

EXHIBIT 17

CR-_____

In the ALABAMA COURT OF CRIMINAL APPEALS

◆

Ex parte State of Alabama

◆

In re:

STATE OF ALABAMA,
Petitioner,

v.

HONORABLE MARVIN WIGGINS
Circuit Judge, Fourth Judicial Circuit
Respondent.

◆

On Petition for A Writ of Mandamus to the
Hale County Circuit Court
(Milliarstine Coleman v. Troy King, Attorney
General, et al. CV-2007-074)

PETITION FOR A WRIT OF MANDAMUS

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TABLE OF AUTHORITIES

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PETITION FOR A WRIT OF MANDAMUS

The Honorable Marvin Wiggins, who has a history of obstructing voter fraud investigations,¹ has revealed his personal bias against the State and its investigation and/or his commitment to impede this investigation and thereby protect members of his family in the following ways:

1. He has issued an ex parte order quashing a search warrant and subpoenas without legal justification or jurisdiction to do so in an investigation in which his family members are suspects;
2. He has refused to vacate the order quashing the search warrant and subpoenas issued in an investigation wherein his family members are suspects;
3. Over the objection of the state, he rescheduled the hearing in this matter giving Milliarstine Coleman an opportunity to amend her pleadings thereby further delaying and obstructing the investigation of this matter to the detriment of the state and to the benefit of his family members;
4. He has refused to rule on the pending motions, including the State's Motion To Recuse, despite a specific request for the Court to do so and despite uncontested and unrefuted evidence that his sister, Gay Nell Tinker, his brother-in-law and former

¹ See Ex parte Avery, 843 So. 2d 137 (Ala. 2002) wherein Judge Marvin Wiggins sought to jail the probate judge for seeking to turn over election materials to the District Attorney for voter fraud investigation. The Supreme Court appropriately granted mandamus relief and prevented Judge Wiggins from returning the evidence to the Circuit Clerk, Judge Wiggin's sister, Gay Nell Tinker.

bailiff, Bobby Singleton and his first cousin, Carrie Reaves are suspects in the instant investigation and are directly benefiting from the court's quashing of the search warrant and subpoenas.

Accordingly, to ensure the appearance of absolute fairness and integrity in the litigation of the instant matter, the State petitions this Court to issue a writ of mandamus directing Judge Wiggins to recuse himself from hearing the petition of Milliarstine Coleman.

Statement Of Facts

The Alabama Attorney General's Office is involved in an ongoing investigation of rampant voter fraud in Hale County, Alabama. The suspected violations occurred during 2004 and 2005 and involve the forgery and illegal verification of voter signatures on Affidavits of Absentee Voter. Pivotal to the investigation are the procurement and comparison of suspects' handwriting exemplars to handwriting on the questioned Affidavits. To date, the investigation has resulted in two (2) indictments.²

The investigation has faced various obstacles due in part to the pervasiveness of the problem and in part to the

² State v. Rosie Lyles, CC 2007-071 and State v. Valada Paige Banks, CC 2007-070.

fact that, during the initial stages of the investigation, one suspect, Gay Nell Tinker, was the Circuit Clerk and by law also served as the Absentee Election Manager.³ At one stage of the investigation, Tinker, acting as magistrate, issued an arrest warrant on the complaint of her first cousin, Carrie Reaves, charging Alabama Attorney General Investigator George Barrows with Harassment for serving a subpoena on Reaves. The charge was ultimately dismissed.⁴ Gay Nell Tinker is the sister of Judge Marvin Wiggins. Reaves is the first cousin of Judge Wiggins.

Despite these obstacles, the investigation has proceeded, and in furtherance thereof, on September 12, 2007, Agent Barrows, a sworn law enforcement officer, filed an application for a search warrant with a supporting affidavit with Hale County District Judge William Ryan. After review of the affidavit, Judge Ryan issued the search warrant directing Milliarstine Coleman to appear at 10:30 a.m. on September 20, 2007 for the purpose of providing handwriting exemplars. At the same time, the State of Alabama issued an Attorney General's Subpoena and an Attorney General's Subpoena Duces Tecum also seeking

³ Alabama Code 17-11-2.

⁴ See Exhibit I. Certified copy of record from State v. George Barrows, DC 2005-655.

handwriting exemplars. Both the subpoenas and a notice of the search warrant were served on Coleman on September 12, 2007.

While the State received no notice of any filings or orders until approximately 10:00 a.m on September 20, 2007, it has discerned that the following transpired in the Hale County Circuit Court. On September 18, 2007, Milliarstine Coleman, through counsel, presented Judge Wiggins with a pleading entitled "Motion To Quash" and styled Milliarstine Coleman vs. Troy King, Attorney General, seeking to quash the search warrant. On the same date, Judge Wiggins granted the motion and set a hearing for October 10, 2007. The matter was assigned Case Number CV 07-74 and since Judge Wiggins had already entered an order in the matter, the Circuit Clerk's Office assigned the case to him.

Coleman then filed "Petitioner's First Amendment To 'Motion To Quash,'" seeking to quash the Attorney General's Subpoena and Attorney General's Subpoena Duces Tecum. On September 19, 2007, Judge Wiggins, entered an "Order" stating, in part, "the Search Warrant issued by the District Court of Hale County and the Attorney General's Subpoena Duces Tecum are quashed pending further hearing of

the Court on October 10, 2007." At no time prior to the court's order was the State given the opportunity to be heard.

On October 3, 2007, the State filed a number of pleadings including a "Motion To Recuse" requesting Judge Wiggins to recuse himself from the instant proceedings. The State supported its motion with a sworn affidavit from Agent Barrows wherein he outlined the investigation including the relationships of Judge Wiggins to three of the targets of the investigation.⁵

On October 10, 2007, Judge Wiggins conducted a hearing on several issues including the State's motion to recuse. Agent Barrows' affidavit was entered into evidence and unrefuted. Judge Wiggins, rather than rule on any motions, rescheduled the matter for further hearing on November 13, 2007 and, over the state's objection, granted Coleman's request to amend her wholly deficient pleadings thereby further delaying the investigation of alleged Hale county voter fraud.

⁵ The affidavit of George Barrows is attached as Exhibit H.

Statement Of Issues

The issues presented are:

(1) Whether Canon 3(C)(1) of the Alabama Canons of Judicial Ethics requires Judge Marvin Wiggins' recusal based on a reasonable perception of impartiality; and

(2) Whether Canon 3(C)(1)(d)(ii) requires Judge Marvin Wiggins' recusal based on his relationship to a person within the fourth degree who is known by Judge Wiggins to have an interest that could be substantially affected by the outcome of the proceeding; and

(3) Whether Canon 3(C)(1)(d)(iii) requires Judge Marvin Wiggins' recusal based on his relationship to a person within the fourth degree who is known by Judge Wiggins to likely to be a material witness in the proceeding.

While unfortunate, it is necessary to ensure fairness, avoid the appearance of impropriety, and prevent the questioning of impartiality, for the State to request this Honorable Court to order Judge Wiggins to recuse himself from these proceedings.

Statement Why Writ Should Issue

A. Standard of Review

To prevail on a petition for a writ of mandamus, the petitioner must show: (1) a clear legal right to the relief sought; (2) an imperative duty upon the respondent to perform, accompanied by the respondent's refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the reviewing court. Ex parte Eubank, 871 So. 2d 862, 864 (Ala. Crim. App. 2004).

A writ of mandamus is a proper method by which to seek the pre-trial recusal of a trial judge. See, e.g., Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006). To be entitled to a writ of mandamus ordering the recusal of a trial judge, a petitioner must show that recusal is required under Canon 3(C) of the Alabama Canons of Judicial Ethics. See, e.g., Atchley, 951 So. 2d at 766-68; Eubank, 871 So. 2d at 864; Ex parte Bryant, 682 So. 2d 39, 41 (Ala. Crim. App. 1996).

Under Canon 3(C)(1)(a), recusal is required if the trial judge "has a personal bias or prejudice concerning a party." Alternatively, even if actual bias cannot be proven, recusal is required under Canon 3(C)(1) if "[the

trial judge's] impartiality might reasonably be questioned." Under Canon 3(C)(1), "recusal is required when facts are shown which make it reasonable for members of the public, or a party, or counsel opposed to question the impartiality of the judge." Atchley, 951 So. 2d at 766 (quoting Ex parte Duncan, 638 So. 2d 1332 (Ala. 1994)). Canon 3(C)(1)(d)(ii) requires recusal if the judge, his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person, is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Canon 3(C)(1)(d)(iii) further requires recusal if a person within the prohibited degree of relationship is likely to be a material witness in the proceeding.

In reviewing this case for actual bias and/or facts that could lead a member of the public or a party to question Judge Wiggins' impartiality, this Court must remember that "[a]n independent and honorable judiciary is indispensable to justice in our society, and this requires avoiding all appearance of impropriety, even to the point of resolving all reasonable doubt in favor of recusal." Brooks, 847 So. 2d at 398 (emphasis added). As shown

below, there are numerous individual facts that could lead an average person in Hale County and/or a party in this case (the State) to question Judge Wiggins' impartiality, all of which *must* be resolved "in favor of recusal." Id. When these facts are taken as a whole, there is no question that recusal is warranted.

**B. The Writ Should Issue To Avoid An Appearance Of
Partiality**

The circumstances of this case show that Judge Wiggins has an imperative duty to recuse and that he has refused to do so. This Court has consistently stressed the importance of the appearance of impartiality when called upon to recuse a trial judge.⁶ The State asks this Court to apply the same standard in this case on behalf of the voters of Hale County and for the sake of our democratic form of government. As shown below, this case mandates recusal at least as much as the previous recusals that have been ordered by this Honorable Court.

⁶ Recusal was ordered in the following cases: State v. Moore, CR-06-0747, 2007 WL 1377912 (Ala. Crim. App., May 11, 2007); Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006); Ex parte Eubanks, 871 So. 2d 862 (Ala. Crim. App. 2003); Ex parte Brooks, 847 So. 2d 396 (Ala. Crim. App. 2004); Ex parte Price, 715 So. 2d 856 (Ala. Crim. App. 1997).

1. Judge Wiggins improperly entered an ex parte order quashing a search warrant and subpoenas.

Canon 3.A(4) of the Alabama Canons of Judicial Ethics instructs that "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications concerning a pending or impending proceedings." In this case, Judge Wiggins not only entertained the ex parte communication, but acted on the communication and quashed a search warrant issued by a fellow judge. While there are certain provisions in the law whereby ex parte proceedings are authorized, none were applicable to this matter. In this day of technology, it is difficult to explain how a conference call or some other communicative means could not have been devised to allow the state an opportunity to be heard before the Court issued its ruling.

2. Judge Wiggins has refused to vacate the ex parte order, dismiss the action, or to rule on said motion thereby preventing the state the opportunity to appeal.

Upon learning of Judge Wiggins' illegal order, the State filed appropriate pleadings with the trial Court asking the Court to vacate the order. At the hearing held on October 10, 2007, counsel for Milliarstine Coleman admitted that the pleadings were not proper.⁷ Despite this admission, the Court refused to vacate the order and instead gave Coleman the opportunity to amend her pleadings. The end result is that the order quashing the search warrant and the subpoenas remains in place and the investigation of Judge Wiggins' sister, brother-in-law, and first cousin is at a standstill. Inasmuch as there is no final order, the State may not appeal Judge Wiggin's order.

This dilatory tactic is extremely prejudicial to the State. The alleged illegalities occurred during the 2004 and 2005 elections. Accordingly, the statutes of

⁷ Transcript at page 15 and 18.

limitation are continuing to run, a fact that was pointed out to Judge Wiggins in the October 10, 2007 hearing.⁸

3. Judge Wiggins has refused to rule on the Motion To Recuse despite uncontroverted evidence demonstrating the necessity of his recusal and repeated requests for a ruling.

While the State is unaware of any familial relationship between Milliarstine Coleman and Judge Marvin Wiggins, such is not required to substantiate a demand for recusal under Canon 3(C)(1)(d)(ii). Recusal is required upon a mere showing that a family member of the judge has an interest that *could* be substantially affected.⁹ The outcome of this case will have substantial precedential value to the other targets of the investigation. Apparently, Judge Wiggins does not confess to appreciate the affect of the outcome of this case on the investigation of his family, but a spokesperson for an already indicted coconspirator certainly does. Albert Turner, Jr. was quoted by the Tuscaloosa News referencing the October 10, 2007 hearing in this case as saying, "A hearing will be held to determine whether the search warrants issued in the [Attorney

⁸ Transcript at page 21.

