

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-60534-CIV-DIMITROULEAS
MAGISTRATE JUDGE: ROBIN ROSENBAUM

HOWARD K. STERN,

Plaintiff,

vs.

JOHN O'QUINN, et al.

Defendants.

AFFIDAVIT OF DON CLARK

I, Don Clark, having first been sworn, upon oath, deposes and states as follows:

1. I am an adult over 18 years of age, residing in Houston, Texas. I am employed as an Investigative Strategist and Jury Consultant with the O'Quinn Law Firm (hereinafter "O'Quinn"). In 2000, I retired from the federal government after 35 years of service, first serving close to ten years as an officer in the U.S. Army, achieving the rank of Captain, with service including a combat tour of duty in Vietnam and as commander of an Airborne/Ranger Company in the first Ranger Battalion. Following my Army service, I served for 25 years with the Federal Bureau of Investigations, including serving as a Special Agent of the FBI in Miami, New York, Washington D.C., Los Angeles, and Newark. I served as special agent in charge in New York and San Antonio. In 1996 I was appointed by FBI Director Louis Freeh as the special Agent in Charge of the Houston

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

Division, one of the FBI's top ten field Divisions, a position I held until my retirement. My assignments as an investigative agent and manager in the FBI included foreign counterintelligence, counter-terrorism, violent crimes, organized crime, drugs, and other investigative programs.

2. I have supervised numerous high profile FBI investigations, including the 1979 Iranian Hostage Crisis, where I handled the movement of the Shah of Iran from NYC to San Antonio, TX. I supervised the investigation of the terrorist attach aboard the Achille Lauro cruise ship, and was involved in managing the investigation of the 1993 bombing of the World Trade Center. I was in charge of tactical operations in 1996 during the Freeman crisis in Jordan, Montana, coordinated the investigation and prosecution of the dragging death of James Byrd, Jr. in Jasper, TX, and was in charge of the investigation and coordination to locate the FBI's top-10 most wanted fugitive and accused "Railcar Killer" Rafael Resendes Ramirez.

3. I am a member of the International Association of Chiefs of Police and National Organization of Black Law Enforcement Executives. Among other commendations, I have received the US Army Air Medal for Combat Assaults and two Bronze Stars for service in Vietnam; the FBI Medal for Meritorious Achievement during law enforcement action, and in 2000 the

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

Attorney General's highest Award for Excellence for my involvement in the investigation and prosecution of those involved in the James Byrd, Jr. hate crime murder.

4. After joining O'Quinn, I also served as Homeland Security Advisor for Sharp Technology Inc. Since my retirement from the FBI, I have also served as a law enforcement, counter terrorism and security analyst for NBC News Houston affiliate KPRC television. I currently have the same duties for Fox 26 Television Houston and Fox News and CNN nationally.

5. When John O'Quinn was asked to represent Virgie Arthur with regard to her efforts to secure custody of the body of her daughter, Anna Nicole Smith, I was asked to perform an immediate investigation, to see what information I could develop with regard to Mr. Stern's relationship with Ms. Smith, his potential involvement in the deaths of both Ms. Smith and her son, Daniel, and other issues. From that point forward, beginning toward the middle part of February, I began investigating the circumstances surrounding the death of Ms. Smith and her son, including the interview of various witnesses, review of documents and on-line materials that had been generated by various media sources, articles and publications that had been written about the relationship between Ms. Smith and Mr. Stern, as well as

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

transcripts of interviews that had been given by Mr. Stern and/or Ms. Smith over the proceeding year.

6. I enlisted the assistance of Wilma Vicedomine to help me with the background research that I was conducting with regard to Mr. Stern. The request was on a strictly informal basis, and came about after Ms. Vicedomine asked if she could be of some assistance with our investigation, since Ms. Vicedomine felt that she would like to assist our client, Virgie Arthur, in our efforts to secure the return of her daughter's body to Texas for burial.

7. Over the course of the next several weeks, Ms. Vicedomine and I were able to gather hundreds of pages of on-line interviews, on-line postings and media publications. I was also able to speak with the police authorities in both Florida and the Bahamas, and to interview a number of potential witnesses connected with the case, including among others, Maurice and Tasma Brighthaupt.

