

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 4:17-cv-2455-RLW
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs seek a preliminary injunction ensuring the City of St. Louis and its officers and agents will cease engaging in unconstitutional conduct against individuals observing, recording, or participating in protest activity.

**I. Factual Background**

A Missouri state court acquitted St. Louis Metropolitan police officer Jason Stockley of first-degree murder on the morning of Friday, September 15, 2017. (Ex. A, Stockley verdict.) Stockley, who is white, had been charged and prosecuted by the St. Louis Circuit Attorney for killing Anthony Lamar Smith, who was African American, in late 2011. Stockley shot Smith—whom he suspected had engaged in a drug deal—at point-blank range after a brief car chase. Stockley asserted the shooting had been in self-defense; the prosecution argued otherwise.

Some members of the community swiftly condemned the verdict, which they view as a product of institutional racism and unfair bias in favor of the police. Public protests began almost immediately and continue every day. It is no secret that the St. Louis Metropolitan Police Department has repeatedly engaged in heavy-handed conduct vis-à-vis the protests. As soon as the afternoon of the verdict, police officers were—without warning or justification—spraying

nonviolent protestors with chemical agents. (*See* Ex. B, Ahmad Declaration; Ex. C, Dreith Declaration; Ex. D, Smith Declaration; Ex. E, Wedding Declaration.) Since then, SLMPD officers have continued to deploy chemical agents, including pepper pellets and tear gas, on multiple occasions without adequate justification and without giving constitutionally required notice. (*See, e.g.*, Ex. F, Sommers Declaration; Ex. G, Green Declaration; Ex. H, Rice Declaration; Ex. I, Counihan Declaration; Ex. J, Lewczuk Declaration; Ex. K, Hoffmann Declaration, Ex. Q, Street Declaration, Ex. R, Davis Declaration, all attached hereto.) In fact, SLMPD officers have repeatedly sprayed and gassed nonviolent protestors who criticize the police or record them engaging in intimidation. (*See, e.g.*, Ex. L, Ziegler Declaration; Ex. M, Rose Declaration; Ex. F, Sommers Declaration; Ex. G, Green Declaration; Ex. H, Rice Declaration, Ex. Q, Street Declaration.) Officers have retaliated against livestreamers and videographers by deleting video, conducting unlawful searches, damaging video equipment, using unnecessary force when conducting arrests, and—again—resorting to chemical agents, often at close range and in the eyes. (Ex. N, Mobley Declaration; Ex. L, Ziegler Declaration; Ex. H, Rice Declaration; Ex. F, Sommers Declaration; Ex. O, Thomas Declaration.)

On Sunday, September 17, SLMPD also employed a tactic known as “kettling,” trapping protestors (as well as members of the media, legal observers, curious residents who lived nearby, pedestrians out for a walk, and an undercover police officer) in the intersection of Washington and Tucker Avenues. (Ex. M, Rose Declaration; Ex. P, Franks Declaration; Ex. Q, Street Declaration; Ex. R, Davis Declaration; Ex. H, Rice Declaration; Ex. L, Ziegler Declaration; Ex. S, Newbold Declaration; Ex. T, Nelson Declaration; Ex. U, Baude Declaration; Ex. V, Maclean Declaration.) The officers came ready for a fight: they wore personal protective equipment, gas masks and helmets, and they carried full-body shields and batons. Though there was no threat to

their safety, they fanned out along each of the crosswalks, cutting off all routes of egress, and then rushed and arrested the hundred or so people who got caught inside the kettle. Officers sprayed arrestees who were already compliant, subdued, and kneeling or lying on the ground. Many of the arrestees sustained serious injuries. (*See also* Ex. W, Molina Declaration.)<sup>1</sup> Again, as has been their wont, the officers did not provide to the people adequate warning or opportunity to disperse. The police rejoiced in their victory, chanting “Whose streets? Our streets!” after they had arrested the nonviolent people they had trapped and subdued. (Ex. L, Ziegler Declaration; Ex. J, Lewczuk Declaration.)

At times, riot police have given pedestrians no warning at all before deploying chemicals indiscriminately or taking other actions of force. (Ex. B, Ahmad Declaration; Ex. C, Dreith Declaration; Ex. D, Smith Declaration; Ex. E, Wedding Application.) But at other times, the police have provided vague, haphazard instructions in some apparent facsimile of the City’s “unlawful assembly” and “failure to disperse” ordinances. (Ex. X, Southwards Declaration.) Even then, the warnings have been far away from the sites of the officers’ eventual enforcement, based on constitutionally insufficient cause, and either followed immediately by the use of force (like knocking while opening a door) or too remote in time to justify their actions. (*Id.*; *see also* Ex. V, Maclean Declaration.)

The Stockley protests are not SLMPD’s first rodeo with the First Amendment. The St. Louis Metropolitan Police Department has reacted in much the same way on other occasions when St. Louisans have amassed in public places to demonstrate against what they see as police misconduct; that is, with the arbitrary enforcement of vague ordinances and the deployment of

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<sup>1</sup> Indeed, evidence at the hearing will show that an undercover police officer was among those gathered up, beaten, and arrested.

chemical agents without adequate cause or warning. (*See, e.g.*, Ex. B, Ahmad Declaration; Ex. K, Hoffmann Declaration; Ex. W, Molina Declaration.)

SLMPD's unconstitutional policies and customs have frightened Plaintiffs and chilled their observation of, recording of, and participating in protesting activity. They have refrained from expressive activity they otherwise would have engaged in. (*See* Ex. B, Ahmad Declaration; Ex. C, Dreith Declaration; Ex. N, Mobley Declaration; Ex. V, Maclean Declaration.)

## **II. Argument**

### **A. Preliminary Injunction Standard**

When considering whether to issue a preliminary injunction, this Court must determine: (a) whether the plaintiffs are likely to prevail on the merits, (b) if there exists a threat of irreparable harm to the plaintiffs absent the injunction, (c) the balance between this harm and the injury that the injunction's issuance would inflict upon the defendant, and (d) what is in the public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc); *accord Abdullah v. Cty. of St. Louis*, 52 F. Supp. 3d 936, 943 (E.D. Mo. 2014).

### **A. First Amendment Implications**

When the government regulates the exercise of First Amendment rights, the burden is on the proponent of the restriction to establish its constitutionality. *Phelps-Roper v. Koster*, 713 F.3d 942, 949 (8th Cir. 2013). Moreover, where a challenged policy restricts First Amendment activity, consideration of the likelihood of success on the merits is decisive to the question of whether an injunction should issue. "In a First Amendment case, . . . the likelihood of success on the merits is often the determining factor in whether a preliminary injunction should issue." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester*, 697 F.3d 678 (8th Cir. 2012). "When a plaintiff has shown

a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (quoting *Phelps–Roper v. Troutman*, 662 F.3d 485, 488 (8th Cir. 2011) (per curiam) (quotation marks omitted)).

In addition to Plaintiffs’ First Amendment claims, their unlawful seizure and due process claims should be considered under this framework because, in the context of this case they touch upon First Amendment rights.

### **C. Likelihood of Success on the Merits**

Plaintiffs are likely to succeed on the merits<sup>2</sup> because the policies or customs of the City of St. Louis violate the First, Fourth, and Fourteenth Amendments.

“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). A policy or custom is unconstitutionally vague where it “does not provide people with fair notice of when their actions are likely to become unlawful,” *Stahl v. City of St. Louis, Mo.*, 687 F.3d 1038, 1041 (8th Cir. 2012), and when it “necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat.” *Kolender v. Lawson*, 461 U.S. 352, 360 (1983) (brackets and quotation marks omitted); *see also City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion).

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<sup>2</sup> Because Plaintiffs challenge a municipal policy or custom, not a statute, they demonstrate likelihood of success if they can show a “fair chance of prevailing.” *Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (“[C]ourts should . . . apply the familiar ‘fair chance of prevailing’ test where a preliminary injunction is sought to enjoin something other than government action based on presumptively reasoned democratic processes.”).

Defendant has policies or customs of: (a) declaring an unlawful assembly (and thus ordering dispersal) in the absence of the use of force or violence; (b) enforcing vague orders of dispersal that do not specify the area from which dispersal is required and after an extended period of time during which individuals reasonably believe the need for dispersal has ceased; and (c) utilizing chemical agents without first issuing clear and unambiguous warnings that such chemical agents will be utilized; without providing individuals sufficient opportunity to heed the warnings and exit the area; without minimizing the impact of such agents on individuals who are complying with lawful law enforcement commands; and without ensuring that there is a means of safe egress from the area that is available to the individuals; and (d) retaliating against or interfering with people recording video of police in public places. Each of these policies or customs places Plaintiffs and others like them at the arbitrary risk of arrest or infliction of injury. These policies or customs also provide the opportunity for discriminatory enforcement and action based on the content and viewpoint of one's expressive activity.

Because the policies and customs of ordering dispersal, enforcing dispersal orders, and utilizing chemical agents are applied to persons engaged in expressive activity at traditional public fora, these customs or policies must have a "greater degree of specificity" than normally required. *Smith v. Goguen*, 415 U.S. 566, 573 (1974) ("Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the [void-for-vagueness] doctrine demands a greater degree of specificity than in other contexts."); *see also Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 872 (1997) (imposing higher standards for vagueness on criminal laws). Here, as applied against Plaintiffs and others, the policies or customs have *ad hoc*, unascertainable parameters. This provides the public insufficient, if any, notice of what is permissible. That is, individuals are required to steer

wide and thereby surrender their First Amendment rights or face the possibility of arrest or assault with chemical agents.

Without clear rules, enforcement of vague dispersal orders and the use of chemical agents on protests without warning is arbitrary. The arbitrary nature of the restrictions is especially problematic where First Amendment freedoms are involved. *See Stahl*, 687 F.3d at 1041-42. As the Supreme Court has observed, “[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.” *NAACP v. Button*, 371 U.S. 415, 433 (1963). Thus, “[w]hen speech is involved, rigorous adherence to [due process] requirements is necessary to ensure that ambiguity does not chill protected speech.” *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). Even in the few instances where there has been an interest in safety and public order, the government’s interest in “curbing criminal activity . . . cannot justify legislation that would otherwise fail to meet constitutional standards for definiteness and clarity.” *Kolender v. Lawson*, 461 U.S. 352, 361 (1983). Because, as applied, the unlawful assembly and dispersal ordinances allow arbitrary enforcement they thereby “impermissibly delegat[ing] basic policy matters to policemen” in violation of the due process clause. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972).

Interference with and retaliation for photographing and recording police officers also violates the First Amendment. It is clearly established that “the First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” *Smith v. Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); *Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (holding that an individual’s right to record officers’ performance of their duties in public was clearly established); *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995) (holding there is a “First Amendment right to film matters of

public interest”); *Turner v. Lieutenant Driver*, 848 F.3d 678, 687-88 (5th Cir. 2017) (establishing a First Amendment right to record police activity); *Fields v. Philadelphia*, 862 F.3d 353, 359-60 (3rd Cir. 2017) (same and commenting that all citizens, not just members of the media, have such a right and that “the act of recording, regardless what is recorded, may improve policing”); *Robinson v. Fetterman*, 378 F. Supp. 2d 534, 542 (E.D. Pa. 2005) (recognizing that there was “no doubt that the free speech clause of the Constitution protected” individuals who videotaped law enforcement officers because “[v]ideotaping is a legitimate means of gathering information for public dissemination and can often provide cogent evidence”); *Ramos v. Flowers*, 429 N.J. Super. 13, 56 A.3d 869 (App. Div. 2012) (ruling that an independent filmmaker had a right to film police in the course of making a documentary film); *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583 (7th Cir. 2012); *Demarest v. Athol/Orange Cmty. Television, Inc.*, 188 F. Supp. 2d 82, 94-95 (D. Mass. 2002) (finding it “highly probable” that filming of a public official on street outside his home by contributors to public access cable show was protected by the First Amendment, and noting that, “[a]t base, plaintiffs had a constitutionally protected right to record matters of public interest”); *Channel 10, Inc. v. Gunnarson*, 337 F. Supp. 634, 638 (D. Minn. 1972) (holding that police interference with television newsman’s filming of crime scene and seizure of video camera constituted unlawful prior restraint under First Amendment). Simply put, “a citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.” *Glik*, 655 F.3d at 82; *see also Cumming*, 212 F.3d at 1333 (holding that individual citizens have a First Amendment right, subject to reasonable time, manner, and place restrictions, to photograph or videotape police conduct); *Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012) (recognizing that audio recording of police activity is entitled to some



degree of First Amendment protection and “the act of making an audio or audiovisual recording is necessarily included within the First Amendment’s guarantee of speech and press rights”).

