

May 10, 2012

The Honorable Jay Nixon
Governor of Missouri

Supplemental Information Regarding Byron Case's Petition for Absolute Pardon

Sir,

I have written to you previously regarding Byron Case and his petition for absolute pardon. In my previous letter, I described 12 time-of-death markers that overwhelmingly impeach Kelly Moffett's uncorroborated claim that Byron Case murdered Anastasia WitbolsFeugen.

In this letter, I discuss three additional time-of-death markers. I explain how the earliest recollections of Justin Bruton, Byron Case, and Kelly Moffett herself establish that Anastasia WitbolsFeugen was alive after dark. Given that Kelly Moffett claimed she could see, in precise detail, Byron Case shoot Anastasia WitbolsFeugen, the statements of these three individuals add to the substantial body of evidence proving Kelly Moffett's accusation to be false.

I conclude this supplement by discussing Kelly Moffett's voice stress test. During that test, Kelly Moffett stated repeatedly that Byron Case did not murder Anastasia. She was informed she had passed the test. She believed she had passed the test. During Byron's trial, however, she surprised everyone when she buttressed her testimony by telling the jury she had taken a lie detector test.

For sake of brevity, I do not include any background information in this letter. I detailed the background information previously. This letter is written as a supplement, to be read in conjunction with my earlier letter.

Time-of-Death as per Justin Bruton

After Anastasia stepped from the car, Justin drove Kelly and Byron first to his condo, then to their homes. He dropped Kelly off first. Byron was still with them. From Kelly's house, Justin tried to call Anastasia, but Anastasia was not home. Justin spoke instead with Anastasia's sister. From the police interview of Francesca WitbolsFeugen, we learn that Justin believed it was 8:30 PM when Anastasia stepped from his car. The emphasis is mine.

Q. So Justin called you right around 9:00 or so?

A. Well, let's see, well no, I remember, it had to have been after that.

Q. After 9:00?

A. Yeah. Because uh I had been, ***I remember now that he had said that she got out of the car around 8:30***, I'm like, so she's been out there for an hour? Or close to an hour, something like that. So it was probably closer to 9:30, but I'm not sure.

Time-of-Death as per Byron Case

Witnesses are notoriously bad about remembering specific times, especially when they have no particular reason to take note of the time. Dairy Queen employee Dawn Wright, for example, reported seeing Anastasia alive around 9:00 PM on the night of the murder. Though Ms. Wright attempted to recall the specific time less than 24 hours later, she was likely in error by more than an hour. Based on the weight of all other chronological evidence, it is likely that the encounter between Dawn Wright and Anastasia WitbolsFeugen ended near 8 PM.

Dawn Wright's recollection, nonetheless, unequivocally impeaches Kelly Moffett's uncorroborated claim that she saw Byron Case shoot Anastasia WitbolsFuegen near sunset. Even though Ms. Wright struggled with the specific time, she reported unambiguously that it was dark when she last saw Anastasia alive. That simple, easy-to-remember detail places Anastasia alive after sunset, and therefore proves Anastasia was alive after Kelly Moffett claimed to have witnessed her murder.

I offer the following segment from Dawn Wright's next-day interview with Detective Kilgore. The emphasis is mine.

A. ... I think it was about 9:00, I'm not for sure. It was about 9:00 or so and uh I seen her, she ran outside because three people had pulled up, there was two guys and a girl.

Q. What kind of car?

A. Uh, I didn't see the car. I just seen them walking by. It was a long car. I didn't see the color, *it was dark outside*.

Byron Case also has trouble recalling specific times. As evidence of that, I offer the following segment from his first interview with Detective Kilgore. The discussion revolved around an earlier phone call between Justin and Anastasia. Again, the emphasis is mine.

Q. Did they talk on the phone?

A. Yeah, they talked on the phone for, for quite a while.

Q. And about what time did she call him?

A. I have no idea.

Q. It was Wednesday afternoon though?

A. Yeah.

Q. After 5:00?

A. It was probably about, it was probably almost 6:00 or thereabouts, I'm not really sure. I mean, *I've got a horrible concept of time*.

