

IN THE CIRCUIT COURT CRITTENDEN COUNTY

**PAM HICKS and JOHN MARK
BYERS**

APPELLANTS

v. **CV-2012-290-6**

**THE CITY OF WEST MEMPHIS,
ARKANSAS, and SCOTT ELLINGTON,
in his Official Capacities as Prosecuting
Attorney for the Second Judicial District
of Arkansas**

APPELLEES

APPELLEES' SECOND MOTION AND BRIEF FOR RECONSIDERATION

Come now the Appellants¹, and for their Second Motion and Brief for Reconsideration, state:

I. MOTION

1. At the previous hearing this matter, held on October 24, 2012, the Appellee, Scott Ellington (hereinafter, "Defendant"), sent Deputy Prosecutor Curt Huckaby to testify that there is an open and ongoing investigation into the murders of Steve Branch, Jr., Christopher Byers, and Michael Moore that occurred at the Blue Beacon Wood in West Memphis, Arkansas, on May 5, 1993 (hereinafter, collectively referred to as the Blue Beacon Wood murders).

2. Appellants (hereinafter, "Plaintiffs") dispute the accuracy of said testimony.

3. Specifically, on February 22, 2012, Bennie Guy mailed a letter to Defendant, Ellington.

See, Plaintiffs' Exhibit 1, Envelope from Bennie Guy to Defendant, Ellington, attached.

¹ Appellants continue to assert that the correct designation of the Parties is that of Appellants and Appellees. Ark. Code Ann. §25-19-107(b). At the last hearing in this matter, attorney Colin Jorgensen, on behalf of Scott Ellington, requested that the Parties be referred to as "Plaintiffs" and "Defendants" to avoid any confusion upon appeal to the Arkansas Court of Appeals or the Arkansas Supreme Court. Though technically incorrect, the Appellants will comply with this request as a courtesy to Mr. Jorgensen.

4. Plaintiffs have confirmed that said letter was timely received by Mr. Ellington and is still part of Mr. Ellington's file involving the Blue Beacon Wood murders.

5. Said letter contained critical information regarding the Blue Beacon Wood murders.

6. However, in more than a year since receiving said information, Defendant, Ellington has failed to make any contact with Mr. Guy. See, Plaintiffs' Exhibit 2, Affidavit of Bennie Guy, para. 109 attached.

7. Plaintiffs anticipate that the Defendant, Ellington, will argue that he found Mr. Guy's letter incredible and that he is making other investigations.

8. However, a review of the information provided by Mr. Guy shows it to be very credible and consistent with all known evidence in the Blue Beacon Wood murders.

9. Moreover, a simple telephone call made to Mr. Guy would have led to information from Billy Stewart, further corroborating the information provided by Mr. Guy. See, Plaintiffs' Exhibit Number 3, Affidavit of Billy Stewart, attached.

10. Again, the information provided by Mr. Stewart is consistent with all known evidence regarding the Blue Beacon Wood murders.

11. In summary, Defendant, Ellington, cannot both claim that he supposedly has an ongoing investigation into the Blue Beacon Wood murders and yet fail to do even the most rudimentary aspects of such an investigation, such as responding to witnesses who contact him and who show knowledge consistent with all known evidence of said murders.

Wherefore, the Plaintiffs respectfully request an order from this Court granting their Third Amended Petition, withdrawing the previous ruling in this matter that the Defendant is engaged in an

ongoing investigation, ordering the Defendant to disclose the documents previously exchanged *in camera*, as well as all other documents involving the Blue Beacon Wood murders, and for all other proper relief.

II. BRIEF

As the Court knows, ongoing investigations are not subject to the Freedom of Information Act. Ark. Code Ann. §25-19-105(b)(6). However, the Court must make a factual determination of whether there is, in fact, any ongoing investigations. *Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990). As is shown below, there is not.

As an initial matter, the information provided by Bennie Guy, who mailed the Defendant, Ellington, the information regarding the Blue Beacon Wood murders, is based upon Mr. Guy's experience with Buddy Lucas. Specifically, in 1993, Mr. Guy lived with Mr. Lucas' uncle, Freddie Wilson, and Mr. Lucas' cousin, Rachael Wilson. See, Plaintiffs' Exhibit 2, Affidavit of Bennie Guy, para. 3, attached.

