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September 18, 2017

VIA FACSIMILE 573-751-9456
Michael Quinlan
Chief Counsel, Litigation Division
Attorney General of Missouri
Jefferson City, Missouri 65102

Re: ABS, a Minor, et al. v. The St. Louis Board of Police Commissioners, et al.
U.S. District Court, E. Dist. of Missouri, E. Div. Case No. 4:12-cv-00202

Dear Mr. Quinlan:

By letter dated June 22, 2016 directed to St. Louis City Counselor Michael A. Garvin, I raised the then recent revelation that the DNA evidence used by the State of Missouri at the recently concluded trial of Jason Stockley had been garnered and tested and the test results corresponding thereto had been in the possession of the Defendants since not later than 2012, well prior to the June 20, 2013 mediation of the above referenced federal civil rights case.

I also confirmed in my June 22, 2016 letter directed to St. Louis City Counselor Michael A. Garvin the then recent revelation that the third-party video taken from the second floor of the building overlooking the scene of the shooting of Anthony Lamar Smith was under the possession and control of the Defendants since not later than 2012, being years prior to the mediation of the above referenced federal civil rights case.

A copy of my June 22, 2016 letter directed to St. Louis City Counselor Michael A. Garvin is attached hereto for your ease of reference as Exhibit A.

My June 22, 2016 letter was apparently turned over to your predecessor, Joel Poole, for response. By letter dated June 28, 2016, Mr. Poole responded to my June 22, 2016 letter by advising, that "every report and every video **in possession of the Attorney General's Office was produced to [me] and [my] firm as part of the discovery process.**" He added, "In this regard, [my] file and [your] office's file contained the same information" [Emphasis added].

Mr. Poole's response was not responsive. The duty of the Office of the Attorney General of the State of Missouri in this regard was not to provide us with everything in the possession of your office, but rather, to provide us with all documents and evidence responsive to the requests propounded in the federal court proceedings which were **in possession of your clients.**

A copy of Mr. Poole's June 28, 2016 letter directed to me in this regard is attached hereto for your ease of reference as Exhibit B.

Michael Quinlan
Chief Counsel, Litigation Division
September 18, 2017
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As I understand you are aware, a criminal Complaint was filed against Mr. Stockley on May 16, 2016. The Indictment was filed on August 8, 2016. After waiving a jury trial, the trial of Mr. Stockley proceeded before the Honorable Timothy J. Wilson. Judge Wilson's Verdict was entered on September 15, 2017.

During the trial, testimony was elicited from witnesses to lay the evidentiary foundation for the DNA evidence and the second video. The testimony confirmed the possession of this evidence by the City of St. Louis well prior to the mediation of the federal civil rights case.

The Findings and Verdict issued by Judge Wilson corroborates the foregoing.

Obviously, as an agent of the Court in any legal proceeding, including especially a federal court proceeding, your office had an inescapable duty to strictly comply with the applicable federal rules governing matters of this nature.

It appears that compliance with the Court rules in this regard was not observed.

More troubling appears to be the absence of transparency in Mr. Poole's June 28, 2016 letter.

Now that a record has been made and the trial of Mr. Stockley has concluded, I demand the following:

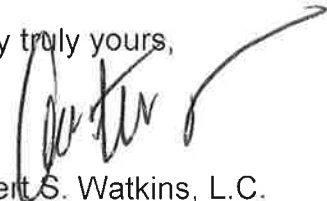
1. State the date on which the DNA evidence was received by the City of St. Louis;
2. State the date on which the second video was received by the City of St. Louis;
3. Provide us with copies of the DNA Reports corresponding to the test performed on the firearm retrieved from the vehicle driven by Anthony Lamar Smith.

Given the reality that a record has been made in the Circuit Court of the City of St. Louis of the evidentiary foundations corresponding to both of these pieces of evidence, it is imperative that your response to the foregoing explain how your then client, being the Board of Police Commissioners, was either not properly instructed to comply with the federal rules applicable to these vital pieces of evidence or was permitted to not disclose same.

