STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	WARRANT NO.'S: 2014A2610200461, 464 AND 2014A2611000021, 26, 27
State of South Carolina	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**MEMORANDUM IN RESPONSE TO MOTION TO LIFT GAG ORDER**
	)	
Tammy Caison Moorer,	)	
	)	
Defendant.	)	
	)	

The State of South Carolina (hereinafter "State") submits this Memorandum in response to Tammy Caison Moorer's (hereafter "the Defendant") Motion to Lift Gag Order.

STATEMENT OF FACTS

On March 12, 2014, the State moved for an order prohibiting extrajudicial statements made by counsel for the Defendant, the Defendant, the State, and agents of the State. (**Exhibit #1 – State's Motion for Order Prohibiting Extrajudicial Statements**). On March 21, 2014, the Defendant filed memorandum in opposition to the State's motion, styled as a "Memorandum of Law in Response to Motion for Gag Order." (**Exhibit #2 – Defendant's Memorandum of Law in Response to Motion for Gag Order**). On March 21, 2014, the Honorable Steven H. John issued an Order prohibiting the Solicitor, all law enforcement agencies currently or formerly involved in these cases, the Defendant, and counsel for the Defendant from making any extrajudicial comments or from releasing any documents pertaining to the case until its conclusion. (**Exhibit #3 – Judge John's Order**).

Judge John's Order contained two (2) important caveats. First, it allowed for any person covered by the Order (*i.e.* the Solicitor, law enforcement agencies, the Defendant, and counsel for the Defendant) to issue a written release concerning the case, "provided the Court has approved

the specific release in a Court Order before it is released to the press or to the public." **(Judge John's Order, p. 4)**. Second, the Order allowed any covered person to petition the Court for permission to make a public comment or to publicly release information about the case. **(Judge John's Order, p. 4)**. However, the Order warned that "no such comment or release shall be made until the Court has approved it in an Order ...." **(Judge John's Order, p. 4)**. Defendant did not appeal or otherwise file a writ regarding Judge John's Order, and as of the date of this Memorandum, Judge John's Order has been in place for almost one (1) year.

On January 27, 2015, the Defendant filed a motion entitled "Motion to Lift Gag Order." **(Exhibit #4 – Motion to Lift Gag Order)**. Defendant's Motion asked "...for an Order requesting that the Honorable R. Markley Dennis, Jr., Circuit Court Judge, **reconsider** the March 21, 2014 Order Prohibiting Extrajudicial Statements and Release of Documents." **(Motion to Lift Gag Order, pp. 1-2)** (emphasis added). Following Defendant's Motion to Lift Gag Order, a hearing was set before the Court on Wednesday, March 3, 2015. The State offers this Memorandum of Law in response.

In preparing this responsive memorandum, the State discovered that counsel for Defendant\ violated Judge John's Order by making extrajudicial statements about this case on at least three (3) occasions. Specifically, in Defense counsel's September 2014 newsletter, December 2014 newsletter, and January/February 2015 newsletter, counsel for Defendant made extrajudicial statements to an unknown number of recipients regarding this case by way of email transmissions. **(Exhibit #5 – September 2014 newsletter; Exhibit #6 –December 2014 newsletter; Exhibit #7 – January/February 2015 newsletter)**. It is unknown to the State how many individuals received Defense counsel's newsletters. Additionally, counsel for Defendant has made comments about this case to WBTM-TV News 13, based out of Myrtle Beach, on at least one (1) occasion. **(Exhibit**

#8 – Article from News 13 entitled Tammy Moorer looking forward to murder trial, her attorney says).

ANALYSIS

I. DEFENDANT'S MOTION TO LIFT GAG ORDER IS PROCEDURALLY BARRED

Defendant's Motion to Lift Gag Order is barred by Rule 4(b) of the South Carolina Rules of Criminal Procedure and the common law rule preventing one circuit court judge from overruling another.

Rule 4(b) of the South Carolina Rules of Criminal Procedure is identical to Rule 43(l) of the South Carolina Rules of Civil Procedure. Compare S.C. R. Crim. P. 4(b), with Rule 43(l), SCRCP. The advisory committee's notes to Rule 4 of the South Carolina Rules of Criminal Procedure states that the language of Rule 4(b) "is the language of" Rule 43(l) of the South Carolina Rules of Civil Procedure. S.C. R. Crim. P. 4 advisory committee's notes. Rule 4(b) of the South Carolina Rules of Criminal Procedure and Rule 43(l) of the South Carolina Rules of Civil Procedure state:

> If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.

S.C. R. Crim. P. 4; Rule 43(l), SCRCP.

"Rule 43(l) prohibits repeating a motion on the same facts to a different judge." Professor James F. Flanagan, South Carolina Civil Procedure, § 43.E.3 (3d ed. 2010). "The rule is necessary in South Carolina because judges rotate through the circuits and more than one judge may rule on matters in the same case." Id. "Without this rule, the arrival of a new judge would lead to attempts to undo the rulings of the preceding judge." Id.

Rule 4(b) of the South Carolina Rules of Criminal Procedure and Rule 43(l) of the South Carolina Rules of Civil Procedure trace their lineage to a common law doctrine, which prohibits one circuit court judge from overruling the order of another. Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986); Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979); *Ex Parte* The State of South Carolina in RE: 263 S.C. 363, 210 S.E.2d 600 (SC 1974); Tisdale v. Am. Life Ins. Co., 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949); State v. Harrelson, et al. 211 S.C. 11, 43 S.E.2d 593, (SC 1947). The Supreme Court of South Carolina outlined the rationale for these rules in an early case:

> The Court of Common Pleas is a unity, although its jurisdiction is administered by a number of judges who are, in some sense, the exponents of the court. When one of these judges makes a decision on the merits of a matter within his jurisdiction, that is not merely the personal opinion of the judge, but a judgment of the Court of Common Pleas, which exhausts the power of the court upon that subject and must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one Circuit Judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit.

Steele v. C.C. & A. R. Co., 14 S.C. 324, 329 (1880).

In this case, it is clear the issue raised in Defendant's Motion to Lift Gag Order, filed January 27, 2015, was previously considered by Judge John. On March 12, 2014, the State moved for an order prohibiting extrajudicial statements and release of documents to the media. The Defendant filed a memorandum in opposition to the State's motion **(Exhibit 2)**. Judge John granted the State's motion and on March 21, 2014 issued the Order Prohibiting Extrajudicial Statements and Release of Documents. No appeal has been made from Judge John's Order.

In Defendant's Motion to Lift Gag Order, it is clear she is seeking impermissible relief as she is requesting Judge Dennis to "**reconsider** the March 21, 2014 Order Prohibiting Extrajudicial

Statements and Release of Documents." **(Defendant's Motion to Lift Gag Order, p. 2) (emphasis added)**. Such a motion is impermissible under Rule 4 of the South Carolina Rules of Criminal Procedure, which prohibits a party from repeating a motion on the same facts to a different judge. Professor James F. Flanagan, South Carolina Civil Procedure, § 43.E.3 (3d ed. 2010); see S.C. R. Crim. P. 4(b) (providing that a motion that seeks relief upon the same set of facts as a previous motion is "void"). Such relief is also prohibited by the common law doctrine that prevents one circuit court judge from overruling another. See Charleston County Dep't of Soc. Servs. v. Father, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another.").

Defendant's Memorandum of Law in support of her motion resembles an appellate brief. In Defendant's Memorandum, she attacks the constitutionality and enforceability of Judge John's Order. This Court is not the correct forum for such arguments. To the extent Defendant wishes to assign error to Judge John's Order, argue that it is overbroad, argue that it is unenforceable, argue it is unconstitutional, or argue for its reversal, the Defendant must seek redress from the appropriate appellate court. The great majority of reported cases concerning orders such as the one issued by Judge John reveal that the complaining party challenged such orders by filing a writ of mandamus with the appropriate federal or state court. See Levine v. U.S. Dist. Court for Cent. Dist. of California, 764 F.2d 590, 594 (9th Cir. 1985) (issue presented to Ninth Circuit by way of a writ of mandamus); In re Russell, 726 F.2d 1007, 1008 (4th Cir. 1984) (matter coming before the Court by way of a writ of mandamus seeking to vacate the district judge's order); CBS v. Young, 522 F.2d 234 (6th Cir. 1975) (mandamus lies to review order restraining public comment by parties and their relatives in Kent State civil litigation); Chase v. Robson, 435 F.2d 1059 (7th

Cir. 1970) (mandamus available writ to attack "no comment" order against defendant in a criminal case).

What Defendant cannot do before this Court is argue that Judge John's Order contains a defect that renders its enforcement contrary to law. Such a decision can only be made by the appropriate appellate court, because "One Circuit Court Judge does not have the authority to set aside the order of another." Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986).

Accordingly, for the foregoing reasons, Defendant's Motion to Lift Gag Order is procedurally defective and should be dismissed.

II. ORDERS PROHIBITING EXTRAJUDICIAL STATEMENTS OF TRIAL PARTICIPANTS ARE CONSTITUTIONAL

In Part A of Defendant's Memorandum, she contends, "no Supreme Court case has directly addressed the constitutionality of gag orders on lawyers and parties." **(Defendant's Memorandum p. 3)**. This is inaccurate. The Supreme Court of the United States recognized, and in fact endorsed, the use of orders prohibiting the extrajudicial statements of "prosecutors, counsel for defense, the accused, [and] witnesses" as a means of protecting the accused's due process right to a trial free from outside interference and the accused's right to a trial by an impartial jury. Sheppard v. Maxwell, 384 U.S. 333, 363, 86 S.Ct. 1507, 1522 (1966).