⁹ Canon 3(C)(1)(d)(ii). Compare Canon 3(C)(d)(i) which addresses named parties.

General's Office] investigation were valid. If the judge rules that they were illegal, that effectively ends the case against them."¹⁰

Agent Barrows' affidavit attached to the motion to recuse sets forth pertinent facts relative to the instant investigation. The affidavit was admitted into evidence at the October 10, 2007 hearing and was uncontroverted. Specifically, it evidences a conspiracy among as many as sixteen (16) individuals, including Coleman and relatives of Judge Wiggins, to commit voter fraud by fraudulently executing and verifying Affidavits Of Absentee Voter in several Hale County Elections. During the conspiracy, Gay Nell Tinker, Judge Wiggins' sister, served as the Circuit Clerk and Absentee Election Manager. She certainly has an interest in these proceedings either to preserve her reputation or to forestall an investigation that will ultimately lead to her doorstep. Judge Wiggins' brother in law, Bobby Singleton, and first cousin, Carrie Reaves, obviously have similar interests.

The Alabama Supreme Court acknowledged in *Ex parte Kelly*, 870 So. 2d 711, 728 (Ala. 2003), that "[a] necessary

¹⁰ Attached Exhibit P.

component of a fair trial is an impartial judge." Even if Judge Wiggins' actions and inactions do not prove an actual bias, they certainly provide facts that could lead an average "member of the public or a party" to reasonably question whether he would be biased against the State's position.

4. The State has properly invoked the jurisdiction of this Court by filing this mandamus petition within a reasonable time under Rule 21(a)(3) of the Alabama Rules of Appellate Procedure.

Rule 21(a)(3) of the Alabama Rules of Appellate Procedure provides that a mandamus petition must be filed within a "reasonable time." Although that provision sets out a "presumptively reasonable time" for filing a petition seeking review of an order of a trial court, the Committee Comments to Amendments to Rule 21(a) and Rule 21(e)(4) Effective September 1, 2000 make it clear that the "presumptively reasonable time" framework does not apply to cases such as this one in which the trial court has refused to act. In this case, the State has requested Judge Wiggins to recuse himself by "Motion To Recuse" filed on

October 3, 2007. At the hearing on October 10, 2007, Judge Wiggins failed to rule on said motion. On October 12, 2007, the State filed a "Motion For Ruling and Notice Of Intent To Seek A Writ Of Mandamus." Although the State then asked the court to rule by October 18, 2007, Judge Wiggins has still not ruled. The State recognizes that since Judge Wiggins has scheduled a hearing for November 13, 2007, one could assume by implication that he has no intention of recusing himself from these proceedings. The State has filed this mandamus petition within a reasonable time of realizing that Judge Wiggins has refused to act on the motion to recuse. This Court is the appropriate forum because the underlying case is a purely criminal investigative matter.

Conclusion

To ensure the appearance of absolute impartiality within the judicial system, this Court should grant the State's petition for a writ of mandamus and order Judge Marvin Wiggins to recuse himself from further involvement

in this matter.

Respectfully submitted,



Ben Mark Baxley (BAX 008)
Assistant Attorney General

CERTIFICATE OF SERVICE

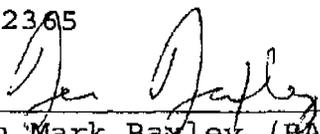
I hereby certify that on this 1st day of November, 2007, I served a copy of the foregoing on Coleman's attorneys and the trial court, by placing said copies in the United States Mail, postage prepaid, and addressed as follows:

The Honorable Marvin Wiggins
Circuit Judge, 4th Judicial Circuit
1001 Main Street, Room 52
Greensboro, AL 36744

The Honorable William A. Ryan¹¹
District Judge, Hale County, Alabama
P. O. Box 27
Greensboro, AL 36744

Kyra Sparks
ATTORNEY AT LAW
P. O. Box 868
Selma, Alabama 36702-0868

J. Patrick Cheshire
ATTORNEY AT LAW
P. O. Box 2365
Selma, Alabama 36702-2365


Ben Mark Baxley (BAX 008)
Assistant Attorney General

ADDRESS OF COUNSEL:

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Montgomery, Alabama 36130
(334) 242-7300

¹¹ In a filing dated October 18, 2007, counsel for Milliarstine Coleman are seeking to add District Judge William A. Ryan as a party to this action.

Note: All exhibits listed below, with the exception of "O" & "P" are omitted. They are found elsewhere in this notebook.

EXHIBITS

- Exhibit A: September 18, 2007 "Motion To Quash" and stamped order
- Exhibit B: Undated "Petitioner's First Amendment To 'Motion To Quash'"
- Exhibit C: September 19, 2007 "Order"
- Exhibit D: October 3, 2007 "Motion To Recuse" with attached "Affidavit Of George Barrows"
- Exhibit E: October 3, 2007 "Motion To Vacate Order Quashing Search Warrant, Subpoena, and Subpoena Duces Tecum"
- Exhibit F: October 10, 2007 "Motion To Dismiss"
- Exhibit G: Transcript of October 10, 2007 hearing
- Exhibit H: Petitioner's Exhibit 1 introduced at October 10, 2007 hearing (Affidavit Of George Barrows).
- Exhibit I: State's Exhibit 1 introduced at October 10, 2007 hearing (Case Action Summary State v. George Barrows DC 2005-655)
- Exhibit J: State's Exhibit 2 introduced at October 10, 2007 hearing (Attorney General's Subpoena)
- Exhibit K: State's Exhibit 3 introduced at October 10, 2007 hearing (Attorney General's Subpoena Duces Tecum)
- Exhibit L: State's Exhibit 4 introduced at October 10, 2007 hearing (Search Warrant)

Exhibit M: State's Exhibit 5 introduced at October 10, 2007 hearing (Application And Affidavit For Order For Handwriting Exemplars)

Exhibit N: October 12, 2007 "Motion For Ruling and Notice Of Intent To Seek A Writ Of Mandamus

Exhibit O: October 18, 2007 "Petitioner's Second Amendment To Prior Pleading; Petition TO Join Necessary Part; Petition For Dismissal Of Subpoena Duces Tecum Pursuant To Rule 17.3 (c) Of The Alabama Rules Of Criminal Procedure; Petition For Writ Of Prohibition"

Exhibit P: October 13, 2007 Article from The Tuscaloosa News

Exhibit 0 of Petition

IN THE CIRCUIT COURT OF HALE COUNTY, ALABAMA

MILLIARSTINE COLEMAN,
Petitioner,

vs.

CASE NO.: CV-2007-000074

WILLIAM A. RYAN
JUDGE OF THE DISTRICT
COURT OF HALE COUNTY,
ALABAMA

and

TROY KING,
ATTORNEY GENERAL

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**PETITIONER'S SECOND AMENDMENT TO PRIOR PLEADING;
PETITION TO JOIN NECESSARY PARTY;
PETITION FOR DISMISSAL OF SUBPOENA DUCES TECUM PURSUANT TO
RULE 17.3 (c) OF THE ALABAMA RULES OF CRIMINAL PROCEDURE;
PETITION FOR WRIT OF PROHIBITION**

Comes now the Petitioner, Milliarstine Coleman, by and through her attorneys of record, Kyra L. Sparks and J. Patrick Cheshire, and would amend the pleadings hereinbefore filed on behalf of the Petitioner as follows:

1. The Petitioner adopts and reasserts the averments contained in the pleadings of Petitioner hereinbefore filed;
2. That the Petitioner invokes the jurisdiction of the Circuit Court of Hale County pursuant to Rule 17.3 (c) of the Alabama Rules of Criminal Procedure and § 12-11-30 (4) of the Code of Alabama of 1975;

MOTION TO JOIN NECESSARY PARTY

1. The Petitioner would move to add as a respondent William A. Ryan, Judge of the District Court of Hale County, Alabama;

2. That pursuant to Alabama Code § 12-11-30 (4) the Circuit Court of Hale County has jurisdiction in this matter;
3. That on or about September 12th, 2007, the said William A. Ryan did issue the search warrant without probable cause that is one of the matters in controversy herein;
4. That in consideration of the above and foregoing the said William A. Ryan, Judge of the District Court of Hale County, Alabama, should be joined as a necessary party herein;

**PETITION FOR DISMISSAL OF SUBPOENA DUCES TECUM PURSUANT TO
RULE 17.3 (c) OF THE ALABAMA RULES OF CRIMINAL PROCEDURE**

1. That pursuant to Rule 17.3 (c) Petitioner filed a timely motion to quash the subpoena duces tecum issued by the Attorney General's Office directing Milliarstine Coleman "to appear, to produce and to provide hand writing exemplars."
2. That pursuant to the affidavit of George A. Barrows filed by the Attorney General's office as part of its Motion to Recuse, Milliarstine Coleman is a suspect and target of the investigation;
3. That no statute or rule exists under Alabama law allowing the issuance of a subpoena duces tecum to a suspect in a criminal investigation.
4. That Rule 17.3(c) of the Alabama Rules of Criminal procedure states: "The court, on motion made promptly, may dismiss or modify a subpoena deuces tecum if compliance therewith would be unreasonable, oppressive, or unlawful."

5. That the issuance of a subpoena duces tecum to a suspect or defendant is unlawful;
6. That the issuance of a subpoena duces tecum to further a concerted effort by elements in the Republican Party to use voting fraud investigations and prosecutions to suppress minority voting is oppressive.
7. That issuance of a subpoena duces tecum to a suspect or defendant without authorization by statute or rule is unreasonable.

PETITION FOR WRIT OF PROHIBITION

Comes now the Petitioner, Milliarstine Coleman, by and through her attorneys of record, Kyra L. Sparks and J. Patrick Cheshire, and would Petition this Honorable Court to issue a writ of prohibition to the District Court of Hale County Alabama, vacating the search warrant issued by said District Court or in the alternative to direct the said District Court to file an answer to this Petition and in support thereof would show as follows:

I. TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

4th amend U.S. CONST. 17895
 Art.I §5 ALA. CONST. 19016

STATUTES AND RULES

Alabama Code § 12-11-30(4).....6
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CASES

Ex parte Jerry T. Fitch, Sr. et al,

715 So. 2d 873 (ALA. CRIM 1997),.....7

II. STATEMENT OF FACTS

On or about September 12th, 2007, the District Court of Hale County did cause to be issued a purported search warrant directing Milliarstine Coleman “to appear on Thursday September 20th, 2007, at 10:00 A.M. at the Hale County Jail, Alabama Highway 14 West, Greensboro, Alabama and to provide handwriting exemplars as directed by Agents with the Attorney General’s Office.” That no criminal charges have been filed against Ms. Coleman and Ms. Coleman is not currently a defendant in any pending action. That pursuant to § 12-11-30(4) of the Alabama Code, Ms. Coleman invoked the jurisdiction of the Circuit Court of Hale County to quash the purported search warrant of District Court of Hale County, Alabama , on or about September 18th, 2007. That on or about September 18th, 2007, the Circuit Court of Hale County stayed the search warrant pending a hearing scheduled for the next available docket, October 10th, 2007.

On about September 19th, 2007, the Petitioner filed Petitioner’s First Amendment to “Motion to Quash” seeking to quash the Attorney General’s Subpoena and Subpoena Duces Tecum issued to the Petitioner. The Attorney General had issued an apparent investigatory subpoena duces tecum to Ms. Coleman who is by the Attorney General’s own admission a suspect and target of its investigation. There is no evidence that a Grand Jury was in session at the time of the issuance of this subpoena nor that any Grand Jury

was engaged in an ongoing investigation. The Circuit Court of Hale County, Alabama, set the matter for hearing on October 10th, 2007.

