

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2019-CP-40-01299
Appellate Case No. 2022-000447

RECEIVED

APR 19 2023

SC Court of Appeals

Christopher Shimeld,

Appellant,

v.

Richland County Sheriff's Office,

Respondent.

RECORD ON APPEAL

Joshua Snow Kendrick (70453)
Christopher Leonard (80166)
Post Office Box 6938
Greenville, SC 29606
(864) 760-4000

Attorneys for Appellant

Andrew Lindemann
Post Office Box 6923
Greenville, SC 29260
(803) 881-8920

Attorney for Respondent

INDEX

Summons and Complaint.....	001
Answer	006
Defendant's Motion for Summary Judgment.....	011
Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment	014
Exhibits to Plaintiff's Response in Opposition to Defendant's Motion	
EX 1 – RCSD Incident Report.	028
EX 2 – Fingerprint Card	032
EX 3 – Contact Information Report	034
EX 4 – Policies and Procedures (Investigations)	040
EX 5 – Midway Bridge Toll Receipts	044
EX 6 – Store Receipts	046
EX 7 – Home Security System Event Log	048
EX 8 – Partial Phone Records.....	051
EX 9 – Partial Bank Records	053
EX 10 – Discount Tobacco Work Order	055
Defendant's Exhibits to Motion for Summary Judgment	
EX 1 – Pictures.....	057
EX 2 – Photo Lineups	060
EX 3 – Arrest Warrant	062
EX 4 – Statutes.....	064
EX 5 – Case law.....	071
EX 6 – Case law.....	084
EX 7 – Deposition of Vicki Rains (excerpts)	097
EX 8 – Circuit Court order	102
EX 9 – Case law.....	108
EX 10 – Case law.....	114
EX 11 – Circuit Court order.....	121
EX 12 – Circuit Court order.....	128
Deposition of Vicki Rains	139
Plaintiff's EX 1 – RCSD Investigative Report.....	188
Plaintiff's EX 2 – Investigator notes	193
Plaintiff's EX 3 – Photo lineup	198
Plaintiff's EX 4 – Photo lineup	199
Plaintiff's EX 5 – Contact information report	200
Plaintiff's EX 6 – Shimeld work invoice	205
Plaintiff's EX 7 – Wells Fargo statement.....	206
Plaintiff's EX 8 – RCSD Policy and Procedure (Investigations)	210
Plaintiff's EX 9 – RCSD Policy and Procedure (Investigations)	213
Plaintiff's EX 10 – RCSD Policy and Procedure (Constitutional Rights)	219
Defendant's EX 1 – Arrest Warrant.....	226

Transcript of Hearing on Motion for Summary Judgment.....	228
Summary Judgment order	269
Certificate of Appellant	280

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CHRISTOPHER SHIMELD,

Plaintiff,

v.

**RICHLAND COUNTY SHERIFF'S
OFFICE,**

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.

SUMMONS

YOU ARE SUMMONED and required to answer the Complaint in this action, a copy of which is served on you with this summons, and to serve a copy of your Answer to the Complaint upon the subscribers, Joshua Snow Kendrick, at mailing address Post Office Box 6938, Greenville, South Carolina 29606 –OR- 506 Pettigru Street, Greenville, South Carolina, 29601, within thirty (30) days after service, and if you fail to answer the Complaint within that time, the Plaintiff will apply to the Court for a judgment by default against you for the relief demanded in the Complaint.

Respectfully Submitted,

s/ Joshua Snow Kendrick

Joshua Snow Kendrick (SC Bar 70453)
Christopher S. Leonard (SC Bar 80166)
KENDRICK & LEONARD, P.C.
506 Pettigru Street (29601)
P.O. Box 6938
Greenville, SC 29606
Tel: (864) 760-4000
Josh@KendrickLeonard.com

March 5, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

CHRISTOPHER SHIMELD,

Plaintiff,

v.

**RICHLAND COUNTY SHERIFF'S
OFFICE,**

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.

COMPLAINT
(Jury trial demanded)

The Plaintiff, through his undersigned counsel, alleges the following:

1. Plaintiff is a resident of Okaloosa County, Florida.
2. Defendant Richland County Sheriff's Office is a government agency as defined by S.C. Code § 15-78-30(a).
3. Pursuant to S.C. Code §15-78-70(c), Defendant is statutorily liable for the acts and omissions of its employees acting in the course and scope of their official duties.
4. The events giving rise to this action took place in Richland County, South Carolina.
5. Venue in Richland County is proper.
6. This Court has proper jurisdiction over the parties and subject matter of this action.

FACTS

7. At all times relevant to this action, deputies of the Richland County Sheriff's Office were acting within the scope of their employment and duties with the Richland County Sheriff's Office.
8. On March 1, 2018, Defendant's deputies responded to an alleged burglary at Discount Tobacco on Two Notch Road in Columbia, South Carolina.
9. Upon information and belief, a fingerprint was taken from a portion of an alarm system inside Discount Tobacco.
10. Upon information and belief, law enforcement matched the fingerprint to the Plaintiff

through records from his South Carolina Concealed Weapons Permit.

11. Plaintiff's fingerprint was on the alarm system because he had worked on the alarm during his employment with the company responsible for upgrading the alarm.
12. An arrest warrant charging Plaintiff with burglary was obtained, based on nothing more than the fingerprint.
13. Plaintiff was arrested on April 6, 2018 in Florida and held in jail on an out-of-state fugitive warrant.
14. Plaintiff provided information to Defendant to prove it was impossible for him to have committed this crime.
15. Defendant refused to dismiss the charges after receiving information Plaintiff could not have committed the crime.
16. Plaintiff was not the person who broke into the business, was not at the business, and was present in Florida on the date of the crime, as well as surrounding dates.
17. Charges against the Plaintiff were eventually dismissed.

FOR A FIRST CAUSE OF ACTION

(Negligent Training/Supervision/Retention)

18. Defendant owed Plaintiff a duty to exercise reasonable care in the training, supervision, and retention of its police officers and other employees.
19. Defendant breached its duty to Plaintiff in failing to properly train, supervise, or retain police officers, including but not limited to the following:
 - a. Failure to properly investigate deputies' backgrounds;
 - b. Failure to properly determine whether deputies were fit for duty;
 - c. Failure to properly train deputies to perform their duties;
 - d. Failure to insure deputies were exercising their duties in a diligent, proper, and reasonable manner;
 - e. Failure to properly investigate deputies' actions as police officers;

- f. Failure to properly discipline deputies for unreasonable behavior.
- 20. Defendant's breach of duty as described above was the direct and proximate cause of injury to the Plaintiff.

FOR A SECOND CAUSE OF ACTION

(Malicious Prosecution)

- 21. Criminal proceedings against Plaintiff were instituted for the charges of Burglary (Non-violent) 2nd Degree.
- 22. The criminal proceedings against Plaintiff were instituted and maintained at the direction of Defendant, by and through its agents and/or employees.
- 23. The criminal proceedings were terminated in favor of Plaintiff when the charges against Plaintiff were dismissed.
- 24. Defendant lacked probable cause to accuse Plaintiff of the charged crimes.
- 25. Defendant's accusation against Plaintiff, in the absence of probable cause, was a malicious act.
- 26. Plaintiff has suffered damages including but not limited to embarrassment, humiliation, mental anguish, loss of standing in the community, and the cost and inconvenience of defending herself against this false and malicious charge.
- 27. Plaintiff is entitled to an award of actual damages as a result of Defendant's malicious prosecution.

FOR A THIRD CAUSE OF ACTION

(False Imprisonment)

- 28. An employee of Defendant intentionally and unlawfully restrained the Plaintiff by directing that Plaintiff be taken into police custody.
- 29. Plaintiff did not violate any law.
- 30. The restraint upon Plaintiff was intentional and unlawful.

31. Defendant's actions were the direct and proximate cause of Plaintiff's deprivation of liberty, physical harm and emotional harm, including, but not limited to, stress, embarrassment and fear.

32. Plaintiff is entitled to all actual damages as a result of Defendant's actions.

Having fully pled his causes of action against the Defendant, Plaintiff demands a jury trial and respectfully requests this Honorable Court award the following:

- a. Actual and compensatory damages in an appropriate amount;
- b. Any other relief this Court deems just and proper or that may be available under any law.

Respectfully Submitted,

s/ Joshua Snow Kendrick

Joshua Snow Kendrick (SC Bar 70453)
Christopher S. Leonard (SC Bar 80166)
KENDRICK & LEONARD, P.C.
506 Pettigru Street (29601)
P.O. Box 6938
Greenville, SC 29606
Tel: (864) 760-4000
Josh@KendrickLeonard.com

March 5, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2019-CP-40-01299

Christopher Shimeld,
 Plaintiff,

v.

Richland County Sheriff's Office,
 Defendant.

ANSWER

(Jury Trial Demanded)

The Defendant Richland County Sheriff's Office hereby answers the Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Summons and Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. The Defendant is immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*, and specifically, § 15-78-60 (1), (2), (3), (4), (5), (20), (17), and (23).

FOR A THIRD DEFENSE

3. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

4. That as to Paragraph One (1), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, denies same and demands strict proof thereof.

5. That as to Paragraph Two (2), the Defendant denies that the Richland County Sheriff's Office is a legal entity of the State, but asserts that the proper entity is the Sheriff of Richland County in his official capacity and that his office constitutes a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act. Except as stated herein, the Defendant denies this paragraph and demands strict proof thereof.

6. That as to Paragraph Three (3), Plaintiff has set forth legal conclusions upon information and belief which can neither be admitted nor denied and, therefore, the Defendant craves reference thereto. To the extent that this paragraph contains factual allegations against the Defendant, the Defendant denies same and demands strict proof thereof.

7. That as to Paragraph Four (4), the Defendant generally admits same upon information and belief.

8. That as to Paragraphs Five (5) and Six (6), the Defendant craves reference to S.C. Code Ann. § 15-78-100(b), *et seq.* as it pertains to the appropriate jurisdiction and/or venue.

9. That as to Paragraph Seven (7), the Defendant admits same upon information and belief. Further answering, the Defendant asserts that its employees acted appropriately and reasonably at all relevant times and categorically deny that any of Plaintiff's causes of action are meritorious.

10. That as to Paragraph Eight (8), the Defendant admits same. Further answering, the Defendant deputies conducted a crime scene investigation and processed the incident location at that time.

11. That as to Paragraph Nine (9) the Defendant only admits that various locations at the incident location, including but not limited to the alarm box, was processed for latent

prints. Except as stated herein, the Defendant denies this paragraph as stated and demands strict proof thereof.

12. That as to Paragraphs Ten (10) and Eleven (11), the Defendant only admits that there was one or more positive fingerprint matches of Plaintiff on the alarm box, which had been torn from the ceiling. Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

13. That as to Paragraphs Twelve (12), Twenty-one (21), Twenty-two (22), and Twenty-eight (28), the Defendant only admits that on or about March 16, 2018, Richland County Magistrate Judge Tomothy Clinton Edmond found that probable cause existed for the charge of Burglary (Non-Violent) in the Second Degree and issued Arrest Warrant No. 2018A4010700088 against Plaintiff. Further answering, the Defendant's Investigator Vicki Rains was the affiant on said warrant. The Defendant craves reference to the description of the offense as referenced on the face of the arrest warrant for the most accurate evidence of what is contained therein. Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

14. That as to Paragraph Thirteen (13), the Defendant only admits upon information and belief that Plaintiff was placed under arrest in the State of Florida and was detained pursuant to the active warrant. Except as stated herein, the Defendant denies this paragraph as stated and demands strict proof thereof.

15. That as to Paragraphs Fourteen (14), Fifteen (15) and Sixteen (16), the Defendant denies same as stated and demands strict proof thereof.

16. That as to Paragraphs Seventeen (17) and Twenty-three (23), the Defendant only admits that the Burglary Second Degree charge was subsequently dropped and the foregoing arrest warrant was cancelled. Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

17. That as to Paragraph Eighteen (18), Plaintiff has set forth legal conclusions upon information and belief which can neither be admitted nor denied and, therefore, the Defendant craves reference thereto. To the extent that this paragraph contains factual allegations against the Defendant, the Defendant denies same and demands strict proof thereof.

18. That as to Paragraphs Nineteen (19), Twenty (20), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-nine (29), Thirty (30), Thirty-one (31), and Thirty-two (32), the Defendant expressly denies same and demands strict proof thereof.

19. Any and all allegations inconsistent with the foregoing are denied. Further, the Defendant asserts that Plaintiff is not entitled to the relief requested in the Complaint, or any other relief against the Defendant.

FOR A FOURTH DEFENSE

20. The Defendant Richland County Sheriff's Office is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

FOR A FIFTH DEFENSE

21. The Defendant alleges that it is immune from suit and liability under the doctrine of sovereign immunity.

FOR A SIXTH DEFENSE

22. The Defendant is entitled to immunity under *Long v. Seabrook* and its progeny.

FOR A SEVENTH DEFENSE

23. The Defendant alleges upon information and belief that at all times herein that its employees were acting within the course and scope of their employment in a discretionary manner, in good faith, without bad faith or malicious motives in the performance of their official duties, and therefore, the Defendant is immune from suit.

FOR AN EIGHTH DEFENSE

24. The Defendant alleges, upon information and belief, that any injury or damages alleged in Plaintiff's Complaint were due to, occasioned by, or caused by intervening acts of omission or commission on the part of someone other than the Defendant or its employees, without which acts and/or omissions Plaintiff would not have sustained any injuries or damages as are set forth in Plaintiff's Complaint, all of which the Defendant pleads as a bar to this action.

FOR A NINTH DEFENSE

25. The Defendant asserts that any injuries and damages sustained by Plaintiff as alleged in the Complaint were due to and caused by the intervening criminal acts of a third party over which the Defendant had no control.

FOR A TENTH DEFENSE

26. The Defendant asserts the Public Duty Rule as a bar to Plaintiff's allegations, in whole or in part.

WHEREFORE, having fully answered the Complaint of Plaintiff, the Defendant Richland County Sheriff's Office prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

CROWE LAFAVE, LLC

BY: s/Robert D. Garfield
 ROBERT D. GARFIELD
 S.C. Bar No. 6557
 Post Office Box 1149
 Columbia, South Carolina 29202
 T: (803) 999-1225
 F: (803) 848-8157
 robert@crowelafave.com

Counsel for the Defendant

Columbia, South Carolina
 May 20, 2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Christopher Shimeld,

Plaintiff,

v.

Richland County Sheriff's Office,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2019-CP-40-01299

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT**

TO: JOSHUA SNOW KENDRICK, ESQ., AND CHRISTOPHER S. LEONARD, ESQ.,
ATTORNEYS FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an order, pursuant to Rule 56, SCRCP, granting summary judgment to the Defendant and dismissing with prejudice the causes of actions set forth in the Plaintiff's Complaint. The Defendant's motion is based upon the following grounds:

1. The Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(1).
2. The Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(2).
3. The Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(3).
4. The Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(4).

5. The Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(20).

6. The Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(23).

7. Dismissing the first cause of action for negligent training, supervision, and retention since Plaintiff is unable to prove that the Defendant had knowledge that its employees engaged in previous conduct for which to place the RCSD on actual or constructive notice that its employee(s) created an unreasonable or undue risk of harm to the public. *See, e.g., Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447, 450 (Ct. App. 2005); *see also, James v. Kelly Trucking Co.*, 377 S.C. 628; 661 S.E.2d 329, (2008).

8. Dismissing the second cause of action for malicious prosecution given the existence of probable cause for the Plaintiff's arrest and that the Plaintiff has failed to state a claim upon which relief can be granted against the Defendant.

9. Dismissing the third cause of action for false arrest and/or imprisonment since the Plaintiff was arrested pursuant to lawful authority and that the Plaintiff has failed to state a claim upon which relief can be granted against the Defendant Sheriff.

10. Any or all injuries and damages sustained by the Plaintiff as alleged in the Complaint were due to and caused by the intervening criminal acts of a third party over which the Defendant had no control.

11 The Plaintiff's cause of actions against the Defendant are barred by application of the public duty rule.

12. There is no evidence that the Defendant breached any legal duty owed to the Plaintiff.

13. The Defendant Richland County Sheriff's Office is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

The Defendant's motion is based upon the pleadings filed in this case; the rules of court; the deposition transcripts of Christopher Shimeld dated January 15, 2021 and Vicki Rains dated October 22, 2020 and the exhibits thereto; and any other matters to be presented to the Court at the time of hearing.

CROWE LAFAVE, LLC

BY: s/Robert D. Garfield
ROBERT D. GARFIELD
S.C. Bar No. 6557
Post Office Box 1149
Columbia, South Carolina 29202
T: (803) 999-1225
F: (803) 848-8157
robert@crowelafave.com

Counsel for the Defendant

Columbia, South Carolina
May 6, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

CHRISTOPHER SHIMELD,

Plaintiff,

v.

**RICHLAND COUNTY SHERIFF'S
OFFICE,**

Defendant.

IN THE COURT OF COMMON
PLEAS FOR THE FIFTH JUDICIAL
CIRCUIT

Case No. 2019-CP-40-01299

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff Christopher Shimeld was arrested and thrown in jail for a burglary committed at the Discount Tobacco store in Richland County. There is no doubt he did not commit this burglary. He has produced receipts and records from his job, his bank, toll booths, and his home security system that he was in Florida, over 8 hours away from Richland County, at the time of the burglary.

Plaintiff's arrest was based on a fingerprint found at the crime scene on the alarm box. In addition to the various records proving he could not have committed this crime, Plaintiff also produced paperwork showing he installed the alarm at the store. The fingerprint card itself, used by the Richland County Sheriff's Office to identify Plaintiff, reflected his employer at the time he was printed was an alarm company.

No other information supported probable cause for the arrest warrant. The arrest warrant was based on Shimeld's mere presence at a scene where a crime was committed, with no evidence of when that presence occurred. As a practical matter, even if the information in the warrant was definitively proven, Plaintiff Shimeld could not legally be convicted of any crime.

Because there was no probable cause for Plaintiff's arrest, the warrant, arrest, and prosecution were all flawed. The Defendant is liable for Plaintiff's arrest and time in jail

for a crime he did not, and could not, commit.

FACTS AND PROCEDURAL BACKGROUND

Late on February 28, 2018, someone burglarized the Discount Tobacco store at 10890 Two Notch Road in Columbia, South Carolina.¹ The owner of the business immediately identified a suspect (not the Plaintiff).² The suspect, Hank Osborne, had worked on the alarm in the office, knew where it was located, and could access the business's security cameras from his phone. Osborne was eventually listed on the investigator's file as the main suspect in the case.³

During the crime scene investigation, a fingerprint was located on the alarm box in the business office.⁴ On March 9, 2018, the Richland County Sheriff's Office crime scene lab matched the fingerprint through AFIS to Christopher Shimeld. As part of that matching process, the lab obtained and reviewed a ten-print card for Shimeld.⁵

The ten-print card had two critical pieces of information on it that were ignored by Defendant's agents. First, it reflected Shimeld's employer at the time the prints were taken was Summit Alarms. Second, the prints were not taken because of any criminal activity. The same card shows the prints were taken so Shimeld could obtain a South Carolina Concealed Weapons Permit (CWP).

Plaintiff Shimeld's eligibility for a CWP reflects he did not have a felony or violent criminal history.⁶ More importantly, the ten-print card reflects Shimeld was employed by an alarm company. Because there was no other evidence besides the print that pointed to Shimeld, his past employment for an alarm company created a reasonable inference his

¹ See Richland County incident report (Exhibit 1).

² Ex. 1, p.2

³ *Dep. of Rains*, p.12, ll.2-16

⁴ *Dep. of Rains*, p.13, ll.13-18

⁵ See RCSD Fingerprint Card (Exhibit 2)

⁶ See SLED CWP application with eligibility requirements:

<https://www.sled.sc.gov/forms/regulatory/CWPApplicationForm.pdf>

prints would be found on an alarm system.

The fingerprint served as the sole basis for probable cause when Defendant sought an arrest warrant for Plaintiff. Defendant has made no reference to the ten-print card, calling into question whether any of Defendant's agents even reviewed the card. Defendant called the current alarm company and asked if Mr. Shimeld had ever worked there, as an employee or a contractor.⁷ She never made any attempt to determine Summit Alarms' involvement in the alarm installation or look further into Shimeld's employment in the alarm industry.

Defendant had more than enough information to warrant some basic investigation into Mr. Shimeld before seeking an arrest warrant. At some point during the investigation, Rains ran a report for background information on Plaintiff Shimeld.⁸ The very first entry reflects Shimeld has a current phone number and address in Florida. Yet Rains never attempted to locate Shimeld. The number on the report matched his current number and would have easily put her in touch with Plaintiff.⁹

Contacting a suspect is part of the Defendant's policy on preliminary and follow up investigations into crimes.¹⁰ Investigator Rains admitted she would have called Plaintiff if she had his number, but the only reason she did not have his number is being she did not take the easily available step of running his contact information report before seeking an arrest warrant.¹¹ Running that report was a common occurrence during a law enforcement investigation.¹²

⁷ Rains, p.22, ll.8-23.

⁸ See attached RCSD contact information report (Exhibit 3)

⁹ Rains, p.31, ll.5-24.

¹⁰ See *Richland County Sheriff's Department Policy and Procedure Guidelines – Preliminary/Follow-Up Investigations* (Exhibit 4).

¹¹ Rains, p.31, ll.18-24.

¹² Rains, p.34, l.20 – p.35, l.15

This step in the investigation was critically important, because Shimeld could have immediately provided information to prove he could not have committed the burglary at issue. He had toll records showing he crossed the Mid-Bay Bridge in Florida around 5:20 p.m. the evening of the burglary and again around 8:45 a.m. the following morning.¹³ Shimeld had store receipts showing he was in Florida the afternoon before the burglary.¹⁴

Records from Shimeld's home security system showed him arming his alarm and staying at the house around 11:30 p.m. the night of the burglary and then disarming the alarm to leave the following morning around 7:00 a.m.¹⁵ He also has phone and bank records supporting his presence in Florida at the time of the burglary.¹⁶

Most importantly, Shimeld produced documentation that he had worked on the alarm at Discount Tobacco several years before the burglary.¹⁷ This easily explained his fingerprint on a part of the alarm that would have rarely been touched by anyone else.¹⁸

Shimeld was able to obtain this information and get it to the Richland County Sheriff's Office shortly after his arrest in Florida. He would have immediately provided it if he were contacted by the Defendant. Investigator Rains candidly admitted she would not have sought an arrest warrant if she had this information.¹⁹

SUMMARY JUDGMENT STANDARD

The standard for summary judgment is well-settled: it can only be granted if there is no genuine dispute as to any material fact in the case. SCRCP Rule 56. The Court views

¹³ Mid-Bay Bridge toll receipts (Exhibit 5)

¹⁴ Receipts from The Home Depot and Best Buy (Exhibit 6)

¹⁵ Security system event log (Exhibit 7) – specifically see serial numbers 15 and 16.

¹⁶ See partial phone records (Exhibit 8) and partial bank statement (Exhibit 9).

¹⁷ See Discount Tobacco work order (Exhibit 10)

¹⁸ According to various sources, a fingerprint can last on a surface that is not cleaned or disturbed for decades. See Missouri State Highway Patrol information: <http://www.mshp.dps.mo.gov/MSHPWeb/PatrolDivisions/CLD/faqs.html> (last accessed September 7, 2021).

¹⁹ Rains, p.32, ll.1-11.

all evidence in the light most favorable to the non-moving party, which is the Plaintiff in this case. In deciding whether summary judgment is proper, the court should construe all inferences arising from the evidence against the moving party. *Bessinger v. Bi-Lo, Inc.*, 329 S.C. 617, 619 (Ct. App. 1998).

If there is a genuine dispute about a material fact, summary judgment is inappropriate. *Young v. UPS*, 135 S.Ct. 1338, 1355 (2015). At this point in the case, it is not a question of whether the Plaintiff will win in a courtroom; it is simply a matter of whether the Plaintiff can get to the courtroom.

The Court must consider all facts in the light most favorable to the Plaintiff. But that does not end the Court's responsibility when considering a motion for summary judgment. As a federal court of appeals has pointed out, in addition to considering the facts in the light most favorable to the Plaintiff, the Court must also draw all reasonable inferences in his favor. *Harris v. Pittman*, 927 F.3d 266, 272 (4th Cir. 2019). The Court cannot weigh evidence or make credibility determinations; it must construe all evidence in the Plaintiff's favor, even if it does not believe the Plaintiff can prevail in this matter. *Id.*

More importantly, the burden on Plaintiff is very low at this stage. Because he must prove his case against the Defendant by a preponderance of evidence, he can defeat summary judgment with a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330 (2009).

The record in this case reveals at least a scintilla of evidence to support Plaintiff's allegations against Defendant. At this stage, the Court should schedule this matter for a jury trial.

LEGAL ARGUMENT

As a state agency, the Defendant is "liable for [its] torts in the same manner and to

the same extent as a private individual under like circumstances,” unless one of the enumerated exceptions to liability found in the South Carolina Tort Claims Act applies. S.C. Code Ann. § 15-78-40. The governmental entity claiming a limitation on liability or an exception to the waiver of immunity must assert the limitation or exception as an affirmative defense and has the burden of proving that defense. *Plyler v. Burns*, 373 S.C. 637, 651 (2007).

Defendant asserts multiple grounds for immunity, all of which fail.

1. Defendant is not entitled to immunity based on legislative, judicial, or quasi-judicial action or inaction (15-78-60(1) & (2)).

Legislative immunity is not applicable to this case, so the Defendant is asserting judicial or quasi-judicial immunity. Because the Defendant in this matter was not carrying out a judicial act when it arrested Plaintiff, this exception does not apply.

There are three exceptions to judicial immunity: (1) lack of jurisdiction; (2) the act did not serve a judicial function; and (3) the suit is for prospective or injunctive relief. *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 324 (2002). South Carolina courts recognize the critical element is whether the entity asserting the immunity was engaged in adjudicatory duties when the act occurred. *Id.*

The *Faile* Court compared probation officers to police officers in discussing immunity: “[j]ust as police officers are not granted absolute immunity when they apply for arrest warrants, probation officers generally are not immune in performing their enforcement duties.” *Id.* at 326. The logical conclusion is that South Carolina law grants immunity for neither the application for an arrest warrant nor the enforcement of that warrant.

South Carolina does not recognize immunity for an arresting officer based on this exception. Summary judgment should not be granted on this ground.

3. Defendant is not entitled to immunity based on the execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process. (15-78-60(3)).²⁰

Law enforcement is not shielded from liability by an arrest warrant secured without probable cause. *Gist v. Berkeley County Sheriff's Dep't.*, 336 S.C. 611, 618 (Ct. App. 1999). Liability does not arise from any order of a court, but from the actions of law enforcement. *Id.*

Factually, the Court in *Gist* took issue with the whether the magistrate was given proper information in determining whether to sign an arrest warrant. *Id.* at 617. *Gist* stands for the proposition that a magistrate's issuance of an arrest warrant does not end the inquiry into probable cause. If there is a question of probable cause summary judgment is inappropriate, regardless of any decision by a magistrate.

4. Defendant is not entitled to immunity based on the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies. (15-78-60(4)).

This subsection of the Tort Claims Act does not apply to this case. Judge Norton analyzed this issue in a South Carolina District Court case that is helpful in the analysis of the statute's application. Judge Norton ruled, based on South Carolina authority, that police enforcement of criminal laws, even when following procedures²¹ does not grant blanket immunities to officers who wrongfully arrest someone. *Risher v. Chapman*, No.

²⁰ Plaintiff skips subsection 2 in his numbering so the numbered arguments will match the arguments in Defendant's motion.

²¹ The record reflects Defendant was not following its own policies in this case.

2:16-cv-00292-DCN-MGB, 2018 U.S. Dist. LEXIS 221789, at *23-24 (D.S.C. Nov. 19, 2018).

In *Risher*, the district court recognized there was no specific policy cited by the defendants in support of its argument. *Id.* at *24. The *Risher* analysis of this issue was based on the South Carolina Court of Appeals opinion in *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291 (Ct. App. 2002). *Clark* held that the mere adoption of a policy, especially one that merely recites a pre-existing duty, does not convey immunity to a law enforcement agency. *Id.* at 307-08.

“The mere fact that the Department enacted a policy does not protect it from having to meet a standard of care that exists whether the policy was enacted or not.” *Id.* at 308. But in this case, the policies offer even less protection because to the extent policies address this matter, they were violated. The policies simply track the legal duty officers have in investigating and arresting citizens. They offer no immunity to the Defendant in the instant case, whether they were followed or violated (though they were certainly violated).

5. Defendant is not entitled to immunity based on the act or omission of a person other than an employee including but not limited to the criminal actions of third persons. (15-78-60(20)).

South Carolina law is well settled that this exception could not apply in a wrongful arrest situation. Plaintiff is suing the Defendant for its failure to properly investigate Plaintiff before arresting him. He is not seeking to hold the Defendant responsible for damages resulting from the criminal acts of a third person. Plaintiff was not damaged by the acts of whoever actually burglarized the store at issue; he was damaged by the acts of the Defendant in failing to properly investigate the matter before arresting him.

Because the focus of the allegations in this case are on the Defendant's actions as

opposed to liability based on the criminal acts of a third party, subsection (20) does not exonerate the Defendant for its own actions. *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 246-7 (1990). Defendant has a duty of care to the Plaintiff that exists independent of the acts of a third party; it is the violation of that duty that creates liability. *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 143 (2006).

6. Defendant is not entitled to immunity for the institution or prosecution of any judicial or administrative proceeding. (15-78-60(23)).

Defendant appears to argue malicious prosecution cases are not allowed against state entities. This would be at odd with numerous opinions from South Carolina courts discussing malicious prosecution without ever ruling the cause of action was improper.

In *McBride v. Sch. Dist. of Greenville County*, the South Carolina Court of Appeals reversed the barring of a malicious prosecution action on a different section of the South Carolina Tort Claims Act. 389 S.C. 546, 565-66 (Ct. App. 2010). Numerous other cases in South Carolina have addressed malicious prosecution actions against state entities with no mention of the cause of action being barred by the South Carolina Tort Claims Act. *See e.g., Law v. South Carolina Department of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006) (addressing merits of malicious prosecution elements); *Jordan v. Deese*, 317 S.C. 260, 452 S.E.2d 838 (1995) (addressing merits of element for malicious prosecution); *Brown v. Leonard*, 2008 WL 9832870, Unpublished Opinion (Ct. App. 2008) (addressing actual malice exception to the SCTCA and merits of claim).

Just last year, the South Carolina Court of Appeals expressly stated the remedy for an arrest on facially valid warrant that ends up lacking probable cause is, among other things, an action for malicious prosecution. *Carter v. Bryant*, 429 S.C. 298, 390 (Ct. App. 2020). There is no authority for the argument a malicious prosecution action is barred by the South Carolina Tort Claims Act and summary judgment should be denied on this

ground.

7. There is evidence to support negligent training, supervision, and retention.

This case involves the failure to properly investigate someone before arresting them. The arresting officer has admitted there are policies on this matter and was shown those policies during her deposition. Yet when asked about whether there was a policy for investigating a suspect, she answered, “[p]olicies change so often I’d have to see the policy.”²²

Despite not knowing the policy, the arresting officer admitted they try to get in touch with a suspect before initially questioning them.²³ That was not done. More importantly, her supervisors were aware of the case and approved her actions.²⁴ This explicit approval of wrongful behavior is clearly within the scope of this cause of action.

8. There is a dispute about probable cause to support Plaintiff’s arrest.

Probable cause is ordinarily a question for the jury unless the evidence yields only one conclusion. *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 436 (2006). For example, *Law* describes an arrest and prosecution based on a thorough investigation that involved multiple witness interviews. *Id.* at 437.

In this case, the only evidence linking Shimeld to the crime was a fingerprint. As he easily explained after his arrest, he had worked on the alarm as a contractor for the alarm company. In addition to producing multiple documents proving he was present in Florida at the time of the crime, Shimeld was also able to produce the work order showing he had worked on the alarm prior to the burglary.

Even more important, the very evidence relied on by the investigator should have

²² *Rains*, p.35, ll.16-22.

²³ *Id.* at ll.23-25

²⁴ *Id.* at p.46, l.16 – p.47, l.16.

tipped her off that more investigation was needed prior to any arrest. The fingerprint card suggested both that Shimeld worked for an alarm company and that he had a clean criminal record by virtue of his eligibility for a concealed weapons permit.

Had the Defendant done even a basic investigation, Shimeld would not have been a suspect in this crime. He would not have been thrown in a Florida jail and prosecuted by the Defendant.

Contrasting Shimeld to another suspect in this case contradicts the Defendant's claims it had sufficient probable cause to arrest Plaintiff. The burglary victim had identified Hank Osborne as a possible suspect. Osborne had installed the alarm system, hung around the store often, and apparently showed the victim he was able to access the store's security cameras on his phone.²⁵ Unlike Osborne, a search of Shimeld's background immediately reflected he was in Florida, not South Carolina.

Osborne, the local suspect identified by the victim, did not respond to calls from Rains.²⁶ Because they could not locate him, Osborne was never arrested or investigated further.²⁷

There is a genuine dispute over probable cause in this case and summary judgment should be denied.

9. Plaintiff was not arrested pursuant to lawful authority.

This argument is the same as the earlier probable cause argument. The Defendant disregarded its own investigative policies and did not make the slightest effort to contact Plaintiff. That contact would have revealed the Plaintiff had not lived in South Carolina for some time and was not in South Carolina at the time of the crime. More importantly,

²⁵ *Rains*, p.12, ll.2-21.

²⁶ *Rains*, p.12, l.17-p.13, l.4

²⁷ *Rains*, p.34, ll. 10-14; p.39, l.15-p.40, l.10

it would have revealed documentary evidence that would have explained the fingerprint on the alarm system.²⁸

Combined with the fingerprint card that showed Shimeld was employed in the alarm industry, any reasonable officer would have hesitated to arrest Plaintiff without undertaking the basic investigation that would have quickly and easily eliminated Plaintiff as a suspect in this matter.

10. The Defendant caused Plaintiff's injuries.

This is the same argument discussed in subsection 5, *supra*. The person who committed this burglary did not harm Shimeld. He was harmed by the Defendant's actions in failing to make the slightest effort at an investigation.

11. The public duty rule does not apply to this case.

The public duty rule states a statute creating or defining the duties of a public office does not create a corresponding duty to member of the general public. *Edwards v. Lexington County Sheriff's Dep't*, 386 S.C. 285, 291 (2010). Defendant does not describe which statute it references in citing the public duty rule and Plaintiff has not brought this action under a statute as contemplated by the public duty rule.

Rather, Plaintiff has brought this action under the common law. Because the South Carolina Tort Claims Act states governmental entities are liable for torts in the same manner and to the same extent as private individuals, subject to limitations in the Act, it is likely the public duty rule no longer applies to actions like this one. *Steinke v. South Carolina Department of labor, Licensing & Regulation*, 336 S.C. 373, 388 n.3 (1999). But in any event, because the public duty rule is not implicated, summary judgment

²⁸ Curiously, the more viable suspect – Hank Osborne – was treated in the opposite manner. Because he is no longer in Richland County, it appears law enforcement is not interested in pursuing him any further as a suspect. However, Osborne seems to have left the County after the crime. In contrast, Shimeld was not in the County at the time of the crime.

should be denied.

12. There is a dispute over whether Defendant breached a duty to Plaintiff.

The elements of a false arrest and malicious prosecution case are well-settled and do not involve a duty with an accompanying breach. To the extent this argument applies to the negligent training and supervision action, summary judgment should be denied.

Plaintiff alleges there is a duty to properly train law enforcement officers and ensure they are handling matters in a reasonable manner. The South Carolina Supreme Court recently noted law enforcement has a duty to investigate and analyze evidence when it held that a Court of Appeals opinion had erred by imposing a duty on civilians to investigate and analyze evidence “in the same manner as law enforcement.” *Huffman v. Sunshine Recycling, LLC*, 826 S.E.2d 609, 615 (2019). The cited Court of Appeals opinion applied the familiar standard of whether an ordinarily prudent and cautious person would believe a crime was committed. *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 525 (Ct. App. 2016).

Defendant is liable for the actions of its agents and employees. It knew or should have known its investigator in this case was not acting in a reasonably cautious manner for two reasons. There are Sheriff’s Department policies governing a proper investigation and they were specifically not followed in this case. In addition, supervisors were aware of the faulty investigation and approved it. Not only was there a clear duty in this case, but there was also a clear breach.

13. Plaintiff can amend the Complaint to reflect whatever name Sheriff Lott prefers to be sued under.

This is not a ground for summary judgment. Plaintiff’s counsel has filed cases against law enforcement agencies across the State. With respect to Sheriff’s Offices, some defense counsel want the Sheriff named individually in his official capacity, some want

the Sheriff's Office named as an entity, and some do not care.

There is no legal authority that this is a material issue warranting summary judgment. Counsel is agreeable to amending the Complaint to name the Sheriff however he wants to be named.

CONCLUSION

Summary judgment is a drastic remedy that should be cautiously invoked to avoid depriving a plaintiff of his day in court when he has properly made a case for a jury trial. *Baughman v. AT&T*, 306 S.C. 101, 112 (1991).

Plaintiff has produced far more than the required scintilla of evidence of a genuine dispute over material facts. Because both the facts and the law require the denial of summary judgment, the Court should deny the Defendant's motion and this case should be set for trial.

Respectfully Submitted,

s/ Joshua Snow Kendrick

Joshua Snow Kendrick (SC Bar 70453)
Christopher S. Leonard (SC Bar 80166)
KENDRICK & LEONARD, P.C.
506 Pettigru Street (29601)
P.O. Box 6938
Greenville, SC 29606
Tel: (864) 760-4000
Josh@KendrickLeonard.com

September 22, 2021
Greenville, South Carolina

EX 1

RCSD INCIDENT REPORT

RICHLAND COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT

AGENCY I.D.
SCOR 400000

CASE NUMBER

1803003801

NCIC

INFO ENDO

EVENT	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM			
1	BURGLARY/BREAKING AND ENTERING - 220	☒ YES ☐ NO	☒ YES ☐ NO	07		☒ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST ☐ GOVERNMENT ☐ RELIG ORGN ☐ SOC/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFFICER			
2		☐ YES ☐ NO	☐ YES ☐ NO						
3		☐ YES ☐ NO	☐ YES ☐ NO						
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)		SUBDIVISION		ZIP CODE		WEAPON TYPE			
10890 Two Notch Rd				29045					
INCIDENT DATE 24 HR. CLOCK TO DATE 24 HR. CLOCK		DISPATCH DATE/TIME 24 HR. CLOCK		AREA		GRID			
02282018 2245 03012018 0515		03012018 0535 0542 0700		7		25			
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RES	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
Ardeb, Ismat		RU	J	U	M	58	N	803 348-2799	
ADDRESS		CITY		STATE		ZIP CODE			
10890 Two Notch Rd		Elgin		SC		29045			

VICTIM	VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RES	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
1	Discount Tobacco	RU	J	U	U	99	U	803 708-2860	
HEIGHT		WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
ADDRESS		CITY		STATE		ZIP CODE			
10890 Two Notch Rd		Elgin		SC		29045			
VISIBLE INJURY (VICT 1) ☐ YES ☒ NO EXPLAIN		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO		DRUGS ☐ YES ☒ NO ☐ UNK TYPE		TWO-MAN VEH ☐ ONE-MAN VEH ☐ DET/SPEC ASMNT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ GANG RELATED ☐ NO ☐ YES			

SUBJECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	
☒ SUSPECT	UNKNOWN										
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
☐ WANTED	NCIC NUMBER										
☐ WARRANT	ADDRESS										
☐ ARREST	CITY										
☐ JAIL	STATE										
☐ SUMMONS	ZIP CODE										
SUBJECT NO 11 USING ALCOHOL ☐ YES ☐ NO ☒ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		OFFENSE DATE		OFFENSE TIME		ARREST DATE		ARREST TIME	
DRUGS ☐ YES ☐ NO ☒ UNK TYPE		TOTAL # ARRESTED									

BWC ON. R/O responded to the I/L in ref to a burglary. The unknown suspect/s did cut open the rear of the building by cutting through the metal siding and busting through the inner drywall to gain entry. Once inside, the suspect/s did rummage through the office area, then enter into the cashier area. A lock was cut/removed from a storage locker and approximately \$1500.00 in cigarettes, 162 cartons (Marlboro and Newport), were removed from the locker. Approximately \$1000.00 in change was removed from a cash box located in the cashier office near the registers. Two cash registers were also opened and \$200 in cash was removed from each register. The suspect/s also made entry into the store portion of the business and removed approximately 15 cases of Bud and Bud Lite 16 packs that were stacked in a display. EST value \$180.00.

The suspect/s did cut the wires for the alarm and poss the camera system. Per Dispatch, there was no alarm notification during the timeframe of the incident. It is unknown if the cameras captured the incident. Est damage to the business is \$4000.00. Inv Schroder was notified and responded to process the scene.

1625,000.00 rare coins
Susan B. Anthony, silver dollars, gold coins

PROPERTY	SEIZED	BURNED	DAMAGED
	\$	\$	\$
☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE-NO CUSTODY			
S NO	REPORTING OFFICER(S)	DATE	S NO
1133	Holding, Ben	03012018	Means, Joseph
FOLLOW UP INVESTIGATION ☐ YES ☐ NO		S NO	DATE
		1655	03012018
OFFICER		DATE	
Rains			

ELECTRONICALLY FILED - 2021 Sep 22 4:43 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

RICHLAND COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTARY REPORT

AGENCY I.D.
SCORI 400000

CASE NUMBER

1803003801

NCIC

INFO ENTD

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ INVESTIGATIVE FOLLOWUP
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE

☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

Incident Type: Burglary
Incident Location: 10890 Two Notch Rd.
Victim: Discount Tobacco
Comp: Ardav, Ismat - Phone: 803-603-9627
Suspect: Unknown

No Body Worn Camera/TRS

Ismat Ardav called the RCSD Desk to add the following information to his report:

Ismat stated that he has found that when the unknown suspect made entry, he also disabled the camera system to the business. Ismat further stated that he thinks that "Hank", who installed the camera may be a person of interest. Ismat did not know "Hank's" last name but his phone number is 803-603-9627.

NARRATIVE

☐ ACTIVE ☐ UNFOUNDED		☐ ADM CLOSED ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY					
S. NO	REPORTING OFFICER(S)	DATE	S. NO	APPROVING OFFICER	DATE
516	Baggott, Christopher	03022018		Baggott, Christopher	03022018
FOLLOWUP INVESTIGATION			S. NO	OFFICER	DATE
☐ YES ☐ NO				<i>Law</i>	

ELECTRONICALLY FILED - 2021 Sep 22 4:43 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

RICHLAND COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SCORI 400000

CASE NUMBER

NCIC

1803003801

IND ENTD

☐ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☒ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE 1 OF 1 PAGES	
--	--	--	--	---	--	-------------------	--

VICT / SUBJ / D. OVERFLOW	☒ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)										VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ETH
	☐ VICTIM #	Clarke, Jennifer										RD			J	M	F	47		N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.														
	☐ RUNAWAY	506	170	2	1															
	☐ WANTED	ADDRESS										CITY		STATE	ZIP CODE	DAY PHONE		EVENING PHONE		
	☐ WARRANT	10890 Two Notch Rd										Elgin		SC	29045	803 708-2860				
	☐ ARREST	VISIBLE INJURIES		☒ NO ☐ YES		COMPLAINANT OF NON-VISIBLE INJURIES		☒ NO ☐ YES		VICTIM USING ALCOHOL		☒ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE		☐ DET./SPASMT				
	☐ JAIL	EXPLAIN								DRUGS		☒ NO ☐ YES ☐ UNK		☐ ONE-MAN VEHICLE		☐ ALONE				
	☐ SUMMONS	USING ALCOHOL		☐ NO ☐ YES						TYPE		☐ UNK		☐ ASSISTED		☐ OTHER				
	☐	USING DRUGS		☐ NO ☐ YES						TYPE		☐ UNK								

VICT / SUBJ / D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)										VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ETH
	☐ VICTIM #																			
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.														
	☐ RUNAWAY																			
	☐ WANTED	ADDRESS										CITY		STATE	ZIP CODE	DAY PHONE		EVENING PHONE		
	☐ WARRANT													SC						
	☐ ARREST	VISIBLE INJURIES		☐ NO ☐ YES		COMPLAINANT OF NON-VISIBLE INJURIES		☐ NO ☐ YES		VICTIM USING ALCOHOL		☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE		☐ DET./SPASMT				
	☐ JAIL	EXPLAIN								DRUGS		☐ NO ☐ YES ☐ UNK		☐ ONE-MAN VEHICLE		☐ ALONE				
	☐ SUMMONS	USING ALCOHOL		☐ NO ☐ YES						TYPE		☐ UNK		☐ ASSISTED		☐ OTHER				
	☐	USING DRUGS		☐ NO ☐ YES						TYPE		☐ UNK								

NARRATIVE	BWC ON. The above listed complainant stated that Rickey Lovejoy (W/M 60 YOA) (803 873-8739) was working to repair the damage done during the burglary and observed what appeared to be blood on the rear metal siding of the I/L. R/O responded, photographed the area in question and collected the possible blood sample for DNA testing. DNA swab was taken of the suspected blood using distilled water, sealed in a cardboard sleeve and packaged for evidence by R/O. Evidence tot Reg 7 evidence box and pics tot to Crimpics.																			