The Sixth Amendment guarantees a trial "by an impartial jury" in federal criminal prosecutions. U.S. Const. amend. VI. Because "trial by jury in criminal cases is fundamental to the American scheme of justice," the Due Process Clause of the Fourteenth Amendment guarantees the same right in state criminal prosecutions. Duncan v. Louisiana, 391 U.S. 145, 149, 88 S.Ct. 1444, 1447 (1968).

"In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent' jurors." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 551, 96 S.Ct. 2791, 2799 (1976) (citing In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955)). "Due process requires that the accused receive a trial by an impartial jury free from outside influences." Sheppard at 362, 86 S.Ct. at 1522. "Legal trials are not like elections, to be won through the use of the meeting-hall, the radio and the newspaper." Bridges v. State of California, 314 U.S. 252, 271, 62 S.Ct. 190, 197 (1941). No one should be punished for a crime "without a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power." Chambers v. State of Florida, 309 U.S. 227, 236—237, 60 S.Ct. 472, 477, 84 L.Ed. 716 (1940). "The theory of our system is that the conclusions to be reached in a case will be induced only evidence and argument in open court, and not by any outside influence, whether of private talk or public print." Sheppard, 384 U.S. at 351, 86 S.Ct. at 1516.

"To safeguard the due process rights of the accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity. Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 378, 99 S.Ct. 2898, 2904 (1979) (citing Sheppard v. Maxwell, *supra.*)); see Nebraska Press Ass'n, 427 U.S. at 552, 96 S.Ct. at 2799-80 (noting that Sheppard "focused sharply on the impact of pretrial publicity and a trial court's duty to protect the defendant's constitutional right to a fair trial."). In Sheppard, the Supreme Court observed, "Given the pervasiveness of modern communications and the difficult of effacing prejudicial publicity from the minds of the jurors, **the trial courts must make strong measures** to ensure that the balance is never weighed against the accused." 384 U.S. at 362, 86 S.Ct. at 1522 (emphasis added). Thus, in cases "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial," the Supreme Court identified a number of steps the trial court should take to fulfill its

constitutional obligation to provide the accused with a fair trial. Id. at 363, 86 S.Ct. at 1522. The Supreme Court noted the trial court could continue the case, transfer it to another county not so permeated with publicity, sequester the jury, order a new trial, or issue orders prohibiting extrajudicial statements by prosecutors, attorneys, and witnesses. Id. On the topic of issuing orders prohibiting extrajudicial statement, the Court stated:

> But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts **must take** such steps by rule and regulation that will protect their processes from prejudicial outside interferences. **Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures.**

Id. (emphasis added).

Following Sheppard, the Supreme Court decided Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 551, 96 S.Ct. 2791, 2799 (1976), where the Court again identified the role the trial court must take in minimalizing the effects of pretrial publicity. The Court observed:

> The capacity of the jury eventually impaneled to decide the case fairly is influenced by the tone and extent of the publicity, which is in part, and often, in large part, shaped by what attorneys, police, and other officials do to precipitate news coverage. The trial judge has a major responsibility .... [T]he measures a judge takes or fails to take to mitigate the effects of pretrial publicity the measures described in Sheppard may well determine whether the defendant receives a trial consistent with the requirements of due process.

427 U.S. at 554-55, 96 S.Ct. 2800-01.

After Nebraska Press Ass'n, the Supreme Court decided Gentile v. State Bar of Nevada, 501 U.S. 1030, 111 S.Ct. 2720 (1991). In Gentile, the Supreme Court again reaffirmed that trial courts could issue orders restraining extrajudicial statements of attorneys in pending cases. 501

U.S. at 1074, 111 S.Ct. at 2744. The Court stated, " We think that the quoted statements from our opinions in In re Sawyer, 360 U.S. 622, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959), and Sheppard v. Maxwell, *supra*, rather plainly indicate that the speech of lawyers representing clients in pending cases may be regulated ...." Gentile, 501 U.S. at 1074, 111 S.Ct. at 2744. The Court continued, "Because lawyers have special access to information through discovery and client communications, their extrajudicial statements pose a threat to the fairness of a pending proceeding since lawyers' statements are likely to be received as especially authoritative." Id. at 1074, 111 S.Ct. at 2744-45.

Therefore, Defendant incorrectly calls into question the constitutionality of Judge John's Order prohibiting the extrajudicial statements of defense counsel, the accused, the Solicitor, and all law enforcement agencies. Contrary to Defendant's position, the Supreme Court of the United States, on at least three (3) separate occasions, has recognized and endorsed the ability of trial courts to issue orders prohibiting extrajudicial statements to ensure the accused receives a fair trial. Judge John's Order prohibiting the extrajudicial statements of defense counsel, the accused, the Solicitor, and all law enforcement agencies is not only constitutionally permissible, but also necessary in this case to ensure that the Defendant receives a fair trial.

III. JUDGE JOHN'S ORDER SURVIVES CONSTITUTIONAL SCRUTINY

In part A of Defendant's Memorandum, she argues Judge John's Order does not survive constitutional scrutiny because the order in question is not a narrowly tailored means of achieving the State's interest of ensuring Defendant receives a fair trial. **(Defendant's Memorandum pp. 4-5).**

A. Reasonable Likelihood of Prejudicial News Prior to Trial

As a starting point for Defendant's analysis, she argues this Court should employ "the clear and present danger" test to determine whether Judge John's Order is constitutional. (**Defendant's Memorandum pp. 2-3**). Under this test, a prior restraint in violation of the First Amendment must be justified by a clear and present danger that the defendant's right to a fair trial is in jeopardy. Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625 (1931). However, the "clear and present danger" standard only applies to orders that constitute a prior restraint on the press' or public's right speak or publish. Cent. S.C. Chapter, Soc. of Prof'l Journalists v. Martin, 431 F. Supp. 1182, 1188 (D.S.C. 1977); see Nebraska Press Ass'n, 427 U.S. at 554-55, 96 S.Ct. at 2800-01 (approving the standard set out in Sheppard that extrajudicial statements of trial participants may be proscribed if there is a reasonable likelihood that prejudicial news prior to trial will jeopardize the defendant's right to a fair trial). The "clear and present danger" test does not apply where only the trial participants are being restrained. Cent. S.C. Chapter, Soc. of Prof'l Journalists v. Martin, 431 F. Supp. at 1188. In such circumstances, the standard set forth in Sheppard applies.

In Cent. S.C. Chapter, Soc. of Prof'l Journalists v. Martin, 431 F. Supp. 1182, 1188 (D.S.C. 1977), the South Carolina District Court held:

> [T]he clear and present danger test does not apply when the Court issues an order ... which does not constitute a prior restraint on the press' or public's right to speak or publish but only restrains the trial participants from certain conduct thereby proscribing the flow of prejudicial information to be gained by non trial participants.

The Supreme Court in Nebraska Press Ass'n "approved the standard set out in Sheppard that extrajudicial statements of trial participants which divulge prejudicial information may be proscribed if there is a reasonable likelihood that prejudicial news prior to trial will jeopardize the defendant's right to a fair trial." Id.; see Nebraska Press Ass'n, 427 U.S. at 554-55, 96 S.Ct. at 2800-01. "The conclusion to be drawn from reading Nebraska is that ... proscriptions on trial

participants' prejudicial statements are to be judged by the Sheppard standard as it regulates the conduct of the participants in the trial." Id. at 1189. In Sheppard, the Supreme Court approved proscribing extrajudicial statements of trial participants "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial." 384 U.S. at 363, 86 S.Ct. at 1522.

Therefore, for Judge John's Order to survive the first level of constitutional scrutiny, there must have existed a reasonable likelihood that pretrial prejudicial news would prevent Defendant Tammy Moorer from receiving a fair trial. Id. In Sheppard, the Supreme Court observed that, "Murder and mystery, ... sex, and suspense" are typical ingredients for publicity. Id. at 356, 86 S.Ct. at 1519. A trial judge can "reasonably conclude, based on human experience, that publicity might impair the defendant's right to a fair trial." In re Russell, 726 F.2d 1007, 1011 (4th Cir. 1984); see Nebraska Press Ass'n, 427 U.S. at 563, 96 S.Ct. at 2804 (trial judge's "conclusion as to the impact of such publicity on prospective jurors was of necessity speculative, dealing as he was with factors unknown and unknowable."). The extent of media coverage of the case in newspapers, television, and radio is indicative of the amount of pretrial publicity. Chapter, Soc. of Prof'l Journalists v. Martin, 431 F. Supp. at 1189.

