

COBB COUNTY, GA
FILED IN OFFICE

IN THE SUPERIOR COURT OF COBB COUNTY

2018 MAR 20 AM 9:24

STATE OF GEORGIA

DeLessa Keaton
COBB SUPERIOR COURT CLERK

STATE OF GEORGIA

*

*

V.

*

CASE # 100998

*

JOSEPH BROWN,

*

DESMOND OMAR POST, and

*

ROLAUNDA BRIDGET FRIPP

*

**EMERGENCY MOTION TO RESTRICT
EXTRAJUDICIAL COMMUNICATIONS BY COUNSEL**

COMES NOW THE STATE OF GEORGIA and moves this Court to enforce the Georgia Rules of Professional Conduct, including Rule 3.6, and issue a restrictive order on extrajudicial communications and/or extrajudicial release of information in the above-styled case and shows as follows:

1.

Defendants are charged with, among other things, multiple counts of murder and armed robbery in this 2009 double homicide case. Each has previously been convicted of murder and related offenses. This case had been set for retrial after a recusal issue and remains active and pending in the Superior Court of Cobb County.

2.

The above-styled case has received considerable pretrial and post-conviction publicity which may further impact the ability to get a fair and impartial jury at a future trial date.

3.

Even though this remains an active criminal case, counsel for the defense continue to make public extrajudicial statements about this case. These extrajudicial communications span years. See e.g., Exhibits A & B. Some of the statements occurred *during* jury selection this past week.

4.

On March 12, 2018, the above-styled case, having been specially set for trial by this Court, was called in for trial. Jury selection commenced. After four days of jury selection including voir dire of four panels of prospective jurors, juror number 44 revealed that she has known counsel for Defendant Fripp for approximately a decade and that she is Facebook friends with her, facts that were not affirmatively revealed by counsel herself. As revealed by Juror 44, she and counsel for Defendant Fripp came to know each other personally through a support group beginning approximately 10 years ago. Additionally, all jurors, including Juror 44, were asked by the State if they had any knowledge about the case other than what may have been learned in court. Juror 44 failed to affirmatively respond. At one point, Juror 44 became emotional during her voir dire testimony and was sequestered for further questioning. During this subsequent questioning, the State asked Juror 44 if there was any other fact that had not been inquired about or that should be known about her ability to serve. Juror 44 responded in the negative and disclosed nothing further to the State regarding her impartiality.

5.

Counsel for Defendant Post also questioned Juror 44. Counsel suggested and explicitly asked if there was some other reason why she was emotional about the possibility of serving on this jury and if there was any other reason she should not serve. Juror 44 said there were personal matters but would not elaborate.

6.

Counsel for Defendant Fripp also briefly questioned Juror 44 regarding the limited nature of their relationship. Juror 44 was ultimately excused for cause.

7.

Thereafter, Juror 46 was questioned after having also been sequestered from the panel. Unlike Juror 44, Juror 46 revealed that she had extrajudicial knowledge about the case. Juror 46 testified that Juror 44 was the source of her extrajudicial information. Juror 46 went on to disclose that Juror 44 had talked to prospective jurors, including her, about the history of this case. Juror 46 gave details about the case she had learned from prospective Juror 44, including the fact that the case was nine years old, that this case was a retrial, and that the reason for the new trial involved a recusal issue. Juror 46 further revealed that Juror 44 had learned this information from the public Facebook page of counsel for Defendant Fripp. At the time, neither counsel for Defendant Brown, Defendant Fripp, nor Defendant Post revealed to the Court that Juror 44 had obtained knowledge about the case from counsel for the defense, or the extent to which the defense had publicly shared information about the case *before* or *during* trial.

8.

While in court, the State conducted a cursory check of Defendant Fripp's counsel's public Facebook page and confirmed the existence of a public Facebook post by counsel posted *during* the trial of this case and *after* jury selection had commenced. The State disclosed this information to the Court. At this point, it was confirmed by counsel for Defendant Fripp. Thereafter, counsel for Defendant Post was the first party to move for mistrial. The motion was then joined by all codefendants. The Court granted the defense motion for mistrial - without objection from the State based on a tainted jury pool.

