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

STATE OF MISSOURI, EX INF. ANDREW BAILEY, ATTORNEY GENERAL,	)	
Relator,	)	
v.	)	Case No. _____
KIMBERLY M. GARDNER,	)	
Respondent.	)	

Petition in Quo Warranto

The Attorney General, Andrew Bailey, as Relator and upon information and belief, states the following in support of the petition for writ of quo warranto against Kimberly M. Gardner, Respondent:

Introduction

Janae Edmonson, a teenage athlete, was walking back to her hotel in downtown St. Louis on Saturday, February 18. Ms. Edmonson, who was in town for a volleyball tournament, had just verbally committed to play sports for a college in Tennessee. As Ms. Edmonson and her family walked down the sidewalk, a speeding car driven by Daniel Riley crashed into another car and struck Ms. Edmonson, severing one of her legs and maiming the other. Her father, thanks to his quick thinking and military service, applied two belts as tourniquets as he watched the life drain from her face. Thankfully, Ms. Edmonson survived, although both of her legs were amputated.

Daniel Riley never should have been driving that car. In 2020, the St. Louis Circuit Attorney's Office charged Riley with First Degree Robbery and Armed Criminal Action for stealing a firearm from Victim at gunpoint. The Circuit Attorney dismissed and refiled that case on July 18, 2022, but not before Riley—who was out on bond—earned 54 separate violations for failing to comply with the pre-trial bond conditions. After the Circuit Attorney refiled the case, Riley earned 50 *more* violations. The Circuit Attorney never filed a motion to revoke Riley's bond.[1]

Ms. Edmonson's injuries are the direct result of years of willful neglect from Circuit Attorney Kimberly M. Gardner. As the Circuit Attorney, Respondent is morally, ethically, and legally responsible for the conduct of her office. For years, the Circuit Attorney's Office has failed to prosecute cases to resolution, has failed to inform and confer with victims, and has failed to even review and file cases submitted by the St. Louis Metropolitan Police Department. Respondent has, therefore, forfeited her office. In order to maintain

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[1] The facts in this section are taken from the following news articles: Chris Hayes, et al., "Emotional plea from parents of teen athlete struck by reckless driver," Fox 2 Now, available at https://fox2now.com/news/missouri/emotional-plea-from-parents-of-teen-athlete-struck-by-reckless-driver/; Kelsi Anderson, et al., "Parents of volleyball player who lost legs in crash speak at suspect's detention hearing," *KSDK*, available at https://www.ksdk.com/article/news/local/suspect-crash-volleyball-player-denied-bond-reduction/63-b7d41d82-2850-4a78-802e-54764c024a7c.

order, enforce the laws, and protect the public, the Attorney General brings this action in quo warranto.

Parties

1. Relator is Andrew Bailey, Attorney General of the State of Missouri, and prosecutes this cause for and on behalf of the State of Missouri and its citizens upon his personal information.

2. Respondent Kimberly Gardner is the Circuit Attorney of the City of St. Louis, Missouri, and has held that office continuously since January 1, 2017, with her present term commencing on January 1, 2021. The position of Circuit Attorney of the City of St. Louis, Missouri, is an elective office.

Authority and Jurisdiction

3. This cause of action is governed by Chapter 531, and Rule 98 of the Missouri Rules of Civil Procedure.

4. Relator is authorized to bring this action under § 531.010 which provides that "in case any person shall . . . unlawfully hold or execute any office . . . the attorney general of the state . . . shall exhibit to the circuit court, or other court having concurrent jurisdiction therewith in civil cases, an information in the nature of a quo warranto . . . ."

5. Relator is also authorized to bring such action under Rule 98.02(b)(1), which provides that "the attorney general of this state, upon personal information" may proceed as Relator in quo warranto.

6. This Court has jurisdiction over this matter under § 531.010 and Article VII, § 4, and Article V, § 4 of the Constitution of Missouri.

Statement of the Case

7. Respondent has been the elected Circuit Attorney in the City of St. Louis since January 1, 2017. Her current term commenced on January 1, 2021. *See* § 56.020.

8. The office of Circuit Attorney of the City of St. Louis is an elective office of great trust in the administration of public justice.