According to police interviews, Betsy Owens (Anastasia's biological mother) and Abraham Kneisley (Byron's friend) independently reported that Byron told them he (and Justin and Kelly) met Anastasia at the Dairy Queen at 7:00 PM. While Byron's recollection of 7:00 PM still impeaches Kelly Moffett's claim, the time is likely too early.

Just as Dawn Wright was probably an hour or so late in her recollection, Byron was probably an hour or so early in his. Everyone agrees, however, that it was dark.

I offer another segment from Byron's first interview with Detective Kilgore. The segment reports the events after Byron, Justin, Kelly, and now Anastasia traveled directly across the street from Dairy Queen into Mt. Washington Cemetery. There, Byron and Kelly stepped from the car to allow Justin and Anastasia to speak in private. The emphasis is mine.

A. Uh, yeah, yeah, we'd all gotten out of the car at least for a second. I mean, it was probably like for quite honestly under 30 seconds that we were outside of the car. Then we saw the car coming around the corner ...

Q. Was it, *was it after dark*?

A. *Yeah. Yeah, it was.*

Q. Do you remember about what time it might be?

A. I have no idea. I didn't have, I don't carry a watch or anything.

That first interview took place less than two days after the events just described. Byron's second interview with Detective Kilgore took place almost two years later. Byron was still unclear about specific times, but still unambiguous that it was dark. I offer three segments from his second interview. As always, the emphasis is mine.

A. ... So we drove onto the property and drove around for a little bit just trying to find a place, a good place to park the car. And then we decided that, you know, basically *it was too dark* and you know we didn't want to run into any unsavory people that might be there. ...

...

A. We like, we stepped out of the car and looked around and *it was like wow, it's really dark.* And then we saw the car turning the corner pretty much like as we said that and we said that might be the groundskeeper, you know, *it's dark*, it's after sundown ...

...

A. Oh, yeah. I mean, *it was dark* when we were at the cemetery.

Time of Death as Per Kelly Moffett

Contrary to everyone else's claim that it was dark and/or late when Kelly arrived at Dairy Queen, Kelly Moffett testified that it was merely dusk when she later witnessed Byron Case murder Anastasia WitbolsFeugen.

Q. And your testimony is this occurred around dusk and you were able to see; is that correct?

A. Yes.

Sunset on that day was at 6:29 PM. Nautical twilight ended at 7:28 PM. After nautical twilight, even the outlines of objects are no longer distinguishable in the absence of moonlight or artificial light.

Kelly Moffett's uncorroborated claim demands that Anastasia died soon after sunset. Had Anastasia died later, Kelly would have been unable to describe the events in such precise detail at trial.

Years earlier though, Kelly Moffett reported that it was after 7:30 PM, and therefore after nautical twilight, when they met Anastasia at the Dairy Queen.

Q. Okay, when was the last time you saw Anastasia?

A. Um, it would probably be Wednesday night at uh, around like 7:30 or so.

Q. Where at? What were you guys doing?

A. Uhm, we had picked her up at uhm, Dairy Queen.

Kelly then described the same sequence of events that Byron described. The four of them traveled across the street to Mt. Washington Cemetery. They left there because Glen Colliver pulled up behind them. From Mt. Washington they traveled towards Justin's condo. Justin and Anastasia argued, as they did frequently. When they pulled up to a light near the intersection of

Truman and I-435, Anastasia got out of the car and started walking towards her home. Kelly described the lighting conditions at that time. It was dark.

A. ... I remember like looking over and we were just kinda looking at each other and uhm, I was thinking, you know, it was a bad area 'cause *it was dark* and it was just kinda like big and deserted ...

In her second interview, Kelly recalled the time to be even later. The interview, specifically the segment below, took place at the same Dairy Queen where Kelly had met Anastasia.

Q. And do you remember about what time you got here?

A. I'd probably say 7:30, no, probably 7:45 or so. Cause it took us a while to get down here, you know. I think Justin was speeding, so it probably took us a half an hour to get down here. So a little bit before 8:00.

