

**CIRCUIT COURT OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT
HAMILTON COUNTY**

ASHLEY N. BURGESS,)
)
 Plaintiff,)
)
 v.)
)
 CHARLES D. LAWSON,)
)
 Defendant.)

Case No. 09C786

Judge Thomas W. Graham

10 APR - 9 PM 2:47
FILED IN OFFICE, CLERK
PAULA THOMPSON
BY
DC

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Charles D. Lawson, by and through counsel and pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, hereby moves the Court for the entry of an order granting summary judgment in his favor and against Plaintiff Ashley N. Burgess. In support of this motion, Mr. Lawson relies upon the simultaneously submitted Memorandum of Law in support of this motion and the Statement of Uncontroverted Material Facts in support of this motion. In addition, Mr. Lawson relies upon the following:

- The Affidavit of Lori Fulmer, with exhibits, which is attached hereto as Exhibit A and is herein incorporated by reference;
- The Affidavit of Amber Kindred, which is attached hereto as Exhibit B and is herein incorporated by reference;
- The Affidavit of Nick Andrews, with exhibit, which is attached hereto as Exhibit C and is herein incorporated by reference;
- The Affidavit of Kristen Wright, which is attached hereto as Exhibit D and is herein incorporated by reference; and

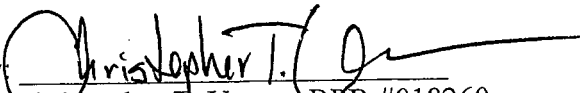
- The Verified Answer of Charles D. Lawson, with exhibits (including the Affidavit of Tracy Vandergriff, the Affidavit of Jonathan Vickery, and the Affidavit of Heather McRoy).

For grounds, Mr. Lawson shows that he did not sexually assault Plaintiff on June 14, 2008. (Andrews Aff. ¶ 3, Ex. 1; Kindred Aff. ¶ 9; McRoy Aff. ¶¶ 8-10; Verif. Answer ¶ 13.) With the affirmative proof that Mr. Lawson is presenting on that issue, the burden of production shifts to Plaintiff to show that there is a genuine issue of material fact as to whether the alleged sexual assault occurred. Because Plaintiff has given multiple inconsistent and contradictory accounts regarding the events of June 14, 2008, the rule of cancellation bars Plaintiff as a matter of law from relying on her own statements to create a genuine issue of material fact regarding the occurrence of the alleged sexual assault. As a result, Mr. Lawson is entitled to the entry of judgment as a matter of law in the absence of any other legally cognizable proof.

For all the foregoing reasons, Mr. Lawson respectfully requests that the Court enter an order granting him judgment as a matter of law against Plaintiff.

Respectfully submitted,

GEARHISER, PETERS, CAVETT, ELLIOTT
& CANNON, PLLC

By: 
Christopher T. Varner, BPR #018260
320 McCallie Avenue
Chattanooga, Tennessee 37402
Tele: 423.756.5171
Fax: 423.266.1605

Attorneys for Defendant Charles D. Lawson

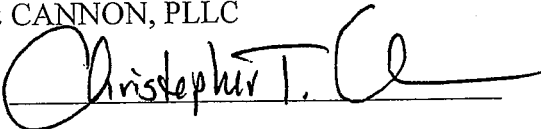
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing pleading has been served upon all parties of record or their counsel in this case by delivery to the address of said parties or their counsel, or by placing the same in the United States mail addressed to the parties or to the office of their counsel, postage prepaid as follows:

Darren G. McBride
3496 Brainerd Road
Chattanooga, TN 37411

This 9 day of April, 2010.