Absent a full, accurate and transparent response to the foregoing within seven (7) days of the date of this letter, there will be no alternative other than to proceed with the immediate pursuit of all available legal and equitable remedies.

Your attention to this matter of significant importance is anticipated.

Very truly yours,



Albert S. Watkins, L.C.

ASW/rbt

Attachments

EXHIBIT A



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June 22, 2016

VIA EMAIL ONLY

Michael A. Garvin, Esq.
City Counselor
Room 314, City Hall
1200 Market Street
St. Louis, MO 63103

Re: ABS, a Minor, by and through her Next Friend, Christina Wilson, et al. v. The St. Louis City Board of Police Commissioners, Jason Stockley, et al.
U.S. District Court, E. Dist. MO, E. Div. Case No. 4:12-cv-00202

REPRESENTATION CONFIRMATION

Dear Mr. Garvin:

As you know, the undersigned and the law firm of Kodner Watkins, LC represented Autumn Smith, the surviving minor child of Anthony Lamar Smith, by and through her judicially recognized Next Friend, Christina Wilson ("Autumn Smith"), in connection with the above referenced Federal Civil Rights action ("Federal Case") addressed in the U.S. District Court for Eastern District of Missouri.

Permit this correspondence to serve as written confirmation of our continued representation of Plaintiff as well as our representation of Charles Washington, Mr. Smith's father.

As I understand you are aware, Anthony Gray, Esq. represents Annie Smith, Mr. Smith's mother.

This correspondence has been issued to you on behalf of our clients and, pursuant to a collaborative-joint prosecution agreement, Annie Smith, by and through her legal counsel, Anthony Gray, Esq.

THE FEDERAL LAWSUIT

By way of background, the Office of the Attorney General for the State of Missouri ("State of Missouri") represented all of the named defendants in the Federal Case. The Complaint arose out of the December 20, 2011 shooting death of Anthony Lamar Smith by then St. Louis Police Officer Jason Stockley. The underlying Complaint, a true and correct copy of which is attached hereto as Exhibit A, was filed in the Federal Case on February 6, 2012.

DISCOVERY AND DUTY OF DEFENDANTS AND THEIR COUNSEL

Extensive discovery was conducted during the course of the Federal Case. In fact, in addition to the automatic disclosures required by Rule 26, our office issued three separate rounds of written discovery to the Defendants. The discovery requests were comprehensive and encompassed all evidence garnered as part of the investigation by law enforcement into the underlying fact situation giving rise to the Complaint.

As a member of the Missouri Bar, a public servant affiliated with the Office of the Attorney General, a member of the bar of the District Court and an agent of the Court, Defendants' prior counsel were required to disclose all discoverable evidence requested or required by Rule 26.

In one of the internal reports produced as part of the disclosed discovery, it was noted that the silver handgun Defendant Stockley alleged he recovered from Mr. Smith's car was processed for DNA evidence. Despite our requests, no results were present as part of the discovery produced by your office. When we inquired, Defendants' counsel told us there was no DNA evidence found on the gun.

In an FBI report provided to us by the State of Missouri as part of the disclosed discovery, a witness referenced taking video from a second floor window looking over the scene of the shooting. We were told the phone containing the video had been stolen and Defendants did not have the video.

Following the extensive discovery process, and based on the affirmative representation by the State of Missouri that the Defendants had fully complied with discovery production requirements, we agreed to forego taking depositions of the Defendants and witnesses and to proceed with the court ordered mediation of the Federal Case. The mediation was thereafter conducted on June 20, 2013 at the offices of US Arbitration & Mediation ("USA&M") in the City of St. Louis. Retired Federal Judge Stephen Limbaugh served as the mediator.

