



## OFFICE OF THE MERCER COUNTY PROSECUTOR

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*Deputy Chief of County Detectives*

September 12, 2019

VIA FACSIMILE (609) 883-1746  
Honorable Roget T. Haley, P.J.M.C.  
Ewing Municipal Court  
2 Jake Garzio Drive  
Ewing, New Jersey 08628

Re: State v. Kelly Yaede & Daniel Scharfenberger  
Complaint No. S-2019-001819-1103  
Complaint No. S-2019-001820-1103

Dear Judge Haley:

Please accept this letter in lieu of a formal brief in opposition to the defendants' Motion to Dismiss the Complaint in the matter referenced above.

### STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendant Kelly Yaede is the Mayor of Hamilton Township and, at all times relevant to this matter, was running for re-election. Defendant Daniel Scharfenberger was hired by defendant Yaede to be her campaign manager and was acting in that capacity at all times relevant to this matter. On or about March 28, 2019, defendants Yaede and Scharfenberger posted on a website titled: hamiltonnjnews.blogspot.com (hereinafter referred to as the "blog"), which they controlled, an arrest report from 2001 pertaining to a political rival. That arrest record had been expunged on June 27, 2008, by an Order of Expungement granted by the Honorable Darlene J. Pereksta, J.S.C. In that

expungement matter, counsel for the Petitioner, John Doe<sup>1</sup>, properly served the respective agencies with the Order of Expungement on or about July 1, 2008. The Hamilton Township Police Department was served with the Order of Expungement on July 2, 2008. It was learned through later investigation that, in 2008, Hamilton Township Police Deputy Chief George Zimmer was responsible for expungement orders and maintaining proper disposition of those orders. Based on the investigation, it appears that while the notice of expungement was received by the Hamilton Police, it was not appropriately delivered to the records clerk due to Deputy Chief Zimmer's sudden death on July 1, 2008.

It was also learned through investigation that an anonymous Open Public Records Act (OPRA) request, which requested among other things the arrest report at issue, was left on the counter in the Hamilton Township Clerk's Office on or about February 7, 2019. The request was fulfilled by the Records Division Manager at the Hamilton Township Police Department, in part.<sup>2</sup> The responsive documents were kept in an envelope on the counter in the Clerk's Office and were picked up by Marty Flynn, Mayor Yaede's Chief of Staff.

Beginning on or about March 21, 2019, defendants Yaede and Scharfenberger began discussing via a series of text messages when they would disclose the arrest report of John Doe via the blog. Over the course of that day, Scharfenberger drafted a proposed post for the blog regarding John Doe and sent it to Yaede to review. The following day, Yaede re-reviewed the draft blog post and advised Scharfenberger of certain edits she wanted to make, specifically removing a reference to John Doe's tattoos.

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<sup>1</sup> In order to avoid disclosing the identity of the expungement petitioner, and for consistency with defense counsel's brief, the State will refer to that person as John Doe, or Petitioner.

<sup>2</sup> Two of the three records requested related to domestic violence incidents, which are not subject to OPRA, and were denied.



On or about March 23, 2019, Scharfenberger created the Facebook page: Hamilton Spotlight and shared it with Yaede. On March 27, 2019, Scharfenberger resent the proposed blog post regarding John Doe to Yaede and made the edits suggested by Yaede to redact the tattoos/marks section on the arrest report. He stated that once she gave him the "green light", he would make it live. That evening, Scharfenberger published the post on the blog and on the blog's Facebook page, Hamilton Spotlight, then shared the link with Yaede. Scharfenberger continued to monitor the pages, texting a few hours later to Yaede how many views and comments the blog post was receiving. The following day, Yaede and Scharfenberger discussed the impact of their blog post about John Doe and conferred on a public response to the media, ultimately agreeing to publicly deny knowledge and responsibility for the blog and the post.