8. During the course of my investigation, and based upon all of the information that I had reviewed in my extensive training as an FBI investigator, I came to believe that Howard Stern was intimately involved in the death of both Anna Nicole Smith and her son Daniel. My opinion was based predominantly upon the extensive interviews that I had conducted, my review of

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

on-line research and investigation which had been provided to me by Wilma Vicedomine, or which I had read independent of Ms. Vicedomine, from other sources, various inconsistencies between the testimony of Mr. Stern and statements that he had made during multiple interviews, testimony in court, and other sources. I was also struck by the seemingly "coincidental" nature of the deaths of both Ms. Smith and her son Daniel. My suspicions in that regard were only highlighted by several of the interviews which I conducted, which clearly indicated to me that Mr. Stern was heavily involved in the unlawful procurement of prescription drugs for Ms. Smith, and that he was essentially facilitating - if not actively promoting - her drug use. Those interviews included statements by certain witnesses to the effect that Mr. Stern routinely carried around a "brown Coach bag," containing numerous medications which he had procured for Ms. Smith, and the belief of a number of Anna Nicole's friends and family members that Mr. Stern had maintained control over her financial empire through the use of various "drug cocktails" which he administered to her on a regular basis. When I coupled that information with interviews that I had conducted concerning the night of Daniel's death and the morning of Anna Nicole's demise, I came to the conclusion that Mr. Stern could not avoid direct criminal implication in the death of both of these two individuals. I

Stern v. O'Quinn
CASE NO.: 07-60534-CIV-DIMITROULEAS

advised Mr. O'Quinn accordingly, and discussed a number of the bases for my conclusions.

9. I was in court during the hearings involving the custody of Anna Nicole's body, when Mr. O'Quinn began to cross examine Mr. Stern as to why he would have Ms. Smith's will faxed to him four days before she died. While plaintiff's counsel, Krista Barth, argued at that juncture that this was simply an error in her fax machine, Mr. O'Quinn and I discussed the fact that we simply did not believe that statement, and that we felt that Ms. Barth was covering for Mr. Stern. Our impressions in that regard were enhanced when it was later disclosed that the problem was with the machine from the party who had actually faxed the will, Ron Rale. While we found that story to be of dubious credibility, particularly given numerous other inconsistencies which had developed with regard to Mr. Stern's testimony on a number of different fronts, including his claims of paternity over Danielynn, we simply did not accept the proposition that this was simply a good faith error. I also pointed out to John that it was virtually inconceivable to me that Mr. Stern professed to have no knowledge of the contents of the will, or being there when the will was signed, despite the fact that Ms. Smith was his only "client." He also denied knowing the contents of the will during the court hearings,

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

despite the fact that his sister was apparently able to discuss the substance of the will itself during interviews which took place several days prior to Mr. Stern's testimony in the body custody case. Under the circumstances, given John's own observations and the information that I provided to him, I believe that he had ample cause to believe that Mr. Stern had in fact requested a copy of Anna Nicole's will four days before she died.

10. I am aware of the fact that John related his belief that Mr. Stern was responsible for the death of Anna Nicole Smith, on several different occasions. John actually stated on at least one occasion that he believed that Howard K. Stern murdered Anna Nicole. In fact, that belief was also harbored by John's client, Virgie Arthur, Anna Nicole's mother. In addition, as I noted above, I personally advised Mr. O'Quinn on several occasions prior to any of his statements to the media that I believed that Mr. Stern was responsible for the death of both Anna Nicole and her son Daniel. In discussing that issue with Mr. O'Quinn, I also stated my belief that it really didn't matter whether or not Mr. Stern had actually attempted to induce a drug overdose, or had done so accidentally. In my opinion, if Mr. Stern had been procuring drugs illegally, using multiple identifications, through misrepresentation, he was guilty of a

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

felony under various state statutes. If either Daniel or his mother died, as a result of Stern's administration of those medications - which I believe they did based upon the information that I gathered during my investigation - then I felt that he would be guilty of felony murder. I advised Mr. O'Quinn accordingly.

11. I also I advised John prior to his statement to the press that I believed that there were life insurance policies that had been issued to Ms. Smith, and that Mr. Stern was a secondary beneficiary. I had seen several media reports to that effect. While I believe that our research in that area has ultimately failed to demonstrate that those policies actually existed, we had reason to believe that they did exist at the time. Further, it was my understanding that John had spoken with a producer from one of the investigative television shows during that period of time, and that they had advised him that they were in the process of confirming the existence of those policies.

