

MAY 02 2017

COUNTY OF LARAMIE)
)ss.
)
STATE OF WYOMING)

IN THE CIRCUIT COURT
FIRST JUDICIAL DISTRICT
Criminal Action No. CR 2017-565

THE STATE OF WYOMING,
Plaintiff,

v.

CALEB TIDWELL,
YEAR OF BIRTH: 1998
Defendant.

FILED
MAY - 2 2017
CIRCUIT COURT
J. Tracy Sanchez

**DEFENDANT'S MOTION TO DISQUALIFY LARAMIE COUNTY DISTRICT
ATTORNEY'S OFFICE**

Defendant Caleb Tidwell, through counsel, hereby submits this Motion requesting this Court disqualify the Laramie County District Attorney's office as the prosecuting office in this matter. In support of his Motion, Defendant states the following:

BACKGROUND

This is a criminal matter in which the Laramie County District Attorney's office ("Office") charged Defendant Tidwell for alleged violation of Wyo. Stat. § 6-2-501(g). The Assistant District Attorney assigned to the case is Joshua Taylor ("Taylor").

Throughout the prosecution, District Attorney Jeremiah Sandburg ("Sandburg") and Chief Deputy District Attorney Monique Meese ("Meese") have involved themselves in this case directly and indirectly. On various occasions, Defendant's counsel has met with or conferred with all three regarding this matter.

On or about April 6, 2017, Defendant's counsel contacted Taylor to initially discuss the case. Taylor immediately stated to Defendant's counsel he "understands [his] client is low functioning." Additionally, Taylor stated "we want to scare Mr. Tidwell and his parents." At that time, no discussion of the alleged crime was had, just a desired result for the Office.

On April 11, 2017, someone from the Office contacted the Defendant's

father's commanding officer and station asking that Chad Tidwell's commanding officer, Captain Brett Cottrell, return the phone call. (Exhibit A, Capt. Cottrell Affidavit, ¶ 5¹). Upon returning the phone call, Mr. Tidwell's commanding officer was directed to Sandburg. (*Id.* at ¶ 6). Sandburg informed Captain Cottrell of the details of the case; forwarded the videos the parents had made regarding autism awareness and desired outcome of this matter; and requested the he give Defendant Tidwell's father a direct order to remove the videos. (*Id.* at ¶¶ 7-9). The next day, Defendant Tidwell's father removed the videos based on a direct order from his commanding officer. (Exhibit B, LCDR Chad Tidwell Affidavit, ¶ 6).

Defendant's counsel submitted Defendant's educational records on April 12, 2017, at the request of the Laramie County School District since there had not been a formal request from the Office. These education records included evidence of Mr. Tidwell's cognitive disabilities, individualized education plans, etc., which would give the Office a more comprehensive understanding of exactly what Mr. Tidwell's diagnoses are. Meese emailed Defendant's counsel on April 17, 2017, regarding the documents. Through a verbose reply, she essentially stated the Office was at a loss as to what to do with the documents but that it would continue to "review" the documents. She also stated it was not "customary for [Office] to review" documents of this nature in a case such as this, basically admitting to not thoroughly investigate the case and the particular defendant.

On April 21, 2017, the Office requested a meeting with Defendant's counsel scheduled for the next day. Defendant's counsel attended this meeting. During the meeting, the only person to discuss the wishes of the alleged victim was Meese based on her numerous conversations with the alleged victim's mother. Additionally, numerous times, Meese made reference to things that would not make the alleged victim's parents happy.

During this same meeting, Taylor informed Defendant's counsel that in situations involving alleged incidents at a school, Meese will be involved on various

¹ Defendant's counsel will represent to the Court that Captain Brett Cottrell mistakenly crossed out the case caption county and state. Captain Cottrell was unreachable to correct the same.

levels and in different roles. This involvement is due to her experience and work history involving the school district and juveniles, generally.

Again during this meeting, Meese and Taylor made it abundantly clear they were focused on and concerned with Defendant Tidwell's family's conduct on social media regarding this case, specifically stating that it cast a dim view on the Office for prosecuting Defendant Tidwell. Their concern with Defendant Tidwell's family's social media use was so high that it was their stated catalyst to rescind the Office's offer to resolve the case.

Throughout the pendency of this matter, Meese's husband has numerous times visibly and negatively reacted to social media posts by the Tidwells. (*See* Exhibits C-1 through C-4²). Some of these posts discussed the case, some were completely unrelated. (*See Id.*). Rick Meese also reacted negatively to a post made by another student at Central High School who is a close friend of the Defendant. (Exhibit C-4). When confronted with this revelation during the meeting the Office held with Defendant's counsel on April 22, 2017, it was suggested that it was appropriate because the Office and Meese, personally, have been inundated with negative communications because of this case.

