

file



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
v.)
)
Andrew Ozias)
DOB: 01/12/1992)
)
Defendant.)

CF - 2013 - 1240
Case No. _____

DISTRICT COURT
FILED

MAR 12 2013

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

INFORMATION

In the name and by the authority of the State of Oklahoma:

E. Scott Pruitt, Attorney General of Oklahoma, in and for the State and County aforesaid, gives the Court to know and be informed as follows:

Andrew Ozias, in Tulsa County, State of Oklahoma on or about February 14, 2012, did commit the crime of **WORKERS' COMPENSATION FRAUD** in violation of Title 21 O.S. § 1663(C)(1) by unlawfully, willfully feloniously, and intentionally misrepresented the facts and circumstance related to the cause of his injuries to his face during a deposition to Blake Whitten, an attorney representing his employer L.E.F Inc., and CompSource Oklahoma insurance carrier in support of a claim for payment or other benefits from his employer, L.E.F., Inc. and CompSource Oklahoma insurance carrier pursuant to contract of insurance during the pendency of his Workers' Compensation Claim in the Workers' Compensation Court case of Andrew Ozias v. L.E.F., Inc, and CompSource Oklahoma insurance carrier case number 2011-12945H, to-wit:

On December 9, 2011, the Defendant caused to be filed a Form 2, "Employer's First Notice of Injury" form with the Oklahoma Workers' Compensation Court alleging that he sustained a work-related injury caused by "standing in area near cutting torch.

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Josh Duckworth had lighter in hand and was rolling it in hand. A flash occurred from acetylene ignition. 3 people burned”, while working for said L.E.F., Inc. On February 14, 2012, the Defendant testified at a deposition in Case No. 2011-12945H before the Workers’ Compensation Court, State of Oklahoma. During the deposition, the Defendant misrepresented material information about the cause of his injuries as follows:

Page 25

Line 16 Q Okay, alright. Well, with that in mind, Andrew, tell me in your words what happened on November 19, 2011.

Line 18 A Okay. We were standing by one of the machines. It was just before break time, we were fixing to take our break, and we’re sitting there talking and Joshua has his lighter and he’s just playing with it because he’s fixing to walk outside and smoke, and – and that’s when the torch ignited, later to find out that it had a leak in a line.

Line 24 Q Okay. And when it ignites – okay, well, let me go back to the beginning. About what time of the night are we

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Line 1 in here?

Line 2 A It was about 11:00 o’clock at night.

Line 3 Q And you all are near what machine?

Line 4 A Nate’s machine.

Line 20 Q Okay. What time was your break scheduled that night?

Line 21 A 11:30

Line 22 Q 11:30 ‘til when?

Line 23 A PM, 11:40 PM.

Line 24 Q So about the time you guys are going on break, who all is standing near Nate’s machine?

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Line 1 A Me, Nate and Joshua.

Line 2 Q And this is on the inside of the plant?

Line 3 A Yes.

Line 4 Q Okay. And you said who was playing with the lighter?

Line 5 A Joshua.

Line 6 Q Okay, I am assuming he's got his lighter out because it's almost smoke break time.

Line 8 A Right.

Line 9 Q Where is the designated smoke break area?

Line 10 A Outside bay door.

Line 11 Q How far is the outside bay door from where the three of you were standing?

Line 13 A About thirty feet.

Line 19 Q Was Josh already there in the area?

Line 20 A He was with us.

Line 21 Q Okay. And do you, Nate, and Josh are standing over near Nate's machine, which is the NTC 4000 watt machine. Josh has a lighter out?

Line 24 A Yes.

Line 25 Q Do you all smell any sort of gas?

Page 28

Line1 A No.

Line 6. Q Okay. How far were you standing from Josh?

Line 7 A I don't know.

Line 8 Q Well, are you standing like as close as we are, three or four

ORIGINAL

feet?

- Line 10 A Four or five feet probably.
- Line 11 Q Okay. And what happens, I mean --
- Line 12 A He was just rolling, you know, the flint on the lighter, and that's what ignited the torch.
- Line 14 Q Now, when it ignited, does it make a fireball?
- Line 15 A Yes.
- Line 16 Q How big of a fireball?
- Line 17 A Big enough to hit all three of us and it was very fast, not even a couple of seconds.
- Line 19 Q So how big of a circumference are you, Nate and Josh? Are you closer together than all of this in this room or are you more spread out?
- Line 22 A It's about the same.
- Line 23 Q Okay, so we're talking, are you all within eight feet of each other --
- Line 25 A Yes.
- Page 29
- Line 1 Q -- more or less?
- Line 2 A Less than that.
- Line 3 Q Less than eight feet?
- Line 4 A Yes.
- Line 5 Q Okay. Okay, and again, I'm almost gonna draw a picture here. You all are near Nate's machine. Are you all standing around that machine, are you all standing --
- Line 8 A In front of it.

