

CR58385

STATE OF TEXAS

*

IN THE 142nd DISTRICT COURT

*

V.

*

SHELBY HAMMER

*

MIDLAND COUNTY, TEXAS

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STATE'S MOTION TO DISMISS

COMES NOW the State of Texas by and through her District Attorney and moves the Court to dismiss the above entitled and numbered criminal action in which the defendant is charged with the offense of FAILURE TO MAKE A REQUIRED CHILD ABUSE REPORT, and for cause would show the Court as follows:

1. Midland Police Department Sergeant Jennie Alonzo was called as a witness for the State on April 25th, 2023, to testify regarding her role as the lead detective investigating this case. Multiple times during the course of her testimony, Sgt. Alonzo made statements regarding a meeting that allegedly took place prior to the arrest of the four co-defendants in this case. Sgt. Alonzo further testified that the alleged meeting was attended by Sgt. Alonzo, District Attorney Laura Nodolf, Assistant District Attorney Jennifer Lively, and Midland Police Department Sgt. Rosemary Sharp. Sgt. Alonzo testified that during this meeting District Attorney Laura Nodolf specifically directed her to seek arrest warrants regarding the Trinity administrators. Sgt. Alonzo testified that she was acting only at the direction of District Attorney Nodolf, that she did not herself make the decision, and that if she had the opportunity to do it over she would not seek the arrest warrants.

2. Counsel for the State has reason to believe that Sgt. Alonzo has testified falsely regarding the matters stated above. As established by the attached affidavits of District Attorney Laura Nodolf and Assistant District Attorney Jennifer Lively, no such meeting ever took place. Additionally, at no time did District Attorney Nodolf direct Sgt. Alonzo to seek arrest warrants against the Trinity Administrators, and certainly did not direct Sgt. Alonzo to take any action that Sgt. Alonzo did not believe was justified by law and the evidence. At no time did Sgt. Alonzo express any reservations to either District Attorney Nodolf or to Assistant District Attorney Lively about Sgt. Alonzo's decision to seek or execute arrest warrants in this case.

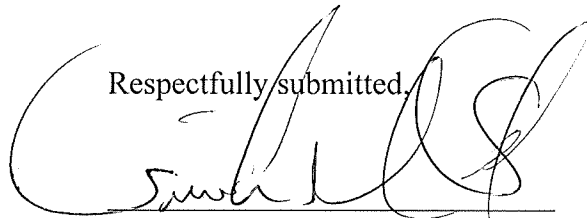
3. Because the State believes that Sgt. Alonzo has testified falsely, the State can no longer sponsor her testimony as evidence in this case. In fact, based on Sgt. Alonzo's prior testimony, the State at this time believes it cannot ethically elicit any further sworn testimony from her, even if it were an attempt to correct some portion of her previous statements. Sgt. Alonzo is no longer a credible or reliable witness. Were the trial to proceed, the State would be required by the rules of ethics to bring forth evidence to rebut Sgt. Alonzo's testimony and impeach her as a witness. This evidence would necessarily include the testimony of the elected District Attorney, Laura Nodolf; the testimony of Assistant District Attorney Jennifer Lively, currently lead counsel for the State in this case; the testimony of Sgt. Rosemary Sharp; and likely others. As a result, the focus of this trial would no longer rest on evidence of the offense charged or on the culpability of the defendants, but on the dispute between the State's witnesses. The false testimony provided by Sgt. Alonzo and now before the jury has created a situation in which Counsel for the State believes it is now impossible to prove the elements of the charged offense

beyond a reasonable doubt at this trial.

4. The State continues to believe that there exists ample credible evidence showing the guilt of the defendants. In particular, the decision not to go forward is in no way a reflection of the credibility of the child whose unreported abuse is the subject of these charges. As a result of the testimony of the witness described above, counsel for the State believes at this time it will be impossible to obtain true justice for the wrongs that were perpetrated in this case.

WHEREFORE, PREMISES CONSIDERED, the State prays that the above entitled cause be dismissed.

