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FILED
Chris Daniel
District Clerk
FEB 24 2016
Time: 2:24:16
Harris County, Texas
By _____ Deputy

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CAUSE NO. 1479933

STATE OF TEXAS	§	**IN THE DISTRICT COURT**
	§	
v.	§	**185TH JUDICIAL DISTRICT**
	§	
SHANNON MILES	§	**HARRIS COUNTY, TEXAS**

MOTION TO PRECLUDE SENATOR JOHN WHITMIRE FROM INTERFERING IN THE PROSECUTION OF SHANNON MILES

Defendant Shannon Miles, by counsel, pursuant to his right to be free from cruel and unusual punishment, his right to due process, his right to a fair trial, and other rights safeguarded by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article 1, sections 3, 10, 13, 15, and 19 of the Texas Constitution; Articles 1.05, 1.06, 1.09; and Article 2, section 1 of the Texas Constitution, moves this Court to preclude State Senator John Whitmire from interfering in the above captioned proceeding.

The tremendous politicization of this trial has already jeopardized Mr. Miles's ability to receive a fair trial. Law enforcement and state officials have rushed to judgment about the facts of this case from its inception. Ignoring the presumption of innocence, they began making statements to the media about Mr. Miles's guilt from the time of his arrest, long before completing a full investigation into the case. Now, State Senator Whitmire has inserted himself into these proceedings. As discussed in detail *infra*, his interference with the ordinary provision of justice increases the threat to Mr. Miles's Due Process rights. His actions also violate the Separation of Powers doctrine that forms the backbone of this system of government. In order to ensure that Mr. Miles receives a fair trial, this Court should preclude Senator Whitmire from

interfering and should refuse to send Mr. Miles to a state facility until his name reaches the top of the list for available beds.

ARGUMENT

It is beyond dispute that the criminal trial of an incompetent defendant violates due process. *Medina v. California*, 505 U.S. 437, 453 (1992). It is therefore critical for the state to utilize procedures for evaluating competency that "jealously guard" an incompetent criminal defendant's fundamental right not to stand trial. *Jacob v. New York*, 315 U.S. 752, 752-53 (1942). Those procedures must exist not only during the initial competency determination, but also during any attempts to restore competency. While the State has an interest in restoring competency and bringing a criminal defendant to trial, *Lakey v. Taylor*, 435 S.W.3d 309, 321 (Tex. App. 2014), restoration of competency is sometimes impossible. The state must ensure that doctors have the independence to draw this critical conclusion. If the state does not do this, there is a tremendous risk that the doctor will erroneously conclude that a defendant is competent when in fact, he cannot aid his lawyer or understand the proceedings against him. *Dusky v. United States,* 362 U.S. 402(1960) *(per curiam).* Such a scenario violates due process. *Cooper v. Oklahoma*, 517 U.S. 348, 363-65 (1996).

The intervention of State Senator John Whitmire creates such a risk. It is now clear that Senator Whitmire has a strong interest in seeing Mr. Miles prosecuted quickly. This is dangerous. As part of the Texas legislature, Senator Whitmire holds the purse strings to the funding of state-sponsored mental health facilities.[1] As a result, he has considerable influence over the staff at these facilities – one disagreeable move by the staff, and a department could lose

[1] *See Managing and Funding State Mental Hospitals in Texas: A Legislative Primer* (2009) (available at http://www.lbb.state.tx.us/Documents/Publications/Primer/Managing%20and%20Funding%20State%20Mental%20Hospitals%20in%20Texas%20-%20Legislative%20Primer.pdf).

funding. His interference in this prosecution therefore places a thumb on the scale of finding competency restoration. Particularly if the case is a close one, doctors may feel pressured to conclude that Mr. Miles can assist his legal team when he cannot. This Court should therefore order Mr. Whitmire to refrain from interfering in this prosecution. Mr. Miles should be admitted into Vernon just as every other inmate is – when he is at the top of the list and there is an open bed.

Allowing this legislator to intervene also violates core separation of powers principles. The powers of the Texas Government are divided into three distinct departments, "each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another.' *Fin. Comm'n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013). "[N]o other person . . . being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances . . . expressly permitted." *Id.* (citing Tex. Const. art. II § 1). Texas has sharply enforced the line between the legislative function and that of the judiciary, which includes local prosecuting authorities. *See State v. Rhine*, 297 S.W.3d 301, 317 (Tex. Crim. App. 2009); *Meshell v. State*, 739 S.W.2d 246, 280 (Tex. Crim. App. 1987). The legislature's power is purely plenary – when it interferes with the functions of the judiciary, it acts beyond its constitutionally permissible boundaries. Harold H. Bruff, *Separation of Powers Under the Texas Constitution*, 68 Tex. L. Rev. 1337, 1348 (1990); *Meshell*, 739 S.W.2d at 280. And yet here, the State Senator is interfering in the daily process of this prosecution. That is well beyond the scope of his authority. *Ex parte Barnes*, 959 S.W.2d 313, 320 (Tex. App. 1997). For this reason, too, this Court should wall off the Senator from these proceedings and follow the normal course for transfer of inmates for competency restoration.