12. I have read the contents of John's interview with Greta Van Susteran on March 15, 2007. I believe that John's statements to Ms. Van Susteran are based almost exclusively upon information that I had gathered for him, including interviews which I had conducted which convinced me that Mr. Stern and Mr. Birkhead were beginning to negotiate a deal which would allow Birkhead to

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

assume paternity, while Mr. Stern would continue to control Anna Nicole's estate. John's statements were also based upon information which I had gathered concerning Stern's facilitation of Anna Nicole's drug use, and his attempts to control her every movement through the regular administration of prescription medications. That information included statements from Birkhead himself, both to the media and in court, indicating that Stern was providing drugs to Anna Nicole even while she was hospitalized for the birth of her child, and notwithstanding the fact that Ms. Smith was medicated by hospital physicians at that time.

13. I have also reviewed the transcripts of the Nancy Grace Show from March 20, 2007. While I believe that John was commenting about an investigation that we had researched that had been undertaken by Anna Nicole's biological father, I had summarized the results of that investigation for John, and the conclusions which had been reached. In addition, however, by this point in time, I had gathered a considerable amount of information to confirm my earlier suspicion that Mr. Stern was heavily implicated in the death of both Anna Nicole Smith and her son Daniel. I also believe that John's comments concerning the purchase of the yacht (which Stern claims he was attempting to purchase on the morning that Anna Nicole died) was accomplished

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

with Anna Nicole's funds. Yet my preliminary investigation had indicated that the boat was in the name of a company that was presently being controlled by Mr. Stern. All of that information had been communicated to Mr. O'Quinn.

14. The March 26th interview on the Nancy Grace Show again indicated that Stern was responsible for the murder of Anna Nicole. John's comments in that interview clearly refer to the now infamous duffel bag of drugs, which had been referred to by multiple witnesses and in multiple on-line and media printed interviews for well over a month preceding that statement. Similarly, John's comments concerning Anna Nicole laying blue in her bed on the morning that she died was based upon numerous witness interviews which I had conducted in Ft. Lauderdale, and which formed apart of my opinion - which I expressed to Mr. O'Quinn - that Mr. Stern was fully responsible for the both the provision of drugs to Ms. Smith and for the totally inexplicable failure to seek appropriate medical help when it was clear that Ms. Smith was gravely ill during the three day period prior to her demise. In addition, I believe that I had recounted for John some of the factual information that had been related by the Broward County Coroner's office.

15. By the time of John's last interview with Nancy Grace, on March 27th, we had both become firmly convinced that Mr. Stern

Stern v. O'Quinn

CASE NO.: 07-60534-CIV-DIMITROULEAS

was fully implicated in the death of Anna Nicole Smith. While I personally believed - and still believe - that Mr. Stern bears criminal responsibility for Ms. Smith's death, and that he should be prosecuted for felony murder, I also communicated those beliefs in the strongest possible terms to Mr. O'Quinn on a number of occasions prior to the last Nancy Grace interview. In fact, I will continue to use every legal means available in my power to develop evidence which will convince the appropriate authorities to prosecute Mr. Stern.

14. The final interview given by John to Greta Van Susteran on March 27th asked about information concerning the manner in which Mr. Stern had been able to procure prescriptions from doctors, that were written in his name, or in other names, and given to Anna Nicole Smith. That interview also referred again to the "duffel bag" of drugs. The balance of John's statements dealt with information and beliefs that had been expressed by John's client, Virgie Arthur, i.e., that Anna Nicole deteriorated after she became involved with Mr. Stern, and that he had manipulated her and succeeded driving a wedge between Anna Nicole and the family members. Finally, John pointed out that Stern had done everything possible to drive a wedge between Anna Nicole and her son Daniel, and that Stern was afraid that Daniel's efforts would eventually halt the proverbial "gravy train." All of

Stern v. O'Quinn


CASE NO.: 07-60534-CIV-DIMITROULEAS

information was imparted to John by me, based in large part based upon the information that Ms. Vicedomine and I had been able to retrieve from an assortment of interviews, and based upon my own research and interviews of a number of different potential witnesses, many of whom agreed that Mr. Stern manipulated Anna Nicole through the constant provision of prescription drugs, in massive amounts.

FURTHER AFFIANT SAYETH NOT.


Don Clark

SWORN AND SUBSCRIBED before me this 3rd day of October, 2008, by Don Clark, who is personally known to me or has produced Texas Drivers License as identification.


Notary Public

My commission expires:

