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A P P E A R A N C E S

FOR THE PLAINTIFF:

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PROCEEDINGS

THE COURT: Stephen Dale Barnes vs. Tulsa County District Attorney's Office, et al, Case No. CV-15-55.

Will Counsel announce their appearances?

And I think we're here on Motion for Summary Judgment filed by the defendants -- the Plaintiff. Sorry.

MR. DUNN: John Dunn for Plaintiff, Stephen Barnes.

MR. GROSE: Justin Grose from the Attorney General's office representing the District Attorney's office.

MR. BENDER: Gerald Bender from the City Attorney's office representing the Tulsa Police Department, Your Honor.

THE COURT: And are you -- are you ready to proceed, Mr. Dunn?

MR. DUNN: Yes, Your Honor, we are.

THE COURT: Could we get a little bit of background for the students perhaps -- sorry to interrupt -- just so they'll know this is --

I think Mr. Ashworth gave a little bit of background. But you might discuss a little bit of the nature of the case and what kind of motion that you're

1 filing.

2 MR. DUNN: I will try, sir.

3 Your Honor, the facts behind this case are,
4 Stephen Dale Barnes is a registered sex offender. He
5 was convicted in Oklahoma County in CF-1998-2410, on
6 December the 17th of 1999.

7 As someone who is a registered sex offender,
8 he is subject to 57 O.S. 582, et sequitur, which is
9 the Oklahoma Sex Offender Registration Act. That act
10 has been changed many times since its enactment. Year
11 after year the legislature changes more and more
12 things about it.

13 Among the things that have changed is, in
14 2003, the legislature enacted 57 O.S. 590, which
15 was --

16 THE COURT: Would you step a little closer to
17 the microphone so they can hear in the back?

18 MR. DUNN: Okay. I'm sorry. Being heard is
19 usually not a problem of mine.

20 In 2003, the legislature enacted its first
21 version of 57 O.S. 590, which prohibits sex offenders
22 from residing within a certain distance of a park.
23 That has become 2,000 feet at the present time.

24 My client presently registers at a legal
25 address and is desirous of moving in with his mother,

1 who resides at 14547 East 12th Place, which is an
2 address that is within 2,000 feet of an undeveloped
3 park within the city limits of Tulsa.

4 They have -- my client has filed this action
5 seeking Declaratory Judgment, in other words, we're
6 asking this court to declare the rights and
7 relationships between the parties, and injunctive
8 relief, in other words, we're asking this court to
9 enter an order telling the defendants what they cannot
10 do to my client pursuant to the Court's order.

11 THE COURT: Nothing has happened yet, but
12 you're -- you're saying in anticipation of him being
13 arrested you want me to declare that unconstitutional?

14 MR. DUNN: To prohibit them from doing it.
15 We believe that it's contrary to statute and the
16 Supreme Court has already answered the question as to
17 constitutionality and retroactive application.

18 After that my client filed a petition in this
19 court. There's been no discovery because there's no
20 real fact that's in dispute. This is almost a pure
21 question of law and therefore we have filed a Motion
22 for Summary Judgment in which we're asking this court
23 to enter an order based upon the facts as they are
24 undisputed.

25 Summary Judgment is appropriate in --

1 Is that sufficient for background?

2 THE COURT: I think so.

3 MR. DUNN: Okay. Summary Judgment is
4 appropriate in this case because there is no dispute
5 of fact and there is very little dispute of law. I
6 believe this is an instance where the judiciary is
7 required to make a decision that the politicians are
8 not willing to make because of their fear of the
9 voting public.

10 The facts are these. Each defendant is a
11 person who is responsible for enforcing the law in the
12 city and county of Tulsa, Oklahoma. The District
13 Attorney, as the chief prosecuting office in the
14 county of Tulsa, the Sheriff who is the
15 constitutionally supreme law enforcement officer, and
16 the City of Tulsa, ex rel, the Tulsa Police
17 Department, who is statutorily the lead agency because
18 they are the most local agency governing the city
19 limits of Tulsa and therefore under statute the ones
20 responsible for sex offender registration within their
21 jurisdiction.

