



County of Kenosha District Attorney

Michael D. Graveley
District Attorney

Angelina Gabriele
Deputy District Attorney

Heather M. Beasy
Victim Witness Coordinator

Tina A. Burke
Office Manager

Brian P. Stuht
Office Investigator

912 56th Street
Molinaro Building
Kenosha, WI 53140
Phone 262 653-2400
Victim Witness (262) 653-2408
Fax (262) 653-2783 – 2nd Floor
Fax (262) 653-2411 – 3rd Floor, West
Fax (262) 653-2487 – 3rd Floor, East

For Official Use

September 27, 2017

Michael M. Bell

Kenosha, WI 5

Dear Mr. Bell:

I want to again express my thanks for our meeting of September 7, 2017. I appreciated an opportunity to hear your heartfelt perspective, as well as to review all the information you shared with me regarding the handling of the death of your son and regarding the Kenosha Police Department in the subsequent years. Our contact has convinced me that you are absolutely sincere and committed to bringing positive change to our community and society. I have had an opportunity to review all the materials you provided and followed this review with discussions with the US Attorney's Office, the Sheriff, and the Chiefs of Police past and present. I also reviewed some of the materials submitted to Robert Jambois for his original review and his findings of facts and conclusions. I closely scrutinized the information you provided me, including excerpts of depositions, sworn affidavits of persons including retired Detective Russell Beckman, and photographs and descriptions of physical evidence. After a careful review, I respectfully decline to call for a John Doe investigation regarding the 2004 death of your son, Michael E. Bell.

I understand your request to be based on three main elements. First, you have indicated that the absence of Michael Bell's DNA on Officer Strausbaugh's gun and holster make the collective statements of Kenosha Law Enforcement Officers implausible. Additionally, you indicated that the conclusions in the report by Referee Flynn in the Kyle Baars matter are connected to a cover up after your son's death and show a pattern of police corruption that would date from 2004 through the conduct regarding Baars in 2015. Finally, you believed no independent law enforcement agencies have reviewed the matters and materials you have presented and so there have been no independent judgments about whether they constituted a crime or misconduct.

Let me first address the assertion by Russell Beckman that the absence of DNA from Michael Bell on Officer Strausbaugh's gun or holster would lead to any strong conclusion supportive of

officers being disingenuous or mistaken in their reports contemporaneous with your son's death. I have been the primary firearms prosecutor in Kenosha County for over a decade. During that period of time, I have handled hundreds of criminal cases regarding the possession and use of firearms and have reached conclusions regarding the presence and absence of DNA in several dozen cases. It is both my training and experience that in circumstances where the firearm or holster is simply touched by the party, and for an extremely limited period of time, you would almost never receive a positive test result for the presence of that individual's DNA. In other words, I would not expect Michael Bell's DNA on the gun or holster based on the factual circumstances of this case. This is consistent with literature on Touch DNA. Prior to drafting this letter, I again called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death. I believe that Russell Beckman's extremely strong assertions in this case have done you a disservice as they are contrary to the underlying science of DNA evidence.

After thorough review, I see no connection between the misconduct of Kyle Baars in 2015 and the investigation of your son's death in 2004 that would merit any additional criminal investigation or prosecution regarding the events of 2004. You suggested that there is a connection between the two events in that Retired Chief John Morrissey was the Public Information Officer in 2004 and was the Police Chief during the Baars episode. During the course of my time as a prosecutor, I have had literally hundreds of interactions with the Public Information Officer position at the Kenosha Police Department. On no occasion have I ever seen that person to be a decision maker regarding what officers will write in reports or how officers will be disciplined or supervised. In fact, the position is designed to do community outreach and provide press releases and occasional press conferences in a press secretary type capacity. There is an 11 year period between your son's death and the misconduct of Kyle Baars. There is no nexus or commonality of persons or policies that would suggest that 2015 provides new insight into 2004.

In my review of the activities of the US Attorney's Office in the Eastern District of Wisconsin, I find that they appear to have reviewed materials and information you provided on three separate occasions. I am told by Assistant US Attorney Mel Johnson, a civil rights specialist, that he reviewed this matter as a possible civil rights case within a couple of years of your son's death. That review would have been essentially on the improper lethal use of force by the Kenosha Police Department and the officers specifically involved. Assistant US Attorney Johnson indicated that he declined to open a case and that the materials were then presented in Washington DC to the civil rights specialists and attorneys at the US Department of Justice. Mr. Johnson indicates that all decisions by himself, in a fatal shooting case, are reviewed by Washington based attorneys. Mr. Johnson indicates that the review of his initial decision confirmed that the US Department of Justice would not open a case or further investigate the fatal shooting of your son.

