

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
THIRD DIVISION

FILED

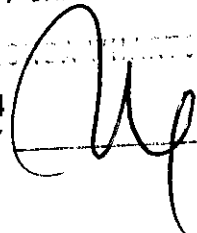
2014 JAN 31 8 11 13

STATE OF ARKANSAS

VS.

CASE NO: 23-CR-12-1044

JACK W. GILLEAN

PLAINTIFF
BY  DEFENDANT

DEFENDANT'S MOTION FOR RECONSIDERATION AND MOTION TO BAR THE PROSECUTION FROM FILING DISCOVERY MATERIAL OF RECORD

Comes now the Defendant, Jack W. Gillean, by and through his counsel, and for his motion states:

1. Jury selection in this case is presently scheduled for March 6, 2014. Pursuant to an Order of this Court, after a hearing on Defendant's motion for change of venue, the Court transferred this case to Van Buren County for trial to mitigate potential pre-trial publicity saturation that could impact the Defendant's right to a fair trial. As a part of Defendant's motion for change of venue, the Defendant cited numerous instances where the prosecution made inflammatory statements, commented on the evidence, and intentionally leaked inflammatory material for the specific purpose of trying the Defendant in the media.

2. Anticipating more of the same, the Defendant filed his motion to place future filings under seal until such time as they presented no danger to his right to a fair trial in front of an unbiased jury. In that motion, the Defendant stressed that the future motions and pleadings would likely contain sensitive and potentially inflammatory material and facts. In addition, the Defendant pointed out that many of the State's responses to motions filed to date were more in the nature of press releases than legal pleadings designed to address the issues. The Defendant used the State's Response to Defendant's Motion to Dismiss as a classic example. Finally, Defendant stressed that even a cursory examination of the vast majority of news accounts in the

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case reveals a bias against the Defendant fueled by inciting and inflammatory remarks to the media by the prosecution. Consequently, the Defendant felt that since the Court had taken extraordinary steps to ensure that he receives a fair trial in front of a fair and impartial jury, future pleadings containing sensitive and inflammatory matters should be kept under seal until such time as they would pose no danger to his right to a fair trial.

3. Of course, the State objected to the motion. In denying the motion, the Court stated (1) he wasn't "a big fan" of sealing pleadings; (2) he was "really reluctant to set a precedent" and (3) he believed "[e]very thing should be done on the record."

4. However, in an attempt to mitigate the chances that motions in limine containing sensitive matters would taint the jury pool, the Court stated that motions in limine could be filed on March 5, 2014, the day before the trial. Defendant assumes that the State would be bound by the same reasoning and will file its motion in limine, if it has one, on March 5, 2014 as well. The Court reasoned that a late filing of that nature would limit the jury pool from seeing anything printed in the paper because they would report for jury duty on March 6, 2014 and would, ostensibly, not be able to see or read anything that might be reported on March 6, 2014.

5. Notwithstanding the Defendant's and the Court's attempts to prevent pretrial publicity from prejudicing Defendant's right to a fair trial, the State, on the other hand, is apparently intent on doing exactly the opposite. An event that occurred immediately prior to the pretrial hearing on October 4, 2013 is evidence of the State's intent. Defendant's counsel, Tim Dudley, approached Chief Deputy Prosecuting Attorney Troy Braswell about the relevancy of certain discovery that suggested casual drug use by the State's star witness, Cameron Stark, some of the prosecution witnesses and perhaps the Defendant. Mr. Braswell agreed that this type of information was not admissible in evidence. Mr. Dudley was satisfied with that response and, as