MEDIATION PARTICIPATION

The State of Missouri represented all of the Defendants at the USA&M mediation conducted by Ret. Judge Limbaugh. Significant discussion and analysis of the underlying fact situation was conducted by the parties during the mediation. As part of this process, the materials provided by Defendants as part of the federally mandated discovery disclosures, included the in-dash camera footage, the in-dash audio, the On-Star audio, and, of course, the statement of then Officer Stockley.

At the time of the mediation:

➤ Officer Stockley was still employed by the St. Louis Metropolitan Police Department;

➤ The federal law enforcement authorities had already turned over to Defendants all of its evidence and investigative reports;

➤ No disciplinary proceedings had been made public relative to Stockley;

➤ No federal charges had been brought against Stockley;

➤ No state charges had been brought against Stockley.

In fact, at the time of the mediation, the position of the Defendants was that Stockley was an exemplary officer who had acted in fear of his life; that of his partner, Officer Bianchi; and bystanders.

In his statement, a copy of which was provided to us by Defendants as part of the mandated federal discovery disclosures, Stockley made a number of contradictory statements, including (in essence if not verbatim):

1. At the outset of the chase with Anthony Lamar Smith in the Church's Fried Chicken lot that he personally observed in plain view in Anthony Lamar Smith's hand a silver handgun pointing up and toward Stockley (this despite the required use by Mr. Smith of both hands as he repeatedly shifted gears from reverse to drive to reverse to drive while he maneuvered and steered the vehicle in which he was driving out of the police car blocked parking spot in which the car Smith was operating was parked).

2. At the conclusion of the chase with Anthony Lamar Smith, Stockley exited his squad car's passenger side and approached Mr. Smith's driver side door. Stockley specifically noted in his statement that the airbags of the vehicle operated by Smith had deployed, thus blocking Stockley's view of Anthony Lamar Smith.

3. Despite the blockage of view, Stockley states that in light of the fact that he knew that Smith was purportedly armed (as described in paragraph # 1 above) he approached Smith's vehicle with his weapon drawn; opened the driver's door to Smith's vehicle, lifted the airbags so he could see Smith with clarity; made eye contact with Smith (who purportedly said nothing); instructed Mr. Smith to show his hands and stop moving; observed Mr. Smith's right hand reaching between the passenger seat and the center console, a movement Stockley indicated Smith was reaching for the handgun Stockley reported seeing in plain view in the hand of Smith while Smith was navigating his vehicle out of the Church's Fried Chicken parking lot.

4. At this point, according to Stockley, Mr. Smith purportedly continued to reach in the area between the passenger seat and center console.

5. Stockley asserted further in his statement that when Mr. Smith continued to reach in the area between the passenger seat and center console Stockley believed, based on the way Mr. Smith moved, that Mr. Smith had gained control of the silver handgun Stockley

purportedly previously saw. As a result, Stockley asserted in his statement that he again instructed Mr. Smith to show his hands, but Mr. Smith refused to do so.

6. Again asserting fear for his own safety and that of his partner, Stockley stated he discharged his department issued firearm at Mr. Smith, striking Mr. Smith in the heart. Stockley stated he believed he discharged his weapon at Mr. Smith four times from a distance of three feet and immediately thereafter holstered his weapon.

7. Immediately after the shooting, Stockley stated that Mr. Smith brought both of his hands to his lap and stopped moving.

8. Stockley brazenly noted in his written statement that he attempted to render first aid to Mr. Smith by returning to his police vehicle and retrieving what he described as his personally owned "Quick Clot."

9. The in-dash camera depicting images from within the police car reflect Stockley indeed returned to the back seat of the police car to retrieve something from his bag, however, as if by design, Stockley made sure his back wholly obscured any video images of that which was actually retrieved from his bag. This is vital in the fact situation in that it left open during the mediation the possibility that indeed Stockley was trying to help Mr. Smith and not retrieve a weapon to plant in Mr. Smith's car. Interestingly, and inexplicably, the in-dash video stopped suddenly after Stockley exited the back seat, leaving the Plaintiffs incapable of disproving that Stockley was trying to render first aid to Mr. Smith.

