

# AFFIDAVIT

**FILED**

**JUN 22 2016**

**ZACK WALLACE, CIRCUIT CLERK**

BY \_\_\_\_\_ D.C.

16-624

STATE OF MISSISSIPPI  
COUNTY OF HINDS  
FIRST JUDICIAL DISTRICT

Personally appeared before the undersigned Justice Court Judge, Leland McDivitt, criminal investigator with the office of the Mississippi Attorney General, who being duly sworn, deposes and makes affidavit on information and belief that in the First Judicial District of Hinds County, Mississippi

## COUNT I

Robert Shuler Smith on or about the 10<sup>th</sup> day of June, 2016, while acting in his capacity as the District Attorney of the 7<sup>th</sup> Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Darnell Turner, who was then and there charged in the Circuit Court of the First Judicial District of Hinds County with the crimes of aggravated assault and domestic violence, by delivering to the Hon. Dennis Sweet III, who is the attorney for Darnell Turner, the attached e-mails (which are incorporated by reference) of conversations that took place between the State, District Attorney, and the Court regarding matters that had been previously sealed by the Court in cause number 16-239, all of this was done in order to consult, advise counsel or defend Darnell Turner by and through attorney Dennis Sweet III against the state's pending charges, this against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Motion to Dismiss.

Exhibit 2: Motion to Unseal Sealed Order and all Discoverable Communications

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

## COUNT II

Robert Shuler Smith on or about the 26<sup>th</sup> day of May, 2016, while acting in his capacity as the District Attorney of 7<sup>th</sup> Circuit Court District, Mississippi, did willfully and unlawfully consult, advise and counsel Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of embezzlement and wire fraud, at the Hinds County Jail outside the presence of Butler's attorney on May 26, 2016 from 8:56 a.m. to 09:13 a.m., against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Sheriff's Department Jail Visitation Log.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

### **COUNT III**

Robert Shuler Smith on or about March 21, 2016, while acting in his capacity as the District Attorney 7<sup>th</sup> Circuit Court District of, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of Embezzlement and Wire Fraud, by delivering to Sanford Knott, who was at that time Mr. Butler's attorney, the attached letter dated March 21<sup>st</sup> 2016 (which is incorporated by reference), in which Mr. Smith advises attorney Knott of various ways to attack the state's pending case against Mr. Butler; thereby, providing advice, counsel, and defense to Christopher Butler, by and through his attorney, against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Letter dated March 21, 2016 to Attorney Sanford Knott.

CHARGE: District Attorney not to advise, consult, counsel, or defend criminals [97-11-3]

### **COUNT IV**

Robert Shuler Smith, on or about May 9, 2016, while acting in his capacity as the District Attorney of 7<sup>th</sup> Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel, or defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of Embezzlement and Wire Fraud at the Hinds County Jail, outside the presence of Mr. Butler's attorney on May 9, 2016, against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Sheriff's Department Jail Visitation Log.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

### **COUNT V**

Robert Shuler Smith on or about and between the dates of January 14, 2016 and June 20, 2016, while acting in his capacity as the District Attorney of the 7<sup>th</sup> Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of embezzlement and wire fraud, by meeting with the family of the defendant Christopher Butler, referring to Butler as "his client", attempting to retain defense counsel for defendant Butler and working with defense counsel to obtain the release of defendant Butler from the Hinds County Jail, against the peace, dignity and laws of the State of Mississippi;

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

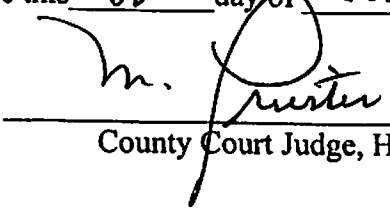
## COUNT VI

Robert Shuler Smith on or about and between the dates of January 14, 2016 and June 20, 2016, while acting in his capacity as the District Attorney of the 7<sup>th</sup> Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 12-045 and 12-831 with the crime of possession of a controlled substance, by using the power of the grand jury to pressure a sitting circuit court judge to dismiss the charges of possession of marijuana against Christopher Butler, against the peace and dignity of the State of Mississippi

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

AFFIANT: 

Sworn and Subscribed before me this 22<sup>nd</sup> day of June 2016

  
County Court Judge, Hinds County

STATE OF MISSISSIPPI  
OFFICE OF THE ATTORNEY GENERAL

550 High Street, 11<sup>th</sup> Floor Jackson, MS 39201

16-624

FILED

JUN 22 2016

ZACK WALLACE, CIRCUIT CLERK

BY \_\_\_\_\_ D.C.

ARREST WARRANT

TO ANY LAWFUL OFFICER OF THE STATE OF MISSISSIPPI

You are hereby ordered to take the body of Robert Shuler Smith whose address is believed to be: 2725 Hemmingway Circle, Jackson, MS 39209 and bring said person before the Hinds County Judge without unnecessary delay for initial appearance on the charge of:

Count 1: District Attorney not to advise or defend criminals [97-11-3]

Count 2: District Attorney not to advise or defend criminals [97-11-3]

Count 3: District Attorney not to advise or defend criminals [97-11-3]

Count 4: District Attorney not to advise or defend criminals [97-11-3]

Count 5: District Attorney not to advise or defend criminals [97-11-3]

Count 6: District Attorney not to advise or defend criminals [97-11-3]

The defendant's copy of this warrant is to be served upon said defendant. Said defendant may be released on bail before initial appearance upon posting bail in the amount of \$ \_\_\_\_\_

GIVEN under my hand and issued this 22 day of June 2016

STATE OF MISSISSIPPI  
OFFICE OF THE ATTORNEY GENERAL  
Hinds County Judge

Officer's Return:

I have executed this arrest warrant on this  
the 22 day of June 2016

OFFICER: \_\_\_\_\_

**IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

STATE OF MISSISSIPPI

PLAINTIFF

vs.

