



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-1524

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE BEN E. BRADY
JUSTICE OF THE PEACE, PRECINCT 3, PLACE 1
MAXWELL, CALDWELL COUNTY, TEXAS**

During its regularly scheduled meeting on October 3-4, 2018, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Ben E. Brady, Justice of the Peace, Precinct 3, Place 1, Maxwell, Caldwell County, Texas. Judge Brady was advised by letter of the Commission's concerns and provided written responses. Judge Brady appeared before the Commission on October 3, 2018, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Ben E. Brady was Justice of the Peace for Precinct 3, Place 1 in Maxwell, Caldwell County, Texas.
2. On May 5, 2017, McLennan County Commissioner Will Jones pleaded guilty to a Class A misdemeanor charge of offering a gift to a public servant in the 54th Judicial District Court of McLennan County and was sentenced to one year of deferred adjudication probation, 80 hours of community service and fined \$4,000.

3. Shortly thereafter, R.S. Gates¹ contacted Judge Brady to request the issuance of a warrant for Jones' arrest on a felony charge of engaging in organized criminal activity.² The judge reviewed the complaint Gates sent him via Facebook Messenger, but determined that "it was not specific enough for [him] to be able to comfortably determine probable cause."
4. On June 8, 2017, Gates submitted two sworn complaints to Judge Brady requesting the issuance of warrants for the arrest of Jones on felony charges of engaging in organized criminal activity. The first complaint stated in pertinent part:

I hereby state upon my oath that I have reason to believe and do believe that heretofore and before the making and filing of this complaint that Will Jones...did on or about 1/2/17, in McLennan County, Texas, did with the intent to establish, maintain, or participate in a combination commit the offense of engaging in organized criminal activity against the laws of the State. (Penal Code Sec. 71.02(a)(13) (Engaging in Organized Criminal Activity))

My probable cause for said belief and accusation is as follows

On January 2nd 2017 Will Jones signed a Statement of Elected/Appointed Officer (Attachment A). The statement was also signed by McLennan County Judge Scott Felton and notarized by Robin Hutyra AKA Robin Hutyra Miles AKA Cody Hutyra AKA Cody Miles. Cody Miles is listed as the business manager for County Judge Scott Felton. The signed form indicates it is Form 2201 but differs from Form 2201 available on the Secretary of State website (Attachment B)

Complainant believes Will Jones knew of the falsity of the document because at the time it was filed he was under investigation for bribery.

On May 5th 2017, Will Jones plead guilty to Offering a gift to a public servant. (Penal Code Sec. 36.09)

"I was wrong to offer to refund my opponent's filing fee back," Jones wrote in the statement. "Ignorance of the law is not a defense. Therefore, I accept the consequences of my actions." Waco Tribune Herald 5/5/17.

The second complaint stated in pertinent part:

I hereby state upon my oath that I have reason to believe and do believe that heretofore and before the making and filing of this complaint that Will Jones...did on or about 1/3/17, in McLennan County, Texas, did with the intent to establish, maintain, or participate in a combination commit the offense of engaging in organized criminal activity against the laws of the State. (Penal Code Sec. 71.02(a)(13) (Engaging in Organized Criminal Activity))

My probable cause for said belief and accusation is as follows

On January 3rd 2017 Will Jones signed a document (Attachment A) titled Oath of Office. That document contains similar language to the required Anti-Bribery

¹ Judge Brady stated that he originally met R.S. Gates during a public meeting of the Homeland Security and Public Safety Committee meeting regarding House Bill 910 pertaining to the open carrying of pistols. He also acknowledged that they are both members of the Facebook group "Open Carry Texas."

² The Commission notes that Waco is approximately 135 miles north of Maxwell.

Statement. The document is signed by County Judge Scott Felton and notarized by Robin Hutyra.