Kelly recalled meeting Anastasia at the Dairy Queen sometime after 7:30, perhaps as late as 8:00. Byron recalled arriving at 7:00. Dairy Queen employee Dawn Wright recalled the time to be 9:00 or later. Dairy Queen owner Sulaman Saulat placed the time between 8:30 and 9:00. Glen Colliver testified he chased them from his cemetery around 9:00. Justin Bruton told Francesca WitbolsFeugen, during a 9:30 phone call, that Anastasia stormed out of his car an hour earlier. Auto mechanic Don Rand actually saw Anastasia step from the car and walk past him; he recalled the incident happened at 8:30.

There is simply no way to establish the exact time of the events that night. However, each of the seven witnesses, including Kelly Moffett, was unequivocal that the events took place well after sunset. Their time estimates ranged from 30 minutes after sunset to 150 minutes after sunset. Six of them, including Kelly Moffett, mentioned specifically that it was dark, not dusk.

Kelly Moffett specifically recalled meeting Anastasia at the Dairy Queen between 7:30 and 8:00 PM. That was after nautical twilight, which ended at 7:28 PM. Not even the outlines of nearby objects would have been recognizable in the absence of moonlight or artificial lighting.

The moon had yet to rise by that time. The moon would make no difference in any case, since clouds covered the entire sky. It was therefore dark in the extreme within Lincoln Cemetery. The cemetery had no artificial lighting. The cemetery was covered and surrounded by trees.

Deputy Epperson testified that it was "pitch black" in Lincoln Cemetery that night. He should know. He is the one who discovered Anastasia lying there at 3:44 the next morning. Deputy Epperson had to illuminate her with his headlights and his flashlight. Only then could he see that her eyes were open, her corneas were clear, and her color had yet to leave her.

Anastasia thereby told us when she died. She died near the time her father heard a gunshot. She died several hours after Don Rand saw her stepping from Justin's car. She died five or six hours after sunset, five or six hours after Kelly Moffett claimed to have witnessed her death.

Kelly Moffett's Voice Stress Test

Q. Were you with Anastasia when she was killed?

A. No.

Q. Do you know for sure if Justin killed Anastasia?

A. No.

Q. Did Byron kill Anastasia?

A. No.

It is impossible for Kelly Moffett to have witnessed Anastasia's murder at dusk if she and her friends picked Anastasia up sometime after nautical twilight, sometime after dark. Her testimony that she witnessed Anastasia's murder is to this day uncorroborated by any witness, uncorroborated by any piece of forensic evidence. On the other hand, her long-standing initial reports that she last saw Anastasia alive when Anastasia stormed from Justin's car is corroborated by six witnesses and all of the physical and forensic evidence.

While it is now easy for us to understand that Kelly perjured herself, it was nearly impossible for the jurors to then recognize. The jurors listened for days on end to disjointed, conflicting, emotional testimony. They did not have access to the police reports or to trial transcripts. No one explained to them the significance of dusk versus nautical twilight. They were not allowed to take notes. They were instructed to rely on their collective memory.

For the jurors, it came down to believing Kelly Moffett or Byron Case. They choose to believe Kelly Moffett, and not surprisingly so. Kelly Moffett manipulated them as cleverly and successfully as she manipulated Missouri's entire justice system. In court, Kelly Moffett surprised everyone when she assured the jurors she had taken a lie detector test. From the trial transcript, when Kelly is being questioned by prosecutor Crayon.

Q. Did you talk to the police more than once?

A. Yes.

Q. Do you know how many times?

A. No. Quite a few. Every time they called me, I would go talk to them. I took a lie detector too or voice stress test.

Mr. Lance: Objection. May counsel approach.

(Counsel approached the bench and the following proceedings were had:)

Mr. Lance: Judge, I object. This was a topic we agreed was going to be off limits.

Ms. Crayon: And I wasn't trying to solicit it.

