

CRIMINAL DOCKET NUMBER 60600

THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION

STATE OF LOUISIANA

STATE OF LOUISIANA Union Parish Clerk of Court

FILED

VERSUS

SEP 12 2024

KORY YORK Monet Frazier, Deputy Clerk
Third Judicial District Court
DY.CLK.

FILED: _____ :

MOTION TO COMPEL PRODUCTION OF ADDITIONAL EVIDENCE
CONCERNING PRESENCE OF LETHAL LEVELS OF
COCAINE AND ALCOHOL IN THE SYSTEM
OF RONALD GREENE ON THE DATE OF HIS DEATH

TO THE HONORABLE, THE THIRD JUDICIAL DISTRICT COURT, PARISH OF
UNION, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel comes the defendant, KORY YORK,
(hereafter Mr. York), and for the purpose of this motion respectfully represents the
following:

1.

Mr. York is charged by Amended Bill of Indictment with One Count of Negligent
Homicide in violation of La. R.S. 14:32 and Ten Counts of Malfeasance in Office in
violation of La. R.S. 14:134A(1) or A(2). All of the charges arise from a single incident.

2.

Trial in the captioned matter is scheduled to commence on Monday, October 28, 2024
in Union Parish.

3.

The deceased in this case, Mr. Ronald Greene, was the subject of a law enforcement
pursuit traversing several North Louisiana parishes and ending in Union Parish on May
10, 2019, the date of Mr. Greene's death.

4.

Little Rock, Arkansas forensic pathologists Jennifer Forsyth, M.D. and Frank J. Peretti,
M.D. performed an autopsy on Ronald Greene on May 10, 2019 and issued an autopsy

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report which has been provided to the defense. A supplemental autopsy report was later issued by Dr. Forsyth alone and that report has also been provided to the defense. Both the autopsy report and the supplemental report list cocaine use as one of the several causes of Mr. Greene's death.

5.

The defense has previously been provided with reports from Glenwood Regional Medical Center and NMS Labs reflecting positive cocaine and alcohol screens as to Mr. Greene. The discovery materials in this case have been reviewed by undersigned counsel and his paralegal Mary Jane Marcantel. Those materials do not include a report from a toxicology expert.

6.

As part of the defense review of the extensive discovery provided in this case counsel has read various email communications between Assistant District Attorney Laurie Whitten James and Dr. Forsyth.

7.

In one such exchange of September 19, 2022 prosecutor Whitten James wrote to Dr. Forsyth, in part, the following:

Additionally he (Mr. Belton) is engaging a toxicology expert to provide an expert opinion whether the cocaine and alcohol found in Mr. Greene's system would/would not/may have alone caused his death.

See transcript of Laurie Whitten James' email of September 19, 2022 at 3:29 p.m. to Dr. Forsyth attached hereto and marked as Defendant's Exhibit 1 for identification.

8.

As reflected above Ms. Whitten James' email of September 19, 2022 unequivocally states that Mr. Belton "... is engaging a toxicology expert" to provide his opinion as to whether the cocaine and alcohol found in Mr. Greene's system on May 10, 2019 would/would not/may have alone caused his death.

9.

Based upon the above email communication between prosecutor Whitten James and Dr.

Forsyth, counsel recently inquired of the prosecutor as to the possible existence of any sort of written memo reflecting the substance of any conversation which might have occurred between District Attorney Belton or one of his assistant D.A.s and any toxicologist with whom they State may have conferred. (See undersigned counsel's email communication with prosecutor Hugo Holland of 9/4/24 at 4:35 p.m. attached hereto and marked Defendant's Exhibit 2 for identification).

10.

Prosecutor Holland responded to undersigned counsel's email inquiry by way of two email transmissions of September 5, 2024 at 6:19 a.m. and September 5, 2024 at 9:17 a.m. Those responses are attached hereto and marked Defendant's Exhibit 3 and 4 for identification.

11.

Undersigned counsel accepts prosecutor Holland's responses at face value but in an abundance of caution hereby specifically inquires whether or not there occurred any conversation between a prosecutor in this case and a toxicologist, whether retained or not, concerning the levels of cocaine and alcohol found in Mr. Greene's system on the date of his death.

12.

If the response to the inquiry in the preceding paragraph is affirmative then Mr. York requests the following particulars:

1. The names of the prosecutor and toxicologist who engaged in such conversation;
2. The date and time any such conversation occurred;
3. Contact information as to the toxicologist to include physical address and phone, fax and email data;
4. Detailed particulars as to the questions asked of the toxicologist and the answers of the toxicologist to those questions.

