

Maxton v Hilbert
SDOH Case No. 1:18-cv-372

FULL, FINAL AND COMPLETE SETTLEMENT
AND RELEASE AGREEMENT

The parties to this case have engaged in good faith negotiation with Magistrate Judge Stephanie K. Bowman and by signing this agreement express their intent to fully and permanently settle all claims, differences and disputes relating to the allegations contained in Plaintiff's Amended Complaint (Doc #4), in Case No. 1:18-cv-372 (hereafter "the Complaint") and hereby agree to its terms:

A. THE PARTIES:

The parties to this Settlement and Release Agreement are as follows:

(1) THE RELEASED PARTIES:

(a) Defendant Bill Hilbert, individually and on behalf of himself, his agents, attorneys, children, heirs, administrators, guardians, executors and beneficiaries;

(b) Defendant Jeff Gramke, individually and on behalf of himself, his agents, attorneys, children, heirs, administrators, guardians, executors and beneficiaries; and

(c) Defendant City of Cincinnati, its directors, employees, agents, partners, affiliates, and/or designees and their heirs and assigns, administrators, guardians, executors and beneficiaries.

(2) THE RELEASING PARTY: Plaintiff Joshua Maxton individually and on behalf of himself, his agents, attorneys, children, heirs, administrators, guardians, executors, and beneficiaries.

B. TERMS OF THE SETTLEMENT AND RELEASE AGREEMENT

The terms of this Settlement and Release Agreement are as follows:

1. **SETTLEMENT:** The parties hereby agree that on behalf of Defendants Bill Hilbert, Jeff Gramke and the City of Cincinnati (collectively hereafter "Defendants"), the City of Cincinnati shall pay the sum of \$100,000.00 dollars in damages and attorney fees and costs to Plaintiff Joshua Maxton ("Plaintiff") and his attorneys, by transmitting a check made payable to "*Gerhardstein & Branch, Co. LPA IOLTA account FBO Joshua Maxton*"

within 30 days of the execution of this agreement. This payment is acknowledged by the releasing party as valuable consideration in full and final settlement of all claims and causes of action, arising from the allegations set forth in the Complaint, including all claims for attorney fees and costs (other than court costs), fees accrued from hiring a Special Master to conduct an audit and costs associated with the audit unless otherwise specified below. The City of Cincinnati will pay court costs associated with Case No. 1:18-cv-372.

2. **RELEASE**: Plaintiff agrees to RELEASE and DISCHARGE Defendants from any and all claims of liability of any kind or character which he ever had, now have or might in the future have against Defendants, on account of any and all damages, losses, or injuries, known and unknown, either developed or undeveloped, resulting to or to result from the allegations set forth in the Complaint, which resulted in litigation under Case No. 1:18-cv-372, from the beginning of time up to the signing of this Settlement and Release Agreement.
3. **STIPULATION OF DISMISSAL WITH PREJUDICE**: Upon receipt of the above-referenced check, and once the funds therefrom become available, Plaintiff's attorneys will execute on his behalf and will file a Stipulation of Dismissal with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) dismissing Plaintiff's Amended Complaint (Doc #4), in Case No. 1:18-cv-372 but retaining jurisdiction with the Court to enforce this settlement agreement.
4. **AUDIT**: As part of this Settlement and Release Agreement the parties agree to the following conditions of an Audit:
 - a. An Audit will be conducted of a subset of cases investigated by Cincinnati PD (as defined in section (c) below), subject to the following limitations:
 - i. The time period for cases reviewed in the Audit will be 7 years – from June 2011-June 2018, including Joshua Maxton's case;
 - ii. CODIS reports identify DNA of an individual other than the charged suspect;
 - iii. A suspect was convicted; and
 - iv. The crime being investigated was a homicide.
 - b. The parties recognize that not all CODIS "hits" are necessarily exculpatory evidence, but agree to conduct this review for the purpose of identifying situations where a CODIS report was not

properly disclosed to a convicted person and their counsel. The parties also recognize that the interests of justice and public safety are furthered by ensuring that proper disclosure of exculpatory evidence has been made to law enforcement and defense counsel, and by adopting policies that ensure timely and complete disclosure of such evidence going forward. It is further recognized by the parties that CPD does not provide CODIS reports CPD receives to criminally charged defendants or their attorneys, because such disclosures are required by law to be made by the Prosecuting Attorney, pursuant to the Rules of Criminal Procedure on Discovery.