Seizing recording devices, deleting videos, damaging camera equipment, deploying chemical agents against people recording, and retaliating against people recording through the use or threat of force or arbitrary arrest all violate these First Amendment principles. They also constitute unlawful seizures, in violation of the Fourth Amendment, and are perpetrated without fair warning, in violation of the Due Process Clause of the Fourteenth Amendment.

For these reasons, Plaintiffs are likely to prevail on the merits.

#### **D. Remaining *Dataphase* Factors**

When a plaintiff has shown a likely violation of constitutional rights, the other preliminary injunction requirements are generally deemed to have been satisfied. *Swanson*, 692 F.3d at 870; *accord Phelps-Roper v. Cty. of St. Charles*, 780 F. Supp. 2d 898, 900-01 (E.D. Mo. 2011). There is no basis for departing from the general rule here.

A restriction of constitutional rights constitutes irreparable harm. It is well settled that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality); *accord Marcus v. Iowa Pub. Television*, 97 F.3d 1137, 1140-41 (8th Cir. 1996). The alleged deprivation of liberty without due process constitutes irreparable harm. *See Lane v. Lombardi*, No. 2:12-CV-4219-NKL, 2012 WL 5873577, at \*6 (W.D. Mo. Nov. 15, 2012). Here, protests are ongoing and will be for the foreseeable future, so the need to vindicate the right to observe, record, and participate in protest activity without being subject to arbitrary mistreatment is urgent.

The balance of equities generally favors the constitutionally protected rights. *Nixon*, 545 F.3d at 690; *accord Lane*, 2012 WL 5873577, at \*6. Most of the injunctive relief Plaintiffs seek

is derived from the consent decree entered on April 19, 2016, in *United States v. City of Ferguson*, No. 4:16-cv-000180-CDP (E.D. Mo.). These provisions have not prevented the City of Ferguson from pursuing legitimate law enforcement objectives. (*See, e.g.,* Moreover, similar restrictions on the use of chemical agents were previously ordered in *Templeton v. Dotson*, No. 4:14-cv-2019 (CEJ) without demonstrable hardship. The restrictions on interference with recording are similar those in consent judgments entered in *Hussein v. County of St. Louis*, No. 4:14-cv-1410 JAR (E.D. Mo.)—except to the extent Defendant has engaged in more egregious behavior of seizing and deleting recordings. And providing specific dispersal directions (and only when a dispersal order is warranted) is not a significant hardship. Indeed, the City of St. Louis has no significant interest in enforcing unconstitutional customs and policies.

“It is always in the public interest to protect constitutional rights.” *Id.* at 689; *see also Doe v. S. Iron R-I Sch. Dist.*, 453 F. Supp. 2d 1093, 1103 (E.D. Mo. 2006), *aff’d*, 498 F.3d 878 (8th Cir. 2007). The public interest is served by protection of the right to gather on public streets and sidewalks without arbitrary interference.

### **III. Conclusions**

For these reasons and those that will be presented at the hearing, Plaintiffs request this Court issue preliminary injunction.

Respectfully submitted,

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Certificate of Service

A copy of the foregoing was delivered by hand to the City Counselor for the City of St. Louis on September 28, 2017.

/s/ Anthony E. Rothert

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

**FILED**  
SEP 15 2017

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

STATE OF MISSOURI, )  
 )  
Plaintiff, )  
 ) No. 1622-CR02213-01  
vs. )  
 ) Division No. 23  
JASON STOCKLEY, )  
 )  
Defendant. )

FINDINGS AND VERDICT

Defendant, a St. Louis police officer at the time of the events at issue here, has been charged with first degree murder and armed criminal action for the shooting death of Anthony Smith following a high speed pursuit on city streets.

The Court has closely examined the evidence, has viewed the State's video exhibits multiple times, has reviewed the testimony of the witnesses, and has considered the arguments of the parties. In reaching a decision in this case the Court is bound by the Code of Judicial Conduct, and specifically, Rule 2-2.4, which provides that "a judge shall not be swayed by partisan interests, public clamor or fear of criticism." The Comment to this Rule provides, "A fair, impartial, and independent judiciary requires that judges decide cases according to the law and facts, without regard to whether

**EXHIBIT A**

particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family."

Chronologically, the factual events at issue in this case occurred in 2011. Defendant was interviewed by the F.B.I. on May 30, 2012 about the events of December 20, 2011, and the criminal charges in this case were brought in the Spring of 2016.<sup>1</sup> No federal criminal charges have been pursued by the Civil Rights Division of the United States Department of Justice.

The relevant events began on December 20, 2011 when a silver Buick being driven by Anthony Smith pulled into a parking space at a Church's Fried Chicken restaurant.<sup>2</sup> Mr. Smith and his companion, Kirkwin Taylor, exited the vehicle, leaving the engine running and the windshield wipers operating, and walked into the restaurant. Mr. Taylor subsequently walked to the rear of the building where, he testified, he urinated. Mr. Smith returned to the vehicle a couple of times, opened the door on the driver's side and reached in, and then returned to the front of the restaurant. Mr. Taylor was walking back to the front of

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<sup>1</sup> The complaint was filed on May 16, 2016 and the indictment was filed on August 8, 2016.

<sup>2</sup> State's Exhibit 2, a surveillance video from the restaurant, was admitted into evidence and was played at the trial.

the restaurant when a marked police vehicle drove by. The police vehicle is then seen driving rapidly up to and stopping behind the silver Buick as Smith ran up to and got into the Buick.<sup>3</sup> Mr. Smith did not have a bag containing food on any of the occasions when he returned to the car. Two police officers exited the police vehicle, Stockley from the passenger's side and Brian Bianchi from the driver's side, and approached Mr. Smith's car.<sup>4</sup> Mr. Smith rapidly pulled forward up to the building, then frantically drove his Buick backward crashing into the marked police vehicle twice, before speeding away at a high rate of speed. Mr. Smith's Buick did not "gently strike" the police vehicle. Smith's Buick forcefully struck the police vehicle twice, striking the police vehicle hard enough to cause the driver's side door to slam shut, and also struck a red sedan parked on the lot adjacent to, and perpendicular to, the police vehicle. Smith struck the red car hard enough that it could be seen to rock back and forth on the surveillance video.

After completing a "five point turn" Smith drove off the parking lot, striking the hand of Stockley, who had a gun drawn,

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<sup>3</sup> Defendant Stockley testified he observed a hand to hand transaction between Smith and another person, and Stockley believed it to be a drug transaction. Stockley testified the officers decided they needed to investigate the suspicious activity.

<sup>4</sup> Brian Bianchi was a relatively new police officer on December 20, 2011.

and Smith sped away. Bianchi swung at the driver's door of the Buick with his gun, breaking the window, and then as Smith sped off the parking lot Bianchi returned to the police vehicle while holstering his gun. Stockley testified that Bianchi yelled "gun" at the time Bianchi broke the driver's window on the Buick, indicating Smith had a gun in the car, and Stockley testified that he saw a gun in Smith's hand on the passenger seat of the Buick as the Buick was pulling away. Stockley fired shots from his police department issued Baretta at the Buick as it sped off. Stockley then got into the police vehicle and told Bianchi to "get him."

Anthony Smith drove at speeds up to 87 miles per hour, on wet roads, endangering other drivers and pedestrians, and the police pursuit was in response to Smith's perilous conduct. The pursuit lasted for approximately three (3) minutes. The pursuit ended when Smith drove into oncoming traffic and was bumped from behind by the police vehicle being driven by Brian Bianchi. It is apparent from the dash cam video recording, which includes audio from inside the police vehicle, that this pursuit was a stressful event for the occupants. Due to multiple radios being turned on (Stockley's, Bianchi's, and the car communication radio) there were confusing sounds including feedback on the



radios and communications with a police dispatcher. One of the occupants of the police vehicle said on the radio multiple times, "shots fired, shots fired."<sup>5</sup> During the pursuit Bianchi at one point started to turn right where the Buick had turned left, and Bianchi also hit a sign and a tree and had to back up to continue the pursuit.

Approximately 45 seconds before the pursuit came to an end, the audio contains a garbled and unintelligible statement, in the middle of which Stockley said, "we're killing this motherfucker, don't you know."<sup>6</sup>

The dash cam video from the police vehicle continued to run for a time after the vehicles came to a stop. Smith's car came to a stop perpendicular to and adjacent to the curb, when it was struck by the police vehicle, and the police vehicle came to a stop parallel to the curb with its front end adjacent to the right rear of Smith's car. Stockley testified it was decided to attempt to end the pursuit by striking Smith's car when Smith started to drive head-on into oncoming traffic.

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<sup>5</sup> Police officer John Baumgartner testified that "shots fired" means somebody has fired shots, either a suspect or a police officer.

<sup>6</sup> The statement was not intelligible when the recording was played during the trial. However, Stockley did not deny making the statement. He testified he could not recall making the statement and he could not recall the context. The context is not clear from the recording; it cannot be determined what was said immediately before and immediately after the statement.

After both vehicles came to a stop, Bianchi is seen on the dash cam video running up to the driver's window of the Buick. Bianchi has his hand on his gun, which is in the holster, as he runs up to the Buick. He then leans down at the driver's side window briefly before Stockley approaches and leans down at the driver's window. One can see Bianchi's exhaled breath in the cold air, as he approaches the driver's window, and another large exhale of his breath as Bianchi leans down at the window. The view from the dash cam is over the top of the Buick; it cannot be seen what is occurring inside the car. While Stockley is bent over at the driver's window, out of sight of the dash cam, it appears that Stockley is wrestling with something or someone at the window and Bianchi approaches again. At one point it appears Stockley's breath blows off to his right when he stands up; his breath again appears to blow off to his right as he is bent down at the driver's window. Stockley's right elbow can be seen rising up as if he is unholstering his gun, Bianchi suddenly backs up, and it appears that at this point Stockley fires into the car. It cannot be determined from the dash cam video how far Stockley's hand, holding the gun, is from Smith at the time the shots are fired, or precisely when each

shot was fired. At the time the shots are fired, Stockley is wearing what, on the video, appear to be winter gloves.

Antonio French, a witness for the State, said he was on the second floor of his club where Mr. French and a few others were cleaning the club up for the next event. Mr. French testified he heard a loud crash, he went to the window and he saw two officers, one with a firearm, approach the crashed car. Mr. French saw an officer at the driver's door and heard the officer say, "open the fucking door, open the fucking door." The officer then fired shots into the car. Mr. French recorded from the second floor window the events that followed the shooting for several minutes, and his cell phone video was introduced as Exhibit 5 and was played at the trial. Mr. French said the officer fired four or five shots all together in sequence. He could not see anything inside the car. Mr. French said the officer came up to the door and pulled on the door three times without the door opening prior to the shots being fired.

Monte Jodeh, a witness for the defense, testified that he was at a store across the street from the scene of the shooting (the evidence shows he was across the street diagonally from the scene). Mr. Jodeh heard a crash and ran to the door. He testified he saw two officers at the driver's side window of

Smith's car. Jodeh said he saw and heard struggling and murmuring. He could not see into the car because the airbags had been deployed. Something happened that startled the officers, and then he heard four or five shots in succession with the officer firing the shots stepping back. He said there was no break between the shots.

Police Officer Elijah Simpson testified that he was the first officer, other than Stockley and Bianchi, to respond to the scene on December 11, 2011. Before he arrived at the scene he had observed a police vehicle pursuing a silver car. Simpson did a U-turn and followed the pursuit. When the other two cars came to a rest, he parked his police vehicle and approached the scene. Stockley and Bianchi were at the silver vehicle and airbags in the silver car had been deployed. Both Bianchi and Stockley had 9 mm. Barettas drawn when Simpson arrived, but Simpson did not see or hear gunshots. Simpson said Stockley told him to "watch his hands" and Simpson's belief was that the person in the car had a gun, but he could not recall whether anybody specifically warned him that the person inside the car had a gun. Simpson also heard Stockley tell the driver of the car to "show me your hands."

John Baumgartner, who is currently a Richmond Heights police officer, testified he was a patrolman for the St. Louis Police Department in December 2011. Baumgartner said he arrived at the scene several minutes after the shooting. He said he recognized several officers from the Sixth District who were present but he did not speak with any officers other than maybe to ask if they were okay. Stockley did not provide him with any information after Baumgartner arrived at the scene. At some point he was told there was a gun in the car and Sergeant Rumpsa told him to recover the gun from the car. The gun (a .38 Special) had been "made safe" by removing the cartridges from the gun. The car had already been searched by another officer and the items had been left on the passenger seat. Baumgartner said a bag containing narcotics was also recovered from inside the car.<sup>7</sup> Baumgartner said there are two different jobs involved at that point, one by a searching officer who would search the car, and one by a seizing officer who would be told what's there and who would recover it.