9.

After the mistrial was granted, the State learned that counsel for Defendant Post, the first party moving for mistrial, had also participated in the Facebook post *after* the trial had commenced and *during* jury selection. See Exhibit C. Of note, counsel for each defendant in this case are tagged to the public Facebook post, which by default means comments and reactions to the post would generate Facebook notifications to counsel. See Exhibit D. Neither counsel for Defendant Fripp nor counsel for Defendant Post revealed to the Court the fact that *both* counsel were involved in the public comments that tainted the jury pool. In fact, it is now being disclosed to the Court for the first time by the State, the State having discovered this fact on its own after the mistrial was granted – and without an opportunity for objection by the State.

10.

Subsequent to the mistrial, and even though public communications by the defense have now further delayed the trial of this case, counsel for Defendants continue to post public statements about the case, some of which are false. See Exhibits E, F, and G, public communications postdating the mistrial. As depicted in Exhibit E, counsel for Defendants Fripp and Post (the parties directly contributing to the mistrial), are celebrating the mistrial they helped create. These continuing acts of misconduct represent an ongoing risk to the fair administration of justice in this case.

11.

Georgia Rule of Professional Conduct Rule 8.4 provides, in pertinent part, as follows:

- (a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:
- (1) violate or attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through acts of another; [or]

* * *

(4) engage in professional conduct involving dishonesty, fraud, deceit, or misrepresentation[.]

12.

Georgia Rule of Professional Conduct Rule 3.3, Candor Towards Tribunal, provides, in pertinent part, as follows:

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

* * *

- (3) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding[.]

13.

Regarding Trial Publicity, Georgia Rule of Professional Conduct Rule 3.6 provides, in pertinent part, as follows:

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a person would reasonably believe to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

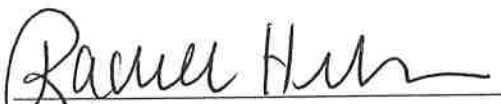
WHEREFORE, the State moves for an emergency hearing on this matter. The State further moves this Court to make additional inquiry about the public Facebook posts and comments. Finally, the State moves this Court to issue a restrictive order enforcing the Georgia Rules of Professional Conduct, including Rule 3.6, and prohibiting further extrajudicial communications and/or extrajudicial release of information on this case by any party outside those authorized by the Rule.

This the 23rd day of March, 2018.

Presented by:



Jesse D. Evans
Chief Assistant District Attorney
Cobb Judicial Circuit



Rachel Hines
Assistant District Attorney
Cobb Judicial Circuit

EXHIBIT "A"



Kim Keheley Frye

November 17, 2015

Happy today that my only murder case client that was tried and received a life sentence had her case reversed today by the Georgia Supreme Court. We requested the Judge recuse himself because of his ties to the DA's office and his defense of those ties. My client will get a new trial. Fripp v. State of Georgia S15A1190. Very grateful to the wonderful appellate attorneys that argued these cases. **Ashleigh Bartkus Merchant, Chris Geel, Mitch Durham** and Ken Kroy. The trial lawyers who helped preserve the issue as well **John Rife** and **Bert Cohen**

#100happydays #27thday #4-0

145

18 Comments

Like

Comment





 Daniel McCall and 144 others



Andrew Fleischman

I can tell you, that's a case that a lot of lawyers are going to be citing. Great investigative work discovering the link, and even better following up.

2y Like Reply



Daniel McCall

<http://www.gasupreme.us/wp-content/uploads/2015/11/s15a1189.pdf>

2y Like Reply



Write a reply...



Write a comment...





Stephanie Mutti

How have you only had 1 murder case get a life sentence? That is amazing!!! & congrats on the reversal. Some of these da-judges & their shenanigans!