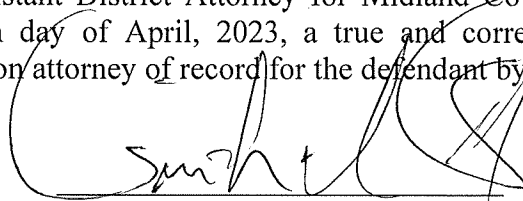
Respectfully submitted,



Timothy M. Flathers
Assistant District Attorney
Midland County Courthouse
Midland, Texas 79701

CERTIFICATE OF SERVICE

I, the below signed Assistant District Attorney for Midland County, Texas, do hereby certify that on the 26th day of April, 2023, a true and correct copy of the foregoing document was served on attorney of record for the defendant by hand delivery.



Timothy M. Flathers
Assistant District Attorney
Midland County Courthouse
(432) 688-4411
tflathers@mcounty.com

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COUNTY OF MIDLAND §

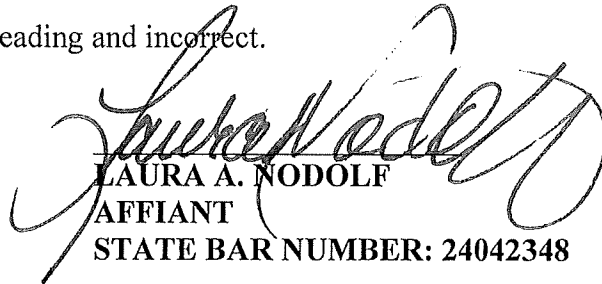
AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Laura A. Nodolf, who, being by me duly sworn, deposed as follows: My name is Laura A. Nodolf. I am over the age of 18. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

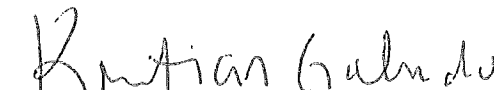
- 1) On either February 21st or 22nd, 2023, I received a phone call from Sgt. Rosemary Sharp that a report had been made by Darby Brown regarding a sexual assault that occurred at Trinity School. I am familiar with Mrs. Darby Brown and her family. My knowledge of the Brown family does not rise to the level that would have created a conflict of interest if I were engaged in the prosecution of the case. Additionally, my knowledge of the Brown family would not have impeded a fair and impartial analysis of facts. However, to avoid any potential appearance of a conflict, I deferred the matter to Assistant District Attorney Jennifer Lively.
- 2) I have had no active involvement in the investigation surrounding the report made by Mrs. Brown. If the matter was brought up during a conversation, I made it clear that I was not handling the case and to please contact I did not direct any law enforcement agent to conduct an arrest of any individual. I have no authority to compel a law enforcement agency to seek, or not seek, any type of warrant. Additionally, I was not involved in subsequent investigations involving the allegations reported by Mrs. Brown or grand jury presentation that resulted in cause numbers CR58382, CR58383, CR58384, or CR58385.
- 3) I have taken extreme efforts to allow my trusted Assistant District Attorneys to prosecute the matters in cause numbers CR58382, CR58383, CR58384, or

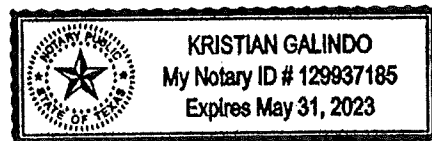
CR58385 and to apprise me of any issues that I may need to address. Assistant District Attorney Jennifer Lively has been assigned as lead prosecutor on the case and has kept me generally apprised of the posture of the case.

- 4) On April 25, 2023, when I received a phone call after the court adjourned for the day regarding the testimony of Sgt. Jenny Alonzo, the lead detective in the case. She testified that I had an active role in the investigation and subsequent arrest of the individuals in cause numbers CR58382, CR58383, CR58384, or CR58385. This information is false, misleading and incorrect.


LAURA A. NODOLF
AFFIANT
STATE BAR NUMBER: 24042348

SWORN TO AND SUBSCRIBED before me on this the 26th day of April, 2023.