It cannot be seriously questioned that prior to Judge John entering the Order in question, there was a reasonable likelihood that prejudicial pretrial news would prevent the Defendant from receiving a fair trial. This case contains the necessary ingredients for public intrigue, as it involves murder, sex, and the mysterious disappearance of a young girl. This case has been covered extensively by local, State, and national media, and it has been covered prominently in a number of different mediums, including, but not limited to, newspapers, television, and the internet. (**Exhibit #8 – Article from News 13 entitled Tammy Moorer looking forward to murder trial, her attorney says; Exhibit #9 – Article from the State Newspaper**). The disappearance of

Heather Elvis and the criminal trial of Tammy and Sydney Moorer have even been featured multiple times on Nancy Grace's national television show, which appears on the HLN channel, formerly known as CNN Headline News. Human experience teaches us that the public has an insatiable appetite for cases such as the one *sub judice*, involving the mysterious disappearance of a young woman.

There is no doubt that this case has garnered a significant amount of pretrial media attention. This is true today, and it was true on date when Judge John issued the order in question. Accordingly, because of the nature of this case, Judge John correctly determined that there existed a reasonable likelihood that prejudicial news prior to trial would affect Defendant Moorer's right to a fair trial.

B. Strict Scrutiny

In cases "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial," the Supreme Court identified a number of steps the trial court should take to fulfill its constitutional obligation to provide the accused with a fair trial. Sheppard at 363, 86 S.Ct. at 1522. The Supreme Court noted the trial court could continue the case, transfer it to another county not so permeated with publicity, sequester the jury, order a new trial, or issue orders prohibiting extrajudicial statements by prosecutors, attorneys, and witnesses. Id.

In Gentile, the Supreme Court recognized that the other methods identified in Sheppard for dealing with pretrial publicity are more costly to the system than issuing orders prohibiting extrajudicial statements. The Court observed, "Even if a fair trial can ultimately be ensured through *voir dire*, change of venue, or some other device, these measures entail serious costs to the system." 501 U.S. at 1075, 111 S.Ct. at 2745. The Court also observed that the other methods identified in Sheppard were not as effective as an order prohibiting extrajudicial statements:

> Extensive *voir dire* may not be able to filter out all of the effects of pretrial publicity, and with increasingly widespread media coverage of criminal trials, a change of venue may not suffice to undo the effects of statements such as those made by petitioner. The State has a substantial interest in preventing officers of the court, such as lawyers, from imposing such costs on the judicial system and on the litigants.

Id.

In Levine v. U.S. Dist. Court for Cent. Dist. of California, 764 F.2d 590, 600-01 (9th Cir. 1985), the Ninth Circuit conducted a similar inquiry as the Supreme Court conducted in Gentile to determine whether any of the other measures identified in Sheppard would be as effective to as an order prohibiting extrajudicial statements. In Levine, the Court found that *voir dire*, jury instructions, change of venue or postponement, and sequestration would either be ineffective or counterproductive. Id. at 600. On the other hand, the Court found "A restraining order on trial participants, however, is a highly effective remedy for excessive trial publicity." Id. at 600-01. Similarly, in In re Russell, 726 F.2d 1007, 1010 (4th Cir. 1984), the Fourth Circuit concluded that an order prohibiting trial participants from making extrajudicial statements was necessary to ensure a fair trial given "the relative ineffectiveness of the considered alternatives."

Here, Judge John's Order prohibiting the extrajudicial statements of defense counsel, the accused, the Solicitor, and all law enforcement agencies is the most effective and only viable manner to ensure the accused receives a fair trial. As acknowledged by the Supreme Court in Gentile, Ninth Circuit in Levine, and the Fourth Circuit in In re Russell, the other measures identified in Sheppard to ensure the accused receives a fair trial are more costly to the system, ineffective, and counterproductive. The State has a compelling interest in ensuring the accused receives a fair trial, and Judge John's Order is narrowly tailored to ensure the accused receives a fair trial, as it is the only viable manner to meet this objective. See In re Treatment and Care of

Luckabaugh, 351 S.C. 122, 140-41, 568 S.E.2d 338, 347 (2002) (to survive strict scrutiny analysis, the order must meet a compelling state interest and be narrowly tailored to effectuate that interest).

In addition, Judge John's Order is narrowly tailored in the sense that it allows any party who is covered by the Order to issue a written release concerning the case, "provided the Court has approved the specific release in a Court Order before it is released to the press or to the public." **(Judge John's Order, p. 4).** In addition, Judge John's Order allows any party who is covered by the Order to petition the Court for permission to make a statement about the case or release information about the case. The Order provides that any covered person "may petition the Court ... for permission to make a public comment or to publicly release information ...." **(Order, p. 4).** To date, neither the Defendant, nor her counsel have attempted to lawfully make any extrajudicial statements as contemplated by the Order. In other words, neither the Defendant, nor her counsel have sought approval for any release to the public by the Court concerning this case, nor have they petitioned the Court to make any extrajudicial statements or release information concerning this case. Nonetheless, Judge John's Order is narrowly tailored because it is not an unequivocal prohibition of extrajudicial statements or comments. Rather, it only requires that any extrajudicial comments or information be pre-approved by the Court before it is submitted to the public. This protection ensures that the Defendant receives a fair trial before an impartial jury in this highly publicized case.

Accordingly, for the foregoing reasons, Judge John's Order was appropriately issued based on the facts of this case and is narrowly tailored so as to survive constitutional scrutiny.

IV. DEFENDANT WISHES TO PUBLICIZE INADMISSIBLE EVIDENCE PRIOR TO TRIAL

In Defendant's Memorandum, she makes clear that she wishes to publicize to the media inadmissible character evidence. Defendant states she desires to present "an accurate image—who

she is and who she is not—all in an effort to repair the damage that has been done to her reputation." (**Defendant's Memorandum p. 8**).

Inadmissible information leaked to the media before trial is "particularly prejudicial" and "has the effect of making more difficult the selection of an impartial jury." Cent. S.C. Chapter, Soc. of Prof'l Journalists v. Martin, 431 F. Supp. 1182, 1189 (D.S.C. 1977). Generally speaking, character evidence is inadmissible. Rule 404, SCRE. Rule 404(a)(1) of the South Carolina Rules of Evidence allows the accused in a criminal proceeding to introduce evidence of a pertinent character trait. However, Rule 405 of the South Carolina Rules of Evidence allows such character evidence of the accused to be introduced by reputation or by testimony in the form of opinion. The Defendant cannot offer specific instances of her character at trial, as such evidence is prohibited by Rule 405 of the South Carolina Rules of Evidence.

Thus, in effect, the Defendant is asking this Court to lift the ban on the trial participants from making extrajudicial statements, so that the Defendant may, through her lawyers, make inadmissible statements to the public regarding the specifics of the Defendant's character. This Court maintains an affirmative constitutional obligation to minimize the effects of pretrial publicity. Gannett Co., Inc. v. DePasquale, 443 U.S. at 378, 99 S.Ct at 2904. If Judge John's Order is lifted and the Defendant's attorneys are allowed to present inadmissible matters to the public at large, it will jeopardize the Court's ability to ensure the Defendant is tried by a panel of impartial, indifferent jury free from outside influences. Additionally, the threat of contaminating the jury venire at this stage is greater than when Judge John's Order was initially issue, because this case is on the eve of trial, as it is scheduled to begin on May 11, 2015. See Levine, 764 F.2d at 598 (publicity during or immediately before trial has a greater potential for prejudice than publicity months in advance of trial).

Accordingly, this Court should not lift Judge John's Order, as Defendant has made clear it is her desire to disseminate inadmissible evidence to the public on the eve of trial, which poses a great threat to the integrity and impartiality of the jury venire.

V. DEFENSE COUNSEL HAS VIOLATED JUDGE JOHN'S ORDER

Judge John's current Order prohibits Defense counsel from making "**any** extrajudicial comments" about this case. **(Order, p. 4)** (emphasis added). Judge John's Order further provides that any person covered by the Order "may petition the Court, with notice to all counsel of record, for permission to make a public comment or to publicly release information when the comment or release is not specifically permitted by this Order. However, **no such comment or release shall be made until the Court has approved it in an Order**." **(Order, p. 4)** (emphasis added).

Defense counsel has sent newsletters, by email, to an unknown number of recipients. Defense counsel has not petitioned the Court to include any matter related to this case in his newsletters. Nevertheless, Defense counsel has, in contravention of Judge John's Order, made comment and released information about this case.

In counsel's September 2014 newsletter, counsel made the following statements about this case:

> Nancy Livesay has been appointed by Solicitor Jimmy Richardson as the new lead prosecutor in Tammy and Sydney Moorer's case. Our team is preparing for and looking forward to trial. Tammy has been incarcerated over six months and a Speedy Trial Motion will be filed with the Horry County Clerk of Court within the next week, and a detailed Memoranda of Law outlining the defense's position will be provided to Judge John and the new prosecutor.

(Exhibit #5, September 2014 Newsletter).

In counsel's December 2014 newsletter, counsel made the following statements about this case:

> Tammy Moorer remains in jail through Christmas. At this time it looks as though the case will be set for trial beginning Monday, May 11, 2014. Our team continues to prepare and plan the defense of Tammy Moorer, and we are looking forward to our day in court when we can present the defense.

(Exhibit #6, December 2014 Newsletter).

In counsel's January/February 2015 newsletter, counsel made the following statements about this case:

> On January 30th Circuit Court Judge Dennis set bond for Tammy and her husband, Sydney at $100,000.00 Surety. Because our team had already completed the legal work to certify clear title to real estate, and because our paralegal Michelle was awaiting the documents sent electronically from Charleston, she filed all of the documents at the clerks [sic] office and at J. Reuben Long Detention Center, we were successful in obtaining Tammy's release that same day around 5:30 pm. Thanks to our team for preparing all complete defense documents and taking all of the anticipatory steps necessary. Tammy spent 11 months in custody because her bond had been denied at her two previous bond hearings.
>
> Our team has filed a motion to lift the gag order and the Court has set the hearing in Charleston on Wednesday March 4, 2015. We look forward to presenting our reasons in court and explaining how we do not believe the current order serves the interest of justice, and how we believe it hampers the defense. We continue to prepare Tammy's defense. And we are looking forward to presenting our defense at trial, which is set to being in Conway on May 11, 2015.

(Exhibit #7, January/February 2015 Newsletter).

Lastly, a news article posted on January 22, 2015 reflects that counsel for Defendant made a number of comments to a news media outlet about this case. **(Exhibit #8 – Article from News 13 entitled Tammy Moorer looking forward to murder trial, her attorney says.)**. Judge John's Order unquestionably prohibits Defense counsel from making "extrajudicial comments" about this case until its resolution. Defense counsel was free to petition the Court for permission to make public comments about this case, but Defense counsel has not done so. Because Defense counsel

has made public comment about this case, counsel has violated Judge John's Order. The State requests that this Court take whatever steps it considers appropriate for Defense counsel's violations of Judge John's Order. The State further requests that this Court take whatever steps it deems necessary to ensure future compliance.

CONCLUSION

For the foregoing reasons, this Court should deny the Defendant's motion to lift Judge John's Order prohibiting extrajudicial statements.

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2015 MAR -3 AM 11:00

Myrtle Beach, South Carolina

March 3, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	WARRANT NO:2014A2610200461, 464
COUNTY OF HORRY	)	2014A2611000021, 26, 27
	)	
STATE OF SOUTH CAROLINA	)	
	)	
VS.	)	***MOTION FOR AN ORDER PROHIBITING EXTRAJUDICIAL STATEMENTS AND RELEASE OF DOCUMENTS TO THE MEDIA***
	)	
TAMMY CAISON MOORER	)	
DEFENDANT	)	
	)	

2014 MAR 12 AM 11:12
CLERK OF COURT
FILED
BY COUNT

Now comes the State with notice to the defendant, by and through counsel, for defendant, M. Gregory McCollum, Esquire, that the State of South Carolina moves to for an Order prohibiting extrajudicial statements, discussion or comments either directly or indirectly about this case to the media nor release of discoverable documents to the media by the defense attorney, the defendant, the State and agents of the State in the above captioned matter.

The State recognizes that this case has received and is expected to continue to receive local and possible national media interest. The State submits that extrajudicial statements to the media, by either party could jeopardize the fair administration of justice in this case.

The State requests a pretrial Order forbidding public comment on the dissemination of discoverable documents in regards to this pending criminal case by the attorneys, defendants and agents thereto. This request has been held valid under the First, Fifth and Sixth Amendments to the United States Constitution. *See* Levine v. U.S. District Court for Cent. Dist of California, 764 F.2d. 590 (9th Cir. 1985); In re Russell, 726 F.2d 1007 (4th Cir. 1984); Hamilton v. Municipal Court for Berkley-Albany Judicial Dist., 270 Cal. App. 2d 797 (1st Dist. 1969). It is not objectionable for a Court to issue an Order governing matters such as extrajudicial statements and limitations placed upon lawyers, litigants and officials directly affected by court proceedings such limitations may be made at the Court's discretion for good cause to assure fair trials.

Respectfully Submitted,

Donna E. Elder
Senior Assistant Solicitor

3/12/14

Exhibit 1

STATE OF SOUTH CAROLINA)	**IN THE COURT OF GENERAL SESSIONS**
)	
COUNTY OF HORRY)	**COUNTY OF HORRY**
)	
State of South Carolina,)	
v.)	**MEMORANDUM OF LAW IN RESPONSE TO MOTION FOR GAG ORDER**
)	
Tammy Caison Moorer.)	
)	

Warrant Number: 2014A2610200464, Murder
Warrant Number: 2014A2610200461, Kidnapping

TO: THE HONORABLE STEVEN H. JOHN, RESIDENT JUDGE, FIFTEENTH CIRCUIT

Before the Court is a proposed consent order to prohibit the parties from commenting publicly about the case against Tammy Moorer and Sidney Moorer. Since it is clearly not in the best interest of Tammy Moorer, the defense cannot consent to enter into such an Order. There are a number of relevant factors beyond the issues of whether or not such an order entered against the will of the defendants is legally advisable or would be practicable. We now live in an age of information and transparency. Whether we like it or not we are in an age of free expression of ideas and free expression of speech and thought.

One need not look far to see voluminous and anonymous comments or posts to every type of news story. Media companies and news companies not only respond to such comments, they actively encourage and promote comments. The days of you writing a letter to the editor of a local paper and being contacted by the newspaper to confirm your identity and the legitimacy of your letter are over.

Only a few decades ago, dictatorial countries and governments could censor all expression and could also censor most of the free press or news media. Now, when almost everyone has a mobile smart phone, they can post words and photographs twenty four hours a day. Anyone can search any idea on Google or Yahoo from anywhere at any time. In today's world, communication cannot be stopped. The state's proposed motion relies upon the concept or idea that a court would be capable of policing the conduct of the public on social media. The proposal that a court could successfully regulate this web of communication is unrealistic. To stop this conduct in a case with 90,000 Facebook or news website followers is unrealistic and untenable.

Prior to the arrest of Tammy Moorer the entire investigative process was covered by all interested parties and on social media daily, if not hourly. All information generated thus far has been derogatory toward Tammy Moorer and her family. She has been excoriated and vilified completely. Now she has the opportunity to begin a gradual process of presenting an accurate image of herself and who she is and what she is not. To deny her or her attorneys the opportunity to exercise the most basic fundamental right of freedom of speech and expression

Exhibit 2

would be and will be a gross miscarriage of justice. Any action taken to restrict those rights is contrary to her right to defend herself.

Curiously, the state's motion seems incongruent with what would be typically the basis for asking for a gag order. At the bond hearing which was covered by every local media outlet including newspapers and television stations with cameras photographing, the state presented its case against Tammy. The state's theory of the case and what the state believes is evidence against Tammy Moorer was openly presented. All of this information is now in the public domain.

It is inconsistent and incongruent for the state to present this evidence against Tammy and then move before the Court to request an order to prohibit the counsel for defense or Tammy's family or supporters to comment publicly. A fair trial is a fundamental right. Gagging Tammy Moorer and gagging her advocates does not promote the fair administration of justice. In this case, counsel, for Ms. Moorer, has over twenty five years experience in criminal court. He, as all attorneys licensed to practice law in South Carolina, is governed by a code of ethics and professional responsibility. All licensed attorneys are already regulated and held to a high standard.

Without doing an exhaustive review of all relevant case law, the Defense points out that in the past, gag orders may have been effective under certain circumstances, such as once the trial had started and a jury was empanelled and not sequestered where attorneys or police or witnesses were commenting on evidentiary rulings made by the court earlier that day. Other circumstances presented exceptional circumstances such as in the case of State v. Quattlebaum, 527 S.E. 2d 105, 338 S.C. 441 (S.C. 2000), where the court ordered that the attorney client communication between a capital murder defendant and his attorney were secretly recorded by the police and the deputy solicitor and the court ordered that the tape recorded conversation could not be released or published. Beyond that, the case law is sparse in South Carolina because of the right to be free from a preemptive prior restraint of free speech guaranteed by the first amendment to the United States Constitution and further guaranteed by the Constitution of South Carolina.

It is unrealistic to believe that the Court could enforce an order against anonymous posters of information on social media or that the Court would have time to try to police such conduct. Consequently, the parties subject to a prior restraint of freedom of expression would be the most responsible parties with the greatest levels of responsibility and accountability involved in the case and the opportunity of counsel to even explain how the court system operates and works would be lost. The result would be more wild and out of control conjecture and speculation which will further harm Tammy Moorer's right to a fair trial.

The state cites no South Carolina cases to support its motion. The three cases cited are outside the mainstream of caselaw. Two cases are from California. The case of Steven Hamilton etl al, 270 Cal. App. 2d 797, involves protesters at the University California Berkeley in 1966. The case of Levine et al. v. United State District Court, 764 F.2d 590 (9th Cir. 1985), involved an ex FBI Agent charged with espionage against the Unites States, and that case was a 9th Circuit Court of Appeals case from 1984 with dissenting opinions. The third case, In re Lacie Russell,

726 F.2d 1007 (4th Cir. 1984), was a Federal 4th Circuit Opinion denying a writ of mandamus, where witnesses only, were ordered not to comment about the case involving the Ku Klux Klan and the Nazi Party. Beyond these cases which are on the outer fringe and date from thirty to about fifty years ago, there really are not legal precedents supporting the state's motion.

For all of the reasons stated, defense counsel for Tammy Moorer hereby asks the Court to deny the motion to issue a gag order prohibiting the Defendant or Counsel for the Defense to comment in the period from now up until the date of trial.