That same day, John Doe made his own public post on Facebook, wherein he stated that the charges in questions "were dismissed and the arrest vacated and subsequently expunged." Scharfenberger took a screenshot of this post announcing the expungement and sent it to Yaede later that day. Shortly thereafter, Scharfenberger sent Yaede a link to a Trentonian.com news article wherein John Doe made the same declaration, that the arrest record had previously been expunged, and the news article quoted the order of expungement. Defendants continued to conspire to obtain additional arrest records regarding John Doe, including the domestic violence reports which were previously denied via the OPRA request. They also continued to discuss via text John Doe's assertion that the arrest record was expunged, sharing screenshots of his Facebook posts.

On March 29, 2019, Yaede asked Scharfenberger if they could make a public request to John Doe for the expungement papers. On April 1, 2019, Yaede texted Scharfenberger and requested that he ask for the expungement papers from a Trentonian reporter who had already reported that the matter was expunged, which Scharfenberger agreed to do. Yaede asked Scharfenberger again the next day if he received the expungement documents from the reporter, to which he replied no.

From the initial posting on March 27, 2019, John Doe's arrest report remaining published on hamiltonnjnews.blogspot, with links to it appearing on the Hamilton Spotlight Facebook page and Mayor Kelly Yaede's Facebook page.

On May 27, 2019, the Trentonian published another news article which contained a photograph of the cover letter sent by John Doe's attorney when the final Order of Expungement was granted and served on all the parties.

On May 30, 2019, John Doe's attorney, Colin Bell, spoke to Michael Balint, Hamilton Township Attorney, and advised him that a tort claims notice was going to be filed against Hamilton Township for the release of the expunged arrest record. The following day, Bell filed the tort claims notice. On or about June 3, 2019, that tort claims notice was received by the Hamilton Township Municipal Clerk's office.

The Hamilton Township primary election took place on June 4, 2019. Defendant Yaede was successful in her campaign to be the Republican candidate for Mayor in the 2019 general election. On June 5, 2019, investigators from the Mercer County Prosecutor's Office contacted defendant Scharfenberger and scheduled an interview for the following day. On June 6, 2019, prior to his interview, the hamiltonnjnews.blogspot was taken down.

During Scharfenberger's interview, he admitted that he created the hamiltonnjnews.blogspot (Hamilton Spotlight blog) to share content for Yaede's re-election campaign and that they kept that fact from the media as a campaign strategy. Scharfenberger told investigators that he received a packet of documents that included the arrest report in question in late February 2019 at a Hamilton Republican meeting but did not state who gave them to him. He stated that the agreed upon response to the press regarding the expungement claim was that John Doe was lying about the expungement. He also stated that they did not take the posting down once they knew it was expunged because they did not see any physical evidence. At the conclusion of the interview, Scharfenberger signed a Mercer



County Prosecutor's Office Consent to Search Electronic Media form and permitted the investigators to conduct a forensic analysis of his iPhone. The text messages referred to above were obtained from same.

After a thorough review of the evidence, including considerable amounts of electronic data from Scharfenberger's phone, complaints were filed on September 3, 2019, charging Yaede and Scharfenberger each with one count of disclosure of an expunged record, in violation of N.J.S.A. 2C:52-30, a disorderly persons offense. On September 4, 2019, counsel for Yaede filed a Notice of Motion to Dismiss the Complaint. On September 9, 2019, counsel for Scharfenberger filed a Notice of Motion to Dismiss the Complaint. For purposes of expediency, and since the defendants' claims are similar, the State will address both motions in this brief.

## LEGAL ARGUMENT

### POINT I

#### THE ARREST RECORD WAS PROPERLY EXPUNGED PURSUANT TO A VALIDLY ISSUED ORDER

In New Jersey, expungement of an arrest and/or conviction record is a statutory creation of the Legislature. N.J.S.A. 2C:52-1, et seq. This remedy is a creation of law. It is not an equitable remedy subject to judicial interpretation and equitable principles cannot be applied. In re F.A.U., 190 N.J. Super. 245, 247-248 (App. Div. 1983), cited with approval in State v. A.N.J., III, 98 N.J. 421, 427 (1985); State v. T.P.M., 189 N.J. Super. 360, 367-368 (App. Div. 1983); E.A. v. N.J. Real Estate Comm., 208 N.J. Super. 65, 68 (App. Div. 1986), certif. den. 104 N.J. 415 (1986); State v. Blazanin, 298 N.J. Super. 221, 226, 229 (App. Div. 1997); IMO Application of Hart, 265 N.J. Super. 285, 292-293 (Law Div. 1993).