far as he was concerned, the matter had been put to rest after it was confirmed on the record. Nevertheless, after this Court denied the Defendant's request to seal future motions and responses, Mr. Braswell, to the surprise and shock of everyone in the courtroom, asked the Court to order that the Defendant be tested for drugs later that day. This request came nearly a year after the Defendant was arrested on the charges in this case and without any reasonable basis that the Defendant was currently using illegal substances. Of course, the Court summarily denied the request without comment. However, Mr. Braswell got what he was after. He knew the press was in the courtroom and that his motion would be recorded in the press. His wishes were granted when the next day the Arkansas Democrat Gazette carried a prominent article on the hearing, which included a sub-headline stating "Judge Also Denies Drug-Test Request." (A copy of the article is attached hereto as Exhibit "A" and incorporated herein). A similar article was carried by the Log Cabin Democrat without the sub-headline (A copy of the article is attached hereto as Exhibit "B" and incorporated herein). Finally, a few days later, Chief Deputy Prosecuting Attorney Troy Braswell filed a number of discovery records in the case relating to witnesses receiving immunity and other evidentiary points. The press described the material as providing "a glance at behind-the-scenes work in the case." As far as the Defendant can tell, there was no real justification for this other than to secure another newspaper headline and the Chief Deputy Prosecuting Attorney scored another headline. On October 18, 2013, the Arkansas Democrat Gazette carried a prominent article which read "Records Show Four Given Immunity in Gillean Case." (A copy of the article is attached hereto as Exhibit "C" and incorporated herein). In the article, the press names the University of Central Arkansas students who have been granted immunity in the case as well as audio-recorded interviews with employees and

downloaded text messages containing, among other things, some of the inflammatory material Defendant initially spoke about and which the prosecution agreed was irrelevant.

There is little doubt that the prosecuting attorney and the press, particularly the Arkansas Democrat Gazette, are in lock step. The printed media is going to print anything the prosecution brings to its attention and the Defendant has no doubt, since it has occurred in the past, that the prosecution brought the filings to the paper's attention.

6. The Defendant is grateful for this Court's attempts to protect and preserve his right to a fair and impartial jury. The steps taken to date will do just that if they are not compromised by media reports concerning material that has no business in the courtroom. The Defendant realizes that the Court has strong feelings that all criminal cases should be done on the record and be subject to press access. The Defendant feels the same way. However, the Defendant is not attempting to deny the press and the public that right. What the Defendant is requesting is an Order delaying disclosure of the information past the point at which it could be irreparably harmful. As the United States Supreme Court stated in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306, L.Ed. 570 (1978), a case involving the sealing of the Watergate tapes in the criminal case of Attorney General John Mitchell:

It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.

It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.

435 U.S. 589.

A few years later, the Arkansas Supreme Court, in *Arkansas Television Company and Beasley v. Tedder, Judge*, 281 Ark. 152, 662 S.W. 2d 174 (1983), laid down a test for closing

pretrial hearings which was followed in another case involving a pretrial motion in a criminal case. See, *Arkansas Newspaper, Inc., v. Patterson, Judge, 281 Ark. 213, 662 S.W. 2d 826 (1984)*. The test to close a hearing and seal a motion is satisfied by the movant where:

The proponent demonstrates a substantial probability that (1) irreparable damage to the defendant's fair trial right will result from an open hearing (or open pleading) and (2) alternatives to closure will not adequately protect the right to a fair trial.

Tedder, supra.

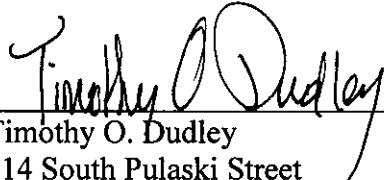
Van Buren County/Clinton is a small community. While the jurors may not have an opportunity to read what is in the pleadings that will be filed on March 5, 2013 until they retire for the day, the Court's attempt to mitigate the potential harm does nothing to prevent the families of the jurors from reading the material as well as the jurors' neighbors and friends. While disclosure may be innocent, the Defendant is confident that inflammatory and prejudicial information will permeate the jury box in this case if it is not kept from the press until the trial is concluded. Moreover, the Court's current Order does nothing to prevent the prosecution from filing more discovery material for the press to spread across the paper in the days leading up to trial. The defense has done everything it can think of to keep the prosecution from trying this case in the media and prejudicing Defendant's right to a fair trial. The Court has been thoughtful in its approach to safeguard Defendant's constitutional rights, but the Court's protections are going to be thwarted if additional steps are not taken.