10. Stockley further noted in his statement that upon returning to Mr. Smith that it was apparent the "Quick Clot" was a futile effort to save Mr. Smith.

11. Incredulously, Stockley then asserted he immediately entered Mr. Smith's car to locate the silver handgun, recover the silver handgun between the center console and the passenger seat, unload it for safety reasons, and place it on the passenger seat. This means that Stockley, after he shot Mr. Smith and believing Mr. Smith was alive and would benefit from first aid efforts (and presumably in a position to use the silver handgun), actually returned to his police car before securing the weapon.

SETTLEMENT OF FEDERAL CASE

Based on the representations of the Office of the Attorney General as counsel for the Defendants that we were in possession of all evidence in Defendants' possession or control and the ongoing assertion that the statement of Stockley constituted a true and correct recital of the fact situation upon which the Federal Case was premised, the Federal Case was settled on June 20, 2013.

Ultimately, issues relating to the apportionment of the settlement proceeds were thereafter reconciled and the settlement was paid in December 2013.

In short order thereafter, Stockley was suspended by the St. Louis Metropolitan Police Department. Upon the conclusion of his suspension, Officer Stockley resigned his employment with the Department. Officer Bianchi remains gainfully employed by the St. Louis Metropolitan Police Department.

RECENT DEVELOPMENTS

St. Louis has since become synonymous with racial tension and strife arising out of, touching upon and pertaining to excessive use of force by law enforcement. The name "Ferguson" is internationally recognized as indicia of the social eruption from a long simmering volcano of distrust, unrest, and injustice.

The death of Anthony Lamar Smith did not simply fade into the bottomless abyss of bygone travesties. Rather, local activists, members of the media, and others have sought transparency and forthcoming candor with respect to the loss of Mr. Smith's young life.

As you know, Stockley has recently been charged by the State of Missouri with 1st Degree Murder. He has recently been released on bond pending trial. In the days following the Circuit Attorney's announcement in this regard, it was disclosed for the first time that DNA test results had been garnered by the Defendants relative to the silver handgun. It has been reported and confirmed to us by the Circuit Attorney's office the DNA test results indicated that there was zero presence of Mr. Smith's DNA (this despite the weapon purportedly being seen by Stockley in the hand of Mr. Smith while Mr. Smith was navigating his vehicle out of the Church's Fried Chicken parking lot and again after the collision with Mr. Stockley's police vehicle). In a sobering announcement, the Circuit Attorney's office has recently stated Stockley's DNA was found on the silver handgun.

We have since been advised by the Circuit Attorney's Office that the DNA evidence in this regard was garnered and tested and the test results were procured and in the possession of Defendants in 2012, being the year before the mediation of the Federal Case was conducted. This evidence was never disclosed by Defendants to Plaintiffs.

We have also since ascertained that contrary to representations from Defendants, the third-party video from the second floor of the building overlooking the scene of the shooting of Anthony Lamar Smith not only existed, but was known about and under the custody and/or control of Defendants. This video evidence was never disclosed by Defendants to the Plaintiffs.

SETTING ASIDE SETTLEMENT OF A FEDERAL CASE

Federal law is clear that a party or parties may be entitled to relief from a final settlement of a federal case for fraud, misrepresentation, or misconduct by an opposing party. To do so, in this case, it must be established that the Defendants, and the State of Missouri, by and through its Office of the Attorney General, engaged in fraud or other misconduct and that this conduct prevented the Plaintiffs from fully and fairly presenting the case.

The evident disregard for duties and obligations as a party to a federal action of the nature involved herein transcends misconduct and appears to embrace all that is fraud, borne of a systemic preoccupation with and focus on the shrouding of truth, transparency; avoidance of exposure to public scrutiny and ridicule, the wholesale refusal to accept responsibility and the equally wholesale absence of prompt employment of remedial measures to ensure the Defendants, and others in like position, do not similarly act with reckless disregard for the health, safety, welfare and lives of any Americans.