Expungement is not an automatic remedy or entitlement. Persons seeking expungement must apply for and receive an Order for Expungement. State v. Petti, 142 N.J. Super. 283, 286-7 (App. Div. 1976). Once an Order for Expungement is granted, filed and properly served on all parties required

to be given notice, the person whose record has been expunged can answer any question concerning that matter as if it never occurred. N.J.S.A. 2C:52-27. The nature of an Order for Expungement is such that not only do the records of the petitioner become expunged, but the Order for Expungement becomes part of the expunged file.

Defendant claims that the records at issue were not expunged records within the meaning of the statute until after the blog was taken down and thus the complaint must be dismissed as a matter of law. Defendant begins by mischaracterizing the definition of an expungement as the definition of an expunged record. The difference is small, but distinct. The defendant cites N.J.S.A. 2C:52-1a, which defines the process of an expungement, not what an expunged record is.

As is clearly set forth in N.J.S.A. 2C:52-27, "if an order of expungement is granted, the arrest, conviction, and any proceedings related thereto shall be deemed not to have occurred...." Therefore, contrary to defendant's claim, it is the granting of the expungement by the court which constitutes an expungement, not the sealing and removal of records. Once an order is granted by the court, all records specified in the order shall be removed by agencies which are notified, as directed by N.J.S.A. 2C:52-15a. It is this second step that was not completed by Hamilton Township Police Department. However, the failure of the Hamilton Township authorities to properly follow the court's order of expungement does not negate the court's order.

Defendant contends that a record of an arrest or conviction is not expunged until the records are extracted and isolated. However, the statute is clear that once an Order of Expungement is granted, the expungement is effective. What defendant suggests is that ignoring a court order, whether intentional or not, invalidates that order, which would completely undermine judicial authority and the effect of a court order. The expungement statute is clear that the expungement is effective when it is granted, not when the records are removed. Therefore, the arrest record at issue was deemed expunged because there was a validly issued order.



POINT II

DISCLOSURE OF AN EXPUNGED RECORD IS A VIOLATION OF N.J.S.A. 2C:52-30, AND THERE IS NO POLITICAL CAMPAIGN EXCEPTION

Defendants claim that they cannot be prosecuted under N.J.S.A. 2C:52-30 for revealing lawfully obtained records. Defendants rely on G.D. v. Kenny, 205 N.J. 275 (2011), a Supreme Court case dealing with a civil defamation case. While the facts are similar, G.D. did not deal with a criminal prosecution under N.J.S.A. 2C:52-30.

In G.D. v. Kenny, opponents of a political candidate issued campaign flyers which criticized him for hiring someone with a criminal record, G.D., calling G.D. a drug dealer. Id. at 282. G.D. filed a civil lawsuit claiming defamation, violation of privacy and other related torts. Defendants asserted truth as a defense. Id. G.D. had in fact been convicted of a drug charge and sentenced to a prison term but successfully petitioned for expungement of his criminal record years later. Id. Defendants argued that G.D.'s conviction was a public fact before he obtained the expungement and publication of that fact during a political campaign was a legitimate exercise of their free speech rights. Id. Since truth is a defense to the claims of defamation, intentional and negligent infliction of emotional distress, false light, invasion of privacy and civil conspiracy, the accuracy of the flyers was at issue. The Appellate Division held that expungement of a public record does not, for purposes of defamation and other related torts, render false a public fact. The Supreme Court agreed that truth was a permissible defense to a defamation action despite the expungement of a record of conviction.

