

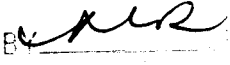


IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS:
FILED

2023 MAY 10 PM 1:28

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 v.)
)
 NANCY KEMP,)
)
 Defendant.)

CLERK OF DISTRICT COURT
BY  DEPUTY

No.: CM-2022-167

**DEFENDANT'S MOTION TO COMPEL THE STATE TO PRODUCE THE
PERSONNEL FILES OF THE ARRESTING LAW ENFORCEMENT OFFICER**

COMES NOW Defendant Nancy Kemp, by and through her attorney of record, Stephen G. Fabian, Jr., and pursuant to the due process clause of the Fourteenth Amendment, Article II, § 7 of the Oklahoma Constitution, and *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963), moves the Court for an order compelling the State of Oklahoma to produce the personnel and/or employment files, Oklahoma Highway Patrol training records, and Council on Law Enforcement Training and Education training records of Officer Preston Cox, the arresting officer in this case. In support of this motion, the Court is shown the following:

1. The due process clause of the United States Constitution compels the State in a criminal prosecution, and confers an obligation upon the State, upon request of a defendant to disclose to a criminal defendant material favorable evidence in the State's possession, including information about State witnesses, that could be used to impeach them. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); *see also, United States v. Bagley*, 473 U.S. 667, 675-77, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).
2. The individual prosecutor representing the State in a criminal case has a duty to learn of any favorable evidence known to any persons acting on the government's behalf in a

criminal prosecution, including law enforcement personnel. *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 1567, 131 L.Ed.2d 490 (1995).

3. In prosecuting a criminal case, the State has a constitutional duty to examine the personnel files of testifying law enforcement officers for *Brady* material. *United States v. Henthorn*, 931 F.2d 29, 31 (9th Cir.1991).
4. Defendant does not have the burden of making a preliminary showing of materiality; rather, the obligation of the State to provide the files arises upon the demand for such information by the Defendant. *Henthorn*, 931 F.2d at 31. Following examination of such files by the State, any information contained in them which is material to a fair trial must be produced to the defense. *Henthorn*, 931 F.2d at 31.

WHEREFORE, Defendant requests an order from this Court: (1) compelling the State of Oklahoma provide all personnel and employment files of the arresting law enforcement officer in this case to the Defendant or to the Court for review and , (2) upon the completion of such examination, to disclose to the defense all information that is material to the preparation of the defense or the adjudication of the issues at trial, and (3) Give the Attorney for the Defendant the opportunity to review the records produced by the State to determine the use of said information in his Defense.

Respectfully submitted,

FABIAN & ASSOCIATES, INC. P.C.



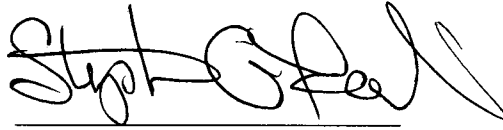
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Attorney for Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 10th day of ^{May}~~April~~ 2023, I caused a true and correct copy of the foregoing to be mailed First Class postage prepaid to:

Laura Thomas, District Attorney
Logan County District Attorney's Office
301 E. Harrison
Guthrie, Ok 73044
Attorney for State



Stephen G. Fabian, Jr.