

THE McDANIEL LAW FIRM
243 Exchange Avenue
Memphis, Tennessee 38105

Telephone: 901-527-6518
Fax: 901-527-4600
Email: marksr@themcdaniellawfirm.com

Mark S. McDaniel
Attorney at Law

Kimberly C. McDaniel
Legal Assistant

Mark S. McDaniel, Jr.
Law Clerk

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Beverly P. Sharpe, Esq.
Director of Consumer Assistance
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Re: Kristina Cole Complaint

Dear Ms. Sharpe:

Please allow this letter to serve as my response to the complaint lodged against me by Kristina Cole. I was initially contacted on or about February 5, 2016, by Kimberly White Underwood, the mother of Kristina Cole's fiancé, Jason White, to represent Ms. Cole on a February 3, 2016 arrest charging her with Unlawful Possession of one (1) pound of Methamphetamine with Intent to Sell. Her bond was set at \$150,000.00 and she was in the custody of the Shelby County Jail. I required a flat fee of \$2500.00 for representation of Ms. Cole in the Shelby County General Sessions Court (lower court) only, and advised that there would be an additional fee of \$5000.00, and up to \$7500.00 if a jury trial was necessary, to continue my representation in Shelby County Criminal Court (trial court) once the case was indicted. I was initially paid \$500 on February 5th, an additional \$265 on February 8th, an additional \$270 on February 10th, an additional \$300 on February 19th, and the remaining \$1165 on February 22, 2016 for representation in the lower court.

I first met with Ms. Cole on or about February 5, 2016, at Shelby County Jail East, which is approximately 20 miles from my office, interviewed her, discussed with her what efforts that I would be making immediately on her behalf to obtain a reduction in her bail, and what for her to expect on her next court date, then scheduled for February 12, 2016. I began working to secure a reduction in her bond. I obtained copies of her arrest information, including the affidavit of complaint, identified and made contact with the prosecutor handling her case, Chris Scruggs, and convinced him to agree to recommend a reduction of her \$150,000.00 bond to \$10,000.00. This caused her a savings of \$14,000.00 in bail premiums alone, although based upon what was represented to me by Ms. Cole and her family members, she would not have been able to afford to post the higher bond.

In an early meeting at my office with Kimberly White Underwood and Desiree Cole, Ms. Cole's daughter, at a time while Ms. Cole was still incarcerated, I was asked by Ms. Underwood to speak with someone who she had on her cellphone, who represented himself to be her son and Ms. Cole's fiancé, Jason White. He advised that he was currently an inmate at Riverbend Maximum Security Institution, Tennessee Department of Corrections. Further research revealed that Jason White had been incarcerated since December 2, 1999, with his sentence scheduled to end on August 15, 2018. He was on a cellphone which he represented was his own, which I found to be remarkable, in light of the fact that possession of such by an inmate was a felony offense. Jason White advised that he personally would provide me with an affidavit acknowledging that Ms. Cole had no knowledge that the package she received contained methamphetamine. He advised that he was aware of this package, which he said was shipped to Ms. Cole by another prisoner, who he referred to as "Tez", later identified as Montez Mullins. Mullins is currently an inmate in the Northeast Correctional Complex, Tennessee Department of Corrections, having been incarcerated since December 24, 2009, with his sentence scheduled to end on November 15, 2078. Shortly after that call ended, another call was received by Ms. Underwood, which she handed to me to speak with. This party identified himself as Montez "Tez" Mullins, and confirmed that he did cause this package of methamphetamine to be sent to Ms. Cole. He went on to advise that he would provide me with a sworn affidavit acknowledging that Ms. Cole was unaware of the contents of the package. However, no such affidavits were ever provided by Jason White or Montez "Tez" Mullins. Additionally, I never again received any communication from either Jason White or Montez Mullins, either by telephone or in writing.

Formal discovery is not available at the General Sessions court level. As such, I attempted to gain as much information from Mr. Scruggs, the prosecutor, as he would share, to go along with information that I learned from Ms. Cole. Because Ms. Cole initially indicated a willingness to cooperate with the State in their ongoing investigation of who caused the package to be sent to her, I recommended that she should waive her right to a preliminary hearing, as I did not believe any additional information would be forthcoming to assist in the probable cause determination. She acknowledged that she understood and signed a written waiver of a preliminary hearing. I never told Ms. Cole that I would "get her probation", however, I did tell her that I would seek that for her as a sentencing alternative upon conviction, at sentencing, if probation was an available option. I likewise advised her that if she were eligible for Judicial Diversion I would also seek that sentencing alternative. I never told her that she had to plead guilty to anything.