It is clear that G.D. v. Kenny is distinguishable on several grounds. First, it was a civil defamation action, not a criminal prosecution. In any defamation action, truth is a defense. The court determined that the expungement of G.D.'s record did not make the defendants' statements about that record "false." Id. at 288. Second, the information put forth by defendants was in the form of statements about G.D.'s prior arrest, conviction and prison sentence. There were no court

records or arrest documents that were publicized. It was information that was learned by the defendants after G.D. obtained the expungement but there is no indication how that information was learned. The person who obtained the information denied knowledge of the expungement. The comments disparaging G.D. were put into self-published flyers by the defendants but no actual records were released.

The Court's opinion is clear that they were determining whether the expungement statute negates truth as a defense to a defamation action when a person published information about an expunged conviction. The Court was looking at the facts from the perspective of what violates a reasonable expectation of privacy, not enforcement of a statute alleging a criminal offense. In that context, the Court determined that the law of defamation focuses on substantial truth and therefore the main issue was whether the statements in the flyers were false or substantially accurate. In determining that truth, the Court found that obtaining an expungement does not permit the "wholesale rewriting of history." *Id.* at 295. Accordingly, the Court held that one of the exceptions in the expungement statute was applicable in a defamation action. N.J.S.A. 2C:52-19 permits the inspection of expunged records if the Superior Court finds "good cause shown and compelling need based on specific facts" and "only in those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings." *Id.* at 296. Such was the case in G.D. v. Kenny, therefore the Court allowed defendants access to those records to establish truth as a defense.

Defendant relies on dicta in the opinion referring to N.J.S.A. 2C:52-30 to suggest that defendants here are not subject to the statute because they lawfully obtained the records. The Court opined that while certain government agencies having custody of expunged records are bound by the statute, a literal and overbroad reading of the statute likely would violate free-speech rights. *Id.* at 299. The State strongly disagrees with defendants' suggestion that 2C:52-30 would never apply to



anyone who reveals an expunged record in a political context even if the expungement was not known. Such an exaggeration cannot possibly have been contemplated by the Court as it would completely negate any criminal liability under the statute.

Here, although the State cannot show that defendants knew of the expungement when the records were obtained and first posted to the blog and Facebook, defendants learned of the expungement shortly after. What is notable is that even after learning from John Doe and other public sources that that the arrest record was expunged, defendants continued to publish this arrest report on the public sites. Thus, they revealed “the existence of an arrest ... with knowledge that the records and information pertaining thereto [had] been expunged”, which is a violation of N.J.S.A. 2C:52-30.

Defendant also points out that John Doe conducted a press conference in March 2019 wherein he disclosed his prior arrest. This does not release defendants of their responsibility under the law to refrain from revealing expunged records. While a petitioner may choose to disclose the existence of his/her expunged record, the provisions of the expungement statutes do not permit criminal justice entities or the judiciary who have been served with an Order for Expungement to release any information pertaining to the expungement, or for that matter to even acknowledge the existence of the expunged record. See, N.J.S.A. 2C:52-15 & -16. In the absence of a court order under N.J.S.A. 2C:52-19, any release of information will expose the person involved to being charged as a disorderly person under the provisions of N.J.S.A. 2C:52-30. Moreover, what defendant fails to acknowledge, was that this was done only after – and in direct response to – defendants publishing the arrest report on their website.

Finally, defendant Yaede claims that as a private citizen, she was not subject to the expungement order and was not obligated to take the blog post down upon gaining knowledge of that expungement order. This argument is misplaced. Based on the facts of this case, the arrest was

already deemed expunged prior to defendant posting the arrest record. Had the blog been in existence prior to the John Doe obtaining the expungement order, a private citizen would not have a duty under the law to remove the post. Such is the case for media outlets that print or post news articles about arrests that may later be expunged. But the defendants here published the arrest records *after* the expungement was effective. Therefore, upon gaining knowledge that the record of the arrest had previously been expunged, defendants had a duty to remove the posting.