PROPERTY	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY										JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY															
	STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM		TYPE ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES, STOCKS ☐ ARTICLE		VIN AND/OR LICENSE NO										BOAT HULL NO. AND/OR REG NO											
					SERIAL AND/OR OWNER APPLIED NO										STATE											
					YEAR OF REGISTRATION										YEAR OF EXPIRATION											
					MODEL										STYLE											
					COLOR										BRAND NAME											
	SEIZED \$		BURNED \$		DAMAGED \$		NIC NO.										DENOMINATION									
							ISSUER										SECURITIES DATE									
							MISCELLANEOUS																			

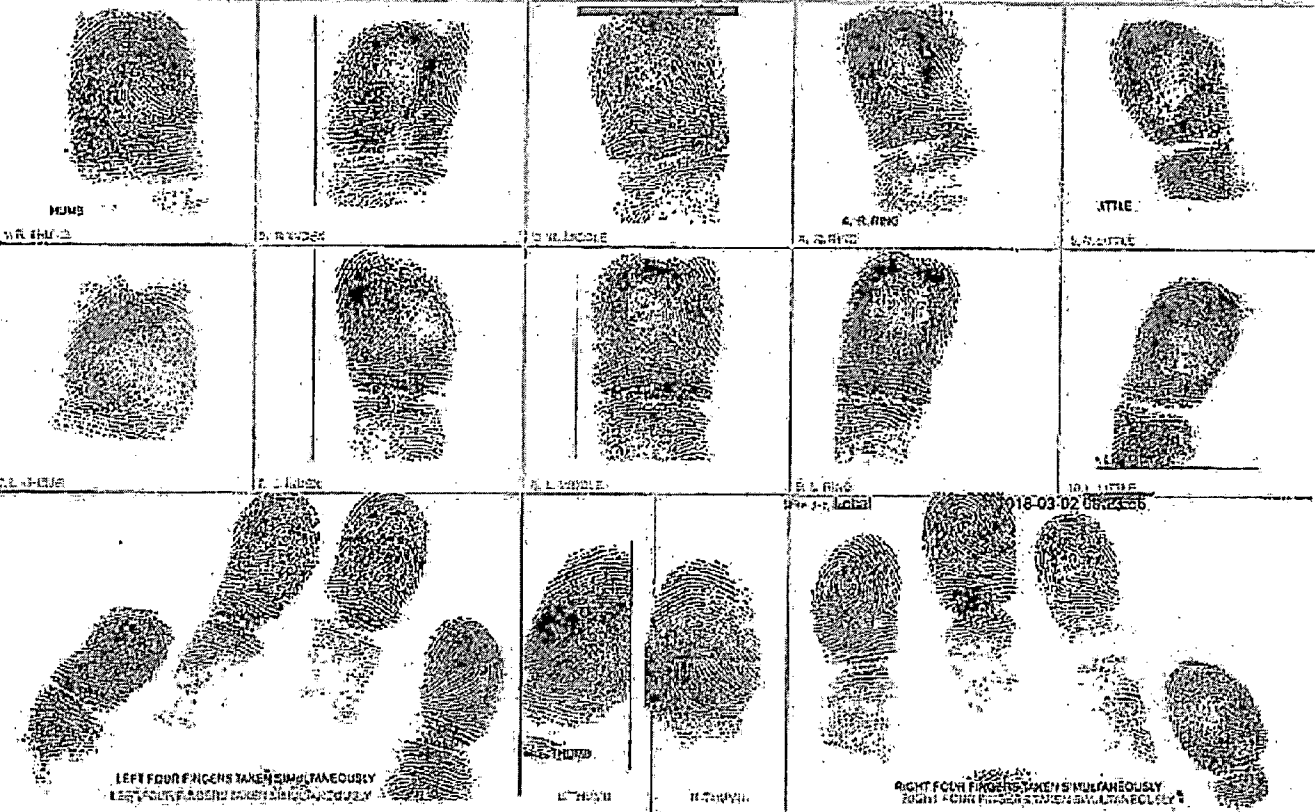
ADMINISTRATIVE	☐ ACTIVE ☐ UNFOUNDED										☐ ADM. CLOSED ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER										☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER									
	REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY																													
	S. NO.		REPORTING OFFICER(S)								DATE		S. NO.		APPROVING OFFICER								DATE							
	1133		Bolding, Ben								03012018				Means, Joseph								03012018							
															FOLLOW UP INVESTIGATION															
															☐ YES ☐ NO															
															S. NO. 1655 OFFICER Rains															

ELECTRONICALLY FILED - 2021 Sep 22 4:43 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

EX 2

FINGERPRINT CARD

APPLICANT FINGERPRINTS SIGNATURE OF PERSON IDENTIFIED:		LEAVE BLANK APR000303777		TYPE OR PRINT ALL INFORMATION IN BLACK LAST NAME FIRST NAME MIDDLE NAME SHIMELD, CHRISTOPHER ALLEN		FBI LEAVE BLANK K-1 AFIS 1803003801 1/2 20	
ADDRESS OF PERSON IDENTIFIED 4017 PERCIVAL RD UNIT 3112 COL, SC 29228		PLACES ANY SHIMELD, CHRIS.		DOB SC040800 SCLEDSWAZ COLUMBIA, SC		SIGNATURE OF PERSON IDENTIFIED [Signature]	
ADDRESS OF PERSON IDENTIFIED 4017 PERCIVAL RD UNIT 3112 COL, SC 29228		COUNTRY OF CITIZENSHIP US		SEX M		RACE W	
DATE 09/22/2014		SIGNATURE OF APPLICANT NA		HEIGHT 510		WEIGHT 175	
EMPLOYER AND ADDRESS SUMMIT ALARMS		OCCUPATION OCA		EYES XXX		HAIR XXX	
PERSON IDENTIFIED 23-31-215 CONCEALED WEAPON		FBI FBI		LEAVE BLANK		PLACE OF BIRTH FL	
23-31-215 CONCEALED WEAPON		ARMED FORCES MMU		OTHER		SEX	
23-31-215 CONCEALED WEAPON		FROM [illegible] FOC		OTHER		SEX	
23-31-215 CONCEALED WEAPON		VISITATION NO. MMU		OTHER		SEX	



EX 3

CONTACT INFORMATION REPORT

Your Current Reference ID: NONE

14 Results Found for phones for people named CHRISTOPHER SHIMELD in the United States.

(showing all results)

(850) 612-1192 - SHIMELD, CHRISTOPHER ALLEN (South Carolina)

Score: 86% Likely Active

CHRISTOPHER ALLEN SHIMELD - [View Person Record]

Address: 4017 PERCIVAL I
(RICHLAND COUNTY)

Phone: (850) 612-1192 - SHIMELD, CHRISTOPHER ALLEN (08/29/2014)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: CRESTVIEW

State: FL

County: OKALOOSA

Score: 86

(850) 612-1192 - SHIMELD, CHRISTOPHER (South Carolina)

Score: 86% Likely Active

CHRISTOPHER SHIMELD - [View Person Record]

Address: 4017 PERCIVAL I
(RICHLAND COUNTY)

Phone: (850) 612-1192 - SHIMELD, CHRISTOPHER (06/13/2014)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: CRESTVIEW

State: FL

County: OKALOOSA

Score: 86

(850) 612-1192 - SHIMELD, CHRISTOPHER A (Florida)

Score: 86% Likely Active

CHRISTOPHER A SHIMELD - [View Person Record]

Address: 3909 BEAR HEAT
COUNTY)

Phone: (850) 612-1192 - SHIMELD, CHRISTOPHER A (12/07/2012 to 04/07/2018)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: CRESTVIEW

<https://tloxp ilo.com/search.php>

4/17/2018

State: FL
 County: OKALOOSA
 Score: 86

(850) 486-6847 - SHIMELD, CHRISTOPHER (Florida)

Score: 78%

CHRISTOPHER SHIMELD - [View Person Record]

Address: 3003 STILLWELL
 (OKALOOSA COUNTY)

Phone: (850) 486-6847 - SHIMELD, CHRISTOPHER (09/17/2009 to
 01/05/2017)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON
 WIRELESS)

Carrier Type: WIRELESS

City: COTTONDALE

State: FL

County: JACKSON

Score: 78

(850) 486-6847 - SHIMELD, CHRISTOPHER (Florida)

Score: 78%

CHRISTOPHER SHIMELD - [View Person Record]

Address: 3909 BEAR HEAL
 COUNTY)

Phone: (850) 486-6847 - SHIMELD, CHRISTOPHER (09/2005 to 12/07/2017)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON
 WIRELESS)

Carrier Type: WIRELESS

City: COTTONDALE

State: FL

County: JACKSON

Score: 78

(850) 486-6847 - SHIMELD, CHRISTOPHER (Florida)

Score: 78%

CHRISTOPHER SHIMELD - [View Person Record]

Address: 5088 DOCKSIDE
 COUNTY)

Phone: (850) 486-6847 - SHIMELD, CHRISTOPHER (12/22/2014)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON
 WIRELESS)

Carrier Type: WIRELESS

City: COTTONDALE

State: FL

County: JACKSON

Score: 78

(850) 689-0523 - SHIMELD, CHRISTOPHER A (South Carolina)

Score: 70%

CHRISTOPHER A SHIMELD - [View Person Record]
 Phone: (850) 689-0523 - SHIMELD, CHRISTOPHER A (08/16/2014)
 Phone Type: LandLine
 Listing Type: Unknown
 Time Zone: CT
 Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
 (CENTURYLINK)
 Carrier Type: LANDLINE
 City: CRESTVIEW
 State: FL
 County: OKALOOSA
 Score: 70

Address: 4017 PERCIVAL
 (RICHLAND COUNTY)

(850) 689-0523 - SHIMELD, CHRISTOPHER A (Florida)
 Score: 70%
 CHRISTOPHER A SHIMELD - [View Person Record]
 Phone: (850) 689-0523 - SHIMELD, CHRISTOPHER A (04/07/2005)
 Phone Type: LandLine
 Listing Type: Unknown
 Time Zone: CT
 Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
 (CENTURYLINK)
 Carrier Type: LANDLINE
 City: CRESTVIEW
 State: FL
 County: OKALOOSA
 Score: 70

Address: 162 LAKE ST, CR
 COUNTY)

(850) 689-0523 - SHIMELD, CHRISTOPHER A (Florida)
 Score: 70%
 CHRISTOPHER A SHIMELD - [View Person Record]
 Phone: (850) 689-0523 - SHIMELD, CHRISTOPHER A (12/31/2006 to
 10/31/2017)
 Phone Type: LandLine
 Listing Type: Unknown
 Time Zone: CT
 Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
 (CENTURYLINK)
 Carrier Type: LANDLINE
 City: CRESTVIEW
 State: FL
 County: OKALOOSA
 Score: 70

Address: 3909 BEAR HEAL
 COUNTY)

(321) 264-0778 - SHIMELD, CHRIS (Florida)
 Score: 66%
 CHRIS SHIMELD - [View Person Record]
 Phone: (321) 264-0778 - SHIMELD, CHRIS (01/14/2005)
 Listing Type: Unknown
 Time Zone: ET
 Carrier: BELL SOUTH TELECOMMUNICATIONS INC DBA SOUTHERN BELL
 TELEPHONE & TELEGRAPH (AT&T SOUTHEAST)
 Carrier Type: LANDLINE

Address: 1600 GARDEN S
 COUNTY)

City: TITUSVILLE
 State: FL
 County: BREVARD
 Score: 66

(321) 264-0778 - SHIMELD, CHRISTOPHE A (Florida)

Score: 66%

CHRISTOPHE A SHIMELD - [View Person Record]

Address: 1600 GARDEN S
 COUNTY)

Phone: (321) 264-0778 - SHIMELD, CHRISTOPHE A (07/12/2004)

Listing Type: Unknown

Time Zone: ET

Carrier: BELLSOUTH TELECOMMUNICATIONS INC DBA SOUTHERN BELL
 TELEPHONE & TELEGRAPH (AT&T SOUTHEAST)

Carrier Type: LANDLINE

City: TITUSVILLE

State: FL

County: BREVARD

Score: 66

(321) 383-3166 - SHIMELD, CHRISTOPHE A (Florida)

Score: 66%

CHRISTOPHE A SHIMELD - [View Person Record]

Address: 470 ELOISE AVE
 COUNTY)

Phone: (321) 383-3166 - SHIMELD, CHRISTOPHE A (09/20/2001)

Listing Type: Unknown

Time Zone: ET

Carrier: BELLSOUTH TELECOMMUNICATIONS INC DBA SOUTHERN BELL
 TELEPHONE & TELEGRAPH (AT&T SOUTHEAST)

Carrier Type: LANDLINE

City: TITUSVILLE

State: FL

County: BREVARD

Score: 66

(850) 682-5697 - SHIMELD, CHRISTOPHER A (Florida)

Score: 66%

CHRISTOPHER A SHIMELD - [View Person Record]

Address: 3003 STILLWELL
 COUNTY)

Phone: (850) 682-5697 - SHIMELD, CHRISTOPHER A (08/10/2007)

Phone Type: LandLine

Listing Type: Unknown

Time Zone: CT

Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
 (CENTURYLINK)

Carrier Type: LANDLINE

City: CRESTVIEW

State: FL

County: OKALOOSA

Score: 66

(850) 682-8079 - SHIMELD, CHRISTOPHER A (Florida)

Score: 66%

CHRISTOPHER A SHIMELD - [View Person Record]

Address: 3909 BEAR HEAL
 COUNTY)

Phone: (850) 682-8079 - SHIMELD, CHRISTOPHER A (01/24/2009)

Listing Type: Unknown
Time Zone: CT
Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
(CENTURYLINK)
Carrier Type: LANDLINE
City: CRESTVIEW
State: FL
County: OKALOOSA
Score: 66

EX 4

POLICIES AND PROCEDURES
(INVESTIGATIONS)

RICHLAND COUNTY SHERIFF'S DEPARTMENT POLICY AND PROCEDURE GUIDELINES

PROCEDURE TITLE	PROCEDURE NO. 707
PRELIMINARY/FOLLOW-UP INVESTIGATIONS	

I. POLICY

All members of the Richland County Sheriff's Department must clearly understand their responsibilities for the conduct of preliminary and follow-up criminal investigations and complaints of organized crime, vice, and narcotics.

II. PROCEDURE

A. The preliminary investigations: The success of an investigation depends greatly upon the initial observations and actions of the first officer to arrive. Preliminary investigations shall begin when the first officer arrives on the scene and shall continue until that officer is relieved by an investigator. The transfer of the case to the investigator must not jeopardize successful completion of the investigation. The following procedure shall be followed unless the particular action is unwarranted by the circumstances:

1. Obtain aid for the injured.
2. Secure and protect persons.
3. Determine what specific crime has occurred.
4. Determine the identity of the suspect(s) and effect an arrest if it can be accomplished either at the scene or through immediate pursuit.
5. Relay all available information to other personnel if the suspect(s) is/are not in custody.
6. Obtain statements from the victim, witnesses, and suspects if an investigator is not available to come to the scene.
7. Interview witnesses and victims.
8. Preserve the crime scene and evidence.
9. Record all the pertinent data on the appropriate report forms.

B. Responsibility for conducting preliminary investigation:

1. The assigned/dispatched officer is responsible for the preliminary investigation. Note that on some occasions a uniformed officer may hamper an investigation; therefore, it may be necessary to dispatch an investigator or other officer who has special skills.
2. The nature of certain crimes requires the immediate notification of investigators and their response to the scene. Such cases include:

RICHLAND COUNTY SHERIFF'S DEPARTMENT POLICY AND PROCEDURE GUIDELINES

CONTINUATION PAGE FOR PROCEDURE NO. 707

- a. Death of a violent or suspicious nature.
 - b. Serious sex crimes.
 - c. Serious injury assaults.
 - d. Armed robberies.
 - e. Other situations where the uniformed officer believes assistance is required.
3. Upon the arrival of an investigator, the preliminary officer shall relinquish responsibility for the initial investigation to that investigator. The investigator will ensure an adequate and complete preliminary investigation has been conducted. He/she will do this by reviewing the incident report for accuracy and completeness.
- C. Follow-up investigation: The follow-up investigation is an extension of the preliminary investigation. The officer may be needed along with the investigator for follow-up investigation which shall include:
 1. The review, consolidation, and analyzing of the reports.
 2. Re-interviewing victims and witnesses for any additional information if required.
 3. Arranging for the analysis and evaluation of evidence with Lab personnel.
 4. Interviewing suspects.
 5. Identifying and apprehending the offender.
 6. Determining if the suspect may be involved or responsible for the commission of other crimes.
 7. Recording information received and preparing the case for court presentation.
- D. Responsibility for conducting follow-up investigations:
 1. The assigned uniform patrol officer shall be responsible for conducting and completing the investigation of non-criminal calls for service and the follow-up investigation of some misdemeanor crimes.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 707

2. If the investigating uniform patrol officer has not completed the case by the end of his tour of duty, the Major of Investigations or his designee may either assign the case to an investigator or hold the case for the original officer. If the case will not be jeopardized by temporary discontinuance, it shall remain the responsibility of the assigned officer.
3. The Investigations Division will be responsible for the follow-up investigations of felonies and assigned misdemeanors. Case assignment shall be made by the Major of Investigations or his designee.

EX 5

MIDBAY BRIDGE TOLL RECEIPTS

Account Activity > Simple Search

Simple Search (Available for the last 90 days)

[Advanced Search](#)

Posted Date Range

Starting Date (MM/DD/YY): **02/27/18**

Ending Date (MM/DD/YY): **03/01/18**

Search

Showing Items 1 to 2 of 2

Skip To Page **Go**

Total Pages: 1

Export To: ☒ PDF ☒ CSV ☒ Excel

Posted Date	Transaction Date	Activity Description	Transaction Type	Amount	Balance	Receipt
03/01/2018 10:04:26 AM	03/01/2018 08:43:54 AM	Transponder 044672230110 on 03/01/2018 08:43:54 AM at Mid-Bay Bridge lane 04D Agency Mid-Bay Bridge with 02 axles.	TTOL	(\$3.00)	\$11.96	Receipt
02/28/2018 06:27:20 PM	02/28/2018 05:19:01 PM	Transponder 044672230110 on 02/28/2018 05:19:01 PM at Mid-Bay Bridge lane 08B Agency Mid-Bay Bridge with 02 axles.	TTOL	(\$3.00)	\$14.96	Receipt

Skip To Page **Go**

Total Pages: 1

Export To: ☒ PDF ☒ CSV ☒ Excel

Showing Items 1 to 2 of 2

ELECTRONICALLY FILED - 2021 Sep 22 4:43 PM - RICHLAND - COMMON P

045

EX 6

STORE RECEIPTS



More saving.
More doing.™

414 B. MARY ESTHER CUTOFF, FWB, FL 32548
PHONE#: 850-301-0450 * * * * *

6301 00058 81339 02/27/18 02:14 PM
SELF CHECK OUT

045242188444 1/2 COBALT <A> 17.97
MILWAUKEE 1/2" COBALT RED HELIX

SUBTOTAL 17.97
SALES TAX 1.08
TOTAL \$19.05

XXXXXXXXXXXX3958 DEBIT

USD\$ 19.05

AUTH CODE 932562
Chip Read
AID A0000000980840
TVR 8080048000
IAD 06010A03608000
TSI 6800
ARC 00

Verified By PIN
US DEBIT

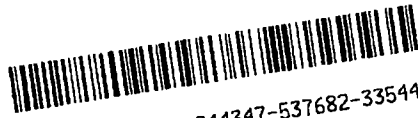


6301 58 81339 02/27/2018 7826

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 05/28/2018
THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

BUY ONLINE PICK-UP IN STORE
AVAILABLE NOW ON HOMEDEPOT.COM

Welcome to Best Buy #177
34940 EMERALD COAST PKWY
DESTIN, FL 32541
(850) 269-2140



Val #: 000030-359541-944347-537682-335444-744
0799 005 4339 02/28/18 15:47

5884334 NS-PW06501 14.99
6FT AC POWER REPLACEMENT CABLE 0.90
Sales Tax

Subtotal 14.99
Sales Tax 0.90
=====

Total 15.89

*****3958 ChipRead USD\$ 15.89
US DEBIT - DEBIT
SHIMELD/ CHRISTOPHER
Approval 671034
Verified By PIN

MODE: Issuer
AID: A0000000980840
Reference Number: 5515472763317

ELECTRONICALLY FILED - 2021 Sep 22 4:43 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

EX 7

HOME SECURITY SYSTEM EVENT LOG

Serial No	Event Name	Originator	Date Time	Event Type
1	Sensor 6 : Master Bedroom Other Sensor Trouble Cleared		Mar 02 2018 02:00:44 PM CST	
2	Sensor 6 : Master Bedroom Other Sensor Trouble		Mar 02 2018 02:00:37 PM CST	
3	Disarmed	Christopher Shimeld	Mar 02 2018 01:37:42 PM CST	
4	Armed Away Instant	Security Panel User [0]	Mar 02 2018 10:58:16 AM CST	
5	Disarmed	Christopher Shimeld	Mar 02 2018 07:40:03 AM CST	
6	Armed Stay	Viki Slot 3	Mar 02 2018 06:47:50 AM CST	
7	Disarmed	Viki Slot 3	Mar 02 2018 06:30:15 AM CST	
8	Armed Stay Instant	Security Panel User [0]	Mar 01 2018 10:06:13 PM CST	
9	Disarmed	Christopher Shimeld	Mar 01 2018 09:16:40 PM CST	
10	Armed Away Instant	Security Panel User [0]	Mar 01 2018 07:56:53 PM CST	
11	Disarmed	Christopher Shimeld	Mar 01 2018 02:12:10 PM CST	
12	Armed Away Instant	Security Panel User [0]	Mar 01 2018 08:01:35 AM CST	
13	Disarmed	Christopher Shimeld	Mar 01 2018 08:00:04 AM CST	
14	Armed Away Instant	Security Panel User [0]	Mar 01 2018 07:59:55 AM CST	
15	Disarmed	Viki Slot 3	Mar 01 2018 07:11:51 AM CST	
16	Armed Stay Instant	Security Panel User [0]	Feb 28 2018 11:36:59 PM CST	
17	Disarmed	Christopher Shimeld	Feb 28 2018 07:06:44 PM CST	
18	Armed Away	Viki Slot 3	Feb 28 2018 08:49:26 AM CST	
19	Disarmed	Viki Slot 3	Feb 28 2018 08:48:57 AM CST	
20	Armed Away	Viki Slot 3	Feb 28 2018 08:44:41 AM CST	
21	Disarmed	Viki Slot 3	Feb 28 2018 07:37:13 AM CST	
22	Armed Away	Viki Slot 3	Feb 28 2018 07:19:25 AM CST	

Serial No	Event Name	Originator	Date Time	Event Type
23	Disarmed	Christopher Shimeld	Feb 28 2018 06:08:50 AM CST	
24	Armed Stay Instant	Security Panel User [0]	Feb 27 2018 11:05:23 PM CST	
25	Disarmed	Viki Slot 3	Feb 27 2018 03:41:35 PM CST	
26	Armed Away	Viki Slot 3	Feb 27 2018 09:38:48 AM CST	
27	Disarmed	Viki Slot 3	Feb 27 2018 09:37:06 AM CST	
28	Armed Away	Viki Slot 3	Feb 27 2018 09:37:03 AM CST	
29	Disarmed	Christopher Shimeld	Feb 27 2018 08:15:38 AM CST	
30	Armed Stay Instant	Security Panel User [0]	Feb 27 2018 01:55:50 AM CST	
31	Disarmed	Christopher Shimeld	Feb 27 2018 01:52:51 AM CST	
32	Armed Stay Instant	Security Panel User [0]	Feb 27 2018 01:26:03 AM CST	

EX 8

PARTIAL PHONE RECORDS

Christopher Shimeld

850.612.1192 | Samsung Galaxy S 5

Talk activity - continued

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
Feb 27	10:34 AM	210.874.0802	Crestview, FL	Sanantonio, TX	1	--	--	--
Feb 27	11:51 AM	850.758.2842	Crestview, FL	Incoming, CL	2	--	--	--
Feb 27	11:53 AM	850.737.4585	Crestview, FL	Ftwaltnbch, FL	2	--	--	--
Feb 27	11:55 AM	850.902.4949	Crestview, FL	Crestview, FL	2	--	--	--
Feb 27	12:08 PM	850.586.9995	Crestview, FL	Incoming, CL	2	--	--	--
Feb 27	2:02 PM	609.207.7186	Mary Esthe, FL	Beachhaven, NJ	1	--	--	--
Feb 27	2:03 PM	850.210.2645	Mary Esthe, FL	Tallahassee, FL	3	--	--	--
Feb 27	2:08 PM	850.902.4949	Ft Walton, FL	Crestview, FL	4	--	--	--
Feb 27	2:12 PM	850.902.4949	Ft Walton, FL	Crestview, FL	1	--	--	--
Feb 27	2:55 PM	850.902.4949	Mary Esthe, FL	Incoming, CL	1	--	--	--
Feb 27	4:07 PM	850.902.4949	Mary Esthe, FL	Crestview, FL	1	--	--	--
Feb 27	4:08 PM	850.902.4949	Mary Esthe, FL	Crestview, FL	1	--	--	--
Feb 27	5:17 PM	850.368.3625	Ft Walton, FL	Incoming, CL	2	--	--	--
Feb 27	6:02 PM	850.586.9995	Crestview, FL	Ftwaltnbch, FL	3	--	--	--
Feb 27	6:12 PM	850.682.5697	Crestview, FL	Crestview, FL	1	--	--	--
Feb 27	6:12 PM	850.737.4585	Crestview, FL	Ftwaltnbch, FL	3	--	--	--
Feb 27	6:29 PM	850.682.5697	Crestview, FL	Crestview, FL	5	--	--	--
Feb 27	7:44 PM	850.902.4949	Crestview, FL	Incoming, CL	6	--	--	--
Feb 28	7:11 AM	850.737.4585	Crestview, FL	Ftwaltnbch, FL	1	--	--	--
Feb 28	7:16 AM	850.737.4585	Crestview, FL	Ftwaltnbch, FL	2	--	--	--
Feb 28	7:24 AM	850.737.4585	Crestview, FL	Ftwaltnbch, FL	1	--	--	--
Feb 28	8:29 AM	850.586.9995	Destin, FL	Ftwaltnbch, FL	7	--	--	--
Feb 28	1:42 PM	850.586.9995	Destin, FL	Ftwaltnbch, FL	2	--	--	--
Feb 28	2:06 PM	346.200.1255	Destin, FL	Houston, TX	1	--	--	--
Feb 28	2:06 PM	850.586.9995	Destin, FL	Ftwaltnbch, FL	1	--	--	--
Feb 28	2:08 PM	850.586.9995	Destin, FL	Ftwaltnbch, FL	1	--	--	--
Feb 28	2:39 PM	850.586.9995	Destin, FL	Ftwaltnbch, FL	1	--	--	--
Feb 28	3:11 PM	850.269.2140	Destin, FL	Destin, FL	3	--	--	--
Feb 28	3:38 PM	850.902.4949	Destin, FL	Crestview, FL	21	--	--	--
Feb 28	4:07 PM	850.612.2303	Destin, FL	Incoming, CL	1	--	--	--
Feb 28	4:18 PM	800.901.0800	Destin, FL	Toll-Free, CL	5	--	--	--
Feb 28	4:24 PM	850.586.9995	Destin, FL	Ftwaltnbch, FL	1	--	--	--
Feb 28	4:58 PM	850.269.2140	Miramar Be, FL	Destin, FL	3	--	--	--
Feb 28	5:25 PM	850.682.8001	Niceville, FL	Crestview, FL	4	--	--	--
Feb 28	5:42 PM	850.423.7400	Niceville, FL	Crestview, FL	3	--	--	--
Feb 28	5:44 PM	850.892.3564	Niceville, FL	Dfuniakspg, FL	2	--	--	--
Feb 28	5:54 PM	850.689.5705	Defuniak S, FL	Crestview, FL	7	--	--	--
Feb 28	6:11 PM	850.306.1012	Crestview, FL	Crestview, FL	1	--	--	--
Feb 28	6:12 PM	850.306.1012	Crestview, FL	Crestview, FL	2	--	--	--
Feb 28	6:14 PM	850.331.2929	Crestview, FL	Crestview, FL	4	--	--	--
Feb 28	6:39 PM	850.737.4585	Crestview, FL	Incoming, CL	8	--	--	--
Feb 28	8:31 PM	877.521.6773	Crestview, FL	Toll-Free, CL	1	--	--	--
Mar 1	8:04 AM	850.586.9995	Crestview, FL	Ftwaltnbch, FL	4	--	--	--
Mar 1	9:42 AM	478.955.0096	Destin, FL	Incoming, CL	6	--	--	--
Mar 1	9:51 AM	850.682.2731	Destin, FL	Incoming, CL	1	--	--	--

ELECTRONICALLY FILED - 2021 Sep 22 4:43 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

EX 9

PARTIAL BANK RECORDS

**Transaction history (continued)**

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
2/28		Square Inc 180228R2 180228 L207338141626 Christopher Shimeld	607.85		
2/28		Purchase authorized on 02/27 Sonic Drive IN #51 Crestview FL S468058649658820 Card 3958		4.65	
2/28		Purchase authorized on 02/28 Tom Thumb 1602 E James Crestview FL P00000000489376664 Card 3958		11.79	
2/28		Purchase authorized on 02/28 Best Buy 00007997 Destin FL P0000000073925353 Card 3958		15.89	
2/28		ATM Withdrawal authorized on 02/28 4526 Hwy 20 East Niceville FL 0007233 ATM ID 1713Q Card 3958		80.00	1,318.50
3/1		ATM Check Deposit on 03/01 4526 Hwy 20 East Niceville FL 0007363 ATM ID 1713Q Card 3958	935.00		
3/1		Purchase authorized on 02/28 Tom Thumb #115 Crestview FL S468059472248800 Card 3958		20.00	
3/1		Purchase authorized on 02/28 Davids Catfish Cre Crestview FL S388060014012534 Card 3958		11.64	
3/1		Purchase authorized on 03/01 Brummeyers Gen Store Crestview FL P00000000732505784 Card 3958		13.81	
3/1		Purchase authorized on 03/01 Brummeyers Gen Store Crestview FL P00000000580592098 Card 3958		6.36	2,201.69
3/2		Purchase authorized on 02/28 Chick-Fil-A #03355 Miramar Beach FL S468059734533140 Card 3958		6.51	
3/2		Cash eWithdrawal in Branch/Store 03/02/2018 1:00 Pm 4526 E Hwy 20 Niceville FL 3958		500.00	
3/2		Cash eWithdrawal in Branch/Store 03/02/2018 1:02 Pm 4526 E Hwy 20 Niceville FL 3958		500.00	1,195.18
3/5		Purchase authorized on 03/01 Shell Oil 57542791 Miramar Beach FL S468060581918861 Card 3958		10.01	
3/5		Purchase authorized on 03/01 Shell Oil 57543724 Niceville FL S308060697574617 Card 3958		13.01	
3/5		Chase Credit Crd Epay 180302 3478976815 Christopher A Shimeld		400.00	772.16
3/6		Centurylink Speedpay 180305 xxxxx5232 xxxxx1495		149.59	622.57
3/7		Deposit Made In A Branch/Store	800.00		1,422.57
3/8		ATM Check Deposit on 03/08 320 N. Ferdon Blvd Crestview FL 0008395 ATM ID 2857Q Card 3958	410.00		
3/8		Auburn Water Util Bill 180307 00530-00 Shimeld, Christopher A		21.03	
3/8		Chase Credit Crd Epay 180307 3486054841 Christopher A Shimeld		873.44	938.10
3/9		Square Inc 180309R2 180309 L207340252257 Christopher Shimeld	406.50		
3/9		ATM Check Deposit on 03/09 320 N. Ferdon Blvd Crestview FL 0008645 ATM ID 2857Q Card 3958	275.00		
3/9		Purchase authorized on 03/07 Cefco #408 Crestview FL S308066695298479 Card 3958		25.00	1,594.60
3/12		ATM Withdrawal authorized on 03/12 320 N. Ferdon Blvd Crestview FL 0009793 ATM ID 2857Q Card 3958		800.00	794.60
3/13		Purchase authorized on 03/12 Tom Thumb #115 Crestview FL S588071788164364 Card 3958		31.01	
3/13		Purchase authorized on 03/12 Firehouse Subs -CR Crestview FL S308071798006687 Card 3958		7.63	
3/13		Purchase authorized on 03/13 Brummeyers Gen Store Crestview FL P00000000683800596 Card 3958		12.85	743.11
3/14		ATM Check Deposit on 03/14 4526 Hwy 20 East Niceville FL 0009032 ATM ID 1713Q Card 3958	504.00		

EX 10

DISCOUNT TOBACCO WORK ORDER



Service Ticket



5512UE00

ELECTRONICALLY FILED - 2021 Sep 22 4:23 PM - RICHLAND - COMMON PLEAS - CASE# 2019CP4001299

Service Date: <u>3-19-15</u>		Customer Acct #: <u>17818928</u> Add Customer Acct. # to check.		Job #: <u>79824613</u>					
Enroute: <u>11:12</u> Onsite: <u>12:26</u>		Cleared: <u>1:14</u>							
Customer Name: <u>Discount Tobacco</u>									
Address: <u>10890 Two Notch Rd</u>									
City, State, ZIP: <u>Elgin SC 29045</u>									
Requested By: _____		Contact Name: _____		Contact Phone: <u>803-348-2719</u>					
System Type: <u>SW3000</u>		System #: <u>0383634674</u>		Service Plan: _____					
QSP/Extended Limited Warranty: ☐ Yes ☐ No		Warranty Work: ☐ Yes ☐ No		Billable: ☐ Yes ☒ No Labor Quote: ☐ Yes ☐ No					
Service Requested: <u>2g 3g</u>		<u>RCV 79824613 353431705</u>							
Is work complete? ☒ Yes ☐ No		Were device(s) disconnected? ☐ Yes ☒ No		Were devices/services added? ☐ Yes ☒ No Devices/services can only be added from a Rider.					
Description of Work: <u>Replaced Radio kept old sim #</u>									
Cause Code: _____		Resolution Codes: _____		System taken off test? ☒ Yes ☐ No ☐ N/A					
Parts				Labor Calculation					
Qty	Part #	Price	Total Price	Minimum Labor Charge	Labor Increment Qty				
1	3g 3070 RF ☐ Need to order	\$ <u>7</u>	\$	\$					
	☐ Need to order	\$	\$	After-Hours Labor Calculation					
	☐ Need to order	\$	\$	Minimum Labor Charge	Labor Increment Qty				
	☐ Need to order	\$	\$						
	☐ Need to order	\$	\$						
	☐ Need to order	\$	\$	Payment Information					
	☐ Need to order	\$	\$	Check/Credit Amount: \$ <u>7</u> Check #: _____					
	☐ Need to order	\$	\$	Credit Card #: _____					
	☐ Need to order	\$	\$	Card Type: ☐ VISA ☐ MasterCard ☐ Discover ☐ AMEX					
	☐ Need to order	\$	\$	Exp Date: <table border="1"><tr><td>Month</td><td>Year</td></tr><tr><td></td><td></td></tr></table>		Month	Year		
Month	Year								
Total Parts Price (A) \$				Purchase Order #: _____					
Labor Charges				IN ACCORDANCE WITH AND SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH IN OUR EXISTING CONTRACT/AGREEMENT IF ONE IS IN EFFECT, OTHERWISE AS SET FORTH ON THE REVERSE SIDE HEREOF.					
Trip Charge: ☐ Yes ☒ No		Trip Charge \$		Print Name: <u>[Signature]</u> (As it appears on the credit card.)					
Minimum Labor Charge		\$		Signature: _____					
Additional Labor Charge		\$		Date: <u>3-19-15</u>					
Overtime Labor Charge		\$		On monitored alarm systems, I tested, and if necessary, connected ☐ Yes ☐ No the line seizure feature to ensure it is working correctly.					
Total Labor Price (B) \$				Representative Name: <u>Chris Shimel</u>					
Less Credit or Non-Chargeable Labor		\$		Representative ID #: <u>131256</u>					
Subtotal Parts + Labor (A+B) \$									
Tax Exempt Code: _____									
Tax @ _____ %		\$							
Total Service Price \$		<u>7</u>							

PAYMENT IS DUE UPON COMPLETION OF WORK

056

ADT COPY

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 1

1803003801



815

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 2

PHOTO LINE-UP RICHLAND COUNTY SHERIFF'S DEPARTMENT



PHOTO LINE-UP AFFIDAVIT

Case Number: 1803003801 Date: _____, 2018 Time: _____

On this date Investigator Vicki Rains showed me six (6) pictures at _____

I picked out picture (# 4), which is the person who committed the crime

of _____ at _____

on _____

I hereby swear and certify the above is the truth.

Sign: [Signature]

Print: Kristen Clark

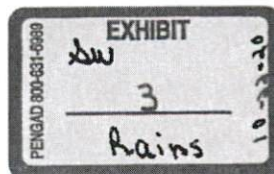
Sworn and subscribed to before me, this
____ Day of _____ 2018

Address: _____

Phone: _____

NOTARY PUBLIC OF SOUTH CAROLINA
COMMISSION EXPIRES _____

Witness: _____



00516-A-044

060

PHOTO LINE-UP
RICHLAND COUNTY SHERIFF'S DEPARTMENT

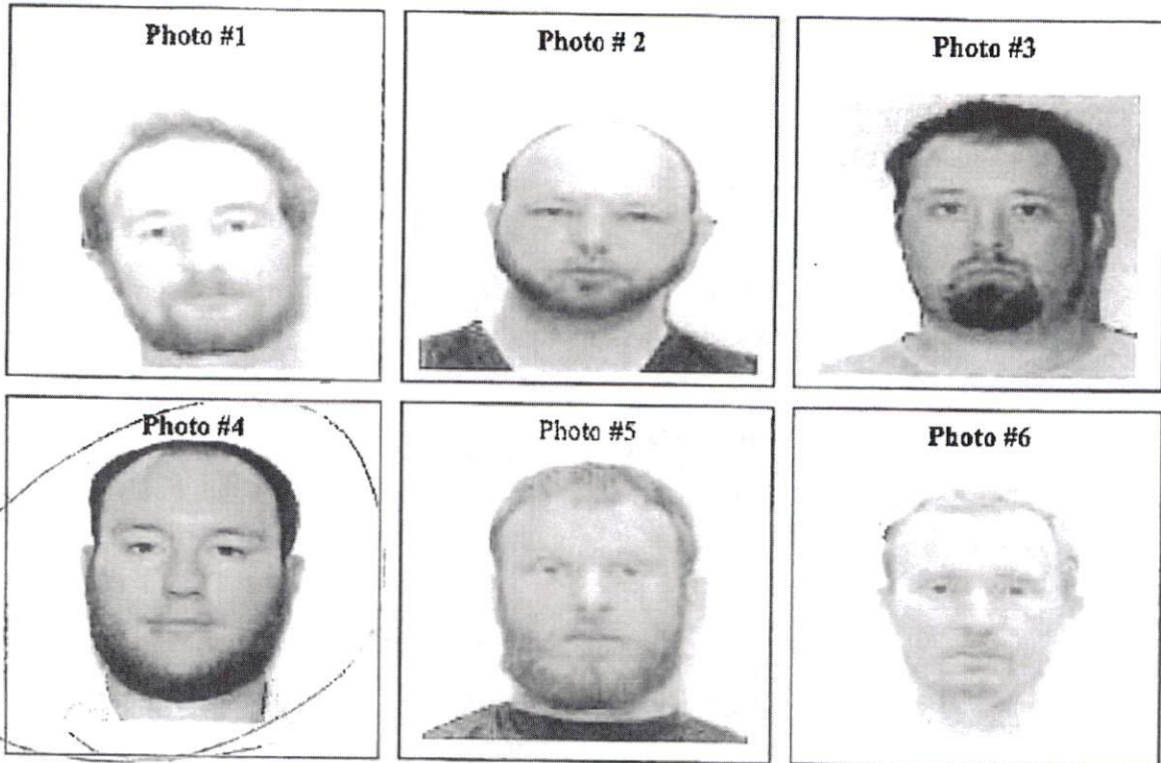


PHOTO LINE-UP AFFIDAVIT

Case Number: 1803003801 Date: _____, 2018 Time: _____

On this date Investigator Vicki Rains showed me six (6) pictures at _____

I picked out picture (# 4), which is the person who committed the crime

of _____ at _____

on _____

I hereby swear and certify the above is the truth.

Sign: *J. Clark*

Print: *Jennifer Clark*

Sworn and subscribed to before me, this
____ Day of _____, 2018

Address: _____

Phone: _____

NOTARY PUBLIC OF SOUTH CAROLINA
COMMISSION EXPIRES _____

Witness: _____



00516-A-045

061

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 3

00516-A-054

Exhibit No. 15
WITNESS Christopher R. Shimeld
Date 11-5-2021
Thompson Court Reporter

ARREST WARRANT

2018A4010700088

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland / Upper Township Magistrate

THE STATE 1803803801
against
Christopher R Shimeld

Address: 4017 Percival Rd
Columbia, SC 29229-

Phone: SSN:
Sex: M Race: W Height: 5 10 Weight: 180
SC0400000

Prosecuting Agency: Richland County Sheriff
Prosecuting Officer: Vicki L Rains - S00796
Offense: Burglary / Burglary (Non-Violent) - Second degree

Offense Code: 0080
Code/Ordinance Sec: 16-11-0312

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Richland / Upper Township Magistrate)

AFFIDAVIT

DEFENDANT COPY

Form Approved by
U.S. Attorney General
April 21, 2003
CCCA 515

Personally appeared before me the affiant Vicki L Rains who
being duly sworn deposes and says that defendant Christopher R Shimeld
did within this county and state on or about 2/28/2018 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Upper Township Magistrate)
in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on or about 02/28/2018 while at 10890 Two Notch Rd., in the Pontiac Magisterial District of Richland County, it is believed
that the defendant did commit the crime of Burglary 2nd because the defendant did willfully and unlawfully force entry by cutting
through the back of the business and entering through the office where the camera was unplugged and the alarm system was torn
from the ceiling and destroyed. There is a fingerprint match for the defendant on the alarm box that was torn from the ceiling. I
spoke with the manager of the alarm company who installed the alarm system and he stated he has never heard of the defendant nor
has the defendant ever been employed by the alarm company who installed the alarm. The victim stated the defendant has never
been in the office with the alarm system and he does not know the defendant. The estimated amount of Theft is \$28,000. Affiant
and others are witness to prove same.

Signature of Affiant Vicki L Rains

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Richland / Upper Township)
Magistrate)

Affiant's Address: 5623 Two Notch Road
Columbia, SC 29223
Affiant's Telephone: (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 2/28/2018 defendant Christopher R Shimeld
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Richland / Upper Township Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 3/16/2018

Signature of Issuing Judge (L.S.)
Timothy Clinton Edmond
Judge Code: 7154

Judge's Address: 4919 Rhett Street
Columbia, SC 29203-4528
Judge's Telephone: (803)576-2570

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 4

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-60

§ 15-78-60. Exceptions to waiver of immunity.

Effective: March 30, 2010
Currentness

The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;
- (7) a nuisance;
- (8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;
- (9) entry upon any property where the entry is expressly or impliedly authorized by law;

§ 15-78-60. Exceptions to waiver of immunity., SC ST § 15-78-60

- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;
- (11) assessment or collection of taxes or special assessments or enforcement of tax laws;
- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;
- (15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;
- (16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;
- (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;
- (18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;

§ 15-78-60. Exceptions to waiver of immunity., SC ST § 15-78-60

- (19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;
- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;
- (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;
- (22) termination or reduction of benefits under a public assistance program;
- (23) institution or prosecution of any judicial or administrative proceeding;
- (24) holding or conduct of elections;
- (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;
- (26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.
- (27) solicitations on streets and highways as authorized by the provisions of Section 5-27-910.
- (28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.
- (29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.
- (30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.
- (31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.

(32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46-43-40.

(33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.

(34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.

(35) the failure of a library's or media arts center's governing board to adopt policies as provided in Section 10-1-205.

(36) acts or omissions by a special state constable who is appointed pursuant to Section 23-7-10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in Section 23-7-40.

(37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.

(38) conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57.

(39) the grant or denial by a governing body of a county or municipality as provided in Section 23-35-175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.

(40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

Credits

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, §§ 5, 6; 1988 Act No. 373, § 2; 1988 Act No. 664; 1988 Act No. 675, § 1; 1989 Act No. 132, § 2; 1990 Act No. 351, § 2; 1996 Act No. 386, § 3; 1997 Act No. 35, § 6; 1999 Act No. 77, § 4; 2000 Act No. 362, § 1; 2000 Act No. 387, Part II, § 69A.5; 2000 Act No. 387, Part II, § 97B; 2000 Act No. 407, § 3; 2005 Act No. 6, § 2, eff January 13, 2005; 2005 Act No. 81, § 2, eff May 26, 2005; 2005 Act No. 137, § 2, eff May 25, 2005.

Relevant Notes of Decisions (9)

View all 240

Notes of Decisions listed below contain your search terms.