In 1993, Buddy Lucas was both a witness and a suspect in the Blue Beacon Wood murders. As part of said investigation, Mr. Lucas confirmed his knowledge of Bennie Guy. In fact, Mr. Lucas confirmed all of Mr. Guy's statements about his living arrangements in a 1994 telephone conversation with John Fogleman, the assigned prosecuting attorney investigating the Blue Beacon Wood murders at the time. See, Plaintiff's Exhibit 4, Transcribed Telephone Conversation of Buddy Lucas and John Fogleman, attached. Specifically, Mr. Lucas stated:

Buddy: Mr. John, like my mom said if you check back on their records and stuff you wouldn't believe the people they hang around with. I mean they lied on my uncle Freddy before.

Fogleman: Hmm. Who's your uncle Freddy?

Buddy: The man that I lived with. I did live with.

Fogleman: What's his last name?

Buddy: Wilson.

Fogleman: Oh, Freddy Wilson

Buddy: Uh huh.

Fogleman: Ok.

Buddy: He's a nice man and stuff. He was there. It was him, me and Benny [?] and Jamie and Rachel.

Mr. Guy also stated that Mr. Lucas' family forced Mr. Lucas to leave because of concerns of Mr. Lucas' involvement in the Blue Beacon Wood murders. See, Plaintiffs' Exhibit 2, para. 16, attached. This information is further confirmed by Mr. Lucas' own words in his telephone conversation with Mr. Fogleman. In that conversation, he stated:

Fogleman: Well tell your momma what you told Eddie Wilson about the bloody tennis shoes.

Buddy: I didn't say nothing to Eddie Wilson.

Fogleman: Now Buddy, why would Eddie tell the police that you did?

Buddy: I didn't say nothing to Eddie. I didn't even say anything to Eddie.

Fogleman: Well I'm not talking about lately. I'm talking about some time ago.

Mary: Did you tell Eddie and Amy and everything that Jessie gave you a pair of bloody tennis shoes?

Buddy: Nuh uh. I told him that uh when I went hunting with Uncle Ronny that pair of shoes I gave little Eddie.

Mary: Uh huh.

Buddy: And he asked me where that stain come from and I told him when me and Ronny went hunting. And he asked Uncle Ronny and Uncle Ronny told him yeah.

Fogleman: Well, Buddy, why do you think if that's all you told him then why would Eddie go to the police with that?

Buddy: Because he thought I had something to do with it. That's when they kicked me out.

Fogleman: They kicked you out of the house because they thought you had something to do with it?

Buddy: Yes sir, cause they kept on jumping down my throat and I told them look just get off my back cause I don't know nothing about it. And I left. They kept jumping down my throat. I told them look I don't know nothing about it.

Fogleman: Buddy, and listen, it's all over with and nobody thinks you had anything to do with murdering those boys. Nobody does. But --

Buddy: My family didn't believe that.

In fact, numerous family members of Mr. Lucas believed that he was involved in the Blue Beacon Wood murders. See, *e.g.*, Plaintiffs' Exhibit 5, October 13, 1993, Statement of Charlotte Bly, attached.

Mr. Guy's information was also based upon his experience with L G Hollingsworth while both were confined to the same cell in the Crittenden County Jail. See, Plaintiffs' Exhibit 2, paras. 52, *et seq.*, attached. Such confinement is, again, easily confirmable to the Defendant, Ellington, yet he has not acted upon it. This is significant, as L G Hollingsworth was the very first suspect of the West Memphis Police Department, when they interviewed Mr. Hollingsworth on May 6, 1993, before the bodies of Steve Branch, Jr., Christopher Byers, and Michael Moore were even discovered. See,

Plaintiffs' Exhibit 6, May 10, 1993, Statement of Narlene Hollingsworth to the West Memphis Police Department, attached. Further, it was quickly established that Mr. Hollingsworth's alibi for his whereabouts on May 5, 1993 did not check out. See, Plaintiffs' Exhibit 7, May 26, 1993, Report of West Memphis Police Department, attached.