2y Like Reply



Scott Semrau

Great work to you all. What an amazing team!

2y Like Reply



Joshua Schiffer

That is fantastic. You are really on a roll Kim! And that team.... pretty tough to beat.

2y Like Reply



Write a comment...





Mike Jacobs

Great work Kim. I'd love for you to take a look at my 2 pending murders and give me your thoughts.

2y Like Reply



John Skelton

Nice job, y'all!

2y Like Reply



Phil Stackhouse

Awesome.

2y Like Reply



Greg Hampikian

Well done to all.

2y Like Reply



Cheryl Carpenter



Write a comment...





John Rife

I was honored to work with my extremely talented co-counsel, Kim Kim Keheley Frye and Bert Cohen on the trial of this case. They fought harder against increasingly difficult conditions as the trial wore on and never backed up or backed down.

Kudos to the Appellate dream team that was assembled to advocate the accused's appeal. They did an amazing job.

It is a case like this that reminds me why we do this unpopular job. Thanks guys!!!!!!

2w · Like · Reply



Write a comment...





appeal. They did an amazing job.

It is a case like this that reminds me why we do this unpopular job. Thanks guys!!!!

2y Like Reply



Ed Wilson

wow. great job everybody

2y Like Reply



Betsy Greene

Well done, Kim!

2y Like Reply



Gwen Gillespie

Proud of you, John and all the others in your team.

2y Like Reply



Write a comment...



EXHIBIT "B"



Kim Keheley Frye checked in to **Cobb County Superior Court** with Mitch Durham and 3 others.

December 15 • Marietta

Double murder motions continue on today...
#eightyears later
#retrial



COURTHOUSE
Cobb County Superior Court
★★★★



Charles Engelberger

Please share why there was a retrial ...i love the story ...and mention names

12w Like Reply



Kim Keheley Frye

Well if you recall Chip, we moved to recuse Judge Reuben Green which he fought and denied our motion...we litigated and tried the case for 2 weeks. Got not guilty verdicts on malice murder counts...it cost the county well over \$100k in attorney fees alone. The GA Supreme Court ruled that Judge Green should not have



Write a comment...





Kim Keheley Frye

Well if you recall Chip, we moved to recuse Judge Reuben Green which he fought and denied our motion...we litigated and tried the case for 2 weeks. Got not guilty verdicts on malice murder counts...it cost the county well over \$100k in attorney fees alone. The GA Supreme Court ruled that Judge Green should not have conducted himself as he did in this trial and reversed the convictions of the defendants that fought for his recusal. We have started over 8 years



Write a comment...





have started over 8 years later and the county is still footing the bill for the new trial and the appeal. This case will probably cost 500k easily.

12w Like Reply



Charles Engelberger

Are the taxpayers of Cobb county footing the bill for this mistake?

12w Like Reply



Kim Keheley Frye

yes they are... again and again.

12w Like Reply



Charles Engelberger



Write a comment...





Charles Engelberger
One mans ego can be
costly

12w Like Reply



Ashleigh Bartkus Merchant
I'm loving this. Y'all rock.

12w Like Reply



Bert Cohen
I wouldn't characterize it
as a mistake. I believe it
was a cynical,
unnecessary, arrogant,
and purposeful political
decision made at the
expense of the county's
taxpayers.

12w Like Reply



Write a comment...





Ed Wilson

Bert Cohen : Tell us how you really feel, Bert Cohen.

12w Like Reply



Bert Cohen



12w Like Reply



Write a reply...



Esther Feuer Panitch

Can you make this post public? I'd like to share.

12w Like Reply



Write a comment...





Esther Feuer Panitch
Can you make this post public? I'd like to share.

12w Like Reply  1



Esther Feuer Panitch
Shared

12w Like Reply  1



Write a reply...



Scotty Roberson
Gotta let it go at some point

12w Like Reply



Ronald Hazzard
Give 'me hell! 😊

12w Like Reply



Scott Halperin



Write a comment...  