Respectfully Submitted,

Greg McCollum
Complete Legal Defense Team
1012 38th Avenue North, Suite 202
Myrtle Beach, South Carolina 29577
Counsel for Defendant
Tammy Moorer

March 21, 2014
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	INDICTMENT NO(S):
		2014-GS-26-01126
		2014-GS-26-01127
		2014-GS-26-01128
		2014-GS-26-01129
		2014-GS-26-01130

14 MAR 21 PM 2:28
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	
V.	)	
	)	**ORDER PROHIBITING EXTRAJUDICIAL**
TAMMY CAISON MOORER,	)	**STATEMENTS AND RELEASE OF DOCUMENTS**
	)	
DEFENDANT.	)	

This matter comes before the Court by Motion of the State to prohibit extrajudicial statements and the release of documents until the resolution of the above-entitled cases. Upon consideration of the Motion, the Court finds as follows:

Under both the United States Constitution and the South Carolina Constitution, a defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury. U.S. Const. amend. VI; S.C. Const. art. I Section 14. This "most fundamental of all freedoms" must be maintained at all costs. Estes v. Texas, 381 U.S. 534, 540 (1965).

The United States Supreme Court interpreted the requirement of an impartial jury to mean that "the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." Patterson v. State of Colorado ex rel. Attorney General, 205 U.S. 454, 462 (1907). Subsequently, in Sheppard v. Maxwell, 384 U.S. 333, 357 (1966), the Supreme Court ruled that a trial court erred by "holding that it lacked the power to control the publicity about the trial." The Court specifically found that "the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which

Exhibit 3

divulged prejudicial matters," noting that with the pervasiveness of modern communications and the difficulty of erasing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused." Sheppard, 384 U.S. at 361, 362.

Regarding the scope of this power, any order of the Court that directly prohibits or restrains publication of information already gained or commentary on judicial proceedings held in public is a prior restraint in violation of the First Amendment which must be justified by a clear and present danger that the defendants' right to a fair trial is in jeopardy. Nebraska Press Assoc. v. Stuart, 427 U.S. 539 (1976); Wood v. Georgia, 370 U.S. 375 (1962). However, "the clear and present danger test does not apply when the Court issues an order . . . which does not constitute a prior restraint on the press' or public's right to speak or publish, but only restrains the trial participants from certain conduct thereby proscribing the flow of prejudicial information to be gained by non trial participants." Central South Carolina Chapter, Society of Professional Journalists, Sigma Delta Chi v. Martin, 431 F.Supp. 1182, 1188 (D.S.C. 1977) aff'd 556 F.2d 706 (4th Cir. 1977), cert. denied 434 U.S. 1022 (1978).

A pretrial order forbidding public comment about a pending criminal case by the attorneys, defendants, and witnesses has been found to be valid under the First, Fifth, and Sixth Amendments to the United States Constitution. *See* Levine v. U.S. District Court for Cent. Dist. of California, 764 F.2d. 590 (9th Cir. 1985); In re Russell, 726 F.2d 1007 (4th Cir. 1984); Hamilton v. Municipal Court for Berkeley-Albany Judicial Dist., 270 Cal. App. 2d 797 (1st Dist. 1969).

The Court finds that it is likely that there will continue to be inquiries made by non trial participants and that any statements and information responsive to such inquiries are likely to be widely disseminated and could jeopardize the fair administration of justice in these cases. As such,

without some restraint on the trial participants and those involved with the investigation of these cases there is a substantial likelihood that the Defendant may be denied a fair trial.

This Order applies to the Solicitor, all law enforcement agencies currently or formerly involved in these cases, the Defendant, and counsel for the Defendant.

This Order also applies to any employee of the Solicitor or entities listed above or any agent of these parties, and it shall be the responsibility of the Solicitor, the heads of the agencies listed above, or representatives of the Defendant to ensure that their employees and any associated persons are aware of, and comply with, the terms of this Order.

These parties and entities covered by this Order will be collectively referred to as "Covered Persons."

This Order does not in any way restrict the activity of any person or entity not included as a Covered Person.

Any Covered Person may file official court papers, including indictments, motions, responses to motions, and any other court document or notice permitted by law. However, no Covered Person may file any court papers which could reasonably be construed as containing comments or information that if covered by the public could adversely affect the right of the State or the Defendant to a fair trial. In order to ensure compliance with this provision, except for indictments, no document filed with the Court may contain any discussion or argument concerning the facts or investigation of these cases. The Court will review any court papers filed, and if any discussion or argument concerning the facts is warranted, the parties will be notified, and thereafter written argument may be submitted directly to the undersigned for consideration.

Any Covered Person may notify the press or the public of the time and place of any hearing to be conducted before the Court.

Any Covered Person may issue a written release concerning these cases, provided the Court has approved the specific release in a Court Order before it is released to the press or to the public. Any Covered Person who wishes to get approval for such release shall provide a copy of the proposed release to all counsel of record before presenting it to the Court.

Any Covered Person may petition the Court, with notice to all counsel of record, for permission to make a public comment or to publicly release information when that comment or release is not specifically permitted by this Order. However, no such comment or release shall be made until the Court has approved it in an Order, and the content of any proposed comment or release may not be revealed in the petition. Subject to the above restrictions, it is therefore

ORDERED that extrajudicial comments or the release of documents by the State, any of the attorneys, the Defendant, or any agents of these parties, are prohibited until the resolution of these cases.

Steven H. John
Chief Administrative Judge – General Sessions
Fifteenth Judicial Circuit

March 21, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE GENERAL SESSIONS COURT FIFTEENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, vs. Tammy Caison Moorer, Defendant.	)	NOTICE OF MOTION AND MOTION TO LIFT GAG ORDER

Re: **State of South Carolina vs. Tammy Caison Moorer**
Indecent Exposure, Warrant No.: 2014A2611000021, Indictment No.: 2014GS2601129
Indecent Exposure, Warrant No.: 2014A2611000027, Indictment No.: 2014GS2601130
Incident Date: December 17, 2013
Arrest Date: February 22, 2014
Arresting Officer: T. Large, HCPD

Obstructing Justice, Warrant No.: 2014A2611000026, Indictment No.: 2014GS2601128
Incident Date: December 20, 2013
Arrest Date: February 22, 2014
Arresting Officer: T. Large, HCPD

Kidnapping, Warrant No.: 2014A2610200461, Indictment No.: 2014GS2601127
Incident Date: December 18, 2013
Arrest Date: February 23, 2014
Arresting Officer: J. Cauble, HCPD

Murder, Warrant No.: 2014A2610200464, Indictment No.: 2014GS2601126
Incident Date: December 18, 2013
Arrest Date: February 24, 2014
Arresting Officer: J. Cauble, HCPD

Medicaid Fraud, Warrant No.: 2014A2610700584, Indictment No.: 2014GS2602619
False Pretenses, Warrant No.: 2014A2610700585, Indictment No.: 2014GS2602620
Arrest Date: June 3, 2014
Arresting Officer: J. Evans, Jr., SC Attorney General's Office

PLEASE TAKE NOTICE that the Defendant, Tammy Caison Moorer, by and through her undersigned attorney, will move before this Court within ten (10) days from the date hereof or as soon thereafter as counsel can be heard, for an Order requesting the Honorable R. Markley

Exhibit 4

Dennis, Jr., Circuit Court Judge, reconsider the March 21, 2014 Order Prohibiting Extrajudicial Statements and Release of Documents.

The Defendant requests that this Honorable Court hear substantial grounds for relief relating to the Order and the State's reliance on secrecy throughout this judicial process.

In compliance with Judge John's March 21, 2014 Order Prohibiting Extrajudicial Statements and Release of Documents, a Memoranda of Facts and Law will be forwarded to the Court under seal for the Court's consideration. This Memoranda of Facts and Law is being furnished to the State.

Respectfully submitted,

Greg McCollum
Complete Legal Defense Team
1012 38th Avenue North, Suite 202
Myrtle Beach, South Carolina 29577

January 23, 2015
Myrtle Beach, South Carolina

GREG McCOLLUM

COMPLETE LEGAL DEFENSE TEAM

www.CriminalLawyerMyrtleBeach.com

(843) 626-5480

January 23, 2015

The Honorable Melanie Huggins
Horry County Clerk of Court
Post Office Box 677
Conway, South Carolina 29526

Re: **State of South Carolina vs. Tammy Caison Moorer**
Indecent Exposure, Warrant No.: 2014A2611000021, Indictment No.: 2014GS2601129
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Incident Date: December 18, 2013
Arrest Date: February 24, 2014
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Medicaid Fraud, Warrant No.: 2014A2610700584, Indictment No.: 2014GS2602619
False Pretenses, Warrant No.: 2014A2610700585, Indictment No.: 2014GS2602620
Arrest Date: June 3, 2014
Arresting Officer: J. Evans, Jr., SC Attorney General's Office

Dear Melanie:

Please find enclosed an original Notice of Motion and Motion to Lift Gag Order and three (3) copies of it regarding the above-referenced matters. If you would return the copies in

the self-addressed stamped envelope and return them to our office, I would greatly appreciate it. Thank you for your assistance and cooperation in this matter.

