

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,)	
Plaintiff,)	
vs.)	Cause Number 1622-CR02213-01
)	
JASON STOCKLEY,)	Division 23
Defendant.)	

STATE'S MEMORANDUM IN SUPPORT OF A GUILTY VERDICT

COMES NOW, the State of Missouri, by Assistant Circuit Attorneys Robert Steele and Aaron Levinson, and respectfully request that this Court find Defendant Jason Stockley guilty of Murder in the First Degree. In support of its motion, the State of Missouri states as follows:

- 1) Murder in the First Degree requires the State of Missouri prove that a defendant knowingly causes the death of another person after deliberation upon the matter.
- 2) All of the evidence adduced at trial proved that Stockley killed Anthony Smith. Antonio French, an eyewitness to the killing identified Stockley as the person who fired into the Buick containing Anthony Smith. The dash camera footage showed Stockley firing into Smith's Buick. The bullets pulled out of Smith and the Buick matched Stockley's Beretta. Stockley himself testified he shot and killed Smith.
- 3) Deliberation means cool reflection upon the matter for any length of time no matter how brief. MAI-CR 3d 313.02. Evidence of deliberation was presented through Stockley's own statement. At 12:41:30 in the dash camera video, Stockley tells Bianchi "We're killing this motherfucker, don't you know". Forty-five seconds later, he fatally shot Smith.
- 4) Stockley has claimed that he killed Smith in self-defense.
- 5) A law enforcement officer may not use deadly force in affecting an arrest or preventing an escape "unless he reasonably believes that the person being arrested is attempting to escape by use of a deadly weapon or that the person may endanger life or inflict serious physical injury unless arrested without delay." MAI-CR3d 306.14[2]. A reasonable belief means "a belief based on reasonable grounds, that is, grounds which could lead a reasonable person in the same situation to the same belief." MAI-CR3d 306.14[3].

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6) Because Stockley's testimony that Anthony Smith had a gun that he was reaching for at the time he fire was not corroborated by any of the videos or scientific evidence, the Court must evaluate Stockley's credibility as is relates to the believability and reasonableness of his self-defense claim.

7) The video, physical evidence, and the actions and reactions of his partner Officer Brian Bianchi at both scenes lie in stark contradiction to Stockley's words and claims of self-defense. Stockley's testimony and account of events is not credible.

8) Video surveillance footage from Church's Chicken showed that Anthony Smith tried to flee from police, not that he was attempting to injure or kill police officers. The video shows Smith did not attempt to intentionally strike Stockley, and instead tried to drive past him to exit the lot.

9) Stockley claimed that, after knocking out the driver side window, his former partner Officer Brian Bianchi saw a gun and alerted him to that gun. Stockley further claimed that after Officer Bianchi alerted him to the gun, Stockley saw Smith holding a silver gun pointed at him. This claim is neither consistent with the behavior of either officer on the video nor common sense.

10) After breaking out Smith's window with his firearm, Officer Bianchi supposedly looked inside Smith's car and observed Smith with a gun. But the video shows Bianchi's response to what would have been an obvious danger was to immediately holster his firearm. An officer standing next to an armed suspect holding a gun would not have holstered his own weapon.

11) Stockley was carrying his personal Draco AK-47 pistol throughout this encounter. Carrying such a weapon is not permitted under SLMPD policy. Stockley disregarded SLMPD policy. His partner, Officer Bianchi, a "reasonable person in the same situation" did not.

12) If Stockley had seen Smith with a gun pointed at him when Smith drove past him, Stockley would have fired the AK-47 in his hands immediately when he faced the greatest danger. Instead, Stockley waited for the Buick to leave the lot, transitioned to his department issued Beretta and fired at the fleeing Buick.

13) Stockley's testimony about seeing Smith with a gun in his right hand pointed at him is also refuted by the physical evidence. Smith's Buick had a gear shift that had to be operated with the right hand. A button on the back of the gear shift that had to be held to shift

gears. In order to drive the car forward out of the lot after reversing, Smith would have had to have held the gear shift with his right hand. As Smith quickly accelerated, there would not have been time for him to then grab a firearm and point it at Stockley.