Lieutenant Kirk Deeken testified that in December 2011 he was notified of an officer involved shooting. He viewed the dash cam video and briefly spoke with the Deputy Commander, and

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<sup>7</sup> Mr. Smith's DNA was on this bag, and the contents were later determined to be heroin.

then said the FBI should be contacted because there was the potential for a criminal investigation. Lieutenant Deeken also testified that an officer is trained to order a suspect out of a car and to have one's firearm out in case the suspect is armed. One re-holsters one's gun when the threat is over.

Sergeant Brian King testified he was called to the scene where he photographed the entire area. Sergeant King said five shell casings were recovered from the scene, four on the ground and one on the floorboard of the Buick.

Doctor Gershom Norfleet, a medical examiner, performed the autopsy on Anthony Smith. Dr. Norfleet testified at the trial that he found five entrance bullet wounds and one exit wound: 1) the left lower neck; 2) left chest; 3) mid left flank; 4) left lower flank; 5) dorsal left forearm (entry); and 6) inside left forearm (exit). The cause of death was a combination of the shots to the lower flank and chest, one of which went through Smith's heart, and internal bleeding. Smith did not die from bleeding out. A toxicology report indicated that at the time of death Smith had metabolites of marijuana in his blood. Dr. Norfleet did not testify as to the order of the wounds and he could not say whether Smith was reaching for anything at the time he was shot. Dr. Norfleet said the shots to Smith's left

shoulder/lower neck, left chest, left mid flank and lower flank (which was "pretty low") all had the same trajectory. He said the wound on the shoulder would not have caused Smith's death and to call that shot a "kill shot" would be wrong.

Dr. Norfleet was asked how Smith got a gunshot wound to the lower flank if he was sitting inside the car and was shot from the outside. Dr. Norfleet said this was not inconsistent with Smith's reaching for a gun at the time he was shot.

David Menendez, a supervisor at the firearm lab, testified that he examined and swabbed the .38 special and saw nothing that was consistent with blood stains.

Eric Hall, a biological screener at the St. Louis Metropolitan Police Department, testified that a DNA test and analysis will determine what DNA, if any, is present but it will not determine whether the DNA is from blood, semen or something else.

Mary Ann Kwiatkowski, a supervisor at the biology section for the St. Louis Metropolitan Police Department, was called as a witness by the State. Ms. Kwiatkowski testified that she examined screws on the firearm recovered from the Buick for blood. A test she performed, a presumptive test, indicated possible blood, however, the lab does not perform confirmatory

tests, a presumptive test can produce false positives, and DNA testing determines whether DNA is present, but DNA testing does not say what substance the DNA is from. Ms. Kwiatkowski testified she could not say there was blood on the gun, that in 2011 it was rare to find DNA on a gun, and that the absence of a person's DNA on a gun does not mean that person did not touch the gun. She reiterated that if DNA is not found on a gun, all she can say is that there is no DNA there, not that someone did or did not touch the gun.

Dr. Karen Preiter, a DNA analyst at the St. Louis Metropolitan crime lab, testified that DNA results from the gun are consistent with Jason Stockley. Dr. Preiter further said that the absence of a person's DNA does not mean that person did not touch the gun, but it only means there was no DNA present. When DNA is found, all that can be said is there is DNA present, not who else may have touched the gun or how many times anyone touched the gun.

Doug Halepaska, a firearms examiner at the FBI laboratory division in Quantico, Virginia, testified at the trial that he received materials to be examined via a Fed Ex package that was delivered in 2012. Included in the package was clothing that Anthony Smith had been wearing at the time of his death as well



as a hand gun. He test fired the handgun and examined the clothing. He concluded, based on his testing of the jacket, that the bullet hole related to the shot to the top left shoulder of the jacket was from six inches or less but was not a contact shot.

Defendant Stockley testified at the trial. Defendant is a graduate of the United States Military Academy at West Point, N.Y., and he suffered injury to his back while serving in the United States Army during the January 2004 bombing of the Shaheen Hotel in Baghdad, Iraq. He has lingering problems with his sciatic nerve. Stockley testified that in December 2011 he was a certified field training officer for the police department.

Stockely testified the weather on December 20, 2011 was wet and "somewhat cold." He was wearing a bullet proof vest under his shirt, the pants he was wearing did not have cargo pockets, and he was wearing a three inch wide duty belt. Stockley said he was also wearing his personal gloves for the cold, gloves which were needle resistant to avoid getting stuck by a sharp object.

Stockley testified that on December 20, 2011, his partner was Brian Bianchi who was six months off probation. Their

assignment was to take 911 calls, and to proactively look for drug or burglary activity. As they were driving by the Church's restaurant they observed suspicious activity and decided to investigate. Stockley said he had never seen the silver Buick before, they were not looking for it at the time, they did not know either person involved in the perceived drug transaction, and they initially did not know either participant in the perceived transaction was connected to the silver Buick at the time they observed the transaction.

Stockley testified that he heard Bianchi yell "gun" at the time Bianchi broke the driver's window on the Buick, and Stockley then saw the driver's hand on a gun on the passenger seat as the Buick drove by him and was pulling away.

Stockley said that the pursuit was a high risk situation during which he was feeling fear. When asked about the statement, "kill that motherfucker" he could not remember making the statement. He said he had not made a decision to kill Smith and he could not recall the context in which the statement was made.

Stockley testified that after the pursuit ended he exited the police vehicle and went around to the driver's side door. When he got to the door, the airbag which had deployed was

lifted up by Bianchi and Stockley said he could see Smith reaching around, patting around with his right hand. Stockley told Smith to "show me your hands" repeatedly, but Smith continued reaching around. Suddenly Smith's demeanor changed, around fifteen seconds after Stockley reached the driver's window, when Smith reached between the seats, and Stockley said he thought Smith had retrieved the gun. Stockley reached for his Baretta (his service revolver) and stepped back because he was scared Smith would pull up his hand and shoot him. Stockley then fired several shots at Smith, which ultimately resulted in Smith's death. Stockley said he did not initially have his Baretta drawn when he got to the driver's window.

Evidence of what occurred following the shooting was provided through, among other things, the cell phone video taken by Mr. French from the second story window overlooking the scene. When the cell phone video first starts, Stockley is seen walking from the driver's side of the Buick back to the left rear door of the police vehicle, where he opens the door, places his AK-47 on the rear seat, then closes the door and walks back to the driver's side of the Buick. Another officer is standing at the door with his gun drawn and aimed into the Buick. Stockley then returns to the police vehicle, removing gloves

from both hands while approaching the vehicle, and he then climbs in and reaches across the rear seat.<sup>8</sup> Stockley testified he took his gloves off as he returned to the police vehicle because he was going to retrieve Quick Clot, which is used to stop bleeding, from his personal bag which was on the back seat of the police vehicle, and he said it's hard to feel what you're touching with the gloves on. Stockley then exits the police vehicle and returns to the driver's side of the Buick and proceeds to walk all the way around the Buick and the adjacent police vehicle where he meets with Bianchi and Sergeant Rumpsa. Stockley can be seen on all sides while walking around the two vehicles. Stockley does not have a jacket on over his blue police uniform shirt. There is no gun, other than his holstered service revolver, visible in his hands, in his pockets or tucked into his belt, and there is no bulge from a gun in any pocket. As other officers gather at the scene, they do not appear to be wearing gloves as they approach the Buick or other officers. After conferring with Bianchi and Rumpsa, Stockley again returns to the driver's side of the Buick and again there is no gun in

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<sup>8</sup> A video recording from inside the police vehicle shows Stockley was reaching across the rear seat to a personal bag, which he reaches around in, and then exits the vehicle. Stockley does not have anything in either hand during the brief periods his hands are in view on this video, immediately before he exits. The video does not show defendant trying to stealthily recover a revolver and conceal it on his person.

his possession other than his holstered service revolver. After Smith is removed from the Buick, Stockley gets in on the driver's side; there are six other officers visible immediately adjacent to the Buick, and initially four of them are by the driver's door looking in. The evidence at trial was that Stockley got into the car to search for a weapon, and Stockley testified that he found a handgun tucked down between the seat and the center console. He rendered the gun safe by unloading cartridges from the cylinder, and then left the gun and cartridges on the passenger seat. A demonstration at the trial of how the gun was unloaded showed that a person would hold the gun tightly by its grip in one hand, and with the other hand unlock the cylinder and remove any cartridges.

No charges were filed by the State in this case until the Spring of 2016, and no federal charges have been filed.

The key issues in this case are whether the shooting of Anthony Smith was an intentional killing following deliberation by Stockley, or whether the shooting of Smith was a lawful use of deadly force by a police officer who was reasonably acting in self-defense. All of the witnesses who testified at the trial, other than defendant Stockley and Monte Jodeh, were called as witnesses for the State.

A criminal defendant is presumed innocent and the State has the burden to prove a defendant guilty beyond a reasonable doubt. State v. Henton, 753 S.W.2d 19, 20 (Mo.App.E.D. 1988). Due process requires the State to prove every element of a crime beyond a reasonable doubt. State v. Neal, 328 S.W.3d 374, 378 (Mo.App.W.D. 2010). Proof beyond a reasonable doubt is proof that leaves the finder of fact "firmly convinced of the defendant's guilt." See, MAI-Cr 4<sup>th</sup> 402.04. The burden on the State to prove a criminal defendant's guilt beyond a reasonable doubt applies to every criminal defendant in every case.

The version of the statute on first degree murder that was in effect in December 2011 provided that "a person commits the crime of murder in the first degree if he knowingly causes the death of another person after deliberation upon the matter." § 565.020.1 RSMo. 2000. Therefore, the three elements of first degree murder are: (1) knowingly; (2) causing the death of another person; and (3) after deliberation upon the matter. "Deliberation" is defined as "cool reflection for any length of time no matter how brief." § 565.002(3). "Like any state of mind, deliberation generally must be proved through the surrounding circumstances of the crime." State v. Ferguson, 20 S.W.3d 485, 497 (Mo.banc 2000).

The defendant has the burden of injecting the issue of self-defense. § 563.031.5 RSMo 2016. However, the defendant does not have the burden of proof on the issue of self-defense. State v. Morley, 748 S.W.2d 66, 68 (Mo.App.S.D. 1988). It does not matter which side presents the evidence that supports the issue of self-defense. State v. Fincher, 655 S.W.2d 54, 58 (Mo.App.W.D. 1983). If there is evidence to support self-defense, the State has the burden of disproving the defense beyond a reasonable doubt. State v. Watson, 839 S.W.2d 611, 615 (Mo.App.E.D. 1992).

A law enforcement officer need not retreat or desist from efforts to arrest or prevent the escape of a person the officer believes to have committed an offense. A law enforcement officer is entitled to use deadly force where the officer reasonably believes the use of deadly force is necessary to effect the arrest and reasonably believes the person is attempting to escape by the use of a deadly weapon or may otherwise endanger life or inflict serious physical injury. § 563.046 RSMo 2000.

The State contends it has met its burden of proof as to murder in the first degree because the statement made by officer Stockley during the pursuit that "we're killing this

motherfucker" was followed by Stockley shooting Smith while Smith was seated in his car. The State contends Stockley's statement during the pursuit proves Stockley intended to kill Smith and that he deliberated about doing so, prior to shooting Smith when the pursuit ended. The State argued that Stockley initially fired four shots at Smith, who the State contends was not in possession of a firearm in the car, and then after a gap in time fired a fifth shot at close range into Smith's lower neck/shoulder. The prosecutor referred to this fifth shot as a "kill shot" that was fired because the first four shots did not kill Smith. The State argued that a "puff of smoke" seen on the dash cam video came from the "kill shot" and supports the State's theory of a fifth shot separated in time from the first four shots. The State claims Stockley did not act in self-defense because Smith was not in possession of a firearm, and the firearm found in the car was planted by Stockley.

The Court believes it is significant that defendant Stockley and Smith did not know each other prior to December 20, 2011, they had no prior history, there was no history between Stockley and members of Smith's family, and there was no basis in the evidence to suggest any pre-existing animosity by



Stockley towards Smith.<sup>9</sup> There was also no evidence that Stockley even knew who was being pursued.

Commencing in the parking lot of the Church's restaurant, when Anthony Smith rammed into the police vehicle twice, and then struck Stockley's arm with the car while fleeing, officers Bianchi and Stockley were involved in a dangerous high speed pursuit. It is apparent from the dash cam audio and video that the pursuit was stressful both from the high speed nature of the pursuit and from confusion caused by the multiple radios and communications with a dispatcher. People say all kinds of things in the heat of the moment or while in stressful situations, and whether Stockley's statement that "we're killing this motherfucker," which can be ambiguous depending on the context, constituted a real threat of action or was a means of releasing tension has to be judged by his subsequent conduct.

