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NO. 401-80453-08

THE STATE OF TEXAS	§	IN THE 416 TH JUDICIAL
	§	
V.	§	DISTRICT COURT OF
	§	
MARK LYLE BELL	§	COLLIN COUNTY, TEXAS

MOTION TO DETERMINE CONFLICT of INTEREST

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the State of Texas by and through her Assistant District Attorney, Bill Dobiyski, and files this Motion to Determine Conflict, and in support respectfully shows the following:

I.

BACKGROUND

Defendant, Mark Lyle Bell, "Defendant" stands charged by indictment in this case with the offense of Capital Murder. The State has given notice of its intention to seek the death penalty in this case.

Keith Gore ("Gore") is a licensed attorney in the State of Texas. Gore, along with Steven Miers, was appointed as counsel to represent Defendant in this case. Gore has been an appointed counsel for Defendant at all times relevant to this motion.

On or about February 22, 2008, the State of Texas learned that Linda Bell, wife of Defendant, had delivered several items to Gore in February 2008. These items included:

1. Correspondence from Defendant (after his arrest in this case) in which he outlined plans for an escape attempt and urged his wife to retrieve items from their home that

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 COLLIN COUNTY, TEXAS
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he considered to be evidence connected to this case;

2. Shoebox (that Defendant had urged his wife to retrieve from their home in McKinney) that allegedly contradicted other physical evidence recovered in this case;
3. Employment and bank records; and
4. Boots that Defendant allegedly (according to Defendant and Linda Bell) was wearing at the time he committed this capital murder.

These items clearly constituted evidence in this case. As a result, on Thursday, February 28, 2008, Gore was served with a subpoena duces tecum to testify instanter before the Grand Jury of Collin County, Texas. The subpoena instructed Gore to produce the following items for the Grand Jury:

Any and all tangible items received from Linda Bell, including but not limited to the following:

1. Bank records;
2. Time and/or attendance records;
3. Boxes;
4. Receipts; and
5. Written correspondence, including letters, cards, and envelopes.

Instead of complying with the subpoena and producing the tangible items as requested by the Grand Jury, Gore (through Steven Miears) filed a motion to quash the subpoena.

On that date, a conference was held in the chambers of the Honorable Robert Dry, Judge of the 199th Judicial District Court in Collin County, Texas. Gore, Steven Miears (acting as Gore's attorney), and attorneys from the Collin County District Attorney's Office were present at the conference. Rather than forcing Gore to produce the requested items that day, Judge Dry scheduled a hearing on the motion to quash on Tuesday, March 4, 2008. Before the conclusion of the conference,

Gore advised Judge Dry , in the presence of the attorneys from the Collin County District Attorney's Office, that he would not produce the requested items even if ordered by the Court to do so. Gore told Judge Dry that he would not produce the items even if Judge Dry held him in contempt and fined him.

As a result of Gore's stated intention to disobey a lawful order of the 199th Judicial District Court in Collin County, Texas, it became clear to the State of Texas that further attempts to obtain the requested items through voluntary compliance or the subpoena process would be fruitless. The State of Texas also had concerns that evidence in Gore's possession might be destroyed or further concealed before the scheduled hearing on Tuesday, March 4, 2008. As a direct result of Gore's actions and statements, the State had no other viable option but to obtain an evidentiary search warrant to obtain the evidence in question.

On February 29, 2008, officers from the Frisco Police Department interviewed Linda Bell at her home in McKinney. Ms. Bell confirmed that she had in fact delivered correspondence, records, and a pair of boots to Gore. Later that afternoon, the Frisco Police Department applied for a warrant to search Gore's law office in McKinney, Texas. The Honorable Mark Rusch, 401st, issued the search warrant. The search was limited to the items that Gore had refused to produce pursuant to the earlier subpoena duces tecum. Judge Rusch also appointed Eric Higgins, a privately employed attorney, to act as a special master to ensure that the attorney-client privilege and attorney work product were protected during the search.

The search was conducted later that night. Eric Higgins was present during the search. Gore was also present, witnessed the search, and had conversations with members of the search team. During the search, law enforcement officers found a shoebox and correspondence from the Defendant (escape plans and instructions to Linda Bell to retrieve evidence from their McKinney home) in

Gore's office. Law enforcement officers did not find the boots, which Defendant claimed to be wearing at the time of the murder, that Linda Bell allegedly delivered to Gore. Those boots have never been located by law enforcement and their whereabouts remain unknown.

II.

Gore has, through his own voluntary actions, become a necessary fact witness in this case. During his representation of Defendant in this case, Gore received several pieces of evidence from Defendant's wife, Linda Bell. These items included hand-written letters authored by Defendant after his arrest in this case and a shoebox from Defendant's home. Gore retained possession of these items until law enforcement agencies seized them from his McKinney law office pursuant to a search warrant. Gore was present when the search warrant was executed at his law office and communicated with law enforcement personnel during the search. The shoebox and hand-written letters may be relevant and substantially adverse to the defendant at the guilt and punishment phases.

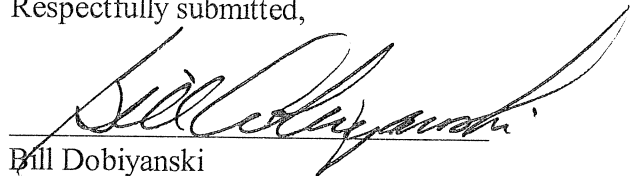
The State must call a witness to sponsor and authenticate the hand-written letters and the shoebox. The State cannot call Linda Bell to testify in this case. Texas Rule of Evidence 504 (the husband-wife privilege) prohibits the State from calling Defendant's wife to perform this function. Therefore, the State may be required to call Gore to sponsor and authenticate these items. Additionally, the State may question Gore about his alleged possession and current location of the boots.

III.

Fundamental fairness demands that a Defendant in a capital murder case be represented by an attorney who will act exclusively as his advocate. This is especially true where the State has announced its intention to seek the death penalty. It would be grossly unfair to Defendant to allow Gore to continue as his counsel when Gore, by his own voluntary actions, has made himself a fact witness for the State of Texas. Such a clear conflict of interest would in all probability result in unnecessary and costly litigation if the Defendant receives the death penalty. It could also require an unnecessary and costly retrial.

WHEREFORE, PREMISES CONSIDERED, the State respectfully requests that the Court set a hearing to determine whether a conflict exists, and if so, whether said conflict requires the removal of Keith Gore as attorney of record for Defendant or whether said conflict can be waived on the record by the defendant.

Respectfully submitted,



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