9. As an elected official of the City of St. Louis, Respondent is subject to the provisions of § 106.220, which states, in pertinent part:

> Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or *who shall be guilty* of any willful or fraudulent violation or *neglect of any official duty*, or who shall *knowingly* or *willfully fail or refuse to do or perform any official act or duty* which by law it is his duty to do or perform *with respect to the* execution or *enforcement of the criminal laws* of the state, *shall thereby forfeit his office*[.]
>
> (emphasis added).

10. On or about January 1, 2021, as a condition precedent to taking office, as required by § 56.550, Respondent swore "to support the Constitution of the United States and the Constitution of Missouri, and to faithfully demean [herself] in office."

11. By virtue of § 56.450, Respondent, as Circuit Attorney of the City of St. Louis, must "manage and conduct all criminal cases" in the City of St. Louis.

12. By virtue of § 56.460, Respondent, as Circuit Attorney of the City of St. Louis, must "hear complaints in felony and misdemeanor cases and . . . file information in such cases with the clerk of the circuit court of the city of St. Louis and . . . prosecute the same in said court. . . ."

13. By virtue of § 56.470, after the St. Louis police arrest any person for a felony or misdemeanor, and after the St. Louis police report that person's name and any prosecuting and material witnesses to the Circuit Attorney of the City of St. Louis, the circuit attorney must "proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to [her] is sufficient to justify a prosecution."

14. By virtue of § 56.550, Respondent, as Circuit Attorney of the City of St. Louis, must "institute and prosecute all criminal actions in the circuit court" and "may attend upon the grand jury."

15. By virtue of Article I, § 32, of the Missouri Constitution and §595.209, Respondent, as Circuit Attorney of the City of St. Louis, must, in cases involving dangerous felonies and other specified offenses, timely inform

victims "of the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case." § 595.209.1(3).

16. By virtue of Article I, § 32 of the Missouri Constitution and §595.209, Respondent, as Circuit Attorney of the City of St. Louis, must, in cases involving dangerous felonies and other specified offenses, confer with and inform victims "regarding bail hearings, guilty pleas, pleas under chapter 552 or its successors, hearings, sentencing and probation revocation hearings and the right to be heard at such hearings . . . ." § 595.209.1(4).

17. As more fully alleged herein, and in the accompanying suggestions in support of this petition, Respondent is guilty of a "willful . . . violation or neglect" of her official duties and Respondent has knowingly and willfully failed to perform her duties which by law it is her duty to "perform with respect to the execution or enforcement of the criminal laws of the state." § 106.220.

18. By virtue of Missouri Supreme Court Rule 4, Respondent, as Circuit Attorney of the City of St. Louis, must supervise the employees of her office. Rule 4-5.1; Rule 4-5.3; § 56.450.

19. During Respondent's present term as Circuit Attorney of the City of St. Louis, Respondent has forfeited her office for willful neglect of official duty, including, without limitation, the following incidents:

i. Respondent and her office willfully neglected to timely move to revoke bond and prosecute Daniel Riley, resulting in Ms. Edmonson's near death and loss of her legs.

ii. Over the course of about three months, and concluding on July 14, 2021, Respondent repeatedly failed to fulfill her discovery obligations and failed to appear in court and to prosecute the charges that had been brought against the defendant in *State of Missouri v. Brandon Campbell*, No. 2022-CR02036-01, resulting in the dismissal of the charges, which included a charge of murder in the first degree. The trial court found that Respondent's office failed to appear despite having been served with an order to show cause.

iii. Respondent has failed to notify and confer with victims as required by Article I, § 32 of the Missouri Constitution and § 595.209.

iv. Respondent has refused to exercise her judgment in multiple cases to ascertain whether the evidence presented to her is "sufficient to justify a prosecution."

v. Respondent has mismanaged her office, causing a mass exodus of employees.

vi. Respondent has a backlog of at least 3,000 cases that she has failed to review for charges, including some number of violent crimes.

Allegations

Count I

Respondent's Failure to Prosecute Criminal Cases

20. Relator incorporates paragraphs 1 through 19 as if they were restated herein.

21. In *State of Missouri v. Daniel Riley*, No. 2022-CR01534-01, Respondent willfully neglected her official duty or knowingly or willfully failed or refused to timely move to revoke bond and prosecute Riley, and as a result, Riley was not in custody on February 18, 2023, when he drove his car into Ms. Edmonson, resulting in the loss of both of her legs.