22 The Plaintiff is a registered sex offender.
23 As I said, he became subject to the Act on
24 December 17th, 1999, when he was convicted in Oklahoma
25 County, Case CF-1998-2410.

1 He's presently registered at 1010 North
2 Garnett, which is a legal address for him within the
3 City of Tulsa. He wants to live with his mother at
4 14547 East 12th Place, which is an address that's
5 within 2,000 feet of an undeveloped park.

6 When he explored the possibility of
7 registering, he was told by the officers who are in
8 charge of that, that if he moved he would be in
9 violation of statute. These facts are undisputed.

10 The law is, 57 -- also relatively undisputed,
11 at least as it applies to him. 57 O.S. Section 590
12 was, in fact, enacted in 2003 and it prohibits sex
13 offenders from residing within 2,000 feet of a park.

14 Punitive statutes cannot be applied
15 retroactively and the residency restriction against
16 sex offenders is punitive by nature. The Oklahoma
17 Supreme Court decided that fact -- or that -- that
18 fact in *Starkey vs. Oklahoma Department of*
19 *Corrections, 2013 OK 43.*

20 In that case they explored the Kentucky case
21 and agreed that a residency restriction is akin to
22 banishment, which is a traditional punishment, and
23 therefore a person who -- therefore that cannot be
24 applied retroactively without offending Oklahoma's ex
25 post facto clause.

1 For a person convicted in Oklahoma of an
2 enumerated offense, the controlling provisions of the
3 sex offender registration statute are those that are
4 in effect on the date of the conviction. That was --
5 or that is *Osborne vs. Oklahoma Department of*
6 *Corrections* at 2013 OK 89.

7 At the time my client became subject to the
8 statute, this statute didn't exist. This statute
9 wasn't enacted until four years later.

10 The relief that we are asking this court for:
11 First, we're asking for Declaratory Judgment. In
12 short, what we're asking this court to do is
13 affirmatively state that Section 590 does not apply to
14 Mr. Barnes. There's not a lot of argument about that
15 statement of law.

16 I don't know that in their brief the Attorney
17 General's office has disputed that fact. They've
18 talked about a dichotomy between Federal and State law
19 and they've told you that if you find that, you have
20 to decide that under Oklahoma law and the Oklahoma
21 constitution. Which is fine. The Oklahoma
22 constitution can be more protective of its citizens
23 than the Federal constitution and the Federal law.

24 And, in fact, any law that is argued about
25 sex offender registration and whether or not it is

1 punitive is suspect if it does not come from the State
2 of Oklahoma, the State of Delaware, or one of the
3 other states that have decided that sex offender
4 registration is punishment as opposed to an
5 administrative act. Because an administrative act can
6 be applied retroactively because it is not punitive by
7 nature.

8 So that is a critical distinction. And all
9 of the Federal courts have determined so far that it
10 is administrative and therefore not punitive.

11 THE COURT: What about the *Weems* case that
12 they cite in their response brief? That is Arkansas'
13 residency restriction to non-punitive. You said --

14 MR. DUNN: That's -- Arkansas has determined
15 that sex offender registration is an administrative
16 act and therefore, across the board, is non-punitive.
17 They start from that prospective. Whereas Oklahoma's
18 court has held that ours is punitive and specifically
19 that residency restrictions in Oklahoma are punitive.

20 THE COURT: But I thought you said every
21 Federal case that has decided the case has gone your
22 way. And that's not true; correct?

23 MR. DUNN: No, that's not what I said. If I
24 said that, I misspoke. Every Federal case is on their
25 side that is administrative.

1 There are a handful of states -- Oklahoma was
2 actually No. 2 in the Union.

3 THE COURT: You said they were suspect.

4 MR. DUNN: Suspect.

5 THE COURT: And that's what I was trying to
6 get you to respond to. What do you mean "suspect"?

7 MR. DUNN: That means that they should not be
8 binding or persuasive on this court because they start
9 from a -- they start from an assumption.

10 THE COURT: They don't agree with you?

11 MR. DUNN: They start from an assumption
12 that's different than Oklahoma Supreme Court, which
13 I'm fortunate does agree with me.