14) As Smith was getting away, Stockley ran to the sidewalk, transitioned his AK-47 from his right hand to his left, pulled out his Beretta, and fired seven shots at the fleeing car. If firing at the fleeing Buick was necessary to prevent an imminent deadly threat, using the AK already in his hands would have reduced the threat sooner.

15) A fleeing vehicle occupied by an unknown suspect presented no imminent danger or threat to life that required the use of deadly force.

16) Stockley testified that he didn't fire the AK-47 because he wasn't able to accurately control the shots he fired and worried about hurting others. If this was his concern, he shouldn't have fired any weapon given the circumstances and shouldn't have carried a weapon he was unable to safely use.

17) Lieutenant Kirk Deeken, testified that SLMPD officers were not permitted to fire at a fleeing vehicle. Again Stockley chose to ignore department directives – Officer Bianchi, a reasonable officer in the same situation, did not.

18) Stockley testified that after looking at the video from the Church's Chicken lot numerous times, he found it strange that Officer Bianchi did not pull their patrol vehicle up to his location after Stockley chased Smith's car across the lot on foot. Stockley had to run back to their vehicle and order Officer Bianchi to "get him". Officer Bianchi clearly did not believe a pursuit was warranted before Stockley gave the order.

19) The dash camera video shows the pursuit of Smith's car. During the pursuit, neither Stockley nor Officer Bianchi tried to convey over the radio that Smith had a gun.

20) "Shots fired" is an unclear and misleading statement. While it may signify that something serious has happened, it doesn't tell other officers who fired shots or why. If its purpose was to convey that Smith had a gun, then it was intentionally misleading as other officers might incorrectly assume that Stockley and Officer Bianchi had been fired on.

21) There was testimony adduced that supervisors can cancel pursuits if they don't think the circumstances warrant it. By stating "shots fired" instead of that he fired at a fleeing car--which was against department policy--Stockley was able to assure that he would not be called off the pursuit.

22) Stockley testified that he only said "Shots Fired" and not that the suspect had a gun because he was trying to keep the use of the radio brief and because of "feedback". However, the dash camera video shows he had time to share other information over the radio. At 12:39:54, Stockley reports over the air that the suspect, a black male, tried to run him over with his car. Bianchi then adds "He tried to hit us too." Stockley then relays "He hit our vehicle too." Neither Stockley or Bianchi ever mention the suspect had a gun.

23) Again at 12:40:50, Stockley mentions shots were fired. Even after the "feedback" ended, Stockley did not clarify or alert fellow officers that the suspect, Smith, had a gun.

24) At 12:41:30, Stockley announced that "We're killing this motherfucker, don't you know". He then ordered Officer Bianchi to "hit him now" - creating opportunity to effectuate his commitment. These declarations are inconsistent with his self-defense claim.

25) Stockley conveniently claimed not to remember threatening to kill Smith seconds before doing so and telling Officer Bianchi to ram Smith's car. Stockley lied to detectives investigating the incident and the FBI and only acknowledged his statements when confronted with the dash cam video.

26) After the collision, Officer Bianchi approached the driver's side of Smith's Buick with his hand on his firearm but Bianchi quickly re-holsters his firearm. The driver side airbag had deployed and Smith's actions were not visible from the exterior of the car. No officer would approach an armed suspect, hidden from view behind an air bag, without their firearm drawn. Officer Bianchi's actions at the crash site were consistent with his response on the Churches Chicken lot and reveal the obvious - Bianchi never told Stockley that Smith had a gun.

27) Stockley by his own admission again approached Smith with his AK-47 drawn. Since he testified that this weapon required an additional degree of discretion and that he told the FBI he would only use this weapon if he were outgunned, this behavior is inconsistent with approaching a suspect that was allegedly armed with only a handgun. By his own logic, if he had seen Smith with a handgun and he knew he might have to shoot but didn't feel comfortable using the AK-47, Stockley would have approached Smith with his Beretta drawn.

