



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
 BIRMINGHAM DIVISION

VIVIAN STERLING, as Mother and	)	
Next of Kin to Jabari Latrell	)	
Peoples, Deceased;	)	
	)	
Petitioner;	)	
	)	CASE NO.: 01-CV-2025-902665
v.	)	
	)	
CITY OF HOMEWOOD, etc., et al.;	)	
	)	
Respondents.	)	

RESPONSE TO SECOND AMENDED RULE 27 PETITION

The City of Homewood responds to Vivian Sterling's second amended Alabama Rule of Civil Procedure 27 petition (Doc 68) under Rules 12(b)(6) and 27.¹ The petition should be dismissed.

In the second amended petition, Ms. Sterling claims her lawyers and family were shown a "different" video than the video seen by Jefferson County District Attorney Danny Carr. But the existence of a "different" video of the shooting of Jabari Peoples, Ms. Sterling's son, is merely unsupported speculation. Ms. Sterling has no evidence that "additional footage" exists, only allegations, which is insufficient under Alabama law.

Ms. Sterling relies on non-existent statements of Mr. Carr, and her counsel's argument is belied by Mr. Carr's published statement. Ms. Sterling admits she has not seen the video shown by Mr. Carr. Even if this non-existent

¹ Homewood also adopts and incorporates its response to and motion to dismiss (Doc 16) the original petition and the first amended petition (Doc 56).

video based on self-serving speculation existed, the second amended petition does not prove a right to Rule 27 preaction discovery based on Alabama precedent with identical determinative facts.

GROUNDS

The second amended petition, like the original and first amended petition, has no substance factually or legally. It is based solely on the confabulation that Mr. Carr withheld a video from Ms. Sterling and her lawyers.

Rule 27's sole purpose is the perpetuation of evidence. *Jackson v. City of Montgomery*, 213 So. 3d 552, 559 (Ala. 2016) ("Under *Ferrari*, the preservation of evidence is the only proper purpose for preaction discovery under Rule 27.") Here, no evidence exists of an additional video, so there is nothing to preserve.

Even if this video did exist, it does not support granting Rule 27 relief. As the second amended petition acknowledges, the purpose of a Rule 27 petition is to preserve evidence where an action cannot presently be brought. But there is no need for a court order to preserve evidence here because Homewood has a statutory duty and a common law duty to preserve the evidence sought by Ms. Sterling. Ala. Code § 41-13-23 (1975); Ala. Code § 36-21-214 (1975); *Smith v. Atkinson*, 771 So. 2d 429 (Ala. 2000) (acknowledging the principles of negligence afford a plaintiff a cause of action if evidence is not preserved.) Any suggestion that a law enforcement agency would alter evidence is at best irresponsible; it is also groundless and potentially defamatory.

The second amended petition states:

Shortly after the family and counsel reviewed the videos, DA Carr detailed a different, detailed version of the video he saw to the media.

In his statement to the media, DA Carr detailed that the video he saw showed what allegedly transpired before the struggle ensued. Clearly, the video shown to the family and counsel differs, or is a shortened version, of the full body-worn camera footage that exists. (See Affidavit of Vivian Sterling attached hereto as "Exhibit C" and Affidavit of Liza Park attached hereto as "Exhibit D").

(Doc 68, ¶ 19.)

The representation that Mr. Carr had a different video from the video shown Ms. Sterling's lawyers and family is egregiously flawed for myriad reasons and cannot serve as a basis for discovery under Rule 27. There is no additional or different video. Evidence of such does not exist.

First, the statements of Mr. Carr, on which Ms. Sterling rests her petition, are not filed by Ms. Sterling in support of the second amended petition. What Mr. Carr is represented to have said is merely a statement in a motion and argument of counsel carrying no evidentiary value. *Fountain Fin., Inc. v. Hines*, 788 So. 2d 155, 157 (Ala. 2000) ("Statements in motions are not evidence and are therefore not entitled to evidentiary weight."); *Ex parte Alabama Dep't of Mental Health & Mental Retardation*, 937 So. 2d 1018, 1026 (Ala. 2006) ("Argument of counsel is not evidence."); *American Nat'l Bank & Trust Co. of Mobile v. Long*, 281 Ala. 654, 656, 207 So. 2d 129, 132 (1968) (noting that an "unsworn statement of counsel was not evidence").

At the hearing on the second amended petition, this Court admonished that the second amended petition had to be based on admissible evidence.

THE COURT: I'm ready, Mr. Maxwell. And also **I would like you to address a concern that I have in terms of what you read for me was from WBRC from Mr. Carr. It's not on record it's not on Alacourt it's not -- we do have a court reporter but it's not -- it**

would not have been admissible in evidence for you to read statements from a newspaper so you're outside the bounds of the evidentiary rules for me to consider when you're reading from WBRC about what Mr. Carr said.