14 THE COURT: Okay. So all of the Federal
15 cases agree with the Attorney General's position, but
16 the Oklahoma Supreme Court has declined to follow the
17 Federal rulings?

18 MR. DUNN: Correct. Because Oklahoma's
19 constitution is more protective, they have found, than
20 the Federal constitution.

21 THE COURT: Gotcha.

22 MR. DUNN: This court has the power to
23 declare the meaning of Oklahoma law under 12 O.S.
24 1651, which is the Declaratory Judgment Act. This is
25 the only remedy that Plaintiff really has, short of

1 placing himself in a position to be arrested, which
2 even the State of Oklahoma, in their brief at page 4,
3 tells you they shouldn't have to do.

4 Since he has a duty to register and he has
5 been placed in a -- or and he has been told he cannot
6 register at his mother's address legally, he's placed
7 in a position where he cannot comply with the law
8 without this court's intervention.

9 He has a fundamental right to live with his
10 mother. He has an obligation to register where he
11 lives. It is necessary for this court to declare what
12 the law is to protect him from being wrongfully
13 arrested and deprived of his liberty by agents of the
14 state.

15 We are also seeking injunctive relief. Under
16 law, once this court determines what the law is, the
17 Court is empowered by the powers of equity to make
18 further orders to enforce that order.

19 The right -- or the right to relief must be
20 established by clear and convincing evidence. And in
21 this case, clearly my client has a right not to be
22 arrested for violation of a law that does not apply to
23 him. There's no dispute of that.

24 The question is going to be whether or not
25 the Court has the power to enter injunctive relief to

1 prevent the prosecutor's office from prosecuting or
2 the police department from arresting. That's
3 essentially the argument that's going -- that I
4 expect -- that I anticipate to be had.

5 It is not unreasonable that this court grant
6 injunctive relief to prevent that scenario from
7 happening, especially in light of this is not
8 speculative, even though it hasn't happened.

9 In my initial brief to the Court and in my
10 response brief I have provided the Court with
11 information that Tulsa County, Tulsa City, and Tulsa
12 County District Attorney's office are all agents and
13 signatories of the Violate Crimes Task Force, which
14 seek to enforce SORNA in its entirety, which would
15 include the residency restriction.

16 Additionally, I have told the Court that I
17 have represented on several occasions persons who were
18 later delisted. I would point the Court specifically
19 to my reply brief of the case of *Sequichie*, who I
20 represented after he had been in jail for 90 days
21 after the *Starkey* case was decided. And it was
22 subsequently found that his obligation to register
23 actually had ended years before the *Starkey* case, and
24 yet he was left to rot in jail for 90 days before it
25 was brought to the attention of a magistrate judge at

1 a bail reduction hearing and the case was dismissed.

2 I've also represented both Mr. Hall and
3 Mr. Ransdell, both of which -- I've provided the Court
4 with the docket sheets -- both of which the cases were
5 later dismissed because there was an anomaly in the
6 law that was pointed out by one lawyer to a
7 prosecuting attorney and the case was later dismissed.

8 Mr. Ransdell, specifically, the charge
9 alleged that he had failed to register every 90 days,
10 and under statute he only has to register once a year.
11 Once that was confirmed by DOC, the charges were
12 dismissed at preliminary hearing.

13 So the risk is very real. The defendants --
14 my clients, I shouldn't say the defendants. The
15 citizens that are arrested for violation of the law
16 are held in jail. They have to pay bond if they can
17 make it. Mr. Sequichie obviously could not. They
18 have to hire an attorney. And this process can be
19 repeated over and over again because a judge that
20 would sign an arrest warrant, if they were -- if the
21 City were to proceed that way, has absolute immunity,
22 the DA's office has absolute immunity, and suing the
23 City for a police officer arresting somebody pursuant
24 to a warrant issued by a judge is a fruitless
25 endeavor.

1 The only remedy that my client would have
2 would be this court to, first, make it clear what the
3 law is, and, second, tell those that might arrest that
4 they cannot.

5 THE COURT: Can I ask you a question about
6 retroacti vi ty?

7 MR. DUNN: Yes, sir.

8 THE COURT: And I don't have *Starkey* in front
9 of me. I don't know if that was addressed. You
10 mentioned another case, the *Osborne* case.

