

# BLUMENFIELD & SHEREFF, LLP

Attorneys at Law

A Limited Liability Partnership



1001 West Glen Oaks Lane, Suite 110  
Mequon, Wisconsin 53092  
(262) 241-3400  
Fax: (262) 241-3403  
www.cbcslaw.com

Charles S. Blumenfield♦\*  
blumenfield@cbcslaw.com

♦Court Commissioner

\*Also admitted in New York  
Certified Civil Trial Advocate

July 17, 2014

**VIA E-MAIL**

Attorney Timothy E. Hawks  
Hawks Quindel SC  
222 East Erie Street – Suite 210  
P.O. Box 442  
Milwaukee WI 53201-0442

Re: James D. Adams

Dear Tim:

Attached please find a copy of the letter I received today from District Attorney Robert D. Zapf, indicating no criminal prosecution is warranted. Also attached is a copy of the statement given by Jeremy Ryan.

Please call if you have any questions.

Very truly yours,

**BLUMENFIELD & SHEREFF, LLP**

By: \_\_\_\_\_

Charles S. Blumenfield

CSB:jll

Attachments

cc: James D. Adams (via e-mail; w/attachments)  
Jeremy R. Ryan (via e-mail; w/attachments)

Dictated but not read.



# COUNTY OF KENOSHA DISTRICT ATTORNEY

**Robert D. Zapf**

District Attorney

912 - 56th Street, Molinaro Building  
Kenosha, Wisconsin 53140**Assistant D.A.**

Patrick J. Anderson

Kelly A. Birschbach

Tracey L. Braun

Andrew J. Burgoyne

Rosamaria I. Delgado

Angelina Gabriele

Mary M. Hart

James S. Kraus

Jessica L. Krejcarek

Carli A. McNeill

Jennifer A. Phan

Erica M. Reinke

Tricia J. Riley

Emily K. Trigg

Jason R. Zapf

**Michael D. Graveley**

Deputy District Attorney

(262) 653-2400

Victim Witness (262) 653-2408

Fax (262) 653-2783 – 2<sup>nd</sup> FloorFax (262) 653-2411 – 3<sup>rd</sup> Floor, WestFax (262) 653-2487 – 3<sup>rd</sup> Floor, East**Heather M. Beasy**

Victim Witness Coordinator

**Laura P. Yocum**

Office Manager

**Brian P. Stuht**

Office Investigator

July 15, 2014

**COPY**

Det. Sgt. Randy Myles  
Pleasant Prairie Police Department  
8600 Green Bay Road  
Pleasant Prairie, WI 53158

RECEIVED  
JUL 17 2014

RE: Adams Eavesdropping Referral, PPPD 14-7797

Dear Det. Sgt. Myles:

The purpose of this letter is to notify you that upon review of the information provided to this office and upon our further investigation and follow up, this office has now determined that given the facts and circumstances surrounding this case, criminal prosecution is not warranted and further prosecution is denied.

As you know, we first met to discuss this case on May 5, 2014. ADA Tracey Braun was also present. At first, you strongly believed that any recording by Adams was illegal but upon further discussion, you conceded that under Wisconsin's One-Party Consent Law, a recording of the initial meeting was probably not illegal but felt that the alleged continued recording of the meeting during the "break" or "caucus" was illegal. Because of this rather unusual set of facts presented, this office wanted time to review the case law. You advised that you were going to obtain a search warrant for the cell phone and its contents because the phone had not been seized and you were unsure if any recording had been erased or deleted as directed by the Chief.

You also advised that you were going to do some further checking with other law enforcement agencies regarding their use of mobile devices and recordings. You were advised that upon completion of your investigation, to submit your case to this office for review and possible charging.

On May 28, 2014, you submitted your case to this office for evaluation.

According to your report, you indicate that as a result of our meeting, you "were not offered any legal advice." I respectfully disagree with your comment. If by not agreeing with your initial assessment and wanting to research the issue further means "not giving you legal advice," then you are entitled to your opinion. On the other hand, this office will not merely rush to judgment for the

sake of expediency without getting all of the facts and evidence and then making an informed decision.

In fact, according to your continued investigation, the search of Adams' phone revealed no recording of the meeting, which is consistent with observations made by those in attendance at the meeting that he appeared to have erased or deleted any recordings as directed by the Chief.

It should also be noted that although you interviewed and obtained statements from the City's side of the table, you did not interview Jeremy Ryan, a witness on the other side. This office contacted Ryan, and he provided a statement (a copy of Ryan's statement is attached).

According to Ryan, and confirmed by Adams' attorney, Adams' phone was on the table in plain view of everyone. Adams does not deny recording during the initial meeting. However, he believes he turned the recording device off at the time of the break and had no intent of recording during their absence from the room.

