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A DA Cleared Him. But a Fox Rothschild Partner May Still Be Under Bribery Investigation by State AG

In addition to urging the denial of wrongful incarceration compensation to Alfred Dewayne Brown, records that show that Texas Attorney General Ken Paxton's office has launched a criminal investigation into one of Brown's pro bono attorneys, even though two local prosecutors dismissed the allegation as unfounded.

By Angela Morris | October 29, 2019



Alfred Dewayne Brown (left) and his attorney, Brian Stolarz partner in Fox Rothschild in Washington, D.C.

A Fox Rothschild partner, who's worked 12 years pro bono for a wrongfully convicted black man in Texas, found himself in the crosshairs of Houston police, who sought to make him the subject of a criminal inquiry.

Brian Stolarz of Washington, D.C., who won habeas corpus relief that freed Alfred Dewayne Brown from death row, was the target of a criminal complaint by the Houston Police Officers' Union. That complaint came shortly after the union also urged Texas politicians to deny compensation for Brown's wrongful incarceration on charges he murdered a Houston police officer.

Texas Lawyer has obtained records that show that Ray Hunt, the police union's past president, on June 12 emailed a criminal complaint to the Texas Attorney General Ken Paxton and Polk County's district attorney. The complaint alleged that Stolarz promised to pay \$2,000 to a co-defendant in Brown's criminal case to entice that inmate to change his previous statement that Brown was at the crime scene.

Polk County Criminal District Attorney Lee Hon has dismissed Hunt's complaint without filing charges.

But Marc Rylander, a spokesman for Paxton, declined to comment when asked if the office is still investigating the allegation.

‘Helpful to Harris County’

Texas Lawyer obtained an email that shows that a criminal investigator in Texas Attorney General Ken Paxton’s office had inside knowledge—and worked to derail—a separate civil lawsuit Alfred Dewayne Brown filed against Harris County over his wrongful conviction.

The records show the office worked to leak information from Paxton to the media to harm Brown’s suit against two municipalities and other defendants.

Neither the state of Texas, nor its attorney general’s office, is involved in Brown’s lawsuit against Harris County, the city of Houston and individual police officers.

But on Aug. 23, Sgt. Chris Smyth of the attorney general’s criminal investigations division

“I am pleading with your office to investigate at minimum unethical and possibly illegal activities by the defense team of Alfred Dewayne Brown,” Hunt wrote in the complaint. “Time is of the essence as the Harris County District Attorney recently declared Alfred Brown ‘actually innocent’ and Brown has applied for \$2 million from the state of Texas for a wrongful conviction.”

Read the email

emailed the comptroller's open-records attorney. He asked whether the comptroller had given another open-records requester access to a June 17 letter that Paxton had written to Texas Comptroller Glenn Hegar. Paxton's letter opposed compensation for Brown, who was wrongfully incarcerated for 12 years for a conviction of murdering a police officer, Charles Clark.

Smyth wrote in the email that releasing Paxton's letter was "time sensitive."

**Read the emails
(https://drive.google.com/file/d/1nOEdOY-vtUCDeM_LewU00G-jWqtZEm9b/view?usp=sharing)**

"There is a scheduled mediation next week in Harris County where the county is looking to settle the lawsuit," Smyth wrote. "If the letter has been made public, it could prove helpful to Harris County."

When asked why Paxton's office wanted to assist Harris County in the civil case with

Brown, Marc Rylander, a spokesman for Paxton, declined to comment.

Fox Rothschild partner Brian Stolarz of Washington, D.C., who represents Brown in the civil suit, noted that the case hasn't settled—it's still ongoing.

Stolarz said he's not surprised to hear about the state's interference in Brown's civil case.

"They got it wrong," he said. "They should realize that, and pursue justice for Officer Clark, and not hold on to bogus theories about Dewayne's guilt."

(<https://drive.google.com/file/d/1NyFAwKZNkqalRkJGzeVn8K9Mn5r8G00c/view?usp=sharing>)

Hunt told Texas Lawyer in an email, "My letters and comments speak for themselves. The victims have never been given fairness by the media."

Stolarz, who declined to comment about the allegation, previously has written that he flat-out rejected the inmate's demands for payment in exchange for testimony.

Dogged allegation

The allegation of the \$2,000 payment has dogged Stolarz.

It survived all the way to a June 17 letter (https://drive.google.com/file/d/1qXlIPvCJITB4svopUAU1e6QBT07p-6c_/view?usp=sharing) that Paxton sent to Texas Comptroller Glenn Hegar.

But the claim surfaced in 2015 from a prison informant.

A Houston police detective had interviewed Elijah Joubert, who's on death row for his role in the 2003 robbery that killed the police officer Charles Clark and a Houston woman. Joubert had initially stated that Brown was at the crime scene but later recanted and said Brown wasn't there.

Joubert suggested he did so in exchange for the promise of payment from Brown's attorneys.

Listen to the recording

(<https://drive.google.com/file/d/1P0N5ZOcjTNwGXLzGbJlvapJ73i8ld2NO/view?usp=sharing>)

On the detective's recording of the interview, Joubert told the detective that Brown's lawyers "played me straight up."

"Brian Stolarz promised to give me \$2,000 for my affidavit," Joubert said. "They were supposed to give it to my sister."

Joubert told the detective that he didn't think his affidavit would work to help Brown.

"I guess I was trying to get something—trying to be slick," he said, adding later that the money never came.

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Former Chief Justice Joins Fight for Ex-Death Row Texas Man

(<https://www.law.com/texaslawyer/2019/10/29/former-chief-justice-fighting-to-get-compensation-for-ex-death-row-texas-man/>)

The interaction between Joubert and Stolarz was recounted much differently in the 2016 book by Stolarz, "Grace and Justice on Death Row: The Race against Time and Texas to Free an Innocent Man."

"He said that he had a nine-year-old daughter, and asked if we would set up a trust fund for her. He was a hustler until the end. I said we would do no such thing," wrote Stolarz. "There would be no deals between us at all."

Case closed

Hon, the Polk County prosecutor, told Texas Lawyer that the state Department of Criminal Justice's special prosecution unit, which handles crimes that occur in Texas prisons, investigated the allegation but found no basis to pursue formal charges.

"It's closed," he said.

It's not clear if the Texas attorney general's office is still investigating.

In September, when Texas Lawyer asked for records about Brown in a Texas Public Information Act request, the office argued

(<https://drive.google.com/file/d/1iLHyQaYq54MgO53I-o3aPZI76N0tyoyq/view?usp=sharing>) that it doesn't have to release them. One of the office's arguments was that some records are part of an ongoing criminal investigation, which is one of the exceptions to disclosure in the Texas open records law.

Meanwhile, the official report by John Raley, a special prosecutor who Harris County District Attorney Kim Ogg appointed to investigate the Brown case, concluded that Joubert is an extremely unreliable witness and that he made the allegation only for his own survival.

"I don't believe for an instant that Brian Stolarz would do anything like this," said Raley, partner in Raley & Bowick in Houston, in an interview. "Joubert has demonstrated repeatedly that he is a liar. He says whatever he thinks he needs to say to get a benefit of some sort from his listener. He has no credibility whatsoever."

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