At the hearing into this matter held before the Circuit Court of Hale County, Alabama, on October 10, 2007, the office of the Attorney General in open court filed a motion to recuse as well as various motions challenging the Jurisdiction of the Circuit Court. Under repeated questions the representative of the Attorney General's office could not provide a direct link between Ms. Coleman and any kinsmen of the Circuit Judge. The Court took all motions under advisement and set November 13th, 2007 for determination. The Court granted Petitioner 14 days to amend her pleadings and respond to the Motions by the Attorney General's office.

III STATEMENT OF ISSUES

- A. Whether the District Court lacks Jurisdiction to issue a search warrant absent probable cause.
- B. Whether the Attorney General lacks authority to issue a Subpoena or a Supoena Duces Tecum to a suspect or defendant where no statute or rule exists under Alabama law allowing the issuance of such Subpoena or Subpoena Duces Tecum to a suspect in a criminal investigation.

IV. STATEMENT WHY WRIT SHOULD BE ISSUED

The fourth amendment to the United States Constitution provides "...no Warrants shall issue, *but upon probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." 4th amend. U.S. CONST. This prohibition against the issuance of any search warrant except upon a showing of probable cause is echoed in the Alabama

Constitution which provides: "...that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation." Art. I § 5 ALA. CONST. 1901. The Alabama legislature has elected to codify this constitutional requirement in Ala. Code § 15-3-3: "A search warrant can only be issued on probable cause, supported by affidavit naming and describing the property and place to be searched." ALA. CODE § 15-3-3 1975.

In the case now before the Court the Petitioner invoked the general superintendence jurisdiction of the Circuit Court of Hale County, Alabama over the District Court of Hale County, Alabama by filing a motion to quash a search warrant issued by the said District Court. Alabama Code § 12-11-30(4) states: "The circuit court shall exercise a general superintendence over all district courts,..." § 12-11-30(4) ALA. CODE 1975. While it is the Petitioner's position that the Circuit Court of Hale County, Alabama may act upon the Petitioner's motion to quash without the need of issuing a writ of prohibition, the Petitioner further contends that the District Court is without jurisdiction to issue a search warrant without probable cause. Further Petitioner would aver that the content of the exemplars sought is testimonial and/or communicative in nature.

On or about September 12th, 2007, the office of the Attorney General had issued an apparent investigatory subpoena duces tecum to Ms. Coleman who is by the Attorney General's own admission a suspect and target of its investigation. There is no evidence that a Grand Jury was in session at the time of the issuance of this subpoena nor that any Grand Jury was engaged in an ongoing investigation.

Pursuant to Rule 17.3 (c) Petitioner filed a timely motion to quash the subpoena duces tecum issued by the Attorney General's Office directing Milliarstine Coleman "to appear, to produce and to provide hand writing exemplars"

In Ex parte Jerry T. Fitch, Sr. et al, 715 So. 2d 873 (ALA. CRIM 1997), the Alabama Court of Criminal Appeals held that no statute or rule exists under Alabama law allowing the issuance of a subpoena duces tecum to a suspect in a criminal investigation. Thus the Attorney General has no authority to issue such a subpoena or a subpoena duces tecum as was issued to the Petitioner herein.

Rule 17.3(c) of the Alabama Rules of Criminal procedure states: "The court, on motion made promptly, may dismiss or modify a subpoena duces tecum if compliance therewith would be unreasonable, oppressive, or unlawful."

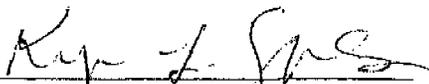
The Petitioner would assert that since no rule or statute authorizes the issuance of a subpoena duces tecum to a suspect or defendant then the issuance of such subpoenas is unlawful.

Petitioner would further assert that the issuance of a subpoena duces tecum to further a concerted effort by elements in the Republican Party to use voting fraud investigations and prosecutions to suppress minority voting is oppressive and unreasonable.

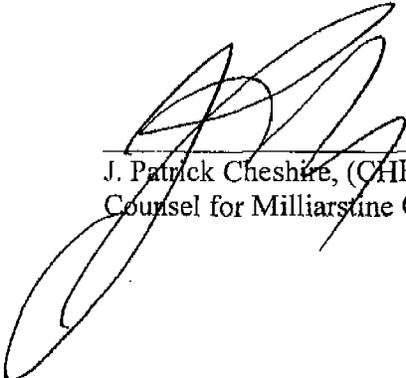
That Petitioner is without adequate remedy unless the Court exercises jurisdiction by either hearing the Motions to Quash hereinbefore filed or granting the Petition for writ of prohibition.

NOW WHEREFORE the premises considered the Petitioner would pray this Honorable Court to exercise its jurisdiction by either hearing the Motions to Quash hereinbefore filed or granting the Petition for writ of prohibition.

Respectfully submitted.



Kyra L. Sparks (SPA010)
Counsel for Milliarstine Coleman

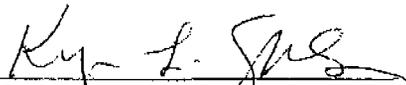


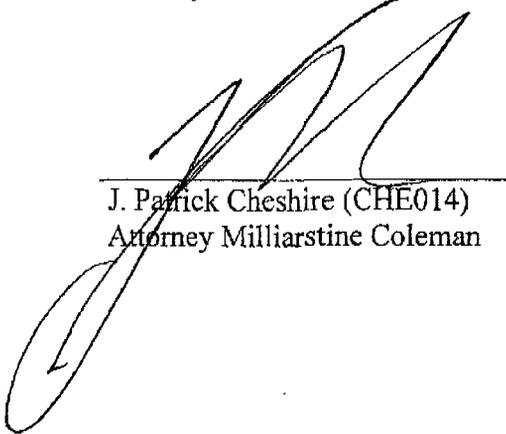
J. Patrick Cheshire, (CHE014)
Counsel for Milliarstine Coleman

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing Motion on William A. Ryan, the District Judge of Hale County, Alabama, and the Office of the Attorney General of the State of Alabama by hand delivery or mailing the same United States mail, properly addressed with first class postage prepaid.

This the 18th day of October, 2007.


Kyra L. Sparks (SPA010)
Attorney for Milliarstine Coleman


J. Patrick Cheshire (CHE014)
Attorney Milliarstine Coleman

OF COUNSEL:

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Telephone: (334) 872-6440

Oct 13, 2007

Voter fraud suspects in Hale County plead not guilty

By Stephanie Taylor
Staff Writer

GREENSBORO | More than 200 people packed the Hale County courthouse Friday morning to support two women they believe have been wrongfully accused of committing voter fraud.

The crowd applauded as Rosie Lyles and Valada Paige Banks pleaded not guilty Friday morning. They gathered outside the courthouse, holding hands in a circle and singing and praying. About half wore shirts that read "Greensboro 2: Injustice

Anywhere is a Threat to Justice Everywhere."

A Hale County grand jury indicted Banks, 44, and Lyles, 67, in August. They were charged with second-degree possession of a forged instrument — an absentee voter affidavit — with the knowledge that it was forged and four counts of promoting illegal absentee voting.

The group hoped that the cases might not even make it to court. A woman whose name apparently appeared on an absentee ballot has filed

a motion in court to quash a search warrant issued in September for her handwriting sample.

"A hearing will be held to determine whether the search warrants issued in the [Attorney General's Office] investigation were valid," said Albert Turner Jr., a Perry County commissioner and member of the group that organized the rally, Campaign 2000 & Beyond. "If the judge rules that they were illegal, that effectively ends the case against them."

Joy Patterson, spokeswoman for the Alabama Attorney General's Office, said she couldn't comment about the case. She did provide court documents about it, although they didn't specifically indicate whether the case would be thrown out if the search warrant is ruled invalid.

Campaign 2000 & Beyond was formed in 1998 to encourage residents to vote and become involved in the community.

Turner said that Lyles and Banks are being prosecuted because of their race.

He said that the authorities haven't done anything even though members the group have documented evidence that implicates white people in committing voter fraud in Hale, Perry and Marion counties.

"Neither the DA nor the AG have moved," he said.

Jackie Hoskins, a 52-year-old lifelong Greensboro resident, also believes that the prosecutions are racially motivated.

"We have a thing about black and white here; it's always been that way. It's a shame that it's come

down to this," she said. "White people have been doing this [committing voter fraud] for years."

She believes that the high numbers of absentee votes in the questioned elections were legitimate.

"Eighty to 90 percent of people here work out of town. There are no jobs here — there is nothing here," she said.

The rally at the courthouse Friday followed a rally attended by Rev. Al Sharpton at Salem Baptist Church on Sunday.

"We're about to turn the temperature up in Greensboro," he told a crowd of about 250 people.

According to the documents from the Attorney General's Office, investigators suspect at least 16 people of crimes related to voter fraud and forgery during Hale County elections in 2004 and 2005.

EXHIBIT 18

THE STATE OF ALABAMA -- JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS

CR-07-0226

Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: Milliarstine Coleman v. State of Alabama)

Hale Circuit Court No. CV-07-074

ORDER

This petition for a writ of mandamus is **DISMISSED WITHOUT PREJUDICE**. The State may refile this petition if the motion to recuse is denied before a final ruling is made on the action to quash the search warrant.

Baschab, P.J., and McMillan and Welch, JJ., concur.
Shaw and Wise, JJ., dissent.

Done this 16th day of November, 2007.



PAMELA W. BASCHAB, PRESIDING JUDGE

cc: Hon. Marvin W. Wiggins, Judge
Hon. Catrinna A. Perry, Clerk
Hon. William A. Ryan, District Judge
Michael W. Jackson, District Attorney
Ben Baxley, Assistant Attorney General
I. Patrick Cheshire, Attorney for Respondent
Kyrá L. Sparks, Attorney for Respondent
Callie Dietz, AOC Director
Office of the Attorney General

SHAW, Judge, dissenting.

I respectfully dissent. I would not dismiss the mandamus petition at this time. Rather, I would lift the stay previously issued by this Court to allow the trial court to rule on the State's motion to recuse. If the trial court denies the motion to recuse, I would then grant the parties additional time to file supplemental briefs regarding that ruling. I caution counsel for Milliarstine Coleman that, in any future filings with this Court, he should conduct himself in a professional and ethical manner in compliance with the Rules of Professional Conduct and should argue the merits of the issue or issues based solely on the law and the facts.

Wise, J., concurs.

EXHIBIT 19

CR- _____

In the ALABAMA COURT OF CRIMINAL APPEALS

Ex parte State of Alabama

In re:

STATE OF ALABAMA,
Petitioner,

v.

HONORABLE MARVIN WIGGINS
Circuit Judge, Fourth Judicial Circuit
Respondent.

On Petition for A Writ of Mandamus to the
Hale County Circuit Court
(Milliarstine Coleman v. Troy King, Attorney
General, et al. CV-2007-074)

STATE'S SECOND PETITION FOR A WRIT OF MANDAMUS

Troy King
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John M. Porter
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Ben Baxley
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November 30, 2007

TABLE OF AUTHORITIES

Cases

Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006)...8
Ex parte Eubank, 871 So. 2d 862 (Ala. Crim. App. 2004)....6
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Canons Of Judicial Ethics,

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Canon 3(C) (1) (d) (iii) 8
Canon 3(C) (1) (a) 7
Canon 3(A) (4) 8

PETITION FOR A WRIT OF MANDAMUS

Comes now the State of Alabama, by and through the Attorney General of the State of Alabama and respectfully petitions this Court pursuant to Rule 21 of the Alabama Rules of Appellate Procedure to issue a writ of mandamus to the Honorable Marvin Wiggins, a circuit court judge in Hale County, Alabama, directing him to enter an order ruling upon the State's motion to recuse filed on October 3, 2007 in the case of Milliarstine Coleman v. Troy King, Attorney General, CV-2007-000074, within 14 days. Judge Wiggins has refused to rule upon the State's motion to recuse, despite a specific request for the Court to do so and despite evidence that his sister, Gay Nell Tinker, his brother-in-law and former bailiff, Bobby Singleton and his first cousin, Carrie Reaves are suspects in the instant investigation and are directly benefiting from the court's quashing of the search warrant and subpoenas issued as part of the State's investigation. Accordingly, to ensure the appearance of absolute fairness and integrity in the litigation of the instant matter, the State petitions this Court to issue a writ of mandamus directing Judge Wiggins

to issue an order ruling on the State's motion to recuse within 14 days.