28) When Stockley fired on Smith after the collision, he again did so using the Beretta, not the AK-47. He had been holding the AK-47 which means that Stockley had to shift the AK-47 from his dominant right hand to his left hand and draw the Beretta with his right hand

before firing. If Stockley believed Smith was an immediate threat that was about to shoot him, Stockley would have fired with the weapon already in his hands.

29) Video establishes that during the seconds leading up to Stockley shooting Smith, Officer Bianchi had his back turned towards Smith and didn't have his gun out. If Bianchi believed Smith had a gun, he would certainly have had his own gun drawn and have been focused on the "armed suspect".

30) When Stockley started shooting Smith, Officer Bianchi jumped back in shock before getting on the radio. Bianchi's behavior demonstrates that he was surprised that Stockley fired on Smith.

31) On the dash camera video, four clear and distinct shots can be heard. Stockley testified that he fired all of the shots at once. However, the physical evidence shows that Smith was shot five times.

32) Deeken testified that at the police academy, new officers are trained to holster their weapons immediately after they are done firing and the threat has ceased. Stockley fires the last audible gunshot at 12:42:23. However, he does not holster his Beretta until 12:42:43, right after a cloud of white smokes ascends from the driver's window of the Buick.

33) Officer Elijah Simpson had been approaching the Buick at the time Stockley was firing shots. Simpson testified he did not hear any of the five gunshots. But on the dash camera video Simpson is seen retreating backwards with his gun drawn following the wisp of smoke and Stockley reholstering. Simpson was unable to articulate what caused this behavior but he clearly acted startled as this was not natural behavior. He only later advanced forward after being summoned by Stockley.

34) None of the witnesses at trial testified that Stockley told them the suspect had a gun. This included Simpson who was asked to watch Smith as Smith sat in the car with engine running.

35) On the cell phone video, when Simpson comes to the Buick and Stockley leaves, the airbag over Smith's window is down. Simpson reached down with his left hand and raise the airbag blocking the driver's door. This means that there was a period when Smith wasn't visible to any officers. If Stockley's account of seeing Smith with a gun is to be believed, then he left a suspect armed with a gun alone inside a vehicle out of view of any officers. This undermines his claim to have been protecting himself or other officers.

36) Stockley returned to the patrol vehicle twice. The first time, he set down his AK-47 on the rear driver's side seat. The second time, he again opened the rear driver's side door and accessed his duty bag which was located on the passenger side of the rear seat. In doing so, Stockley positioned his body directly blocking the body camera. This was an unnatural position since to access his bag, he had to kneel on the AK-47 and on the hat that was already in the backseat.

37) Before other officers could arrive, Stockley removed his gloves. He had previously worn these gloves throughout the encounter with Smith.

38) According to the 302, Stockley told the FBI that he kept a case the shape of a gun case in his duty bag but Stockley testified he only told them he kept "a bag" in the duty bag.

39) Stockley concealed the item he took out of his duty bag. It appears from the video he is adjusting his waistband. When he leaves the patrol vehicle and walks back to Smith's Buick the third time, both the dash camera and cell phone video show Stockley with empty hands.

40) Stockley testified that he retrieved QuikClot from his duty bag and put the QuikClot in his front shirt pocket. He also stated he never used the QuikClot on the scene because of Smith's condition. In the photo taken of Stockley at homicide, his front shirt pockets appear empty.

41) The dash camera was turned off at the scene. It is unclear from the videos whether it was Stockley or Bianchi that turned the camera off. Stockley told the FBI that neither of them turned the camera off, but at trial claimed it was Officer Bianchi. The fact that either one of them turned it off shortly before Stockley entered Smith's car is indicative that they were aware that something was about to happen that should not be recorded.

42) Stockley told the FBI that he attempted to administer first aid. At the time he made that statement, he was unaware of the cell phone footage. The cell phone footage refutes the claim that Stockley ever attempted to provide first aid. Stockley claimed he provided first aid when he walked by the car and observed Smith. That testimony was ridiculous on its face.

43) If Stockley had grabbed QuikClot from his bag and had intended on providing first aid, he would have had the QuikClot out and ready to administer. There was no need for Stockley to secret it in a pocket. The patrol vehicle was only a short distance from Smith and if he needed both hands free, he could have set the QuikClot down.