Additionally, defendant Yaede is hardly a private citizen in this situation. She is the sitting Mayor of Hamilton Township and, the State submits, has a greater obligation than a private citizen to protect the privacy interests of the residents of Hamilton Township. Perhaps not the same obligation as any other member of the law enforcement agencies because she is a civilian, but as Mayor and Director of Public Safety for the Township, she is a public employee. Moreover, she was using her status as Mayor to publish – and republish – the arrest record via her Mayor Yaede 2019 Facebook page.



POINT III

DEFENDANTS HAD REQUISITE KNOWLEDGE THAT THE RECORDS  
WERE EXPUNGED

Defendant next claims that the Notice of Tort Claim filed with Hamilton Township did not give her knowledge that the records were expunged. To be found guilty of this violation of N.J.S.A. 2C:52-30, defendants must have “knowledge that the records and information pertaining thereto have been expunged or sealed.” As noted by the defendant, a person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, of that such circumstances exists, or he is aware of a high probability of their existence. Knowledge is a condition of the mind that cannot be seen and can be determined only from inferences from conduct, words or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he acted with a particular state of mind. Proof of knowledge can be furnished by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

The proof of the defendants’ knowledge can be inferred from their acknowledgment of John Doe’s announcement that the records were expunged, which they learned the day after the arrest record was posted on the blog, and which they proceeded to discuss in several texts. In addition to that, they shared and viewed the Trentonian.com news article that furthered John Doe’s claim of expungement, and also provided proof of the Order of Expungement by way of the letter from John Doe’s attorney which accompanied the final Order when it was served to all parties. There are multiple text conversations after that wherein the defendants discussed how they could obtain a copy of the expungement papers. Furthermore, when Hamilton Township was advised by John Doe’s attorney that a tort claims notice was being filed for releasing expunged records, and that tort claims notice was received by the Township Clerk, defendant Yaede was certainly on notice that the

records she and Scharfenberger released via the blog were expunged records. It is beyond a stretch of the imagination that the Mayor of Hamilton Township was not made aware of this particular tort claims notice, either by the Township Attorney or the Municipal Clerk, when it was filed by her political adversary and so directly related to her ongoing campaign. All of these inferences together support the State's contention that the defendants were aware that their conduct was in violation of the statute – that is, that they revealed expunged records – or that there was high probability that those circumstances existed.

To clarify, the State does not concede that there was no record of expungement at the Hamilton Township Police Department at the time of the posting. The order of expungement was in fact received by the agency, as evidenced by the green card receipt from July 2, 2008. However, it was not delivered to the records clerk in order to process the expungement by isolating and sealing the records.



#### POINT IV

#### BOTH DEFENDANTS WERE RESPONSIBLE FOR RECORDS POSTED ON BLOG

Defendant Yaede contends that there is no evidence that she posted the expunged records on the blog. Her argument is belied by her own words, or texts. In multiple text conversations with co-defendant Scharfenberger and others, defendant Yaede discussed obtaining John Doe's records, when they would be posted and what information to redact from the arrest report. Once it was posted, there were more discussions via text about reviewing the public post and sharing it on Facebook. In fact, text conversations between Yaede and Scharfenberger are replete with her directing him what to say and when to say it. In addition to their texts about publicizing John Doe's arrest record, there are numerous other occasions where Scharfenberger asks for Yaede's input and approval before posting items to the blog. All of these demonstrate that Yaede was coordinating and managing the site with Scharfenberger.

By his own admission, co-defendant Scharfenberger was the one who created the blog and the Hamilton Spotlight Facebook page. He may have been the one making the keystrokes, but by her own words, defendant Yaede was clearly orchestrating whatever her campaign manager was going to post. It is this ability to control the content that makes her subject to the criminal violation for posting an expunged record.

CONCLUSION

For the aforementioned reasons, the State respectfully requests that defendants' Motion to Dismiss the Complaint be denied.

Respectfully submitted,



Kathleen M. Petrucci  
Supervising Assistant Prosecutor  
Attorney No. 023641998

cc: Robin Kay Lord, Esquire (via email - [robin@robinlordlaw.com](mailto:robin@robinlordlaw.com))  
Edward C. Bertuccio, Esquire (via email - [Ted@kmhlawyers.com](mailto:Ted@kmhlawyers.com))  
Maryann Convenio, Court Administrator



Ewing Township Municipal Court  
2 Jake Garzio Dr.  
Ewing, NJ 08628  
609-883-2900

STATE OF NEW JERSEY

PLAINTIFF

vs.