The Court does not believe Stockley's conduct immediately following the end of the pursuit is consistent with the conduct of a person intentionally killing another person unlawfully.<sup>10</sup>

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<sup>9</sup> The defense wanted to introduce evidence that Anthony Smith had an outstanding parole violation warrant and a felony record. However, the Court ruled that such evidence is not relevant and can be given no weight as the defendant did not know Mr. Smith and he had no knowledge of any criminal history at the time of the relevant events here.

<sup>10</sup> The Court also believes the dangerous, highly stressful and frenetic events during and immediately following the pursuit and shooting on December 20, 2011, are the antithesis of "cool" anything, much less reflection.

Stockley did not approach the Buick and immediately shoot Smith multiple times. Stockley had been warned by Bianchi that Smith had a gun. Stockley approached the driver's side, appeared to attempt to open the door and, as testified to by the State's own witnesses, ordered Smith to open the door and to show his hands. Stockley also warned another officer to "watch his hands." It was not until fifteen seconds after Stockley arrived at the driver's side door, that he unholstered his service revolver and fired several shots in succession.

The Court finds the State's contention there was a fifth "kill shot" fired by Stockley after a gap in time, is not supported by the evidence. No witness testified to hearing a shot separated in time from the first group of successive shots. Antonio French, a fact witness for the State, testified that the gun shots were in rapid succession and that one shot was not separated in time from the other shots. There was also no evidence regarding the order in which Smith's wounds were inflicted. The Court finds the State's reliance on a "puff of smoke" as evidence of a fifth shot separated in time from the others is not supported by the evidence. There was no puff of smoke from any of the other shots, and there was no testimony that firing a service revolver would or could cause such a puff

of smoke. There was also no explanation offered for why such a "puff of smoke" would be seen outside the car if such a fifth shot was fired with the gun inside the car as the State contends. It seems more reasonable to conclude that what the State characterizes as a "puff of smoke" was in reality exhaled breath in cold air. Puffs of smoke are seen multiple times on the dash cam video unrelated to the firing of any gun, but coming from the mouths of officers in the cold air.

The State made much of the fact that Stockley was in possession of an AK-47 pistol on December 20, 2011. Stockley admitted he was in possession of such a weapon, he testified he knew his possession of such a weapon was in violation of department policy, but he said he had it with him to use as a deterrent in situations in which he (and other officers) might be facing persons armed with more dangerous weapons than a Baretta service revolver. There is no evidence he ever fired this weapon, and while Stockley's possession of the gun might be a matter for departmental discipline, it is not relevant to the criminal charges here.

The defense does not deny that Stockley shot and killed Smith. Rather, the defense contends Stockley acted in self-defense and that Stockley's use of deadly force, as a police

officer, was justified because Smith was armed with a handgun, had demonstrated that he was a danger to other persons by the manner in which he fled from the police at high speed, and Stockley did not shoot Smith until Smith reached for his gun.

Section 563.061 RSMo Supp. 2010, the statute in effect in December 2011 which governed the defense of self-defense, provided that a person could use physical force upon another person "when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such other person." Subsection 2 of the statute provided that a person could not use deadly force upon another person unless he or she reasonably believed that such deadly force was necessary to protect himself or herself "against death, serious physical injury, or any forcible felony."

A fact issue that is central here is whether Smith was in possession of a firearm inside the car at the time he was shot. The State contends Anthony Smith was not in possession of a firearm inside the silver Buick and that Stockley planted the firearm that was recovered from the Buick.

Stockley testified that Bianchi warned him of a gun in the Buick at the Church's restaurant, and that he observed a gun in Smith's hand as the Buick drove past him. Stockley testified he did not draw his service revolver and fire until after he saw Smith reaching around inside the car and then change his demeanor suggesting to Stockley that Smith found the gun. A handgun was found inside the Buick after the shooting.

The Court finds the State's contention that Stockley planted the handgun found in the Buick is not supported by the evidence.<sup>11</sup> The gun was a full size revolver and not a small gun, such as a derringer, that can fit in the palm of one's hand or into the side pocket on a pair of pants without being obvious. Stockley was not wearing a jacket; if he had such a gun in his possession it would have been visible on the cell phone video. The gun was too large to fit entirely within any of the pockets on the pants he was wearing, there was no bulge in any pocket indicating a gun within the pocket, and the gun would have been visible if it was tucked into his belt. There

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<sup>11</sup> Mr. Taylor, Mr. Smith's companion when he arrived at the Church's restaurant and who has a felony drug conviction, from Pike County, Missouri, and a fifteen year (15) sentence, with execution of the sentence suspended, testified that he did not see Smith with a handgun and he did not know there was heroin in the car. The Court finds Taylor's testimony has no probative value and was not credible. Taylor was impeached with his own deposition testimony that he did not recall anything about that day, and he was impeached with several inconsistencies between his trial and deposition testimonies.

were several officers standing around adjacent to the driver's side of the Buick and not one of them was called to testify that they saw Stockley plant a gun in the Buick. The State's argument that the presence of Stockley's DNA and the absence of Smith's DNA on the gun proves the gun was not in Smith's possession but must have belonged to and been planted by Stockley is refuted by the State's own witnesses. Mary Ann Kwiatkowski and Dr. Karen Preiter both testified that the absence of a person's DNA on a gun does not mean that person did not touch the gun.

Finally, the Court observes, based on its nearly thirty years on the bench, that an urban heroin dealer not in possession of a firearm would be an anomaly.

The State further contends Stockley did not act in self-defense because Officer Bianchi did not perceive Smith to be a threat. Brian Bianchi, defendant's partner on December 20, 2011, did not testify at the trial. At the time of the shooting, Bianchi was an inexperienced police officer. To draw compelling inferences from Bianchi's actions or inactions is not a reliable endeavor, and would amount to mere speculation. Officer Bianchi only holstered his revolver on the Church's restaurant parking lot when Smith drove away at high speed.

Stockley testified Bianchi warned him on the Church's parking lot about a gun. The Court does not believe one can draw any inferences regarding Bianchi's state of mind from Bianchi's actions at the side of the Buick prior to the shooting. It is worth noting that Stockley did not perceive Smith to be an imminent threat while he was initially interacting with Smith through the driver's window after the pursuit, but only after fifteen seconds had passed during which Smith was ordered to show his hands and open the door, and only when Stockley believed Smith had located the gun.

The State further argues that Stockley removed his gloves when he returned to the police vehicle with the purpose of providing an explanation for his DNA being on the handgun recovered from Smith's vehicle. The gloves he removed were winter gloves, Stockley's explanation for removing the gloves is plausible, other officers at the scene either did not have winter gloves or had removed them prior to exiting their vehicles, and it makes sense that a person would remove winter gloves when searching for something inside a personal bag. Here Stockley was searching inside his personal bag, and he testified he was searching for Quick Clot. In the absence of any evidence showing Stockley in possession of the gun prior to his entering

the Buick to search, this contention regarding the gloves makes no sense.

One obvious question the State made no attempt to answer was how Anthony Smith could have been shot in the left lower abdomen by a person standing outside the car if Smith was simply sitting in the driver's seat. Dr. Norfleet, who conducted the autopsy, testified that the wounds in Smith's left flank could indicate that Smith was reaching for something to his right at the time the wounds occurred. This would be consistent with Stockley's testimony regarding Smith's actions immediately prior to the shooting.

No one promised a rose garden, and this surely is not one. Missouri law requires that the trier of fact be "firmly convinced" of the defendant's guilt in order to convict. As stated above, the burden on the State to prove a criminal defendant's guilt beyond a reasonable doubt applies to every criminal defendant. The requirement that the State meet its burden of proof is not a mere "technicality" and the instant case is not decided on a technicality.

This Court, as the trier of fact, is simply not firmly convinced of defendant's guilt. Agonizingly, this Court has poured over the evidence again and again. This Court has viewed



the video evidence from the restaurant's surveillance camera, the cameras in the police vehicle, and the cell phone video by the lay witness, over and over again - innumerable times.

This Court, in conscience, cannot say that the State has proven every element of murder beyond a reasonable doubt or that the State has proven beyond a reasonable doubt that defendant did not act in self-defense.

The State asked the Court to consider, should it find defendant not guilty of first degree murder, whether defendant is guilty of a lesser degree of homicide. The defense did not ask the Court to consider lesser offenses.

The lesser degree offenses of first degree murder are listed in § 565.025 RSMo. This Court has found that the State did not prove beyond a reasonable doubt that Stockley did not act in self-defense. The issue is whether a finding that the defendant was not guilty of an intentional killing based on the defense of self-defense forecloses the possibility of a conviction of a lesser degree of homicide.

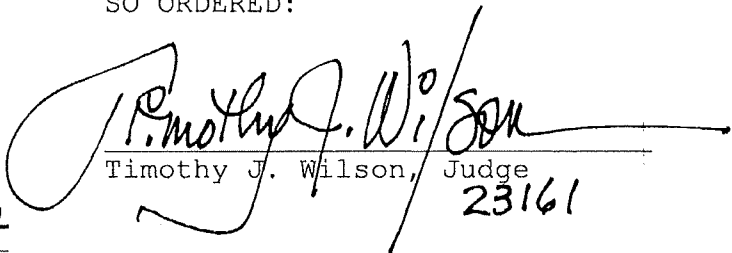
The Missouri Supreme Court has held that self-defense in a homicide does not foreclose a conviction for involuntary manslaughter if the defendant was entitled to use force while acting in self-defense, but exceeded the scope of the self-

defense privilege by using an unreasonable amount of force. This is because an intentional act of self-defense may constitute reckless conduct if the force used was unreasonable. State v. Beeler, 12 S.W.3d 294 (Mo.banc 2000); State v. Pulley, 356 S.W.3d 187 (Mo.App.E.D. 2012). Given that the State here has failed to prove beyond a reasonable doubt that defendant's use of deadly force was not justified in self-defense, the Court need not address lesser degrees of homicide including involuntary manslaughter.

WHEREFORE, it is ordered, adjudged and decreed that the State has failed in its burden of proof and the Court finds that defendant is not guilty of both charges in this case, murder first degree and armed criminal action.

SO ORDERED:

Dated: September 15, 2017

  
Timothy J. Wilson, Judge  
23161

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF MALEEHA AHMAD**

I, Maleeha Ahmad, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. On September 15, 2017, I participated in a protest march following the acquittal of Officer Jason Stockley.
3. The march took place in downtown St. Louis.
4. That afternoon, I was standing on Tucker Boulevard between the cross streets Spruce and Clark.
5. The street had already been closed by the St. Louis Metropolitan police.
6. Behind me was a bus full of police. The bus faced toward the north.
7. A line of St. Louis Metropolitan police officers carrying bicycles in front of their bodies approached me from the north on Tucker.

8. The line of police officers shouted “Get out of our way!” when they were about one foot away from me.

9. I did not say anything to them.

10. Without warning, an officer sprayed me with pepper spray directly in my face.

11. The lead officer used his bicycle to ram through me and the other pedestrians who had been standing there, and then the officers stormed through in a V-shape.

12. I was unarmed, not committing any damage to property, and posed no safety threat to any person.

13. The officer did not warn me that he was about to deploy a chemical agent against me.

14. Even though I was wearing a scarf and sunglasses, the pepper spray burned my eyes and my skin. Everything went black with pain.

15. Other protestors immediately came to my aid and helped me flush the spray. The bright sun exacerbated the pain tremendously. Since I could not see, other protestors helped me move to the shade.

16. The police did not provide me with any first aid.

17. I was not arrested.

18. Attached to this declaration is a photograph of me with residue on my skin.

19. I knew that the St. Louis Metropolitan police had previously deployed chemical agents without warning during nonviolent protests against police misconduct because I had been gassed near the intersection of Arsenal and Grand in late 2014.

20. That time, too, I had been unarmed and posed no threat to any person or property.

21. I learned that the St. Louis Metropolitan police had deployed chemical agents, including at least pepper spray, pepper balls, and tear gas, without warning at other times over the weekend of September 15, and that they had done so on previous occasions other than the time I had experienced it.

22. I learned that over the weekend of September 15, the St. Louis Metropolitan police interfered with, and targeted for arrest and abuse, people who were recording video of the police performing their duties.

23. I learned that the St. Louis Metropolitan police were arresting protestors and others for “failing to disperse” or for being part of an “unlawful assembly” in an arbitrary way and without giving warnings that I would be able to understand.

24. What I learned—plus what I experienced—made me frightened of arbitrary arrest by the St. Louis Metropolitan police, as well as abuse and retaliation for engaging in expressive activity that is critical of the police.

25. I have not participated in protests I would otherwise have participated in because I am afraid of what the police will do.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of September, 2017.

