

PETITION FOR A WRIT OF CERTIORARI - 32

APP 1

CAUSE NO. 18-3417-431

IN THE DISTRICT COURT
431ST JUDICIAL DISTRICT
DENTON COUNTY, TEXAS

PATRICIA ANN BOGAN

Plaintiff

vs

**BOB CASTLEBERRY – MAYOR, CITY OF
DENTON, CITY OF DENTON DISTRICT
ATTORNEY, CITY OF DENTON POLICE DEPT**

Defendant

ORDER OF DISMISSAL

On this day came on to be heard Defendant, City of Denton District Attorney, (hereinafter Denton County DA's Office) Motion to Dismiss with Prejudice, and came Plaintiff, pro se, and Defendant by and through Assistant District Attorney Matt Shovlin. After considering the Motion, it is the

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opinion of the Court that said Motion should be
GRANTED.

IT IS, THEREFORE, ORDERED, ADJUDGED,
AND DECREED that each and every claim of the
Plaintiff against Defendant, Denton County DA's
Office be, and hereby is, dismissed with prejudice as
to re-filing. The Court further holds that the
Plaintiff take nothing by reason of the allegations in
their pleadings in the above-styled and numbered
cause and that judgment be entered in favor of the
Defendant Denton County DA's Office.

Signed this the 20th day of June 2019

Jonathan Bailey

Judge Presiding

*Certified a true and correct copy of the
Record on file in my office. Signed....*

**David Trantham
Denton County District
Clerk**

06/20/2019 illegible-----
Signed **Deputy Clerk**

IN THE
COURT OF APPEALS
SECOND APPELLATE DISTRICT OF TEXAS
At FORTH WORTH

MANDATE

THE STATE OF TEXAS

To the 431st District Court of Denton County,
greetings:

On December 31,2019, the Court of Appeals for
the Second District of Texas affirmed your judgment
in the following case:

Patricia Ann Bogan v. Denton County District
Attorney, Denton County Sheriff's Department, City
of Denton Police Department, and the City of Denton
Mayor's Office, No. 02-19-00264-CV (18-3417-431).

The Court of Appeals entered the following judgment
or order:

This court has considered the record on appeal
in this case and holds that there was no error in the
trial court's judgment. It is ordered that the
judgment of the trial court is affirmed.

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Accordingly, we command you to observe the order of the Court of Appeals.

CONCLUSION

We affirm the trials court's orders dismissing Bogan's claims with prejudice.

/s/ Mike Wallach

Mike Wallach

Justice

Delivered: December 31, 2019

IN THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CIVIL NO.: 4:20-CV-00137-ALM-KPJ

PATRICIA ANN BOGAN

Plaintiff,

v.

DENTON COUNTY DISTRICT ATTORNEY
OFFICE

Defendant,

ORDER

Pending before the Court is Defendant Denton County
District Attorney's Office Motion to Stay Discovery and
Abatement of any Order for Rule 26 Conference Pending
Determination of Their Motion to Dismiss (the "Motion")

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(dkt#11). On April 27, 2020, Defendant filed a Motion to Dismiss (dkt#10). In the Motion, Defendant request that all discover, Rule 26 Conferences, Joint Reports, and Management Conference be stayed pending the resolution of Defendant's Motion to Dismiss. See (dkt#11) at 3. The Motion to Dismiss, notably, asserts that Defendant is a non-jural entity that lacks the capacity to be sued as a matter of law. *See* (dkt#10 at 8).

Upon review, the Motion (dkt#11) is **GRANTED**.

The case is, therefore, stayed in its entirety except as to responsive pleadings related to Defendant's Motion to Dismiss (dkt#10).

**So ORDERED and SIGNED this 29th day of April
2020.**

KIMBERLY C. PRIEST JOHSON

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

CIVIL ACTION NO. 4:20-cv-00137-ALM-KPJ

PATRICIA ANN BOGAN

Plaintiff,

v.

DENTON COUNTY DISTRICT

ATTORNEY OFFICE et al.,

Defendants.

ORDER

Pending before the Court is Defendant **GERALD WAYNE COBB'S** Motion to stay Discovery and Abatement of Any Order for Rule 26 Conference Pending Determination of his Motion to Dismiss (the “Motion”) (dkt#52). The Motion prays that all discovery deadlines in this matter be stayed pending resolution of **Cobb's** Motion to Dismiss (dkt#51), which asserts prosecutorial immunity, qualified immunity, and sovereign immunity under the Eleventh Amendment.

