

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

GENEVA REED-VEAL, Individually and as Mother
and Personal Representative of the Estate of
SANDRA BLAND, deceased,

Plaintiff,

v.

BRIAN ENCINIA, Individually and as an agent
and/or employee of TEXAS DEPARTMENT OF
PUBLIC SAFETY; TEXAS DEPARTMENT OF
PUBLIC SAFETY; ELSA MAGNUS, Individually
and as an agent and/or employee of WALLER
COUNTY SHERIFF'S OFFICE; OSCAR
PRUDENTE, Individually and as an agent and/or
employee of WALLER COUNTY SHERIFF'S
OFFICE; and WALLER COUNTY,

Defendants.

No. 4:15-cv-02232
Jury Demand
Judge David Hittner
Magistrate Judge Stephen Smith

**PLAINTIFF'S RESPONSE TO THE CITY OF PRAIRIE VIEW POLICE
DEPARTMENT'S MOTION QUASH AND FOR PROTECTIVE ORDER AS WELL AS
PLAINTIFF'S MOTION TO COMPEL, OR IN THE ALTERNATIVE, FOR IN
CAMERA INSPECTION**

I. BACKGROUND

1. On July 10, 2015 Plaintiff's Decedent, Sandra Bland, was stopped by DPS Trooper Brian Encinia. At some point following the stop, Prairie View Police Officer, Penny Goode, appeared on the scene and ultimately transported Ms. Bland to the Waller County Jail. On information and belief, Officer Goode also played a role in Ms. Bland's booking process.

2. On October 22, 2015, Plaintiff served the City of Prairie View Police Department with a subpoena in the above captioned matter calling for the disclosure of information, documentation, and communications pertinent to the above traffic stop and this litigation. **(A copy of said subpoena is attached hereto as Exhibit A).**

3. Said Subpoena was returnable on November 10, 2015 and the place designated for production of materials responsive to the same was the Law Offices of Olson and Olson, LLP located in Houston Texas.

4. The Prairie View Police Department, through its attorneys, filed a motion to quash and for protective order claiming law enforcement privilege based on the claim that an ongoing criminal investigation is being conducted by the Texas Rangers concerning the subpoenaed information.

II. APPLICABLE LAW & ARGUMENT

5. While the 5th Circuit has recognized a law enforcement privilege for some items, like police reports where a pending criminal investigation is ongoing, such privilege expires upon an unreasonable lapse of time. ***In Re United states Department of Homeland Security***, 459 F.3d, 565,568-569. This Court enjoys the discretion to determine whether disclosure should occur. ***Id.***

6. First, on information and belief, no criminal investigation is being, or has been, performed by the Texas Rangers. Rather, though the Rangers may issue a report, the Texas Rangers have been and/or are obtaining information so as to compile an account of alleged events. The same does not rise to the level of a criminal investigation.

7. Further, there are rumors of a grand jury inquest regarding Ms. Bland. On information and belief however, said grand jury inquest, does not seek to evaluate Trooper Encinia's conduct at the time of Ms. Bland's stop nor does it seek to consider the conduct of any of the Waller County Jail employees present while Ms. Bland was incarcerated there. Further still, it does not seek to consider if other bad actors may have been involved in Ms. Bland's death. Rather, the unconfirmed inquest, is purposed to corroborate the Harris County Coroner's opinions regarding the cause and manner of death; suicide by hanging.

8. As of the filing of this motion, three months have transpired since Ms. Bland's death. Arguably, law enforcement has had ample time to complete any criminal investigation that it might have desired to conduct surrounding Ms. Bland's death.

9. Frankly, no showing has been made that the Texas Rangers are or ever have been engaged in a criminal investigation regarding Ms. Bland's death.

10. Similarly, no showing has been made establishing that a grand jury probe has been initiated to address criminal aspects of Ms. Bland's death.

11. Finally, it seems that a sufficient amount of time has been afforded to law enforcement to investigate any criminal circumstances surrounding Ms. Bland's death.

