

October 29, 2015

Steve Kunzweiler
Tulsa County District Attorney
stevekunzweiler@tulsacounty.org

Kevin Gray
Tulsa County Assistant District Attorney
kgray@tulsacounty.org

Re: *State of Oklahoma v. Robert C. Bates*

Dear Mr. Kunzweiler and Mr. Gray:

As you know, I represent the Estate of Eric Harris. It is axiomatic that Mr. Harris' Estate has a personal and emotional interest in the criminal proceedings involving Robert C. Bates ("Bates"). It is also my belief that the Estate has a legal and financial interest in the outcome of the Bates criminal matter. More particularly, the Estate has a legally cognizable interest in whether Judge Caputo should be disqualified from presiding over the Bates case.

The Oklahoma Constitution Article 2, § 34 gives victims the right to have restitution for damages or losses heard and ordered by the court. Also, Title 21 Okla. Stat. § 142A ("Victim's Right's Act") provides victims with the right to seek a restitution order from the court. Plainly, the Estate, as representative for Mr. Harris, the victim of the crime which Bates is charged with, has a direct interest in the Bates matter. Further, Oklahoma District Court Rule 15, which addresses "Disqualification of Judges in Civil and Criminal Cases", provides that "[a]ny **interested party** who deems himself aggrieved..." may seek review of a Judge's refusal to recuse. We plan on formally seeking such review if necessary.

My office has received information, from media outlets, which indicates that Judge Caputo has had close business and familial ties with the Tulsa County Sheriff's Office ("TCSO"), including ties with individuals who are key witnesses in the Bates case. It also now appears that Judge Caputo failed to disclose some of his connections with TCSO at the time he refused to recuse from the Bates criminal case. It is my opinion that the circumstances surrounding the Bates criminal case require Judge Caputo's disqualification. As the Oklahoma Supreme Court has reasoned:

"Where there are circumstances that cause doubts as to a judge's partiality, it is the judge's duty to disqualify, **notwithstanding the judge's personal belief that he or she is impartial.** Miller Dollarhide, P.C. v. Tal, 2007 OK 58 ¶ 17, 163 P.3d 548, 554. When such circumstances exist, the error, if any, should be made in favor of the disqualification rather than against it. Justice must satisfy the ***appearance of justice***, even though this stringent rule may sometimes bar trials by judges who have no actual bias and who would do their very best to weigh the scales of justice between contending parties. Id., citing Marshall v.

Jerrico, Inc. 446 U.S. 238, 243, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980)."

Casey v. Casey, 2011 OK 46, 270 P.3d 109, 112, *reh'g denied* (Jan. 9, 2012) (emphasis added). At the very least, Judge Caputo's ties to TCSO, and officials within that organization, could create the appearance of bias. In order to satisfy the "appearance of justice", Judge Caputo should be disqualified.

I believe that the District Attorney's Office must formally request that Judge Caputo recuse himself from the Bates case. If your office will not seek Judge Caputo's recusal, I will intervene in the criminal case on behalf of the Estate and file a formal motion to disqualify Judge Caputo.

Thank you for your attention to this matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Smolen', with a stylized flourish extending to the right.

Daniel Smolen