The Court: What do you want to do? It's his ox that got gored. So what do you want me to do? ... She jumped right into an area that was agreed to by the State that you weren't going to get into. ***To leave the impression that she passed the test is not particularly fair to the Defendant. That's for sure.***

So egregious was Kelly Moffett's conduct that the judge was willing to entertain a defense request for a mistrial. So ineffective was Byron's counsel that he did not insist on a mistrial. He agreed instead on a cautionary instruction to disregard Kelly's unsolicited outburst.

The Court: So, Mr. Lance, I'll begin with you. Is there a request? ***Do you desire to request a mistrial at this time?***

Mr. Lance: ***No, Your Honor.***

...

~~The Court~~ Mr. Lance: All right. ... But I think we have to give some type of instruction. ***I'm concerned the witness brought it up in an attempt to bolster her own testimony***, and to just leave it hanging lets the jury think that she passed the test.

It makes no difference whether Kelly Moffett took a lie detector or a voice stress test. She took a voice stress test, but that is incidental. As a juror on four criminal trials, including a murder trial, I suspect each juror presumed she took a lie detector test.

Nor does it make any difference whether or not Kelly Moffett actually passed the test. She knew she would pass because, at that time, she was telling the truth. And she was told she passed. She conveyed that confidence to the jury.

Nor does it make any difference whether or not the equipment malfunctioned when Kelly Moffett was given her voice stress test, as the prosecution claimed. The jury never heard this. They would not care in any case. They heard Kelly Moffett tell them that she was confident that she had passed a lie detector test. They heard those words whether she spoke them or not.

Nor does it make any difference that the judge told the jurors that lie detectors and voice stress tests are not valid forms of evidence, and that in Byron's case no witness had passed any such test. As a four-time juror and three-time foreperson, I assure you that the jurors did not disregard that portion of Kelly Moffett's testimony. They believed that she believed that she passed a lie detector test when she told the police that she witnessed Byron Case shoot Anastasia WitbolsFeugen.

Nor did it make any difference, at least to the jury, that Kelly Moffett was administered the voice stress test when she was repeatedly assuring Sergeant Kilgore that Byron Case did not kill Anastasia WitbolsFeugen. From her third interview with Sergeant Kilgore:

Q. Would you have any objections to take a lie detector test to verify your truthfulness with me?

A. ... I would take it.

Q. ... Let me ask you just, if you'll just give me some yes and no answers. ... And your name is Kelly Moffett?

A. Yes.

Q. You live at [redacted]?

A. Yes.

Q. Were you with Anastasia when she was killed?

A. No.

Q. Is your telephone number [redacted]?

A. Yes.

Q. Do you know for sure if Justin killed Anastasia?

A. No.

Q. And you are 15 years old, correct?

A. Yes.

Q. Did Byron kill Anastasia?

A. No.

Q. Today is Saturday, isn't it?

A. Yeah.

That ended the voice stress test. Sgt. Kilgore soon thereafter realized he made a mechanical error when conducting the test. He therefore repeated the test.

Q. [inaudible] my microphone on like that? I tell you, this has been a bad day for me. Is your name Kelly Moffett?

A. Yes.

Q. Were you with Anastasia when she was killed?

A. No.

Q. Do you live at [redacted]?

A. Yes.

Q. Did Justin kill Anastasia?

A. No.

Q. Is your date of birth 10/18/82?

A. Yes.

Q. Did Byron kill Anastasia?

A. No.

Q. Is your telephone number [redacted]?

A. Yes.

What matters is that Kelly Moffett deliberately used a voice stress in which she unequivocally exonerated Byron Case to convince a jury that Byron Case was guilty of murder. It was quite simply brilliant, in evil genius fashion.

Once again as a four-time juror and a three-time foreperson, I assure you the jury would have acquitted Byron Case had they learned the circumstances of Kelly Moffett's voice stress test.

I respectfully request that you correct the grievous wrong Kelly Moffett has so long inflicted upon Byron Case and the entire Missouri justice system. I respectfully request that you grant Byron Case an absolute pardon.

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