In general

§ 15-78-60. Exceptions to waiver of immunity., SC ST § 15-78-60

Section 15-78-60(5), which provides for immunity from liability for losses resulting from "...the exercise of discretion or judgment by the governmental entity or employee...", must be read in light of § 15-78-60(25), which provides an exception to immunity where the governmental entity exercises its responsibility or duty in a grossly negligent manner. Thus, if discretion is exercised in a grossly negligence manner, the exception to the normal rule of immunity applies. *Jackson v. South Carolina Dept. of Corrections* (S.C.App. 1989) 301 S.C. 125, 390 S.E.2d 467, certiorari granted, affirmed 302 S.C. 519, 397 S.E.2d 377.

Traffic signals

The "sign, signal, warning device, illumination device" referred to in § 15-78-60 are "those used in connection with hazards normally connected with the use of public ways"--that is, warning devices used on the roadway, not on motor vehicles; thus, in an action arising from, inter alia, the malfunctioning of a school bus's signal lights, the Department of Education could not use § 15-78-60 to limit its liability. *Singletary v. South Carolina Dept. of Educ.* (S.C.App. 1994) 316 S.C. 153, 447 S.E.2d 231, rehearing denied.

Maintenance of premises

A trial judge did not err in refusing to dismiss under § 15-78-60(20) a personal injury action in which the plaintiff sought damages for injuries received as a result of his being struck by a glass bottle which was thrown by an unknown third party from a city auditorium's balcony during a rock concert, where the complaint alleged that the city auditorium and its employees were negligent in adequately securing and maintaining the premises during the concert and that this negligence created a reasonably foreseeable risk of such third party conduct, and the complaint did not allege that the city auditorium was liable because of the criminal act of a third party; consequently, § 15-78-60(20) would not operate to exonerate the city auditorium of liability for its own conduct. The city auditorium could not successfully defend on the ground that the plaintiff's injuries were caused by the wrongful criminal act of a third party where the very basis upon which the city auditorium was claimed to be negligent was that it created a reasonably foreseeable risk of such third party conduct. *Greenville Memorial Auditorium v. Martin* (S.C. 1990) 301 S.C. 242, 391 S.E.2d 546.

Schools

A school district was not entitled to the dismissal of a complaint by a student which alleged that the district was grossly negligent in its supervision of the student and another student, which resulted in the other student's assault on the plaintiff at school during school hours, since the complaint did not seek to pin liability on the school district based on the alleged criminal action of the other student; thus, the district was not entitled to the immunity of § 15-78-60 and an issue for the trier of fact was presented. *Woodell by Allen v. Marion School Dist. One* (S.C.App. 1992) 307 S.C. 297, 414 S.E.2d 794.

A school district's failure to conduct an identification check during one week of school to ensure that the students had parental permission to drive to a vocational center in private vehicles instead of riding a bus did not constitute an intentional and conscious failure, and thus the school district was not grossly negligent under § 15-78-60 of the Tort Claims Act. *Richardson by McDaniel v. Hambright* (S.C. 1988) 296 S.C. 504, 374 S.E.2d 296. *Automobiles* § 187(2)

Court orders

In an action for unlawful arrest, a city was not entitled to summary judgment under § 15-78-60(3) where the plaintiff was arrested before the city obtained a warrant from a magistrate, and thus the actions of the police did not occur either during the execution or enforcement of a court order, or during the lawful implementation of any process. *Wortman v. Spartanburg* (S.C. 1992) 310 S.C. 1, 425 S.E.2d 18. *Municipal Corporations* § 747(3)

Failure to follow laws or policies

The defendant county was entitled to summary judgment in an action to recover for the death of a bicyclist who was fatally injured when she was chased into traffic by several vicious dogs, since the gravamen of the complaint was the county's failure to enforce an animal control ordinance, and thus the county was immune from liability under § 15-78-60(4). *Adkins v. Varn* (S.C. 1993) 312 S.C. 188, 439 S.E.2d 822. Counties ~~§~~ 141

Prison officials

Prison officials were immune from suit based upon the South Carolina State Tort Claims Act, §§ 15-78-10 et seq. arising from the denial of an inmate's application for participation in a work-release program; the decision to grant or deny such an application clearly involves the exercise of discretion or judgment which is protected by § 15-78-60. *Quillian v. Evatt* (S.C.App. 1994) 315 S.C. 489, 445 S.E.2d 639, rehearing denied, certiorari denied, certiorari denied 115 S.Ct. 1105, 513 U.S. 1152, 130 L.Ed.2d 1071. Civil Rights ~~§~~ 1376(7)

Burden of proof

The Tort Claims Act, §§ 15-78-10 et seq., did not bar a suit by a motorist against the Department of Highways and Public Transportation where she alleged that because of an unusually low shoulder, of which the department was aware, she lost control of her car when she inadvertently drove her right wheels off the edge of a highway and was injured; under § 15-78-60 the governmental entity bears the burden of establishing discretionary immunity as an affirmative defense. *Foster v. South Carolina Dept. of Highways and Public Transp.* (S.C. 1992) 306 S.C. 519, 413 S.E.2d 31.

COPYRIGHT (C) 2021 BY THE STATE OF SOUTH CAROLINA

Code 1976 § 15-78-60, SC ST § 15-78-60

Current through 2021 Act No. 116, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 5

429 S.C. 298
Court of Appeals of South Carolina.

Russell Shane CARTER, Respondent/Appellant,
v.
Bruce BRYANT, as Representative for the Office of
the York County Sheriff, Appellant/Respondent.

Appellate Case No. 2016-002556

Opinion No. 5710

Heard September 16, 2019

Filed January 15, 2020

Rehearing Denied February 20, 2020

Certiorari Denied October 19, 2020

Synopsis

Background: After charge of assault and battery of high and aggravated nature (ABHAN) against homeowner for repeatedly hitting neighbor with baseball bat was nolle prossed due to assistant solicitor's belief homeowner would be acquitted, homeowner brought action for false arrest and malicious prosecution against sheriff. Sheriff moved for directed verdict. The Circuit Court, York County, John C. Hayes, J., directed verdict for sheriff on false arrest claim and let malicious prosecution claim proceed. Jury awarded homeowner \$150,000 in actual damages, and sheriff moved for judgment notwithstanding verdict. Circuit court denied motion, and parties cross-appealed.

Holdings: The Court of Appeals, Hill, J., held that:

[1] trial court's entry of directed verdict against homeowner on his claim for false arrest was warranted under facially valid warrant doctrine;

[2] homeowner's expert's testimony was inadmissible;

[3] warrant for homeowners arrest was supported by probable cause; and

[4] sheriff was entitled to judgment as matter of law on homeowner's malicious prosecution claim.

Affirmed in part and reversed in part.

Procedural Posture(s): On Appeal; Motion for Judgment as a Matter of Law (JMOL)/Directed Verdict; Motion for Judgment Notwithstanding the Verdict (JNOV); Judgment.

West Headnotes (20)

[1] **False Imprisonment** ➡ Liability of officer or other person making arrest and persons assisting officer

Sheriffs and Constables ➡ Liabilities for negligence or misconduct in general

Warrant pursuant to which homeowner was arrested was facially valid, and thus trial court's entry of directed verdict against homeowner on his claim for false arrest was warranted under facially valid warrant doctrine, in homeowner's action against sheriff for false arrest arising from incident in which homeowner was arrested for hitting neighbor with baseball bat when neighbor appeared at homeowner's door during night seeking water from a shared well and allegedly became combative; warrant complied with statutory requirements and set forth facts showing homeowner had committed crime, sheriff's deputy's affidavit was sworn under oath, warrant was signed by magistrate and was on form approved by attorney general, and magistrate had authority and jurisdiction to issue warrant and was neutral, independent, and detached.  S.C. Code Ann. §§ 17-13-160, 22-3-710.

[2] **Appeal and Error** ➡ Review for correctness or error

Appeal and Error ➡ Sufficiency of evidence
The Court of Appeals may reverse the grant of a directed verdict only if there is no evidence supporting it or it is controlled by an error of law.

[3] False Imprisonment ⇌ Nature and Elements of False Imprisonment

The elements of the tort of false arrest or false imprisonment are intentional restraint of another without lawful justification.

3 Cases that cite this headnote

[4] False Imprisonment ⇌ Illegality of Arrest

One arrested pursuant to a facially valid warrant has no cause of action for false arrest.

3 Cases that cite this headnote

[5] False Imprisonment ⇌ Nature and form of remedy

Malicious Prosecution ⇌ Nature and form of remedy

In the event no probable cause existed to support a facially valid warrant pursuant to which a plaintiff was arrested, the remedy is to sue for malicious prosecution, not false arrest. U.S. Const. Amend. 4.

2 Cases that cite this headnote

[6] False Imprisonment ⇌ Illegality of Arrest

If a plaintiff suing for false arrest has shown that the arrest and imprisonment of which he complains was made under legal process, regular in form, and lawfully issued and executed, then he has proved himself out of court.

1 Cases that cite this headnote

[7] Searches and Seizures ⇌ Necessity of and preference for warrant, and exceptions in general

A warrant issued without probable cause violates the Fourth Amendment of the United States Constitution and Article I, section 10 of the South Carolina Constitution and makes any seizure based solely on the warrant unlawful. U.S. Const. Amend. 4; S.C. Const. art. 1, § 10.

[8] False Imprisonment ⇌ Illegality of Arrest

A facially valid warrant that proves to lack probable cause does not make the initial arrest unlawful for the purposes of the tort of false arrest. U.S. Const. Amend. 4.

1 Cases that cite this headnote

[9] Civil Rights ⇌ Arrest and detention

False Imprisonment ⇌ Nature and form of remedy

Malicious Prosecution ⇌ Nature and form of remedy

A person proximately harmed by being arrested on a facially valid warrant that transpires to lack probable cause may have several remedies, including a § 1983 action based on an unlawful seizure, or an action for malicious prosecution; he does not have a claim for false arrest. U.S. Const. Amend. 4; 42 U.S.C.A. 1983.

[10] False Imprisonment ⇌ Questions for jury

In a false arrest claim, even if the facially valid test required determination of whether the warrant pursuant to which plaintiff was supported by probable cause, that question would not be for the jury but for the court. U.S. Const. Amend. 4.

2 Cases that cite this headnote

[11] Appeal and Error ⇌ In general; asserting new or inconsistent grounds

Homeowner's argument, that sheriff's deputy omitted from warrant application process that neighbor assaulted homeowner while homeowner was in his home and that homeowner was protected by Protection of Persons and Property Act (PPPA) and that those facts could have defeated probable cause and entitled him to hearing invalidating warrant, was not preserved for appeal, in homeowner's action for malicious prosecution against sheriff after charge of assault and battery of high and aggravated nature (ABHAN) against homeowner was nolle

crossed, where homeowner did not raise issue to trial court nor produce any evidence in his case in chief of warrant application process or any alleged omissions or misrepresentations by officer. U.S. Const. Amend. 4; S.C. Code Ann. § 16-11-410 et. seq.

[12] **Appeal and Error** ⇌ Evidence and Witnesses in General

The Court of Appeals reviews evidentiary rulings for an abuse of discretion and must affirm them unless they rest on incorrect law or inadequate facts.

[13] **Evidence** ⇌ Matters directly in issue

Expert testimony on issues of law is rarely admissible. S.C. R. Evid. 704.

[14] **Evidence** ⇌ Matters directly in issue

Homeowner's expert witness' proposed testimony regarding police investigations and defining probable cause stated legal conclusion that ran risk of misleading jury and telling them what their verdict should be, and thus expert's testimony was inadmissible, in homeowner's action against sheriff for false arrest arising from incident in which homeowner was arrested for hitting neighbor with baseball bat when neighbor appeared at homeowner's door during night seeking water from shared well and allegedly became combative. U.S. Const. Amend. 4.

[15] **Arrest** ⇌ What constitutes such cause in general

The concept of probable cause to arrest is a legal term of art carrying a specialized meaning distinct from everyday usage. U.S. Const. Amend. 4.

[16] **Judgment** ⇌ Evidence and inferences that may be considered or drawn

Judgment ⇌ Propriety of judgment in general

In ruling on a judgment notwithstanding the verdict (JNOV) motion, the trial court construes all reasonable inferences and ambiguities in the evidence in favor of the non-moving party as to each element of the claim and must deny the motion if more than one reasonable inference emerges; if, however, the evidence could only produce one reasonable conclusion, the motion must be granted.

[17] **Malicious Prosecution** ⇌ Nature and elements of malicious prosecution in general

To establish a claim for malicious prosecution, a plaintiff must prove the following elements by the greater weight of the evidence: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of the proceedings in plaintiff's favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage.

1 Cases that cite this headnote

[18] **Arrest** ⇌ Grounds for warrantless arrest in general

At the arrest warrant stage, the law does not demand certainty, clear and convincing proof, proof beyond a reasonable doubt, or even proof by the greater weight of the evidence; instead, the law insists on something less, but something more than reasonable suspicion: it demands a fair probability. U.S. Const. Amend. 4.

[19] **Malicious Prosecution** ⇌ Acts and conduct of accused evidence of probable cause in general

A reasonable person would have believed homeowner had committed crime of assault and battery of high and aggravated nature (ABHAN) against neighbor when he repeatedly hit neighbor with baseball bat, and thus warrant for homeowner's arrest was supported by probable cause, in homeowner's action against

sheriff for malicious prosecution; although homeowner had good defense based on Castle Doctrine, deputy testified neighbor was covered in blood and had bruises all over his body, homeowner admitted he hit neighbor with bat several times, including after he was already on ground and declared he would have continued to hit neighbor until he stopped moving, deputy observed neighbor's head was disfigured, and neighbor had bruises and abrasions on back of his head, torso, and upper back. U.S. Const.

Amend. 4; S.C. Code Ann. §§ 16-3-600(A)(1), 16-3-600(B)(1).

[20] Malicious Prosecution ⇌ Result of preliminary examination

Warrant for homeowner's arrest for assault and battery of high and aggravated nature (ABHAN) established probable cause on its face, and thus sheriff was entitled to judgment as matter of law on homeowner's malicious prosecution claim; although ABHAN charge was nolle prossed before preliminary hearing because assistant solicitor in charge of case believed jury would acquit homeowner, sheriff's deputy presented his entire case investigation to magistrate and deputy signed and swore to warrant, deputy stated under oath in warrant that his belief in probable cause was based on police investigation and cited to his report, and officers were faced with classic case of conflicting evidence as to who struck first blow and if neighbor tried to enter home. U.S. Const. Amend. 4.

****526** Appeal From York County, John C. Hayes, III, Circuit Court Judge

Attorneys and Law Firms

Andrew F. Lindemann, of Lindemann, Davis & Hughes, PA, and Robert David Garfield, of Crowe LaFave, LLC, both of Columbia, for Appellant/Respondent.

John Christopher Mills, of J. Christopher Mills, LLC, and Alexandre Thomas Postic, of Law Offices of Alex Postic, both of Columbia, for Respondent/Appellant.

Opinion

HILL, J.:

***303** Following the *nolle pros* dismissal of an assault and battery of a high and aggravated nature (ABHAN) charge against him, Russell Shane Carter sued former York County Sheriff Bruce Bryant, in his official capacity as York County Sheriff, for false arrest and malicious prosecution. The trial court directed a verdict for Bryant on the false arrest claim but let the malicious prosecution claim proceed. The jury awarded Carter \$150,000 actual damages. Both sides now appeal. Carter appeals the directed verdict against him on his false arrest claim and the exclusion of his expert witness. We affirm these rulings. Bryant raises several issues on appeal, including the fundamental one that the trial court should have granted him a judgment notwithstanding the verdict (JNOV) on Carter's ***304** malicious prosecution claim because the only reasonable inference from the evidence was that there was probable cause to arrest Carter. We agree with Bryant and, therefore, reverse the judgment against him.

I.

Carter and his family rented a home on property they shared with three mobile homes. Carter served as caretaker of the property, including assisting other renters with the troublesome well that served as the water supply.

According to Carter, one night in April 2012, he was awakened by someone banging on his front door. The person refused to identify himself, so Carter opened his front door and cracked the screen door to talk with him. A man, later identified as Michael Robinson Faile, stated he wanted water. Carter repeatedly told Faile he was trespassing and asked him to leave, but Faile refused. Carter sensed Faile smelled of alcohol, decided Faile would not listen, and agreed to check the water the next day. Faile demanded Carter check the water immediately. Carter asked his wife to call the sheriff's office. Carter stated Faile moved forward and put his hands on the screen door, and in response, Carter's wife handed her husband an aluminum baseball bat. Carter again asked Faile to leave, but Faile refused. Carter tried to ****527** close the screen door, but Faile placed one hand inside the door to hold

it open and struck Carter on the side of the head with his other hand. As Carter tried to force Faile outside, Faile continued to hit Carter. Carter then hit Faile in the head with the bat and continued to hit him after Faile fell to the ground. Carter stood over Faile until the police arrived. The entire fracas occurred on Carter's front porch.

When Deputy Kevin Gwinn of the York County Sheriff's Office arrived at the scene, Carter was holding the bat and standing over a motionless Faile. EMS arrived and took Faile to a hospital, and Deputy Gwinn and the other responding officers took statements from Carter and his wife. Carter told Gwinn his version of the altercation and asked if he was protected by the "Stand My Ground Law," referring to the South Carolina Protection of Persons and Property Act (PPPA), also popularly known as the law incorporating the *305 common law "Castle Doctrine." See S.C. Code Ann. §§ 16-11-410 to -450 (2015). One of the officers responded "that law might be down in Florida but that ain't up here." The officers did not arrest Carter at this time.

After leaving Carter's home, Deputy Gwinn went to the hospital to obtain Faile's statement. Faile told Deputy Gwinn he went to speak with Carter about the water, in hopes of assisting with any necessary repair of the well. He explained he was walking off Carter's porch when Carter hit him in the back of the head, and a struggle ensued. Deputy Gwinn noted Faile's head was injured and even sunken in several spots, and Faile had bruises all over his body. Deputy Gwinn prepared an incident report, which detailed both Carter's and Faile's versions of the incident and Faile's injuries.

The following day, Deputy Gwinn met with York County magistrate Leon Yard to discuss the case. After Deputy Gwinn presented the case, Yard determined there was probable cause to issue an arrest warrant for Carter on the charge of ABHAN. The affidavit on the face of the warrant sworn by Deputy Gwinn states:

On April 25, 2012, in the county of York, one Russell Shane Carter did willfully and unlawfully violate SC Laws by striking Michael Robin Faile about the head and body with an aluminum baseball bat causing visible injuries that required medical attention. The victim was transported to Piedmont Medical Center in Rock

Hill by EMS. Probable cause based on a police investigation. REPORT # 201200013457.

An assistant solicitor later *nolle prossed* the charge against Carter (who was never indicted), noting on the dismissal form that Carter's "actions were within the law" and later testifying Carter's actions were likely protected by the PPPA, the Castle Doctrine, and the defense of habitation.

II. CARTER'S APPEAL

A. False Arrest and the Facially Valid Warrant Doctrine

[1] [2] Carter's appeal centers on the trial court's directing a verdict against him on his false arrest claim. We may reverse the grant of a directed verdict only if there is no evidence supporting it or it is controlled by an error of law. *306 *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 39, 664 S.E.2d 83, 86 (Ct. App. 2008). The trial court ruled that because Carter was arrested on the strength of a facially valid warrant, there was no false arrest as a matter of law. We agree with the trial court.

[3] False arrest in South Carolina is also known as false imprisonment. The elements of the tort are intentional restraint of another without lawful justification. See *Jones v. City of Columbia*, 301 S.C. 62, 64, 389 S.E.2d 662, 663 (1990); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995); Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* 455 (4th ed. 2011); see also *Wallace v. Kato*, 549 U.S. 384, 388, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007) ("False arrest and false imprisonment overlap; the former is a species of the latter."). The hallmark of the tort is an unlawful restraint deliberately applied, and it is grounded in the law of trespass. See William L. Prosser & W. Page Keeton et al., *Prosser and Keeton on Torts* § 11 (5th ed. 1984).

**528 [4] [5] It has long been the law that one arrested pursuant to a facially valid warrant has no cause of action for false arrest. *Bushardt v. United Inv. Co.*, 121 S.C. 324, 330, 113 S.E. 637, 639 (1922) ("It has been definitely decided in this jurisdiction that where one is 'properly arrested by lawful authority,' 'an action for false imprisonment cannot be maintained against the party causing the arrest.'") In the event no probable cause existed, the remedy

is to sue for malicious prosecution, not false arrest. *See* *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996) (“At common law, allegations that a warrantless arrest or imprisonment was not supported by probable cause advanced a claim of false arrest or imprisonment. ... However, allegations that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for the period after legal process issued, are analogous to the common-law tort of malicious prosecution.”); *see also* *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998) (accord).

[6] An early South Carolina case relies on a distinction drawn by Lord Mansfield that the trespass-based wrong of false imprisonment occurs when a defendant's actions are *307 “upon the stating of it” manifestly illegal, while a malicious prosecution is for a prosecution that began as manifestly legal but “was carried on without cause.” *McHugh v. Pundt*, 17 S.C.L. (1 Bail.) 441, 445 (1830) (quoting *Sutton v. Johnstone*, 1 T.R. 544); *see generally* *Hubbard & Felix, supra* at 464 (“The distinguishing factor of the tort of false imprisonment, is that, unlike either [malicious prosecution or abuse of process], it cannot, by definition, involve a lawful arrest or detention.”). If a plaintiff suing for false arrest “has shown that the arrest and imprisonment of which he complains was made under legal process, regular in form, and lawfully issued and executed, then he has proved himself out of court.” *McConnell v. Kennedy*, 29 S.C. 180, 186–87, 7 S.E. 76, 78 (1888).

[7] [8] It appears *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), and *Law v. South Carolina Department of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006), have caused some confusion surrounding the elements of false arrest. However, in *Gist*, the defendant sheriff's department conceded the warrant lacked probable cause. 336 S.C. at 166, 521 S.E.2d at 616. Citing *Wortman v. Spartanburg*, 310 S.C. 1, 425 S.E.2d 18 (1992), the court in *Gist* stated the “fundamental issue in determining the lawfulness of an arrest is whether there was ‘probable cause’ to make the arrest.” *Gist*, 336 S.C. at 615, 521 S.E.2d at 165; *see also* *Law*, 368 S.C. at 441, 629 S.E.2d at 651 (accord). *Wortman*, however, involved a warrantless arrest. It is true of course that a warrant issued without probable cause violates the Fourth Amendment of the United States Constitution and Article

I, section 10 of the South Carolina Constitution and makes any seizure based solely on the warrant unlawful. *See, e.g.,* *Manuel v. City of Joliet, Ill.*, — U.S. —, 137 S. Ct. 911, 919, 197 L.Ed.2d 312 (2017) (stating in a § 1983 case, “[i]f the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment”). But a facially valid warrant that proves to lack probable cause does not make the initial arrest unlawful for the purposes of the tort of false arrest. Otherwise, the doctrine of facial validity would be extinct.

Neither *Gist* nor *Law* mentioned—much less overruled—the long-standing precedent that an arrest pursuant to a facially *308 valid warrant will not support an action for false arrest. This unbroken line of authority was not breached by *Gist* or *Law* and compels us to affirm the trial court's grant of directed verdict on Carter's false arrest claim. *See Pundt*, 17 S.C.L. (1 Bail.) at 445–46; *McConnell*, 29 S.C. at 186–87, 7 S.E. at 78–79; *Bushardt*, 121 S.C. at 330, 113 S.E. at 639; *Cannon v. Haverty Furniture Co.*, 179 S.C. 1, 17–19, 183 S.E. 469, 476, 479–80 (1935); *Watkins v. Mobil Oil Corp.*, 281 S.C. 79, 80, 313 S.E.2d 641, 642 (Ct. App. 1984); *Manley v. Manley*, 291 S.C. 325, 330, 353 S.E.2d 312, 314 (Ct. App. 1987). We could cite many more supporting cases, but as the court noted in *Pundt*, such piling on would “swell this **529 opinion to inordinate length,” 17 S.C.L. (1 Bail.) at 477, and we have said enough.

We agree with the trial court that the arrest warrant was facially valid. The facially valid inquiry is not an invitation to look beyond the language of the warrant, which need only contain information given under oath that “plainly and substantially” sets forth the offense charged. S.C. Code Ann. § 22-3-710 (2007). We conclude as a matter of law that the warrant here was facially valid and complied with section 22-3-710 as it set forth concrete facts plainly and substantially showing Carter had committed the crime. Deputy Gwinn's affidavit was sworn under oath, and the magistrate signed the warrant attesting that the affidavit furnished “reasonable grounds to believe” Carter committed the crime of ABHAN. A warrant is “facially valid” if (1) it is regular in form, (2) it is issued by a court official having authority to issue the warrant for the conduct it describes and jurisdiction over the person charged, and (3) all proceedings required for the proper issuance of the warrant have duly taken place. *See* Restatement (Second) of Torts § 123 (Am. Law Inst. 2019). Here, the warrant was regular in form because it was on

a form approved by the South Carolina Attorney General as required by § section 17-13-160 of the South Carolina Code (2014) and its content complied with section 22-3-710. There is no dispute Magistrate Yard had sufficient authority and jurisdiction to issue the warrant; that he was neutral, independent, and detached; and all necessary proceedings for the warrant's issuance duly occurred. *See McConnell*, 29 S.C. at 189–90, 7 S.E. at 80 (an arrest warrant need not charge offense with the “technical precision required in indictments,” and the intent of the statute requiring offenses *309 to be “plainly and substantially” stated in the warrant is to “enable the party accused to understand the nature of the offense with which he is charged, so that he might be prepared to meet the charge at the proper time”).

[9] We emphasize that a person proximately harmed by being arrested on a facially valid warrant that transpires to lack probable cause may have several remedies, including a § 1983 action based on an unlawful seizure, *see* § Manuel, 137 S. Ct. at 918 (“The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements.”), or an action for malicious prosecution. He just does not have a claim for false arrest.

B. Carter's Challenge to the Facially Valid Warrant Doctrine

Carter contends the warrant was invalid because (1) the affidavit on the face of the warrant failed to state an adequate factual basis for the crime charged and (2) Deputy Gwinn inadvertently or deliberately omitted material facts during the warrant application process that bore on probable cause, specifically facts related to Faile's aggression towards Carter while Carter was in his dwelling.

i. Whether the Warrant Established Probable Cause

Carter maintains the warrant was facially invalid because the affidavit contained only conclusory statements and did not give the magistrate enough facts to find probable cause.

See § State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990). As we have noted, whether an arrest warrant

was supported by probable cause is a different question than whether the warrant was facially valid.

Still Carter argues that, viewing the record in the light most favorable to him, there was evidence enabling a reasonable jury to find probable cause was lacking. He points to evidence that Faile provoked and attacked him in his home, and therefore, *310 all of his later blows to Faile were protected by the PPPA and the defense of habitation. He reasons that because of those defenses, the only evidence in the record that could lead to a finding of probable cause was Faile's claim that Carter struck him first.

[10] Carter's argument is off base, for whether the warrant was supported by probable **530 cause is not a jury issue under the circumstances here. To establish the tort of false arrest, a party must prove his arrest was unlawful. If Carter had been arrested without a warrant, he would have to prove there was a lack of probable cause for his arrest, a question a jury ordinarily must answer. *Jackson v. City of Abbeville*, 366 S.C. 662, 669–70, 623 S.E.2d 656, 660 (Ct. App. 2005). As we have held, Carter was arrested based on a facially valid warrant, which dooms his false arrest case. Even if the facially valid test required determination of whether the warrant was supported by probable cause, that question would not be for the jury but for the court. *See State v. Dill*, 423 S.C. 534, 544–45, 816 S.E.2d 557, 563 (2018) (holding in determining sufficiency of probable cause for issuance of a warrant, the reviewing court, while giving great deference to the magistrate's probable cause conclusion, must decide whether the conclusion is anchored by a substantial basis). While *Dill* is a criminal case, we see no reason to adopt a contrary view for civil cases that would enable the jury rather than the court to rule upon whether probable cause existed to issue a criminal arrest warrant.

We add one more point. Whether Carter was protected by the immunity of the PPPA or a defense does not affect the validity of the warrant. Only diplomatic immunity includes an immunity from arrest; an immunity such as the PPPA, which a person may plead to bar prosecution or secure release from custody, “does not destroy the privilege of the one making the arrest.” Restatement (Second) of Torts § 123 comment d (Am.

Law Inst. 2019); *see also* § State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 265–66 (2013) (holding immunity provided by PPPA is immunity from prosecution).

ii. Franks v. Delaware and the
Facially Valid Warrant Doctrine

In his final attack on the trial court's directed verdict ruling, Carter alleges Deputy Gwinn inadvertently or deliberately *311 omitted material facts during the warrant application process that would have defeated probable cause, specifically facts related to Faile's assault on Carter while Carter was in his home and therefore protected by the PPPA. According

to Carter, this omission entitled him to a Franks hearing that would have allowed him to have the warrant declared void. See Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) (holding the Fourth and Fourteenth Amendments gave defendants the right to challenge the veracity of a warrant affidavit after the warrant was issued and executed if the defendant could make a preliminary showing the officer who presented the case to the magistrate judge intentionally or with reckless disregard told false information to the judge).

[11] Carter did not mention Franks or raise this issue to the trial court nor produce any evidence in his case in chief of the warrant application process or any alleged omissions or misrepresentations by the officers. We therefore find this issue unpreserved as the trial court was not given the chance to ponder or rule upon it.

Nonetheless, even if the issue were preserved, we are not aware of any reported decision by our state appellate courts transporting the Franks procedure—designed for use in motions to suppress evidence in criminal prosecutions—to civil false arrest claims. But the transfer has occurred in § 1983 cases in other courts, and some think it a logical extension of Franks. See Goldstein, *From the Exclusionary Rule to a Constitutional Tort for Malicious Prosecutions*, 106 Colum. L. Rev. 643, 681–84 (2006).

As Carter suggests, the facially valid warrant doctrine carries the risk of allowing government officials to illegitimately procure warrants by intentionally or recklessly falsifying or omitting material facts and then using the warrant as a shield against a false arrest claim. Jones v. City of Chicago, 856 F.2d 985, 994 (7th Cir. 1988) (police instrumental in confinement of plaintiff by supplying misleading information “cannot hide behind the officials who they have defrauded”).

The federal courts have recognized, in the context of § 1983 actions, “a man [is] responsible for the natural consequences of his actions,” Monroe v. Pape, 365 U.S. 167, 187, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), and have long held a police officer who *312 should have known his affidavit did not establish probable cause is not entitled to qualified immunity **531 when sued in a § 1983 action, Malley v. Briggs, 475 U.S. 335, 344–45, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986).

Drawing on the Franks procedure, courts in § 1983 actions have acknowledged that a facially valid warrant or other facially sufficient legal process (be it a preliminary hearing ruling or even a grand jury indictment) does not cut off a plaintiff's Fourth Amendment rights if the process has been so tainted that “the result is that probable cause is lacking.” Manuel, 137 S. Ct. at 920 n.8; see, e.g., Humbert v. Mayor & City Council of Baltimore City, 866 F.3d 546 (4th Cir. 2017); Winfrey v. Rogers, 901 F.3d 483, 491–92, 496 (5th Cir. 2018) (holding falsity in affidavit violates right not to be arrested without probable cause; causal chain not broken by grand jury indictment based on same falsity); Juriss v. McGowan, 957 F.2d 345, 350–51 (7th Cir. 1992). Borrowing from Franks, these courts allow a § 1983 plaintiff arrested on a facially valid warrant to attack the underlying probable cause if the plaintiff can prove the officer procured the warrant through deliberate or reckless false statements or omissions that were material to the finding of probable cause; then, the court deems the warrant void, and the plaintiff's § 1983 claim survives. See Humbert, 866 F.3d at 556–59; see also Rainsberger v. Benner, 913 F.3d 640 (7th Cir. 2019).

C. Exclusion of Carter's Expert Witness

In support of his false arrest claim, Carter offered an expert witness on police investigations. During the proffer of his testimony, the expert opined among other things that the warrant lacked probable cause. The trial court, finding the expert ill-prepared, excluded him from testifying on the ground his proposed testimony lacked foundation and would not assist the jury. On appeal, Carter contends the trial court erred in excluding the expert because any deficiencies in the expert's preparation went to the weight rather than the admissibility of his testimony.

[12] [13] We review evidentiary rulings for an abuse of discretion and must affirm them unless they rest on incorrect law or inadequate facts. *See* *313 *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 714 (Ct. App. 2019). The trial court properly discharged its gatekeeping role. As we have held, the issue of whether the arrest warrant lacked probable cause was not relevant to the jury's decision on Carter's false arrest claim. Even if it were, the expert's proffered testimony on probable cause was a legal conclusion. Generally, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE. However, expert testimony on issues of law is rarely admissible. *See Dawkins v. Fields*, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (finding trial court properly declined to consider an expert affidavit that mainly offered legal arguments concerning the reasons the trial court should deny summary judgment); *see also* *State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011). The common law and the federal rules of evidence forbid opinions on issues of law, except foreign law. *McCormick on Evidence* § 12 (7th ed. 2016); *Weinstein's Federal Evidence* § 704.04[1] (2nd ed. 2019); *see* *United States v. Oti*, 872 F.3d 678, 691–92 (5th Cir. 2017) (holding expert is never permitted to testify as to conclusions of law).

[14] [15] Although the trial court did not invoke Rule 704, SCRE, its ruling embodied that principle. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). Rule 704, SCRE, is identical to Rule 704 of the Federal Rules of Evidence as it existed before a 1984 amendment. The federal advisory committee note emphasizes that Rule 704's "abolition of the ultimate issue rule does not lower the bar so as to admit all opinions," because an opinion on the ultimate issue has to be "otherwise admissible," meaning in the context here that it must be helpful to the jury as required by Rule 702, SCRE, and satisfy the strictures of Rule 403, SCRE. The opinion here was not helpful to the jury because it stated a legal conclusion and essentially told the jury what result to reach on the probable cause question. *Weinstein's Federal Evidence* § 704.04[2][01] (2nd ed. 2019) (stating unhelpfulness is the most common reason for excluding expert legal conclusions, for such an **532 opinion "supplies the jury with no information other than the witness's view of how the verdict should read"). The concept of "probable cause" is a *314 legal term of art carrying a specialized meaning distinct from everyday usage.

See *United States v. Perkins*, 470 F.3d 150, 158 (4th Cir. 2006) (concluding testimony using "terms with considerable legal baggage ... nearly always invade the province of the jury").

We agree with the trial court that the expert's opinion would not have assisted the jury. *See Estes v. Moore*, 993 F.2d 161, 163 (8th Cir. 1993) (affirming exclusion of expert opinion on probable cause for arrest in a § 1983 action because it would not have assisted the jury); *Cameron v. City of New York*, 598 F.3d 50, 62 (2d Cir. 2010) (finding expert witness testimony on probable cause improper in malicious prosecution case). As the wise trial court well knew, allowing an "investigations" expert to define probable cause to the jury and apply his view of the facts to his definition of the law ran the risk of misleading the jury and telling them what their verdict should be, much like the "oath-helpers" of ancient times. *See* Fed. R. Evid. 704 (advisory committee note). It also risked treading on the trial judge's role as the sole source of the law in the trial, further confusing the jury (but not the judge).

We affirm the trial court's exclusion of Carter's false arrest expert.

III. BRYANT'S APPEAL

A. The Probable Cause Element of Carter's Malicious Prosecution Claim

In his appeal, Bryant argues the trial court erred in denying his motion for JNOV on Carter's cause of action for malicious prosecution because the only inference from the evidence was that probable cause existed to issue the warrant for his arrest. We agree.

[16] In ruling on a JNOV motion, the trial court construes all reasonable inferences and ambiguities in the evidence in favor of the non-moving party as to each element of the claim and must deny the motion if more than one reasonable inference emerges. If, however, the evidence could only produce one reasonable conclusion, the motion must be granted. We use the same yardstick as the trial court. *See Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016).

*315 [17] To establish a claim for malicious prosecution, a plaintiff must prove the following elements by the greater weight of the evidence: (1) the institution or continuation of

original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of the proceedings in plaintiff's favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

[18] In assessing whether probable cause existed, we must view things as they appeared to the officers arriving at this chaotic scene. It is an inquiry guided by common sense, and one that acknowledges human conflict is messy and tense encounters can produce differing perspectives on what happened. Recognizing that lack of clarity, at the warrant stage the law does not demand certainty, clear and convincing proof, proof beyond a reasonable doubt, or even proof by the greater weight of the evidence. Instead, the law insists on something less, but something more than reasonable suspicion: it demands a "fair probability." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); see also *Jones v. City of Columbia*, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990) ("Probable cause" is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise."); *Jackson v. City of Abbeville*, 366 S.C. 662, 667, 623 S.E.2d 656, 659 (Ct. App. 2005) ("Probable cause is determined as of the time of the arrest, based on facts and circumstances—objectively measured—known to the arresting officer. The determination of probable cause is not an academic exercise in hindsight."); *State v. Morris*, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015) ("Probable cause is a 'commonsense, nontechnical conception [] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' " (alterations **533 in original) (quoting *Ornelas v. United States*, 517 U.S. 690, 695, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996))). As noted in *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949):

These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give *316 fair leeway for enforcing the law in the community's protection.

Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

[19] Although probable cause is typically an issue for the jury in a malicious prosecution case, the evidence here yielded only one conclusion—that there was probable cause to issue a warrant for Carter's arrest on the charge of ABHAN. Accordingly, Bryant was entitled to judgment as a matter of law. *Pallares v. Seinar*, 407 S.C. 359, 367, 756 S.E.2d 128, 132 (2014) ("Whether probable cause exists is ordinarily a jury question, but it may be decided as a matter of law when the evidence yields only one conclusion."). Deputy Gwinn testified Faile was "covered in blood," and had "bruises all over his body." Deputy Gwinn took statements from both Carter and Faile, whose accounts differed as to who started the altercation and whether Faile was attempting to leave Carter's property when the altercation began. However, Carter admitted he hit Faile with the bat multiple times, including after Faile was already on the ground, and declared he would have continued to beat Faile until he stopped moving. Deputy Gwinn observed Faile's head was disfigured. There were also bruises and abrasions to the back of Faile's head, torso, and a large mark on his upper back consistent with the shape of the business end of a baseball bat. Deputy Gwinn included this information in his police report and provided it, along with Carter's and Carter's wife's statements, to Judge Yard. Based on these facts, the only conclusion that can be drawn is that a reasonable person would have believed Carter had committed the crime of ABHAN. See *S.C. Code Ann.* § 16-3-600(B)(1) (2015) (defining ABHAN); *S.C. Code Ann.* § 16-3-600(A)(1) (2015) (defining great bodily injury).

*317 Carter contends the evidence showed he was within his rights in defending himself and his home because Faile assaulted him in his dwelling. While Carter certainly had a good defense to the alleged ABHAN charge, we can find no evidence in the record that the officers lacked an objectively reasonable, good faith belief that Carter had committed ABHAN. The officer who misstated that Castle Doctrine law did not apply in South Carolina corrected himself later when speaking with Carter's wife, and there was no evidence this misstatement was repeated to the magistrate or affected the warrant application process. Carter also points out that Magistrate Yard testified he did not know who the homeowner was when he signed the warrant, but Yard testified he knew Carter's position was that Faile had tried to "enter his dwelling and from there it turned into a physical altercation." Yard stated he was persuaded Carter had gone too far in his beating of Faile by continuing to strike him beyond what was necessary.

[20] In addition to contending the Castle Doctrine prohibited any probable cause finding, Carter also argues the warrant fails to establish probable cause on its face. While we discussed probable cause above in Part II of this opinion while considering Carter's false arrest claim, in deciding whether there was insufficient evidence of probable cause to support Carter's malicious prosecution claim, we are free to venture beyond the borders of the warrant and consider the record. There was confusion in the record about what Deputy Gwinn actually swore to under oath. Deputy Gwinn testified he presented his entire case investigation to Magistrate Yard, and **534 Yard typed up the warrant, which Deputy Gwinn signed and swore to. In the warrant, Deputy Gwinn stated under oath that his belief in probable cause was based on "police investigation" and cited to his report (the report was made a court's exhibit but was never offered into evidence). The record recounts the officers' struggle to reconcile the evidence and figure out what happened and who did what. They were faced with a classic case of conflicting evidence as to who struck the first blow and whether Faile tried to enter Carter's front door. Carter's wife's statement differed a bit from Carter's. The officers on scene documented the conflicts and testified they *318 considered the case from every side, and Deputy Gwinn ultimately presented all sides to the magistrate.

Although the ABHAN charge against Carter was *nolle prossed* before a preliminary hearing occurred because the assistant solicitor in charge of Carter's case believed a jury would acquit Carter based on the defense of habitation, the

Castle Doctrine, or the PPPA, that fact did not affect whether there was probable cause for Carter's arrest. The assistant solicitor even testified the arrest was good and the officers' investigation solid. *See Jackson*, 366 S.C. at 666, 623 S.E.2d at 658 ("Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime."). Furthermore, as we have noted, the PPPA is an affirmative defense that only grants a party immunity from prosecution, not immunity from arrest. *See* S.C. Code Ann. § 16-11-450(A) (2015) ("A person who uses deadly force as permitted by [the PPPA] is justified in using deadly force and *is immune from criminal prosecution* and civil action for the use of deadly force" (emphasis added)); *see* *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 265–66 (2013) (holding immunity provided by PPPA is immunity from prosecution).

We therefore find the trial court erred in denying Bryant JNOV on Carter's malicious prosecution claim because the only reasonable inference from the record is that probable cause supported the warrant for Carter's arrest.

Accordingly, we reverse as to this issue. *See* *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 567, 698 S.E.2d 845, 856 (Ct. App. 2010) (affirming directed verdict as to malicious prosecution claim where witness statements supported finding that sheriff's officers had probable cause for arrest and grand jury had indicted plaintiff).

Because our reversal of the trial court's denial of Bryant's motion for JNOV is dispositive of Bryant's appeal, we do not address Bryant's remaining issues on appeal. *See* *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

*319 Accordingly, we affirm the trial court's (1) directed verdict against Carter on his false arrest claim and (2) exclusion of Carter's expert witness. We also hold that the trial court erred in denying Bryant's JNOV motion on Carter's malicious prosecution action, and consequently, we reverse the judgment against him.

AFFIRMED IN PART AND REVERSED IN PART.

LOCKEMY, C.J., and WILLIAMS, J., concur.

All Citations

429 S.C. 298, 838 S.E.2d 523

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

ELECTRONICALLY FILED - 2021 Oct 11 9:16 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 6



KeyCite Yellow Flag - Negative Treatment

Distinguished by Chapman v. South Carolina Department of Social Services, S.C.App., May 3, 2017

368 S.C. 424

Supreme Court of South Carolina.

Anthony LAW, Vondeste G. Mole, Mark
Holmes, Arthur A. Vaughan, Harry
Jenkins, and Kenneth Green, Appellants,

v.

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS, Respondent.

No. 26134.

|
Heard Jan. 18, 2006.

|
Decided April 10, 2006.

|
Rehearing Denied May 24, 2006.

Synopsis

Background: Former corrections officers, all of whom had been charged with drug trafficking, brought lawsuit against Department of Corrections (DOC) under Tort Claims Act, for wrongful termination, malicious prosecution, and false imprisonment. The Circuit Court, Allendale County, Daniel F. Pieper, J., granted directed verdict for DOC on wrongful termination claims, and, following jury verdict for officers' on their false imprisonment claims, granted DOC's motion for judgment notwithstanding the verdict (JNOV). Officers appealed.

Holdings: Upon certification for review from Court of Appeals, the Supreme Court, Burnett, J., held that:

[1] officers failed to establish claim for malicious prosecution;

[2] officers who voluntarily resigned from their employment with DOC failed to state a cause of action for wrongful termination;

[3] officers' claims for wrongful discharge were foreclosed under State Employee Grievance Procedure Act, as they failed to exhaust their administrative remedies; and

[4] officers failed to show that their arrests were unlawful, as necessary to establish claim for false imprisonment.

Affirmed as modified.

Pleicones, J., concurred in part and dissented in part, with opinion.

Procedural Posture(s): On Appeal; Motion for Judgment as a Matter of Law (JMOL)/Directed Verdict.

West Headnotes (35)

[1] **Appeal and Error** ⇔ Review using standard applied below

Judgment ⇔ Existence or non-existence of fact issue

In reviewing the grant of a summary judgment motion, appellate court applies the same standard that governs the trial court pursuant to summary judgment rule, under which a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. Rules Civ.Proc., Rule 56(c).

17 Cases that cite this headnote

[2] **Judgment** ⇔ Presumptions and burden of proof

In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Rules Civ.Proc., Rule 56(c).

40 Cases that cite this headnote

[3] **Judgment** ⇔ Evidence and inferences that may be considered or drawn

Judgment ⇔ Where evidence is conflicting or where different inferences may be reasonably drawn therefrom

Trial ⇔ Inferences from evidence

Trial ⇌ Hearing and determination

In ruling on motions for directed verdict and judgment notwithstanding the verdict (JNOV), trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt.

35 Cases that cite this headnote

[4] **Appeal and Error** ⇌ Review for correctness or error

Appellate court will reverse the trial court's ruling on a motion for judgment notwithstanding the verdict (JNOV) only when there is no evidence to support the ruling or where the ruling is controlled by an error of law.

