

1 IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

2  
3 Dave Ware

Plaintiff

4 versus

Cause No. CI 13-0152

5 Johnny Dupree

Defendant

6  
7 \*\*\*\*\*  
8 TRANSCRIPT OF 7/26/2013 PROCEEDINGS HELD IN CHAMBERS IN  
9 THE ABOVE-STYLED AND NUMBERED CAUSE BEFORE  
10 THE HONORABLE WILLIAM F. COLEMAN, SPECIAL JUDGE  
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19  
20 Reported By:

21 Beverly Temple, CCR #1264  
22 Official Court Reporter  
23 Post Office Box 309  
24 Hattiesburg, MS 39403  
25

COPY

1 (IN OPEN COURT, JULY 26, 2013)  
2 (PRIOR TO THE JURY RETURNING TO THE COURTROOM, THE  
3 FOLLOWING PROCEDURES WERE HELD OUTSIDE OF THEIR  
4 PRESENCE)

5 THE COURT: Go ahead.

6 MR. MALCOLM JONES: Your Honor, before we  
7 go ahead and bring the jury in, we need to go  
8 ahead and have an in chambers conference.  
9 Something has come to my attention overnight  
10 that we need to discuss in chambers, and I  
11 will need the court reporter to be in chambers  
12 for this record.

13 THE COURT: Okay.

14 (THE FOLLOWING PROCEDURES WERE HELD IN CHAMBERS OUTSIDE  
15 THE PRESENCE OF THE JURY)

16 MR. MALCOLM JONES: Your Honor, Malcolm  
17 Jones for the plaintiff. It came to my  
18 attention last night that one of our  
19 witnesses, Arthur Smith, was scheduled to  
20 testify. I have been informed that Major Sims  
21 at the Hattiesburg Police Department ordered  
22 and directed Lieutenant McLemore to run an  
23 NCIC request on my witness, and that is -- and  
24 for an improper reason not allowed by the  
25 federal law NCIC. I've subpoenaed the

1 lieutenant to be here. Originally the chief  
2 of police told him not to talk to us any  
3 further about this. But when he got his  
4 subpoena, he said the police chief told him  
5 that he could talk to us, so I want to make a  
6 record that somebody at the police department  
7 directed an NCIC investigation regarding my  
8 witness. And now my witness is unwilling to  
9 testify that it's been brought to his  
10 attention.

11 THE COURT: You were going to call Arthur  
12 Smith?

13 MR. MALCOLM JONES: Yes, sir, had him on  
14 my witness list.

15 THE COURT: Okay.

16 MR. REED: He was the gentleman that his  
17 absentee vote was missing.

18 THE COURT: I know who he is.

19 MR. MALCOLM JONES: I have the lieutenant  
20 here that can support this. I'd like to go  
21 ahead and have him brought in.

22 THE COURT: Okay.

23 MR. MALCOLM JONES: I should also point  
24 out to you, Judge, that this lieutenant is  
25 going to state under oath that he received

1 information that this request or this  
2 directive to go ahead and run this NCIC came  
3 from someone in the mayor's administration.

4 MR. MARTIN: Your Honor, this is my first  
5 time hearing about this. But now if he has a  
6 witness that's under subpoena to testify, the  
7 witness has to testify. His witness has to  
8 testify. If you're going to call him, he's  
9 still got to testify, and he's got to testify  
10 truthfully.

11 MR. BRANDON JONES: And it should  
12 probably be clarified, we don't represent the  
13 City of Hattiesburg. They have a city  
14 attorney. There's some of this we can't speak  
15 to, but I hear something going beyond a  
16 factual pattern here. Mr. Jones just  
17 described to you that a request was made. He  
18 has no idea why the request was made.