CAUSE NO.: 16-239

DARNELL TURNER

DEFENDANT

**MOTION TO DISMISS**

Defendant Darnell Turner (sometimes "Defendant" or "Turner"), by and through counsel, files this Motion to Dismiss the indictment of Defendant. In support of this motion, Defendant states the following:

1. Defendant is charged in a three count indictment in the above-styled cause. The alleged offense for which he is charged occurred on July 12, 2014. This matter was thoroughly investigated and upon information and belief presented to a grand jury where the case was no billed. Defendant was indicted on these charges on April 7, 2014. Undersigned counsel is not privy to grand jury proceedings and is unaware of who presented this matter to the grand jury or what witnesses were called.

2. Upon information and belief the Attorney General's Office initiated and investigation into criminal cases in Hinds County alleging that persons were not being properly indicted.

3. Defendant had previously been represented by the now Hinds County District Attorney Robert Smith, when Robert Smith was in private practice and before he was elected Hinds District Attorney.

4. As a result of this representation and upon information and belief Defendant was then targeted by the Attorney General's Office.

5. Without explanation at least two of the Circuit Judges recused themselves from hearing any matters related to Turner including any of the charges he was indicted on, or any of the investigations of him or hearings conducted by the Attorney General's Office.

6. Upon information and belief this court was made aware of all allegations regarding Mr. Turner made by the Attorney General's Office.

7. During the investigation of this matter defendants obtained emails which involved this court, the circuit clerk, the District Attorney and the Attorney General's Office. Upon information and belief the matters referred to in the emails are matters relating to defendant.

8. It appears that the court got involved in the prosecution of defendant by demanding that a grand jury be held for the Attorney General to present matters relating to him. (See emails attached as Exhibit A).

9. It is clear that neither this court nor the Attorney General's office have the authority to initiate or intervene in local criminal action which involves the authority of the District Attorney. In *Williams vs. State of Mississippi*, 2013-IA-00402 – the Mississippi Supreme Court stated “Neither Mississippi’s Constitution nor its common law permits the involuntary disqualification of a duly elected district attorney from the lawful performance of his duty and the substitution of the attorney general in the district attorney’s place and stead in a case in which no legal grounds for the district attorney’s disqualification exists. “ *Id.* at ¶ 17.

10. Defendant was arrested on a two year old incident. He cooperated with law enforcement and made no attempt to flee. He has no prior convictions yet he was given an extremely high bond on one indictment and no court has even set bond on the second

indictment. He was made to sit weeks in jail before the court would even hear argument about bond in indictment, and he has been incarcerated months on Cause No. 16-00238 and to date no bond has been set.

11. Defendant submits that there cannot be any ex parte communication between the Attorney General's office and the Court. Such communications would violate Mr. Turner's constitutional rights. "No person shall be deprived of life, liberty, or property except by due process of law" Miss. Const. Art. 3, § 14 "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard, according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding." Miss. Code of Judicial Conduct, Canon 3(A)(4). Courts previously held it is improper for judges to have contact with those involved in cases before them. *Miss. Comm'n on Judicial Performance v. Gunn*, 614 So. 2d at 389; *Miss. Comm'n on Judicial Performance v. Willard*, 788 So.2d 736, 744 (Miss.2001). We even have admonished judges that it is improper "merely to listen to another person involved in pending litigation." *Willard*, 788 So.2d at 741 (quoting *Miss. Comm'n on Judicial Performance v. Chinn*, 611 So. 2d 849, 852 (Miss.1992)). Ex parte communication regarding a citizen deprives said citizen of their due process rights. *Mississippi Comm'n on Judicial Performance v. Patton*, 57 So.3d 626, 634 (Miss.2011).

12. Further, Turner states there may be information revealed that would warrant Judge Weill to recuse himself from this case. According to the Miss. Code of Judicial Conduct, Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other

grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; Miss. Code of Judicial Conduct, Canon 3(E)1a.

13. In the present case it is clear there was some form of communication between the Court and the Attorney General's Office. This is evidenced by the correspondence between Judge Weill's staff attorney and employees of Hinds County. (See Exhibit A). Judge Weill's staff attorney had specific information and knowledge about Mr. Turner's case. Also, Judge Weill's staff attorney made a specific request on behalf of the Attorney General's Office. Judge Weill signed a specific Order, which was intentionally kept under seal, allowing the Attorney General's Office to convene a Hinds County Grand Jury. It is evident Hinds County District Attorney Robert Smith did not participate in this agreement or agree to impanel the grand jury. This agreement was made solely between Judge Weill and the Attorney General's Office. Thus, there was communication between the Attorney General's Office and Judge Weill outside the presence of Mr. Turner or Mr. Turner's counsel. This ex parte communication violates Mr. Turner's constitutional rights to due process of the laws. Mr. Turner should have the ability to ascertain the contents of the communications between the Attorney General's Office and Judge Weill to determine the extent of his constitutional violations, and to determine whether Judge Weill should be disqualified from hearing his case. "No person shall be deprived of life, liberty, or property except by due process of law" Miss. Const. Art. 3, § 14

14. Mr. Turner requests a hearing on this matter.



**WHEREFORE, PREMISES CONSIDERED**, Defendant Darnell Turner respectfully requests that this Honorable Court dismiss the April 7, 2014 indictment issued against him.