GEARHISER, PETERS, CAVETT, ELLIOTT
& CANNON, PLLC

By: 

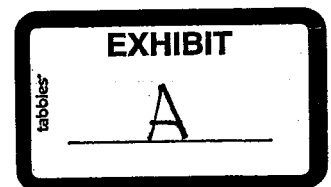
AFFIDAVIT OF BIG RIVER GRILLE DOCUMENT CUSTODIAN

STATE OF TENNESSEE)

COUNTY OF HAMILTON)

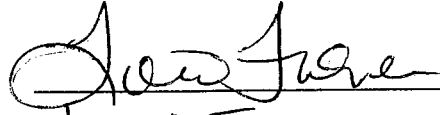
I, Lori Fulmer, having been first been duly sworn, hereby testify and make affidavit as follows:

1. I am over the age of 18 years, and am competent to testify to and have personal knowledge of the facts herein contained, unless otherwise expressly stated.
2. I am a custodian of records relating to Big River Grille.
3. As a part of an investigation made by Big River Grille of allegations made by an employee of Big River Grille, Ashley Burgess, relating to an alleged incident at Big River Grille on June 14, 2008, statements were taken from Ms. Burgess regarding the events of June 14, 2008.
4. A true and correct copy of the handwritten statement of Ashley Burgess regarding the events of June 14, 2008, taken shortly thereafter is attached hereto as Exhibit 1 and is herein incorporated by reference.
5. A true and correct copy of Ashley Burgess' account of the events of June 14, 2008, given telephonically on June 19, 2008, is attached hereto as Exhibit 2 and is herein incorporated by reference.
6. The above-referenced statements regarding the events of June 14, 2008, provided by Ashley Burgess were procured from Ms. Burgess shortly after June 14, 2008, were kept and maintained by Big River Grille as a regularly conducted activity pursuant to the regular practice of Big River Grille, and constitute a part of the investigative file of Big River Grille relating to



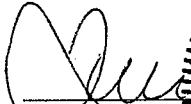
the alleged incident at Big River Grille between Ashley Burgess and Charles D. Lawson on or about June 14, 2008.

FURTHER AFFIANT SAITH NAUGHT.

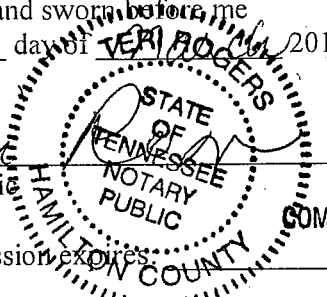


Lori Fulmer (print name)
Authorized Agent

Subscribed and sworn before me
On this 31 day of DECEMBER, 2010.



Notary Public



My Commission expires: COMM. EXP. 08-25-2012

Ashley Burgess statement -

I was doing security on the night of June the 14th. I noticed Chuck because he was being loud and wild bringing beer outside of the bar area. I ~~told~~^{asked} him to set down his glass and he did the first time, when he was done with his cigarette he went back inside. As the night went on he came back out with the same glass and broke the rules again. I saw him approach ladies that he had apparently befriended inside the bar and touch them on there butts and private areas. I told my co-worker Nick who was also working the door how disgusted I was. ~~He~~ ~~was~~ I suggested food to Chuck to help with his drunkenness, but he refused. ~~As~~ He kept ~~saying~~ telling me how gorgeous I was and ~~started~~ started play hitting me while I was trying to check i.d.s. He proceeded to walk up to me and whisper how gorgeous I was and put his hands in between my legs. He touched my body like a lover would and pulled my hair shots when Amber came outside and asked him what he was

EXHIBIT

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doing. He then walked up to her and touched her arms and told me to "shut up" because they were having a conversation. I proceeded to check i.d.s and realized Chuck had his beer in a bluewater glass. I told him he couldn't go in with it hoping he would finish and leave for the night. I watched his actions close and told the situation to my manager Jenea. He was then asked to leave and I continued with my night. The police were contacted and ~~they~~ ^{they took} my statement.

