

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY, CIVIL DIVISION

KENNETH MIDDLETON,)	
Movant/ Petitioner,)	
v.)	Case No. CV91-23437
STATE OF MISSOURI,)	Division 12
Respondent)	

**TRANSCRIPTS FROM UNDERLYING PROCEEDINGS RELATED TO KENNETH
MIDDLETON'S MOTION TO RE-OPEN PREVIOUSLY FILED RULE 29.15
PROCEEDING UPON SHOWING OF ABANDONMENT,
OR IN THE ALTERNATIVE, PETITION FOR WRIT OF HABEAS CORPUS**

Certificate of Service

I certify that a copy of the above
and foregoing was hand-delivered
_____, 2003 to Mr. Michael
Sanders, Jackson County Prosecutor
415 East 12th Street, KC, MO 64105

Respectfully submitted,

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1
2 IN THE UNITED STATES DISTRICT COURT FOR THE
3 WESTERN DISTRICT OF MISSOURI

4 KENNETH G. MIDDLETON,)
5)
6 Plaintiff,)
7)
8 vs.) No. 97-0981-CV-W-2-P
9)
10 CITY OF BLUE SPRINGS, et al.,)
11)
12 Defendants.)
13

14 VIDEO DEPOSITION OF DAVE LINK,

15 produced, sworn and examined on Monday, the 3rd day of
16 November, 1997, between the hours of 8 o'clock in the
17 forenoon and 6 o'clock in the afternoon of that day,
18 pursuant to subpoena, at the Crossroads Correctional
19 Center, I-35 and 36 Highway, Cameron, Clinton County,
20 Missouri, before

21 THERESA M. TAYLOR
22 Certified Shorthand Reporter

23 a Notary Public in and for the State of Missouri, in a
24 certain cause as set out above; taken on the part of
25 the Plaintiff.

26 A P P E A R A N C E S:

27 For the Plaintiff: Mr. Kenneth G. Middleton, Pro Se
28 Crossroads Correctional Center
29 I-35 and 36 Highway
30 Cameron, Missouri 64429

31 Mr. Sean O'Brien
32 Attorney at Law
33 5319 Rockhill Road
34 Kansas City, Missouri 64110

35 Taylor Reporting
36 (816) 531-6961 Fax: 531-6991
37 5000 Oak - 509N
38 Kansas City, Mo. 64112

1 MR. O'BRIEN: Correct.

2 MR. MIDDLETON: I'll have a chance to
3 confer with him if there's any questions he leaves
4 out, but I won't ask any.

5 MR. BAKER: That's correct. All I'm
6 saying is that Mr. O'Brien is the sole person
7 who can actually pose questions of the witness.

8 MR. O'BRIEN: If I can, I will give you a
9 legal pad, and you just, if things occur to you
10 that you want -- oh, you've got one? Okay -- well,
11 then you just go right ahead then and write down
12 anything that occurs to you.

13 DAVE LINK,
14 of lawful age, produced, sworn and examined on behalf of
15 the Plaintiff, deposes and says:

16 EXAMINATION BY MR. O'BRIEN:

17 Q Would you state your name, please?

18 A I am Dave Link.

19 Q And how are you employed, sir?

20 A I am the property vault supervisor and the evidence
21 technician for the Blue Springs Police Department.

22 Q And how were you employed in February of 1990?

23 A I was employed as a property vault supervisor and
24 the evidence technician.

25 Q And in February of 1990 were you involved in the

1 Q (By Mr. O'Brien) So I was almost done. You were
2 heading in the right direction.

3 Are you aware of whether he performed any
4 gunshot residue tests on Mrs. Middleton?

5 A Dr. Overman would not have routinely administered
6 gunshot residue tests; that would have been my job.

7 Q And was that a job you would have done at the scene
8 of the crime or during the autopsy?

9 A Prior to the autopsy at the medical examiner's
10 office.

11 Q And did you perform those tests at the medical
12 examiner's office?

13 A That would have been the logical place for me to do
14 it. But I don't have recollection of actually
15 doing it.

16 Q Are you aware that there were gunshot residue tests
17 taken of Mrs. Middleton's hands in this case?

18 A Here again, it would have been logical that we
19 would have done them. But I don't have personal
20 recollection of doing them.