By: /s/ Maleeha Ahmad  
Maleeha Ahmad







**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF ALISON DREITH**

I, Alison Dreith, declare as follows:

1. I am over the age of 18. I am a plaintiff in the above-captioned action. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
  
2. On Friday, September 15, 2017, I drove to downtown St. Louis in order to participate in a protest march following the acquittal of Officer Jason Stockley
  
3. That morning, I approached downtown from the south, driving up Tucker toward the protest location at Market and Tucker.
  
4. When I arrived at the intersection of Tucker and Clark, I noticed that police officers and police vehicles had already blocked off Tucker, so I was unable to continue driving north on Tucker.



5. Instead, I turned left on Clark and entered the parking lot behind St. Louis City Hall, where I parked my vehicle.

6. Then I joined the march for approximately one hour before I returned to the intersection of Tucker and Market. I remained there, engaged in expressive activity, for approximately two more hours.

7. At approximately 1 p.m., I had an urgent need to use a restroom.

8. I saw a St. Louis elected official whom I knew personally and asked him to let me in to City Hall to use the restroom. City Hall was locked and chained.

9. The official and I saw many dozens of police officers with bicycles as we walked into City Hall and remarked to each other on the number of officers amassed.

10. The official let me in to City Hall, and I used the restroom.

11. As I left City Hall via the back entrance (facing the Tucker and Clark intersection), I saw a St. Louis Metropolitan police officer standing on the steps of City Hall and using a radio, pointing out protestors and describing what they were wearing.

12. I continued down the steps and through the City Hall parking lot.

13. As I approached Tucker, which was still closed, I saw some police officers pick up their bikes and use them to push people, aggressively.

14. Toward my left, I saw a woman—whom I later learned was Maleeha Ahmad—get sprayed with a chemical directly in the face by a police officer.

15. I was shocked.

16. I had seen no one who posed any threat to any person and had seen no one committing any damage to property.

17. Immediately thereafter and without warning, a St. Louis Metropolitan police officer sprayed me directly in the face with some type of pepper spray.

18. I was committing no crime.

19. No officer had given me any directive.

20. The officer did not warn me that he was about to deploy a chemical agent against me.

21. In fact, I heard no warnings either before I went into City Hall or after I left.

22. The pepper spray burned my eyes and my skin terribly for some 24 hours.

23. The spray left red splotches all over my body.

24. Attached to this declaration is a photograph of me with residue on my skin. I took the photograph after I was able to return to my vehicle.

25. I learned that the St. Louis Metropolitan police deployed chemical agents, including at least pepper spray, pepper balls, and tear gas, without warning at other times over the weekend of September 15, and that they had done so on previous occasions.

26. I learned that the St. Louis Metropolitan police interfered with, and targeted for arrest and abuse, people who were recording video of the police performing their duties.

27. I learned that the St. Louis Metropolitan police were arresting protestors and others for “failing to disperse” or for being part of an “unlawful assembly” in an arbitrary way and without giving warnings that I would be able to understand.

28. What I learned—plus what I experienced on September 15—made me frightened of arbitrary arrest by the St. Louis Metropolitan police, as well as abuse and retaliation for engaging in expressive activity that is critical of the police.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25 day of September, 2017.

By:   
Alison Dreith







**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF DERRELL SMITH, JR.**

I, Derrell Smith, Jr., declare as follows:


1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. On September 15, 2017, I was protesting at the intersection of Clark Avenue and Tucker Boulevard in the City of St. Louis.
3. I fully complied with all police orders and I did not break any laws.
4. During the entire time I was at and near that intersection, I never once heard the police issue a warning to protesters or order anyone to disperse.
5. Without warning, the police began to use pepper spray on protesters and other observers in the area.
6. A police officer sprayed me directly in the face with a big blue can of pepper spray.

7. I suffered burning and pain.

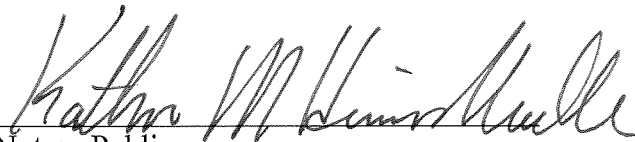
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 22nd day of September, 2017.

Executed on 9/22/17

  
Derrell Smith, Jr.

Subscribed and sworn to before me this 22nd day of September, 2017, by

  
Notary Public



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14614968



**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF JOSHUA TORRES WEDDING**

I, Joshua Torres Wedding, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. On September 15, 2017, I participated in a protest march following the acquittal of Officer Jason Stockley.
3. The march took place in downtown St. Louis.
4. At approximately 5:15 p.m., I was walking to meet my wife after leaving the protest group.
5. I saw a Metro bus full of police officers unload onto the sidewalk near me.
6. Many of the officers were dressed in black full-body tactical gear, including personal protective equipment and helmets.

**EXHIBIT E**



7. I did not understand why the officers were there. I used my smartphone to record the officers, who were moving into a phalanx formation.

8. Some of the officers were on the west sidewalk of Tucker Boulevard, and I was standing in the City Hall parking lot, so we were separated by an iron fence. I walked to the brick-and-iron entranceway between sidewalk and parking lot. I was a couple feet away from the nearest officers.

9. Without warning, an officer sprayed me directly in the forehead with a stream of pepper spray.

10. I was unarmed, not committing any damage to property, and posed no safety threat to any person.

11. The officer did not warn me that he was about to deploy a chemical agent against me.

12. The pepper spray burned my eyes and my skin, and I began screaming.

13. The police did not provide me with any first aid.

14. I was not arrested.

15. Attached to this declaration is a photograph of me with the residue on my skin.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of September, 2017.

By: /s/ Joshua Torres Wedding  
Joshua Torres Wedding







IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF CHRIS SOMMERS**

I, Chris Sommers, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. At approximately 8:30 p.m. on Friday, September 15, 2017, I arrived at my restaurant, Pi Pizzeria, at the northeast corner of McPherson and Euclid Avenues in the Central West End neighborhood of St. Louis, Missouri.
3. I watched hundreds of people participate in a peaceful march and protest, which proceeded north up Euclid Avenue and its adjacent sidewalks. The march passed by Pi.
4. I observed the guests at my restaurant, as well as my staff, and I did not see anyone appear to be frightened. In fact, I saw some current guests cheer on the protestors

and, among the protestors, saw some of my regular guests. My staff and I offered cups of water to the protestors.

5. Though they chanted and waved signs in order to garner attention of nearby business patrons, none of the protestors physically intimidated me, my guests, or my staff.

6. The protestors did not damage my property, and I did not see damage done to any property around me.

7. Eventually, I saw the protestors continue north on Euclid Avenue. I saw normal vehicular traffic resume going both west and east on McPherson Avenue.

8. I sat at a table on the Pi patio with a friend and a couple of clergy members for approximately one hour after the protestors had passed by.

9. Everything seemed calm to me. At that point, guests were eating at outdoor tables on my patio and conversing normally.

10. Around 11 p.m., I decided to go home, so I walked to my vehicle.

11. No protestors or other pedestrians blocked my way to my vehicle, which had been undisturbed throughout the evening.

12. I drove by Pi on McPherson and happened to glance toward the south.

13. I was surprised to see a line of St. Louis Metropolitan police officers dressed in riot gear marching north up Euclid toward the Euclid and McPherson intersection.

14. I saw dozens of officers. They were wearing gas masks, full helmets, and other protective equipment, and they were carrying full-body shields and batons.

15. I parked my vehicle and ran back to my restaurant.

16. I saw the officers fan out across Euclid Avenue at the crosswalk just south of McPherson, blocking any route of egress to the south, including via the sidewalks. They were armed with weapons, including pepper guns.

17. I heard some officers beat their batons against the ground or their shields.

18. Even while the officers were blocking Euclid Avenue, vehicles continued driving west and east on McPherson, unimpeded by any pedestrians or protestors.

19. There were only a few pedestrians at the intersection, and I saw no pedestrian committing any crime or even blocking the street.

20. One of the officers fired a pepper gun into the air.

21. I yelled repeatedly at the officers from across the street because I was baffled about why they were there; I shouted at them to stop intimidating my guests and my staff. My restaurant was still open and serving customers.

22. At least one officer continued to shoot a pepper gun.

23. I saw my guests and my staff retreat inside the restaurant.

24. I yelled frantically at the officers to stop attacking us.

25. An officer shot a tear gas canister directly at Pi.

26. A man standing next to me threw it away from the restaurant.
27. The officers rushed us.
28. I ran inside the restaurant with a few other people and got the door locked.
29. I had to close down the restaurant for the night.
30. I bought dinner for everyone who was left.
31. I helped my staff members get out safely and find rides to their homes.
32. Using my smartphone, I recorded three videos during this incident. I was recording when the officers rushed me. The videos are attached to this declaration and fairly and accurately depict what I saw.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25<sup>th</sup> day of September, 2017.

By:   
Chris Sommers

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF MEGAN GREEN**

I, Megan Green, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I live in the City of St. Louis.
3. On the evening of Friday, September 15, 2017, I participated in the march that started in the Central West End in order to express my disapproval of the acquittal of Officer Stockley, police brutality, and institutional racism.
4. After the march, I was traveling south on Lake.
5. I saw buses of riot police officers coming in from both directions and all of Westminster was blocked by riot police.
6. In every direction there were officers in riot gear, and there was nowhere to go in order to disperse from the area.

**EXHIBIT G**

7. When I was near the synagogue Central Reform Congregation, I ran into a line of riot police at Kinghighway, which were blocking the only open route of egress. I went in the synagogue.

8. While I was inside, I heard police banging on the door and yelling.

9. I could see clouds of tear gas and the synagogue entrance was surrounded by officers.

10. I stayed inside the synagogue for an hour and a half.

11. When I left the synagogue, I walked south down Kingshighway, and as I approached the Chase Park Plaza, I saw a line of riot police with a small pathway open among them. I asked if I could pass through to get to my car, and I was allowed us to do so.

12. I then crossed the street at Lindell and Kingshighway to head east on Lindell.

13. As we walked down the street a police MRAP drove past us.

14. The MRAP then did a U-turn at Kingshighway and Lindell and doubled back to where I was standing with a small group so that it could shoot tear gas at the group.

15. We were on the sidewalk trying to get into our vehicles.

16. The occupants of the MRAP gave no warning they would start gassing us.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/22/17

Megan E. Green  
Megan Green

Subscribed and sworn to before me this 22nd day of September, 2017.



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14814958

Kathryn M. Hinnert-Mueller  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF TONY RICE**

I, Tony Rice, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a resident of St. Louis County.
3. I participated in peaceful protests after the acquittal of Officer Stockley.
4. On the evening of Sunday, September 17, 2017, I was biking downtown after protesting. There was no ongoing organized protest, but people were still gathered in small groups in and around the intersection of Tucker and Washington Avenues.
5. I saw protestors, bystanders, and pedestrians, mostly on sidewalks and in the medians.
6. The streets had already been closed off by police vehicles.

7. There were many police officers in and around the intersection of Tucker and Washington in full riot gear and carrying full-body shields and batons. I would estimate there were more than one hundred police officers.

8. At approximately 11:20 p.m., I was riding on my bike in the intersection of Tucker and Washington Avenues.

9. I heard no warning or instruction from the police at that intersection.

10. The police riot lines closed in at me and everyone else in that intersection from all sides, leaving no routes of egress even via the sidewalk. The police were wearing helmets and personal protective equipment.

11. The police officers shouted, "GET DOWN, GET DOWN, GET DOWN."

12. There were different commands from different police officers; they were not all consistent.

13. Some police said "GET DOWN ON YOUR KNEES."

14. I immediately laid my bike down and complied with the directive to get down to my knees.

15. Police officers deployed chemical agents against me and the other people caught in the intersection.

16. It burned my skin like nothing I have never felt.

17. There was no room to go down any farther because the police officers were squeezing in on me and the other people in the intersection.

18. Because I thought I needed to get down farther to comply with the police officers' directives, I laid down on top of my bike.

19. Police officers then knelt on top of me and hit me in the back with the point of a baton.

20. I was knocked firmly into my bike, my throat was pressed against a metal pole of my bike, and I could not breathe.

21. A police officer sprayed me with chemical agents directly at my head.

22. I was sprayed with a chemical agent so much that the substance flowed down my head, my shoulder, and my arm, and made my skin so slippery that police could not handcuff me right away.

23. A different police officer eventually got me some water to reduce the amount of pain I was in from the pepper spray.

24. Eventually I was handcuffed, arrested, and transported to the Justice Center.

25. I could not see for a long while.

26. I did not throw anything at the police at any time.

27. I never resisted arrest.

28. I was unarmed.

29. I never threatened the police or anyone else.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/22/17

Tony Rice  
Tony Rice

Subscribed and sworn to before me this 22<sup>nd</sup> day of September 2017, by Tony Rice.