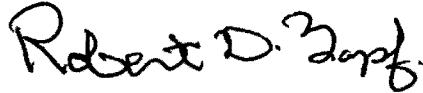
Assuming without deciding whether recording during the "break" or "caucus" constitutes a violation of Section 968.31, Wis. Stats., there remains a factual dispute whether the mobile device was recording during the "break" or "caucus." Unfortunately, because the Chief ordered the recording erased/deleted, the City caused to be destroyed the very evidence or proof necessary to confirm that Adams was recording during the "break" or "caucus." Under the law, defendants have been successful in having evidence suppressed or their cases dismissed on grounds of destruction/spoliation of potentially exculpatory evidence controlled by the government.

Correspondingly, without the recording (the physical evidence), we have no provable case beyond a reasonable doubt that Adams was, in fact, recording during the "break" or "caucus" in violation of Section 968.31, Wis. Stats. Hence, prosecution is denied.

Finally, it is my understanding that the Fire Department has now taken steps to clarify its policy (work rules) regarding use of mobile devices and recordings. So in the end, maybe something good did come from all of this anyway.

Thank you for bringing this matter to our attention.

Sincerely,



Robert D. Zapf  
District Attorney  
State Bar No. 1014578

cc: KFD Chief John Thomsen  
City Attorney Ed Antaramian  
Attorney Charles Blumenfield

RDZ:tab



# COUNTY OF KENOSHA DISTRICT ATTORNEY

## STATEMENT

## COPY

Page 1 of 2

DATE: July 1<sup>st</sup>, 2014

AGENCY CASE NUMBER: PPPD 14-7797

NAME: Jeremy R. Ryan

DOB: 03/21/1982

SEX/ RACE: M/W

ADDRESS: 14004 Evans Ln Sturtevant, WI 53177

TELEPHONE: 262-308-5009

EMPLOYER: Kenosha Fire Department

EMPLOYER TELEPHONE: 262-925-3312

*This statement is being typed for me by Brian Stuht an Investigator with the Kenosha County District Attorney's Office and is a true and accurate account of my statement.*

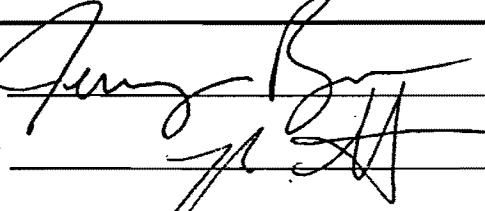
*My name is Jeremy R Ryan. I am employed by the Kenosha Fire Department as a Fire Fighter/ Paramedic. I am also the president of Local 414 of the International Association of Fire Fighters. On April 30th 2014 at approximately 3:00PM I was at the City of Kenosha Administration Building in the Fire Administration section. I was in the First floor Chief's conference room. The purpose was for a step two grievance meeting regarding a training pay issue the union has.*

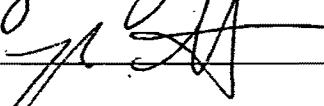
Present in the Meeting were Chief John Thompson, Deputy Chief John Poltrack, Division Chief James Poltrack, Training Chief Johnson, Battalion Chief Wes Bernhardt, Fire Fighter James D. Adams and myself. Adams wasn't scheduled to be at the meeting. Adams was on duty and on assignment and was summoned to the meeting by Batt. Chief Bernhardt. Adams arrived at approximately 3:30 pm.

When JD arrived he wasn't prepared for the meeting so he grabbed a couple napkins to take notes with. I provided JD with a sheet of paper. JD put his phone on the table in front of him also. The phone was also in front of Johnson and myself. I noticed JD's phone had the recording application open and I believe Johnson saw this as well. I had no prior knowledge that JD was going to record the meeting. I made eye contact with Johnson and believe he observed JD's phone with the recording application open as well. Approximately 20-30 minutes into the meeting Batt. Chief Bernhardt asked if we could, "take a quick break". I asked about how long the break would be and if JD and I should take our belongings out of the room with us? Bernhardt replied, "No you can leave it right there." I was closest to the door and immediately turned to get up to leave the room leaving my belongings on the table. I saw JD push back from the table but did not see him actually get up and did not see if he grabbed his phone off the table. When we were in the hallway the door to the conference room was closed but we could see through the window.

JD said to me, "Bernhardt has my phone in his hands." Approximately 30 seconds later, after being in the garage for about a minute, Berhardt opened the conference room door and told us to come back in. The mood in the room was significantly different. Chief Thompson angrily asked JD, "Do you deny recording this meeting?" JD replied, "No." Thompson then said, "You just committed a felony, you will be disciplined pending a formal investigation. I am ordering you to delete that right now." JD appeared to delete the file as ordered. Thompson

said, "This meeting is over." I asked Chief Thomsen about the status of our grievance? Thomsen replied, "The grievance is denied." JD and I left the meeting. I asked JD if he was recording during the break? JD said, "No." *JK*  
EOR

Signed:  Jeremy Ryan Date: 7/1/14

Witness:  Brian Stuht

Cc: Records Bureau / Originating Agency \_\_\_\_\_ / DA File