman, Charles

<HAGERMAN_CHARLES@dao.hctx.net>

Cc: Salazar, William (CCL) <William_Salazar@ccl.hctx.net>

Subject: Re: 2141543 State v. Bales

The no PC order was signed and entered this morning. The defendant declined a personal bond at PC court so he can resolve the matter here before being transported to Michigan on a hold. The matter will be resolved here, as quickly as possible.



CAUSE NO. 2305212

THE STATE OF TEXAS X IN THE COUNTY CRIMINAL
v. X COURT AT LAW NO. 8
CHRISTOPHER BALES X HARRIS COUNTY, TEXAS

AFFIDAVIT OF SHANE MERZ

BEFORE ME, THE UNDERSIGNED AUTHORITY, did personally appear Shane Merz, who upon being duly sworn, did state upon his oath the following:

“My name is Shane Merz. I am of sound mind and over eighteen years of age, and I am legally qualified to make this affidavit. I am a Vice President of MRE Consulting, Ltd., located at 3800 Buffalo Speedway, Suite 200, Houston, Texas 77098. MRE Consulting’s former employee, James Drew, is the named complainant in the indictment against Christopher Bales, the defendant in this case. The computer Mr. Bales is accused of stealing was in the possession of MRE Consulting because of a contract with a customer of MRE Consulting in which the customer gave possession and use of the computer to MRE Consulting to work on the contract.

Although the theft of the computer occurred in 2016, it is my understanding Mr. Bales was not arrested for this crime until March of 2020. I was advised that on March 17, 2020, Judge Bynum immediately set the

case for trial, because the State refused to dismiss the charges, and would not permit a jury to hear the case, even though the prosecutors wanted a jury trial. I was prepared to appear in court on Monday, March 23, 2020, to testify against Mr. Bales. I did not understand why the judge was pushing the case to trial so soon, especially since the coronavirus pandemic was beginning and the government was telling everyone to avoid unnecessary outside exposure.

On Friday, March 20, 2020, I learned the trial would not happen on the following Monday. I subsequently watched a YouTube video of a hearing that took place before Judge Bynum on March 20, 2020. Based on that video, I have concluded that Judge Bynum has already decided to acquit Mr. Bales, since he does not consider this case to be important or worthy of the court's time. This is why he did not want a jury trial – he wanted to be sure the verdict was “not guilty.” Judge Bynum expressed anger at the prosecutors for not dismissing the case, and his only concern seemed to be for Mr. Bales and getting him out of jail as soon as possible. The judge was upset that another warrant was keeping him from letting Mr. Bales out of jail, and scolded the prosecutors for not making the efforts to release him that were being pushed by the defense lawyer. The judge sarcastically thanked

the prosecutor for making sure a defense lawyer was appointed to represent Mr. Bales.

Judge Bynum did not express any interest in us as victims or in our desire to seek justice. Before this experience, I assumed that judges were usually calm, fair, and impartial. I now see that my assumption was incorrect and that judges sometimes cannot rule impartially on certain cases. It has certainly taken away a lot of my faith in the criminal justice system. This judge seemed to care only about keeping the defendant out of jail no matter what he did to break the law here or in another state. I understand that these are strange days and that there are considerations of safety, but the judge essentially told the prosecutors to stop charging criminals.

This theft adversely impacted our company, both internally and externally. Mr. Bales was our employee, and he violated our trust by taking the laptop without permission and refusing to return it, despite numerous demands. We believe the theft caused damage to our reputation in the industry, especially with the client we had to repay for its stolen equipment.

I believe we have a right to have this case heard by a judge who has not already decided the defendant is not guilty and who is interested in

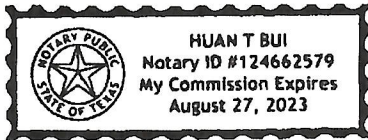
hearing all the evidence before making a decision. I have no confidence in Judge Bynum's ability to be fair and impartial.

To the best of my knowledge, all of the foregoing is true and correct."

Shane Merz

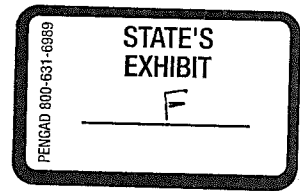
Shane Merz, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME this 9th day of April, 2020.



Huan T. Bui

Notary Public in and for
The State of Texas



CAUSE NO. 2305212

THE STATE OF TEXAS } IN THE COUNTY CRIMINAL
v. } COURT AT LAW NO. 8
CHRISTOPHER BALES } HARRIS COUNTY, TEXAS

UNSWORN DECLARATION OF NATALIE DREW

“My name is Natalie Drew. I am of sound mind and over eighteen years of age, and am legally qualified to make this affidavit. I previously was employed as a Human Resources Generalist at MRE Consulting, located at 3800 Buffalo Speedway, Suite 200, Houston, Texas 77098, under the name James Drew. I am the named complainant in the indictment against Christopher Bales, the defendant in this case. The computer Mr. Bales is accused of stealing was in the possession of MRE Consulting.

