

IN THE CRIMINAL COURT FOR ROANE COUNTY
AT KINGSTON, TENNESSEE
NINTH JUDICIAL DISTRICT

COPY

STATE OF TENNESSEE, * CASE NO. 2013 CR 197
Appellee, *
v. *
ROY COOK * MOTION TO WITHDRAW ATTORNEY
Appellant. *

April 15, 2016

THE HONORABLE JEFFERY WICKS, PRESIDING JUDGE

APPEARANCES

FOR THE APPELLEE:

Mr. Russell Johnson
District Attorney General
State of Tennessee
Ninth Judicial District
P.O. Box 703
Kingston, Tennessee 37763-0703

Mr. Robert Edwards
Asst. District Attorney General
State of Tennessee
Ninth Judicial District
P.O. Box 703
Kingston, Tennessee 37763-0703

FOR THE APPELLANT:

Alan R. Moore
Attorney at Law
501 Adesa Parkway, Suite B210
Lenoir City, TN 37771

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CRIMINAL COURT FOR ROANE COUNTY
AT KINGSTON, TENNESSEE
NINTH JUDICIAL DISTRICT

STATE OF TENNESSEE, * CASE NO. 2013 CR 197
v. *
ROY COOK. * MOTION TO WITHDRAW ATTORNEY

This cause came on to be heard and was heard on the 15th day of April, 2016, before the Honorable Jeffery Wicks, presiding Judge, holding the Criminal Court for Roane County at Kingston, Tennessee, and the following proceedings were had:

ASST. GENERAL ROBERT EDWARDS: Your Honor, Mr. Moore and I have a matter on today's docket.

This is the Roy Cook case. Mr. Cook is present. It's item 24, 2013 CR 197. We are set for status today.

Your Honor had recently replaced Mr. Hedrick with Mr. Moore, at the insistence of Mr. Cook.

THE COURT: Okay.

1 ASST. GENERAL ROBERT EDWARDS: Mr. Moore
2 is before is before having filed a motion to withdraw as
3 counsel today.

4 THE COURT: What's the basis for your
5 motion?

6 ATTORNEY ALAN MOORE: Your Honor, if it
7 pleases the Court, in my motion I detailed several multiple
8 underlying conflicts, which I presented in that motion, that
9 in my opinion permits me from effectively representing Mr.
10 Cook.

11 Number one, we have material and
12 fundamental disagreement on the defense strategy in this
13 case. I tried to resolve it with Mr. Cook; I've been unable
14 to.

15 Number two, Mr. Cook has acted in direct
16 contravention to the legal advice that I have given him.

17 Number three, taking all of that into
18 account, I do believe that the attorney/client relationship
19 and communication at this point, has been damaged to a point
20 to where it cannot be repaired and I would not be able to
21 effectively represent him at this stage.

22 THE COURT: When did you file that?

23 ATTORNEY ALAN MOORE: (No audible
24 response)

25 THE COURT: When did you file that?

1 ATTORNEY ALAN MOORE: Oh, Wednesday,
2 Your Honor.

3 I apologize.

4 THE COURT: What do you have to say
5 about that Mr. Cook?

6 DEFENDANT ROY COOK: Your Honor, I - Mr.
7 Moore is my third attorney.

8 THE COURT: I understand that. We are
9 going to run out of them.

10 DEFENDANT ROY COOK: Every attorney I've
11 had refused to subpoena or investigate evidence. And it's
12 got to the point because they refused to, evidence has
13 disappeared; evidence that may not be able to get anymore.

14 THE COURT: What has disappeared?

15 DEFENDANT ROY COOK: Email records, you
16 can no longer subpoena because they are over four months
17 old.

18 Phone records.

19 I have evidence right here, dozens of
20 emails between me and Walter Johnson.

21 THE COURT: Walter Johnson is no longer
22 on your case. (Indiscernible - all talking at once) Mr.
23 Moore.

24 DEFENDANT ROY COOK: I know. He was my
25 first attorney.

1 Here's another dozen between me and Mr.
2 Hedrick where I've asked them - Mr. Hedrick served three
3 subpoenas and he put the wrong dates on them and I got
4 (indiscernible) requested the right dates. He never
5 followed up on them. I've got multiple emails here where he
6 said he would follow-up.

7 THE COURT: Mr. Hedrick's no longer your
8 attorney, let's get to Mr. Moore.

9 DEFENDANT ROY COOK: Okay.

10 Mr. Moore is refusing to subpoena a
11 statement from an F. B. I. agent in Knoxville, Tennessee.

12 ATTORNEY ALAN MOORE: And Your Honor, if
13 I may briefly be heard.

14 This is part of the motion that Mr. Cook
15 has filed on this case to dismiss and I was informed that if
16 I did not file it he would. And he would argue it, and I
17 would not. And that is the basis of partly my move to
18 withdraw from the case.

