

STATE OF LOUISIANA ~ PARISH OF OUACHITA

FOURTH JUDICIAL DISTRICT COURT

JEFF MERCER, LLC

FILED: _____

VERSUS NO. 07-3151 CV. SECT. 3

STATE OF LOUISIANA, THRU DEPT.
OF TRANSPORTATION AND
DEVELOPMENT, ET AL

DEPUTY CLERK OF COURT

**MEMORANDUM IN OPPOSITION TO MOTION TO QUASH
AND MOTION TO STAY PRODUCTION FILED BY THE
CADDO PARISH DISTRICT ATTORNEY'S OFFICE
AND CADDO PARISH SHERIFF'S OFFICE**

NOW INTO COURT, through undersigned counsel, comes Plaintiff Jeff Mercer, LLC, who opposes the motion to quash and motion to stay production filed by the Caddo Parish District Attorney and Sheriff's Offices.

A. STATEMENT OF FACTS

Plaintiff Jeff Mercer, LLC filed a petition to nullify the Second Circuit Court of Appeal's decision reversing the unanimous Ouachita Parish jury verdict on the basis of "ill practices." Jeff Mercer of Jeff Mercer, LLC had made public records requests to the Caddo Parish Sheriff's Office related to the Trina Chu investigation from the Caddo Parish Sheriff's Office. According to the report of the Caddo Parish Sheriff's Office (CPSO), a copy of which was attached to the Petition for Nullity as *EXHIBIT A*, the case was administratively closed, as the CPSO was unable to locate any evidence substantial enough to prove the commission of computer tampering or the violation of any other criminal statute by the suspect, Trina Chu. The administrative closing of the criminal case occurred on June 20, 2019. Mercer learned of this case closure and made a public records request to the Caddo Parish Sheriff's Office, which said documents were received on July 24, 2019. These public records produced by the Caddo Parish Sheriff's Office included snapshots of the private G: drive on the computer that was used by Judge Henry Brown's law clerks, including Trina Chu. Six (6) computer files related to the Mercer case were on the G: Drive of Judge Brown's law clerks. These six (6) computer files are as follows:

<u>Name</u>	<u>Date/Time Modified</u>	<u>Type Document</u>	<u>Size</u>
51371ca Mercer - JLB	3/27/17 – 2:18 p.m.	Microsoft Word	33KB
51371ca April 2017	3/29/17 – 11:44 a.m.	Microsoft Word	25KB
51371ca HNB – Mercer v. DOTD	6/5/17 – 12:06 p.m.	Microsoft Word	54KB
51371ca Mercer v. State DOTD, et al Motion	7/24/17 – 3:40 p.m.	Adobe Acrobat	47KB
51371ca Mercer-en banc hearing	7/26/17 – 11:23 a.m.	Adobe Acrobat	304KB
51371ca Mercer v. DOTD – JLB	4/25/18 – 3:52 p.m.	Microsoft Word	60KB

Trina Chu, based on information and belief, was not a clerk at the time of the Mercer hearing. Five of the six documents were created or modified from March 27, 2017 to July 26, 2017, before Trina Chu was ever hired as a Clerk. As indicated in the Caddo Parish Sheriff investigation, Chu was not hired at the Second Circuit until February 2018. Mercer believes that these documents were actually downloaded on the G: Drive by another law clerk of Judge Henry Brown. When these computer records were requested of the Caddo Parish Sheriff's Office ("CPSO"), Mercer was told that he would need a subpoena for those computer records, and once the CPSO received the subpoena, those documents would be provided. Never once was Mercer or his counsel told that the investigation was still ongoing or open. According to the CPSO, the Chu case was closed.

This present lawsuit was instituted on September 29, 2019. A subpoena and subpoena duces tecum were also issued on the same date to the Caddo Parish Sheriff's Office for the above referenced computer records. Now the CPSO and District Attorney for the Parish of Caddo have filed motions to quash the subpoena into this lawsuit asserting that DA's office has now commenced a criminal investigation of Trina Chu. However, that is completely contrary to representations by the Caddo Parish Sheriff's Office that they did not find sufficient evidence of a crime that had been committed, and had administratively closed the file. Now, four (4) months later, suddenly the District Attorney's Office is supposedly commencing a criminal investigation only after the subpoena had been issued by Mercer in this case. Any such "criminal investigation" is highly suspect, especially given the circumstances of this particular case. It appears to be little more than an attempt to cover up important and vital documents under the cloak of a "criminal investigation" of Chu.

B. LEGAL DISCUSSION

1. The computer files sought by Mercer are not part of pending or reasonably anticipated criminal litigation.

Louisiana Revised Statute 44:3 prohibits certain public records requests, including “records pertaining to pending criminal litigation or any criminal litigation which may be reasonably anticipated.” Louisiana Revised Statute 44:3(A)(1). However, the Chu matter is not “pending” or “reasonably anticipated” criminal litigation under the law. “Criminal litigation” requires an adversarial contest begun by formal accusation instituted by the District Attorney’s Office in the name of the State. See *Nix v. Daniel*, 669 So.2d 573, 575 (La. App. 1st Cir. 1996), *writ denied* 681 So.2d 360 (La. 1996). Criminal litigation is “pending” when the formal accusation is instituted either by the district attorney (bill of information) or by grand jury (indictment) *Id* at p. 575. Criminal litigation is “reasonably anticipated” *when the District Attorney concludes that it is probable that an arrest will be made* and formal accusation will be instituted in due course against a potential criminal defendant as the criminal investigation progresses. *Harrison v. Norris*, 569 So. 2d 585, 589 (La. App 2nd Cir. 1990).

The criminal case involving Trina Chu had been officially and administratively closed by the Caddo Parish Sheriff’s Office since early June of 2019, with a finding of no criminal activity. Now, four (4) months later, the CPSO and the District Attorney’s Office, only after a subpoena had been issued by Mercer, are now claiming that they have commenced a criminal investigation of Trina Chu. However, the District Attorney’s Office has not made a formal accusation against Trina Chu by either a bill of information or a grand jury indictment. Further, the DA’s office has not represented that it is probable that an arrest of Chu will be made. This motion to quash and stay is under highly suspicious circumstances given that the case had been administratively closed by the Caddo Parish Sheriff’s Office for almost four (4) months. There was no active criminal investigation of Trina Chu by the DA’s office until **after** this subpoena duces tecum had been issued on September 27, 2019 by Mercer. Additionally, it is also highly questionable if the District Attorney, James E. Stewart, Sr., who is a former Second Circuit Court of Appeal judge for almost 20 years, can even prosecute a case involving matters affecting the Second Circuit Court of Appeal and Judges with whom he served. At a minimum, there is the appearance of impropriety in this situation.

2. The computer files Mercer seeks are not related to any criminal investigation of Chu.

As discussed above, Trina Chu was hired in February 2018 by the Second Circuit Court of Appeal, which occurred several months after the Mercer case had been heard by the Second Circuit

in 2017. The Chu investigation revealed that there were certain computer files on the computer of Judge Brown's law clerks related to the Mercer case that had been downloaded. Mercer is simply trying to get those documents because they have great relevancy for his case in showing that ill practices occurred at the Second Circuit Court of Appeal related to the hearing of his case. All of that activity and the dates of almost all of the relevant computer files predate Chu's employment with the Second Circuit in February 2018. Thus, the computer files that the CPSO and District Attorney are seeking to protect have nothing to do with a criminal investigation of Trina Chu. As a result, there is no justifiable reason for granting the motions to quash and stay. This Honorable Court is to construe liberally the right to access certain public records, with any doubt being resolved in favor of the Mercer's right of access. Mercer has a constitutional right under Article XII Section 3 to examine the public documents.

3. The Caddo Parish Sheriff's Office has waived any privilege in this situation.

The Caddo Parish Sheriff's Office has represented that the case was administratively closed, and they could find no proof of a crime involving Trina Chu. After this, Mercer made a public records request to them, and the received documentation was provided to him on July 24, 2019, including copies of what was on the G: Drive of Judge Brown's law clerk. That public records disclosure revealed that the G: Drive of Judge Brown's law clerk contained documents related to the Mercer case with almost all of them created or modified between March and July 2017. The existence of these documents have already been disclosed to Mercer, and the Caddo Parish Sheriff's Office has waived any confidentiality of the records under the Public Records Act. Code of Evidence Article 502 states that a person upon whom the law confers a privilege against disclosure *waives* the privilege by voluntary or consented disclosure of any significant part of the privilege matter. Here, law enforcement voluntarily complied with Mercer's public records request because the criminal case was closed. Law enforcement's disclosure of the information on Judge Brown's law clerk's G: Drive regarding Mercer has resulted in the waiver of any claimed privilege.

C. CONCLUSION

For the foregoing reasons, the motions to quash and stay filed by the Caddo Parish District Attorney and the Sheriff's Office should be denied, and these officials ordered to comply with the outstanding subpoenas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum in Opposition to Motion to Quash and Motion to Stay Production filed of the Caddo Parish District Attorney's Office has this day been sent to the following counsel of record in this proceeding:

State of Louisiana, Through the
Department of Transportation and Development,
Michael Murphy, John Eason, Barry Lacy
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Rayville, Louisiana, this _____ day of November, 2019.

DAVID P. DOUGHTY