

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

STATE OF MISSOURI, )  
 )  
 Plaintiff, )  
 ) Case No. 1622-CR02213  
 )  
 vs. )  
 )  
 JASON STOCKLEY, )  
 )  
 Defendant. )

**FINAL ARGUMENT: THE MAGIC BULLET, A TALE OF TWO GUNS  
AND OTHER FAIRY TALES**

1. According to Instruction 406.14, you must find for the Defendant Jason Stockley if you determine that he was a law enforcement officer making or attempting to make a lawful arrest of Anthony Smith and that the Defendant reasonably believed that the use of deadly force was necessary to affect the arrest or to prevent the escape of Anthony Smith.
2. The undisputed testimonial and video evidence established there was a violent encounter at Church’s Chicken, a dangerous high-speed chase and a final encounter where Jason Stockley ordered Anthony Smith to show his hands for fifteen seconds before drawing and discharging his weapon. The uncontroverted evidence is that Smith was non-compliant during those fifteen seconds and that Smith located a weapon all of which caused Jason Stockley to be startled and to reasonably believe the use of deadly force was necessary. A Taurus .38 was recovered from Smith’s vehicle.
3. A summary of the State’s claims based upon their opening statement:
  - a. **The Magic Bullet – “Video don’t lie.”**
    - The prosecution has insisted contrary to all of the available video footage and the uncontroverted testimony of all the witnesses that there were four shots

fired in sequence and a fifth shot fired some nineteen second later.

- Witnesses French and Jodeh both indicate all shots were sequential.

There was no later shot.

- Neither the cellphone video footage nor the dashcam pick up a later shot.

- Simpson would have been present at the “execution shot” and at a distance of three to four feet. Simpson indicated unequivocally he heard no shots and had there been a shot from that distance, he would have heard it.

- The shell casings: a review of the dashcam video indicates the first shot fired was in close proximity to Anthony Smith. Stockley testified he was leaning into the car commanding Smith to “show his hands.” The dashcam video clearly demonstrates that the first shots were fired at close proximity which would explain the shell casing in the car. There is no evidence there was an “execution shot”. There have been no experts who have come forward to talk about whether a “wisp of smoke” was airbag gas or discharge from a Berretta. In short, there has been no evidence of any type presented to support this theory that there was an “execution shot” and the “video don’t lie”.

**b. “Kill shot” “execution” – 15 seconds**

- The above evidence establishes the fact that there was not a separate shot or “kill shot”.

- The concept of an “execution” is overcome by the dashcam video and the testimonial evidence. By all accounts, Stockley is at the window giving voice commands. The video shows he is there for 15 seconds before he withdraws his service weapon and that he is clearly startled at the time he fires the weapon.

- The prosecution has argued that the single phrase “We are killing.... or I am killing....” is a statement of intent and premeditation. The prosecution relies upon the dashcam video which is garbled at best. As proof of the indecipherable nature of the audio, even the State’s rendition varies between “We” and “I.” There is no way to determine what is said either before or after this statement. There is no context which is given to this statement which supports the State’s argument.

- There is no dispute five shots were fired. These five shots were fired in

self-defense.

- The context of the claim “statement of intent” is of critical importance. Since it cannot be determined what is said either before or after the comment, it is as reasonable to assume that there was no criminal intent. For example, if the prior conversation had indicated “If he tries to run over us again, we are killing this mother fucker, don’t you know it.” Any number of phrases can be used to fill in the blanks. However, such speculation is insufficient to support the conclusion this was evidence of premeditation and criminal intent.

- The medical evidence indicates the left shoulder wound referred to as the “kill shot” by the prosecution, broke the clavicle of Anthony Smith and lodged in soft tissue. Dr. Norfleet, who testified on behalf of the State, said unequivocally that the “kill shot” or “execution” shot would not have killed Anthony Smith and was not in and of itself life-threatening.

**c. A Tale of two guns.**

- Bianchi did not testify in this matter and there is no evidence as to what was in his mind. The State would have us engage in rank speculation as to what he may have been thinking and such speculation is without evidentiary foundation and a denial of the right to confrontation.

- At the time of this incident, Bianchi had been on the force for eighteen months.

- At the Church’s Chicken, Bianchi draws his weapon for the apparent purpose of breaking the driver’s side window. Bianchi holsters his weapon immediately after breaking the window and attempting to open the driver’s side door, which appears to be locked. However, it is not until after he has holstered his weapon that Bianchi would have been able to see into the vehicle. Stockley testified that Bianchi alerted him to the presence of a gun. Bianchi’s hand remained on his gun at all times. Bianchi started to withdraw the weapon again as the car drives off. Bianchi then dashes to his vehicle and pulls forward to pick up Stockley. The State’s conclusion that he saw no weapon is not supported by any evidence. This exchange happens within a matter of seconds.