Respectfully, submitted this the 10<sup>th</sup> day of June, 2016.

Respectfully submitted,

SWEET & ASSOCIATES

BY: /s/ Dennis C. Sweet, III  
Dennis C. Sweet, III

**OF COUNSEL:**

Dennis C. Sweet, III, MSB# 8105  
Dennis C. Sweet, IV, MSB# 103009  
Jeffrey M. Graves, MSB# 104327  
SWEET & ASSOCIATES  
158 E. Pascagoula Street  
Jackson, MS 39201  
Office: 601+965+8700  
Facsimile: 601+965+8719

**CERTIFICATE OF SERVICE**

I certify that on June 10, 2016, I electronically filed the above with the Clerk of the Court using the MEC system which sent notification of the filing to all counsel of record.

/s/ Dennis C. Sweet, III

Dennis C. Sweet, III

**From:** STAN ALEXANDER <SALEX@ago.state.ms.us>  
**Sent:** Wednesday, April 06, 2016 9:03 PM  
**To:** Weills Lawclerk  
**Cc:** Robert Smith; Weills Court Administrator; Walter Bleck; Brad McCullouch  
**Subject:** Re: SEALED CASE

Thank you. I am in receipt of your email.

Sent from my iPhone

On Apr 6, 2016, at 5:15 PM, Weills Lawclerk <[weillslawclerk@co.hinds.ms.us](mailto:weillslawclerk@co.hinds.ms.us)> wrote:

Mr. Alexander, Below please find a second *ex parte* email sent by Mr. Smith this afternoon, apparently while I was composing my email in response to Mr. Smith's first email.

Mr. Smith, we await your immediate response to clarify whether the grand jury was instructed to be present tomorrow morning at 9:00 a.m. for the presentation of a sealed investigation by the Office of the Attorney General, as Ordered by Judge Weill on April 4, 2016.

Kate C. Steiner

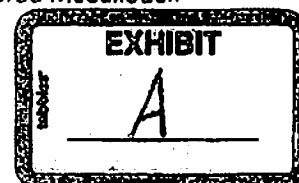
Staff Attorney to Judge Jeff Weill, Sr.  
Hinds County Courthouse  
407 E. Pascagoula Street  
1st Floor - 39201  
P.O. Box 22711  
Jackson, MS 39225-2711  
Office- (601) 973-5576  
Fax- (601) 973-5541

**From:** Robert Smith  
**Sent:** Wednesday, April 06, 2016 4:52 PM  
**To:** Weills Lawclerk <[weillslawclerk@co.hinds.ms.us](mailto:weillslawclerk@co.hinds.ms.us)>  
**Subject:** RE: SEALED CASE

The Court fails to realize that it CANNOT direct or instruct the Hinds County District Attorney to essentially convene a special grand jury on behalf of the MS AG's office. Further, the conflict of interest has been noted and agreed upon. However, the Court should correct itself in stating that there was an "agreement" for a specified date and time for the AG's office to present a case, especially after the listed dates of grand jury service. The MS AG's office and the Court must respect and accept the applicable rules.

Robert Shuler Smith

**From:** Weills Lawclerk  
**Sent:** Wednesday, April 06, 2016 8:44 AM  
**To:** Robert Smith <[rsmith@co.hinds.ms.us](mailto:rsmith@co.hinds.ms.us)>; Walter Bleck <[wbleck@co.hinds.ms.us](mailto:wbleck@co.hinds.ms.us)>; Brad McCullouch <[bmccullouch@co.hinds.ms.us](mailto:bmccullouch@co.hinds.ms.us)>





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From: STAN ALEXANDER [<mailto:SALEX@ago.state.ms.us>]  
Sent: Tuesday, April 05, 2016 10:24 AM  
To: Weills Lawclerk <[weillslawclerk@co.hinds.ms.us](mailto:weillslawclerk@co.hinds.ms.us)>  
Cc: Robert Smith <[rsmith@co.hinds.ms.us](mailto:rsmith@co.hinds.ms.us)>  
Subject: Re: Attached Image

Kate,

If possible please let the GJ know that they will be needed on Thursday morning. I don't know if they will be finished with their other cases before Thursday and I wouldn't want them to be prematurely dismissed. Thank you.

Sent from my iPhone

On Apr 4, 2016, at 9:10 AM, Weills Lawclerk <[weillslawclerk@co.hinds.ms.us](mailto:weillslawclerk@co.hinds.ms.us)> wrote:

Attached please find a copy of the signed SEALED Order which will be sent for filing under seal with the clerk later today.

Thanks,

Kate Steiner  
Staff Attorney to Judge Jeff Weill, Sr.

From: [Canon-3715@co.hinds.ms.us](mailto:Canon-3715@co.hinds.ms.us) [[Canon-3715@co.hinds.ms.us](mailto:Canon-3715@co.hinds.ms.us)]  
Sent: Monday, April 04, 2016 8:05 AM  
To: Weills Lawclerk  
Subject: Attached Image

This E-mail may contain legally privileged and/or confidential information intended only for the individual or entity named in the message. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited. If this communication was received in error, please notify us by reply E-mail and delete the original message.

**From:** Weills Lawclerk  
**Sent:** Wednesday, April 06, 2016 5:16 PM  
**To:** Stanley Alexander  
**Cc:** Robert Smith; Weills Court Administrator; Walter Bleck; Brad McCullouch  
**Subject:** FW: SEALED CASE

Mr. Alexander, Below please find a second *ex parte* email sent by Mr. Smith this afternoon, apparently while I was composing my email in response to Mr. Smith's first email.