On May 14, 2021, the Court granted a similar motion to stay filed by Defendant Bruce Isaacks (Isaacks”). See dkts#48,49,50. In that Order, the Court ordered “that discovery and Rule 26 conference and scheduling requirements are **STAYED** pending resolution of Isaacks' Motion to Dismiss (dkt#48).” See dkt#50 (emphasis original). It is the Court's intention that all deadlines in this case shall

remain stayed pending the resolution of all motions asserting prosecutorial immunity, qualified immunity and sovereign immunity under the Eleventh Amendment.

Accordingly, the Court finds that Cobb's Motion (dkt#52) is hereby **GRANTED**.

IT IS ORDERED that all discovery and Rule 26 conference and scheduling requirements are **STAYED** pending resolution of all motions asserting prosecutorial immunity, qualified immunity, and sovereign immunity under the Eleventh Amendment, including, but not limited to, Cobb's Motions to Dismiss (Dkt#51).

So ORDERED and SIGNED this 27th day of May 2021.

KIMBERLY C. PRIEST JOHNSON

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

CIVIL ACTION NO. 4:20-CV-00137-ALM-KPJ

PATRICIA ANN BOGAN

Plaintiff,

v

DENTON COUNTY DISTRICT ATTORNEY
OFFICE et al.,

Defendants.

ORDER

Pending before the Court is DEFENDANT
BRUCE ISAACK'S ("Isaacks") Motion to Stay
Discovery and Abatement of Any Order for Rule
26 Conference Pending Determination of his

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Motion to Dismiss (the “Motion to Stay”) (Dkt#49), wherein Isaacks prays that all discovery in this matter be suspended until his pending Motion to Dismiss (Dkt#48) is resolved. Isaacks’ Motion to Dismiss (dkt#48) seeks dismissal based on Eleventh Amendment immunity prosecutorial immunity, and qualified immunity.

Until a “threshold immunity question is resolved, discovery should not be allowed.”

Harlow v. Fitgerald, 457 U.S. 800(1982); see also Criss v. City of Kent, 867F.2d 259, 261 (6th Cir.1988) (“[D]iscovery in litigation against government officials should be halted until the threshold question of immunity is resolved.”).

Eleventh Amendment immunity confers immunity from suit, not merely from liability.

Pennhurst State Sch. & Hosp. v. Halderman,

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465 U.S. 89,100-02 (1984); Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). The U.S. Supreme Court expressly acknowledges the importance of protecting government time and witnesses in the context of immunity from suit. Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009) (“The basic thrust of the qualified-immunity doctrine is to free officials from the concerns of litigation, including ‘avoidance of disruptive discovery.’”).

Upon consideration the Court finds that Isaacks’ Motion to Stay (dkt#49) is hereby **GRANTED.** **IT IS ORDERED** that discovery and Rule 26 conference and scheduling requirements are **STAYED** pending resolution of Isaacks’ Motion to Dismiss (dkt#48).

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**So, ORDERED and SIGNED this 14th
day of May 2021.**

Kimberly C Priest Johnson

UNITED STATE MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

CIVIL ACTION NO. 4:20-CV-00137-ALM-KPJ

PATRICIA ANN BOGAN,

Plaintiff,

v

DENTON COUNTY DISTRICT

ATTORNEY, et al.,

Defendants.

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

Came on for consideration the Report and Recommendation of the United States Magistrate Judge in this action (the "Report") (dkt#60), this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C.636. The following Motions are pending before the Court:

- 1) Defendant Denton County District Attorney Office's Motion to Dismiss Plaintiff's Third Amended Complaint (dkt#36)

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- 2) Defendant Bruce Isaacks' Motion to Dismiss Plaintiff's Third Amended Complaint (dkt#48)
- 3) Defendant Gerald (Jerry) Wayne Cobb's Motion to Dismiss (dkt#51).

In the Report, the Magistrate Judge recommended that the Motions (dkt#36, 48, 51) be granted and Plaintiff's lawsuit be dismissed with prejudice. Plaintiff Patricia Ann Bogan ("Plaintiff") then filed an Objection (dkt#61) to the Report.

The Court has conducted a *de novo* review of the Objection and is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Objection is without merit as to the ultimate findings of the Magistrate Judge. Accordingly, Plaintiff's Objection (dkt#61) is **OVERRULED**, and the Magistrate Judge's Report is **ADOPTED** as the findings and conclusions of the Court.