With warm regards, I remain,

Yours truly,

Michelle Schmalfeldt

Michelle Schmalfeldt
Paralegal to Greg McCollum

Enclosures

cc: The Honorable R. Markley Dennis, Jr. (via email)
Nancy Livesay, Assistant Solicitor (via email)
Kirk Truslow, Esq. (via email)
Tammy Moorer (via U.S. Mail)

Pelasara, Deborah

From: Richardson, Gabriel
Sent: Tuesday, September 16, 2014 4:36 PM
To: Pelasara, Deborah
Subject: FW: News from Complete Legal Defense Team

GABRIELE G. RICHARDSON
Assistant to Senior Solicitor Donna E. Elder
Office of the Solicitor
P O Box 1276
Conway, SC 29528
843-915-8643

From: Complete Legal Defense Team <la@gregmccollumlaw.com>
Sent: Tuesday, September 16, 2014 11:24 AM
To: Richardson, Gabriel
Subject: News from Complete Legal Defense Team

Like

Greg McCollum

Complete Legal Defense Team

In This Issue

Legal Seminar
Expungement Clinic
More on Moorer
Recent Case Results
DUI 101

Join Our Mailing List!

Greetings!

The kids are back in school and fall is the perfect time to take care of any charges which may have been dismissed or adjudicated to allow an expungement. An expungement is a second chance for law abiding citizens to "erase" the circumstances surrounding an

Exhibit 5

More on Moorer

Nancy Livesay has been appointed by Solicitor Jimmy Richardson as the new lead prosecutor in Tammy and Sydney Moorer's case. Our team is preparing for and looking forward to going to trial. Tammy has been incarcerated over six months and a Speedy Trial Motion will be filed with the Horry County Clerk of Court within the next week, and a detailed Memoranda of Law outlining the defense's position will be provided to Judge John and the new prosecutor.

Recent Case Results

Assault and Battery, (file # 5-14-39-SM)
Result: Dismissed

Criminal Domestic Violence, Result: Dismissed

DUI
Result: Dismissed.

Minor in Possession of Alcohol,(file # 7-14-54-SM)
Result: Alcohol Education Program (AEP)

DUI, Illegal Passing, Speeding, (file # 13-55-DUI)
Result: Speeding $185.00 Fine.

DUI
Result: Reckless Driving, 6 Points, $445.00 Fine.

DUI
Result: Careless Operation, 0 points, $106.00 Fine.

DUI, Driving Under Suspension (DUS),Running Stoplight
Result: Reckless Driving, $444.00 Fine, No Valid Driver's License, $237.50 Fine and Running Stoplight, Fine $133.50.

Indecent Exposure, 2 Day Trial, Guilty verdict, sentence 60 days weekend time, Sex Registry, Appeal filed.

Minor in Possession of Alcohol, (file #7-14-54-SM)
Result: AEP

Possession of Heroin (3 counts), Leaving the Scene of an Accident, Failure to Stop for a Blue Light
Result: 3 years probation.

When reading results from past cases it is important to know that any result Attorney Greg McCollum may achieve on behalf of one client does not necessarily indicate similar results can be obtained for other clients.

Defense of Major Felonies

Driving Under the Influence

Traffic Court

Quick Links

Our Website

Greg Joins Myrtle Beach Rotary

August 25, 2014 Greg was honored to join the Myrtle Beach Rotary Club. The club meets on Mondays for lunch, and Greg is truly looking forward to meeting fellow Rotarians and participating in the organization's charitable contributions.

arrest. Please read further on expungements below and schedule an office consultation to discuss your options.

Best regards, Greg

Wheeling, Illinois Seminar

After exploring Chicago with their girls, Greg and Sarah headed to the North Shore, Wheeling specifically, for a legal seminar.

At the seminar we learned the importance of informing our clients of the circumstances they are facing following their arrest, and how our team can help solve not only their legal problem but also other problems, including public relations, family court and/or employment issues, among others.

After the seminar we met friends at Bob Chinn's Crabhouse. Who knew this was the largest steak and crab house east of the Mississippi and it was delicious!

Expungement Clinic

An expungement is a legal process, wherein a Judge's Order is issued to all organizations which have a record of any arrest, to destroy all records of the arrest. An expungement places the person who was once charged with a crime in a position prior to the arrest. The purpose of an expungement is to have a clean record, without evidence of a past arrest.

The fees associated with an expungement are an initial $350.00 to determine if the charges can be expunged. Once it is determine charges can be expunged, an additional $750.00 is required to complete the process. The fee includes filing fees and expenses and takes approximately 3 months.

Please set your appointment with Jeff to begin your expungement process (843) 626-5480

Possession Cocaine, 1st Offense and Minor in Possession Alcohol, (file # 7-14-57 GS)
Result: Cocaine, dismissed, Minor in Possession Alcohol, AEP

::

Possession with Intent to Distribute Marijuana, (file # 3-14-21-GS)
Result: Dismissed by Conditional Discharge for Simple Possession

Public Intoxication,
Result: Dismissed.

Assault and Battery 3rd Degree, (file # 6-14-48-SM)
Result: AEP.

Possession of Marijuana,
Result: Dismissed.

Possession of Marijuana,
Result: Dismissed.

Speeding,(file# 8-14-78-TR)
Result: No Registration, 237.00 fine, 0 points.

Successfully completed 3 expungements.

DUI 101

Greg and Michelle gave their first DUI 101 to the Myrtle Beach Rotary Club. Greg has allotted time in his busy schedule to make this informative presentation bi-monthly.
Please contact the office if you or your organization would be interested in viewing DUI 101. (843) 626-5480.

The team felt the need to educate the public on the policies and procedures, along with common concerns, facing individuals charged with Driving Under the Influence.

The program is 20 minutes long and details the traffic stop, field sobriety tests, arrest, breath test, bond and consequences here in South Carolina.

Pelasara, Deborah

From: Complete Legal Defense Team <la@gregmccollumlaw.com>
Sent: Thursday, December 18, 2014 11:54 AM
To: Pelasara, Deborah
Subject: News from Complete Legal Defense Team

Greg McCollum

Complete Legal Defense Team

In This Issue

Defense of Major Felonies

Driving Under the Influence

Traffic Court

Dear Deborah,

Welcome new recipients! Our team is in the process of adding court personnel as well as some of our NACDL colleagues whom we thought may be interested in receiving our monthly newsletter. If you do not wish to receive the newsletter, please click on unsubscribe at the bottom and accept our apologies for including your email.

Our team wishes everyone a safe and healthy holiday filled with love and happiness and for a New Year filled with hope and promise.

Best regards,

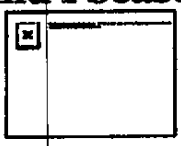
Greg

Exhibit 6

Quick Links

Our Website

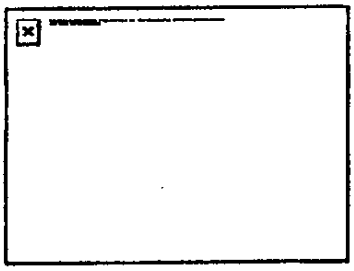
Cosmos 6 and 1 Season



The seven year old girls soccer season has ended at the Grand Strand YMCA in Myrtle Beach. Although we don't keep score, Greg was so blessed to have coached the Cosmos to a winning season and is looking forward to beginning again in the spring. Thank you to Coach Wayne, the players and their parents who made our season a success.

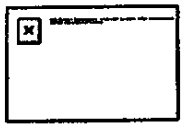
Stand Your Ground

A recent local shooting had Myrtle Beach residents questioning how someone could shoot a person through a closed door and not be charged with a crime. The 2006 expansion of the "castle doctrine"enables citizens to use deadly force for defense of home, business and automobile. Previously, one had to be in actual danger of losing life or limb. Under the current stand your ground and "castle doctrine" a person can use any force necessary, including deadly force, to protect himself in his home, business, and vehicle.



South Carolina Castle Doctrine Explained

MORE ON MOORER



Tammy Moorer remains in jail through Christmas. At this time it looks as though the case will be set for trial beginning Monday May 11, 2014. Our team continues to prepare and plan the the defense of Tammy Moorer, and we are looking forward to our day in court when we can present the defense.

November Case Results

State of South Carolina vs. (Name Withheld for Privacy of Client)
(13-100-GS)
Criminal Sexual Conduct with a Minor, 3rd Degree
Disposition: Dismissed

When reading results from past cases it is important to know that any result we may achieve on behalf of one client does not necessarily indicate that similar results can be obtained for other clients.

State of South Carolina vs (Name Withheld for Privacy of Client)
(10-14-90-SM)
Simple Possession of Marijuana, Conviction
Disposition: Conviction overturned, case dismissed after the completion of 15 hours community service.

State of South Carolina vs. (Name Withheld for Privacy of Client)
(10-14-92-ACR)
Criminal Domestic Violence
Disposition: Dismissed

State of South Carolina vs. (Name Withheld for Provacy of Client)
(3-14-23-DUI)
Driving Under the Influence
Disposition: Dismissed

State of South Carolina vs. (Name Withheld for Privacy of Client) (2-14-10-DUI)
Driving Under the Influence
Disposition: DUI Dismissed, Plea to Leaving the Scene, $237.50 Fine.

State of South Carolina vs. (Name Witheheld for Privacy of Client
(2-14-14-DUI)
Driving Under the Influence
Disposition: DUI Dismissed, Plea to Reckless Driving, 6 points, $445.00 Fine

State of South Caorlina vs. (Name Withheld for Privacy of Client)
(3-14-17-DUI)
Driving Under the Influence
Sisposition: DUI dismissed, Plea to Reckless Driving, 6 points, $445 Fine.