I. RELEVANT FACTS

Mr. Miles stands charged with capital murder. On February 9, 2016, after reviewing the reports of both the defense and the state's experts, this Court ruled that Mr. Miles was not competent to stand trial. The next day, State Senator John Whitmire intervened and arranged for Mr. Miles's expedited transfer to a state facility. On February 15, 2016, the Court held a hearing and halted Mr. Miles's transfer, agreeing to revisit the issue in two weeks.

II. ALLOWING SENATOR WHITMIRE TO EXPEDITE THE COMPETENCY RESTORATION PROCESS THREATENS MR. MILES'S DUE PROCESS RIGHTS.

"Competence to stand trial is rudimentary." *Drope v. Missouri,* 420 U.S. 162, 171-172 (1975)." The prohibition against trying an incompetent defendant has deep roots in our common-law tradition. It was well established by the time Hale and Blackstone wrote their famous commentaries. 4 W. Blackstone, Commentaries *24 ("[I]f a man in his sound memory commits a capital offence ... [a]nd if, after he has pleaded, the **1378 prisoner becomes mad, he shall not be tried: for how can he make his defence?"); 1 M. Hale, Pleas of the Crown *34-*35 (same).

The reason for this bar to prosecution is obvious. A criminal defendant "will ordinarily have to decide whether to waive his 'privilege against compulsory self-incrimination,' by taking the witness stand; if the option is available, he may have to decide whether to waive his 'right to trial by jury,' and, in consultation with counsel, he may have to decide whether to waive his 'right to confront [his] accusers.'" *Cooper v. Oklahoma*, 517 U.S. 348, 364 (1996) (citing *Boykin v. Alabama*, 395 U.S. 238, 243 (1969)). He also "is called upon to make a myriad of smaller decisions concerning the course of his defense." *Id.* The importance of these rights and decisions demonstrates that an "erroneous determination of competence threatens a 'fundamental

component of our criminal justice system' – the basic fairness of the trial itself." *Id.* (citing *United States v. Cronic*, 466 U.S. 648, 653 (1984)).

In order to protect this fundamental right, courts must establish careful procedures that ensure that doctors do not erroneously suggest that a defendant is competent. *Cf. Gross v. State*, 41 N.E.3d 1043, 1048-49 (Ind. Ct. App. 2015) (describing how statutory procedures for criminal commitment must balance the various interests at stake: the defendant's liberty versus the state's interest in restoring the accused to competency and protecting the defendant against proceedings he cannot understand). Courts must ensure that, particularly in close cases, doctors feel no pressure to declare a defendant restored. An erroneous conclusion of incompetency when the defendant is malingering causes only a "modest injury to the State," *Cooper*, 517 U.S. at 365. "impos[ing] an expense on the state's treasury and frustrat[ing] that State's interest in the prompt disposition of criminal charges." *Id.* But the opposite result – an erroneous conclusion that the defendant is restored to competency – causes grave and irreparable harm. A defendant will go to trial unable to exercise the rights that form the bedrock of the criminal justice system. *Manning v. State*, 766 S.W.2d 551, 555 (Tex. Crim. App. 1989) (stating that the "issue of competency goes to the fundamental issue of whether a defendant can exercise his constitutional rights.").

The State of Texas has established detailed procedures for handling cases where competency is at issue. Under Texas Code of Criminal Procedure Article 46B.071, once a defendant is found incompetent, the trial judge must either commit the defendant to a mental health facility or residential care facility for treatment aimed at restoring the defendant's competency or release him, subject to the defendant's participation in an out treatment program. *See generally Lakey v. Taylor*, 435 S.W.3d 309, 313 (Tex. App. 2014). When the defendant is transferred to a facility – as Mr. Miles will be – the facility must develop a treatment program for

the defendant, assess and evaluate his chances for competency restoration, and report to the trial court on the defendant's progress. Tex. Code. Crim. Proc. Article 46B.077 (individual treatment program). After the initial commitment period has expired, the defendant returns to the court for another competency determination. If he does not attain competency within the statutory time limit, the court must issue commitment orders under the stricter, extended civil commitment statutes. *Id.* arts. 46B.084(a), (e)-(f).

Because there are not unlimited beds for competency restoration in Texas, the Texas Department of State Health Services created the Forensic Clearinghouse List in 2006. This list governs the allocation of beds available for committed defendants throughout the state hospital system. Defendants are transferred to a state hospital in order of their placement on the list, whenever a bed becomes available. *Lakey*, 435 S.W. at 314. Senator Whitmire, however, has attempted to circumvent this normal procedure and called the state hospital to secure a bed for Mr. Miles.

