



IN THE DISTRICT COURT OF TULSA COUNTY FOR THE
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

WINDSTREAM CORPORATION,
a Delaware Corporation,

Defendant.

Case No. CF-2012-3841

DISTRICT COURT
FILED

SEP 27 2012

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

**DEFENDANT'S BRIEF IN FURTHER SUPPORT OF ITS
APPLICATION FOR RELEASE OF GRAND JURY TRANSCRIPTS**

Defendant Windstream Corporation has filed its Application for an order releasing to defendant's counsel copies of the grand jury transcripts of certain witnesses who appeared before the Thirteenth Oklahoma Multicounty Grand Jury, as well as relevant exhibits, related to the charges brought against defendant in this case. The State does not dispute that defendant is entitled to the grand jury transcripts and relevant exhibits. At the status conference on September 17, however, the State took the position that the District Court of Tulsa County, the venue in which this case is being prosecuted, lacks the authority and/or jurisdiction to order the release of the transcripts and exhibits. The State argued, instead, that only the designated Presiding Judge for the Multicounty Grand Jury has the authority to order release of the transcripts and exhibits.

Since the State does not dispute that defendant is entitled to the transcripts and relevant exhibits, it is puzzling that the State would take the strident position that this Court lacks the authority to order their release. There surely will be more significant battles to be fought in this case than this one. In any event, however, the position taken by the State at the September 17 status conference lacks merit for at least two reasons.

First, in *English v. Dist. Court of Adair County*, 492 P.2d 1125 (Okla. Crim. App. 1972), contrary to the State's position, the Oklahoma Supreme Court stated:

We thus conclude that the intent of the Legislature would preclude a judge other than the judge presiding over the Grand Jury or a judge designated by the presiding judge to order the Grand Jury testimony transcribed.

492 P.2d at 1127 (emphasis added).

The August 23, 2012 Order entered by Presiding Judge Swinton (attached as Exhibit 1) established that venue and jurisdiction for this case should be in Tulsa County. The August 23 Order specifically directed the District Court of Tulsa County to proceed with this case. (Ex. 1, Order at ¶ 3). Thus, the District Court of Tulsa County, and more specifically the assigned Tulsa County District Judge, is "a judge designated by the presiding judge" within the meaning of the *English* case. This Court therefore has the authority and jurisdiction to grant defendant's Application and order release of the grand jury transcripts, and relevant exhibits, related to the charges brought against defendant in this case.

Second, the State's position taken at the September 17 hearing is inconsistent with the position taken previously by the Attorney General's office on this issue. Windstream's counsel and Assistant Attorney General George Burnett exchanged email correspondence on this very issue before Windstream filed its Application with this Court. As reflected in the attached e-mail exchange (attached as Exhibit 2), Windstream's counsel questioned whether, since the Multicounty Grand Jury's term had expired and Judge Swinton's authority to act further as Presiding Judge had also ended, Windstream should present its Application to the assigned judge in Tulsa County. Based on Mr. Burnett's affirmative response on September 10, 2012, Windstream filed its Application in this case in Tulsa

County, for presentment to the assigned judge. The State's opposition to this Court ordering release of the transcripts, particularly in light of the Assistant Attorney General's previous position on this very issue, is curious since it has no opposition to Windstream's counsel having the transcripts.

CONCLUSION

The State's current position directly conflicts with its previous advice on the issue, based upon which defendant filed its Application in this Court. Just why the State wants to now change course is unclear. This Court has the authority to order release of the grand jury transcripts and relevant exhibits to defense counsel. Defendant's Application should be granted forthwith.

Dated: September 27, 2012.