I don't have it on the record. So even if I give you a ruling and, allow it there's nothing on the record and that could easily be overturned without anything on the record from you or from your petitioner demonstrating why the evidence needs to be preserved.

MR. MAXWELL: Yes, Your Honor. As to that concern, Your Honor, I think that could easily be remedied by our petitioner making that statement or attaching an affidavit which would allow them to enter into the record what it is that their concerned about as far as the discrepancies of what it is that Attorney Carr has stated versus what it is that was viewed by the family.

THE COURT: Before you go on, as long as whatever affidavit -- it's got to be based on personal knowledge. It can't have hearsay from Mr. Carr. Okay? So just so you are aware of that, but go ahead.

MR. MAXWELL: Correct, Your Honor. And I think the affidavit would be essentially based off what it is that the family viewed and what their concerns are about what it is that was actually viewed in the video on the day in August when they saw the video. I believe that there would probably be certain hearsay exceptions if it's not for the substance of what's contained in the actually document itself but to the extent that it's an authentic document, Your Honor.

THE COURT: I'll give you a chance to supplement with that, but go ahead.

MR. MAXWELL: Your Honor, as far as our argument, again, much like opposing counsel we do rely on Ferrari and we do rely on Jackson v. The City of Montgomery and we believe that we are distinguishable from those cases in that we didn't march up here asking for unnecessary discovery. ALEA did provide the video to the DA's office. The DA's office did allow us to see the footage which answered quite a few questions for us and here today we are limiting what it is that we're asking for because we don't want to come off or come before the court seeking additional discovery for purposes or for things that could obviously be discovered within a lawsuit.

(Ex. A, Transcript of Sept. 8, 2025 hearing, pp. 63-65.)

The second amended petition complies with none of the Court's directives or Alabama law. What Mr. Carr said at a press conference is inadmissible hearsay. What Ms. Sterling and Liza Park represent in affidavits Mr. Carr supposedly said is inadmissible hearsay (Doc 71 and 72). Ala. R. Evid. 801 – 803.

Further, Ms. Sterling did not witness the video. (Doc 71). What Ms. Sterling represents the video contains is inadmissible because it was learned from "family," a statement of an unidentified declarant. Ala. R. Evid. 801-803; *Zaken v. Boerer*, 964 F.2d 1319, 1323-24 (2d. Cir. 1992) (holding that an out-of-court statement by an unidentified declarant was inadmissible hearsay). Ms. Sterling's statements regarding the video are also inadmissible because of her lack of personal knowledge. Ala. R. Evid. 602.

Here, the second amended petition has no statement from DA Carr, from WBRC, or elsewhere. As the Court noted, the statement is inadmissible hearsay. His press release, however, stated:

August 6, 2025 Press Release

The Officer Involved Shooting investigative report/case file which contained all relevant investigatory information involving Homewood Police Department whereby Mr. Jabari Peoples was shot and killed was delivered to the Jefferson County District Attorney's Office on Friday, August 1, 2025, by the Alabama Law Enforcement Agency/State Bureau of Investigation.

On Wednesday, August 6, 2025, around 2:00 p.m., the family of Mr. Jabari Peoples along with their attorneys came to The Jefferson County District Attorney's Office and were allowed to view the body worn camera footage.

The body worn camera footage, as well as the other evidence reviewed, showed that the Homewood Police Officer was attempting

to detain Mr. Jabari Peoples due to Mr. Peoples having marijuana in his vehicle. The officer asked Mr. Peoples, and the passenger, to exit the vehicle and noticed a gun on the driver's side of the vehicle between the seat and the door frame. The officer attempted to place handcuffs on Mr. Peoples for officer safety. At that time Mr. Peoples began resisting and a tussle ensued. Mr. Peoples was subsequently able to escape from the custody of the officer. Mr. Peoples then ran back to his vehicle where he reached inside and grabbed a gun from the driver's side of the vehicle.

At the time of the shooting Mr. Peoples had the gun in his right hand and the officer fired one shot, hitting Mr. Peoples in the left side of the back causing injury that ultimately caused his death.

I informed the family, ALEA/SBI, Homewood Police Department, and the attorney for the officer involved in the shooting that after a thorough review of the facts and circumstances surrounding this incident, and based upon Sections 13A-3-23 and 13A-3-27(b)(2) of the Alabama Criminal Code, no criminal charges will be filed against the Homewood Police Officer involved in the shooting, nor will the matter be presented to a Grand Jury for its consideration, as this shooting is deemed justified.

(Ex. B.)

Tellingly, Mr. Carr never said that his conclusions were based only on the video as represented by the second amended petition. Mr. Carr's "alleged" representations contained and unsupported in the second amended petition are belied by his actual statements.

Ms. Sterling asks the court to infer that an additional video exists, not on evidence, but on argument of counsel and speculation. Inferences must be reasonable, and not based on speculation. *Fleetwood v. Pacific Mut. Life Ins. Co.*, 245 Ala. 571, 574 (1945) ("We may add that inference means reasonable inference and not mere speculation or conjecture.")