24 Cases that cite this headnote

[5] **Malicious Prosecution** ⇌ Nature and elements of malicious prosecution in general

To maintain an action for malicious prosecution, plaintiff must establish: (1) the institution or continuation of original judicial proceedings, (2) by or at the instance of the defendant, (3) termination of such proceedings in plaintiff's favor, (4) malice in instituting such proceedings, (5) lack of probable cause, and (6) resulting injury or damage.

49 Cases that cite this headnote

[6] **Malicious Prosecution** ⇌ Probable cause and malice

An action for malicious prosecution fails if plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause.

24 Cases that cite this headnote

[7] **Malicious Prosecution** ⇌ Mode of Termination

Correctional officers failed to establish a favorable determination of prior criminal charges against them, which was necessary element for them to establish claim for malicious prosecution against Department of Corrections (DOC); while charges against officers had been nolle prossed, the reason stated for the nolle prosequere was that arresting agency had chosen to pursue charges in federal court, which reason did not imply and was not consistent with officers' innocence.

3 Cases that cite this headnote

[8] **Malicious Prosecution** ⇌ Presumptions and burden of proof

Burden is on plaintiff asserting claim for malicious prosecution to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him.

7 Cases that cite this headnote

[9] **Malicious Prosecution** ⇌ Time of acquiring knowledge or receiving information

Malicious Prosecution ⇌ Belief in guilt of accused

For purposes of requirement that plaintiff asserting claim for malicious prosecution show the institution of judicial proceedings without probable cause against him, "probable cause" means the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

17 Cases that cite this headnote

[10] **Malicious Prosecution** ⇌ Belief in guilt of accused

For purposes of probable cause element of claim for malicious prosecution, the facts must be regarded from the point of view of the party

prosecuting; the question is not what the actual facts were, but what he honestly believed them to be.

5 Cases that cite this headnote

[11] Malicious Prosecution ⇌ Finding of grand jury

A true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.

12 Cases that cite this headnote

[12] Malicious Prosecution ⇌ Probable cause

Although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one conclusion.

11 Cases that cite this headnote

[13] Malicious Prosecution ⇌ Personal knowledge and statements of others

Malicious Prosecution ⇌ Finding of grand jury

Evidence established that Department of Corrections (DOC) had probable cause to pursue criminal charges against correctional officers, in action for malicious prosecution; indictments of officers on charges of drug trafficking were prima facie evidence of probable cause, and facts, including bank records of certain officers, revealed numerous, large cash deposits and wire transfers during months prior to investigation, supported finding that DOC had probable cause to pursue criminal charges.

5 Cases that cite this headnote

[14] Malicious Prosecution ⇌ Express malice

In context of claim for malicious prosecution, "malice" is the deliberate intentional doing of an act without just cause or excuse.

7 Cases that cite this headnote

[15] Malicious Prosecution ⇌ Nature and elements

In context of claim for malicious prosecution, "malice" does not necessarily mean defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice.

4 Cases that cite this headnote

[16] Malicious Prosecution ⇌ Nature and elements

In context of claim for malicious prosecution, malice may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person.

2 Cases that cite this headnote

[17] Malicious Prosecution ⇌ Implied malice in general

In context of claim for malicious prosecution, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person.

4 Cases that cite this headnote

[18] Malicious Prosecution ⇌ Implied malice in general

In context of claim for malicious prosecution, malice may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person.

2 Cases that cite this headnote

[19] Malicious Prosecution ⇌ Inference from want of probable cause

In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.

33 Cases that cite this headnote

- [20] **Malicious Prosecution** ⇌ Acts and conduct evidence of malice

Correctional officers failed to establish malice with respect to their claim for malicious prosecution against Department of Corrections, in pursuing criminal charges against them for drug trafficking, DOC's institution of original proceedings against officers was result of a thorough investigation, involving interviews with no less than 38 inmates.

2 Cases that cite this headnote

- [25] **Appeal and Error** ⇌ Abuse of discretion

Appeal and Error ⇌ Absence of Evidence

An "abuse of discretion" occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.

2 Cases that cite this headnote

- [21] **Administrative Law and Procedure** ⇌ Exhaustion of Administrative Remedies

General rule is that administrative remedies must be exhausted absent circumstances excusing application of the general rule.

1 Cases that cite this headnote

- [26] **Prisons** ⇌ Termination

Public Employment ⇌ Resignation

Correctional officers who voluntarily resigned from their employment with Department of Corrections (DOC) failed to state a cause of action for wrongful termination.

- [22] **Administrative Law and Procedure** ⇌ Futility

A general exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that a pursuit of them would be a vain or futile act; futility, however, must be demonstrated by a showing comparable to the administrative agency taking a hard and fast position that makes an adverse ruling a certainty.

5 Cases that cite this headnote

- [27] **Appeal and Error** ⇌ Theory and Grounds of Decision Below and on Review

Supreme Court may affirm the trial court based on any ground found in the record. Appellate Court Rule 220(c).

1 Cases that cite this headnote

- [23] **Administrative Law and Procedure** ⇌ Exhaustion of Administrative Remedies

Question of whether to require plaintiff to exhaust administrative remedies is a matter within the sound discretion of the trial judge.

3 Cases that cite this headnote

- [28] **Public Employment** ⇌ Exhaustion of Remedies

Correctional officers' claims for wrongful discharge were foreclosed under State Employee Grievance Procedure Act, as they failed to exhaust their administrative remedies; officers were terminated because charges against them for conspiracy to traffic crack cocaine violated Department of Corrections' (DOC) internal policy regarding employee behavior, they had grievable action under Act which they voluntarily did not appeal, failure to appeal within statutory time period constituted waiver of right to appeal, and any concerns about bias during DOC's appellate process should have been allayed by fact that, under Act, appeal would have been to state human resources director, who was outside DOC. Code 1976, § 8-17-330.

- [24] **Appeal and Error** ⇌ Abuse of discretion

A matter within the sound discretion of the trial judge will not be disturbed on appeal absent an abuse of discretion.

3 Cases that cite this headnote

[29] False Imprisonment ⇨ Nature and Elements of False Imprisonment

The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification.

5 Cases that cite this headnote

[30] False Imprisonment ⇨ Nature and Elements of False Imprisonment

To prevail on a claim for false imprisonment, plaintiff must establish: (1) defendant restrained plaintiff, (2) restraint was intentional, and (3) restraint was unlawful.

34 Cases that cite this headnote

[31] Arrest ⇨ Grounds for warrantless arrest in general

The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. U.S.C.A. Const.Amend. 4.

8 Cases that cite this headnote

[32] Arrest ⇨ What constitutes such cause in general

"Probable cause" to make an arrest is a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. U.S.C.A. Const.Amend. 4.

10 Cases that cite this headnote

[33] False Imprisonment ⇨ Questions for jury

In the context of a claim for false imprisonment, although the question of whether probable cause exists to make an arrest is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.

17 Cases that cite this headnote

[34] Criminal Law ⇨ Examination of witnesses and evidence

An arrest warrant affidavit that is insufficient in itself to establish probable cause may be supplemented before a magistrate by sworn oral testimony. U.S.C.A. Const.Amend. 4; Code 1976, § 22-3-710.

2 Cases that cite this headnote

[35] False Imprisonment ⇨ Illegality of Arrest
False Imprisonment ⇨ Probable cause

Correctional officers failed to show that their arrests on charges of trafficking in crack cocaine by Department of Corrections (DOC) were unlawful, as necessary to establish claim for false imprisonment; facts known to magistrate at time of probable cause determination included information from affidavits in support of warrants, and from sworn, oral testimony, and those facts would induce ordinarily prudent and cautious person under the circumstances to believe that officers had committed offenses charged.

5 Cases that cite this headnote

Attorneys and Law Firms

****646** Charles E. Johnson, of Columbia, for Appellants.

Marvin C. Jones and R. Clenten Campbell, both of Bogoslow, Jones, Stephens & Duffie, P.A., of Walterboro, for Respondent.

Opinion

Justice BURNETT:

***430** Anthony Law, Vondeste Mole, Mark Holmes, Arthur Vaughan, Harry Jenkins, and Kenneth Green (Appellants) appeal the trial court's grant of summary judgment for South Carolina Department of Corrections (Respondent) on their malicious prosecution claims, the trial court's grant of directed ***431** verdict for Respondent on their wrongful

termination claims, and the trial court's grant of judgment notwithstanding the verdict (JNOV) for Respondent on their false imprisonment claims. We affirm as modified.

FACTUAL/PROCEDURAL BACKGROUND

In early 1999, Willie Harrison, an inmate at the Allendale Correctional Institution (Institution), contacted Geraldine Miro, the Institution's warden. Harrison alleged Appellants, who were correctional officers at Institution, were trafficking drugs into and within the Institution. He further alleged Appellants gave him drugs to sell to other inmates and he, in return, gave them money from those drug transactions. Harrison also claimed Appellants would shake him down to collect the monetary proceeds from the drug sales. Miro contacted Al Waters, Director of Internal Affairs for Respondent, who set up an internal investigation and assigned Investigators Melissa Nettles and Joseph Baker to the case.

As part of the internal investigation, Nettles contacted the Greenville County Sheriff's Department to verify Harrison's credibility, and they advised her that Harrison had provided them with reliable information on prior occasions. Nettles and Baker interviewed at least four inmates prior to March 25, 1999, who corroborated Harrison's allegations. At trial, Nettles gave the following examples of information corroborated prior to March 25: inmate Larry David asserted Holmes was his drug supplier; inmate Eckerin Frazier said he received marijuana from Holmes and had paid Holmes over \$4,700 from June 1998 to January 1999; Frazier also claimed Law, Holmes, Jenkins, and Green worked together to sell drugs in the Institution; and inmate Terry Fuller said he observed Law and Holmes give drugs to Harrison.

Nettles and Baker interviewed at least thirty-eight inmates at the Institution from March 15, 1999 to April 20, 1999, with at least twenty inmates corroborating Harrison's allegations. Nettles and Baker also searched bank records for Mole and Vaughan which showed large cash deposits and wire transfers during the latter part of 1998 and the early part of 1999.

Nettles testified Harrison told her that Vaughan had purchased a mobile home with the money received from Harrison *432 through the drug deals. Harrison gave Nettles a specific description of the mobile home, including where Vaughan purchased it and the purchase price. Nettles confirmed these two details. Harrison also picked Vaughan's mobile home from a photo lineup.

Waters testified the senior staff met and decided Nettles and Baker would apply for arrest warrants for Appellants. Nettles testified she assisted in preparing the affidavits and she and Baker gave sworn, oral testimony **647 to support the warrants. She told the magistrate that Harrison's allegations had been corroborated and gave the magistrate the same kind of examples of corroboration that she gave during trial.

On March 25, 1999, Law, Mole, Holmes, Jenkins, and Vaughan were charged with conspiracy to traffic cocaine greater than 100 grams. Law, Holmes, Jenkins, and Vaughan were arrested while at work and were held at the Institution from approximately 6:30 p.m. on March 25 until 2:00 a.m. on March 26, at which time they were transported to the county jail. Mole was also arrested by the Dorchester County Police Department on March 25 while traveling through Dorchester County.

Upon arrest, Holmes admitted he had received \$200 from Harrison in exchange for one ounce of marijuana but denied giving Harrison the marijuana. Upon arrest, Law admitted receiving money from Harrison and accused Holmes, Vaughan, Jenkins, and Green of running a drug ring within the Institution. On March 26, 1999, Law and Holmes were charged with misprision of a felony, common law, and acceptance of rebates or extra compensation, and Mole was charged with misprision of a felony, common law.

Green was arrested at work on April 15, 1999 and detained for approximately six to seven hours. He was charged with conspiracy to traffic crack cocaine, greater than 10 grams but less than 28 grams.

Based on the charges and the ongoing investigation, Respondent administratively suspended Appellants effective on the date of their arrests. A review meeting before the warden was scheduled for each Appellant. Respondent sent letters of termination to several Appellants but later rescinded the terminations.

*433 Jenkins and Law voluntarily resigned on March 29, 1999; Green and Holmes voluntarily resigned on April 30, 1999, and May 21, 1999, respectively. None of the Appellants who voluntarily resigned filed a grievance with Respondent, but Green did request a review hearing. Mole was terminated on May 7, 1999, and Vaughan was terminated on May 20, 1999. After his termination, Mole filed a grievance report with Respondent and an investigative review was conducted

by Respondent's General Counsel's Office. The Deputy Director of Operations upheld Mole's termination and the Director of Respondent subsequently upheld the termination. Also after his termination, Vaughan filed a grievance.

The indictments against Appellants were *nolle prossed* because "[t]he arresting agency has chosen to pursue these charges in federal court." Nettles and Baker testified after making the arrests they consulted with Solicitor Randolph Murdaugh, who decided to turn the cases over to the Federal Bureau of Investigation (FBI). Nettles and Baker continued to help the FBI with the investigation until the end of their employment with Respondent.

After filing verified claims with Respondent, Appellants individually sued Respondent on February 21, 2001. Each Appellant sued under the South Carolina Tort Claims Act¹ for: (1) civil conspiracy, (2) defamation, (3) false imprisonment, (4) malicious prosecution, and (5) wrongful discharge. Respondent simultaneously filed motions to dismiss and Answers on April 16, 2001.

Appellants' cases were consolidated for trial. Prior to trial, Appellants' causes of actions for defamation and civil conspiracy were dismissed by Appellants' consent. Respondent also moved for summary judgment on all causes of action. The trial judge granted summary judgment on the malicious prosecution claims only.

At the close of Appellants' cases, the trial judge granted a directed verdict for Respondent on the wrongful termination claims. The jury returned a verdict for Appellants on their false imprisonment claims, awarding \$25,000 to each Appellant. The trial judge granted Respondent's motion for JNOV. *434 This appeal follows, and this Court certified the case for review from the Court of Appeals, pursuant to Rule 204(b), SCACR.

**648 ISSUES

I. Did the trial court err in granting Respondent's motion for summary judgment on the malicious prosecution claims?

II. Did the trial court err in granting Respondent's motion for directed verdict on the wrongful termination claims?

III. Did the trial court err in granting Respondent's motion for judgment notwithstanding the verdict on the false imprisonment claims?

STANDARD OF REVIEW

[1] [2] In reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRPC. Under Rule 56, SCRPC, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).

[3] [4] In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). The appellate court will reverse the trial court's ruling on a JNOV motion only when there is no evidence to support the ruling or *435 where the ruling is controlled by an error of law. *Hinkle v. Nat'l Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

LAW/ANALYSIS

I. Summary Judgment on Malicious Prosecution

Appellants argue the trial court erred in granting Respondent's motion for summary judgment on the malicious prosecution claims.² We disagree.

[5] [6] "[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's

favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965); *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 477, 289 S.E.2d 414, 415 (1982). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause. *Parrott*, 246 S.C. at 322, 143 S.E.2d at 609.

Respondent admitted to the institution of original judicial proceedings by its instance, elements 1 and 2, but contends Appellants did not prove the remaining elements of malicious prosecution.

Appellants contend the trial judge erred in finding the original proceedings had not been sufficiently terminated in their favor. Appellants argue that the criminal proceedings were terminated in their favor because the charges were *nolle prossed*. Respondent has not commenced a federal action, lapse of time, and lack of tangible evidence of the alleged crimes.

[7] First, Appellants failed to establish a favorable determination of their prior criminal charges. In *McKenney v. Jack Eckerd Co.*, 304 S.C. 21, 22, 402 S.E.2d 887, 888 (1991), the Court held “where an accused establishes that charges were *nolle prossed* **649 for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained.” On the underlying charges in the present cases, the reason stated for the *nolle prosequere* was that the arresting agency had chosen to pursue the charges in federal court. This reasoning does not imply and is not consistent with Appellants’ innocence.

[8] [9] [10] [11] [12] Second, an essential element of malicious prosecution is the institution of judicial proceedings without probable cause against the plaintiff. *Kinton v. Mobile Home Indus., Inc.*, 274 S.C. 179, 262 S.E.2d 727 (1980). The burden is on the plaintiff to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him. *Parrott*, 246 S.C. at 322, 143 S.E.2d at 609. Probable cause means “the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should

be considered.” *Id.* In determining the existence of probable cause, the facts must be “regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be.” *Eaves*, 277 S.C. at 478, 289 S.E.2d at 415–16 (citing 54 C.J.S. *Malicious Prosecution* § 20, p. 977). South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution. *Kinton*, 274 S.C. at 182, 262 S.E.2d at 728. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. *Parrott*, 246 S.C. at 323, 143 S.E.2d at 609.

[13] Appellants were indicted by the Allendale County Grand Jury in September 1999. Prior to the arrests on March 25, 1999, Nettles and Baker interviewed Harrison at least three times and interviewed several other inmates who corroborated Harrison’s allegations. Nettles and Baker also *437 searched bank records of Mole and Vaughan which revealed numerous, large cash deposits and wire transfers during the months prior to the investigation. Viewing the record in the light most favorable to Appellants, Appellants failed to establish a lack of probable cause because the indictments are prima facie evidence of probable cause and because the facts support a finding that Respondent had probable cause to pursue criminal charges.

[14] [15] [16] [17] [18] [19] Third, Appellants not establish Respondent’s malice in instituting the original proceedings. Malice is defined as “the deliberate intentional doing of an act without just cause or excuse.” *Eaves*, 277 S.C. at 479, 289 S.E.2d at 416. Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person. Moreover, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be implied in the doing of an illegal act for one’s own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution. *Margolis v. Telech*, 239 S.C. 232, 122 S.E.2d 417, 420 (1961).

[20] The record reveals Respondent conducted an internal investigation based upon an inmate's allegations that Appellants were trafficking drugs in the Institution. The two primary investigators interviewed Harrison and at least four other inmates prior to the arrests and interviewed no less than 38 inmates at the Institution during the entire investigation. Before completing the investigation, Nettles and Baker discussed the evidence with Waters who thought that arrests should be made based on historical conspiracy. The institution of the original proceedings against Appellants was the result of a **650 thorough investigation, and Appellants failed to establish malice.

*438 We conclude the trial judge properly granted summary judgment for Respondent because Appellants failed to establish termination of the original proceedings in their favor, lack of probable cause, and malice, all elements of malicious prosecution.

II. Directed Verdict on Wrongful Termination

Appellants argue the trial court erred in ruling they had failed to exhaust their administrative remedies and in granting a directed verdict for Respondent on their wrongful termination claims. We disagree.

[21] [22] The general rule is that administrative remedies must be exhausted absent circumstances excusing application of the general rule. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994); *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 201 S.E.2d 241 (1973). "A general exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that a pursuit of them would be a vain or futile act." *Moore v. Sumter County Council*, 300 S.C. 270, 273-74, 387 S.E.2d 455, 458 (1990) (citing 82 Am.Jur.2d *Zoning and Planning* § 332 at 903 (1976)). Futility, however, must be demonstrated by a showing comparable to the administrative agency taking "a hard and fast position that makes an adverse ruling a certainty." *Thetford Properties IV Ltd. P'ship v. U.S. Dep't of Hous. and Urban Dev.*, 907 F.2d 445, 450 (4th Cir.1990).

[23] [24] [25] The question of whether to require the plaintiff to exhaust administrative remedies is a matter within the sound discretion of the trial judge. *Andrews Bearing Corp.*, 261 S.C. at 536, 201 S.E.2d at 243. A matter within

the sound discretion of the trial judge will not be disturbed on appeal absent an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). "An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." *Id.*

Respondent, as a state agency, is governed by the State Employee Grievance Procedure Act, *439 S.C.Code Ann. §§ 8-17-310 through 380 (1996 & Supp. 2005). Section 8-17-330 provides in pertinent part:

Each agency shall establish an agency employee grievance procedure....A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within fifty-five calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency's final decision or fifty-five calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal.... As used in this article, a covered employee may file a grievance or appeal concerning the following adverse employment actions: terminations, suspensions, involuntary reassignments, and demotions....A covered employee has the right to appeal to the State Human Resources Director an adverse employment action involving the issues specified in this section after all administrative remedies to secure

relief within the agency have been exhausted.

Appellants contend the trial court misinterpreted the State Employee Grievance Procedure Act as requiring an employee to appeal to the State Human Resources Director upon an adverse ruling by the agency hearing the appeal. Appellants argue the statute uses permissive language regarding the appeal to the State Human Resources Director.

Appellants further argue the general rule of exhaustion of administrative remedies is inapplicable to them because they have demonstrated the pursuit of such remedies would have been vain or futile. Specifically, Appellant Mole's appeal was denied by the Director **651 of Respondent; therefore his attempt was futile and because all Appellants were similarly situated, their attempts would have been futile.

[26] [27] Appellants Law, Holmes, Jenkins, and Green voluntarily resigned. Therefore, we affirm the directed verdict for Respondent on their wrongful termination claims because *440 they failed to state a cause of action.³ See *Troutman v. Facetglas, Inc.*, 281 S.C. 598, 316 S.E.2d 424 (Ct.App.1984) (former employee who resigned under alleged threat to fire him did not state a cause of action for wrongful discharge).

[28] Appellants Mole and Vaughan were terminated because conspiracy to traffic crack cocaine violated Respondent's internal policy regarding employee behavior. Appellants had a grievable action under the State Employee Grievance Procedure Act which they voluntarily did not appeal.⁴ Failure to file an appeal with the State Human Resources Director within the statutory time period constitutes a waiver of the right to appeal. See S.C.Code Ann. § 8-17-330. Furthermore, if Appellants were concerned of bias during the Respondent's appellate process because Respondent sought the charges, then an appeal to the State Human Resources Director, who was outside the agency, should have allayed any concerns of bias. The trial judge correctly determined their wrongful termination claims were foreclosed under the State Employee Grievance Procedure Act because they did not exhaust their administrative remedies.

III. JNOV on False Imprisonment

Appellants argue the trial judge erred in granting Respondent's motion for JNOV on the false imprisonment claims. We disagree.

[29] [30] The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990); *Thomas v. Colonial Stores, Inc.*, 236 S.C. 95, 113 S.E.2d 337 (1960). To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 521 S.E.2d 163 (Ct.App.1999); *441 *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct.App.1995); *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct.App.1991); see also *Jones*, 301 S.C. at 64, 389 S.E.2d at 663 (an action for false imprisonment cannot be maintained where one is arrested by lawful authority).

[31] [32] [33] The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. *Gist*, 336 S.C. at 615, 521 S.E.2d at 165. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. *Jones v. City of Columbia*, 301 S.C. at 65, 389 S.E.2d at 663. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. *Parrott*, 246 S.C. at 323, 143 S.E.2d at 609.

[34] "All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue." S.C.Code Ann. § 22-3-710 (1989). A warrant affidavit that is "insufficient in itself to establish probable cause may be supplemented before a magistrate by sworn oral testimony." *State v. Crane*, 296 S.C. 336, 338, 372 S.E.2d 587, 588 (1988).

Because Respondent admitted the first and second elements, the determinative issue is whether probable cause to make the arrests existed.

****652** Appellants assert their situation is similar to *Gist*. Gist sued the Berkeley County Sheriff's Department for false arrest and false imprisonment. The sheriff's department conceded the affidavit supporting the warrant for Gist's arrest did not establish probable cause, but relied on the investigating officer's testimony that he orally told the judge information that was not referenced in the affidavit to establish probable cause. However, the record did not contain any evidence as to whether the affidavit was accompanied by sworn, oral testimony before the judge. The Court of Appeals reversed and remanded the trial court's grant of summary judgment for the ***442** sheriff's department. The court found viewing the evidence in the light most favorable to Gist, a genuine issue of material fact existed as to whether the judge was presented sworn, oral testimony concerning a photographic lineup when the probable cause determination was made. *E. Gist*, 336 S.C. at 615–17, 521 S.E.2d at 165–66.

[35] In the present case, the magistrate, who issued the arrest warrants, testified he routinely conducted an oral report, under oath, in addition to the affidavits presented to him before making a probable cause determination. Nettles testified she and Baker gave sworn, oral testimony to the magistrate, which included examples of corroboration of Harrison's allegations.⁵

The present situation is distinguishable from *Gist* because the record contains evidence the affidavits were supplemented with sworn, oral testimony. The facts known to the magistrate at the time of the probable cause determination included information from the affidavits⁶ and from sworn, oral testimony. ***443** We conclude, as a matter of law, the facts known to the magistrate “would induce an ordinarily prudent and cautious man, under the circumstances, to believe” that Appellants had committed the offenses. *E. Jones*, 301 S.C. at 65, 389 S.E.2d at 663. The trial judge correctly granted Respondent's JNOV because Appellants failed to establish the restraint was unlawful.

CONCLUSION

We affirm the trial court's grant of Respondent's motions for summary judgment on the malicious prosecution claims and for JNOV on the false imprisonment claims. We affirm as modified the directed verdict for Respondent on the wrongful termination claims.

AFFIRMED AS MODIFIED.

TOAL, C.J., MOORE, J., and Acting Justice CLYDE N. DAVIS, JR., concur.

PLEICONES, J., concurring in part and dissenting in part in a separate opinion.

Justice PLEICONES concurring in part and dissenting in part: I concur in part and dissent in part. I agree with the majority opinion that the ****653** grant of summary judgment on the malicious-prosecution claims and the directed verdict on the wrongful-termination claims should be affirmed. I respectfully dissent from the affirmance of JNOV on the false-imprisonment claims, because the evidence in the record yields at least one inference that supports the jury's verdict. *See Strange v. S.C. Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994) (providing the standard for ruling on motions for JNOV).

The lawful-authority determination here turns on whether the insufficient warrant affidavits were sufficiently supplemented by sworn oral testimony pursuant to *State v. Crane*, 296 S.C. 336, 338, 372 S.E.2d 587, 588 (1988). If so, then the warrants were valid and lawful authority to arrest was present. If not, then the warrants were not issued pursuant to ***444** legal process, and lawful authority to arrest was absent. The relevant evidence is the trial testimony of the magistrate and the trial testimony of Investigator Nettles. As stated in the majority opinion, “the magistrate, who issued the arrest warrants, testified he routinely conducted an oral report, under oath, in addition to the affidavits presented to him before making a probable cause determination. Nettles testified she and Baker gave sworn, oral testimony to the magistrate, which included examples of corroboration of Harrison's allegations.” The majority holds that this trial testimony proves the warrant affidavits were orally supplemented. In so holding, the majority necessarily passes on the credibility of witness. I disagree with the holding because it was within the jury's province to believe or disbelieve this trial testimony. *See E. Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003) (holding that “[w]hen considering a JNOV, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence”) (internal quotation omitted). In my opinion, the evidence yields at least one reasonable inference that the warrant affidavits were not

orally supplemented. That inference supports a conclusion that the warrants were not issued pursuant to legal process and that lawful authority was therefore absent. Consequently, I would reverse the grant of JNOV and reinstate the jury's verdict on Appellants' false-imprisonment claims.

All Citations

368 S.C. 424, 629 S.E.2d 642

Footnotes

- 1 S.C.Code Ann. §§ 15–78–10 to –200 (2005).
- 2 In support of its motion, Respondent presented the following evidence: affidavits of Nettles, Miro, Elizabeth Stewart, Robin Gracien, and Magistrate Walter Griffin; deposition of Baker; and several internal policies of Respondent. Appellants did not file additional evidence.
- 3 This court may affirm the trial court based on any ground found in the record. Rule 220(c), SCACR; *E'l'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 418, 526 S.E.2d 716, 722 (2000).
- 4 See S.C.Code Ann. §§ 8–17–320(7), –330 (defining “grievance” to include dismissal from employment).
- 5 At trial, Nettles testified as follows:
Q: And did you give sworn testimony to?
A: Yes, sir, both myself and Officer Baker or Investigator Baker did.
Q: And did you tell [the magistrate] essentially the same things that you told the Court here today?
A: Yes, sir, I told [the magistrate] essentially what is written on the affidavits of each warrant, yes, sir.
Q: Did you tell him about the corroboration of Mr. Harrison?
A: Yes, sir.
Q: And give him the same kinds of examples that you’ve given us here today?
A: Yes, sir, I did.
- 6 For example, the affidavit supporting the warrant for Law provides:
That between May 1997 thru March 25, 1999 while at Allendale Correctional Institution located in Allendale County South Carolina, the defendant Anthony F. Law, did violate statute § 44–53–375 of the South Carolina Code of Laws, 1976 as amended, Conspiracy To Traffic Crack Cocaine Greater Than 100 Grams. In that the defendant did willfully, unlawfully, and feloniously conspire with Harry Jenkins, Mark Holmes, Vondeste Mole, and Arthur Vaughan, to Traffic Crack Cocaine Greater Than 100 Grams with a Confidential Reliable Informant (CRI) at the Allendale Correctional Institution during the period of May 1997 thru March 25, 1999. A statement was provided by the Confidential Reliable Informant which has been determined factual through corroboration of the facts. Investigators Joseph Baker and Melissa [Nettles] are witnesses to prove the same. All of which are against the Law, Peace, and Dignity of the State of South Carolina.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

ELECTRONICALLY FILED - 2021 Oct 11 9:16 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4001299

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 7

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) Civil Action No. 2019-CP-40-01299

3
4 CHRISTOPHER SHIMELD,)
5 Plaintiff,)

6 vs.) DEPOSITION OF

7 RICHLAND COUNTY) VICKI RAINS

8 SHERIFF'S OFFICE) OCTOBER 22, 2020

9 Defendant.)

10 _____)

11
12 Deposition on oral examination of VICKI RAINS
13 reported by Suzanne R. Wade, Court Reporter and Notary
14 Public in and for the State of South Carolina, pursuant
15 to the South Carolina Rules of Civil Procedure. Said
16 deposition was taken at Crowe LaFave, L.L.C., located at
17 500 Taylor Street, Suite 202, Columbia, South Carolina, on
18 Thursday, the 22nd day of October, 2020, commencing at 3:09
19 p.m.
20
21
22
23
24
25

1 by map, if you're looking at a driving map?

2 MR. GARFIELD: Object to the form.

3 A. Yes.

4 BY MR. KENDRICK:

5 Q. Okay. So after -- so you got a warrant for
6 Mr. Shimeld based on -- why don't you tell me that.

7 Tell me what your probable cause was for the warrant
8 against Mr. Shimeld.

9 A. So the fingerprint match came back. I went
10 to his apartment complex. Actually, it -- the way it
11 happened was I spoke to Mr. Ardap.

12 So I got the fingerprint match. I said,
13 "Mr. Ardap, do you know this person?" And he said,
14 "No, but I believe it's probably going to be the
15 person that hangs out with him all the time because I
16 think two people would have had to have done this
17 job."

18 And so he described him. And I, at this
19 point, had never showed him a picture or anything. He
20 described what the other person that was always with
21 Mr. Osborne looked like, which was very similar to Mr.
22 Shimeld.

23 Q. Uh-huh.

24 A. And he said that his clerk, Jennifer, would
25 see him even more often and would definitely be able

1 to identify him. That was the point of doing the
2 photo lineups.

3 So they picked him out of a photo lineup
4 and -- I have to look at -- (Witness examines
5 document).

6 Q. And just so the record's clear, what you're
7 looking at is the arrest warrant, correct?

8 A. It is. It's the arrest warrant. So after I
9 talked to Mr. Ardap and the clerk, I called the alarm
10 company that had installed the alarm system and spoke
11 to the manager and asked him if a Mr. Shimeld had ever
12 worked there, thinking that perhaps if he had
13 installed the alarm system would be why his
14 fingerprints would be there.

15 So he said no, there was -- there was no
16 person ever by the name Shimeld that worked for him.
17 I asked if maybe he was a contractor or something, and
18 he said no, that he was never a contractor there.

19 So I asked him to reassure me that Mr.
20 Shimeld had never worked for their alarm company, ADS.
21 And he said no, absolutely. He was -- he gave me the
22 names of the people that did install the system, and
23 Mr. Shimeld was not one of them.

24 So at that point, I had no reasonable
25 thought of why his fingerprint would be on the alarm

1 box that was ripped from the ceiling.

2 Q. Okay. Is that what you took to the judge,
3 the fingerprint and the photo lineup?

4 A. The fingerprint match and that I had spoke
5 to the alarm company and they had never had him as an
6 employee there.

7 And they had installed a new system about a
8 year ago and he had never worked there. He had no
9 reason to be there. I asked Mr. Ardap. He didn't
10 know him and said that he would never have a reason to
11 be in his office.

12 Q. So sounds like -- so when you talked to Mr.
13 Ardap, he told you that he thought it would take two
14 people to do this job?

15 A. Yes.

16 Q. And he pointed you out to -- pointed you to
17 Mr. Osborne also.

18 A. Yes.

19 Q. And Ms. Clark identified Mr. Osborne as
20 someone who hangs out in the store.

21 A. Yes.

22 Q. Did you seek a warrant for Mr. Osborne?

23 A. No.

24 Q. Did you follow up on getting a statement
25 from Mr. Osborne?

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 8

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

Akira Jefferson,
Plaintiff,

VS.

Town of Johnston and Edgefield Fuel and Convenience, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A NO: 2017-CP-19-00293

ORDER GRANTING SUMMARY JUDGMENT AS TO TOWN OF JOHNSTON

This matter comes before the Court on the Town of Johnston’s (“Town” or “Defendant”) Motion for Summary Judgment, filed April 24, 2018 pursuant to Rule 56, SCRCPP. A hearing on this motion was conducted at the Edgefield County Courthouse on October 1, 2018. Present on behalf of Akira Jefferson (“Plaintiff”) was Marion Fairey, Esq., on behalf of Town was Daniel Plyer, Esq., and on behalf of Defendant Edgefield Fuel and Convenience, LLC (“Edgefield Fuel”) was Darby Plexico, Esq.

FACTUAL BACKGROUND

Plaintiff was terminated from her position as a cashier with Edgefield Fuel on August 5, 2015 based on allegations that she was taking money from the cash register. On August 13, 2015, Edgefield Fuel lodged a criminal complaint against Plaintiff with the Johnston Police Department. Police officers reviewed Edgefield Fuel's surveillance tapes and subsequently obtained a warrant for Plaintiff's arrest for breach of trust with fraudulent intent. Plaintiff was arrested on September 2, 2015. On September 22, 2016 the Edgefield Magistrate, Judge Carpenter, dismissed the warrant due to the poor quality of the videotape and the fact that no witness from Edgefield Fuel was present for trial to authenticate the videotape. Plaintiff filed claims for malicious prosecution against Defendants, as well as defamation against Edgefield Fuel on September 5, 2017.

LEGAL STANDARD

A motion for summary judgment may be granted when there is no genuine dispute as to any material facts and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. “In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment.” *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014). When the evidence is susceptible to more than one reasonable inference, the issue

should be submitted to the jury, rather than being resolved at the summary judgment stage. *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009).

DISCUSSION

Defendant argues for summary judgment on two grounds. First, Defendant avers that it is immune from any claim for malicious prosecution under the South Carolina Tort Claims Act (“TCA”), codified at S.C. Code Ann. §§ 15-78-10, et seq. Second, Defendant argues that Plaintiff’s claim for malicious prosecution fails on the merits.

To prevail on a claim for malicious prosecution, a plaintiff must show by a preponderance of the evidence: (1) the institution or continuation of original judicial proceedings; (2) by, or at the instance of, the defendant; (3) the termination of such proceedings in plaintiff's favor; (4) malice in instituting the proceedings; (5) lack of probable cause for the proceeding; and (6) the suffering of injury or damage as a result of the action or prosecution. *Law v. S.C. Dep't. of Corrections*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

To support her claim, Plaintiff argues the evidence establishes that the Town instituted judicial proceedings by swearing out an arrest warrant and continuing to prosecute the same after the Town knew or should have known that the copy of the video provided by Defendant Edgefield Fuel was insufficient as a basis for prosecution of Plaintiff. Plaintiff points to the pretrial dismissal of the warrant as a termination of the proceedings in her favor. Plaintiff asserts that the copy of the video that was to be used at trial was altered and inaccurate. Deposition of Akira Jefferson, pp. 41-42; *see also* Deposition of Lamaz Robinson, pp. 53-55 (clarifying that the video officers observed in the store was different from the one provided on a disc and thumb drive by Edgefield Fuel). As a result, Plaintiff argues, there was no probable cause to support the arrest and, under *Law*, 368 S.C. at 437, 629 S.E.2d at 649, a lack of probable cause can create an inference of malice. Plaintiff states that she has applied for numerous jobs since her termination and has been unable to find gainful employment due to her short employment history and the nature of the allegations precipitating her arrest. Deposition of Akira Jefferson, pp. 15-16.

Defendant argues it is immune from suit under the TCA because the plain meaning of Section 15-78-60(23) negates the first element of any malicious prosecution claim against a government entity. The TCA provides in part that a governmental entity is not liable for any loss stemming from the “institution or prosecution of any judicial or administrative proceedings.” S.C. Code Ann. § 15-78-60(23). As a matter of public policy, the Legislature has determined that

government entities within this state are only liable for their torts to the extent that sovereign immunity has been explicitly waived within the TCA. S.C. Code Ann. § 15-78-20(a). The remedy provided by [the Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).” *See* S.C. Code Ann. § 15-78-20(b). Section 15-78-60 of the TCA provide the exceptions to the waiver of immunity. As stated previously, Section 15-78-60(23) provides immunity based upon the “institution or prosecution of any judicial or administrative proceeding.” The TCA must be liberally construed in favor of limiting the liability of the State, its political subdivisions, and any government employees. S.C. Code Ann. § 15-78-20(f); *see also Plyler v. Burns*, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007).

The S.C. Supreme Court and the Court of Appeals have not directly interpreted this provision of the TCA. However, at least two U.S. district courts in this state have. In *McCoy v. City of Columbia*, 929 F. Supp. 2d 541 (D.S.C. 2013), the federal district court determined that the plain language of Section 15-78-60(23) precluded a malicious prosecution claim against a law enforcement agency because of the similarity of the statutory language with the first element of a malicious prosecution claim. 929 F. Supp. 2d at 567; *see also Brown v. Dorchester County South Carolina*, 2018 WL 1351510 (D.S.C. 2018)(solicitors immune from malicious prosecution claims under TCA). Additionally, at least two other states have drawn similar conclusions when analyzing similarly-worded statutes in their own jurisdictions. *See Asgari v. City of Los Angeles*, 15 Cal. 4th 744 (Cal. 1997)(police officers not liable for instituting or prosecuting any judicial or administrative proceedings); *Livingston v. Consolidated City of Indianapolis*, 398 N.E.2d 1302, 1305 (Ind. Ct. App. 1979)(“it is clear [. . .] that the legislature fully intended to extend immunity to the [state] and other political subdivisions and their police officers in actions for malicious prosecution”).

The cardinal rule of statutory interpretation is to determine the intent of the legislature. *E.g., Jones v. State Farm Mutual Automobile Insurance Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *Id.* It is clear from the language of the statute that immunity is extended to a political subdivision of the state and its law enforcement officers for initiating or prosecuting judicial proceedings.

Plaintiff notes that the language of the immunity provision in Section 15-78-60(23) covers the "institution or prosecution" of judicial proceedings, while the first element of a malicious prosecution claim requires "institution or *continuation*"¹ of judicial proceedings. As a result, Plaintiff contends, the immunity provision does not apply to a situation where, as here, the government continues to prosecute a case beyond its outset. This is a distinction without a difference; the term "prosecution" covers all stages of the government's pursuit of a criminal charge against a defendant; specifically, "the *institution and continuance* of a criminal suit involving the process of pursuing formal charges against an offender to final judgment."² (Emphasis added).

This Court is persuaded that a claim for malicious prosecution against a governmental entity must fail because the language of Section 15-78-60(23) clearly states that the governmental entity, here a law enforcement agency, is not liable for instituting or prosecuting any judicial or administrative proceeding. This is clearly the first element of a malicious prosecution claim. *Law*, 368 S.C. at 435, 629 S.E.2d at 648.

Because Defendant is entitled to immunity under the Tort Claims Act, the remaining basis Defendant argues for summary judgment is moot.

ORDER

Based upon the foregoing, **IT IS ORDERED**, that Defendant Town of Johnston's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

Signature page to follow

¹*Law v. S.C. Dep't of Correction, supra* (emphasis added).

²Merriam-Webster's Online Dictionary, [webster.com/dictionary/prosecution](https://www.merriam-webster.com/dictionary/prosecution) (last visited April 29, 2019);

<https://www.merriam-webster.com/dictionary/prosecution>



Edgefield Common Pleas

Case Caption: Akira Jefferson VS Town Of Johnston, Et Al , defendant, et al
Case Number: 2017CP1900293
Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2019-05-09 10:45:26 page 5 of 5

EDGEFIELD COMMON PLEAS COURT CASE #2017CP00293
ELECTRONICALLY FILED 2019 May 09 10:45 AM - REID

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 9



KeyCite Yellow Flag - Negative Treatment

Disagreed With by Ferrer v. Okbamichael, Colo., February 27, 2017

377 S.C. 628

Supreme Court of South Carolina.

Rose L. JAMES and Leroy T. James, Plaintiffs,

v.

KELLY TRUCKING COMPANY
and Alvino C. Hymes, Defendants.

No. 26447.

Heard Sept. 18, 2007.

Decided March 10, 2008.

Synopsis

Background: Plaintiffs, who were injured in vehicle collision, filed negligence action against truck driver and, under theory of respondeat superior, against driver's employer, and also asserted claim against employer for negligent hiring, training, and supervision. After plaintiffs settled with defendants' insurers and sought recovery under underinsured motorists (UIM) provision of plaintiffs' insurance policy, insurer assumed defense of case and moved for partial summary judgment. The United States District Court for the District of South Carolina, Joseph F. Anderson, Jr., J., certified questions of state law.

[Holding:] The Supreme Court, Toal, C.J., held that South Carolina law does not prohibit a plaintiff from pursuing a negligent hiring, training, supervision, or entrustment claim once respondeat superior liability has been admitted.

Certified questions answered.

Moore, J., filed a dissenting opinion in which Waller, J., concurred.

West Headnotes (5)

- [1] **Labor and Employment** ⇌ Scope of Employment

Doctrine of "respondeat superior" provides that the employer, as the employee's master, is called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment.

8 Cases that cite this headnote

- [2] **Labor and Employment** ⇌ Nature of liability in general

Employer's liability under doctrine of respondeat superior is not predicated on the negligence of the employer, but upon the acts of the employee, whether those acts occurred while the employee was going about the employer's business, and the agency principles that characterize the employer-employee relationship.

18 Cases that cite this headnote

- [3] **Labor and Employment** ⇌ Negligent Hiring
Labor and Employment ⇌ Negligent training and supervision

Employer's liability under theory of negligent hiring, supervision, training, or entrustment is not derivative, but is direct.

53 Cases that cite this headnote

- [4] **Trial** ⇌ Prima facie case

When judging whether a plaintiff may proceed to trial on a cause of action, the trial court typically concerns itself only with whether the plaintiff's complaint states a factual basis to support a cause of action and whether, at the close of his presentation of the case, the plaintiff has presented a prima facie case supporting the allegations of his complaint.

1 Cases that cite this headnote

- [5] **Labor and Employment** ⇌ Negligent Hiring
Labor and Employment ⇌ Negligent training and supervision

South Carolina law does not prohibit a plaintiff from pursuing a negligent hiring,

training, supervision, or entrustment claim once respondeat superior liability has been admitted.

47 Cases that cite this headnote

Attorneys and Law Firms

****329** Dwight Christopher Moore, of Moore Law Firm, of Sumter, John S. Nichols, of Bluestein & Nichols, of Columbia, and S. Randall Hood, of McGowan Hood Felder & Johnson, of Rock Hill, for Plaintiffs.

Kirby D. Shealy III, of Baker Ravenel & Bender, of Columbia, for Defendants.

Opinion

Chief Justice TOAL:

629** We accepted two certified questions from the United States District Court arising out of the situation in which a plaintiff, as a result of allegedly tortious actions by an employee, asserts causes of action for vicarious liability and negligent hiring, training, supervision, or entrustment against an employer. The first question asks whether a plaintiff in South Carolina is precluded, as a general matter, from maintaining a cause of action *330** for negligent hiring, training, supervision, or entrustment after an employer stipulates that it is vicariously liable for its employee's negligence. In the event we answer the first question "yes," the second question asks whether ***630** there is an exception to this general rule when the negligent hiring, training, supervision, or entrustment claim involves a properly pled and available claim for punitive damages. We answer the first question "no," and therefore do not reach the second.

FACTUAL/PROCEDURAL BACKGROUND

Rose and Leroy James commenced this action to recover for injuries sustained in an automobile accident caused by defendant Alvino Hymes. Hymes was driving a tractor-trailer truck for his employer, defendant Kelly Trucking Company, when he failed to stop for a red light and struck Mrs. James' vehicle. The James sued both Hymes and Kelly Trucking, seeking to hold Kelly Trucking liable for Hymes' negligence through the doctrine of respondeat superior. The James also asserted a separate cause of action against Kelly Trucking for the negligent hiring, training, and supervision of Hymes based

on his poor driving record. In their prayer for relief, the James sought both actual and punitive damages.