Last, Meese is "friends" on Facebook with the alleged victim's mother. (Exhibit D, Carlson Facebook Page). Additionally, her children attend school with Defendant Tidwell and the alleged victim. The alleged victim's mother works for Wyoming Department of Family Services. It is also understood the two, beyond Facebook, are close personal friends.

Since the inception of this case, it has been more than what appears face value. Simply put, the Office has ulterior motives and improper biases, which are inappropriately influencing this case and continued prosecution thereof.

ARGUMENT

Defendant Tidwell contends this Court should disqualify the Office for various ethical violations and improper biases, resulting in improper prosecution. This Court is

² Defendant's counsel redacted any personal information from the Facebook posts concerning people not related to this matter.

within its discretion to disqualify the Office and appoint a Special Prosecutor.

The Wyoming Supreme Court has defined prejudice as involving a prejudgment or forming an opinion without sufficient knowledge or examination; and bias as a leaning of the mind or an inclination toward one person over another. *Reichart v. State*, 2006 WY 62, ¶ 15, 134 P.3d 268, 278 (Wyo. 2006).

Wyoming Rule of Professional Conduct 1.7 addresses conflicts of interest in pertinent part: “(b) a lawyer shall not represent a client if the representation of that client **may** be materially limited by the lawyer’s responsibilities to . . . a third person, or by the lawyer’s own interests” W.R.P.C. 1.7(b). The lawyer’s potential conflict is avoidable if, the lawyer reasonably believes his representation will not be adversely affected, or the client consents after consultation. *Id.* at (b)(1) and (2).

Moreover, the comment to Rule 3.8 addresses the special responsibilities of prosecutors. W.R.P.C. 3.8 cmt. [1]. The goal of the criminal justice system is the attainment of justice; and thus, the role of the prosecuting attorney differs from that of an advocate in a civil case. *Dysthe v. State*, 2003 WY 20, ¶ 25, 63 P.3d 875, 885 (Wyo. 2003); *see also Reichart v. State*, 2006 WY 62, ¶ 32, 134 P.3d 268, 277 (Wyo. 2006). The prosecutor’s special role has been described as follows:

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Dysthe v. State, 2003 WY 20, 63 P.3d 875 (Wyo. 2003).

Specific to this case are the American Bar Association’s Criminal Justice Standards for the Prosecution Function. The Wyoming Supreme Court has adopted various chapters of the Standards, but adopted the guidelines broadly in *McGinn v. State*. 2015 WY 140, 361 P.3d 295, 301 n.12 (citing *Moe v. State*, 2005 WY 58, ¶ 20, 110 P.3d 1206, 1214 (Wyo. 2005)). “The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon . . . disability” *ABA Standards*

for *Criminal Justice for the Prosecution Function*, Standard 3-1.6. Indeed, a prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority." *Id.* Prosecutors should not allow their professional judgment or obligations to be affected by the prosecutor's personal relationships, or other interests or relationships. *Id.* at 3-1.7(f). Nothing should affect the prosecutor's judgments regarding what is in the best interests of justice in any case. *Id.* The prosecutor's office should not go forward until a "non-conflicted" prosecutor is put in place. *Id.* at 3-1.7(a).

Regarding the Office's decision to pursue this case, which reflects inherent bias, a prosecutor should seek or file criminal charges only if the decision is in the best interests of justice. *ABA Standards for Criminal Justice for the Prosecution Function*, Standard 3-4.3(a). The prosecutor should investigate the "background and characteristics of the offender, including any voluntary restitution or efforts at rehabilitation," "whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the **offender**," and "the view and motives of the victim or complainant." *Id.* at 3-4.4(a)(v)-(vii) (emphasis added).

Wyoming Rule of Professional Conduct require a "partner" in a law firm to make reasonable efforts to ensure the "firm" follows measures and methods giving reasonable assurance that all lawyers in the "firm" conform to ethical rules. W.R.P.C. 5.1(a). In fact, supervisory attorneys are charged with a responsibility to ensure that subordinate attorneys are in compliance with ethical rules. *Id.* at (b). Supervisory lawyers are responsible for another lawyer's violation of ethical rules. *Id.* at (c).

This Court should disqualify because of the bias, prejudice, and various ethical violations. From the start, the Office had a misunderstanding of the facts and circumstances regarding this case. It has admitted it did not have all the information to begin with prior to charging the Defendant. Moreover, based on the facts it did have, it made rash judgments; i.e., Taylor stating, "I understand he is low functioning."

Additionally, from the beginning, it is clear the Office intended nothing more than to “scare” the Defendant and his family. Certainly, in some situations a “scare tactic” is appropriate to induce a defendant to comply with the law. But in this circumstance, given the Defendant’s afflictions, a “scare tactic” was unnecessary and out of line. The Office has only punitive motives in this case, rather than upholding the interests of justice, which prosecutors are prescribed by law to do. *Dysthee*, 2003 WY 20, ¶ 25, 63 P.3d at 885; *see also Reichart*, 2006 WY 62, ¶ 32, 134 P.3d at 277.