IMPACT OF NON-DISCLOSURE OF EVIDENCE

Obviously, the undisclosed evidence significantly alters the lay of the land with respect to liability and culpability on the part of the Defendants. Moreover, the role played by the State of Missouri in connection with same appears to patently place the State of Missouri in harm's way.

The DNA evidence reportedly demonstrates that only the DNA of Stockley was found on the revolver purportedly found by Stockley in the car of Mr. Smith after the shooting. As noted above, if Stockley's statement is accurate and Mr. Smith was indeed holding the revolver in his hand on the passenger seat of the car at two separate points in this incident, then Mr. Smith's DNA would be just as likely to be recovered from the revolver as Stockley's. This withheld DNA evidence supports the proposition that Stockley's statement regarding Mr. Smith's holding of the revolver was a fabrication. It is important to note that this fabrication serves as the basis for the post-shooting assertion by Stockley that he felt in danger because of the revolver he had purportedly seen in Mr. Smith's hand.

The withheld third-party video pieces are more problematic for the Defendants, the State of Missouri and Stockley in that they depict a number of troubling facts:

1. Stockley not only had his department issued revolver with him at the time he confronted Mr. Smith, but he also possessed and flourished his personal AK-47 assault rifle with him. The AK-47 was outfitted with a barrel drum containing 63 rounds of ammunition;

2. Stockley had no time from the point he confronted Mr. Smith to interact with Mr. Smith in the fashion described by Stockley in his statement before shooting him;

3. After the shooting, Stockley did not secure the revolver;

4. Stockley is overheard by the third-party videographer saying he either did not see any weapon or simply thought he saw Mr. Smith reaching for something;

5. Stockley was wearing black leather gloves during the shootings and continued to wear them until after the shooting and just before he returned to the squad car and placed his AK-47 assault rifle out of view and went into the back seat to rummage through the bag to purportedly retrieve a "Quick Clot" bandage.

6. During Stockley's purported retrieval of the "Quick Clot" bandage, Officer Bianchi is seen entering the front driver's side door of the squad car to turn off the in-dash camera (accounting for the sudden cessation of video at a crucial time of events).

7. After purportedly retrieving the "Quick Clot" bandage, Stockley is seen exiting the police car with nothing in his hands and walking around but not stopping at the car in which the lifeless body of Mr. Smith remained. Thus, Stockley's brazen assertion that he returned to the police car to garner medical supplies for the administration of first-aid to the young man he had just shot at point-blank range is categorically demonstrated to be a ruse designed to shroud the truth.

8. The foregoing undisclosed evidence, if present at the mediation, would not only have significantly altered the valuation of the case but it makes establishing a strong case for liability exponentially easier.

In short, the non-production of the disclosure of the DNA evidence and the video was a game changer. Production of that evidence would have wholly supported the proposition that the version of facts as delineated in the statement proffered by Stockley was, at best, a work of fiction and, at worst, a patent lie. In addition to discrediting Stockley, the video would have provided immense credibility to the statements of the FBI witness who produced the video of the shooting's aftermath. In addition to taking the video, the witness told the FBI (1) Officer Stockley never gave Mr. Smith any commands and (2) he heard Officers Stockley and Bianchi talking to their supervisor and overheard one say he did not see anything and the other say that he cannot be sure the suspect had a gun, but that he thought he was reaching for something. By producing this video, we could have verified this witness truly was at the scene to witness what he claimed and that his statements to the FBI regarding the contents of the video are corroborated by the video. Defendants' failure to produce the video deprived Plaintiffs of a witness of incalculable credibility.

