



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

<b>LESLIE WAYNE HILL,</b>	)
	)
<b>PLAINTIFF,</b>	)
	)
<b>v.</b>	)
	)
<b>SHERIFF MIKE HALE, ET AL</b>	)
	)
<b>DEFENDANTS.</b>	)

**PLAINTIFF'S RESPONSE TO THE DEFENDANT'S MOTION FOR  
 JUDGMENT AS A MATTER OF LAW AND DEFENDANT'S MOTION FOR  
 NEW TRIAL OR REMITTITUR**

Comes Now the Plaintiff in the above styled proceeding, LESLIE WAYNE HILL, by and through his undersigned counsel and hereby responds to the Defendant's motion for judgment as a matter of law and motion for new trial or remittitur by saying the following:

1. The Court did not err in denying WVTM-TV's motions for judgment as a matter of law as to the Plaintiff's claim for defamation.
2. The verdict and judgment in this case are not contrary to state and federal laws and/or constitutional provisions protecting speech on matters of public concern.
3. The Plaintiff presented sufficient evidence to support the elements of his defamation claim.
4. The Plaintiff presented sufficient and substantial evidence for a reasonable jury to find for the Plaintiff and against WVTM-TV on his defamation claim. The jury in this case was certainly reasonable, and it should be noted that the jury returned its verdict in favor of the Plaintiff in less than 30 minutes – which shows that the jury concluded that the evidence was quite substantial in favor of the Plaintiff.
5. The Court did not determine that the December 13<sup>th</sup> broadcast (the retraction) was a fair and impartial report of a matter of public concern.
6. The Defendant is not due judgment as a matter of law.

7. The Defendant relies on the privilege of Section 13A-11-161, *Code of Alabama*, (1975) and a claim of the absence of actual malice. The privilege under Section 13A-11-161 applies only if the publication is fair and impartial.

8. It was clear from the evidence that not only was the December 13<sup>th</sup> retraction not published in the same manner and light as the initial offending broadcast of December 6<sup>th</sup>, but also it was not fair and impartial. The evidence established that the December 13<sup>th</sup> segment of "Catch a Predator" was produced on December 11<sup>th</sup> and WVTM-TV participated in the production of that segment. The evidence further established that the two warrants that were issued against the Plaintiff were recalled on December 10<sup>th</sup> BECAUSE THEY WERE ISSUED BY MISTAKE. Therefore, WVTM-TV knew or should have known that on December 11<sup>th</sup> that the warrants against the Plaintiff were recalled because they were issued by mistake. The jury could have, and did, reasonably conclude from the evidence in this case that WVTM-TV had that information before the December 13<sup>th</sup> newscast.

9. The Plaintiff would state again for the purposes of his response to the Defendants' motions that WVTM-TV participated in the broadcast of the December 6<sup>th</sup> segment of "Catch a Predator." In that broadcast, WVTM-TV and Sheriff Hale called the Plaintiff: a sex offender; a sexual predator; a convicted sex offender refusing to register under SORNA; and a convicted sex offender living too close to a school, implying that he was dangerous to children.

10. The December 13<sup>th</sup> retraction was not included in Sheriff Hale's video portion of the "Catch a Predator" segment. It was a mere afterthought by WVTM-TV. WVTM-TV simply stated that the warrants against the Plaintiff were recalled. There was no statement that the warrants were issued by mistake, nor was there any statement that the Plaintiff was not required to register as a sex offender under SORNA because he was not a sex offender or sexual predator and he was not living too close to a school.

11. The information broadcast by WVTM-TV in the December 6<sup>th</sup> segment of "Catch a Predator" was false, whether or not WVTM-TV knew that it was false at the time. By December 11<sup>th</sup> two days before airing the retraction, WVTM-TV knew or should have known that the information about the Plaintiff that was broadcast on December 6<sup>th</sup> was false. WVTM-TV chose to publish the retraction on its own. The fairness and impartiality

of the December 13<sup>th</sup> retraction should not be judged in a vacuum. It should be judged in the context of the December 6<sup>th</sup> broadcast. There is no way that WVTM-TV can argue that the December 13<sup>th</sup> retraction was in the same manner and light as the December 6<sup>th</sup> broadcast.