The James settled with the insurers of both Hymes and Kelly Trucking, and then sought recovery under the underinsured motorists provision (UIM) of their insurance policy. The James' insurer ("the Insurer") then assumed the defense of this case as allowed by S.C.Code Ann. § 38-77-160 (Supp.2006). The Insurer, defending the action from the defendants' perspective, stipulated that Hymes was negligent in causing the accident and that Hymes was acting in the course and scope of his employment with Kelly Trucking when the accident occurred. The Insurer then moved for partial summary judgment, arguing that the James were precluded from proceeding with their negligent hiring claim because Kelly Trucking had admitted liability for Hymes' negligence.

It was against this backdrop that the District Court certified two questions to this Court, questions which we accepted pursuant to Rule 228, SCACR. The District Court asked:

I. Does South Carolina law prohibit a plaintiff from pursuing a negligent hiring, training, supervision, or entrustment claim once respondeat superior liability has been admitted?

***631** II. If the answer to question 1 is in the affirmative, does South Carolina law recognize an exception to the rule where punitive damages on the negligent hiring, training, supervision, or entrustment claim are pled and available?

LAW/ANALYSIS

[1] [2] A plaintiff in a civil case may have a number of causes of action at his disposal through which he may seek to hold a tortfeasor or other responsible party liable for his injury, and this is no less the case when a plaintiff alleges that he has been injured by an employee acting in the course and scope of his employment. The doctrine of respondeat superior provides that the employer, as the employee's master, is called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment. *Sams v. Arthur*, 135 S.C. 123, 128-131, 133 S.E. 205, 207-08 (1926). Such liability is not predicated on the negligence of the employer, but upon the acts of the employee, whether those acts occurred while the employee was going about the employer's business, and the

agency principles that characterize the employer-employee relationship. *Id.*

[3] Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort. In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public. See RESTATEMENT (SECOND) OF TORTS § 317 (1965)

(Cited with approval in ****331** *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992)). As this recitation suggests, the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct.¹

***632** The Insurer argues that public policy justifies the preclusion of the pursuit of a negligent hiring, training, supervision, or entrustment claim against an employer when the employer admits vicarious liability. The argument goes that the admission of evidence which must be offered to prove a negligent hiring, training, supervision, or entrustment claim—evidence such as a prior driving record, an arrest record, or other records of past mishaps or misbehavior by the employee—will be highly prejudicial if combined with a stipulation by the employer that it will ultimately be vicariously liable for the employee's negligent acts. The Insurer argues that allowing a plaintiff to maintain an independent negligence cause of action against the employer will require that evidence of an employee's past negligence be admitted. This admission, in the Insurer's view, will result in the jury improperly inferring that because the employee was negligent in the past, he was negligent in causing the plaintiff's injuries. The Insurer argues that this inference will lead to a jury verdict driven more by emotion than by application of the law. Although we do not take these arguments lightly, we believe that they do not accurately characterize the concerns at play.

Primarily, we think the argument that an independent cause of action against an employer must be precluded to protect the jury from considering prejudicial evidence presumes too much. Our court system relies on the trial court to determine when relevant evidence is inadmissible because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

Rule 403, SCRE. Similarly, we rely on the trial court to craft instructions describing what a jury may or may not infer from a particular piece of evidence, and we grant the trial court discretion to give such instructions to the jury at the time such evidence is introduced, when charging the jury at the close of the case, or at any proper time in between. In our view, the argument that the court must entirely preclude a cause of ***633** action to protect the jury from considering prejudicial evidence gives impermissibly short-shrift to the trial court's ability to judge the admission of evidence and to protect the integrity of trial, and to the jury's ability to follow the trial court's instructions.

If this fact alone did not provide a sufficient basis to reject the proposition at issue, the additional complexities involved with adopting such a rule and the proposed exception would provide the tiebreaker. To its credit, the Insurer stipulates that if a plaintiff should generally be prohibited from pursuing a negligent hiring, training, supervision, or entrustment claim once respondeat superior liability has been admitted, there should be an exception to this rule where an employer's conduct is so reckless or wanton that punitive damages are available. Although this exception appears fairly benign on the surface, we think it raises procedural problems of its own.²

[4] When judging whether a plaintiff may proceed to trial on a cause of action, the trial court typically concerns itself only with whether the plaintiff's complaint states a factual basis to support a cause of action and whether, at the close of his presentation of the case, the plaintiff has presented a prima facie case supporting the allegations of his complaint. If the trial court, under the exception proposed, is asked to make any sort ****332** of a qualitative judgment regarding the employer's conduct, the exception would drastically alter our traditional concepts of the court's proper function. On the other hand, if the trial court is simply required to ask whether the plaintiff has requested an award of punitive damages, we think the adoption of a rule of preclusion might prove of little utility. As requests for punitive damages are commonplace in cases of this type, we think traveling the road the Insurer proposes would create an exception which swallows the rule.

We recognize that other jurisdictions have answered these questions differently, *see, e.g.,* **McHaffie v. Bunch**, 891 S.W.2d 822, 826 (Mo.1995), but we are not resolved to agree in this instance. In our view, it is a rather strange proposition that a ***634** stipulation as to one cause of action could somehow “prohibit” completely the pursuit of another. A

plaintiff may, in a single lawsuit, assert many causes of action against a defendant. The considerations limiting a plaintiff's available causes of action in the typical case are that the plaintiff must be able to demonstrate a prime facie case for each cause of action and that a plaintiff may ultimately recover only once for an injury. Thus, although the Insurer's stipulation as to vicarious liability ensures that the Insurer (standing in the shoes of Kelly Trucking) will be liable for the James' injuries, that is only the practical effect of the stipulation. Such practical considerations, in our opinion, ought not require the preclusion of a claim based upon Kelly Trucking's alleged negligence in hiring Hymes as a matter of law.

CONCLUSION

[5] After considering the arguments in favor of answering the first certified question in the affirmative, we are of the opinion that the largely policy-based arguments offered in support of such an answer do not justify a grant of approval to the rule proposed. Accordingly, we conclude that South Carolina law does not prohibit a plaintiff from pursuing a negligent hiring, training, supervision, or entrustment claim once respondeat superior liability has been admitted, and we therefore answer the first certified question "no." For this reason, we need not reach the second question certified by the District Court.

PLEICONES and BEATTY, JJ., concur.

MOORE, J. dissenting in a separate opinion in which WALLER, J., concurs.

Justice MOORE dissenting:

I respectfully dissent. I would hold that a plaintiff may proceed on a negligent hiring claim when the employer admits vicarious liability only if there is evidence of gross negligence in hiring that would support an award of punitive damages.

As a general rule, most jurisdictions do not allow a separate claim against an employer where vicarious liability is admitted for the acts of an employee. See [] *635 *McHaffie v. Bunch*, 891 S.W.2d 822, 826 (Mo.1995), and cases cited therein; annot. 30 A.L.R.4th 838 (1984).³ the rationale is that the employer's liability is a derivative claim fixed by a determination of the employee's negligence. Some courts

following this general rule, however, will allow a negligent hiring claim to proceed when the employer's liability is alleged to include gross negligence in hiring; in this situation, the employer's gross negligence supports a claim beyond the employee's negligent act. See [] *Durben v. American Materials, Inc.*, 232 Ga.App. 750, 503 S.E.2d 618 (1998); [] *Lockett v. Bi-State Transit Auth.*, 94 Ill.2d 66, 67 Ill.Dec. 830, 445 N.E.2d 310 (1983); [] *Coville v. Ryder Truck Rental, Inc.*, 30 A.D.3d 744, 817 N.Y.S.2d 179 (2006); see also [] *Bruck v. Jim Walter Corp.*, 470 So.2d 1141 (Ala.1985). Finally, a minority of courts will allow a negligent hiring claim to proceed, irrespective of gross negligence on the employer's part, because they hold that negligent hiring is a separate, and not derivative, claim. See [] *Quinonez v. Andersen*, 144 Ariz. 193, 696 P.2d 1342 (1984); [] *Marquis v. State Farm Fire and Cas. Co.*, 265 Kan. 317, 961 P.2d 1213 (1998); [] **333 *Lim v. Interstate System Steel Div., Inc.*, 435 N.W.2d 830 (Minn.App.1989). The majority has chosen to follow the minority rule.

Contrary to the minority view, our precedent indicates that generally a claim against an employer under a theory of respondeat superior is treated as a derivative claim dependent upon establishing the negligence of the employee. For instance, in [] *David v. McLeod Reg. Med. Center*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006), a plaintiff alleged medical malpractice by the treating physicians and vicarious liability of the hospital. We held summary judgment was properly granted in favor of the hospital because the plaintiff had failed to establish negligence by the physician-employees. Similarly, in *McCullem v. Liberty Life Ins. Co.*, 217 S.C. 565, 571, 61 S.E.2d 181, 184 (1950), we upheld a nonsuit in the plaintiff's action against an employer for injuries allegedly caused by an employee where there was no evidence of the employee's negligence. Both these cases indicate that generally an employer's *636 liability is determined by the negligence of his employee and the suit against the employer is a derivative one.⁴

In some circumstances, a plaintiff may allege the employer's negligence rises to such a level that it supports liability in addition to the employer's vicarious liability for the employee's negligent acts.⁵ I would allow a separate cause of action in this circumstance because the cause of action against the employer is no longer simply derivative of, or

dependent upon, the negligence of the employee.⁶ Allowing such an action against an employer would further the deterrent purpose of punitive damages. See *Clark v. South Carolina Dep't of Pub. Safety*, 362 S.C. 377, 608 S.E.2d 573 (2005) (upholding verdict on claim of negligent supervision where there was evidence of employer's gross negligence despite jury's failure to find employee's breach of a duty); *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) (purposes of punitive damages are to punish wrongdoer and deter similar reckless, willful, wanton, or malicious conduct

in the future).⁷ I depart from the majority's holding because I would not allow a separate cause of action to proceed where there is no evidence of gross negligence on the employer's part.

WALLER, J., concurs.

All Citations

377 S.C. 628, 661 S.E.2d 329

Footnotes

- 1 Some jurisdictions have limited the application of the theories of negligent hiring, training, supervision, and entrustment to instances where an employee acts outside the scope of his employment, and this proposition finds some support in the comments to the Restatement. See *Di Cosala v. Kay*, 91 N.J. 159, 450 A.2d 508, 515 (1982); and RESTATEMENT (SECOND) § 317 cmt. a. Our case law has not previously recognized such a distinction, and the parties in this case did not argue that we should begin to do so.
- 2 The Insurer focuses much of its argument on the question of whether an award of punitive damages against it, standing in the shoes of the defendants, would be constitutional. Though an intriguing question, this was not a question we agreed to answer.
- 3 Judge Anderson, who certified the questions here, applied this majority rule in another South Carolina case but acknowledged that this Court has never ruled on the issue. *Bowman v. Norfolk So. Rwy. Co.*, 832 F.Supp. 1014, 1021–22 (D.S.C.1993).
- 4 Similarly, in *Longshore v. Saber Security Servs., Inc.*, 365 S.C. 554, 619 S.E.2d 5 (Ct.App.2005), the Court of Appeals speculated that a plaintiff must prove an actionable tort by the employee in order to maintain a negligent hiring action against the employer.
- 5 Defendants do not argue against adopting such a rule. Instead, they simply claim that any punitive damages award in this case is unconstitutional. This is not a question we agreed to answer in accepting the questions certified by the District Court.
- 6 For instance, here plaintiffs claim Hymes' poor driving record supports punitive damages against Kelly Trucking irrespective of any showing that Hymes himself was grossly negligent.
- 7 I note that by giving a limiting instruction, the trial court may restrict the use of evidence regarding the negligent hiring claim to avoid the potential danger of unfair prejudice from the jury's consideration of such evidence in the context of the underlying tort. For instance, here the jury could be instructed that Hymes' poor driving record is not to be considered in determining liability for the wreck but is admissible only on the negligent hiring claim. See *Lockett, supra*.

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 10

367 S.C. 199

Court of Appeals of South Carolina.

Sharon DOE, as Special Conservator
for her daughter, Audra Doe,
2003-CP-23-2255, Appellant,
v.

ATC, INC., Transportation Management Services,
Inc., and Multisystems, Inc., Respondents.

Sharon Doe, as Special Conservator
for her daughter, Audra Doe,
2003-CP-23-2256, Appellant,
v.

Calvin Murray, Respondent.

No. 4063.

|
Heard Nov. 8, 2005.

|
Decided Dec. 19, 2005.

Synopsis

Background: Mother of disabled adult brought action against employer and its employee who drove Medicaid bus and who allegedly inappropriately touched adult while adult was on Medicaid bus to physical therapy sessions. The Circuit Court, Greenville County, John C. Few, J., directed a verdict in favor of employer, and mother appealed.

[Holding:] The Court of Appeals, Kittredge, J., held that employer was not responsible under theory of negligent retention for any injuries to disabled adult as result of employee's alleged conduct.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Judgment as a Matter of Law (JMOL)/Directed Verdict.

West Headnotes (8)

- [1] **Appeal and Error** ⇌ Review using standard applied below

In reviewing a motion for directed verdict, the appellate court applies the same standard as the circuit court.

1 Cases that cite this headnote

- [2] **Trial** ⇌ Inferences from evidence

Trial ⇌ Hearing and determination

On motion for directed verdict, court must view the evidence and the inferences that can reasonably be drawn in the light most favorable to the nonmoving party, and if the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should be denied.

1 Cases that cite this headnote

- [3] **Labor and Employment** ⇌ Sexual misconduct

Reasonable jury could not conclude, based on employee's attempt to kiss co-employee, that employer knew or should have known that employee was likely to commit a sexual assault sometime in the future, particularly given co-employee's unwillingness to file a formal complaint and the complete absence of evidence of other such similar conduct by employee, and thus, employer was not responsible under theory of negligent retention for any injuries to disabled adult who alleged that employee, who drove Medicaid bus, inappropriately touched adult while adult was on Medicaid bus going to physical therapy sessions.

- [4] **Labor and Employment** ⇌ Negligent retention

There may be circumstances in which the only effective control which the master can exercise over the conduct of his servant is to discharge the servant, and therefore, the master may subject himself to liability by retaining in his employment servants who, to his knowledge, are in the habit of misconducting themselves in a manner dangerous to others. Restatement (Second) of Torts § 317.

2 Cases that cite this headnote

- [5] **Labor and Employment** ⇌ Negligent Hiring
Labor and Employment ⇌ Negligent retention

Negligent hiring and retention cases generally turn on two fundamental elements, namely knowledge of employer and foreseeability of harm to third parties, and these elements, from factual perspective, are not necessarily mutually exclusive, as fact bearing on one element may also impact resolution of other element, and from a practical standpoint, these elements are analyzed in terms of number and nature of prior acts of wrongdoing by employee, and nexus or similarity between the prior acts and ultimate harm caused, and such factual considerations will ordinarily be determined by factfinder, and not as matter of law; nevertheless, court should dispose of matter on a dispositive motion when no reasonable factfinder could find risk foreseeable or employer's conduct to have fallen below acceptable standard.

22 Cases that cite this headnote

- [6] **Labor and Employment** ⇌ Negligent Hiring
Labor and Employment ⇌ Negligent retention

Standard in negligent hiring and retention cases is whether the employer knew the offending employee was in the habit of misconducting himself in a manner dangerous to others.

12 Cases that cite this headnote

- [7] **Labor and Employment** ⇌ Negligent retention

The "habit of misconducting" language in the Restatement of Torts section, stating that master may subject himself to liability by retaining in his employment servants who, to his knowledge, are in the "habit of misconducting" themselves in a manner dangerous to others, does not mandate multiple prior acts of misconduct for a negligent retention action to remain viable in

South Carolina. Restatement (Second) of Torts § 317.

3 Cases that cite this headnote

- [8] **Labor and Employment** ⇌ Negligent retention

A single isolated incident of prior misconduct of which the employer knew or should have known may support a negligent retention claim, provided the prior misconduct has a sufficient nexus to the ultimate harm. Restatement (Second) of Torts § 317.

14 Cases that cite this headnote

Attorneys and Law Firms

****448** John Robert Peace, of Greenville, for Appellant.

Maureen Z. White, of Greenville and Michael H. Montgomery, of Columbia, for Respondents.

Opinion

KITTREDGE, J.:

***202** This is an appeal from the granting of a directed verdict in a negligent retention action. The dispositive issue, as narrowly framed in the trial court, is whether a jury question existed as a result of the employer's decision not to fire an employee based on the report of a single incident of an inappropriate sexual advance toward a fellow employee. We agree with the trial court that a jury question was not created by the employer's decision to retain the employee. We affirm.

FACTS¹

Appellant Sharon Doe² is the mother of Audra Doe, a disabled adult female. Audra rode a Medicaid bus to physical therapy sessions and to Greenville Memorial Hospital, where she did volunteer work. Calvin Murray, an employee of Respondents (collectively "ATC") drove the Medicaid bus on which Audra sometimes rode. While Audra was on the bus, Murray repeatedly touched her legs inappropriately, kissed her and made persistent comments to her of a sexual nature over a period of several months.

Doe filed separate lawsuits on behalf of Audra against Murray and ATC. These suits were consolidated and tried together. Doe's claim against ATC was based on a negligent retention theory.³

****449** The trial court directed a verdict in favor of ATC. The action against Murray resulted in a jury verdict of \$1,000. Doe appeals only from the direction of a verdict in favor of ATC, and there is no challenge in connection with the action

***203** against Murray. Concerning the negligent retention theory of liability against ATC, Doe contended that Murray should have previously been fired due to an earlier, isolated incident involving a fellow employee, Tycie Moss.

Moss testified that several months before the incidents involving Audra, Murray made an inappropriate advance toward her. Moss's car had broken down, so Murray picked her up before her shift, around 3 or 4 o'clock in the morning. Moss got out of Murray's van and, as she was getting into her van, Murray approached her, and "then grabbed [her] arms ... like he was forcing [her] to kiss him." Moss pushed him away before he could kiss her, got into her van, and left. Moss also testified that Murray made inappropriate sexual comments to her in the presence of clients on the van.

Moss reported the incident to her supervisor, Hattie Wright. Moss, however, told Wright not to write up a formal complaint against Murray because she "didn't want it to blow up." ATC had a formal complaint procedure that provided for an investigation of a complaint, but Moss refused to file a complaint. In fact, Moss did not want Wright "to do anything about [the incident]." Wright said that Moss wanted her disclosure to remain in confidence, noting that Moss did not want Wright to "say anything to anyone."

Wright ignored Moss's wishes and pursued the matter the same day, initially by speaking with Murray. Murray gave "his side" and said the incident was not as "interpreted." Without an admission from Murray and the lack of a formal complaint, Wright nevertheless issued Murray a verbal warning, instructing him to "keep [his] distance" and to "do [his] job." Also on the same day, Wright discussed the incident with her supervisor, Audlyn Williams, who was the manager in charge of the Greenville office. Williams believed that in light of Murray's otherwise laudable employment record—he "never had a [problem] before"—Wright's actions were appropriate. Wright subsequently prepared a memorandum for the file regarding the incident.

It is undisputed that ATC—prior to Doe's complaint on behalf of Audra—had no other knowledge of inappropriate conduct of any kind by Murray.

***204** After Doe filed her complaint, Williams and Wright notified Melville Padgett, the general manager for ATC's Medicaid properties in South Carolina. Padgett testified he was satisfied with Wright's earlier actions because prior to the present action Murray had a "clean record" except for the single incident reported by Moss. Following Doe's complaint, Murray admitted making an inappropriate comment to Audra on the bus, and Padgett fired him.

The Directed Verdict Motion

ATC moved for a directed verdict, and the trial court engaged in a lengthy discussion with Doe's counsel in an effort to determine the precise allegation of negligence against ATC. Specifically, it was not clear what Doe claimed ATC should have done differently following the reported incident involving Moss. The answer eventually surfaced:

THE COURT: So they would have to have fired him [following the report by Moss]?

[DOE'S COUNSEL]: Yes, sir.

The trial court, as noted, directed a verdict in favor of ATC.

STANDARD OF REVIEW

[1] [2] In reviewing a motion for directed verdict, the appellate court applies the same standard as the circuit court. *Welch v. Epstein*, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct.App.2000). The court must view the evidence and the inferences that can reasonably be drawn in the light most favorable to the nonmoving party. *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should be denied. *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995); *Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 913 (Ct.App.2001).

****450 LAW/ANALYSIS**

[3] Doe argues that ATC negligently retained Murray by failing to fire him following the report by Moss. The issue before us, as framed in the trial court and stipulated at oral argument, is a narrow one—was a jury question presented on *205 Doe's theory of liability that ATC was negligent in not firing Murray following the attempted kissing incident involving a fellow employee? We join the circuit court in answering the question "no."

[4] We have canvassed the record and conclude that ATC's decision not to fire Murray following the incident with Moss was reasonable as a matter of law. Doe makes no claim that ATC's *supervision* of Murray was negligent following the incident with Moss. Cf. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116–17, 420 S.E.2d 495, 496 (1992) (recognizing the tort of negligent supervision in South Carolina law); *Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 590, 486 S.E.2d 9, 12–13 (Ct.App.1997) (examining negligent supervision case law since *Degenhart*).⁴ We can find no South Carolina case on point, and none has been cited. South Carolina, indeed, recognizes the tort of negligent retention in the context of a negligent supervision action. We have no pause in concluding our supreme court would recognize the tort of negligent retention, independent of allegations of negligent supervision. See e.g., *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 422 (Minn.Ct.App.1993) (holding that negligent hiring and negligent retention are distinct theories of recovery separate from negligent supervision). In addressing the law of negligent supervision, our supreme court has cited with approval the Restatement (Second) of Torts § 317 (1965). *Degenhart*, 309 S.C. at 116–17, 420 S.E.2d at 496. Comment c to section 317 of the Restatement (Second) of Torts deals specifically with the retention of employees, and provides, in relevant part:

c. Retention in employment of servants known to misconduct themselves. There may be circumstances in which the only effective control which the master can exercise over the conduct of his servant is to discharge the servant. *206 Therefore the master may subject himself to liability under the rule stated in this Section by retaining in his employment servants who, to his knowledge, are in the

habit of misconducting themselves in a manner dangerous to others.

[5] Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties. *Di Cosala v. Kay*, 91 N.J. 159, 450 A.2d 508, 516 (1982). These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. Such factual considerations—especially questions related to proximate cause inherent in the concept of foreseeability—will ordinarily be determined by the factfinder, and not as a matter of law. *Hoke v. May Dep't Stores Co.*, 133 Or.App. 410, 891 P.2d 686, 691 (1995); *Gaines v. Monsanto Co.*, 655 S.W.2d 568, 571 (Mo.Ct.App.1983). Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable factfinder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard. *Hoke*, 891 P.2d at 690; *Reed v. Kelly*, 37 S.W.3d 274, 278 (Mo.Ct.App.2000). We believe Doe's claim against ATC is properly resolved as a matter of law.

[6] The standard, according to the Restatement section 317 comment c, is whether **451 the employer knew the offending employee was "in the habit of misconducting [himself] in a manner dangerous to others." Accordingly, many courts have recognized that a plaintiff must demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties. See e.g., *Frye v. Am. Painting Co.*, 642 N.E.2d 995, 999 (Ind.Ct.App.1994) (holding that an employer may be held negligent if it retains an employee it knew or should have known had a propensity for dangerous behavior); *Alpharetta First United Methodist Church v. Stewart*, 221 Ga.App. 748, 472 S.E.2d 532, 536 (1996) (holding that an employer may not be held liable for *207 negligent hiring or retention unless the plaintiff shows the employer knew or should have known of the employee's dangerous propensities); *Gomez v. City of New York*, 304 A.D.2d 374, 758 N.Y.S.2d 298, 299 (N.Y.App.Div.2003) ("[R]ecovery on a negligent hiring and retention theory requires a showing

that the employer was on notice of the relevant tortious propensities of the wrongdoing employee.”).

Based on this requirement, some courts have dismissed negligent hiring and negligent retention claims when the claim rests on a single prior incident of misconduct.

For example, in *Sullivan v. St. Louis Station Assocs.*, 770 S.W.2d 352 (Mo.Ct.App.1989), the court held that a single prior incident was insufficient as a matter of law to establish negligent retention. The Sullivan court noted that “the plaintiff must demonstrate that the employee had dangerous proclivities ... which denotes a course of conduct rather than a single aberration of behavior.” *Id.* at 357.

Similarly, in *Moore v. Hosier*, 43 F.Supp.2d 978, 993–994 (N.D.Ind.1998), the United States District Court for the Northern District of Indiana granted summary judgment to an employer in a negligent hiring and retention claim that was predicated on a single, prior incident. The court observed that a single incident does not equate to a habit or propensity toward misconduct. *Id.* at 993.

[7] [8] However, we do not view the “habit of misconducting” language in the Restatement as mandating multiple prior acts of misconduct for a negligent retention action to remain viable in South Carolina. We hold that a single isolated incident of prior misconduct (of which the employer knew or should have known) may support a negligent retention claim, provided the prior misconduct has a sufficient nexus to the ultimate harm. In *Doe v. Greenville Hosp. Sys.*, 323 S.C. 33, 40–41, 448 S.E.2d 564, 568 (Ct.App.1994), in the context of a negligent supervision claim, this court affirmed the denial of the employer’s directed verdict motion—and hence a jury question was presented—where the prior isolated incident involved the same sexual misconduct against the same victim.

Turning to the case at hand, the prior alleged misconduct by Murray against Moss, a co-employee, lacks a sufficient nexus to the sexual assault on Audra. While it is true that both incidents may generally be described as sexual in nature, the *208 totality of the prior incident is a far cry from

the reprehensible, persistent pattern of abuse against Audra. If Moss’s allegation against Murray were founded,⁵ then Murray’s conduct involving Moss certainly deserved some form of disciplinary action. ATC could have taken any number of actions, such as transferring Murray or requiring counseling. However, none of these possibilities are in play here, because we are not confronted with any claim of negligent supervision, but only the claim that ATC should have fired Murray.

Doe’s laser-beam approach—Murray had to be fired—is simply not reasonable under the facts presented, including the nature of the incident involving Moss, Moss’s unwillingness to file a formal complaint, and the complete absence of evidence of other such similar conduct by Murray. Indeed, but for the allegation by Moss, Murray had a “clean” work record. Imposition of liability against an employer for negligent retention under these facts is legally untenable. This court in no manner condones Murray’s purported misconduct against Moss, and we recognize **452 that a single assault may well create a jury question as to whether an employee should be fired. But this is not such a case.

CONCLUSION

We find that the directed verdict for ATC was appropriate under the facts presented and the theory of liability advanced by Doe. A reasonable jury could not conclude, based on the incident involving Moss, that ATC knew or should have known that Murray was likely to commit a sexual assault sometime in the future. The decision to retain Murray following the informal report by Moss was reasonable as a matter of law. The order of the trial court is

AFFIRMED.

STILWELL and WILLIAMS, JJ., concur.

All Citations

367 S.C. 199, 624 S.E.2d 447, 24 IER Cases 109

Footnotes

- 1 We adhere to the appropriate standard of review and thus view the facts in a light most favorable to Appellant, although the facts necessary for resolution of this appeal are largely undisputed.
- 2 We have substituted the name Doe due to the nature of the allegations.
- 3 The complaint alleged negligent supervision, but the case was tried as one of negligent retention.
- 4 In Appellants' Final Brief, Doe seeks to recast the case as one of negligent supervision, arguing that ATC was "on notice" about the incident with Moss and hence the need to "exercise control" over Murray. Issue preservation rules preclude us from expanding the case and issues beyond those argued in the trial court. Counsel for Doe conceded at oral argument that the case against ATC rested solely on the claim that ATC was required to fire Murray following the incident with Moss. When properly viewed, Doe has defined and equated ATC's duty to "exercise control" with a duty to fire Murray.
- 5 We decline Doe's invitation to view Moss's allegation in hindsight through the lens of Murray's abuse of Audra.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 11

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James McKinney,

Plaintiff,

v.

Richland County Sheriff's Department and
Richland County Sheriff Department
Officer Roy Livingston,

Defendants.

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Civil Action No. 03-CP-40-2620

ORDER

RICHLAND COUNTY
FILED
2005 MAR 29 PM 2:29
CLERK OF COURT
C.C.C. & N.S.

STATEMENT OF THE CASE

The Plaintiff, James McKinney, filed this action pursuant to 42 U.S.C. § 1983 alleging that the Defendant, Roy Livingston, violated his Fourth Amendment rights by arresting him without probable cause. The Plaintiff also asserted state law claims for false arrest, false imprisonment, malicious prosecution, and negligence. The Defendants removed this action to federal court.

By order entered November 22, 2004, the federal district court granted in part and denied in part the Defendants' motion for summary judgment. The Defendants then filed a motion to alter or amend pursuant to Rule 59(e), FRCP, requesting the court to reconsider the denial of summary judgment on several points. By order filed March 7, 2005, the district court granted that motion in part. In addition, on that same date, the district court issued an amended order which again granted in part and denied in part the Defendants' motion for summary judgment. In that amended order, the district court denied the Defendant Livingston's qualified immunity defense and allowed the Plaintiff's Section 1983 claim to proceed against Livingston in his individual capacity only. The remaining federal law claims were dismissed.

The Defendant Livingston then appealed that interlocutory ruling denying him qualified immunity to the Fourth Circuit Court of Appeals. In a published opinion, the Fourth Circuit ruled that there was probable cause as a matter of law for the Plaintiff's arrest on the first arrest warrant. Alternatively, the Fourth Circuit ruled that even if probable cause was lacking, the Defendant Livingston was entitled to qualified immunity because his actions in relying on the conclusions reached by an Assistant Solicitor and a Magistrate Judge were objectively reasonable. Finally, the Fourth Circuit agreed that the Plaintiff has only brought a claim for the

first arrest warrant and not the second warrant which was dismissed at a preliminary hearing. See, *McKinney v. Richland County Sheriff's Dept.*, 431 F.3d 415 (4th Cir. 2005).

The Fourth Circuit remanded to the district court with directions to enter judgment for the Defendant Livingston on the federal claims. In light of the Fourth Circuit's decision, Judge Seymour vacated her earlier order denying summary judgment on the state law claims and issued an Amended Order dismissing all federal claims. She declined to exercise supplemental jurisdiction over the remaining state law claims and remanded those to state court from which this action had been initially removed.

STATEMENT OF THE FACTS

On May 2, 2001, Verda Roberts contacted the Richland County Sheriff's Department regarding an alleged assault of her nine-year-old daughter, Jasmine. At that time, Sergeant Bill Connors responded to the pediatric section of the Richland Memorial Hospital Emergency Room to prepare an initial incident report. Ms. Roberts informed Connors that Jasmine had been assaulted earlier that day while at E.E. Taylor Elementary School by the Plaintiff, James McKinney, who was a teacher at the school. The nature of the assault included allegations that McKinney grabbed Jasmine's neck from behind, choked her, and then shoved, pushed, or dragged her into a corner. As a result, Jasmine received a blunt injury to her face which caused her to bite down on her lip. Photographs demonstrated visible injuries, specifically fresh finger marks around Jasmine's neck.¹

Deputy Roy Livingston, a Youth Crimes Investigator with the Sheriff's Department, was assigned to investigate the case. Two days after the event, Livingston had an opportunity to interview both Verda Roberts and Jasmine. Ms. Roberts and Jasmine's versions of the event in question were consistent with the oral accounts previously recorded by Sgt. Connors in his incident reports.

On May 9, 2001, Livingston met with Deputy Solicitor Jonathan S. Gasser with the Fifth Circuit Solicitor's Office to discuss whether probable cause existed to arrest McKinney on a criminal charge. During the meeting, Livingston discussed all aspects of the case and fully disclosed the strengths and weaknesses involving the case against McKinney. As a result,

¹ Jasmine was diagnosed with Attention Deficit Disorder. On May 2, 2001, she was "very loud and using profanity and screaming and hollering." In an effort to calm her down, school officials placed Jasmine in the Behavior Management Room (BMA Room) where McKinney was assigned.

Solicitor Gasser gave the opinion that probable cause existed to seek an arrest warrant against McKinney for Assault and Battery of a High and Aggravated Nature ("ABHAN"). During their meeting, Solicitor Gasser suggested to Livingston that he continue his attempts to interview McKinney. Before and after Livingston's meeting with Solicitor Gasser, he had made several unsuccessful attempts to interview McKinney. Livingston had conversations with Debbie Bailey, the school principal, and two attorneys for the school district in an attempt to arrange an interview of McKinney.

On May 22, 2001, Livingston prepared an arrest warrant affidavit against McKinney for ABHAN, describing the offense consistent with the allegations as they had been understood by him. At that time, Livingston delivered the proposed affidavit to Magistrate Mel Maurer's office for Verda Roberts' review and then for consideration by the magistrate. Ms. Roberts attested to the judge the allegations against McKinney and Magistrate Maurer ultimately issued the warrant. These events transpired without Livingston present. That same day, Livingston retrieved the signed arrest warrant from the magistrate's office. Thereafter, on May 30, 2001, Livingston served the arrest warrant on McKinney at the Sheriff's Department. That warrant was later presented to the Richland County Grand Jury, which returned a no bill.

DISCUSSION

I. The law of this case based upon the decision of the Fourth Circuit Court of Appeals in *McKinney v. Richland County Sheriff's Dept.*, 431 F.3d 415 (4th Cir. 2005), establishes that probable cause existed for the arrest of the Plaintiff. As a result, the Plaintiff cannot state a cause of action for false arrest, false imprisonment, malicious prosecution, and/or negligent arrest.

In *McKinney v. Richland County Sheriff's Dept.*, 431 F.3d 415 (4th Cir. 2005), the Fourth Circuit Court of Appeals has already ruled as a matter of law that probable cause existed for the Plaintiff's arrest. The Court held that "[e]ven viewing the evidence in the light most favorable to McKinney, we conclude that the first arrest warrant was based on probable cause and that McKinney thus suffered no violation of his constitutional rights." 431 F.3d at 418. The Court pointed specifically to the victim's reliable identification of [her] attacker as a reasonable basis for the officer's belief that probable cause existed. The Court further explained:

The victim made that identification on two separate occasions to two separate officers, and her account was supported by documented evidence of physical injury and by the fact that

another of McKinney's students had made similar allegations. This evidence was "sufficient to warrant a prudent man in believing that [McKinney] had committed or was committing an offense" and it therefore gave rise to probable cause.

Id. (Citations omitted). Thus, the Fourth Circuit's finding of probable cause constitutes the law of this case given that this action is before this Court on remand from the federal district court. Additionally, The Plaintiff attempted in the Fourth Circuit, and again in this Court, to argue that Livingston failed to conduct an adequate investigation. However, the fact that a more thorough investigation did not take place before seeking the arrest warrant does not negate the probable cause already established by the victim's identification. *McKinney*, 431 F.3d at 419.

The lack of probable cause is an essential element for the causes of action for false arrest, false imprisonment, and malicious prosecution. *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). Because the existence of probable cause has already been established as a matter of law, the Plaintiff cannot prevail on those three causes of action. An officer cannot be held liable for an arrest where probable cause supporting that arrest was present. In sum, the Fourth Circuit's conclusion that probable cause existed for the Plaintiff's arrest entitles the Defendants to summary judgment on the remaining state law claims.

II. As to the negligence claim, the law of this case based upon the decision of the Fourth Circuit Court of Appeals in *McKinney v. Richland County Sheriff's Dept.*, 431 F.3d 415 (4th Cir. 2005), establishes that Livingston is entitled to qualified immunity because an objectively reasonable police officer in the position of the Defendant Livingston would not have known or understood that probable cause did not exist for the arrest of the Plaintiff.

In addition to finding that probable cause exists as a matter of law, the Fourth Circuit also concluded that the conduct of the Defendant Livingston was objectively reasonable. The Court explained:

Even if we were to conclude that the warrant was not supported by probable cause, Livingston would nonetheless be entitled to qualified immunity because the absence of probable cause would not have been evident to an objectively reasonable officer in these circumstances. Both a prosecutor and a neutral and detached magistrate independently reviewed the evidence and concluded that there was probable cause. A reasonable officer would not second-guess these determinations unless probable cause was plainly lacking, which it was not.

Handwritten signature/initials

McKinney, 431 F.3d at 419. If Livingston's conduct was objectively reasonable, which is the law of the case, then it cannot be shown that he failed to exercise due care. Objective reasonableness is the equivalent of the reasonable man standard which governs the Defendants' conduct. See, S.C. Code Ann. § 15-78-20(a) ("Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.") Thus, the Defendants are entitled to summary judgment on the negligence claim for this additional reason.

III. South Carolina law does not recognize a cause of action for negligent arrest or negligent investigation.

There is no case law holding that South Carolina law even recognizes a cause of action for negligent arrest or negligent investigation. To the contrary, in *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent investigation leading to an arrest.

IV. The Defendants are entitled to absolute sovereign immunity under provisions of the Tort Claims Act.

In addition to the other defenses discussed above, the Defendants are entitled to absolute sovereign immunity under several provisions of the Tort Claims Act. S.C. Code Ann. § 15-78-60(3) provides immunity for the execution of legal process including an arrest warrant. The Fourth Circuit has already held that the facially valid arrest warrant issued by Magistrate Mel Maurer was supported by probable cause. Thus, the execution of that warrant resulting in the Plaintiff's arrest and incarceration is subject to immunity.

VI. The Defendant Livingston is not a proper party-Defendant under S.C. Code Ann. § 15-78-70 because he was at all times acting within the scope of his official duties.

The Defendant Livingston would also be entitled to absolute employee immunity under the Tort Claims Act. The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity is immune from liability for tortious acts committed within

and
85

the scope of his official duties. *See Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). The Plaintiff has presented no evidence that Deputy Livingston was not acting within the scope of his official duties when he investigated the allegations against the Plaintiff and when he arrested the Plaintiff. As a result, the Defendant Livingston is entitled personally to absolute immunity under the Tort Claims Act.

VII. The Plaintiff's claims for punitive damages are barred by S.C. Code Ann. § 15-78-120(b).

The Plaintiffs' complaint includes a general prayer for punitive damages. To the extent that the Plaintiff seeks the recovery of punitive damages for any state law claims, S.C. Code Ann. § 15-78-120(b) bars the recovery of punitive damages against the Defendants.

CONCLUSION

Based on the foregoing, it is **ORDERED** that the Defendant's motion for summary judgment be granted.


ALISON RENEE LEE
Circuit Court Judge

Columbia, South Carolina

March 27, 2006



Shimeld v. Richland County Sheriff's Office
C/A No.: 2019-CP-40-01299

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

EXHIBIT 12

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,

C/A NO.: 2010-CP-40-3299

Plaintiff,

vs.

ORDER

City of Columbia Police Department,

Defendant.

RECEIVED

OCT - 7 2011

LEGAL
DEPARTMENT

RICHLAND COUNTY

FILED

2011 SEP 29 PM 3:12

JEANETTE M. McBRIDE
C.C.P. Judge

This matter came before the Court upon the motion for summary judgment the Defendant City of Columbia Police Department ("City").¹ A hearing was held on June 30, 2011, at which the Plaintiff was represented by Dylan W. Goff and E. Scott Winburn and the City was represented by Robert G. Cooper.

BACKGROUND

The following are the facts taken in the light most favorable to the Plaintiff.

On September 9, 2009, a cinder block was thrown through the glass door to break into the Roly Poly restaurant in Columbia, South Carolina. Crime Scene Officer Pete Currie of the Columbia Police Department lifted a partial latent fingerprint from the door where the glass had been pushed up to gain entry. Officer Currie ran the print through the Automatic Fingerprint Identification System ("AFIS") of the South Carolina Law Enforcement Division ("SLED"). AFIS returned twenty possible matches, with the fingerprint of the Plaintiff identified as the most probable match. Officer Currie then conducted a review and independently determined that the Plaintiff's print matched the latent print taken from the crime scene. Pursuant to standard operating procedures at the City, Officer Currie showed the latent fingerprint to two other qualified crime scene officers and they verified that it matched the fingerprint of the Plaintiff.

Investigator Roberta Tyler of CPD was assigned to investigate this crime. Officer Currie informed her that he had matched the fingerprint of the robber and identified the Plaintiff as the

¹ The Plaintiff had also filed a motion for summary judgment but withdrew it at the hearing on June 30, 2011.

person who broke into the restaurant. Investigator Tyler sought and received authorization from an Assistant Solicitor to seek warrants. On September 17, 2009, she appeared before a ministerial recorder² of the City of Columbia and related the facts involved in the robbery investigation. The ministerial recorder found probable cause to believe that the Plaintiff committed the crime and issued warrants for Burglary 2nd and Petit Larceny.

Investigator Tyler contacted the Plaintiff's probation officer in Bennettsville, South Carolina, where the Plaintiff resides, and informed him that she had warrants for the arrest of the Plaintiff. The probation officer assisted in having her turn herself in to Marlboro County law enforcement officers on September 17, 2009. CPD brought the Plaintiff to Columbia and then took her to the detention center on September 18, 2009.

On September 21, 2009, Officer Currie became aware that the Plaintiff was incarcerated and took fresh fingerprints from her as was his custom. It still appeared to him that her fingerprints matched that of the person who committed the robbery. However, because of her protests that she could not have committed the crime, he took the fingerprints to SLED for review. The SLED analyst indicated that the fingerprints were very close but that he could not confirm a match for certain. Given the lack of confirmation from the SLED analyst, the charges were dismissed and the Plaintiff was driven home by police officers that same day.

The Plaintiff then brought this action for false arrest, false imprisonment, malicious prosecution, negligence and assault and battery. The City filed a motion for summary judgment on all claims.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCF. The party moving for summary judgment bears the initial burden of pointing to the absence of a genuine issue of material fact. Richardson v. State Record Co., Inc., 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). The burden then shifts to the non-moving party to respond with specific facts to show that there is a triable issue of fact. City of Columbia v. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). The Court must view the facts

and
#2

² Ministerial recorders are municipal officers with the power to issue arrest warrants. S.C. Code Ann. § 14-25-115.

and inferences therefrom in the light most favorable to the non-moving party. Strother v. Lexington County Recreation Commission, 332 S.C. 54, 504 S.E.2d 117 (1998).

DISCUSSION

After considering the oral argument of the parties and the written materials submitted, the City's motion for summary judgment should be granted for the reasons below.

A. False Arrest and False Imprisonment

To prevail on a claim for false arrest or false imprisonment³, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (1995). The City contends that the arrest was lawful because it was made pursuant to a facially valid warrant and because it was based on probable cause as a matter of law. The City is entitled to summary judgment on both grounds.

(1) Warrants

The essence of the tort of false imprisonment is depriving a person of his liberty without lawful justification. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). Where one is properly arrested by lawful authority, an action for false imprisonment cannot be maintained against the party causing the arrest. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). If a lawful arrest has been improvidently procured, without probable cause, the plaintiff's remedy lies in an action for malicious prosecution. Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987); Watkins v. Mobil Oil Corp., 281 S.C. 79, 313 S.E.2d 641 (Ct. App. 1984); Bushardt v. United Inv. Co., 121 S.C. 324, 113 S.E. 637 (1922); Barfield v. Coker, 73 S.C. 181, 53 S.E. 170 (1906). The Plaintiff in this case was arrested pursuant to warrants that were regular on their face; issued by a neutral, detached ministerial recorder. Therefore, the Defendant is entitled to summary judgment on the false arrest and false imprisonment causes of action. Law v. South Carolina Department of Corrections, *supra* (warrant supplemented by oral testimony bars false imprisonment claim); Watkins v. Mobil Oil Corp., *supra*; Dorn v. Town of Prosperity, 375 Fed.Appx. 284, 2010 WL 997175 (4th Cir. 2010); Wilkins v. Harley, 2011 WL 379747 (D.S.C. 2011); Hubbard & Felix, The South Carolina Law

³ False arrest and false imprisonment are not separate torts. False arrest is a form of false imprisonment that accrues when the person is unlawfully arrested. A false arrest is one way to commit false imprisonment. Since an arrest involves a restraint, it always involves imprisonment. 32 Am.Jur.2d, False Imprisonment §2.

ad
#3

of Torts 410 (2d ed. 1997). (if arrest is based on a proper warrant, no action for false imprisonment shall succeed).

The Plaintiff contends that the warrants were invalid because the police investigator withheld exculpatory evidence when she applied for them. Specifically, she contends that Investigator Tyler should have told the ministerial recorder that Plaintiff's probation officer had doubts that the Plaintiff could have committed the crime because she did not have transportation or money for gas to get to Columbia and because she had recently had a child.

The preclusive effect of the warrants is not negated by the fact that they were based on erroneous information. A facially valid warrant can only be attacked if the party first makes "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." Franks v. Delaware, 438 U.S. 154, 155-56 (1978); Miller v. Prince George's County, 475 F.3d 621, 627 (4th Cir. 2007); Ferrara v. Hunt, 2010 WL 5479655 (D.S.C. 2010). The showing must be more than conclusory and must be accompanied by a detailed offer of proof. Franks, 438 U.S. at 171. With regard to alleged omissions in the affidavit, a plaintiff must establish that the officer failed to inform the magistrate of facts the officer knew would negate a finding of probable cause. Miller, 475 F.3d at 627. However, allegations of negligence or honest mistake are insufficient. Id. at 627-28. If a Franks hearing is required and an affiant's material perjury or recklessness is established by a preponderance of the evidence, the warrant must be voided. Franks, 438 U.S. at 156. Whether a party has made a sufficient showing for a Franks hearing to be held, and whether a warrant should be declared void, are issues of law to be decided by the Court.