Kathryn M. Hinnert-Mueller  
Notary Public



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14614956

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

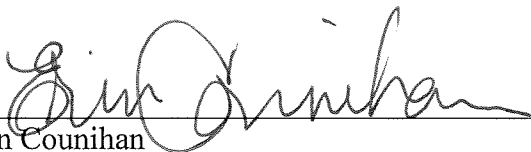
**AFFIDAVIT OF ERIN COUNIHAN**

I, Erin Counihan, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a pastor at Oak Hill Presbyterian Church, and I also work with Metropolitan Congregations United, a faith-based community organizing group.
3. I live in the City of St. Louis.
4. On the evening of September 15, 2017, I was in the Central Reform Congregation synagogue after participating in a march and protest following the acquittal of Officer Stockley.
5. I saw a black armored vehicle on Lindell shoot out tear gas.
6. I heard no instructions or warning.
7. I saw smoke and gas blanketing the street.
8. I saw people severely impacted by the gas. I provided first aid.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

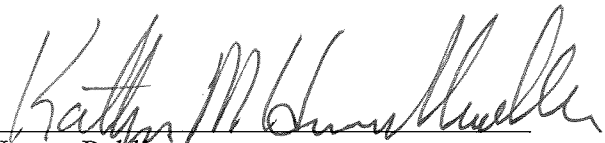
Executed on 9/22/17

  
Erin Counihan

Subscribed and sworn to before me this 22nd day of September, 2017.



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14814888

  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF PAMELA LEWCZUK**

I, Pamela Lewczuk, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a Legal Observer coordinator, and in that capacity, I observed protests following the acquittal of Officer Jason Stockley on September 15, 2017.
3. At all times, I was unarmed and nonviolent, and I committed no crime against any person or property.
4. On Friday, September 15, between 5 p.m. and 6 p.m., at the intersection of Clark and Tucker Avenues in downtown St. Louis, St. Louis Metropolitan police officers exposed me to chemical agents on three occasions.
5. On two occasions, I was some 10-20 feet away from the officers. On one occasion, I was sprayed from approximately one foot away even though I posed no threat to the



officers or to any person or property. That time, an officer sprayed a man standing right next to me, whom I did not see commit any crime.

6. I heard no warning that chemical munitions would be deployed any of these times.

7. Later in the evening of September 15, I was exposed to both tear gas and pepper spray in the Central West End neighborhood of St. Louis. I heard no warning that chemical munitions would be deployed against me.

8. My skin, eyes, nose, and throat burned profusely from these exposures. The exposures caused me to cough heavily and have some difficulty breathing.

9. On September 17, 2017, while I was observing the protest, I was caught in the kettle at the intersection of Washington and Tucker in downtown St. Louis. There was no means of egress through or around the lines of police officers in riot gear that formed the walls of the kettle.

10. I did not hear a dispersal order or a warning given that chemical munitions would be deployed.

11. I heard several officers on Tucker chanting "Whose streets?"

12. At approximately 11:30 p.m., the lines of officers rushed in on us and commanded us to get down. A police officer ordered me to turn off my cellphone.

13. I complied immediately with every command.

14. I saw other people caught in the kettle get sprayed with chemical agents directly in the face. I was affected by the spray, which hit me on the arms and legs since we did not have much room, and it burned my throat and nose. I also saw a police officer kick a person who was on the ground.

15. A police officer ordered me to turn face down, and I complied. I was handcuffed tightly and handled roughly, which caused me pain. Officers grabbed me by the back and stood me up and then shoved through the crowd to the sidewalk.

16. I was arrested and transported to jail.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of September, 2017.

By: /s/ Pamela Lewczuk  
Pamela Lewczuk

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF STEVEN HOFFMANN**

I, Steven Hoffmann, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a Legal Observer coordinator with the National Lawyers Guild of St. Louis and have attended hundreds of protests in that capacity.
3. I drove to the Central West End neighborhood of the City of St. Louis at approximately 11:15 p.m. on Friday, September 15, so that I could observe protests following the acquittal of Officer Jason Stockley.
4. I was wearing a bright green hat identifying me as a Legal Observer.
5. After I parked my vehicle, I walked south on Euclid Avenue, where I saw a line of several dozen St. Louis Metropolitan police officers dressed in tactical gear, including helmets, and carrying batons and full-body shields, at the intersection of Euclid Avenue and

Pershing Place. I later learned there were additional police officers at other locations in the neighborhood.

6. The police had closed Euclid.

7. In front of the police line on Euclid, I saw about two dozen pedestrians, including protestors, residents, and patrons of area businesses.

8. I did not see any pedestrian commit any act of force or violence or any damage to property. I did not see any signs of property damage at that time. I was myself unarmed, nonviolent, not committing any crime, and posing no threat to any person or property.

9. Suddenly, and without warning, police officers in that riot line began to yell. I heard several officers banging long batons on the ground.

10. Police began to shine red laser gun sights on people. I looked down at my chest and stomach, and the red laser was shining on me. I took several steps to get out of the line of fire, but the laser came back as soon as I stopped moving. The police were pointing some kind of gun at me.

11. I was afraid for my life, because I thought that the officers were going to fire bullets at me. I heard no warning about the deployment of chemical munitions.

12. I yelled to someone next to me “we need to get out of here fast.” As I was running, I heard a loud, deep clicking noise, and then I began to hear some projectiles hitting the ground all around me.

13. All of the other pedestrians ran north on Euclid as well. There was nowhere else to go, because there were fences or walls against the sidewalk.

14. I began to smell a strange smell. I believe they were firing pepper balls at me, some kind of balls or bullets filled with pepper spray, or mace.

15. I looked back behind me, and police were running toward us in a line. They continued to follow and shoot at the pedestrians until we reached McPherson Avenue, where I tried to take shelter next to a bookstore.

16. I thought that I could catch my breath for a moment, but police continued to deploy tear gas canisters into the intersection.

17. There must have been several canisters, because I saw smoke coming from three different places in the intersection. No one who was standing there was doing anything wrong that I could see.

18. I ran west on McPherson and stopped behind a car. I could not hear the police, but I could see more canisters of tear gas hitting the ground and releasing gas, and I could smell the gas.

19. I started to feel pain all over my face, and in my eyes. It felt like my skin was burning. I could not breathe without inhaling a noxious smell and taste. It is hard to describe, but I felt like many small pins were piercing my skin and causing me to itch. It was very uncomfortable and frightening.

20. I did not hear police make any warning before they fired or threw the tear gas, or before they shot at me with the pepper balls. I had been standing close enough to their line that I would have heard it if a police officer had shouted or used any amplification, such as a megaphone.

21. After more than 30 minutes, police started to move in a line, and they all followed behind one another and marched back south on Euclid, where we had all come from.

22. Once the police left, I returned to Euclid. I could see the police several blocks south of me, so I walked back to where they had shot at me before. I was afraid to go back, but I was even more afraid for people who were further south down Euclid.

23. Instead of a line of police in tactical gear, or “riot gear,” there were several police officers in normal “soft” uniforms. They told me that the sidewalk was closed, and that I needed to leave the area and go home.

24. I was not committing any crime or posing any threat to any person or property. I was not part of a larger group.

25. I could see that the tactical vehicle, and officers in tactical gear were far away, maybe 4 or 5 blocks south, and I told the officer that I wanted to film what they were doing with my smartphone, but it was too far away to really see what was happening up there.

26. An officer in a white shirt came up and asked if there was a problem, and I told him that police did not give any warning before they tear gassed us and shot at us, and he said, “I don’t need to give you a fucking warning.”

27. Eventually I was able to walk south on Euclid to Maryland Avenue after the police moved south.

28. All in all, I saw at least one hundred police officers standing in and around that intersection.

29. In November 2014, during the protests following the acquittal of former Ferguson police officer Darren Wilson, I was near the intersection of Arsenal and Grand in St. Louis city to observe in my capacity as a Legal Observer.

30. I saw the St. Louis Metropolitan police department deployed chemical agents there without warning.

31. In August 2015, during the protests and public grieving following the shooting of St. Louis resident Mansur Ball-Bey, I was near the intersection of Walton and Page in St. Louis city to observe in my capacity as a Legal Observer.

32. I saw the St. Louis Metropolitan police department deployed chemical agents there without warning.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of September, 2017.

By: /s/ Steven Hoffmann  
Steven Hoffmann

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF JON ZIEGLER**

I, Jon Ziegler, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am an independent journalist.
3. I came to the St. Louis area to cover the protests following the acquittal of Officer Jason Stockley.
4. On the evening of Friday, September 15, 2017, I was in the Central West End neighborhood of the City of St. Louis to cover the protest.
5. The St. Louis Metropolitan police officers deployed chemical agents against me and other people.
6. The police also used bright flashlights to prevent me from using my cameras.

**EXHIBIT L**



7. I informed one police officer that I suffer from seizures, and then two officers immediately began using their flashlights on strobe mode.

8. On the evening of Sunday, September 17, 2017, I saw police officers follow protestors and journalists, indiscriminately pepper spraying out of unmarked police vehicles. I also saw police officer use pepper balls.

9. I also twice saw police officers jumping out of vans with less-lethal shotguns, sometimes referred to as rubber bullets, and opening fire in a fashion that seemed random and arbitrary to me.

10. I heard a police officer make an announcement over the PA of a police vehicle to move to the north and west (toward Tucker and Washington).

11. Around 11:20 p.m., I was walking around recording video on the sidewalk near the intersection of Tucker and Washington.

12. Then suddenly riot lines of police officers formed around the intersection.

13. There was no warning given that people would get trapped inside.

14. When I realized I was getting trapped, I went to every corner of the intersection, and police told me to go out another way.

15. I saw people outside the perimeter of the kettle being dragged into the kettle by police officers.

16. At this point police moved in from all sides and ordered us to get down.

17. I complied immediately by crouching to the ground.

18. I had a camera on a tripod that stayed upright so as not to hit anyone around me. There was not enough room for everyone to get down.

19. I tried to fold the legs of my tripod.

20. Once I was on the ground, I was sprayed directly with pepper spray by multiple police officers, though I was unarmed, nonresisting, and following their directives.

21. I heard no warning.

22. At least six times, different officers sprayed me directly at point-blank range.

23. As other pedestrians were arrested and dragged away, I was able to lay down flat and so I laid down on my stomach.

24. I was handcuffed with zip ties.

25. After I was handcuffed, an officer told me to shut up and pepper sprayed me in the mouth.

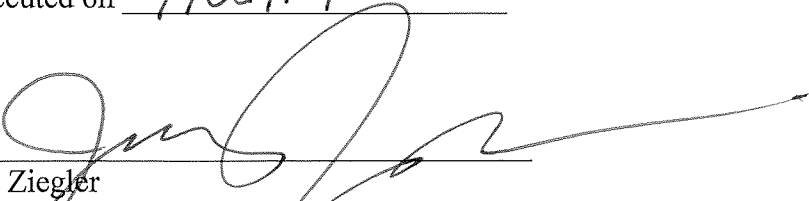
26. After that the officer used either a knee or foot on my back and proceeded to grind my face into the concrete.

27. I personally recorded three videos of these events, two with my iPhone and one with an HD camera. The two videos recorded with my phone were via livestream.

28. The videos are attached on a DVD.

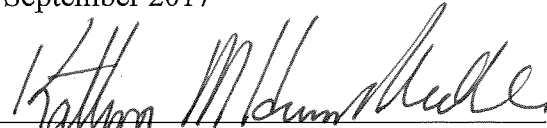
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/22/17

  
\_\_\_\_\_  
Jon Ziegler  
Subscribed and sworn to before me this 22nd day of September 2017



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14814958

  
\_\_\_\_\_  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF KEITH ROSE**

I, Keith Rose, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. On September 15, 2017, after the verdict was announced in the Stockley case, I arrived in downtown St. Louis at around 1 p.m.
3. At that time, the police had blocked off several streets to vehicular traffic, including Tucker Avenue between Chestnut Street and Clark Street.
4. At about 5:17 p.m., I recorded a police officer using my mobile phone. The officer responded by spraying me with what I believe was OC spray from a distance of no more than five feet. I do not know the officer's name because he was not wearing a nametag, but this is a picture of him just before he sprayed me:

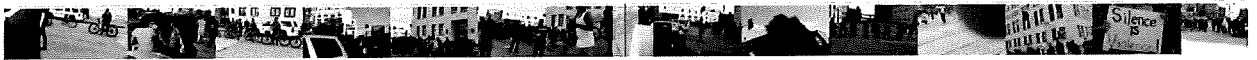
**EXHIBIT M**

< Videos

Saint Louis - Downtown West  
September 15 5:12 PM



Details



At the time, no announcements had been made suggesting an unlawful assembly, ordering dispersal, or warning that chemical agents might be used. I was not engaged in any illegal activity.

