

NO. _____

IN THE ALABAMA COURT OF CRIMINAL APPEALS

EX PARTE BURTON WHEELER NEWSOME, Petitioner

(In re: State of Alabama

v.

*Burton Wheeler Newsome, Defendant,
Circuit Court of Shelby County
Case Number CC 2015-000121)*

PETITION OF BURTON WHEELER NEWSOME
FOR THE WRIT OF CERTIORARI,
OR IN THE ALTERNATIVE, FOR THE WRIT OF MANDAMUS

TO THE HONORABLE H. L. CONWILL, CIRCUIT JUDGE
AND THE HONORABLE MARY H. HARRIS, CIRCUIT CLERK

(VOLUME 1 of 4)

ATTORNEY FOR PETITIONER
BURTON WHEELER NEWSOME:

G. Houston Howard II (HOW015)
27582 Canal Road, Unit 2710
Orange Beach, AL 36561
Telephone: (334) 462-5844
Fax: (205) 747-1971
Email: Ghhowardii@aol.com

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i-iii
TABLE OF AUTHORITIES.....	iv-viii
STATEMENT OF JURISDICTION.....	1-2
STATEMENT OF THE FACTS.....	3-13
STATE OF THE ISSUES.....	14-15
STATEMENT CONCERNING PROCEDURAL RULES.....	15-16
STATEMENT OF THE STANDARD OF REVIEW.....	16-17
REASONS WHY THE WRIT SHOULD ISSUE.....	18-38
1. The Order Is Void because Case CC 2015-000121 Did Not Exist when Bullock Filed His Motion, when Seier Filed His Petition, and when Judge Conwill Signed the Order.....	17
2. The Order Is Void because It Was Not Entered in the SJIS as Required by Rule 58(c).....	17-18
3. The Order Is Void because It Granted Relief to Bullock and Seier, who Were Not Parties to the Case.....	18
4. The Order Is Void because Neither Bullock nor Seier Paid a Filing Fee to Intervene.....	18-19
5. The Order Is Void because Neither Seier nor Bullock Had Standing To Challenge Newsome's Expungement....	19-22
6. The Order Is Void because the Motion and Petition Judge Conwill Granted Were Filed More Than Thirty Days after the Expungement.....	26-28
7. The Order Is Void because the Motion and Petition Judge Conwill Granted Were Filed More Than Four Months after the Expungement.	
8. Judge Conwill Erred in Vacating Newsome's Expungement without a Transcript of the Proceedings before Judge Reeves.....	27

9. Judge Conwill Erred in Vacating Newsome's Expungement Based on "False Pretenses" - when the Facts Constituting the "Alleged False Pretenses" Were Known to Judge Reeves when He Granted the Expungement.....	27-28
10. Judge Conwill Erred in Failing To Hold that Bullock's Motion and Seier's Petition Were Barred by Res Judicata.....	28-30
11. Judge Conwill Erred in Holding that Newsome Had Falsely Sworn that He Had "Fulfilled All Terms and Conditions of the Underlying Deferred Prosecution Agreement.".....	30-34
12. Judge Conwill Erred in Holding that the Release "Is Valid.".....	34-38
CONCLUSION.....	39-40
CERTIFICATE OF SERVICE.....	41
APPENDIX.....	42
INDEX TO APPENDIX.....	43-47
PARTS OF APPENDIX IN THIS VOLUME:	

1. "Order" of Judge Conwill dated June 8, 2016, Setting Aside Newsome's Expungement.
2. Newsome's "Petition for Expungement of Records" filed February 19, 2015."
3. "Victim's [Bullock's] Objection to Expungement of Records" dated August 20, 2015 and stamped August 24, 2015.
4. Newsome Affidavit dated May 31, 2015. Filed in the Circuit of Shelby County as "Exhibit L" to the "Response of Burt W. Newsome to Motion of John Bullock to Use Contents of Expunged Filed" delivered to Bonita Davidson on June 1, 2016 (Tab 10, page 123).
5. "Order on Petition for Expungement of Records" Entered by Judge Reeves on September 10, 2015. 6. "Victim John Bullock's Motion to Use Contents of Expunged File" stamped "filed" on January 19, 2016.

7. Newsome's "Opposition to Bullock's Motion to Use Contents of Expunged Filed" delivered to Judge Reeves' office on January 25, 2016, after the Circuit Clerk refused to accept it for filing.

8. Email from Judge Conwill's Judicial Assistant, Bonita Davidson, dated May 3, 2016, setting a hearing for June 3, 2016.

TABLE OF AUTHORITIES

CASES:

<i>Bell v. State</i> , CR-15-0618 (Ala. Crim. App. April 29, 2016)...	2
<i>Cadle Co. v. Shabani</i> , 4 So. 3d 460 (Ala. 2008).....	20, 22
<i>Cain v. Borough</i> , 7 F.3d 377 (3d Cir. 1993).....	38
<i>Casey v. McConnell</i> , 975 So. 2d 384 (Ala. Civ. App. 2007)....	22
<i>Century 21 Preferred Properties, Inc. v. Alabama Real Estate Commission</i> , 401 So. 2d 764 (Ala. 1981).....	29-30
<i>City of Mobile v. Cooks</i> , 915 So. 2d 29 (Ala. 2005).....	35
<i>Commonwealth v. Balboni</i> , 419 Mass. 42, 642 N.E.2d 576 (1994).....	24
<i>Coughlen v. Coots</i> , 5 F.3d 970 (6 th Cir. 1993).....	38
<i>Ein v. Commonwealth</i> , 246 Va. 396, 436 S.E.2d 610 (1993).....	20, 23
<i>Evans v. State</i> , 722 So. 2d 778 (Ala. Crim. App. 1997).....	23
<i>Ex parte Bush</i> , 270 Ala. 62, 116 So. 2d 382 (1959).....	8
<i>Ex parte Courtyard Citiflats</i> , No. 1140264 (Ala. June 12, 2015).....	19
<i>Ex parte DiGeronimo</i> , Civ. No. 2140611 (Ala. Civ. App. Oct. 9, 2015).....	2, 22-23
<i>Ex parte Dowling</i> , 477 So. 2d 400 (Ala. 1985).....	2
<i>Ex parte Hennies</i> , 33 Ala. App. 377, 34 So. 2d 22 (1948)....	2
<i>Ex parte Izundu</i> , 568 So. 2d 771 (Ala. 1990).....	20
<i>Ex parte State</i> , 187 So. 3d 1122 (Ala. 2015).....	16-17
<i>Ex parte State Dept. of Human Resources</i> , 47 So. 3d 823 (Ala. Civ. App. 2010).....	2
<i>Ex parte Teasley</i> , 967 So. 2d 732 (Ala. Crim. App. 2007)....	15

<i>Faulkner v. Hays</i> , 160 So. 2d 329 (Ala. Civ. App. 2014).....	19
<i>George v. Sims</i> , 888 So. 2d 1224 (Ala. 2004).....	22
<i>Greathouse v. Alfa Financial Corp.</i> , 732 So. 2d 1013 (Ala. Civ. App. 1999).....	27
<i>Hetzel v. Johnson</i> , 100 So. 3d 1056 (Ala. Crim. App. 2012)...	19
<i>Hunt v. Pennsylvania State Police of Commonwealth</i> , 983 A.2d 627 (Pa. 2009).....	20
<i>J.K. v. State Department of Human Resources</i> , 103 So. 3d 807 (Ala. Civ. App. 2012).....	18
<i>Kinney v. City of Cleveland</i> , 144 F. Supp. 2d 908 (N.D. Ohio 2001).....	38
<i>K.L.R. v. K.G.S.</i> , No. 2140882 (Ala. Civ. App. Jan. 8, 2016).....	36
<i>Levins v. State</i> , CR-15-612 (Ala. Crim. App. April 29, 2016).....	2, 26
<i>Miller v. State</i> , 99 So. 3d 349 (Ala. Crim. App. 2011).....	28
<i>Noll v. Noll</i> , 47 So. 3d 275 (Ala. Civ. App. 2010).....	26
<i>Penick v. Roberts</i> , Nos. 214067, 2140581 (Ala. Civ. App. Sept. 18, 2015).....	18
<i>Pennsylvania State Police v. Izbicki</i> , 785 A.2d 166 (Pa. Commw. Ct. 2001).....	20
<i>People v. Holum</i> , 166 Ill. App. 3d 658, 520 N.E.2d 419 (1988).....	23
<i>People v. Lewis</i> , 356 Ill. Dec. 602, 961 N.E.2d 1237 (Ill. App. 5 Dist. 2011).....	15-16
<i>Raia v. Goldberg</i> , 33 Ala. App. 435, 34 So. 2d 620 (1948)....	36
<i>Ronning v. Yellowstone County</i> , 360 Mont. 108, 253 P.3d 818 (2011).....	36

<i>SSC Selma Operating Company, LLC v. Gordon</i> , 56 So. 3d 598 (Ala. 2010).....	23
<i>State v. Feliciano</i> , 81 P.3d 1184 (Hawaii 2003).....	37
<i>State v. Hutchen</i> , 946 N.E.2d 270, 191 Ohio App. 3d 388 (Ohio App. 2 Dist. 2010).....	16
<i>State v. Anaya</i> , 95 Wn. App. 751, 976 P.2d 1251 (Wash. App. Div. 1, 1999).....	36-37
<i>State v. Pali</i> , 129 Hawaii 363, 300 P.3d 1022 (2013).....	34
<i>State v. Property at 2018 Rainbow Drive</i> , 740 So. 2d 1025 (Ala. 1999).....	19, 22
<i>State v. Taylor</i> , 146 So. 3d 862 (La. App. 4 Cir. 2014).....	20
<i>State Personnel Board v. State Department of Mental Health & Mental Retardation</i> , 694 So. 2d 1367 (Ala. Civ. App. 1996)...	16
<i>Taylor v. Dorough</i> , 547 So. 2d 536 (Ala. 1989).....	38
<i>T.B. v. T.A.P.</i> , 979 So. 2d 80 (Ala. Civ. App. 2007).....	26
<i>Tex. Dep't Pub. Safety v. Mendoza</i> , 952 S.W.2d 560 (Tex. App. – San Antonio 1997).....	16
<i>Town of Newton v. Rumery</i> , 480 U.S. 386 (1987).....	38
<i>Trail Pontiac-GMC Truck, Inc. v. Evans</i> , 540 So. 2d 645 (Ala. 1988).....	27
<i>Turenne v. Turenne</i> , 884 So. 2d 844 (Ala. 2003).....	36
<i>Underwood v. Allstate Insurance Co.</i> , 590 So. 2d 258 (Ala. 1991).....	38
<i>Warren v. Warren</i> , 94 So. 3d 392 (Ala. Civ. App. 2012).....	36
<i>Warwick v. State</i> , 843 So. 2d 832 (Ala. Crim. App. 2002).....	37
<i>Yeager v. State</i> , 500 So. 2d 1260 (Ala. Crim. App. 1986).....	27

STATUTES :

Ala. Code § 12-3-8.....	2
Ala. Code § 12-17-94.....	12
Ala. Code § 12-19-71.....	18
Ala. Code § 12-27-226.6.....	31, 32, 34
Ala. Code § 12-17-226.10.....	33
Ala. Code § 13A-6-23.....	33
Ala. Code § 13A-10-7.....	35
Ala. Code § 15-18-1.....	37
Ala. Code § 15-27-1.....	21, 33
Ala. Code § 15-27-2.....	21, 30-31, 34
Ala. Code § 15-27-3.....	21
Ala. Code § 15-27-5.....	2, 25, 26
Ala. Code § 15-27-6.....	17, 24
Ala. Code § 15-27-7.....	24
Ala. Code § 15-27-9.....	17
Ala. Code § 15-27-12.....	30, 34
Ala. Code § 15-27-16.....	25
Ala. Code § 15-27-17.....	25

RULES:

Ala. R. App. P. 4.....	3
Ala. R. App. P. 21.....	3
Ala. R. Civ. P. 1.....	15
Ala. R. Civ. P. 5.....	5, 8
Ala. R. Civ. P. 6.....	7
Ala. R. Civ. P. 10.....	18
Ala. R. Civ. P. 58.....	17
Ala. R. Civ. P. 59.....	22
Ala. R. Civ. P. 60.....	18, 26
Ala. R. Jud. Admin. 7.....	18

OTHER AUTHORITIES:

Sen. Bill 108-148758-1 (Jan 13, 2014).....	21, 24
--	--------

INTRODUCTION

BURTON WHEELER NEWSOME HEREBY PETITIONS this court for the writ of certiorari and the writ of mandamus to Circuit Judge H. L. Conwill and Circuit Clerk Mary H. Harris of Shelby County. Newsome seeks an order or writ directing Judge Conwill to vacate his order dated June 8, 2016, which set aside an expungement that Judge Dan Reeves had granted to Newsome on September 10, 2015.

Newsome also seeks orders or writs directing Judge Conwill and Clerk Harris to deliver to this court and serve on his attorney authenticated copies of all records in their possession or control concerning case CC 2015-000121 (including records showing the docket fees or filing fees paid). Newsome requests that the records be filed and served separately by Judge Conwill and Clerk Harris so the court can determine which documents are part of the official records of the Circuit Clerk and which are not.

STATEMENT OF JURISDICTION

Newsome seeks review of an order dated June 8, 2016. This petition is filed within forty-two days of the order and is therefore timely. Ala. R. App. P. 21(a)(3); Ala. R. App. P. 4(a)(1).

This court has original appellate and supervisory jurisdiction of expungements. *Bell v. State*, CR-15-0618, (Ala. Crim. App. April 29, 2016); see Ala. Code § 12-3-8 (1975). This is the correct court to review Newsome's case.

A Petition for a Writ of Certiorari is the proper method to compel a court or public official to deliver an authenticated record to an appellate court for review. *Levins v. State*, CR-15-612, slip op. at 6 (Ala. Crim. App. April 29, 2016); *Ex parte Hennies*, 33 Ala. App. 377, 34 So. 2d 22, 24 (1948). It is also the proper method to review an order denying a petition for expungement. *Bell v. State*, CR-15-0618 (Ala. Crim. App. April 29, 2016); *Levins v. State*, CR-15-612 (Ala. Crim. App. April 29, 2016); Ala. Code § 15-27-5(d). If it is not void, the order June 8, 2016, is a final order denying Newsome's petition for expungement.

Newsome contends that the order dated June 8, 2016, is void. Mandamus is a proper method to review an order that is void. *Ex parte Dowling*, 477 So. 2d 400, 402 (Ala. 1985); *Ex parte DiGeronimo*, Civ. No. 2140611 (Ala. Civ. App. Oct. 9, 2015); *Ex parte State Dept. of Human Resources*, 47 So. 3d 823 (Ala. Civ. App. 2010). Consequently, Newsome also petitions for the writ of mandamus.

STATEMENT OF THE FACTS

1. On January 14, 2013, John Franklin Bullock (hereinafter "Bullock") filed a criminal complaint against the Petitioner, Burton Wheeler Newsome (hereinafter "Newsome") for menacing in the District Court of Shelby County (Tab 10, at 90).

2. On November 12, 2013, the District Court entered a Form "DISMISSAL & RELEASE ORDER." The Order contained a "Release" of Newsome's "civil and criminal claims stemming directly or indirectly from th[e] case." The order was signed by the judge, Newsome, the Assistant District Attorney, and Bullock (Tab 2, at 4).

3. The Form Order contained different paragraphs to be checked for different dispositions. The paragraph checked "[c]ontinued [the case] until 4/01/14, then to be dismissed with prejudice, provided that the defendant have no further incidents/arrests." The underlined words were handwritten in blanks on the Form (Tab 2, at 4).

4. A different paragraph would have "placed [the] case on the Administrative docket until ____." This is a statutory requirement when the defendant signs a deferred-prosecution agreement. Ala. Code § 12-17-226.6(d). This

paragraph was **not** checked. Newsome did not sign a deferred-prosecution agreement. (Tab 15, at 61).

5. On April 4, 2014, the criminal case was dismissed with prejudice. The order of dismissal contained "no terms or conditions"; it was unqualified (Tab 2, at 3).

6. On January 14, 2015, Newsome filed suit in the Circuit Court of Jefferson County against John Bullock, Claiborne Seier (hereinafter "Seier"), and others (Tab 10, at 23-3).

7. He alleged that Bullock and Seier had staged the events that led to his arrest for the purpose of framing him on a false charge of menacing.

8. On February 13, 2015, Seier filed a motion to dismiss the civil suit based on the DISMISSAL & RELEASE ORDER (Tab 10, at 39). The other defendants filed similar motions. (Tab 10, at 43-53).

9. On February 19, 2015, Newsome filed a petition in the Circuit Court of Shelby County to expunge the records of his prosecution for menacing. (Tab 2; Tab 10, at 54).

10. Newsome filed his petition on Uniform Judicial System Form CR-65 7/2014. He checked blanks certifying that he had been charged with "a misdemeanor criminal offense" and that "the charge was dismissed with prejudice." (Tab 2, at 1).

11. The Form contained a paragraph to check if the petitioner had "complet[ed] ... any court-approved deferred prosecution program." Newsome did not check that paragraph; it applied to "Non-violent Felon[ies] Only." (Tab 2, at 1).

12. The case was assigned to Judge Dan Reeves. Judge Reeves knew that Newsome had signed the DISMISSAL & RELEASE ORDER; Newsome attached it to his petition. (Tab 2, at 4).

13. The attorneys for Bullock and Seier knew about Newsome's Expungement Petition by April 21, 2015. Newsome served them electronically¹ with discovery responses containing his petition that day (Tab 10, at 56-57, 102-03); see Interrogatory answer 28, tab 10, at 65).

14. On August 20, 2015, Bullock filed an objection to Newsome's Petition for Expungement. He alleged that "Newsome ha[d] instituted ... legal action against [him] in clear contravention of his agreement." (Tab 3, at 1; Tab 10, at 121).

15. On August 31, 2015, Judge Reeves held a hearing on Newsome's Petition. Bullock and his attorney appeared, and Bullock's attorney argued that the petition should be denied

¹ Ala. R. Civ. P. 5(d) ("All discovery material may be served electronically using the court's electronic filing system.").

"because [Newsome] had filed a civil action against Mr. Bullock" and that Mr. Bullock wanted "to use the expunged documents in the civil case." (Tab 4, at 1).

16. The State filed an objection during the hearing, alleging that a charge of menacing was not subject to expungement because menacing is a "violent crime." (Tab 10, at 125). Based on this objection, the court denied Newsome's petition. (Tab 10, at 126).

17. The Circuit Court of Jefferson County also dismissed Newsome's civil case the same day. (Tab 10, at 125-28).

18. On September 2, 2015, Newsome filed a post-trial motion in the expungement case. He argued that (a) the misdemeanor of menacing is not excluded by the expungement statute, (b) that neither the State nor the alleged victim had filed a timely objection to his petition for expungement, and (c) that he had satisfied the statutory requirements for expungement (Tab 10, at 131-150).

19. Bullock filed an objection (Tab 10, at 151-58), but Judge Reeves granted Newsome's motion. He entered an order of expungement on September 10, 2015, finding that "Newsome ha[d] ... satisfied the requirements for expungement under section 15-27-1 et seq." (Tab 5; Tab 10, at 159-60).

20. The expungement case (CC 2015-000121) was thereafter removed from the State Judicial Information System (SJIS); a search for case CC 2015-000121 reveals nothing. (Tab 15, pages 76-77, ¶¶ 74-75; Tab 15, page 114, ¶ 4).

21. On September 28, 2015, Newsome filed a post-trial motion in his civil case (Tab 10, at 161-213), and he attached the expungement to his motion. (Tab 10, at 230-31). He argued that the expunged release was "not a lawful basis" for dismissing his civil case. (Tab 10, at 166).

22. Bullock and Seier knew then that this was Newsome's contention; they were served electronically with his motion the same day. (Tab 10, at 161, 231).

23. The thirty days for filing post-trial motions in the expungement case expired on October 13, 2015;² no one filed such a motion.

24. The forty-two days for filing a petition for a writ of certiorari expired on October 22, 2015;³ no one filed such a petition.

² The thirtieth day fell on Saturday October 10, 2015, and Monday October 12, 2015, was a legal holiday (Columbus Day). By application of rule 6(a), the last day for filing post-trial motions was Tuesday, October 13, 2015.

³ See *Bell v. State*, CR-15-0618, slip op. at 4-5 (Ala. Crim. App. April 29, 2016); Ala. R. App. P. 4(a).

25. On December 16, 2015, the Circuit Court of Jefferson County granted Newsome's rule 59 motion and reinstated his civil suit against all parties (Tab 10, at 232-33).

26. On January 19, 2016, Bullock filed a "Motion to Use Contents of Expunged File." The Motion bore the caption of Newsome's expungement case. Bullock asked the court to allow him to use the expunged file in Newsome's civil case. (Tab 6).

27. On January 25, 2016, Newsome attempted to file a response to Bullock's Motion, but the clerk refused to accept the document for filing. She told Newsome's counsel "that nothing ... could be filed in that case because it had been expunged."⁴ Newsome's counsel delivered the document to Judge Reeves' office. (Tab 7).

28. Judge Reeves did not act on Bullock's Motion, and he retired effective March 1, 2016.

29. Judge Alvis was appointed to replace Judge Reeves effective May 1, 2016.⁵ Yet, on May 3, 2016, Judge Conwill's

⁴ Rule 5(e), Ala. R. Civ. P., requires the Circuit Clerk to accept documents tendered for filing.

⁵ This court may take judicial notice of the retirement of Judge Reeves and the appointment of his successor. *Ex parte Bush*, 270 Ala. 62 116 So. 2d 382, 383 (1959).

Judicial Assistant distributed an email setting a hearing on Bullock's Motion for June 3, 2016 (Tab 8). The "order" was not stamped "filed" by the Circuit Clerk, and it was not entered in the SJIS as the case no longer existed.

30. Judge Conwill had never previously presided over Newsome's expungement case, and Newsome is not aware of his authority to preside.

31. On May 19, 2016, Seier "filed" a "Petition to Set Aside [Newsome's] Expungement." The Petition bore the caption of Newsome's expungement case. Seier alleged that Newsome's expungement had been "erroneously granted by a previous judge of this Court based on false pretenses." (Tab 9, at 1).

32. He alleged that Newsome had signed a "Deferred Prosecution and Release Agreement," which he purported to attached as "Exhibit 1." (Tab 9, page 2, ¶ 3). The document attached was the DISMISSAL & RELEASE ORDER, but the title of the document was covered by an electronic filing stamp (Tab 9, at 7). The unobscured title appears at Tab 10, at 98.

33. Seier also alleged that Newsome had "pled guilty,"⁶ received a "criminal conviction,"⁷ and been "sentenc[ed]."⁸

⁶ Tab 9, page 2, ¶ 2.

