



DISTRICT COURT  
**FILED**

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

NOV 01 2012

STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
JAMES DAVID SISNEY, )  
)  
Defendant. )  
)

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

Case No. CF-2012-3842

The Honorable William Kellough

**DEFENDANT'S RESPONSE TO STATE'S MOTION TO CONSOLIDATE  
CASES FOR PRELIMINARY HEARING AND TRIAL**

Defendant, James David Sisney, respectfully submits the following Response to the State's Motion to Consolidate Cases for Preliminary Hearing and Trial, filed herein on October 17, 2012.

1. Mr. Sisney has **no objection** to the captioned case being consolidated with Case No. CF-2012-3841 for the limited purpose of preliminary hearing. If a preliminary hearing occurs, it appears that the evidence between the two cases will be similar and perhaps identical.

2. At the current time, however, it is premature to consolidate the cases for purposes of trial.

3. Under Oklahoma law, "[i]f it *appears* that a defendant . . . is prejudiced by joinder of . . . defendants in an indictment . . . or by such joinder for trial together, the court *shall* . . . grant a severance of defendants or provide whatever other relief justice requires." 22 *Okla. Stat.* § 439 (emphasis added).

4. Likewise, where significant prejudice results from the joinder of defendants for trial, such joinder is a violation of the Due Process Clause. *See Bean*

*v. Calderon*, 163 F.3d 1073, 1084 (9th Cir. 1998) (“Consolidation of the relatively weak Fox case with the compelling Schatz charges in a single trial violated Bean's right to due process by leading the jury to infer criminal propensity.”); *see also United States v. Lane*, 474 U.S. 438, 446 n.8 (1986); *Neill v. State*, 1992 OK CR 12, ¶ 20, 827 P.2d 884, 888 (“The failure to grant the severance denied the Appellants the right to a fair trial.”).

5. At this early point in the litigation, it is premature to determine whether Mr. Sisney and Windstream Corporation would be prejudiced by joinder for trial. This week, Mr. Sisney has, for the first time, received the transcripts of grand-jury testimony (of 23 witnesses) which compromises many hundreds of pages. Mr. Sisney has not yet received the grand jury exhibits, nor any other discovery from the State.

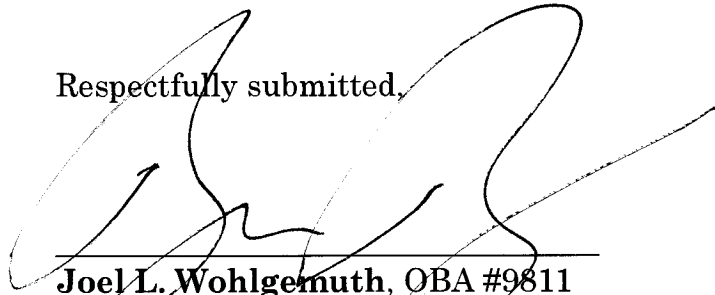
6. Until Mr. Sisney receives those materials (some of which will not be produced until after any preliminary hearing and after any district court arraignment), he cannot determine his defenses, in full, and whether such defenses are inconsistent with Windstream Corporation's defenses or vice versa.

7. It would unequivocally not be in the interests of judicial economy and efficiency to grant joinder, only to later have proceedings on severance motions by either Mr. Sisney, Windstream, or both. Thus, Mr. Sisney respectfully submits that the Court should deny the State's Motion to Consolidate without prejudice or defer consideration of the Motion, as it relates to consolidation for the purposes of trial, until after preliminary hearing and discovery. There will be no prejudice whatsoever to the State from so doing, as its discovery obligations and briefing

obligations will remain the same in either event. The Court should be able to render a decision on the Motion to Consolidate in ample time to allow the parties a reasonable period to prepare for trial.

**WHEREFORE**, Defendant, James David Sisney, does not object to limited consolidation for the purposes of preliminary hearing, but respectfully requests that the State's Motion to Consolidation be denied without prejudice as to the issue of consolidation for trial or at least that the Court's decision on the Motion to Consolidation be deferred until after preliminary hearing and trial.

Respectfully submitted,



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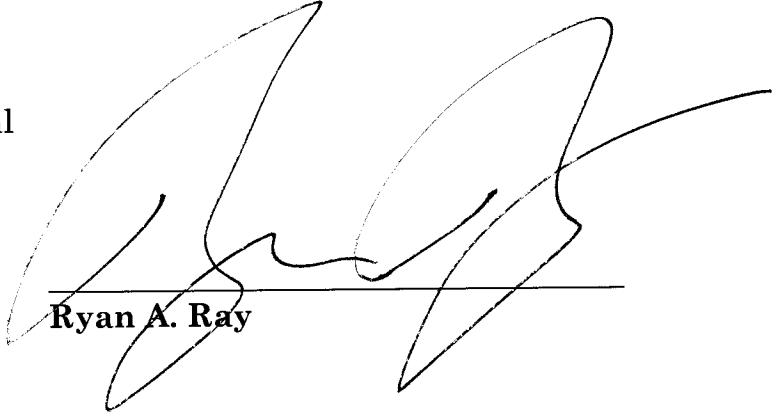
918-584-7846 (facsimile)

**ATTORNEYS FOR DEFENDANT,  
JAMES DAVID SISNEY**

**CERTIFICATE OF SERVICE**

I certify that on the 1<sup>st</sup> day of November, 2012, a true and correct copy of the above and foregoing instrument was served by United States Mail, with proper postage thereon, upon the following:

Charles Rogers, Esq.  
George Burnett, Esq.  
Megan Tilly, Esq.  
Assistant Attorneys General  
Office of the Attorney General  
313 N.E. 21st Street  
Oklahoma City, OK 73105



A handwritten signature in black ink, appearing to read 'Ryan A. Ray', is written over a horizontal line. The signature is stylized and cursive.

**Ryan A. Ray**