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**Cc:** STAN ALEXANDER <SALEX@ago.state.ms.us>; Zack Wallace <zwallace@co.hinds.ms.us>; LouAnn Jackson <louannjackson@co.hinds.ms.us>  
**Subject:** RE: SEALED CASE

Mr. Smith, Mr. Bleck and Mr. McCullouch,

Case: 25Cr16-cl-00239 JAW Document 16-1 Filed: 06/10/2016 Page 5 of 9  
Please be advised that Judge Weill has entered an Order in Cause # 251-16-120, Mr. Simon's Agreement, which permits the Office of the Attorney General to present an investigation to the Hinds County Grand Jury on Thursday, April 7, 2016 at 9:00 a.m. The circuit clerk informed us below that the District Attorney's office coordinates the grand jury schedule after they are called in for the week. Accordingly, please make sure to take the appropriate steps to inform the grand jurors to be present on April 7, 2016 at 9:00 a.m., and please be sure that they are not prematurely dismissed in the event that they are no longer needed by the District Attorney.

The Court directs someone on behalf of the DA's office to respond to this email by 5:00 p.m. today and confirm that the reporting instructions will be communicated to the grand jurors as directed.

Kate C. Steiner

Staff Attorney to Judge Jeff Weill, Sr.  
Hinds County Courthouse  
407 E. Pascagoula Street  
1st Floor - 39201  
P.O. Box 22711  
Jackson, MS 39225-2711  
Office- (601) 973-5576  
Fax- (601) 973-5541

From: Zack Wallace  
Sent: Tuesday, April 05, 2016 12:18 PM  
To: Weills Lawclerk <weillslawclerk@co.hinds.ms.us>  
Subject: RE: SEALED CASE

Kate,

I do not call in the grand jury after the jury summons listed date of service. You may want to contact the DA's office.

Thanks

From: Weills Lawclerk  
Sent: Tuesday, April 05, 2016 11:01 AM  
To: STAN ALEXANDER; Zack Wallace  
Cc: Robert Smith  
Subject: SEALED CASE

Zack,

Judge Weill executed a sealed Order yesterday, which permits the Attorney General's Office to present a matter to the Hinds County Grand Jury on April 7, 2016 at 9 a.m. Please make sure that the grand jurors are not released prior to that time and that they know to be present on April 7 at 9 a.m. I will bring the Order down later for you to file in sealed cause number 251-16-120. Let me know if you need anything further.

Thanks,

Kate C. Steiner

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**IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

STATE OF MISSISSIPPI

PLAINTIFF

vs.

CAUSE NO.: 16-239

DARNELL TURNER

DEFENDANT

**MOTION TO UNSEAL SEALED ORDER AND  
ALL DISCOVERABLE COMMUNICATIONS**

Defendant Darnell Turner (sometimes "Defendant" or "Turner"), by and through counsel, files this Motion to unseal the file in Cause No. 16-00238 and any other file or Cause No. wherein a hearing was conducted relating in any manner to Defendant Turner. Defendant files this Motion pursuant to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the Constitution of the United States of America and the Constitution of the State of Mississippi. As grounds for this Motion defendant states as follows:

1. Turner is charged in a three count indictment in the above-styled cause. The alleged offense for which he is charged occurred on July 12, 2014. This matter was thoroughly investigated and upon information and belief presented to a grand jury where the case was no billed. Undersigned counsel is not privy to grand jury proceedings and is unaware of who presented this matter to the grand jury or what witnesses were called.

2. Upon information and belief the Attorney General's Office initiated and investigation into criminal cases in Hinds County alleging that persons were not being properly indicted.

3. Defendant in this case had been represented by the now Hinds County District Attorney Robert Smith, when Robert Smith was in private practice and before he was elected Hinds District Attorney.

4. As a result of this representation and upon information and belief defendant was then targeted by the Attorney General's Office.

5. Without explanation at least two of the Circuit Judges recused themselves from hearing any matters related to Turner including any of the charges he was indicted on, or any of the investigations of him or hearings conducted by the Attorney General's Office.

6. Upon information and belief this court was made aware of all allegations regarding Mr. Turner made by the Attorney General's Office.

7. During the investigation of this matter defendants obtained emails which involved this court, the circuit clerk, the District Attorney and the Attorney General's Office. Upon information and belief the matters referred to in the emails are matters relating to defendant.

8. It appears that the court got involved in the prosecution of defendant by demanding that a grand jury be held for the Attorney General to present matters relating to him. (See emails attached as Exhibit A).

9. This court then Ordered that certain matters be sealed and defendant has not been allowed access to these materials, including any allegations made by the Attorney General about defendant and any relationships.

10. It is clear that neither this court nor the Attorney General's office have the authority to initiate or intervene in local criminal action which involves the authority of the

District Attorney. In *Williams vs. State of Mississippi*, 2013-IA-00402 – the Mississippi Supreme Court stated “Neither Mississippi’s Constitution nor its common law permits the involuntary disqualification of a duly elected district attorney from the lawful performance of his duty and the substitution of the attorney general in the district attorney’s place and stead in a case in which no legal grounds for the district attorney’s disqualification exists. “ *Id.* at ¶ 17.

11. Defendant respectfully submits that the sealed file, pleadings, transcripts and documents relate to defendant and the Attorney General’s authority to proceed with the prosecution of said matters.

12. He was arrested on a two year old incident. He cooperated with law enforcement and made no attempt to flee. He has no prior convictions yet he was given an extremely high bond on one indictment and no court has even set bond on the second indictment. He was made to sit weeks in jail before the court would even hear argument about bond in indictment, and he has been incarcerated months on Cause No. 16-00238 and to date no bond has been set.

13. Defendant submits that the fact that the victim here is a convicted felon who has been convicted of violent offenses in the past, served prison time, and who when called before the grand jury had a pending aggravated assault charge. This witness was allowed to simply leave while defendant has essentially been denied bond.

14. Undersigned counsel submits that he is entitled to review the sealed file and obtain the transcript of any hearings conducted by this court which in any manner relate to the defendant.

15. On the Scheduling Order entered by this Court, the Court wrote that defendant was being denied an opportunity to interview witnesses in the about matter.

16. Defendant requests that the sealed order be unsealed. Defendant also request all communication between the Mississippi Attorney General's Office and Judge Weill regarding this case, this indictment, and the order allowing the Attorney General to present the case to the Grand Jury be unsealed and turned over to the Defendant. Defendant submits that such information is discoverable. Also, Defendant is entitled to know the substance of any communication between the Attorney General's office and the Judge – as the information may be from ex parte communications. Any such information may be exculpatable.

17. Defendant submits that the requested information is discoverable and exculpatory. In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held that due process forbids a prosecutor from suppressing “evidence favorable to an accused upon request where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87. See *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. McCrane*, 527 F.2d 906 (3d Cir. 1975), *aff'd after remand*, 547 F.2d 205 (1976). The Supreme Court has also emphasized that impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule. *United States v. Bagley*, 473 U.S. 669, 678 (1985). Such evidence, if disclosed and used effectively, may make the difference between conviction and acquittal. See *Napue v. Illinois*, 360 U.S. 264 (1959) (“The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in

testifying falsely that a defendant's life or liberty may depend."'). In acknowledging that the prosecution has a duty to disclose any favorable evidence that could be used at trial, it is frequently overlooked that the prosecution also has a duty to disclose any favorable evidence that could be used "in obtaining further evidence." *Giles v. Maryland*, 386 U.S. 66, 74 (1967). Additionally, favorable evidence need not be competent evidence or evidence admissible at trial. *United States v. Gleason*, 265 F. Supp. 850, 886 (S.D.N.Y. 1967); *Sellers v. Estelle*, 651 F.2d 1074, 1077 n.6 (5th Cir. 1981)(evidence suppressed was material to the preparation of petitioner's defense, regardless whether it was intended to be admitted into evidence). In the present case, the information sought is clearly relevant and discoverable. The information sought can lead to further discoverable evidence. Also, the information sought may show bias to motive on behalf of the Court, the Attorney General's Office, or any witness who testified while this case was presented to the grand jury. It is important to note that bias is always discoverable. Rule 616 of the Mississippi Rules of Evidence states that "evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible" for the purpose of attacking a witness' credibility.

18. Defendant also submits that there can not be any ex parte communication between the Attorney General's office and the Court. Such communications would violate Mr. Turner's constitutional rights. "No person shall be deprived of life, liberty, or property except by due process of law" Miss. Const. Art. 3, § 14 "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard, according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding." Miss. Code of



Judicial Conduct, Canon 3(A)(4). Courts previously held it is improper for judges to have contact with those involved in cases before them. *Miss. Comm'n on Judicial Performance v. Gunn*, 614 So. 2d at 389; *Miss. Comm'n on Judicial Performance v. Willard*, 788 So.2d 736, 744 (Miss.2001). We even have admonished judges that it is improper "merely to listen to another person involved in pending litigation." *Willard*, 788 So.2d at 741 (quoting *Miss. Comm'n on Judicial Performance v. Chinn*, 611 So. 2d 849, 852 (Miss.1992)). Ex parte communication regarding a citizen deprives said citizen of their due process rights. *Mississippi Comm'n on Judicial Performance v. Patton*, 57 So.3d 626, 634 (Miss.2011).

19. Further, Turner states there may be information revealed that would warrant Judge Weill to recuse himself from this case. According to the Miss. Code of Judicial Conduct, Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; Miss. Code of Judicial Conduct, Canon 3(E)1a.

20. In the present case it is clear there was some form of communication between the Court and the Attorney General's Office. This is evidenced by the correspondence between Judge Weill's staff attorney and employees of Hinds County. (See Exhibit A). Judge Weill's staff attorney had specific information and knowledge about Mr. Turner's case. Also, Judge Weill's staff attorney made a specific request on behalf of the Attorney General's Office. Judge Weill signed a specific Order, which was intentionally kept under seal,

allowing the Attorney General's Office to convene a Hinds County Grand Jury. It is evident Hinds County District Attorney Robert Smith did not participate in this agreement or agree to impanel the grand jury. This agreement was made solely between Judge Weill and the Attorney General's Office. Thus, there was communication between the Attorney General's Office and Judge Weill outside the presence of Mr. Turner or Mr. Turner's counsel. This ex-parte communication violates Mr. Turner's constitutional rights to due process of the laws. Mr. Turner should have the ability to ascertain the contents of the communications between the Attorney General's Office and Judge Weill to determine the extent of his constitutional violations, and to determine whether Judge Weill should be disqualified from hearing his case. "No person shall be deprived of life, liberty, or property except by due process of law" Miss. Const. Art. 3, § 14

21. Mr. Turner requests a hearing on this matter.

**WHEREFORE, PREMISES CONSIDERED,** the Defendant, Darnell Turner, requests that this Motion be received and considered by this Honorable Court and after same an Order removing the seal of the sealed order and compelling all discoverable communications the above-styled case.

Respectfully, submitted this the 10<sup>th</sup> day of June, 2016.