21 Q And the purpose of doing them would be to exclude
22 suicide as a possible cause of death, would it not?

23 A No, sir.

24 Q They'd be done for some other purpose?

25 MR. BAKER: Well, I'll object. Lack of

1 foundation. Speculation. This is irr- -- whatever
2 reasons might have been done for the performance of
3 a parafin test for gunshot residue doesn't have boo
4 to do with this lawsuit.

5 MR. O'BRIEN: It does in the sense that
6 we're trying to locate records. As I understand
7 the scope of this lawsuit, it deals with Sunshine
8 law, what records are available. And we do have
9 cryptic records reflecting that a gunshot test was
10 performed. But for want of complete records,
11 apparently, the Regional Crime Lab was unable to
12 draw any conclusions from those tests. And so that's
13 one of the things that we are looking for in these
14 depositions is to find out what happened with
15 respect to those tests.

16 MR. BAKER: Okay. That's correct. I
17 understand that's where this lawsuit is or should
18 be going. But why someone else might have done a
19 parafin test doesn't cover what you just described.
20 So my objection is for the record. I'm sorry to
21 digress.

22 MR. O'BRIEN: Okay.

23 Q (By Mr. O'Brien) You indicate that there would be
24 some other reason. Let me show you -- and this is
25 from the habeas corpus action. The style of that

1 test kit that was referred on the front part of the
2 page of that exhibit was received from you by the
3 Regional Crime Lab; is that correct?

4 A Yes.

5 Q Was there ever a gunshot residue test of the left,
6 hand?

7 MR. BAKER: Of who?

8 MR. O'BRIEN: Of Mrs. Middleton.

9 A I don't recall. I need to --

10 MR. BAKER: No. Just -- all you can do
11 is answer his questions. You're not here to guess
12 or speculate.

13 Q (By Mr. O'Brien) Now you were aware at that time,
14 were you not, that Mrs. Middleton died as a result
15 of a gunshot wound that entered the left side of
16 her face; correct?

17 A Yes.

18 Q And at that time you were responsible for taking
19 the gunshot residue test -- correct? -- of Mrs.
20 Middleton?

21 A I would have of Mrs. Middleton, yes.

22 Q And is it your testimony that you don't recall
23 whether you checked the left hand for gunshot
24 residue?

25 A I would have checked both hands.

1 Q You would have checked both hands?

2 A Absolutely.

3 Q Are you saying you did check both hands?

4 A I'm saying I would have. I don't recall exactly
5 doing that. That would have been my procedure.

6 Q Have you ever been involved in a case where you
7 checked only one hand or the other?

8 A I, myself?

9 Q Yes.

10 A No, sir.

11 Q So do you have any idea what would have become of
12 the test that you performed -- assuming you
13 performed a test on the left hand of Mrs. Middleton --
14 what would have become of it?

15 A Both of those tests would have been reported and
16 recorded as two separate gunshot residue tests, as
17 opposed to the one that appears here.

18 Q And if we were to want to obtain a copy -- or I
19 guess not a copy but obtain the residue that was
20 taken from the left hand of Mrs. Middleton, where
21 would that evidence be today?

22 A That would still be in the Blue Springs Police
23 Department.

24 Q And are you aware of whether or not there is such --
25 whether the residue kit from the left hand is still

1 in the Blue Springs Police Department?

2 A I would have to check the records to verify that.
3 I have no reason to doubt that.

4 Q Is there any particular reason that you're aware of
5 that the Regional Crime Lab was only given tests
6 for the right hand?

7 A Right hand of whom?

8 Q Of Mrs. Middleton.

9 A This does not say it was for the right hand of Mrs.
10 Middleton.

11 Q Doesn't it indicate at the top that it was
12 recovered from Middleton, Katherine B.?

13 A I don't know. That's not my report. That's a
14 report written by Sergeant Rogers.

15 Q At the Regional Crime Lab?

16 A You'll be talking to him here momentarily.

17 Q Oh, I see. Okay.

18 A I cannot testify to his records.

19 Q Okay. Did you have discussions with Patrick
20 Peters, the attorney who represented the State in
21 the prosecution of Mr. Middleton?