The Plaintiff has not presented any evidence that would entitle her to a Franks hearing. The factual basis for Plaintiff's claim is contained in a statement from her probation officer dated July 26, 2010. That statement was not served on defense counsel two days before the hearing and was not in affidavit form as required by Rule 56, SCRCP, and therefore cannot be considered. The unsworn statement was in letter form but without an addressee. It was not attached to Plaintiff's motion and was first presented to the Court and defense counsel at the hearing. Counsel for the City objected to the statement when it was submitted. Further, even if the statement were properly before the Court, the failure to relate its contents to the ministerial recorder does not involve a material omission. The statement does not say that the probation officer contended that it was impossible or even improbable that the Plaintiff committed the

and
#4

robbery. Instead, it only states that he informed Investigator Tyler that the Plaintiff was the mother of a newborn baby and she recently had issues with transportation. In light of the apparent positive match of Plaintiff's fingerprint with that of the robber, these alleged omissions fall far short of the Franks requirements.

There is no evidence in this case that Investigator Tyler knowingly or recklessly provided false information or omitted material information to the ministerial recorder to obtain the warrants. On the contrary, it is clear that she presented the information in good faith based upon facts related to her by Officer Currie. Absent such proof, the arrest warrants bar Plaintiff's claims for false arrest and false imprisonment and the City is entitled to summary judgment on those causes of action.

(2) Probable Cause

An essential element in claims for false arrest and false imprisonment is the lack of probable cause for the arrest. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). The Plaintiff has the burden of demonstrating the lack of probable cause. Id. Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. Id. Probable cause is determined based on the facts and circumstances known to the arresting officer at the time of the arrest. Id. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

Here, Officer Currie conducted a thorough investigation that developed facts appearing to establish the guilt of the Plaintiff. An Assistant Solicitor authorized Investigator Tyler to seek warrants. A ministerial recorder then found probable cause and issued warrants against the Plaintiff. These facts establish probable cause as a matter of law.

In addition, probable cause is established as a matter of law because the police officers reasonably believed that they had correctly identified the Plaintiff as the robber. Officer Currie is a well-trained, seasoned veteran in fingerprint analysis. He obtained a fingerprint from the crime scene that he believed was from the person who committed the break-in. He ran the print through the AFIS system and the Plaintiff's fingerprint was found to be the most probable match out of all of the fingerprints in that database. Officer Currie then conducted an extensive

all
#5

comparison of the latent print from the crime scene and the print of the Plaintiff that was on file with SLED and determined that they matched. He had two additional crime scene analysts review the prints and both agreed that they were a match. Officer Currie followed his training and the professional standards applicable to fingerprint analysis and believed in good faith that the fingerprints matched and constituted probable cause for the arrest of the Plaintiff. Investigator Tyler acted upon that information to obtain arrest warrants against the Plaintiff. She justifiably relied upon the positive and unequivocal identification of the Plaintiff as a result of the fingerprint analysis. Under those circumstances, both Investigator Tyler and Officer Currie reasonably believed that the fingerprint evidence was accurate and that the Plaintiff had committed the crimes.

For the reasons set out above, the police officers had probable cause to arrest the Plaintiff and the City is entitled to summary judgment on the false arrest and false imprisonment claims.

B. Malicious Prosecution

To maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. McBride v. School District of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including lack of probable cause. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). The burden is on the plaintiff to show that the prosecuting person or entity lacked probable cause to pursue a criminal action against him. Id. Probable cause means the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered. Id. In determining the existence of probable cause, the facts must be regarded from the point of view of the party prosecuting. The question is not what the actual facts were, but what he or she honestly believed them to be. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Id.

and
#6

The Plaintiff in this case has failed to show a lack of probable cause for pursuit of the charges against her. For the reasons set out above in the discussion of the false arrest and false imprisonment claims, the evidence in this case requires the conclusion that Investigator Tyler had probable cause as a matter of law to arrest the Plaintiff for burglary and petit larceny. The City is therefore entitled to summary judgment on the malicious prosecution claim.

C. Assault and Battery

The Plaintiff asserts claims for assault and battery stemming solely from the fact that she was placed under arrest. There is no allegation that the police officers used excessive force. An assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant. Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995). A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree. Id.

A police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. Roberts v. City of Forest Acres, 902 F.Supp. 662, 671-72 (D.S.C. 1995) (applying South Carolina law). This principle applies even where the police officer mistakenly arrests the wrong person. 6 Am.Jur.2d, Assault and Battery §105. The arrest in this case was based upon facially valid arrest warrants. Any touching that took place thereafter was lawful and cannot constitute an assault or battery and the City is entitled to summary judgment on that cause of action.

D. Negligence and Gross Negligence

The Plaintiff also asserts a claim for negligence or gross negligence in failing to fingerprint the Plaintiff when she was taken into custody in Bennettsville, before she was transported to Columbia for detention. Plaintiff also alleges that the City failed to properly train its employees to administer the taking of fingerprints and to investigate a burglary and failed to implement policies to insure that officers were properly trained to handle such situations.

These allegations fail to state facts sufficient to constitute a cause of action. A plaintiff asserting a tort claim for wrongful arrest must bring the claim as either false arrest or malicious prosecution. In either case, she must prove the absence of probable cause as an element of the action. The courts of this state have not adopted an alternative tort theory for wrongful arrest with a negligence standard for liability. Other courts that have considered this issue have also rejected claims of this nature. See, Guntlow v. Barbera, 76 A.D.3d 760, 907 N.Y.S.2d 86

and
*7

(N.Y.A.D. 2010) (claim for negligent investigation does not state cause of action separate from false arrest and malicious prosecution); Laymon v. Dept. of Natural Resources, 99 Wash.App. 518, 994 P.2d 232 (2007) (no claim for negligent investigation against police).

Even if such a cause of action existed, there is no evidence in this case that a City employee was negligent. The Plaintiff indicated at the hearing that she relies upon the fact that a misidentification took place to meet this burden. However, negligence cannot be established by the fact that an event occurred. Reilland v. Southland Equipment Service, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998); Lewis v. Norfolk Southern Railroad, 2010 WL 2851131 (D.S.C. 2010) (applying South Carolina law). The Plaintiff did not present expert testimony or any other evidence establishing the applicable standard of care for fingerprint analysis and showing that the standard was breached. Kemmerlin v. Wingate, 274 S.C. 62, 261 S.E.2d 50 (1979) (Plaintiff's burden to prove standard of care for professional negligence claim, usually by expert testimony). A jury would be left to speculate as to whether any act of negligence has taken place based upon the evidence submitted by the Plaintiff. In contrast, the steps taken by Officer Currie to attempt to properly identify the robber are set out in detail in his affidavit. Officer Currie investigated the scene of the robbery, lifted a fingerprint from the scene, and ran the print through a law enforcement database that identified Plaintiff as the most probable match. He then independently compared the latent fingerprint from the crime scene to Plaintiff's print in the law enforcement database and concluded that they matched. He then showed the two prints to two other crime scene analysts and they verified the match. There is no evidence in the record that suggests that Officer Currie deviated from the appropriate standard of care for a crime scene analyst in this instance.

The Plaintiff has failed to present any evidence that would indicate that the failure to take her fingerprints while in Bennettsville is the appropriate practice for police and that the failure to take that step constitutes negligence. On the contrary, once probable cause to arrest exists, the Court is unaware of any obligation on the part of the police to take further steps prior to arrest or detention. Similarly, the Plaintiff suggests that it was negligent to fail to take her fingerprints immediately once she arrived in Columbia. However, she did not present any evidence or authority to establish that police have such a duty. In this case, the Plaintiff was transported to Columbia and arrived on Friday afternoon or evening. Officer Currie was not working at the time that she arrived but took her fingerprints on the following Monday. The mistake was

and
#8

discovered that day and the Plaintiff was released and taken home shortly thereafter. There is no evidence of negligence in the arrest or of unreasonable delay in the release of the Plaintiff.

Similarly, Plaintiff's allegations of negligence in training have no evidentiary support. The Plaintiff has not presented any evidence of training deficiency in this case. She suggests that more training must be needed since she was misidentified. This is no more than speculation that ignores the fact that properly trained people sometimes make mistakes. In contrast, the City has demonstrated that Officer Currie has received extensive training in taking and analyzing fingerprints. This includes a one week course of study called "Basic Fingerprints" at the South Carolina Criminal Justice Academy; a two-week advanced fingerprint course taught by the FBI at the Criminal Justice Academy; certification in the Automatic Fingerprint Identification System ("AFIS"); as well as training from other organizations and while on the job. Officer Currie indicates that he has been fully trained and that there was no different or additional training that he could have received that would have changed the outcome in this case. There is no evidence that would create a factual issue as to whether Officer Currie has been sufficiently trained.

Based upon the foregoing, the Plaintiff has failed to demonstrate that there are genuine issues of material fact to be presented to a jury on the negligence claim and summary judgment must be granted to the City.

E. Tort Claim Act Defenses

The City also maintains that it is entitled to summary judgment based upon the provisions of the South Carolina Tort Claims Act. A tort claim against a municipality or municipal employee is governed by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*, which is the exclusive remedy for any tort committed by an employee of a governmental entity. S.C. Code Ann. § 15-78-70(a). The provisions of the Tort Claims Act must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-20(f); Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993). The Tort Claims Act waives immunity for the sovereign, subject to a number of exemptions from liability which are set out in S.C. Code Ann. § 15-78-60. The City contends that it is entitled to summary judgment based upon those exemptions.

S.C. Code Ann. § 15-78-60(5) precludes liability by a governmental entity for a loss resulting from the exercise of discretion or judgment by a governmental employee, or the performance or failure to perform any act or service which is in the discretion or judgment of the employee. Discretionary immunity is contingent on proof that the governmental entity or

and
x9

employee, faced with alternatives, actually weighed competing considerations and made a conscious choice. Further, the entity must establish, in weighing the competing considerations and alternatives, its employees utilized accepted professional standards appropriate to resolve the issue. Strange v. S.C. Dept. of Hwys. & Pub. Transp., 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense. Niver v. S.C. Dept. of Hwys. & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App. 1990). A disagreement as to whether the discretion was properly exercised does not preclude discretionary immunity. The exercise of discretion includes the right to be wrong. Giannini v. S.C. Dept. of Transp., 378 S.C. 573, 664 S.E.2d 450 (2008).

In this case, the comparison of fingerprints and determination whether they match clearly involves judgment and discretion. Officer Currie exercised his professional judgment based upon his training and experience. His affidavit establishes that he was familiar with the proper procedures for obtaining fingerprint samples and matching them to fingerprints from the "AFIS" database. It establishes further that he conducted his investigation in accordance with those standards. The Plaintiff has not presented any evidence to the contrary. The City is also entitled to summary judgment on the claims for false arrest, false imprisonment, malicious prosecution and negligence based upon this provision of the South Carolina Tort Claims Act.⁴

NOW, THEREFORE, IT IS ORDERED that Defendant's motion for summary judgment is granted and the Plaintiff's action is dismissed with prejudice.

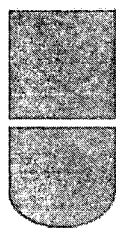
AND IT IS SO ORDERED.


ALISON RENEE LEE
Fifth Judicial Circuit

Columbia, South Carolina
September 29, 2011

⁴ The City also argues that Plaintiff's claims are barred by other provisions of the Tort Claims Act, specifically S.C. Code Ann. §§ 15-78-60 (4), (17) and (23). However, summary judgment in this case is not based on those exceptions.

and
#10



Garber

Reporting Service & Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

VICKI RAINS

October 22, 2020

Christopher Shimeld

VS

Richland County Sheriff's Office

2019-CP-40-01299

REPORTER: Suzanne Wade

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) Civil Action No. 2019-CP-40-01299
3
4 CHRISTOPHER SHIMELD,)
5 Plaintiff,)
6 vs.) DEPOSITION OF
7 RICHLAND COUNTY) VICKI RAINS
8 SHERIFF'S OFFICE) OCTOBER 22, 2020
9 Defendant.)
10 _____)
11

12 Deposition on oral examination of VICKI RAINS
13 reported by Suzanne R. Wade, Court Reporter and Notary
14 Public in and for the State of South Carolina, pursuant
15 to the South Carolina Rules of Civil Procedure. Said
16 deposition was taken at Crowe LaFave, L.L.C., located at
17 500 Taylor Street, Suite 202, Columbia, South Carolina, on
18 Thursday, the 22nd day of October, 2020, commencing at 3:09
19 p.m.
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

REPRESENTING THE PLAINTIFF:

JOSHUA S. KENDRICK, ESQ.
Kendrick & Leonard, P.C.
1522 Lady Street, Suite A
Columbia, South Carolina 29201
(josh@kendrickleonard.com)

REPRESENTING THE DEFENDANT:

ROBERT D. GARFIELD, ESQ.
Crowe LaFave, L.L.C.
Post Office Box 1149
Columbia, South Carolina 29202
(robert@crowelafave.com)

JOANNA McDUFFIE, ESQ.
Deputy Chief of Legal Affairs
Richland County Sheriff's Department
5623 Two Notch Road
Columbia, South Carolina 29223
(jmcduffie@rcsd.net)

1	CONTENTS:	
2		PAGE:
3	Exhibit Index.....	3
4	Stipulations.....	5
5	Direct Examination by Mr. Kendrick.....	5
6	Cross-Examination by Mr. Garfield.....	44
7	Certification of Reporter.....	48
8	Verification.....	49
9	Errata.....	50
10	Word Index	

* * * * *

14	EXHIBIT INDEX:	PAGE:
15	(Copies of exhibits attached to transcript.)	
16	Plaintiff's Exhibit No. 1 (5 pages).....	7
17	- Investigative Report	
18	Plaintiff's Exhibit No. 2 (5 pages).....	11
19	- Handwritten notes	
20	Plaintiff's Exhibit No. 3 (1 page).....	14
21	- Photo Line-Up (Bates No. 00516-A-044	
22	Plaintiff's Exhibit No. 4 (1 page).....	14
23	- Photo Line-Up (Bates No. 00516-A-045	
24	Plaintiff's Exhibit No. 5 (5 pages).....	17
25	- Information regarding Christopher Shimeld	

1	EXHIBIT INDEX:	PAGE:
2	Plaintiff's Exhibit No. 6 (1 page).....	26
3	- CTECH - Information regarding Christopher Shimeld	
4	Plaintiff's Exhibit No. 7 (4 pages).....	27
5	- Wells Fargo Everyday Checking	
6	Plaintiff's Exhibit No. 8 (3 pages).....	37
7	- Policy and Procedure Guidelines - Preliminary	
8	Follow-up Investigations	
9	Plaintiff's Exhibit No. 9 (6 page).....	37
10	- Policy and Procedure Guidelines - Investigations	
11	Plaintiff's Exhibit No. 10 (8 pages).....	37
12	- Policy and Procedure Guidelines - Legal Authority	
13	and Recognition of Constitutional Rights	
14	Defendant's Exhibit No. 1 (1 page).....	44
15	- Arrest Warrant	
16		
17		
18	* * * * *	
19		
20		
21	Court Reporter'S Legend:	
22	dashes [--] Intentional or purposeful interruption	
23	... Indicates trailing off	
24	[ph] Denotes phonetically written	
25	[sic] Written as said	

1 This deposition is taken in accordance with the
2 South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent and
4 respective counsel that the reading and signing of the
5 deposition by the deponent is expressly reserved.

6 WHEREUPON:

7 VICKI RAINS,

8 having been first duly affirmed, was examined
9 and testified as follows:

10 DIRECT EXAMINATION BY MR. KENDRICK:

11 Q. Investigator Rains, my name is Josh
12 Kendrick. We met off the record briefly, so I'm going
13 to go over just some very brief instructions. Have
14 you ever been deposed before?

15 A. (Witness shakes head)

16 Q. Oh, first time. All right. But you're
17 obviously a law enforcement officer, so this is just
18 like you're in court. They're -- you're under oath.
19 The court reporter is taking everything down.

20 MR. KENDRICK: I guess we also need to
21 clear -- I did not do this by a Notice. We just
22 agreed to do your deposition today. So we'll put that
23 on the record that you all are in agreement with
24 today's deposition.

25 MR. GARFIELD: That is correct.

1 BY MR. KENDRICK:

2 Q. So here's a few things you need to remember.
3 If you don't understand my question, please ask me to
4 repeat it. I will maybe ask a strange question
5 because I didn't think it through. I will repeat it.
6 If you answer it, I will assume you understood it.

7 I am not trying to trick you. This is -- I
8 can't talk to you because you're represented by a
9 lawyer, so this is my chance to talk to you. I don't
10 want to make you fall into a trap. I'm not going to
11 bully.

12 I mean, this is going to be as close to a
13 conversation as we can get. The only thing I will do
14 that I always find awkward is that in our normal
15 conversation we do a lot of uh-huh, huh-uh, and nods,
16 and it doesn't do anything on a transcript. So I
17 might have to remind you to say yes or no, and I'm
18 sorry.

19 I had to do that one time to the head of the
20 Greenville County school district who had a doctorate
21 in English, and I felt like a little kid every time I
22 said, "Do you mean yes?" But I'm not doing it to give
23 you a hard time.

24 MR. KENDRICK: So let me do this first.
25 We're going to mark this as Exhibit 1.

1 (Plaintiff's Exhibit 1 marked for
2 identification purposes - 5 pages
3 Investigative Report)

4 BY MR. KENDRICK:

5 Q. And obviously, you know who Mr. Shimeld is,
6 right?

7 A. Correct.

8 Q. I'm going to show you Exhibit 1, and I don't
9 have a specific question right this second to ask you
10 about, but that appears to be a time line that you
11 made of this investigation. Are you familiar with
12 this document?

13 A. Yes.

14 Q. It looks like it starts on March 2nd of 2018
15 and ends on May 23rd of looks like 2019. And it seems
16 like it covers every step you took.

17 The reason I wanted to mark that first is
18 because if you need to refer to it or we get caught up
19 in when things happened, this will be kind of a good
20 reference for us.

21 So tell me. As you sit here today, do you
22 believe that Mr. Shimeld committed the burglary that
23 you were investigating that took place in the early
24 morning hours of March 1st, 2018?

25 MR. GARFIELD: Object to the form. You can

1 answer it.

2 A. We -- I gave him the benefit of doubt that
3 he did not do it, so...

4 BY MR. KENDRICK:

5 Q. Okay. And just so you know -- so you may
6 hear "Object to the form." You still answer the
7 question. If your lawyer does not want you to answer,
8 he will specifically say that.

9 I highly doubt I'll ask you a question that
10 would delve into something where you have to not
11 answer it, but just so you know, we'll probably just
12 keep going when we hear that.

13 All right. So you say you gave him the
14 benefit of the doubt. Let's talk about how you first
15 got involved in this case. It looks like from our
16 time line that sometime at the beginning of March 2018
17 you got called at -- well, why don't you tell me. How
18 did you first get involved in this case?

19 A. I got assigned the case.

20 Q. And so you get assigned after it happens,
21 obviously.

22 A. Correct.

23 Q. Did you respond to the scene?

24 A. No.

25 Q. What was the first thing you did when you

1 got assigned the case?

2 A. I called Discount Tobacco to try to get in
3 touch with the victim.

4 Q. And did you speak with the victim?

5 COURT REPORTER: Called who? I'm sorry.

6 WITNESS: Discount Tobacco.

7 COURT REPORTER: Thank you.

8 BY MR. KENDRICK:

9 Q. And did you, in fact, get in touch with
10 someone there?

11 A. She gave me Mr. Ardap's phone number, so I
12 called Mr. Ardap.

13 Q. And he, Mr. Ardap, was the owner of Discount
14 Tobacco?

15 A. Yes.

16 Q. And when you say she, who was that?

17 A. The employee that answered the phone.

18 Q. Is that Jennifer Clark?

19 A. She didn't identify herself. She just
20 answered like, "Discount Tobacco."

21 Q. Okay. So walk me through what you do in
22 this investigation. When you get assigned and you try
23 to get in touch with him, what do you do next?

24 A. So I tried to get in touch with the victim
25 and hear from him. A lot of times the report, there's

1 more information that the victim can give once they
2 talk to an investigator.

3 So I set up a time for them to come in and
4 give a question/answer statement. So that's why I was
5 calling Mr. Ardap to see when he could come in and do
6 a question/answer statement.

7 Q. And he did come in, right?

8 A. He did.

9 Q. And so Mr. Ardap told you, when he came in,
10 that there were some items that had been stolen. Do
11 you remember what he told you?

12 A. Cigarettes, money.

13 Q. And I notice on 3/5/2018 on Exhibit 1 at
14 1500, so 3:00 p.m., when he comes in to write a
15 statement, he says \$25,000 and various gold coins were
16 stolen.

17 A. Yes.

18 Q. Did you ever ask him to document those gold
19 coins?

20 A. Yes.

21 Q. Was he able to?

22 A. He -- well, he did a supplement saying -- he
23 said he gathered them from all over the world. So he
24 didn't have like a record of each individual coin or
25 anything.

1 Q. And he didn't tell anyone that at first
2 response, correct?

3 A. He said he did, but it was not in the
4 report.

5 Q. So did he give you the name of a possible
6 suspect in this case?

7 A. He did.

8 Q. And who was that, if you remember?

9 A. Mr. Osborne.

10 Q. Hank Osborne?

11 A. Yes.

12 MR. KENDRICK: If you will mark that as No.
13 2, please.

14 (Plaintiff's Exhibit 2 marked for
15 identification purposes - 5 pages
16 Handwritten notes)

17 BY MR. KENDRICK:

18 Q. So I'm going to show you what we have marked
19 as Exhibit 2. The only thing I'll remind you, keep
20 that -- don't try to take those when you leave. The
21 court reporters get really mad at all of us.

22 This is something that your lawyer gave me
23 in response to discovery, and I -- what I understand
24 it to be are your notes from the investigation. Is
25 that correct?

1 A. Yes.

2 Q. Okay. And I see on page one of Exhibit 2
3 there's a -- in the tab folder there's a number,
4 Discount Tobacco, and then the name Hank Osborne with
5 an "S" in parentheses next to it. What does that
6 mean?

7 A. The "S" means he's a possible suspect.

8 Q. Do you remember the details Mr. Ardap gave
9 you that led you to list him as a suspect?

10 A. Yes.

11 Q. Can you tell me what those are?

12 A. He said that he had installed the system and
13 that he came back four or five times after that and
14 went into the office where it was installed, and that
15 he showed him on his phone that he was viewing his
16 office.

17 Q. Okay. On March the 8th -- so this is the
18 bottom of page one of our time line, which is Exhibit
19 1 -- it looks like you're trying to get Mr. Osborne to
20 come in and give you a statement.

21 A. Correct.

22 Q. How did you get in touch with Mr. Osborne?

23 A. I -- I can't recall totally. I believe his
24 phone number was because he had installed the service
25 and so Mr. Ardap had his number.

1 Q. Did he ever come in and talk to you?

2 A. He did not.

3 Q. Did you ever go to him to question him?

4 A. I could not locate him.

5 Q. Do you remember when Mr. Shimeld became a
6 suspect in your case?

7 A. Yes.

8 Q. When was that?

9 A. There was a fingerprint match. That's what
10 brought his name up.

11 Q. Who took the fingerprint?

12 A. Crime scene.

13 Q. Okay. And that's what I meant. I wasn't
14 asking you the name of the specific tech, but where
15 did -- do you remember where they got the fingerprint
16 from?

17 A. Off the box that was mounted up by the roof
18 that was torn down where the alarm system was.

19 Q. Okay. And then you ran that through your
20 system?

21 A. It automatically got ran, and then I got
22 notified that there was a fingerprint match.

23 Q. What did you do when you got Mr. Shimeld's
24 name?

25 A. I ran like his driver's license and stuff to

1 see if he was in our -- like our jail system or
2 anything like that, to see anything about him. And
3 then I tried to located him.

4 Q. What steps did you take to locate him?

5 A. I went to his apartment complex. Well, I
6 asked Mr. Ardap if he knew him first to see if he was
7 familiar with him like he was Mr. Osborne. And he
8 said he believed it was the person that always hung
9 out with Mr. Osborne.

10 So I did a photo lineup, and him and the
11 other employee, Jennifer, they had both stated that
12 there was a person that always stayed with Mr. Osborne
13 out in front of the store. So they picked out Mr.
14 Shimeld.

15 MR. KENDRICK: If you can make those 3
16 and 4.

17 COURT REPORTER: This one 3?

18 MR. KENDRICK: It doesn't matter.

19 (Plaintiff's Exhibit 3 marked for
20 identification purposes - 1 page

21 Photo Line-Up (Bates No. 00516-A-044)

22 (Plaintiff's Exhibit 4 marked for
23 identification purposes - 1 page

24 Photo Line-Up (Bates No. 00516-A-045)

25 BY MR. KENDRICK:

1 Q. I'm going to show you what we have marked as
2 Exhibit 3. That looks like a photo lineup by Ms.
3 Clark. Is that correct?

4 A. Yes.

5 Q. And then Exhibit 4 is another photo lineup.
6 And is that Mr. Shimeld that is --

7 A. Yes.

8 Q. -- circled here?

9 A. I've never met him in person, but that's
10 what's on his driver's license.

11 Q. Got you. So I can't tell -- do you remember
12 when this photo lineup was done?

13 A. I can remember that I went to the store to
14 do it because they were really busy, and she couldn't
15 come in to the office because she was at work.

16 So I went out to the store so that they
17 could do the photo lineup and made contact with her
18 there. But I don't remember the date.

19 Q. Okay. Was it within a few days of getting
20 his name or a week later or do you...

21 A. I -- I don't know.

22 Q. Okay. Fair enough. Before you got a
23 warrant for him.

24 A. As far as I remember, yes.

25 Q. Okay. So it could have been after you got a

1 warrant.

2 MR. GARFIELD: Object to the form.

3 A. I -- I would imagine that I would do that
4 prior to getting a warrant.

5 BY MR. KENDRICK:

6 Q. Okay. And you were never able to contact
7 Mr. Shimeld, right?

8 A. Correct. I went to his apartment, but he
9 had moved out and they didn't have a forwarding
10 address or phone number.

11 Q. Okay. And I noticed in your time line and
12 some other stuff your lawyer provided to me that when
13 you went there they told you that he had been wanted
14 on some other burglary by the City.

15 A. Yes.

16 Q. Did you ever talk to somebody at the City
17 about that?

18 A. I did. I asked them who the City person
19 was, but I didn't follow up to -- for that particular
20 officer. He couldn't really say. He said that it was
21 the girlfriend's car that was on the video.

22 The apartment complex tried to tell me who
23 his girlfriend was so I could go talk with her, but
24 they didn't know her name. They just knew that she
25 worked at Wendy's, but I didn't have a name so I

1 couldn't go to Wendy's to locate her.

2 Q. Got you. So you never located any kind of
3 incident report or official file on Mr. Shimeld at the
4 City?

5 A. No.

6 Q. Okay. I mean, never talked to an actual
7 investigating officer who gave you the name Mr.
8 Shimeld.

9 A. No.

10 Q. Okay. So this came from the apartment
11 management.

12 A. Correct.

13 Q. Okay.

14 MR. KENDRICK: Mark that one next.

15 (Plaintiff's Exhibit 5 marked for
16 identification purposes - 5 pages
17 Information regarding Christopher
18 Shimeld)

19 BY MR. KENDRICK:

20 Q. I'm going to show you what I have marked as
21 Exhibit 5. And this is another thing I got from -- I
22 guess I think it's your file that your lawyer gave me.
23 Do you recognize this document?

24 A. (Witness examines document) Yes.

25 Q. What is this?

1 A. When we're trying to locate somebody to get
2 a phone number, like if we have no information on them
3 or we're trying to get in touch with them to get a
4 phone number, we have different resources that we can
5 run their name through to get a phone number.

6 Q. And is this the result of that?

7 A. Yes.

8 Q. And is it something within law enforcement
9 you searched?

10 A. Yes.

11 Q. Now, the first entry is Christopher Shimeld
12 and has a phone number. That's on page one of Exhibit
13 5. Do you recognize that?

14 A. Yes.

15 Q. And that's Mr. Shimeld's phone number,
16 right?

17 A. I would have to look back and verify,
18 but --

19 Q. So if you look at your file, which I forgot
20 which number -- I think -- I think I gave you that as
21 Exhibit 2.

22 A. This? (Indicating)

23 Q. Exhibit 2. If you look at the last page --

24 A. (Witness examines document)

25 Q. -- I wanted to talk to you a little bit

1 about the notes you took. It's the very last page of
2 that. It's a notebook paper like this. (Indicating)

3 A. Oh, that one?

4 Q. Yeah, yeah. Sorry. It's the --

5 A. Okay.

6 Q. -- last one. All right. So you've got the
7 name Christopher and some phone numbers. Is this
8 notes you're taking while you're talking to him or
9 during the course of your case?

10 A. This would have been whenever his attorney
11 contacted us and I was saying, "How do I get in touch
12 with him?" His grandmother contacted us and his
13 attorney.

14 Q. Okay. So this is, to the best of your
15 knowledge, a valid number for him, the 850-612-1192.

16 A. One of those, yes.

17 Q. Okay. And that's also the same number at
18 the top of your printout at Exhibit 5, which was your
19 sort of search for him.

20 A. (Witness nods head)

21 Q. Yes?

22 A. Yes.

23 Q. Sorry. The nod. I got to correct you.

24 A. No. You're good.

25 Q. And this reflects that -- that Mr. Shimeld,

1 at least his cell phone, is based out of Florida in a
2 city called Crestview.

3 A. Yes.

4 Q. Do you know where Crestview, Florida is?

5 A. (Witness shakes head)

6 Q. No?

7 A. No.

8 Q. Did you ever look it up?

9 A. Yes. I knew it was at the -- like the top
10 of Florida.

11 Q. Kind of near Destin --

12 A. Uh-huh.

13 Q. -- Florida? The panhandle, I think?

14 A. Uh-huh.

15 MR. GARFIELD: Is that a "yes"? Sorry.

16 WITNESS: Yes.

17 MR. KENDRICK: See, I'm terrible at it.

18 MR. GARFIELD: No. I'll be the police.

19 That's fine.

20 WITNESS: I'll do better.

21 MR. GARFIELD: No. You've done wonderful.

22 BY MR. KENDRICK:

23 Q. So I will -- I can pull this up, if you guys
24 cannot believe me, but is it fair for me to say that
25 Crestview, Florida is about eight hours from Columbia

1 by map, if you're looking at a driving map?

2 MR. GARFIELD: Object to the form.

3 A. Yes.

4 BY MR. KENDRICK:

5 Q. Okay. So after -- so you got a warrant for
6 Mr. Shimeld based on -- why don't you tell me that.
7 Tell me what your probable cause was for the warrant
8 against Mr. Shimeld.

9 A. So the fingerprint match came back. I went
10 to his apartment complex. Actually, it -- the way it
11 happened was I spoke to Mr. Ardap.

12 So I got the fingerprint match. I said,
13 "Mr. Ardap, do you know this person?" And he said,
14 "No, but I believe it's probably going to be the
15 person that hangs out with him all the time because I
16 think two people would have had to have done this
17 job."

18 And so he described him. And I, at this
19 point, had never showed him a picture or anything. He
20 described what the other person that was always with
21 Mr. Osborne looked like, which was very similar to Mr.
22 Shimeld.

23 Q. Uh-huh.

24 A. And he said that his clerk, Jennifer, would
25 see him even more often and would definitely be able

1 to identify him. That was the point of doing the
2 photo lineups.

3 So they picked him out of a photo lineup
4 and -- I have to look at -- (Witness examines
5 document).

6 Q. And just so the record's clear, what you're
7 looking at is the arrest warrant, correct?

8 A. It is. It's the arrest warrant. So after I
9 talked to Mr. Ardap and the clerk, I called the alarm
10 company that had installed the alarm system and spoke
11 to the manager and asked him if a Mr. Shimeld had ever
12 worked there, thinking that perhaps if he had
13 installed the alarm system would be why his
14 fingerprints would be there.

15 So he said no, there was -- there was no
16 person ever by the name Shimeld that worked for him.
17 I asked if maybe he was a contractor or something, and
18 he said no, that he was never a contractor there.

19 So I asked him to reassure me that Mr.
20 Shimeld had never worked for their alarm company, ADS.
21 And he said no, absolutely. He was -- he gave me the
22 names of the people that did install the system, and
23 Mr. Shimeld was not one of them.

24 So at that point, I had no reasonable
25 thought of why his fingerprint would be on the alarm

1 box that was ripped from the ceiling.

2 Q. Okay. Is that what you took to the judge,
3 the fingerprint and the photo lineup?

4 A. The fingerprint match and that I had spoke
5 to the alarm company and they had never had him as an
6 employee there.

7 And they had installed a new system about a
8 year ago and he had never worked there. He had no
9 reason to be there. I asked Mr. Ardap. He didn't
10 know him and said that he would never have a reason to
11 be in his office.

12 Q. So sounds like -- so when you talked to Mr.
13 Ardap, he told you that he thought it would take two
14 people to do this job?

15 A. Yes.

16 Q. And he pointed you out to -- pointed you to
17 Mr. Osborne also.

18 A. Yes.

19 Q. And Ms. Clark identified Mr. Osborne as
20 someone who hangs out in the store.

21 A. Yes.

22 Q. Did you seek a warrant for Mr. Osborne?

23 A. No.

24 Q. Did you follow up on getting a statement
25 from Mr. Osborne?

1 A. I attempted, but he moved away from where he
2 was. I could never get in touch with him.

3 Q. Okay. Why did you not get a warrant for Mr.
4 Osborne?

5 A. I had no evidence tying him to the case
6 other than them saying that he hangs out there. There
7 was no DNA or anything forensically tying him to that
8 case.

9 Q. And he had been in the office and
10 done -- manipulated the alarm system in some way,
11 correct, according to Mr. Ardap?

12 A. He installed it, yes, and had been in there
13 afterwards, yes.

14 Q. And Mr. Ardap said that he seemed to have
15 access to the alarm system on his phone, too.

16 A. He could view the office is what he said,
17 yes.

18 Q. So is it fair to say that it was the
19 fingerprint that made the difference for you to get a
20 warrant against Mr. Shimeld as against -- as opposed
21 to Mr. Shimeld and Mr. Osborne?

22 A. Yes.

23 Q. Okay. When did you first speak with Mr.
24 Shimeld?

25 A. When he called me after he was released from

1 jail.

2 Q. Okay. And did Mr. Shimeld tell you that he
3 had not been in Columbia, South Carolina for a period
4 of time?

5 A. He did.

6 Q. And this -- this last page we were looking
7 at on Exhibit 2, which is your handwritten notes, so
8 we have Christopher's name at the top, phone numbers,
9 and it looks -- are these questions you're asking him
10 or information he's providing you?

11 A. No. My sergeant, Cary Johnson, we were kind
12 of working the case together and he wrote those.

13 Q. Okay.

14 A. I was on the phone with Mr. Shimeld and he
15 wrote those for me to ask him.

16 Q. Okay. So -- but these -- this is something
17 you were working on with Mr. Shimeld, in other words.

18 A. Yes.

19 Q. Okay. So you asked him who his supervisor
20 was at the alarm company.

21 A. (Witness nods head)

22 Q. Yes?

23 A. Yes.

24 Q. Did he explain to you his role in the alarm
25 company?

1 A. He said that he used to work for ADT and
2 that he believed he still had paperwork from there,
3 that he always keeps his paperwork and that he would
4 be able to send me paperwork showing me that he worked
5 for ADT and had installed an alarm system at Discount
6 Tobacco.

7 Q. And when the -- when the newer alarm system
8 was installed, that was a take-over, correct?

9 A. Well, it was eventually figured out to be
10 that, but when I first called, they said that -- Mr.
11 Ardap told me they installed a new system because he
12 had just purchased the store. So when I originally
13 called, they said they installed a new system.

14 Q. Okay. And it looks like from your notes he
15 told you that he had moved away from Columbia over two
16 years ago --

17 A. Yes.

18 Q. -- and was working in Florida, it looks
19 like?

20 A. Yes.

21 Q. Okay. I'm going to show you --

22 MR. KENDRICK: If you'll mark that one and
23 that one as well.

24 (Plaintiff's Exhibit 6 marked for
25 identification purposes - 1 page

1 CTECH - Information regarding Christopher
2 Shimeld)
3 (Plaintiff's Exhibit 7 marked for
4 identification purposes - 4 pages
5 Wells Fargo Everyday Checking)

6 BY MR. KENDRICK:

7 Q. So it came, I assume, from your file. This
8 is a -- looks like a job work order, I'll say, from a
9 CTECH company. Do you recognize that?

10 A. (Witness examines document) Yes.

11 Q. When did you receive this?

12 A. Mr. Shimeld e-mailed this to me.

13 Q. And just for the record, this looks like a
14 handwritten job invoice from February 28th and March
15 1st where he was installing, I believe, some kind of
16 audio or electronic system.

17 A. Yes.

18 Q. Okay. And then I'll show you Exhibit 7,
19 which appear to be Wells Fargo bank records. Did he
20 send you these, too?

21 A. Yes, he did.

22 Q. Okay. And I was just looking through. If
23 you flip to -- and I'm going to use the little number
24 down in the corner, the last three digits.

25 So if you look at 106, which is the third

1 page, it looks like there's a number of transactions
2 on particular days and were -- on this day were the
3 28th and the 1st.

4 And if you'll look about four or five lines
5 down, there's actually a deposit on March 1st for
6 \$935. Do you see that?

7 A. Yes.

8 Q. And that corresponds to the exhibit that I
9 just gave you before that has a subtotal of \$935 that
10 was paid by check.

11 A. Yes.

12 Q. So is this paperwork -- does this establish
13 that he was not in Columbia, South Carolina on the
14 28th of February?

15 A. That's what caused me to give him the
16 benefit of the doubt that he's saying that he did
17 this. I had no, you know, surveillance camera showing
18 that he was who made the deposits or anything. But he
19 sent this paperwork, so I gave him the benefit of the
20 doubt that he was the actual one doing the work and
21 depositing the money or the bank transaction.

22 Q. And when you say you gave him the benefit of
23 the doubt, what do you mean by that?

24 A. That I took him at his word as what he was
25 saying, provided this evidence, because I didn't have

1 any way to know that he was who actually did the work
2 on this day for Exhibit 6 or that he was who actually
3 was doing the bank transactions on Exhibit 7.

4 I didn't have anything showing -- any video
5 surveillance from the bank showing that it was Mr.
6 Shimeld doing it or anything from the following day.

7 I don't know Mr. Shimeld's handwriting on
8 this form or anything like that. But he sent me this
9 paperwork, so I gave him the benefit of the doubt that
10 he was actually the person doing Exhibit 6 and 7.

11 Q. Okay. And just since I don't -- only get
12 one chance to talk to you, do you have any reason to
13 believe that he was not the person doing the work or
14 at the bank on those days?

15 A. No.

16 Q. Okay. Did he provide you with other
17 information to show that he was in Florida on February
18 28th and March 1st of -- I forget the year. 2016 or
19 2017 -- 2018. Sorry.

20 A. He sent me several papers. I don't know
21 exactly what they were, but they were along those
22 lines to show that he was in Florida.

23 Q. Okay. And what did you do with that
24 information when he sent it to you?

25 A. I looked over it and we decided that we

1 would not serve the warrant on him in Florida and
2 extradite him back to South Carolina. So we contacted
3 the warrant division about the warrant and then
4 dismissed the charge.

5 Q. Okay. At the time that occurred, he had
6 been held in jail in Florida already, correct?

7 A. Yes.

8 Q. And that was because the warrant was in the
9 system?

10 A. Correct.

11 Q. Okay. So was there -- let me ask this. I
12 want to ask it the simplest way I can.

13 Why didn't you just call Mr. Shimeld before
14 you got the warrant?

15 A. I didn't -- I was trying to. I went to his
16 apartment complex and everything to try to get in
17 touch with him, but they said that he had moved out in
18 the middle of the night and even left some of his
19 belongings behind. That even though his rent was paid
20 up for a month, he left in the middle of the month.

21 So they didn't -- he didn't leave a
22 forwarding address or a phone number to get in touch
23 with him. I did get his phone number from them, but
24 it was not the correct number.

25 Q. Okay. Would you agree with me that

1 on -- I'm sorry. I keep forgetting what exhibits. I
2 should write them down. The report where you ran his
3 personal information and got some addresses and --

4 A. Five.

5 Q. So on Exhibit 5. So would you agree with me
6 that that -- we talked -- that first number,
7 850-612X -- I guess I won't put the last ones on the
8 record, but that is the same number you got when you
9 interviewed either him or his lawyer, correct?

10 A. Yes.

11 Q. So did you ever try to call that number?

12 A. This wasn't ran then.

13 Q. Okay. Fair enough. Did you do this at the
14 Sheriff's Office, this search?

15 A. Yes.

16 Q. And is it a routine thing to do?

17 A. When we're trying to locate somebody, yes.

18 Q. Okay. So is it -- if you had run this and
19 gotten that number, do you believe you would have been
20 able to contact him?

21 MR. GARFIELD: Object to the form. You can
22 answer it.

23 A. Yes. Had I had that number, yes, I would
24 have called him.

25 BY MR. KENDRICK:

1 Q. Okay. And if you had called him and he had
2 given you information about his whereabouts that -- at
3 the time of the incident, would you have gotten a
4 warrant for him?

5 MR. GARFIELD: Object to the form.

6 A. If he would have provided all the
7 information that he provided at the end and it would
8 have turned out the way it did at the end with the
9 alarm company and everything that he did previously
10 work there, no, I would not have gotten a warrant at
11 that point.

12 BY MR. KENDRICK:

13 Q. Okay. And do you know the date that he
14 called you and provided this information to you?

15 A. It was when he was -- (Witness examines
16 document).

17 Q. And it might be in your time line.

18 A. That's what I was going to look at. It was
19 when he got out of jail. He called several people
20 before he called me or I may have even called him.

21 Q. So it looks like on -- and I'll just turn
22 you to page two of your time line. It looks like near
23 the bottom you got a voicemail from his grandmother on
24 April 7th. It's the second paragraph from the top on
25 page two -- I mean from the bottom.

1 A. From the bottom?

2 Q. Uh-huh.

3 A. April 9th.

4 Q. It looks on April 9th. It says, "Checked
5 your voicemail and there had been a call from Ms.
6 Bowman that" -- it looks like she left it over the
7 weekend.

8 A. Yes. He was arrested on Friday.

9 Q. And when you called her back -- and I
10 understand that it sounds like you're talking to
11 someone maybe older that is not clear, but she tells
12 you he'd lived in Florida, right?

13 A. Yes. She said he had never been in the
14 state of South Carolina.

15 Q. And that's not actually true.

16 A. Correct.

17 Q. But she told you that at the time he was in
18 Florida. And then you received a series of calls over
19 the next few days from other folks in Florida.

20 A. Yes. From her, I believe her husband, and
21 an attorney.

22 Q. Then it looks like -- if we go to page four,
23 it looks like Judge Edmonds got a call from Mr.
24 Shimeld.

25 A. Yes.

1 Q. And that would have probably been, I guess,
2 because Judge Edmonds' signature is on your search
3 warrant, right?

4 A. On my warrant, the arrest warrant.

5 Q. Okay. It looks like he's also now calling
6 folks from -- at the Sheriff's Office. He must get
7 your number, right, because you missed some calls from
8 him by April 17th.

9 A. Yes.

10 Q. So during all this time, did you ever go
11 back to Mr. Osborne?

12 A. I tried to locate Mr. Osborne several times,
13 but he was no longer in Richland County. We couldn't
14 find him.

15 Q. Okay. This -- the report we were talking
16 about that has his phone number on it, so that would
17 be exhibit -- I think it's --

18 A. Five.

19 Q. Yeah, five. I'm going to write five on here
20 so I don't keep asking you. Exhibit 5. How many of
21 these reports have you run in your time as an
22 investigator?

23 A. Usually, we have phone numbers so it doesn't
24 have to be that often. We also have analysts that do
25 this for us. So, I mean, it's a common thing, if

1 we're looking for someone, to do this.

2 Q. Is this something that is part of a law
3 enforcement database or is it something that's
4 available to anybody?

5 A. Law enforcement.

6 Q. So if I called you and asked you to run a
7 number, you'd --

8 A. I could not do that.

9 Q. Got you. Okay. This is just something you
10 can do. And is -- and is it -- so you have an
11 analyst --

12 A. It has to be relevant to the case.

13 Q. Of course. So an analyst could run this for
14 you or you could run it yourself.

15 A. Correct.

16 Q. Okay. So generally when you're
17 investigating crimes and you identify a suspect, is
18 there any particular policy or procedure at the
19 Richland County Sheriff's Office about the initial
20 questioning of that suspect?

21 A. Policies change so often I'd have to see the
22 policy.

23 Q. Okay.

24 A. But we do try to get in touch with the
25 suspect, yes.

1 Q. I don't need -- we don't necessarily need to
2 enter this, but I don't want you to feel like I'm
3 hiding something from you.

4 So the way -- and that's kind of my question
5 is, you know, I assume that there are certain crimes
6 where it might be to your advantage to arrest them and
7 deal with it, you know, that you don't want to tip
8 them off. And then there's other crimes where you
9 might want to seek more information.