19 MR. MALCOLM JONES: I know exactly why it  
20 was made.

21 MR. BRANDON JONES: So then by all means,  
22 there's the microphone.

23 MR. MALCOLM JONES: I know exactly why it  
24 was.

25 THE COURT: Bring the lieutenant, please.

1 MR. REED: Yes, sir.

2 MR. MALCOLM JONES: Judge, let me just  
3 tell you this. I didn't do this lightly, and  
4 I'm doing this in chambers for a very specific  
5 reason. I do not want to have a mistrial at  
6 this point. I really don't, so that's why I'm  
7 in here doing this. But as an officer of the  
8 court, I had no choice but to go ahead and  
9 bring to your attention something that affects  
10 a witness.

11 THE COURT: I don't know whether you  
12 should bring it to my attention if we're going  
13 to proceed, but it maybe should be brought to  
14 someone else's attention.

15 (WITNESS SWORN BY THE COURT)

16 THE COURT: Have a seat there.

17 MR. MALCOLM JONES: Proceed?

18 THE COURT: Yeah.

19 BRANDON MCLEMORE,

20 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 EXAMINATION BY MR. MALCOLM JONES:

22 Q. State your name.

23 A. Lieutenant Brandon McLemore.

24 Q. Mr. McLemore, where do you work?

25 A. Hattiesburg Police Department.

1           Q.    What is your position with the Hattiesburg  
2 Police Department?

3           A.    Lieutenant over investigations.

4           Q.    How long have you been with the Hattiesburg  
5 Police Department?

6           A.    January 2, 2008.

7                   THE COURT:   How many?

8                   THE WITNESS:  Sir?

9                   THE COURT:   How long have you been there?

10                  THE WITNESS:  January 2, 2008.

11                  THE COURT:   Okay.  Thank you.

12 BY MR. MALCOLM JONES

13           Q.    In your job as the lieutenant with the  
14 Hattiesburg Police Department, do you have  
15 responsibilities as it pertains to the NCIC system?

16           A.    Yes, sir, I'm the TAC officer of the MDT  
17 server or mobile server.

18           Q.    And just so the Judge and the rest of us  
19 understand what a TAC officer is, what are the  
20 responsibilities as it pertains to complying with the  
21 regulations and the laws for improper use of the NCIC  
22 system?

23           A.    Basically the circumstances, the FBI -- they  
24 come down and do -- conduct audits, which everything  
25 that goes through this state or through NCIC through

1 CJIS, I'm responsible for every one that actually runs  
2 that search.

3 Q. And when you say you're responsible for,  
4 you're responsible for making sure that they do it for  
5 one of the purposes that is authorized under the federal  
6 law and the federal regulations?

7 A. Yes, sir.

8 Q. All right. What are -- as it pertains to this  
9 matter, what are the lawful purposes for using NCIC to  
10 do a criminal background check on a person?

11 A. Basically if they're an actual suspect in a  
12 crime or if the person is standing there in front of  
13 you, it's for investigative purposes for criminal  
14 matters. Any type of circumstances that if -- if we had  
15 an employee that was applying for the police department,  
16 under CJIS guidelines, we're required for anyone to come  
17 into that building, we're also required to actually run  
18 a -- conduct that kind of type of check.

19 Q. All right. Now, were you recently directed by  
20 someone in authority over you in the Hattiesburg Police  
21 Department to run a NCIC check on Arthur Smith?

22 A. Yes, sir.

23 Q. Who directed you to do that?

24 A. Major Hardy Sims.

25 Q. What is Major Hardy Sims' position with the

1 Hattiesburg Police Department? How is he in order  
2 coming down from the police chief? Is he second, third,  
3 fourth?

4 A. He's the third in command, major of  
5 operations.

6 Q. All right. What was the reason that Major  
7 Sims gave you for running the NCIC check on Arthur  
8 Smith?

9 A. He advised he was trying to see -- there was a  
10 complaint that came in on an officer, and he was trying  
11 to see if -- what that complaint -- if it was violent or  
12 not, if the circumstances, if the subject had any  
13 knowledge or had been in contact with law enforcement.

14 Q. All right. Who was the person that supposedly  
15 made the complaint against the officer?

16 A. He didn't advise me.

17 Q. All right. After you -- well, let me ask you  
18 this. At the time that you received that information,  
19 did you believe that to be a proper person for running  
20 an NCIC check?