⁷ Tab 9, page 5, ¶ 10.

⁸ Tab 9, page 2, ¶ 3.

Seier attached no evidence to support these allegations, and they were false.

34. He asserted that "Newsome [had] submitted information ... that all terms and conditions of his underlying agreement and sentence had been completed," but he "was ... in direct violation of the Deferred Prosecution and Release Agreement" because he was suing Bullock (Tab 9, page 4, ¶ 9).

35. On June 1, 2016, Newsome attempted to file responses to Bullock's Motion and Seier's Petition with the Circuit Clerk, but the clerk again refused to accept the documents. She again told Newsome's counsel "that nothing ... could be filed in that case because it had been expunged ..." (Tab 10). Newsome's counsel delivered the documents to Bonita Davidson, Judge Conwill's Judicial Assistant (Tabs 10-11).

36. On June 2, 2016, Newsome's counsel also delivered a "Motion to Expunge" to Judge Conwill's Judicial Assistant. (Tab 12). He argued that "all pleading filed in this case" should be expunged because they had been filed after the deadline for filing post-trial motions.

37. Judge Conwill held a hearing on June 3, 2016, but received no testimony. (Tab 13). Newsome was the only person who had submitted an affidavit (Tab 10, at 123, 217-19); the

only evidence before Judge Conwill other than Newsome's affidavits consisted of pleadings and motions delivered to his office before the hearing. (Tabs 6-7, 9-12).

38. Although Bullock had not filed a motion or petition to set aside Newsome's expungement, he "join[ed] in" Seier's Petition during the hearing. (Tab 13, at 10).

39. At the conclusion of the hearing, Judge Conwill indicated his intent to do what he thought was "right" - even though "it may be reversed." (Tab 13, at 22-23).

40. He then instructed the attorneys for Bullock and Seier to prepare an order, but gave them no instructions what to put in the order. (Tab 13, at 24).

41. On June 9, 2016, Newsome's counsel received an order by email signed by Judge Conwill. The order "set aside[]" Newsome's expungement and granted Bullock and Seier "leave to use the contents of Defendant Newsome's charge, plea and disposition." (Tab 1, at 1). The order further stated,

22. On the facts before the Court, it is clear that Defendant Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement) as to all terms and conditions of the underlying deferred prosecution agreement were not satisfied in full at the time that the Petition for Expungement was filed. To the extent that the Defendant represented otherwise to this Court, said representations were necessarily false by virtue of his pending civil action against, among other persons, the Victim of the underlying offense.

23. The Court hereby determines that the Defendant's false representation that he had fulfilled all terms and conditions of the underlying deferred prosecution agreement when he was concurrently prosecuting a civil action against the victim in violation of the Release and Dismissal Order of the District Court of Shelby County constitutes "false pretenses" within the meaning of Ala. Code 1975 § 15-27-17. (Tab 1, at 5-6).

42. The order was not stamped "filed," and it did not bear an insignia of electronic filing.

43. On Friday, June 10, 2016, Newsome's counsel attempted to inspect the court file concerning the case, but the Circuit Clerk refused to allow him to do so.⁹

44. On Tuesday, June 14, 2016, Newsome's office manager, Jennifer Choi, attempted to obtain copies of the pleadings in the case, but the clerk refused to allow her to do so, stating, "[A]ll pleadings were given to the presiding judge and he [is] keeping them in his office."¹⁰ (Tab 15, at 76).

45. On June 28, 2016, Ms. Choi attempted to file a post-trial motion for Newsome, but the Deputy Circuit Clerk refused to accept the Motion. She told Ms. Choi, "I can't personally

⁹ Section 12-17-94(a)(3) requires the Circuit Clerk to allow parties to inspect the file.

¹⁰ Section 12-17-94(a)(3) requires the Circuit Clerk to "keep" the file.

take anything on it [CC 2015-000121] because it doesn't exist." (Tab 15, page 114, ¶ 4).

46. Newsome emailed Ms. Davidson, Judge Conwill assistant, asking, "How am I suppose[d] to file this in for the Judge's consideration?" (Tab 14, at 1-2).

47. Ms. Davidson informed Newsome that "the Clerk has not been taking in the other documents. They are brought directly to me." (Tab 14, at 1).

48. Newsome informed Ms. Davidson that the clerk's office had filed documents for Seier and Bullock; Ms. Davidson responded, "[W]e have those documents, the Clerk does not have them." (Tab 14, at 1).

49. Newsome and Ms. Choi then delivered Newsome's rule 59 motion to Ms. Davidson, who marked the document "received 6/28/16." (Tab 15, at 1; tab 15, page 115, ¶ 6).

50. Newsome's case does not appear in the SJIS; Newsome has been denied the right to file pleadings in his case; he has been denied the right to inspect the records in his case; and he has been denied the right to obtain copies of the records in his case. Newsome has received no notice of any action taken by Judge Conwill on his post-trial motion, which he delivered to Judge Conwill's assistant on June 28, 2016.

STATEMENT OF THE ISSUES

1. Is the order dated June 8, 2016, void because Case CC 2015-000121 did not exist when Bullock filed his motion, when Seier filed his petition, and when Judge Conwill signed the Order?

2. Is the order void because it was not "entered" in the SJIS as required by rule 58(c)?

3. Is the order void because it granted relief to Bullock and Seier, who were not parties to the case?

4. Is the order void because neither Bullock nor Seier paid a filing fee to intervene in the case?

5. Is the order void because neither Seier nor Bullock had standing to challenge Newsome's expungement?

6. Is the order void because the motion and petition Judge Conwill granted were both filed more than thirty days after the expungement was entered?

7. Is the order void because the motion and petition Judge Conwill granted were both filed more than four months after the expungement was entered?

8. Did Judge Conwill err in vacating Newsome's expungement without a transcript of the proceedings before Judge Reeves?

9. Did Judge Conwill err in holding that Newsome obtained his expungement based on false pretenses -- when the facts constituting the "alleged false pretenses" were known to Judge Reeves when he granted the expungement?

10. Did Judge Conwill err in failing to hold that Bullock's Motion and Seier's Petition were barred by res judicata?

11. Did Judge Conwill err in holding that Newsome had falsely sworn that he had "fulfilled all terms and conditions of the underlying deferred prosecution agreement"?

12. Did Judge Conwill err in holding that the release "is valid"?

STATEMENT CONCERNING PROCEDURAL RULES

Neither the *Rules of Criminal Procedure* nor the *Rules of Civil Procedure* mentions "expungements," and the Expungement Act does not specify what procedural rules apply.

In *Ex parte Teasley*, 967 So. 2d 732 (Ala. Crim. App. 2007), this court held, "[Expungement] is in the nature of a civil proceeding...." The *Rules of Civil Procedure* apply "in all actions of a civil nature." Ala. R. Civ. P. 1(a). Thus, the proceedings in this case were governed by the *Rules of Civil Procedure*. *People v. Lewis*, 356 Ill. Dec. 602, 961

N.E.2d 1237, 1239 (Ill. App. 5 Dist. 2011); *Tex. Dep't Pub. Safety v. Mendoza*, 952 S.W.2d 560, 562 (Tex. App.— San Antonio 1997); *State v. Hutchen*, 946 N.E.2d 270, 191 Ohio App. 3d 388, (Ohio App. 2 Dist. 2010).

STATEMENT OF THE STANDARD OF REVIEW

The standard of review applicable to a Petition for a Writ of Certiorari is as follows:

"The certiorari standard of review is whether the law was properly applied and whether the ruling was supported by any legal evidence." *Ex parte United Steelworkers of America, Local Union 7533*, 536 So. 2d 32, 33 (Ala. 1988), *cert. denied*, 490 U.S. 1046, 109 S.Ct. 1954, 104 L.Ed.2d 423 (1989) (emphasis added). "[I]f there is any legal evidence to support the decision of the lower tribunal, such is conclusive on the reviewing court." *Sanders v. City of Dothan*, 642 So. 2d 437, 440 (Ala.1994).

"[W]hen proceedings of a lower tribunal are reviewed on common-law writ of certiorari the tribunal's order should be sustained if it is supported by any substantial or legal evidence. In the context of common law writ of certiorari proceedings, substantial evidence means legal evidence. Thus, there must be some evidence presented to the lower tribunal which is competent and legal under the general rules of evidence....

State Personnel Board v. State Department of Mental Health & Mental Retardation, 694 So. 2d 1367 (Ala. Civ. App. 1996).

The standard of review applicable to a Petition for a Writ of Mandamus is as follows:

The writ of mandamus is a drastic and extraordinary writ, to be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative

duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court. *Ex parte State*, 187 So. 3d 1122, 1124 (Ala. 2015) (internal quotation marks omitted).

REASONS THE WRIT SHOULD ISSUE

1. The order is void because case CC 2015-000121 did not exist when Bullock filed his motion, when Seier filed his Petition, and when Judge Conwill signed the order. The expungement case was removed from the State Judicial Information System (SJIS) when Newsome's petition was granted (Tab 15, at 74-75). See Ala. Code § 15-27-6(a); Ala. Code § 15-27-9(3). Case CC 2015-000121 then ceased to exist (Tab 15, at 114, ¶ 4). Thus, the case did not exist when Bullock "filed" his motion and Seier "filed" his petition - or when Judge Conwill signed the order.

If Bullock or Seier wished to challenge Newsome's expungement, they were required to file a new case. See *Ex parte State*, 187 So. 3d 1122, 1128 (Ala. 2015). The order dated June 8, 2016, is void because it was extrajudicial - it was not a part of any existing case.

2. The order is void because it was not entered in the SJIS as required by rule 58(c). Under rule 58(c), Ala. R. Civ. P., an order is not valid unless it is entered in the

SJIS. The order does not bear an insignia of electronic filing. (Tab 1). Because the case had been removed from the SJIS, the order was not entered in the SJIS. "[B]ecause it was not entered in the SJIS, the ... order did not constitute a valid order or judgment." *J.K. v. State Department of Human Resources*, 103 So. 3d 807, 810 (Ala. Civ. App. 2012).

3. The order is void because it granted relief to Bullock and Seier, who were not parties. The order describes Seier as "a non-party," and neither Bullock nor Seier is listed in the caption to any order or pleading. See Ala. R. Civ. P. 10(a). A court may not grant relief to a non-party. *Cf.* Ala. R. Civ. P. 60(b) ("the court may relieve a party ... from a final judgment"). Consequently, the court lacked subject-matter jurisdiction to grant Bullock's Motion or Seier's Petition; they were not parties. "The ... order was a nullity." *Penick v. Roberts*, Nos. 214067, 2140581 (Ala. Civ. App. Sept. 18, 2015) (vacating order granting relief to non-party).

4. The order is void because neither Bullock nor Seier paid a filing fee to intervene. If Bullock or Seier had filed a Motion to Intervene, they would have been required to pay a filing fee. Ala. Code § 12-19-71(a)(9). If they had filed a new action and received a new case number, they would have

been required to pay a filing fee. See *Faulkner v. Hays*, 160 So. 2d 329, 335 (Ala. Civ. App. 2014) ("The payment of a filing fee commences an independent action."); see Ala. R. Jud. Admin. 7.

They did neither, and as result, the court did not acquire jurisdiction of their motion and petition. "[A]bsent the payment of a filing fee ... the trial court fails to obtain subject matter jurisdiction." *Ex parte Courtyard Citiflats*, No. 1140264 (Ala. June 12, 2015); *Hetzel v. Johnson*, 100 So. 3d 1056, 1057 (Ala. Crim. App. 2012) ("for all that appears, the jurisdictional prerequisite of the payment of the filing fee ... was not met in this case").

5. The order is void because neither Seier nor Bullock had standing to challenge Newsome's expungement. "When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction." *State v. Property at 2018 Rainbow Drive*, 740 So. 2d 1025, 1028 (Ala. 1999). Judge Conwill invoked three grounds for his jurisdiction to vacate Newsome's expungement, but none of those grounds is sufficient.

(a) Seier lacked standing to challenge Newsome's expungement.

(1) *Seier* lacked a personal interest in *Newsome's* expungement. "Standing is [t]he requisite personal interest that must exist at the commencement of the litigation." *Cadle Co. v. Shabani*, 4 So. 3d 460, 462-63 (Ala. 2008). "[A] litigant may not claim standing to assert the rights of a third party." *Ex parte Izundu*, 568 So.2d 771, 772 (Ala. 1990).

Seier did not sign the DISMISSAL & RELEASE ORDER (Tab 2, at 4), and he did not allege that he was an intended beneficiary of the order. Instead, he cited *Newsome's* suit against *Bullock* as the basis for setting aside the expungement (Tab 9, page 4, ¶ 9). *Seier* lacked standing to assert the alleged injury to *Bullock*.

(2) *Seier* had no right to notice of *Newsome's* Petition for Expungement. The only entities with standing to attack an expungement are the entities who had a statutory right to notice of the expungement petition. *Ein v. Commonwealth*, 246 Va. 396, 436 S.E.2d 610 (1993) (defendants in related civil suit lacked standing); *Pennsylvania State Police v. Izbicki*, 785 A.2d 166 (Pa. Commw. Ct. 2001); *Hunt v. Pennsylvania State Police of Commonwealth*, 983 A.2d 627 (Pa. 2009); *State v. Taylor*, 146 So. 3d 862, 865 (La. App. 4 Cir. 2014).

Under section 15-27-3(c), the only entities with a statutory right to notice were "the district attorney, the law enforcement agency, and [the] clerk of [the] court ...". Seier had no statutory right to notice; as a result, he had no standing.

(b) Bullock lacked standing to challenge Newsome's expungement. As proposed, the Expungement Act granted the victim an absolute right to notice of an expungement petition Sen. Bill 108-148758-1, § 4(b) (Jan 13, 2014) (Tab 15, at 107). As enacted, the bill removed the victim's absolute right and substituted notice at the district attorney's discretion - and then only for certain felonies: "The district attorney ... may make reasonable efforts to notify the victim if the petition has been filed seeking an expungement under ... paragraph a. of subdivision (4) of Section 15-27-2." Ala. Code § 15-27-3(c) (1975).

Newsome's Petition was filed under 15-27-1(a)(1). It was **NOT FILED** under section 15-27-2(a)(4); that section applies only to felonies. Bullock had no statutory right to notice. As a result, he had no standing to attack Newsome's expungement after it was granted. The court "acquire[d] no

subject-matter jurisdiction" from Bullock. *State v. Property at 2018 Rainbow Drive*, 740 So. 2d at 1028.

(c) Even if Bullock had standing, his joinder in Seier's petition did not "cure" Seier's lack of standing. Judge Conwill acknowledged Seier's "questionable standing," but he held that Bullock's joinder in Seier's petition gave him jurisdiction to grant the relief Seier had requested. This was incorrect. "The jurisdictional defect resulting from the plaintiff's lack of standing cannot be cured by amending the complaint to add a party having standing." *State v. Property at 2018 Rainbow Drive*, 740 So. 2d 1025, 1028 (Ala. 1999); *Cadle Co. v. Shabani*, 4 So. 3d 460, 462-63 (Ala. 2008).

(d) Judge Conwill lacked jurisdiction to vacate the expungement on his own motion. Judge Conwill also relied on his "obligat[ion] to investigate and act." "[A] trial court has no jurisdiction to modify or amend a final order *sua sponte* more than 30 days after the judgment ..." *Casey v. McConnell*, 975 So. 2d 384, 389 (Ala. Civ. App. 2007); see *George v. Sims*, 888 So. 2d 1224, 1227 (Ala. 2004); Ala. R. Civ. P. 59(d). Consequently, Judge Conwill had no jurisdiction "to investigate and act" on June 8, 2016. "[His] determination ... was made sua sponte at a point when [he]

had no jurisdiction to act." *Ex parte DiGeronimo*, No. 2140611 (Ala. Civ. App. Oct. 9, 2015).

6. The order is void because the motion and petition Judge Conwill granted were filed more than thirty days after the expungement. The expungement was entered on September 10, 2015 (Tab 5). Bullock filed his motion on January 19, 2016 (Tab 6), and Seier's filed his petition on May 19, 2016 (Tab 9). This was far too late. A trial court has no jurisdiction to grant a post-trial motion filed more than thirty days after judgment. *SSC Selma Operating Company, LLC v. Gordon*, 56 So. 3d 598, 601 (Ala. 2010); *Evans v. State*, 722 So. 2d 778, 780 (Ala. Crim. App. 1997).

Judge Conwill held that Bullock's Motion and Seier's Petition were not subject to any time limits (Tab 1, page 7 ¶ 26). Courts in others states have held that motions seeking to modify or set aside expungements are subject to the same time limits as other post-trial motions. *People v. Holum*, 166 Ill. App. 3d 658, 662, 520 N.E.2d 419, 421 (1988) ("[T]he State, by failing to challenge or appeal the order within 30 days, lost its opportunity to attack the expungement order."); *Ein v. Commonwealth*, 246 Va. 396, 401, 436 S.E.2d 610, 613 (1993) ("The trial court did not have jurisdiction to

vacate the expungement order."); *Commonwealth v. Balboni*, 419 Mass. 42, 642 N.E.2d 576, 576-77 (1994) ("the limitations period for filing such motions is the same as the time period allowed for appeal.").

The expungement act does not create a procedure for modifying an expungement more than thirty days after it is granted. As proposed, the act authorized a court to allow the use of expunged documents in other litigation "subject to the Alabama Rules of Evidence." Sen. Bill 108-148758-1, § 8(d) (Jan 13, 2014) (Tab 15, at 111-12). This provision did not become law.

Under the bill as enacted, a court may allow the use of expunged documents in only one instance. "[A] government regulatory or licensing agency, utility[,] ... Bank or other financial institution shall have the right to inspect the expunged records after filing notice with the court." Ala. Code § 15-27-6(b). The court may issue an "order" allowing these entities to "use" the records, but neither Bullock nor Seier falls within this provision.

Section 15-27-7(a) expressly prohibits the use of expunged documents in civil actions such as Newsome's.

"[Expunged] records may not be used for any non-criminal justice purpose."

Section 15-27-16 creates a criminal offense for using expunged documents "without a court order." Bullock paraphrased this section as authority for his Motion to Use Contents (Tab 6, page 1, ¶ 4).¹¹ The underlined language does not, however, create a procedure for a court to allow the use of expunged documents. It creates a "safe harbor" for one who uses expunged documents pursuant to an order issued under section 15-27-6(b).

Similarly, no provision of the act authorizes a Motion to Set Aside an Expungement, such as Seier filed. An expungement "granted" "under false pretenses ... shall be reversed," Ala. Code § 15-27-17, but the Act does not create a procedure for obtaining a "reversal" other than a Petition for a Writ of Certiorari under section 15-27-5(c).

In every other instance when "shall be reversed" or "shall not be reversed" appears in the Alabama Code concerning a court, the word "reversed" applies to action taken by an appellate court to correct the ruling of a lower court or

¹¹ Judge Conwill cited no statutory authorization for a Motion to Use Contents of Expunged Documents.

agency - just as it does in section 15-27-5(c) (Tab 15, at 42); cf. *Levins v. State*, CR-15-612, slip op. at 5 (Ala. Crim. App. April 29, 2016) (An appeal seeks a "reversal.").

7. The order is void because the motion and petition Judge Conwill granted were filed more than four months after the expungement. Although neither Bullock nor Seier invoked rule 60(b), it is "[t]he only mechanism ... whereby a litigant may collaterally attack a civil judgment by filing a motion in the same civil action."¹² *T.B. v. T.A.P.*, 979 So. 2d 80, 91 (Ala. Civ. App. 2007).

Nevertheless, a motion to set aside a judgment for "fraud ... [or] misrepresentation" "shall be made ... not more than four (4) months after the judgment," Ala. R. Civ. P. 60(b)(3); Ala. R. Civ. P. 60(b)(6), and "false pretenses" is a type of fraud or misrepresentation. "A trial court lacks jurisdiction to consider an untimely Rule 60(b) motion." *Noll v. Noll*, 47 So. 3d 275, 279 (Ala. Civ. App. 2010).

If section 15-27-17 permits a circuit court to "reverse[]" its own expungement, then any motion to do so must be filed within four months of the expungement. As a

¹² Neither Bullock nor Seier filed an independent action under rule 60(b)(6). All "filings" were made under the same case number as the expungement (Tab 13, at 3-4).

matter of law, Bullock's Motion and Seier's Petition were filed too late. See *Greathouse v. Alfa Financial Corp.*, 732 So. 2d 1013 (Ala. Civ. App. 1999) (false certification of Mini-Code compliance subject to four-month limitation).

8. Judge Conwill erred in vacating Newsome's expungement without a transcript of the proceedings before Judge Reeves.

A successor judge may not vacate the decision of his predecessor "without even considering the record or the transcript upon which the earlier decision was made." *Trail Pontiac-GMC Truck, Inc. v. Evans*, 540 So. 2d 645, 645 (Ala. 1988). As the parties seeking to set aside the earlier ruling, Bullock and Seier were "responsible for supplying the record and transcript." (*Id.* at 645-46). Judge Conwill "ha[d] not been provided with a transcript." (Tab 1, page 7, ¶ 27) Consequently, he erred in vacating the expungement.

9. Judge Conwill erred in vacating Newsome's expungement based on "false pretenses" - when the facts constituting the "alleged false pretenses" were known to Judge Reeves when he granted the expungement. "False pretenses" cannot be predicated on facts known to the alleged "victim" - Judge Reeves. *Yeager v. State*, 500 So. 2d 1260, 1267 (Ala. Crim. App. 1986). Judge Reeves knew that Newsome had signed a

DISMISSAL & RELEASE ORDER; Newsome attached it to his petition (Tab 2, at 4). Judge Reeves also knew that Newsome was suing Bullock. Bullock's objection alleged that "Newsome ha[d] instituted ... legal action against [him] in clear contravention of his agreement." (Tab 3, at 1). Judge Conwill misapplied the law to the facts in holding that facts known to Judge Reeves were "false pretenses."

10. Judge Conwill erred in failing to hold that Bullock's Motion and Seier's Petition were barred by res judicata.

Bullock objected to the expungement on the ground that he "should be able to use the expunged documents in the pending civil case." (Tab 4, at 1). He repeated this argument in his motion. He asked the court to "allow[] him ... to ... use ... the contents of the file expunged ... in [the] ongoing civil case." (Tab 6, at 3).

"[R]es judicata bars any claim that was or could have been raised at trial or on direct appeal." *Miller v. State*, 99 So. 3d 349, 354 (Ala. Crim. App. 2011). The issue of whether Bullock could use the expunged documents in Newsome's civil case "could have been raised" and was raised in the expungement. Res judicata prohibited Bullock from relitigating this issue.

Bullock also objected to the expungement because "Newsome ha[d] instituted ... legal action against [him] in clear contravention of his agreement." (Tab 3, at 1). Seier repeated this argument: "Newsome was (and remains) in direct violation of the Deferred Prosecution and Release Agreement through his prosecution of a civil action." (Tab 9, page 3, ¶ 9).

Judge Conwill's order paraphrases the objection Bullock filed before Judge Reeves:

Bullock's Objection 08/20/15 Order Dated 06/08/16

[1] Newsome has instituted
unsuccessful legal action

[2] against Mr. Bullock

[3] in ... contravention of

[4] his agreement (Tab 3, at
1).

[1] he was concurrently
prosecuting a civil suit

[2] against the victim

[3] in violation of

[4] the Release (Tab 1, page
6, ¶ 23).

Bullock had litigated this issue and lost; res judicata barred him from relitigating it again before a different judge.

Res judicata also barred Seier from relitigating this issue. Bullock "vicariously represented [Seier's] interest" at the expungement hearing (Tab 13, page 13, lines 13-14). This vicarious representation binds Seier. "If a party has a sufficient 'laboring oar' in the conduct" of the litigation, then the principle of res judicata can be actuated." *Century*

21 *Preferred Properties, Inc. v. Alabama Real Estate Commission*, 401 So. 2d 764, 770 (Ala. 1981).

11. Judge Conwill erred in holding that Newsome had falsely sworn that he had "fulfilled all terms and conditions of the underlying deferred prosecution agreement."

(a) The "terms and conditions" mentioned in section 15-27-12 are the "terms and conditions" of the programs listed in section 15-27-2(a)(4). Judge Conwill found that "Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement) as all terms and conditions of the underlying deferred prosecution agreement were not satisfied ..." (Tab 1, page 5, ¶ 22).

The words "deferred-prosecution agreement" **DO NOT** appear in section 15-27-12. The "terms and conditions" that must be "satisfied" are the terms and conditions of the programs listed in section 15-27-2(a)(4). That section authorizes a court to expunge the records of a "felony" defendant when "[t]he charge was dismissed after successful completion of a drug court program, mental health court program, diversion

program, veterans court, or any court-approved deferred prosecution program...."¹³

Newsome's petition for expungement was **NOT** filed under 15-27-2(a)(4); that section applies only to felonies. The Expungement Act does not require a misdemeanor defendant to sign a deferred-prosecution agreement, complete a program, or swear that he has done so.

(b) Newsome did not agree to the "terms and conditions" of a "deferred-prosecution agreement" or enter a "deferred-prosecution program." Judge Conwill held that the DISMISSAL & RELEASE ORDER was a "deferred-prosecution agreement" and that a "condition" of that agreement was that Newsome not sue anyone. (Tab 1, pages 5-6, ¶¶ 22-23). This was incorrect.

Deferred-prosecution agreements have specific statutory elements; the DISMISSAL & RELEASE ORDER is not a deferred-prosecution agreement.

(1) Newsome did not plead guilty. A defendant who enters the "pretrial diversion program" must submit "a written plea

¹³ These programs are listed in the pretrial diversion act. Ala. Code § 12-17-226.10(b)(17) ("pretrial diversion program"); Ala. Code § 12-17-226.10(b)(21) ("drug court program"); Ala. Code § 12-17-226.10(b)(23) ("mental health evaluation and treatment program"); Ala. Code § 12-17-226.10(b)(24) ("veterans" program); Ala. Code § 12-27-226.6(d) ("deferred" prosecution).

of guilty." Ala. Code § 12-17-226.6(a)(7). The court must then "accept[] ... the guilty plea." Ala. Code § 12-17-226.6(d). Newsome did not plead guilty (Tab 4).

(2) *Releasing an alleged victim from "civil and criminal claims" is not an authorized "term or condition" of a deferred-prosecution agreement.* Section 12-17-226.10(b) provides, "[T]he district attorney may require the offender to agree to any of the following [twenty-seven] terms and conditions." Releasing an alleged victim from "civil and criminal claims" is not an authorized "term or condition" of a deferred-prosecution agreement. Ala. Code § 12-17-226.10(b).

(3) *Newsome's case was not placed on an administrative docket until he fulfilled the terms of an "agreement."* Section 12-17-226.6(d) states, "[T]he court shall expressly **place** the case or cases **on an administrative docket until** ... the offender has fulfilled the terms of the pretrial diversion agreement."

The DISMISSAL & RELEASE ORDER contained a paragraph to "**place**[] [the case] **on the Administrative Docket until** _____," but it was not checked. Newsome's case was not "expressly

place[d]... on an administrative docket" until he "fulfilled the terms" of an "agreement"; it was simply continued.

(4) *Newsome did not participate in a "program."* "Upon successful completion of the program by the offender, the district attorney shall notify the court ..." Ala. Code § 12-17-226.6(f). The DISMISSAL & RELEASE ORDER did not require Newsome to complete a "program." The blank after "until" - where the "program" would be listed - was not filled in (Tab 2, at 4). The court simply dismissed the case on a predetermined date (Tab 2, at 3).

(c) Newsome's did not swear that he had "satisfied" the "terms and condition" of any "agreement" or "program." Newsome was charged with menacing, and menacing is a misdemeanor. Ala. Code § 13A-6-23. As a result, Newsome's Petition for Expungement was filed under section 15-27-1:

(a) A person who has been charged with a misdemeanor criminal offense ... may file a petition ... to expunge the records relating to the charge in any of the following circumstances:

(1) When the charge is dismissed with prejudice.

There are no other requirements - or "terms and conditions" - that a misdemeanor defendant must satisfy.

The requirement that a petitioner "satisfy" the "terms and conditions" of a "deferred-prosecution program" applies

only to felony defendants. Ala. Code § 15-27-2(a)(4). Uniform Judicial System Form CR-65 7/2014 confirms this. It contained a paragraph for a petitioner to swear that he had "complet[ed]" a "court-approved deferred prosecution program," but it was preceded by the words, "Non-violent **Felony only**." This paragraph did not apply to Newsome, and he did not check it. Newsome did not "swear" that he had "completed" any "agreement" or "program."

(d) Conclusion. In summary, the DISMISSAL & RELEASE ORDER was not a "deferred-prosecution agreement" that Newsome was require to "fulfill[],"¹⁴ "complet[e],"¹⁵ or "satisf[y]."¹⁶ Similarly, the release of "civil and criminal claims" was not a "condition" Newsome was required to "fulfill[]," "complet[e]," or "satisf[y]" after his discharge. "Petitioner's discharge ... relieved [him] of any further obligation to the Court." *State v. Pali*, 129 Hawaii 363, 300 P.3d 1022, 1030 (2013) (expungement).

12. Judge Conwill court erred in holding that the Release "is valid." If the "release" is not valid, then it cannot form the basis for Judge Conwill's finding that Newsome was

¹⁴ Ala. Code § 12-17-226.10(d).

¹⁵ Ala. Code § 15-27-2(a)(4).

¹⁶ Ala. Code § 15-27-12.

violating the "Agreement" or the "order" by suing Bullock (Tab 1, pages 5-6, ¶¶ 22-23; tab 1, page 8, ¶ 27). The court erred in finding that the release "is valid."

(a) The release is unenforceable because it released Newsome's "criminal claims." The DISMISSAL & RELEASE ORDER releases "all [of Newsome's] civil and criminal claims." (Tab 2, at 4). A "criminal claim" is a "criminal prosecution." See *City of Mobile v. Cooks*, 915 So. 2d 29, 32 (Ala. 2005) (referring to criminal prosecution as a "criminal claim"). An agreement to "refrain[] from seeking prosecution of a crime" is illegal. Ala. Code § 13A-10-7.

Judge Conwill held, "[E]ven assuming the validity of Defendant Newsome's argument that one clause of the Agreement (which purports to contain a release of criminal claims) is unenforceable, that clause is not at issue here" (Tab 1, pages 6-7, ¶ 25).

Judge Conwill is incorrect; this is the clause on which he relied in finding that Newsome obtained his expungement under false pretenses (Tab 1, page 8, ¶ 27). If Judge Conwill meant that Newsome's criminal claims were "not at issue here," that is irrelevant.

A contract is unenforceable "if an agreement express or implied to suppress a criminal prosecution forms even a part of the consideration." *Raia v. Goldberg*, 33 Ala. App. 435, 34 So. 2d 620, 623 (1948). The provision releasing Newsome's criminal claims voided the order.

(b) The release was part of an interlocutory order that terminated when the case was dismissed. The Release is not part of an independent contract; it exists only in the DISMISSAL & RELEASE ORDER. "[I]f an agreement is merged into a judgment, only the judgment may be enforced." *Warren v. Warren*, 94 So. 3d 392, 396 n.6 (Ala. Civ. App. 2012). As a result, the "release" is not enforceable as a "contract." *Turenne v. Turenne*, 884 So. 2d 844, 849 (Ala. 2003) ("there is no claim that can be enforced on a contract theory"). The release is enforceable only if the order itself remains enforceable.

But the order was an interlocutory order, and "interlocutory orders become unenforceable upon a final judgment of dismissal." *K.L.R. v. K.G.S.*, No. 2140882 (Ala. Civ. App. Jan. 8, 2016); *Ronning v. Yellowstone County*, 360 Mont. 108, 253 P.3d 818 (2011) (plea agreement did not survive the entry of judgment); *State v. Anaya*, 95 Wn. App. 751, 976

P.2d 1251, 1256 (Wash. App. Div. 1, 1999) (no-contact order did not survive dismissal of the prosecution); *State v. Feliciano*, 81 P.3d 1184 (Hawaii 2003) (restitution order did not survive expiration of probation). The RELEASE & DISMISSAL became "unenforceable upon [the] final judgment of dismissal."

(c) The release of a defendant's "civil and criminal claims" is not a legal sentence or punishment. Judge Conwill characterized the release as part of Newsome's sentence (Tab 1, page 7, ¶ 27). The release of "civil and criminal claims" is not a legal punishment. "The only legal punishments ... are fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary ... and death." Ala. Code § `15-18-1 (1975).

"A trial court does not have jurisdiction to impose a sentence not provided for by statute. Matters concerning unauthorized sentences are jurisdictional." *Warwick v. State*, 843 So.2d 832, 834 (Ala. Crim. App. 2002). The court-ordered release of Newsome's "civil and criminal claims" is void.

(d) There was no evidence rebutting Newsome's claims that the release was secured by fraud and that it violated the requirements of Rumery. Newsome contends that the release was

obtained by fraud or misrepresentation. (Tab 6, at 22-24; tab 10, at 164-65). "A release obtained by fraud is void." *Taylor v. Dorough*, 547 So. 2d 536, 540 (Ala. 1989). Neither Bullock nor Seier offered any evidence to rebut this contention. The court erred in finding that the release is "valid" without any "evidence" rebutting Newsome's fraud claim. *Underwood v. Allstate Insurance Co.*, 590 So. 2d 258, 258-59 (Ala. 1991).

Newsome also asserted that the release failed to satisfy the criteria established in *Town of Newton v. Rumery*, 480 U.S. 386 (1987) (Tab 10, 161-64; tab 15, 50-53). The proponent of a release-dismissal agreement bears the evidentiary burden of proving compliance with the three *Rumery* factors. *Coughlen v. Coots*, 5 F.3d 970, 973 (6th Cir. 1993).

The DISMISSAL & RELEASE is *prima facie* invalid under *Rumery*. It is a Form Order executed pursuant to a "blanket policy" of requiring a "release" as a condition of a "dismissal." *Cain v. Borough*, 7 F.3d 377, 383 (3d Cir. 1993); *Kinney v. City of Cleveland*, 144 F. Supp. 2d 908, 917-18 (N.D. Ohio 2001). Bullock and Seier offered no evidence to meet their evidentiary burden.

CONCLUSION

WHEREFORE, Burton Wheeler Newsome petitions the court to grant him the following relief: (1) To take jurisdiction of this petition; (2) To issue an order forthwith requiring Mary H. Harris to accept for filing in CC 2015-000121 any document tendered by the petitioner, including any Notice of Appeal; (3) To issue a writ or order requiring the Honorable H.L. Conwill to deliver to this court and serve on the petitioner authenticated copies of all documents or records in his possession or control concerning CC 2015-000121; (4) To issue a writ or order requiring the Honorable Mary H. Harris to deliver to this court authenticated copies of all documents or records in her possession or control concerning CC 2015-000121, including records showing the docket fees or filing fees paid in the case; (5) To require the respondents to file an answer admitting or denying the allegations in the petitioner's Statement of Facts; and (6) after review, to issue a writ or order directing the Honorable H.L. Conwill to vacate his order June 8, 2016, to reinstate Newsome expungement, and to dismiss Bullock's Motion and Seier's petition; (7) and to grant Burton Wheeler Newsome such other,

further, and different relief as he may be entitled to receive.

Respectfully submitted this the 13th day of July 2016.

s/ G. Houston Howard II
G. Houston Howard II

ATTORNEY FOR PETITIONER
BURTON WHEELER NEWSOME:

G. Houston Howard II (HOW015)
27582 Canal Road, Unit 2710
Orange Beach, AL 36561
Telephone: (334) 462-5844
Fax: (205) 747-1971
Email: Ghhowardii@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July 2016, I have served the four volumes of this Petition and Appendix on the persons listed below by email, with a hard copy to follow by U.S. mail, postage prepaid:

State of Alabama
A. Gregg Lowrey
Assistant District Attorney
gregg.lowrey@alabamada.gov
P.O. Box 706
Columbiana, AL 35051

James E. Hill, Jr.
Attorney for John W. Bullock
jimhill@stclairlawgroup.com
Hill, Weisskopf & Hill, P.C.
P.O. Box 310
Moody, AL 35004

Robert Ronnlund
Attorney for Claiborne Seier
ronnlund@sssandf.com
P. O. Box 380548
Birmingham, AL 35238

Hon. H. L. Conwill
Circuit Judge
hewitt.conwill@alacourt.gov
Shelby County Courthouse
112 N. Main Street
Columbiana, AL 35051

Mary H. Harris
Circuit Clerk
mary.harris@alacourt.gov
P. O. Box 180
Columbiana, AL 35051

s/ G. Houston Howard II
G. Houston Howard II (HOW015)

APPENDIX TO PETITION
OF BURTON WHEELER NEWSOME

INDEX TO APPENDIX¹⁷

1. "Order" of Judge Conwill dated June 8, 2016, Setting Aside Newsome's Expungement.
2. Newsome's "Petition for Expungement of Records" filed February 19, 2015" in Circuit Court of Shelby County, CC 2015-000121, Shelby County.
3. "Victim's [Bullock's] Objection to Expungement of Records" dated August 20, 2015, and stamped August 24, 2015.
4. Newsome's Affidavit dated May 31, 2015, filed in the Circuit of Shelby County as "Exhibit L" to the "Response of Burt W. Newsome to Motion of John Bullock to Use Contents of Expunged Filed" delivered to Bonita Davidson on June 1, 2016 (Tab 10, page 123).
5. "Order on Petition for Expungement of Records" Entered by Judge Reeves on September 10, 2015. Filed below as an attachment to numerous pleadings, including Tab 10, pages 159-60.
6. "Victim John Bullock's Motion to Use Contents of Expunged File" stamped "filed" in *State v. Newsome*, CC 2015-000121, Shelby County on January 19, 2016.
7. Newsome's "Opposition to Bullock's Motion to Use Contents of Expunged Filed" delivered to Judge Reeves' office on January 25, 2016, after the Circuit Clerk refused to accept the document for filing.
8. Email from Judge Conwill's Judicial Assistant, Bonita Davidson, dated May 3, 2016, setting a hearing for June 3, 2016.
9. Claiborne Seier's "Petition to Set Aside Expungement Pursuant to Ala. Code § 15-27-17 and Joinder in Victim's Motion" stamped "filed" on May 19, 2016.

¹⁷ Each Tab in the Appendix is numbered separately. The exhibits to Tabs 10 and Tab 15 are listed separately by the page number on which they begin in the Tab.

10. The "Response of Burt W. Newsome to Motion of John Bullock to Use Contents of Expunged File" delivered to Bonita Davidson on June 1, 2016, after the Circuit Clerk refused to accept the document for filing.

Exhibits to the "Response of Burt W. Newsome":

A. Complaint in <i>Newsome v. John W. Bullock</i> , CV 2015-900190, Jefferson County, filed January 14, 2015.....	23
B. Motion to Dismiss of Claiborne Seier in <i>Newsome v. Bullock</i> , et al, CV 2015-900190, Jefferson County.....	39
C. Motion to Dismiss of John Bullock in <i>Newsome v. Bullock</i> , et al, CV 2015-900190, Jefferson County.....	43
D. Motion to Dismiss of Clark Cooper in <i>Newsome v. Bullock</i> , et al, CV 2015-900190, Jefferson County in <i>State v. Newsome</i> , CC 2015-000121, Shelby County.....	52
E. Newsome's "Petition for Expungement of Records," <i>State v. Newsome</i> , CC 2015-000121, Shelby County.....	54
F. "Notice of Service of Discovery Documents" in <i>Newsome v. John Bullock</i> , CV 2015-900190, Jefferson County, together with Interrogatory Answers and Response to Request for Production filed and served electronically by Newsome on April 21, 2015.....	56
G. Order Dismissing John Bullock in <i>Newsome v. John Bullock</i> , CV 2015-900190, Jefferson County.....	110
H. Order Dismissing Claiborne Seier in <i>Newsome v. John Bullock</i> , CV 2015-900190, Jefferson County.....	111
I. Plaintiff's Motion to Reconsider Order Dismissing Bullock and Seier in <i>Newsome v. John Bullock</i> , CV 2015-900190, Jefferson County.....	112
J. "State's Response to Petition for Expungement of Records" in <i>State v. Newsome</i> , CC 2015-000121, Shelby County, filed July 10, 2015.	120

K. "Victim's [Bullock's] Objection to Petition for Expungement of Records" in <i>State v. Newsome</i> , CC 2015-000121, Shelby County (August 20, 2015).	121
L. Affidavit of Burt W. Newsome dated May 31, 2016....	123
M. "State's Response to Petition for Expungement of Records" in <i>State v. Newsome</i> , CC 2015-000121, Shelby County, filed August 31, 2015.....	125
N. Order Denying Newsome's Petition for Expungement in <i>State v. Newsome</i> , CC 2015-000121, Shelby County, filed August 31, 2015.....	126
O. Orders Dismissing Newsome's Claims in <i>Newsome v. Bullock</i> , CV 2015-900190, Jefferson County, filed August 31, 2015.....	127-130
P. Newsome's "Motion to Alter, Amend, or Vacate Judgment, or in the Alternative, Motion for a New Hearing on the Petition" in <i>State v. Newsome</i> , CC 2015-000121, Shelby County, filed September 2, 2015.....	131
Q. "Victim John Bullock's Response to Defendant Burton Wheeler Newsome's Motion to Alter, Amend, or Vacate Judgment, or in the Alternative, Motion for a New Hearing on the Petition" in <i>State v. Newsome</i> , CC 2015-000121, Shelby County, served "September ____ 2015.".....	151
R. "Order on Petition for Expungement of Records" in <i>State v. Newsome</i> , CC 2015-000121, Shelby County, filed September 10, 2015.....	159
S. "Plaintiff's [Newsome's] Motion to Alter, Amend, or Vacate Judgment, or in the Alternative, to Grant a New Trial" in <i>Newsome v. Bullock</i> CV 2015-900190, Jefferson	

County, filed and served electronically on September 28, 2015.....161-185, 208-231.¹⁸

T. Order Granting Newsome's "Motion to Alter, Amend, or Vacate Orders of Dismissal" in *Newsome v. Bullock*, CV 2015-900190, Jefferson County, filed December 16, 2015.....232

U. *Ein v. Commonwealth*, 436 S.E.2d 610, 246 Va. 396 (1993).....234

V. Maryland Statutes § 10-108.....237

W. New Jersey Criminal Code § 2C:52-19.....238

X. Louisiana Statutes title 34, article 973.....239

Y. Interview with Roger Bedford, the Senate Sponsor of the Expungement Act.....241

Z. Alabama Law Enforcement Agency, "Criminal Record Expungement FAQ".....243

11. The "Response of Burt W. Newsome to Claiborne Seier's 'Petition to Set Aside Expungement Pursuant to Ala. Code § 15-27-17 and Joinder in Victim's Motion'" delivered to Bonita Davidson on June 1, 2016, after the Circuit Clerk refused to accept documents for filing.

12. Newsome's "Motion to Expunge" delivered to Bonita Davidson on June 2, 2016, after the Circuit Clerk refused to accept documents for filing.

13. Transcript of Hearing before Judge Conwill on June 3, 2016.

14. Emails between Bonita Davidson and Burt W. Newsome on June 28, 2016, about how to "file" his post-trial motion.

15. Newsome's "Motion To Alter, Amend, or Vacate Judgment, or in the Alternative, Motion for New Trial" delivered to

¹⁸ Pages 186-207 are duplicate pages of the rule 59 motion erroneously copied into the certified copy of exhibit 10.

Bonita Davidson on June 28, 2016, after the Circuit Clerk refused to accept the document for filing:

Exhibits to "Motion to Alter, Amend, or Vacate"

Affidavit of Burt W Newsome dated June 27, 2016 and certified copy of "Petition for Expungement of Records" with attachments.....61-67

"Victim's [Bullock's] Objection to Petition for Expungement of Records" (previously filed as "Exhibit K" to Newsome's Opposition to Bullock, Tab 10, at 121).....69-70

Affidavit of Burt W. Newsome dated May 31, 2016 (previously filed as "Exhibit L" to Newsome's Opposition to Bullock, Tab 10, at 123).....72- 73

Affidavit of Jennifer Choi dated June 24, 2016....74-76

Excerpts from Newsome's discovery responses filed and served electronically on April, 21, 2015 (previously filed as "Exhibit F" to Newsome's Response to Bullock, Tab 10, at 56-58, 65, 71-72, 102-07)78-89

Excerpts from Newsome's rule 59 motion in *Newsome v. Bullock* (previously filed as "Exhibit S" to Newsome's Response to Bullock, Tab 10, at 161-167, 212-213).....91-99

Email from Bonita Davidson dated May 3, 2016, and setting a hearing for June 3, 2016.....100

Senate Bill 108-148781-1 (January 13, 2014).....101-113

Affidavit of Jennifer Choi dated July 7, 2016 certifying the "Motion to Alter, Amend, or Vacate Judgment" as a true copy.....114-115

EXHIBIT 1 TO NEWSOME'S PETITION

"Order" of Judge Conwill dated June 8,
2016, Setting Aside Newsome's Expungement.

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA

Plaintiff,

v.

BURTON WHEELER NEWSOME

Defendant.

)
)
)
)
)
)
)
)
)
)
)

CASE NO. CC 2015-000121

ORDER

This matter came before the Court on various Motions filed by the victim, John Bullock, and Claiborne Porter Seier, Esq. — a non-party named as a defendant in civil litigation filed by Defendant Newsome arising out of the same operative facts as the instant criminal matter. Mr. Bullock has filed a Motion to Use Contents of Expunged File, while Attorney Seier has filed a Petition to Set Aside an expungement previously granted by this Court (through another, now-retired judge) pursuant to Ala. Code 1975 § 15-27-15. Both movants have joined (orally, in writing, or both) in the others' respective motions. Having received written briefs and oral argument from the various parties and considered same, the Court hereby sets aside the expungement pursuant to Ala. Code 1975 § 15-27-15, and further gives the movants leave to use the contents of Defendant Newsome's charge, plea and disposition as they may deem necessary and appropriate.

RELEVANT BACKGROUND AND FACTS

1. On or about December 19, 2012, Defendant Newsome alleges that he was scheduled to appear in court in Pell City, Alabama.

2. On the same date, Victim John Bullock had a scheduled appointment with a dentist whose office is next door to Newsome's law practice. Bullock apparently parked next to Newsome's vehicle in the parking lot shared by and between the two businesses.

3. As Newsome exited his office heading towards his vehicle, Bullock exited his vehicle and began walking towards dentist's office. Newsome, who alleged that he felt threatened by Bullock, produced and brandished a pistol. Newsome then entered his car and left for Pell City.

4. Bullock subsequently filed a criminal complaint against Newsome for the crime of menacing.

5. On May 2, 2013 Newsome was stopped for speeding and arrested on the menacing warrant.

6. On November 12, 2013, the District Court of Shelby County accepted a deferred prosecution agreement reached between the State and Defendant Newsome and entered a "Dismissal & Release Order." Defendant Newsome and Victim Bullock both signed the order. The order continued the case until April 1, 2014, and provided that the case would be dismissed with prejudice at that time "if the defendant had no further incidents/arrests." The order also contained a general release of all civil claims of any

nature related to the underlying incident and all parties related thereto.

7. On April 4, 2014, the criminal prosecution against Newsome was dismissed with prejudice pursuant the deferred prosecution and the terms of the Dismissal & Release Order.

8. On January 14, 2015, Newsome filed a civil suit in the Circuit Court of Jefferson County against John Bullock, Claiborne Seier, Clark Cooper and the law firm of Balch & Bingham, LLP. Newsome alleged that Seier and Bullock had staged the event that led to his arrest for the purpose of fabricating a false charge of menacing. He asserted claims against them for malicious prosecution, abuse of protection, false arrest, and outrage. He additionally asserted claims against Cooper and Balch & Bingham related to Cooper's sending an email containing Newsome's mugshot and other information related to the criminal case to a mutual banking client or clients.

9. On February 13, 2015, Seier filed a motion to dismiss the civil suit based on the dismissal-release order.

10. On February 24, 2015, Bullock filed a motion to dismiss the civil suit based on the dismissal-release order.

11. On February 19, 2015, Newsome filed the instant action to expunge the records of his prosecution for menacing.

12. On July 10, 2015, the state filed an objection to Newsome's Petition for Expungement pursuant to Ala. Code 1975 § 15-27-5.

13. On August 24, 2015, Bullock filed a separate objection to the expungement

petition through his attorney, James E. Hill, Jr.

14. Newsome's Petition for Expungement was set for a hearing on August 31, 2015.

15. The State filed a second objection to the petition on the date of the hearing. In this second objection, the State argued that menacing was a "violent crime" and that a charge of menacing was not subject to expungement.

16. Following the August 31, 2015 hearing, this Court entered an order denying Newsome's petition.

17. On September 2, 2015, Newsome filed a post-trial motion in this Court related to the denial of his expungement petition. He argued that (a) the misdemeanor of menacing is not excluded by the expungement statute, (b) that neither the State nor the victim had filed a timely objection to the petition for expungement, and (c) that he had satisfied the statutory requirements for expungement.

18. On September 10, 2015, a now-retired judge of this Court granted Newsome's post-trial motion and entered an order of expungement.

19. On September 28, 2015, Newsome filed a post-trial motion in his civil case, and he attached a copy of the expungement order to the motion. He argued that the expunged release was "not a lawful basis" for dismissing his civil action. He also argued that any defensive use of the expunged release or other documents from the criminal court file by the Victim/Civil Defendant or any other party to that action was "now a criminal offense."

20. The civil case remains pending against both Bullock and Seier at this time.

ANALYSIS

21. Alabama's expungement statute states in relevant part:

Section 15-27-3 (Submission of sworn statement and records; service).

(a) A petition filed under this chapter shall include a sworn statement made by the person seeking expungement under the penalty of perjury stating that the person has satisfied the requirements set out in this chapter and whether he or she has previously applied for an expungement in any jurisdiction and whether an expungement has been previously granted.

Section 15-27-12 (Prerequisites to expungement).

No order of expungement shall be granted unless all terms and conditions, including court ordered restitution, are satisfied and paid in full, including interest, to any victim, or the Alabama Crime Victim's Compensation Commission, as well as court costs, fines, or statutory fees ordered by the sentencing court to have been paid, absent a finding of indigency by the court.

Section 15-27-17 (Filing under false pretenses).

Upon determination by the court that a petition for expungement was filed under false pretenses and was granted, the order of expungement shall be reversed and the criminal history record shall be restored to reflect the original charges.

22. On the facts before the Court, it is clear that Defendant Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement) as all terms and conditions of the underlying deferred prosecution agreement were not satisfied in full at the time that the Petition for Expungement was filed. To the extent that the Defendant represented

otherwise to this Court, said representations were necessarily false by virtue of his pending civil action against, among other persons, the Victim of the underlying offense.

23. The Court hereby determines that the Defendant's false representation that he had fulfilled all terms and conditions of the underlying deferred prosecution agreement when he was concurrently prosecuting a civil action against the victim in violation of the Release and Dismissal Order of the District Court of Shelby County constitutes "false pretenses" within the meaning of Ala. Code 1975 § 15-27-17. This conclusion is further supported and confirmed in the Court's mind by the subsequent motions filed by the Defendant alleging that the Victim's defensive use of the deferred prosecution agreement in the civil action filed against him by the Defendant as supposedly criminal.

24. Addressing the arguments of Defendant Newsome in opposition to the Petition to Set Aside the Expungement, the Court agrees with the Defendant that Attorney Seier has questionable standing to bring such a Petition in this Court. However, Attorney Seier's Petition has been joined by the Victim. Further, the matter having been brought to the Court's attention by an officer of the Court, the Court is obligated to investigate and act as may be necessary and appropriate. This is particularly true given that the Defendant is himself a member of the local Bar.

25. Defendant Newsome additionally alleges that the Release and Dismissal Agreement itself should be declared void. In making this assertion, however, Defendant Newsome does not volunteer to have this case placed back on the active criminal docket. Furthermore, even assuming the validity of Defendant Newsome's argument that one clause of the Agreement (which purports to contain a release of criminal claims) is

unenforceable, that clause is not at issue here. The Court finds that the general civil release of claims contained in the Agreement is valid under Alabama law.

26. Defendant Newsome also alleges that the various motions filed in this case are untimely, or are barred by the doctrines of res judicata and/or collateral estoppel. Ala. Code 1975 § 15-27-17, upon which the Court bases its ruling herein, does not contain any specific time period during which the Court must act, and there has been no authority presented that this Court's jurisdiction to act pursuant to Ala. Code 1975 § 15-27-17 is limited to a proscribed time period. Likewise, Defendant Newsome has presented no evidence or authority that the Court must enter an order allowing for a party to use previously-expunged records within some definite time period under Ala. Code 1975 § 15-27-16. In fact, such an argument flies in the face of common sense, which dictates that such requests for orders to use expunged records would often necessarily be filed well after an order of expungement was entered. Regardless, due to the lack of any supporting legal authority, the Court finds that any such timeliness or waiver argument has been waived.

27. Finally, Defendant Newsome alleges that his Petition for Expungement was not filed under false pretenses because the existence of a pending civil action was raised by the victim in prior proceedings. The undersigned was not present for any of the prior proceedings in this matter and has not been provided with a transcript of those proceedings to study. Regardless, it is abundantly clear that the statutory prerequisites for expungement were not met in this case. A valid expungement requires an affirmance under oath by the Petitioner that all requirements of the underlying sentence have been

met. The prosecution of a civil lawsuit against a victim who was released from liability in conjunction the Defendant's execution of a deferred prosecution agreement or Dismissal and Release Order clearly indicates to the Court that the terms of that agreement and Order have not been followed and fulfilled. Further, the Defendant's continued prosecution of the civil action against the Victim (and thus, by extension, his continuing violation of the Dismissal and Release Order) shows that Defendant is still not in compliance with the terms of the agreement and Order.

28. As such, the Court finds that the requirements of Ala. Code 1975 § 15-27-17 have been shown, and that the Defendant's expungement was filed and obtained upon false pretenses. The Clerk of Court is accordingly ordered to vacate the previously-entered order expunging this file, and take all other necessary steps to restore the Court record related to the subject charge.

29. The movants are further free to utilize all records related to the Defendant's prosecution, plea and the case's disposition as they may find appropriate and necessary. The expungement statute was enacted to provide a "shield" to first-time and non-violent offenders. It was not intended to be a "sword" for those engaged in civil litigation over the same transaction made the basis of their criminal offense, and the Court will not construe the statute as such.

DONE AND ORDERED this the 8th day of June 2016,

1 Howard
CIRCUIT COURT JUDGE

EXHIBIT 2 TO NEWSOME'S PETITION

Newsome's "Petition for Expungement of
Records" filed February 19, 2015.

State of Alabama
Unified Judicial System
Form CR-65 7/2014

PETITION FOR EXPUNGEMENT OF
RECORDS

Case No. DC-2013-001434

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

(Name of County)

☒ STATE OF ALABAMA v. BURTON W. NEWSOME,
Defendant/Petitioner

☐ MUNICIPALITY OF _____ v. _____,
Defendant/Petitioner (Name of Municipality) (Name)

CASE NUMBER DC-2013-001434

CHARGE MENACING

(Name or Describe the Offense; Only One Offense per Petition)

I, the above-named Defendant/Petitioner, was charged with the above-named Offense which is

☒ a misdemeanor criminal offense.

☐ a violation.

☐ a traffic violation.

☐ a municipal ordinance violation.

☐ a non-violent felony.

I hereby file this petition with the circuit court in order to have the records relating to the above charge expunged for one of the following circumstances:

☒ The charge was dismissed with prejudice.

☐ The charge was not billed by a grand jury.

☐ I was found not guilty of the charge.

☐ (Non-felony only) The charge was dismissed without prejudice more than two years ago and was not refiled, and I have not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous two years.

☐ (Non-violent Felony only) The charge was dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran's court, or any court-approved deferred prosecution program after one year from successful completion of the program.

RECEIVED & FILED

FEB 19 2015

MARY H. HARRIS
CIRCUIT & DISTRICT COURT CLERK
SHELBY COUNTY

State of Alabama
Unified Judicial System
Form CR-65 7/2014

PETITION FOR EXPUNGEMENT OF
RECORDS

Case No. DC-2013-001434

☐ (Non-violent Felony only) The charge was dismissed without prejudice more than five years ago, was not refiled, and I have not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous five years.

☐ (Non-violent Felony only) Ninety days have passed from the date of dismissal with prejudice, no-bill, acquittal, or nolle prosequi and the charge has not been refiled.

Attached to this petition is a certified record of arrest, disposition, or the case action summary from the appropriate agency for the court record I seek to have expunged, as well as a certified official criminal record obtained from the Alabama Criminal Justice Information Center.

I am providing the following additional information as required by Act # 2014-292 (codified at Ala. Code 1975, § 15-27-1 et seq.):


I was charged with menacing and a warrant was issued for my arrest. On May 2, 2014, I was arrested by a Shelby County Deputy and booked into Shelby County Jail.

(specify what criminal charges from the record are to be considered, further specify the agency or department that made the arrest and any agency or department where the petitioner was booked or was incarcerated or detained pursuant to the arrest or charge sought to be expunged). Further, **I have satisfied and paid in full all terms and conditions**, including court ordered restitution, including interest, to any victim or the Alabama Crime Victims Compensation Commission, as well as court costs, fines, or statutory fees ordered by the sentencing court to have been paid, absent a finding of indigency by the court.

I swear or affirm, under the penalty of perjury, that I have satisfied the requirements set out in Act # 2014-292 (codified at Ala. Code 1975, § 15-27-1 et seq.) that I ☒ have not ☐ have previously applied for an expungement in any other jurisdiction, specifically

and, if I have applied for an expungement in any other jurisdiction, the expungement was previously ☐ granted ☐ denied.

2/6/2015
Date


Signature of Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME:

2/6/2015
Date


Person Authorized to Administer Oaths

Jennifer Choi
Notary Public Alabama State at Large
My Commission Expires October 4, 2016



ELECTRONICALLY FILED
4/4/2014 2:58 PM
58-DC-2013-001434.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE DISTRICT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA

)

)

V.

)

)

NEWSOME BURTON WHEELER

)

Defendant.

)

Case No.: DC-2013-001434.00

ORDER

Pursuant to earlier written agreement, with no objection by A.D.A. Willingham, this case is
DISMISSED with prejudice. Apply cash bond.

DONE this 4th day of April, 2014.

/s/ RONALD E. JACKSON

DISTRICT JUDGE (amh)



ELECTRONICALLY FILED
11/12/2013 2:50 PM
58-DC-2013-001434.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE DISTRICT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA V. Burton Wheeler Newsome

CASE NO. DI 2013-1434

This matter comes before the Court by the specific **AGREEMENT** of the parties. The Defendant is ☒ present, is ☒ represented by counsel and has NOT knowingly and voluntarily waived the right to the same. After due consideration and pursuant to said agreement, all of the following as specifically noted below is hereby **ORDERED, ADJUDGED** and **DECREED**.

- () This matter is Dismissed with _____ prejudice.
- (X) This matter is Continued until 4/10/14 9:00 then to be Dismissed with ☒ prejudice, provided that the defendant have no further incidents/arrests
- () This matter is placed on the Administrative Docket until _____, then to be Dismissed with _____ prejudice, provided that _____
- () **DEFENDANT MUST APPEAR IN COURT ON THE ABOVE DATE.**

COURT COSTS ARE TAXED AS FOLLOWS:

\$ _____ in further Recoupment to the Fair Trial Tax Fund

\$ 368.00 in Court Costs including \$100.00 Bail Bond Fee

\$ 20.00 as Jail Housing Costs and all jail Medical Expenses

\$ 25.00 to the Crime Victims' Compensation Fund

\$ _____ to the Forensic Science Trust Fund (Act No. 93-733 does _____ apply)

\$ _____ in Restitution to _____

\$ _____ as Worthless Check Cost (IWC # _____)

☒ \$ 413.00 TOTAL to be deducted from Cash Bond

PAYMENT MAY BE MADE BY CERTIFIED CHECK, MONEY ORDER, OR IF IN PERSON BY CASH TO COURT CLERK, P.O. BOX 1810, COLUMBIANA, AL. 35051. THE ABOVE CASE NUMBER SHOULD APPEAR ON ALL PAYMENTS. NOTE: IF THE DEFENDANT FAILS TO MAKE SUCH PAYMENTS AND FAILS TO APPEAR IN COURT ON THE ABOVE DATES SHOWN, THIS MATTER WILL NOT BE DISMISSED AND AN ARREST WARRANT AND BOND FORFEITURE CAN BE ISSUED FOR THE DEFENDANT.

The Defendant does hereby grant a full, complete and absolute Release of all civil and criminal claims stemming directly or indirectly from this case to the State of Alabama, its agents and employees, including, but not limited to the District Attorney for Shelby County, Alabama, his agents and employees; to Shelby County, Alabama, its agents and employees, including, but not limited to the Sheriff of said County, his agents and employees, to any other law enforcement or investigative agencies, public or private, their agents and employees; to any other complainants, witnesses, associations, corporations, groups, organizations or persons in any way related to this matter, to also include the Office of the Public Defender of Shelby County, Alabama, its agents and employees, from any and all actions arising from the instigation, investigation, prosecution, defense, or any other aspect of this matter. The Defendant freely makes this release knowingly and voluntarily. In exchange for this release, this case will be either dismissed immediately, or pursuant to conditions noted above

ANY FEES OR COSTS NOT SPECIFICALLY TAXED ABOVE ARE HEREBY REMITTED.

The foregoing duly reflects the Agreement of the parties as entered above and as attested by their signatures below

[Signature]
Complaining Witness

[Signature]
District Attorney

[Signature]
Defendant

[Signature]
Defendant's Attorney

Done and ordered: 11-12-13

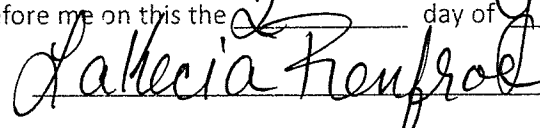
[Signature]
DISTRICT JUDGE (SHELBY COUNTY)

This is to certify that the attached documents are true and correct copies of the criminal records that appear in the files of the Alabama Criminal Justice Information Center.



Risha Whetstone/staff

Criminal History Staff, ACJIC

SWORN TO AND SUBSCRIBED before me on this the 2nd day of January, 2015

Notary Public

My commission expires: 7.14.2018

***** CHRI REQUEST RAPSHEET *****

Provided by the
ALABAMA CRIMINAL JUSTICE INFORMATION CENTER
P.O.Box 300660 . 201 South Union Street, Suite 300 . Montgomery, Alabama 36130-0660
334.517.2400 phone

The information in this rapsheet is subject to the following caveats:

This criminal history record information (CHRI) is confidential and may only be used for the purposes defined by the Code of Federal Regulations or as defined in Section 265-X-2.03 of the Alabama Administrative Code. This rap sheet is based only on the name-based information provided in written request to the Alabama Criminal Justice Information Center (ACJIC), and contains Alabama information only. When explanations of charge or disposition are needed, please communicate directly with the agency that contributed the record information. Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. The procedure to make such a request may be found on the ACJIC website, www.acjic.alabama.gov or by calling 334.517.2400.

Data as of: 01/02/2015

THIS CHRI REQUEST RAPSHEET IS PROVIDED IN RESPONSE TO A SPECIFIC REQUEST BY:

NAME	STATE ID NO.	FBI ID NO.	AVIS NO.	REPORT DATE
NEWSOME, BURTON	02610310	483265VD2		01-02-2015

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYE	HAIR	BIRTH PLACE
M	W	09-04-1966	508	180	BRO	BRO	AL

SOCIAL SECURITY SCARS-MARKS-TATTOOS
255-27-7001

FILE NUMBER BIRTH DATE SOCIAL SECURITY OCCUPATION
02610310

ARREST-01

DATE OF ARREST - 05-02-2013
AGENCY - SHELBY CO SHERIFFS DEPT ORI - AL0590000
NAME - NEWSOME, BURTON
CHARGE 01 - 7399 PUBLIC ORDER CRIMES-MENACING
DATE OF OFFENSE - 05-02-2013
DISP - DISMISSED DATE OF DISP - 04-04-2014
OFFENSE - 7399 PUBLIC ORDER CRIMES -MENACING

***** END OF RAPSHEET *****

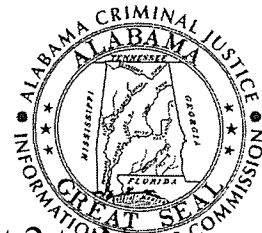


EXHIBIT 3 TO NEWSOME' S PETITION

"Victim' s [Bullock' s] Objection to
Expungement of Records" dated August 20,
2015 and stamped August 24, 2015.

AUG 24 2015

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

State of Alabama,

Plaintiff,

V.

Burton Wheeler Newsome,

Defendant.

CASE NO. CC-2015-000121.00

Victim's Objection to Petition for Expungement of Records

COMES NOW, John F. Bullock, Jr., victim in DC-2013-1434, and objects to Plaintiff's Petition for Expungement of Records pursuant to Ala. Code § 15-27-5.

Mr. Bullock strongly objects to the expungement of Burt Newsome's criminal record. Since the dismissal of the case against Newsome, Newsome has instituted unsuccessful legal action against Mr. Bullock in clear contravention of his agreement. The case against John Bullock, 01-CV-2015-900190.00 – Burt Newsome and Newsome Law, LLC, v. Clark Andrew Cooper, Balch & Bingham, LLP, Clairborne P. Seier, and John Franklin Bullock, Jr., was dismissed on a Rule 12(b) Motion to Dismiss by Judge Carol Smitherman. *See* Exhibit A. Nevertheless, Newsome has filed motion to reinstate and motion to compel discovery even after dismissal, Newsome's actions have caused and continue to cause Mr. Bullock to endure spurious and protracted proceedings and incur unnecessary legal fees. In short, Newsome's bad behavior against Mr. Bullock continues.

WHEREFORE, PREMISES CONSIDERED, John Bullock objects to Plaintiff's

Petition for Expungement of Records and requests that this Court deny the same at the hearing on said Petition.

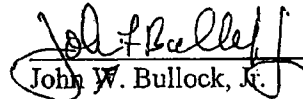
Respectfully submitted,

/s/ James E. Hill, Jr.
JAMES E. HILL (HIL005),
Attorney for John W. Bullock

OF COUNSEL:

HILL, WEISSKOPF & HILL, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000

I hereby certify that the above statements are to the best of my knowledge accurate and true.


John W. Bullock, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2015, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to all parties, and I hereby certify that, to the best of my knowledge and belief, there are no non-AlaFile participants to whom the foregoing is due to be mailed by way of the United States Postal Service.

A. Gregg Lowery
Assistant District Attorney

William R. Justice
ELLIS, HEAD, OWENS, & JUSTICE
P.O. Box 587
Columbiana, AL 35051

/s/ James E. Hill, Jr.
OF COUNSEL

EXHIBIT 4 TO NEWSOME'S PETITION

Newsome's Affidavit dated May 31, 2015, filed in the Circuit of Shelby County as "Exhibit L" to the "Response of Burt W. Newsome to Motion of John Bullock to Use Contents of Expunged File," which is Tab 10.

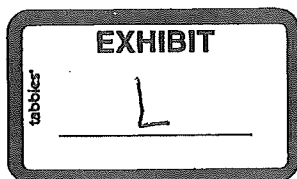
STATE OF ALABAMA

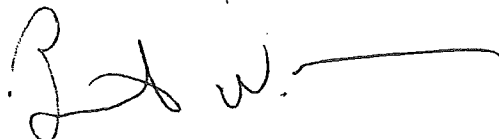
SHELBY COUNTY

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Burt Newsome, who being known to me and being first duly sworn and under oath, deposes and says as follows:

"My name is Burt W. Newsome and I am a resident of Shelby County, Alabama and over nineteen years of age. On August 31, 2015, I was present at the hearing on my Petition for Expungement before the retired Honorable Judge Dan Reeves. John Bullock and his attorney James Hill were also present at the hearing. Attorney Hill argued on behalf of his client that the expungement should not be granted because I had filed a civil action against Mr. Bullock in Jefferson County, Alabama and also that his client (Bullock) should be able to use the expunged documents in the pending civil case. The Assistant District Attorney who was at the hearing filed a pleading during the hearing that erroneously stated that menacing was not an expungable offense and was a violent crime. Judge Reeves denied my expungement petition initially based on the arguments set out in the Assistant District Attorney's motion. My attorney Bill Justice filed a Motion To Reconsider which pointed out that menacing was a misdemeanor and was an expungable offense under Alabama's new expungement statute, and that the charges against me had been dismissed. Judge Reeves granted the motion to reconsider and my expungement petition. I never pled guilty to any of the criminal charges filed against me by John Bullock as the charges were false.




Burt W. Newsome

STATE OF ALABAMA
COUNTY OF SHELBY

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Burt W. Newsome, whose name is signed to the foregoing affidavit, and who is known to me, acknowledged before me on this day, that being informed of the contents of this affidavit, he acknowledged its truthfulness and executed the same voluntarily on the day the same bears

date.

Sworn to and subscribed before me on this the 31st day of May, 2016.

Ashley Brooke Yeager
Notary Public

My commission expires: 11/6/19

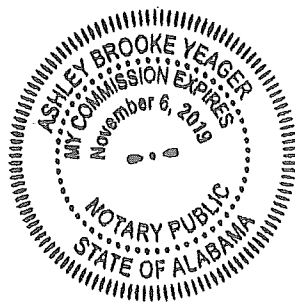


EXHIBIT 5 TO NEWSOME'S PETITION

"Order on Petition for Expungement of
Records" entered by Judge Reeves on
September 10, 2015.



IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA)	
)	
V.)	Case No.: CC-2015-000121.00
)	
NEWSOME BURTON WHEELER)	
Defendant.)	

ORDER ON PETITION FOR EXPUNGEMENT OF RECORDS

ORDER ON PETITION FOR EXPUNGEMENT OF RECORDS

This case comes before the Court on the motion of Burton Wheeler Newsome (or "Newsome") to Alter, Amend, or Vacate its order dated August 31, 2015, denying his Petition for Expungement of Records related to his arrest for the misdemeanor of menacing. UPON CONSIDERATION thereof, the motion be and hereby is GRANTED, and the order dated August 31, 2015, be and hereby is VACATED and Newsome's Petition for Expungement of Records is GRANTED.

Upon consideration of the motion and the matters of record in this case, the court hereby finds as follows:

1. "Menacing" is a "misdemeanor criminal offense," and records concerning a charge of menacing are subject to expungement under section 15-27-1 of the Alabama Code.
2. The District Attorney of Shelby County was served with Newsome's Petition for Expungement on April 28, 2015.
3. Neither the district attorney nor the victim filed any objection to the Petition for Expungement within 45 days as required by section 15-27-3(c) of the Alabama Code. Consequently, they "have waived the right to object."
4. The record in this case reflects that the misdemeanor charge against Newsome was dismissed with prejudice by the District Court of Shelby County, Alabama, on April 4, 2014.
5. Newsome has therefore satisfied the requirements for expungement under section 15-27-1 *et seq.*

BASED ON THE FOREGOING, it is therefore ORDERED by the court as follows:

1. The Petition for Expungement of Records filed by Burton Wheeler Newsome is GRANTED.
2. All "records" concerning the charge, arrest, and incarceration of Burton Wheeler Newsome, on the misdemeanor of menacing be and hereby are EXPUNGED.
3. The charge and arrest subject to this order are further identified as case number DC 2013-001434 in the District Court of Shelby County Alabama, which case

originated with a complaint signed by John Franklin Bullock, Jr., on January 14, 2013, alleging that Newsome committed the crime of “menacing” in violation of section 13A-6-23 of the Alabama Code.

4. The “records” subject to this order include but are not limited to “arrest records,” “booking or arrest photographs,” “index references such is the State Judicial Information Services or any other governmental index references for public records search,” and all “other data, whether in documentary or electronic form relating to the arrest or charge,” as provided in section 15-27-9 of the Alabama Code.

5. Pursuant to section 15-27-6 of the Alabama Code, the District Court of Shelby BE AND HEREBY IS ORDERED TO EXPUNGE any and all “records” of the charge, arrest and incarceration except as otherwise provided in sections 15-27-6 and 15-27-10 of the Alabama Code.

6. Pursuant to section 15-27-6 of the Alabama Code, “any other agency or official” having custody of any such records BE AND HEREBY IS ORDERED TO EXPUNGE any and all “records” of the charge, arrest and incarceration except as otherwise provided in sections 15-27-6 and 15-27-10 of the Alabama Code.

DONE this 10th day of September, 2015.

/s/ DAN REEVES

CIRCUIT JUDGE

EXHIBIT 6 TO NEWSOME'S PETITION

"Victim John Bullock's Motion to Use
Contents of Expunged File" stamped "filed"
on January 19, 2016.

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

State of Alabama,

Plaintiff,

v.

Burton Wheeler Newsome,

Defendant.

CASE NO. CC-2015-000121.00

Victim John Bullock's Motion to Use Contents of Expunged File

COMES NOW, John F. Bullock, Jr., and moves this Court to enter an order allowing him to divulge, make known, reveal, give access to, make public, use, or otherwise disclose the contents of the file expunged by this Court in CC-2015-000121.00 for the purpose of using same in an ongoing and related civil trial and as support therefore would show the following unto to the Court:

1. While the Petition for Expungement was pending in this Court, a civil case involving the Petitioner and Victim, John Bullock, was pending in the Jefferson County Circuit Court, 01-CV-2015-900190.00.
2. That civil case is currently still pending in the Jefferson County Circuit Court.
3. The facts of the case expunged by this Court, DC-2013-1434, bear directly upon and are the basis for Petitioner's claims in the Jefferson County civil case.
4. Under Ala. Code § 15-27-1, et seq., this Court has the authority to enter an order allowing an individual to divulge, make known, reveal, give access to, make public, use, or otherwise disclose the contents of the file expunged by this Court.

Circuit & District
Clerk
Shelby Co.

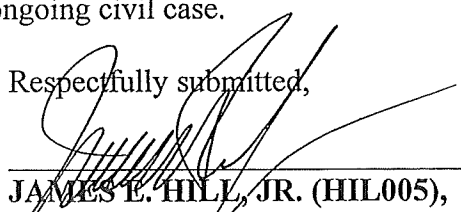
JAN 19 2016

RECEIVED AND FILED
MARY H. HARRIS

5. It would be impossible to fully and fairly adjudicate the matter pending before the Jefferson County Circuit Court without the ability to reference the facts, circumstances, documents, and other matters contained within the records expunged by this Court. The basis of Mr. Newsome's case against Mr. Bullock is an incident in front of the shopping center where Mr. Bullock's Dentist and Mr. Newsome's law practice are located. Those facts are that Mr. Bullock was outside the shopping center in his vehicle when Mr. Newsome approached his own vehicle parked next to Mr. Bullock's. Mr. Bullock exited his vehicle as Mr. Newsome was approaching his own, apparently blocking Mr. Newsome from entering his own vehicle. At that point Mr. Newsome produced a hand gun. Mr. Newsome pointed that handgun at Mr. Bullock. Mr. Newsome instructed Mr. Bullock at gunpoint to move out of Mr. Newsome's way and get back in Mr. Bullock's vehicle. Mr. Bullock complied with the instructions given. Mr. Newsome claims that this incident was staged and contrived to set up Mr. Newsome for criminal charges because it was similar to a prior incident wherein Mr. Newsome was threatened by a disgruntled party to one of his cases. Mr. Newsome also claims in his civil case that the release signed in the District Court case expunged by this Court was obtained by fraud and or misrepresentation. (See "Complaint" attached as Exhibit A, "Amended Complaint" attached as exhibit "B", "Defendant, John F. Bullock's, Answer to Plaintiffs' Complaint" attached as Exhibit "C", "Defendant, John F. Bullock's, Answer to Plaintiffs' Amended Complaint" attached as Exhibit "D", and "Counterclaim" attached as Exhibit "E").

WHEREFORE, John Bullock prays that this Court will enter an order allowing him and/or his agents to divulge, make known, reveal, give access to, make public, use, or otherwise disclose the contents of the file expunged by this Court in CC-2015-000121.00 for the purpose of using same in an ongoing civil case.

Respectfully submitted,



JAMES E. HILL, JR. (HIL005),
Attorney for John F. Bullock

OF COUNSEL:
HILL, HILL & GOSSETT, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2016, I served a copy of the foregoing to the following counsel and/or parties by electronic mail, by placing a copy of the same, properly addressed and postage prepaid, in the United States mail, and/or by using the Alafile system which will provide electronic notice to all counsel of record to the following counsel and/or parties of record:

A. Gregg Lowery
Assistant District Attorney

William R. Justice
ELLIS, HEAD, OWENS, & JUSTICE
P.O. Box 587
Columbiana, AL 35051



OF COUNSEL

EXHIBIT A



ELECTRONICALLY FILED
1/14/2015 4:54 PM
01-CV-2015-900190.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and)
NEWSOME LAW, LLC,)
Plaintiffs,)

v.)

CASE NO.: CV-2014-_____

CLARK ANDREW COOPER;)
BALCH & BINGHAM, LLP;)
JOHN W. BULLOCK, JR.;)
CLAIBORNE PORTER SEIER;)
Fictitious Defendants 1-4 being the true)
and correct names of the named Defendants;)
Fictitious Defendants 5-15 being those)
individuals and/or entities who conspired)
with any of the named Defendants in the)
commission of the wrongs alleged herein)
and whose true and correct identities are)
currently unknown but will be substituted)
upon discovery; Fictitious Defendants)
16-26 being those individuals and/or)
entities who participated in or otherwise)
committed any of the wrongs alleged)
herein and whose true and correct)
identities are currently unknown but will)
be substituted upon discovery;)
Defendants.)

COMPLAINT

The Plaintiff's, Burt W. Newsome and Newsome Law, LLC, as their complaint allege as follows:

PARTIES

1. The Plaintiff, Burt W. Newsome, (hereinafter "Newsome"), is an Alabama citizen, resident of Shelby County, Alabama, over the age of 19 years, and is engaged in the private practice of law in the State of Alabama.

2. The Plaintiff, Newsome Law, LLC, (hereinafter "Newsome Law"), is an Alabama limited liability company with its principal place of business in Shelby County, Alabama.

3. The Defendant, Clark Andrew Cooper, (hereinafter “Clark Cooper”) upon information and belief, is an Alabama citizen, a resident of Jefferson County, Alabama, over the age of nineteen years, and engaged in the private practice of law as a partner in Balch & Bingham, LLP.

4. The Defendant, Balch & Bingham, LLC, (hereinafter “Balch”) is an Alabama Registered Limited Liability Partnership, with its principal place of business in Jefferson County, Alabama.

5. The Defendant, John W. Bullock, Jr., (hereinafter “Bullock”), upon information and belief, is an Alabama citizen, a resident of St. Clair County, Alabama, and over the age of nineteen years.

6. The Defendant, Claiborne Porter Seier, (hereinafter “Claiborne Seier”), upon information and belief, is an Alabama citizen, a resident of Jefferson County, Alabama, and over the age of nineteen years.

7. Fictitious Defendants 1-4 are the true and correct names of the above-named Defendants and whose true and correct names are otherwise unknown and will be substituted upon discovery.

8. Fictitious Defendants 5-15 are those individuals and/or entities who conspired with any of the named Defendants in the commission of the wrongs alleged herein and whose true and correct identities are currently unknown but will be substituted upon discovery.

9. Fictitious Defendants 16-26 are those individuals and/or entities who participated in or otherwise committed any of the wrongs alleged herein and whose true and correct identities are currently unknown but will be substituted upon discovery.

FACTS

10. Beginning on or about June 9, 2010, in Aliant Bank v. Sharyn K. Lawson, 01-CV-2010-902033, Circuit Court of Jefferson County, Newsome represented Aliant Bank against Sharyn K. Lawson for breach of contract involving a note evidencing indebtedness to Aliant Bank.

11. On or about October 5, 2010, Newsome obtained a judgment in favor of Aliant Bank against Sharyn K. Lawson in the amount of \$189,930.08 more or less.

12. In and around December 2011 and January 2012, Newsome was attempting to depose Sharyn K. Lawson in an effort to discover post-judgment assets.

13. Upon information and belief, Sharyn K. Lawson was the wife of Alfred Wallace Seier (hereinafter "Alfred Seier").

14. On or about January 30, 2012, Alfred Seier went to the offices of Newsome Law in Shelby County, Alabama.

15. Alfred Seier waited in his vehicle outside the offices of Newsome Law for Newsome to exit the building.

16. When Newsome exited the building and approached his vehicle, Alfred Seier, whose vehicle was parked adjacent to Newsome's vehicle, exited his vehicle, walked towards Newsome, blocking Newsome from his vehicle, pointed a gun at Newsome and told him he would never "fuck" with his wife again.

17. Newsome was unarmed.

18. Newsome was in fear for his life and ran away to the back of the building.

19. Newsome entered the offices of Newsome Law through the back door, called law enforcement and stayed until they arrived.

20. On or about February 2, 2012, Newsome filed a criminal complaint against Alfred Seier for the offense of menacing, a violation of Ala. Code §13A-6-23 (1975, as amended).

21. Upon information and belief, Claiborne Seier was the brother of Alfred Seier.

22. Upon information and belief, Claiborne Seier is a lawyer engaged in the private practice of law in Jefferson County, Alabama.

23. After Alfred Seier was arrested on the criminal charges filed by Newsome, Claiborne Seier contacted Newsome and requested Newsome to drop the criminal charges.

24. During at least one conversation with Claiborne Seier, Newsome told Claiborne Seier that he [Newsome] carried a handgun, but was not carrying his handgun that day or Alfred Seier could have been shot.

25. Claiborne Seier told Newsome that Alfred Seier had a terminal illness and was not expected to live in an attempt to convince Newsome to drop the criminal charges.

26. Claiborne Seier called Newsome on at least two more occasions trying to pressure Newsome into dropping the charges.

27. Newsome refused to drop the criminal charges against Alfred Seier.

28. On or about May 8, 2012, in State of Alabama v. Alfred Wallace Seier, 58-DC-2012-000431, in the District Court of Shelby County, Alabama, Alfred Seier was convicted of menacing, a violation of Ala. Code §13A-6-23 (1975, as amended).

29. Alfred Seier was sentenced to a 30-day suspended sentence, placed on two years' probation, ordered to stay away from Newsome, Newsome's residence, and Newsome's place of business, and ordered to pay a fine of \$50.00, plus court costs and other court ordered monies.

30. Upon information and belief, on or about November 18, 2012, Alfred Seier passed away.

31. On or about December 19, 2012, Newsome was scheduled to appear in court for on a personal legal matter for a client.

32. Upon information and belief, Clark Cooper was aware of Newsome's scheduled court appearance on December 19, 2012.

33. Upon information and belief, Clark Cooper had discussed the personal legal matter and scheduled court appearance with Newsome's client.

34. On December 19, 2012, prior to Newsome's scheduled court appearance, Bullock parked outside the offices of Newsome Law in Shelby County, Alabama.

35. Upon information and belief, Bullock waited in his vehicle outside the offices of Newsome Law for Newsome to exit the building.

36. When Newsome exited the building and approached his vehicle, Bullock, whose vehicle was parked adjacent to Newsome's vehicle, exited his vehicle, blocking Newsome from his vehicle.

37. Bullock's conduct was substantially identical to the conduct of Alfred Seier during the incident that occurred on January 30, 2012.

38. Because of the previous incident involving Alfred Seier, Newsome was armed with his handgun.

39. Because of the substantial similarities with the Alfred Seier incident, Newsome produced his handgun and directed Bullock to move out of his way and to get back in his vehicle.

40. Bullock complied.

41. Newsome got into his vehicle without further incident and left for court.

42. Upon information and belief this incident was staged and contrived to set-up Newsome for possible criminal charges under circumstances substantially similar to those that resulted in Newsome's criminal charges against Alfred Seier.

43. On or about January 14, 2013, almost a month after the incident, Bullock filed a criminal complaint against Newsome for the offense of menacing, a violation of Ala. Code §13A-6-23 (1975, as amended).

44. On or about May 2, 2013, Newsome was stopped for a minor traffic violation.

45. During the stop, Newsome was arrested on the menacing warrant resulting from Bullock's criminal complaint.

46. During the foregoing events and particularly at the time of his arrest, Newsome had a lawyer-client relationship, professional business relationship, and a contractual relationship with Iberiabank Corp.

47. During the foregoing events and particularly at the time of his arrest, Newsome had a lawyer-client relationship, professional business relationship, and a contractual relationship with Renasant Bank.

48. During the foregoing events and particularly at the time of his arrest, Newsome had a lawyer-client relationship, professional business relationship, and a contractual relationship with Bryant Bank.

49. Upon information and belief, Clark Cooper was aware of Newsome's ongoing lawyer-client relationship, professional business relationship, representation of and contractual relationship with Iberiabank Corp, Renasant Bank, and Bryant Bank.

50. Upon information and belief, shortly after Newsome's arrest, Clark Cooper sent emails and/or other communications to officers and bank officials with Iberiabank Corp,

Renasant Bank, and Bryant Bank containing a copy of Newsome's mug shot, asking if they had seen Newsome's mug shot, and questioning the effect of Newsome's arrest on his license to practice law and intentionally casting Newsome and Newsome Law in a bad light.

51. Newsome was not convicted on the criminal charges, which were dismissed with prejudice on or about April 1, 2014.

52. Upon information and belief, shortly after Newsome's arrest, Clark Cooper improperly sent other emails and/or communications to officers and bank officials referencing specific cases in which Newsome was appearing as counsel for the bank and requesting work from Newsome's client knowing that the client was represented by Newsome in the matter.

COUNT I

MALICIOUS PROSECUTION

53. Plaintiffs re-allege the material allegations of paragraphs 1–52 as if fully set forth herein.

54. Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26, set-up and entrapped Plaintiff, Newsome, into engaging in the conduct occurring on or about December 19, 2012.

55. Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 instituted a prior judicial proceeding without probable cause and with malice, said judicial proceeding ended in favor of Plaintiff, Newsome, and as a proximate consequence of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT II
ABUSE OF PROCESS

56. Plaintiffs re-allege the material allegations of paragraphs 1-55 as if fully set forth herein.

57. Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 wrongfully used the judicial process and in so doing acted with malice and were motivated by an ulterior improper purpose or proper purpose accomplished through improper and/or wrongful conduct, and as a proximate consequence of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT III
FALSE IMPRISONMENT

58. Plaintiffs re-allege the material allegations of paragraphs 1-57 as if fully set forth herein.

59. Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 acted in bad faith without probable cause to believe Plaintiff, Newsome, had engaged in any criminal conduct, which resulted in Plaintiff Newsome’s unlawful detention wherein Plaintiff Newsome was wrongfully and unlawfully deprived of his personal liberty, and as a proximate consequence of the Defendants’ conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT IV
OUTRAGE/INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

60. Plaintiffs re-allege the material allegations of paragraphs 1-59 as if fully set forth herein.

61. By doing the foregoing, Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 intentionally engaged in conduct that was so outrageous, so extreme in degree as to go beyond all possible bounds of decency, as to be regarded as atrocious and utterly intolerable in a civilized society, and as a proximate consequence of the Defendants’ conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT V
CONSPIRACY

62. Plaintiffs re-allege the material allegations of paragraphs 1-61 as if fully set forth herein.

63. Fictitious Defendants 5-15 conspired with each other and/or with Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 to achieve an unlawful purpose or a lawful purpose by unlawful means to engage in malicious prosecution and/or abuse or process and/or false imprisonment and/or outrage and/or intentional infliction of emotional distress, and as a proximate consequence of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT VI
INTENTIONAL INTERFERENCE WITH A BUSINESS OR CONTRACTUAL
RELATIONSHIP

64. Plaintiffs re-allege the material allegations of paragraphs 1-52 as if fully set forth herein.

65. Plaintiffs had a valid and existing business and contractual relationship with Iberiabank Corp.

66. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 knew of the Plaintiffs' valid and existing business and contractual relationship with Ibertiabank Corp.

67. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 were strangers to the business and contractual relationship between the Plaintiffs and Iberiabank Corp.

68. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 separately and/or severally and/or collectively, intentionally and wrongfully interfered with the said business and contractual relations.

69. As approximate result of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, loss of future business, loss of business opportunity, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT VII
INTENTIONAL INTERFERENCE WITH A BUSINESS OR CONTRACTUAL
RELATIONSHIP

70. Plaintiffs re-allege the material allegations of paragraphs 1-52 as if fully set forth herein.

71. Plaintiffs had a valid and existing business and contractual relationship with Renasant Bank.

72. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 knew of the Plaintiffs' valid and existing business and contractual relationship with Renasant Bank.

73. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 were strangers to the business and contractual relationship between the Plaintiffs and Renasant Bank.

74. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 separately and/or collectively intentionally and wrongfully interfered with the said business and contractual relations.

75. As approximate result of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, loss of future business, loss of business opportunity, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT VIII
INTENTIONAL INTERFERENCE WITH A BUSINESS OR CONTRACTUAL
RELATIONSHIP

76. Plaintiffs re-allege the material allegations of paragraphs 1-52 as if fully set forth herein.

77. Plaintiffs had a valid and existing business and contractual relationship with Bryant Bank.

78. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 knew of the Plaintiffs' valid and existing business and contractual relationship with Bryant Bank.

79. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 were strangers to the business and contractual relationship between the Plaintiffs and Bryant Bank.

80. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 separately and/or collectively intentionally and wrongfully interfered with the said business and contractual relations.

81. As approximate result of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, loss of future business, loss of business opportunity, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT IX
DEFAMATION

82. Plaintiffs re-allege the material allegations of paragraphs 1-52 as if fully set forth herein.

83. By engaging in the above conduct, Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 separately or severally made a false and defamatory statement concerning the Plaintiff.

84. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 separately and/or severally made an unprivileged communication of that false and defamatory statement to a third party.

85. Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 separately and/or severally made the false and defamatory statements knowing they were false and defamatory at the time they were made or made them negligently without regard to their truth or falsity in an improper attempt to cast the Plaintiff in a bad light.