City of North Myrtle Beach vs. (Name Withheld for Privacy of Client)
(0-14-83-TR)
Footrest Violation, Disregard Traffic Signal, Beginner's Permit Violation.
Disposition: Footrest Violation, Dismissed, Disregard of Traffic Signal, Beginner's Permit Violation, Dismissed. Rewrite to No Registration, no points, Fine $2650.00

Gilliam, James

From: Complete Legal Defense Team <la@gregmccollumlaw.com>
Sent: Thursday, February 26, 2015 10:35 AM
To: Gilliam, James
Subject: News from Complete Legal Defense Team

Greg McCollum
Complete Legal Defense Team

January/February Newsletter

1012 38th Avenue N., Suite 202
Myrtle Beach, SC 29577
(843) 626-5480

In This Issue

Join Our Mailing List!

Defense of Major Felonies

Driving Under the Influence

Traffic Court

Quick Links

Our Website

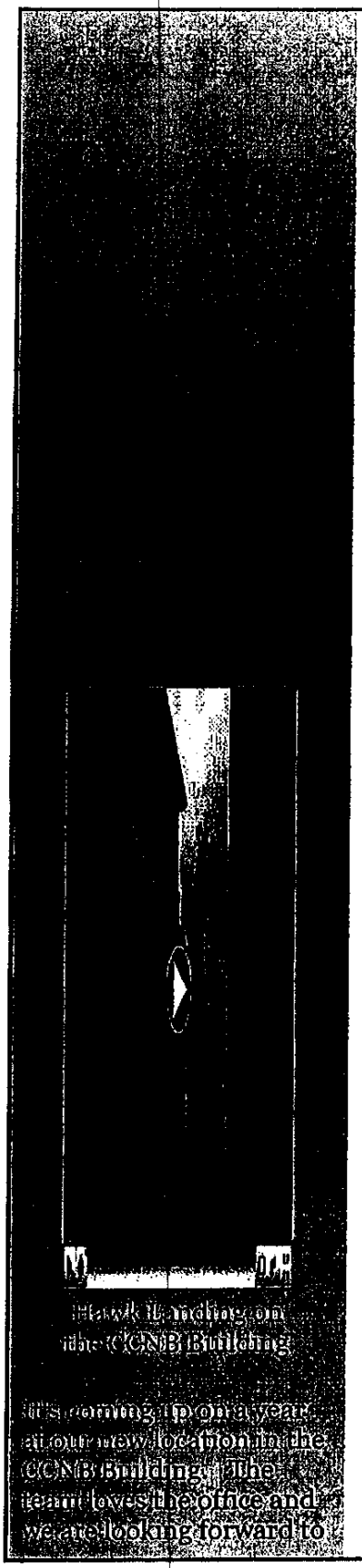
Dear James,

2015 is here and at the Complete Legal Defense Team we are continuing to improve our procedures so we can further improve our ability to deliver the most complete defense possible. We have been able to deliver even better representation to the people we help. Our associate attorney, Jeff Lucas, continues to provide outstanding legal support for our improving motions practice for serious felonies and DUI defense.

We believe in our ability to constantly improve how we serve our clients to achieve the defense goals and results our clients need and have come to expect. Our team is committed to the exclusive practice of criminal defense and DUI defense. That is all we do, and we believe in our ability and our client's right to expect the best defense available.

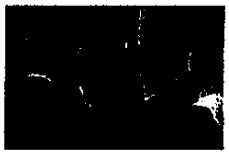
Best regards,

Exhibit 7



Greg

MOORER BOND GRANTED



On January 30th Circuit Court Judge Dennis set bond for Tammy and her husband, Sydney at $100,000.00 Surety. Because our team had already completed the legal work to certify clear title to real estate, and because our paralegal Michelle was awaiting the documents sent electronically from Charleston, she filed all of the documents at the clerks office and at J. Reuben Long Detention Center, we were successful in obtaining Tammy's release that same day around 5:30 pm. Thanks to our team for preparing all complete defense documents and taking all of the anticipatory steps necessary. Tammy spent 11 months in custody because her bond had been denied at her two previous bond hearings.

Our team has filed a motion to lift the gag order and the Court has set the hearing in Charleston on Wednesday March 4, 2015. We look forward to presenting our reasons in court and explaining how we do not believe the current order serves the interest of justice, and how we believe it hampers the defense. We continue to prepare Tammy's defense. and we are looking forward to presenting our defense at trial, which is set to begin in Conway on May 11, 2015.

WMBF News story about Tammy Moorer Bond

DUI 101 Presentations

Greg had the opportunity to give a DUI 101 presentation to the Gamma Phi Beta sorority at Coastal Carolina University. The 75 or so sorority sisters enjoyed the brief description of what to expect if you are pulled over for Driving Under the Influence here in Horry County South Carolina.

growing in the upcoming months to include a seasoned trial attorney to exclusively handle all Driving Under the Influence charges.

When reading results from past cases it is important to know that any result we may achieve on behalf of one client does not necessarily indicate that similar results can

If you or your organization would like to host a 25-35 minute DUI 101 PowerPoint presentation, please contact Sarah at (843) 626-5480, and she will be happy to arrange a presentation for your group.

December/January Case Results

State of South Carolina vs. (Name Withheld for Privacy of Client) (7-14-51-GS)
Unlawful Carrying of a Weapon
Remand Myrtle Beach Municipal Court
Result: Plea Possession of Illegal Weapon, $469.00 fine

State of South Carolina vs. (Name Withheld for Privacy of Client) (5-14-40-GS)
Driving Under the Influence, 2nd BA Level: .19
Result: Pled Guilty to DUI 1st, Credit for Time Served, 5 days

State of South Carolina vs. (Name Withheld for Privacy of Client) (8-14-76-GS)
Driving Under the Influence, 2nd
BA Level: .00/Refusal
Result: DUI, Dismissed

City of Myrtle Beach vs. (Name Withheld for Privacy of Client) (10-13-103-GS)
Driving Under the Influence, 2nd Offense
Result: DUI, Dismissed

State of South Carolina vs. (Name Withheld for Privacy of Client) (1-14-05-DUI)
Driving Without Insurance
Driving Under the Influence, BA Level: .00/Refusal
Open Container
Result: DUI, Dismissed; No Vehicle Insurance, Dismissed , pled to Open Container, $262.50 fine

City of Conway vs. (Name Withheld for Privacy of Client) (12-77-DUI)
Driving Under the Influence

be obtained for other clients.

Result: DUI, Dismissed, rewrite to Careless Operation & Reckless Driving, $997 fine

City of Myrtle Beach vs. (Name Withheld for Privacy of Client)(10-14-93-DUI)
Driving Under the Influence
Traffic/Striking Fixtures
Result: DUI, Dismissed, rewrite to Reckless Driving, $445 fine, Striking Fixtures, Dismissed with restitution payment

City of Myrtle Beach vs. (Name Withheld for Privacy of Client) (8-14-75-SM)
Public Intoxication
Public Exposure of Specified Anatomical
Result: Public Intoxication, Dismissed, Public Exposure, Public Intoxication, Dismissed, Public Exposure of Specified Anatomical, Dismissed

City of Myrtle Beach vs. (Name Withheld for Privacy of Client)(7-14-58-SM)
Prostitution
Simple Possession of Marijuana
Result: Prostitution, Dismissed, Simple Possession of Marijuana, Dismissed, Pled Guilty to Disorderly Conduct, time served

City of Conway vs. Name Withheld for Privacy (12-92-SM)
Simple Possession of Marijuana
Result: Dismissed & Expunged

City of Surfside Beach vs. (Name Withheld for Privacy of Client) (10-14-94-SM)
Drug Paraphernalia
Result: Drug Paraphernalia, Dismissed

State of South Carolina vs. Name Withheld for Privacy(9-14-86-EXP)
Successful Expungement

City of Myrtle Beach vs. (Name Withheld for Privacy of Client) (8-14-73-TR)
Reckless Driving
Result: Reckless Driving, Dismissed

City of Myrtle Beach vs. Name Withheld for Privacy(2-14-11-SM)
Speeding

Result: Speeding, Dismissed, Rewrite to Improper Start, $81.50 Fine

City of Myrtle Beach vs. Name Withheld for Privacy (7-14-61-TR)
Speeding
Result: Speeding, Dismissed, rewrite to Improper Start, $81.50 fine

State of South Carolina vs. (Name Withheld for Privacy of Client) (4-14-28-TR)
Speeding
Result: Speeding, Dismissed

City of Myrtle Beach vs. (Name Withheld for Privacy of Client) (9-14-89-TR)
Speeding
Result: Speeding, Dismissed

City of Myrtle Beach vs. (Name Withheld for Privacy of Client) (9-14-81-TR)
Speeding
Result: Speeding, Dismissed, rewrite to Improper Start, Time Served, No Fine

City of Myrtle Beach vs. (Name Withheld for Privacy of Client) (9-14-84-TR)
Giving Improper Signal
Result: Giving Improper Signal, Dismissed, rewrite to Improper Start, $133.50 fine

Tammy Moorer 'looking forward' to murder trial, her attorney says

Posted: Jan 22, 2015 8:09 PM EST Thursday, January 22, 2015 8:09 PM EST*Updated: Jan 22, 2015 11:46 PM EST* Thursday, January 22, 2015 11:46 PM EST

By Rod Overton
Email
Connect
roverton@wbtw.com


Heather Elvis (left) and Tammy Moorer.