21 A. Yes, sir.

22 Q. All right. Once you ran the NCIC check on  
23 Arthur Smith, what did you discover regarding his  
24 background?

25 A. I discovered that he was a part of this trial.



1 THE COURT: He was what?

2 THE WITNESS: A part of this trial.

3 BY MR. MALCOLM JONES

4 Q. No. I'm asking you on the NCIC check, did you  
5 find that he had any criminal background?

6 A. No, sir. He just had -- the only thing he had  
7 was a citation on his actual record.

8 Q. Citation being what?

9 A. A speeding violation.

10 Q. All right. Now, once you went ahead and got  
11 the information from the NCIC check -- and by the way,  
12 were you directed to do this by Major Sims?

13 A. Yes, sir.

14 Q. All right. Once you got the information back,  
15 did you share it with Major Sims?

16 A. Yes, sir.

17 Q. All right. What did you find out was the real  
18 purpose why the NCIC check was being directed by Major  
19 Sims?

20 A. I discovered through hearsay information that  
21 basically he was a part of this trial.

22 MR. MARTIN: I'm going to object to any  
23 hearsay, Your Honor.

24 THE COURT: Overruled. Go ahead.

25 A. The witness that was in this trial supposedly

1 he'd put in the affidavit, cast a ballot for an absentee  
2 vote. And when he -- his ballot supposedly was missing,  
3 and they were just trying to discover if there was a  
4 reason that that ballot is missing.

5 Q. All right. When --

6 THE COURT: It was his personal ballot?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay.

9 BY MR. MALCOLM JONES

10 Q. When you reported this back to Major Sims, did  
11 Major Sims talk to anyone in your presence that you  
12 overheard as to who directed or requested him to run the  
13 NCIC check?

14 A. Yes, sir.

15 Q. And who directed him to run the NCIC check?

16 A. City attorney, Charles Lawrence.

17 Q. The city --

18 THE COURT: Do what?

19 THE WITNESS: The city attorney.

20 Q. -- attorney. The city attorney for the City  
21 of Hattiesburg?

22 A. Yes, sir.

23 Q. The one that works under Mayor Dupree?

24 A. Yes, sir.

25 Q. All right. Just a moment.

1 (Brief Pause)

2 BY MR. MALCOLM JONES

3 Q. When all this discussion occurred when you  
4 were hearing the conversation with Major Sims, where did  
5 that occur? What location?

6 A. Chief's office.

7 Q. Chief of police?

8 A. Yes, sir.

9 Q. Was the chief present?

10 A. Yes, sir.

11 (Terry Martin Exited)

12 THE COURT: Ask him to come back in,  
13 please.

14 MR. MARTIN: Terry. Terry, come back in.

15 THE COURT: Stay in since you've started.

16 MR. TERRY MARTIN: Oh, no problem.

17 THE COURT: Thank you.

18 Go ahead. I didn't get the last. I  
19 didn't get the last question.

20 MR. MALCOLM JONES: Yes, sir. I asked  
21 him where did this conversation occur when he  
22 found out about the city attorney directing  
23 Major Sims to get this information from the  
24 NCIC.

25 BY MR. MALCOLM JONES

1 Q. I'd ask you where did that occur?

2 A. In chief's office.

3 Q. Chief of police?

4 A. Yes, sir.

5 Q. Was the chief present?

6 A. Yes, sir.

7 Q. Okay. When you related this information to  
8 us, and we -- I asked to go ahead and talk to you  
9 because I wanted to confirm this, were you originally  
10 told not to talk to me?

11 A. Yes, sir.

12 Q. And who told you that?

13 A. That was Major Sims.

14 Q. After you talked to the chief, did the chief  
15 tell you it was okay to talk to me?

16 A. Yes, sir. He told me to tell the truth.

17 Q. All right.

18 MR. MALCOLM JONES: That's what I have.

19 THE COURT: Anybody else have questions?

20 (No Verbal Response)

21 THE COURT: I want to instruct everybody  
22 to -- that this is confidential information at  
23 this point unless you need to use it in the  
24 trial for any reason if it would be admissible  
25 for any reason. Do all of you understand?

