SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

January 4, 2018

Scott Mitchell
8333 Corbett Street
Las Vegas, NV 89149

Re: Thomas (Lacy) vs Dist. Ct. (State), Supreme Court Case No. 69074

Dear Mr. Mitchell:

This court is in receipt of your submission regarding Docket No. 69074. We are returning the document, unfiled. The court cannot consider matters outside the record that are from non-parties to a case.

Sincerely,

R. Wunsch
Deputy Clerk

18-00388

Scott S. Mitchell

December 25,

Dear Justices of the Nevada Supreme Court,

The attached affidavit pertains to the case of Lacy Thomas v. State, Case 69074, currently pending before you on the State's Petition for Rehearing. I am the affiant in said affidavit. This court concluded in its September 14, 2017 Opinion that I had committed egregious prosecutorial misconduct by intentionally withholding potentially exculpatory documents from the defense prior to trial. As set forth in the affidavit, this Court relied on, and accepted as true, false assertions by a Las Vegas Metropolitan Police Department detective, Michael Ford, which were testified to in a hearing held without my knowledge after I had retired from the district attorney's office. To this day, I have never been afforded an opportunity to rebut this perjured testimony, having never been subpoenaed nor informed by the defense or prosecution that the evidentiary hearing was on calendar.

Though this court may contend that this affidavit is not part of the record on appeal, and is therefore not cognizable, please remember that I am not a party to this litigation, and it is not my fault that the legal system provided me no opportunity at all to rebut the allegations made against me at hearings and in appellate briefs of which I was unaware. Please also remember that this court never attempted to ascertain whether I was aware of the police detective's allegation against me, or of the defense arguments made for the first time five years after the mistrial, and a year after my retirement from the district attorney's office. Had this court taken this step, it would have had no basis for concluding that I had failed to rebut the testimony of the police detective. As this case stands right now, this court has already based its opinion on conclusions that find no factual basis in the record (the conclusion that I was aware of, and knowingly failed to rebut, Detective Michael Ford's testimony), and thus has *itself* strayed from the record on appeal to reach its decision.

If my affidavit is determined to be not cognizable, it will create the anomalous result of punishing *me* for not providing a proper record on appeal in proceedings I was never aware of, and in which I had no standing to make a proper record in the first place. That punishment will come in the form of a ruined reputation. This affidavit is my only recourse, and I have nothing to lose. For 30 years in the district attorney's office, I cultivated a reputation for integrity, and never during any of those years withheld, or was accused of withholding, exculpatory evidence.

Even if considering this affidavit causes this court to remand the case to district court for an evidentiary hearing of which I would have notice, and in which I could respond to the police detective's testimony, this step is necessary in order to prevent the gross injustice that will result from deciding a case on unsupported factual conclusions which you never bothered to establish as true. I urge you to revisit your factual conclusions in the interests of fairness, truth, and safeguarding the judicial process, so that attorneys' lifelong reputations for integrity cannot be so lightly and negligently ruined.

Sincerely yours,

Scott S. Mitchell

Scott S. Mitchell
Bar No. 346

AFFIDAVIT OF SCOTT S. MITCHELL

Scott S. Mitchell, under penalty of perjury, swears and states as follows:

1. I am a former prosecutor with the Clark County District Attorney's Office, and was one of the two prosecutors who tried the case of State v. Lacy Thomas in 2010.

2. During said trial, the district court judge granted a defense motion for mistrial due to the court's finding that documents potentially exculpatory on two counts of the ten-count indictment had not been timely provided to the defense team before the trial.

3. In the hearing on the defense's motion for mistrial, I stated on the record that I had never seen the said documents, which were corporate records of a company called ACS, and did not know of their existence until that day when the defense attempted to introduce them into evidence. I had objected to the admission of the documents on the grounds that neither I nor my co-counsel had ever seen them before. Everything I stated to the court about those documents was completely true.

4. The defense attorney, Mr. Daniel Albregts, did not allege that I or my co-counsel had ever seen or possessed said documents, and specifically told the court that my co-counsel and I had done nothing wrong. Mr. Albregts specifically accused the two Las Vegas Metropolitan Police Department detectives of withholding the documents, one of whom was Detective Michael Ford. It was revealed at the hearing that the police department had located the documents in question just days earlier in an area separated from the rest of the discovery pertaining to the case. In granting the defense motion, the court specifically stated he found no evidence that the prosecutors had known of the documents' existence, but was granting the mistrial motion because of the police department's failure to timely make the documents available for perusal. Following the hearing, I was informed by Detective Robert Whitely that when the police department had initially received the allegedly exculpatory documents, they had ordered them copied, but thereafter, police personnel had failed to join said copies with the rest of the case discovery which had already been copied earlier. Detective Michael Ford never claimed that day that he had previously given me the documents in question, nor did he ever allege it subsequently until five years later when I was retired and not present.