Respectfully submitted,

SWEET & ASSOCIATES

BY: /s/ Dennis C. Sweet, III  
Dennis C. Sweet, III

**OF COUNSEL:**

Dennis C. Sweet, III, MSB# 8105  
Dennis C. Sweet, IV, MSB# 103009  
Jeffrey M. Graves, MSB# 104327  
SWEET & ASSOCIATES  
158 E. Pascagoula Street  
Jackson, MS 39201  
Office: 601+965+8700  
Facsimile: 601+965+8719

**CERTIFICATE OF SERVICE**

I certify that on June 10, 2016, I electronically filed the above with the Clerk of the Court using the MEC system which sent notification of the filing to all counsel of record.

/s/ Dennis C. Sweet, III

Dennis C. Sweet, III

**Robert Smith**

---

**From:** STAN ALEXANDER <SALEX@ago.state.ms.us>  
**Sent:** Wednesday, April 06, 2016 9:03 PM  
**To:** Weills Lawclerk  
**Cc:** Robert Smith; Weills Court Administrator; Walter Bleck; Brad McCullouch  
**Subject:** Re: SEALED CASE

Thank you. I am in receipt of your email.

Sent from my iPhone

On Apr 6, 2016, at 5:15 PM, Weills Lawclerk <[weillslawclerk@co.hinds.ms.us](mailto:weillslawclerk@co.hinds.ms.us)> wrote:

Mr. Alexander, Below please find a second *ex parte* email sent by Mr. Smith this afternoon, apparently while I was composing my email in response to Mr. Smith's first email.

Mr. Smith, we await your immediate response to clarify whether the grand jury was instructed to be present tomorrow morning at 9:00 a.m. for the presentation of a sealed investigation by the Office of the Attorney General, as Ordered by Judge Weill on April 4, 2016.

Kate C. Steiner

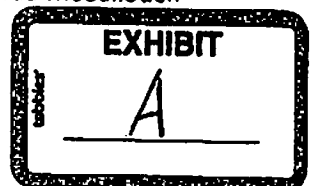
Staff Attorney to Judge Jeff Weill, Sr.  
Hinds County Courthouse  
407 E. Pascagoula Street  
1st Floor - 39201  
P.O. Box 22711  
Jackson, MS 39225-2711  
Office- (601) 973-5576  
Fax- (601) 973-5541

**From:** Robert Smith  
**Sent:** Wednesday, April 06, 2016 4:52 PM  
**To:** Weills Lawclerk <[weillslawclerk@co.hinds.ms.us](mailto:weillslawclerk@co.hinds.ms.us)>  
**Subject:** RE: SEALED CASE

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Robert Shuler Smith

**From:** Weills Lawclerk  
**Sent:** Wednesday, April 06, 2016 8:44 AM  
**To:** Robert Smith <[rsmith@co.hinds.ms.us](mailto:rsmith@co.hinds.ms.us)>; Walter Bleck <[wbleck@co.hinds.ms.us](mailto:wbleck@co.hinds.ms.us)>; Brad McCullouch <[bmccullouch@co.hinds.ms.us](mailto:bmccullouch@co.hinds.ms.us)>



Cc: STAN ALEXANDER; SAEY@aaa.state.ms.us; Zack Wallace <weills@co.hinds.ms.us> Page 2 of 9  
Case: 251-16-120 Filed: 05/10/2016  
Jackson <louannjackson@co.hinds.ms.us>  
Subject: RE: SEALED CASE

Mr. Smith, Mr. Bleck and Mr. McCullouch,

Please be advised that Judge Weill has entered an Order in a sealed matter, pursuant to Mr. Smith's agreement, which permits the Office of the Attorney General to present an investigation to the Hinds County Grand Jury on Thursday, April 7, 2016 at 9:00 a.m. The circuit clerk informed us below that the District Attorney's office coordinates the grand jury schedule after they are called in for the week. Accordingly, please make sure to take the appropriate steps to inform the grand jurors to be present on April 7, 2016 at 9:00 a.m., and please be sure that they are not prematurely dismissed in the event that they are no longer needed by the District Attorney.

The Court directs someone on behalf of the DA's office to respond to this email by 5:00 p.m. today and confirm that the reporting instructions will be communicated to the grand jurors as directed.

Kate C. Steiner

Staff Attorney to Judge Jeff Weill, Sr.  
Hinds County Courthouse  
407 E. Pascagoula Street  
1st Floor - 39201  
P.O. Box 22711  
Jackson, MS 39225-2711  
Office- (601) 973-5576  
Fax- (601) 973-5541

From: Zack Wallace  
Sent: Tuesday, April 05, 2016 12:18 PM  
To: Weills Lawclerk <weillslawclerk@co.hinds.ms.us>  
Subject: RE: SEALED CASE

Kate,

I do not call in the grand jury after the jury summons listed date of service. You may want to contact the DA's office.

Thanks

From: Weills Lawclerk  
Sent: Tuesday, April 05, 2016 11:01 AM  
To: STAN ALEXANDER; Zack Wallace  
Cc: Robert Smith  
Subject: SEALED CASE

Zack,

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Kate C. Steiner

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From: STAN ALEXANDER [mailto:SALEX@ago.state.ms.us]  
Sent: Tuesday, April 05, 2016 10:24 AM  
To: Weills Lawclerk <weillslawclerk@co.hinds.ms.us>  
Cc: Robert Smith <rsmith@co.hinds.ms.us>  
Subject: Re: Attached Image

Kate,

If possible please let the GJ know that they will be needed on Thursday morning. I don't know if they will be finished with their other cases before Thursday and I wouldn't want them to be prematurely dismissed. Thank you.