12w Like Reply



Esther Feuer Panitch
Shared

12w Like Reply



Write a reply...



Scotty Roberson
Gotta let it go at some point

12w Like Reply



Ronald Hazzard
Give 'me hell! 😊

12w Like Reply



Scott Halperin
It is, was and apparently shall continue to be a shame...

12w Like Reply



Write a comment...



EXHIBIT "C"



Kim Keheley Frye checked in to **Cobb County Courthouse** with **Ashleigh Bartkus Merchant** and **2 others**.

Tuesday at 9:21 AM · Marietta ·

Day 2 of jury selection...



COURTHOUSE
Cobb County Courthouse

★★★★☆

45

13 Comments

Like

Comment



Kim Keheley Frye was eating listening to music at **Eddie's Attic** with **Beth Guerra**.

February 3 · Decatur ·



  Ross Cavitt and 45 others

Jack Diamond

Good Luck. Have Fun. Mass courts are closed today due the 2nd N'oreaster in 2 weeks.

3d Like Reply



E Allen Chandler

Good luck and fight the good fight.

3d Like Reply



Cheryl Champion-White

Go get'em.

3d Like Reply



Tom Jordan

which judge/courtroom?



Write a comment...





Tom Jordan

which judge/courtroom?

3d Like Reply



Ross Cavitt

I'll stop by and cheer you on.

3d Like Reply



Ashleigh Bartkus Merchant

you know the case....

3d Like Reply



Write a reply...



Stan Glasscox

Git 'em!

3d Like Reply



Betsy Greene



Write a comment...





Betsy Greene



3d Like Reply



Esther Feuer Panitch
Good luck!!!

2d Like Reply



Ken Gallon



2d Like Reply



Ashleigh Bartkus Merchant



Write a comment...





GOOD LUCK!!!

2d Like Reply



Ken Gallon



2d Like Reply



Ashleigh Bartkus Merchant
Still no jury... day 3 of picking

2d Like Reply



Melinda Taylor
What courtroom?

1d Like Reply



Kim Keheley Frye
2000

1d Like Reply



Write a reply...



Write a comment...



EXHIBIT "D"

48

2 Comments

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Kim Keheley Frye checked in to Cobb County Courthouse with Mitch Durham and 2 others.

Tuesday at 9:21 AM · Marietta

Day 2 of jury selection...



COURTHOUSE Cobb County Courthouse



Search



Ashleigh Bartku...

110 mutual friends

Add Friend



Bert Cohen

158 mutual friends

Add Friend



EXHIBIT "E"



Photo



ashleighmerchan
Johnnie Maccracken's



38 likes

ashleighmerchan #stillnotguilty
#mistrialmeansnotguiltystill

View 1 comment

16 HOURS AGO



EXHIBIT "F"



Ashleigh Bartkus M...



POSTS



Ashleigh Bartkus Merchant ...

1 hr · Marietta, GA · 👥

What's the absolute best part of trial?
Not feeling guilty when you don't go to
the office the day after.

After 4 LONG days of jury selection,
we had a mistrial due to juror
misconduct. Before we even got a jury.
Insane. But today is gorgeous out and
I have a pool to enjoy instead of sitting
in a courtroom! Cheers 🌂🌂☀️☀️☀️



👍❤️ 28

3 Comments

👍 Like

💬 Comment

Ashleigh Bartkus Merchant ...



EXHIBIT "G"



Ashleigh Bartkus Merchant

It's funny to be discussing this on Facebook given the misconduct but this isn't discussing the facts of the case or case specific so here goes.

One juror was FB friends with one of the lawyers. Not me. That juror looked on the lawyers Facebook page and found out about the case history. Key words recusal and retrial. That would normally not have been a big deal because we questioned this juror privately and she was gone either way. Issue came because she did not tell us that she told at least two full panels about it... thank goodness another juror outed her and told us that she had overheard this in the jury room. Cannot unring that bell...



42 likes · Like Reply More