5. The hearing on the motion for mistrial in 2010 was the last time I ever had any involvement in the case of State v. Lacy Thomas. It was also the last time I was ever aware of any hearings that took place therein. From that point on, the case was handled, I assume, by my office's appellate division, since the defense litigated the sufficiency of the indictment on appeal to the Nevada Supreme Court. During that time, I was assigned to my office's Case Assessment team, where I remained until I retired in July 2014 after thirty years with the Clark County District

Attorney's Office. In fact, the first time I learned of any evidentiary hearings in that case was retroactively, seven (7) years after the mistrial had been granted, when on September 24, 2017, I read an editorial in the Las Vegas Review Journal accusing me of egregious prosecutorial misconduct. The editorial reported that the Nevada Supreme Court had concluded in an opinion, issued a few days earlier, that I had lied to the district court in 2010 when I said I had never seen the documents in question. When I subsequently read the Nevada Supreme Court opinion, I was shocked not only by the knowledge of Detective Ford's perjury, but by the knowledge that the Nevada Supreme Court had accepted said uncorroborated perjury as being true, and had repeatedly disparaged me, by name, in dismissing the case without determining whether I'd ever had any knowledge of Ford's 2015 testimony.

6. At the evidentiary hearing on the defense motion to dismiss the case, which I have since learned from court records occurred in 2015, I had been retired from the district attorney's office for a year. I was not present, due to my having no knowledge the hearing was taking place, and having received no subpoena from the defense or the district attorney requiring my presence. I speculate that the district attorney handling the hearing, Michael Staudaher, who had been my co-counsel at trial, did not anticipate that Michael Ford, who was the submitting detective on the case, would perjure himself in the manner that he did, and therefore, likely saw no reason to subpoena me as a potential rebuttal witness. Mr. Staudaher had been in court with me in 2010 when both defense attorney Albregts and the district court judge had exonerated us of any intentional or negligent wrongdoing, and had instead placed the blame on the police. The police department had not denied responsibility for the oversight at that time, either. Mr. Staudaher had personal knowledge that he and I had provided the defense with every discovery document we knew to exist, well in advance of the trial. However, had I known that that an evidentiary hearing was scheduled on the case, and that Detective Michael Ford was going to testify that he had provided me the documents in question before the case was even presented to the grand jury, I would have driven from home to the courthouse and attended the hearing, without being subpoenaed, and would have insisted that I be called as a witness to clear my name and rectify the record. From reading the Supreme Court's opinion dismissing this case, I have learned that Detective Ford perjured himself at the hearing in claiming he provided me with the documents in question long before trial. I allege said perjury by Ford unequivocally. It is my opinion that Ford made the conscious decision to transfer blame from himself for losing track of the documents and to falsely place it on me instead, knowing I was retired and the defense had not subpoenaed me to testify, seeing I wasn't present, and expecting the prosecutor handling the hearing would be unprepared for the new allegation he was about to make. The district court's conclusion that Ford had provided me with the documents, and that I must have forgotten or been unaware that I had them, was clearly based on the fact that Ford's testimony had gone unrebutted. But if I had been there to testify, I would have accused Ford of being untruthful, even if the accusation itself would provide the defense with new ammunition with which to impeach Ford at trial. My doing so would have made it impossible for the Nevada Supreme Court to issue the opinion it later issued in this case, since that opinion relied so heavily on my failure to rebut Ford's testimony.

7. To this day, I have never withheld exculpatory evidence in this or any other case I have ever handled, nor has anyone ever accused me of doing so, or of any other ethical violation, to the state bar. Nor have I ever lied about my actions to a court. Every conclusion reached by the Nevada Supreme Court in Lacy Thomas v. State, Case No. 69074, wherein I was found to have committed ethical violations or misconduct, is in error as being based on completely false facts.

Scott S. Mitchell

Affiant Scott S. Mitchell, Bar No. 346

State of Nevada
County of Clark
The instrument was acknowledged before me on 12/19/2017 (date) / By Scott S Mitchell

(Signature of notarial officer)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MINA MOHAMADIAN
Appt. No. 17-2042-1
My Appt. Expires Jan. 18, 2021