86. As approximate result of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, loss of future business, loss of business opportunity, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT X
CONSPIRACY

87. Plaintiffs re-allege the material allegations of paragraphs 1-52, 65-69, 71-75, 77-81, and 83-86 as if fully set forth herein.

88. Fictitious Defendants 5-15 conspired with each other and/or with Defendant Clark Cooper and/or Fictitious Defendants 1–4, and/or Fictitious Defendants 16-26 to intentionally

interfere with a business or contractual relation and/or engage in defamation and as a proximate consequence of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, loss of future business, loss of business opportunity, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants Clark Cooper and/or Fictitious Defendants 1–4 and/or Fictitious Defendants 5-15 and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

COUNT XI
VICARIOUS LIABILITY/RESPONDEAT SUPERIOR

89. Plaintiffs re-allege the material allegations of paragraphs 1-52, 65-69, 71-75, 77-81, and 83-86 as if fully set forth herein.

90. While engaging in the above conduct, Defendant Clark Cooper and/or Fictitious Defendants 1–4 and/or Fictitious Defendants 5-15 and/or Fictitious Defendants 16-26 separately or severally were acting in the line, course and scope of their authority and capacity as a partner and/or employee and/or agent of Defendant Balch and/or Fictitious Defendants 1-4 and, therefore, Defendant Balch and/or Fictitious Defendants 1-4 are vicariously liable for the acts committed and complained of herein.

91. As approximate result of the Defendants' conduct Plaintiffs have suffered damages to their character, good name, reputation, good will, loss of business, loss of business income, loss of future business, loss of business opportunity, emotional distress and mental anguish, and have otherwise been injured and damaged.

Wherefore, Plaintiffs demand judgment separately and severally against Defendants Clark Cooper and/or Balch and/or Fictitious Defendants 1-4 and/or Fictitious Defendants 5-15 and/or Fictitious Defendants 16-26 for compensatory and punitive damages in excess of the minimum jurisdictional limits of this Court and costs.

/s/Robert E. Lusk, Jr
ROBERT E. LUSK, JR. (LUS005)
Attorney for the Plaintiffs BURT W. NEWSOME
and NEWSOME LAW, LLC.

LUSK LAW FIRM, LLC
P. O. Box 1315
Fairhope, AL 36533
251-471-8017
251-478-9601 Fax
rlusk@lusklawfirmllc.com

PLAINTIFFS DEMAND A JURY ON ALL ISSUES SO TRIABLE.

To Clerk of the Court:

Plaintiffs request service of the Summons and Complaint upon each Defendant by United States certified mail, restricted delivery, return receipt requested, pursuant to A.R.Civ.P., Rule 4.1(c).

/s/Robert E. Lusk, Jr
ROBERT E. LUSK, JR. (LUS005)
Attorney for the Plaintiffs BURT W. NEWSOME
and NEWSOME LAW, LLC.

CLARK ANDREW COOPER
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

CLAIBORNE P. SEIER
3557 Al Seier Drive
Birmingham, AL 35226

BALCH & BINGHAM, LLP
C/O ALAN T. ROGERS
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

JOHN FRANKLIN BULLOCK, JR.
1917 Cogswell Avenue
Pell City, AL 35125

EXHIBIT B

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and)	
NEWSOME LAW, LLC,)	
)	
<i>Plaintiffs,</i>)	
vs.)	CASE NO. CV-2015-900190
)	
CLARK ANDREW COOPER, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

AMENDED COMPLAINT

The Plaintiffs, Burt W. Newsome and Newsome Law, LLC, file this, their Amended Complaint, and allege as follows:

92. Plaintiffs hereby re-allege and adopt the material allegations of paragraphs 1 – 91 of their Complaint as if fully set out herein.

93. As part of the agreement between Newsome and the State to dismiss the menacing charge against him, Newsome signed a release agreement releasing various parties from civil liability for their actions in connection with his criminal charges. Newsome was unaware at the time of the conspiracy between the defendants in this case to cause charges to be brought against him. Plaintiff was led to believe by Bullock that Bullock acted alone and that no one else was involved with bringing charges against Newsome. Based on these false representations, Newsome signed the release.

COUNT XII
FRAUD

94. Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1-4, and/or Fictitious Defendants 5-15, and/or Fictitious Defendants 16-26, made or caused to be made false representations to Newsome regarding the true nature of his criminal

charges. Further, one or all or some combination of those named defendants and Fictitious Defendants made false representations to the prosecutor regarding the reason the filing the criminal complaint against plaintiff and/or fraudulently concealed material facts which could not have been known or discovered by Plaintiffs through reasonable diligent efforts. Plaintiffs relied on those false representations to their detriment.

95. As a result of said fraud, Newsome signed the release. Said release was obtained by fraud. Newsome was unaware of the conspiracy to bring false criminal charges against him at the time he signed the release.

96. Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock, and/or Claiborne Seier, and/or Fictitious Defendants 5-15, and/or Fictitious Defendants 16-26, for fraud, and seeks an order from this Court declaring the release void to the extent that it was obtained by fraud, and costs.

COUNT XIII **MISREPRESENTATION**

97. Defendants John Bullock and/or Claiborne Seier and/or Fictitious Defendants 1-4, and/or Fictitious Defendants 5-15, and/or Fictitious Defendants 16-26, made or caused to be made false representations to Newsome regarding the true nature of his criminal charges. Further, one or all or some combination of those named defendants and Fictitious Defendants made false representations to the prosecutor regarding the reason the filing the criminal complaint against plaintiff and/or misrepresented concealed material facts which could not have been known or discovered by Plaintiffs through reasonable diligent efforts. Plaintiffs relied on those misrepresentations to their detriment.

98. As a result of said misrepresentations, Newsome signed the release. Said release

was obtained by fraudulent misrepresentation. Newsome was unaware of the conspiracy to bring false criminal charges against him at the time he signed the release.

99. Wherefore, Plaintiffs demand judgment separately and severally against Defendants John Bullock, and/or Claiborne Seier, and/or Fictitious Defendants 5-15, and/or Fictitious Defendants 16-26, for misrepresentation, and seeks an order from this Court declaring the release void to the extent that it was obtained by fraud, and costs.

/s/ Robert E. Lusk, Jr.
ROBERT E. LUSK, JR. (LUS005)
Attorney For Plaintiffs BURT W. NEWSOME
and NEWSOME LAW, LLC.

LUSK LAW FIRM, LLC
P. O. Box 1315
Fairhope, AL 36533
251-471-8017
251-478-9601 Fax
rlusk@lusklawfirmllc.com

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE

Certificate of Service

I hereby certify that I have filed electronically and served a copy of the foregoing upon the below listed parties to this action by placing a copy of same in the United States Mail, postage prepaid and properly addressed, this the _____ day of March, 2015.

S. Allen Baker
Amelia K. Steindorff
Balch & Bingham
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203

James E. Hill, Jr.
Hill, Weisskopf & Hill
Moody Professional Bldg
2603 Moody Parkway
Suite 200
Moody, Alabama 35004

Robert Ronnlund
P.O. Box 380548
Birmingham, AL 35238

/s/ Robert E. Lusk, Jr. _____
ROBERT E. LUSK, JR. (LUS005)
Attorney For Plaintiffs

EXHIBIT C



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and
NEWSOME LAW, LLC,

Plaintiffs,

v.

JOHN F. BULLOCK, JR., et al.

Defendant.

CASE NO. CV-2015-900190.00

DEFENDANT, JOHN F. BULLOCK'S, ANSWER TO PLAINTIFFS'
COMPLAINT

COMES NOW Defendant, John F. Bullock, Jr., and states as his answer to Plaintiff's Complaint the following:

1. Defendant has insufficient knowledge regarding the allegations made in paragraphs 1 - 4 and must therefore deny the same and demand strict proof thereof.
2. Defendant is named John F. Bullock, Jr., Defendant admits the other allegations contained in paragraph 5.
3. Defendant has insufficient knowledge regarding the allegations made in paragraphs 6 - 33 and must therefore deny the same and demand strict proof thereof.
4. Defendant denies the allegations contained in paragraph 34 and demands strict proof thereof. Defendant parked outside the Offices of Narrows Family Dentistry, which is located in the same shopping center as Newsome Law, LLC.

5. Defendant denies the allegations contained in paragraph 35 and demands strict proof thereof. Defendant was waiting for his dentist appointment at Narrows Family Dentistry with Dr. Lora Gaxiola, DMD.
6. Defendant denies the allegations contained in paragraphs 36 and 37 and demands strict proof thereof.
7. Defendant has insufficient knowledge regarding the Plaintiff's motivations for carrying a firearm made in paragraph 38 and must therefore deny the same and demand strict proof thereof.
8. Defendant admits that Plaintiff produced a handgun, that Plaintiff pointed said handgun at Defendant, and that Plaintiff forced Defendant at gunpoint to move out of Plaintiff's way and get back in Defendant's vehicle. Defendant has insufficient knowledge regarding the Plaintiffs' motivation for brandishing a firearm at him made in paragraph 39 and must therefore deny the same and demand strict proof thereof.
9. Defendant admits that he complied with the instructions Plaintiff gave him at gunpoint as alleged in Paragraph 40.
10. Defendant admits Plaintiff got into his vehicle. Defendant denies any and all other allegations contained in Paragraph 41 and demands strict proof thereof.
11. Defendant denies the allegations contained in paragraph 42 and demands strict proof thereof.
12. Defendant admits the allegations contained in paragraph 43.
13. Defendant has insufficient knowledge regarding the allegations made in paragraphs 44 - 50 and must therefore deny the same and demand strict proof

thereof.

14. Defendant admits that the criminal charges against Plaintiff were dismissed and denies each and every other allegation contained in paragraph 51.
15. Defendant has insufficient knowledge regarding the allegations made in paragraph 52 and must therefore deny the same and demand strict proof thereof.
16. Defendant denies the allegations contained in paragraphs 53 – 63 demands strict proof thereof.
17. Defendant has insufficient knowledge regarding the allegations made in paragraphs 64 - 91 and must therefore deny the same and demand strict proof thereof.
- 18.

Affirmative Defenses

1. Plaintiffs' complaint, and each and every count thereof, has failed to state a claim upon which relief can be granted.
2. The Defendant denies the material allegations of the Complaint and demands strict proof thereof.
3. The Defendant affirmatively pleads that the Plaintiffs are not entitled to the relief requested in the Complaint and demand strict proof thereof.
4. Defendant affirmatively pleads that the Plaintiffs are barred or limited by release and/or waiver.
5. Defendant affirmatively pleads that the Plaintiffs are barred or limited by the doctrine of unclean hands.
6. Defendant affirmatively pleads improper venue.

7. Defendant affirmatively pleads that Plaintiff was not injured to the nature and extent claimed and contest damages.
8. Defendant denies that it has been guilty of any conduct which entitles Plaintiff to recover punitive damages.
9. Defendant affirmatively pleads that the Complaint has failed to state a claim upon which punitive damages may be awarded.
10. Defendant affirmatively pleads that any award of punitive damages to Plaintiff in this case would violate of the constitutional safeguards provided to the Defendant under the Constitution of the State of Alabama and the Constitution of the United States.
11. Defendant affirmatively pleads that any award of punitive damages to Plaintiff in this case would violate the constitutional safeguards provided to the Defendant under the Due process clause of the Fourteenth Amendment to the Constitution of the United States in that punitive damages are vague and are not rationally related to legitimate governmental interests.
12. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate Article I, Section 6 of the Constitution of the State of Alabama which provides that no person shall be deprived of live, liberty, or property except by due process of law, in that punitive damages are vague and are not rationally related to legitimate governmental interests.
13. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate the procedural safeguards provided to Defendant under the Sixth Amendment to the Constitution of the United States in that punitive damages are

penal in nature and consequently, Defendant is entitled to the same procedural safeguards accorded to criminal defendants.

14. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate the self-incrimination clause of the Fifth Amendment to the Constitution of the United States of America because imposing against the Defendant punitive damages, which are penal in nature, yet compelling the Defendant to disclose potentially incriminating documents and evidence violates same.

15. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate Article I, Section 6 of the Constitution of the State of Alabama because imposing against the Defendant punitive damages, which are penal in nature, yet compelling the Defendant to disclose potentially incriminating documents and evidence violates same.

16. Defendant affirmative pleads that Plaintiff's claim of punitive damages violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States, on the following grounds:

- a. It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- b. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant,

which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

- c. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- d. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- e. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon defendant's rights under the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

17. Defendant affirmative pleads that Plaintiff's claim of punitive damages violates the due process clause of Article I, Section 6 of the Constitution of the State of Alabama, on the following grounds:

- a. It is a violation of the due process clause to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

- b. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant;
 - c. The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;
 - d. The procedures pursuant to which punitive damages are awarded fail to provide specific standard for the amount of the award of punitive damages and;
 - e. The award of punitive damages in this case would constitute a deprivation of property without due process of law.
18. The award of punitive or extra-contractual damages on the Defendant on the basis of vicarious liability for the conduct of others, violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.
19. The award of punitive damages to the Plaintiff in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United State Constitution.
20. Defendant affirmatively pleads that under the facts of this case, any actions for which it is charges are no sufficiently reprehensible to justify significant sanctions in addition to compensatory damages.
21. Defendant affirmatively pleads that § 6-11-20(a) of the Alabama Code is unconstitutional in that this statutory provision provides no standards to distinguish between the degree of conduct warranting the imposition of small punitive damage awards versus conduct warranting the imposition of larger punitive damage awards. BMW v. Gore, 517 U.S. 559 (1996).

22. Defendant affirmatively pleads that the lack of standards under Alabama law for the award of punitive damages violates the United States Constitution because under Alabama law no guidance is provided to a jury to determine what constitutes a reasonable relationship between the harm suffered and the amount of punitive damages which may be awarded. Moreover, Alabama law fails to provide any legal standards to safeguard an individual's or entity's constitutional rights and to prevent the unjust or arbitrary imposition of punitive damages by reasonably and rationally constraining the unlimited, unbridled discretion of the jury to consider and award punitive damages, BMW v. Fore, 517 U.S. 559 (1996).
23. Defendant affirmatively pleads that the imposition of punitive damages under current Alabama law violates the United States Constitution and Constitution of the State of Alabama because there are no legislative enactments or common law limitations to provide constraining legal standards to guide juries in their deliberations with regard to the award pf punitive damages.
24. Defendant affirmatively pleads the protection afforded to it pursuant to § 6-11-20 of the Alabama Code.
25. Defendant affirmatively pleads the protection afforded to it pursuant to ∞ 6-11-21 of the Alabama Code.
26. Defendant affirmatively pleads that any claim by Plaintiff for punitive damages in excess of the statutory cap allowed under § 6-11-21 of the Alabama Code is barred.
27. Defendant affirmatively pleads that the Complaint fails to state a claim for punitive damages under §§ 611-20 to 6-11-30 of the Alabama Code and is barred.

28. Defendant affirmatively pleads the applicable statute of limitations.

29. Defendant affirmative pleads that there is no causal connection or relationship between any alleged negligence or wrongdoing on the part of the Defendant and Plaintiff's alleged injuries or damages.

DEFENDANT RESERVES THE RIGHT TO AMEND AND SUPPLEMENT THIS ANSWER AND PLEAD OTHER AND ADDITIONAL DEFENSES, INCLUDING AFFIRMATIVE DEFENSES, WHICH MIGHT BE APPLICABLE AND PROPER DURING OR AFTER DISCOVERY IN THIS CASE.

WHEREFORE, PREMISES CONSIDERED, the Defendant, John F. Bullock, Jr., having answered the Complaint, prays that this Court will enter a judgment in favor of Defendant, that the Complaint be dismissed with prejudice, and that Defendant have such other, further, and different relief to which it may be entitled.

Respectfully submitted,

/s/ James E. Hill, Jr.

JAMES E. HILL, JR. (HIL005),
Attorney for Defendant, John F. Bullock, Jr.

OF COUNSEL:

**HILL, HILL & GOSSETT, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on each of the parties listed below *via* Alafile Electronic Filing System, this the 14th day of January, 2016.

Robert E. Lusk, Jr.
P.O. Box 1315
Fairhope, AL 36533

Clark Andres Cooper
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Blach & Bingham, LLP
C/O Alan T. Rogers
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Clairborne P. Seier
2557 AL Seier Drive
Birmingham, AL 35226

/s/ James E. Hill, Jr.
OF COUNSEL

EXHIBIT D

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and
NEWSOME LAW, LLC,

Plaintiffs,

v.

JOHN F. BULLOCK, JR., et al.

Defendant.

CASE NO. CV-2015-900190.00

DEFENDANT, JOHN F. BULLOCK'S, ANSWER TO PLAINTIFFS' AMENDED
COMPLAINT

COMES NOW Defendant, John F. Bullock, Jr., and states as his answer to
Plaintiffs' Complaint the following:

1. Defendant denies the allegations contained in paragraphs 92 - 99 and demands
strict proof thereof.

Affirmative Defenses

1. Plaintiffs' Amended Complaint, and each and every count thereof, has failed to
state a claim upon which relief can be granted.
2. The Defendant denies the material allegations of the Amended Complaint and
demands strict proof thereof.
3. The Defendant affirmatively pleads that the Plaintiffs are not entitled to the relief
requested in the Complaint and demand strict proof thereof.
4. Defendant affirmatively pleads that the Plaintiffs are barred or limited by release
and/or waiver.

5. Defendant affirmatively pleads that the Plaintiffs are barred or limited by the doctrine of unclean hands.
6. Defendant affirmatively pleads that Plaintiffs have failed to plead the circumstances allegedly constituting fraud, mistake, and misrepresentation with particularity.
7. Defendant affirmatively pleads improper venue.
8. Defendant affirmatively pleads that Plaintiff was not injured to the nature and extent claimed and contest damages.
9. Defendant denies that it has been guilty of any conduct which entitles Plaintiff to recover punitive damages.
10. Defendant affirmatively pleads that the Complaint has failed to state a claim upon which punitive damages may be awarded.
11. Defendant affirmatively pleads that any award of punitive damages to Plaintiff in this case would violate of the constitutional safeguards provided to the Defendant under the Constitution of the State of Alabama and the Constitution of the United States.
12. Defendant affirmatively pleads that any award of punitive damages to Plaintiff in this case would violate the constitutional safeguards provided to the Defendant under the Due process clause of the Fourteenth Amendment to the Constitution of the United States in that punitive damages are vague and are not rationally related to legitimate governmental interests.
13. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate Article I, Section 6 of the Constitution of the State of Alabama

which provides that no person shall be deprived of live, liberty, or property except by due process of law, in that punitive damages are vague and are not rationally related to legitimate governmental interests.

14. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate the procedural safeguards provided to Defendant under the Sixth Amendment to the Constitution of the United States in that punitive damages are penal in nature and consequently, Defendant is entitled to the same procedural safeguards accorded to criminal defendants.

15. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate the self-incrimination clause of the Fifth Amendment to the Constitution of the United States of America because imposing against the Defendant punitive damages, which are penal in nature, yet compelling the Defendant to disclose potentially incriminating documents and evidence violates same.

16. Defendant affirmatively pleads that any award of punitive damages to Plaintiff would violate Article I, Section 6 of the Constitution of the State of Alabama because imposing against the Defendant punitive damages, which are penal in nature, yet compelling the Defendant to disclose potentially incriminating documents and evidence violates same.

17. Defendant affirmative pleads that Plaintiff's claim of punitive damages violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States, on the following grounds:

a. It is a violation of the Due Process and Equal Protection Clauses of the

Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff satisfying a burden of proof which is less than the “beyond a reasonable doubt” burden of proof required in criminal cases;

- b. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- c. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- d. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- e. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon defendant’s rights under the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

18. Defendant affirmative pleads that Plaintiff's claim of punitive damages violates the due process clause of Article I, Section 6 of the Constitution of the State of Alabama, on the following grounds:
- a. It is a violation of the due process clause to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
 - b. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant;
 - c. The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;
 - d. The procedures pursuant to which punitive damages are awarded fail to provide specific standard for the amount of the award of punitive damages and;
 - e. The award of punitive damages in this case would constitute a deprivation of property without due process of law.
19. The award of punitive or extra-contractual damages on the Defendant on the basis of vicarious liability for the conduct of others, violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.
20. The award of punitive damages to the Plaintiff in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United State Constitution.
21. Defendant affirmatively pleads that under the facts of this case, any actions for

which it is charges are no sufficiently reprehensible to justify significant sanctions in addition to compensatory damages.

22. Defendant affirmatively pleads that § 6-11-20(a) of the Alabama Code is unconstitutional in that this statutory provision provides no standards to distinguish between the degree of conduct warranting the imposition of small punitive damage awards versus conduct warranting the imposition of larger punitive damage awards. BMW v. Gore, 517 U.S. 559 (1996).
23. Defendant affirmatively pleads that the lack of standards under Alabama law for the award of punitive damages violates the United States Constitution because under Alabama law no guidance is provided to a jury to determine what constitutes a reasonable relationship between the harm suffered and the amount of punitive damages which may be awarded. Moreover, Alabama law fails to provide any legal standards to safeguard an individual's or entity's constitutional rights and to prevent the unjust or arbitrary imposition of punitive damages by reasonably and rationally constraining the unlimited, unbridled discretion of the jury to consider and award punitive damages, BMW v. Fore, 517 U.S. 559 (1996).
24. Defendant affirmatively pleads that the imposition of punitive damages under current Alabama law violates the United States Constitution and Constitution of the State of Alabama because there are no legislative enactments or common law limitations to provide constraining legal standards to guide juries in their deliberations with regard to the award pf punitive damages.
25. Defendant affirmatively pleads the protection afforded to it pursuant to § 6-11-20 of the Alabama Code.

26. Defendant affirmatively pleads the protection afforded to it pursuant to ∞ 6-11-21 of the Alabama Code.

27. Defendant affirmatively pleads that any claim by Plaintiff for punitive damages in excess of the statutory cap allowed under § 6-11-21 of the Alabama Code is barred.

28. Defendant affirmatively pleads that the Complaint fails to state a claim for punitive damages under §§ 6-11-20 to 6-11-30 of the Alabama Code and is barred.

29. Defendant affirmatively pleads the applicable statute of limitations.

30. Defendant affirmative pleads that there is no causal connection or relationship between any alleged negligence or wrongdoing on the part of the Defendant and Plaintiff's alleged injuries or damages.

DEFENDANT RESERVES THE RIGHT TO AMEND AND SUPPLEMENT THIS ANSWER AND PLEAD OTHER AND ADDITIONAL DEFENSES, INCLUDING AFFIRMATIVE DEFENSES, WHICH MIGHT BE APPLICABLE AND PROPER DURING OR AFTER DISCOVERY IN THIS CASE.