Name ___ Ashley Burgess

SS# _____

Location _ Big River - Downtown

Date	NOTES
6/19/2008	Ashley called me to discuss the incident that took place on Saturday the 14th.
	Ashley said she was working security at the front door of Big River the night of Riverbend
	She stated that "chuck created a lot of problems at Big River when he's there"
	She said that he was trying to bring his beer out of Bluewater in to Big River and she was trying
	to tell him that he couldn't do that, he was belligerent , grabbed her between her legs, grabbed
	her head and started banging it on the door. She stated she felt violated. Police came and
	escorted him off the premises.
	She said that the Manager, Tenesa Pickett, stood there with her the entire time and that co-
	worker Amber Kindred witnessed everything.
	Ashley said as long as Mr. Lawson is banned from coming back to our restaurants that she
	felt like we handled the situation for her. She stated she was taking a week off this week to get
	ABC Card and she's glad it worked out that way to give her this week to handle this situation
	because she feels like everyone is talking about it around the restaurant and she hopes it
	doesn't affect her job.
	She said that she had a situation that had happened in her past that she was raped by her
	step father when she was 2 so she felt passionate about this that she couldn't let it go. She
	said she was going to have to visit her therapist
	She said her attorney was Darren McBride ("like a 2nd father to her")
	She seemed satisfied with the way management handled the situation and that there was
	nothing more she needed us to do at this time.

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**CIRCUIT COURT OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT
HAMILTON COUNTY**

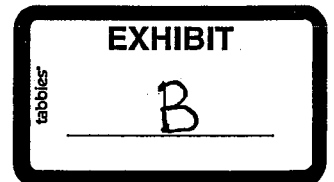
ASHLEY N. BURGESS,)	
)	
Plaintiff,)	
)	No. 09C786
v.)	
)	
CHARLES D. LAWSON,)	
)	
Defendant.)	

AFFIDAVIT OF AMBER KINDRED

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

The undersigned, Amber Kindred, having first been duly sworn according to the law, hereby testify as follows based on my personal knowledge.

1. I am over the age of 18 years, and am competent to testify to the facts contained herein, unless otherwise expressly stated.
2. On the night of June 14, 2008, I was working at Big River Grille at 222 Broad Street, Chattanooga, Tennessee.
3. June 14, 2008, was the last night of Riverbend.
4. Ashley Burgess was also working that same night at Big River Grille, and she was posted at the front doors leading out to Broad Street that are immediately adjacent to Bluewater Grille which is located at 224 Broad Street.
5. I was working as a server that night, but at various times I would go over to the front doors where Ashley Burgess was posted to help her because I had a good bit of experience performing that function at Big River Grille.



6. At some point between approximately 10:30 p.m. and 11:00 p.m. that night, I came over to the front doors where Ashley Burgess was posted, and Chuck Lawson was attempting to enter Big River Grille with a beer in a Bluewater glass.

7. I observed Mr. Lawson and Ms. Burgess being very friendly with each other, with Ms. Burgess calling Mr. Lawson names like "Babe," "Hon," and "Sweetie."

8. Mr. Lawson complied with her request not to bring the beer from Bluewater into Big River Grille.

9. From personal observation, I know for a fact that at no time during the encounter did Mr. Lawson slam Ms. Burgess up against a brick wall or touch her genitals.

10. Mr. Lawson and Ms. Burgess remained friendly with each other throughout the entirety of the encounter.

11. At no point did Ms. Burgess look offended, frightened, or uncomfortable during the encounter with Mr. Lawson.

12. Approximately forty-five (45) minutes to an hour later, I learned that Ms. Burgess had complained about the encounter with Mr. Lawson, and I could not understand why.

13. Not long after June 14, 2008, Ms. Burgess had informed me that she planned to sue Mr. Lawson for the alleged assault, and Ms. Burgess told me that if I went along with her version of the alleged assault, including the parts about her supposedly having been slammed up against a wall by Mr. Lawson and Mr. Lawson touching her genitals, that Ms. Burgess would give me money out of the settlement Ms. Burgess anticipated receiving from Mr. Lawson.

14. I did not agree to go along with Ms. Burgess' plan because I did not think it was right.

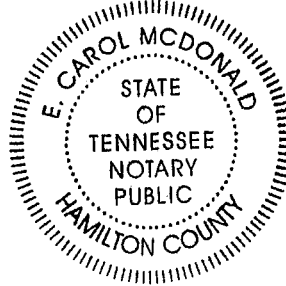
FURTHER AFFIANT SAITH NAUGHT.

Amber Kindred
AMBER KINDRED

Subscribed and sworn before me
On this 22 day of July 2009.

E. Carol McDonald
Notary Public

My Commission expires: 9-19-12



**CIRCUIT COURT OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT
HAMILTON COUNTY**

ASHLEY N. BURGESS,)	
)	
Plaintiff,)	
)	No. 09C786
v.)	
)	
CHARLES D. LAWSON,)	
)	
Defendant.)	

AFFIDAVIT OF J. NICK ANDREWS

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

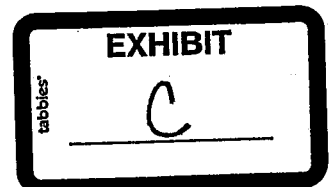
The undersigned, J. Nick Andrews, having first been duly sworn according to the law, hereby testifies as follows based on my personal knowledge.

1. I am over the age of 18 years, and am competent to testify to the facts contained herein, unless otherwise expressly stated.
2. On the night of June 14, 2008, I was working at Big River Grille at 222 Broad Street, Chattanooga, Tennessee.
3. Attached as Exhibit 1 to this Affidavit is a true and correct copy of my handwritten statement given by me on June 16, 2008.
4. I have reviewed my attached handwritten statement given June 16, 2008, which was accurate at the time I provided it, and I have learned nothing since that time that would change my statement.

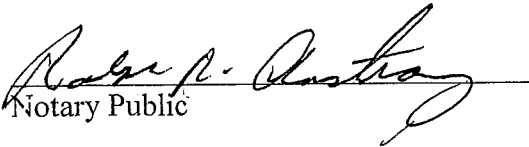
FURTHER AFFIANT SAITH NAUGHT.



J. NICK ANDREWS



Subscribed and sworn before me
On this 30th day of September, 2009.

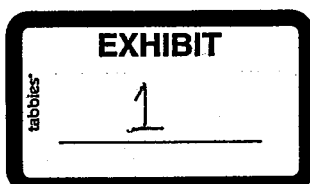

Notary Public

My Commission expires: 7/14/2012

Ashley B. and I, Nick Andrews,
were checking I.D's at the door
on Saturday night, June 14th, 2008.

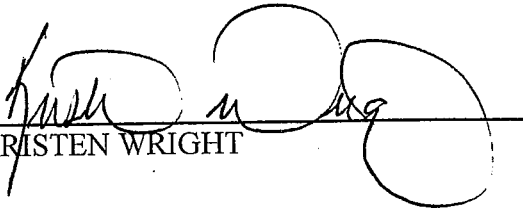
At one point during the night, there
was an ~~intoxicated~~ intoxicated man that
came to the door and started
talking to us, mainly Ashley.
He was a middle-aged man, dressed
in shorts and a polo, and he was
also accompanied by a blonde
middle-aged woman. After a few
minutes, he started flirting with
Ashley, and got between us with
his back to me, so that I couldn't
see Ashley. A fellow server named
Amber came outside with us at
this point into the night and started
talking to Ashley. I then saw the
man run his hand through Ashley's
hair. I was about to ask him to
step away, but Amber and Ashley
did it themselves. The man was
definitely intoxicated.

J. Nick Andrews
6-16-08

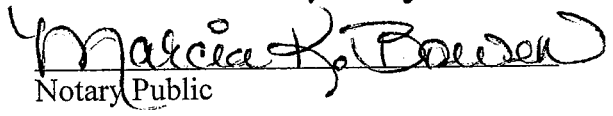


6. Shortly thereafter, I witnessed Ms. Burgess speaking with a manager, Tenesa Pickett.
7. Only after this conversation with Ms. Pickett did Ms. Burgess appear to be upset.
8. I also worked the next day, Sunday, June 15, 2008, as did Ms. Burgess.
9. That day, Ms. Burgess was joking and laughing about her encounter with Mr. Lawson and in no way appeared to be upset or distraught regarding the same.

FURTHER AFFIANT SAITH NAUGHT.


KRISTEN WRIGHT

Subscribed and sworn before me
On this 17 day of July 2009.


Notary Public

Commission expires: 3-14-2010