Regarding Meese’s conduct, Defendant does not suggest improper disclosure of the facts of an ongoing case; i.e., informing her husband Rick Meese of the case. Rather, Defendant contends Meese’s husband acts as her surrogate, and his actions should be imputed to her and the Office. Mr. Meese “reacted” to social media posts the Tidwells posted along with those of another student at Central, all in support of Caleb. (*See Exhibits C-1 through C-4*). This conduct is completely outside the bounds of ethical prosecution. In defense of these actions, Meese indicated her husband’s actions were a direct response to the voluminous attacks on social media that she and her husband have endured—essentially ratifying his conduct. None of those “attacks” were from the Tidwells and certainly not the Defendant. Meese has taken a personal affront to the proceedings and external pressure in this case. She has allowed the situation to be handled poorly and apparently can no longer act objectively.

The Office upon receipt of educational documents Defendant’s counsel delivered to it, stated it was going to review the documents but planned to do nothing with them. Prosecutors have an ethical obligation to consider evidence before them that may tend to show innocence or mitigating factors in a case. W.R.P.C. 3.8(d). Whether the Office saw this material as exculpatory is subjective, but what cannot be disputed is its complete disregard for the substantive information included therein. Most importantly, the office had an obligation to investigate the “background and characteristics of the offender.” *ABA Standards*, Standard 3-4.4(a)(v).

Further bias and conflicts are present in this matter evidenced by the alleged victim’s mother’s relationship with Meese, and presumably the Office. Meese is

“friends” on Facebook with the alleged victim’s mother. Her children attend school with the alleged victim and Defendant Tidwell. The alleged victim’s mother works for the Wyoming Department of Family Services and is conceivably often involved in Meese’s (and the Office’s) work/cases. Additionally, it is believed and understood the alleged victim’s mother and Meese are close personal friends as well. This relationship is sufficient for Meese to have conflicted herself out of the matter.

Last, Meese’s contact with the Defendant’s father’s commanding officer was inappropriate and shows personal bias. Meese is not even the attorney assigned to the case. There is no question the Office likely operates as a unit, thereby giving some attorneys roles in cases where it is not spelled out in a pleading. However, her involvement in this way is wholly inappropriate. Without digressing into a protracted Constitutional argument, it suffices to say that Meese was aiming to suppress the voice of the Defendant’s father and family, which is constitutionally protected speech. This furthered no purpose in the attainment of justice; rather it stifled the only voice the Defendant had to advocate for him at the time.

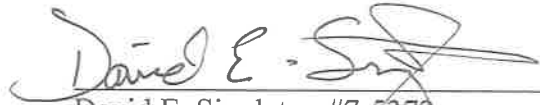
None of this is appropriate. Each individually may not be enough to raise an appearance of impropriety, but taken together, these circumstances scream bias and prejudice. But the other side of this is the Office could have acted in the best interests of justice and remedied any of these situations. Presumably, since the inception of this matter, the contentions discussed above were known to the Office by some, if not all. But by April 22, 2017, when the Office held a meeting with Defendant’s counsel, where all three mentioned above were present, the Office had knowledge and had a duty to rectify any conflicts of interest.

From that meeting it was also abundantly clear the Office was mostly, if not solely, concerned with Defendant’s parents’ social media outreach. The Office’s concern should not be with the lawful activity of the parents of the Defendant, but rather with the interests of justice. This should not have affected the decisions of the Office. But the Office’s frustration shone through when it pulled the offered resolution because of the same. He is not them, and they are not him.

The prosecutor is the representative of a sovereignty, whose obligation is to govern impartially. *Dysthe v. State*, 2003 WY 20, 63 P.3d 875 (Wyo. 2003). The goal here should not be to “win,” but to ensure justice is done for all, including the Defendant. *Id.* While the Office is permitted, and should, fight earnestly, it is not permitted to strike foul blows. *Id.* The Office has taken a case, which Defendant contends never should have made it to where it is, and morphed it into a case fraught with bias, conflict, and injustice. Certainly, Laramie County deserves better, but most importantly Caleb Tidwell deserves better—and for those reasons, Defendant Tidwell, through counsel, asks the Office be disqualified from continuing this prosecution.

WHEREFORE, Defendant respectfully requests this Court grant the above requested relief and this Court enter an Order disqualifying the Laramie County District Attorney’s Office and appoint a special prosecutor.

DATED this 2 day of ^{May} April, 2017.



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CERTIFICATE OF SERVICE

This is to certify that on this 2 day of May, 2017 a true and correct copy of the foregoing **DEFENDANT’S MOTION TO DISQUALIFY LARAMIE COUNTY DISTRICT ATTORNEY’S OFFICE** was served by U.S. mail upon the following:

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