WHEREFORE, PREMISES CONSIDERED, the Defendant, John F. Bullock, Jr., having answered the Amended Complaint, prays that this Court will enter a judgment in favor of Defendant, that the Amended Complaint be dismissed with prejudice, and that Defendant have such other, further, and different relief to which it may be entitled.

Respectfully submitted,

/s/ James E. Hill, Jr.

JAMES E. HILL, JR. (HIL005),
Attorney for Defendant, John F. Bullock, Jr.

OF COUNSEL:

**HILL, HILL & GOSSETT, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on each of the parties listed below *via* Alafile Electronic Filing System, this the 14th day of January, 2016.

Robert E. Lusk, Jr.
P.O. Box 1315
Fairhope, AL 36533

Clark Andres Cooper
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Blach & Bingham, LLP
C/O Alan T. Rogers
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Clairborne P. Seier
2557 AL Seier Drive
Birmingham, AL 35226

/s/ James E. Hill, Jr.
OF COUNSEL

EXHIBIT E



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and
NEWSOME LAW, LLC,

Plaintiffs and Counter-Defendants,

v.

JOHN F. BULLOCK, JR., et al.

Defendant and Counter-Plaintiffs.

CASE NO. CV-2015-900190.00

COUNTERCLAIM

Comes Now Defendant and Counter-Plaintiff, John. F. Bullock and states the following as his Counterclaim against Plaintiffs and Counter-Defendants, Burt W. Newsome and Newsome Law, LLC.

PARTIES

1. The Counter-Plaintiff, John F. Bullock, Jr., is an Alabama citizen, resident of St. Clair County, Alabama, and over the age of nineteen (19) years.
2. The Counter-Defendant, Burt W. Newsome, upon information and belief, is an Alabama citizen, resident of Shelby County, Alabama and over the age of nineteen (19) years.
3. The Counter-Defendant, Newsome Law, LLC, upon information and belief, is an Alabama limited liability company with its principal place of business in Shelby County, Alabama.

FACTS

4. Counter-Plaintiff hereby adopts, re-alleges, and incorporates paragraphs 1 – 3 above as if fully set forth herein.

5. On or about December 19, 2012, Counter-Plaintiff, John F. Bullock, Jr., at or about 8:00 a.m. arrived for a scheduled dental appointment at Narrows Family Dentistry.
6. According to his complaint, Counter-Defendant, Burt Newsome, was on his way to a scheduled court appearance when he saw, Counter-Plaintiff, John F. Bullock, exiting his vehicle.
7. At that time Mr. Newsome produced a handgun and directed it toward Mr. Bullock, a stranger to Mr. Newsome.
8. Mr. Newsome ordered Mr. Bullock to move out of his way and get back into his vehicle.
9. Under threat of deadly force, Mr. Bullock complied.

COUNT I

ASSAULT

10. Counter-Plaintiff hereby adopts, re-alleges, and incorporates paragraphs 1 – 9 above as if fully set forth herein.
11. Counter-Defendant threatened to touch or harm Mr. Bullock, made that threat in an angry or rude manner, and/or had the apparent ability to carry out his threat against Mr. Bullock.
12. Under the circumstances, Mr. Bullock had a well-founded fear that the Counter-Defendant would immediately carry out the threat.

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff demands a judgment against Counter-Defendants for compensatory, punitive damages, costs, interests, and all other lawful damages in an amount to be determined by the Court.

COUNT II

FALSE IMPRISONMENT

13. Counter-Plaintiff hereby adopts, re-alleges, and incorporates paragraphs 1 – 12 above as if fully set forth herein.

14. Counter-Defendant unlawfully detained Mr. Bullock for a period of time.

15. This unlawful detention deprived Mr. Bullock of his personal liberty.

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff demands a judgment against Counter-Defendants for compensatory, punitive damages, costs, interests, and all other lawful damages in an amount to be determined by the Court.

COUNT III

OUTRAGE/ INTENTIONAL INFLECTION

OF EMOTIONAL ABUSE OR DISTRESS

16. Counter-Plaintiff hereby adopts, re-alleges, and incorporates paragraphs 1 – 15 above as if fully set forth herein.

17. Counter-Defendants, Burt W. Newsome and Newsome Law, LLC intentionally engaged in conduct that was outrageous, extreme, deceitful, and uncivilized and as a proximate consequent of this conduct, Counter-Plaintiff has suffered damage to his character, good name, reputation, good will, emotional distress and mental anguish and have otherwise been injured and damaged.

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff demands judgment against both the named and fictitiously named party Counter-Defendant, jointly and severally, in an amount to be assessed by a jury for loss of earnings and compensatory, punitive, and mental anguish damages as well as all other lawful damages, plus the interest and cost of this proceeding.

COUNT IV

ALABAMA LITIGATION ACCOUNTABILITY ACT

18. Counter-Plaintiff hereby adopts, re-alleges, and incorporates paragraphs 1 – 17 above as if fully set forth herein.
19. Code of Alabama, 1975, § 12-19-270 et seq., provides for the recovery of counsel fees and costs by a prevailing party who has to defend or respond to any claim, defense or appeal that is interposed without substantial justification.
20. The Counter-Defendants, Newsome and Newsome Law, LLC, filed their Complaint and Amended Complaint against Counter-Plaintiff on or about the 14th day of January, 2015, and 11th day of March, 2015, respectively, which raised the claims of malicious prosecution, abuse of process, false imprisonment, Outrage/intentional infliction of emotional distress, conspiracy, fraud, and misrepresentation against Counter-Plaintiff.
21. Said claims were interposed without substantial justification, and have caused and will cause the Counter-Plaintiff to incur counsel fees and costs.

WHEREFORE, PREMISES CONSIDERED, the Counter-Plaintiff prays the Court to retain jurisdiction over this issue upon final resolution of the case in Counter-Plaintiff's favor and set a hearing to award the Counter-Plaintiff counsel fees and costs.

COUNTER-PLAINTIFF RESERVES THE RIGHT TO AMEND AND SUPPLEMENT THIS COUNTERCLAIM AND PLEAD OTHER AND ADDITIONAL CLAIMS WHICH MIGHT BE APPLICABLE AND PROPER DURING OR AFTER DISCOVERY IN THIS CASE.

Respectfully submitted,

/s/ James E. Hill, Jr.
 JAMES E. HILL, JR. (HIL005),
 Attorney for Defendant, John F. Bullock, Jr.

/s/ Joel P. Watson

JOEL P. WATSON (WAT098)

Attorney for Defendant, John F. Bullock, Jr.

OF COUNSEL:

HILL, HILL & GOSSETT, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on each of the parties listed below *via* Alafile Electronic Filing System, this the 14th day of January, 2016.

Robert E. Lusk, Jr.
P.O. Box 1315
Fairhope, AL 36533

Clark Andres Cooper
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Blach & Bingham, LLP
C/O Alan T. Rogers
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Clairborne P. Seier
2557 AL Seier Drive
Birmingham, AL 35226

/s/ James E. Hill, Jr.

OF COUNSEL

EXHIBIT 7 TO NEWSOME'S PETITION

Newsome's "Opposition to Bullock's Motion to Use Contents of Expunged File" delivered to Judge Reeves' office on January 25, 2016.

STATE OF ALABAMA
COUNTY OF SHELBY

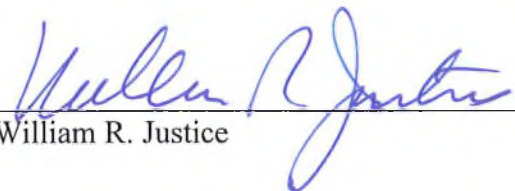
AFFIDAVIT

Before me, the undersigned authority, personally appeared William R. Justice, who being known to me and being by me first duly sworn, deposed and said as follows:

My name is William R. Justice. I am a practicing attorney with the law firm Ellis, Head, Owens & Justice in Columbiana, Shelby County, Alabama. At all time pertinent to the matters covered by this Affidavit, I was representing Burton Wheeler Newsome in an expungement proceeding related to Case No. CC 2015-000121 in the Circuit Court of Shelby County, Alabama.

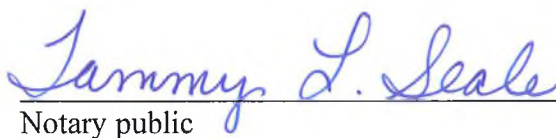
On January 25, 2016, I appeared in the Shelby County Circuit Clerk's Office with a document entitled Opposition to Bullock's Motion to Use Contents of Expunged File consisting of 5 pages and 24 pages of exhibits, a true and correct copy of which is attached to this affidavit. I attempted to file this document in Case No. CC 2015-000121 and was told by Deputy Clerk Jill Smitherman that nothing, including my document, could be filed in that case because it had been expunged by order of Judge Reeves, Circuit Judge of Shelby County, Alabama. She told me I could leave a copy with Judge Reeves. I went to Judge Reeves' office but it was locked, the lights were out, and no one answered my knock. I left a copy of the attached document on the floor at his door.

This the 10th day of June, 2016.



William R. Justice

Sworn to and subscribed before me
this 10th day of June, 2016.



Notary public

My commission expires: 09-09-2019

SEAL



In *Ein v. Commonwealth*, 246 Va. 396, 436 S.E.2d 610 (1993), the court rejected an argument similar to Bullock's; that the complaining party in the expunged criminal case needed the expunged file to defend a civil suit brought by the former defendant.

The defendant in *Ein* was arrested for sexual battery on his daughter based on allegations made by Barry and Lewis. After he was acquitted, he filed suit "against Barry and Lewis, alleging malicious prosecution, intentional infliction of emotional distress, and conspiracy" (246 Va. at 398, 436 S.E.2d at 611). While the civil suit was pending, he also filed an action to expunge the records of his arrest and the expungement was granted.

Barry and Lewis – who had not been notified of the expungement proceeding – "filed motions for disclosure of the expunged records, claiming that the records were 'germane and of the highest importance,' to them in their defense of the civil action" (246 Va. at 398, 436 S.E.2d at 611). The trial court granted the motions, but the Supreme Court of Virginia reversed, holding, "The trial court did not have jurisdiction to vacate the expungement order" (246 Va. at 401, 436 S.E.2d at 613).

The only material difference between this case and *Ein* is that Bullock was notified of the expungement proceeding, and he objected to the expungement. He now seeks to relitigate the expungement. The court has no jurisdiction to entertain his motion because it was filed more than 30 days after the order of expungement.

2. Second, even if the court has jurisdiction, the issues Bullock attempts to raise are barred by res judicata and collateral estoppel.

"The elements of res judicata are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same

cause of action presented in both actions.” *Greene v. Jefferson County Comm’n*, 13 So. 3d 901, 910 (Ala. 2008) (internal quotations omitted). “The doctrines of collateral estoppel and res judicata are applicable to criminal cases as well as civil cases.” *Parker v. State*, 516 So.2d 859 (Ala. Crim. App. 1987).

The expungement order is “a prior judgment on the merits,” and this Court is “a court of competent jurisdiction.” Bullock personally appeared in the expungement case through his present attorney, James E. Hill, and he filed an “Objection to Petition for Expungement,” Exhibit 1, and a lengthy response to Newsome’s post-judgment motion. Exhibit 2. Without regard to whether Bullock was technically a party to the case, he participated in the case and presented his arguments through his attorney. This is sufficient to establish “a substantial identity of the parties.”

In *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Commission*, 401 So. 2d 764 (Ala. 1981), the court held,

Judgments can bind persons not party (or privy) to the litigation in question where the nonparties’ interests were represented adequately by a party in the original suit. *Southwest Airlines Co. v. Texas International Airlines*, 546 F.2d 84, 94-95 (5th Cir. 1977). A person may be bound by a judgment even though not a party to a suit if one of the parties to the suit is so closely aligned with his interests as to be his virtual representative. *Aerojet-General Corporation v. Askew*, 511 F.2d 710, 719 (5th Cir. 1975). Moreover, if a party has “a sufficient ‘laboring oar’ in the conduct” of the litigation, then the principle of res judicata can be actuated. *Montana v. U. S.*, 440 U.S. 147, 155, 99 S. Ct. 970, 974, 59 L.Ed.2d 210 (1979).

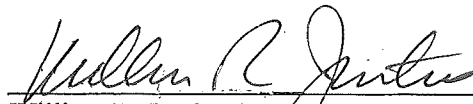
Bullock participation in the expungement case through his attorney establishes the third element of res judicata.

Finally, Bullock’s Motion attempts to present “the same cause of action [that was presented]” in the expungement proceeding; namely, whether the records from Newsome’s

criminal file may be used, or whether they should be expunged. “Res judicata applies not only to the *exact legal theories* advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts.” *Greene v. Jefferson County Comm’n*, 13 So. 3d 901, 913 (Ala. 2008). Clearly, the issues raised by Bullock’s Motion “aris[e] out of the same nucleus of operative facts” as the expungement proceeding. Consequently, *res judicata* prevents Bullock from relitigating the issue of whether he may “divulge, make known, reveal, give access to, make public, use, or otherwise disclose the contents of the file expunged by this Court.”

WHEREFORE, “John Bullock’s Motion to Use the Contents of Expunged File” is due to be DENIED.

This the 25th day of January, 2016.



William R. Justice (JUS001)
Attorney for Defendant

ELLIS, HEAD, OWENS & JUSTICE
P.O. Box 587
Columbiana, AL 35051
phone: (205)669-6783
fax: (205)669-4932
email: wjustice@wefhlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have on this 25th day of January, 2016, filed the foregoing with the Clerk of the Court using the Alabama Judicial System electronic filing system which will send notification of such filing to those parties of record who are registered for electronic filing, and further certify that those parties of record, or their attorneys, who are not registered for electronic filing have been served by sending this date a copy of same by first class U.S. Mail, postage prepaid, and addressed to them as follows:

State of Alabama
A. Gregg Lowery
Assistant District Attorney
P.O. Box 706
Columbiana, AL 35051

James E. Hill, Jr.
Attorney for John W. Bullock
Hill, Weisskopf & Hill, P.C.
P.O. Box 310
Moody, AL 35004

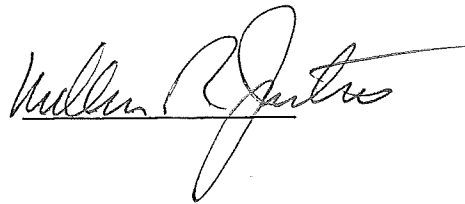
A handwritten signature in cursive script, appearing to read "A. Gregg Lowery", written over a horizontal line.

EXHIBIT 1: “Victim’s Objection to Petition for Expungement of Records

AUG 24 2015

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

State of Alabama,

Plaintiff,

v.

Burton Wheeler Newsome,

Defendant.

CASE NO. CC-2015-000121.00

Victim's Objection to Petition for Expungement of Records

COMES NOW, John F. Bullock, Jr., victim in DC-2013-1434, and objects to Plaintiff's Petition for Expungement of Records pursuant to Ala. Code § 15-27-5.

Mr. Bullock strongly objects to the expungement of Burt Newsome's criminal record. Since the dismissal of the case against Newsome, Newsome has instituted unsuccessful legal action against Mr. Bullock in clear contravention of his agreement. The case against John Bullock, 01-CV-2015-900190.00 – Burt Newsome and Newsome Law, LLC, v. Clark Andrew Cooper, Balch & Bingham, LLP, Clairborne P. Seier, and John Franklin Bullock, Jr., was dismissed on a Rule 12(b) Motion to Dismiss by Judge Carol Smitherman. *See Exhibit A.* Nevertheless, Newsome has filed motion to reinstate and motion to compel discovery even after dismissal, Newsome's actions have caused and continue to cause Mr. Bullock to endure spurious and protracted proceedings and incur unnecessary legal fees. In short, Newsome's bad behavior against Mr. Bullock continues.

WHEREFORE, PREMISES CONSIDERED, John Bullock objects to Plaintiff's

Petition for Expungement of Records and requests that this Court deny the same at the hearing on said Petition.

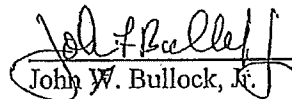
Respectfully submitted,

/s/ James E. Hill, Jr.
JAMES E. HILL (HIL005),
Attorney for John W. Bullock

OF COUNSEL:

HILL, WEISSKOPF & HILL, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000

I hereby certify that the above statements are to the best of my knowledge accurate and true.


John W. Bullock, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2015, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to all parties, and I hereby certify that, to the best of my knowledge and belief, there are no non-AlaFile participants to whom the foregoing is due to be mailed by way of the United States Postal Service.

A. Gregg Lowery
Assistant District Attorney

William R. Justice
ELLIS, HEAD, OWENS, & JUSTICE
P.O. Box 587
Columbiana, AL 35051

/s/ James E. Hill, Jr.
OF COUNSEL

EXHIBIT 2: “Victim John Bullock’s Response to Defendant Burton Wheeler Newsome’s Motion to Alter, Amend, or Vacate Judgment, or in the Alternative Motion for a New Hearing on the Petition.”

should be DENIED.

Mr. Bullock's objection to Defendant Newsome's Petition for Expungement was filed timely because the statute does not provide that the victim waives their right to file the same after 45 days. *See* Ala. Code § 15-27-3(c). Alabama Code § 15-27-3(c) provides both the district attorney and victim "shall have a period of 45 days to file a written objection to the granting of the petition *or the district attorney shall be deemed to have waived the right to object.*" ALA. CODE § 15-27-3(c). Defendant Newsome argues that neither the district attorney's office or Mr. Bullock objected in writing within 45 days so the district attorney was deemed to have waived their right to do so. Def. Mtn. Pgs 3-4. The statute, much like Defendant's argument, only says that the district attorney is deemed to have waived their right to object if a written objection is not filed within 45 days. Ala. Code § 15-27-3(c) and Def. Mtn. generally. Neither the statute nor Defendant's argument address the Victim's right to object being deemed waived. While the statutory language provides a period after which the district attorney is deemed to have waived its objections if the district attorney or victim(s) do not object, it does not provide the same waiver for the victim. The statute is silent as to whether the victim is ever deemed to have waived that right before the matter of expungement is decided. The statute only speaks to waiver of the district attorney's right to object and never the victim's. Thus, the Legislature has granted victims a right to object and also seen fit to allow the same to continue beyond the rights of the district attorney, perhaps to account for the lack of notice required to be given to victims. Thus, victim, John Bullock's objection was timely and had effect.

Even if Court agrees with Defendant Newsome that the objections filed should

not be given effect, Defendant's position that the Court is required to expunge Defendant's misdemeanor charge when not objected to is flatly wrong and ridiculously at odds with the language of the statute. Defendant cites § 15-27-5(d) which he believes requires the Court to grant a his petition for expungement of a misdemeanor charge when neither the district attorney or victim file objections, timely or otherwise. There are several distinct problems with this interpretation. First, Defendant's interpretation is plainly not what the legislature intended when it passed the statute. Defendant relies upon the second of two sentences, taken out of context from § 15-27-5, reading:

If no objection to a petition is filed by the prosecuting authority or victim, the court having jurisdiction over the matter may rule on the merits of the petition without setting the matter for hearing. In such cases, the court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter.

ALA. CODE § 15-27-5(d). This language, quoted by Defendant in support of his position, clearly states that if no objections are filed "the court having jurisdiction over the matter may rule on the merits of the petition without setting the matter for hearing." ALA. CODE § 15-27-5(d). The "may" language is key. Defendant's argument that the rest of the section applies would be correct if the Court had elected to rule on the expungement without holding a hearing. The Court, however, did not make such an election because it chose to set a hearing and the plain language in the statute in no way requires the Court to rule on an expungement without first setting a hearing. Thus, the remainder of section 15-27-5(d) does not apply and Defendant's argument to the contrary is wrong.

Even if the Court were required to apply the second half of § 15-27-5(d), Defendant would still not be entitled to expungement. The statutory language upon which

Defendant Newsome relies, in an obvious attempt to mislead the court, for the proposition that the Court must grant his motion absent any objection, in fact, merely outlines what the court is to do if no objections are filed and the Court chooses not to hold a hearing. The statute does not in any way require the Court to grant an expungement. Defendant in his second to last paragraph posits that:

Since Newsome “has complied with and satisfied the requirements of [the] chapter” on expungement, “**the court shall grant the petition. . .**” As a matter of law, Newsome is due to have the record of his arrest expunged under section 15-27-1(a)(1).

Def. Mtn. Pg 4. If Defendant had continued the rest of the language of the bolded sentence rather than conveniently place an ellipsis in the place most profitable to his argument the sentence would read “the court shall grant the petition *if it is reasonably satisfied* from the evidence that petitioner has complied with and satisfied the requirements of this chapter.” ALA. CODE § 15-27-5(d). The “if reasonably satisfied” language obviously contemplates that the Court will retain its discretion to review the evidence presented and determine for itself whether such evidence is sufficient to comply with the statute. The statute obviously does not require the court to enter an expungement unless it is reasonably satisfied that the statute has been complied with.

To reiterate, Section 15-27-5(d) should not even be a factor because it only applies where the Court has decided not to set the matter for a hearing after receiving no objection to defendant’s petition. That is not the case here. The State and the Victim both filed objections, so the whole subsection (d) of § 15-27-5 is inapplicable. If the Court accepts Newsome’s proposition that those objections were untimely and waived, then § 15-27-5(d) is *still* not applicable. A necessary precondition of subsection (d) is the the Court electing not to have a hearing. *See* ALA. CODE § 15-27-5(d) (stating “the court

having jurisdiction over the matter *may* rule on the merits without setting the matter for hearing. In such cases, the court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter.”) If a court elects to rule on the merits of the case after having a hearing the language of the second sentence would not apply because the two preconditions would not be satisfied. That was precisely the case here. The Court elected to have a hearing before ruling on the petition. Thus the preconditions of no objections filed and ruling without a hearing were not present and therefore the rest of § 15-27-5(d) would not apply.

The Court must also consider the rest of § 15-27-5. Subsection (a) outlines several factors which “*In the discretion of the court*, the court shall consider. . . .” This discretionary language again gives credence to the notion that the Legislature granted the Court significant discretion as to when to exercise its new found power of expungement.

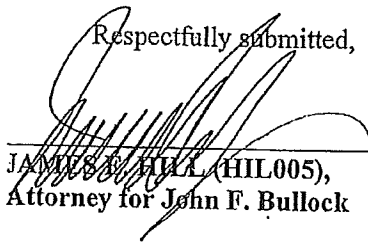
Most damning to Defendant’s argument is ALA. CODE § 15-27-5(c), which Defendant also conveniently left out of his motion. This section states:

There is no right to the expungement of any criminal record, and any request for expungement of a criminal record may be denied at the sole discretion of the court. The court shall grant the petition *if it is reasonably satisfied* from the evidence that the petitioner has complied with and satisfied the requirements of this chapter. *The court shall have discretion* over the number of cases that may be expunged pursuant to this chapter after the first case is expunged. The ruling of the court shall be subject to certiorari review and *shall not be reversed absent a showing of an abuse of discretion.*

ALA. CODE § 15-27-5(c) (emphasis added). The above quoted language plainly states the exact opposite of Mr. Newsome's claim that the court must grant his expungement as a matter of law. Section 15-27-5(c), and the whole of Chapter 27, is littered with blatant indications that the trial court has discretion to decide whether or not to grant an expungement. This Court, based on the above, properly exercised its discretion to hold a hearing, take evidence at that hearing, and ultimately deny Defendant's petition.

