



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

IN THE MATTER OF THE ESTATE
OF TERENCE CRUTCHER

CASE NO. PB-2016-777
JUDGE KURT GLASSCO

Deceased.

DISTRICT COURT
FILED
OCT 20 2016
KIM HOWE SMITH, CLERK
STATE OF OKLA. TULSA COUNTY

SPECIAL ENTRY OF APPEARANCE OF
CITY OF TULSA *ex rel.* TULSA POLICE DEPARTMENT
AND MOTION TO STAY DISCOVERY,
OR IN THE ALTERNATIVE, MOTION TO QUASH SUBPOENAS DUCES TECUM

The City of Tulsa *ex rel.* Tulsa Police Department ("City"), by and through its attorneys, specially enters its appearance and, pursuant to 12 O.S. §2004.1, respectfully moves the Court for an Order staying discovery from the City in this case while the Tulsa County District Court criminal case No. CF-2016-5138, styled State of Oklahoma v. Betty Jo Shelby ("Criminal Case"), is pending. In the alternative, the City moves the Court for an Order quashing the two (2) undated subpoenas duces tecum issued on behalf of Frenchel Johnson-Crutcher ("Johnson-Crutcher") and served on the City ("Subpoenas"). The City has had a good faith meet and confer conversation with a lawyer representing Johnson-Crutcher pursuant to Local Rule CV 21 in an attempt to resolve the issues. Resolution cannot be had. In support of this motion the City shows the Court the following:

FACTS

1. Johnson-Crutcher filed a Petition for Letters of Special Administration on September 23, 2016. *See, Official Docket Sheet.* Therein, she claimed she is the "surviving spouse and natural guardian of the minor children of" the Decedent. *Id.*
2. The Court entered an Order issuing Letters of Special Administration to Johnson-Crutcher and appointing her Special Administratrix of the Estate on September 23, 2016. *Id.*

3. Also on September 23, 2016, the Court approved an attorney fee contract that Johnson-Crutcher has with Smolen, Smolen & Roytman ("Law Firm"). *Id.*

4. On September 26, 2016, Joey Crutcher and Leanna Crutcher ("Parents") filed a Motion to Vacate Order Issuing Letters of Special Administration to Johnson-Crutcher. Parents asked the Court to appoint them as special administrators of the Estate. *Id.* Parents asserted their status as Parents of the Decedent is authority for appointment. *Id.*

5. Johnson-Crutcher, on September 27, 2016, filed her Declination to Serve as Personal Representative. *Id.*

6. A hearing was held September 30, 2016, during which the Court revoked Johnson-Crutcher's Letters of Special Administration. The Court appointed Austin Bond as Special Administrator of the Estate and Christopher Brecht to represent the Decedent's minor children.

7. Law Firm served the Subpoenas on the City on or about October 6, 2016. Copies of the Subpoenas are attached hereto as Exhibit "A".

8. For the reasons set out herein the Court should stay discovery from the City in this case until the Criminal Case is concluded, or in the alternative the Court should quash the Subpoenas.

ARGUMENT AND AUTHORITIES

Johnson-Crutcher no longer represents the Estate. *See, Docket Sheet*, Minute Order entered September 30, 2015. Indeed, at this time she has no interest in the Estate because the Court has not made any finding about whether Johnson-Crutcher is an heir or a person who has

any interest at all in the Estate.¹ *Id.* Accordingly, Johnson-Crutcher has no standing to seek for discovery from the City.

The Court has discretion to stay discovery in a case “when there is no strong public interest in proceeding expeditiously in the civil case.” *In re K.W.*, 2000 OK CIV APP 84, ¶7, relying on *State ex rel. Oklahoma Bar Association v. Gasaway*, 1993 OK 133. There is absolutely no public interest in permitting discovery at this time, even though Johnson-Crutcher and her Law Firm may have a strong personal interest in securing discovery. In contrast, there is a strong public interest the City's continued, unfettered investigation of the Criminal Case and in a neutral, unbiased prosecution by the State. Until the Court determines if or whether Johnson-Crutcher has any interest in this Estate, the Court should stay discovery, or quash the Subpoenas.

As further grounds to quash the Subpoenas, both are overly broad and general in nature and would likely require the disclosure of privileged or other protected matters. 12 O.S. §2004.1(C)(3)(a)(3). *See, Exhibit "A"*, p1, paragraphs B. and C., which request that the City produce "all records" related to the City's investigation into the shooting of Decedent as well as "all records" relating to any arrests of Decedent; *see also*, p4, paragraphs A. and B., which requests "[t]he complete arrest record" of Johnson-Crutcher and "all records" concerning Johnson-Crutcher's arrest on August 13, 2016.

