

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

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

**DEFENDANT’S SUPPLEMENTAL BRIEF IN  
SUPPORT OF MOTION FOR SANCTIONS**

**I. Introduction**

The Court is by now aware that the Circuit Attorney elicited false sworn deposition testimony and failed to produce Brady material regarding witness K.S. Sunday the defense learned of more misconduct because, once again, defense counsel just received additional previously concealed discovery. This misconduct includes more perjury by Mr. Tisaby. It includes more perjury elicited by the Circuit Attorney's own questions. And it includes additional Brady violations. But most distressingly, yesterday's revelations show that the prosecution team altered a witness statement thereby concealing exculpatory information.

**II. Overview**

Witness J.W. was endorsed by the Circuit Attorney in the indictment. She was a friend and confidant of K.S. K.S. confided in J.W. back in 2015 about the alleged events at issue in this case. J.W., consequently, is an important witness.

Witness J.W. was interviewed by Mr. Tisaby on January 30, 2018. Though the indictment was issued on February 22, 2018, it was not until March 15, 2018, that the Circuit Attorney produced a typed witness statement prepared by Mr. Tisaby of this interview. Defense counsel

was told this witness statement was the only material related to the interview of J.W. At his deposition, Mr. Tisaby confirmed -- under oath -- that he had no detailed notes of the interview, that the summary included all information provided by J.W., and that he did not have drafts of the witness statement. Yesterday's production of documents proves that this testimony was false. However, yesterday's production appears to demonstrate something even more sinister: the witness statement provided to the defense back in March 2018 had removed from it important exculpatory evidence that is included in the handwritten notes taken at the January interview and that is included in both of Tisaby's prior drafts of the witness statement that were just provided.

J.W. talked to K.S. about these events back in March of 2015. J.W.'s source of information is from the words used by K.S. and her ability to hear or see K.S. as she described the events at issue in this case. Remarkably, though not in the final witness statement produced back in March, each of the documents just produced state that K.S. told J. W. that following the March 21, 2015, encounter, "K.S. thought [the defendant] cared about her". K.S.'s belief that the defendant "cared about her" right after the encounter is, of course, exculpatory. It is 100% inconsistent with the arguments made by the prosecution that the defendant had violated the rights of K.S.; had victimized her in some way; or had traumatized her, and it directly contradicts the quote K.S. made to the House committee, "I was a thing to him."

To be clear, the statement by J.W. that K.S. believed that the defendant "cared about her" (a) was included in Tisaby's handwritten notes taken at the interview (that were just provided yesterday); (b) was included in a handwritten draft of the interview summary (that was just provided yesterday); and (c) was included in the first type-written draft of the interview summary (that was just provided yesterday). Yet, somehow this very exculpatory statement was not included in the interview memorandum that the Circuit Attorney produced to the defense back in

March 2018 in response to the discovery requests. The defense did not have these notes for the first six weeks of trial preparation, the defense did not have these notes at K.S.'s deposition, and the defense did not have these notes at the hearing to impose sanctions. Rather, these notes were only produced after defense counsel threatened once again to bring the matter to the Court's attention.

### III. Mr. Tisaby Provided False Sworn Testimony

On March 15, 2018 the Circuit Attorney produced to the defense a type-written witness statement of J.W. based on his interview of the witness. At his deposition, Mr. Tisaby provided materially false testimony about his interview. The Circuit Attorney never corrected this false testimony. Here is some of that testimony:

Q: "... I'm talking about the pen to paper notes you took when you interviewed [K.S.] and [J.W.]."

A: Okay. Mr. Martin, **I have no handwritten notes** for the interview itself. I have a body of a predication, and the date the interview conducted and where. But notes themselves, I -- I typed them and that's what you see in the report. I typed my report." Tisaby Dep., 109:12-19 (emphasis added).

Eventually, after taking a more than two-hour break to allow Mr. Tisaby time to return to his hotel to check his laptop for drafts of his reports, he provided two, two-inch by two-inch Post-It notes with J.W.'s name, her occupation, date of interview, place of interview, names of others present for the interview and a note that J.W.'s counsel requested the interview not be recorded. Id. at 124:13-25.

Mr. Tisaby assured the defense that these two sticky notes comprised the entirety of his note taking.

Q: "Okay. And this -- this is the full extent of handwritten notes you have from [J.W.'s] interview?"

A: Yes, sir. Absolute -- absolutely." Id. at 126:1-4.

In addition to testifying under oath that he did not have any notes, he also testified that he did not have any earlier drafts of J.W.'s interview report.

Q: "And you -- and -- and it's your testimony under oath that you went to your laptop and you looked for earlier drafts, and you could not find earlier drafts of the interview report of [K.S.] or [J.W.]?"

A: Yes, sir." Id. at 128:2-7.

And after providing conflicting testimony as to how he works with different draft versions of a report, Mr. Tisaby eventually settled on the claim that for K.S. and J.W.'s interview reports, he only worked in one document.

Q: "And what about with [J.W.]?"