Sent from my iPhone

On Apr 4, 2016, at 9:10 AM, Weills Lawclerk <weillslawclerk@co.hinds.ms.us> wrote:

Attached please find a copy of the signed SEALED Order which will be sent for filing under seal with the clerk later today.

Thanks,

Kate Steiner  
Staff Attorney to Judge Jeff Weill, Sr.

From: Canon-3715@co.hinds.ms.us [Canon-3715@co.hinds.ms.us]  
Sent: Monday, April 04, 2016 8:05 AM  
To: Weills Lawclerk  
Subject: Attached Image

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**Robert Smith**

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**From:** Weills Lawclerk  
**Sent:** Wednesday, April 06, 2016 5:16 PM  
**To:** Stanley Alexander  
**Cc:** Robert Smith; Weills Court Administrator; Walter Bleck; Brad McCullouch  
**Subject:** FW: SEALED CASE

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**Cc:** STAN ALEXANDER <SALEX@ago.state.ms.us>; Zack Wallace <zwallace@co.hinds.ms.us>; LouAnn Jackson <louannjackson@co.hinds.ms.us>  
**Subject:** RE: SEALED CASE

Mr. Smith, Mr. Bleck and Mr. McCullouch,

Case: 25Cr116-cr-00239-JAW Document: 1-5 Filed: 06/10/2016 Page 5 of 9  
Please be advised that Judge Weill has entered an Order # 15 sealed filed: 06/10/2016. Pursuant to Mr. Smith's agreement, which permits the Office of the Attorney General to present an investigation to the Hinds County Grand Jury on Thursday, April 7, 2016 at 9:00 a.m. The circuit clerk informed us below that the District Attorney's office coordinates the grand jury schedule after they are called in for the week. Accordingly, please make sure to take the appropriate steps to inform the grand jurors to be present on April 7, 2016 at 9:00 a.m., and please be sure that they are not prematurely dismissed in the event that they are no longer needed by the District Attorney.

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# Activity Log

## 2<sup>nd</sup> Floor Visitation

### Victor Mason, Sheriff

Date: 05/26/2016

Officer: Jessica Baggett

Location: 2<sup>nd</sup> Floor visitation

0800	Officer Baggett enters 2 <sup>nd</sup> floor visitation area
0803	Officer Baggett exits 2 <sup>nd</sup> floor visitation area
0812	Officer Baggett enters 2 <sup>nd</sup> floor visitation area with inmate workers Laura Brown #95998 Clara Anderson # 87233 Shaquita Montgomery #34545
0820	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate workers Laura Brown #95998 Shaquita Montgomery #34545 ,Clara Anderson #87233, to 1 <sup>st</sup> floor Laundry
0836	Officer Baggett enters 2 <sup>nd</sup> floor visitation area with inmate worker Laura Brown #95998 Clara Anderson #87233,Shaquita Montgomery#34545,
0856	District Attorney Robert Schuler Smith enters 2 <sup>nd</sup> floor visitation area to visit with Inmate Christopher Butler #30502
0903	Officer Mitchell enters 2 <sup>nd</sup> floor visitation area with inmate Christopher Butler #30502 to visit with District Attorney Robert Schuler Smith
0906	Officer Mitchell exits 2 <sup>nd</sup> floor visitation area
0913	District Attorney Robert Schuler Smith exits 2 <sup>nd</sup> floor visitation
1134	Social Worker Amanda Coleman enters 2 <sup>nd</sup> floor visitation area with one visitor for lunacy/commitment hearing
1345	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate worker Shaquita Montgomery #34545 Eva Funderburk #79846
1400	Officer Baggett enters 2 <sup>nd</sup> floor visitation area
1406	Officer Ables enters 2 <sup>nd</sup> floor visitation area
1416	Officer Baggett exits 2 <sup>nd</sup> floor visitation area
1446	Officer Baggett enters 2 <sup>nd</sup> floor visitation area with inmate worker Shaquita Montgomery #34545 and Eva Funderburk #79846
1500	Officer Ables enters 2 <sup>nd</sup> floor visitation area
1535	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate worker Shaquita Montgomery #34545 and Eva Funderburk #79846 back to 4 <sup>th</sup> floor female housing unit

Supervisor Signature: \_\_\_\_\_

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Robert Shuler Smith  
District Attorney  
Hinds County, Mississippi



Office: (601) 968-6568  
Fax: (601) 968-6655  
Email: [rsmith@co.hinds.ms.us](mailto:rsmith@co.hinds.ms.us)

**OFFICE OF THE DISTRICT ATTORNEY**

Seventh Circuit Court District

Post Office Box 22747

Jackson, MS 39225-2747

To: Attorney Sanford Knott

From: Robert Shuler Smith

Date: March 21<sup>st</sup>, 2016

Dear Mr. Knott:

Please be advised that I have enclosed a motion for contempt of court and other relief, which was filed on Friday, March 18<sup>th</sup>, 2016, due to the blatant and contemptuous behavior of Assistant Attorneys General Patrick Beasley and Shaun Yurkuran. Per our conversation regarding the subsequent hearing held on Friday, March 18<sup>th</sup>, 2016, I was not advised by the Attorney General's office that a hearing would be held. Furthermore, based upon your representation that the Court held that I waived my right to object based upon the rationale that I was not present I strongly disagree with the Court's ruling. Needless to say, I am the duly elected District Attorney for Hinds County, Mississippi, and therefore, I can appear before any Court in this jurisdiction- especially regarding the Christopher Butler matter. Furthermore, it should be noted that my objections to the Butler is well documented in various previously held hearings.