Acting US Attorney Greg Haanstad wrote you describing a review regarding issues of police corruption done by the FBI in 2015. The US Attorney's Office believes that this investigation was opened based on the request of yourself and others when you provided materials that stemmed from your civil suit against the City of Kenosha, as well as a tasing incident and other results of your investigative activities. In October of 2015, Acting US Attorney Haanstad indicated that both the US Attorney's Office and the FBI reviewed the materials you provided

and determined that they would not open a case and that no further Federal action or investigation would be conducted. Finally, on September 11, 2017, you again received communication from US Attorney Greg Haanstad and Mel Johnson of the US Attorney's Office, reflecting that you asserted to the US Attorney's Office allegations of misconduct by Kenosha County officials and suggesting that you requested they re-investigate this case in light of Referee Flynn's report regarding the activities in the Kyle Baars case. On September 11, 2017, the US Attorney's Office again declined to open any kind of investigation into this matter.

From a legal perspective, the US Attorney's Office has reviewed these matters on three separate occasions over a period of more than a decade. They have been apprised of the same materials you have provided me. One of the activities they actively engage in across the country is the investigation of police departments for misconduct. Despite their clear authority, their reviews of your materials and allegations have resulted in decisions to decline to conduct any further investigations or to file any charges. I believe these agencies to be completely independent of the Kenosha Police Department or any other officials within the City or County of Kenosha. Their review of these matters is persuasive to myself regarding whether additional investigation is currently warranted.

Finally, I am recently aware that the Kenosha Police Chief, Daniel Miskinis, has called on our State Division of Criminal Investigations (DCI) to review the activities of the Kenosha Police Department regarding the Kyle Baars matter. I believe that the focus of that review will be to specifically look at the report of Referee Flynn to see if there is any misconduct which warrants any further action. I believe that is an appropriate review by an independent agency and I fear this investigation could be impeded by a parallel John Doe investigation.

For all the reasons stated above, I decline to call for a John Doe investigation regarding police conduct in 2004. I ask that despite this decision, that you keep the lines of dialogue open with myself and my office. You provide a valuable perspective which I can benefit from regarding conclusions I will reach on matters in the future. I deeply respect your heartfelt efforts.

Sincerely,



Michael D. Graveley
Kenosha County District Attorney
State Bar No. 1000229

MDG:ed

Stuht, Brian

From: Graveley, Michael
Sent: Wednesday, September 27, 2017 9:35 AM
To: Lewis, Eva M - DOJ
Cc: Burgoyne, Andrew; Thorne, Todd
Subject: FW: Richard Dukes DNA Request

Eva, Please accept this case for touch DNA testing when it is brought by the Kenosha Police Department. Thanks, Mike Graveley

From: Burgoyne, Andrew
Sent: Wednesday, September 27, 2017 8:45 AM
To: Graveley, Michael
Subject: Richard Dukes DNA Request

Mike,

I am reviewing charges that have been submitted against Richard Dukes for Felon in Possession of a Firearm. The referral came in under KDOG case number 17-300410. I am hoping to have the Crime Lab perform DNA testing on this case.

The drug unit executed a search warrant at Dukes' residence. Two firearms were found underneath a mattress. Dukes' girlfriend informed a detective that the firearms belonged to Dukes. However, it appears that the girlfriend's brother also would have had access to the residence.

Dukes is a convicted felon because of a 2008 Substantial Battery conviction. On the day the search warrant was executed, he was on extended supervision for a 2013 conviction for Felon in Possession of a Firearm. In total, he has been sentenced to prison in the past on 3 separate cases.

I am also currently prosecuting him for an open case of Child Sexual Assault where the teenage victim maintains that he had intercourse with her by force.

There were also at least two children living in this residence when the search warrant was executed. One of these children, a 7 year old boy and the son of Dukes' girlfriend, told a social worker that he has seen Dukes selling drugs from the house. He was able to give very detailed descriptions of what went on in the drug trade. He also indicated seeing Dukes' firing off a gun previously in the backyard while filming a rap video. He also was aware that one of these guns (which law enforcement found loaded) was under the mattress in his mother's bedroom.

Detective Torres did obtain a search warrant for Dukes' DNA and did obtain a buccal swab. I would like to have either the firearms themselves or swabs from the firearms sent to the Crime Lab to determine whether they can find DNA on the firearms. If so, I would like to see that compared to Dukes' DNA.

If you think this is an appropriate request, would you please contact the Crime Lab about this? Please let me know if you need any further information. Thanks.

Drew