I recall Mr. Bales began his employment with the company as the HR Generalist who processed the majority of company new hires. He worked primarily at the client site, so I had limited personal interactions with him. While working at the client site, Mr. Bales would likely have had access to proprietary information and programs. The theft of a laptop, especially one used to perform work for company clients, creates a security issue with

regard to any data that may have been present when the computer was stolen.

I was subpoenaed to appear in court on Monday, March 23, 2020, to testify against Mr. Bales. I was prepared to come to court and testify, since the prosecutors told me the judge had set the case for trial as soon as Mr. Bales had been arrested. I thought this was odd, since the COVID-19 pandemic had started and the government was telling everyone to stay home and practice "social distancing." On Friday, March 20, 2020, I learned the trial would not happen on the following Monday.

I have watched a YouTube video of a hearing that took place before Judge Bynum on March 20, 2020. I was surprised at the immediately hostile tone Judge Bynum took with the assistant district attorneys. I was also surprised that he seemed to already have a determined course of action that he preferred before ever talking with Mr. Eber and Mr. Valdez. Instead of listening to their perspective, he immediately began to take a tone of lecturing and accusing the D.A.'s office of being "frivolous," and saying the D.A.'s office is abusing court resources.

Judge Bynum spoke over Mr. Eber, and then proceeded to monologue for the bulk of the video, in which he lectures the D.A.'s office for pursuing this case. When Mr. Eber was given a chance to talk, Mr. Eber asked for

clarification on the timeline related to defense counsel having enough time to prepare, and Judge Bynum told him to “stay in his lane.” Judge Bynum even told Mr. Eber to be more like defense counsel. Judge Bynum seemed grossly unprofessional, at least compared to what I’d expect from someone in his position.

Judge Bynum clearly does not value the company’s interests. He continually dismissed the charges as a “3 year old minor theft case,” and did not take into consideration the severity of what the stolen computer could have meant for MRE Consulting or the client that Mr. Bales was working for. It is clear, to me at least, that Judge Bynum seems far more interested in letting Mr. Bales go (ironic given he’s facing a fugitive case from another state) than he is in upholding the laws he took an oath to uphold.

Judge Bynum made clear throughout the 21-minute video that his decision has already been made, and he diminishes the importance of the case repeatedly. Given the importance of the case for MRE Consulting and their client, it became clear that any witness on behalf of MRE will be viewed almost hostilely by Judge Bynum. Sensitive client and company data could have been compromised by Mr. Bales’ theft.

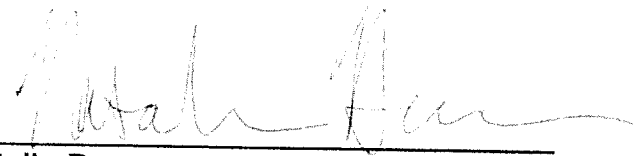
Judge Bynum has already made it clear that he will do whatever it takes to not hold Mr. Bales accountable for his theft. He even seems to coordinate

with defense counsel as to how they can get him released from jail by handling it with another judge overseeing the fugitive case against Mr. Bales. I have no doubt that a bench trial with Judge Bynum will result in an acquittal for Mr. Bales, regardless of the substantial evidence against him. I also have no doubt that Judge Bynum will treat the prosecutors and the MRE Consulting witnesses in a hostile fashion in order to achieve his desired result . . . which is clearly the release of Mr. Bales, regardless of the facts of the case.

Although I know the criminal justice system is imperfect, before I watched the video I had never imagined I'd see a judge, such as Judge Bynum, behave in such an unprofessional manner. I have never seen such bias and pettiness on such unfiltered open display, especially from someone in Judge Bynum's position. It was shocking, to say the least. It came across as a personal grievance he has with the D.A.'s office, instead of legitimate professional differences. But even then, you would imagine that in this system, someone like a judge, should check all those differences at the door and provide an impartial presence during proceedings. This was anything but impartial.

I want to stress that I believe this video shows that Judge Bynum has made up his mind on this case. He was repeatedly dismissive of the severity

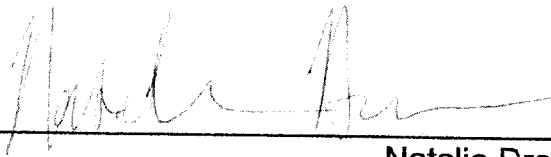
of the charges, especially as it pertains to MRE Consulting and our client. He lectured, talked down to, and was visibly hostile to the prosecutors seeking to enforce the law, as they took an oath to do. I do not believe a fair trial is remotely possible if Judge Bynum presides over this case.



Natalie Drew

My name is Natalie Drew, and my date of birth is 09/26/1979
My address is 2602 TOWING LEAF DR, BRYAN, TX 77807, USA. I declare under penalty of perjury that all information in the foregoing statement concerning the motion to recuse Judge Franklin Bynum is true and correct.

Signed in Harris County, Texas on this the 13th day of April, 2020.



Natalie Drew



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this April 15, 2020

Certified Document Number: 90248283 Total Pages: 61

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com