STATEMENT OF THE FACTS

The Alabama Attorney General's Office is involved in an ongoing investigation of widespread voter fraud in Hale County, Alabama occurring during 2004 and 2005 and involving the forgery and illegal verification of voter signatures on Affidavits of Absentee Voter.¹ At least three suspects in this investigation are closely related to Circuit Judge Marvin Wiggins either by blood or marriage: Gay Nell Tinker, the Circuit Clerk and who by law also served as the Absentee Election Manager, is the sister of Judge Wiggins²; Carrie Reaves is the first cousin of Judge Wiggins; and Bobby Singleton is Judge Wiggins's brother-in-law.

On September 12, 2007, as a critical part of the voter fraud investigation, Alabama Attorney General Investigator George Barrows filed an application for a search warrant with a supporting affidavit with Hale County District Judge

¹To date, the investigation has resulted in two indictments. See State v. Rosie Lyles, CC 2007-071 and State v. Valada Paige Banks, CC 2007-070.

² Alabama Code 17-11-2.

William Ryan. Exhibit I. After review of the affidavit, Judge Ryan issued the search warrant directing Milliarstine Coleman, another suspect in the investigation, to appear at 10:30 a.m. on September 20, 2007 for the purpose of providing handwriting exemplars. At the same time, the State of Alabama issued an Attorney General's Subpoena and an Attorney General's Subpoena Duces Tecum also seeking handwriting exemplars. Both the subpoenas and a notice of the search warrant were served on Coleman on September 12, 2007.

On September 18, 2007, Coleman, through counsel, presented Judge Wiggins with a pleading entitled "Motion To Quash" and styled Milliarstine Coleman vs. Troy King, Attorney General, seeking to quash the search warrant. Exhibit A. On the same date, Judge Wiggins granted the motion and set a hearing for October 10, 2007. The matter was assigned Case Number CV 07-74 and since Judge Wiggins had already entered an order in the matter, the Circuit Clerk's Office assigned the case to him. Coleman then filed "Petitioner's First Amendment To 'Motion To Quash,'" seeking to quash the Attorney General's Subpoena and Attorney General's Subpoena Duces Tecum. Exhibit B. On

September 19, 2007, Judge Wiggins, without giving the State a chance to be heard, entered an "Order" stating, in part, "the Search Warrant issued by the District Court of Hale County and the Attorney General's Subpoena Duces Tecum are quashed pending further hearing of the Court on October 10, 2007." Exhibit C. On October 3, 2007, the State filed a number of pleadings including a "Motion to Recuse" requesting Judge Wiggins to recuse himself from the instant proceedings. Exhibit D. The State supported its motion with a sworn affidavit from Agent Barrows wherein he outlined the investigation including the relationships of Judge Wiggins to three of the targets of the investigation.³ Id.

On October 10, 2007, Judge Wiggins conducted a hearing on several issues including the State's motion to recuse. Exhibit G. Agent Barrows' affidavit was entered into evidence and unrefuted. Exhibit G, p. 20. Judge Wiggins, rather than rule on any motions, rescheduled the matter for further hearing on November 13, 2007 and, over the state's objection, granted Coleman's request to amend her pleadings thereby further delaying the investigation of alleged Hale

³ The affidavit of George Barrows is attached as Exhibit H.

county voter fraud. Exhibit G, pp. 20-21, 39-40. On October 12, 2007, the State filed a "Motion for Ruling and Notice of Intent to Seek a Writ of Mandamus," requesting that Judge Wiggins rule on its pending motions by October 18, 2007 and noting that the further delay was prejudicing the investigation. Exhibit N. On November 1, 2007, realizing that Judge Wiggins had not recused himself despite serious concerns under Canon 3(C)(1) of the Alabama Canons of Judicial Ethics, the State filed a "Petition for Writ of Mandamus," asking this Court to order Judge Wiggins to recuse himself from this matter. Exhibit Q. On November 16, 2007, this Court dismissed the State's petition without prejudice, indicating that the "State may refile this petition if the motion to recuse is denied before a final ruling is made on the motion to quash the search warrant." Exhibit R.

STATEMENT OF ISSUE

Whether the trial court must rule upon the State's motion to recuse in a timely manner when its continued refusal to rule upon the motion not only impedes the State's investigation of the underlying matter but acts as an effective denial of the motion and precludes any review by this Court?

STATEMENT WHY WRIT SHOULD ISSUE

A. Standard of Review

To prevail on a petition for a writ of mandamus, the petitioner must show: (1) a clear legal right to the relief sought; (2) an imperative duty upon the respondent to perform, accompanied by the respondent's refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the reviewing court. Ex parte Eubank, 871 So. 2d 862, 864 (Ala. Crim. App. 2004).

B. The State Has A Clear Legal Right To The Relief Requested And Judge Wiggins Has An Imperative Duty To Rule Upon The State's Motion To Recuse.

Because Judge Wiggins's presiding over this case raises serious concerns under Canon 3(C)(a) of the Alabama Canons

of Judicial Ethics, it is imperative that these concerns be resolved in a timely manner so that the underlying investigation may proceed with the appearance of judicial impartiality. Judge Wiggins's refusal to rule upon the State's motion to recuse is effectively a denial of that motion because, as long as he has not made any such ruling, he continues to preside over the case. Furthermore, without any express ruling, the State is precluded from seeking review of Judge Wiggins's decision as evidenced by the State's first petition for writ of mandamus filed in this matter. Because the State is prejudiced by each day the investigation is delayed, it is entitled to at least a timely ruling on its motion to recuse.

This Court has consistently stressed the importance of the appearance of impartiality when called upon to recuse a trial judge. Under Canon 3(C)(1)(a), recusal is required if the trial judge "has a personal bias or prejudice concerning a party." Alternatively, even if actual bias cannot be proven, recusal is required under Canon 3(C)(1) if "[the trial judge's] impartiality might reasonably be questioned." Under Canon 3(C)(1), "recusal is required when facts are shown which make it reasonable for members

of the public, or a party, or counsel opposed to question the impartiality of the judge." See, e.g., Ex parte Atchley, 951 So. 2d 764, 766 (Ala. Crim. App. 2006) (quoting Ex parte Duncan, 638 So. 2d 1332 (Ala. 1994)). Likewise, Canon 3(C)(1)(d)(ii) requires recusal if the judge, his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person, is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Canon 3(C)(1)(d)(iii) further requires recusal if a person within the prohibited degree of relationship is likely to be a material witness in the proceeding. In quashing the search warrant, Judge Wiggins entertained and acted on an ex parte communication in violation of Canon 3A(4) of the Alabama Canons of Judicial Ethics, which instructs that "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications concerning a pending or impending proceedings." Clearly, numerous factors exist that could lead an average person in Hale County and/or a party in

this case (the State) to question Judge Wiggins' impartiality. Id. Accordingly, it is imperative that the issue of Judge Wiggins's recusal be decided expeditiously and judiciously.

C. The State Has No Adequate Remedy At Law

Despite its numerous efforts to have the issue of Judge Wiggins's recusal resolved in a timely manner, the State has faced a roadblock at every turn. Judge Wiggins did not rule upon the written motion to recuse filed on October 3, 2007; did not rule upon the oral motion to recuse raised at the October 10, 2007 hearing; and failed to rule on the State's specific request for a ruling on or before October 18, 2007. Although the matter was reset for another hearing to be held 33 days later, on November 13, 2007, this hearing has been continued indefinitely. Although the State filed a petition for writ of mandamus asking this Court to order Judge Wiggins to recuse, this Court held that this issue was not ripe until Judge Wiggins issued a ruling on the State's motion to recuse.

Upon dismissing the State's first petition for writ of mandamus without prejudice, this Court indicated that the

State could refile the petition "if the motion to recuse is denied before a final ruling is made on the motion to quash the search warrant." If Judge Wiggins rules on the motion to quash the search warrant without ever issuing a ruling on the motion to recuse, however, the State will suffer irreparable injury. Not only will adjudication of the underlying matter without first resolving the issues concerning Judge Wiggins's recusal result in a cloud of suspicion, but the State will lose any ability to have the recusal issues reviewed by an appellate court.

Furthermore, Judge Wiggins's final order would be entitled to any presumptions allowed such orders, such as the ore tenus rule. See Odom v. Hull, 658 So. 2d 442, 444 (Ala. 1995) ("Where evidence is presented to the trial court ore tenus in a nonjury case, a presumption of correctness exists as to the court's conclusions on issues of fact; its determination will not be disturbed unless clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence."). Because such presumptions could play a critical role in how the underlying case is adjudicated, the issues concerning

whether Judge Wiggins should be presiding over the case should be decided before the issuance of a final ruling.

The State, furthermore, has continued to suffer prejudice from each day the investigation is delayed and will suffer irreparable prejudice if there is further delay. Upon learning of Judge Wiggins' order quashing the search warrant, the State filed appropriate pleadings with the trial Court asking it to vacate the order. Although Coleman's counsel admitted that the pleadings seeking to quash the search warrant and the subpoenas were not proper at the hearing held on October 10, 2007,⁴ Judge Wiggins refused to vacate the order and instead gave Coleman the opportunity to amend her pleadings. The order quashing the search warrant and the subpoenas remains in place and the investigation of Judge Wiggins' sister, brother-in-law, and first cousin is at a standstill. Because the alleged illegalities occurred during the 2004 and 2005 elections, the three-year statutes of limitation⁵ are continuing to run, a fact that was pointed out to Judge Wiggins in the

⁴ Transcript at page 15 and 18.

⁵ See §15-3-1, Ala. Code (1975); for crimes associated with illegal absentee voting, see § 17-17-24, Ala. Code. (1975).

October 10, 2007 hearing.⁶ Inasmuch as there is no final order from which to appeal, the only remedy to have the issue of Judge Wiggins's recusal resolved expeditiously and judiciously is for this Court to order Judge Wiggins to rule upon the State's motion to recuse within a reasonable time. Due to the pressing concerns regarding the effective conduct of the investigation to allow proper charges be brought before the expiration of the statute of limitation, the State requests that Judge Wiggins be ordered to rule upon its motion to recuse within 14 days.

D. The State has properly invoked the jurisdiction of this Court by filing this mandamus petition within a reasonable time under Rule 21(a)(3) of the Alabama Rules of Appellate Procedure.

Rule 21(a)(3) of the Alabama Rules of Appellate Procedure provides that a mandamus petition must be filed within a "reasonable time." Although that provision sets out a "presumptively reasonable time" for filing a petition seeking review of an order of a trial court, the Committee Comments to Amendments to Rule 21(a) and Rule 21(e)(4) Effective September 1, 2000 make it clear that the "presumptively reasonable time" framework does not apply to

⁶ Transcript at page 21.

cases such as this one in which the trial court has refused to act. In this case, the State has requested Judge Wiggins to recuse himself by "Motion To Recuse" filed on October 3, 2007. Not only did he not rule on this motion at the hearing on October 10, 2007, but Judge Wiggins still did not rule despite the State's request to do so by October 18, 2007. This Court held that the State's request to order Judge Wiggins to recuse was not ripe because Judge Wiggins had not yet issued a ruling on the motion to recuse. The State has filed this mandamus petition within a reasonable time of realizing that Judge Wiggins has refused to act on the motion to recuse and that it will suffer irreparable prejudice if it passively waits for Judge Wiggins to issue such a ruling when every indication has been that he will not do so unless ordered to issue a ruling. This Court is the appropriate forum because the underlying case is a purely criminal investigative matter.

CONCLUSION

To ensure the appearance of absolute impartiality within the judicial system and to enable the effective investigation of voter fraud within Hale County, this Court should grant the State's petition for a writ of mandamus and order Judge Marvin Wiggins to issue an order ruling upon the State's motion to recuse within 14 days.

Respectfully submitted,

John M. Porter
Assistant Attorney General

Ben Mark Baxley (BAX 008)
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2007, I served a copy of the foregoing on Coleman's attorneys and the trial court, by placing said copies in the United States Mail, postage prepaid, and addressed as follows:

The Honorable Marvin Wiggins
Circuit Judge, 4th Judicial Circuit
1001 Main Street, Room 52
Greensboro, AL 36744

The Honorable William A. Ryan⁷
District Judge, Hale County, Alabama
P. O. Box 27
Greensboro, AL 36744

Kyra Sparks
ATTORNEY AT LAW
P. O. Box 868
Selma, Alabama 36702-0868

J. Patrick Cheshire
ATTORNEY AT LAW
P. O. Box 2365
Selma, Alabama 36702-2365

Ben Mark Baxley (BAX 008)
Assistant Attorney General

ADDRESS OF COUNSEL:

Office of the Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(334) 242-7300

⁷ In a filing dated October 18, 2007, counsel for Milliarstine Coleman are seeking to add District Judge William A. Ryan as a party to this action.