- c. The Audit will be limited to cases in which both (1) DNA test results were obtained during the CPD investigation where the DNA did not come from the convicted person or the victim *and* (2) a search of the state, local, or national DNA databank ("CODIS") yielded a presumptive identification of another individual or a cross-DNA match to another forensic profile (aka a database "hit").
 - i. The purpose of the Audit will be to determine whether all exculpatory CODIS DNA database "hits" were timely disclosed to the defense, and if not, to provide that information in the course of the audit to the defendant or the defendant's current/last known counsel.
- d. A Special Master will be appointed by the U.S. District Court to oversee the Audit.
 - i. Following the execution of a settlement agreement, Plaintiff's counsel will recruit a qualified special master. Plaintiff's counsel will provide a candidate to Defendants' counsel who may reject any candidate who may not be fair or impartial. Defendants' counsel shall not unreasonably reject any candidate but may reject any candidate without any prosecutorial experience. If the parties cannot agree on a Special Master, the parties agree to accept Magistrate Bowman's appointment of a fair and impartial Special Master. Plaintiff's goal is to recruit a Special Master who will provide their services without charge to the parties, but if that is not accomplished, Joshua Maxton's attorney and the City agree to evenly divide the cost of the Special Master (including expenses) up to a total amount of \$5,000 from Joshua Maxton's counsel and \$5,000 from the City. The parties shall exercise good faith in the selection of a Special

Master and proceed with diligence. The parties shall have 60 days from the execution of this agreement to agree upon a candidate for appointment to Special Master unless there is good cause for delay.

- ii. The City shall be obligated to cooperate with the Special Master by providing, at the City's expense, electronic and paper copies of relevant requested documents and records in the City's possession, including CODIS reports and notifications.
- iii. The Special Master is empowered to retain pro bono services of legal attorneys, paralegals, and law students to assist with the audit provided that those persons are fair and impartial. All individuals who assist the Special Master with the audit shall abide by the confidentiality provisions set forth herein, and the Special Master shall make all determinations concerning the release of information to individuals or the public.
- iv. The Special Master will set a schedule and procedure for the Audit to ensure it is done in a timely manner (recognizing that the audit could lead to evidence resulting in the release of innocent people from prison or jail), while balancing the City's demands in light of COVID-19.
- v. The Special Master will manage the production of all documents and serve as the arbiter of privacy/Brady concerns:
 1. The Special Master will make sure that all evidence containing potential *Brady* information is disclosed to the convicted person and his or her counsel.
 2. The Special Master will make sure that no sensitive victim, uncharged person or active-suspect information, or other records prohibited from disclosure pursuant to Ohio Public Records Laws, are disclosed. Should the Special Master determine that public disclosure of these records is necessary to provide information of a potential constitutional violation to prosecutors, courts, law enforcement agencies or other official bodies, no record prohibited from disclosure under Ohio Public Records Laws shall be made public without a protective order filed and

approved by the U.S. District Court limiting public disclosure to those necessary officials.

- e. The Special Master shall review each case that meets the criteria to determine if a CODIS report containing non-defendant, non-victim DNA was properly disclosed to a convicted person.
- f. In the event the Special Master determines a CODIS report containing non-defendant, non-victim DNA was not properly disclosed to a convicted person, the SM shall notify the convicted person, the convicted person's last counsel of record, and counsel for the parties in this matter.
- g. Counsel for Plaintiff agree to not represent any individual defendant who the Special Master may notify in a matter arising from the notification except on a pro-bono basis.
- h. Finally, recognizing that it is in the interest of justice and public safety to ensure that – even if inadvertent – exclusionary DNA evidence is timely disclosed to an accused citizen, and recognizing that the City has already made significant changes to its existing policy, the City agrees to seek input on a policy for disclosure of CODIS reports from Plaintiff's counsel and other relevant stakeholders.
 - 1. At a time that the Special Master deems appropriate (whether during the course of the audit or at the conclusion of the audit), the Special Master will review the current CPD policy and procedure for reviewing and disclosing exclusionary CODIS reports.
 - 2. The Special Master shall consult with counsel for the parties and representatives from key stakeholders who choose to participate (including the CPD, the Hamilton County Prosecuting Attorney, the Hamilton County Public Defender, the Hamilton County Coroner's Office, and the Ohio Innocence Project) regarding whether any changes to the current policy may be advisable to ensure timely and complete disclosure.
 - 3. The Special Master shall then make recommendations as to whether any changes in the current policy would further the above objectives. The parties agree that it shall be in the City's discretion whether or not to adopt

the Special Master's recommendations. However, the Special Master shall be permitted to make his or her final recommendations public and open for comment and review, if the City rejects the recommendation.

5. GOVERNING LAW: This agreement is contractual in nature and shall be interpreted in accordance with Ohio law.
6. NO ADMISSION OF LIABILITY: Nothing contained herein, and no action taken by any party with respect to this Settlement and Release Agreement, shall be construed as an admission of liability.
7. MISCELLANEOUS: The parties acknowledge that they fully understand the terms of this agreement and represent and warrant that there are no collateral agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates indicated below and it shall be deemed effective as of the date first noted below.



Joshua Maxton, Plaintiff

DATE: 7-6-20

Counsel for Plaintiff:

/s/ Jennifer L. Branch

/s/ Alphonse A. Gerhardstein

/s/ Nina J. Morrison

Counsel for Defendants:

/s/ Marva K. Benjamin

/s/ Mark Manning

/s/ Kimberly A. Rutowski

Date: July 1, 2020