7. Finally, as for the Court's reluctance to set a precedent, the Defendant can only state that he hopes this case is unprecedented. That is, he hopes the prosecution does not act this way in all cases. For, if they do, a precedent needs to be set.

WHEREFORE, the Defendant prays for an Order of this Court (1) directing the Defendant and the prosecution to file future motions and pleadings under seal until the case has

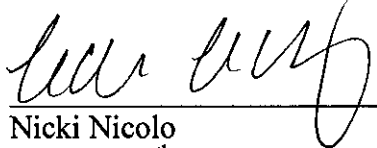
been concluded and (2) barring the prosecution from filing any further discovery material or documentary evidence of record. In addition, the Defendant requests that the Order sealing future pleadings state that the pleadings will become unsealed at the conclusion of the trial so that the press and the public will have full access to the information contained therein.

Respectfully submitted,



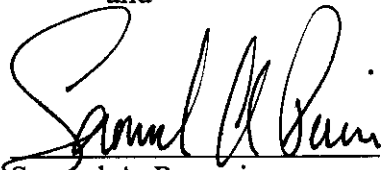
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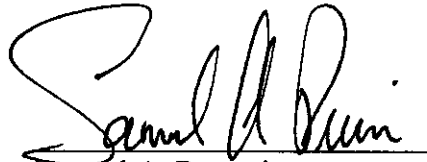
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CERTIFICATE OF SERVICE

I, Samuel A. Perroni, do hereby certify that a true and correct copy of the foregoing has been served upon the Prosecuting Attorney, Cody Hiland, via electronic mail and U.S. Mail on this 31st day of January 2014.


Samuel A. Perroni

ARKANSAS

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Arkansas Democrat  Gazette

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SATURDAY, OCTOBER 13, 2013

Elaborating on the drug-test request, Chief Deputy Prosecuting Attorney Troy Braswell said the terms under which Gillean was
See **GILLEAN**, Page 10B

Gillean

• Continued from Page 1B
released on bond in October 2012 stated that Gillean was not to have firearms, alcohol or drugs without a prescription while awaiting trial.

Defense attorney Timothy Dudley quickly objected to the motion, which had not been filed before the hearing, saying the prosecution had to have "reasonable" grounds for believing the defendant was using drugs. Braswell replied that he had "sufficient" reason. Clawson rejected the motion without explanation.

Gillean did not comment as he sat on a courtroom bench behind his attorneys.

Gillean faces five counts of commercial burglary in addition to charges of fraudulent insurance acts, all felonies, and issuing a false financial statement, a misdemeanor. His March trial will focus on the commercial-burglary charges. The other counts are to be tried later.

Gillean resigned June 15, 2012, after UCA President Tom Courtway asked him about a grandmaster key given to police by Cameron Stark, now a former student. The prosecution contends Gillean gave Stark UCA-issued keys and a key card, knowing that Stark intended to use them to steal tests from professors' offices.



More information on the Web

Jack Gillean case documents
arkansasonline.com/gilleantrial/

Stark has been given limited immunity from the prosecution in exchange for his cooperation.

UCA police have said they learned that Stark had Gillean's keys when they questioned Stark for reportedly stealing prescription drugs on campus.

In court Friday, Dudley told the judge that he wanted to file two motions pertaining to evidence the defense does not believe should be entered during the trial.

Dudley and Braswell said they agreed on the exclusion of the evidence mentioned in one of the matters, and the judge ordered them to file an agreement to that effect. On the second issue, Dudley said he believed information in the motion would be "so prejudicial" that he would withhold it until the trial if the judge would not seal it.

Although all other pretrial motions are due Feb. 1, the judge told Dudley that in lieu of sealing motions, he would give the defense until the end of the business day March 5 to file that motion. Clawson said he will consider it March 6.

Gillean records won't be sealed

Judge also denies drug-test request

DEBRA HALE-SHELTON
ARKANSAS DEMOCRAT-GAZETTE

CONWAY — A judge denied a defense request Friday to seal future motions and responses in the commercial-burglary case of former University of Central Arkansas Chief of Staff Jack Gillean.