Secondly, the defendant has a right to a preliminary hearing, which was set at least twice by the Court. Upon failure to present evidence at his preliminary hearing by the Attorney General's office, who filed an affidavit, warrant and ultimately influenced his bond to be set at a highly unreasonable amount under the circumstances further proves my theory of this case in the Butler matter. Contrary to the ruling, the Attorney Generals' office has violated Mr. Butler's constitutional rights in numerous ways and by continuing to confine him under the circumstances also violates his civil rights. In fact, the defendant did not waive his constitutional right to a preliminary hearing, but has been denied his right as well as being held in confinement under these circumstances.

I will forward this letter to all parties who have affected the rights of Mr. Butler and will continue to move forward with all proceedings as planned for the administration of justice and equality for all who appear before Court in Hinds County, Mississippi.

If there is anything further, please advise me as soon as possible. Thank you.

Cordially,

A handwritten signature in black ink, appearing to read "Robert Shuler Smith".

Robert Shuler Smith

Cc: Circuit Judges Weill and Green  
County Court Judge Priester

# Activity Log

## 2<sup>nd</sup> Floor Visitation

### Victor Mason, Sheriff

Date: 05/09/2016

Officer: Jessica Baggett

Location: 2<sup>nd</sup> Floor visitation

0800	Officer Baggett enters 2 <sup>nd</sup> floor visitation area
0809	Officer Allen enters 2 <sup>nd</sup> floor visitation area with inmate workers Laura Brown #95998 and inmate Barbara Brown #01311
0816	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate workers Laura Brown #95998 and inmate Barbara Brown #01311 to 1 <sup>st</sup> floor laundry to dress out
0836	Officer Baggett enters 2 <sup>nd</sup> floor visitation area with inmate workers Laura Brown #95998 and inmate Barbara Brown #01311
0846	Attorney Dereck Martin enters 2 <sup>nd</sup> floor visitation area to visit with inmate Shaquita Montgomery
0850	Officer Allen enters 2 <sup>nd</sup> floor visitation area with inmate Shaquita Montgomery for attorney visit with attorney Dereck Martin
0851	Officer Ables exits 2 <sup>nd</sup> floor visitation area
0900	Undersheriff Matory enters 2 <sup>nd</sup> floor visitation area
0906	Officer Ables exits 2 <sup>nd</sup> floor visitation area
1114	Officer Ables enters 2 <sup>nd</sup> floor visitation area
1120	Officer Ables exits 2 <sup>nd</sup> floor visitation area
1138	Undersheriff Matory enters/exits 2 <sup>nd</sup> floor visitation area
1144	Undersheriff Matory enters/exits 2 <sup>nd</sup> floor visitation area
1146	Officer Patton and Undersheriff Matory enters 2 <sup>nd</sup> floor visitation area
1205	Attorney Sandy Knott enters 2 <sup>nd</sup> floor visitation area to visit with inmate Christopher Butler #30502
1210	Officer Patton enters 2 <sup>nd</sup> floor visitation area with inmate Christopher Butler #30502 for attorney visit with Attorney Sandy Knott
1211	Officer Patton exits 2 <sup>nd</sup> floor visitation area

Supervisor Signature: \_\_\_\_\_

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# Activity Log

## 2<sup>nd</sup> Floor Visitation

### Victor Mason, Sheriff

Date: 05/09/2016

Officer: Jessica Baggett

Location: 2<sup>nd</sup> Floor visitation

1218	Attorney Sandy Knott exits 2 <sup>nd</sup> floor visitation area, visit complete with inmate Christopher Butler
1219	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate Christopher Butler #30502 to 1 <sup>st</sup> floor booking area for court
1221	District Attorney Robert Schuler Smith enters/ exits 2 <sup>nd</sup> floor visitation area
1225	Officer Ables enters 2 <sup>nd</sup> floor visitation area
1225	Attorney Kathleen Baxter enters 2 <sup>nd</sup> floor visitation area to visit with inmate Jeffery Tyler Mote #00457
1230	Lunacy/Commitment visitors exits 2 <sup>nd</sup> floor visitation area
1233	Officer Whitely enters/exits 2 <sup>nd</sup> floor visitation area
1235	Officer Patton enters 2 <sup>nd</sup> floor visitation area with inmate Jeffery Tyler Mote #00457 for attorney visit with Attorney Kathleen Baxter
1320	Attorney Kathleen Baxter exits 2 <sup>nd</sup> floor visitation area, visit complete with inmate Jeffery Tyler Mote #00457
1333	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate Jeffery Tyler Mote #00457 back to 3 <sup>rd</sup> floor housing unit
1335	Officer Baggett enters 2 <sup>nd</sup> floor visitation area
1400	Officer Baggett exits 2 <sup>nd</sup> floor visitation area
1402	Officer Baggett enters 2 <sup>nd</sup> floor visitation area
1410	Captain Davis enters 2 <sup>nd</sup> floor visitation area to 3 <sup>rd</sup> floor housing unit
1413	Captain Davis enters 2 <sup>nd</sup> floor visitation area with 1 inmate
1420	Officer Ables enters 2 <sup>nd</sup> floor visitation area
1429	Officer Baggett exits 2 <sup>nd</sup> floor visitation area with inmate worker Barbara Brown #01311

Supervisor Signature: \_\_\_\_\_

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Activity Log  
2<sup>nd</sup> Floor Visitation  
Victor Mason, Sheriff

Date: 05/09/2016

Officer: Jessica Baggett

Location: 2nd Floor visitation

[illegible]

Supervisor Signature: \_\_\_\_\_

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