22. On September 4, 2020, Respondent's office charged Riley with First Degree Robbery and Armed Criminal Action for stealing a firearm from Victim at gunpoint. (Ex. 1 Indictment). Between September 4, 2020, and February 18, 2023, Riley earned at least 94 bond violations for his misconduct, and Respondent's office dismissed and refiled the criminal charges against Riley because the State "was not ready to proceed." (Ex. 2 Order). The victim's father reported that the State was not ready because the Assistant Circuit Attorney had just returned from her honeymoon. Christine Byers, "'St. Louis has let you down': Father of robbery victim

reacts to volleyball player's injuries after repeat bond violations go unchecked," *KSDK*, available at: https://www.ksdk.com/article/news/investigations/father-robbery-victim-reacts-volleyball-players-injuries/63-b9e0a621-5990-47a1-8d58-be7199abab3d

23. September 4, 2020 to February 18, 2023, Respondent willfully neglected to seek sufficient bond conditions to protect the community from future crime.

24. September 4, 2020 to February 18, 2023, Respondent willfully neglected to file a motion to revoke Riley's bond despite an extra ordinary number of bond violations.

25. Since February 18, 2023, Respondent has issued statements to the public that conflict with the facts. First, Respondent stated that the robbery victim had died and that is why the case was dismissed and refiled. *Id.* But, members of the news media interviewed the robbery victim's father, and the robbery victim is alive. *Id.* Second, Respondent issued a statement on February 22, 2023, saying "On December 12, 2021, prosecutors asked for a bond revocation, which was denied by Judge Hettenbach." @Stlcao, Twitter (Feb. 22, 2023, 10:15), https://twitter.com/stlcao/status/1628609479745982466?s=20. However, the court's docket sheet reveals no such request, and moreover, December 12, 2021, was a Sunday. Third, Respondent issued a statement on February 22, 2023, saying "On August

10, 2022, Mr. Riley was again released on personal recognizance and GPS, against the state's wishes." *Id.* However, the Court order that day indicates that the "State and Defendant *consent* to conditions of release as set forth below." (Ex. 10) (emphasis added). The order is signed by counsel for the State. (*Id.*).

26. In *State of Missouri v. Brandon Campbell*, No. 2022-CR02036-01, Respondent willfully neglected her official duty or knowingly or willfully failed or refused to fulfill her discovery obligations and failed to appear on multiple occasions and, as a result, the charges in that case, including a charge of First Degree Murder, were dismissed on July 14, 2021, after the court found that Respondent's office had "essentially abandoned its duty to prosecute those it charges with crimes" (Ex. 3 Dismissal Order).

27. Respondent willfully neglected her official duty or knowingly or willfully failed or refused to maintain proper case staffing by assigning *State of Missouri v. Brandon Campbell,* No. 2022-CR02036-01, to an Assistant Circuit Attorney who was on maternity leave.

28. Respondent has willfully neglected her official duty or knowingly or willfully failed or refused to prosecute criminal cases, in that she has failed to maintain proper attorney staffing.

29. Upon information and belief, there are more than 200 case of First Degree Murder, Second Degree Murder, and Involuntary Manslaughter currently

pending. Upon information and belief, one attorney, who has had three health related incidents during trials, including one on February 14, 2023, is assigned 44 of those homicide cases. Upon information and belief, another attorney is assigned 43 of those case, a third attorney is assigned 28 of those cases, a fourth attorney is assigned 24 of those cases, and a fifth attorney is assigned 24 of those cases. Upon information and belief there are 163 homicide cases assigned to five attorneys. Upon information and belief, the Presiding Judge of the Circuit Court of St. Louis City has requested Respondent to explain how she would ensure that assistant circuit attorney's cases would be reassigned. Christine Byers, "Judge wants to know what's next for dozens of cases following St. Louis prosecutor's collapse in court," *KSDK*, available at https://www.ksdk.com/article/news/politics/st-louis-prosecutor-collapses-court-cases/63-4a5b1443-4307-4cf2-b84a-0fde465ddef1. Upon information and belief, the Presiding Judge has not yet received a response.