DANIEL SCHARFENBERGER

DEFENDANT

HAMILTON TOWNSHIP  
MUNICIPAL COURT  
(Transferred to Ewing  
Township Municipal Court)


Complaint No: S-2019-001820

ORDER

IT IS ON THIS 10<sup>th</sup> DAY OF SEPTEMBER 2019, ORDERED that the State provide discovery requested pursuant to R. 7:7-7 by September 13, 2019.

PLEASE TAKE FURTHER NOTICE that all parties are required to appear in Ewing Township Municipal Court for a pre-trial conference on September 19, 2019 at 12:30 pm. If the discovery issue is not resolved by that date, the defendant's Motion will be heard at that time together with any other pre-trial motions raised by the parties.

September 10, 2019

  
\_\_\_\_\_  
Roger T. Haley, P.J.M.C.

KALAVRUZOS MUMOLA HARTMAN & LENTO  
A LIMITED LIABILITY COMPANY

**KMH&L**  
ATTORNEYS AT LAW

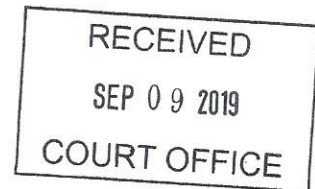
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| www.kmhlawyers.com    | Brian J. Duff      | Edward Bertuccio §  |
|                       |                    | Audrey P. Blackburn |

§Certified Criminal Trial Attorney \*Admitted in NJ & NY \*\*Admitted in NJ & PA ‡Admitted in NJ, PA & DC

September 9, 2019

**VIA HAND DELIVERY**

Clerk of Ewing Township Municipal Court  
2 Jake Garzio Drive  
Ewing, NJ 08628



Re: *State of New Jersey v. Daniel Scharfenberger*  
Complaint No.: S 2019 001820 1103

Dear Sir/Madam:

Please be advised that our office has been retained by Daniel Scharfenberger with regard to the above referenced case. Please note that this was a matter that was transferred over from Hamilton Township Municipal Court.

Enclosed please find an original and two (2) copies of our Notice of Motion to Dismiss the Complaint in the above-matter. Please file same and return to our office a stamped filed copy in the enclosed self-addressed stamped envelope.

Should you have any questions or concerns, regarding this matter please do not hesitate to contact us.

Very Truly Yours,

**KALAVRUZOS, MUMOLA,  
HARTMAN & LENTO, LLC**

A handwritten signature in cursive script that reads "Edward Bertuccio".

By: \_\_\_\_\_  
EDWARD C. BERTUCCIO, ESQ.

ECB/tmr

cc: **Honorable Roger T. Haley, P.J.M.C.**  
Kathleen Petrucci, Mercer County Assistant Prosecutor  
Robin Kay Lord, Esq.



KALAVRUZOS MUMOLA HARTMAN & LENTO  
A LIMITED LIABILITY COMPANY

**KMH&L**  
ATTORNEYS AT LAW

|                       |                    |                     |
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|                       |                    | Audrey P. Blackburn |

§ Certified Criminal Trial Attorney \* Admitted in NJ & NY \*\* Admitted in NJ & PA † Admitted in NJ, PA & DC

September 9, 2019

**-SENT VIA HAND DELIVERY, FACSIMILE AND REGULAR MAIL-**

Honorable Roger T. Haley, P.J.M.C.  
Ewing Township Municipal Court  
2 Jake Garzio Drive  
Ewing, NJ 08628

Re: **State v. Daniel Scharfenberger**  
Complaint No. S-2019-001820 (Transferred from Hamilton Township Municipal Court)

Dear Judge Haley:

Please accept this letter brief in lieu of a more formal brief seeking the proposed relief.