5. Shortly thereafter, an unlawful assembly was declared by Brian Rossomanno, a sergeant with the police department. The reason given for declaring the assembly unlawful was that it was impeding the flow of traffic. The flow of traffic was not impeded, however, because police had blocked the street in all directions hours earlier and, thus, there was no traffic. The burning sensation from the chemicals on my skin was so intense and painful that I decided to leave the protest. A friend took me to his home nearby to shower and change clothes.

6. On September 17, 2017, I arrived in downtown St. Louis around 9:00 p.m. to document police interactions with protestors. I watched Rossomanno at Washington Avenue and Tucker Avenue at 9:28 p.m. declare an assembly unlawful, order dispersal, and warn of the use of chemical munitions. He told us to walk west on Washington Avenue. When I proceeded west on Washington Avenue before I could pass Tucker Avenue, different police officers told me I could not go west on Washington Avenue. So I moved north on Tucker. Police officers said to stand four to five feet away from the police line, which I did; seconds later, I was threatened with arrest by another police officer for failure to disperse although I was standing exactly where a police officer had told me to stand.

7. Around 10 p.m., the situation had deescalated and the police officers disbanded their line. The officers in riot gear left the area. While other officers lingered, the area was reopened to pedestrian traffic.

8. I did not hear any other dispersal orders the entire evening.

9. I followed the crowd south on Tucker and east on Locust and then to Ninth and Olive. I stood at Ninth and Olive from about 10:20 p.m. to 10:50 p.m. at which point my friend and I walked west to Tucker on Olive. We then walked north on Tucker to between St. Charles Street and Washington. I stood on the sidewalk for about ten minutes. During this time I did not observe any illegal activity or hear any announcements.

10. At about 11:15 p.m. police in riot gear starting walking toward us from south on Tucker; they entirely blocked the street and sidewalk so it was impossible to pass. Simultaneously, police officers on bicycles entirely blocked Washington Street and its sidewalks to the east of Tucker. At the same time, a line of riot police blocked the street and sidewalk

across Tucker north of Washington and began advancing toward Washington. I then noticed that riot police were also advancing east of Tucker heading west toward Washington. I was trapped and had no possible route to leave the area.

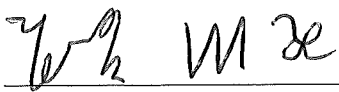
11. After the police surrounded us, we were directed to sit on the ground, which I and the others did, and ordered us to stop recording them. I saw police officers take the phones of individuals in the crowd from their hands and throw them on the ground. I followed exactly all directions given by police officers; however, I (and the group I was kneeling on the ground with) were sprayed with what I believe to be OC spray, and I was sprayed again from a distance of no more than five feet while my hands were zip-tied behind my back.

12. I saw no one resisting arrest, but I witnessed police officers beating, kicking, and dragging individuals. I also saw a police officer strangle a black man with the strap of his camera before taking the camera, viewing pictures, and pushing buttons on the camera.

13. I have witnessed St. Louis police use chemical agents on groups of protestors without warning on multiple occasions, including on July 21, 2017 at around 9 p.m. at the City Workhouse on Hall Street and on May 19, 2015 at around 9 p.m. on Fillmore Street.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25th day of September, 2017.

By:   
Keith Rose



**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF W. PATRICK MOBLEY**

I, W. Patrick Mobley, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts.
2. On the evening of Sunday, September 17, 2017, I was in the area of Pine Street and Tucker Boulevard in St. Louis, Missouri.
3. Using my smartphone, I was recording video of approximately five St. Louis Metropolitan police officers as they made an arrest.
4. I was standing on a sidewalk, across the street from the arrest. I was approximately 10 feet away from the nearest officer and approximately 30 feet from the arrest and was not addressing the officers, so I did not interfere with their ability to perform their duties.
5. I was not committing any crime.

**EXHIBIT N**



6. The officers seized my phone without warning and without my consent.
7. One officer accessed my phone without my consent and deleted my video. This officer was in plainclothes.
8. The officers demanded identification and commanded me to sit in a certain location on the sidewalk with my legs extended.
9. I was ordered to remain there while the officers checked my identification, a process that took approximately 20 minutes.
10. The officers repeatedly threatened to arrest me for “interfering.”
11. The officers also threatened to arrest me for property damage.
12. One officer told me that he was arresting me for property damage and resisting arrest. He walked away without saying anything further or taking any further action after another officer said something to him, which I could not hear.
13. An officer searched my bag without my consent.
14. The plainclothes police officer threatened to take me to jail, where he said he would find someone who would say they saw me damaging property.
15. I did not damage any property or commit any other crime.
16. Eventually I was commanded to leave the area, even though I had been on a public sidewalk and committing no crime.
17. The plainclothes officer told me to walk away and that he would arrest me if I turned around.
18. I have learned that the St. Louis Metropolitan police deployed chemical agents, including at least pepper spray, pepper balls, and tear gas, without warning on multiple occasions during the protests following the Stockley verdict.

19. I have learned that the St. Louis Metropolitan police have arrested protestors and others for “failing to disperse” or for being part of an “unlawful assembly” in an arbitrary way and without giving warnings that I would be able to understand.

20. What I learned—plus what I experienced—has made me frightened of arbitrary arrest by the St. Louis Metropolitan police, as well as abuse and retaliation for engaging in expressive activity that is critical of the police or attempts to hold police accountable.

21. I have not engaged in expressive activity I otherwise would have engaged in, including recording the entire arrest I had been recording when my phone was seized, because I am afraid of what the police will do.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2017.

By: /s/ W. Patrick Mobley  
W. Patrick Mobley

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF DEMETRIUS THOMAS**

I, Demetrius Thomas, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I work as a videographer.
3. On the evening of September 17, 2017, I was driving in downtown St. Louis and saw what seemed to me like a parade of police officers marching by. I was curious what was happening.
4. I parked my vehicle and got out to film the marching police. The video I took the evening of September 17, 2017, is a true and accurate depiction of what I observed.
5. As I was walking down a sidewalk with my camera out, I heard one officer yell to another officer, "EVERYONE IS GOING TO JAIL."
6. I only heard the officer because I was very close to him.

7. The officers gave no directive to disperse, but when I heard that remark, I decided to return to my vehicle and leave.

8. When I got back to my vehicle, it was surrounded by police and they would not let me enter. Officers told me to “Move, walk that way!” and pointed another direction. The officer also lifted up a can of mace as if he was about to spray me. I complied and jogged away.

9. Again, I heard no order or warning to disperse and no declaration that I was part of an unlawful assembly.

10. I was unarmed, and I did not commit any crime nor pose any threat to any person or property.

11. There were so many police officers, and they were wearing riot gear and gas masks. They were carrying long batons, and they continuously hit the batons against the ground in a rhythmic way that was very intimidating.

12. As I had already complied with the police order to walk in a certain direction, I tried to approach my vehicle from the way they had directed me to, but there were more officers blocking every possible route back.

13. Officers eventually cornered me and many others at the intersection of Washington and Tucker. We tried to exit the area but were blocked by police on all sides, and officers on bikes pushed us back toward the riot police.

14. I was pushed onto the ground by the police.

15. They closed in and sprayed me and other pedestrians with chemical agents.

16. I heard no warning that officers would deploy chemicals.

17. I saw officers continue to spray people at point-blank range even after everyone was on the ground.

18. One police officer hit me in the ribs with his baton even as other officers were dragging me toward the sidewalk.

19. When I was pushed onto the ground, dragged by the police, and they tried to force my professional-grade camera equipment away from me, my equipment was damaged, dented, and scratched. The officer broke the \$800 detachable lens I had been using. The lens will not focus, and I cannot work until I am able to replace my equipment.

20. I observed the police taking pictures of the protesters, observers, journalists, and pedestrians they had surrounded on their own cameras and phones.

21. Along with many others, I was arrested and transported to jail.

22. I never broke any law and I complied with all of the police commands.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2017.

By: /s/ Demetrius Thomas  
Demetrius Thomas

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF DANA KELLY-FRANKS**

I, Dana Kelly-Franks, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. On September 15, 2017, I was in the area of Tucker Boulevard and Clark Avenue, participating in protests in St. Louis, Missouri, related to the public outrage over the acquittal of Jason Stockley, a former St. Louis police officer who shot and killed Anthony Smith in 2011.
3. At all times while I was at the protest, I was complying with the law.
4. I never heard the police give an order to disperse or any other warning.
5. I did not observe anyone in the area breaking the law.
6. When it appeared to me that the police were close to taking action against the peaceful protesters, I attempted to move kids out of the way to protect them.

**EXHIBIT P**

7. When I turned around after moving the kids out of the way, there was an officer who, without warning, sprayed me in the face with a chemical irritant and then knocked me down onto the ground with his riot shield.

8. I could not see from being sprayed and was getting stepped on. I rolled on the ground and ended up under a truck.

9. I could not breathe and started to hyperventilate.


10. I heard people around me running and screaming.

11. I heard people calling my name so I rolled out from under the truck and held up my hand so that someone could help me.

12. I suffered headaches for approximately four days after being sprayed with a chemical irritant and had bruising on my ribs from being hit with the officer's riot shield.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2017.

By:   
Dana Kelly-Franks

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF ALICIA STREET**

I, Alicia Street, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. On Friday, September 15, 2017, I participated in a protest in the Central West End in order to express my displeasure with the Officer Stockley verdict.
3. That evening, St. Louis Metropolitan police officers deployed chemical agents and rubber bullets against me and others without giving us adequate time or open routes to disperse or telling us where we needed to go.
4. On Sunday, September 17, after an organized protest, I was near the intersection of Tucker and Washington Avenues in downtown St. Louis.

**EXHIBIT Q**



5. After speaking with others, I attempted to walk down Washington Avenue to my vehicle to leave downtown, but a line of riot police in full tactical dress blocked my route and would not let me continue to my car. I was trapped in.

6. Around 11:20 p.m., I was kettled, along with others. That is, riot police in full tactical dress cut off all my possible routes of egress from the intersection of Washington and Tucker and pressed in on me and the group of people in the middle of that intersection.

7. Police officers shouted at us to “GET DOWN!”

8. I immediately complied and got on the ground on my stomach. Some other people I saw did not have enough room to lay down so they crouched.

9. The police closed in on us. Multiple police officers sprayed me with chemical agents on my back.

10. I asked one police officer for permission to put on a mask, and he said I could.

11. Then a different police officer approached me, stated, “didn’t I tell you to put your hands up?” and then hit me in the head, which knocked off my glasses.

12. I saw the police single out individuals who were filming for particularly long sprays of chemical agents.

13. I was eventually handcuffed with zipties, arrested, and transported to the Justice Center.

14. I never resisted arrest.

15. I never threatened the police or any other person.

16. I was unarmed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/22/17

Alicia Street  
Alicia Street

Subscribed and sworn to before me this 22nd day of September, 2017, by



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14614956

Kathryn M. Hinnners-Mueller  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF EMILY DAVIS**

I, Emily Davis, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I live in St. Louis County.
3. I participated in protests on Friday September 15, 2017 and Sunday, September 17, 2017, after the acquittal of Officer Stockley.
4. On the evening of Friday September 15, 2017, I was in the Central West End riding my bike and saw riot police. A man near me, also riding a bike, was yanked down by police. Along with another woman, I reached out to try to help the man keep his bike upright.
5. Without warning, I was then targeted with pepper spray twice by St. Louis Metropolitan police officer Brian Rossamano. He first aimed the spray directly at my butt and then aimed directly at my face.

6. As a result, I had pepper spray in my hair and on my arms and experienced painful effects from the chemical.

7. On the evening of Sunday, September 17, I was downtown near the intersection of Tucker and Washington Avenues.

8. The atmosphere was calm and I saw pedestrians just standing on the sidewalks having conversations.

9. I did not see anyone initiate an interaction with any police officers.

10. I heard no warnings about the use of chemical agents.

11. Suddenly, police officers wearing full tactical dress came from one direction and started moving towards us. I backed away from the officers and then saw a second line coming, and yet another line of riot police officers with bicycles from a third direction. The officers used their bikes as a fence and the other lines banged long batons on the ground.

12. I was blocked in on three sides and so I moved toward Tucker and Washington so that we could leave.

13. But as I got closer to the intersection, I saw another line of riot police fill in the final side. They were also banging their batons on the ground. I was trapped.

14. The officers yelled at us to "GET DOWN!"

15. I immediately complied by getting on the ground.

16. I was using my phone. An officer came over snatched my phone out of my hand and threw it on the ground.

17. I reached for my goggles to put them on because I saw pepper spray being deployed against people caught in the middle of the kettle. As I put them on my face an officer came over and snatched them from my face.