30. Upon information and belief, due to Respondent's willful neglect of her official duty or knowing or willful failure or refusal to prosecute cases, Respondent's office has resolved significantly fewer felony matters. In 2016, Respondent's office generated 172 felony appeals. In 2017, Respondent's office generated 177 felony appeals. In 2018, Respondent's office generated 108 felony appeals. In 2019, Respondent's office generated

95 felony appeals. In 2020, Respondent's office generated 81 felony appeals. In 2021, Respondent's office generated 56 felony appeals. In 2022, Respondent's office generated 69 felony appeals. Upon information and belief, this nearly two-thirds drop in felony appeals is a direct result of Respondent's failure to prosecute and convict guilty defendants.

31. It is Respondent's duty to manage and prosecute all felony cases in the City of St. Louis.

32. By her conduct above, Respondent is guilty of a "willful . . . violation or neglect" of her official duties and Respondent has knowingly and willfully failed to perform her duties "with respect to the execution or enforcement of the criminal laws of the state." § 106.220. Accordingly, Respondent has forfeited her office and is a usurper who must be removed from office.

Count II

Respondent's Failure to Inform and Confer with Victims

33. Relator incorporates paragraphs 1 through 19 as if they were restated herein.

34. Under § 595.209, in cases involving dangerous felonies and charges of murder in the first degree (among other offenses), Respondent must timely inform victims "of the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case." § 595.209.1(3). Respondent must also confer with and inform victims "regarding bail hearings, guilty pleas, pleas under chapter 552 or its successors, hearings,

sentencing and probation revocation hearings and the right to be heard at such hearings. . . ." § 595.209.1(4).

35. "The term 'victim' also includes the family members of . . . a homicide victim." § 595.200(7). "The rights of the victims granted in this section are absolute and the policy of this state is that the victim's rights are paramount to the defendant's rights." § 595.209.5.

36. After the court dismissed the charges in *State of Missouri v. Brandon Campbell*, No. 2022-CR02036-01—which included a charge of murder in the first degree—the family members of Randy Moore, the murder victim, were reportedly "outraged." Marisa Sarnoff, "St Louis Judge Dismisses Murder Charges, Blames No-Show Prosecutor: Kim Garner's Office 'Abandoned Its Duty,'" https://lawandcrime.com/crime/st-louis-judge-dismisses-murder-charges-blames-no-show-prosecutor-kim-gardners-office-abandoned-its-duty/. Family members stated that they had not "heard anything about the case from anyone other than homicide detectives."

37. In *State of Missouri v. Jarmond Hatim Johnson*, No. 2022-CR00529-01, the Respondent charged Mr. Johnson with the dangerous felony of murder in the second degree, alleging that Mr. Johnson "with the purpose of causing serious physical injury to Dwight Anthony Washington caused the death of Dwight Anthony Washing[ton]" (Ex. 4, Indictment). The victim's

mother, Dr. Shirley Washington-Cobb, had been in contact with the assistant circuit attorney assigned to the case; however, without Dr. Washington-Cobb's knowledge, a newly-assigned assistant circuit attorney negotiated a plea agreement that contemplated a guilty plea to a reduced charge and the imposition of an eight-year sentence (Ex. 5, Letter). Dr. Washington-Cobb only found out about the plea agreement when she called the Circuit Attorney's office to inquire about trial, which had previously been scheduled before the plea agreement was negotiated (Exs. 6–7). Dr. Washington-Cobb expressed her anger to the media on July 21, 2021, just a few days after she found out about the plea agreement. Christine Byers, "Grieving mother furious with St. Louis prosecutors for striking deal with son's killer," https://www.ksdk.com/article/news/investigations/grieving-mother-furious-st-louis-striking-deal-sons-killer-kim-gardner-city-attorney/63-07c6f941-0f06-4e11-a3ac-7a33a78ae324. Five days later, on July 26, 2012, the defendant pleaded guilty to the offense of involuntary manslaughter in the first degree, and he was sentenced to ten years' imprisonment (Exs. 8–9).[2]

38. It was Respondent's duty in *State of Missouri v. Brandon Campbell*, No. 2022-CR02036-01, to inform the victim's family members about any

[2] The written judgment originally indicated that the defendant would be sentenced to eight years' imprisonment; however, a handwritten change to the document indicates that he was sentenced to ten years' imprisonment (Ex. 9).

hearings in the case and the final disposition of the case. By failing to tell the victim's family members "anything about the case," and by failing to tell them that the case had been dismissed, Respondent willfully neglected of her official duties and she has knowingly and willfully failed to perform her duties "with respect to the execution or enforcement of the criminal laws of the state." § 106.220. Accordingly, Respondent has forfeited her office and is a usurper who must be removed from office.