The City's criminal investigation of the shooting continues to this day. Additionally, it is the City's position that all of its investigative records are work product, are privileged, and are not subject to discovery pursuant to 51 O.S. §24A.5(1)(a) which provides:

¹ A hearing to determine whether Johnson-Crutcher is the common law wife of Decedent, and therefore an heir who takes under the Estate is scheduled for October 25, 2016. *See, Docket Sheet.*

"1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:

a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,".

See also, Nauri v State, 1983 OK CR 136, at ¶31 ("[u]nsworn statements of prosecution witnesses are considered to fall within the work-product privilege and are not discoverable. (Citations omitted). This privilege extends as well to police investigative reports."); *Moore v State*, 1987 OK CR 149, ¶20 ("The State's 'work Product' shall include reports compiled by a law enforcement agency in the course of its investigation into a criminal offense and statements obtained by prosecuting attorneys and peace officers from various witnesses for the State, without regard to whether such statements and reports are later sought for the purpose of cross-examination or impeachment."). Production of the City Police Department's work product files while its investigation of the Criminal Case is ongoing may well impede or disrupt the investigation and will not serve the public interest to see that justice is achieved.

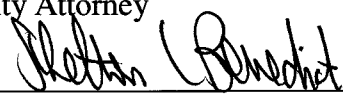
Based on the foregoing, the City respectfully requests that the Court enter its Order staying discovery pursuant to the Subpoenas, or in the alternative quashing the Subpoenas.

Respectfully submitted,

CITY OF TULSA, OKLAHOMA,
A municipal corporation,

DAVID E. O'MEILIA,
City Attorney

By:


Gerald M. Bender, OBA #14471
Litigation Division Manager
Shelton L. Benedict, OBA #11058
T. Michelle McGrew, OBA #20279
Senior Assistant City Attorneys

Stephan Wangsgard, OBA #18312
Assistant City Attorney
City Hall @ One Technology Center
175 East Second Street, Suite 685
Tulsa, Oklahoma 74103
(918) 596-7713
(918) 596-9700 Facsimile

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 20th day of October, 2016, a true and correct copy of the foregoing document was mailed, with first class postage prepaid thereon, address to the following:

Daniel Smolen
701 S. Cincinnati
Tulsa, Ok 74119
Attorney for Johnson-Crutcher

Robbie E. Burke
320 S. Boston, Suite 1130
Tulsa, Ok 74103
Attorney for Estate

Austin Bond
9 E. 4th Street, Suite 403
Tulsa, Ok 74103
Special Administrator

Christopher Brecht
1800 S. Baltimore Ave., Suite 900
Tulsa, Ok 74119
Attorney for Minor Children

Thomas Mortensen
1331 S. Denver Ave
Tulsa, Ok 74119
Attorney for Johnson-Crutcher

Damario Solomon-Simmons
502 W. 6th Street
Tulsa, Ok 74119
Attorney for Parents

Steve Kunzweiler
500 S. Denver, Suite 900
Tulsa, Ok 74103
District Attorney for Tulsa County



Shelton L. Benedict

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

IN THE MATTER OF THE ESTATE)
OF TERENCE CRUTCHER,)
Deceased.) PB - 2016-777

SUBPOENA DUCES TECUM

CERTIFIED-RETURN RECEIPT

THE STATE OF OKLAHOMA,

TO:

Tulsa Police Department
Information Services Division
c/o Tulsa Police Records
P.O. Box 1027
Tulsa, OK 74103

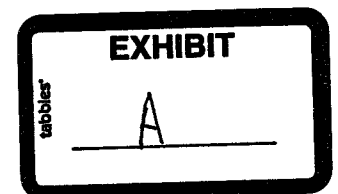
GREETINGS:

PURSUANT TO OKLA. STAT. TIT. 12, § 2004.1, YOU ARE HEREBY
COMMANDED to produce the following documents for inspection and copying as
provided herein;

1. **SUBJECT:** The Arrest Record of Terence Tafford Crutcher, a/k/a/
Terance Tafford Crutcher, d/o/b August 16, 1976.

2. **DOCUMENTS TO BE PRODUCED:**

- A. The complete arrest record of Terence Crutcher
- B. All records (electronic documents, paper-based documents, audio recordings, video recordings, 911 calls, police dispatches or video surveillance) in the Tulsa Police Department's possession, custody or control relating to any arrest(s) and detention(s) of Plaintiff at any time.
- C. All records (electronic documents, paper-based documents, audio recordings, video recordings, 911 calls, police dispatches or video surveillance) in Tulsa Police Department's possession, custody or control relating to the shooting of Terence Tafford Crutcher on or about September 16, 2016.