ORIGINAL

Line 9 Q You are standing in front, all three of you?

Line 10 A Yes.

Line 11 Q Where is the acetylene tank sitting from where the three of you are standing? Is it behind you, to the side?

Line 13 A It's about to the side of us.

Line 14 Q Which side of you?

Line 15 A It was the right side of me.

Line 16 Q Okay. Do you remember who was standing where when this happened?

Line 18 A I honestly don't remember.

Line 19 Q Well, were you standing between Nate and Josh, were you all standing kind of in a triangle?

Line 21 A Nate was sitting down, --

Line 22 Q Was he --

Line 23 A -- I know that.

Line 24 Q --at the machine?

Line 25 A No, he was on his -- he was doing paperwork on his.

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Line 1 desk.

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Line 25 Q Josh is sitting here, he's got his -- is it a Zippo,

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Line 1 is it a Bic?

Line 2 A It's just a little Bic.

ORIGINAL

Line 3 Q He's got a little lighter?

Line 4 A Yes.

Line 5 Q And when he hits that thing, poof?

Line 6 A Yeah.

Line 7 Q Okay. Is there a sprinkler system in this place?

Line 8 A I think so, yes.

Line 9 Q Does it go off?

Line 10 A No.

Line 11 Q Okay. So when this – and this is kind of a strange question, but do you see the flash first or do you feel it first, or do you hear it?

Line 14 A Honestly I couldn't feel anything, but I – I did see it just for a split second.

Line 16 Q Okay. As a result of that flash that you've described what parts of your body were burned as a result of that incident?

Line 19 A My face.

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Line 13 Q Okay. And you say you had burns to your face?

Line 14 A Yes.

Line 15 Q Whole face or which part?

Line 16 A It was mainly in the middle, but it was kind of on this side most.

Line 18 Q Okay, so we're talking this middle forehead down to your chin.

Line 20 A Right.

Line 21 Q The only reason I'm describing it is when you say "Here",

ORIGINAL

that doesn't tell us much.

Line 23 A Right

Line 24 Q As so it's the middle of your face and –

Line 25 A And to the right side of my face.

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Line 15 Q Let me ask you this. After this explosion occurs, what is the condition of the area? I mean, does it knock that acetylene – does it knock the acetylene tanks over?

Line 18 A No.

Line 19 Q Does it start a fire with any of those hoses that were attached?

Line 21 A No.

Line 22 Q Okay. Did you all clean up the area?

Line 23 A No.

Line 24 Q Was there anything to clean up?

Line 25 A No, just our face.

The Defendant misrepresented this information with the intent to deceive Brandon Whitten, attorney for L.E.F., Inc., and CompSource insurance provider and with the intent to injure, defraud, and deceive L.E.F., Inc.

All of which is contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State of Oklahoma.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

By: 
KRISTIN M. FULTON, OBA #21185
Assistant Attorney General
907 S. Detroit Ave., Suite 750

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years and/or by a fine not exceeding Ten Thousand Dollars
(\$10,000.00).

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Tulsa, OK 74145

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c/o L.E.F., Inc.
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Tulsa, OK 74145

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THE STATE OF OKLAHOMA,)
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Plaintiff,)
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v.)
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Andrew Ozias)
DOB:01/12/92)
Defendant.)

CF-2013-1240
CASE NO.

**DISTRICT COURT
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AFFIDAVIT OF PROBABLE CAUSE

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

The undersigned, being first duly sworn and upon oath, does depose and state as follows:

I, Carl Reed, am employed as an investigator with the Workers' Compensation and Insurance Fraud Unit in the Office of Attorney General. I was assigned to investigate an alleged case of workers' compensation fraud involving Andrew Ozias, DOB: 01/12/92. In the course of my investigation, I obtained and reviewed various medical records, surveillance video, transcripts, written statements, and Workers' Compensation Court files, as well as conducted witness interviews.

On November 19, 2011, between approximately 3:30 p.m. and midnight, Ozias was working the evening shift at L.E.F., Inc. located at 9401 E. 54th St. Tulsa, OK 74145 in the City of Tulsa and Tulsa County. At this time, Ozias worked as a laser and machine operator along with co-workers Joshua Duckworth, Nathaniel McAlexander, and Jose Esparza Figuero who were also present.

On November 19, 2011, at approximately 10 p.m., Ozias, Duckworth, and McAlexander left LEF, Inc., and drove themselves to area hospitals seeking medical attention for burns. Ozias and Duckworth went to the Trauma Emergency Care Center at the Saint Francis Hospital in Tulsa, and Nathaniel McAlexander went to the Emergency Department at Hillcrest Medical Center in Tulsa. While at the Saint Francis Hospital, Dr. Randy A. Engelman treated Ozias for burns to his face and neck. According to the medical history Ozias provided directly to Dr. Engelman, Ozias was at work using a gas torch when all of a sudden it went off.