Further, if Defendant, Ellington, would have acted upon said information, he would have also learned of Billy Stewart's information. See, Plaintiffs' Exhibit 3, attached. Mr. Stewart's information is confirmed by all known evidence regarding the Blue Beacon Wood murders. For example, Mr. Stewart's information is based upon his experience with Buddy Lucas while both lived at Lakeshore Trailer Park in Marion, Arkansas in 1993. See, Plaintiffs' Exhibit 3, para. 3, attached. A simple review of public documents show that Billy Stewart was, in fact, a resident of Lakeshore Trailer Park in 1993 and that Buddy Lucas' mother, Mary "Oochie" Wilson (f/k/a "Mary Hudson") still resides there today.

Moreover, Mr. Stewart testifies that Buddy Lucas threw his shoes in the lake at Lakeshore and was walking around barefooted, even among sharp pieces of metal, shortly after the Blue Beacon Wood murders. *Id.* at paras. 38-43. This evidence is certainly consistent with the evidence that Jessie Misskelley, Jr., a friend of Buddy Lucas, gave Buddy a pair of Jessie's shoes shortly after the murders. See Plaintiffs' Exhibit 8, June 10, 1993, Report of West Memphis Police Department Detective Bryn Ridge and Exhibit 9, June 10, 1993, hand-written statement by Mary Wilson to the West Memphis Police Department on behalf of Buddy Lucas, attached.

Also, the fact that Buddy Lucas received his shoes from Jessie Misskelley, Jr., after throwing his own shoes away after the Blue Beacon Wood murders explains while Mr. Lucas was wildly

inconsistent in his stories about how the shoes from Mr. Misskelley came into Mr. Lucas' possession. For example, in the June 10, 1993, report, Mr. Lucas states that Mr. Misskelley gave Mr. Lucas a pair of blue and white Addidas shoes in February, 1993. See, Plaintiffs' Exhibits 8-9, attached. However, in his October 14, 1993 statement, Mr. Lucas described the supposed transaction not in February, but now on May 6, 1993, the day after the Blue Beacon Wood murders. Also, the shoes had changed from blue and white Addidas to black and white Converse shoes. See, Plaintiffs' Exhibit 10, October 14, 1993, Statement of Buddy Lucas to the West Memphis Police Department, attached.

The Court should also note that the autopsy reports document the massive blows to the back of the heads of the children. See, Plaintiffs' Exhibits 11-13, Autopsy Reports of Steve Branch, Jr., Christopher Byers, and Michael Moore, attached. Such injuries were never reported or acknowledged by Jessie Misskelley, Jr. in his statements to the West Memphis Police Department. See, Exhibits 14-15, June 3, 1993, Statements of Jessie Misskelley, Jr., attached. However, Mr. Lucas does confirm knowledge of the injuries to the back of the children's heads, though attempting to shift the source of this knowledge to Mr. Misskelley. See, Plaintiffs' Exhibit 10, attached. ("I finally got it talked out of him. What did he do, he said 'I hit uh, a couple in the back of the head.'")

Finally, the information provided by Mr. Guy and Mr. Stewart implicate both Terry Hobbs and David Jacoby. As the Court may be aware, physical evidence implicating both Mr. Hobbs and Mr. Jacoby has been found at the site of the discovery of the bodies of Steve Branch, Christopher Byers, Jr., and Michael Moore.

In summary, more than one year ago, the Defendant, Ellington, received information that led directly to the involvement of four people in the Blue Beacon Wood murders. Of those four people,

two were suspects very early in the investigation of the Blue Beacon Wood murders, reported by numerous family members as being involved, and had alibis that proved to be untrue. The remaining two have had physical evidence tying them to the crime scene. It is difficult to imagine a more substantive tip to be received. And yet, more than one year after receiving said information, the Defendant, Ellington, has made no contact with the person providing the information. Such inaction, combined with the Defendant, Ellington's, repeated public statements that the case is closed make any allegation that the Defendant has an ongoing investigation incredible and this Court should order that the Defendant turn over any information requested by the Plaintiffs that the Defendant has withheld.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Ken Swindle, hereby state that the above-referenced document was hand-delivered to David Peebles and Colin Jorgensen this 27th day of March, 2013.

Ken Swindle