As to the law, R. 3:3-1 and Gerstein v. Pugh, 420 U.S. 103 (1975) command that a probable cause hearing occur forthwith.

Under G.D. v. Kenny, 205 N.J. 275 (2011) the disclosure of the records in question in a political campaign is permitted despite the alleged expungement.

Therefore, the complaint should be dismissed.

Respectfully submitted,

**KALAVRUZOS, MUMOLA,  
HARTMAN & LENTO LLC**

By:

  
EDWARD C. BERTUCCIO, ESQ.

ECB/tmr

cc: Kathleen Petrucci, Mercer County Assistant Prosecutor  
Robin Kay Lord, Esq.

**Edward C. Bertuccio, Esq. – Attorney ID# 031441983**  
**KALAVRUZOS, MUMOLA, HARTMAN & LENTO, L.L.C.**  
2681 Quakerbridge Road  
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(609) 586-9000, Fax (609) 586-9404  
Attorneys for Defendant

STATE OF NEW JERSEY

Plaintiff,

vs.

DANIEL SCHARFENBERGER

Defendant.

HAMILTON TOWNSHIP MUNICIPAL  
COURT (TRANSFERRED TO EWING  
TOWNSHIP MUNICIPAL COURT)

COMPLAINT SUMMONS NO. S-2019-  
001820-1103

**NOTICE OF MOTION TO DISMISS THE  
COMPLAINT FOR LACK OF PROBABLE  
CAUSE UNDER R. 3:3-1 AND GERSTEIN  
v. PUGH, 420 U.S. 103 (1975)**

To: Clerk of Ewing Township Municipal Court  
2 Jake Garzio Drive  
Ewing, NJ 08628

Honorable Roger T. Haley, P.J.M.C.  
Ewing Township Municipal Court  
2 Jake Garzio Drive  
Ewing, NJ 08628

Kathleen Petrucci, Mercer County Assistant Prosecutor  
Mercer County Prosecutor's Office  
1589 Lambertson Road  
Trenton, NJ 08611

Robin Kay Lord, Esq.  
Law Office of Robin Kay Lord, LLC  
210 S. Broad Street, Suite B  
Trenton, NJ 08608-2407

**PLEASE TAKE NOTICE** that on a date and time to be set by the Court, the  
defense shall move before the Honorable Roger T. Haley, J.S.C. for an Order:

- 1) To conduct a probable cause hearing; and
- 2) Dismissing the complaint for lack of probable cause.

{00134277.}

In support of said motion, the defense shall rely on the attorney's certification in lieu of affidavit of the undersigned and letter brief. An original and 3 copies of the proposed form of Order is attached.

**KALAVRUZOS, MUMOLA,  
HARTMAN & LENTO, LLC**

Dated: September 9, 2019

By:   
EDWARD C. BERTUCCIO, ESQ



**Edward C. Bertuccio, Esq. – Attorney ID# 031441983**  
**KALAVRUZOS, MUMOLA, HARTMAN & LENTO, L.L.C.**  
2681 Quakerbridge Road  
Hamilton, New Jersey 08619  
(609) 586-9000, Fax (609) 586-9404  
Attorneys for Defendant

STATE OF NEW JERSEY

Plaintiff,

vs.

DANIEL SCHARFENBERGER

Defendant.

HAMILTON TOWNSHIP MUNICIPAL  
COURT (TRANSFERRED TO EWING  
TOWNSHIP MUNICIPAL COURT)