Between 2:00 and 3:00 a.m., on November 20, 2011, Duckworth called his supervisor Joshua Salisbury at home and reported that he (Duckworth), Ozias, and McAlexander were each burned by a flash fire. Duckworth explained that a leaking acetylene tank associated with a piece of welding equipment inside the business caused the flash fire. Immediately following this telephone call, Salisbury drove to L.E.F., Inc. and inspected the work area in which Duckworth reported the accident occurred. Salisbury found the work area undisturbed, and the welding equipment in question, including the oxygen and acetylene tanks, related tubing, and equipment to be in proper working order and without signs of a flash fire.

According to Salisbury, acetylene gas, like with natural gas, has a distinct odor. Thus, anyone standing

in the vicinity of a leaking acetylene gas tank would detect the acetylene leak before an explosion. Further when acetylene gas burns it causes an oily soot to cover everything in the area surrounding the flame. On November 20, Salisbury observed no oily soot on or near the welding equipment, tanks, tubing, or the work station located next to the tanks.

Jose Esparza Figuero was the fourth person working at L.E.F., Inc. on November 19, 2011, during the evening shift. He did not see or hear a flash fire or explosion though he was working approximately 10 to 12 meters from the area Ozias claims this flash fire occurred. Further, he did not see any evidence of a flash fire anywhere around the area where the claimants stated the accident occurred.

David Durbin is the welding supervisor at L.E.F., Inc. Later, on the morning of November 20, 2011, Durbin used the same set of tanks and welding equipment to weld a project before he became aware of the alleged flash fire the previous night. He found the tanks and welding equipment in proper working order and completed the welding project without incident.

Gary Jackson is the operations manager for Wilbanks Welding Supply. Wilbanks Welding Supply owns and leases to L.E.F., Inc. acetylene tanks and related welding equipment and sells L.E.F., Inc. acetylene and oxygen gases. On November 20, 2011, Jackson examined the welding equipment including the tanks, hoses, and torch in question at L.E.F., Inc. Jackson discovered no damage to any of the tanks or welding equipment, and nor did he see any evidence of a leak or fire on the tanks and welding equipment or in the surrounding work area. Jackson further stated that when acetylene gas burns it emits a oily soot that covers everything in the area surrounding the fire. Had the fire occurred in the manner described by Ozias it would have covered the equipment and surrounding area. Further, a fire caused by a leaking acetylene gas tank or tubing would have continued to burn until the flame was consumed inside of the acetylene gas tank and resulted in the tank exploding.

On November 20, 2011, Steve Nash a supervisor at L.E.F., Inc., discovered items of evidence outside the northwest entrance to L.E.F., Inc. Nash photographed and collected these items which include: a soot covered blue Bic cigarette lighter found in the grass, a pressure tank believed to store acetylene gas, fragments of a balloon, a burned and exploded five-gallon plastic container, and two plastic drinking bottles believed to have been used as a small, explosive devices.

On or about December 8, 2011, Ozias caused to be filed a Form 2, "Employer's First Notice of Injury" form, with the Oklahoma Workers' Compensation Court. In this Form 2, it is alleged that Ozias sustained "burns from acetylene ignition", and that these injuries occurred when he was "Standing in area near cutting torch. Josh Duckworth had lighter in hand and was rolling it in hand. A flash occurred from acetylene ignition. 3 people burned."

On February 14, 2012, Ozias was present at the Law Office of Frasier, Frasier & Hickman, 1700 Southwest Boulevard, Tulsa, Oklahoma in the City of Tulsa and Tulsa County. At this time, Ozias gave the following testimony in Workers' Compensation Court case, 2011-12945H:

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words what happened on November 19, 2011.

Line 18 A. Okay. We were standing by one of the machines. It was just before break time, we were fixing to take our break, and we're sitting there talking and Joshua has his lighter and he's just playing with it because he's fixing to walk outside and smoke, and – and that's when the torch ignited, later to find out that it had a leak in a line.

Line 24 Q. Okay. And when it ignites – okay, well, let me go back to the beginning. About what time of the night are we

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Line 3 Q. And you all are near what machine?

Line 4 A. Nate's machine.

Line 20 Q. Okay. What time was your break scheduled that night?

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Line 22 Q. 11:30 'til when?

Line 23 A. PM, 11:40 PM.

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Line 6 Q. Okay, I am assuming he's got his lighter out because it's almost

smoke break time.

Line 8 A. Right.

Line 9 Q. Where is the designated smoke break area?

Line 10 A. Outside bay door.

Line 11 Q. How far is the outside bay door from where the three of you were standing?

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