EXHIBITS

- Exhibit A: September 18, 2007 “Motion To Quash” and stamped order
- Exhibit B: Undated “Petitioner’s First Amendment To ‘Motion To Quash’”
- Exhibit C: September 19, 2007 “Order”
- Exhibit D: October 3, 2007 “Motion To Recuse” with attached “Affidavit Of George Barrows”
- Exhibit E: October 3, 2007 “Motion To Vacate Order Quashing Search Warrant, Subpoena, and Subpoena Duces Tecum”
- Exhibit F: October 10, 2007 “Motion To Dismiss”
- Exhibit G: Transcript of October 10, 2007 hearing
- Exhibit H: Petitioner’s Exhibit 1 introduced at October 10, 2007 hearing (Affidavit Of George Barrows)
- Exhibit I: State’s Exhibit 1 introduced at October 10, 2007 hearing (Case Action Summary State v. George Barrows DC 2005-655)

- Exhibit J: State's Exhibit 2 introduced at October 10, 2007 hearing (Attorney General's Subpoena)
- Exhibit K: State's Exhibit 3 introduced at October 10, 2007 hearing (Attorney General's Subpoena Duces Tecum)
- Exhibit L: State's Exhibit 4 introduced at October 10, 2007 hearing (Search Warrant)
- Exhibit M: State's Exhibit 5 introduced at October 10, 2007 hearing (Application And Affidavit For Order For Handwriting Exemplars)
- Exhibit N: October 12, 2007 "Motion For Ruling and Notice Of Intent To Seek A Writ Of Mandamus"
- Exhibit O: October 18, 2007 "Petitioner's Second Amendment To Prior Pleading; Petition TO Join Necessary Part; Petition For Dismissal Of Subpoena Duces Tecum Pursuant To Rule 17.3 (c) Of The Alabama Rules Of Criminal Procedure; Petition For Writ Of Prohibition"
- Exhibit P: October 13, 2007 Article from The Tuscaloosa News

EXHIBIT 20

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

CR-07-0391

Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: Milliarstine Coleman v. State of Alabama)

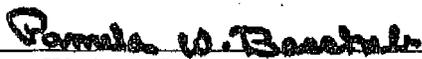
Hale Circuit Court No. CV-07-74

ORDER

This petition for a writ of mandamus is GRANTED. Judge Marvin Wiggins is directed to issue a ruling on the State's motion to recuse within 21 days from the date of this order.

Baschab, P.J., and McMillan, Shaw, Wise, and Welch, JJ., concur.

Done this 18th day of December, 2007.



PAMELA W. BASCHAB, PRESIDING JUDGE

cc: Hon. Marvin W. Wiggins, Judge
Hon. William A. Ryan, District Judge
Hon. Catrina A. Perry, Clerk
Ben Baxley, Assistant Attorney General
John McGavock Porter, Assistant Attorney General
J.Patrick Cheshire, Attorney for Respondent
Kyra L. Sparks, Attorney for Respondent
Callie Dietz, AOC Director
Office of the Attorney General

EXHIBIT 21

particular, the State proffered no evidence that Mrs. Singleton, Senator Bobby Singleton or Mrs. Reaves were present during anytime the ballots were executed, that either one personally handled the ballots or that either one secured the ballots in any manner. The State simply stated Mrs. Singleton, in her official capacity as Circuit Clerk and Absentee Elections Manager would have processed the ballots as she was required to do in her capacity as Absentee Manager. Further, the State testified there is an over all investigation of voter fraud centered around Mrs. Singleton and Senator Bobby Singleton.

This Court's Order granting the Motion to Quash specifically and directly addressed the subpoena issued to Mrs. Coleman. The State is and has been free, without this Court's interference to issue a subpoena, warrant, indictment, investigation and/or other request to Mrs. Singleton, Senator Bobby Singleton or Mrs. Reaves. The Court has not and will not interfere with that process.

The Court will not hesitate to recuse itself from matters, claim and issues outlined in the Canons where the facts justify. However, in this instance, the Court does not believe the State has submitted sufficient evidence at this juncture to grant the motion. Therefore, the Motion to Recuse is **DENIED**.

DONE THIS THE 8th DAY OF JANUARY, 2008.

MARVIN W. WIGGINS
CIRCUIT JUDGE

CC: Each Counsel of Record

EXHIBIT 22

In the ALABAMA COURT OF CRIMINAL APPEALS

Ex parte State of Alabama

In re:

STATE OF ALABAMA,
Petitioner,

v.

HONORABLE MARVIN WIGGINS
Circuit Judge, Fourth Judicial Circuit
Respondent.

On Petition for A Writ of Mandamus to the
Hale County Circuit Court
(Milliarstine Coleman v. Troy King, Attorney
General, et al. CV-2007-074)

STATE'S THIRD PETITION FOR A WRIT OF MANDAMUS

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January 10, 2008

TABLE OF AUTHORITIES

Cases

Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006)... 7

Ex parte Brooks, 847 So. 2d 396, 398 (Ala. Crim. App. 2004) 8

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Rule 21(a)(3) 18

Alabama Rules of Criminal Procedure,
Rule 15.7 18

Alabama Canons of Judicial Ethics,
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Canon 3(C)(1) 7

Canon 3(C)(1)(a) 7

Canon 3(C)(1)(d)(ii) 8

Canon 3(C)(1)(d)(iii) 8

Canon 3A(4) 13

PETITION FOR A WRIT OF MANDAMUS

Comes now the State of Alabama, by and through the Attorney General of the State of Alabama and respectfully petitions this Court pursuant to Rule 21 of the Alabama Rules of Appellate Procedure to issue a writ of mandamus to the Honorable Marvin Wiggins, a circuit court judge in Hale County, Alabama, directing him to recuse himself from hearing the matter of Milliarstine Coleman v. Troy King, Attorney General, CV-2007-000074, because this matter pertains to the State's overall investigation for conspiracy to commit voter fraud in Hale County - a conspiracy that allegedly involves three individuals who are related to Judge Wiggins, either through blood or marriage.

STATEMENT OF THE FACTS

The Alabama Attorney General's Office is involved in an ongoing investigation of widespread voter fraud in Hale County, Alabama occurring during 2004 and 2005 and involving the forgery and illegal verification of voter

signatures on Affidavits of Absentee Voter.¹ At least three suspects in this investigation are closely related to Circuit Judge Marvin Wiggins either by blood or marriage: Gay Nell Tinker, the Circuit Clerk and who by law also served as the Absentee Election Manager, is the sister of Judge Wiggins²; Carrie Reaves is the first cousin of Judge Wiggins; and Bobby Singleton is Judge Wiggins's brother-in-law.

On September 12, 2007, as a critical part of the voter fraud investigation, Alabama Attorney General Investigator George Barrows filed an application for a search warrant with a supporting affidavit with Hale County District Judge William Ryan. Exhibit I. After review of the affidavit, Judge Ryan issued the search warrant directing Milliarstine Coleman, another suspect in the investigation, to appear at 10:30 a.m. on September 20, 2007 for the purpose of providing handwriting exemplars. Exhibit L. At the same time, the State of Alabama issued an Attorney General's Subpoena and an Attorney General's Subpoena Duces Tecum also seeking handwriting exemplars. Exhibits J, K, and M.

¹To date, the investigation has resulted in two indictments. See State v. Rosie Lyles, CC 2007-071 and State v. Valada Paige Banks, CC 2007-070.

² Alabama Code 17-11-2.

Both the subpoenas and a notice of the search warrant were served on Coleman on September 12, 2007. Id.

On September 18, 2007, Coleman, through counsel, presented Judge Wiggins with a pleading entitled "Motion To Quash" and styled Milliarstine Coleman vs. Troy King, Attorney General, seeking to quash the search warrant. Exhibit A. On the same date, and without allowing the State an opportunity to be heard, Judge Wiggins granted the motion and set a hearing for October 10, 2007. The matter was assigned Case Number CV 07-74 and since Judge Wiggins had already entered an order in the matter, the Circuit Clerk's Office assigned the case to him. Coleman then filed "Petitioner's First Amendment To 'Motion To Quash,'" seeking to quash the Attorney General's Subpoena and Attorney General's Subpoena Duces Tecum. Exhibit B. On September 19, 2007, Judge Wiggins, again without giving the State a chance to be heard, entered an "Order" stating, in part, "the Search Warrant issued by the District Court of Hale County and the Attorney General's Subpoena Duces Tecum are quashed pending further hearing of the Court on October 10, 2007." Exhibit C. On October 3, 2007, the State filed a number of pleadings, including a "Motion to Recuse"

requesting Judge Wiggins to recuse himself from the instant proceedings. Exhibits D-F. The State supported its motion with a sworn affidavit from Agent Barrows wherein he outlined the investigation including the relationships of Judge Wiggins to three of the targets of the investigation.³ Exhibit H.

On October 10, 2007, Judge Wiggins conducted a hearing on several issues including the State's motion to recuse. Exhibit G. Agent Barrows' affidavit was entered into evidence and unrefuted. Exhibit G, p. 20. Judge Wiggins, rather than rule on any motions, rescheduled the matter for further hearing on November 13, 2007 and, over the State's objection, granted Coleman's request to amend her pleadings thereby further delaying the investigation of alleged Hale county voter fraud. Exhibit G, pp. 20-21, 39-40. On October 12, 2007, the State filed a "Motion for Ruling and Notice of Intent to Seek a Writ of Mandamus," requesting that Judge Wiggins rule on its pending motions by October 18, 2007 and noting that the further delay was prejudicing the investigation. Exhibit N. On November 1, 2007, realizing that Judge Wiggins had not recused himself

³ The affidavit of George Barrows is attached as Exhibit H.

despite serious concerns under Canon 3(C)(1) of the Alabama Canons of Judicial Ethics, the State filed a "Petition for Writ of Mandamus," asking this Court to order Judge Wiggins to recuse himself from this matter. Exhibit Q. On November 16, 2007, this Court dismissed the State's petition without prejudice, indicating that the "State may refile this petition if the motion to recuse is denied before a final ruling is made on the motion to quash the search warrant." Exhibit R. On November 30, 2007, the State filed a second petition for writ of mandamus asking this Court to order Judge Wiggins to issue a ruling on its motion to recuse. Exhibit S. On December 18, 2007, this Court granted the State's second petition for writ of mandamus, allowing Judge Wiggins 21 days in which to rule on the motion to recuse. Exhibit T. On January 8, 2008, Judge Wiggins issued an order denying the State's motion to recuse. Exhibit U.

Statement Of Issues

(1) Whether Canon 3(C)(1) of the Alabama Canons of Judicial Ethics requires Judge Wiggins's recusal based on a reasonable perception of impartiality;

(2) Whether Canon 3(C)(1)(d)(ii) requires Judge Wiggins' recusal because he has an interest that could be substantially affected by the outcome of the proceeding or a person within the fourth degree of relationship to him is known by him to have an interest that could be substantially affected by the outcome of the proceeding; and,

(3) Whether Canon 3(C)(1)(d)(iii) requires Judge Wiggins's recusal because he is likely to be a material witness in the proceeding or a person within the fourth degree of relationship to him is known by him to likely to be a material witness in the proceeding.

Statement Why Writ Should Issue

A. Standard of Review

To prevail on a petition for a writ of mandamus, the petitioner must show: (1) a clear legal right to the relief sought; (2) an imperative duty upon the respondent to

perform, accompanied by the respondent's refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the reviewing court. Ex parte Eubank, 871 So. 2d 862, 864 (Ala. Crim. App. 2004).