13.

Counsel also specifically inquires as to whether or not there exists any written notation, memo, or writing of any sort memorializing a conversation between any prosecutor in this case and a toxicologist concerning the presence of cocaine and alcohol in Mr. Greene's system on the date of his death, and if so, counsel hereby moves for production of any such written memo or other writing.

14.

In a later email of September 23, 2022 at 1:27 p.m. prosecutor Whitten James wrote to Dr. Forsyth the following:

"In the telephone conversation D.A. Belton, ADA Lewis Jones and I had with you (I believe in November 2021) when asked whether you could testify that the cocaine alone could not have killed Mr. Greene, you answered that you could not say that the cocaine alone could not have killed him. Was this a misunderstanding?" (See Defendant's Exhibit 1.)

15.

As regards the telephone conversation referred to in the preceding paragraph Mr. York requests the following particulars:

- A. All memoranda, notations or writings of any sort reflecting and/or memorializing the phone conversation referenced in paragraph 14 above and all of the following particulars:
1. The date, time, and approximate length of the conversation;
 2. The names of all participants in the conversation;
 3. The specific questions put to Dr. Forsyth;
 4. The specific responses of Dr. Forsyth to the above referenced questions;
 5. Whether there occurred Any follow up conversations between any prosecutors and Dr. Forsyth regarding the above referenced phone conversation;
 6. The substance of all questions put to Dr. Forsyth in such follow up conversations and Dr. Forsyth's responses to those questions.

B. In the event there does not exist any memoranda, notations or writings regarding the information requested in Part A above, then counsel requests that the State provide answers to the inquiries appearing in subparts 1 through 6 of Part A of this paragraph based on the personal knowledge of any prosecutor presently or heretofore involved in this case.


16.

Counsel suggests that he is entitled to the information requested in this motion pursuant to the principles announced in *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny as well as La.C.Cr.P. Article 723(B).

WHEREFORE, counsel prays that this Motion to Compel Production of Additional Evidence Concerning Presence of Lethal Levels of Cocaine and Alcohol in the System of Ronald Greene on the Date of His Death be filed. Counsel elected not to request a contradictory hearing regarding the motion because of his belief that the requested information will be voluntarily provided if found to exist. In the event a contradictory hearing is required counsel will file a motion for such hearing well in advance of the current trial date.

Respectfully submitted,

LAW OFFICES OF J. MICHAEL SMALL

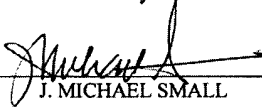
BY: 
J. MICHAEL SMALL
POST OFFICE BOX 12720
ALEXANDRIA, LOUISIANA 71315
STATE BAR ROLL# 8810
TELEPHONE: (318) 487-8963
EMAIL: jmikesmall@aol.com

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CERTIFICATE

I hereby certify that a copy of the above Motion to Compel Production of Additional Evidence Concerning Presence of Lethal Levels of Cocaine and Alcohol in the System of Ronald Greene on the Date of His Death has been served on Special Assistant District Attorney Hugo Holland, by United States mail with proper postage affixed and via email.

Alexandria, Louisiana, this 12th day of September 2024.



J. MICHAEL SMALL

On Mon, Sep 19, 2022 at 3:29 PM Laurie Whitten <lwhitten@lincolnpaish.org> wrote:

Dr. Forsyth:

In the Ronald Greene matter, DA Belton is in the process of engaging a Use of Force expert to provide an opinion relative to whether the Use of Force and Prone Restraint was/was not/may have been excessive. Additionally, he is engaging a toxicology expert to provide an expert opinion whether the cocaine and alcohol found in Mr. Greene's system would/would not/may have alone caused his death

His request would be that, after we receive these opinions, you review them. After your review, he would like to have a conference or telephone conference with you to discuss these findings and, additionally, to further discuss your findings with you.