COMPLAINT SUMMONS NO. S-2019-  
001820-1103

**ATTORNEY CERTIFICATION OF  
EDWARD C. BERTUCCIO, ESQ.**

**Edward C. Bertuccio, Esq.**, hereby certifies as follows:

1. I am an attorney at law in the State of New Jersey at the law firm of Kalavruzos, Mumola, Hartman & Lento, LLC, attorneys for Defendant, Daniel Scharfenberger, in the above referenced matter. I am the attorney entrusted with the handling of this matter and am fully familiar with the facts set forth herein. I make this Certification in support of the Defendant's Motion to Dismiss the Complaint for Lack of Probable Cause under R. 3:3-1 and Gerstein v. Pugh, 420 U.S. 103 (1975).
2. On September 3, 2019, Defendant Daniel Scharfenberger was charged in Complaint Summons No. S-2019-001820-1103 with violation of the non-disclosure rule in the expungement statute N.J.S. 2C:52-30.
3. In fact, in reply to an OPRA request, the records were released because Hamilton Township Police Department did not effect the sealing of the records.
4. So N.J.S. 2C:52-30 was not in effect or violated when the records were released.
5. For the reasons set forth in the accompanying letter brief, defendant did not violate the law.

{00134277.}

6. Therefore, no probable cause exists to sustain the complaint. It must be dismissed.

I hereby certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment

**KALAVRUZOS, MUMOLA,  
HARTMAN & LENTO, L.L.C.**

By:

  
EDWARD C. BERTUCCIO, ESQ.

Dated: September 9, 2019

**Edward C. Bertuccio, Esq. – Attorney ID# 031441983**  
**KALAVRUZOS, MUMOLA, HARTMAN & LENTO, L.L.C.**  
2681 Quakerbridge Road  
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(609) 586-9000, Fax (609) 586-9404  
Attorneys for Defendant

STATE OF NEW JERSEY

Plaintiff,

vs.

DANIEL SCHARFENBERGER

Defendant.

HAMILTON TOWNSHIP MUNICIPAL  
COURT (TRANSFERRED TO EWING  
TOWNSHIP MUNICIPAL COURT)

COMPLAINT SUMMONS NO. S-2019-  
001820-1103

**CERTIFICATION OF SERVICE**

I hereby certify that the enclosed Notice of Motion and proposed form of Order have been delivered via courier and filed with the Clerk of the Ewing Township Municipal Court, 2 Jake Garzio Drive, Ewing, NJ 08628; delivered via courier to the Honorable Roger T. Haley, P.J.M.C., Ewing Township Municipal Court, 2 Jake Garzio Drive, Ewing, NJ 08628; delivered via regular mail and email to Kathleen Petrucci, Mercer County Assistant Prosecutor, Mercer County Prosecutor's Office, 1589 Lambert Road, Trenton, NJ 08611; delivered via regular mail and email to Robin Kay Lord, Esq., Law Office of Robin Kay Lord, LLC, 210 S. Broad Street, Suite B, Trenton, NJ 08608-2407 and to Daniel Sharfenberger via regular mail and email.

I hereby certify that the foregoing statements made by me are true, I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**KALAVRUZOS, MUMOLA,  
HARTMAN & LENTO, LLC**

Dated: September 9, 2019

By:

  
**EDWARD C. BERTUCCIO, ESQ.**

{00134277.}



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STATE OF NEW JERSEY  
  
Plaintiff,  
  
vs.  
  
DANIEL SCHARFENBERGER  
  
Defendant.

HAMILTON TOWNSHIP MUNICIPAL  
COURT (TRANSFERRED TO EWING  
TOWNSHIP MUNICIPAL COURT)

COMPLAINT SUMMONS NO. S-2019-  
001820-1103

**PROPOSED FORM OF ORDER FOR: 1)  
PROBABLE CAUSE HEARING and 2)  
DISMISSAL OF THE COMPLAINT**

This matter having been opened to the Court before the Honorable Roger T. Haley, P.J.M.C. on Defendant Daniel Scharfenberger’s Motion as set forth above, and on notice to the municipal prosecutor and co-counsel, and the Court having considered the papers of the parties and testimony or argument in Court; and for good cause shown, it is on this \_\_\_\_ day of \_\_\_\_\_, 2019

**HEREBY ORDERED** as follows:

- 1) The hearing for probable cause is granted; and
- 2) The Complaint is dismissed.

**IT IS FURTHER ORDERED** that a copy of the within Order be served upon all parties within \_\_\_\_\_ days of the date hereof.

\_\_\_\_\_  
Hon. Roger T. Haley, P.J.M.C.