

**IN THE CIRCUIT COURT FOR THE
TWENTY-SECOND JUDICIAL CIRCUIT
CITY OF ST. LOUIS
STATE OF MISSOURI**

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	Cause No. 1822-CR00642
v.)	
)	
ERIC GREITENS,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO COMPEL IMMEDIATE
PRODUCTION OF ALL EXCULPATORY INFORMATION**

Defendant Eric Greitens requests a court order compelling the Circuit Attorney to immediately produce all exculpatory information in her possession. Recent deposition testimony has confirmed that information that supports the Defendant's innocence has been withheld from him – as well as from the Grand Jury and the House Committee reviewing this matter.

Background on Recent Events

Counsel for the Defendant questioned K.S. under oath on Friday, April 6, 2018. This testimony provided information establishing that the Circuit Attorney lacks evidence to prove the offense. However, it also established that the Circuit Attorney has withheld evidence from the defense. Similarly, the House Committee looking into these matters has been deprived of essential information. Of note, the sworn testimony established that K.S. never saw a photograph, has no evidence of transmission of any image, and that any assertion by K.S. that she saw a phone on the day in question was based on a dream or vision. In addition, the Circuit Attorney videotaped an interview of witness K.S. but now claims that this tape (which Defendant

believes would further provide proof of his innocence) does not exist due to a claimed malfunction. The loss or destruction of such key evidence bears scrutiny.

A. Undisclosed Dreams or Visions

The prosecution admits it does not have any photograph that forms the basis of the charges. Nor has the prosecution provided any evidence that K.S. ever saw such a photograph. Nor has evidence of any transmission been provided. Nor does K.S. recall seeing a telephone or camera. When K.S. was asked by defense counsel, “Did you ever see him in possession of a camera or phone?” she answered: “Not to my knowledge. I didn’t see him with it.” The question was then asked: “And as you sit here now, you cannot state under oath that you ever saw him in possession of a camera – with a camera or a phone?” and K.S. replied, “Correct.” And then, “And you can’t say you saw it on his person, you can’t say you saw him put it down in the kitchen, take it from the kitchen, or put it down anywhere in the basement. Those are all correct statements, are they not?” K.S. answered, “Yes. I cannot say.”

Apparently recognizing the difficulty this testimony presented for the charges, the Assistant Circuit Attorney later asked K.S. “did you see what you believed to be a phone?” K.S. answered: “... I haven’t talked about it because **I don’t know if it’s because I’m remembering it through a dream** or I – I’m not sure, but yes, **I feel like I saw it** after that happened, but I haven’t spoken about it because of that.” She later re-confirmed, however, that she could not testify under oath that she saw a phone.

A witness who is "remembering it through a dream" is not a witness upon which a prosecution can be based. K.S. testified that she had informed the Circuit Attorney that her recollections may well be from a dream or vision, but the Circuit Attorney did not turn that information over to the defendant. It was not until after hours of testimony that K.S. revealed

she was having a dream or vision about what happened. Nor did K.S. inform the Missouri House Committee looking into these matters of this key fact. These dreams and visions may well extend to multiple other aspects of K.S.'s recollection of these three-year-old events. For the Circuit Attorney to have been told by K.S. about these dreams and visions and to have not disclosed it to the defense is a violation of Brady.

B. Witness K.S. Provides Other Undisclosed Evidence That is Exculpatory

There are also differences between the testimony K.S. gave in her deposition versus what she said to the Grand Jury. On key points, K.S. admitted she had not disclosed to the Grand Jury or the House Committee important facts. K.S. also acknowledged that the recordings made by her ex-husband contained what she describes as lies. These differences make it critically important that the defense obtain accurate information about what K.S. has said on different dates about the events in question.

By way of example, apparently a theory of the Circuit Attorney is that K.S. would not consent to creation of images involving partial nudity. But in an event never previously disclosed to the Grand Jury or House Committee, K.S. now admits that in June of 2015, she transmitted images via Facetime of herself to the Defendant while she was in a state of partial nudity. In a similar manner, K.S. acknowledged that for months after the alleged "invasion of privacy," K.S. continued to see the defendant willingly. One of those events took place that very same afternoon on March 21, 2015, and another just days later. Other events took place weeks and months later, again suggesting that K.S. did not view the Defendant as having violated her privacy rights back in March. K.S. acknowledged that she never viewed anything that happened as a criminal matter, agreeing that the "last thing on [her] mind" even in January of 2018 was

potential criminal prosecution. Moreover, key information tending to prove innocence was not provided to the Grand Jury or House Committee.

The facts disclosed in the deposition establish that this was a months-long relationship and that K.S. was a co-equal participant; any current testimony to the contrary appears to be the product of dreams or visions that make it difficult to remember what happened, the passage of time after the defendant decided to terminate the relationship, or the continuous interviews on this subject. The defense therefore requests a report of any statement by K.S. to the government that would tend to be exculpatory, including in the sense of showing that K.S.'s conduct after March 21, 2015 was unlike a person who was the victim of an invasion of privacy. These multiple statements by this witness are key to the defense and have not been provided in any detail. Therefore, full memoranda of what was said by K.S. at all interviews should be provided.