- The video of the encounter on West Florissant also contradicts the State's theory that Bianchi observed no threat. In the dashcam video, it is clear that Bianchi has drawn his weapon. One is unable to determine whether or not he, in fact, holstered his weapon during the final encounter. It was clear that Bianchi's task was to hold the deployed airbags so that Stockley would have a clear view of the suspect Anthony Smith. From the dashcam, it is also clear that Bianchi had no opportunity to observe Anthony Smith during that 15 seconds. His task was to hold the airbag so that Stockley could observe the suspect and give appropriate voice commands. The concept that Bianchi somehow holstered his weapon because he did not believe that there was a weapon in the vehicle is unsupported by the evidence. Bianchi did not testify. The dashcam video directly contradicts this theory and "video don't lie."

**d. "Blood on the screw"**

- The prosecution in its opening statements insisted that there was "blood on the screw" of the Taurus located in the Buick operated by Anthony Smith. Their own evidence contradicts this statement. The DNA experts testified that they did not determine whether there was any blood on the weapon.

- The DNA experts testified that the only DNA on the weapon was on the rough surfaces including the screw head. There was no DNA discovered in unexposed areas, including the interior of the gun.

**e. DNA**

- The DNA experts testified that the absence of DNA did not allow them to conclude that Anthony Smith did not own or possess that weapon.

- Stockley acknowledged the evening of December 20, 2011 that he touched the weapon and unloaded it.

- The DNA evidence is consistent with Stockley's claim. There is no other conclusion that can be drawn from the DNA evidence.

- The prosecution insists that the absence of Anthony Smith's DNA on the

Taurus .38 is evidence that Anthony Smith did not own or possess the .38.

- Eric Hall, Ann Kwiatkowski and Karen Preiter all testified that the absence of DNA does not allow such a conclusion.

**f. “Shots fired, shots fired.”**

- The prosecution insisted that there had not been notification that Anthony Smith was armed. Officers Strode, Baumgartner and Simpson all testified that the phrase “Shots fired” alerted them to the fact that the suspect Anthony Smith was armed.

**g. “All he wanted was to get away....”**

- The video shows a violent encounter at Church’s Chicken. Anthony Smith was willing to strike two vehicles and present a risk of serious harm or death to both officers Bianchi and Stockley. The prosecution has attempted to introduce a new affirmative defense to assault in the first degree with a vehicle as a deadly weapon by claiming “all he wanted to do is get away.”

**h. “Video don’t lie.”**

- The prosecution insists the video footage which shows Stockley enter the Tahoe is proof of a retrieval of the Taurus .38. As proof of this spurious claim, the prosecution asserts you are unable to see the presence of a Quikclot bag in Stockley’s hands. The defense acknowledges this is true. At the same time, one would have to acknowledge there is also no weapon seen in his hand. The video does not demonstrate or show in any way, that Stockley procured the Taurus from his duty bag. In addition, the cell phone video shows that there is nothing in his hands when he exits the vehicle. At least four minutes pass from the time Stockley leaves the vehicle to the point where he enters the Buick to search for the weapon. Not one officer said they saw anything on Stockley’s person that would suggest he was in possession of the Taurus. Pictures taken that day show the uniform he was wearing at the scene and there is no way to have obscured or

hidden a weapon like the Taurus on his person.

4. The Defense's Case.

a. Jason Stockley testified he fired his weapon because he believed Anthony Smith put him in imminent danger of harm or death.

b. Jason Stockley testified that based on all the facts that had occurred on December 20, 2011 he believed that Anthony Smith posed a threat of serious injury or death to Jason Stockley, Brian Bianchi and the people of the City of St. Louis.

c. Brian Bianchi did not testify in this matter. There is no way of knowing what was in his mind other than rank speculation unsupported by any facts.

d. William Clinton did not testify in this matter.

e. Anthony French did testify in this matter.

- French testified he observed two police officers but his focus was on one police officer coming from the sidewalk or driver's side of the Tahoe and the Buick. He testified the person he observed had only one drawn weapon and it was not a long-gun. He testified the person pulled on the driver's side door which appeared to be locked and was giving voice commands to the person in the vehicle before he started firing. He indicated the person firing stepped back before he fired.

- French testified unequivocally that the shots were sequential and there was no separate shot at a later time.

f. Police Officer Brian King of the Evidence Technician Unit testified.

- King stated it was not at all unusual for an officer involved in a shooting to search for the suspect's weapon after the shooting and render it safe.

- King testified there were shell casing only for the Beretta and there was no evidence that the Draco was fired at any time.

g. Police Officer Strode testified.

- The scene was chaotic.

