

IN THE SUPREME COURT OF MISSISSIPPI

ORIGINAL

ROBERT SMITH

FILED

PETITIONER

VERSUS

OCT 13 2017

NO 2017-M-1409-SC

STATE OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RESPONDENT

**PETITION FOR INTERLOCUTORY APPEAL
BY PERMISSION, OR, IN THE ALTERNATIVE
FOR WRIT OF MANDAMUS, AND
MOTION FOR STAY AND EXPEDITION**

Petitioner by counsel, pursuant to M.R.A.P. 5, 21 and 27, petitions this Court for permission to appeal an interlocutory order of the Circuit Court of Rankin County, Mississippi, or in the alternative, for a writ of mandamus directed to that Court, and for other relief. In support of its Petition, Petitioner would show the following:

1. Petitioner is the defendant in two cases in the Circuit Court of Rankin County, Mississippi. The Petitioner was indicted under the following sections of the Mississippi Code, 1972, as amended:

Cause No. 28250:

- a. Count 1: Simple Domestic Violence, MCA § 97-3-7(3);
- b. Count 2: Simple Domestic Violence, MCA § 97-3-7(3)
- c. Multi-Count: Common Plan or Scheme, MCA § 99-7-2

Cause No. 28251:

- a. Count 1: Aggravated Stalking, MCA § 97-3-107(1) & (2);
- b. Count 2: Robbery, MCA § 97-3-73;
- c. Multi-Count: Common Plan or Scheme, MCA § 99-7-2

2. In this Petition, Petitioner seeks relief from this Court from an order of the Circuit Court of Rankin County denying Petitioner's motion to dismiss these cases asserting as a basis that court Attorney General, State of Mississippi, exceeded the scope of his authority in pursuing the indictments in Rankin County Circuit Court when the Honorable Michael Guest, the District Attorney, declined to do so.

Exhibits

3. A copy of the Rankin County Circuit Court trial record for cause nos. 28250 and 28251 is attached hereto as Exhibits "1-A" through "1-X."
4. A copy of the transcript of the hearing held on October 2, 2017 on defendant's motion to dismiss is attached hereto as Exhibit "2."

Facts and Procedural History

5. The facts necessary to an understanding of the question of law determined by the order of the Circuit Court as to which this appeal is sought are as follows:

- a. Respondent, the State of Mississippi, indicted Petitioner in Rankin County multiple sections of the Mississippi Code, 1972, as amended. See copies of each of the indictments attached hereto as Exhibits "1-A" and "1-B," respectively. Each of the indictments were filed on May 25, 2017.
- b. In each case, Petitioner timely filed a motion to dismiss pursuant to *Williams v. State*, 184 So.3d 908 (2014), and the Mississippi Constitution alleging that the Attorney General lacks the authority to pursue the indictments against District Attorney Smith. See copies of the motion and memorandum of authorities attached hereto as Exhibits "1-I" and "1-J," respectively.

- c. On October 2, 2017, counsel for the parties argued the pending motion to dismiss before the Honorable John H. Emfinger. See copy of notice of hearing on defendant's motion to dismiss attached hereto as Exhibit "1-K."
- d. On October 3, 2017, Honorable John H. Emfinger entered an Order denying defendant's motion, a copy of which is attached hereto as Exhibit "1-O."
- 6. Petitioner seeks interlocutory appeal of the Circuit Court's October 3, 2017, denial of his motion to dismiss on the grounds the Attorney General lacks the authority to pursue the indictments against District Attorney Smith.
- 7. These cases are currently set for trial on October 23, 2017 before the Honorable John H. Emfinger at the Rankin County Circuit Court.

Issues Presented

- 8. The questions of law decided by the Circuit Court and to be presented on appeal are:
 - a. Whether the Attorney General exceeded the scope of his authority pursuant to *Williams v. State*, 184 So.3d 908 (2014), when the Attorney General caused the Petitioner to be indicted despite the fact that the Honorable Michael Guest, District Attorney for the Twentieth Circuit Court District, composed of Madison and Rankin Counties, Mississippi, declined to prosecute District Attorney Smith. In *Williams*, the Court held that where Mississippi law does not permit a trial court to disqualify a duly elected and serving district attorney and replace him with the attorney general where the district attorney has decided, in the lawful exercise of his discretion, not to prosecute a criminal case.
Id. at 917.
 - b. Whether the Attorney General usurped the authority of the district attorney's office when he caused the Petitioner to be indicted in conflict with Mississippi Code

Section 75-5-59, which authorizes the Mississippi Attorney General to investigate and prosecute specifically enumerated crimes for public corruption and white collar crimes, and Mississippi Code Section 75-5-53, which authorizes the Attorney General to assist, but not usurp, a local district attorney in the discharge of his or her duties. *Williams v. State*, 184 So.3d at 915.

Argument

9. Pursuant to *Williams v. State*, “[t]he powers of the district attorneys can neither be increased nor diminished by the Attorney General.” *Id.* at 913 (citing *Capital Stages v. State*, 157 Miss. 576, 128 So. 759, 763 (1930)) (emphasis in original). A district attorney’s duties are prescribed by law, and the Attorney General is not authorized to “usurp or encroach upon the constitutional or statutory power of the local district attorney where the attorney general’s assistance is not requested by the district attorney, and is in fact opposed by the district attorney.” *Id.* at 912 (citing Miss. Const. art. 6, § 174). In the instant case, the local district attorney was presented with the evidence and declined to prosecute because he did not believe that the facts presented rose to the felony level. See pg. 8, lines 13 through 24 of the hearing transcript attached hereto as Exhibit “2.” Moreover, the local district attorney neither consented to, nor requested, the Attorney General to assist with the prosecution of the instant case. The local district attorney stated only after the Attorney General began the prosecution that he did not oppose the Attorney General’s decision to prosecute. Whether or not the local district attorney later approves of intervention by the Attorney General is irrelevant. *Williams v. State*, 184 So.2d at 914.

10. Pursuant to *Williams v. State*, 184 So.3d 908 (2014), the Attorney General may not diminish the statutory power of a local district attorney provided by Mississippi Code Section

25-31-11(1) by intervening when a local attorney general has chosen not to prosecute a criminal case since “the Mississippi Attorney General is not the local district attorney’s boss.” *Id.* at 913.

11. Moreover, the underlying allegations of simple domestic violence, aggravated stalking, and robbery are not of statewide interest. District attorneys are not authorized by statute to “encroach upon the powers of the attorney general,” and likewise, the Attorney General may not “encroach” upon the powers of local district attorneys. *Id.* at 912.

12. Mississippi Code Section 25-31-21 provides three instances in which a district attorney *pro tempore* shall be appointed: “the absence or inability or disqualification of the district attorney.” Miss. Code Ann. § 25-31-21 (Rev. 2010). In the instant case, the local district attorney was not absent, unable to perform, or disqualified from prosecuting the Petitioner, so the Attorney General overreached when he caused the Petitioner to be indicted absent a request, or consent, to intervene in the prosecution on the part of the local district attorney. *Williams v. State*, 184 So.3d at 916.

13. The alleged victim was advised by the local district attorney that she could present her evidence to the county prosecutor, the Honorable Richard Wilson, to prosecute her case but she declined to do so. See pg. 16, lines 6 through 10, of the hearing transcript attached hereto as Exhibit “2.”

14. The Circuit Court’s denial of defendant’s motion to dismiss was improper and this Court should permit interlocutory appeal because a substantial basis exists for a difference of opinion on these questions of law and appellate resolution may materially advance the termination of the litigation and avoid exceptional expense to the parties, and will also resolve issues of general importance in the administration of justice.

Writ of Mandamus

15. In the alternative, if this Court should find that interlocutory appeal pursuant to M.R.A.P. 5 is not available, Petitioner prays that this Court will issue a writ of mandamus pursuant to M.R.A.P. 21 directing the Circuit Court to dismiss the indictments in these cases.

16. Upon information and belief, the Honorable Michael Guest, District Attorney for the Twentieth Circuit Court District, composed of Rankin and Madison Counties, Mississippi, declined to prosecute District Attorney Smith and neither requested, nor consented to, the involvement of the Attorney General in the prosecution of the District Attorney Smith. See pg. 9, lines 10 through 21, of hearing transcript attached hereto as Exhibit "2"

17. Petitioner asserts that the Attorney General exceeded the boundaries established by the Mississippi Constitution, as well as the controlling legal precedent established in *Williams v. State*, 184 So.3d 908 (2014), by indicting District Attorney Smith in Rankin County Circuit Court.

18. Petitioner's rights to dismissal of this cause of action cannot be fully vindicated by appeal after final judgment. In particular, the Petitioner may suffer irreparable harm personally and professionally if interlocutory review is not granted. The risk and damage to Petitioner's professional reputation as a result of going forward on a case that may be reversed on direct appeal, but which could be terminated on interlocutory appeal, far outweighs the desire of the Attorney General to prosecute a case over which he has no jurisdiction.

FOR THESE REASONS, Petitioner respectfully prays that this Court will grant the following relief:

- a. Enter an order staying the trial of the scheduled for October 23, 2017, in these cases pending further action by this Court.
- b. Grant such other relief as the Court may deem appropriate in the circumstances.

Respectfully submitted,



JOHN R. REEVES, MSB #04699
LAW OFFICES OF JOHN R. REEVES,

P.C.

ATTORNEY FOR PETITIONER
355 SOUTH STATE STREET
JACKSON, MS 39201
601-355-9600

CERTIFICATE OF SERVICE

I, John Reeves, do hereby certify that I have this day served, via First Class U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing *Petition for Interlocutory Appeal by Permission Or, In the Alternative, For Writ of Mandamus, and Motion for Stay and Execution* on:

Honorable John H. Emfinger
Circuit Court Judge
P.O. Box 1885
Brandon, MS 39043

Stanley Alexander, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205

THIS, the 13th day of October, 2017.


JOHN R. REEVES

INDICTMENT

SIMPLE DOMESTIC VIOLENCE

MCA § 97-3-7(3) Count 1

SIMPLE DOMESTIC VIOLENCE

MCA § 97-3-7(3) Count 2

MULTI-COUNT MCA § 99-7-2 (Common Plan or Scheme)

CIRCUIT COURT
NO. 28150

FILED
MAY 25 2017

REBECCA N. BOYD, CIRCUIT CLERK
BY

THE STATE OF MISSISSIPPI
COUNTY OF RANKIN

Circuit Court
January Term, A.D., 2017

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful persons of Rankin County, in the State of Mississippi, elected, impaneled, sworn and charged to inquire in and for said County and State aforesaid, in the name and the authority of the State of Mississippi, upon their oaths present: That

ROBERT S. SMITH

in said County and State

COUNT I

on or about August 13, 2015, Robert S. Smith did purposely, knowingly or recklessly cause bodily injury to Christie Edwards, by grabbing her by the arms and throwing her against a counter, said Christie Edwards had a former dating relationship with Robert S. Smith, in violation of Section 97-3-7(3) of the Mississippi Code, 1972, as amended; and

COUNT II

on or about August 13, 2015, Robert S. Smith did purposely, knowingly and unlawfully attempt by physical menace to put Christie Edwards in fear of imminent serious bodily harm by pointing a firearm at Christie Edwards and making threatening comments, said Christie Edwards had a former dating relationship with Robert S. Smith, in violation of Section 97-3-7(3) of the Mississippi Code, 1972, as amended; and

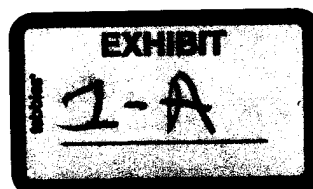
Said offenses herein charged are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan, and are charged together pursuant to Section 99-7-2 of the Mississippi Code, 1972, as amended.

All counts contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.


GRAND JURY FOREPERSON


SPECIAL ASST. ATTORNEY GENERAL

000743



AFFIDAVIT

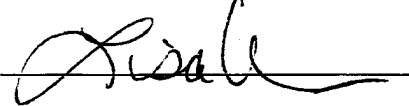
COMES NOW the Foreperson of the Rankin County Grand Jury, and makes oath that this indictment presented to this Court was concurred in by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members thereof were present during all deliberations.


Lea Ann McElroy
Foreperson of the Grand Jury

SWORN TO AND SUBSCRIBED before me on this, the 25 day of

May, A.D., 2017

BECKY BOYD, CIRCUIT CLERK

BY:  D.C.



000749

INDICTMENT

AGGRAVATED STALKING

MCA § 97-3-107(1) & (2) Count 1

ROBBERY

MCA § 97-3-73 Count 2

MULTI-COUNT MCA § 99-7-2 (Common Plan or Scheme)

CIRCUIT COURT

NO. 2851

MAY 25 2017

REBECCA N. BOWEN, CIRCUIT CLERK

THE STATE OF MISSISSIPPI
COUNTY OF RANKIN

Circuit Court
January Term, A.D., 2017

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful persons of Rankin County, in the State of Mississippi, elected, impaneled, sworn and charged to inquire in and for said County and State aforesaid, in the name and the authority of the State of Mississippi, upon their oaths present: That

ROBERT S. SMITH

in said County and State

COUNT I

on or about August 13, 2015, Robert S. Smith did purposely, knowing and feloniously, make a credible threat toward Christie Edwards, by the use or display of a deadly weapon to wit: a firearm with the intent to place Christie Edwards in reasonable fear of death or great bodily injury and knew or should have known that the conduct would cause a reasonable person to fear for his or her own safety, in violation of Section 97-3-107(1) and (2) of the Mississippi Code, 1972, as amended; and

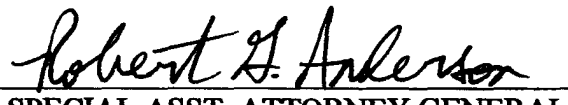
COUNT II

on or about August 13, 2015, Robert S. Smith did knowingly, purposefully and feloniously take the personal property of Christie Edwards to wit: a handgun in her presence and against her will, by violence to her person or by putting her in fear of some immediate injury to her person, in violation of Section 97-3-73 of the Mississippi Code, 1972, as amended.

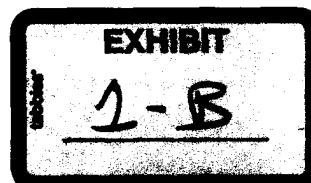
Said offenses herein charged are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan, and are charged together pursuant to Section 99-7-2 of the Mississippi Code, 1972, as amended.

All counts contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.


GRAND JURY FOREPERSON


SPECIAL ASST. ATTORNEY GENERAL

000750



AFFIDAVIT

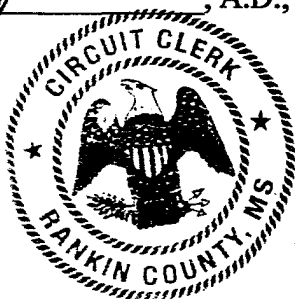
COMES NOW the Foreperson of the Rankin County Grand Jury, and makes oath that this indictment presented to this Court was concurred in by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members thereof were present during all deliberations.



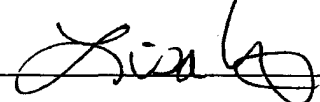
Lea Ann McElroy
Foreperson of the Grand Jury

SWORN TO AND SUBSCRIBED before me on this, the 25 day of

May, A.D., 2017



BECKY BOYD, CIRCUIT CLERK

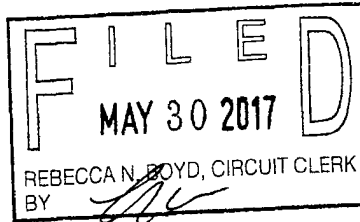
BY:  D.C.

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

vs.

ROBERT S SMITH



Cause No. 28250

WAIVER OF ARRAIGNMENT AND ENTRY OF PLEA
ON NON CAPITAL CASES

Prior to arraignment, Defendant through his Counsel reserves the right to object to any defect in the indictment and reserves the right to file pleadings required to be filed prior to arraignment, within ten (10) days from the date hereof.

Comes now the Defendant, ROBERT S SMITH, with Counsel and acknowledges service of an indictment on a non capital charge of

SIMPLE DOMESTIC VIOLENCE - CT 1
SIMPLE DOMESTIC VIOLENCE - CT II

I understand the nature of the charge against me, and I hereby waive formal reading of the indictment to me in open Court. I hereby enter a plea of NOT GUILTY to the charge set out in the indictment.

Witness my signature this the 30 day of

May, 2017.

[Signature]
Attorney for Defendant

[Signature]
Defendant

Sworn to and subscribed before me, this the 30 day of

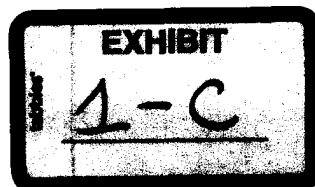
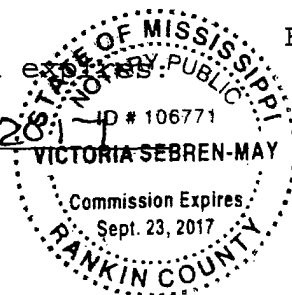
May, 2017.

REBECCA N. BOYD, CIRCUIT CLERK

By: [Signature] D.C.

My commission expires

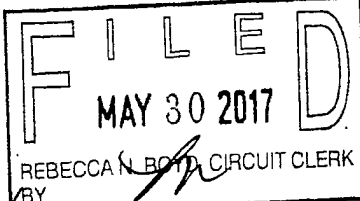
Sept 23, 2017



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

Robert S. Smith

CAUSE NO.

28252

DEFENDANT

**ORDER SETTING TRIAL, PRE-TRIAL CONFERENCE,
GUILTY PLEA DATE AND SETTLEMENT CONFERENCE**

IT APPEARING defendant has been duly arraigned and entered a plea of not guilty to the indictment, bail is set at \$ _____ and returnable to each date set by the Court.

IT IS ORDERED AND ADJUDGED that defendant appear at the Rankin County Justice Center on the following dates and times:

1. **SETTLEMENT CONFERENCE** set for 9:00 a.m. on the 2 day of October, 2017, however, defendant's appearance at the **SETTLEMENT CONFERENCE** is excused if one of the items set forth in paragraph A., B. or C. below is completed before the **SETTLEMENT CONFERENCE**. The Court will take a guilty plea or enter the Pre-Trial Conference Checklist for a defendant who wishes the Court to do either at the **SETTLEMENT CONFERENCE**.

Defendant must complete one of the below actions before 5:00 p.m. on the 6 day of October, 2017.

A. File a guilty plea petition with the Circuit Clerk in order to take advantage of the State's recommendation as to sentence (See URCCC 8.04 B. 4.), and attach a copy of the recommendation letter thereto; or

B. Provide a pre-trial diversion program application to the State and pay any fees associated therewith; or

C. Provide the Court Administrator a Pre-Trial Conference Checklist fully completed by the parties.

2. **GUILTY PLEA DATE** set for 9:00 a.m. on the 9 day of

October, 2017, however, defendant's appearance at the **GUILTY PLEA DATE** is excused if a pre-trial diversion program application has been provided to the State, along with any fees associated therewith, or if defendant appeared at the **SETTLEMENT CONFERENCE** and was questioned by the Court in relation to the entry of a Pre-Trial Conference Checklist.

If a guilty plea petition or pre-trial diversion program application has not been filed as set forth in paragraph A. or B. above, or if the Court has not questioned defendant and entered a Pre-Trial Conference Checklist, the Court will do so on the **GUILTY PLEA DATE**.

The parties must file all pre-trial motions with the Circuit Clerk and, either personally or electronically, serve counsel opposite, before 5:00 p.m. on the 10 day of October, 2017, or will be deemed abandoned for that reason. See URCCC 8.02 and 2.04.

3. **PRE-TRIAL CONFERENCE** set for 9:00 a.m. on the 16 day of October, 2017, however, the parties appearance at the **PRE-TRIAL CONFERENCE** is excused if a pre-trial motion has not been filed by either party.

All pre-trial motions will be heard on or before this date, or will be deemed abandoned for that reason. See URCCC 2.04.

4. **TRIAL** set for 9:00 a.m. on the 23 day of October, 2017, or commenced on any day thereafter that week or on any day of the following week.

SO ORDERED AND ADJUDGED this the _____ day of _____, 2017.

Robert S. Smith
DEFENDANT

Defendant's Address and Telephone Number:

Robert S. Smith
2725 Aeminyway Circle
JACKSON, MS 39209
(601) 969-9281

Initial Setting - 2/17

John H. Emfinger
CIRCUIT JUDGE

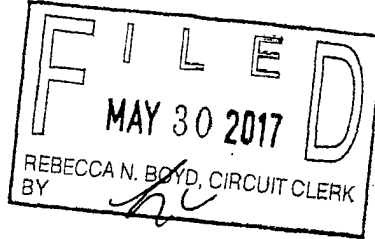
Robert S. Smith
ATTORNEY FOR DEFENDANT
Robert S. Smith
Print Name

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

vs.

ROBERT S SMITH



Cause No. 28251

WAIVER OF ARRAIGNMENT AND ENTRY OF PLEA
ON NON CAPITAL CASES

Prior to arraignment, Defendant through his Counsel reserves the right to object to any defect in the indictment and reserves the right to file pleadings required to be filed prior to arraignment, within ten (10) days from the date hereof.

Comes now the Defendant, ROBERT S SMITH,
with Counsel and acknowledges service of an indictment on a
non capital charge of

AGGRAVATED STALKING - CT I
ROBBERY - CT II

I understand the nature of the charge against me, and I hereby waive formal reading of the indictment to me in open Court. I hereby enter a plea of NOT GUILTY to the charge set out in the indictment.

Witness my signature this the 30 day of

May, 20 17.

Robert S. Smith
Attorney for Defendant

Robert S. Smith
Defendant

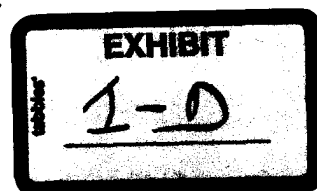
Sworn to and subscribed before me, this the 30 day of

May, 20 17.

REBECCA N. BOYD, CIRCUIT CLERK

My commission expires:

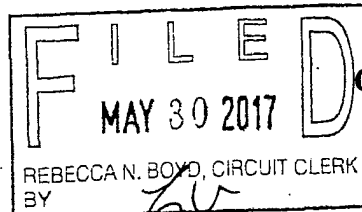
Sept 23, 2017



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

Robert S. SmithCAUSE NO. 28251

DEFENDANT

**ORDER SETTING TRIAL, PRE-TRIAL CONFERENCE,
GUILTY PLEA DATE AND SETTLEMENT CONFERENCE**

IT APPEARING defendant has been duly arraigned and entered a plea of not guilty to the indictment, bail is set at \$ _____ and returnable to each date set by the Court.

IT IS ORDERED AND ADJUDGED that defendant appear at the Rankin County Justice Center on the following dates and times:

1. **SETTLEMENT CONFERENCE** set for 9:00 a.m. on the 2 day of October, 2017, however, defendant's appearance at the **SETTLEMENT CONFERENCE** is excused if one of the items set forth in paragraph A., B. or C. below is completed before the **SETTLEMENT CONFERENCE**. The Court will take a guilty plea or enter the Pre-Trial Conference Checklist for a defendant who wishes the Court to do either at the **SETTLEMENT CONFERENCE**.

Defendant must complete one of the below actions before 5:00 p.m. on the 6 day of October, 2017.

A. File a guilty plea petition with the Circuit Clerk in order to take advantage of the State's recommendation as to sentence (See URCCC 8.04 B. 4.), and attach a copy of the recommendation letter thereto; or

B. Provide a pre-trial diversion program application to the State and pay any fees associated therewith; or

C. Provide the Court Administrator a Pre-Trial Conference Checklist fully completed by the parties.

2. **GUILTY PLEA DATE** set for 9:00 a.m. on the 9 day of

October, 2017, however, defendant's appearance at the **GUILTY PLEA DATE** is excused if a pre-trial diversion program application has been provided to the State, along with any fees associated therewith, or if defendant appeared at the **SETTLEMENT CONFERENCE** and was questioned by the Court in relation to the entry of a Pre-Trial Conference Checklist.

If a guilty plea petition or pre-trial diversion program application has not been filed as set forth in paragraph A. or B. above, or if the Court has not questioned defendant and entered a Pre-Trial Conference Checklist, the Court will do so on the **GUILTY PLEA DATE**.

The parties must file all pre-trial motions with the Circuit Clerk and, either personally or electronically, serve counsel opposite, before 5:00 p.m. on the 10 day of October, 2017, or will be deemed abandoned for that reason. See URCCC 8.02 and 2.04.

3. **PRE-TRIAL CONFERENCE** set for 9:00 a.m. on the 16 day of October, 2017, however, the parties appearance at the **PRE-TRIAL CONFERENCE** is excused if a pre-trial motion has not been filed by either party.

All pre-trial motions will be heard on or before this date, or will be deemed abandoned for that reason. See URCCC 2.04.

4. **TRIAL** set for 9:00 a.m. on the 23 day of October, 2017, or commenced on any day thereafter that week or on any day of the following week.

SO ORDERED AND ADJUDGED this the 30 day of May, 2017.

Robert L. Hill
DEFENDANT

Defendant's Address and Telephone Number:

2725 Hemingway Circle

JACKSON, MS 39209

(601) 969-9281

John A. Emfinger
CIRCUIT JUDGE

Robert L. Hill
ATTORNEY FOR DEFENDANT

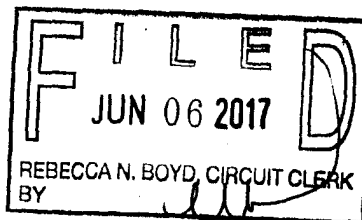
Robert S. Smith
Print Name

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SMITH



NO. 28, 250

DEFENDANT

DEFENDANT'S REQUEST FOR DISCOVERY

COMES NOW the defendant and requests the following:

1. All written or recorded statements (or copies), and the substance of any oral statements, relevant in any way to the alleged crimes, made by defendant that are known, or through the exercise of diligence should or may become known, by the district attorney, or which are in the possession, custody or control of the state or any law enforcement officer, agency or authority. This request includes, but is not limited to, all statements (whether inculpatory or exculpatory) in any way relevant to the alleged crimes, whether volunteered or in response to questions, directions, or communications of any kind and all observed behavior of the defendant known by the district attorney, or any law enforcement agency or authority (including the Mississippi Department of Corrections), or which by the exercise of due diligence should or could become known. Additionally, the name, address and phone number of each person present when any statements were made by defendant; the exact time, place and date of any statements; whether any statement was volunteered or in response to questions; and the identity of any questioner or interrogator.
2. All communications of the defendant, in any form, that are purported to be, or to contain evidence of any waiver of his legal or constitutional rights, including the exact date, time and place of any such communication or waiver and the names, addresses and phone numbers of all witnesses to such communication.



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

NO. 28, 250

ROBERT SMITH

DEFENDANT

DEFENDANT'S REQUEST FOR DISCOVERY

COMES NOW the defendant and requests the following:

1. All written or recorded statements (or copies), and the substance of any oral statements, relevant in any way to the alleged crimes, made by defendant that are known, or through the exercise of diligence should or may become known, by the district attorney, or which are in the possession, custody or control of the state or any law enforcement officer, agency or authority. This request includes, but is not limited to, all statements (whether inculpatory or exculpatory) in any way relevant to the alleged crimes, whether volunteered or in response to questions, directions, or communications of any kind and all observed behavior of the defendant known by the district attorney, or any law enforcement agency or authority (including the Mississippi Department of Corrections), or which by the exercise of due diligence should or could become known. Additionally, the name, address and phone number of each person present when any statements were made by defendant; the exact time, place and date of any statements; whether any statement was volunteered or in response to questions; and the identity of any questioner or interrogator.
2. All communications of the defendant, in any form, that are purported to be, or to contain evidence of any waiver of his legal or constitutional rights, including the exact date, time and place of any such communication or waiver and the names, addresses and phone numbers of all witnesses to such communication.

3. All purported waiver forms, warnings, cautions or instructions that were communicated to the defendant in any form in connection with any written or oral statement, response, communication or observed behavior of the defendant at any interview, examination, or during any other communication, including the exact date, time and place of any such communication and the names, addresses and phone numbers of all witnesses to such warnings.

4. All written or oral statements, all responses to questions, directions or communications of any kind and all observed behavior of the defendant during any interview, examination or contact during which the defendant:

- a. indicated that he did not wish to, or would not respond to any question, direction or communication;
- b. failed to respond to any question, direction or communication; or
- c. requested an attorney or requested to see any other person.

SEARCH AND SEIZURE

5. All objects, substances or materials seized from defendant at the time of his arrest or at any time thereafter or from his home, and a statement of the name, address and phone number of each individual who seized items from the defendant or who was present when any item was seized.

6. All physical objects, substances or materials seized from anyone or any place purported to belong to the defendant or contemplated to be introduced as evidence at the trial or sentencing hearing of this case which have not already been listed. A statement of the exact time, date and place of seizure and the name, address and phone number of any person present when such item came into the possession of the state.

7. Copies of all search warrants and supporting affidavits in connection with this case, and underlying facts and circumstances sheets, and copies of anything signed by the defendant or purported to have been signed by him in regard to such warrants.

8. Copies of all arrest warrants, affidavits, and underlying facts and circumstances sheets, and copies of anything signed by the defendant or purported to have been signed by him in regard to such warrants.

PHYSICAL EVIDENCE

9. All photographs of the defendant, scenes of this crime, the victim, the automobiles, any pre-trial photographic identification procedure or display, any photographs or lineups and any composites done in connection with this case or any other such items contemplated to be introduced at the trial or sentencing hearing of this case.

10. All books, papers, documents or tangible object, or copies or portions thereof, that are in the possession, custody or control of the state, or which by due diligence should or could be known by the state or any of its agents, which have any evidentiary value with regard to the guilt or innocence or sentence of the defendant or which may lead to such evidence or which are being retained for potential use in evidence at any trial or hearing of this case.

11. Any weapon(s) purported to belong to defendant at any time, and any information in the possession of the state or any of its agents or law enforcement officers which would indicate defendant possessed weapon(s) or ammunition at any time.

12. Any maps, sketches and diagrams relating to the alleged charges which are in the possession of the district attorney and which the state intends to offer in evidence, which are being

retained for potential use in evidence at any trial or hearing in this case, or which were prepared in connection with this case.

13. All physical evidence obtained in connection with the investigation of this case that is known, or could be known by the exercise of diligence, to be in the possession, custody or control of the state or any of its law enforcement officers or agents. This request includes, but is not limited to:

- a. clothing of defendant;
- b. clothing of the victim;
- c. clothing of other persons;
- d. weapon(s);
- e. ammunition;
- f. any fruits of crime, i.e., money, physical objects;
- g. soil samples;
- h. footprint casts;
- i. hair, blood, saliva, or other body samples;
- j. handwriting exemplar; or
- k. anything else.

14. Copies of all data, results, records or reports of physical or mental examinations and of scientific tests or experiments made in connection with the alleged crimes, including any analysis of items described in paragraphs 9-13 that are known or may be in the possession, custody or control of the state and for each, the name, address and phone number of any person who has examined or

tested the same or has otherwise participated in preparation of reports. Such items include, but are not limited to:

- a. Medical or laboratory reports and all other papers, photographs, slides, specimens and objects relating to the examination of the bodies of the alleged victims (analysis of blood, sperm, saliva, hair, etc.);
- b. The information requested to paragraph "a" but relating to scientific examination of any item or substance seized from the defendant personally including clothing, blood, sperm, saliva, hair, etc.
- c. Records, reports and results of any psychological/psychiatric tests of the defendant or any or all of the witnesses;
- d. Records, reports and results, whether negative or positive, relating to any attempt to obtain fingerprints in connection with the alleged crimes, the automobiles of the victim, and any physical objects or evidence, and the specific locations from which any efforts to obtain fingerprints were made, including but not limited to the scene of the crime, or any weapon(s).
- e. Records, reports and results of any ballistic, scientific or other tests including neutron activation analysis on any weapons, guns, bullets, pellets, shell casings or projectiles in connection with this case, known or knowable to the state by the exercise of due diligence.

IDENTIFICATION PROCEDURES

15. A statement of the exact date, time and place of each lineup or attempted lineup identification procedure connected with the crime of which the defendant is accused conducted by any law enforcement agency, prosecuting, court or detention authority or any other person; and the name, address and phone number (and position) of each participant in the lineup(s), each attorney present at the lineup(s), and all other persons present at the lineup(s); any positive, tentative, "look-a-like" or hesitant identifications of any person in the lineup(s); the names of the persons whom each witness identified, if any.

16. A statement of the exact date, time and place of each show-up or attempted show-up identification procedure employed in this case, and other information requested in paragraph 15 as to each show-up conducted or attempted.

17. A statement of the exact date, time and place of each photographic or attempted photographic identification procedure employed in this case; the name and position of each person depicted in photographs in each display and a copy of each picture; the name, address and phone number of each witness or potential witness or person shown photographs in connection with this case, each law enforcement officer present, each attorney present and all other persons present or each photographic or attempted photographic display; whether any positive, tentative, "look-a-like" or hesitant identifications of each picture shown to each witness or person.

18. A statement of the exact date, time and place of each occasion a witness, potential witness or person viewed or attempted to view "mug-books," "mug-shots" or other photographs at one time, and the other information as requested in paragraph 15, as well as the names of each person

in the photo-display and copies of each picture, and the exact "mug-books" or "mug-shots" viewed by each person.

19. A statement of the exact date, time and place of each composite drawing or photographic composite attempted or completed by any person in connection with this case known to the district attorney or any person listed in paragraphs 1 or 21; the name, address and phone number of each witness, potential witness or person who attempted to complete any composite drawing or picture, or any artist or professional personnel or person who assisted in attempting or completing any composite drawing or picture and of any other person present; and a copy of any composite attempted or completed.

INVESTIGATION

20. The name, address and phone number of each person known to the state or its law enforcement agencies who has knowledge of any facts related to the alleged charges or knowledge pertaining to this case.

21. The name, address and phone number of each representative of a law enforcement authority, prosecutor's office or court authority who had any connection with the investigating of the alleged charges, and any reports, records, or memoranda prepared by such individuals.

22. The name, address and phone number of any person whom the district attorney intends or potentially will call as a witness in any trial or hearing in this case.

23. The local, state and FBI arrest and conviction records of all persons listed in paragraphs 20 through paragraphs 22.

24. Copies of all written statements, or the substance of any oral statements whether inculpatory or exculpatory, relevant in any way to the alleged crimes, made by any person, witness or potential witness in connection with the alleged charges which is in the possession, custody of control or the state or any other law enforcement officer, or which by the exercise of due diligence could or should be known.

EXCULPATORY EVIDENCE AND EVIDENCE FAVORABLE TO
THE DEFENDANT

25. Any information that would tend to exculpate to any degree the defendant of the alleged crime or of any degree or grade of criminal liability in connection with the alleged crime, or to support any factual or legal defense to the alleged crime, or to any of its degree or grades, or which is relevant to the mitigation or extenuation of the alleged crime, or of any of its degrees or grades or which is relevant to extenuation of the sentence to be imposed upon the defendant, including, but not limited to the following:

- a. any written statement of any person;
- b. any oral statement of any person;
- c. any real or physical object, substance or material;
- d. any record or report;
- e. anything which tends to suggest that someone other than defendant was the perpetrator of the alleged crime;
- f. any positive, tentative, hesitant, "look-a-like" identification, even if subsequently retracted, or any person other than defendant (whether in person

or by picture) as the perpetrator or involved in the alleged crime in any manner;

- g. any information which indicates that the defendant did not plan, intend or directly participate in the actual homicide;
- h. the results of any polygraph or similar tests which would indicate the above;
- i. any other information or thing.

26. The names, addresses, phone numbers, pictures or mugshots, local, state or FBI arrest and conviction records of any suspects questioned by any representative of any law enforcement authority in connection with the alleged charges.

27. With regard to any and all persons from whom the state received information about this case and for all persons who may testify at trial or hearing, the following information;

- a. Any and all consideration or promises of consideration given to or made on behalf of prosecution witnesses, including but not limited to, immunity, grants, deals, promises or suggestions or leniency, witness fees, special witness fees, transportation assistance, assistance to members of witness's family or associates of witness, assistance or favorable treatment with respect to criminal, civil, or administrative dispute with the state or the United States, and anything else which could arguably create an interest or bias in the witness in favor of the state or against the defense or act as in inducement to testify or to color testimony;

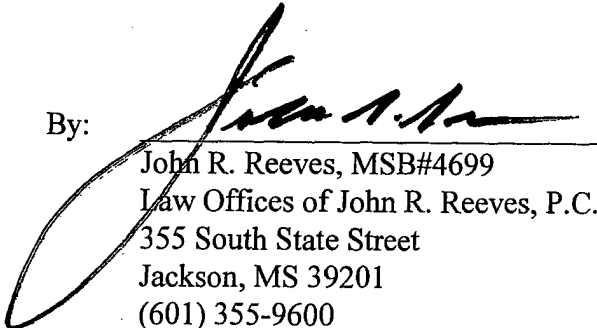
- b. Any and all prosecution, investigations or possible prosecutions pending or which could be brought against any witness and any probationary, custodial parole or deferred prosecution status of the witness;
- c. Any and all records and information revealing convictions or juvenile adjudications attributed to the witness;
- d. The probation or parole status of each witness, including supervision under any juvenile authority.
- e. Any and all records and information showing prior misconduct or bad acts committed by the witness;
- f. Any and all personnel, probation or parole files for the witness which may contain materials for use as impeachment.

28. Any information which may be considered as a mitigating factor, which includes but is not necessarily limited to, any aspect of the defendant's character, record or history or circumstances of the offense which may serve as a basis for a reduced sentence.

29. Any information or thing which may hereafter come into the custody, possession, or control of, or become available or known to any representative of the district attorney or any other law enforcement authority or person which has not otherwise been described in any of the preceding paragraphs.

Respectfully Submitted,
Defendant

By:



John R. Reeves, MSB#4699
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
(601) 355-9600
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on June 2, 2017, I mailed by First Class U.S. mail, postage pre-paid, a true and correct copy of this document to Assistant Attorney General Robert Anderson, P.O. Box 220, Jackson, MS 39205-0220.



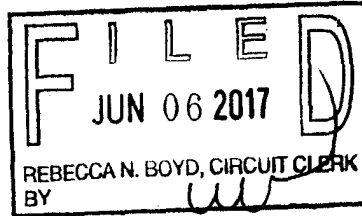
John R. Reeves

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SMITH



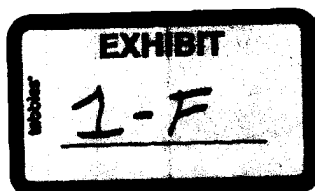
NO. 28, 251

DEFENDANT

DEFENDANT'S REQUEST FOR DISCOVERY

COMES NOW the defendant and requests the following:

1. All written or recorded statements (or copies), and the substance of any oral statements, relevant in any way to the alleged crimes, made by defendant that are known, or through the exercise of diligence should or may become known, by the district attorney, or which are in the possession, custody or control of the state or any law enforcement officer, agency or authority. This request includes, but is not limited to, all statements (whether inculpatory or exculpatory) in any way relevant to the alleged crimes, whether volunteered or in response to questions, directions, or communications of any kind and all observed behavior of the defendant known by the district attorney, or any law enforcement agency or authority (including the Mississippi Department of Corrections), or which by the exercise of due diligence should or could become known. Additionally, the name, address and phone number of each person present when any statements were made by defendant; the exact time, place and date of any statements; whether any statement was volunteered or in response to questions; and the identity of any questioner or interrogator.
2. All communications of the defendant, in any form, that are purported to be, or to contain evidence of any waiver of his legal or constitutional rights, including the exact date, time and place of any such communication or waiver and the names, addresses and phone numbers of all witnesses to such communication.



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

28, 251
NO. 08, 230

ROBERT SMITH

DEFENDANT

DEFENDANT'S REQUEST FOR DISCOVERY

COMES NOW the defendant and requests the following:

1. All written or recorded statements (or copies), and the substance of any oral statements, relevant in any way to the alleged crimes, made by defendant that are known, or through the exercise of diligence should or may become known, by the district attorney, or which are in the possession, custody or control of the state or any law enforcement officer, agency or authority. This request includes, but is not limited to, all statements (whether inculpatory or exculpatory) in any way relevant to the alleged crimes, whether volunteered or in response to questions, directions, or communications of any kind and all observed behavior of the defendant known by the district attorney, or any law enforcement agency or authority (including the Mississippi Department of Corrections), or which by the exercise of due diligence should or could become known. Additionally, the name, address and phone number of each person present when any statements were made by defendant; the exact time, place and date of any statements; whether any statement was volunteered or in response to questions; and the identity of any questioner or interrogator.
2. All communications of the defendant, in any form, that are purported to be, or to contain evidence of any waiver of his legal or constitutional rights, including the exact date, time and place of any such communication or waiver and the names, addresses and phone numbers of all witnesses to such communication.

3. All purported waiver forms, warnings, cautions or instructions that were communicated to the defendant in any form in connection with any written or oral statement, response, communication or observed behavior of the defendant at any interview, examination, or during any other communication, including the exact date, time and place of any such communication and the names, addresses and phone numbers of all witnesses to such warnings.

4. All written or oral statements, all responses to questions, directions or communications of any kind and all observed behavior of the defendant during any interview, examination or contact during which the defendant:

- a. indicated that he did not wish to, or would not respond to any question, direction or communication;
- b. failed to respond to any question, direction or communication; or
- c. requested an attorney or requested to see any other person.

SEARCH AND SEIZURE

5. All objects, substances or materials seized from defendant at the time of his arrest or at any time thereafter or from his home, and a statement of the name, address and phone number of each individual who seized items from the defendant or who was present when any item was seized.

6. All physical objects, substances or materials seized from anyone or any place purported to belong to the defendant or contemplated to be introduced as evidence at the trial or sentencing hearing of this case which have not already been listed. A statement of the exact time, date and place of seizure and the name, address and phone number of any person present when such item came into the possession of the state.

7. Copies of all search warrants and supporting affidavits in connection with this case, and underlying facts and circumstances sheets, and copies of anything signed by the defendant or purported to have been signed by him in regard to such warrants.

8. Copies of all arrest warrants, affidavits, and underlying facts and circumstances sheets, and copies of anything signed by the defendant or purported to have been signed by him in regard to such warrants.

PHYSICAL EVIDENCE

9. All photographs of the defendant, scenes of this crime, the victim, the automobiles, any pre-trial photographic identification procedure or display, any photographs or lineups and any composites done in connection with this case or any other such items contemplated to be introduced at the trial or sentencing hearing of this case.

10. All books, papers, documents or tangible object, or copies or portions thereof, that are in the possession, custody or control of the state, or which by due diligence should or could be known by the state or any of its agents, which have any evidentiary value with regard to the guilt or innocence or sentence of the defendant or which may lead to such evidence or which are being retained for potential use in evidence at any trial or hearing of this case.

11. Any weapon(s) purported to belong to defendant at any time, and any information in the possession of the state or any of its agents or law enforcement officers which would indicate defendant possessed weapon(s) or ammunition at any time.

12. Any maps, sketches and diagrams relating to the alleged charges which are in the possession of the district attorney and which the state intends to offer in evidence, which are being

retained for potential use in evidence at any trial or hearing in this case, or which were prepared in connection with this case.

13. All physical evidence obtained in connection with the investigation of this case that is known, or could be known by the exercise of diligence, to be in the possession, custody or control of the state or any of its law enforcement officers or agents. This request includes, but is not limited to:

- a. clothing of defendant;
- b. clothing of the victim;
- c. clothing of other persons;
- d. weapon(s);
- e. ammunition;
- f. any fruits of crime, i.e., money, physical objects;
- g. soil samples;
- h. footprint casts;
- i. hair, blood, saliva, or other body samples;
- j. handwriting exemplar; or
- k. anything else.

14. Copies of all data, results, records or reports of physical or mental examinations and of scientific tests or experiments made in connection with the alleged crimes, including any analysis of items described in paragraphs 9-13 that are known or may be in the possession, custody or control of the state and for each, the name, address and phone number of any person who has examined or

tested the same or has otherwise participated in preparation of reports. Such items include, but are not limited to:

- a. Medical or laboratory reports and all other papers, photographs, slides, specimens and objects relating to the examination of the bodies of the alleged victims (analysis of blood, sperm, saliva, hair, etc.);
- b. The information requested to paragraph "a" but relating to scientific examination of any item or substance seized from the defendant personally including clothing, blood, sperm, saliva, hair, etc.
- c. Records, reports and results of any psychological/psychiatric tests of the defendant or any or all of the witnesses;
- d. Records, reports and results, whether negative or positive, relating to any attempt to obtain fingerprints in connection with the alleged crimes, the automobiles of the victim, and any physical objects or evidence, and the specific locations from which any efforts to obtain fingerprints were made, including but not limited to the scene of the crime, or any weapon(s).
- e. Records, reports and results of any ballistic, scientific or other tests including neutron activation analysis on any weapons, guns, bullets, pellets, shell casings or projectiles in connection with this case, known or knowable to the state by the exercise of due diligence.

IDENTIFICATION PROCEDURES

15. A statement of the exact date, time and place of each lineup or attempted lineup identification procedure connected with the crime of which the defendant is accused conducted by any law enforcement agency, prosecuting, court or detention authority or any other person; and the name, address and phone number (and position) of each participant in the lineup(s), each attorney present at the lineup(s), and all other persons present at the lineup(s); any positive, tentative, "look-a-like" or hesitant identifications of any person in the lineup(s); the names of the persons whom each witness identified, if any.

16. A statement of the exact date, time and place of each show-up or attempted show-up identification procedure employed in this case, and other information requested in paragraph 15 as to each show-up conducted or attempted.

17. A statement of the exact date, time and place of each photographic or attempted photographic identification procedure employed in this case; the name and position of each person depicted in photographs in each display and a copy of each picture; the name, address and phone number of each witness or potential witness or person shown photographs in connection with this case, each law enforcement officer present, each attorney present and all other persons present or each photographic or attempted photographic display; whether any positive, tentative, "look-a-like" or hesitant identifications of each picture shown to each witness or person.

18. A statement of the exact date, time and place of each occasion a witness, potential witness or person viewed or attempted to view "mug-books," "mug-shots" or other photographs at one time, and the other information as requested in paragraph 15, as well as the names of each person

in the photo-display and copies of each picture, and the exact "mug-books" or "mug-shots" viewed by each person.

19. A statement of the exact date, time and place of each composite drawing or photographic composite attempted or completed by any person in connection with this case known to the district attorney or any person listed in paragraphs 1 or 21; the name, address and phone number of each witness, potential witness or person who attempted to complete any composite drawing or picture, or any artist or professional personnel or person who assisted in attempting or completing any composite drawing or picture and of any other person present; and a copy of any composite attempted or completed.

INVESTIGATION

20. The name, address and phone number of each person known to the state or its law enforcement agencies who has knowledge of any facts related to the alleged charges or knowledge pertaining to this case.

21. The name, address and phone number of each representative of a law enforcement authority, prosecutor's office or court authority who had any connection with the investigating of the alleged charges, and any reports, records, or memoranda prepared by such individuals.

22. The name, address and phone number of any person whom the district attorney intends or potentially will call as a witness in any trial or hearing in this case.

23. The local, state and FBI arrest and conviction records of all persons listed in paragraphs 20 through paragraphs 22.

24. Copies of all written statements, or the substance of any oral statements whether inculpatory or exculpatory, relevant in any way to the alleged crimes, made by any person, witness or potential witness in connection with the alleged charges which is in the possession, custody of control or the state or any other law enforcement officer, or which by the exercise of due diligence could or should be known.

EXCULPATORY EVIDENCE AND EVIDENCE FAVORABLE TO
THE DEFENDANT

25. Any information that would tend to exculpate to any degree the defendant of the alleged crime or of any degree or grade of criminal liability in connection with the alleged crime, or to support any factual or legal defense to the alleged crime, or to any of its degree or grades, or which is relevant to the mitigation or extenuation of the alleged crime, or of any of its degrees or grades or which is relevant to extenuation of the sentence to be imposed upon the defendant, including, but not limited to the following:

- a. any written statement of any person;
- b. any oral statement of any person;
- c. any real or physical object, substance or material;
- d. any record or report;
- e. anything which tends to suggest that someone other than defendant was the perpetrator of the alleged crime;
- f. any positive, tentative, hesitant, "look-a-like" identification, even if subsequently retracted, or any person other than defendant (whether in person

or by picture) as the perpetrator or involved in the alleged crime in any manner;

- g. any information which indicates that the defendant did not plan, intend or directly participate in the actual homicide;
- h. the results of any polygraph or similar tests which would indicate the above;
- i. any other information or thing.

26. The names, addresses, phone numbers, pictures or mugshots, local, state or FBI arrest and conviction records of any suspects questioned by any representative of any law enforcement authority in connection with the alleged charges.

27. With regard to any and all persons from whom the state received information about this case and for all persons who may testify at trial or hearing, the following information;

- a. Any and all consideration or promises of consideration given to or made on behalf of prosecution witnesses, including but not limited to, immunity, grants, deals, promises or suggestions or leniency, witness fees, special witness fees, transportation assistance, assistance to members of witness's family or associates of witness, assistance or favorable treatment with respect to criminal, civil, or administrative dispute with the state or the United States, and anything else which could arguably create an interest or bias in the witness in favor of the state or against the defense or act as in inducement to testify or to color testimony;

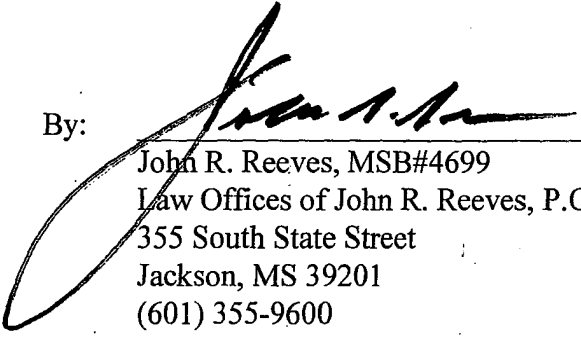
- b. Any and all prosecution, investigations or possible prosecutions pending or which could be brought against any witness and any probationary, custodial parole or deferred prosecution status of the witness;
- c. Any and all records and information revealing convictions or juvenile adjudications attributed to the witness;
- d. The probation or parole status of each witness, including supervision under any juvenile authority.
- e. Any and all records and information showing prior misconduct or bad acts committed by the witness;
- f. Any and all personnel, probation or parole files for the witness which may contain materials for use as impeachment.

28. Any information which may be considered as a mitigating factor, which includes but is not necessarily limited to, any aspect of the defendant's character, record or history or circumstances of the offense which may serve as a basis for a reduced sentence.

29. Any information or thing which may hereafter come into the custody, possession, or control of, or become available or known to any representative of the district attorney or any other law enforcement authority or person which has not otherwise been described in any of the preceding paragraphs.

Respectfully Submitted,
Defendant

By:



John R. Reeves, MSB#4699
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
(601) 355-9600
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on June 2, 2017, I mailed by First Class U.S. mail, postage pre-paid, a true and correct copy of this document to Assistant Attorney General Robert Anderson, P.O. Box 220, Jackson, MS 39205-0220.



John R. Reeves

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

NO. 28, 250

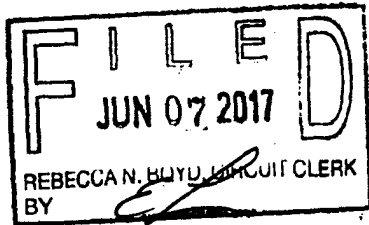
ROBERT SMITH

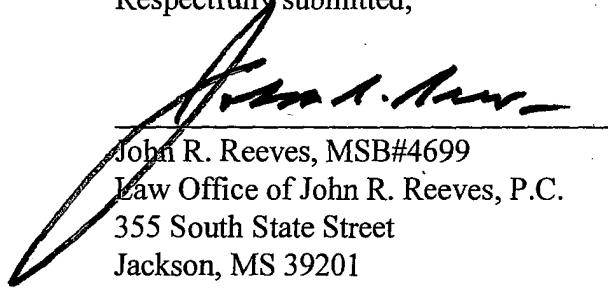
DEFENDANT

NOTICE OF APPEARANCE AS COUNSEL FOR DEFENDANT

The Law Office of John R. Reeves, P.C., 355 South State Street, Jackson, Mississippi 39201, enters its appearance as counsel for Defendant.

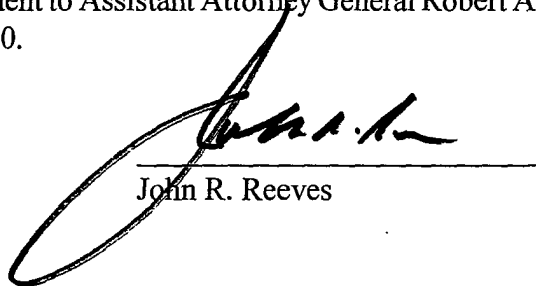
Respectfully submitted,

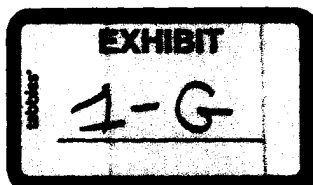



John R. Reeves, MSB#4699
Law Office of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601/355-9600
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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John R. Reeves



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

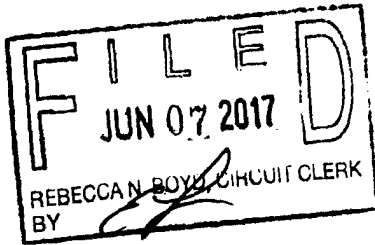
NO. 28, 250

ROBERT SMITH

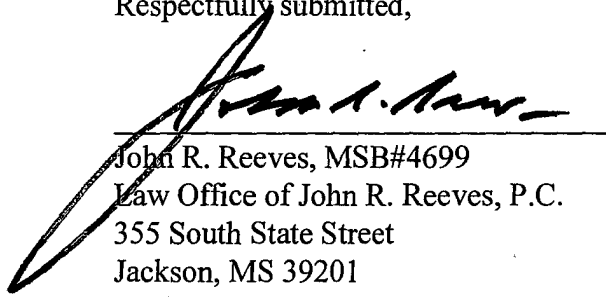
DEFENDANT

NOTICE OF APPEARANCE AS COUNSEL FOR DEFENDANT

The Law Office of John R. Reeves, P.C., 355 South State Street, Jackson, Mississippi 39201, enters its appearance as counsel for Defendant.



Respectfully submitted,


John R. Reeves, MSB#4699
Law Office of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601/355-9600
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on June 2, 2017, I mailed by First Class U.S. mail, postage pre-paid, a true and correct copy of this document to Assistant Attorney General Robert Anderson, P.O. Box 220, Jackson, MS 39205-0220.


John R. Reeves

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI

VS.

NO. 28, 251

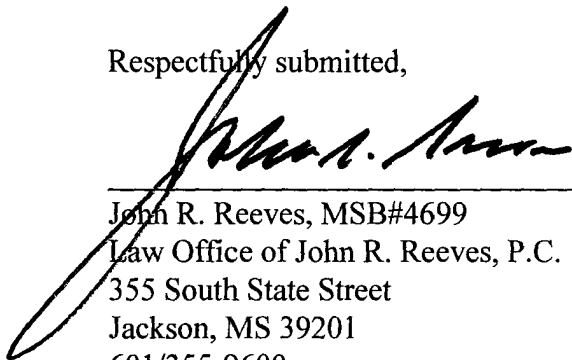
ROBERT SMITH

DEFENDANT

NOTICE OF APPEARANCE AS COUNSEL FOR DEFENDANT

The Law Office of John R. Reeves, P.C., 355 South State Street, Jackson, Mississippi 39201, enters its appearance as counsel for Defendant.

Respectfully submitted,



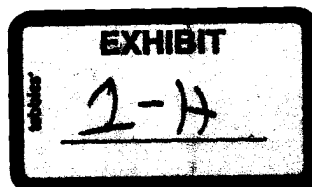
John R. Reeves, MSB#4699
Law Office of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601/355-9600
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on June 2, 2017, I mailed by First Class U.S. mail, postage pre-paid, a true and correct copy of this document to Assistant Attorney General Robert Anderson, P.O. Box 220, Jackson, MS 39205-0220.



John R. Reeves

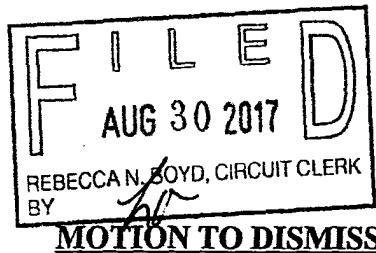


IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SHULER SMITH



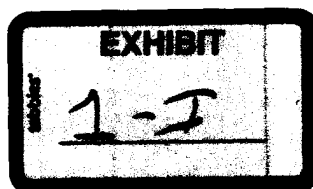
NO. 28250

DEFENDANT

COMES NOW defendant, pursuant to *Williams v. State*, 184 So.3d 908 (2014), and moves the court to dismiss the indictment herein and would show the following, to wit:

As established in *Williams v. State*, "neither Mississippi's Constitution—silent with regard to the power of duties of the attorney general — nor the common law authorizes the attorney general to usurp or encroach upon the constitutional or the statutory power of the local district attorney in a criminal case where the attorney general's assistance is not requested by the district attorney...." *Id.* at 912. If the attorney general were to intervene "regarding whether or not to prosecute a criminal case," it would constitute "an impermissible diminution of the statutory power of the district attorney." *Id.* at 913. Finally, Mississippi law does not allow a district attorney to be replaced by the attorney general "where the district attorney has decided, in the lawful exercise of his discretion, not to prosecute a criminal case." *Id.* at 917.

The defendant in this cause is the duly elected and serving District Attorney for the Seventh Circuit Court District of Mississippi, composed of Hinds County, Mississippi. As in *Williams*, the defense asserts, upon information and belief, that the Honorable Michael Guest, District Attorney for the Twentieth Circuit Court District, composed of Rankin and Madison Counties, Mississippi, neither requested, nor consented to, the involvement of the attorney general in the prosecution of the Hinds County District Attorney. Upon information and belief,



the defense asserts that Mr. Guest was presented with this case and declined to prosecute District Attorney Smith. The attorney general overreached the boundaries established by the Mississippi Constitution, and interpreting case law by pursuing the indictments against District Attorney Smith. Based upon the controlling legal precedent established in *Williams v. State*, this court should dismiss the indictment herein.

WHEREFORE, PREMISES CONSIDERED, defendant prays that the court shall dismiss the indictment herein.

Respectfully submitted,
Robert Shuler Smith, Defendant

BY: 

JOHN R. REEVES, MSB #04699
LAW OFFICES OF JOHN R. REEVES, P.C.
ATTORNEY FOR DEFENDANT
355 SOUTH STATE STREET
JACKSON, MS 39201
601-355-9600

CERTIFICATE OF SERVICE

I certify that I transmitted a copy of the document to the Honorable Robert G. Anderson, Assistant Mississippi Attorney General, P.O. Box 220, Jackson, MS, 39202-0220, on August 30, 2017, by first class U.S. mail, postage prepaid.


John R. Reeves

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NOS. 28250, 28251

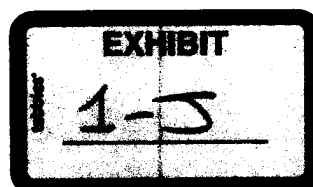
ROBERT SHULER SMITH

DEFENDANT

MEMORANDUM OF AUTHORITIES

The Mississippi Attorney General's Office does not have the authority to prosecute the charges of domestic violence, aggravated stalking, and robbery against the duly elected district attorney for Hinds County Mississippi. Section 7-5-1 Mississippi Code Annotated "does not support the usurpation by the attorney general of the independent discretion over criminal prosecution which statutorily has been vested in local district attorneys." *Williams v. State*, 184 So.3d at 914. In fact, no statutory authority or common law exists allowing the Mississippi Attorney General's Office to charge these crimes in Rankin County, Mississippi against the defendant "where the attorney general's assistance is not requested by the [Rankin County] district attorney" *Id.* at 912.

The Mississippi Attorney General's authority to prosecute crimes in Rankin County, Mississippi, is limited to those enumerated in §7-5-59 Miss. Code Ann., which authorizes the Mississippi Attorney General to investigate and prosecute specifically enumerated crimes for public corruption and white collar crimes. That section, however, does not authorize the Mississippi Attorney General to investigate or prosecute the crimes of domestic violence, aggravated stalking, and robbery. Since the statutory authority to prosecute these crimes is not provided to that office, the Mississippi Attorney General may not prosecute the same, in Rankin County, Mississippi.

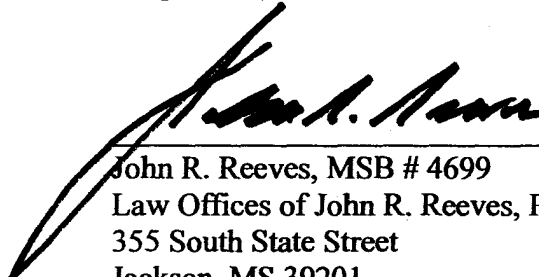


The Mississippi Attorney General can intervene in the prosecution of criminal matters in Rankin County, Mississippi but only in extremely limited circumstances. Only one statute authorizes intervention by the Mississippi Attorney General. Mississippi Code Section § 7-5-53 provides: "The Attorney General shall, when required by public service or when directed by the Governor in writing, repair or in person, or by any regular or specially designated assistant, to any county or district in the state and assist the district attorney there in the discharge of his duties and in prosecution as state officer" Miss. Code Ann. § 7-5-53 (Rev. 2014). (emphasis added.) "The operative word in Section 7-5-53 is but one: **assist**. According to the statute's plain language, the attorney general may assist a local district attorney in the discharge of his or her duties." *Williams v. State*, 184 So.3d at 914. If one of the two scenarios as stated in §7-5-53 applies, the attorney general may be allowed to assist the local district attorney in the discharge of his or her duties but is not allowed to usurp those duties. *Id.* at 915.

In this cause, neither the Rankin County District Attorney requested the Mississippi Attorney General to assist him with the prosecution of the same, nor did the Attorney General receive written affirmation by the governor to assist the District Attorney. Therefore as a matter of law, the Mississippi Attorney General does not have the authority to bring the within prosecution of Robert Shuler Smith for the crimes of domestic violence, aggravated stalking, and robbery. The attorney general did not meet

one of the two statutory requirements that would give him authority to prosecute the District Attorney. The within cause should therefore be dismissed.

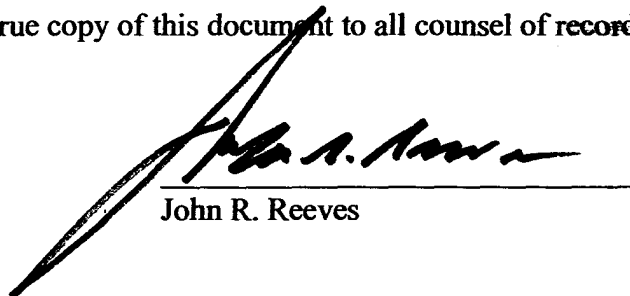
Respectfully submitted,



John R. Reeves, MSB # 4699
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601-355-9600

Certificate of Service

I certify that I hand delivered a true copy of this document to all counsel of record on October 2, 2017.



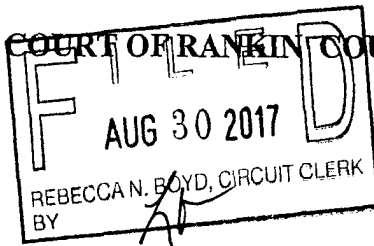
John R. Reeves

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SHULER SMITH



NO. 28250

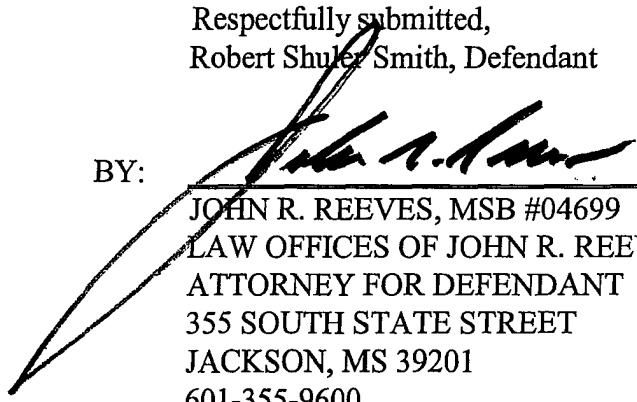
DEFENDANT

NOTICE OF HEARING

PLEASE TAKE NOTICE that the hearing of the defendant's motion to dismiss is set for the 2nd day of October, 2017, at 9:00am, before the Honorable John Emfinger, Circuit Judge, at the Rankin County Courthouse in Brandon, Mississippi.

Respectfully submitted,
Robert Shuler Smith, Defendant

BY:



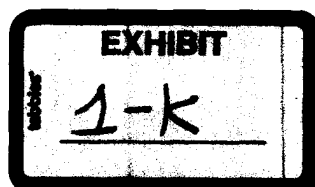
JOHN R. REEVES, MSB #04699
LAW OFFICES OF JOHN R. REEVES, P.C.
ATTORNEY FOR DEFENDANT
355 SOUTH STATE STREET
JACKSON, MS 39201
601-355-9600

CERTIFICATE OF SERVICE

I certify that I transmitted a copy of the document to the Honorable Robert G. Anderson, Assistant Mississippi Attorney General, P.O. Box 220, Jackson, MS, 39202-0220, on August 30, 2017, by first class U.S. mail, postage prepaid.



John R. Reeves



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

NO. 28250

ROBERT SHULER SMITH

DEFENDANT

SUBPOENA

TO: The Honorable Michael Guest, Rankin County District Attorney
Rankin County Courthouse
Brandon, MS

You are required to be and personally appear in the Circuit Court of Rankin County, Mississippi, at Brandon, Mississippi, before the Honorable Judge John Emfinger, Circuit Court Judge, on the 2nd day of October, 2017, at 9:00 a.m., to give evidence and testify in a certain cause in said court pending wherein **Robert Shuler Smith** is Defendant. You are subpoenaed on part of defendant.

Herein you shall not fail under the penalty in such case made and provided; and have there then this writ.

Dated: _____

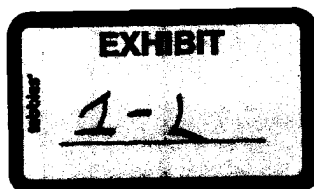
9-22-17



Becky Boyd, Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

By: _____

[Signature] D.C.



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NOS. 28250, 28251

ROBERT SHULER SMITH

DEFENDANT

SUBPOENA

TO: The Honorable Richard Wilson, Rankin County Prosecutor
Where he may be found in the state of Mississippi

You are required to be and personally appear in the Circuit Court of Rankin County, Mississippi, at Brandon, Mississippi, before the Honorable Judge John Emfinger, Circuit Court Judge, on the 2nd day of October, 2017, at 9:0 a.m., to give evidence and testify in a certain cause in said court pending wherein **Robert Shuler Smith** is Defendant. You are subpoenaed on part of the defendant.

Herein, you shall not fail under the penalty in such case made and provided; and have there then this writ.

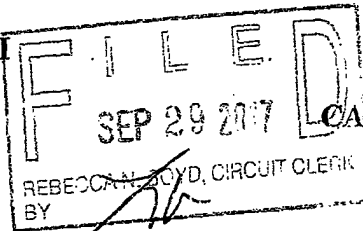
Dated: 9.28.17

Becky Boyd, Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

By: [Signature] D.C.



IN THE CIRCUIT COURT OF RANKIN COUNTY, M
STATE OF MISSISSIPPI PLA
VS. CAUSE NOS. 2825
ROBERT SMITH DEF.



MOTION TO QUASH SUBPOENA

COMES NOW, the State of Mississippi, by and through Stanley Attorney General, and files this its Motion to Quash the Subpoena in the : served upon Christy Edwards. And in support of the State would show to

1. On or about May 25, 2017 the Defendant was indicted by t Grand Jury for the crimes of Aggravated Stalking, Robbery and two count Violence.

2. On or about August 30, 2017 the defendant filed a Motion t matters. Said Motion to Dismiss was based upon a point of law. Said Mot to be heard by the Court on October 2, 2017.

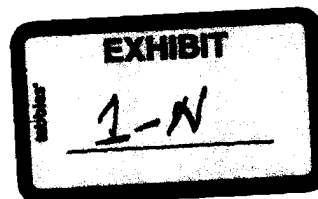
3. On or about September 29, 2017, the Defendant served the v bar with a subpoena to give testimony before this Court during the Motion 1 that is to be held October 2, 2017. (See attachment)

4. Said subpoena is in violation of Rule 45(d)(1)(i).

5. The victim in the case at bar is a fact witness and therefore ca opinion on the legal issue of dismissal that is before the Court.

6. Since the issue before the Court is one of law and not of fact, evidence the victim can provide to the Court.

7. It has been long established by the Appellate Courts of Missis criminal proceeding a trial court cannot summarily dismiss a case based upon evidence. State v. Parkman, 106 So.3d 378 (COA 2012)



8. Clearly, the defendant subpoenaed the victim for the sole purpose of intimidation and harassment.

9. Consequently, the State prays that the Court quash the instant subpoena for Christy Edwards. In the alternative, the State prays that the Court enforce Rule 3(c) of the Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings since the case at bar involves domestic abuse.

Wherefore, premises considered, the State respectfully requests this honorable Court to grant the relief herein sought.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'Stanley Alexander', written over a horizontal line.

Stanley Alexander
Assistant Attorney General

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI

CAUSE NOS. 28230, 28251

VS.

ROBERT SHULER SMITH

DEFENDANT

SUBPOENA

TO: Christy Edwards
[REDACTED]

You are required to be and personally appear in the Circuit Court of Rankin County, Mississippi, at Brandon, Mississippi, before the Honorable Judge John Emfinger, Circuit Court Judge, on the 2nd day of October, 2017, at 9:00 a.m. to give evidence and testify in a certain cause in said court pending between Robert Shuler Smith is Defendant. You are subpoenaed on part of the defendant.

Herein, you shall not fail under the penalty in such case made and provided; and have there then this writ.

Dated: 9-29-17

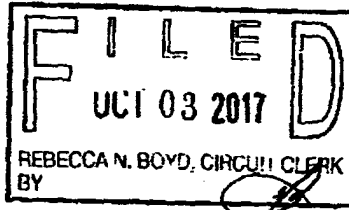
Becky Boyd, Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SHULER SMITH



CAUSE NOS. 28250 & 28251

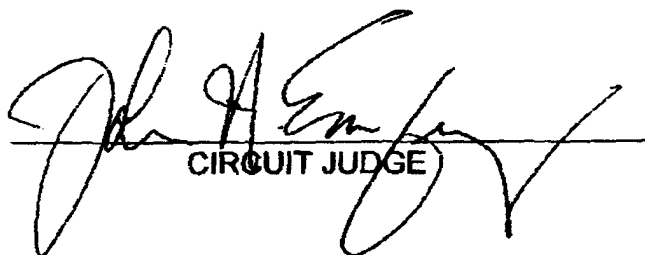
DEFENDANT

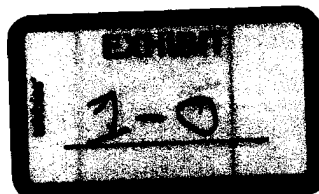
**ORDER TO DENY
MOTION TO DISMISS**

COMES NOW BEFORE THE COURT the **MOTION TO DISMISS** filed in each of the above styled and numbered causes. The Defendant, Robert Shuler Smith, appeared before the Court, with counsel John R. Reeves, on October 2, 2017, and presented his evidence and argument in support of the motions. The State of Mississippi appeared by and through Assistant Attorney General Stanley Alexander and Special Assistant Attorney General James F. Giddy, and presented its evidence and argument in opposition to the motions. Having now fully considered the matters presented, the Court finds that the motions are not well taken and should be denied.

IT IS, THEREFORE, ORDERED that the **MOTION TO DISMISS** filed in each cause should be and is hereby denied.

SO ORDERED AND ADJUDGED this the 3rd day of October, 2017.


CIRCUIT JUDGE



IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NOS. 28250 & 28251

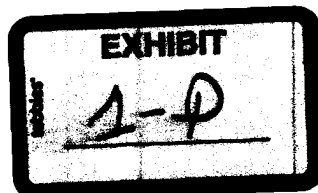
ROBERT SMITH

DEFENDANT

MOTION IN LIMINE 2

COMES NOW, the State of Mississippi, by and through Stanley Alexander, Assistant Attorney General, and files this its Second Motion in Limine in the above matter requesting that the defense be prohibited from introducing any testimony, asking any questions of witnesses or making any remarks at any point during the trial, in the presence of the jury, concerning Hinds County cause number 2016-0-836. And in support of the State would show to wit:

1. On or about May 25, 2017 the Defendant was indicted by the Rankin County Grand Jury for the crimes of Aggravated Stalking, Robbery and two counts of Simple Domestic Violence..
2. On or about August 30, 2017 the defendant filed a Motion to Dismiss the above matters. Said Motion to Dismiss was based upon a point of law. Said Motion hearing is was set to be heard by the Court on October 2, 2017.
3. On or about October 2, 2017, this Court heard arguments of the State and the Defendant on the Defendant's Motion to Dismiss in the above matter.
4. During the Defendant's argument before the Court, counsel opposite mentioned the Defendant's prosecution and acquittal in Hinds County cause number 2016-0-836.
5. Neither the prosecution nor the outcome of Hinds county cause number 2016-0-836 has any tendency to make the existence of any fact that is of consequence to the determination of this action more probable or less probable than it would be without the evidence. Therefore, the Hinds County matter listed in paragraph four is not relevant to the case

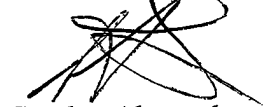


at bar pursuant Rule 401 of the M.R.E.

6. Even if the above items were relevant, any probative value would be substantially outweighed by the prejudicial effect of the evidence. Any mention of the recovered items that are listed in paragraph 3 would only serve to confuse the issues and mislead the jury and would be in violation of Rule 403 of the M.R.E.

Wherefore, premises considered, the State respectfully requests this honorable Court to grant the relief herein sought.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stanley Alexander', written over a horizontal line.

Stanley Alexander
Assistant Attorney General

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI	PLAINTIFF
VS.	CAUSE NOS. 28250 & 28251
ROBERT SMITH	DEFENDANT

MOTION IN LIMINE

COMES NOW, the State of Mississippi, by and through Stanley Alexander, Assistant Attorney General, and files this its First Motion in Limine in the above matter requesting that the defense be prohibited from introducing any testimony, asking any questions of witnesses or making any remarks at any point during the trial, in the presence of the jury, concerning accusing the State of selective prosecution or any other type of prosecutorial misconduct. And in support of the State would show to wit:

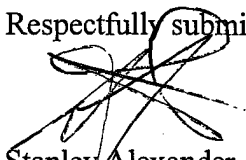
1. On or about May 25, 2017 the Defendant was indicted by the Rankin County Grand Jury for the crimes of Aggravated Stalking, Robbery and two counts of Simple Domestic Violence.
2. On or about August 30, 2017 the defendant filed a Motion to Dismiss the above matters. Said Motion to Dismiss was based upon a point of law. Said Motion hearing is was set to be heard by the Court on October 2, 2017.
3. On or about October 2, 2017, this Court heard arguments of the State and the Defendant on the Defendant's Motion to Dismiss in the above matter.
4. During the Defendant's argument before the Court, counsel opposite accused the State of selective prosecution and prosecutorial misconduct.
5. Prosecutorial misconduct is a legal argument and is "not a defense on the merits to the criminal charge itself." **United States v. Armstrong**, 517 U.S. 456, 463 (1996), **Fox v. State**, 129 So.3d 208 (COA 2013)

6. Based upon the law of the above cases, allegations of selective prosecution, prosecutorial misconduct and political motivations are not a defense on the merits of the criminal charges against the defendant, irrelevant and therefore should not be brought before the jury.

7. Even if the above items were relevant, any probative value would be substantially outweighed by the prejudicial effect of the evidence. Any mention of alleged prosecutorial misconduct would only serve to confuse the issues and mislead the jury and would be in violation of Rule 403 of the M.R.E.

Wherefore, premises considered, the State respectfully requests this honorable Court to grant the relief herein sought.

Respectfully submitted,



Stanley Alexander
Assistant Attorney General

CERTIFICATE OF SERVICE

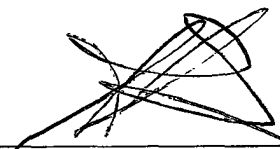
I, Stanley Alexander, Assistant Attorney General, hereby certify that I have caused to be delivered the foregoing Notice of Hearing and Motions in Limine 1 & 2 to:

Honorable John H. Emfinger
Circuit Court Judge
P.O. Box 1885
Brandon, MS 39043

John R. Reeves, Esq.
355 South State St.
Jackson, MS 39201

Becky Boyd
Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

This the 3rd day of October, 2017



STANLEY ALEXANDER
OFFICE OF THE ATTORNEY GENERAL

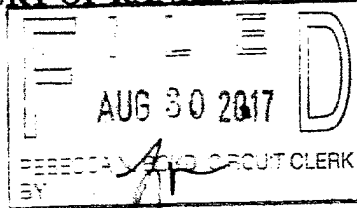
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
601-359-4276

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SHULER SMITH



NO. 28251


DEFENDANT

NOTICE OF HEARING

PLEASE TAKE NOTICE that the hearing of the defendant's motion to dismiss is set for the 2nd day of October, 2017, at 9:00 am, before the Honorable John Emfinger, Circuit Judge, at the Rankin County Courthouse in Brandon, Mississippi.

Respectfully submitted,
Robert Shuler Smith, Defendant

BY:


JOHN R. REEVES, MSB #04699
LAW OFFICES OF JOHN R. REEVES, P.C.
ATTORNEY FOR DEFENDANT
355 SOUTH STATE STREET
JACKSON, MS 39201
601-355-9600

CERTIFICATE OF SERVICE

I certify that I transmitted a copy of the document to the Honorable Robert G. Anderson, Assistant Mississippi Attorney General, P.O. Box 220, Jackson, MS, 39202-0220, on August 30, 2017, by first class U.S. mail, postage prepaid.


John R. Reeves

EXHIBIT

3-Q

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NOS. 28250 & 28251

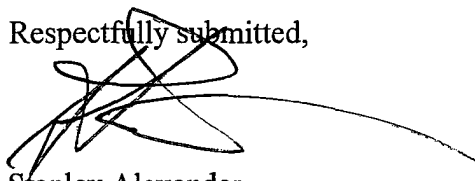
ROBERT SMITH

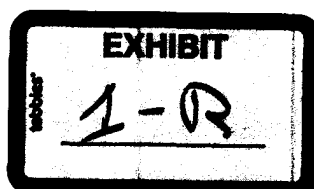
DEFENDANT

NOTICE OF HEARING

PLEASE TAKE NOTICE that the State's Motions in Limine 1 & 2 in the above matter will be heard on Monday, October 16, 2017, at 9:00 a.m. at the Rankin County Courthouse, in Brandon, Mississippi before the Honorable John H. Emfinger. Please disregard the State's prior notice for October 9, 2017.

Respectfully submitted,


Stanley Alexander
Assistant Attorney General



CERTIFICATE OF SERVICE

I, Stanley Alexander, Assistant Attorney General, hereby certify that I have caused to be delivered the foregoing Notice of Motion to:

Honorable John H. Emfinger
Circuit Court Judge
P.O. Box 1885
Brandon, MS 39043

John R. Reeves, Esq.
355 South State St.
Jackson, MS 39201

Becky Boyd
Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

This the 4th day of October, 2017



STANLEY ALEXANDER
OFFICE OF THE ATTORNEY GENERAL

Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
601-359-4276

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NOS. 28250 & 28251

ROBERT SMITH

DEFENDANT

NOTICE OF INTENT TO OFFER 404 (b)(2) EVIDENCE

COMES NOW, the State of Mississippi, by and through Stanley Alexander, Assistant Attorney General, and files this its Notice of Intent to Offer 404 (b)(2) evidence in the above matter. The State intends to offer the following witnesses as proponents of the 404(b)(2) evidence:

1. In addition to testimony regarding the assault that took place on August 13, 2015, the victim will also give testimony regarding at least four (4) other violent assaults perpetrated by the Defendant against her that took place beginning in 2006. The victim will also testify that the Defendant has held her and Angela Walters at gunpoint in the past.

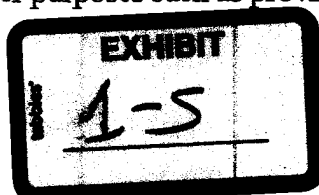
2. Angela Walters is also expected to testify regarding several occasions in which the Defendant has physically assaulted her and held her at gun point. Ms. Walters will also testify regarding the incident in which the defendant held she and the victim at gun point.

3. Sandy Middleton of the Mississippi Coalition for Domestic Violence, is also expected to give testimony regarding past incidents of violence that the victim has reported to her at the Domestic Violence Shelter.

4. April Porter will testify about dating Smith in the past and him being physically abusive toward her.

5. Both the victim and Ms. Walters are expected to testify regarding the defendant's use of drugs and how it affected his behavior and violent actions.

6. Rule 404 (b)(2) of the Mississippi Rules of Evidence states that crimes, wrongs or other acts may be admissible for other purposes such as proving motive, opportunity, intent,



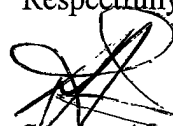
preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

7. The State intends to admit the above prior bad acts for the purpose of showing intent, preparation, plan, absence of mistake and lack of accident. Admission of this evidence is supported by the following cases: **Johnson v. State**, 204 So.3d 763 (Miss. 2016); **Clark v. State**, 122 So.3d 129 (COA 2013); **Marbra v. State**, 904 So.2d 1169 (COA 2004).

8. The Defense was provided all of the aforementioned witnesses in discovery on or about June 29, 2017.

Wherefore, premises considered, the State respectfully requests this honorable Court to allow the above prior acts into evidence pursuant to Rule 404(b)(2) and the pertinent case law.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Stanley Alexander', written over a horizontal line.

Stanley Alexander
Assistant Attorney General

CERTIFICATE OF SERVICE

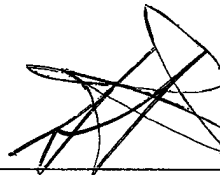
I, Stanley Alexander, Assistant Attorney General, hereby certify that I have caused to be delivered the foregoing Notice of Intent to Offer 404(b)(2) evidence.

Honorable John H. Emfinger
Circuit Court Judge
P.O. Box 1885
Brandon, MS 39043

John R. Reeves, Esq.
355 South State St.
Jackson, MS 39201

Becky Boyd
Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

This the 4th day of October, 2017



STANLEY ALEXANDER
OFFICE OF THE ATTORNEY GENERAL

Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
601-359-4276

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NOS. 28250 & 28251

ROBERT SMITH

DEFENDANT

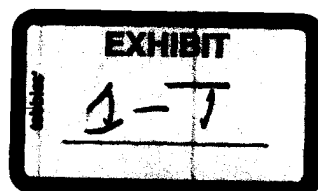
NOTICE OF HEARING

PLEASE TAKE NOTICE that the State's Motion to Compel Reciprocal Discovery or in the Alternative to Quash Defense Witnesses will be heard on Monday, October 16, 2017, at 9:00 a.m. at the Rankin County Courthouse, in Brandon, Mississippi before the Honorable John H. Emfinger.

Respectfully submitted,



Stanley Alexander
Assistant Attorney General

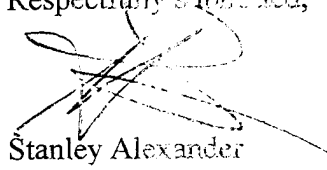


28251

- B) On or about June 29, 2017 and in compliance with Rule 17, the State hand delivered discovery to counsel opposite in cause numbers 28250 and 28251.
- C) The State also requested Reciprocal Discovery from counsel opposite on June 29, 2017.
- D) Rule 17.3 of the URRC states that, *If the defendant requests discovery under this rule, the defendant shall, subject to constitutional limitations, PROMPTLY disclose to the prosecutor and permit the prosecutor to inspect, copy, test, and photograph... (EMPHASIS ADDED)*
- E) As of the date of the filing of this motion, the Defendant has provided no reciprocal discovery to the State in this matter as required by Rule 17.3
- H) The State prays that the Court will set a deadline date of October 17, 2017 by 5:00 p.m. to have all discovery matters completed. Since both the prosecution and the Defense are located here in downtown Jackson, MS, the State further requests that any and all Discovery be placed in the physical possession of opposing counsel so that there will be no delays caused by mail issues.
- I) If either party does not comply with the above date the State prays that the Court require the offending party to show good cause or have those witnesses stricken pursuant to Pelletier v. State, 207 So.3d 1263, (COA 2016) and Lindsey v. State, 965 So2d 712, (COA 2007).

Wherefore, premises considered, the State respectfully requests this Honorable Court to grant the relief herein sought.

Respectfully submitted,



Stanley Alexander
Assistant Attorney General
MS Bar # 9922

Office of the Attorney General
State of Mississippi
P.O. Box 220
Jackson, MS 39205

CERTIFICATE OF SERVICE

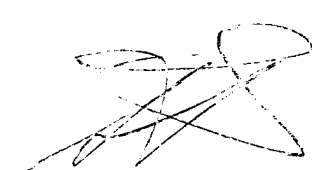
I, Stanley Alexander, hereby certify that I have this day caused to be mailed a true and correct copy of the foregoing Notice of Motion and Motion to Compel Reciprocal Discovery to:

Honorable John H. Emfinger
Circuit Court Judge
P.O. Box 1885
Brandon, MS 39043

John R. Reeves, Esq.
355 South State St.
Jackson, MS 39201

Becky Boyd
Circuit Clerk
P.O. Box 1599
Brandon, MS 39043

This the 6th of October, 2017.



STANLEY ALEXANDER
MS BAR #9922

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NUMBERS

28250 & 28251

ROBERT SMITH

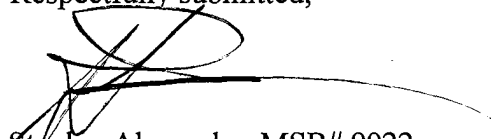
DEFENDANT

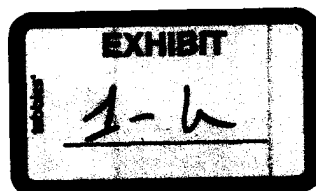
SUPPLEMENTAL RESPONSE TO MOTION FOR DISCOVERY

COMES NOW, the State of Mississippi, by and through its attorney of record, Stanley Alexander, Assistant Attorney General, and files this its Supplemental Response to Defendant's Motion for Discovery and in response states to wit:

1. **Agent Pam Bergren**, Federal Bureau of Investigations, 1220 Echelon Parkway, Jackson, MS 39213, Agent Bergren will testify as to the information contained within the reports that were tendered to the Defense on June 29, 2017 and also that the victim feared for her life after reporting the incident to Agents Bergren and Culpepper. Because of this fear, the victim was given \$2,000.00 by the Bureau so that she could leave town for her safety.

Respectfully submitted,


Stanley Alexander, MSB# 9922
Assistant Attorney General




CERTIFICATE OF SERVICE

I, Stanley Alexander, Special Assistant Attorney General, hereby certify that I have caused to be hand delivered the foregoing Supplemental Response to Motion for Discovery to:

John R. Reeves, Esq.
355 South State St.
Jackson, MS 39201

This the 9th day of October, 2017.



STANLEY ALEXANDER
OFFICE OF ATTORNEY GENERAL
MSB# 9922

Stanley Alexander
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
Tel: 601-359-4276

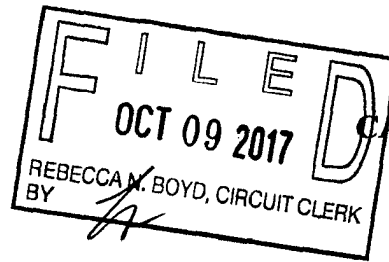
IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

ROBERT SMITH



CAUSE NOS. 28250 & 28251


DEFENDANT

MOTION FOR CONTINUANCE

The Defendant, Robert Smith, respectfully moves that this court to grant a continuance of the cause, which was originally set for trial on October 23, 2017. The ground for this motion is that additional time is needed because the defendant intends to file an interlocutory appeal as to the denial of the motion to dismiss entered by the court on October 3, 2017. In the interest of economy, the court should grant a motion for continuance so that the defendant may file an interlocutory appeal as to the denial of the above-referenced motion to dismiss.

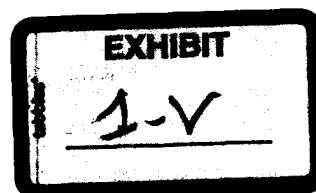
DATED: October 9, 2017

Respectfully Submitted,
Robert Smith


JOHN R. REEVES
Attorney for the Defendant

OF COUNSEL:

John R. Reeves, MSB #4699
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601-355-9600



CERTIFICATE OF SERVICE

I, John Reeves, do hereby certify that I have this day served, via U.S. Mail, a true and correct copy of the above and foregoing *Motion for Continuance* on:

Stanley Alexander
Assistant Attorney General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
601-359-4276

THIS, the 9th day of October, 2017.


JOHN R. REEVES

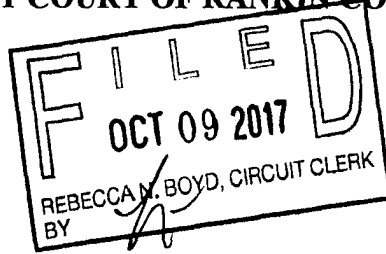
IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

ROBERT SMITH



CAUSE NOS. 28250 & 28251

DEFENDANT

MOTION FOR ENLARGEMENT OF TIME TO FILE PRE-TRIAL MOTIONS

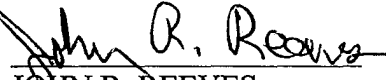
COMES NOW, the Defendant, Robert Smith, and moves this honorable court for an *Order for Enlargement of Time to File Pre-Trial Motions* and would state as follows:

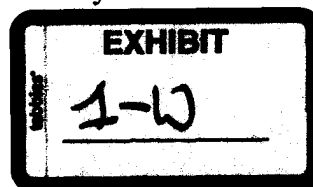
1. The above-entitled action commenced on March 25, 2017.
2. An Order Setting Trial, Pre-Trial Conference, Guilty Plea Date and Settlement Conference was entered on May 30, 2017.
3. Pursuant to the above-referenced Order, the deadline for pre-trial motions is currently set for October 10, 2017.
4. On October ~~4~~ 9, 2017, the Court denied the Defendant's motion to dismiss.
5. Therefore, the Defendant hereby requests an enlargement of time to file pre-trial motions to file in response to the court's denial of Defendant's motion to dismiss.

WHEREFORE, PREMISES CONSIDERED, the Defendant, Robert Smith, respectfully requests that this Court grant the Defendant's *Motion for Enlargement of Time to File Pre-Trial Motions*.

DATED: October 9, 2017

Respectfully Submitted,
Robert Smith


JOHN R. REEVES
Attorney for the Defendant



OF COUNSEL:

John R. Reeves, MSB #4699
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601-355-9600

CERTIFICATE OF SERVICE

I, John Reeves, do hereby certify that I have this day served, via U.S. Mail, a true and correct copy of the above and foregoing *Motion for Continuance* on:

Stanley Alexander
Assistant Attorney General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39202-0220

THIS, the 9th day of October, 2017.

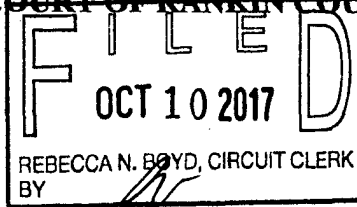

JOHN R. REEVES

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

ROBERT SMITH



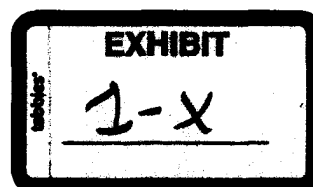
CAUSE NOS. 28250 & 28251

DEFENDANT

MOTION IN LIMINE

COMES NOW, the Defendant, and moves this honorable court for an Order *in Limine* prohibiting the State, its counsel or any of its witnesses from mentioning, referencing and/or attempting to introduce into evidence, through testimony or otherwise at the trial or during voir dire, opening statements and closing arguments, any issues whatsoever concerning any of the matters set forth below:

1. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any mention of alleged incidences of domestic violence against the alleged victim or Angela Walters by the Defendant prior to the August 13, 2015 incident. This information would be hearsay, which is inadmissible pursuant to Rule 802 of the *Mississippi Rules of Evidence*. This information is not relevant pursuant to M.R.E. 401 and should be excluded pursuant to M.R.E. 403, because any probative value of this information is substantially outweighed by the danger of unfair prejudice. In *Carpenter v. State*, the Court held that the trial court did not err in excluding statements of witnesses regarding a statement allegedly made by the defendant's boyfriend in a felony child abuse case because the probative value, if any, of the statements was substantially outweighed by the risk of confusing the jury. *Carpenter v. State*, 196 So. 3d 1136, 1142 (Miss. App. 2016), *cert. denied*, 214 So. 3d 1058 (Miss. 2017).



Moreover, pursuant to M.R.E. 404(b)(1), "evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Miss. R. Evid. 404(b)(1). Any allegations of domestic abuse by the Defendant did not result in a conviction, so the evidence is inadmissible pursuant to Rule 609 of the Mississippi Rules of Evidence.

M.R.E. 802 defines "hearsay" as a "statement that the declarant does not make while testifying at the current trial or hearing" and that "a party offers in evidence to prove the truth of the matter asserted in the statement." Miss. R. Evid. 802. The aforementioned information is not relevant to this cause of action and should be disallowed. Rule 402 of the *Mississippi Rules of Evidence* states that "irrelevant evidence is inadmissible." Miss. R. Evid. 402. Further, Rule 401 of the *Mississippi Rules of Evidence* defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Miss. R. Evid. 401. The Defendant requests this Court to preclude the State from introducing any mention at trial of any alleged incidences of domestic violence against the alleged victim or Angela Walters by the Defendant prior to the August 13, 2015 incident.

2. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any statements made by the alleged victim to Agent Pam Bergren of the Federal Bureau of Investigations regarding alleged prior abuse by the Defendant. These statements would be highly prejudicial to the Defendant and in violation of Rules 402 and 403 of the *Mississippi Rules of Evidence*. This information would also be hearsay, which is inadmissible pursuant to Rule 802 of the *Mississippi Rules of Evidence*. Moreover, the alleged victim is available to testify at trial, so the introduction of out of court

statements is not necessary. The Defendant requests this Court to preclude the State from introducing these statements at trial.

3. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any statements made by the alleged victim to Sandy Middleton of the Mississippi Coalition for Domestic Violence regarding alleged prior abuse by the Defendant. These statements would be highly prejudicial to the Defendant and in violation of Rules 402 and 403 of the *Mississippi Rules of Evidence*. This information would also be hearsay, which is inadmissible pursuant to Rule 802 of the *Mississippi Rules of Evidence*. Moreover, the alleged victim is available to testify at trial, so the introduction of out of court statements is not necessary. Any allegations of domestic abuse by the Defendant did not result in a conviction, so the evidence is inadmissible pursuant to Rule 609 of the Mississippi Rules of Evidence. Moreover, an alleged victim may not introduce character evidence of a Defendant's alleged violent disposition to bolster its defense. Miss R. Evid. 404(a)(1). The Defendant requests this Court to preclude the State from introducing these statements at trial.

4. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any mention of alleged incidences of drug abuse by the Defendant. This information would be highly prejudicial to the Defendant and in violation of Rules 402 and 403 of the *Mississippi Rules of Evidence*.

This information is irrelevant. Rule 402 of the *Mississippi Rules of Evidence* states that "irrelevant evidence is inadmissible." Miss. R. Evid. 402. Further, Rule 401 of the *Mississippi Rules of Evidence* defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Miss. R. Evid. 401. Any allegations of

drug abuse by the Defendant did not result in a conviction, so the evidence is inadmissible pursuant to Rule 609 of the Mississippi Rules of Evidence. This information would also be inadmissible hearsay pursuant to Rule 802 of the *Mississippi Rules of Evidence*. The Defendant requests this Court to preclude the State from introducing this information at trial.

5. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any mention of alleged incidences of domestic violence against April Porter by the Defendant. M.R.E. 802 defines "hearsay" as "statement that the declarant does not make while testifying at the current trial or hearing" and that "a party offers in evidence to prove the truth of the matter asserted in the statement." Miss. R. Evid. 802. Furthermore, the aforementioned information is not relevant to this cause of action and should be disallowed. Rule 402 of the *Mississippi Rules of Evidence* states that "irrelevant evidence is inadmissible." Miss. R. Evid. 402. Further, Rule 401 of the *Mississippi Rules of Evidence* defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Miss. R. Evid. 401. This information is not relevant pursuant to M.R.E. 401 and should be excluded pursuant to M.R.E. 403, because any probative value of this information is substantially outweighed by the danger of unfair prejudice.

6. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any mention of a telephone call made by the alleged victim to the Defendant on August 20, 2015. This information is irrelevant. Rule 402 of the *Mississippi Rules of Evidence* states that "irrelevant evidence is inadmissible." Miss. R. Evid. 402. Further, Rule 401 of the *Mississippi Rules of Evidence* defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the evidence.” Miss. R. Evid. 401. This information would also be inadmissible hearsay pursuant to Rule 802 of the *Mississippi Rules of Evidence*. Importantly, there is no admission on the part of the Defendant regarding removal of the weapon from the alleged victim’s residence. The Defendant requests this Court to preclude the State from introducing this information at trial.

7. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any statement made by Russell Dorris, Sr., father of the alleged victim, regarding allegations that the Defendant removed a pistol from the alleged victim’s residence on the date of the incident. This information would be hearsay, which is inadmissible pursuant to Rule 802 of the *Mississippi Rules of Evidence*. This information is not relevant pursuant to M.R.E. 401 and should be excluded pursuant to M.R.E. 403, because any probative value of this information is substantially outweighed by the danger of unfair prejudice. Moreover, the alleged victim is available to testify at trial, so the introduction of out of court statements is not necessary.

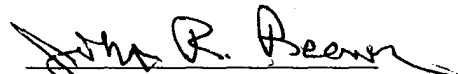
8. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any photographs made of the alleged victim by staff at the Mississippi Coalition for Domestic Violence. These photographs would be highly prejudicial to the Defendant and in violation of Rules 402 and 403 of the *Mississippi Rules of Evidence*.

9. The Defendant requests that this Court prohibit the State from mentioning, referencing and/or attempting to introduce any statements made by William Fears to the Federal Bureau of Investigation regarding allegations that the Defendant removed a pistol from the alleged victim’s home. These statements are inadmissible hearsay pursuant to Rule 802 of the *Mississippi Rules of Evidence* which defines “hearsay” as “statement that the declarant does not

make while testifying at the current trial or hearing” and that “a party offers in evidence to prove the truth of the matter asserted in the statement.” Miss. R. Evid. 802. These statements would also be highly prejudicial to the Defendant and in violation of Rules 402 and 403 of the *Mississippi Rules of Evidence*.

WHEREFORE, PREMISES CONSIDERED, the Defendant, Robert Smith, respectfully requests that this Court grant the Defendant’s *Motion in Limine* which specifically orders the State, its counsel, and all other witnesses called by the State to refrain from mentioning, offering, or attempting to offer into evidence any testimony or documents regarding the matters outlined above or from otherwise referring to or alluding to such evidence either directly or indirectly during voir dire or any portion of the trial in this case.

Respectfully Submitted,
Robert Smith, Defendant


JOHN R. REEVES, MSB #34699
Attorney for the Defendant
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, MS 39201
601-355-9600

CERTIFICATE OF SERVICE

I, John Reeves, to hereby certify that I have this day served, via First Class U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing *Motion in Limine* on:

Stanley Alexander
Assistant Attorney General
Office of the Attorney General
P.O. Box
Jackson, MS 39205

THIS, the 10th day of October, 2017.


JOHN R. REEVES

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

V

CAUSE NO. 28250
and CAUSE NO. 28251

ROBERT SHULER SMITH

DEFENDANT

Charge(s): 28250 - Count I - Simple Domestic Violence
Count II - Simple Domestic Violence

28251 - Count I - Aggravated Stalking
Count II - Robbery

Motion to Dismiss

BE IT REMEMBERED on October 2, 2017, the
above-styled case came on for hearing before the
Honorable Judge John H. Emfinger, and the following
proceedings were held and done, to-wit:

APPEARANCES:

STANLEY ALEXANDER, ESQUIRE
Attorney General's Office
550 High Street
Jackson, Mississippi 39201

COUNSEL FOR THE PLAINTIFF

JOHN REEVES, ESQUIRE
Attorney at Law
355 State Street
Jackson, Mississippi 39201

COUNSEL FOR THE DEFENDANT

EXHIBIT

2

REPORTED BY:

Harvey J. Rayborn, CCR #1274

Official Court Reporter

Post Office Box 720248

Jackson, Mississippi 39272

Cell: (601) 259-7498

e-mail: Raybornhj@aol.com

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: All right. We're here on Cause Number 28250 and 28251, State versus Robert Shuler Smith. We're here on the Defense motion to dismiss.

Counsel, if you will, announce your appearance for the record; first, on behalf of the Defendant.

MR. REEVES: Can we approach one more time?

THE COURT: Well, let's go ahead and make your appearance for the record, please.

MR. REEVES: All right. We're ready, your Honor.

THE COURT: What's your name?

MR. REEVES: John Reeves for the Defense.

THE COURT: And for the State?

MR. ALEXANDER: Your Honor, Stanley Alexander and Jim Giddy for the State.

THE COURT: All right. Y'all can approach.

(An off-the-record bench conference was held.)

(On the record.)

THE COURT: All right. We're here on the motion to dismiss. I've read the motion. I'm familiar with the case Williams versus State. Do you have testimony you wish to put on, Mr. Reeves?

MR. REEVES: May it please the Court. Yes, we do.

1 **THE COURT:** Who do you call?

2 **MR. REEVES:** Honorable Michael Guest.

3 **THE COURT:** Do you waive the oath, Mr. Reeves?

4 **MR. REEVES:** We certainly do.

5 **THE COURT:** Mr. Guest, if you will, just take
6 the stand there.

7 **MR. REEVES:** I would ask the Court to take
8 notice of the fact that he's the DA for Rankin County.

9 **THE COURT:** I take notice that he is the
10 District Attorney for Rankin County and a member of the
11 Bar so the oath is waived.

12 **MR. REEVES:** May it please the Court?

13 **THE COURT:** You may proceed.

14 **DIRECT MOTION EXAMINATION BY MR. REEVES:**

15 Q. Your name, sir?

16 A. Michael Guest.

17 Q. And your business address?

18 A. 205 Government Street Brandon, Mississippi.

19 Q. And, Mr. Guest, what do you do for a living?

20 A. I'm District Attorney for the Twentieth
21 Judicial District which encompasses Madison and Rankin
22 County.

23 Q. And what does that job entail?

24 A. Prosecuting felony crimes that occur anywhere
25 within either of the two counties, and also other things

1 such as operating the bad check unit, asset forfeiture,
2 things of nature.

3 Q. Now, Mr. Guest, are you familiar with the
4 Robert Shuler Smith case?

5 A. Yes, sir, I am.

6 Q. How are you so familiar?

7 A. Several months prior to Mr. Smith's
8 indictment, I was contacted by a female FBI agent
9 requesting a meeting regarding a domestic violence
10 incident that had occurred between Robert and a
11 long-time girlfriend of his. There was a meeting set
12 up that occurred in the DA's office in our conference
13 room.

14 At the meeting, I was present, along with
15 Richard Wilson, the county prosecutor. The victim was
16 present, the female FBI agent, and her name escapes me,
17 Mr. Reeves. I do not recall her name. In addition to
18 that, Sandy Middleton, who runs the Domestic Violence
19 Center in Pearl, was there. And it seems like there was
20 another member of my staff who was present, but I do not
21 recall who that would have been.

22 There has been many meetings that I've
23 attended and I do not recall the other person, but it
24 does seem like there was a sixth person there at that
25 meeting.

1 Q. Yes, sir. And tell the Court what transpired
2 in that meeting.

3 A. At the meeting, as I said earlier, there was a
4 request made for us to look at possibly bringing
5 criminal charges against Mr. Smith. I wanted to have a
6 meeting so that I could ferret out what information
7 existed, whether or not there was a basis for the
8 charges to go forward.

9 In the meeting, the meeting lasted, I'm going
10 to say approximately half an hour. For the first
11 several minutes of the meeting, the victim in that case
12 described to myself and to Mr. Wilson that she had been
13 engaged in a long-time relationship with Mr. Smith; that
14 she believed him to be a very powerful, political
15 person; that she had great fear of Mr. Smith and that
16 she was coming forth with information in hopes of
17 prosecuting him for charges for an event that occurred
18 on some family property that Mr. Smith's family had in
19 Rankin County.

20 Myself and Mr. Wilson listened to her --

21 Q. Who is Mr. Wilson, for the record?

22 A. Richard Wilson who is the county prosecutor
23 for Rankin County.

24 Q. Thank you, sir.

25 A. We listened to her as she described the events

1 that occurred on the day in question. After just
2 listening to a brief synopsis of the information that
3 she provided, it was my opinion, and I think Mr. Wilson
4 echoed by opinion, that the assault that she had
5 described would not have risen to the level of an
6 aggravated domestic violence.

7 To be an aggravated domestic violence, as
8 I understand the law, it either has to be a third
9 offense, which we did not have in this instance; there
10 has to be serious bodily injury, and there was no
11 evidence of serious bodily injury; or there has to be
12 choking which restricts a person's airflow.