11 But in terms of retroacti vi ty, do you look
12 at -- I mean, I know what you're going to argue, but
13 what -- my question is, what do the cases say -- speak
14 to, if you know? Is it retroactive -- do you look at
15 the date of convi cti on or do you look at just whether
16 they're li vi ng with grandmother and then all of a
17 sudden they can't li ve with grandmother and -- and
18 then -- and that would not be retroactive?

19 Do you look at -- do you look at when they
20 would have to move or date of condi ti on?

21 Do you see my poi nt?

22 MR. DUNN: Yes, sir, I do. And I can tell
23 you that *Starkey* says that retroactive is from the
24 date that they become subject to the law. In other
25 words, the date of convi cti on.

1 *Olson*, I believe, is the next case that I
2 cited in my brief that follows up with that. And each
3 case thereafter has looked at what existed, what was
4 the requirements of SORNA on the date the person was
5 convicted of their crime as being that's what they're
6 obligated to follow.

7 THE COURT: Isn't that the issue, about being
8 subject to the law and -- isn't that the whole issue
9 of retroactivity about -- you know, it wouldn't be
10 subject to the law back -- you know, back in 1999?
11 They've already -- they've already moved to be close
12 to grandmother, who's near a park, and that's already
13 happened. Then don't you look at -- do the cases both
14 speak to that? The conviction or the operative date
15 that they had moved to a prohibited area?

16 MR. DUNN: The case says -- the cases speak
17 to the things that are in effect at the time of the
18 conviction. And at this point, because --

19 Maybe this is a better way to answer the
20 question. Because the residency restriction was added
21 to SORNA, in my client's case four years after his
22 date of conviction, and because that is an element of
23 punishment according to *Starkey*, it is fair to say
24 that element would not apply to my client because that
25 element of what was going to happen to him as a result

1 of being subject to the Sex Offender Registration Act
2 did not exist when he became subject to the Act.

3 It would be akin to, in a DUI case, for
4 example, saying that upon conviction of Aggravated
5 DUI, you have to have a blow tube in your car for 18
6 months when you get your license back. If that's part
7 of the penal code, if I'm convicted prior to that
8 being enacted, then you cannot later require me to
9 have that blow tube for 18 months. However, if I'm
10 convicted afterwards --

11 That's how we -- you know, that's how the
12 Court -- the Oklahoma Supreme Court looks at SORNA, as
13 a whole, as its entirety, not just a single section.

14 THE COURT: But to be clear, your client has
15 not moved yet?

16 MR. DUNN: No.

17 THE COURT: He anticipates that he would move
18 if approved by the Court?

19 MR. DUNN: Yes. Probably within days, maybe
20 hours.

21 THE COURT: Have the retroactivity cases --
22 again, this is where I'm having -- have they made any
23 analysis of that, about when they -- if they've
24 actually moved or before -- before that was passed?

25 MR. DUNN: I'm not aware of any retroactivity

1 cases that deal specifically with the residency
2 restrictions. The cases that I'm aware of deal with
3 how long one has to register, the frequency with which
4 they have to register, whether or not they're somebody
5 who would be allowed on a school property, whether or
6 not they're somebody who would be an aggravated
7 offender under statute or not.

8 THE COURT: This would be a case of first
9 impression on these facts?

10 MR. DUNN: With these specific facts, yes,
11 sir, I believe it could be.

12 THE COURT: Okay. Very good.

13 I think we need to move on to the other side
14 now, unless you want to summarize very quickly.

15 MR. DUNN: In summary, we believe that we are
16 entitled to the relief that we are seeking.
17 Contrary -- like I said, I believe that the State is
18 going to cite the case of *Anderson*, which he gave me
19 this morning. *Anderson vs. Trimble*.

20 I would point out to the Court that that case
21 was expanded upon in *Edmondson vs. Pearce* that allows
22 the Court to issue injunctive relief if it is
23 necessary to protect existing legitimate property
24 rights or fundamental constitutional rights, which I
25 believe are at stake in this case.