WHEREFORE, PREMISES CONSIDERED, Victim, John F. Bullock, objects to Defendant Burton Wheeler Newsome's Motion to Alter, Amend, or Vacate Judgment, or in the Alternative, Motion for a New Hearing on the Petition for Expungement of Record and requests that this Court deny the same.

Respectfully submitted,


JAMES E. HILL (HIL005),
Attorney for John F. Bullock

OF COUNSEL:

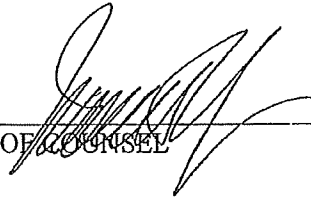
HILL, WEISSKOPF & HILL, P.C.
2603 MOODY PARKWAY, SUITE 200
P.O. BOX 310
MOODY, ALABAMA 35004
(205) 640-2000

CERTIFICATE OF SERVICE

I hereby certify that on September ___, 2015, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to all parties, and I hereby certify that, to the best of my knowledge and belief, there are no non-AlaFile participants to whom the foregoing is due to be mailed by way of the United States Postal Service.

A. Gregg Lowery
Assistant District Attorney

William R. Justice
ELLIS, HEAD, OWENS, & JUSTICE
P.O. Box 587
Columbiana, AL 35051



OF COUNSEL

EXHIBIT 3: Order of Expungement



ELECTRONICALLY FILED
9/10/2015 8:02 AM
58-CC-2015-000121.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA)	
)	
V.)	Case No.: CC-2015-000121.00
)	
NEWSOME BURTON WHEELER)	
Defendant.)	

ORDER ON PETITION FOR EXPUNGEMENT OF RECORDS

ORDER ON PETITION FOR EXPUNGEMENT OF RECORDS

This case comes before the Court on the motion of Burton Wheeler Newsome (or "Newsome") to Alter, Amend, or Vacate its order dated August 31, 2015, denying his Petition for Expungement of Records related to his arrest for the misdemeanor of menacing. UPON CONSIDERATION thereof, the motion be and hereby is GRANTED, and the order dated August 31, 2015, be and hereby is VACATED and Newsome's Petition for Expungement of Records is GRANTED.

Upon consideration of the motion and the matters of record in this case, the court hereby finds as follows:

1. "Menacing" is a "misdemeanor criminal offense," and records concerning a charge of menacing are subject to expungement under section 15-27-1 of the Alabama Code.

2. The District Attorney of Shelby County was served with Newsome's Petition for Expungement on April 28, 2015.

3. Neither the district attorney nor the victim filed any objection to the Petition for Expungement within 45 days as required by section 15-27-3(c) of the Alabama Code. Consequently, they "have waived the right to object."

4. The record in this case reflects that the misdemeanor charge against Newsome was dismissed with prejudice by the District Court of Shelby County, Alabama, on April 4, 2014.

5. Newsome has therefore satisfied the requirements for expungement under section 15-27-1 *et seq.*

BASED ON THE FOREGOING, it is therefore ORDERED by the court as follows:

1. The Petition for Expungement of Records filed by Burton Wheeler Newsome is GRANTED.

2. All "records" concerning the charge, arrest, and incarceration of Burton Wheeler Newsome, on the misdemeanor of menacing be and hereby are EXPUNGED.

3. The charge and arrest subject to this order are further identified as case number DC 2013-001434 in the District Court of Shelby County Alabama, which case

originated with a complaint signed by John Franklin Bullock, Jr., on January 14, 2013, alleging that Newsome committed the crime of "menacing" in violation of section 13A-6-23 of the Alabama Code.

4. The "records" subject to this order include but are not limited to "arrest records," "booking or arrest photographs," "index references such is the State Judicial Information Services or any other governmental index references for public records search," and all "other data, whether in documentary or electronic form relating to the arrest or charge," as provided in section 15-27-9 of the Alabama Code.

5. Pursuant to section 15-27-6 of the Alabama Code, the District Court of Shelby BE AND HEREBY IS ORDERED TO EXPUNGE any and all "records" of the charge, arrest and incarceration except as otherwise provided in sections 15-27-6 and 15-27-10 of the Alabama Code.

6. Pursuant to section 15-27-6 of the Alabama Code, "any other agency or official" having custody of any such records BE AND HEREBY IS ORDERED TO EXPUNGE any and all "records" of the charge, arrest and incarceration except as otherwise provided in sections 15-27-6 and 15-27-10 of the Alabama Code.

DONE this 10th day of September, 2015.

/s/ DAN REEVES
CIRCUIT JUDGE

EXHIBIT 4: Affidavit of Burt W. Newsome

STATE OF ALABAMA

SHELBY COUNTY

)
)
)

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Burt W. Newsome, who being known to me and being first duly sworn, deposes and says as follows:

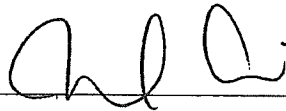
"My name is Burt W. Newsome and I was present at the August 31, 2015 hearing on my Motion for Expungement. Both Assistant District Attorney Gregg Lowrey and Attorney Jim Hill (Mr. Bullock's personal attorney) were present on behalf of Mr. Bullock at the hearing on my Motion for Expungement and argued against the Expungement. In addition, both Assistant District Attorney Lowrey and Jim Hill filed written Objections to the Motion for Expungement on behalf of Mr. Bullock. Mr. Bullock was also present at the hearing. My civil case against Mr. Bullock and others was pending at the time of the August 31, 2015 hearing on the Motion for Expungement and was used by Mr. Bullock's personal attorney Jim Hill as an argument against the expungement. All of the above statements are true and correct and stated as facts."



Burt W. Newsome

SWORN TO AND SUBSCRIBED before me on this the 25th day of January, 2016:

NOTARY PUBLIC:



My commission expires:

Jennifer Choi
Notary Public Alabama State at Large
My Commission Expires October 4, 2016

EXHIBIT 5: *People v. Holum*, 166 Ill. App. 3d 658,
520 N.E.2d 419 (1988)

Page 658

166 Ill.App.3d 658 (Ill.App. 2 Dist. 1988)

520 N.E.2d 419, 117 Ill.Dec. 258

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Edward HOLUM, Defendant-Appellant.

No. 2-87-0394.

Court of Appeals of Illinois, Second District.

February 26, 1988.

Page 660

On December 15, 1980, defendant was charged with possession of cannabis. (Ill.Rev.Stat.1985, ch. 56 1/2, par. 704.) Defendant entered a plea of guilty and was placed on probation pursuant to section 10 of the Cannabis Control Act. (Ill.Rev.Stat.1985,

[520 N.E.2d 420] [117 Ill.Dec. 259] ch. 56 1/2, par. 710.) On March 5, 1982, the court found that defendant had successfully completed the conditions of the probation. In accordance with section 10(e) of the Cannabis Control Act, the court discharged defendant from probation and dismissed the proceedings against him. Ill.Rev.Stat.1985, ch. 56 1/2, par. 710(e).

On September 25, 1986, defendant filed a petition to have his records of arrest expunged from the official records of the arresting authority and the circuit court pursuant to section 5 of "An Act in relation to criminal identification and investigation." (Ill.Rev.Stat.1985, ch. 38, par. 206-5.) Section 5 provides for the expungement of arrest records of individuals with no prior convictions who have been acquitted or released without being convicted. The petition was granted on November 6, and the court further ordered the arresting authority to obtain identification materials from all repositories, including the Illinois Department of Law Enforcement.

On January 16, 1987, the State filed a "Motion to Reconsider Expungement." The State contended the expungement order conflicted with subsection 5 of section 55a of the Civil Administrative Code of Illinois. (Ill.Rev.Stat.1985, ch. 127, par. 55a.) Effective July 1, 1986, section 55a(5) provided that the Department of State Police was not precluded from maintaining identification

materials of persons fulfilling the terms and conditions of section 10 probation. The State requested the order of expungement be amended to allow the Department of State Police to maintain defendant's arrest records. The court granted the State's motion on April 2. Defendant filed a timely notice of appeal.

Defendant first contends the trial court lacked jurisdiction to amend the order of expungement because the State's motion to reconsider was filed more than 30 days after entry of the order. The State asserts the order was void as it related to the Department of State Police and therefore was subject to attack at any time. (See Ill.Rev.Stat.1985, ch. 110, par. 2-1401(f).) While we agree with the State that a void order or judgment may be attacked and vacated at any time (*Fox v. Department of Revenue* (1966), 34 Ill.2d 358, 361, 215 N.E.2d 271), we do not agree the original order of expungement was void as it applied to the Department of State Police. Therefore, the court did not have jurisdiction to amend the order of expungement.

A judgment or order is characterized as void where the court

Page 661

lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the order. (*Cooper v. United Development Co.* (1984), 122 Ill.App.3d 850, 854, 78 Ill.Dec. 510, 462 N.E.2d 629.) The latter circumstance forms the basis for the State's contention that the trial court had jurisdiction to amend the order. According to the State, the court lacked the authority to enter an order expunging all of the defendant's arrest records. The principal cases relied on by the State flesh out the requirements that must be present in order to render an order or judgment void on the ground the court lacked the authority to enter the order or judgment. In *Collins v. Collins* (1958), 14 Ill.2d 178, 151 N.E.2d 813, the court found a divorce decree was in error for reasons apparent from the record and was in direct violation of statutory provisions. In *Lake Shore Savings & Loan Association v. American National Bank & Trust Co.* (1968), 91 Ill.App.2d 143, 234 N.E.2d 418, the court found there was an error of law on the face of the record where no facts constituting fraud were set forth in the complaint. It is apparent then that a judgment or order will be classified as void based on lack of inherent authority only in clear-cut circumstances.

In the present case, it is not beyond dispute that the original order of expungement is in direct violation of applicable statutory provisions. The statutory provision relied on by the State in its motion to reconsider became

effective on July 1, 1986, long after defendant had successfully completed his section 10 probation. Prior to the recent amendment to section 55a(5), it was determined in *People v. Kane* (1980), 85 Ill.App.3d 252, 40 Ill.Dec. 693, 406 N.E.2d 896, that successful completion of section 10 probation is a release without a

[520 N.E.2d 421] [117 Ill.Dec. 260] conviction within the meaning of section 5. Therefore, arrest records associated with a possession of cannabis charge could be expunged pursuant to section 5. (*Kane*, 85 Ill.App.3d at 253-54, 40 Ill.Dec. 693, 406 N.E.2d 896.) In view of the *Kane* decision, it is apparent that had defendant petitioned to expunge his arrest record prior to the amendment to section 55a(5) there would have been authority justifying a complete expungement. Consequently, whether the court in the present case had the authority to enter the original order of expungement depends on whether the amendment to section 55a(5) applies to an individual who has successfully completed section 10 probation prior to the amendment but petitioned for expungement subsequent to the amendment. Since there is no guidance from the legislature on this matter, the issue is left to judicial resolution. The arguments of the parties and our research reveal that to date the question at hand has not been resolved by a court of review. Consequently, the trial court could not have exceeded its authority in entering the original order. Therefore, the order expunging all of the defendant's arrest

Page 662

records was not void when entered and was not subject to attack on that basis.

A petition seeking relief from a final judgment or order under section 2-1401 is not intended to relieve a party of the consequences of its own mistake or negligence. (*Lofendo v. Ozog* (1983), 118 Ill.App.3d 237, 241, 73 Ill.Dec. 709, 454 N.E.2d 806.) Here, the statutory amendment relied on by the State was effective several months prior to the defendant's petition to expunge his arrest records. The State was provided notice of the petition and given ample time to respond. Thereafter, the order of expungement was entered. Not until 2 1/2 months after the entry of the order of expungement did the State bring to the court's attention the amendment to section 55a(5). While the amendment may have rendered voidable the court's order, it did not render the order void. Since a voidable judgment or order is not subject to collateral attack (*In re Day* (1985), 138 Ill.App.3d 783, 787, 93 Ill.Dec. 206, 486 N.E.2d 307), the State, by failing to challenge or appeal the order within 30 days, lost its opportunity to attack the expungement order. Concomitantly, the court lacked jurisdiction to amend the order. See *Cooper*, 122 Ill.App.3d at 854, 78 Ill.Dec. 510, 462 N.E.2d 629.

For the foregoing reasons, the order amending the order of expungement is reversed, and the original order of expungement is reinstated.

Reversed.

HOPF and UNVERZAGT, JJ., concur.

EXHIBIT 6: *Ein v. Commonwealth*,
246 Va. 396, 436 S.E. 610 (1993)

Page 396

246 Va. 396 (Va. 1993)

436 S.E.2d 610

Robert J. EIN

v.

COMMONWEALTH of Virginia.

No. 930094.

Supreme Court of Virginia.

November 5, 1993.

[436 S.E.2d 611]

Page 397

John M. DiJoseph, Arlington (Sattler & DiJoseph on briefs), for appellant.

Kathleen B. Martin, Asst. Atty. Gen. (Stephen D. Rosenthal, Atty. Gen., on brief), for appellee.

David D. Hudgins, Alexandria, Paul T. Emerick, Springfield, Hudgins, Carter & Coleman, Alexandria, on brief, amicus curiae in support of appellee.

Robert Ellis; Louise DiMatteo; Siciliano, Ellis, Dyer & Boccarosse, Fairfax, on brief, amicus curiae in support of appellee.

Page 396

Present: All the Justices.

Page 397

STEPHENSON, Justice.

The sole issue in this appeal is whether the trial court had jurisdiction to declare void and vacate its previous order that expunged certain police and court records.

Upon allegations made by Charlotte D. Barry and Ann M. Lewis and after an investigation by the Arlington County Police Department, Robert John Ein was charged with aggravated sexual battery of his five-year-old daughter. Following a trial in the Circuit Court of Arlington County, Ein was acquitted of the charge on May 17, 1992.

On July 14, 1992, Ein filed a petition in the Circuit

Court of Arlington County, pursuant to Code § 19.2-392.2, requesting the expungement of the police and court records pertaining to the charge. As required by the statute, the Commonwealth was named the respondent in the proceeding, and notice of the proceeding was given to the Arlington County Commonwealth's Attorney. In its answer, the Commonwealth objected to the expungement "on the ground that the continued existence and possible dissemination of information relating to the arrest of [Ein] have not and would not cause circumstances which would constitute a manifest injustice to [Ein]."

Page 398

Following a hearing on September 23, 1992, the circuit court ordered the expungement of the records, finding that "the continued existence and possible dissemination of information relating to [Ein's arrest] may cause circumstances that constitute a manifest injustice to [Ein]." The Commonwealth did not appeal from the expungement order.

Prior to the expungement hearing, Ein had filed a civil action in the Circuit Court of Arlington County, which was removed to the United States District Court for the Eastern District of Virginia, against Barry and Lewis, alleging malicious prosecution, intentional infliction of emotional distress, and conspiracy in relation to the sexual battery charge. Ein had not informed the court conducting the expungement hearing about his pending civil action.

In early November 1992, Barry and Lewis filed motions for disclosure of the expunged records, claiming that the records were "germane and of the highest importance" to them in their defense of the civil action. They further claimed that their defense would be "seriously jeopardized without immediate access to [the] records."

On November 12, 1992, the trial court conducted a hearing on the motions which consisted only of a colloquy between counsel and the court. No evidence was presented. Throughout the hearing, the trial court questioned whether it had jurisdiction to hear the motions because more than 21 days had expired since the entry of the expungement order. Rule 1:1. [1]

[436 S.E.2d 612] Counsel for Barry and Lewis stated that they were not seeking an order "reversing" the expungement order; rather, they only sought access to the records for use in the civil action. Counsel contended that Code § 19.2-392.3 gave the court jurisdiction to grant the relief sought.

The trial court rejected this contention. The court correctly observed that Code § 19.2-392.3 authorizes only a Commonwealth's Attorney to petition for access to expunged records when the records are needed for a pending criminal investigation in which life

Page 399

or property will be jeopardized without immediate access to the records. [2]

Ultimately, however, the trial court concluded that Barry and Lewis were entitled to notice of the expungement proceeding because they were defendants in Ein's civil action and, therefore, would be "aggrieved" persons under Code § 19.2-392.2(F). The court further stated from the bench that "[k]eeping that information [of the pending civil action] from the Court not only creat[ed] a suspicion of fraud, but it also was improper" in relation to Barry and Lewis.

Consequently, on November 12, 1992, the trial court entered two essentially identical orders. The orders read, in pertinent part, as follows:

IT APPEARING TO THE COURT that Robert J. Ein obtained the order of expungement after the commencement of his civil action against [Barry and Lewis] in this Court, ...; and

IT FURTHER APPEARING TO THE COURT that the Arlington County criminal records contain information pertinent to the pending civil matter; and

IT FURTHER APPEARING TO THE COURT that Robert J. Ein knew at the time the order of expungement was entered that [Barry and Lewis] would be aggrieved pursuant to VA CODE § 19.2-392.2(F), but that Robert J. Ein failed to give notice to [Barry and Lewis], or any other interested party, of his request for the order of expungement; and

IT FURTHER APPEARING TO THE COURT that manifest injustice would result from the enforcement of the order of expungement, which was procured in contravention of the statement of policy set forth in VA CODE § 19.2-392.1; and so it is hereby

Page 400

ORDERED, ADJUDGED and DECREED that this Court's Order dated September 23, 1992 is void ab initio, that jurisdiction resides in this Court to grant the relief requested, and that [Barry and Lewis] shall be granted access to any and all records of Arlington County relating to the criminal proceedings against Robert J. Ein.

We awarded Ein an appeal from these orders. We also permitted Barry and Lewis to file amicus briefs.

Ein, relying upon Rule 1:1, contends that, because more than 21 days had expired after entry of the expungement order, the trial court lost jurisdiction of the matter and could not modify, vacate, or suspend the order. The Commonwealth contends, on the other hand, that the trial court correctly ruled that the expungement order was void and, therefore, subject to attack. Each party states accurate principles of law. Therefore, we must decide which principle is applicable in the present case.

The trial court ruled that the expungement order was void because Ein failed to give Barry and Lewis, who would be parties "aggrieved" pursuant to Code § 19.2-392.2(F), notice of the proceeding. However, we find nothing in the expungement statutes that would have required Ein to give notice to Barry and Lewis. Code § 19.2-392.2(D) provides that "[a] copy of the [expungement] petition shall be served on the attorney for the Commonwealth of the ... county in which the petition is [436 S.E.2d 613] filed." Subsection F of Code § 19.2-392.2 provides that the Commonwealth shall be made the party defendant to the expungement proceeding. Subsection F further provides that "[a]ny party aggrieved by the decision of the court [respecting the expungement order] may appeal, as provided by law in civil cases." The trial court's reliance upon subsection F is misplaced because subsection F merely defines who may appeal the court's judgment. Clearly, only the Commonwealth was entitled to notice of the expungement proceeding. Therefore, the expungement order was not void for Ein's failure to give notice to Barry and Lewis.

The Commonwealth, however, claims that the expungement order was void, and subject to collateral attack, because Ein committed a fraud on the court in failing to disclose that Barry and Lewis were defendants in his civil action then pending. Our reading of the record does not indicate that the trial court made a finding of fraud on the court. The trial court's order does not reflect such a

Page 401

finding. Furthermore, although the trial court stated from the bench that keeping from the court the information about the civil action created a "suspicion" of fraud, a suspicion of fraud is not a finding of fraud.

Additionally, even if the trial court's remark could be construed as a finding of fraud, the record does not support such a finding. The law does not presume fraud; to the contrary, the presumption is always in favor of innocent conduct. *Jenkins v. Trice*, 152 Va. 411, 429-30, 147 S.E. 251, 257 (1929). Moreover, the burden is upon the party

alleging fraud to prove it by clear and convincing evidence, *Winn v. Aleda Const. Co.*, 227 Va. 304, 308, 315 S.E.2d 193, 195 (1984), and, in the present case, the trial court heard no evidence. Clearly, neither the Commonwealth nor Barry and Lewis carried their burden of proving fraud by clear and convincing evidence. Therefore, the expungement order was not void for fraud on the court.

Consequently, we hold that the trial court did not have jurisdiction to vacate the expungement order. Accordingly, we will reverse and vacate the trial court's judgment and reinstate the expungement order.

Reversed and final judgment.

Notes:

[1] Rule 1:1, in pertinent part, provides as follows:

All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer.

[2] A court's authority to permit a "review" of an expunged police or court record is strictly limited to the provisions of Code § 19.2-392.3. That section merely empowers a Commonwealth's Attorney to seek such a review when the record is "needed by a law-enforcement agency for the purposes of employment application as an employee of a law-enforcement agency or for a pending criminal investigation [provided] the investigation will be jeopardized or that life or property will be endangered without immediate access to the record."

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA

Plaintiff,

BURTON WHEELER NEWSOME,

Defendant.

)
)
)
)
)
)
)
)
)
)

CASE NO. CC 2015-000121

ORDER

“John Bullock’s Motion to Use the Contents of [the] Expunged File” concerning Burton Wheeler Newsome be and is hereby DENIED.

DONE this the ____ day of January 2016.

**DAN REEVES
CIRCUIT JUDGES**

EXHIBIT 8 TO NEWSOME'S PETITION

Email from Judge Conwill's Judicial
Assistant, Bonita Davidson, dated May 3,
2016, setting a hearing for June 3, 2016.

Burt Newsome

From: Bonita Davidson <bonita.davidson@alacourt.gov>
Sent: Tuesday, May 03, 2016 2:36 PM
To: Jill Lee; gregg.lowery@alabamada.gov; wjustice@wefhlaw.com; Burt Newsome; jimhill@stclairlawgroup.com
Subject: State of Alabama v. Burt Newsome

By notice of this email, I am notifying all of you that I have ORDERED a hearing on VICTIM'S MOTION TO USE CONTENTS OF EXPUNGED FILE. The hearing is scheduled for Friday, June 3, 2016, at 9:00 a.m., Courtroom #6. Judge Hill, you will need to notify Mr. John Bullock as you represent him in the filing of this MOTION.

Bonita Davidson
Judicial Assistant
Presiding Circuit Judge H.L. Conwill
P.O. Box 1136
Shelby County Courthouse
Columbiana, Alabama 35051
(205) 669-3800