44) Stockley was standing right next to Smith as he was pulled from the Buick. He made no attempt to provide first aid but instead stepped over Smith's body to enter the Buick.

45) At the time Stockley entered the Buick, there was no risk of Smith or any civilians accessing a firearm, if one had been in Smith's vehicle. It must be noted that cell phone video established that Officer Baumgartner, who was not involved in Smith's murder and ultimately seized the .38 revolver, was standing near the driver side of Smith's car when Stockley entered Smith's vehicle.

46) Stockley's desperation in entering Smith's Buick was made apparent when he sat down on a seat containing blood and broken glass.

47) If concerns about civilians entering the crime scene and getting their hands on a dangerous weapon had any validity, Stockley wouldn't have taken a firearm from a hidden area between the passenger seat and center console and put it in plain view on top of the seat with ammunition right next to it.

48) Despite defense claims concerning the alleged difficulty obtaining DNA from a firearm, Stockley's DNA profile was on every weapon he touched. Anthony Smith's DNA was not on any.

49) A presumptive serological examination revealed the possible presence of blood on the outside of a screw in the grip of the .38. That sample was tested for DNA and the DNA obtained from the area of suspected blood was consistent with Stockley.

50) Dr. Preiter testified that when two individuals touch an item, it could result in a mixed DNA profile, DNA profiles from both contributors. This was evidenced from the DNA profiles recovered from the baggie of heroin seized from inside Smith's car.

51) There were multiple contributors of DNA on the baggie of heroin, including Smith as a minor contributor. Stockley claimed to have touched that baggie of heroin when he retrieved the .38 revolver but Stockley's DNA was not on the baggie.

52) Stockley's DNA was found on his AK-47. Video establishes that on December 20, 2011, Stockley wore gloves while handling the AK-47. His DNA must have been deposited on the AK-47 from previous contact. But, it is illuminating, that Smith's DNA was not on the .38 revolver despite a similar alleged previous contact.

53) The only evidence linking Smith to the .38 revolver was Stockley's testimony that he and Officer Bianchi saw Smith with it.

54) FBI Lab Examiner Doug Halepaska conducted gunshot residue testing on the clothing worn by Anthony Smith at the time he was killed. Using Stockley's Beretta and ammunition, he was able to compare the residue on Smith's Adidas jacket to a series of test shots on a similar Adidas jacket. Halepaska concluded that one of the shots that hit Smith was fired between contact and six inches.

55) Halepaska testified that the Beretta Stockley used was specifically designed to eject spent cartridge casings to the right. Halepaska fired five shots using Stockley's Beretta and found the weapon functioned as designed.

56) The scene at Church's Chicken contained seven spent casings clustered together on the sidewalk in the area where video showed Stockley shooting at Smith's car.

57) At the scene at West Florissant and Acme, four spent casings were found on the ground near the curb to the right of where Stockley was standing when he fired his Beretta. However, one spent casing was found separate from the rest on the driver's floorboard of Smith's Buick at Smith's feet.

58) In order to fire a shot with the muzzle of his Beretta less than six inches from Smith neck, Stockley had to fire his Beretta inside the Buick.

59) Sticking a firearm through a car window before firing the first shot is implausible and incredibly dangerous. Smith would not have been incapacitated at this point and would have had the ability to grab the firearm and either redirect it or wrestle it from Stockley, whose other hand would have been holding his AK-47.

60) Under the defense theory of the case, Stockley was startled, pulled out his Beretta, and fired five shots while backing up.

61) Defense counsel argued that the shot that was fired between contact and six inches could not have been a "kill shot" because the medical examiner found that was not the lethal shot. However, Stockley's own testimony repeatedly referenced how serious he believed the shot to Smith left clavicle was. Stockley specifically stated one of the reasons he would not move Smith or attempt to provide first aid was that with a shot through the clavicle, he believed moving Smith could further exacerbate the impact of that shot. Stockley made no similar statements regarding any of the other four shots that hit Smith.