A writ of mandamus is a proper method by which to seek the pre-trial recusal of a trial judge. See, e.g., Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006). To be entitled to a writ of mandamus ordering the recusal of a trial judge, a petitioner must show that recusal is required under Canon 3(C) of the Alabama Canons of Judicial Ethics. See, e.g., Atchley, 951 So. 2d at 766-68; Eubank, 871 So. 2d at 864; Ex parte Bryant, 682 So. 2d 39, 41 (Ala. Crim. App. 1996).

Under Canon 3(C)(1)(a), recusal is required if the trial judge "has a personal bias or prejudice concerning a party." Alternatively, even if actual bias cannot be proven, recusal is required under Canon 3(C)(1) if "[the trial judge's] impartiality might reasonably be questioned." Under Canon 3(C)(1), "recusal is required when facts are shown which make it reasonable for members of the public, or a party, or counsel opposed to question the impartiality of the judge." Atchley, 951 So. 2d at 766

(quoting Ex parte Duncan, 638 So. 2d 1332 (Ala. 1994)). Canon 3(C)(1)(d)(ii) requires recusal if the judge, his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person, is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Canon 3(C)(1)(d)(iii) further requires recusal if a person within the prohibited degree of relationship is likely to be a material witness in the proceeding.

This court reviews a trial judge's denial of a motion to recuse for an abuse of discretion. Ex parte Atchley, 951 So. 2d 764, 766 (Ala. Crim. App. 2006). In determining whether a trial judge has abused his or her discretion, this Court takes into consideration that "[a]n independent and honorable judiciary is indispensable to justice in our society, and this requires avoiding all appearance of impropriety, even to the point of resolving all reasonable doubt in favor of recusal." Ex parte Brooks, 847 So. 2d 396, 398 (Ala. Crim. App. 2004) (emphasis added). The Alabama Supreme Court acknowledged in Ex parte Kelly, 870 So. 2d 711, 728 (Ala. 2003), that "[a] necessary component

of a fair trial is an impartial judge."

**B. The Writ Should Issue To Avoid An Appearance Of
Partiality**

The circumstances of this case show that Judge Wiggins has an imperative duty to recuse and that he has refused to do so. This Court has consistently stressed the importance of the appearance of impartiality when called upon to recuse a trial judge.⁴ Even if Judge Wiggins' actions and inactions do not prove an actual bias, they certainly provide facts that could lead an average "member of the public or a party" to reasonably question whether he would be biased against the State's position. These concerns are especially important in this case where the interests of the voters of Hale County and our democratic form of government are at stake. As shown below, this case mandates recusal at least as much as the previous recusals that have been ordered by this Honorable Court.

⁴ Recusal was ordered in the following cases: State v. Moore, CR-06-0747, 2007 WL 1377912 (Ala. Crim. App. May 11, 2007); Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006); Ex parte Eubanks, 871 So. 2d 862 (Ala. Crim. App. 2003); Ex parte Brooks, 847 So. 2d 396 (Ala. Crim. App. 2004); Ex parte Price, 715 So. 2d 856 (Ala. Crim. App. 1997).

1. Judge Wiggins denied the Motion To Recuse despite uncontroverted evidence demonstrating that at least three people within the fourth degree of relationship to him have an interest that could be substantially affected by the outcome of the proceeding and/or are likely to be witnesses in the proceeding.

Judge Wiggins denied the State's motion to recuse because, according to him, the State failed to present evidence that the investigation of Milliarstine Coleman's role in a voter fraud scheme involved the conduct of the three individuals related to him - Gay Nell Tinker, Bobby Singleton, and Carrie Reaves. Exhibit U. Judge Wiggins stated that he "has not and does not intend to delay, hinder, interrupt and/or interfere with any investigation of voter fraud," including the investigation of Tinker, Singleton, and Reaves. In refusing to recuse from the investigation of Coleman, however, Judge Wiggins has ignored that, because the investigation of Coleman is part of the overall investigation of a voter fraud scheme in Hale County involving Tinker, Singleton, and Reaves, he is aware that his relatives have an interest that is likely to be affected by the outcome of the investigation of Coleman and are likely to be witnesses in any proceeding flowing from the investigation.

Agent George Barrows' affidavit attached to the motion to recuse shows that the investigation of Coleman is manifestly interrelated with the overall investigation of the conspiracy to commit voter fraud in Hale County. The affidavit was admitted into evidence at the October 10, 2007 hearing and was uncontroverted. Specifically, it evidences a conspiracy among as many as sixteen (16) individuals, including Coleman and relatives of Judge Wiggins, to commit voter fraud by fraudulently executing and verifying Affidavits Of Absentee Voter in several Hale County Elections to vote for four specific candidates. During the conspiracy, Gay Nell Tinker, Judge Wiggins' sister, served as the Circuit Clerk and Absentee Election Manager. She certainly has an interest in these proceedings either to preserve her reputation or to forestall an investigation that will ultimately lead to her doorstep. Judge Wiggins' brother in law, Bobby Singleton, and first cousin, Carrie Reaves, obviously have similar interests.

While the State is unaware of any familial relationship between Coleman and Judge Wiggins, such is not required to substantiate a demand for recusal under Canon

3(C)(1)(d)(ii). Recusal is required upon a mere showing that a family member of the judge has an interest that *could* be substantially affected.⁵ The outcome of this case will have substantial precedential value to the other targets of the investigation. . Albert Turner, Jr. was quoted by the Tuscaloosa News referencing the October 10, 2007 hearing in this case as saying, "A hearing will be held to determine whether the search warrants issued in the [Attorney General's Office] investigation were valid. If the judge rules that they were illegal, that effectively ends the case against *them* (emphasis added)."⁶ The media's account of Turner's statement shows that there is at least public perception within Hale County that the investigation of Coleman is related to the overall investigation of conspiracy to commit voter fraud and that Judge Wiggins's actions in this matter will have a dispositive effect on the overall investigation. Judge Wiggins's order denying the State's motion to recuse, on the other hand, portrays the instant matter as the investigation of isolated instances of voter fraud allegedly committed by Coleman

⁵ Canon 3(C)(1)(d)(ii). Compare Canon 3(C)(d)(i) which addresses named parties.

⁶ Attached Exhibit P.

that have no connection to the larger scheme allegedly committed by 16 individuals including Tinker, Singleton, and Reaves. Because this perspective ignores that Coleman's alleged actions were inevitably interrelated with the overall conspiracy, his refusal to recuse from deciding matters related to the Coleman investigation was an abuse of discretion.

2. Judge Wiggins has shown the appearance of actual bias by improperly entering an ex parte order quashing a search warrant and subpoenas, by refusing to vacate the ex parte order or dismiss the action, and by further delaying the State's investigation of voter fraud in Hale County.

By granting Coleman's motion to quash the search warrant and subpoenas before giving the State a chance to respond, by refusing to vacate that order or dismiss the action, and by further delaying the State's investigation of voter fraud in Hale County, Judge Wiggins has at least appeared to show actual bias. Canon 3A(4) of the Alabama Canons of Judicial Ethics instructs that "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate

nor consider ex parte communications concerning a pending or impending proceedings." In this case, Judge Wiggins not only entertained the ex parte communication, but acted on the communication and quashed a search warrant issued by a fellow judge. While there are certain provisions in the law whereby ex parte proceedings are authorized, none were applicable to this matter. In this day of technology, it is difficult to explain how a conference call or some other communicative means could not have been devised to allow the state an opportunity to be heard before the Court issued its ruling.

Upon learning of Judge Wiggins' illegal order, the State filed appropriate pleadings with the trial Court asking the Court to vacate the order. At the hearing held on October 10, 2007, Coleman's counsel admitted that the pleadings were not proper.⁷ Despite this admission, the Court refused to vacate the order and instead gave Coleman the opportunity to amend her pleadings. The end result is that the order quashing the search warrant and the subpoenas remains in place and the investigation of Judge

⁷ Transcript at page 15 and 18.

Wiggins' sister, brother-in-law, and first cousin is at a standstill.

This dilatory tactic is extremely prejudicial to the State. The alleged illegalities occurred during the 2004 and 2005 elections. Accordingly, the statutes of limitation are continuing to run, a fact that was pointed out to Judge Wiggins in the October 10, 2007 hearing.⁸ Despite his awareness of the urgency of this issue, Judge Wiggins has taken several steps to delay resolution of this issue. He first failed to rule on the State's motion to recuse when it was filed on October 3, 2007. Judge Wiggins again failed to rule on the motion to recuse at the hearing on October 10, 2007, instead agreeing to continue the matter over the State's objection, and still did not issue a ruling even after the State filed its "Motion for Ruling and Notice of Intent to Seek a Writ of Mandamus" on October 12, 2007. The State then requested Judge Wiggins to rule on the motion to recuse by October 18, 2007 so that, if denied, the State could seek mandamus review. Judge Wiggins again failed to rule by October 18, 2007 as

⁸ Transcript at page 21.

requested.⁹ Even after this Court directed Judge Wiggins to rule on the motion to recuse within 21 days, Judge Wiggins failed to enter an order until 4:42 p.m. on the last day within which this Court directed that he rule. The failure of Judge Wiggins to act expeditiously stands in stark contrast to the urgency in which he moved when he instantaneously granted Coleman's motion to quash a search warrant issued by a fellow judge. When viewed in the light of Judge Wiggins's history of impeding voter fraud investigations¹⁰, the appearance of actual bias in this case is magnified.

The facts of this case show the appearance of actual bias to at least the same degree as other cases in which Alabama courts have found that recusal was required. In Ex parte Atchley, 951 So. 2d 764 (Ala. Crim. App. 2006), the trial judge represented Atchley in a prior criminal matter

⁹ The State sought mandamus review nonetheless and this Court dismissed the petition without prejudice presumably in part because Judge Wiggins had not ruled on the motion to recuse.

¹⁰ See Ex parte Avery, 843 So. 2d 137 (Ala. 2002), wherein Judge Marvin Wiggins sought to jail the probate judge for seeking to turn over election materials to the District Attorney for voter fraud investigation. The Supreme Court appropriately granted mandamus relief and prevented Judge Wiggins from returning the evidence to the Circuit Clerk, Judge Wiggins's sister, Gay Nell Tinker.

and did not deny Atchley's claims that, during that representation, the two had a heated confrontation. This Court held that, because these facts were sufficient to show "the appearance of impropriety," recusal in Atchley's upcoming criminal trial was required. Id. at 769.

Likewise, in Jackson v. Central Bank of the South, N.A., 508 So. 2d 235, 236 (Ala. 1987), the Alabama Supreme Court held that the fact that the brother of Judge Robert Harper was "thought of in the community as a 'director of the [defendant Central] Bank'" was "sufficient of itself to give rise to an appearance of impropriety for Judge Harper to sit a judge in [the] case." Whereas Judge Harper's brother was not officially a director of the Bank, the Supreme Court held that the public's perception that he was a director was dispositive. Id. In this case, Judge Wiggins is not only closely related to three targets of the overall investigation to which this matter is related, but through his actions he has shown at least the appearance of delaying the investigation. Like in Jackson, there is a public perception that Judge Wiggins, through his rulings on the instant matter, has the power to affect the outcome of a matter involving his close relatives. Accordingly,

because there is at least the appearance of actual bias in this case, Judge Wiggins's recusal is necessary for justice to be served in this case.

3. The State has properly invoked the jurisdiction of this Court by filing this mandamus petition within a reasonable time under Rule 21(a)(3) of the Alabama Rules of Appellate Procedure.

Rule 21(a)(3) of the Alabama Rules of Appellate Procedure provides that a mandamus petition must be filed within a "reasonable time." That provision, furthermore, states that a "presumptively reasonable time" for filing a petition seeking review of an order of a trial court is "the same as the time for taking an appeal." Under Rule 15.7 of the Alabama Rules of Criminal Procedure, the State would have seven days in which to file a pretrial appeal. Since Judge Wiggins denied the motion to recuse on January 8, 2008, the State would have until January 15, 2008 in which to file a mandamus petition within a presumptively reasonable time. Accordingly, the State has filed this mandamus petition within a reasonable time of Judge Wiggins's denial of the motion to recuse.

CONCLUSION

To ensure the appearance of absolute impartiality within the judicial system, this Court should grant the State's petition for a writ of mandamus and order Circuit Judge Marvin Wiggins to recuse himself from further involvement in this matter.