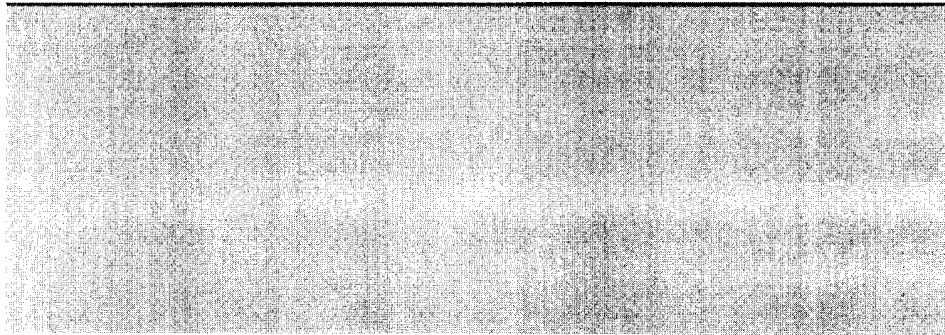
IF this would be agreeable to you, would you please provide your contract for our review and response?

If you have any further questions, please let me know.

Sincerely,

Laurie James

First Assistant District Attorney



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State v. Kory York

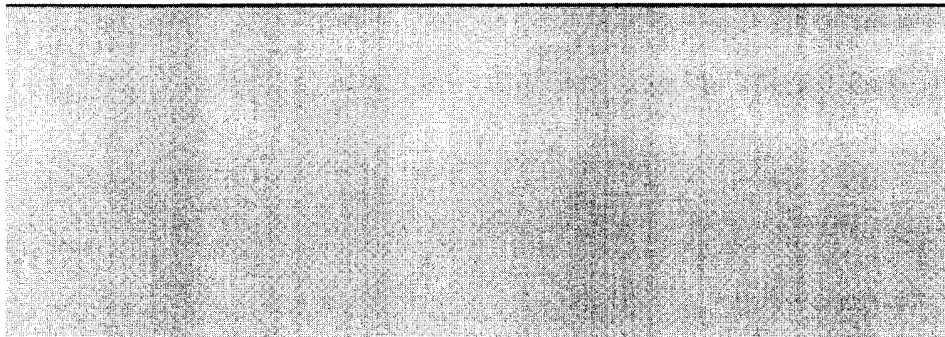
From: Mike Small (jmikesmall@aol.com)
To: dahugo@me.com
Bcc: taylor@taylortownsendlaw.com; mjmrst@outlook.com
Date: Wednesday, September 4, 2024 at 04:35 PM CDT

Hugo,

This is a follow up to our recent phone conversation. As indicated I recently reviewed email correspondence between Laurie Whitten and Dr. Jennifer Forsyth. In an email dated September 19, 2022 at 3:29 p.m. Ms. Whitten advised accordingly "Additionally, he (Mr. Belton) is engaging a toxicology expert to provide an expert opinion whether the cocaine and alcohol found in Mr. Greene's system would/would not/may have alone caused his death."

It's my understanding that there is no toxicology report amongst the materials in this case addressing the issue referenced above. I had assumed that to be the case. I was wondering whether perhaps there might be a memo from Mr. Belton or one of his assistant D.A.s reflecting the substance of any conversation between the prosecutors and a toxicologist regarding the issue outlined above. Look forward to hearing from you.

Mike



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Re: State v. Kory York

From: Hugo Holland (dahugo@me.com)

To: jmikessmall@aol.com

Date: Thursday, September 5, 2024 at 06:19 AM CDT

Mike, I have been searching for several hours and find no such report. I have requested Whitten jog her memory.....and will advise.

I have found, however, that the coke content of Greene's blood was 1700 Ng/mL directly from the heart and not some ancillary pooling organ. I have also found that the seminal study by Jenkins, Levine, Titus and Smialek claims that the mean concentration for cocaine intoxication deaths was 908 ng/ml.

----- Original Message -----

From "Mike Small" <jmikessmall@aol.com>

To "dahugo@me.com" <dahugo@me.com>

Date 9/4/2024 4:35:26 PM

Subject: State v. Kory York

Hugo,

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Mike



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Straight from Whitten

From: Hugo Holland (dahugo@comcast.net)
To: jmikesmall@aol.com
Date: Thursday, September 5, 2024 at 09:17 AM CDT

No, we never retained a toxicology expert. We reached out to one, but for some reason he couldn't do it (I think he worked for the lab which did the tests). The lab basically referred us back to the forensic pathologist for answers to our questions and we never sought to retain any other toxicologist.

Begin forwarded message:


From: Mike Small <jmikesmall@aol.com>
Date: September 4, 2024 at 4:35:51 PM CDT
To: "dahugo@me.com" <dahugo@me.com>
Subject: State v. Kory York

Hugo,

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Mike

 Fwd: State v. Kory York.eml
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