MYRTLE BEACH, S.C. - A Horry County wife charged in the death and disappearance of a young woman who had a relationship with her husband is "looking forward to appearing in court," her attorney told News13 Thursday.

Tammy Moorer, age 42, and her husband Sidney Moorer, age 38, are both charged with the death of Heather Elvis, a Myrtle Beach 20-year-old who disappeared in December 2013.

Elvis has still not been found, although detectives closed a road near the Moorer's house just last week for a search.

Tammy Moorer's attorney, Greg McCollum, spoke Thursday after news came that a new bond hearing would be held for the pair next Friday in Charleston.

More News: Full coverage of the disappearance of Heather Elvis

McCollum told News13 that his client is prepared for the trial, which is scheduled to begin May 11.

"...we're ready to go" McCollum said. "She's looking forward to having her defense heard and all the things that happen in a trial. So we are anxious and ready and willing to begin the trial."

McCollum said that the legal preparation for a trial – in which 800 possible jurors are expected to be called -- is also well underway.

"With the exception of just a very few minor things, we're ready. We know what the case is. We know what the evidence is. We know what the state's position will be."

McCollum talked to WBTW after 15th Solicitor Jerry Richardson announced Thursday that a new bond hearing is planned for Jan. 30 in Charleston. (Click here to read related story)

McCollum welcomes the idea as both Tammy and her husband Sidney Moorer are held without bond.

"Certainly we want to take every opportunity possible to see certainly from our point of view that we

Exhibit 8

would like for Tammy to be released on bond. And so any opportunity we have to do that, we're certainly going to take advantage of that."

The original bond hearing revealed many details about the case that police alleged – including unflattering texts and emails between the married couple to and about Heather Elvis.

One message, allegedly from Tammy Moorer, confronted Heather Elvis: "To Heather.. someone's about to get their a-- beat down..." was part of one of many messages presented by officials in the last hearing in March 2014.

Related story: Texts, phone calls unveiled in Heather Elvis case hearing

"In the initial bond hearing, the case had just begun, and the judge denied the bond," McCollum said. "And he specifically left a provision in there that we would be able to come back – after everyone had a chance to review the evidence, prepare the case and look at it, and that option was available."

During next Friday's bond hearing appearance, McCollum also wants to have a judge remove the gag order that severely limits information about the case from being discussed by officials to the public.

McCollum told WBTW he would file paperwork in the coming days about the lifting of the order.

"I can't say a whole lot about it because it exists. And that's the irony of it. I can't talk about really the reasons we'd like it to be lifted because the gag order is in place to keep us from talking about the evidence. That creates some issues for us and we would prefer to be able to speak more freely about the case."

The State

Opposing attorneys in Heather Elvis murder trial confident of their cases

By Tonya Root

troot@thesunnews.comFebruary 2, 2015

Sidney, left, and Tammy Moorer

- Related Links:
- LinkJudge grants bond for couple accused in Heather Elvis case
- LinkMotion filed for speedy trial in Heather Elvis case
- LinkTroopers, prosecutors close part of road near home of couple charged in Heather
- LinkPhoto gallery: Judge grants Moorers' bond

Prosecutors and defense attorneys say they are confident in their respective cases involving a Myrtle Beach couple charged with murder and kidnapping in Heather Elvis' disappearance.

During and after a bond hearing Friday in Charleston for Tammy and Sidney Moorer, attorneys discussed some of the evidence in the case, including a botched DNA test and the witnesses expected to testify during the May 11 trial.

A circuit court judge set bond at $100,000 each for the couple, ordered that they must be GPS monitored, and stay five miles away from the home of Heather Elvis' parents while free on bail.

Tammy Moorer, 42, was released on bail by 5:45 p.m. Friday. Her husband, 39-year-old Sidney Moorer was released about 2 p.m. Monday, according to jail authorities.

Friday's hearing was the third bond request for Tammy Moorer and the second for Sidney Moorer.

Elvis, who was 20 at the time, was reported missing Dec. 19, 2013, after Horry County police found her car, which was registered to her father, parked at the Peachtree boat landing. Elvis' keys, cellphone and purse were not found in the locked car and she remains missing.

She was last heard from the day before.

Assistant Solicitor Nancy Livesay said during Friday's hearing that nothing had changed in their case against the couple other than the original prosecutor assigned to the case had relocated.

"I can tell you with the upmost confidence . . . it it was said at that initial bond hearing it came directly out of the discovery that was provided," Livesay said after accusations by defense attorneys that the evidence didn't add up in the case.

"There has been no substantial change in circumstances from that first bond hearing," Livesay said. "We do believe we have substantial circumstantial evidence."

Circuit Court Judge Markley Dennis asked Livesay if prosecutors had any direct or physical evidence to link the couple to Elvis' disappearance and she said they did not.

"You'll make a judgment call as a professional [regarding the evidence], . . . and you'll decide if you can get by a directed verdict request because that's what you have to do," Dennis said of the evidence in the case.

Both defense attorneys maintained that Horry County police were under pressure to solve the case and did so by arresting the Moorers on indecent exposure charges in February 2014 after Sidney Moorer admitted to being romantically involved with his wife in a vehicle.

Later, charges of murder and kidnapping were filed against the couple. Sidney Moorer also faces an obstruction of justice charge.

Exhibit 9

In June, state officials charged the couple with making a false statement on an application for Medicaid and obtaining a signature or property under false pretenses with a value of $10,000 or more, authorities said.

"The case was not solved. It's not a situation where law enforcement was able to solve the case and then go and arrest the individuals who are responsible for it," said Greg McCollum, Tammy Moorer's attorney. "The arrest of them was designed to solve the case and if they had committed a crime it may have very well worked."

During Friday's hearing, McCollum and Sidney Moorer's attorney, Kirk Truslow, described how prosecutors tried to get the couple to make a statement against each other in exchange for their freedom.

"After they cooperated with the investigation, which produced other leads . . . for whatever reason the prosecutor who previously had this case decided to basically bring shock and awe down on Tammy Moorer," McCollum said in describing 20 to 40 police cars that arrived the day the couple were arrested at their home on Secondary Highway 814.

"It was my understanding that the prosecutor believed that Tammy Moorer was the killer and they were trying to get her husband to give a statement against her," McCollum said. "I told her 'If you say your husband did it, I'm pretty sure you're going to walk out of here.'"

"I was told that," Tammy Moorer said as an interruption during Friday's hearing.

Immediately, Dennis said to Tammy Moorer, "Ma'am be quiet."

Truslow also said his client was asked to make a statement against his wife.

"He said 'I know nothing about this,'" Truslow said. "There is no physical evidence, there is no direct evidence."

Defense attorneys also pointed to a botched DNA test that initially said Heather Elvis had been inside Sidney Moorer's truck.

"Within a couple months, we received information that, guess what, we got direct evidence. We found Heather Elvis' DNA in Sidney Moorer's truck. That was very disconcerting because he had alleged all the time she had not been in that truck," Truslow said. "As it turned out that was a mistake . . . by the lab. It turns out the sample they sent . . . was a sample taken from Heather Elvis' vehicle."

McCollum also told Dennis that "other than the phone call there was really nothing else. The investigation was exhaustive. . . . The evidence isn't there."

The phone call McCollum referred to was one made by Sidney Moorer from a payphone hours before Elvis disappeared. Truslow said of Sidney Moorer, who admitted he had a relationship with the young woman from July to October:

"Mr. Moorer became a suspect in the disappearance of Heather Elvis. This initially appears to be because he had a relationship with Miss Elvis. It was a short-term relation and it had concluded a couple months prior to her disappearance," Truslow said.

"He was interviewed with his wife. They had repaired their marriage. The purpose of him making that phone call was to ask Heather Elvis to please discontinue calling him, please discontinue leaving on my car," Truslow said.

But Livesay said Elvis' coworkers will testify that during a two-hour period the woman received 90 missed phone calls from Sidney Moorer's phone, which were made by the couple. There were other threatening messages sent to Elvis.

"Every message that was threatening to this 20-year-old came from Sidney and Tammy," Livesay said. There's no doubt about it. When you look at the phone records they came from Sidney Moorer's phone."

Dennis then told Livesay that he didn't need to hear about witnesses because those evidentiary issues will be dealt with during trial and the jury will decide if someone is being truthful.

"We're not trying this today. We needed to get the facts in there that were important for my determination," Dennis said during Friday's hearing.

Livesay also told Dennis that Sidney Moorer initially denied speaking to Heather Elvis just before she disappeared.

"He had just contact with her two hours before her disappearance," Livesay said.

Defense attorneys also were concerned about prosecutors retesting evidence and the trial date set for May 11 being delayed.

"Maybe they need more time, so I don't know if May 11 is written in stone if they are still waiting on reports," Truslow said Friday after the hearing. "We are ready to go next week if necessary. I'll be very curious to see what happens May 11."

Contact TONYA ROOT at 444-1723 or on Twitter @tonyaroot.