IT IS THEREFORE ORDERED that the Motions (dkts#36, 48, 51) are GRANTED, and Plaintiff's lawsuit is **DISMISSED WITH PREJUDICE**.

All relief not previously granted is hereby denied.

The Clerk is directed to close this civil action.

IT IS SO ORDERED.

SIGNED this 16th day of March 2022.

AMOS L. MAZZANT

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

**Lyle W. Cayce Clerk
600 Maestri Place
SUITE 115
NEW ORLEANS LA 70130**

August 10, 2022

Memorandum to counsel or parties listed below:

No. 22-40231 Bogan v. Denton County

USDC NO. 4:20-CV-00137

Enclosed is an order entered in this case:

Sincerely,

Lyle W. Cayce, Clerk

By:

Christina C Rachal, Deputy Clerk

Ms. Patricia Ann Bogan

Mr. John Joseph Feldt, Jr.

Mr. David O'Toole

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 22-40231

PATRICIA ANN BOGAN,
Plaintiff – Appellant,

versus

DENTON COUNTY DISTRICT ATTORNEY
OFFICE; GERALD WAYNE COBB; BRUCE
ISAACKS, Defendants – Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
USDC No. 4:20-CV-00137

ORDER:

On July 21, 2022, the clerk provided the appellant 14 days to correct deficiencies in the brief filed on July 18, 2022. The directed corrections were not made. Accordingly, **IT IS ORDERED** that the previously filed brief is stricken because it does not comply with the applicable **Fed. R. App. P.** or **5th Cir. R.**, and the clerk is directed to dismiss the appeal for failure to prosecute under **5th Cir. R. 42.3**.

Edith Brown Clement

United States Circuit Judge

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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

August 29, 2022

MEMORANDUM TO COUNSEL OR PARTIES
LISTED BELOW:

No. 22-40231 *Bogan v. Denton County*
USDC No. 4:20-CV-00137

The Court has denied appellant's motion to reinstate
the appeal.

Sincerely,

Lyle W. Cayce, Clerk

Christine C. Rachal, Deputy Clerk

Ph # 504-310-7651

Cc: Ms. Patricia Ann Bogan

Mr. John Joseph Feldt Jr.

Mr. David O'Toole

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IN THE 114TH JUDICIAL DISTRICT
COURT OF SMITH COUNTY, TEXAS

THE STATE OF TEXAS

vs

EARL STANLEY LYNCH

CASE NO 480-98

FILED JUNE 18, 1981

R BRAD BURGER CLERK 114TH JUD. DIST.
COURT, SMITH COUNTY BY _____ DEPUTY

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, **EARL STANLEY LYNCH**, stands charged by indictment with the offense of aggravated kidnapping, alleged to have been committed on or about the 18th day of April 1980, in Smith County, Texas. The Defendant has pleaded not guilty.

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1.

A person commits the offense of kidnapping if he intentionally or knowingly abducts another person.

If a kidnapping is committed with the intent to inflict bodily injury on the victim, the offense is aggravated kidnapping.

2.

The term "abduct" means to restrain a person with intent to prevent his liberation by secreting him or holding him in a place where is not likely to be found.

The term "restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him.

Restraint is "without consent" if it is accomplished by force, intimidation, or deception.

By the term "bodily injury" means a bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

3.

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

4.

Now if you find from the evidence beyond a reasonable doubt that on or about the 18th day of April 1980. In Smith County, Texas, the Defendant, Earl Stanley Lynch, with intent to inflict bodily injury on Talitha Whitley, did then and there, restrict Talitha Whitley's movements so as to interfere substantially with her liberty by moving her from one place to another or by confining her and with intent to prevent her liberation by secreting or holding her in a place where she was not likely to be found, then you will find the Defendant guilty of aggravated kidnapping.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the Defendant not guilty of aggravated kidnapping and consider whether the Defendant is guilty of false imprisonment.

You are instructed that unless you find beyond a reasonable doubt that at the time of the alleged abduction, if any, the Defendant had the specific intent to inflict bodily injury on Talitha Whitley, you will find the Defendant not guilty of aggravated kidnapping.

5.

Our law provides that a person commits the offense of false imprisonment if he unlawfully and intentionally or knowingly restrains another person.

6.

Now if you find from the evidence beyond a reasonable doubt that on or about the 18th day of April 1980, in Smith County, Texas, the Defendant, EARL STANLEY LYNCH, did then and there intentionally or knowingly, by means of force or intimidation, restrict Talitha Whitley's movements so as to interfere substantially with her liberty by moving her from one place to another or by confining her, then you will find the Defendant guilty of false imprisonment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will find the Defendant not guilty.