Judge Charles E. Clawson Jr. also denied a surprise prosecution motion during a pretrial hearing that Gillean, 56, be tested for drugs later Friday.

In refusing to seal the court documents, Clawson said he wasn't "a big fan" of such action and said he was "really reluctant to set a precedent" with such an order. Rather, the judge said, "Everything should be done on the record."

Clawson also rescheduled the trial, originally set to begin Oct. 28, to March 2014 at the prosecution's request. The defense did not object.

Jury selection will be March 6-7 with the trial starting March 10. Because of pretrial publicity in Faulkner County, the trial will be held in Clinton in Van Buren County Circuit Court.

EXHIBIT

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Trial for former UCA official moved to March 2014

Posted: October 4, 2013 - 1:43pm

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By LEE HOGAN

LOG CABIN STAFF WRITER

The jury trial for former University of Central Arkansas Chief of Staff Jack Gillean, originally scheduled to begin Oct. 28, has been moved to March 2014.

Faulkner County Circuit Judge Ed Clawson ruled in favor of the prosecution's recent motion to have the trial continued, with no objection from the defense, during a hearing Friday afternoon.

Faulkner County Deputy Prosecuting Attorney Troy Braswell filed the motion for continuance Wednesday, citing the prosecution has not received subpoenaed phone records of Gillean and former UCA student Cameron Stark from AT&T.

Gillean, who faces five counts of commercial burglary, one count of fraudulent insurance acts and one misdemeanor charge of issuing a false financial statement, is accused of giving his master key to Stark, who is accused of using the key to break into the university to steal exams and prescription medication.

The investigation and subsequent charges resulted from a complaint that was filed June 11, 2012, by former assistant director of financial aid for scholarships, Andrew Linn, who said medication was taken from a drawer in his office.

In July 2012, UCA police said the master key used to enter the building was issued to Gillean, who reported the key missing several months prior to the break-in.

Gillean resigned June 15, 2012, days after the complaint.

"Due to the allegations in the case and the text records already provided, the cell phone records are necessary to the state's case," the prosecution's motion stated.



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EXHIBIT

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▪ Police: Former chief of staff's key used in break in

Although stating a trial continuance was not something he wanted to think about, Clawson granted the motion saying he would rather have these issues occur now than in the third day of the trial.

Braswell also cited, in the motion and in court Friday, discovery items that have been in the investigator's file, but had not been in the prosecution's possession, as reason for the continuance.

Gillean's trial is now scheduled for March 10-14 in Van Buren County.

At Friday's hearing, Clawson also ruled in favor of the defense's motion to have potential jurors, who have been subject to happenings in Gillean's case, sequestered voir dire.

Upon no objections from the prosecution or defense, Clawson ruled to have jurors interviewed 14 at a time, at which point general questions would be asked. During the general questioning, Clawson said the potential jurors would be asked if they had been subject to any information regarding Gillean or the case, at which point the jurors who answered yes, would be questioned separately.

Clawson scheduled jury selection for March 6-7. Clawson told both sides to have opening statements, and a couple witnesses prepared for March 7, in case jury selection is completed in one day.

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Clawson ruled against the defense's recent motion to have future motions filed under a seal.

Timothy Dudley, one of three Gillean defense attorneys, told the court the motion was filed in regard to a future motion the defense planned on filing, but did not want to result in the contamination of potential jurors if publicized by the press.

"I'm reluctant to start a precedent," Clawson said in court. "It's my belief that all criminal cases should be done on record, and be subject the press having access."

Clawson told the defense he would allow the motion to be filed as late as March 5, and be addressed March 6 before jury selection. The defense would be required to provide a copy of the motion, if filed, to prosecutors at an earlier time, Clawson ruled.

Clawson set a motion deadline of Feb. 1, with a final pretrial hearing at 1 p.m. on Feb. 21.

During Friday's hearing, Braswell requested Gillean be subject to a drug screening, citing conditions of his pretrial release, which forbid the defendant from possessing firearms, alcohol or controlled substances without a prescription.

Dudley objected to the prosecution's request stating for his client to be subjected to a drug screening, there must be grounds to believe drugs had been used.