I advised Mr. Scruggs, the prosecutor, of my conversations with Jason White and Montez Mullins, and furthered Ms. Cole's assertions that she was an innocent victim of circumstances. Mr. Scruggs assured me that once I had reviewed the discovery, that Ms. Cole's assertions of being an innocent victim of circumstances would not hold true. Jason White and Montez Mullins were identified by Mr. Scruggs as high ranking gang members. An indictment was returned charging Kristina Cole and Jason White of Conspiracy to Possess Methamphetamine with Intent to Sell in a Drug Free Zone. Once the case was indicted, I requested and received discovery, both written and on several discs. The discovery was voluminous. Numerous hours of time was spent by myself and my Legal Assistant, Kim, reviewing documents, listening to telephone conversations, text messages and other data provided. The discovery had what appeared to be repeated accounts of the prosecutor suggested was Ms. Cole's participation in money laundering

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DA lied to jury in closing arguments about knowing of Mullins until 2017.

between her, Jason White and numerous other individuals. Ms. Cole also was reported to have made false statements to the police upon her arrest, which called her credibility into question. She also made numerous references to someone she referred to as "Timothy" in an effort to conceal his true identity, that being Jason White, her fiancé. She would state that he was outside or currently unavailable, but would then access him by a three-way telephone call to him on his illegal prison cellphone. Her conduct, when looked upon as a whole, did not support that of an innocent bystander, in my opinion. Based upon 34 years of experience, it was my opinion, having reviewed the discovery and carefully listened to Ms. Cole's position, that the State would likely prove beyond a reasonable doubt guilty knowledge on her part, and that she committed acts in furtherance of a criminal conspiracy, that being to Possess with Intent to Sell Methamphetamine in a Drug Free Zone. The indictment has since been superseded, and Montez Mullins has been added as an additional co-conspirator.

Once the case was indicted, Ms. Cole paid me \$1000.00 on May 23rd and an additional \$1,000.00 on June 23rd towards the \$5000 to \$7500.00 criminal court fee. I requested and reviewed the discovery information made available to me by the prosecutor. I immediately shared that information with Ms. Cole, and provided continued updates as we listened to telephone call recordings and reviewed encrypted messages. I had repeated conversations throughout this process with Ms. Cole, both in person, and by telephone. I personally reviewed the discovery with her on at least two (2) occasions, and additionally, my Legal Assistant, Kim, spoke with Ms. Cole on numerous occasions, also meeting with her to review the discovery information with her. Kim had numerous conversations with Ms. Cole during the time when we were attempting to understand the encrypted messages between her and Jason White. I have over 30 text messages between my office and Ms. Cole, and telephone call records that would verify many additional telephone conversations. Ms. Cole never expressed any problems opening discovery discs or requesting another copy. She could have easily come into my office to request help gaining access to the information had she just asked to do so. There was never a time that Ms. Cole ever gave any indication that she had any unanswered question, or needed any additional consultation time with me. I made myself available to her at all times. Ms. Cole's assertions that she was never told anything by me or that she was uninformed or "left out" are simply untrue. Unfortunately, Ms. Cole, just did not like what she was hearing from me. I regret that she felt as if she was being "attacked" as she stated, as I believe that is an unfair and untrue characterization. She was challenged as to her assertions as to what she believed to be relevant by what was obtained through discovery process, and in doing so concluding that her case did not offer what I believed to be a viable defense.

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Initially, she had indicated a willingness to cooperate with the State and to provide testimony against others involved in this conspiracy. However, once Jason White, her fiancé, was actually charged, she changed her position regarding cooperation. Interestingly enough, I have learned that she has since discharged her second attorney, Michael Scholl, whose legal opinion seems to have been in line with my own concerning her case, and is now on her third lawyer.

Concerning the Montez Mullins affidavit, Ms. Cole advised me that Montez Mullins did not have a Notary in prison, which I knew from previous experience to be untrue, and requested that I go see him in prison to get his affidavit. I advised Ms. Cole that it would be unrealistic for

me to believe that "Tez" would even agree to see me if I went to see him. I further advised Ms. Cole that I would be unable to personally travel to Mountain City, Tennessee, which is 533 miles from my office, over 8 hours one-way by automobile, without being further compensated to do so. Such a trip would necessitate 2 days out of my office, plus travel expenses, which I estimated at the time to be \$5,000.00. Having not yet satisfied the initial \$5,000.00 criminal court fee, I was unwilling to incur that additional time and expense without any assurance that "Tez" would even see me or execute such an affidavit.

Ms. Cole failed to honor her agreement to pay me what we had agreed for my services. I firmly believe that I was not adequately paid for the amount of time and effort that I invested on her behalf, had I charged her by my hourly rate of \$350 per hour. I did not then, nor do I now, believe that Ms. Cole was due any refund of moneys paid to me.

Lastly, I will reaffirm what I told her when she advised me of her desire to engage a different lawyer in her case. I still wish for her all of the best in her case and in her life thereafter. Lawyers oftentimes find themselves being the bearer of bad news. Clients oftentimes don't hear what they want to hear or choose not to like or follow the advice of their attorney. I believe that Ms. Cole presented herself as such a client.

Yours truly,



Mark S. McDaniel
Attorney at Law

cc: Kristina Cole
278 Tinker Hill Cove, Apt. D
Jackson, TN 38305-4047