Respectfully submitted,



Ben Mark Baxley (BAX 008)
Assistant Attorney General

CERTIFICATE OF SERVICE

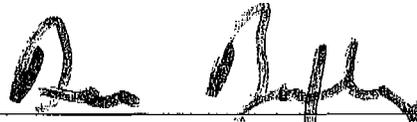
I hereby certify that on this 10th day of January, 2008, I served a copy of the foregoing on Coleman's attorneys and the trial court, by placing said copies in the United States Mail, postage prepaid, and addressed as follows:

The Honorable Marvin Wiggins
Circuit Judge
4th Judicial Circuit
1001 Main Street, Room 52
Greensboro, AL 36744

Kyra Sparks
ATTORNEY AT LAW
P. O. Box 868
Selma, Alabama 36702-0868

The Honorable William A. Ryan¹¹
District Judge,
Hale County, Alabama
P. O. Box 27
Greensboro, AL 36744

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Selma, Alabama 36702-2365



Ben Mark Baxley (BAX 008)
Assistant Attorney General

ADDRESS OF COUNSEL:

Office of the Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(334) 242-7300

¹¹ In a filing dated October 18, 2007, counsel for Milliarstine Coleman are seeking to add District Judge William A. Ryan as a party to this action.

EXHIBITS

- Exhibit A: September 18, 2007 “Motion To Quash” and stamped order
- Exhibit B: Undated “Petitioner’s First Amendment To ‘Motion To Quash’”
- Exhibit C: September 19, 2007 “Order”
- Exhibit D: October 3, 2007 “Motion To Recuse” with attached “Affidavit Of George Barrows”
- Exhibit E: October 3, 2007 “Motion To Vacate Order Quashing Search Warrant, Subpoena, and Subpoena Duces Tecum”
- Exhibit F: October 10, 2007 “Motion To Dismiss”
- Exhibit G: Transcript of October 10, 2007 hearing
- Exhibit H: Petitioner’s Exhibit 1 introduced at October 10, 2007 hearing (Affidavit Of George Barrows)
- Exhibit I: State’s Exhibit 1 introduced at October 10, 2007 hearing (Case Action Summary State v. George Barrows DC 2005-655)

- Exhibit J: State's Exhibit 2 introduced at October 10, 2007 hearing (Attorney General's Subpoena)
- Exhibit K: State's Exhibit 3 introduced at October 10, 2007 hearing (Attorney General's Subpoena Duces Tecum)
- Exhibit L: State's Exhibit 4 introduced at October 10, 2007 hearing (Search Warrant)
- Exhibit M: State's Exhibit 5 introduced at October 10, 2007 hearing (Application And Affidavit For Order For Handwriting Exemplars)
- Exhibit N: October 12, 2007 "Motion For Ruling and Notice Of Intent To Seek A Writ Of Mandamus
- Exhibit O: October 18, 2007 "Petitioner's Second Amendment To Prior Pleading; Petition TO Join Necessary Part; Petition For Dismissal Of Subpoena Duces Tecum Pursuant To Rule 17.3 (c) Of The Alabama Rules Of Criminal Procedure; Petition For Writ Of Prohibition"
- Exhibit P: October 13, 2007 Article from The Tuscaloosa News
- Exhibit Q: State's Petition for Writ of Mandamus
- Exhibit R: Order dismissing State's Petition for Writ of Mandamus without prejudice

Exhibit S: State's Second Petition for Writ of Mandamus

Exhibit T: Order granting State's Second Petition for Writ of Mandamus

Exhibit U: Trial court's order denying State's Motion to Recuse.

EXHIBIT 23

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS

CR-07-0620

Ex parte State of Alabama

PETITION FOR A WRIT OF MANDAMUS

(In re: Milliarstine Coleman v. State of Alabama)

Hale Circuit Court No. CV-07-74

ORDER

This petition for a writ of mandamus is GRANTED. See Ex parte Duncan, 638 So. 2d 1332 (Ala. 1994); In re Sheffield, 465 So. 2d 350 (Ala. 1984); Ex parte Fowler, 863 So. 2d 1136 (Ala.Crim.App. 2001). Judge Marvin Wiggins is directed to recuse himself from presiding over this case.

Baschab, P.J., and McMillan, Shaw, Wise, and Welch, JJ., concur.

Done this 26th day of February, 2008.

Pamela W. Baschab

PAMELA W. BASCHAB, PRESIDING JUDGE

cc: Hon. Marvin W. Wiggins, Judge
Hon. Williams A. Ryan, District Judge
Catrinna A. Perry, Circuit Clerk
Ben Baxley, Assistant Attorney General
Michael W. Jackson, District Attorney
J. Patrick Cheshire, Attorney for Respondent
Kyra L. Sparks, Attorney for Respondent
Callie Dietz, AOC Director
Office of the Attorney General

EXHIBIT 24

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee, to wit, an Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

Count 2 Promoting Illegal Absentee Voting

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as, Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, intentionally solicit, encourage, urge, or otherwise promote illegal absentee voting, or aid any person to unlawfully vote an absentee ballot by willfully falsifying an absentee ballot verification document, to wit, an Affidavit Of Absent Voter purported to be signed by Sandra Faddis, so as to vote absentee in the Hale County Special Election held on May 3, 2005, in violation of Section 17-10-17 of the Code of Alabama.

Count 3 Perjury, First Degree

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as, Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, in an official proceeding, to wit: the Hale County Special Election held on May 3, 2005, did swear falsely, to wit: that Sandra Faddis signed the following Affidavit of Absentee Voter, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama
 County of Hale
 I, the undersigned, do swear (or affirm) that
 (1) I am a resident of Hale County in the State of Alabama
 (2) My place of residence in Alabama is: 592 McGruder Rd
Southernville (City or town) 36776 (ZIP code)

(3) My voting precinct (or place where I vote) is: 6
 (4) My date of birth is: 7-10-64
 (month day year)

(5) I am entitled to vote an absentee ballot because:
 Check only one:
 I will be out of the county or the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a regular workweek shift which has at least 10 hours which coincide with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the armed forces of the United States or am otherwise entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 19731.
 I have been appointed as an election officer at a polling place which is not my regular polling place.
 I further swear (or affirm) that I have not voted nor will I vote in person in the election to which this ballot pertains.
 I have read the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying the ballot and I have carefully complied with such instructions.
 Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information on my ballot I may be guilty of a misdemeanor or a felony, or both, and I am aware of the penalties therefor.

David Foddis
 (Signature or mark of voter)
David Foddis
 (Printed name of voter)

IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED.

Sworn to and subscribed before me this 10 day of July, 2004
 I hereby certify that the within is sworn (or made known) to before me in the County of Hale in the State of Alabama
Gay Nell Tinker
 (Signature of Official)
Gay Nell Tinker
 (Print name of Official)
36776
 (City) (Zip Code)
 OR
 1st Witness _____ (Signature)
 _____ (Print name)
 _____ (Address)
 (City) (Zip Code)
 2nd Witness _____ (Signature)
 _____ (Print name)
 _____ (Address)
 (City) (Zip Code)

and that the false statement was material to the proceeding in which it was made, in violation of Section 13A-10-101 of the Code of Alabama.

Count 4 Criminal Possession Of A Forged Instrument, II

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the

Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

*State of Alabama Male
 *County of Tallapoosa
 I, the undersigned, do swear (or affirm) that:
 *I am a resident of Tallapoosa County in the State of Alabama.
 *My place of residence in Alabama is: 178 Woodbine Dr (street) Greensboro (city or town) 36744 (zip code)
 *My voting precinct (or place where I vote) is: 4
 *My date of birth is: 9/12/56 (month, day, year)
 *I am entitled to vote an absentee ballot because:
 *Check only one:
 I will be out of the county or the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required workplace shift which has at least 10 hours which coincide with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the Armed Forces of the United States or am otherwise entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.
 I have been appointed as an election officer at a polling place which is not my regular polling place.
 I further swear (or affirm) that I have not voted nor will I vote in person in the election to which this ballot pertains.
 I have studied the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying this ballot and I have carefully complied with such instructions.
 Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information so as to vote illegally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both.

Doreca Williams
 (Signature of voter.)
Doreca Williams
 (Printed name of voter.)

"IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED."

Sworn to and subscribed before me this 20 day of April, 2005.
 I certify that the signor is known (or made known) to me to be the identical party to or the claimant to the ballot.
[Signature]
 (Signature of official)
[Title]
 (Title of official)
[Address]
 (Address of official)
[City] (City) [Zip Code] (Zip Code)

OR

1st Witness: [Signature]
 (Signature)
[Print name]
 (Print name)
[Address]
 (Address)
[City] (City) [Zip Code] (Zip Code)

2nd Witness: [Signature]
 (Signature)
[Print name]
 (Print name)
[Address]
 (Address)
[City] (City) [Zip Code] (Zip Code)

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public

office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

Count 5 Promoting Illegal Absentee Voting

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as, Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, intentionally solicit, encourage, urge, or otherwise promote illegal absentee voting, or aid any person to unlawfully vote an absentee ballot by willfully falsifying an absentee ballot verification document, to wit, an Affidavit Of Absent Voter purported to be signed by Dendrea Williams, so as to vote absentee in the Hale County Special Election held on May 3, 2005, in violation of Section 17-10-17 of the Code of Alabama.

Count 6 Perjury, First Degree

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as, Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, in an official proceeding, to wit: the Hale County Special Election held on May 3, 2005, did swear falsely, to wit: that Dendrea Williams signed the following Affidavit of Absentee Voter, to wit:

AFFIDAVIT OF ABSENTEE VOTER

*State of Alabama Mobile
 *County of Mobile
 I, the undersigned, do swear (or affirm) that:
 *(1) I am a resident of Mobile County in the State of Alabama.
 *(2) My place of residence in Alabama is: 178 Woodbine Dr (street) 36704 (zip code)
Breconsboro (city or town)

*(3) My voting precinct (or place where I vote) is: 7
 *(4) My date of birth is: 9/12/86 (month) (day) (year)

- *(5) I am entitled to vote an absentee ballot because:
 *Check only one:
 I will be out of the county or the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required workplace shift which has at least 10 hours which coincide with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the armed forces of the United States or an otherwise entitled to vote pursuant to the Unfranchised and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1972a.
 I have been appointed as an election officer at a polling place which is not my regular polling place.

I further swear (or affirm) that I have not voted nor will I vote in person in the election to which this ballot pertains.
 I have marked the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying this ballot and I have carefully complied with such instructions.
 Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information so as to vote illegally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both."

Dendrea Williams (Signature of mark of voter)
Dendrea Williams (Printed name of voter)

"IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED."

Sworn to and subscribed before me on this <u>23</u> day of <u>April</u> , 20 <u>20</u> . I certify that this person is known (or made known) to me and is the identical party to her name to <u>Dendrea Williams</u> . <u>[Signature]</u> (Signature of official) <u>[Signature]</u> (Title of official) <u>1001 Main Street</u> (Address of official) <u>Mobile</u> (City) <u>36704</u> (Zip Code)	OR	1st Witness: _____ (Signature) _____ (Print name) _____ (Address) _____ (City) _____ (Zip Code) 2nd Witness: _____ (Signature) _____ (Print name) _____ (Address) _____ (City) _____ (Zip Code)
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and that the false statement was material to the proceeding in which it was made, in violation of Section 13A-10-101 of the Code of Alabama.

Count 7 Criminal Possession Of A Forged Instrument, II

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the

Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama
 County of Hale
 I, the undersigned, do hereby (or affirm) that:
 (1) I am a resident of Hale County in the State of Alabama.
 (2) My place of residence in Alabama is: 506 North Main Rd (street) 36716 (zip code)
Lawrenceville (city or town)
 (3) My voting precinct (or place where I vote) is: 4
 (4) My date of birth is: 6-27-38 (month, day, year)

(5) I am entitled to vote for absentee ballot because:
 "Check only one:
 I am 65 or older on the day of the election.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required workweek shift which has at least 10 hours which coincide with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and am unable to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the armed forces of the United States of an overseas entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 19738f.
 I have been appointed as an election officer at a polling place which is not my regular polling place.
 I further swear (or affirm) that I have not voted nor will I vote in person in the election to which this ballot pertains.
 I have studied the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying this ballot and I have carefully complied with such instructions.
 Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information as to my vote illegally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both.
 I am a member of the _____ Party and subscribe to all conditions and qualifications laid down by that party's constitution as a requisite for participation in the election."