A: Same thing with [J.W.].

Q: Only one draft?

A: Only one draft. That was easy. One draft with her." Id. at 144:15-19.

A review of the notes produced just yesterday leaves no doubts that Mr. Tisaby had at least two earlier drafts and edited out of his final report certain exculpatory information. Yet in his prior sworn testimony Mr. Tisaby repeatedly assured defense counsel that his report was an exact rendition of what J.W. told him.

Q: "And this is a verbatim rendition of what she told you?"

A: Yes, sir." Id. at 250:6-8.

\* \* \*

Q: "And how close to verbatim is this report, Exhibit 15 [Tisaby's report of interview of J.W.], to what [J.W.] told you?"

A: Mr. Martin, this is pretty -- this one here is pretty verbatim because I know that I went back and her statement -- I put

most of this in when I -- when I did her statement.” Id. at 251:9-14.

Yesterday's production of documents by the Circuit Attorney proves that all of this testimony is false. He did have handwritten notes taken at the interview. He did write drafts of his witness statement. He did not include all information in the final witness statement provided to the defense. The testimony is false.

#### **IV. The Circuit Attorney Elicited More False Testimony**

The above testimony was elicited by defense counsel. However, as with witness K.S., the Circuit Attorney also elicited false testimony. At page 315 of Mr. Tisaby's deposition, the Circuit Attorney asked Mr. Tisaby if he interviewed J.W. and then she asked follow-up questions. Most critically, she specifically asked him whether "whatever notes you took are incorporated in that report that you turned over?" Mr. Tisaby said, "Completely." Id. at 315:7-9. She then had him confirm he turned over all the drafts and notes he had. Id. at 315:17-19. And at page 341, the final question of the deposition was asked by Ms. Gardner:

Q: [By Ms. Gardner] "To the best of your recollection, is this a true and accurate statement of what [J.W.] stated to you?"

A: Yes, it is, Ms. Gardner." Id. at 341:16-19

This testimony was undeniably false as well, but elicited by the Circuit Attorney in her own questioning.

#### **IV. The Circuit Attorney Was Obligated to Produce these Documents**

On February 23, 2018 defendant served on the Circuit Attorney its Request for Discovery. Defendant's first request was for "[t]he names and last known addresses of all persons whom the State intends to call as witnesses at hearing or trial, together with *their written or recorded statements and existing memoranda reporting or summarizing part or all of their*

*oral statements.*” (emphasis in the original). See also Rule 25.03 (requiring production of this information without motion or court order).

Then, on February 27, 2018, defendant's Supplemental Request for Discovery sought “[a]ny and all memoranda, notes, rough notes, e-mails or other communications by, from or to Enterra, LLC or any of its employees regarding any witnesses interviewed or spoken to regarding this case.” (As the Court is aware, Enterra is the out-of-state, unlicensed private investigation firm owned by Mr. Tisaby.)

The Circuit Attorney never provided these notes or drafts in response to these lawful requests. In fact, even when her office produced the previously-withheld notes of K.S., it did not produce these notes of J.W. Accordingly, on Saturday, April 14, defense counsel informed the Circuit Attorney that the defense would take up the failure to produce notes from J.W.’s interview in court on Monday. The e-mail stated: “We need those [J.W. notes] this weekend because we depose her on Tuesday. As you might expect, we do not believe there are not notes from Tisaby.” Only upon threat of another court hearing did the Circuit Attorney finally turn over the 10 pages of notes and draft reports. Yet the defense needed these notes much earlier.

**V. The Notes are Core Brady and Non-Production Prejudiced the Defendant**

The notes and drafts produced yesterday show that the prosecution left out of Mr. Tisaby’s final report at least three items that he included in his earlier notes and drafts of the interview summary. Of course, it is impossible to know what Brady material Mr. Tisaby may not have ever written down in the first instance. From the tape produced of the K.S. interview, it is clear that he does not write down or report to the defense all the favorable information witnesses provide.

There are three items that appear in his drafts and notes that were not included in his final witness statement. For each of these items, Mr. Tisaby believed it was important enough to write down in his notes and include in his draft statements. Some person deleted the information from what was provided to the defense.

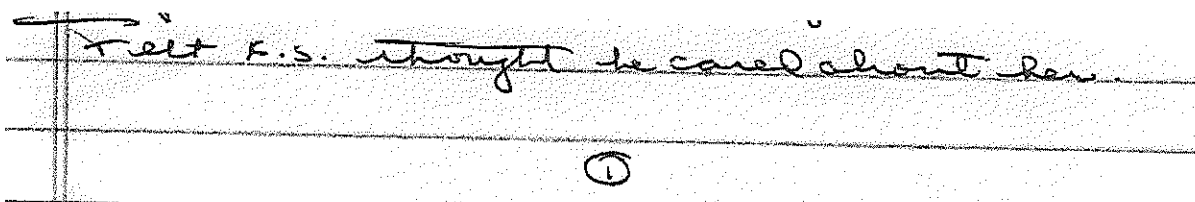
1. Mr. Tisaby wrote down in his notes that K.S. and P.S. were seeing a marriage counselor. Mr. Tisaby omitted this from his final report, perhaps because it did not fit the narrative advanced by P.S. of the cause of his divorce from K.S. or because it could lead to discovery by the defense of materials in the counselor's possession.