22 A When?

23 Q Prior to the trial of Mr. Middleton's case?

24 A Which case?

25 Q The criminal case, the homicide charge.

1 A I don't recall exactly. But probably so.

2 Q And you have traveled to Arkansas to do investigation
3 on this case?

4 A No, sir.

5 Q You haven't?

6 A No, sir.

7 Q Did you discuss with Mrs. Lockhart or Mrs. Anderson
8 the sisters of Kathy Middleton -- do you
9 know who I'm talking about? --

10 A Yes; I do remember.

11 Q -- did you discuss with them referral to an attorney?

12 A I have no recollection of that whatsoever.

13 Q Do you recall testifying in the civil action that
14 Mrs. Anderson and Mrs. Lockhart filed against Mr.
15 Middleton?

16 A Vaguely, yes. I remember being there and doing
17 that.

18 Q And do you recall cooperating with the attorneys
19 who represented them in that matter?

20 A Yes.

21 Q And that would be the law firm of Cochran Oswald
22 McDonald Graham & Roam? Are you familiar with that
23 firm?

24 A Yes; I am. I believe they did, yes.

25 Q And, in fact, the McDonald in that firm is the

1 City Attorney for the City of Blue Springs; is that
2 correct?

3 A Yes.!

4 Q And were you aware that former Judge Peters --
5 retired Judge Peters, is of counsel to that firm?

6 A No.

7 Q Do you know how it came to be that Mrs. Anderson
8 and Mrs. Lockhart hired that firm?

9 A I have no idea.

10 Q Did you discuss with anyone the pretrial release of
11 Mr. Middleton on bond and what those conditions of
12 his release should be; do you recall that?

13 A No.

14 Q Do you recall at the autopsy of Katherine Middleton
15 Dr. Overman telling you that he ruled the death a
16 homicide unless other information is developed to
17 prove otherwise?

18 A I have no memory of that. But it should be a
19 matter of record some place.

20 Q If that was in your report, you wouldn't dispute
21 that; is that what you're saying?

22 MR. BAKER: Now we're getting in the
23 realm of speculation and conjecture.

24 MR. O'BRIEN: I'm just trying to save
25 time to get through the --

1 Q A gallon of milk sitting out?

2 A Perhaps. I don't recall.

3 Q And you had also expressed the belief that Mrs.
4 Middleton died as a result of a gunshot wound from
5 a gun that was discharged within a foot or eight
6 inches from her forehead; is that correct?

7 A As I recall, it appeared to me that it was close
8 proximity -- close range.

9 Q And that there was a stippling pattern with greater
10 density on the left cheek, becoming less dense up
11 on the forehead; do you recall that?

12 A Yes.

13 Q And did you investigate the possibility that this
14 death was a result of suicide?

15 A That was always a possibility.

16 Q But that from the beginning was not your belief in
17 this case, was it?

18 A I don't enter a scene with my mind made up, sir.

19 Q But in terms of records such as the residue test of
20 the left hand and things that might have shed light
21 on the issue of suicide, those kinds of investigations
22 were not pursued, were they?

23 A You keep asking about this left-hand residue kit.

24 Q Uh-huh.

25 A If I administered gunshot residue tests, it would

1 have been on both hands --

2 Q Uh-huh.

3 A -- which are not conclusive. Being an attorney
4 you're well aware --

5 MR. BAKER: I'm going to stop right now. I
6 don't want you to argue with the attorney. I just
7 simply want you to answer his question.

8 THE WITNESS: All right.

9 MR. BAKER: There'll be a time and a
10 place to do this later on maybe. But now is only
11 the time for you to answer his questions.

12 THE WITNESS: Okay.

13 MR. BAKER: So let's not get off on the
14 little side lights here.

15 Q (By Mr. O'Brien) Do you know what became of the
16 gunshot residue kit of Mrs. Middleton's left hand?

17 A I have no reason to doubt but what that is in
18 property. Or it could have been retained by the
19 lab. Sometimes they retain items at the laboratory.