Complainant believes Will Jones made, presented or used a government record with knowledge of its falsity and acted in combination with Scott Felton and Robin Hutyra because the document could not have been filed without the participation of Scott Felton and Robin Hutyra AKA Robin Hutyra Miles AKA Cody Hutyra AKA Cody Miles. Cody Miles is listed as the business manager for County Judge Scott Felton. Complainant believes Will Jones knew of the falsity of the document because at the time it was filed he was under investigation for bribery.

On May 5th 2017, Will Jones plead guilty to Offering a gift to a public servant. (Penal Code Sec. 36.09) Cause # 2017-442-C2

“I was wrong to offer to refund my opponent’s filing fee back,” Jones wrote in the statement. “Ignorance of the law is not a defense. Therefore, I accept the consequences of my actions.” Waco Tribune Herald 5/5/17.

5. On the same day, Judge Brady issued two warrants for Jones’ arrest on felony charges of engaging in organized criminal activity.
6. On June 14, 2017, attorneys for Jones filed a “Motion to Quash Arrest Warrant and Dismiss Complaint,” (the “Motion to Quash”) which stated, in pertinent part:

The complaint alleges that a combination existed if the defendant agreed with one or more persons and that a true ‘combination’ requires three or more people. See TEX. PENAL CODE §71.01(b) (Vernon Supp. 2001) In other words, there must be three or more people; however, two or more of those three members must agree to commit an overt act for it to create a violation of a statute. The complaint/affidavit fails to state what overt act or acts constituted a combination. The mere ministerial act of notarizing and signing a document is conclusory and provides insufficient information to provide probable cause to issue a warrant or that a combination existed.
7. During a hearing in District Court on the Motion to Quash, McLennan County Sheriff Parnell McNamara took Jones into custody in the courtroom. At the conclusion of the hearing, District Judge Ralph Strother stated that “I have some serious questions about the veracity of the affidavits sworn out in the first place,” and quashed the warrants.
8. A June 15, 2017, article published on the Waco Tribune’s website entitled *District Judge Tosses New Felony Charges Against Commissioner Jones*, reported that Judge Brady’s warrants were “highly unusual” because they were requested by Gates, a former sheriff’s deputy and licensed peace officer who was not commissioned by a law enforcement agency at the time of the complaints. According to the article, Gates stated that he pursued the charges against Jones because “he wasn’t satisfied with Jones’ plea bargain and he thought the commissioner would have to resign from office.”
9. Judge Brady recalled that Gates told him that he sought him out to issue the arrest warrants because “he was concerned about the relationships between other judges in McLennan County and the County Commissioners...[and that] he felt it would be best to have someone from outside McLennan County examine the complaint and issue the warrant.”

10. In response to the question asking him to “describe all the material [he] relied on in making [his] decision to find sufficient probable cause to issue the warrant for Jones’ arrest,” Judge Brady explained that he and Gates had “a very specific discussion of more than an hour long...with regard to how [Gates’] stated facts and beliefs contained in the complaint affidavit were related to Texas Penal Code Chapter 71.” The judge went on to say that during their conversation, Gates explained “the role Mr. Jones played in obtaining the cooperation of McLennan County Judge Scott Felton and Cody Miles.”
11. Judge Brady further asserted that Gates’ sworn complaint “absolutely met the requirements” under art. 15.05 of the Texas Code of Criminal Procedure³ for the following reasons:
 - a. “Jones was clearly under investigation for bribery”... “at the time he signed the Anti-Bribery Statement”;
 - b. Jones signed the Anti-Bribery Statement “knowing full well that he was under investigation” by the Texas Rangers;
 - c. County Judge Felton and Mr. Miles assisted in the fraud and “became co-conspirators in the efforts by Mr. Jones to continue with his benefits of profits as County Commissioner” and;
 - d. “It was also Mr. Gates’ belief that this combination of these men, in their roles, fit the definitions in T.P.C. 71.01 and 71.02 for a criminal conspiracy.”
12. Judge Brady insinuated, without evidentiary support, that District Judge Strother entered into “some kind of quid pro quo arrangement with the McLennan County Commissioner’s Court” for “additional monies” in exchange for quashing his warrants for Jones’ arrest.
13. The judge concluded that his conduct did not cast public discredit upon the judiciary and asserted that he has received several telephone calls from residents of McLennan County thanking him for having the courage to issue the warrants for Jones’ arrest.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall comply with the law...”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge should be faithful to the law and maintain professional competence in it.”
3. Canon 3B(5) of the Texas Code of Judicial Conduct states: “A judge shall perform judicial duties without bias or prejudice.”
4. Article V, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that a judge can be sanctioned for “willful or persistent conduct that is clearly inconsistent with the

³ Art. 15.05 of the Texas Code of Criminal Procedure provides: “The complaint shall be sufficient, without regard to form, if it have these substantial requisites: 1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him. 2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense. 3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant. 4. It must be signed by the affiant by writing his name or affixing his mark.”

proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”

5. In assessing the sufficiency of an arrest-warrant affidavit, a reviewing court is limited to the four corners of the affidavit. *McLain v. State*, 337 S.W.3d 268, 271 (Tex.Crim.App. 2011).
6. Tex. Penal Code § 71.02 provides that a defendant commits the offense of engaging in organized criminal activity if, with the intent to establish, maintain, or participate in a combination, he commits or conspires to commit one or more of the enumerated offenses. A “combination” is defined as “three or more persons who collaborate in carrying on criminal activities.” Tex. Penal Code § 71.01(a). In turn, this definition has been interpreted by the Texas Court of Criminal Appeals as obligating the state to prove not only that the accused intended to establish, maintain, or participate in a group of three or more but also that the members of the group intended to work together in a continuing course of criminal activities. *Dowdle v. State*, 11 S.W.3d 233, 235-36 (Tex.Crim.App.2000); *Nguyen v. State*, 1 S.W.3d 694, 697 (Tex.Crim.App.1999). The gravamen of the offense is the continuity element, and the State must “prove that a defendant intended to participate in a continuing course of criminal activity” before a defendant may be found guilty. *Lashley v. State*, 401 S.W.3d 738, 744 (Tex. App.—Houston [14th Dist.] 2013, no pet.). “There must be proof of an intent to participate in a criminal combination that extends beyond a single criminal episode, ad hoc effort, or goal, regardless of whether multiple laws were broken within the confines of that episode or effort.” *Id.*

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Brady failed to follow the law and exhibited incompetence in the law when he issued two warrants for the arrest of Jones on felony charges of engaging in organized criminal activity based on complaints from R.S. Gates that did not contain sufficient probable cause. The Commission further concludes that Judge Brady failed to follow the law and exhibited incompetence in the law by relying on information outside the four corners of the complaints in determining whether probable cause existed to support the issuance of the warrants for Jones’ arrest. The Commission further determined that Judge Brady showed favoritism to Gates, and bias against Jones, by issuing felony warrants for Jones’ arrest that were not based on probable cause. The Commission concludes that Judge Brady’s conduct, described above, constitutes a willful violation of Canons 2A, 3B(2), 3B(5) of the Texas Code of Judicial Conduct. Furthermore, these actions are clearly inconsistent with the proper performance of his duties as a judge and cast public discredit upon the judiciary and administration of justice, in violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canons 2A, 3B(2) and 3B(5) of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Ben E. Brady, Justice of the Peace for Precinct 3, Place 1 in Maxwell, Caldwell County, Texas.

Pursuant to this Order, Judge Brady must obtain **two hours** of instruction with a mentor, in addition to his required judicial education for Fiscal Year 2018. In particular, the Commission desires that Judge Brady receive this additional education in the area of magistration.

Judge Brady shall complete the additional **two hours** of instruction recited within **sixty days** from the date of written notification of the assignment of a mentor. It is Judge Brady's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **two hours** of education described herein, Judge Brady shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 14th day of November, 2018.


Justice Douglas S. Lang, Chair
State Commission on Judicial Conduct