18. Another officer then approached me, yelling, with pepper spray directed at my face.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

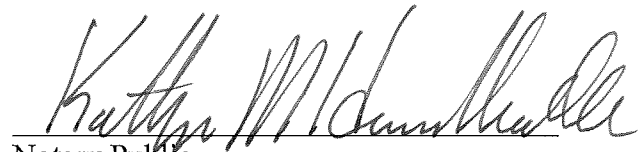
Executed on 9/22/17

  
Emily Davis

Subscribed and sworn to before me this 22nd day of September, 2017.



KATHRYN M. HINNERT-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14614960

  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF DILLAN NEWBOLD**

I, Dillan Newbold, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
  
2. On September 17, 2017, I was in the area of Washington Avenue and Tucker Boulevard in St. Louis, Missouri, with approximately one hundred other civilians and peaceful protesters.
  
3. The protests were related to the public outrage over the acquittal of Jason Stockley, a former St. Louis police officer who shot and killed Anthony Smith in 2011.
  
4. Without any warning, the group of peaceful protesters and civilians, of which I was a part, was surrounded by police in riot gear.

**EXHIBIT S**



5. During the entire time I was at the intersection of Washington Avenue and Tucker Boulevard, I never once heard the police issue a warning to protesters or order anyone to disperse.

6. After we were surrounded, it became clear that the intent of the police was to gather everyone in the area in a single spot and to surround us. After we were surrounded by the police, they began to move inward on us.

7. After we were surrounded and corralled into a small area, I complied with the police commands to get down.

8. I took out my phone and started to record the police after the police surrounded us and forced us into a small area.

9. I was sprayed with a chemical irritant that soaked my face, eyes, and throat. I was sprayed at point blank range. I was sprayed despite being unarmed, compliant, and not resisting the police.

10. I believe I was sprayed with chemical irritant because I was recording the police.

11. Before I was sprayed with chemical irritant, an officer jabbed a can of the pepper spray in my face and said, "put the damn phone away."

12. While surrounded by police and not able to leave, despite complying with their commands, I was restrained with my hands behind my back in such a manner that I lost circulation.

13. My hands were restrained for over an hour causing nerve damage, pain, and dysfunction.

14. I expressed concern to several officers about nerve damage and asked them to rebind my hands so the restraints were not so tight; I was repeatedly ignored and none of the officers loosened the restraints.

15. I was also hit in the head and dragged across the pavement.

16. Other people around me, including those who attempted to record the events as they unfolded, received similar treatment by the police.

17. I was wearing swimming goggles to protect my eyes and a bandana when I was first sprayed by the police with the chemical irritant. An officer then ripped off my goggles, pulled down my bandana, and dragged me into the street. As this was happening, another officer sprayed a thick coat of chemical irritant onto my now exposed face.

18. I held my eyes shut and screamed because of the burning pain piercing my face and neck.

19. It was at this time that my hands were restrained behind my back. My restraints were so tight that I lost blood circulation to my hands.

20. The police stood over me and mocked me while I was in pain. One officer told me, "I'm so glad I'm in St. Louis and get to do shit like this!"


21. I was told by officers that I deserved the pain I was in.

22. I was taken to jail and detained for over fifteen hours.

23. I never broke any law and I complied with all of the police commands.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27<sup>th</sup> day of September, 2017.

By:   
Dillan Newbold

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF ALEX NELSON**

I, Alex Nelson, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a 1st Lieutenant in the United States Air Force.
3. I live in the area of Washington Avenue and Thirteenth Street in St. Louis, Missouri.
4. On September 17, 2017, my wife and I were in the area of Locust Street and Tucker Boulevard, where my wife and I were observing a group of protesters.
5. I was not participating in the protest and was in the area because that is where my wife and I live. We were observing the protesters while standing on a public sidewalk.
6. The protests were related to the public outrage over the acquittal of Jason Stockley, a former St. Louis police officer who shot and killed Anthony Smith in 2011.

7. I heard the police order the protesters to go either west on Locust or north on Tucker. While I was not actively protesting and did not believe that the order applied to me, I still obeyed and began walking with my wife north on Tucker Boulevard as that was the direction of my home. When we reached Washington Avenue, we turned west to walk to our home which is located on Washington Avenue.

8. At all times while I was walking in the area, I was complying with the law.

9. While on the corner of Washington Avenue and Tucker Boulevard, I never heard any police warnings and there was no order to disperse. Police officers were smoking cigars and some were chatting with pedestrians.

10. When my wife and I were approximately eighty feet from our house, suddenly and without warning, a line of police in riot gear marched in front of us. We were forced approximately five hundred feet back down Washington Avenue towards Tucker Boulevard.

11. I did not observe anyone in the area breaking the law.

12. My wife and I were surrounded on all four sides and forced onto the ground.

13. The police began to use pepper spray indiscriminately on everyone in the now surrounded crowd of people.

14. I was pepper sprayed in the face so that I could not see. While blinded, I was hit in the head, beaten, and dragged on my face, arm and shoulder.

15. In addition to being pepper sprayed and beaten, I was restrained with my hands behind my back and arrested.

16. After being pepper sprayed, and while I was being dragged on the ground by the police, an unknown police officer started to laugh at me and I could feel that my face was

covered in discharge from my nose. While laughing he said, “You like that cocksucker. It’s ok, we’ll see you out here tomorrow night.”

17. I was taken to the jail and put in a cell.

18. The police called out each of us one by one from the cell and then removed our restraints. I was the last person called out of my cell to have the restraints removed. My hands were restrained for approximately three to four hours.

19. I was detained until 5:30 p.m. on September 18, 2017.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2017.

By: /s/ Alex Nelson  
Alex Nelson



**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF BRIAN BAUDE**

I, Brian Baude, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a Lieutenant Colonel in the United States Air Force.
3. I live in the area of Washington Avenue and Tucker Boulevard in St. Louis, Missouri.
4. On September 17, 2017, I was in the area of 11th Street and Locust Avenue in an adjacent parking lot observing the interaction of protesters and law enforcement and live streaming the events from my phone. There were approximately five people protesting near a police line. The other people in the area were also observing but not actively protesting.
5. I was not participating in the protest and was in the area observing because it is near where I live.

6. The protests were related to the public outrage over the acquittal of Jason Stockley, a former St. Louis police officer who shot and killed Anthony Smith in 2011.

7. While I was in the area of 11th Street and Locust Avenue, I heard the police order the approximately five protesters to disperse as the police indicated these approximately five protesters were unlawfully assembled. Everyone in the area, including those of us within earshot on the sidewalk/parking lot just observing and recording but not protesting, complied with the order, moved even further away, and left the area.

8. At all times while I was walking in the area, I was complying with the law.

9. When I reached the corner of Washington Avenue and Tucker Boulevard, several blocks away from where the group of approximately five protesters I observed had been ordered to disperse, I again observed a large group of police officers.

10. At this location (Washington Avenue and Tucker Boulevard) I never heard any orders to disperse or any warnings from the police. I continued to comply with the law at all times.

11. Then, while walking west on Washington Avenue back towards my residence and away from the remaining protesters who were milling around lackadaisically back at the intersection of Washington Avenue and Tucker Boulevard, without warning, I was blocked by a group of police in riot gear walking east from North 13th Street.

12. I was surrounded on all four sides, pepper sprayed, forced onto the ground, and restrained with zip-ties. I could not leave the area.

13. The police continued to use pepper spray indiscriminately on the now surrounded and passive crowd of detained people, including compliant and restrained detainees.

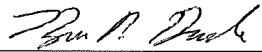
14. I was pepper sprayed, restrained, and arrested.

15. I was taken to the jail and put in a mass holding cell.

16. I was detained from approximately 11:30 p.m. on September 17, 2017, until 2:00 p.m. on September 18, 2017.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28 day of September, 2017.

By:   
Brian Baude

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	No. 4:17-cv-2455
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**DECLARATION OF IRIS MACLEAN**

I, Iris Maclean, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I live in the area of Washington Avenue and Thirteenth Street in St. Louis, Missouri, with my husband, Alex Nelson.
3. On September 17, 2017, my husband and I were in the area of Locust Street and Tucker Boulevard, where we were observing a group of protesters.
4. I was not participating in the protest and was in the area because that is where my husband and I live. We were observing the protesters while standing on a public sidewalk.
5. The protests were related to the public outrage over the acquittal of Jason Stockley, a former St. Louis police officer who shot and killed Anthony Smith in 2011.

6. I heard the police order the protesters to go either west on Locust or north on Tucker. While I was not actively protesting and did not believe that the order applied to me, I still obeyed and began walking with my husband north on Tucker Boulevard as that was the direction of my home. When we reached Washington Avenue, we turned west to walk to our home which is located on Washington Avenue.

7. At all times while I was walking in the area, I was complying with the law.

8. While on the corner of Washington Avenue and Tucker Boulevard, I never heard any police warnings and there was no order to disperse.

9. When my husband and I were approximately eighty feet from our house, we were suddenly, and without warning, surrounded by a group of police in riot gear.

10. I did not observe anyone in the area breaking the law.

11. My husband and I were then surrounded on all four sides and forced onto the ground.

12. The police then began to use pepper spray indiscriminately on everyone in the now surrounded crowd of people.

13. I was pepper sprayed and suffered pain and burning to my face, hands, and arms. I temporarily lost sight in my right eye and was denied any help to wipe off the pepper spray.

14. In addition to being pepper sprayed, my husband was seriously beaten by the police. I witnessed the beating.

15. I was handcuffed with zip ties and led away from the crowd over to the transport vans. The unknown officer leading me twisted my arms with excessive force even though I was being completely compliant.

16. When I asked what was happening he would not tell me and said he did not care that I live in the area and was not a protester.

17. While waiting to be put in the van I observed many police officers high fiving each other, smoking cigars in celebration, and chanting about their victory.

18. I was arrested, taken to the jail, and put in a cell.

19. I was detained until 9:30 p.m. on September 18, 2017.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2017.

By: /s/ Iris Maclean  
Iris Maclean



**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF SARAH MOLINA**

I, SARAH MOLINA, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I was present at the intersection of Walton Avenue and Page Boulevard, on August 19, 2015. I witnessed the St. Louis Metropolitan Police Department indiscriminately use tear gas without giving an audible and intelligible warning. I was standing close enough to the line, that if an adequate warning had been given, I would have heard it. I also witnessed them use tear gas several blocks away from the protest site.
3. On the afternoon of September 15, 2017, I was present at the intersection of Tucker Avenue and Clark Avenue. I saw many people who had been pepper sprayed, crying and in pain. I also saw many people with white liquid on their faces after being treated by medics for chemical weapon exposure.

4. On the mornings of Saturday, September 16, 2017 and Monday, September 18, 2017, I was outside the St. Louis Justice Center when people were being released from jail. People exited the jail with abrasions, bruises, welts, cuts, torn clothing, and still had pepper spray on their skin.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/22/17

Sarah Molina  
Sarah Molina

Subscribed and sworn to before me this 22nd day of September, 2017.



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14614956

Kathryn M Hinnert-Mueller  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MALEEHA AHMAD	)	
	)	
and	)	
	)	
ALISON DREITH,	)	
	)	
<i>on behalf of themselves and a class of</i>	)	
<i>similarly situated individuals,</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No.: 4:17-CV-2455 RLW
CITY OF ST. LOUIS, MISSOURI,	)	
	)	
Defendant.	)	

**AFFADAVIT OF MARISSA SOUTHWARDS**

I, Marissa Southwards, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I joined protesters Friday, September 15 and Saturday, September 16 to express my displeasure with the Stockley verdict.
3. At approximately 10:30 p.m. on September 15, 2017, at the intersection of Lake Avenue and Westminster, I was tear gassed by St. Louis Metropolitan police.
4. I heard a warning to disperse but I was then immediately gassed.
5. I did not have enough time to leave the area.
6. I was not told to where I needed to disperse.
7. Because I am asthmatic, I need medical follow-up. I also had to dispose of all of the clothing I wore at the protest.

**EXHIBIT X**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/22/2017

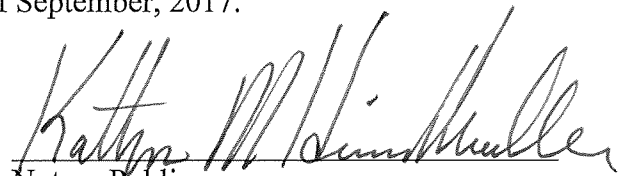


Marissa Southwards

Subscribed and sworn to before me this 22nd day of September, 2017.



KATHRYN M. HINNERS-MUELLER  
My Commission Expires  
May 12, 2018  
St. Louis City  
Commission #14614956

  
Notary Public

8.