62) If Stockley had fired all five shots at once while backing away from Smith, we would have heard five distinct shots, since we know from the video that firing under such circumstances makes a clear and audible sound.

63) A shot fired from a close range within the interior of a car while two separate sirens are blaring would be more muffled than a shot fired from outside the vehicle.

64) A later fifth shot being fired is the only reasonable explanation for one but only one shot being fired within six inches of Smith, the puff of smoke emitted, Stockley immediately holstering his weapon following the smoke, Simpson retreating backwards with his gun out in a defensive manner immediately following that period, and the stray cartridge casing inside the car on the driver's floorboard of Smith's Buick.

65) Stockley's self-defense claim can only be relied on if it is credible and based upon a reasonable belief, "which could lead a reasonable person in the same situation to the same belief." Irrefutably, in this case, there was another reasonable person in the same situation, at the same time as Stockley, his partner Officer Brian Bianchi. We must judge the credibility and reasonableness of Stockley's actions through the simultaneous actions of Officer Bianchi's.

66) Officer Bianchi never behaved as if Smith was armed. He was the first one to approach the driver side of Smith's vehicle on both the Church's lot and at West Florissant. Both times, after looking inside Smith's vehicle and assessing the situation, Officer Bianchi reholstered his firearm. He didn't have his gun drawn either time Stockley fired at Smith. Bianchi never told other officers that Smith had a gun, despite alerting them that he struck their vehicle. Lastly, Officer Bianchi was clearly surprised when Stockley killed Smith.

67) In order to find Stockley's uncorroborated self-defense claims were based upon a reasonable belief, this Court would need to find that in the face of immediate danger from an armed suspect, Officer Bianchi alerted Stockley to the danger then, inexplicably, consciously ignored that same danger and put his own and Stockley's lives at risk by reholstering his firearm.

68) The reasonable person involved in the encounters with Smith was Officer Bianchi. His actions, as well as his inaction, demonstrate that the situation did not require the use of deadly force.

69) The reasonableness of Stockley shooting Smith should also be judged in light of the unreasonableness of his actions leading up to the shooting.

70) A reasonable officer would not have carried a personal assault weapon in direct contravention of department policies designed to protect both officers and the public.

71) A reasonable officer would not have fired at a fleeing car, also in direct contravention of department rules.

72) A reasonable officer would have alerted fellow officers that a suspect they were chasing was armed.

73) A reasonable officer would not have rushed up to a stopped vehicle containing an armed suspect, not visible because of a deployed air bag, without having a weapon they were comfortable firing drawn.

74) A reasonable officer would not have switched firearms before firing at an imminent threat, on two separate occasions.

75) The evidence surrounding the killing of Anthony Smith proves that a reasonable person, Officer Brian Bianchi, in the same situation as Jason Stockley did not believe deadly force was immediately necessary to affect the arrest of Anthony Smith on the Church Chicken lot or the corner of Acme and West Florissant. But Jason Stockley applied that force and murdered Smith after deliberation as evidence by the prophetic words he uttered in their vehicle seconds before taking Smith's life.

WHEREFORE, the State of Missouri respectfully requests that this Court find the defendant Jason Stockley guilty of Murder in the First Degree.

Respectfully Submitted,

/s/ Robert Steele

Robert Steele, MO Bar #42418
Assistant Circuit Attorney

/s/ Aaron Levinson

Aaron Levinson, MO Bar #64989
Assistant Circuit Attorney

Based on the Supreme Court Rules governing eFiling, an eService email has been issued to the following parties:

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MISSOURI CIRCUIT COURT

TWENTY-SECOND JUDICIAL CIRCUIT

FILED

(City of St. Louis)

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AUG 18 2017

State of Missouri

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VS

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE

JASON STOCKLEY

CG

BY DEPUTY

CASE NO. 16 22 CR 2213-01

DIVISION 23

AUG. 18, 2017

COURT ORDER

THE COURT WAITS THE FILING
ON EACH SIDE'S FINAL PLEADING.

NO VERDICT WILL BE DELIVERED
TO DAY, AUGUST 18, 2017.

SO ORDERED.

[Handwritten Signature]

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