III. PRAYER FOR RELIEF

12. Given the above, Plaintiff prays that this Honorable Court, in its discretion, hold that the City of Prairie View Police Department does not enjoy a law enforcement privilege and that it is compelled to fully and complete response to Plaintiff's October 22, 2015 subpoena issued to it within 10 days of the entry of this Honorable Court's Order.

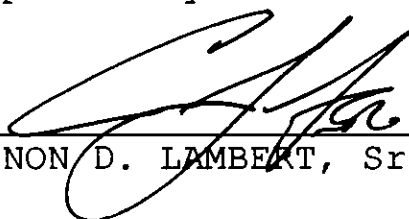
13. Alternatively, Plaintiff prays that the City of Prairie View Police Department be ordered to provide this Honorable Court a full and exhaustive list of all things responsive to her October 22, 2015 subpoena and then submit said list and materials responsive to the same for an in camera inspection by this Honorable Court.

14. It should be noted that Defendant, Brian Encinia, has filed a motion to dismiss based on his claim of qualified immunity.

15. Plaintiff is not able to fully address and respond to Defendant, Encinia's, Motion to Dismiss without first obtaining those things sought in her October 22, 2015 subpoena.

Wherefore, Plaintiff, Geneva Reed-Veal, prays that this Honorable Court deny the City of Prairie View Police Department's motion to quash and for protective order and further prays for an Order compelling the City of Prairie View and its Police Department to release, disclose and tender all materials responsive to Plaintiff's October 22, 2105 subpoena, to Plaintiff's counsel, within 10 days of the entry of this Honorable Court's Order. Plaintiff further requests any and all other relief as may be deemed just and equitable on her behalf.

Respectfully submitted:



CANNON D. LAMBERT, Sr., Esq.

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EXHIBIT A

AO 88B (Rev. 02-14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Texas

Geneva Reed-Veal, et al.,

Plaintiff

Brian Encinia, et al.,

Defendant

Civil Action No. 4:15-cv-02232

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Prairie View Police Dept., 44500 Business HWY 290, Prairie View TX, 77446
ATTN: officer Penny Goodie
(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material. See Attached Subpoena Rider. Previous two Subpoena's are hereby withdrawn.

Place: Olson & Olson, LLP., 2727 Allen Pkwy #600, Houston TX, 77019 Attn: Art Pertile

Date and Time: 11/10/2015 9:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/22/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing Geneva Reed-Veal et al., who issues or requests this subpoena, are: Cannon D. Lambert, Sr., 211 W. Wacker Dr. Ste 1400, Chicago IL, 60606, Cannon@karchmarlambert.com Ph: 312-523-4144

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:15-cv-02232

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

SERVICE LIST

WALLER COUNTY DEFENDANTS

Larry Simmons
Germer PLLC
Houston Tx.
PO. Box 4915
Beaumont, Tx. 77704-4915
Ph: (409)813-8033
Mobile: (409) 880-9305
Email: ljimmons@germer.com
Fax: (409) 835-2115

DEFENSE COUNSEL FOR DPS & BRIAN ENCINIA:

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Asst. Atty. General
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Capitol Station
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Email: seth.dennis@texasattorneygeneral.gov

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SUBPOENA RIDER

Please tender and release to the Law Offices of Karchmar & Lambert, P.C., 211 W. Wacker, Ste. 1400, Chicago Illinois, 60606 the following:

Any and all radio and/or dispatch communications, electronic recordings and/or tapes, as well as all walkie-talkie, and other electronic or voice communications and dispatch information relating to Sandra Bland between 7/10/15 – 7/14/15 . Additionally, please tender full and complete copies of all police and/or incident reports as well as all supplemental reports and other documents that in any way reference Sandra Bland or that were generated due to police involvement or interaction with Sandra Bland on and between 7/10/15-7/14/15. Further, please tender all supplementary or reconstruction reports relating to Sandra Bland as well as all traffic citations and/or traffic warnings issued to or intended for Sandra Bland on and between July 10, 2015 through July 14, 2015.