39. Further, in *State of Missouri v. Jarmond Hatim Johnson*, No. 2022-CR00529-01, it was respondent's duty to confer with and inform the victim's family members "regarding . . . guilty pleas." By failing to confer with the victim's mother and inform her of the negotiated plea agreement, Respondent is guilty of a "willful . . . violation or neglect" of her official duties, and she has willfully neglected to perform her duties "with respect to the execution or enforcement of the criminal laws of the state." *See* § 106.220. Accordingly, Respondent has forfeited her office and is a usurper who must be removed from office.

Count III

Respondent's Refusing to Exercise her Judgment to Determine Whether there is Evidence Sufficient to Justify a Prosecution

40. Relator incorporates paragraphs 1 through 19 as if they were restated herein.

41. When a St. Louis City police officer arrests any person for a felony or misdemeanor, and after the police report that person's name and any prosecuting and material witnesses to the Circuit Attorney of the City of St. Louis, the circuit attorney must "proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to [her] is sufficient to justify a prosecution." § 56.470.

42. The St. Louis Metropolitan Police Department has alleged that police have submitted more than 4,000 cases—some of them violent—to Respondent for her review, but that Respondent has willfully neglected her official duty or knowingly or willfully failed or refused to review these cases for charges. Christine Byers, "Bryer's Beat: An inside look at thousands of cases going nowhere in St. Louis," *KSDK*, https://www.ksdk.com/article/news/local/byers-beat-inside-look-thousands-of-cases-going-nowhere-st-louis/63-e86e5af1-b9c4-48fe-afde-2e5eaa7b5030.

43. Respondent's office has admitted that there are at least 3,000 cases that have been submitted by the St. Louis Metropolitan Police Department that are awaiting review by the Circuit Attorney. *Id.*

44. Respondent has willfully neglected her official duty or knowingly or willfully failed or refused to review these pending charges, some of which had been pending for more than a year, some of which may be violent. For instance, police referred charges on a case where a family was terrorized

in their home by a woman who was attempting to break in. Christine Byers, "Woman arrested after video showed her harassing family," *KSDK*, https://www.ksdk.com/article/news/crime/woman-arrested-video-showed-harassing-south-st-louis-family/63-c0709249-0f03-4c1b-9248-a0001c2cc66c. According to news reports, Respondent failed to review the case until the victims gained notoriety on TikTok by posing video footage of the woman attempting to break into their home. *Id.*

45. Upon information and belief, Respondent's willful neglect of her official duty or knowingly or willfully failed or refused to prosecute cases has resulted in a substantial drop in the number of criminal cases filed in the 22nd Judicial Circuit. Upon information and belief, the Circuit Attorney's Office filed 9,129 total cases in 2013, 3,334 of which were felonies. Upon information and belief, the Circuit Attorney's office filed 3,123 total cases in 2022, 1,194 of which were felonies.

46. It is Respondent's duty to consider reports of all crimes communicated to her by the St. Louis Metropolitan Police Department and to ascertain whether there is evidence "sufficient to justify a prosecution." Respondent has willfully neglected her official duty or knowingly or willfully failed or refused to review thousands of cases submitted to her by the local police. Accordingly, Respondent has forfeited her office and is a usurper who must be removed from office.

Relief Sought

47. Respondent's willful neglect of her official duty or knowingly or willfully failing or refusing to perform her duties with respect to the execution or enforcement of the criminal laws of the state, singularly and collectively, constitutes a violation of § 106.220 and results in Respondent's forfeiture of the office of Circuit Attorney of the City of St. Louis.

48. The Attorney General files this petition upon personal information. Rule 98.04 provides that this Court "shall issue a preliminary order in quo warranto" when requested by the Attorney General.

49. So, the Attorney General requests that this Court issue a preliminary order of quo warranto immediately removing Respondent because such an order is necessary to maintain order, ensure just enforcement of the criminal law, and most importantly, protect the public.

50. The Attorney General further requests that the Court, after a hearing, issue a permanent writ of quo warranto removing Respondent from office.

Conclusion

WHEREFORE, Relator prays for a preliminary order of quo warranto immediately removing Respondent from office, for a permanent writ of quo warranto against Respondent removing her from office, for all taxable court costs, and for such other relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed to the following individuals on February 23, 2022:

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