Senator Whitmire's interference in the process of competency restoration raises serious questions about whether doctors can evaluate Mr. Miles fairly and independently, free from outside influence. In securing a bed for Mr. Miles, he has indicated that he wants to see Mr. Miles brought to trial quickly, at whatever cost. He has sent a strong message that competency must be restored, and quickly. As a powerful political figure, doctors will surely take note and potentially err on the side of finding competency restored.

The risk that doctors will succumb to perceived political pressure is increased given the Senator's role on the Finance Committee, where he plays a key role in the allocation of funds for state hospitals. Staff at Vernon, (where Senator Whitmire has secured a bed), have a strong incentive to please him and to declare Mr. Miles competent with utmost speed. Afraid that their

funding may be cut, the doctors may miss certain signs suggesting Mr. Miles is incompetent. The doctors may place greater emphasis on certain signs of competency than they otherwise might. To be sure, this may occur subconsciously, but the effects are no less problematic.

To ensure that Mr. Miles receives the most accurate diagnosis and is not found competent when he in reality cannot assist his lawyers, this Court should preclude Senator Whitmire from interfering in Mr. Miles's transfer to a state hospital. The stakes are too high to allow a powerful public official to play a role in this extremely delicate situation. Instead, this Court should order Senator Whitmire to refrain from intervening in the transfer process, and should follow the process instead established by the State Department of Health. If it does not, Mr. Miles's due process rights are at risk.

III. THE INTERFERENCE OF A STATE SENATOR IN A JUDICIAL PROCEEDING VIOLATES SEPARATION OF POWERS PRINCIPLES

In addition to infringing on Mr. Miles's Due Process rights, Senator Whitmire's actions violate the Separation of Powers provision found in the Texas Constitution. Under Article II,

> The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Tex. Const. art. II §1. Texas Courts have "aggressively enforce[d] separation of powers between its governmental branches," even more so than "the federal government." *State v. Rhine*, 297 S.W.3d 301, 315 (Tex. Crim. App. 2009).

The role of state legislators is clear: they have law-making power. They establish rules, define crimes, and set policies. Only the legislature can exercise this plenary power. Tex. Const. art. III, § 1. *Boykin v. State,* 818 S.W.2d 782, 785 (Tex.Crim.App.1991); *Copeland v.*

State, 92 Tex.Crim. 554, 244 S.W. 818, 819 (Tex.Crim.App.1922). The judiciary, on the other hand, is the final arbiter on the law's meaning. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). It is also responsible for the orderly administration of justice in the courts. *Cf. Flaska v. Little River Marine Constr. Co.*, 389 F.2d 885, 887 (5th Cir. 1968) (describing courts' inherent authority over the orderly administration of justice); *Gaines v. Com.*, 728 S.W.2d 525, 527 (Ky. 1987) (finding that the legislature's authorization of a child to be a witness without an oath violated separation of powers because it interfered with the "orderly administration of justice."). Neither department of government may exercise the power vested in another department. Daniel C. Brown, *Meshell v. State: The Death of Texas Speedy Trial?*, 41 Baylor L. Rev. 341, 359 (1989).

The Texas Courts have jealously guarded judicial functioning from legislative interference. In *Williams v. State*, 707 S.W.2d 40 (Tex. Crim. App. 1986) (per curiam), the Court found that the legislature exceeded its power in enacting procedural guidelines for bail and bail forfeiture. In *Ex parte Yougblood*, 251 S.W. 509 (Tex. Crim. App. 1923), the Court found that the legislature unconstitutionally delegated contempt power to a committee, rather than the courts. In *Hill County v. Sheppard*, 178 S.W.2d 261 (Tex. 1944), the Court rejected the Legislature's attempt to create a nonconstitutional office of Criminal District Attorney to replace the criminal prosecuting duties of a county attorney. And in *Meshell v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987), the Court found that Texas's Speedy Trial Act interfered too far into the prosecutorial function.

As these cases make clear, the Texas Constitution does not tolerate legislative interference into the functioning of the judiciary. And yet that is just what has occurred here. A State Senator has inserted himself into the competency proceedings of Mr. Miles's trial. He has

utilized his influence as a State Senator to affect how this trial unfolds. This is an extraordinary action, and it is one that he has no authority to perform. There can be no doubt that his actions fall within the judicial sphere. This Court should preclude Senator Whitmire from intervening in the process by which Mr. Miles is sent for competency restoration.

CONCLUSION

For the reasons stated above, the defense respectfully requests that this Court delay Mr. Miles's transfer to a state facility, and treat him as every other criminal defendant is treated in this process.

Respectfully submitted

ANTHONY [illegible]SO
TBA #: 15336800
1730 Lyric Centre
440 Louisiana
Houston, Texas 77002
(713) 225-4444

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing **MOTION TO PRECLUDE SENATOR JOHN WHITMIRE FROM INTERFERING IN THE PROSECUTION OF SHANNON MILES** was delivered to the District Attorney's Office, by hand, on the ____ day of February, 2016.

Ms. Marcy McCorvey
Harris County Assistant District Attorney
Harris County District Attorney
1201 Franklin
Houston, Texas 77002

ANTHONY OSSO