13 And, again, what she described did not tend to
14 meet any of those three elements which would have made
15 the domestic violence aggravated; therefore, making it a
16 mediate felony.

17 Based upon that, a decision was made or
18 I guess advice was given to the victim that if she
19 wished to go forward with the charges that she would
20 need to go to justice court, she would need to sign an
21 affidavit against Mr. Smith; that while there were
22 potential criminal charges that she described to us we
23 both felt like that these criminal charges were
24 misdemeanor in nature and not felony.

25 Q. Thank you, sir. And who made the request for

1 the meeting?

2 A. There was a female FBI agent who contacted my
3 office; and, again, I do not recall her name.

4 Q. But she -- the FBI requested the meeting?

5 A. To the best of my recollection, yes, sir.

6 Q. Okay. Now, Mr. Guest, we know now that the
7 Attorney General of Mississippi intervened and filed
8 these -- got these indictments; is that correct?

9 A. Yes, sir.

10 Q. Did you invite the AG into the county to
11 prosecute this case?

12 A. No, sir, we did not.

13 Q. Did you approve it beforehand?

14 A. We were not requested to, but it is common
15 practice for the attorney general's office to bring
16 cases in this district without requesting permission or
17 seeking approval. But, no, I did not request nor did
18 I approve them going forward; but that is, in most all
19 cases that they bring, unless it is a conflict that our
20 office has, the AG's office routinely brings those cases
21 without contacting the DA's office.

22 Q. So the AG went forward on a case that you
23 refused to prosecute?

24 A. That -- yes, sir, that based upon the limited
25 information that I had that I felt should be prosecuted

1 as a misdemeanor.

2 Q. All right. And do you know if she's filed her
3 affidavit in justice court?

4 A. To my knowledge, she has not.

5 Q. Okay.

6 MR. REEVES: May it please to Court. I'm
7 going to talk to my client one second.

8 (Mr. Reeves confers with Mr. Smith.)

9 MR. REEVES: May it please the Court. That
10 completes my questions of this witness.

11 THE COURT: All right. Cross-examination.

12 CROSS-MOTION EXAMINATION BY MR. ALEXANDER:

13 Q. Good morning, Mr. Guest.

14 A. Good morning.

15 Q. During the questioning, you were asked about
16 the interview with the victim and the FBI agent?

17 A. Yes, sir.

18 Q. And let me ask you this. As a prosecutor, how
19 do cases generally come to your office for prosecution?

20 A. Generally, cases are brought by law
21 enforcement officers or law enforcement agencies. Those
22 officers or agencies will work cases up. They will
23 provide reports to our office for us to review. They
24 would provide photographs, if there's photographs or
25 physical evidence, lab results, things of that nature.

1 So in this particular conversation, that was just our
2 office and the victim. We had no reports to review
3 over, to my knowledge, unless the FBI had done any
4 legwork, that there had not been an investigation by any
5 law enforcement agency up to that point.

6 Q. And in your experience as a prosecutor, once
7 an investigation is done, is more evidence or more facts
8 hashed out about an incident?

9 A. Yes, sir. Once law enforcement gets involved,
10 generally that investigation will either tend to show
11 that an individual has committed a crime or in some
12 instances has not committed a crime. And so until that
13 investigation is done, you know, we can only base our
14 opinion on the limited information that we have.

15 And, again, you know, the information that
16 myself and Mr. Wilson had to work from that day was the
17 information that was relayed to us by the victim. I was
18 led to believe in that meeting that there was a witness
19 who also had viewed or had been present during some or
20 possibly all of the events. We did not have an
21 opportunity to speak to that individual, nor did we have
22 an opportunity to speak to any law enforcement officer
23 who may have gone out and gathered evidence in this
24 case.

25 Q. And were you present when this matter was

1 presented to the grand jury?

2 A. No, sir, I was not.

3 Q. All right. But do you have any knowledge
4 whether or not the FBI or another law enforcement agency
5 generated a report and case file regarding this assault?

6 A. Yes, sir. It's my understanding that the
7 attorney general's office did do an investigation into
8 this matter, that there were witnesses who were spoken
9 to, that there were what we would normally see in any
10 felony case, there was an investigation that was
11 conducted, and that information was then presented to a
12 grand jury and that grand jury then returned a true bill
13 based upon the facts that that grand jury was presented
14 at their meeting.

15 Q. And the fact that based upon your limited
16 interview of the victim and the FBI agent and the fact
17 that that did not lead you to see a felony, does that
18 conclusively mean that there wasn't evidence to support
19 a felony?

20 A. No, sir. And again, you know, we were
21 working, and I say we, being me and Richard Wilson, the
22 county prosecutor, we were working on the information
23 that was provided us which was just basically a --
24 roughly a half hour interview with the victim. During
25 that half hour, I would say the first half of that

1 meeting was us relieving her fears that, you know, that
2 she would be treated fairly, that while I did know
3 Mr. Smith and while Richard knows Mr. Smith that that
4 would not impact our ability to look at the case and if
5 we felt that criminal charges should go forward that we
6 would do our duties and pursue those.

7 And so, you know, probably, Mr. Alexander,
8 most of the information I got or I received came from
9 about a 10 to 15 minute interview where the witness went
10 and relayed the facts that had occurred.

11 Q. Now in this case, at any time did you present
12 an order of nolle prosequi to the Court to dismiss this
13 case?

14 A. No, sir, we did not.

15 Q. At any time were you recused by the circuit
16 courts from handling this case?

17 A. No, sir, we were not.

18 Q. At any time, did you say if there was a felony
19 charge there that you would not prosecute?

20 A. No, sir. At no time did we say that we would
21 not prosecute a felony charge.

22 Q. And do you have any problem with the AG's
23 office prosecuting this case?

24 A. No, sir. You know, traditionally, since I've
25 been in the district attorney's office, which has now

1 been 20 plus years, it's been common practice for the
2 attorney general's office to prosecute cases in this
3 district. I would say that 90 plus percent of the cases
4 that your office prosecutes are cases in which you
5 conduct an investigation and those cases are presented
6 without any knowledge of the district attorney's office
7 and we have routinely worked very closely with the
8 attorney general's office to make sure that y'all are
9 aware of the grand jury dates, grand jury proceedings,
10 so that y'all can bring cases forward, and only a very
11 limited number of cases, which are cases in which there
12 is a -- needs to be a recusal by my office because of
13 some conflict of interest do we ask the AG's office to
14 come in.

15 And so, again, I would say the large majority,
16 90 percent plus, of the cases that your office
17 prosecutes are cases prosecuted by your investigation
18 and they're done so without our request or consent.

19 But we've always had a policy to make our
20 office and our grand jury available to the attorney
21 general's office because I believe that statutorily your
22 office has the ability to prosecute felonies in this
23 judicial district.

24 Q. And, finally, do you have any objection to the
25 attorney general's office prosecuting this case in your

1 district?

2 A. No, sir, not this case or any other case that
3 you choose to bring in this district.

4 MR. ALEXANDER: We tender the witness, your
5 Honor.

6 THE COURT: Redirect.

7 REDIRECT MOTION EXAMINATION BY MR. REEVES:

8 Q. Mr. Guest, you had some evidence presented at
9 the meeting that you -- the meeting that you attended
10 with the victim. There was some -- she had told you
11 what happened and you thought that it didn't rise to a
12 felony level; is that right?

13 A. That's correct. Yes, sir.

14 Q. Now if there's more evidence that could have
15 come up later, they could have come back and met with
16 you, couldn't they?

17 A. Yes, sir. They always could have requested an
18 additional meeting.

19 Q. And you would have done that?

20 A. Yes, sir. And that was not requested in this
21 case.

22 MR. REEVES: Thank you.

23 THE COURT: You may step down.

24 All right. Counsel, y'all approach.

25 (An off-the-record bench conference was had.

1 (On the record.)

2 (Stipulation.)

3 **MR. REEVES:** May it please the Court?

4 **THE COURT:** Yes, sir.

5 **MR. REEVES:** Yes, sir. The Defense offers to
6 stipulate that the Honorable Richard Wilson, the County
7 Attorney for Rankin County, if he testified, would
8 testify that the alleged victim did not file an
9 affidavit in Rankin County Justice Court against
10 Mr. Smith.

11 **THE COURT:** That Christy Edward did not file
12 an affidavit against Chirsty Smith?

13 **MR. REEVES:** Against Robert Smith.

14 **THE COURT:** Against Robert Smith. I'm sorry.
15 What says the State?

16 **MR. ALEXANDER:** The State would agree to the
17 stipulation.

18 **THE COURT:** All right. It'll be so
19 stipulated.

20 Anything further, Mr. Reeves?

21 **MR. REEVES:** Indulge me.

22 (Mr. Reeves confers with Mr. Smith.)

23 **MR. REEVES:** No more evidence, your Honor.

24 **THE COURT:** Any testimony from the State?

25 **MR. ALEXANDER:** No, your Honor.

1 **THE COURT:** All right. I'll hear from you in
2 argument in support of your motion, Mr. Reeves.

3 **(Argument by Mr. Reeves.)**

4 **MR. REEVES:** Your Honor, I've provided the
5 Court with a memo of authorities and I --

6 **THE COURT:** I have it.

7 **MR. REEVES:** Section 7-5-1 of the code does
8 not support the usurpation by the attorney general of
9 the independent discretion of the local elected DA, and
10 that's the Williams versus State case, 184 S.2d at 914.
11 There's no statutory authority or common law to
12 authorize the AG to come in behind the DA, your Honor.

13 In this case, the Honorable Michael Guest
14 testified that he met with the victim, the alleged
15 victim; the Honorable Richard Wilson, the county
16 attorney for this county; the FBI agent, and possibly
17 somebody else from Mr. Guest's office; Sandy Middleton
18 of the Domestic Violence Center, met with all these
19 people in a meeting called by the FBI, the purpose of
20 which was to get an indictment against my client for
21 aggravated stalk -- aggravated domestic violence.

22 The DA declined during that meeting to
23 prosecute my client asserting openly that he didn't see
24 a felony, and he told the victim, the alleged victim,
25 that if she wanted to she could file an affidavit in

1 justice court, and Mr. Guest testified that Mr. Wilson
2 said if you file it we'll prosecute it, and I know he
3 would have and the outcome would have been as it may.

4 So despite that and, by the way, nobody came
5 back to the DA. He testified nobody came back to him
6 and said, you know, "we've got more evidence, at that
7 meeting forgot this or we found this out afterward; so
8 because we found out more evidence, we want to meet
9 again" and he didn't do that. And Mr. Guest testified
10 he would have met with them and I'm sure had the thought
11 that the case justified it, he would have presented it
12 to the grand jury. But they didn't go back and ask for
13 another meeting.

14 The FBI apparently simply did a in-runaround
15 to the DA, they couldn't get what they wanted and went
16 and got the AG to do it, and the local DA wouldn't do
17 it. Of course, the AG's involved in a one in Hinds
18 County. Mr. Smith just won that case about a month ago.
19 And so we believe there are other motives for
20 prosecuting over here in Rankin County, the alleged
21 veracity of the charges.

22 But the point is, the DA did not invite them
23 in. He admitted that. He didn't approve it on the
24 front-end and we believe the Williams' case has been
25 met, your Honor, and the case should be dismissed for

1 failure of the DA to approve the prosecution or to
2 invite them in. Thank you.

3 **THE COURT:** I'll hear from the State.

4 (Response by Mr. Alexander.)

5 **MR. ALEXANDER:** May it please the Court.

6 Your Honor, counsel opposite in his motion relied
7 heavily on Williams v State of Mississippi. However,
8 Williams v State is a totally different fact scenario
9 from the case at bar.

10 In the Williams v State, the circuit court
11 judge forcibly removed the DA from hearing the Williams
12 case. That did not occur in this matter.

13 In Williams v State the DA's office nolle
14 prossed the Williams case and the circuit court
15 reinstated it improperly. That did not happen in this
16 case.

17 In Williams v State, the DA refused to
18 prosecute and opted not to prosecute that case. That
19 did not happen in this case.

20 Mr. Guest testified that he, in fact, urged
21 the victim to file an affidavit in justice court and
22 the victim, for whatever reason, and he did say that she
23 had mentioned to him that she was afraid of the
24 Defendant and his connections.

25 But be that as it may, the fact scenario in

1 Williams v State does not agree with the one here. And
2 most importantly, the DA in Williams v State objected to
3 the attorney general's participation in that case;
4 objected to the judge appointing the AG as special
5 prosecutor, and Mr. Guest has testified that he has no
6 problem whatsoever with the AG's office prosecuting this
7 case. There is no objection whatsoever.

8 Counsel opposite in his motion, a motion for a
9 dismissal, stated that the AG's office has no authority
10 to usurp the authority of the DA or the DA's office,
11 but he left off the most important part of the Williams
12 v State opinion and it says the DA is, in fact, opposed
13 to the AG's involvement. That crucial element is not
14 present in this case; therefore, we'd ask that the Court
15 deny the defense's motion.

16 **THE COURT:** Reply.

17 **(Response by Mr. Reeves.)**

18 **MR. REEVES:** Yes, sir. May it please the
19 court. AT page 917 of the Williams case, judge, the
20 Supreme Court held where the DA has decided in the
21 lawful exercise of his discretion not to prosecute a
22 criminal case, the AG can't do it. And you heard
23 testimony that Mr. Guest didn't do it. He told her --
24 he said he didn't see a felony. He sent her down to
25 justice court. She didn't go there.

1 And then, secondly, your Honor, assuming
2 argument that the AG could come in, under 75-5-53 of the
3 code, he would assist, assist the local DA, not usurp
4 the DA.

5 So in this case, Mr. Guest would have to be
6 involved and would have asked him in and that the AG
7 would assist him, not usurp him, and this what happened
8 here. He didn't request assistance, they're not
9 assisting the DA, they've usurped him and we rest on our
10 earlier argument.

11 **THE COURT:** All right. Thank you for your
12 argument. I'll take the matter under advisement and
13 give you a ruling before the end of the week.

14 The motion for a continuance, we're not going
15 to hear it today. I'll hear it on the regular pretrial
16 motion day.

17 Anythings else at this point from the State?

18 **MR. ALEXANDER:** Nothing from the State, your
19 Honor.

20 **THE COURT:** Anything from the Defense?

21 **MR. REEVES:** No, your Honor. Thank you very
22 much.

23 **THE COURT:** All right. You may be excused.

24 (End of Motion Proceedings.)
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1 CERTIFICATE OF COURT REPORTER

2 I, Harvey J. Rayborn, Court Reporter and
3 Notary Public in and for the County of Hinds, State of
4 Mississippi, hereby certify that the foregoing 21 pages,
5 and including this page, contain a true and correct
6 transcript of the above styled case, as taken by me in
7 the aforementioned matter at the time and place
8 heretofore stated, as taken by stenotype and later
9 reduced to typewritten form under my supervision by
10 means of computer-aided transcription.

11 I further certify that under the authority
12 vested in me by the State of Mississippi that the
13 witness was placed under oath by me to truthfully answer
14 all questions in this matter.

15 I further certify that I am not in the employ
16 of or related to any counsel or party in this matter and
17 have no interest monetary or otherwise, in the final
18 outcome of this proceeding.

19 Witness, my signature and seal this 9th day
20 of October, 2017.

21 _____
22 Harvey J. Rayborn, CSR #1274

23 My commission expires: 10/25/2020
24
25