10 A. Right.

11 Q. Is that fair?

12 A. Yes.

13 Q. And I'll just give you these. I don't think
14 we're going to mark them as exhibits.

15 MR. KENDRICK: That's what you gave me,
16 Robby. Those are policies and procedures. I've read
17 them.

18 BY MR. KENDRICK:

19 Q. You know, there's -- I just don't want you
20 to feel like I'm asking you a question and you're not
21 privy to what that is.

22 A. No.

23 Q. Do you recognize those?

24 A. Yes. These are our policies.

25 Q. Do you review those on a regular basis or...

1 A. I mean, we try to stay up on them. They
2 change, and we get updated so we can put them in our
3 policy book, the updates and things, yes.

4 MR. KENDRICK: Now, just to be safe, let's
5 maybe mark them. If you'll hand them back to me. I
6 didn't want to -- I wasn't going to ask questions
7 about them, but --

8 MR. KENDRICK: There's three of them. We'll
9 do them in this order.

10 (Plaintiff's Exhibit 8 marked for
11 identification purposes - 3 pages
12 Policy and Procedure Guidelines
13 Preliminary Follow-up Investigations)
14 (Plaintiff's Exhibit 9 marked for
15 identification purposes - 6 pages
16 Policy and Procedure Guidelines
17 Investigations)
18 (Plaintiff's Exhibit 10 marked for
19 identification purposes - 8 pages
20 Policy and Procedure Guidelines - Legal
21 Authority and Recognition of Constitutional
22 Rights)

23 BY MR. KENDRICK:

24 Q. So Exhibit 8 is the Policy on Preliminary
25 and Follow-up Investigations. Exhibit 9 is the Policy

1 on Investigations. And Exhibit 10 is -- looks like
2 the Policy on Recognizing Constitutional Rights.

3 So is there any -- is there any
4 responsibility you have to question a suspect before
5 you get a warrant for them?

6 A. We can't always contact them or get in touch
7 with them, but, I mean, yes, we try to do that.

8 MR. KENDRICK: Sorry. I'm not just spacing
9 out. Give me a second. I'm getting close to the end.
10 I don't -- I don't subscribe to the theory that you
11 just keep asking questions until the sun goes down, so
12 I may be done very shortly.

13 (Brief pause)

14 BY MR. KENDRICK:

15 Q. When you were telling me -- you said you can
16 put updated things in your policy book. Is that
17 something you personally have?

18 A. We can all print the policies and have
19 a -- you know, our policy book and they'll -- as
20 be -- as laws change and -- or our policies change
21 because the laws have changed, we get an update to our
22 policies and procedures. Anytime there is, they
23 provide them to us.

24 Q. What other investigators worked on this case
25 with you?

1 A. Sergeant Johnson, Cary Johnson.

2 Q. Okay.

3 A. There was -- I mean, people, you know --

4 Q. And let me ask this in a fairer way. I
5 don't mean anyone who had anything to do with it. I
6 guess maybe a better way to ask it is when
7 you're -- you're the primary investigator, right?

8 A. Yes.

9 Q. Is there someone who is assisting you on a
10 regular basis in your investigation?

11 A. No.

12 Q. Okay. So you're responsible for --

13 A. Right.

14 Q. -- what's going on.

15 When you realized -- well, let me say this.
16 When you -- when you dismissed the warrant against Mr.
17 Shimeld, did you conduct any other steps to
18 investigate the crime?

19 A. To try to locate Mr. Osborne, but he wasn't
20 located.

21 Q. Okay. What did you do to locate Mr.
22 Osborne?

23 A. I went -- I went on his Facebook to locate
24 him on his Facebook. I called Spring Hill Security to
25 try to get in touch with him that way. I asked Mr.

1 Ardap because, you know, he had his phone number
2 originally. But his number, I believe, had changed,
3 and I couldn't get in touch with him.

4 Q. Did it seem like he was avoiding you or do
5 you mean those were dead-ends, like numbers didn't
6 work, not an address?

7 A. It could have been coincidence that he moved
8 during this investigation, but he had my phone number.
9 He could have contacted me. So I felt like he was
10 trying to avoid me.

11 Q. Is there still an open case on this --

12 A. Yes.

13 Q. -- burglary?

14 And I don't know how that works. So when
15 there's an -- I mean, obviously it's open because no
16 one got arrested. Do you still work on the case?

17 A. Yes. There was some DNA that was requested
18 that isn't back. So if that DNA would come back and
19 it would be a match to Mr. Osborne or whoever, it
20 would still be an open case that I would continue
21 with.

22 Q. Earlier you were looking at the arrest
23 warrant.

24 A. Yes.

25 Q. And let's go through this middle paragraph.

1 "On February 28th, 2018, on Two Notch Road" -- and
2 that, I assume, is the address for the Discount
3 Tobacco.

4 A. Yes.

5 Q. You've got, "The defendant committed a crime
6 of burglary second by unlawfully forcing entry through
7 the back of the business, entering through the office
8 through where the camera was unplugged, the alarm
9 system was torn from the ceiling and destroyed."

10 Those sentences I just read are based on
11 your physical observations of the building, correct?

12 A. Yes.

13 Q. So those establish that a crime was
14 committed --

15 A. Yes.

16 Q. -- but they don't give you really any
17 insight into who committed the crime, right?

18 A. Correct.

19 Q. Okay. "There's a fingerprint match for the
20 defendant on the alarm box that was torn from the
21 ceiling."

22 That's, in your mind, what tells you that
23 he's the person that must have done that.

24 A. Not originally. I thought maybe he was the
25 person that installed the system or assisted with

1 installing it or something to that effect.

2 Q. So you -- the manager of the alarm company
3 who installed the alarm system tells you, "He doesn't
4 work for us," and that clears that piece up for you.

5 A. Correct.

6 Q. Okay. Is this -- in this warrant, is this
7 what you presented to Judge Edmonds, the information
8 in this warrant?

9 A. Yes.

10 Q. Is there anything that is not in this typed
11 block that you told Judge Edmonds to get him to sign
12 the warrant?

13 A. No.

14 Q. Okay. Is it fair for me to say that what is
15 in this paragraph is what you based your probable
16 cause determination on --

17 MR. GARFIELD: Object to the form.

18 A. Yes.

19 BY MR. KENDRICK:

20 Q. -- and then also what you conveyed to Judge
21 Edmonds because he had to decide on probable cause,
22 right?

23 A. Correct.

24 Q. Okay. And this was -- it looks like Judge
25 Edmonds signed it on March 16th, correct?

1 A. Yes.

2 Q. Okay. So that's --

3 A. It was actually Judge Stroman for Judge
4 Edmonds.

5 Q. Yeah. You know what? I saw that.

6 MR. GARFIELD: I was going to bring that up
7 later, but I'll let you, yeah.

8 MR. KENDRICK: I don't know why she didn't
9 just sign it herself. Okay.

10 BY MR. KENDRICK:

11 Q. I would -- I noticed that. Thank you for
12 pointing out.

13 But it -- but it -- so did you talk to Judge
14 Stroman or did you -- you told Judge Edmonds about the
15 situation and then he had Stroman sign it? How did
16 that work?

17 A. So whenever we type our warrants, we will
18 send them over to the magistrate's office and they
19 will type them. Then we present them to the judge.

20 So Judge Edmonds' office typed up the
21 warrant, but I went before Judge Stroman to get the
22 warrant signed because Judge Edmonds was not available
23 when the warrant was typed.

24 Q. So when Judge Stroman signs this, does she
25 read it, sign it, and hand it to you or do you discuss

1 the case?

2 A. She tells me, "What is your probable cause?"
3 and I explain to her what my probable cause is.

4 Q. Okay.

5 A. And she decides if there is or isn't.

6 Q. Okay. And I think I asked you this before
7 so I'm not trying to be tricky. I just want to make
8 sure I'm clear.

9 What you explained to her would be also what
10 is typed in the middle.

11 A. Correct.

12 Q. Okay.

13 MR. KENDRICK: I think that's all I have.

14 MR. GARFIELD: I'd like to go ahead and make
15 this -- in fact, Investigator, if you could just hand
16 that over to the court reporter. Let's make that
17 Defendant's Exhibit No. 1.

18 (Defendant's Exhibit 1 marked for
19 identification purposes - 1 page
20 Arrest Warrant)

21 (Discussion held off the record)

22 CROSS-EXAMINATION BY MR. GARFIELD:

23 Q. Investigator Rains, this is your signature
24 on Exhibit No. 1?

25 A. Yes.

1 Q. You're the affiant on this particular arrest
2 warrant that's been marked as Exhibit No. 1?

3 A. Yes.

4 Q. All right. I would like to direct your
5 attention to this one sentence, and it's midway down.

6 MR. GARFIELD: Josh, it starts with "I"
7 right here. It's going to be the last sentence.

8 BY MR. GARFIELD:

9 Q. "I spoke with the manager of the alarm
10 company." Do you see where I'm reading that?

11 A. Yes.

12 Q. All right. "I spoke with the manager of the
13 alarm company who installed the alarm system, and he
14 stated he has never heard of the defendant nor has the
15 defendant ever been employed by the alarm company who
16 installed the alarm."

17 Did I read that correctly?

18 A. Yes.

19 Q. Okay. When you spoke with the manager of
20 the alarm company who installed the alarm, did he
21 indicate as to whether -- during that conversation as
22 to whether that was a new alarm or a used or a, you
23 know, take-over alarm?

24 A. I asked him if Mr. Shimeld had ever worked
25 because there was a new alarm system installed by Mr.

1 Ardap when he purchased the business.

2 And he said they installed a new alarm
3 system and he gave me the name of the person, and it
4 was not Mr. Shimeld.

5 Q. Is that a significant point when you factor
6 in probable cause?

7 A. Yes.

8 Q. Mr. Kendrick asked you -- I'm going to kind
9 of go in a different direction. Mr. Kendrick asked
10 you about other colleagues that you had at the
11 Richland County Sheriff's Department that you may have
12 had discussions with about this case.

13 You were the primary or the lead
14 investigator?

15 A. Yes.

16 Q. All right. Although you were the lead
17 investigator assigned in this case, prior to seeking
18 the arrest warrant in Defendant's Exhibit No. 1, did
19 you have an opportunity to speak with any of your
20 supervisors about this particular case?

21 A. Yes.

22 Q. All right. Did you -- when I say -- when
23 you said that you spoke with them, would you
24 then -- would you have had an opportunity to have
25 briefed them about what you had -- what you had known

1 at the time or what you had learned at the time based
2 on your investigation?

3 A. Yes.

4 Q. Okay. And who -- who did you brief? Which
5 supervisors?

6 A. Sergeant Cary Johnson and Chief Stan Smith.

7 Q. Prior to seeking the arrest warrant, did
8 they give you any indication as to their conclusions
9 or opinions as to whether probable cause existed?

10 A. Yes. They agreed with the probable cause
11 existing, yes.

12 Q. So you had, for the lack of a better way of
13 describing this, the green light from your supervisors
14 to go to the magistrate to swear out an arrest warrant
15 against Mr. Shimeld.

16 A. Correct.

17 MR. GARFIELD: Let's just go off the record
18 real quick.

19 (Recess was taken from 3:52 p.m. to 3:55 p.m.)

20 COURT REPORTER: Back on the record.

21 MR. GARFIELD: I don't have anything else.

22 Thank you.

23 Further deponent sayeth not.

24 (There being no further questions, the deposition
25 concluded at 3:55 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, SUZANNE R. WADE, COURT REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE,
HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF VICKI
RAINS ON THURSDAY, THE 22ND DAY OF OCTOBER, 2020, THAT THE
WITNESS WAS FIRST DULY SWORN BY ME, AND THAT THE FOREGOING
47 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF
SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID
TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO
JOSHUA S. KENDRICK, ESQ., KENDRICK & LEONARD, P.C.,
COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING
SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH
MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL
THIS 28th DAY OF OCTOBER, 2020.

Suzanne R. Wade

SUZANNE R. WADE, COURT REPORTER
MY COMMISSION EXPIRES MAY 8, 2027

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

Case number: 1803003801
Offense date: 02/28/2018
Offense time: 2245

Victim's name: Discount Tobacco
Victim's address: Ismat Ardab

Location of offense: 10890 Two Notch Rd.
Type of offense: Burglary

On 03/02/2018 @ 1523 hours, I called Discount Tobacco and spoke to employee, Jennifer, who stated she does not have any information about the Burglary, she request I call the owner, Mr. Ardab, and provided his cell phone number 803 348 2799.

On 03/02/2018 @ 1529 hours, I called Mr. Ardab who stated the person who committed the Burglary knew where the security and camera system were located and how they operate. He stated the person who committed the Burglary is familiar with the office because they came through a window that would give them access to the office. He stated he believes it is the person who installed and serviced his alarm and camera systems because he was there the day of the Burglary and he is the only person who knows how to operate it and where it is located. He stated he does not have the subject's information with him at the present time however, he stated he called RCSD front desk and provided the subjects information on 03/02/2018 in the morning hours.

On 03/02/2018 @ 1539 hours, Mr. Ardab called me back and stated the subject is a w/m, who goes by Hulk with phone # 803 603 9627.

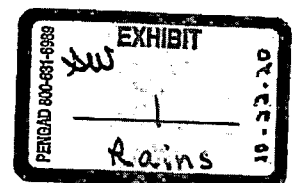
On 03/02/2018 @ 1546 hours, I ran the subjects phone number through Facebook which returned to Hank Osborne of Springhill Security LLC. I called Mr. Osborne, no answer, left vm to return my call.

On 03/05/2018 @ 1500 hours, Mr. Ardab came in to write a statement, he provided additional items (\$25,000.00 in various gold coins) that were stolen and request a supplemental report be completed.

On 03/06/2018 I completed the supplemental report and Mr. Ardab responded to the sheriff department to get a copy for his insurance.

On 03/08/2018 @ 1431 hours, I called Mr. Osborne who stated he didn't show up for his appointment to come in and write a statement because he was busy. He stated he will come in 03/09/2018 @ 1600 hours. He stated he has not been in Mr. Ardab's office for 5 or 6 months. He stated he offered to fix Mr. Ardab's camera but Mr. Ardab told him he was sick and not going to work.

Submitted by:
Page 1



00516-A-013

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

On 03/13/2018 @ 1555 hours, I called the ADS manager, JJ Morrison, who stated they installed an alarm system for Discount Tobacco in January of 2016. He stated they did not have an employee by the name of Christopher Shimeld.

On 03/16/2018 @ 1019 hours, I called the manager of ADS, JJ Morrison, to verify they did not ever have an employee by the name of Christopher Shimeld. He stated Christopher Shimeld has never been employed by ADS. He checked to see if he had been an employee prior to him being the manager and stated Mr. Shimeld had never been an employee. He stated Andrew Schumpert installed the original system. I asked him if it was possible Mr. Shimeld had done a work order on the system and he again stated Mr. Shimeld was never employed by ADS and they did not have contractors do work orders. He stated Ryan Faircloth went to Discount Tobacco on 03/01/2018 to install the new system due to the original one being destroyed in the burglary.

On 03/16/2018 I obtained a warrant for Christopher Shimeld. Inv. Taylor, Inv. Hinson, Inv. Green and I went to the address on Mr. Shimeld's SC driver's license, 4017 Percival Rd., Briar Grove Apartments. I spoke with Amy and another employee who stated they were familiar with Mr. Shimeld. They stated he moved out in August of 2016 without notice. They stated CPD was looking for him in reference to a burglary. She stated there were some other break-ins he may be involved in. She stated his girlfriend was with him and it was her car on the video the police had in reference to the burglary. I asked if she knew the girlfriend's name, however, she stated she did not know what it was. I asked if she knew the tag number for her car. The other employee got the rental contract to check for the girlfriend's name but it was not listed. She stated she did not know what happened with the case because Mr. Shimeld left his apartment although his rent was paid without letting the office know. She stated he left in the middle of the night and didn't even take all his things. They stated they believe the police thought he was possibly involved in other break-ins.

I took the warrant to the warrant division to have it entered.

On 04/09/2018 @ 0830 I checked my voice mail and have a call from Joyce Bowman stating she was Christopher Shimeld's grandmother and he had been arrested and requested I return her call. The voice mail from Ms. Bowman was left on Saturday, 04/07/2018 @ 1335 hours.

On 04/09/2018 @ 0855 hours, I returned the call to Ms. Bowman. She stated her grandson had never been in SC and did not do this. I explained he had a SC driver's license and an address in SC. She stated he had not been in SC for years. She stated she and her husband raised Mr. Shimeld and he lives with her and her husband and she knows he has not left Florida. I also spoke with Mr. Bowman who stated he is 70 years old and Mr. Shimeld comes over and offers to help them do things they physically cannot do. He wanted to know about Mr. Shimeld's charges and I told him I could tell him what the charge was but could not discuss the case with him.

Submitted by:
Page 2

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

On 04/11/2018 @ 1010 hours, I received a call from 850 758 2842.

On 04/11/2018 @ 1307 hours, I received a call from Beth Oates advising the family called about the case.

On 04/11/2018 @ 1517 hours, I received a call from 850 758 2842.

On 04/11/2018 @ 1527 hours, I received a call from 850 398 8790.

On 04/12/2018 @ 0830 I had a voice mail from CV. He left the vm on 04/11/2018 @ 1704 hours. I also had a voice mail from Ms. Bowman and Mary (850 398 8790) from Ryan Hardy's office in Okaloosa County in reference to Mr. Shimeld.

On 04/12/2018 @ 1311 hours, I called Mary back. No answer, left vm.

On 04/12/2018 @ 1312 hours, I called Ms. Bowman back (850 682 5697), no answer, left vm.

On 04/12/2018 @ 1356 hours, I received a call from Ryan Hardy who asked about the case and stated he is representing Mr. Shimeld as his attorney. I told him what the charge was. He stated Mr. Shimeld stated he did not commit any burglary. He stated he would go to the jail and speak with his client about the information I provided.

On 04/12/2018 @ 1706 hours, I received a call from Ryan Hardy who stated his client is adamant he did not do this. I explained I would need something showing Mr. Shimeld was in Florida at the time the burglary occurred. He stated he would email me something showing Mr. Shimeld was in Florida on the date of the burglary.

On 04/12/2018 @ 1739 hours, I received an email from Mr. Hardy showing receipts for the 27th and 28th.

On 04/12/2018 @ 1042 hours, I had a missed call from the warrant division.

On 04/12/2018 @ 1604 hours, I received a call from Cpt. Griffey stating he received a call about the warrants in this case.

On 04/13/2018 @ 1535 hours, I called the apartment complex where Mr. Shimeld previously resided and spoke with Amy about our previous conversation in reference to her stating Mr. Shimeld have left in the middle of the night in the beginning of the month although his rent was paid, and also about CPD looking for him, she stated it was night shift officer from east region who was checking for Mr. Shimeld or his girlfriend's car. She stated there were cameras at the entrance and that is how they acquired the girlfriend's car information. She stated his girlfriend used to work at Wendy's on Percival. She did not know gf name.

Submitted by:
Page 3

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

On 04/17/2018 @ 1504 hours I received a call from Judge Edmonds stating he received a call from Mr. Shimeld saying the warrant was false.

On 04/17/2018 @ 1038 hours, I received a call from Cpt. McRoberts.

On 04/17/2018 @ 1044 hours, I called Cpt. McRoberts back.

On 04/17/2018 @ 1413 hours, 1454 hours and 1515 hours, I had missed calls from Mr. Shimeld.

On 04/17/2018 @ 1435 hours I had a missed call from Upper Township.

On 04/17/2018 @ 1451 hours, I called Upper Township back.

On 04/18/2018 hours, I called ADS and spoke with Mr. Morrison because I had checked the box and when I raised a corner of his company label, I could see what appeared to be an ADS label underneath. I called him back to verify they did install the entire system because of the suspect prints being on the box and him stating on the first phone call they installed a new system and Mr. Shimeld was never an employee there. He checked and stated the whole unit was not replaced, He stated it was a "takeover" not a new install.

On 04/18/2018 @ 1443 hours, I faxed the search warrant for Mr. Shimeld's cell phone (850 612 1192) to Verizon.

On 04/20/2018 @ 1344 hours, the CV called about seeing the case on the news.

On 04/20/2018 @ 1518 hours, I called Mr. Ardab back.

On 05/04/2018 @ 1443 hours, I called Verizon to check on the search warrant and was advised they were back logged but would get it sent out in a day or two.

On 05/07/2018 @ 1445 hours, I called Mr. Shimeld.

On 05/07/2018 @ 1646 hours, I called Mr. Shimeld.

On 05/07/2018 @ 1647 hours, Mr. Shimeld called me back.

On 05/14/2018 @ 11:46 hours, Mr. Shimeld left me a vm. I was on call and called him back at 2103 hours.

On 05/22/2018 @ 1332 hours, the insurance company called and stated they had settled the claim with Mr. Ardab and would send an email with their contact info.

Submitted by:
Page 4

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

On 05/23/2018 @ 1115 hours, the CV called to state his report needed to be amended to show 99 more packs of cigarettes and \$900.00 that were in the closet.

On 05/23/2019 @ 1559 hours, I received a call from Mr. Shimeld asking about his CWP in Florida.

Submitted by:
Page 5

EXHIBIT
 SW
 2
 Rains
 10.2.2.20
 PENDING 800-631-6989

called JJ Morrison 1355 hrs 4/18/18

cell unit ~~replaced~~

take over not a new install

4/25/18

called me

Capt McRoberts 4/17/18 @ 1838

4/20/18 call from Ardab 1344 hrs

called him bk 4/20/18 @ 1518 hrs

J. sec Edwards 2224 hrs

4/17/18 1301

received call from warrant div 4/12/18 1012

4/17/18 1535

received call from warrant div 4/12/18 1012

2150

4/12/18 @ 1706 received call

350 378 3790

4/12/18 @ 1151 Cpt Criffy called me

4/12/18 @ 1354 from 350 378 3790

5/20/18 J. sec called and said 5/11/18 11:11 sent 1350 hrs. email w/ contact info

5/23/86 BOSTON - Mr. [redacted] called. [redacted] [redacted] [redacted]
 [redacted] needs to be updated to show [redacted] [redacted] part
 of [redacted] [redacted] [redacted] [redacted] [redacted]
 [redacted] [redacted] [redacted] [redacted] [redacted]

5/24/86 BOSTON - called Mr. [redacted] to see
 about his [redacted] in FL.

Ryan Hardy
(850) 505-6770

Dexter

received msg 3/13/19 15:35

ADC

641-8860

ext. 3413 (J Morrison)

1/16 installed in operating

Andrew Schimpf
also Ryan Fung

called 3/13/19 15:35

4/13/19 15:35

Received 10:00 AM 4/13/19

8/4/2016

11:30

End report - project done
Used to work @ West's on ground

11:30 AM 4/13/19

Placed 4/17/18
Upper Township 151 hrs.
Cpt. McRobert 10:41 hrs.

had car from
Mr. Shims?
William
5/11/18
called him back.
3:10 hrs. 5/11/18

Mr. Shims
4/17/18 10:41 hrs.
1:51 hrs.
4/17/18 10:41 hrs.
1:51 hrs.
10:41 hrs.

Warrant Due 4/15/18 10:42

4/17/18 10:42
Mr. Shims

4/17/18 10:42
Upper Township

received

Tuesday 4/17/18 10:38 hrs.
Capt. McRobert

13:56
Thursday 4/17/18 1:06 hrs.
Attorney

Thurs. 4/15/18 10:41 hrs.
Cpt. Gaffen

4/11/18 15:27 hrs 5503158710
4/11/18 15:27 hrs 5503158710
4/11/18 15:27 hrs 5503158710
4/11/18 15:27 hrs 5503158710
Beth Gales

Monday 4-9 received
call from parents
Mr. Aylab 1344 hrs. 4/20/18
ABC News - called at 1510 hrs
ADS

Christopher

(850) 612-1192

(850) 486-6847

WHO WAS HIS SUPERVISOR AT ADE

✓ WHEN DID YOU WORK THERE?
FROM 2014 TO 2015

✓ WHEN DID YOU MOVE AWAY
FROM GUMBERTA ^{over} 2 yrs ago

(803) 231-8087

ADT

Outsource - Mike Whaley

(803) 231-8087

Derrick - (803) 518-4548

PAID BY COMPANY FROM CALIFORNIA
3 wks

36 - 26

4-12 a day

quitting & fired

PHOTO LINE-UP
RICHLAND COUNTY SHERIFF'S DEPARTMENT



PHOTO LINE-UP AFFIDAVIT

Case Number: 1803003801 Date: _____, 2018 Time: _____

On this date **Investigator Vicki Rains** showed me six (6) pictures at _____

I picked out picture (# 4), which is the person who committed the crime

of _____ at _____

on _____

I hereby swear and certify the above is the truth.

Sign: [Signature]

Print: Kristen Clark

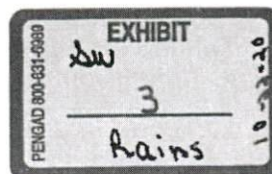
Sworn and subscribed to before me, this
____ Day of _____ 2018

Address: _____

Phone: _____

NOTARY PUBLIC OF SOUTH CAROLINA
COMMISSION EXPIRES _____

Witness: _____



00516-A-044

PHOTO LINE-UP
RICHLAND COUNTY SHERIFF'S DEPARTMENT

Photo #1

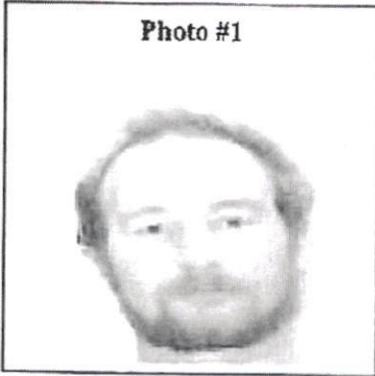


Photo #2



Photo #3



Photo #4



Photo #5

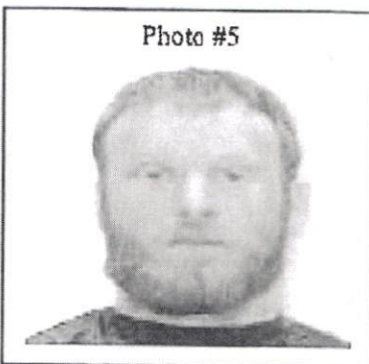


Photo #6



PHOTO LINE-UP AFFIDAVIT

Case Number: 1803003801 Date: _____, 2018 Time: _____

On this date Investigator Vicki Rains showed me six (6) pictures at _____

I picked out picture (# 4), which is the person who committed the crime

of _____ at _____

on _____

I hereby swear and certify the above is the truth.

Sign: J. Clark

Print: Jennifer Clark

Sworn and subscribed to before me, this
____ Day of _____ 2018

Address: _____

Phone: _____

NOTARY PUBLIC OF SOUTH CAROLINA
COMMISSION EXPIRES _____

Witness: _____



00516-A-045

Your Current Reference ID: NONE

14 Results Found for phones for people named CHRISTOPHER SHIMELD in the United States.

(showing all results)

(850) 612-1192 - SHIMELD, CHRISTOPHER ALLEN (South Carolina)

Score: 86% Likely Active

CHRISTOPHER ALLEN SHIMELD - [View Person Record]

Address: 4017 PERCIVAL I
(RICHLAND COUNTY)

Phone: (850) 612-1192 - SHIMELD, CHRISTOPHER ALLEN (08/29/2014)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: CRESTVIEW

State: FL

County: OKALOOSA

Score: 86

(850) 612-1192 - SHIMELD, CHRISTOPHER (South Carolina)

Score: 86% Likely Active

CHRISTOPHER SHIMELD - [View Person Record]

Address: 4017 PERCIVAL I
(RICHLAND COUNTY)

Phone: (850) 612-1192 - SHIMELD, CHRISTOPHER (06/13/2014)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: CRESTVIEW

State: FL

County: OKALOOSA

Score: 86

(850) 612-1192 - SHIMELD, CHRISTOPHER A (Florida)

Score: 86% Likely Active

CHRISTOPHER A SHIMELD - [View Person Record]

Address: 3909 BEAR HEAD
COUNTY)

Phone: (850) 612-1192 - SHIMELD, CHRISTOPHER A (12/07/2012 to 04/07/2018)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: CRESTVIEW

<https://tloxp.tlo.com/search.php>



4/17/2018

00516-A-069

State: FL
County: OKALOOSA
Score: 86

(850) 486-6847 - SHIMELD, CHRISTOPHER (Florida)

Score: 78%

CHRISTOPHER SHIMELD - [View Person Record]

Address: 3003 STILLWELL
(OKALOOSA COUNTY)

Phone: (850) 486-6847 - SHIMELD, CHRISTOPHER (09/17/2009 to 01/05/2017)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: COTTONDALE

State: FL

County: JACKSON

Score: 78

(850) 486-6847 - SHIMELD, CHRISTOPHER (Florida)

Score: 78%

CHRISTOPHER SHIMELD - [View Person Record]

Address: 3909 BEAR HEAT
COUNTY)

Phone: (850) 486-6847 - SHIMELD, CHRISTOPHER (09/2005 to 12/07/2017)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: COTTONDALE

State: FL

County: JACKSON

Score: 78

(850) 486-6847 - SHIMELD, CHRISTOPHER (Florida)

Score: 78%

CHRISTOPHER SHIMELD - [View Person Record]

Address: 5088 DOCKSIDE
COUNTY)

Phone: (850) 486-6847 - SHIMELD, CHRISTOPHER (12/22/2014)

Phone Type: Mobile

Listing Type: Unknown

Time Zone: CT

Carrier: CELLCO PARTNERSHIP DBA VERIZON WIRELESS - FL (VERIZON WIRELESS)

Carrier Type: WIRELESS

City: COTTONDALE

State: FL

County: JACKSON

Score: 78

(850) 689-0623 - SHIMELD, CHRISTOPHER A (South Carolina)

Score: 70%

CHRISTOPHER A SHIMELD - [View Person Record]
Phone: (850) 689-0523 - SHIMELD, CHRISTOPHER A (08/16/2014)
Phone Type: LandLine
Listing Type: Unknown
Time Zone: CT
Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
(CENTURYLINK)
Carrier Type: LANDLINE
City: CRESTVIEW
State: FL
County: OKALOOSA
Score: 70

Address: 4017 PERCIVAL I
(RICHLAND COUNTY)

(850) 689-0523 - SHIMELD, CHRISTOPHER A (Florida)

Score: 70%
CHRISTOPHER A SHIMELD - [View Person Record]
Phone: (850) 689-0523 - SHIMELD, CHRISTOPHER A (04/07/2005)
Phone Type: LandLine
Listing Type: Unknown
Time Zone: CT
Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
(CENTURYLINK)
Carrier Type: LANDLINE
City: CRESTVIEW
State: FL
County: OKALOOSA
Score: 70

Address: 162 LAKE ST, CF
COUNTY)

(850) 689-0523 - SHIMELD, CHRISTOPHER A (Florida)

Score: 70%
CHRISTOPHER A SHIMELD - [View Person Record]
Phone: (850) 689-0523 - SHIMELD, CHRISTOPHER A (12/31/2006 to
10/31/2017)
Phone Type: LandLine
Listing Type: Unknown
Time Zone: CT
Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
(CENTURYLINK)
Carrier Type: LANDLINE
City: CRESTVIEW
State: FL
County: OKALOOSA
Score: 70

Address: 3909 BEAR HEAT
COUNTY)

(321) 264-0778 - SHIMELD, CHRIS (Florida)

Score: 66%
CHRIS SHIMELD - [View Person Record]
Phone: (321) 264-0778 - SHIMELD, CHRIS (01/14/2005)
Listing Type: Unknown
Time Zone: ET
Carrier: BELL SOUTH TELECOMMUNICATIONS INC DBA SOUTHERN BELL
TELEPHONE & TELEGRAPH (AT&T SOUTHEAST)
Carrier Type: LANDLINE

Address: 1600 GARDEN S'
COUNTY)

City: TITUSVILLE
State: FL
County: BREVARD
Score: 66

(321) 264-0778 - SHIMELD, CHRISTOPHE A (Florida)

Score: 66%

CHRISTOPHE A SHIMELD - [View Person Record]

Phone: (321) 264-0778 - SHIMELD, CHRISTOPHE A (07/12/2004)

Listing Type: Unknown

Time Zone: ET

Carrier: BELLSOUTH TELECOMMUNICATIONS INC DBA SOUTHERN BELL
TELEPHONE & TELEGRAPH (AT&T SOUTHEAST)

Carrier Type: LANDLINE

City: TITUSVILLE

State: FL

County: BREVARD

Score: 66

Address: 1600 GARDEN S
COUNTY)

(321) 383-3166 - SHIMELD, CHRISTOPHE A (Florida)

Score: 66%

CHRISTOPHE A SHIMELD - [View Person Record]

Phone: (321) 383-3166 - SHIMELD, CHRISTOPHE A (09/20/2001)

Listing Type: Unknown

Time Zone: ET

Carrier: BELLSOUTH TELECOMMUNICATIONS INC DBA SOUTHERN BELL
TELEPHONE & TELEGRAPH (AT&T SOUTHEAST)

Carrier Type: LANDLINE

City: TITUSVILLE

State: FL

County: BREVARD

Score: 66

Address: 470 ELOISE AVE
COUNTY)

(850) 682-6697 - SHIMELD, CHRISTOPHER A (Florida)

Score: 66%

CHRISTOPHER A SHIMELD - [View Person Record]

Phone: (850) 682-6697 - SHIMELD, CHRISTOPHER A (08/10/2007)

Phone Type: LandLine

Listing Type: Unknown

Time Zone: CT

Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
(CENTURYLINK)

Carrier Type: LANDLINE

City: CRESTVIEW

State: FL

County: OKALOOSA

Score: 66

Address: 3003 STILLWELL
COUNTY)

(850) 682-8079 - SHIMELD, CHRISTOPHER A (Florida)

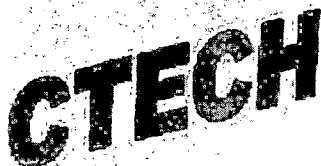
Score: 66%

CHRISTOPHER A SHIMELD - [View Person Record]

Phone: (850) 682-8079 - SHIMELD, CHRISTOPHER A (01/24/2009)

Address: 3909 BEAR HAI
COUNTY)

Listing Type: Unknown
 Time Zone: CT
 Carrier: EMBARQ FLORIDA INC (CENTRAL) DBA CENTURYLINK
 (CENTURYLINK)
 Carrier Type: LANDLINE
 City: CRESTVIEW
 State: FL
 County: OKALOOSA
 Score: 66



Christopher Shimelf
Owner
850-612-1192
www.CTechFL.net

Job Type

- ☐ Estimate
☐ Service
☐ Install
☐ Warranty
☐ Other

Attest: J. G. 4/23

Client

Name Marda Toderise Design
Address 815 Scenic Hwy (3rd fl)

City, State, Zip Metairie, La.

Phone 850-586-9995

Email: maria.ori@interim.com

Description of Services:

Description of Services: 6 hrs 2-28-18 3 1-18
 8:15-2:15 1.5 hrs = 7.5 hrs 9:00-12:00 1 hr
 Flooded up surround sound & test. All rooms working w/ Audio except Apartment 3000
 bedroom & hot tub speakers. Replaced & repaired speakers under kitchen & bedroom. Replaced
 Remove & replace cabinet doors & working to enterainment center. Replaced brown floor
 Cable Reprogrammed Universal Remote Controls & tested
 C-Test, checked clock. All equipment doesn't have sufficient Air Flow components will get
 hot & may burn up or catch fire. *Spoke to* *operation*
 arts

OFFICIALS

TV Power cable

45

42

Service Charges

Exhibit 7.5 - *Continued*

Tip Charge 20

Page 25

Subtotal

2008

Total 92

paid check

by Angela A. ...

EXHIBIT

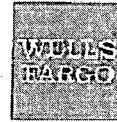
BENGAD 807-831-8989

10-2-30

Aims

Wells Fargo Everyday Checking

Account number: [REDACTED] February 15, 2018 - March 14, 2018 Page 1 of 5



CHRISTOPHER ALLEN SHIMELD
3909 BEAR HEAD RD
CRESTVIEW FL 32539-8827

Questions?

Available by phone 24 hours a day, 7 days a week
Telecommunications Relay Services calls accepted

1-800-TO-WELLS (1-800-869-3557)

TTY: 1-800-877-4833

En español: 1-877-727-2932

華語 1-800-288-2288 (8 am to 7 pm PT, M-F)

Online: wells Fargo.com

Write: Wells Fargo Bank, N.A. (287)
P.O. Box 6995
Portland, OR 97228-6995

You and Wells Fargo

Thank you for being a loyal Wells Fargo customer. We value your trust in our company and look forward to continuing to serve you with your financial needs.

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wells Fargo.com or call the number above if you have questions or if you would like to add new services.

Online Banking	☒	Direct Deposit	☒
Online Bill Pay	☒	Auto Transfer/Payment	☐
Online Statements	☒	Overdraft Protection	☐
Mobile Banking	☒	Debit Card	☐
My Spending Report	☒	Overdraft Service	☐

Activity summary

Beginning balance on 2/15	\$1,831.89
Deposits/Additions	4,558.35
Withdrawals/Subtractions	- 5,328.08
Ending balance on 3/14	\$1,164.98

Account number: 1010105079349

CHRISTOPHER ALLEN SHIMELD

Florida account terms and conditions apply

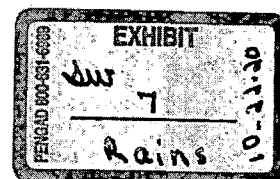
For Direct Deposit use

Routing Number (RTN): 063107513

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

(207)
Sheet Seq = 0001521
Sheet 00051 of 00001



00516-A-104

206



Transaction history

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
2/15		Purchase authorized on 02/14 Tom Thumb #118 Destin FL S308045800522200 Card 3958		45.00	1,786.69
2/20		ATM Withdrawal authorized on 02/18 320 N. Fardon Blvd Crestview FL 0001115 ATM ID 2857Q Card 3958		60.00	
2/20		Chase Credit Card Epay 160219 3461010768 Christopher A Shimeld		413.88	1,312.81
2/21		Purchase authorized on 02/20 Tom Thumb #115 Crestview FL S308051793521081 Card 3958		12.85	
2/21		Purchase with Cash Back \$30.00 authorized on 02/21 Wm Super Wal-Mart Sup Crestview FL P0000000491326418 Card 3958		39.56	
2/21		Gulf Gulf EFT 7673056040Gsv Christopher Shimeld		129.17	1,131.23
2/22		Deposit Made In A Branch/Store	150.00		
2/22		Purchase authorized on 02/21 Sonic Drive IN #51 Crestview FL S308052605927321 Card 3958		5.81	1,275.42
2/23		Purchase authorized on 02/21 Little Caesars 166 Crestview FL S308052786256578 Card 3958		11.66	1,253.76
2/26		ATM Check Deposit on 02/24 4525 Hwy 20 East Niceville FL 0306562 ATM ID 1713Q Card 3958	350.00		
2/26		ATM Check Deposit on 02/24 320 N. Fardon Blvd Crestview FL 0303639 ATM ID 2857Q Card 3958	220.00		
2/26		Purchase authorized on 02/22 Celco #409 Crestview FL S588053650046478 Card 3958		6.73	
2/26		Purchase authorized on 02/22 Honey Baked Ham of Destin FL S308053622137942 Card 3958		7.62	
2/26		Purchase authorized on 02/23 Exxonmobil 5888 Crestview FL S588054430520339 Card 3958		6.99	
2/26		Purchase authorized on 02/23 Marathon Petrol 1767 Hob FL S308054028240382 Card 3958		20.05	
2/26		Purchase authorized on 02/23 Sonic Drive IN #51 Crestview FL S468054643043336 Card 3958		7.92	
2/26		Purchase authorized on 02/24 Tom Thumb #115 Crestview FL S308055503364054 Card 3958		12.00	
2/26		Purchase authorized on 02/24 Lowe's #1782 Crestview FL P00558055517646374 Card 3958		55.95	
2/26		ATM Withdrawal authorized on 02/24 4626 Hwy 20 East Niceville FL 0006584 ATM ID 1713Q Card 3958		240.00	
2/26		Purchase authorized on 02/24 Celco #407 Niceville FL S468056673121492 Card 3958		26.00	
2/26		ATM Withdrawal authorized on 02/24 320 N. Fardon Blvd Crestview FL 0003840 ATM ID 2857Q Card 3958		20.00	
2/26		Purchase authorized on 02/24 Beach Liquors 3 Crestview FL S588055774158847 Card 3958		21.19	
2/26		Purchase authorized on 02/24 North Georgia Rois 708-558-5526 GA S468055825502653 Card 3958		144.91	
2/26		Purchase authorized on 02/25 Jin Jin 18 Inc Crestview FL S468057041838213 Card 3958		18.64	
2/26		Purchase with Cash Back \$20.00 authorized on 02/26 Tom Thumb 1602 E James Crestview FL P3000000333695499 Card 3958		26.42	
2/26		Capital One Auto Directpay 036202149026197 Christopher A. Shimeld		328.61	892.73
2/27		Purchase authorized on 02/25 Burger King #1684 Crestview FL S308058738508056 Card 3958		6.99	
2/27		Purchase authorized on 02/25 Redbox *DVD Rental Oakbrook Ter IL S588057037814208 Card 3958		3.71	
2/27		Purchase authorized on 02/27 The Home Depot #8301 Ft Walton Beach FL P00468056728994101 Card 3958		19.05	
2/27		ATM Withdrawal authorized on 02/27 320 N. Fardon Blvd Crestview FL 0004652 ATM ID 2857Q Card 3958		40.00	822.96

Account number: [REDACTED]

February 15, 2018 - March 14, 2018 Page 3 of 5



Transaction history (continued)

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
2/28		Square Inc 180228R2 180228 L207339141826 Christopher Shimels	607.85		
2/28		Purchase authorized on 02/27 Sonic Drive IN #51 Crestview FL S486058649658820 Card 3958		4.65	
2/28		Purchase authorized on 02/28 Tom Thumb 1802 E James Crestview FL P0000000499376664 Card 3958		11.79	
2/28		Purchase authorized on 02/28 Best Buy 0007997 Destin FL P000000073925353 Card 3958		15.89	
2/28		ATM Withdrawal authorized on 02/28 4526 Hwy 20 East Niceville FL 0007233 ATM ID 1713Q Card 3958		60.00	1,318.60
3/1		ATM Check Deposit on 03/01 4526 Hwy 20 East Niceville FL 0007353 ATM ID 1713Q Card 3958	935.00		
3/1		Purchase authorized on 02/28 Tom Thumb #115 Crestview FL S486058649658820 Card 3958		20.00	
3/1		Purchase authorized on 02/28 Davids Cardish C/o Crestview FL S388060014012636 Card 3958		11.84	
3/1		Purchase authorized on 03/01 Brummeyers Gen Store Crestview FL P00000000732505764 Card 3958		13.61	
3/1		Purchase authorized on 03/01 Brummeyers Gen Store Crestview FL P00000000580592092 Card 3958		6.36	2,201.69
3/2		Purchase authorized on 02/28 Chick-Fil-A #93365 Miramar Beach FL S468059734533140 Card 3958		5.51	
3/2		Cash eWithdrawal in Branch/Store 03/02/2018 1:00 PM 4526 E Hwy 20 Niceville FL 3958		500.00	
3/2		Cash eWithdrawal in Branch/Store 03/02/2018 1:02 PM 4526 E Hwy 20 Niceville FL 3958		500.00	1,195.18
3/5		Purchase authorized on 03/01 Shell Oil 67542791 Miramar Beach FL S486060661918561 Card 3958		19.01	
3/5		Purchase authorized on 03/01 Shell Oil 67543724 Niceville FL S900000697574617 Card 3958		13.03	
3/5		Chase Credit Card Epay 180302 3476976815 Christopher A Shimels		400.00	772.16
3/6		ConcurLink Speedpay 190305 xxxxx5232 xxxxx1495		146.59	622.57
3/7		Deposit Made in A Branch/Store	600.00		1,422.57
3/8		ATM Check Deposit on 03/08 320 N. Ferdon Blvd Crestview FL C006308 ATM ID 2857Q Card 3958	410.00		
3/8		Auburn Water Util 891 180307 00530-00 Shimels, Christopher A		31.03	
3/8		Chase Credit Card Epay 180307 3486054847 Christopher A Shimels		873.44	838.10
3/9		Square Inc 180309R2 180309 L207340262287 Christopher Shimels	406.50		
3/9		ATM Check Deposit on 03/09 320 N. Ferdon Blvd Crestview FL C006345 ATM ID 2857Q Card 3958	275.00		
3/9		Purchase authorized on 03/07 Defco #408 Crestview FL S300000095299479 Card 3958		25.00	1,594.60
3/12		ATM Withdrawal authorized on 03/12 320 N Ferdon Blvd Crestview FL 0009783 ATM ID 2857Q Card 3958		803.00	794.60
3/13		Purchase authorized on 03/12 Tom Thumb #115 Crestview FL S568071780164364 Card 3958		31.01	
3/13		Purchase authorized on 03/12 Firehouse Subs -CR Crestview FL S308071788535587 Card 3958		7.63	
3/13		Purchase authorized on 03/13 Brummeyers Gen Store Crestview FL P00000000683600598 Card 3958		12.65	743.14
3/14		ATM Check Deposit on 03/14 4526 Hwy 20 East Niceville FL 0008032 ATM ID 1713Q Card 3958	904.00		

Sheet Seq = 0008928
Sheet 00092 of 90043

00516-A-106

208



Transaction history (continued)

Date	Cheq Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
3/14		Purchase authorized on 03/12 Redbox "Dvd Rental Oskbrock Ter IL S588071756326330 Card 3558		2.12	
3/14		ATM Withdrawal authorized on 03/14 4525 Hwy 20 East, Niceville FL C008333 ATM ID 17130 Card 3858		80.00	1,164.99
Ending balance on 3/14					1,164.99
Totals			\$4,659.35	\$5,325.05	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, see the Wells Fargo Account Fee and Information Schedule and Account Agreement applicable to your account (EasyPay Card Terms and Conditions for prepaid cards) or talk to a banker. Go to wellsfargo.com/feesfaq for a link to these documents, and answers to common monthly service fee questions.