A reasonable inference is defined as follows:

A process of reasoning by which a fact or proposition sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted. A logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts.

Black's Law Dictionary, 6th Edition; *citing Computer Identics Corp. v. Southern Pacific Co.*, 756 F.2d 200, 204 (1st Cir. 1985). This non-existent video does not even amount to speculation, much less a reasonable inference. There is no supporting evidence or logic.

Next, the second amended petition's mantra that documents and evidence may be lost through "passage of time" if Ms. Sterling is not allowed to conduct pre-lawsuit discovery are mere conclusions without any factual basis. According to the U.S. Court of Appeals for the Tenth Circuit, conclusory allegations that evidence may be lost are insufficient to support a Rule 27 petition:

In contrast, general or conclusory allegations that a witness has a faulty memory or might destroy potential evidence typically do not suffice. *See Penn. Mut. Life Ins. Co. v. United States*, 68 F.3d 1371, 1374-75, 314 U.S. App. D.C. 320 (D.C. Cir. 1995) ("**general allegation**" that **prospective deponent is retired and may, "with the passage of time," lose his ability to "recall relevant facts and testify completely" to relevant matters is "not sufficient to satisfy Rule 27"** (internal quotation marks omitted)); *Ash*, 512 F.2d at 913 ("**conclusory remarks**" that "[t]here exists a substantial risk that testimonial evidence will become unavailable if discovery is further postponed" because "[m]emories may fade" **are insufficient** (internal quotation marks omitted)); *Lombard's, Inc. v. Prince Mfg., Inc.*, 753 F.2d 974, 976 (11th Cir. 1985) (statements that witnesses were not "immune from the uncertainties of life (and death)" and unsupported "concern[s]" that they might destroy documents in their possession are insufficient (internal quotation marks omitted)).

Workman v. United States Postal Serv., 127 F.4th 237, 244 (10th 2025). (Emphasis added.)²

There is no evidence that Homewood Police Chief Tim Ross, whose preaction deposition is sought, is sick, retiring, or moving away. At the hearing, the Court asked Ms. Sterling counsel if he had any such evidence, and he failed to respond. (Ex. A, Transcript of Sept. 8, 2025 hearing, pp. 21-22.) Chief Ross is well and going nowhere. Again, the second amended petition has no supporting evidence, merely conclusory allegations, and argument.

As stated in its response to the original petition, the discovery sought by Ms. Sterling is not obtainable under Rule 27.

- The petitions seek documents and testimony obtainable in discovery after commencement of a damages lawsuit, not to perpetuate evidence as required by Rule 27. *Jackson*, 213 So. 3d at 559.
- The documents Peoples seeks are protected from disclosure by a statute and a common law privilege protecting law enforcement investigations. Ala. Code § 12-21-3.1(b) (1975).

The true purpose of the second amended petition was disclosed by Ms. Sterling's counsel at the hearing.

MR. MAXWELL: Your Honor, again this is -- and while we would love for the media, the public, to view the footage I think the family and supporters have been vocal about that.

(Ex. A, Transcript of Sept. 8, 2025 hearing, pp. 32-33.)

² "Cases interpreting the Federal Rules of Civil Procedure can be persuasive authority in construing the Alabama Rules of Civil Procedure because of the similarities between the Alabama rules and federal rules." *QBE Ins. Corp. v. Austin Co.*, 23 So. 3d 1127, 1132 (Ala 2009) (citation omitted).

Finally, “Rule 27(a), Ala. R. Civ. P., explicitly requires a petitioner to show that he or she is presently unable to bring an action or to cause an action to be brought.” *Jackson*, 213 So. 3d at 560. The second amended petition contains an admission that Ms. Sterling already has enough information to bring a claim:

Petitioner intends to pursue a wrongful death and civil rights action against the City of Homewood and John Doe and does not file this Petition as an avenue to “discover” whether a cause of action exists. ***Petitioner is prepared to allege excessive force and other violations based on the information presently available (including eyewitness accounts).***

(Doc 68 ¶4) (emphasis added).

Ms. Sterling’s claim that she cannot “prosecute that action fully” without this information (Doc 68 ¶11) misstates the standard. Ms. Sterling claims to have the required information to sue the City of Homewood now. Any additional information needed may be sought in traditional discovery, subject to relevant objections and privileges.

To repeat, the only legitimate basis for granting a Rule 27 petition is perpetuation of evidence where a lawsuit cannot presently be brought. The second amended petition does not show that need. Ms. Sterling had three bites at the apple. Her petition should be denied.

DATE: September 15, 2025.

Respectfully,

/s/ Wayne Morse, Jr.

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CERTIFICATE OF SERVICE

I certify that on September 15, 2025, I electronically filed the foregoing motion with the Clerk of the Court using the Alafile system which sends notification of such filing to all attorneys of record.

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