

FILED
06-20-2022
Waupaca County Courts
Terrie J. Tews
2022CF000142

STATE OF WISCONSIN CIRCUIT COURT WAUPACA COUNTY

STATE OF WISCONSIN,

Plaintiff,

**NOTICE OF MOTION AND
MOTION TO DISMISS**

vs.

Robert I Knox,

Defendant.

PLEASE TAKE NOTICE, that on June 28, 2022 at 10:00 a.m., in Circuit Court Branch 3, the State of Wisconsin will ask that the following motion be heard.

NOW COMES District Attorney Veronica Isherwood, in and for Waupaca County, Wisconsin, who, in the best interest of justice, hereby moves that the above-entitled action against this defendant be dismissed without prejudice.

The basis for this motion is that the Waupaca County District Attorney staff prepared a Criminal Complaint and sought an officer to swear under oath as to its reliability and correctness on May 23, 2022. That complaint was emailed to the Waupaca County Sheriff's Office for signing under oath.

On February 21, 2022 the Waupaca County Sheriff Tim Wilz and Waupaca County Detective Captain Julie Thobaben both testified that reports are changed by other than the authoring deputies contrary to Sheriff Office Policy #322: Report Writing¹. Evidence of these changes are not documented nor kept. Additionally, Sheriff Wilz testified that he shared information with District Attorney Isherwood that was not true, testifying "I guess I can say what I want to Isherwood, DA Isherwood".²

Based upon evidence of exculpatory information being removed from a police report by Detective Captain Thobaben without the knowledge of the authoring deputy, a Brady violation, and the testimony described above, the District Attorney's Office became concerned about the reliability of reports from the Sheriff's Office. The DA's Office tried to assure reports were truthful and accurate in a number of ways. Affidavits were submitted to reviewing officers but Sheriff Wilz would not allow officers to sign. A variety of different introductory paragraphs that would assure that the investigating deputy's reports were not changed were submitted to the Sheriff's Office but those complaints went unsigned. Finally, on May 2, 2022 at 2:36 p.m. Sheriff Wilz informed the DA by email that they would be signing complaints with the agreed language, albeit under protest. All complaints would be signed by Chief Deputy Carl Artz.

In this complaint, the affirming paragraph read:

Your complainant is an officer with the Waupaca County Sheriff's Office. Your complainant makes this complaint upon information and belief and upon reports and records of that department. Your complainant is aware that the arresting officer's reports were reviewed by Sgt. Lewinski before submission to the Waupaca County District Attorney's Office. Your complainant has verified that the reviewing officer did not change the reporting deputies report before submission to the DA office per Waupaca County Sheriff's Office Policy #322: Report Preparation.

¹ Waupaca County Sheriff Office Policy #322:Report Writing attached as Exhibit 1.

² See Transcript of State v. Klotzbuecher, 2020CF265, 02/21/2022 Motion Hearing, Partial transcript attached as Exhibit 2.

The complaint was signed under oath by Chief Deputy Carl Artz. Based upon this sworn statement the District Attorney was willing to go forward with alleging criminal conduct and putting the defendant's liberty in jeopardy.

On June 8, 2022, Chief Deputy Carl Artz testified under oath in State of Wisconsin v. Robert I. Knox, Waupaca County Case #2022CF142.

ADA Bolz Question to Artz: "... And in the complaint it also indicates that the signing individual from the Sheriff's Department would have verified with Sergeant Lewinski or another member of the Sheriff's Department that the complaint, or excuse me, the reports that were provided to the DA's Office had not been changed; is that correct?

Chief Deputy Artz replied: "That is correct."³

Atty Gelhar Question to Artz: "And you independently confirmed with Sergeant Lewinski that the reports were not changed in this case?"

Chief Deputy Artz replied: "It is my belief when it's received as a criminal complaint for my signature, that it is correct."

Atty Gelhar Question to Artz: "And so you didn't independently speak with Sergeant Lewinski about the reports?"

Chief Deputy Artz replied: "No."

Atty Gelhar Question to Artz: "You did not review any documentation of whether or not there were changes in the reports?"

Chief Deputy Artz replied: "No I did not."⁴

This testimony took the District Attorney's Office by complete surprise. We are now under the belief that the Criminal Complaint filed in this matter was filed based upon false swearing. The DA Office was misled when the Chief Deputy **swore under oath** that he had verified that reports were not changed. We are now aware of the Waupaca County Sheriff administrative staff's flawed understanding of what it means to swear under oath.

Because the Waupaca County District Attorney's Office will not tolerate misconduct by any police officer or agency, we are immediately moving to dismiss this case. Our intention is that at the motion hearing scheduled herein, witnesses will be called, and IF testimony can be obtained that assures that the reports submitted to the District Attorney Office are true, correct and ethically reviewed, the State will file a new criminal complaint and start the process over.

As the District Attorney for Waupaca County I humbly apologize to the Court for the waste of precious court resources. I and my staff have been diligently trying to do the right thing under extremely difficult circumstances and I am chagrined that we trusted the current Sheriff administration to be honest with my office.

³ Transcript of 06/08/2022 motion hearing, Pages 6 and 7. Transcript attached as Exhibit 3.

⁴ Transcript of 06/08/2022 motion hearing, Pages 14 and 15.

Date Signed: 06/18/22
Electronically Signed By:
Veronica Isherwood
District Attorney
State Bar #: 1022814