

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

WILLIAM RODERICK BRYAN,
Defendant.

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Warrant Nos. _____
Murder; Criminal Attempt to Commit False
Imprisonment

**MOTION TO STRIKE ILLEGAL APPOINTMENT OF JOYETTE HOLMES AS
DISTRICT ATTORNEY PRO TEMPORE**

COMES NOW Defendant William Roderick "Roddie" Bryan, by and through undersigned counsel, pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph I and Article VI, Section VIII, Paragraph I of the Constitution of the State of Georgia, and files this his "Motion to Strike Illegal Appointment of Joyette Holmes as District Attorney Pro Tempore." Defendant shows as follows:

The District Attorney is a constitutional officer, and there is only one such officer in each judicial circuit. Article VI, Section VIII, Paragraph I(a) of the Constitution of the State of Georgia. "It is the duty of the district attorney to represent the state in all criminal cases in the superior court of such district attorney's circuit. Id. at Paragraph I(d). "This includes the investigatory stages of matters preparatory to the seeking of an indictment as well as the pendency of the case." McLaughlin v. Payne, 295 Ga. 609 (2014). Defendant has a constitutional right to have his case prosecuted by the district attorney for the Brunswick Judicial Circuit absent grounds for disqualification of the district attorney. In the event of such disqualification, Defendant has a constitutional right to be prosecuted by the lawfully appointed substitute, the district attorney pro tempore, who steps into the shoes of the district attorney for that circuit. In this case, that individual is Liberty County District Attorney Tom Durden.

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The procedure authorizing the Attorney General of Georgia to substitute one district attorney for another is set forth in O.C.G.A. § 15-18-5. Such appointment is allowed only where a district attorney's office is disqualified by "interest or relationship" to engage in a prosecution. A district attorney may not recuse his himself and his office, and abandon his constitutional duty to the public and the accused, absent the statutorily required "interest or relationship."¹ The Attorney General's power to substitute another prosecutor is triggered only by "notification" from that district attorney of the "interest or relationship." Once the Attorney General appoints a substitute, the appointed district attorney pro tempore steps into the shoes of the lawfully elected district attorney.² At that point, the Attorney General has no further role or involvement in the prosecution of that case. Any further involvement of the Attorney General at that point would constitute an unconstitutional interference with the independent exercise of prosecutorial discretion provided exclusively to the district attorney under the Georgia Constitution. In this case, it is respectfully submitted that the Attorney General of Georgia overstepped his legal authority under Georgia law and improperly usurped control over the prosecution of this matter

¹Georgia law provides various means by which a district attorney may secure the resources necessary to handle a special or unusual criminal case, including a request for assistance from the Prosecuting Attorneys Council of Georgia, Attorney General of Georgia, and the hiring and appointment of additional or special assistant district attorneys under the supervision of the district attorney pro tempore with funds provided by the legislature and/or counties of the circuit within which the case is to be prosecuted.

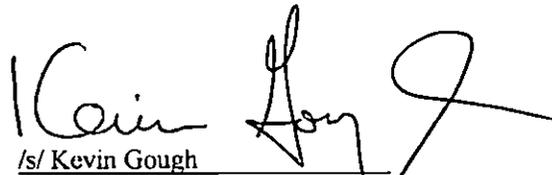
²The appointment of a substitute prosecutor must be made in writing and specify among other things the case or cases to which said appointment applies. A copy of the appointment "shall be filed with the clerk of court" and copied to presiding judge and others including opposing counsel in any action affected by such order. Neither the clerk of court nor undersigned counsel have a copy of the appointment of Joyette Holmes.

The letter from Tom Durden purporting to provide statutory notice of disqualification, a copy of which is attached hereto, does not assert any ground for disqualification. The letter does not reference any "interest or relationship" requiring disqualification. To the contrary, the letter suggests that his office would require additional resources to handle the case which is not grounds for appointment of a substitute district attorney pro tempore under O.C.G.A. § 15-18-5.

It follows, therefore, that Liberty County District Attorney Tom Durden's purported disqualification was a nullity and, therefore, that the substitution of Cobb County District Attorney Joyette Holmes was unauthorized under Georgia law. It follows, therefore, that all prosecutorial actions and decisions taken by Ms. Holmes since her purported appointment are null and void., and due to be set aside.

WHEREFORE, Defendant prays that this matter be set down for an evidentiary hearing and that, upon the completion of said hearing, that the appointment of Joyette Holmes be vacated by this Court and that Tom Durden be notified that he remains district attorney pro tempore in the above-styled case.

So moved, this 4th day of June, 2020.



/s/ Kevin Gough
Kevin Gough
ATTORNEY FOR DEFENDANT
Georgia Bar No. 303210

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CERTIFICATE OF SERVICE

COMES NOW Kevin Gough, attorney for the defendant, and hereby certifies that a copy of the foregoing document(s) have been served upon the District Attorney by email delivery this date.

This 4th day of June, 2020.


Kevin Gough



TOM DURDEN
DISTRICT ATTORNEY

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Honorable Christopher M. Carr
Attorney General of Georgia
40 Capitol Square, SW
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Re: Investigation of the death of Ahmaud Arbery

Dear Chris,

I write to confirm our conversation of last evening. As you will recall, I was appointed District Attorney Pro Tempore on April 13, 2020 to handle this case in the Brunswick Circuit. I received the case file a few days later from Glynn County and my Chief Investigator Jim Gray and I began a review of the matter. My conclusion, as I stated in my press release of May 5, 2020, was that the case was certainly one that needed to be presented to a Grand Jury for consideration of criminal charges once a Grand Jury were available. Almost concurrently with my press release, certain events were put out to the public, not by the State, but by the defense. I believed these actions to be highly improper and began considering criminal charges for the releases and well as the murder charges. After meeting with the GBI, it was my opinion that to protect the integrity of the prosecution, arrests should be made immediately. In a meeting with the GBI last Thursday, May 7, 2020, it was clear that the Bureau was of the same opinion, and I authorized the arrests of Greg and Travis McMichael pursuant to my authority of OCGA 15-18-6.

In the few days since the arrests, I have been made aware that other agencies and offices will be investigating other matters concerning the incident. In other words, the case and surrounding investigations has greatly increased and with that the need for increased resources, technology, and personnel, which are not available in my office to sufficiently to handle the continued workload of the Atlantic Judicial Circuit while, attempting to handle the ever growing case in Brunswick.

I trust that my representation of the State has been a solid contribution to the case in leading to the arrests and preparing the case for Grand Jury. On the other hand, it would be totally inconsistent with my commitment to the goal of effective prosecution of cases in Georgia, to be a drawback due to an issue of resources. To that end, I recuse my office from the above matter, so that the case may continue to be fully and adequately prosecuted.

Of course, our thoughts and prayers continue to be with Mr. Arbery's family along with our steadfast belief that justice will be obtained for them. I believe that my decision today will accelerate the case toward that goal.

In closing, thank you again for allowing me to contribute towards this prosecution and I stand ready to assist your office in the future as we have in the past, when we can help on this or other cases.

Tom Durden
District Attorney
Atlantic Judicial Circuit