

**STATE OF MISSOURI CIRCUIT COURT  
FOR THE COUNTY OF SAINT LOUIS**

State of Missouri <i>ex inf.</i> Montague Simmons, <i>et al.</i> ,	)	
v.	)	Cause No. 15SL-_____
Robert McCulloch, St. Louis County Prosecuting Attorney.	)	Division No. 2
	)	

**AFFIANT MONTAGUE SIMMONS’S REQUEST FOR  
APPOINTMENT OF A SPECIAL PROSECUTOR TO INVESTIGATE  
WHETHER ST. LOUIS COUNTY PROSECUTOR ROBERT MCCULLOCH  
FAILED TO FULFILL HIS DUTIES OF OFFICE REGARDING HIS CONDUCT IN  
THE GRAND JURY PROCEEDINGS OF STATE OF MISSOURI V. DARREN WILSON**

COMES NOW Affiant **MONTAGUE SIMMONS** and pursuant to the Revised Statutes of Missouri sections 106.220–.290 states as follows:

1. My name is Montague Simmons and I am a person of sound mind.
2. I reside in Velda City, in St. Louis County, Missouri, and am 41 years of age.
3. Based on personal information and belief, on August 9, 2014 Ferguson Police Officer Darren Wilson fatally shot Michael Brown in Ferguson, Missouri, in the County of St. Louis, Missouri.
4. Based on information and belief, St. Louis County Prosecuting Attorney Robert McCulloch convened a grand jury on August 20, 2014 (grand jury) to investigate Mr. Brown’s killing.
5. As related in this affidavit pursuant to Missouri Revised Statute section 106.230, I have knowledge that Mr. McCulloch “knowingly or willfully failed or refused to perform any official act or duty which by law it was his duty to do or perform with respect to the execution or

enforcement of the criminal laws of this state” regarding his conduct toward the grand jury. Specifically, I have knowledge that Mr. McCulloch conducted the grand jury in an arbitrary manner and in bad faith, and as a result failed to fulfill his duties of office.

6. Mr. McCulloch, by himself and through his agents, acted arbitrarily by presenting evidence to the grand jury in the following ways:

a. From the beginning of Mr. McCulloch’s investigation into Mr. Brown’s killing, he announced his plan to provide the grand jury with all available evidence, not just evidence of whether probable cause existed to bring criminal charges against Officer Wilson.

b. Mr. McCulloch allowed Officer Wilson, the target of the grand jury investigation, to testify before the grand jury, a practice that is highly unusual in Missouri.

c. Prosecutors presented evidence of Officer Wilson’s justification defense to the grand jury. Other Missouri defendants are not afforded the opportunity to present their defenses to the grand jury, much less have the prosecutors present such evidence on their behalf.

d. The prosecutors themselves admitted during the grand jury proceedings that they were not sure how to conduct the grand jury process or how to instruct the grand jury on Officer Wilson’s justification defense. Such confusion underlines the arbitrariness of the grand jury proceedings, as it shows the prosecutors treated this investigation differently than other shootings.

7. Mr. McCulloch, by himself and through his agents, acted in bad faith by presenting evidence to the grand jury in the following ways:

a. This paragraph hereby incorporates paragraphs 6.a–6.d herein.

b. Mr. McCulloch allowed witness 40 to testify before the grand jury despite knowing her testimony constituted perjury. Prosecutors did not challenge witness 40's testimony despite knowing it to be false.

c. Officer Wilson was permitted to present testimony to the grand jury, highly unusual in of itself, and prosecutors did not challenge his testimony, even though it contradicted his prior testimony, his prior statements to law enforcement personnel, and the physical evidence. Wilson first told police investigators he did not suspect Mr. Brown or Mr. Dorian Johnson—Mr. Brown's friend who witnessed the incident—of having committed a crime when the altercation occurred, but he told the grand jury in his unchallenged testimony that he in fact did suspect the Mr. Brown and Mr. Johnson of having robbed a nearby convenience store when the confrontation between him and Mr. Brown occurred. He also told police that upon exiting his police vehicle, Mr. Brown retreated about thirty to forty feet before the fatal shooting occurred. Yet Mr. Brown's body was found approximately 150 feet from Officer Wilson's police vehicle, indicating that Officer Wilson pursued the fleeing Mr. Brown farther than he told police.