If you have found the Defendant guilty beyond a reasonable doubt of the offense of false imprisonment and you further find beyond a reasonable doubt that said Defendant, EARL STANLEY LYNCH, did then and there expose Talitha Whitley to a substantial risk of serious bodily injury by operating his vehicle at a reckless rate of speed so as to expose Talitha Whitley to a risk of serious bodily injury you will so state in your verdict.

A person acts "recklessly", or is "reckless", with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist, or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the standpoint of the person so acting.

Before a person is deemed to be "reckless", there must actually be both a substantial and an unjustifiable risk that the circumstances exist or that the result will occur, and that the person acting was actually aware of such risk and consciously

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disregarded it, and if you have a reasonable doubt as to any of such matters, then you would be bound to answer the question "We do not".

If you do not so find beyond a reasonable doubt or if you have a reasonable doubt thereof, state in your verdict "We do not".

7.

This is a case depending for conviction on circumstantial evidence. In order to warrant a conviction of a crime on circumstantial evidence, each fact necessary to the conclusion sought to be established must be proved by competent evidence beyond a reasonable doubt; all the facts, that is, the facts necessary to the conclusion must be consistent with each other and with the main fact sought to be proved, and the circumstances, taken together, must be of a conclusive nature, leading, on the whole, to a satisfactory conclusion and production, in effect, a reasonable and moral certainty that the accused, and no other person committed the offense charged. But in such cases, it is not sufficient that the circumstances coincide with, account for and therefore render probable the guilt of the defendant. They must exclude, to a moral certainty, every other reasonable hypothesis except the defendant's guilt, and unless they do so beyond a reasonable doubt, you will find the defendant not guilty.

A grand jury indictment is the means whereby a defendant is brought to trial in a felony

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prosecution. It is not evidence of guilt, nor can it be considered by in passing upon the question of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial, and never shifts to the defendant.

All persons are presumed to be innocent, and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. In case you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you, and these instructions, you will find the defendant not guilty. You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions, and you must be governed thereby.

After you retire to the jury room, you should select one of your members as you Foreman. It is the foreman's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate from attached hereto and signing the same as Foreman.

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not

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consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you have retired, you may communicate with this Court in writing through the officer who has you in charge. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any question you may have. After you have reached a unanimous verdict, the Foreman will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Foreman. You may now retire to consider your verdict.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded a defendant; and, in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify; and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

VERDICT

We, the jury, find the Defendant not guilty.

//S// Signature illegible

Foreman

We, the jury, find the Defendant guilty of aggravated kidnapping as charged in the indictment.

Foreman

We, the jury, find the Defendant guilty of false imprisonment and: _____

(We do or We do not find the defendant recklessly exposed Talith Whitley to a substantial risk of serious bodily injury.)

INDICTMENT

THE STATE OF TEXAS

Vs

EARL STANLEY LYNCH

CHARGE: THEFT

IN THE 114TH DISTRICT COURT OF SMITH
COUNTY, TEXAS

ARTICLE:31.03 CONTROL #: 8007-186
#480-186

Hunter B. Brush

Criminal District Attorney
Smith County Texas

AMOUNT OF BAIL: \$3500.00

R. Brad Burger
Clerk of the District Court
Smith County, Texas

**IN THE NAME AND BY THE AUTHORITY OF
THE STATE OF TEXAS:**

THE GRAND JURORS, duly selected, organized, sworn and impaneled as such for the County of Smith, State of Texas, at the May – August Term, 1980, of the 114th Judicial District Court for said County, a quorum thereof being present, upon their oaths present in and to said Court that on or about the 23rd day May, 1980, and anterior to the presentment of this Indictment in the County and State aforesaid **EARL STANLEY LYNCH** did then and there unlawfully, intentionally, and knowingly appropriate property, to-wit: One 1976 Granada automobile of the value of more than Two Hundred and No/100 (\$200.00) Dollars and less than Ten Thousand and No/100 (10000.00) Dollars without the effective consent of **J.R. SHELTON** the owner thereof, and with intent to deprive said owner of said property;

**AGAINST THE PEACE AND DIGNITY OF THE
STATE.**

Bernard H Ward JR.

Foreman of the Grand Jury

FILED JULY 24, 1980, BY DEPUTY