2. Mr. Tisaby wrote down in his notes that J.W. -- who knew P.S. well -- was "concerned that PS would do something detrimental to Greitens." Mr. Tisaby omitted this from his report, perhaps because it is inconsistent with P.S.'s testimony that he was not motivated by dislike for the defendant in releasing his tapes. This statement is of obvious import for the deposition of P.S., but the Circuit Attorney did not disclose it.

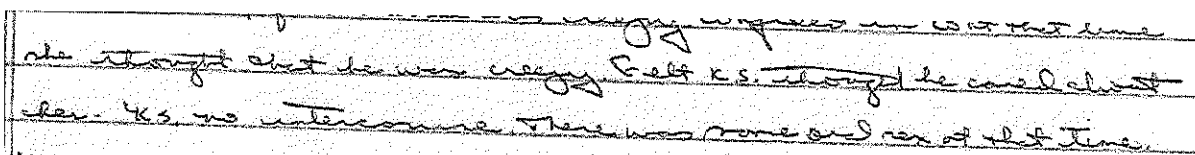
3. Mr. Tisaby wrote in his notes that J.W. (who spoke to K.S. about the March 21, 2015, encounter shortly after it took place) "felt K.S. thought he cared about her." This information is significant. It would have been a focus of the deposition of K.S. Indeed, J.W. talked directly to K.S. about the events of March 21, 2015, shortly after that date. K.S. described the events to her in some detail. J.W. reported that K.S. was nervous because she was married, and not because of anything that the defendant did that was unlawful in some way. Based on what K.S. said and K.S.'s demeanor and voice, J.W. concluded that "K.S. thought he cared about her." A person would never act like another person "cared about" them if that person had victimized them in some way. Moreover, the statement directly contradicts the quote K.S. made to the House committee, "I was a thing to him." The statement is core Brady material.

Not only was Brady material not provided, it was intentionally omitted from the final report. The new documents show the following:

First, in the actual handwritten notes taken during the interview, Mr. Tisaby wrote exactly this down:

A photograph of a handwritten note on lined paper. The text reads "Felt K.S. thought he cared about her." There is a circled number "1" written below the text.

Second, in his first, handwritten draft summary of the interview, Mr. Tisaby wrote exactly this information down:

A photograph of a handwritten draft summary on lined paper. The text reads "she thought that he was crazy. Felt K.S. thought he cared about her. K.S. no interview there was some sort of red line." There is a circled number "1" written above the text.

Then, Mr. Tisaby types this information up into the draft type-written report just turned over. He typed: "[J.W.] noted that she felt that KS thought that Greitens cared about her."

Remarkably, however, in the "final" interview memorandum provided to the defense and available at the time of K.S.'s deposition, this passage was removed. The rest of the paragraph is unchanged. Thus, some person went into a typed-up draft of this interview memorandum, deleted extremely exculpatory information, and then produced only the edited version to the defense.

In this case, the Circuit Attorney did not produce these notes when they were requested. The Circuit Attorney did not produce these notes before the depositions of K.S. and P.S. -- both of whom are discussed extensively in the notes. The Circuit Attorney did not produce these notes when a motion to compel was filed on April 4, 2018. The Circuit Attorney did not produce these notes when it sought its gag order or before the House Report was published. The Circuit Attorney did not produce these notes when they produced the K.S. notes and tape last week. The



Circuit Attorney did not even produce these notes after the Court held its in-chambers discussion regarding the seriousness of the multiple discovery failings already uncovered. The Circuit Attorney only produced them when they were once again going to have to appear before this Court.

These discovery violations are troubling, but it is impossible to avoid the even more sinister conclusions that (a) the Circuit Attorney allowed perjured testimony to be given about these notes; and (b) some person within the prosecution edited out of the notes and the drafts information that is extremely exculpatory and that is directly contrary to the themes and testimony that the Circuit Attorney is presenting in this case. Given that Mr. Tisaby kept that information in three versions of his notes and drafts, it is not unreasonable to conclude that the Circuit Attorney directed the removal of that information. But whether it was Mr. Tisaby or the Circuit Attorney, the Brady violation is clear and the prejudice of not having that information for six weeks of trial preparation and before K.S.'s deposition is manifest.

Given that the Circuit Attorney appears oblivious to the seriousness of her continued misconduct even after last week's hearing - including the in-chambers discussion - it is clear only the most severe sanction will get her attention. Consequently, the defense renews its motion to dismiss this case.

Dated: April 16, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was sent via email to the Court for review *in camera* prior to being filed via the Court's electronic filing system and was also sent via email to the St. Louis City Circuit Attorney's Office this 16<sup>th</sup> day of April, 2018.

/s/ James G Martin