d. Contrast the prosecutors' treatment of the testimony in paragraph 6 sections (b) and (c) above with the treatment of Dorian Johnson and witness 34. Witness 34's testimony was favorable to a finding of probable cause, and the prosecutors challenged his testimony by outright stating within questioning that the witness's testimony did not comport with the physical evidence or with his prior statement to law enforcement. Prosecutors repeatedly questioned Mr. Johnson in a manner meant to corroborate Officer Wilson's testimony that Mr. Brown charged at Wilson before Wilson

fired the fatal shot. When the prosecutors were unable to obtain such corroboration, they shifted focus onto Mr. Johnson's past criminal history in an attempt to discredit him. In contrast, prosecutors did not question Officer Wilson as to his background, despite complaints against him of use of excessive force and his termination from his prior police job after the municipality disbanded the police force for excessive force and corruption.

e. The prosecutors focused much questioning on Mr. Brown's toxicology report, which revealed he had marijuana in his system. By contrast, prosecutors did not question Officer Wilson over his toxicology report results, which revealed high levels of creatinine in his system, indicative of anabolic steroid use. It is my understanding that marijuana is not associated with an increased propensity for violence, whereas anabolic steroids are. This focus on the victim's alleged illegal drug use and not on the more relevant illegal drug use of the officer demonstrates a bias unfavorable to Mr. Brown.

f. Early in the grand jury proceedings the prosecutor provided the jurors with Missouri Revised Statute section 563.046 as the standard for evaluating Officer Wilson's conduct. They did not clarify which portion of that statute applied to Officer Wilson. The statute allows a police officer to use deadly force when he reasonably believes the person to be arrested has committed a felony or "may otherwise endanger life or inflict serious physical injury unless arrested without delay." Prosecutors presented no evidence as to whether Officer Wilson believed Mr. Brown had committed a felony. Prosecutors presented no evidence besides Officer Wilson's self-serving testimony (also unchallenged by prosecutors) as to whether he believed Mr. Brown was a threat to the lives of others when the fatal shooting occurred.

g. Throughout the presentation of evidence, the prosecutors failed to explain to the grand jury the constitutional limits on police use of deadly force, and they potentially provided the grand jury with unconstitutional instructions. Upon the conclusion of evidence, prosecutors explained that the Missouri statute previously provided to them was unconstitutional in light of the U.S. Supreme Court's holding in *Tennessee v. Garner*, 417 U.S. 1 (1985). They then provided the grand jury with a new standard for Officer Wilson's justification defense, asserting that the new standard rectified section 563.046 with *Garner's* holding; however, this cannot be independently confirmed because the grand jury instructions have not been released.

h. Mr. McCulloch has evinced a bias in favor of police officers in both his private life and in prior killings by police. In private life he is intimately involved in a nonprofit support group for the families of police officers killed on duty. In an earlier police shooting of unarmed men, Mr. McCulloch publicly stated he believed the police officers were justified in their actions despite contrary evidence from an independent federal inquiry. In relation to that case, Mr. McCulloch publicly maligned the unarmed victims as "bums."

8. Based upon the facts related above and the attached memorandum of law in support, and in accordance with the laws of the State of Missouri, I believe that Mr. McCulloch has failed to fulfill his duties of office in his conduct toward the grand jury, in violation of Missouri Revised Statute section 106.230, and therefore request that this court appoint a special prosecutor pursuant to Missouri Revised Statute section 106.240 to investigate the allegation herein. Because Mr. McCulloch holds the office of Prosecuting Attorney for St. Louis County, I

further request that this Court appoint a special prosecuting attorney to investigate the matters and violations herein alleged, in accordance with Missouri Revised Statute section 106.240.

WHEREFORE, in light of the above attested-to facts, and pursuant to Missouri Revised Statutes §§ 106.220-.290, I, **MONTAGUE SIMMONS**, request the appointment of a special prosecutor to investigate St. Louis County Prosecuting Attorney Robert McCulloch's conduct towards the grand jury proceedings in *State of Missouri v. Darren Wilson*, to determine whether Mr. McCulloch's conduct constituted a failure to perform the duties of his public office.

Respectfully submitted,

  
Affiant ~~Montague~~ Simmons

STATE OF MISSOURI                                 )  
  ) SS  
COUNTY OF St. Louis                         )

Subscribed and sworn to me on this 15<sup>th</sup> day of January 2015, a Notary Public in and for said State, state the **MONTAGUE SIMMONS**, personally appeared before me, known to be the person who executed the foregoing, and acknowledged to me that he executed the foregoing for the purposes stated therein, that he signed for his free act and deed, and that the facts contained therein are true and correct to the best of his knowledge, information, and belief.

  
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Notary Public  
My commission expires:

TIFFANY M. RICHARDS  
Notary Public, Notary Seal  
State of Missouri  
St. Louis County  
Commission # 12382799  
My Commission Expires March 06, 2016