C. The Circuit Attorney's Missing Tape of K.S. Interview

Given the passage of time and inconsistencies between what K.S. says on different occasions, it is essential that the Defendant have copies of all prior statements of witness K.S. One of these prior statements was given to the Circuit Attorney months ago. On Friday, K.S. testified that the Circuit Attorney and Mr. Tisaby had a video camera at this key interview. They told K.S. and her attorney that the interview was being videotaped. The camera was set up by Mr. Tisaby. As far as K.S. was aware, the interview was videotaped. This videotape is essential to the defense of the case because it likely would confirm even more inconsistencies in the evidence or corroborate important exculpatory details. Already the evidence contains different statements by K.S. (a) to her husband on recordings; (b) to the Grand Jury; (c) what K.S. testified in her deposition that she said to the House Committee; and (d) in her deposition. A videotape of

an interview would be particularly powerful evidence for the Defendant. Its production is essential.

Apparently, the Circuit Attorney claims that the videotape machine did not work. If proper investigation technique was followed, the tape machine would have been checked before the interview started, the tape would have been marked as involving an interview of K.S. on the date at issue, and the tape would be preserved. Yet no tape has been provided. At a minimum, a written report should exist that described the attempted taping and why it failed. No report has been provided. Nor has any other explanation been given for the malfunction. This tape is essential to the defense, both for the substance of what was said and to confirm what was told to the prosecutors. Defendant believes that if the St. Louis Police Department – and not an unlicensed private investigator – conducted this investigation this valuable evidence for the defense would not have been lost or destroyed.

Background on Discovery Issues in this Case

Over a month ago, at the March 6, 2018 court hearing in which The Circuit Attorney participated, the Circuit Attorney's Office stated, "the State will absolutely turn over anything that is Brady, whether or not it's in a report, and it will be put in writing and in a report." 3-6-18 Transcript, p. 15. Similarly, the Circuit Attorney's Office had promised "anything potentially exculpatory ... we will absolutely turn it over within 48 hours of getting it." 3-6-18 Transcript, p. 15-16.

The Court is aware of some of the difficulties defense counsel has had trying to obtain accurate information as to what K.S. has said in prior statements made to the Circuit Attorney. The claim that there are no notes from the January 29, 2018, interview of K.S. conducted by Mr. Tisaby and The Circuit Attorney is well documented in defense counsel's motion to compel a

second deposition of Mr. Tisaby. After Mr. Tisaby had been grilled as to how he could have conducted a two-hour interview without taking a single note, suddenly the following day the Circuit Attorney produced notes she had from that interview. Notations related to what K.S. said regarding the events of March 21 and the days following are minimal to say the least.

Additionally, K.S. had been interviewed on January 24, 2018. However, no one other than The Circuit Attorney participated in that interview. While defense counsel has notes of The Circuit Attorney from that interview, as discussed below, the exculpatory facts were not referenced within the notes. Consequently, until K.S.'s deposition last Friday, significant exculpatory information had not previously been revealed, as promised to the Court and to defense counsel.

Time and effort was wasted in the deposition of K.S. obtaining information that the Circuit Attorney chose not to disclose to defense counsel or the grand jury before the deposition. Defense counsel raised the concerns about not getting exculpatory information more than a month ago. The Circuit Attorney's Office promised "anything potentially exculpatory" would be turned over. The failure to do so in such an important matter is inexcusable. Moreover, what other exculpatory information may also be available is still unknown. K.S. was interviewed once by only The Circuit Attorney, yet her notes have no exculpatory information included. The second interview was videotaped, but the Circuit Attorney's Office claims the equipment did not work. The Circuit Attorney's Office has acknowledged that exculpatory information must be turned over whether written into a report or not. However, that did not happen in this case. With The Circuit Attorney sitting there in the courtroom, her office made clear they knew the rules:

"[W]e will make sure if there are any things that are not contained in the report, and I candidly can't imagine anything that would fall into that that hasn't been turned over, but should there be anything, it's turned over in advance of the deposition."

3-6-18 Transcript, p. 17. When this statement was made, the Circuit Attorney knew at least some of the information set out above.

Request for Relief

Defendant requests that the Court order the Circuit Attorney to produce all exculpatory information in its possession, including any further statements by K.S. that her testimony may be based on "dreams" or "visions"; any further statements by K.S. that negate or call into question the essential elements of the case; and further statements that suggest that K.S. did not view herself as being a victim of an invasion of privacy after March of 2015, and the video tape and machine at issue (or any report related thereto). This request extends to all exculpatory information, whether documented in writing or retained only orally.

Dated: April 8, 2018

Respectfully submitted,

DOWD BENNETT LLP

By: /s/ James G. Martin

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the City of St. Louis Circuit Attorney's Office this 8th day of April 2018.

/s/ James G. Martin