12. Freedom of speech and freedom of the press under the 1<sup>st</sup> Amendment and the due process clause of the 14<sup>th</sup> Amendment have never been interpreted as absolute rights without any infringement, allowing citizens and news agencies to say or broadcast whatever they want no matter how offensive or how it violates another person's right of privacy or reputation.

13. The defendant relies on *Wilson v. Birmingham Post Co.*, 482 So. 2d 1209 (1986). *Wilson* involved a newspaper article published in the Birmingham Post-Herald concerning statements made by two Cuban refugees about mistreatment by their Alabama sponsor. The basis of the *Wilson* decision relied on an undisputed issue, that is, that the newspaper article contained a fair and accurate report of the statements made by the two Cuban refugees. Therefore, the Court held that since Wilson was a private citizen in order to prevail on a defamation claim, he had to prove actual or common malice.

14. The *Wilson* decision can be distinguished from the Plaintiff's case. Not only was the December 6<sup>th</sup> broadcast based upon false information, but also the December 13<sup>th</sup> retraction was not fair, accurate or impartial. Although WVTM-TV asserts that both the December 6<sup>th</sup> and 13<sup>th</sup> broadcasts were fair and accurate, the Plaintiff does not concede that issue, nor did the jury agree with the defendant's position.

15. It should be noted that the *Wilson* case held that actual or common law malice can be shown "... by the violence of the defendant's language, the mode and extent of the publication, and the like." Before the "me-too" movement that is currently sweeping the country, what could be more violent language in 2013 than broadcasting over the airwaves that a person is a "sexual predator" when, in fact, he was not.

16. The Plaintiff submits that WVTM-TV was not entitled to the privilege of Section 13A-11-161 as a matter of law. The jury held that the WVTM-TV was not entitled to the privilege, and the jury's verdict was reasonable based upon the evidence in this case.

17. WVTM-TV's two broadcasts were not substantially true as the defendant asserts. Thus, WVTM-TV is not entitled to judgment as a matter of law.

18. The jury's verdict as to liability and damages was reasonable based upon the evidence presented. The jury's verdict is not an infringement on the media 1<sup>st</sup> Amendment rights. In fact, the jury's verdict promotes and safeguards the very core of the 1<sup>st</sup> Amendment. Our country is based on a free press, but it is also necessary that the media act responsibly in disseminating information about its citizens. The media should take some reasonable steps to protect against the broadcast of "fake news," and when the media does broadcast "fake news," the retraction should be in the same context, same manner and light as the offending broadcast. WVTM-TV did fulfill its 1<sup>st</sup> Amendment obligation in the Plaintiff's case.

19. The jury award of \$250,000 was not excessive. It was based upon the nature of the broadcasts and the Plaintiff's testimony of the effect of those broadcasts on him. How much is a person's reputation worth? The jury determined that in the Plaintiff's case, his was worth \$250,000.

20. The Plaintiff disputes each and every allegation set forth in paragraphs numbers 1 through 20 of the Defendant's motion for judgment as a matter of law and argues that said motion should be denied.

21. The Plaintiff disputes each and every allegation set forth in paragraphs numbers 1 through 11 of the Defendant's motion for new trial and argues that said motion should be denied.

22. The Plaintiff disputes each and every allegation set forth in paragraphs 1 through 3 of the Defendants grounds for remittitur and argues that said remittitur should be denied.

23. The Plaintiff incorporates all the evidence presented at trial and all the arguments and objections made by the Plaintiff at trial in support of his position that the Defendant's post-trial motions and remittitur should be denied, and the jury verdict should stand.

**24. The Plaintiff takes specific expectation to WVTM-TV continuing to imply that he is a sex offender and is required to register as a sex offender under Alabama's SORNA law. The Plaintiff is not a sex offender as that term is defined under SORNA, and he is not required to register as a sex offender.**

Wherefore, the Plaintiff respectfully requests the court to deny WVTM-TV's requested post-trial relief and to enter an order affirming the jury verdict in this case.

RESPECTFULLY SUBMITTED,

/s/John C. Robbins  
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**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing has been served upon the following via electronic filing on this 4<sup>th</sup> day of December, 2018:

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