Respectfully submitted,



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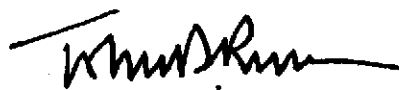
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**COUNSEL FOR DEFENDANT
WINDSTREAM CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2012, a full, true, and correct copy of the "DEFENDANT'S BRIEF IN FURTHER SUPPORT OF ITS APPLICATION FOR RELEASE OF GRAND JURY TRANSCRIPTS" was transmitted by electronic mail and deposited in the U.S. Mail with proper first-class postage, to the following counsel of record at the following address:

Charles S. Rogers, Esq.
George Burnett, Esq.
Megan Tilly, Esq.
Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
COUNSEL FOR PLAINTIFF



John D. Russell

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CF-2012-3841

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA DISTRICT COURT
IN THE DISTRICT COURT OF THE STATE OF OKLAHOMA FILED

IN THE MATTER OF THE MULTICOUNTY) Case No. SCAD-2011-9 AUG 30 2012
GRAND JURY, STATE OF OKLAHOMA) D.C. Case No. CV-2011-81
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

**ORDER DETERMINING VENUE, SEALING INDICTMENT, REQUIRING
TRANSMITTAL OF INDICTMENT TO COUNTY OF VENUE, AND AUTHORIZING
DISTRICT COURT TO OPEN FOR PURPOSE OF ISSUANCE OF WARRANT**

NOW on this 23 day of August, 2012, the Court having been presented, in open court, an indictment returned by the Oklahoma Multicounty Grand Jury, the Court finds and orders as follows:

1. Said indictment having been examined by the Court, the Court pursuant to the provisions of 22 O.S. Section 358 finds and orders that venue and jurisdiction shall be in Tulsa County, State of Oklahoma;
2. That said indictment shall be transmitted by the Attorney General or one of his Assistant Attorneys General to the District Court Clerk of Tulsa County who, thereafter, upon receipt thereof shall notify the District Judge of Tulsa County of the filing of the same;
3. That the District Judge of Tulsa County shall proceed according to the provisions of Title 22 O.S. Section 386;
4. That said indictment may be unsealed by the District Judge of Tulsa County for the purpose of issuing arrest warrants, and thereafter shall remain sealed under the Order of the District Court of Tulsa County until such time following the arrest and arraignment of the named accused.


BARBARA G. SWINTON, PRESIDING JUDGE
OF THE MULTICOUNTY GRAND JURY

From: George.Burnett@oag.ok.gov [mailto:George.Burnett@oag.ok.gov]
Sent: Monday, September 10, 2012 9:57 AM
To: Warren Bickford
Subject: RE: Grand Jury Transcript

I agree, once its opened it goes to the assigned judge. gb

From: Warren Bickford <Wbickford@fellerssnider.com>
To: "George.Burnett@oag.ok.gov" <George.Burnett@oag.ok.gov>,
Cc: John Russell <JRUSSELL@fellerssnider.com>
Date: 09/07/2012 01:23 PM
Subject: RE: Grand Jury Transcript

George,

Thanks for sending these forms. After looking at the statutes and cases mentioned in the Application, it is unclear to me whether the Application should be presented to Judge Swinton, or to the judge in Tulsa County who now actually has been assigned the criminal case. It would seem that, since the grand jury's term has ended and it has been discharged, Judge Swinton's authority to do anything further may also have ended. Do you have a view on that?

Your thoughts would be appreciated.

Thanks.

Warren Bickford

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From: George.Burnett@oag.ok.gov [mailto:George.Burnett@oag.ok.gov]
Sent: Wednesday, September 05, 2012 10:45 AM
To: Warren Bickford
Subject: Grand Jury Transcript

Dear Mr. Bickford,

Here is the Application we use for getting the transcript. You shouldn't have any trouble getting Judge Swinton to sign it. Please check with Charles as we usually enter into agreements to split the costs. Contact me if you have any questions. thanks, gb

----- Forwarded by George Burnett/OAG on 09/05/2012 10:41 AM -----

From: Megan Tilly/OAG
To: George Burnett/OAG@OAG,
Date: 09/04/2012 04:18 PM
Subject:

Can you send this to Sisney's attorneys as well since I don't have a copy of Ryan Ray's business card. Thanks.