1 We are asking the Court to enter an order
2 that tells us what the law is and requires the police
3 department and the Prosecutor's office to follow it.

4 THE COURT: Very good. Thank you.

5 On behalf of the State.

6 It seems like I get a lot of cases of first
7 impression.

8 MR. GROSE: May it please the Court, Your
9 Honor. My name is Justin Grose and I represent the
10 Tulsa County District Attorney's office, as well as
11 District Attorney Stephen Kunzweiler. And we are here
12 on the Summary Judgment filed by the Plaintiff.

13 And I guess at the outset this case is about
14 the Oklahoma Sex Offender Registration Act, OSORA, and
15 so we're not talking about the Federal Registration
16 Act here, which is -- goes by the acronym of SORNA.

17 And the discussion earlier about the
18 differences between the Federal and State law, the
19 reason I put that in my brief was that the Plaintiff
20 had mentioned the Federal constitution, its
21 protections and -- in its petition and also again in
22 the Summary Judgment.

23 So I wanted to make clear that if there was
24 any inclination by the Court to rule on the Federal
25 aspects of the case, that it should follow the Federal

1 case law, but this is an ex post facto violation.

2 Now, under State law we don't actually have a
3 disagreement that Section 590 doesn't apply to the
4 Plaintiff in this case because it was passed four
5 years after he was subject to the law, because *Starkey*
6 tells us that the date of conviction decides which
7 version of OSORA applies to the individual. In this
8 case it's 1999. The statute that we're talking about
9 here, Section 590, which is the residency
10 restrictions, does not apply to the Plaintiff because
11 it wasn't passed until four years later.

12 In this case, however, the District Attorney
13 and the District Attorney's office raised the defenses
14 of Lack of Standing as far as Plaintiff's request for
15 declaratory relief and also --

16 THE COURT: Let me clarify. Let me make sure
17 everybody heard that. You -- you're not disputing
18 that it doesn't apply?

19 MR. GROSE: We're not disputing that, Your
20 Honor.

21 THE COURT: The statute doesn't apply
22 retroactivity, so that's not an issue.

23 MR. GROSE: At least as far as the District
24 Attorney's office and the District Attorney are
25 concerned.

1 THE COURT: Mr. Bender is here and he can
2 respond on behalf of the City.

3 MR. GROSE: Correct.

4 THE COURT: I'm not trying to stir anything
5 up here.

6 MR. GROSE: Well, and something everybody in
7 this room will learn soon, probably this semester, is
8 that you have juris prudential bars that you have to
9 get over before you can bring a suit. And so in this
10 case we've raised standing, or lack thereof, as far as
11 declaratory relief, and then also the *Edmondson* case
12 that Mr. Dunn referenced, as far as the lack -- or the
13 inability to receive injunctive relief in this case.

14 So with regard to the declaratory relief,
15 standing requires that the challenged action has
16 caused or threatened an injury in fact, two, the
17 relief sought with remedy to the injury, and, three,
18 the interest sought to be protected is within the zone
19 protected by the statute or constitution.

20 We're not disputing No. 3. Obviously, the ex
21 post facto clause would protect the Plaintiff in this
22 case, however, at least with respect to my client,
23 there is no challenged action that has caused or even
24 threatened any injury to the Plaintiff in this case.

25 There's no mention in the petition and

1 there's no mention in the Motion for Summary Judgment
2 that anyone from the DA's office has done anything at
3 this point to threaten the Plaintiff with either
4 arrest or prosecution.

5 THE COURT: Now, a cop apparently said, "I'm
6 going to bust you."

7 MR. GROSE: Correct. Yes.

8 THE COURT: So -- but you're saying that's
9 not my -- not my client.

10 MR. GROSE: Correct, Your Honor.

11 THE COURT: Okay.

12 MR. GROSE: In the Plaintiff's affidavit at
13 paragraphs 5 and 6, that is attached to -- as Exhibit
14 A to the Summary Judgment, that's where he talks about
15 the police department personnel threatening --
16 threatening him or telling him that he can't reside at
17 this address at his mother's -- at his mother's home
18 at 14547 East 12th Place in Tulsa.