19 I apologize for interrupting.

20 DEFENDANT ROY COOK: The prosecution has
21 taken stuff to conceal information.

22 There was a forensic analysis done of
23 three computers that have never been turned over.

24 The plaintiff, my twin brother turned
25 over his Vonage records, Vonage phone records in an Excel

1 format to the prosecution. They've never turned those over
2 to me.

3 I don't know how I can prepare a defense
4 if there is evidence missing.

5 I've been told that the statement of an
6 F. B. I. - a statement made to an F. B. I. agent, that
7 contradict statements made to the Ninth District Prosecutor
8 are not relevant to my case. And I would like someone to
9 explain to me how that is possible because I don't get it.

10 I tracked the F. B. I. agent down, they
11 didn't. The way I tracked him down, I finally got the
12 Vonage records that have been concealed and there's
13 also - when I reveal the existence of the F. B. I. agent to
14 Josh Hedrick, my second attorney, we agreed that we would
15 not disclose that to the prosecution. But on a November
16 16th, hearing where Judge Eblen ordered the prosecution to
17 turn over the non-redacted emails where there is a name
18 whited out, evidence has been tampered with. Mr. Edwards
19 stood up here and said it didn't matter if the name that was
20 redacted was an F. B. I. agent, or some other law
21 enforcement agency. He didn't say T. B. I. I don't even
22 know where he got law enforcement agency. But the words
23 F. B. I. came out of his mouth and it didn't faze Josh
24 Hedrick one bit.

25 THE COURT: Josh Edwards is no longer

1 your attorney.

2 DEFENDANT ROY COOK: I know.

3 It's my belief and I have evidence here
4 that he divulged confidential information.

5 I originally requested in August of
6 2014, August 15th, of 2014-

7 THE COURT: Let me ask you something.
8 Are you going to represent yourself?

9 DEFENDANT ROY COOK: Sir, I don't have
10 the ability to represent myself.

11 THE COURT: We are running out of
12 attorneys. You've gone through three.

13 DEFENDANT ROY COOK: Well, could you
14 please order the attorney to subpoena pertinent information
15 evidence that would prove me innocent. Order the
16 prosecution to turn over the records. I got proof they have
17 the Vonage records.

18 Statements from Jeff Vittatoe; Vittatoe,
19 I finally got him on the phone August of last year, maybe it
20 was July, and he told me that the only reason that the
21 prosecution was proceeding with this case was because I did
22 an interview with an internet paper called the Post and
23 Email. I got an email from Josh Hedrick to me that confirms
24 that.

25 I would like to get a copy of any email

1 exchange between my attorney and the prosecutor on that.
2 But they botched that subpoena. They put the wrong dates on
3 it.

4 I tried to call EarthLink to get some of
5 those subpoenas - the email records. The
6 EarthLink - whatever they call him, the guy in charge of
7 that, won't speak to me. Josh Hedrick was supposed to call
8 him dozens of times but never did. I would like to know,
9 how am I supposed to have a competent defense if I'm not
10 allowed to subpoena emails and phone records when the only
11 evidence against me is email and phone records?

12 THE COURT: Is that a question or a
13 statement?

14 DEFENDANT ROY COOK: Both.

15 THE COURT: Are you saying you are not
16 receiving discovery?

17 DEFENDANT ROY COOK: Yes, Sir.

18 Lieutenant Dan Snyder did a forensic
19 analysis of the computers.

20 THE COURT: General where are we-

21 DEFENDANT ROY COOK: I got the computers
22 back, I can't access-

23 THE COURT: Just a moment, just a
24 moment, just a moment.

25 Have you turned over all discovery in

1 this?

2 ASST. GENERAL ROBERT EDWARDS: Your
3 Honor, this isn't the first time we've had this
4 conversation. It predates your ascension to the bench.

5 The discovery that I can tell the Court
6 that I dealt with personally is the email that Mr. Cook has
7 alluded to. I've given Mr. Cook, or his attorneys - I give
8 it to his attorneys. I'm not dealing with Mr. Cook while
9 he's represented - even though he continually tries to get
10 me to respond to emails directly to him, and I will not do
11 that.

12 But I've given him everything I have,
13 everything Mr. Vittatoe has, everything the victim in this
14 case, Andrew Cook, tells me he has. I understand that there
15 is a name that will appear in one of these emails
16 (indiscernible - someone coughing) not appear. I have no
17 explanation for that. I don't have an email that has that
18 name. Mr. Cook, Mr. Roy Cook, has everything I have in the
19 context of that email.

20 I'm hearing now about a forensic
21 examination of computers. There were computers that were
22 seized in this matter. They were subsequently returned, it
23 was quite a while before they were returned, no forensic
24 analysis was ever done that the State is aware of. So I
25 don't have anything to turn over with respect to those

1 computers, they were returned.