3. **PLACE OF PRODUCTION:** The documents responsive to this subpoena shall be produced for inspection to **Daniel E. Smolen** at the law offices of:

Smolen, Smolen & Roytman
701 S. Cincinnati Avenue
Tulsa, OK 74119
(918) 585-2667 (P)
(918) 585-2669 (F)

4. **DATE AND TIME OF PRODUCTION:** On or before *Thursday, October 20, 2016 at 1:00 p.m.*

5. **PERSONAL APPEARANCE:** Your personal appearance is not necessary, your employee or agent can deliver the responsive documents for inspection and copying.

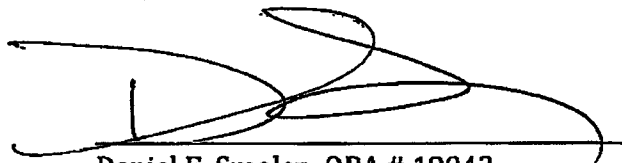
6. **FAILURE TO OBEY:** Pursuant to Okla. Stat. tit. 12, § 2004.1. failure by any person without adequate excuse to obey this subpoena may be deemed to contempt of the Court from which the subpoena issued.

HEREOF FAIL NOT, UNDER PENALTY OF LAW!

"IN ORDER TO ALLOW OBJECTIONS TO THE PRODUCTION OF DOCUMENTS AND THINGS TO BE FILED, YOU SHOULD PRODUCE THEM UNTIL THE DATE SPECIFIED IN THIS SUBPOENA, AND IF AN OBJECTION IS FILED, UNTIL THE COURT RULES ON THE OBJECTION."

Respectfully submitted,

SMOLEN, SMOLEN & ROYTMAN, PLLC



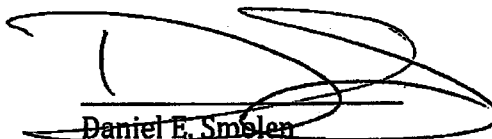
Daniel E. Smolen, OBA # 19943
701 S. Cincinnati Avenue
Tulsa, OK 74119
(918) 585-2667 (P)
(918) 585-2669 (F)
Attorney for Frenchel Johnson-Crutchner

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on this 6th day of October, 2016, a true and correct copy of the above and foregoing document was sent to the following:

Austin P. Bond,
Bond | Gill PLLC
9 East 4th St
Suite 403
Tulsa OK, 74103

Robbie Emery Burke
320 S. Boston, Ste. 1130
Tulsa, OK 74103



Daniel E. Smolen

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THE STATE OF OKLAHOMA,

TO:

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Information Services Division
c/o Tulsa Police Records
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Tulsa, OK 74103

GREETINGS:

PURSUANT TO OKLA. STAT. TIT. 12, § 2004.1, YOU ARE HEREBY
COMMANDED to produce the following documents for inspection and copying as
provided herein;

1. **SUBJECT:** The Arrest Record of Frenchel Renee Johnson, a/k/a
Frenchel Renaea Johnson, d/o/b December, 13, 1977.
2. **DOCUMENTS TO BE PRODUCED:**
 - A. The complete arrest record of Frenchel Renaea Johnson,
including but not limited to her arrest on or about August 13,
2016.
 - B. All records (electronic documents, paper-based documents,
audio recordings, video recordings, 911 calls, police dispatches
or video surveillance) in Tulsa Police Department's possession,
custody or control relating to any arrest(s) and detention(s) of
Plaintiff, including but not limited to her arrest on August 13,
2016.

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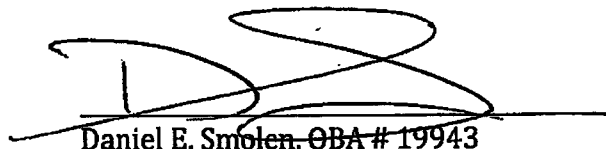
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Respectfully submitted,

SMOLEN, SMOLEN & ROYTMAN, PLLC



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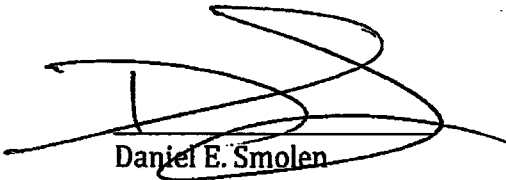
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