19 What the Tulsa Police Department does and
20 what any other entity does is independent of the
21 District Attorney's office. As I argued in our
22 response brief, there would still be some
23 investigation by the District Attorney's office. They
24 would consult the statutes. They would use their
25 prosecutorial discretion to determine whether or not

1 to bring charges against this person.

2 In the reply brief the Plaintiff responded
3 under -- it was on page -- on page -- I believe it's
4 page 3, that the relief sought in this case would
5 remedy the injury. And he says that it's believed
6 that the Tulsa County District Attorney's office will
7 follow the law.

8 But that cuts both ways. Because, as I just
9 said, they'll -- they will review the statute, they
10 will review the case law, and they will review the
11 facts as presented to them on each individual case.

12 And I've spoken with the office and explained
13 to them my -- my legal opinion of the case. And
14 without going into those discussions, I've made it
15 clear to them that I don't think that Section 590 can
16 be retroactively applied to this plaintiff in this
17 case.

18 So I don't think as far as the Plaintiff's
19 standing in this case that -- at least with respect to
20 my client, that there's any threatened injury, in
21 fact, at all.

22 And turning to the injunctive relief --

23 THE COURT: Is the DA going to pay the bond
24 if he's arrested?

25 MR. GROSE: I'm sorry?

1 THE COURT: Is the DA going to pay the bond
2 if he's arrested?

3 MR. GROSE: No, the DA would not pay the
4 bond.

5 THE COURT: Okay.

6 MR. GROSE: But turning to my second defense,
7 is that under the *Edmondson vs. Pearce* case, the
8 general rule is that there's no joinder of criminal
9 statutes. And that's -- the main reason behind that
10 is, the respect of the Separation of Powers Doctrine,
11 that one branch of government shouldn't tell another
12 branch of government -- or at least they should --
13 they should let the other branches of government use
14 their discretion.

15 And so there's a three-part test for that as
16 well. If the statute is unconstitutional, that's
17 element one. And then the Plaintiff also has -- also
18 has to allege a Destruction of Property Rights. And
19 then 3rd they have to be irreparably harmed.

20 The *Edmondson* case talks a little bit about
21 that. But I also found another case as I was getting
22 ready for this hearing, which I gave to Mr. Dunn, and
23 I've got a copy -- a copy of it if the Court would
24 like. It's *Anderson vs. Trimble* from the Oklahoma
25 Supreme Court. And it's a little bit more on point

1 than even the *Edmondson* case because in this case
2 there were individuals that wanted to protest the
3 Vietnam war and there was a statute that said that
4 they couldn't do that, and if they did they would be
5 subject to criminal fines and penalties. And so they
6 brought injunctive relief against the District
7 Attorney saying this statute is unconstitutional, it
8 violates our First Amendment Rights and you shouldn't
9 be able to enforce it against us.

10 At the trial court they granted the
11 injunction, but it was reversed on appeal, partially
12 because of the second -- partially because of the
13 second element, which is, the individuals in that case
14 didn't have any -- any kind of vested property right,
15 nor does the Plaintiff in this case.

16 While his mother owns the house, she
17 doesn't -- he doesn't own it. And while it may go to
18 him in inheritance, that property right wouldn't vest
19 to him until if she is deceased.

20 THE COURT: I want to hear from Mr. Bender
21 real quick, so -- I think we're out of the time for
22 (inaudible) -- the next case, so --

23 MR. GROSE: All right. Thank you, Your
24 Honor.

25 MR. BENDER: If it please the Court, Your

1 Honor, Gerald Bender for the City of Tulsa, ex rel,
2 the Tulsa Police Department.

3 May I approach, Your Honor?

4 THE COURT: Okay.

5 MR. BENDER: Since the seminal question
6 appears to be at this point whether or not the Tulsa
7 Police Department would actually arrest Mr. Barnes, I
8 think we can establish, Your Honor, that there is a
9 department order in place that has been in place since
10 September of 2006, which addresses this issue
11 specifically.

12 Department Order 2006-06 concerns arrest
13 procedures for violation of safe zones by sex
14 offenders, which is what we're talking about here,
15 2,000 feet from a park.