2 I know of no outstanding discovery that
3 Mr. Cook's entitled to. Frankly, as far as I'm concerned
4 I'm as ready to try this case as I'm ever going to be and
5 I'd like to move forward with it.

6 And the only reason we're going slow is
7 because of this kind of situation that the Court's dealing
8 with this morning.

9 DEFENDANT ROY COOK: May I respond to
10 that, Your Honor?

11 THE COURT: (Indiscernible)

12 DEFENDANT ROY COOK: Here's an evidence
13 log. Nothing goes in, nothing goes out.

14 They seized this merchandise - the
15 computers from me on April 23rd.

16 Description of evidence - and I guess
17 this is written by Jeff Vittatoe, see attached to page. Uh,
18 search warrant, and it says all items highlighted have been
19 released May 21st, 2013, to Lieutenant Dan Snyder for
20 forensic analysis. A month they took the merchandise out of
21 my house and they gave it to Lieutenant Dan Snyder for
22 forensic analysis.

23 I can't get any of my attorneys to speak
24 to Lieutenant Dan Snyder, and he won't speak to me.

25 ATTORNEY ALAN MOORE: And-

1 DEFENDANT ROY COOK: Excuse me.

2 Mr. Moore did suggest one thing. He
3 suggested filing a motion to have you order the prosecution
4 to investigate finally. Well, they had their chance, they
5 hid evidence. It's like - what about the Vonage records,
6 there's plenty of evidence they had it. They doctored it,
7 they've hid it.

8 Why don't you explain to the Judge while
9 you refused to subpoena or call an F. B. I. agent?

10 ATTORNEY ALAN MOORE: And Your Honor, to
11 add to the State's statement that they will not speak to my
12 client while he's represented by Counsel, I had advised him
13 not to attempt to speak to Counsel, he has done so. He has
14 told me that he will continue to do so, Your Honor.

15 I think this is a good example of how
16 far down the communication has gone between my client and I.
17 I'm ordered not to speak on his behalf in a hearing.

18 DEFENDANT ROY COOK: Answer the
19 question, why would you not go interview the F. B. I. agent
20 and get the statement?

21 Why is that not pertinent?

22 I've got an email from Josh Hedrick that
23 said it's not important.

24 THE COURT: Mr. Moore, I will allow you
25 to withdraw.

1 Are you going to be able to hire your
2 own counsel?

3 DEFENDANT ROY COOK: No, Sir, I went out
4 and tried. Everyone I talked to wants anywhere from ten to
5 \$40,000.00. But almost everyone that I spoke to said that
6 there was more than enough reason to file a motion to
7 dismiss. I can't get anyone to do it.

8 THE COURT: Are you going to represent
9 yourself?

10 DEFENDANT ROY COOK: No, Sir, I can't.

11 THE COURT: What do you want me to do?

12 DEFENDANT ROY COOK: I'm not - I can't
13 get them to file a subpoena.

14 THE COURT: What do you want me to do?

15 DEFENDANT ROY COOK: I want you to - if
16 I can find my own attorney, will the State pay for it?

17 I've got them but they're not going to
18 work cheap. And I'm sorry, Your Honor, I didn't start this.
19 I'm entitled to this evidence, I'm entitled to discovery.
20 Nothing was done.

21 THE COURT: What are you saying you
22 don't have?

23 DEFENDANT ROY COOK: I don't have the
24 Vonage call logs that come in an Excel format that Andrew
25 Cook supplied to the prosecution. I don't have all the

1 emails. I don't have the F. B. I. - the statement that
2 Andrew Cook made to the F. B. I. agent where he contradicts
3 himself. I spoke to the F. B. I. agent, he has those
4 records. I don't have that.

5 I don't have the forensic analysis of
6 the computers and God knows what else they've covered up.

7 ASST. GENERAL ROBERT EDWARDS: Your
8 Honor, I guess I should at least point out, nothings been
9 covered up. I've given everything in my file to the
10 different attorneys who have asked for it.

11 I don't think I have any additional
12 records for Vonage that hasn't been seen.

13 Open filed discovery's been done on this
14 at least more than once. The files available for open file
15 discovery now. What I don't have in it, if it's not in the
16 (indiscernible) possession of the State, I can't produce and
17 I'm not required to produce.

18 There again, there's no forensic
19 assessment of these computers that I'm aware of. It's never
20 been done. Nothing was ever produced in these computers
21 that the State intends to offer as evidence. That's why
22 they were returned to Mr. Cook. So that's - that's a dead
23 horse as far as I'm concerned.

24 The Vonage records-

25 THE COURT: Were the attorneys - I mean

1 were the computers returned to you?

2 DEFENDANT ROY COOK: Yes, in December of
3 2014. I can't access to them because they are password
4 protected. And the person who knew the password died in
5 June of 2014.