- It was not at all unusual for an officer involved in a shooting to search for a suspect's weapon.
- h. Police Officer Baumgartner testified.
  - Baumgartner established the difference between a searching officer and a seizing officer. Baumgartner testified it was not at all unusual for an officer involved in a shooting to search for a suspect's weapon.
  - Baumgartner stated "Who better than he" to know where to look to search for the weapon.
  - "Render it safe." Baumgartner testified it was common practice of an officer involved in a shooting to search for the suspect's weapon so it would be "rendered safe", unloaded.
  - Baumgartner also testified "shots fired" was a short-hand indication the suspect was armed.
- i. Police Officer Elijah Simpson testified.
  - "Shots fired." Simpson indicated he heard that phrase on air and he assumed when hearing that phrase that the suspect was armed.
  - Simpson further testified that shots fired is a short-hand phrase used on the radio because the airwaves "get clogged."
  - Simpson stated unequivocally he "assumed Smith had a gun based on the radio transmissions."
  - "Show me your hands." Simpson indicated he heard those words come from Jason Stockley at the time Simpson exited his vehicle. This is consistent with Stockley's testimony.
  - "Watch his hands." Simpson testified Stockley made that statement to him and that was a further indication that the suspect Anthony Smith was armed. This was consistent with Stockley's testimony.
  - Simpson testified he heard no shots fired. If the State's claim of a fifth shot, a "kill shot," is true, Simpson would have been present and approximately three to four feet away at the time the shot was fired. Simpson stated unequivocally he heard no shots.

- Simpson testified the scene was “scary.” He indicated people were crawling under the lines and he heard the crowd saying, “White boy killed the black boy” and calling the police “murderers.”
- j. Gersham Norfleet, MD testified in his capacity as Medical Examiner.
- Norfleet testified the “kill shot” claimed by the State would not, in fact, kill Anthony Smith.
  - Norfleet testified the wounds suffered by Anthony Smith were not inconsistent with him reaching to the right.
  - Norfleet testified Anthony Smith had active metabolites of marijuana in his system at the time of his death.
- k. Police Officer Dave Menendez testified .
- Menendez testified he swabbed all the rough areas on the gun including the screwhead which was later re-swabbed by Ann Kwiatkowski.
  - Menendez testified he performed a visual exam under a magnifying glass and saw nothing on the weapon consistent with body fluids but that he did see rust on the gun including on the screwhead.
  - Menendez testified he saw no discoloration on the swab or anything to indicate the presence of blood on the Taurus .38. Had he noticed any discoloration, he would have performed presumptive tests.
  - Menendez testified in order to unload the gun, one has to squeeze the rough areas of the gun.
- l. Analyst Eric Hall testified.
- Hall indicated the absence of DNA allowed no conclusions regarding whether someone had touched an item or not.
  - Hall testified he had looked at the undersides of the screw and all tests for DNA on the undersides or insides of the weapon proved negative. This is inconsistent with the State’s claim in their opening statements and disproves the



claim that there was blood on the underside of the screw.

- Eric Hall indicated presumptive tests do not allow one to conclude that there was blood on a weapon. In order to do so, one would have to perform confirmatory tests. No confirmatory tests were performed on this weapon.

- Hall also testified he believed that squeezing an item with rough surfaces would increase the amount of touch DNA present.

m. DNA Analyst Ann Kwiatkowski testified.

- Kwiatkowski, like Hall and Preiter, testified the absence of DNA did not allow them to conclude that Anthony Smith had not owned or possessed the weapon.

- Kwiatkowski endorsed a statement made by the Circuit Attorney's Office in the Vonderitt Meyer matter that it was "rare to find DNA on a firearm."

- Kwiatkowski acknowledged handling and "squeezing" the weapon would increase the presence of touch DNA on the Taurus. She further acknowledged there are studies which also support this conclusion.

- Kwiatkowski testified she did only a presumptive test and cannot say that there was blood on the firearm. She acknowledged that rust could create a "false-positive" in the presumptive test.

- No confirmatory tests were done.

- Kwiatkowski acknowledged her findings were inconsistent with Menendez's.

- Kwiatkowski acknowledged that if Menendez had swabbed that area that she would expect a lesser amount of DNA to be present. This was confirmed by Karen Preiter. The absence of DNA allows for no conclusions about whether

Anthony Smith owned or possessed the weapon.

n. DNA analyst Karen Preiter testified.

- Preiter acknowledged she could not state that Anthony Smith had not possessed, owned or handled the Taurus .38 and that no conclusions could be drawn from the absence of DNA.

- Preiter's testimony was consistent with that of Kwiatkowski.

- Preiter testified there was touch DNA present on the Taurus.

- Preiter acknowledged there are studies that show that squeezing and handling a weapon will increase DNA.

## 5. Conclusions

The State has failed in its burden of proof. It has presented no evidence regarding what happened in the fifteen seconds from the time Jason Stockley is first seen on the dashcam video to approach the car and the time where his weapon is withdrawn and discharged.

There has been no evidence to contradict or contravene his claims regarding Anthony Smith's conduct in the car. Based upon the information available to Jason Stockley, he acted reasonably under the circumstances. Jason Stockley should be acquitted on all charges.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of August, 2017 the foregoing Memorandum has filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Neil J. Bruntrager