Velma Merrin Weather
 (Signature or mark of voter)
Velma Merrin Weather
 (Printed name of voter)

"IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED) OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED."

Sworn to and signed before me on this _____ day of _____, 20____
 I certify that the voter is known to me (or one known to me) to be the voter and that he or she desires to do so.

 (Signature of Notary)

 (Title of Notary)

 (Address of Notary)

 (City) (Zip Code)

OR

1st Witness _____
 (Signature)

 (Print name)

 (Address)

 (City) (Zip Code)

2nd Witness _____
 (Signature)

 (Print name)

 (Address)

 (City) (Zip Code)

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

Count 8 Criminal Possession Of A Forged Instrument, II

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama Hale
 County of Hale

I, the undersigned, do swear (or affirm) that:
 (1) I am a resident of Hale County in the State of Alabama.
 (2) My place of residence in Alabama is Superior (city or town) Alabama 36274 (zip code)
 (3) My voting precinct (or place where I vote) is: 4 (precinct) 7-2-20 (day year)
 (4) My date of birth is: _____ (month day year)
 (5) I am entitled to vote an absentee ballot because:
 I am the elector of the county of the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required twelve-hour shift which runs at least 10 hours which overlaps with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the armed forces of the United States or am otherwise entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 19739.
 I have been appointed as an election officer at a polling place which is not my regular polling place.
 Another reason (or reasons) that I have not voted (or will) vote in person in the election to which this ballot pertains: I have marked the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying the ballot and I have carefully complied with such instructions.
 Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information so as to vote illegally by absentee ballot I shall be guilty of a crime and liable to punishment by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both.

Quinton Smith
 (Signature of voter)
Quinton Smith
 (Printed name of voter)

"IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER YOUR BALLOT WILL NOT BE COUNTED."

Sworn to and subscribed before me on this 20th day of July, 2020
 I certify that the above is a true and correct copy of the original as shown to me by the elector.
John Smith
 (Name of elector)
John Smith
 (Signature of elector)
John Smith
 (City) (Zip Code)

OR

1st Witness _____ (Signature)
 _____ (Print Name)
 (City) (Zip Code)
 2nd Witness _____ (Signature)
 _____ (Print Name)
 (City) (Zip Code)

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

Count 9 Criminal Possession Of A Forged Instrument, II

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama
 County of Hale
 I, the undersigned, do swear (or affirm) that:
 *I am a resident of Hale County in the State of Alabama.
 *I am a resident of Hale County in the State of Alabama.
 *My place of residence in Alabama is: Sallyville (name) Alabama 31716 (zip code)
 *My voting precinct for place where I vote is: G
 *My date of birth is: 2-24-65 (month day year)
 *I am entitled to vote an absentee ballot because:
 I will be out of the county of the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required workweek which runs at least 10 hours which coincides with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and my instructor enables to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the armed forces of the United States or an otherwise entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 19738.
 I have been appointed as an election officer at a polling place which is not my regular polling place.
 I have been appointed as an election officer at a polling place which is not my regular polling place.
 I have received the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying the ballot and I have carefully complied with such instructions.
 I have received the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying the ballot and I have carefully complied with such instructions.
 *I have signed (or affixed) the name of the voter in person in the presence of the election officer and that I understand that by knowingly giving false information as to my vote legally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail not more than six months, or both.

Randy Parker (Signature of clerk of court)
Randy Parker (Printed name of voter)

***IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER YOUR BALLOT WILL NOT BE COUNTED.**

<p>There is no objection to the return of this ballot by me.</p> <p>I certify that the enclosed absentee ballot is the ballot of the voter named on the ballot and that I have read or had read to me and understand the instructions accompanying the ballot and I have carefully complied with such instructions.</p> <p><u>[Signature]</u> (Name) <u>[Signature]</u> (Name)</p>	OR	<p>1st Witness (Signature) _____ (Print name) _____ (City) (State) _____</p> <p>2nd Witness (Signature) _____ (Print name) _____ (City) (State) _____</p>
---	----	---

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public

office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

Count 10 Criminal Possession Of A Forged Instrument, II

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama
 County of Hale
 I, the undersigned, do hereby affirm that:
 (1) I am a resident of Hale County in the State of Alabama.
 (2) My place of residence in Alabama is Samford (City or town) Alabama 36706 (ZIP code)
 (3) My voting precinct (or place where I vote) is _____
 (4) My date of birth is 9-21-98 (month day year)
 (5) I am entitled to vote an absentee ballot because:
 I must work away from home.
 I will be out of the county or the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required workplace shift which runs at least 10 hours which overlaps with the polling hours at my regular polling place.
 I am a resident of an unincorporated territory located outside the county of my permanent residence and am therefore unable to vote at my regular polling place on election day.
 I am a member of or a spouse or dependent of a member of the Armed Forces of the United States or an individual entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 19739.
 I have been appointed as an election officer at a polling place under the regular polling process.
 I further swear (or affirm) that I have not used nor will I use in connection with the election to which this ballot pertains:
 - I have obtained the enclosed absentee ballot voluntarily and I have read or had read to me and understood the instructions accompanying this ballot and I have carefully complied with such instructions.
 - Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information on this ballot I may be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six months, or both.

 Signature of voter

 Printed name of voter
 (If your affidavit is not signed (or marked), or if your affidavit is not witnessed by two witnesses 18 years of age or older or a notary public or other officer authorized to acknowledge oaths, prior to being delivered or mailed to the absentee election manager, your ballot will not be counted.)
 Sworn to and subscribed before me this _____ day of _____, 20____
 I certify that the foregoing is a true and correct copy of the original as shown to me in the presence of the undersigned.

 Notary Public

 (Notary of Alabama)

 (Address of voter)

 (City) _____ (State) _____ (Zip Code) _____
 OR
 I, _____
 (Signature)

 (Print name)

 (City) _____ (State) _____ (Zip Code) _____
 I, _____
 (Signature)

 (Print name)

 (Address)

 (City) _____ (State) _____ (Zip Code) _____

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

The Grand Jury of said County charges that before the finding of this indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama 1012
 County of 1012

I, the undersigned, do swear (or affirm) that:

(1) I am a resident of 1012 County in the State of Alabama.

(2) My place of residence in Alabama is: 178 Woodbine Dr.
Greensboro AL 36744
 (city or town) (zip code)

(3) My voting precinct (or place where I vote) is:

(4) My date of birth is: 9-12-86
 (month) (day) (year)

(5) I am entitled to vote an absentee ballot because:

I will be out of the county or the state on election day.
 I am physically incapacitated and will not be able to vote in person on election day.
 I work a required workplace shift which has at least 10 hours which coincide with the polling hours at my regular polling place.
 I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day.
 I am a member of or a spouse or dependent of a member of the armed forces of the United States or an otherwise qualified to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973aa.
 I have been appointed as an election officer at a polling place which is not my regular polling place.

I further swear (or affirm) that I have not voted nor will I vote in person in the election to which this ballot pertains.

I have studied the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying this ballot and I have carefully complied with such instructions.

Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information on this ballot I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both.

I am a member of the _____ Party and subscribe to all conditions and qualifications laid down by that party's committee as a requisite for participation in the election.

Dorena Williams
 (Signature or mark of voter.)
Dorena Williams
 (Printed name of voter.)

IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED.

Sworn to and subscribed before me this _____ day of _____, 2012.

I certify that the signor is known to me to be the person whose name is subscribed to be.

(Signature of Official)
 (Title of Official)
 (Address of Official)
 (City) (Zip Code)

OR

1st Witness
 (Signature)
 (Print name)
 (Address)
 (City) (Zip Code)

2nd Witness
 (Signature)
 (Print name)
 (Address)
 (City) (Zip Code)

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public

office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

Count 13 Criminal Possession Of A Forged Instrument, II

The Grand Jury of said County charges that before the finding of this Indictment, Gay Nell Tinker, also known as Gay Singleton, whose name is otherwise unknown to the Grand Jury, did, with intent to defraud, possess, or utter a forged instrument, in substance as follows, to wit:

AFFIDAVIT OF ABSENTEE VOTER

State of Alabama
 County of Hale

I, the undersigned, do swear (or affirm) that:

(1) I am a resident of _____
 City in the State of Alabama.

(2) My place of residence in Alabama is: Sawdenville (City or town) 1740 (Street) 6 (Zip Code) Alabama

(3) My voting precinct (or place where I vote) is: _____

(4) My date of birth is: 7-10-64 (Month day year)

(5) I am entitled to vote an absentee ballot because:

I am only one of the following:

- I will be out of the county or the state on election day.
- I am physically incapacitated and will not be able to vote in person on election day.
- I work a required workplace shift which has at least 10 hours which coincide with the polling hours at my regular polling place.
- I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day.
- I am a member of or a spouse or dependent of a member of the armed forces of the United States or its territories entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 19739.
- I have been appointed as an election officer at a polling place which is not my regular polling place.

I have marked the enclosed absentee ballot voluntarily and I have read or had read to me and understand the instructions accompanying this ballot and I have carefully complied with such instructions.

Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information so as to vote illegally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both.

Gay Nell Tinker
 (Printed name of voter)

"IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), OR IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED."

Sworn to and subscribed before me on this _____ day of _____, 1994.

I certify that the above is a true and correct copy of the original as the same is on file in my office.

 (Signature of Notary Public)

 (City) (Zip Code)

OR

1st Witness _____
 (Signature)

 (Print name)

 (Address)

 (City) (Zip Code)

2nd Witness _____
 (Signature)

 (Print name)

 (Address)

 (City) (Zip Code)

which is, purports to be, is calculated to become, or represents, if completed, a public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee, to wit, Affidavit Of Absentee Voter, with knowledge that it was forged, in violation of Section 13A-9-6 of the Code of Alabama,

AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

TROY KING
Attorney General
State of Alabama


BY:
Ben Mark Baxley
Assistant Attorney General

INDICTMENT

Bail in this case is fixed at
\$1,000 per court for a total of
\$13,000 Dollars

[Signature]

Judge of Circuit Court of
Hale County, 4th Judicial Circuit

No. _____

THE STATE

v.

Gay Nell Tinker

For

Perjury, First Degree (2 counts)
Promoting Illegal Absentee
Voting (2 counts)
Criminal Possession Of Forged
Instrument (9 counts)

Presented in open court by the

Foreman of Grand Jury in the

presence of 14 other

members of the Grand Jury, this

the 17th day of March, 2008.

[Signature]
Clerk of the Circuit Court of
Hale County, 4th Judicial Circuit

WITNESSES:

George Barrows

Filed this the 17th day of
March, 2008.

[Signature]
Clerk of the Circuit Court of
Hale County, 4th Judicial Circuit

Defendant Information

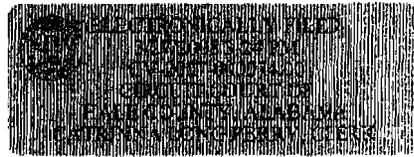
Name: Gay Nell Tinker
DOB: 12/12/1956
Race: Black
Sex: Female
Address: 18651 Ala. Hwy 14
Sawyer ville, AL
36776

A TRUE BILL

[Signature]
Foreman of the Grand Jury

G.J. No. _____

EXHIBIT 25



IN THE CIRCUIT COURT OF HALE COUNTY, ALABAMA

COLEMAN, MILLIARSTINE,)

Plaintiff,)

v.)

Case No.: CV-2007-000074.00

KING, TROY, ATTORNEY GENERAL,)

RYAN, WILLIAM A., JUDGE OF THE DISTRICT)

COURT OF,)

Defendants.)

ORDER

PURSUANT TO THE ORDER OF THE ALABAMA COURT OF CRIMINAL APPEALS DATED FEBRUARY 26, 2008, THE UNDERSIGNED HEREBY ENTERS THIS ORDER OF RECUSAL AND REQUEST THIS CASE BE REASSIGNED TO ANOTHER JUDGE.

DONE this 27th day of March, 2008

/s HON. MARVIN W. WIGGINS

CIRCUIT JUDGE