Braswell countered, stating there was sufficient information from the prosecution's file that would require a screening, however, Clawson ruled against the prosecution's request.

Gillean did not speak during the hearing, and sat in the front row of the courtroom, directly behind his defense attorneys.

(Staff writer Lee Hogan can be reached by email at lee.hogan@thecabin.net or by phone at 505-1246. Follow Lee Hogan on Twitter at https://twitter.com/LCD_LeeHogan. To comment on this and other stories in the Log Cabin, log on to www.thecabin.net. Send us your news at www.thecabin.net/submit)

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Gillean

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four potential witnesses, as well as other evidence.

Gillean's defense, according to his attorneys, will be a "[G]eneral denial of the charges and a challenge to the State to prove the burglary allegations ... beyond a reasonable doubt," his attorneys — Timothy Dudley, Sam Perroni and Nicki Nicolo — wrote in an April document.

The June document filed by Chief Deputy Prosecuting Attorney Troy Braswell also provides a glance at behind-the-scenes work in the case.

For example, it says evidentiary items include audio-recorded interviews with some current and former UCA employees who at least at one time worked in Wingo Hall, where Gillean also worked.

Among those interviewed were Andrew Linn, who worked as a "project specialist" in the president's office during the tenure of former

President Lu Hardin and briefly after Hardin resigned. Linn later worked in financial aid until Courtway fired him in January. UCA records released at the time under the Arkansas Freedom of Information Act showed that university officials determined Linn had acted irresponsibly and unethically when he kept authorizing financial aid for Stark.

Others who have been interviewed include Venita Jenkins, who worked in media relations until she resigned in October 2012 to take a job out of state; and Dot Carden, who was an associate for administration who worked as an assistant to Gillean and now works as a project coordinator in UCA's budget office.

The evidentiary document also lists downloaded text messages from two cellphones that belonged to Stark.

Jury selection for Gillean's case is scheduled for March 6-7 with the trial starting March 10 in Van Buren County Circuit Court in Clinton. Judge Charles Clawson Jr. moved the trial there because of pretrial publicity in Faulkner County.

Records show 4 given immunity in Gillean case

Transcripts listed as evidence

DEBRA HALE-SHELTON
ARKANSAS DEMOCRAT-GAZETTE

CONWAY — Four current or former students at the University of Central Arkansas have been granted immunity from prosecution in the criminal case against former UCA Chief of Staff Jack Gillean, who is charged in a test-cheating scandal, a review of court records shows.

Gillean, a longtime university administrator, abruptly resigned June 15, 2012, after university President Tom

Courtway said he asked Gillean about a grand master key that Gillean had reported lost months ago and that UCA police said a now-former



Gillean

student used in a theft of prescription medicine earlier that month.

Gillean, 56, later was charged with five felony counts of commercial burglary, one felony count of fraudulent insurance acts and one misdemeanor count of issuing a false financial statement. He is awaiting a March trial on the burglary charges. The other counts are to be tried separately.

Authorities contend Gillean gave keys and a key card to that student, Cameron Stark, so that Stark could enter pro-

Gillean has pleaded innocent.

Prosecuting Attorney Cody Hiland has previously said he granted limited immunity to Stark. A review of documents, including one filed by the state in June, shows that the state also has since granted immunity to James Santiago, Jared Santiago and Stephanie Paladino. The Santiagos are brothers.

James Santiago is still a student, and Paladino and Jared Santiago are former students, UCA spokesman Fredricka Sharkey said Thursday.

James Santiago was listed as a biology major from Ward on the UCA dean's list for the spring 2012 semester. Paladino and Stark were each listed on that same dean's list as biology majors from Conway. A fraternity website indicates Jared Santiago also studied biology.

Hiland declined comment Thursday on what evidence Paladino and the Santiagos could offer but said, "Yes," when asked if these four were the only ones granted immunity in this case.

The same document lists "Cell biology tests from Stephanie Paladino" and Stark's UCA transcript as being among the state's evidentiary items.

In a document filed in late September, defense attorneys said they had received from the state eight pages of transcripts relating to those

EXHIBIT

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