

AFFIDAVIT

STATE OF INDIANA, COUNTY OF MARION, SS:

Prosecuting Attorney Ryan Mears swears (affirms) that:

1. The State of Indiana, by Prosecuting Attorney Ryan Mears, submits this Affidavit in support of its Motion for Recusal under I.C. 35-36-5-2 based on comments made by the Honorable Mark Stoner (“the Court”) on March 17, 2023, that demonstrate bias and prejudice against the State.
2. On April 14, 2020, the State filed charges under 49G06-2004-MR-013622 alleging that the Defendant did knowingly or intentionally kill Breann Leath on April 9, 2020.
3. The Probable Cause Affidavit filed under that cause alleged that Breann Leath was a police officer with the Indianapolis Metropolitan Police Department on April 14, 2020.
4. On January 26, 2021, the State filed a Request for a Death Sentence alleging an aggravating circumstance under I.C. 35-50-2-9(b)(6)(A), namely, that Breann Leath was acting in the course of her official duty as a law enforcement officer when she was murdered.
5. On January 23, 2023, Defendant filed a Motion to Dismiss the Request for a Death Sentence (Defendant’s Pleading #69) arguing that the Request should be dismissed because the State cannot prove beyond a reasonable doubt that

I swear (affirm), under penalty of perjury as specified by IC 35-44-2-1, that the foregoing representations are true.

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Defendant knew Breann Leath was a law enforcement officer when he committed the murder.

6. On March 8, 2023, the State filed a response to the Motion to Dismiss arguing that the question of fact related to Defendant's knowledge is an issue for the factfinder at trial and not a proper basis for a Motion to Dismiss under I.C. 35-34-1-8.
7. A hearing on the Motion to Dismiss was held on March 17, 2023.
8. The State became aware of this Court's bias or prejudice against the State through comments the Court made during the March 17, 2023, hearing.
9. The State could not have discovered the Court's bias or prejudice by exercising due diligence prior to March 17, 2023. (see Criminal Rule of Procedure 12(D)(2)).
10. The Court raised, sua sponte, an ethical issue that had not been argued by

Defendant:

I have concerns that if the State of Indiana is not able to prevail in good faith that the defendant had actual knowledge that the officer was a police officer at the time that he fired the shots, I am concerned about, uh, a prosecutor with that knowledge using in any way the death penalty as a plea bargaining leverage as to whether or not that complies (inaudible) with the rules of professional responsibility 3.8. (Trans. p. 13 l. 21 – p. 14 l. 5).

11. The State indicated to the Court that it intends to present the issue of Defendant's knowledge with regards to the alleged aggravator to the jury at trial, to which the Court responded:

You may never get to that point, on a death penalty issue if I don't have it now. I am telling you that in my role in dealing with super due process, that I intend to deal with this issue now. Particularly if it is a violation of ethics. Because if the court believes that there isn't sufficient information to do that, the court would ~, one ~, have to consider removing the death penalty charge, dismissing

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death penalty qualified counsel. And also potentially sending the record over to the board of commissioners in terms of judicial qualifications and professional responsibility. (Trans. p. 17 l. 15 – p. 18 l. 2).

12. The Court further noted with respect to possible plea negotiations:

I believe that you cannot file a death penalty uh, without having sufficient evidence, you cannot file it, uh, without evidence and then use it in any way as a plea negotiation tool. I believe that creates, I believe that creates real ethical problems under 3.8. (Trans. p. 20 l. 8-13).

13. Returning to the issue of possible plea negotiations, the Court stated:

I am not interested at this point in what there have been ~, what negotiations have occurred. I am very concerned about this legal issue, whether or not negotiations could occur where part of the negotiation would be the State would drop death penalty in exchange for ~, that's my concern, that's my ~, that's my concern as to whether or not you could legally, ethically do that if there is an absence of evidence that gets you to a good faith showing to a jury that aggravator exists. That's what I'm concerned about. So, I don't want to do it ~, the rest of it, cause it would only confirm whatever concerns I have. I want to know, just, as an ethical posture, whether or not the government can use the death penalty as a negotiating tool if the government lacks good faith to believe the mitigator, specific evidence on the mitigator exists. (Trans. p. 37 l. 7-22).

14. The State asserts that the Court's sua sponte invocation of potential disciplinary proceedings necessitates a change of judge under Ind. R. Crim. P. 12(B) and I.C. 35-36-5-2(1).

15. The Court's comments demonstrate a bias and prejudice against the State's Request for a Death Sentence such that the State's ability to further prosecute this case has been severely impaired.

16. The undersigned Prosecuting Attorney hereby certifies that he has a good faith belief that the historical facts recited in this Affidavit are true.

I swear (affirm), under penalty of perjury as specified by IC 35-44-2-1, that the foregoing representations are true.

AFFIANT



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