1 MR. MARTIN: Yes.

2 MR. REED: Yes, sir.

3 THE COURT: Thank you for coming.

4 THE WITNESS: All right. Thank you, sir.

5 Am I excused?

6 MR. MALCOLM JONES: You are excused.

7 MR. MARTIN: Thank you.

8 MR. MALCOLM JONES: Would you just stay  
9 in the courtroom for just a minute, please?

10 THE WITNESS: Yes.

11 (Witness Exited Chambers)

12 MR. MALCOLM JONES: All right. Your  
13 Honor, I'm concerned at this point that I've  
14 got a witness listed. I think people on the  
15 jury are expecting this witness to testify.  
16 You know, Mr. Arthur Smith -- that he went and  
17 voted and how he voted and all that sort of  
18 thing about his absentee ballot. Now, this  
19 morning, you know, he came, but he's not here.

20 MR. OTT: Just a second, Your Honor.

21 (Brief Pause)

22 MR. MALCOLM JONES: So, you know, I'm  
23 going to try to go ahead and see if -- and let  
24 me just tell you. Yes, he is under subpoena,  
25 but he's under my subpoena -- not your

1 subpoena. And I'm not going to go ahead and  
2 put a man to where he is, you know, in fear of  
3 what's going on. So I understood you to say  
4 that we're not to talk about this unless it's  
5 necessary for proof at trial, so I'm wanting  
6 to know if it's appropriate for me to go ahead  
7 and make a record on this in the courtroom in  
8 front of the jury?

9 THE COURT: I don't see how it would have  
10 any bearings --

11 MR. MALCOLM JONES: Okay.

12 THE COURT: -- frankly. His absence --  
13 it's not the jury's concern at this point  
14 unless you put him on.

15 MR. MALCOLM JONES: Okay.

16 MR. MARTIN: And for the record, it's not  
17 my subpoena or your subpoena. A subpoena is  
18 issued by the Court.

19 MR. MALCOLM JONES: Right.

20 MR. MARTIN: If the Court issued him a  
21 subpoena -- you served him a court subpoena to  
22 be here, he's obligated to be here. If he's  
23 not here, he can be held in contempt of court.

24 MR. MALCOLM JONES: Okay.

25 MR. MARTIN: The Court can be -- there

1           are remedies for that to make folks compel  
2           their --

3           THE COURT: I've got enough on my plate  
4           at the present time. I might do that later.

5           MR. MARTIN: Yes, sir.

6           MR. MALCOLM JONES: Your Honor, we intend  
7           to finish up our case and rest our case.  
8           Seeing that I've got to be here this morning  
9           in court and can't be chasing around trying to  
10          find Mr. Smith, can I go ahead and request  
11          that I can keep the record open in the event  
12          that I need to call him?

13          THE COURT: Yes, sir. All right.

14          MR. MARTIN: No objection.

15          THE COURT: What?

16          MR. MARTIN: No objection.

17          MR. MALCOLM JONES: All right.

18          THE COURT: Are we ready?

19          MR. MALCOLM JONES: Yes, sir.

20          MR. MARTIN: Yes.

21          (PROCEEDINGS IN CHAMBERS CONCLUDED)

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CERTIFICATE OF COURT REPORTER

STATE OF MISSISSIPPI

COUNTY OF FORREST

I, BEVERLY TEMPLE, Official Court Reporter for the Twelfth Circuit Court District of the State of Mississippi, do hereby certify that to the best of my skill and ability, I have reported the proceedings had and done in Cause Number CI 13-0152, *Dave Ware versus Johnny Dupree*, on the docket of the Circuit Court of the 12th Judicial District of Forrest County, Mississippi, and that the above and foregoing pages contain a true, full, and correct transcript of my stenographic notes and audio recordings in said requested proceedings.

I do further certify that my certificate attached heretc applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 6th day of August 2013.



BEVERLY TEMPLE, CCR #1264  
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