6 The computers were given over to
7 Lieutenant Dan Snyder for forensic analysis.

8 THE COURT: So you're saying-

9 DEFENDANT ROY COOK: We have to believe
10 is that you turn them over and then they didn't do anything
11 with them. Why would you turn them over if he wasn't going
12 to forensically examine them? And what is missing in those
13 forensic analysis-

14 THE COURT: Whoa, whoa, whoa, whoa, we
15 are getting way off track here.

16 DEFENDANT ROY COOK: Okay.

17 THE COURT: This is about allowing Mr.
18 Moore to withdraw and appointing you another attorney.

19 But let me caution you; okay?

20 You have to cooperate with your
21 attorneys; all right? They're the ones that has been to law
22 school, passed the bar exam. Because you said you can't do
23 that on your own; is that correct?

24 DEFENDANT ROY COOK: Yes, Sir.

25 THE COURT: Okay, that's why we

1 appoint someone to represent you.

2 DEFENDANT ROY COOK: But what if
3 they are corrupt, Your Honor?

4 THE COURT: Who's corrupt?
5 Are you accusing some of the
6 attorneys in this court as being corrupt?

7 DEFENDANT ROY COOK: I have reason
8 to believe they are, yes, Sir.

9 ASST. GENERAL ROBERT EDWARDS: I think
10 that list includes the Public Defender's Office, Mr.
11 Hedrick, Mr. Moore, and myself and anyone who preceded me in
12 this case, Your Honor.

13 DEFENDANT ROY COOK: Why would-

14 THE COURT: Mr. Cook, this is what I'm
15 going to do. I'm going to think about appointing you
16 another attorney.

17 Do we have your address where we can
18 send you the information?

19 DEFENDANT ROY COOK: Yes, Sir.

20 THE COURT: And this-

21 DEFENDANT ROY COOK: Can I turn these
22 emails in?

23 THE COURT: No.

24 I will get in touch with you and send
25 you an order who your new attorney is going to be.

1 But I'm going to caution you, this is
2 probably going to be your last attorney. And if you can't
3 get along with this attorney, then you can represent
4 yourself.

5 DEFENDANT ROY COOK: Your Honor-

6 THE COURT: Do you understand that?

7 DEFENDANT ROY COOK: -it's my belief
8 that the reason that my attorney's will not subpoena the
9 evidence I'm asking them to subpoena is because it will - it
10 will expose the multiple Brady violations and the
11 concealment of evidence. That's why I think they are not
12 doing it.

13 Why would Josh Hedrick - well we can't
14 talk about that now.

15 THE COURT: All right, we will be in
16 touch with you Mr. Cook.

17 DEFENDANT ROY COOK: Can I ask one other
18 question?

19 THE COURT: No, Sir.

20 DEFENDANT ROY COOK: Okay.

21 ASST. GENERAL ROBERT EDWARDS: Do we
22 have any court dates in the future, Your Honor. Perhaps we
23 better make sure we have something on the docket.

24 Mr. Cook, we need to make sure we have
25 another date.

1 THE COURT: We are going to go ahead and
2 set a status date for your attorney.

3 What day do you want to set that for?

4 ASST. GENERAL ROBERT EDWARDS: Maybe
5 toward the end of next term, Your Honor.

6 Dealing with this case appeals to me,
7 and then again it doesn't quite frankly. Maybe we should
8 put it at the early part of the terms so if there's
9 something that has to be done we can get busy doing it.

10 THE COURT: How about - what's our
11 non-jury day the week of the fourth? Do we have one?

12 ASST. GENERAL ROBERT EDWARDS: July 5th.

13 THE COURT: July 5th.

14 Okay, July 5th, Mr. Cook.

15 ASST. GENERAL ROBERT EDWARDS: Thank
16 you, Judge.

17 ATTORNEY ALAN MOORE: Thank you, Your
18 Honor.

19

20

21

22

23

24

25

- - - END OF REQUESTED PROCEEDINGS - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned, Mary Gooch, Official Court Reporter for the Ninth Judicial District of the State of Tennessee, do certify that the foregoing is a true, accurate and complete transcript of the motion to withdraw attorney hearing of the captioned cause, to the best of my knowledge and ability, in the Criminal Court for Roane County on the 15th of April, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party thereto.

Mary Gooch

Mary Gooch

Licensed Court Reporter

LCR #049 Expiration 06/30/2017

10/17/16

Date

COPY

CERTIFICATE OF THE COURT

THIS WAS ALL THE EVIDENCE INTRODUCED AND
PROCEEDINGS HAD RELEVANT TO QUESTIONS RAISED ON THE APPEAL
OF THIS CAUSE.

Entered this the ____ day of October, 2016.

Judge Jeffery Wicks