16 "Effective September 11th, 2006, the
17 following procedures shall be used by all personnel
18 when investigating alleged violations of the zones of
19 safety contained in Oklahoma Statutes 21 O.S. 1125."
20 Obviously there's been some change in the statute, but
21 57 O.S. 590, that's the way the law read back in '06.

22 Here's what the department requires of
23 officers that would be faced with this circumstance.

24 "Officers shall conduct a thorough investigation into
25 the alleged violations of the zones of safety by

1 registered sex offenders. Thereafter, officers shall
2 submit the investigation to the District Attorney."

3 Now, there's been a representation made in
4 this case by Mr. Barnes through counsel that he was
5 told by officers of the Tulsa Police Department that
6 he would be arrested if he moved to this house. That
7 would be a direct violation of departmental order. I
8 don't know whether anyone would have told Mr. Barnes
9 that. Given the fact that this order has been in
10 place for nine years, I doubt it. I think we can
11 resolve that issue right away.

12 With regard to the second issue, Your Honor,
13 I believe that the City of Tulsa and the Tulsa Police
14 Department also agrees that 590 does not apply to
15 Mr. Barnes. The statute was enacted in 2003. He was
16 convicted in 1999.

17 He is an aggravated sex offender. He's
18 required to register for life. My understanding is
19 that he hasn't reoffended and that he has complied
20 with registration through the course of proceedings
21 right up through today, so those are not issues. But
22 590 doesn't apply to him, and we're making that
23 representation affirmatively, so --

24 THE COURT: So you're saying that it's the
25 policy -- or that as the attorney for the City, and

1 representing the police department, that he could live
2 with his grandmother because he would not be subject
3 to the Act?

4 MR. BENDER: That's correct, Your Honor.

5 Basically what -- what Counsel is mounting
6 here is -- the requirements for -- for temporary and
7 permanent injunctions would be that, first of all, the
8 statute must be unconstitutional. No one is making
9 the argument that 590 on its face is unconstitutional.
10 The argument Mr. Dunn is making for his client is that
11 590, as applied, would be constitutional because it's
12 ex post facto because it's punitive.

13 The City is not arguing with that position at
14 all. We agree with it.

15 But what we're saying is that this court does
16 not have a case or a controversy. There is no
17 reason -- or actually no -- no jurisdiction for this
18 court to enter a temporary or permanent injunction
19 because it's clear 590 does not apply.

20 With regard to his argument that property
21 rights may be destroyed, I don't know if Mr. Dunn got
22 into that very deeply, but the argument was made in
23 the briefing that at some point down the road he may
24 inherit this house from his mother and at that point
25 his property rights might be implicated. Well, that's

1 not the case that's before the Court right now.
2 That's speculative.

3 THE COURT: We're going to have to wrap it
4 up, Mr. Bender.

5 MR. BENDER: Okay, Your Honor. That's
6 basically our position. We agree that 590 does not
7 apply to this man and we don't believe that there's
8 any reason for the Court to enter any declaratory or
9 injunctive relief.

10 THE COURT: I think maybe it would be helpful
11 if we could supplement the record with this -- without
12 objection from Mr. Dunn. I can't imagine that you
13 would object to making this a copy in the court record
14 and maybe giving your client a copy.

15 MR. DUNN: No, sir. No objection.

16 THE COURT: Okay. All right.

17 MR. BENDER: Thank you, Your Honor.

18 THE COURT: Very good argument. Interesting
19 issues. And I will issue a written order within 10
20 **days, so --**

21 (End of Proceedings.)

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CERTIFICATE

STATE OF OKLAHOMA)
) SS:
COUNTY OF TULSA)

I, D. ANN FITE, a Certified Shorthand Reporter in
and for the State of Oklahoma, do hereby certify that
the above and foregoing transcript of BARNES vs. TULSA
COUNTY D.A., ET AL, Claim No. CV-2015-55, is a true,
correct and complete transcript of my machine shorthand
notes, taken in the above styled and numbered cause.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal on this 2nd day of December, 2015.

D. ANN FITE, CSR, RPR
Certificate No. 1108