20 Q Okay. Now when you reconstructed the scene of the
21 crime, you indicated in one report that that was
22 easily done because of the impressions of the heavy
23 furniture on the carpet; is that correct? Do you
24 recall that?

25 A Yes.

1 Q Now as far as any other objects, such as the brass
2 candle holder, a little brass giraffe or the vase
3 with the dried flowers, was there an attempt to put
4 those back in the position that they were in when
5 you initially viewed the crime scene?

6 A Specifically what is it you want to know? Rephrase
7 the question, please.

8 Q Did you put the giraffe back where it had been before
9 photographing the crime scene?

10 A If it had been moved, we would have attempted to
11 put it back in the same place, yes.

12 Q Now you give that conditionally. Do you recall
13 doing that?

14 A No; I don't.

15 Q But you agree what you're saying is that you should
16 have attempted to do that?

17 A Yes.

18 Q Do you know if there was a tape-recording made of
19 discussions and observations at the autopsy of Mrs.
20 Middleton?

21 A Not to my knowledge.

22 Q Do you know if there was a tape-recording made of
23 any questioning of Mr. Middleton?

24 A I would not be privy to that information.

25 Q Sergeant Link, I'd like to show you the

1 Petitioner's Exhibit 24 from the habeas corpus
2 proceedings; does that appear to be your sketch of
3 the crime scene?

4 A Yes.

5 Q In the lower right does it indicate a vase and a
6 brass giraffe?

7 A A brass statue.

8 Q A brass statue. I'm sorry.

9 A A vase with artificial flowers and a brass vase --
10 a brass statue.

11 Q And again showing you Defendant's Exhibit 40, is
12 that the corner of the room? Does that photograph
13 depict the corner of the room where your crime
14 scene diagram indicates the brass statue and the
15 vase?

16 A Yes.

17 Q It also shows the telephone cord dangling up above,
18 does it not?

19 A It shows a telephone cord.

20 Q Have you ever discussed with anyone the civil
21 action by Mrs. Anderson and Mrs. Lockhart against
22 Mr. Middleton?

23 A At any time with anyone?

24 Q Yes.

25 A Oh, yes.

1 Q And have you discussed it with members of the
2 prosecuting attorney's office?

3 A At what point in time?

4 Q At any time.

5 A (Yes.)

6 Q And do you recall who that was?

7 A No.

8 Q Would it have been Pat Peters?

9 A I don't recall.

10 Q Do you recall any discussions with either Pat
11 Peters or Pat McInerney?

12 A No.

13 Q In those discussions were you aware that Mr.
14 Middleton's conviction of the crime would also
15 result in the loss of the civil action?

16 MR. BAKER: This is all great and may be
17 wonderful for your habeas proceeding. Sean, really
18 this is getting way far afield at this point. I
19 think even you will agree with me here.

20 MR. O'BRIEN: I think it's kind of coming
21 back in in terms of whether or not there is
22 evidence in the Blue Springs Police Department and
23 it's not being disclosed for whatever reason. I
24 think a witness' relationship with the parties is
25 always relevant.

NOTARIAL CERTIFICATE

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

I, Theresa M. Taylor, Certified Shorthand Reporter, a Notary Public in and for the State of Missouri, do hereby certify that there came before me on the day, between the hours and at the place set forth in the caption page hereof; witness:

DAVE LINK

who was by me first duly sworn, that the witness was examined and the examination was taken down in shorthand by me and thereafter transcribed as set forth in the preceding 49 typewritten pages.

I further certify that it has been stipulated and agreed that presentment by the Notary Public taking the deposition is waived and that the deposition will be signed.

I further certify that I am not counsel, attorney or relative of either party or clerk or stenographer of either party or of the attorney for either party or otherwise interested in the event of this suit.

Witness my hand and notarial seal this 14th day
of November, 1997.

My commission expires January 6, 1998.

Theresa M. Taylor CSR
Notary Public, State of Missouri