

UNITED STATES DISTRICT COURT

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA

MIDDLE DISTRICT OF LOUISIANA

2005 MAR 16 P 2:18

SHANNON KOHLER

SIGN _____
NUMBER **CV 03-857** EQUITY CLERK

VERSUS

DIVISION D-M-2

PAT ENGLADE, ELMER LITCHFIELD,
DETECTIVE CHRISTOPHER JOHNSON,
CITY OF BATON ROUGE, and PARISH OF
EAST BATON ROUGE

RESPONSE TO DEFENDANTS' OPPOSITION TO RULE 59 MOTION

May it please the Court:

Defendants have responded to Shannon Kohler's Rule 59 motion. The response does not address Kohler's claims for being exposed to humiliation and defamation damages by being intentionally identified as a non-cooperating suspect in what was then a triple rape murder investigation. Article 1, Section 5 of the Louisiana Constitution guarantees privacy. According to the affidavit of Christopher Johnson, 600 men had been asked for DNA samples, 15 had refused—only Kohler was publicly identified. Johnson has not identified the "police procedures" or "State law" he claims justifies publicizing Kohler.

Johnson's conduct is very close to that of East Baton Rouge Sheriff's Lieutenant Jarreau, in *Miller v. East Baton Rouge Parish Sheriff's Department*, 511 So. 2d 446 La. 1987). Lt. Jarreau, acting on unreliable tips, got warrants for the arrest of Freddie Miller and Johnny Miller based on identical affidavits. He testified he got the warrants because he wanted to get fingerprints from the arrestees—much like Christopher Johnson, who

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wanted DNA from half the white males in Louisiana. Johnson's two unidentified "you should possibly check him out" tipsters didn't even give the details Jarreau's did. The Supreme Court of Louisiana held you cannot arrest to get evidence. Jarreau's conduct, like Johnson's, proved malice.

Like this Court, defendants gloss over the biggest flaw in Johnson's defense: if he truly believed he had probable cause to search Kohler's mouth for evidence, as he swore he did, his inexcusable personal and departmental incompetence is exposed by his failing to simultaneously get a warrant to search Kohler's residence for the knife, bloody clothes, size 10-11 shoes and trophies of the real murderer. The truth is neither he nor his superiors believed they had probable cause, but only Johnson falsely swore he believed he did. This Court really shouldn't create probable cause for Johnson.

The real tragedy of this case is that in 1997 the Louisiana Legislature passed a DNA testing law, R.S. 15:611 et seq. Under that law, Derrick Todd Lee would have been DNA tested in January, 2001, prior to being released from prison for stalking. He either would not have murdered Ms. Green later that year, or he'd have been caught within hours of the murder by a DNA match. That would have saved the lives of Mrs. Kinnamore, Miss Pace, Miss Colomb, Miss Yoder, and Mrs. Desoto, and saved the untold dollars spent chasing white men all over the State of Louisiana. The law was suspended in 1999. We do have the satisfaction of knowing the money went to other equally worthy causes, like the Saints, the Hornets, and a duck camp.

Let us juxtapose the Lee-Kohler serial killer warrant to a possible scenario:

After the corruptions of Judge Collins of the U.S. District Court for the Eastern District of Louisiana, (marked bribe money), Judge Nixon of the U.S. District Court for

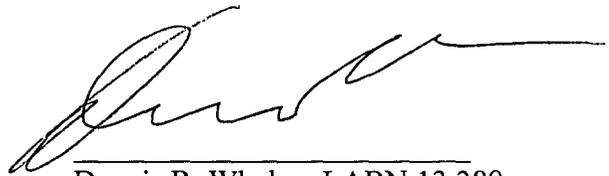
the Southern District of Mississippi (an oil lease for a State Court drug fix), and Judge Bodenheimer of the 24th Judicial District Court of Jefferson Parish, Louisiana (a seafood contract for rigging child visitation), an investigation into judicial bribery begins. Two tips suggest a certain judge's bank records should possibly be checked. Warrant?

Finally, this is not the usual warrant case, a convicted felon trying to escape on police misconduct, ignorance and incompetence. Like the hundreds, perhaps thousands, of white men harassed by police all over the State, Shannon Kohler is innocent.

CONCLUSION

Christopher Johnson did not have probable cause to arrest Shannon Kohler. His actions prove he didn't believe it. This Court should set aside its prior ruling, and deny dismissal of Johnson, Englade, and order return of all DNA material and derivative information from wherever sent.

By Attorney:



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CERTIFICATE

I certify a copy of this response has been faxed and mailed to opposing counsel
this 16th of March, 2005.



Dennis R. Whalen