Notary Public, State of Texas



STATE OF TEXAS

COUNTY OF Midland County

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Jennifer Lively who being by me duly sworn, deposed as follows: My name is Jennifer Lively I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

My name is Jennifer Lively. I am currently an Assistant District Attorney for the County of Midland, Texas. My state bar number is 24004772. I am the lead prosecutor in the following cases: CR58382, The State of Texas v. Chrystal Myers, CR58383, The State of Texas v. Adrienne Clifton, CR58384, The State of Texas v. Todd Freese and CR58385, The State of Texas v. Shelby Hammer. On April 25, 2023, I called Jennie Alonzo, a Sergeant with the Midland Police Department as a witness in those cases. I have had Jennie Alonzo testify as a witness before in a couple of cases and I have known of her testimony in other cases. When I called her as a witness, I felt that she was a credible witness. During her testimony on April 25, 2023, she repeatedly testified about a meeting that occurred between her, her supervisor, Sergeant Rosemary Sharp, the elected District Attorney, Laura Nodolf, and me. This meeting never happened. The circumstances of this meeting that she described are not true. I never told her to work up this case as she had worked up the Midland Christian School cases that happened the week before. There was only one meeting I had prior to the Trinity administrators being arrested. This meeting happened at the Midland Police Department. I did tell her based on a brief recitation of the facts that there might be a case there and that I would be happy to review her

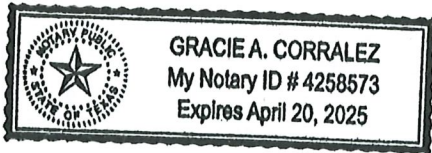
Affidavit for Probable Cause for a search warrant or an arrest warrant. The people in this meeting were Jennie Alonzo, Jonathon McKown, Rosemary Sharp (for parts of the meeting), Bonita Tribble, another Assistant District Attorney, and me. I left with the impression that the investigation would continue and that prior to any action, I would be given the opportunity to review the Affidavit for Probable Cause. After this meeting, I never received a copy of the Affidavit for Probable Cause filed in these cases. Later in that week, the above-mentioned defendants were arrested. I received a phone call from Rosemary Sharp. I was not in my office and a message was left indicating they were going to Trinity. I heard this message only after I returned from my lunch break, which is when I heard that the Trinity administrators were being arrested. Jennie Alonzo participated in the presentation of this case to the Grand Jury. During that testimony she made no mention of the fictitious meeting between Jennie Alonzo, Rosemary Sharp, Laura Nodolf, and me. In numerous calls between me and Jennie Alonzo during the pendency of this prosecution, she never mentioned this fictitious meeting. I was shocked and concerned by her testimony. Obviously, I had no reason to believe that this testimony would come out when I called her as a witness because I knew this meeting had not occurred and she had never mentioned this meeting to me. After the conclusion of her testimony, the court recessed for the day. I then conferred with co-counsel on this case, and we came to the realization that we could no longer ethically sponsor her testimony in this case. Defense counsel was notified by Tim Flathers and the decision was made to dismiss this case during the morning hours of April 26, 2023. This is a true and accurate statement of my memory of the events involving Jennie Alonzo in these cases.

I request that the charges against the defendant in the above-entitled and numbered cause be dismissed.

Jennifer Lively
AFFIANT

SWORN TO AND SUBSCRIBED before me on this the 26 day of April, 2023.

Gracie A. Corrales
Notary Public, State of Texas
My commission expires:



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MIDLAND COUNTY, TEXAS

**ORDER ON STATE'S
MOTION FOR DISMISSAL**

The foregoing motion having been presented to me on this the ____ day of _____, A.D. 20__, and the same having been considered, it is, therefore, ORDERED, ADJUDGED, and DECREED that said above entitled and number cause is hereby dismissed.

Signed this the ____ day of _____, 2023.

JUDGE PRESIDING
142nd DISTRICT COURT