In short, the withholding of crucial existing evidence within the context of a federal Civil Rights action was both a fraud and an act of misconduct wholly inconsistent with the standard of care applicable to all who are privileged to practice before the Court. If it is asserted that the State of Missouri was not aware of the existence of either the DNA evidence or the third-party video evidence, it is respectfully suggested your office as that of the Attorney General had a duty to confirm the non-existence of same before responding to inquiries from our office about their existence.

Whatever the scenario, the duty to disclose existed and the duty was not discharged.

Not one of any of the Plaintiffs' counsel were in a position to independently ascertain the existence or non-existence of these materials and game changing pieces of evidence. Rather, as is the case in virtually all litigation of this nature, they were compelled to rely on the veracity, accuracy and completeness of the representations of, filings from, and discovery produced by the Defendants, by and through Defendant's counsel.

Michael A. Garvin, Esq.
June 22, 2016
Page 8

The mediated settlement was agreed to in reliance upon what has now conclusively been determined to be misrepresentations made by and on behalf of the Defendants.

State and federal courts have held that the bar required to effectively vacate a settlement is hurdled with room to spare if there is a positive representation of an existing fact which is not true and induces the settlement. This amounts to fraud sufficient to entitle the Plaintiffs to have the settlement set aside.

Interestingly, the Circuit Attorney's Office has alluded to new evidence being the basis for the four year delay in the bringing of Murder First charges against Stockley. Yet, notwithstanding the charge having been issued, the Circuit Attorney's Office has refused to specifically identify the new evidence. This refusal has been consistent, regardless of whether the propounding party is a member of local media or the judge conducting the bond reduction hearing.

It is respectfully suggested the best interests of the State of Missouri and the Defendants are served by (1) producing any documents responsive to Plaintiffs prior discovery requests, specifically including any DNA evidence and results, not previously produced to the Plaintiffs and (2) consenting to good faith participation in the reopening of the mediation to take into consideration the undisclosed discovery.

I have been authorized to extend this proposed streamlined alternative dispute resolution format for a period of ten (10) days from the date of this letter after which, if not accepted, will be deemed withdrawn. In this era of sensitivity to transparency and accountability, it is respectfully suggested the best interests of the State of Missouri and the City of St. Louis are furthered by embracing this suggested course of action and obviating further exposure to well-founded ridicule arising out of what hopefully will be demonstrated to be a by-gone era of secrecy, deception, and systemic shrouding of truth.

Very truly yours,



Albert S. Watkins, L.C.

ASW/mds

CC: **VIA E-MAIL**
Mr. Anthony Gray, Esq.

EXHIBIT B



ATTORNEY GENERAL OF MISSOURI

CHRIS KOSTER
ATTORNEY GENERAL

JEFFERSON CITY

65102

P.O. Box 899
(573) 751-3321

June 28, 2016

VIA EMAIL & U.S. MAIL

Albert S. Watkins, L.C.
Kodner & Watkins, L.C.
7800 Forsyth Blvd., Ste. 700
St. Louis, MO 63105

Re: A.B.S., a Minor, et al., v. The St. Louis City Board of Police
Commissioners, et al.

Dear Mr. Watkins:

We are in receipt of your letter of June 22, 2016, addressed to St. Louis City Counselor Michael Garvin, seeking the "reopening" of the mediation of this matter.

Your letter suggests that the attorney from this Office representing the Board and Police Officers in the prior federal lawsuit failed to produce certain documents during discovery, before the case was settled at mediation. Specifically, you reference DNA test results and a cell phone video of a witness who was interviewed by the FBI.

Our Office has thoroughly reviewed our entire file. As we have previously stated, every report and every video in possession of the Attorney General's office was produced to you and your firm as part of the discovery process. In this regard, your file and our office's file contained the same information.

The City and Mr. Garvin have asked us to decline your proposal to reopen the mediation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joel A. Poole", written over a faint, larger signature.

Joel A. Poole
Chief Counsel, Litigation Division

c: Michael A. Garvin, Esq.
City Counselor
St. Louis MO