Fee period 02/15/2018 - 03/14/2018	Standard monthly service fee \$10.00	You paid \$0.00
How to avoid the monthly service fee	Minimum required	This fee period
Have any ONE of the following account requirements		
- Minimum daily balance	\$1,500.00	\$622.57 ☐
- Total amount of qualifying direct deposits	\$500.00	\$1,014.38 ☒
- Total number of posted Wells Fargo Debit Card purchases and/or payments	10	35 ☒
- The fee is waived when the account is linked to a Wells Fargo Campus ATM or Campus Debit Card		
Monthly service fee discount(s) (applied when box is checked)		
Age of primary account owner is 17 - 24 (\$5.00 discount)	☐	
none		



IMPORTANT ACCOUNT INFORMATION

Important information about legal process fees.

The fee for legal order processing, which includes handling fees, writs, garnishments, and any other legal documents that require funds to be attached, remains \$125. However, effective 2/16/18, the bank will assess no more than two legal process fees per account, per calendar month. Please note, the calendar month may not coincide with your statement cycle.

Visit Wells Fargo Online Banking to track your progress toward avoiding the monthly service fee* with 10 posted debit card purchases/payments. Select Debit Card Activity on the Account Activity page in Wells Fargo Online Banking to see how many posted debit card purchases/payments have been made in the fee period, plus how many are still needed to avoid the monthly service fee.

*Available for Everyday Checking, Way2Save Checking and Opportunity Checking accounts.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

PROCEDURE TITLE

PROCEDURE NO. 707

PRELIMINARY/FOLLOW-UP INVESTIGATIONS

I. POLICY

All members of the Richland County Sheriff's Department must clearly understand their responsibilities for the conduct of preliminary and follow-up criminal investigations and complaints of organized crime, vice, and narcotics.

II. PROCEDURE

A. The preliminary investigations: The success of an investigation depends greatly upon the initial observations and actions of the first officer to arrive. Preliminary investigations shall begin when the first officer arrives on the scene and shall continue until that officer is relieved by an investigator. The transfer of the case to the investigator must not jeopardize successful completion of the investigation. The following procedure shall be followed unless the particular action is unwarranted by the circumstances:

1. Obtain aid for the injured.
2. Secure and protect persons.
3. Determine what specific crime has occurred.
4. Determine the identity of the suspect(s) and effect an arrest if it can be accomplished either at the scene or through immediate pursuit.
5. Relay all available information to other personnel if the suspect(s) is/are not in custody.
6. Obtain statements from the victim, witnesses, and suspects if an investigator is not available to come to the scene.
7. Interview witnesses and victims.
8. Preserve the crime scene and evidence.
9. Record all the pertinent data on the appropriate report forms.

B. Responsibility for conducting preliminary investigation:

1. The assigned/dispatched officer is responsible for the preliminary investigation. Note that on some occasions a uniformed officer may hamper an investigation; therefore, it may be necessary to dispatch an investigator or other officer who has special skills.
2. The nature of certain crimes requires the immediate notification of investigators and their response to the scene. Such cases include:



**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 707

- a. Death of a violent or suspicious nature.
 - b. Serious sex crimes.
 - c. Serious injury assaults.
 - d. Armed robberies.
 - e. Other situations where the uniformed officer believes assistance is required.
3. Upon the arrival of an investigator, the preliminary officer shall relinquish responsibility for the initial investigation to that investigator. The investigator will ensure an adequate and complete preliminary investigation has been conducted. He/she will do this by reviewing the incident report for accuracy and completeness.
- C. Follow-up investigation: The follow-up investigation is an extension of the preliminary investigation. The officer may be needed along with the investigator for follow-up investigation which shall include:
 1. The review, consolidation, and analyzing of the reports.
 2. Re-interviewing victims and witnesses for any additional information if required.
 3. Arranging for the analysis and evaluation of evidence with Lab personnel.
 4. Interviewing suspects.
 5. Identifying and apprehending the offender.
 6. Determining if the suspect may be involved or responsible for the commission of other crimes.
 7. Recording information received and preparing the case for court presentation.
- D. Responsibility for conducting follow-up investigations:
 1. The assigned uniform patrol officer shall be responsible for conducting and completing the investigation of non-criminal calls for service and the follow-up investigation of some misdemeanor crimes.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 707

2. If the investigating uniform patrol officer has not completed the case by the end of his tour of duty, the Major of Investigations or his designee may either assign the case to an investigator or hold the case for the original officer. If the case will not be jeopardized by temporary discontinuance, it shall remain the responsibility of the assigned officer.
3. The Investigations Division will be responsible for the follow-up investigations of felonies and assigned misdemeanors. Case assignment shall be made by the Major of Investigations or his designee.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

PROCEDURE TITLE	PROCEDURE NO. 901
INVESTIGATIONS	

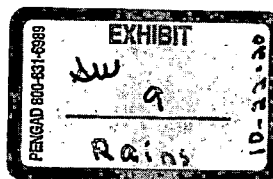
I. POLICY

All members of the department must clearly understand their responsibilities for the conducting of preliminary and follow-up criminal investigations and of complaints of organized crime.

II. PROCEDURE

A. Preliminary Investigations:

1. The preliminary investigation begins when the first unit arrives at the scene of a crime (or a citizen requests assistance by telephone) and continues until postponement of the investigation or until specialized detectives can intervene assuming postponement will not jeopardize the investigation.
2. The following officer responsibilities are part of the preliminary investigation and will vary according to the type of crime:
 - a. Provide aid to the injured.
 - b. Protect the crime scene to ensure evidence is not lost or contaminated.
 - c. Determine if an offense has actually been committed, and, if so, the exact nature of the offense. Certain offenses will necessitate calling for investigative units.
 - d. Determine the identity of the suspect(s) and effect an arrest if it can be accomplished either at the scene or through immediate pursuit.
 - e. Furnish other field units with descriptions, method and direction of flight of suspects, and/or other relevant information concerning wanted suspect(s) or vehicles.
 - f. Obtain complete identification of all witnesses.
 - g. Determine what information is known by the victim and each witness.
 - h. Determine in detail the exact circumstances of the offense.



**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 901

- i. Arrange for collection of evidence.
 - j. Arrange for crime scene processing.
 - k. Decide the necessity of follow-up surveillance of the crime scene.
 - l. Accurately and completely record all pertinent information on the prescribed investigative follow-up.
 3. The initial stages of all preliminary investigations will be conducted by patrol officers. In certain serious crimes, investigators will be called, will respond, and will assume responsibility for completion of the investigation.
 4. As soon as the preliminary investigation is concluded by a uniformed officer, the initial incident report should be completed. The incident report should be brief. Questions of **who, what, when, and where** will be described prior to the narrative section of the incident report. The narrative should tell, insofar as the officer can determine, the "**how**" and "**why**" of the incident. All additional information obtained at the scene of the offense should be documented on investigative follow-up report forms.
 5. It shall be the responsibility of the shift supervisor to ensure an adequate and complete preliminary investigation has been conducted and to review, screen, and approve all incident, supplemental, and investigative follow-up reports. In the case of those offenses reported directly to and handled completely by Investigations, the Major of the Investigations Division will be responsible for ensuring proper reporting.
- B. Serious Crimes - Investigations Division Response:
1. The following offenses require the immediate assignment of an investigator to assume responsibility for completing the preliminary investigation and beginning the follow-up investigation:
 - a. Death of a violent or suspicious nature.
 - b. Criminal sexual conduct offenses.
 - c. Assaults, serious injury or death of a victim.
 - d. Armed robberies of commercial institutions.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 901

- e. Burglaries where there is excessive or unusual loss (high dollar value, negotiables, cash, jewelry, silver etc.) or when an arrest for burglary has been made, the burglary Supervisor on call will be notified. A burglary investigator will be designated to respond and assume the investigation.
 - f. Any major disaster (where investigators can assist in identification of victims).
 - g. Hostage situations.
 - h. Kidnappings, extortion.
 - i. Bombings.
 - 2. An investigator(s) will be assigned on each shift and will be contacted to conduct the investigation of offenses listed above.
 - 3. In the event the investigator on call is unavailable, the Investigations Division Supervisor will be contacted and will provide investigative services as soon as possible.
 - 4. If requested by the assigned investigator, the Shift Supervisor will provide patrol personnel, as available, to assist with protection of the crime scene, traffic, crowd control, witness canvass or other duties.
 - 5. Supervisor on call for homicides will be notified in all cases of violent or suspicious deaths.
- C. Follow-Up Investigation:
- 1. The follow-up investigation is an extension of preliminary investigation. The purpose of the follow-up is to provide additional investigation in order to effect the arrest of an offender or recover stolen property.
 - 2. Officer or investigator responsibilities of the follow-up investigation include:
 - a. Identification and apprehension of the offender.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 901

- b. Collection of additional evidence and arrangements for the analysis and evaluation of the evidence. If the evidence was sent to the lab, on its return, to review lab results.
 - c. Recovery of stolen property.
 - d. Conduct additional interviews of victims and witnesses as required. Statements will be obtained by investigators following CID guidelines.
 - e. Conduct any additional interrogation of suspects as required.
 - f. Seek other information from officers and informants.
 - g. Review department records pertaining to other similar offenses to determine if other crimes may have been committed by the suspects. Review all information contained in the case file (preliminary investigation and earlier follow-up reports) concerning this offense.
 - h. Recording of information obtained and addendum reports as required.
 - i. Give out information as appropriate.
 - j. If necessary, plan, organize, and conduct searches.
 - k. Arrange for polygraph examinations, if necessary.
 - l. Prepare case file folder on suspect(s) for court.
 - m. Check suspect's local police record and criminal history.
- D. Relationships With the Solicitor:
- 1. All personnel are required to make appointments in advance, be on time, have subject for discussion ready, and keep conversations brief.
 - 2. In every known contested case, misdemeanor or felony, the officer involved will make an appointment with the Assistant Solicitor to discuss the case before trial.
 - 3. During any investigation (or during planning for arrest or pretrial stages) any questions of law or criminal procedure will be addressed to the

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 901

Solicitor or assistant. On cases where an arrest is made as a result of a freshly committed General Sessions case, the officer signing the warrant at Bond Court will review the case with the Solicitor or his assistant at that time.

4. Any case which the Solicitor's Office dismisses or declines to prosecute due to mishandling by the Sheriff's Department will be reviewed by the Supervisor of the officer involved or by the Deputy Chief of Investigations or his designee.

E. Organized/Vice Crimes and Law Enforcement Intelligence Information and Complaints:

1. Officers may receive information on or complaints regarding organized crime, vice, or matters of law enforcement intelligence which demand investigation. Organized crime and vice activities and areas of law enforcement intelligence interest may include any of the following:
 - a. Corruption, extortion, bribery.
 - b. Illegal sale and distribution of liquor, tobacco, firearms or controlled substances.
 - c. Prostitution, pornography.
 - d. Gambling.
 - e. Theft/fencing rings.
 - f. Loan sharking or labor racketeering.
 - g. Terrorism, subversive activities, civil disorders.
2. Officers receiving such information will prepare an incident/information report which should include the following information:
 - a. Type of illegal/suspected activity, location, names and addresses of suspect involved and information concerning the activities.
 - b. If complainant; name, address, and telephone number.
3. Initially, the reporting officer will conduct no preliminary or follow-up investigation but will personally contact the Deputy Chief of Investigations or the Major of Investigations.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 901

4. The CID Supervisor to whom it was reported will determine whether the reported information:
 - a. Relates to an ongoing investigation, and, if so, ensure the new information report is incorporated.
 - b. Should be followed up with a preliminary investigation. If so, the Deputy Chief of Investigations Division will coordinate the investigation with the officer reporting and the Shift Supervisor.
 - c. Is significant and should be coordinated with other investigative agencies (County, State, or Federal) due to the jurisdiction or activities involved.
5. The Deputy Chief of Investigations will ensure any information which is provided by any department employee is:
 - a. Made a matter of record, analyzed and used appropriately.
 - b. Called to the attention of the CID Major.
 - c. Kept confidential and the reporting person's name not used or released unless required by law. Only those with a need-to-know will be informed of such investigative activity.
6. Follow-up investigative activity will be reported on investigative reports. The Deputy Chief of Investigations will ensure proper accounting for and processing of reports.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

PROCEDURE TITLE

PROCEDURE NO. 106

LEGAL AUTHORITY AND RECOGNITION OF CONSTITUTIONAL RIGHTS

I. POLICY

The U.S. Constitution guarantees all citizens certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the nation, state, and county.

II. PROCEDURE

A. Law Enforcement Authority To Enforce Laws:

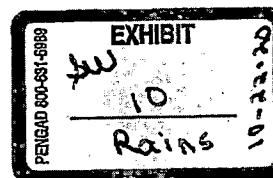
- 1.. Section 23-27-80 of the SC Code of Laws gives law enforcement department's the authority to enforce the criminal laws of the state and ordinances and regulations of the jurisdiction in which they are appointed.
2. Section 23-13-20 of the SC Code of Laws requires that all officers, upon entering their office, take an oath whereby they swear to support the Constitution of the United States and the State of South Carolina.
3. Section 23-27-70 of the SC Code of Laws requires that all officers upon entering their office be bonded.

B. Limitations on Law Enforcement Authority:

1. Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the Attorney General and Solicitor, departmental policies/rules and regulations, and county administrative decisions.
2. Courts constantly interpret laws that place limitations on the authority of law enforcement officers. The more common include: Miranda rights/warnings, rulings on search and seizure, eyewitness identification, and lineups.

C. The Fifth Amendment Right Against Self-Incrimination:

1. The voluminous case law covering Miranda warnings has established several guidelines for officers to help decide when the warnings must be



**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

administered. If a person is taken into custody and subject to interrogation, Miranda warnings must be administered. As to what constitutes "custody", if the suspect is not free to leave and he reasonably believes that he is not free to leave, then he is in custody. In determining if a suspect is free to leave the police officer's presence, a court will look at the circumstances of the interview: if police questioning is conducted in a police car or at a police station, the environment may be construed a coercive one and the interview custodial. Concerning the interrogation; if officers conduct routine, preliminary questioning near or at the scene of an investigation, no "custodial interrogation" exists and Miranda is not required. When the questioning focuses on specific behavior concerning a specific offense, then Miranda is required. Miranda warnings must be administered when:

- a. The suspect is in custody (i.e., not free to leave), and
 - b. The suspect believes he cannot leave, and
 - c. The suspect is subject to interrogation, then Miranda must be administered.
2. Officers will advise suspects of their Miranda warnings:
- a. "You have the right to remain silent."
 - b. "Anything you say can be used against you in court."
 - c. You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning."
 - d. "If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish."
 - e. "If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

3. After the warning, in order to secure a waiver, the officer shall ask and receive affirmative replies to the following questions:
 - a. "Do you understand each of these rights I have explained to you?"
 - b. "Having these rights in mind, do you wish to talk to us now?"
 4. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the waiver of rights form.
- D. Law Enforcement Limitations on Search and Seizure: The Fourth Amendment guarantees the right for people to be free from unreasonable search and seizure of their homes, persons, and property. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except the following:
1. Consent Searches: The consent must be voluntarily given by someone who has the authority to relinquish their right. Whenever practical, officers will get written consent. Officers should carefully observe the court-imposed considerations in determining whether consent was voluntarily given. Further, consent may be withdrawn at any time, and the search must be discontinued until a warrant can be obtained.
 2. Emergency to Save Life or Property or Exigent Circumstances: An emergency must exist. The primary motive must be to protect property or people, and the area searched must be associated with the emergency.
 3. Plain View: The officer must be legally where he can discover fruits/instrumentalities/evidence/contraband, the discovery must be inadvertent, and the property must be recognized as fruit/instrumentalities/evidence of a crime or contraband.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

4. Abandoned Property.
 5. Inventory Searches of Vehicles.
 6. Incident to Arrest: Only the area within the immediate control of the person may be searched.
 7. Emergency Search to Prevent Destruction/Loss of Evidence.
 8. Hot Pursuit.
- E. Probable Cause: Most searches and all arrests are based on the police officer's perception of probable cause. According to the Supreme Court, "Probable cause exists where the facts and circumstances within the knowledge of the arresting officers and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in believing that an offense has been committed or is being committed..."
- F. Police Limitations Pertaining to Eyewitness Identifications: Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by officers. Eyewitness identifications may take the following form:
1. On-Scene Investigation: One-on-one identifications have been constitutional so long as the period of time between the offense and the identification is reasonable.
 2. Line-Ups: Line-ups should be conducted using a minimum of six persons who have physical characteristics similar to the suspect. The accused has the right to have an attorney present during the line-up, and the line-up may not take place until the attorney is present. The attorney may not offer any suggestions during the conduct of the line-up but he may observe. All line-ups must be documented by the department as to date, time, place, name of participants and witnesses and location of suspects participants.
 3. Photo Line-Ups: In conducting photo line-ups, the photos must depict persons displaying similar physical characteristics as the suspect.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

Simply showing an eyewitness a single photo of the suspect has been ruled unconstitutional. As a general rule, a photo line-up containing six photos is reasonable. Photographs shown to witnesses will not contain any identifying information. Photo line-ups will be documented.

- G. Limitations on Law Enforcement Authority by Local Courts: Occasionally, the local courts may limit law enforcement authority to enforce state statutes and local ordinances. These limitations include, but are not limited to:
 - 1. The enforcement of certain parking ordinances.
 - 2. The handling of juvenile offenders.
 - 3. The issuance of summonses as opposed to arrests/incarceration.
 - 4. Restrictions relating to the animal control ordinances.
- H. Limitations on Police Authority by the Solicitor: Occasionally, the solicitor may issue opinions which may impose limitations on officers. These areas include, but are not limited to:
 - 1. Prosecution of certain cases.
 - 2. Extradition.
 - 3. Enforcement of certain statutes pending opinions from the Attorney General's Office.
- I. Limitations on Law Enforcement Actions by County Council or the Sheriff include, but are not limited to:
 - 1. City/town tag violations.
 - 2. Parking violations.
 - 3. All Department policy/rules and regulations concerning the use of force (see Procedure No. 601, "Use of Force".)
- J. Changes In Laws/Interpretational Limitations: Periodically, changes take place which may impose new limitations on police authority or remove or alter existing

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

limitations. Normally, annual updates on such changes are provided to all personnel by the Solicitor. In case immediate changes in departmental operations are required, the Solicitor's Office may provide information orally and confirm it in writing.

K. Compliance With Constitutional Requirements During Criminal Investigations:

1. All statements or confessions will be voluntary and non-coercive.
2. All persons will be advised of their rights in accordance with this general order.
3. All arrested persons will be taken promptly before a magistrate for formal charging.
4. All persons accused or suspected of a criminal violation for which they are being interrogated will be afforded an opportunity to consult with an attorney.
5. Prejudicial pre-trial publicity of the accused will be avoided so as not to interfere with a defendant's right to a fair and impartial trial (see Procedure No. 303. "Media Relations".)

L. The Use of Discretion by Officers:

1. Officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides officers with written policy and procedures, departmental orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
2. With the exception of departmental rules and regulations, departmental policy generally gives officers guidelines to consider in exercising their discretion. It is up to the individual officer to consider the relevant facts and the situation; and then, using knowledge, training, and good judgment make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

M. Alternatives to Arrest/Pre-arraignment Confinement:

1. Under certain circumstances, officers are faced with situations where an arrest and pre-arraignment confinement will not be possible. In this case, officers may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply a warning. Examples may include:
 - a. Mentally or emotionally disturbed persons.
 - b. Domestic situations where counseling may be appropriate.
 - c. Juvenile offenders (see Procedure No. 709. "Juveniles").
 - d. Transient persons who need shelter and food.
 - e. Certain misdemeanor cases.
2. Authority to Issue Summonses in Lieu of Arrest/Confinement: Code 56-7-10 of the SC Code of Laws authorizes law enforcement officers to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except DUI and drunk in public.
3. The Use of Summonses by Officers: In determining whether a summons should be used the officer should:
 - a. Decide whether the offense committed is serious.
 - b. Make a judgment as to whether the accused poses a danger to the public or himself.
 - c. Decide, based on circumstances, whether the person may disregard a summons.
4. Informal Handling of Criminal Matters: Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the officer, a better solution to the problem will be achieved by use of alternatives to enforcement action, he should refer the citizen to a social services agency.
5. Use of Warnings as an Alternative to Arrest: The use of warnings may sometimes provide a satisfactory solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in a traffic offense, but occasionally can be applied to

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 106

criminal offenses. In determining if a warning should be issued, the officer should consider:

- a. The seriousness of the offense.
- b. The likelihood that the violator will heed the warning.
- c. The reputation of the violator, i.e., known repeat offender, if they have received previous warnings, etc.

N. Limitations On Intelligence Activity:

- 1. Department intelligence gathering activities will be limited to that information concerning criminal conduct that relates to activities that present a threat to the community.
- 2. Department personnel and equipment will only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law and only with the advance approval of the Sheriff.
- 3. Intelligence information will be collected, used, and processed in full compliance with all laws.
- 4. See Procedure No. 902. "Use of Informants."

ARREST WARRANT

2018A4010700088

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Upper Township Magistrate

THE STATE against **1603003301**

Christopher R Shimeld

Address: **4017 Percival Rd**
Columbia, SC 29229.

Phone: _____ SSN: _____

Sex: **M** Race: **W** Height: **5 10** Weight: **180**

DL State: **SC** DL #: **103622789**

DOB: **9/1/1983** Agency ORI #: **SC0400080**

Prosecuting Agency: **Richland County Sheriff**

Prosecuting Officer: **Vicki L Rains - S00796**

Offense: **Burglary / Burglary (Non-Violent) - Second degree**

Offense Code: **0080**

Code/Ordinance Sec: **16-11-0312**

This warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of

This accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge _____

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant on _____

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

Richland County General Sessions

1701 Main Street

P O Box 192

Columbia, SC 29202

ORIGINAL

ENTERED NOIC 319-18

NOIC 319-18

9/13/2018

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Upper Township Magistrate

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Agency General Sept 21, 2003 SCDA 518

Personally appeared before me the affiant **Vicki L Rains** who being duly sworn deposes and says that defendant **Christopher R Shimeld** did within this county and state on or about **2/28/2018** violate the criminal laws of the State of South Carolina for ordinance of ☒ County/ ☐ Municipality of **Richland / Upper Township Magistrate** in the following particulars:

DESCRIPTION OF OFFENSE: **Burglary / Burglary (Non-Violent) - Second degree**

I hereby state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 02/28/2018 while at 10890 Two Notch Rd., in the Pontiac Magisterial District of Richland County, it is believed that the defendant did commit the crime of Burglary 2nd because the defendant did willfully and unlawfully force entry by cutting through the back of the business and entering through the office where the camera was unplugged and the alarm system was torn from the ceiling and destroyed. There is a fingerprint match for the defendant on the alarm box that was torn from the ceiling. I spoke with the manager of the alarm company who installed the alarm system and he stated he has never heard of the defendant nor has the defendant ever been employed by the alarm company who installed the alarm. The victim stated the defendant has never been in the office with the alarm system and he does not know the defendant. The estimated amount of Theft is \$28,000. Affiant and others are witnesses to prove same.

Signature of Affiant **Vicki Rains**

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Upper Township

Affiant's Address **5623 Two Notch Road**
Columbia, SC 29223

Affiant's Telephone **(803)576-3000**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about **2/28/2018** defendant **Christopher R Shimeld** did violate the criminal laws of the State of South Carolina for ordinance of ☒ County/ ☐ Municipality of **Richland / Upper Township Magistrate** as set forth below.

DESCRIPTION OF OFFENSE: **Burglary / Burglary (Non-Violent) - Second degree**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on **3/16/2018**

Signature of Issuing Judge **Tomothy Clinton Edmond**

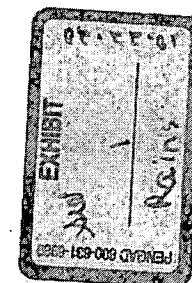
Judge Code **7154**

Judge's Address **4919 Rhet Street**
Columbia, SC 29203-4528

Judge's Telephone **(803)576-2570**

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL **ORIGINAL** **ORIGINAL**



00516-A-055

226

RECEIVED

2018 MAR 19 PM 12:00

RCSO

1 State of South Carolina)
 2 County of Richland)
 3
 4 Christopher Shimeld,)
 5)
 6)
 7)
 8)
 9)
 10)
 11)
 12)
 13)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)
 29)
 30)
 31)
 32)
 33)
 34)
 35)
 36)
 37)
 38)
 39)
 40)
 41)
 42)
 43)
 44)
 45)
 46)
 47)
 48)
 49)
 50)
 51)
 52)
 53)
 54)
 55)
 56)
 57)
 58)
 59)
 60)
 61)
 62)
 63)
 64)
 65)
 66)
 67)
 68)
 69)
 70)
 71)
 72)
 73)
 74)
 75)
 76)
 77)
 78)
 79)
 80)
 81)
 82)
 83)
 84)
 85)
 86)
 87)
 88)
 89)
 90)
 91)
 92)
 93)
 94)
 95)
 96)
 97)
 98)
 99)
 100)
 101)
 102)
 103)
 104)
 105)
 106)
 107)
 108)
 109)
 110)
 111)
 112)
 113)
 114)
 115)
 116)
 117)
 118)
 119)
 120)
 121)
 122)
 123)
 124)
 125)
 126)
 127)
 128)
 129)
 130)
 131)
 132)
 133)
 134)
 135)
 136)
 137)
 138)
 139)
 140)
 141)
 142)
 143)
 144)
 145)
 146)
 147)
 148)
 149)
 150)
 151)
 152)
 153)
 154)
 155)
 156)
 157)
 158)
 159)
 160)
 161)
 162)
 163)
 164)
 165)
 166)
 167)
 168)
 169)
 170)
 171)
 172)
 173)
 174)
 175)
 176)
 177)
 178)
 179)
 180)
 181)
 182)
 183)
 184)
 185)
 186)
 187)
 188)
 189)
 190)
 191)
 192)
 193)
 194)
 195)
 196)
 197)
 198)
 199)
 200)
 201)
 202)
 203)
 204)
 205)
 206)
 207)
 208)
 209)
 210)
 211)
 212)
 213)
 214)
 215)
 216)
 217)
 218)
 219)
 220)
 221)
 222)
 223)
 224)
 225)
 226)
 227)
 228)
 229)
 230)
 231)
 232)
 233)
 234)
 235)
 236)
 237)
 238)
 239)
 240)
 241)
 242)
 243)
 244)
 245)
 246)
 247)
 248)
 249)
 250)
 251)
 252)
 253)
 254)
 255)
 256)
 257)
 258)
 259)
 260)
 261)
 262)
 263)
 264)
 265)
 266)
 267)
 268)
 269)
 270)
 271)
 272)
 273)
 274)
 275)
 276)
 277)
 278)
 279)
 280)
 281)
 282)
 283)
 284)
 285)
 286)
 287)
 288)
 289)
 290)
 291)
 292)
 293)
 294)
 295)
 296)
 297)
 298)
 299)
 300)
 301)
 302)
 303)
 304)
 305)
 306)
 307)
 308)
 309)
 310)
 311)
 312)
 313)
 314)
 315)
 316)
 317)
 318)
 319)
 320)
 321)
 322)
 323)
 324)
 325)
 326)
 327)
 328)
 329)
 330)
 331)
 332)
 333)
 334)
 335)
 336)
 337)
 338)
 339)
 340)
 341)
 342)
 343)
 344)
 345)
 346)
 347)
 348)
 349)
 350)
 351)
 352)
 353)
 354)
 355)
 356)
 357)
 358)
 359)
 360)
 361)
 362)
 363)
 364)
 365)
 366)
 367)
 368)
 369)
 370)
 371)
 372)
 373)
 374)
 375)
 376)
 377)
 378)
 379)
 380)
 381)
 382)
 383)
 384)
 385)
 386)
 387)
 388)
 389)
 390)
 391)
 392)
 393)
 394)
 395)
 396)
 397)
 398)
 399)
 400)
 401)
 402)
 403)
 404)
 405)
 406)
 407)
 408)
 409)
 410)
 411)
 412)
 413)
 414)
 415)
 416)
 417)
 418)
 419)
 420)
 421)
 422)
 423)
 424)
 425)
 426)
 427)
 428)
 429)
 430)
 431)
 432)
 433)
 434)
 435)
 436)
 437)
 438)
 439)
 440)
 441)
 442)
 443)
 444)
 445)
 446)
 447)
 448)
 449)
 450)
 451)
 452)
 453)
 454)
 455)
 456)
 457)
 458)
 459)
 460)
 461)
 462)
 463)
 464)
 465)
 466)
 467)
 468)
 469)
 470)
 471)
 472)
 473)
 474)
 475)
 476)
 477)
 478)
 479)
 480)
 481)
 482)
 483)
 484)
 485)
 486)
 487)
 488)
 489)
 490)
 491)
 492)
 493)
 494)
 495)
 496)
 497)
 498)
 499)
 500)
 501)
 502)
 503)
 504)
 505)
 506)
 507)
 508)
 509)
 510)
 511)
 512)
 513)
 514)
 515)
 516)
 517)
 518)
 519)
 520)
 521)
 522)
 523)
 524)
 525)
 526)
 527)
 528)
 529)
 530)
 531)
 532)
 533)
 534)
 535)
 536)
 537)
 538)
 539)
 540)
 541)
 542)
 543)
 544)
 545)
 546)
 547)
 548)
 549)
 550)
 551)
 552)
 553)
 554)
 555)
 556)
 557)
 558)
 559)
 560)
 561)
 562)
 563)
 564)
 565)
 566)
 567)
 568)
 569)
 570)
 571)
 572)
 573)
 574)
 575)
 576)
 577)
 578)
 579)
 580)
 581)
 582)
 583)
 584)
 585)
 586)
 587)
 588)
 589)
 590)
 591)
 592)
 593)
 594)
 595)
 596)
 597)
 598)
 599)
 600)
 601)
 602)
 603)
 604)
 605)
 606)
 607)
 608)
 609)
 610)
 611)
 612)
 613)
 614)
 615)
 616)
 617)
 618)
 619)
 620)
 621)
 622)
 623)
 624)
 625)
 626)
 627)
 628)
 629)
 630)
 631)
 632)
 633)
 634)
 635)
 636)
 637)
 638)
 639)
 640)
 641)
 642)
 643)
 644)
 645)
 646)
 647)
 648)
 649)
 650)
 651)
 652)
 653)
 654)
 655)
 656)
 657)
 658)
 659)
 660)
 661)
 662)
 663)
 664)
 665)
 666)
 667)
 668)
 669)
 670)
 671)
 672)
 673)
 674)
 675)
 676)
 677)
 678)
 679)
 680)
 681)
 682)
 683)
 684)
 685)
 686)
 687)
 688)
 689)
 690)
 691)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

Certificate of Reporter

41

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held September 27,
2 2021, beginning at 10:39 AM.)

3 THE COURT: The next matter I have is Christopher
4 Shimeld vs. Richland County Sheriff. It's Docket Number
5 2019-CP-40-01299. The plaintiff is represented by Joshua
6 Snow -- Joshua Kendrick. The defense is represented by
7 Robby Garfield.

8 We're here on a motion for summary judgment that
9 was filed by the sheriff's -- Richland County Sheriff's
10 Office.

11 I have received the motion and the plaintiff's
12 response in opposition and I believe that there were a
13 number of exhibits that were provided to me as well.

14 And so, Mr. Garfield, I'll hear from you on your
15 motion. I know several of your motions relate to
16 immunity under the Tort Claims Act.

17 Okay. And I don't know that I received a memo in
18 fav -- in -- to support the summary judgment motion. I
19 may have missed it.

20 MR. GARFIELD: No, ma'am. Can you hear me?

21 THE COURT: Yes, I can hear you.

22 MR. GARFIELD: Okay. Very good. Good morning.

23 THE COURT: Good morning.

24 MR. GARFIELD: We -- we did not file a motion in
25 support. We did believe that it may be more useful --

1 what I've done is trying to -- my best to duplicate what
2 we would be doing live. I have e-mailed chambers or
3 e-mailed you directly and copied your assistant -- or,
4 excuse me, your law clerk with a series of exhibits, I
5 believe they're printed all, that might assist you.

6 And if -- Your Honor, if this is convenient for you
7 or a convenient way to present my argument, I could just
8 -- I'm just going to -- it's 1 through 10, and I would
9 just refer to each one sequentially. And Mr. Kendrick
10 has a copy of this as well.

11 THE COURT: All right. And then there are also
12 excerpts from a deposition?

13 MR. GARFIELD: Yes, ma'am. I think Mr. Kendrick
14 provided the investigator, Vicki Rains, he had his own
15 trans -- excuse me -- excerpts and I have mine as one of
16 my exhibits.

17 THE COURT: Okay. I just want to make sure I put
18 the correct documents with the -- together.

19 MR. GARFIELD: Yes, ma'am.

20 THE COURT: Okay. I did -- I did receive the
21 plaintiff's response in opposition and so Mr. -- Mr.
22 Kendrick, the -- the deposition excerpts are -- are --
23 are with your memo in opposition.

24 MR. KENDRICK: Yes, ma'am. Can you hear me?

25 THE COURT: Yes. Thank you.

1 MR. KENDRICK: Not like during your last hearing
2 when I saw -- saw the audio problem. I just wanted to
3 make sure.

4 THE COURT: Yeah. That's wonderful technology.

5 Okay. Mr. Garfield, I have your exhibits and I've
6 made copies of them so I can refer to them as we go
7 through.

8 Yes, sir.

9 MR. GARFIELD: Oh, terrific. Okay. That was quick.
10 All right. That's great.

11 And Mr. -- if I may just ask Josh, do you have my
12 e-mail?

13 MR. KENDRICK: I just got it.

14 MR. GARFIELD: Okay. All right. So just -- I can
15 slow down and allow everybody to pull it up on -- if
16 needed, but --

17 MR. KENDRICK: Yeah.

18 MR. GARFIELD: Anyway, but thank you, Your Honor.

19 This is the motion for summary judgment on behalf
20 of the sheriff's office. It would be also known as
21 Sheriff Lott, in his official capacity. It's a
22 procedural issue, but anyway, the background of this case
23 is fairly interesting may be a good way of putting it.
24 Taking the facts that we would present in the light most
25 favorably to the plaintiff obviously, I'm gonna give you

1 -- give the Court some broad strokes here.

2 THE COURT: And -- and let me tell you, I --

3 MR. GARFIELD: Yes, ma'am.

4 THE COURT: -- I did kind of go through, so I --
5 I did not read the complaint in detail, but I think I
6 understand the gist of what -- kind of what occurred and
7 -- and the fact that I have all the fingerprints and
8 some other things and the supplementary reports and some
9 of the things that are in your exhibits, I think I kind
10 of understand where the lawsuit came from.

11 MR. GARFIELD: Yes, ma'am.

12 And -- and I struggle with that, too, because I --
13 I looked at the complaint and looked at Mr. Kendrick's
14 well done brief and -- and I'd like to kind of start at
15 the beginning and if I go over some things that's sort
16 of what the Court has, if you would just please tell me
17 to move it along, but I -- I think I can keep this fairly
18 broad moving into our legal argument.

19 So as Your Honor knows, this is a convenience store
20 on Two Notch. It's up between Pontiac and Elgin in
21 Richland county. It was burglarized in the early morning
22 hours of March 1st. It's what was called at the time
23 Discount Tobacco. What may not be specifically -- it may
24 be deep -- deeper in the exhibits for the plaintiff, but
25 it may not be what you've reviewed, the initial police

1 report, the officer that responded, what he or she found
2 was that the suspect had cut through the inner drywall
3 to gain entry, went inside. This subject had rummaged
4 through the office, they had cleaned out \$25,000 in cash
5 and merchandise. It was like over 160 cartons of
6 cigarettes, which is interesting in itself, but the --
7 the key here is that because the wires to the alarm box
8 and the wires to the surveillance camera were cut, there
9 was no alarm notification that would have otherwise
10 alerted law enforcement.

11 And the -- the first of my exhibits is Exhibit 1,
12 and I just really kind of extract one portion of the
13 crime scene, which I'll refer to a little bit here.
14 You'll see a -- a bunch of almost thumb -- thumbnail
15 pictures that Your Honor can see the -- the alarm box,
16 see the alarm decal and see the condition of the office
17 after the burglary.

18 Anyway, the sheriff's department assigned the case
19 to an investigator name Vicki Rains and her first step
20 was to interview the owner name Mr. Ardab. My information
21 is Mr. Ardab has since either sold his interest in the
22 store and has moved out of the country. No one has
23 deposed him. But Mr. Ardab is the owner and the listed
24 victim.

25 He came down to headquarters. He gave a statement

1 and as Your -- Your Honor probably saw the part he -- he
2 provided the name of this individual named Hank Osborne,
3 who is -- who initially installed the security system,
4 and according to Mr. Ardab he told investigator Rains
5 that he was very suspicious because he had come to the
6 store several times and what appeared to Mr. Ardab to
7 look like he was casing his office. So Investigator
8 Rains tries to find Hank Osborne. Her attempts are
9 unsuccessful.

10 And as Your Honor alluded to, at about this time
11 latent prints were lifted from the alarm box, which Your
12 Honor can see in this first exhibit, and the print was
13 of a middle fingerprint that was lifted on the right side
14 of this box top and what -- the key here is that this is
15 ADS. It's a -- it's an alarm company. I believe it's a
16 nationally known one, but it's franchised here in this
17 area, ADS, and this -- the fingerprint was tested and
18 received a positive match, results were communicated to
19 Investigator Rains. Investigator Rains learns that this
20 fingerprint belonged to the plaintiff, Christopher
21 Shimeld. She gets his DMV report, she finds the autos,
22 demographics, she finds out that he's got a valid current
23 South Carolina drivers license and he lives somewhere in
24 an apartment complex on Percival Road. She goes out to
25 the apartment complex and she can't locate him. Her

1 information is that he's moved out.

2 So now Investigator Rains has an ADS alarm box with
3 the plaintiff's fingerprints and according to her, which
4 she testified to in her deposition, she really didn't
5 know what to make of it. So she does two things in her
6 investigation. One is that she goes back to re-interview
7 Mr. Ardab and the second thing she does is she interviews
8 the manager for the alarm company, ADS.

9 So she interviews Mr. Ardab. Mr. Ardab claims that
10 in his mind, as he's told law enforcement, it's likely --
11 it was likely a two-person job. So Investigator Rains
12 prepares two photo lineups; one with Mr. Oswald's {sic}
13 information and one with plaintiff, and that's Exhibit 2.

14 Your Honor can see the -- the two photo lineups that
15 were presented each separately --

16 THE COURT: Oh, you -- so you're sending me
17 different --

18 MR. GARFIELD: There should ten attachments to my
19 e-mail.

20 THE COURT: Okay. So -- but so they're obviously
21 different than the ones that I have. Okay.

22 MR. GARFIELD: And I'm sorry. I may have mis --
23 mis-communicated that.

24 THE COURT: Okay. I -- I'm probably -- I'm probably
25 looking at the plaintiff's attachments as opposed to

1 yours.

2 Okay. Okay.

3 MR. GARFIELD: I -- I know this is clunky and I'm
4 sorry for that.

5 THE COURT: Yeah.

6 MR. GARFIELD: So, so far I've done Exhibit 1, which
7 was the crime scene photos --

8 THE COURT: Yes, sir.

9 MR. GARFIELD: -- and Number 2 would be the photo
10 lineup.

11 THE COURT: Okay.

12 MR. GARFIELD: And as Your Honor can see, we have
13 two photo lineups. These -- they were provided -- or
14 they were shown separately to Mr. Ardab and the store
15 clerk. Both separately picked out Os -- excuse me,
16 Oswald {sic} and the plaintiff as two males that were
17 seen hanging out together in front of the store. That's
18 the way it was described to her.

19 So next Investigator Rains picks up the phone and
20 she calls the manager of the alarm company. She talks to
21 the manager and he does some looking into things on his
22 end and he confirms to her that in January of 2016, so
23 we're talking about maybe two years before, ADS installed
24 the alarm system for this convenience store and he told
25 her emphatically that Christopher Shimeld, the plaintiff,

1 had never been employed by ADS. In fact, Your Honor,
2 Investigator Rains called the manager a second time to
3 double check to ensure that no employee, maybe even
4 before he was a manager, could go back to see if
5 Mr. Shimeld showed anywhere as an employee and, again,
6 he insisted that the plaintiff had never worked for that
7 company. In fact, he told her that they do their own
8 work. They don't -- like other larger companies, they
9 don't contract work orders. So if anyone had anything
10 to do with ADS they would have been an employee and
11 Shimeld's not one of them.

12 She then goes to the magistrate to present evidence
13 and that's where we come into Exhibit 3, which is the
14 arrest warrant in this case.

15 THE COURT: Okay.

16 MR. GARFIELD: Okay. And the -- the key part of
17 this arrest warrant, and I've highlighted this, is she
18 attesting to the magistrate that entry -- there was a
19 forced entry by cutting through the back of the business
20 and entering through the office where the camera was
21 unplugged and the alarm system was torn from the ceiling
22 and destroyed. There is a fingerprint match of the
23 defendant on the alarm box that was torn from the
24 ceiling. This is -- Investigator Rains additionally
25 attested that she spoke with the manager of the alarm

1 company who installed the alarm system and he stated he
2 had never heard of the defendant, nor has the defendant
3 ever been employed by the alarm company who installed the
4 alarm. The victim stated the defendant had never been --
5 that would be Mr. Ardab -- had never been in the office
6 with the alarm system and he does not even know the
7 defendant. I guess he recognized him from being out
8 there, but he doesn't know him personally. That would
9 be my guess, but seeing that the face of the -- the
10 warrant he claims he had told the investigator he did
11 not know the defendant. The estimated amount of the
12 theft was \$28,000. Now an arrest warrant is issued by
13 a Richland County Magistrate.

14 Now what I'm about to say beyond this point, I've
15 got to say and -- and Mr. Kendrick I -- I think would
16 agree, that there's been a -- there was a bizarre series
17 of events, something that I have not seen in my years of
18 doing this, but we'd submit that it does not reflect on
19 probable cause, but I believe that it's very helpful for
20 the Court to understand what happened here.

21 There were three or four key things that happened.
22 Number one, Investigator Rains has this live warrant and
23 she returns with other investigators back to the apartment
24 complex to serve the warrant on the plaintiff. She speaks
25 with a manager. The manager represents to Investigator

1 Rains that Mr. Shimeld, indeed, had lived there, that he
2 had moved out about a year and a half before, and she
3 additionally explains to -- to the police, the manager,
4 that the plaintiff had moved out in the middle of the
5 night, he left some of this things, he never notified the
6 office. I think there was even comment that he even left
7 some of his security deposit, didn't go back to -- to try
8 to get that back.

9 And, additionally, that the Columbia Police
10 Department had him as a person of interest for a
11 burglary -- a break in. And I'll be real clear, I'm
12 not following up with that. There's no argument made
13 of that. It is just that that is what the manager
14 represented to Investigator Rains.

15 Okay. Be that as it may, sometime around that --
16 these events, the -- there is a live warrant in the
17 system and it goes out over NCIC and there is an event
18 as Your -- Your Honor may have seen in some of the
19 paperwork that the warrant was served on the plaintiff
20 who now resides in the state of Florida -- or, excuse
21 me, that he is detained by local law enforcement in the
22 state of Florida -- Mr. Kendrick will tell me if I'm
23 wrong here -- based on the fact that there is a -- an
24 active arrest warrant for him in South Carolina.

25 That prompts the plaintiff's grandmother to call

1 the investigator and the grandmother tells Investigator
2 Rains that her grandson, the plaintiff, had never been
3 to the state of South Carolina; therefore, he's innocent,
4 and, therefore, he didn't do it, and what was strange to
5 Investigator Rains is that he had a valid South Carolina
6 drivers license and he had lived in this apartment
7 complex.

8 Then Investigator Rains gets a call from
9 Mr. Shimeld's lawyer down in Florida and this lawyer
10 produces receipts and paperwork and records from
11 Mr. Shimeld, and this is in the brief of the plaintiff,
12 from his job, his bank and other sources, I guess, that
13 relates to a potential alibi, saying that he was an
14 alarm contractor. In fact, he worked for ADT as opposed
15 to ADS, two different companies obviously, and that he
16 had been, the plaintiff, in Discount Tobacco, in that
17 store, on behalf of ADT installing the alarm.

18 Well, Investigator Rains, who's justifiably
19 confused at this point, she then calls the manager --
20 or, excuse me, I'm sorry. I have the sequence wrong.
21 She goes back to the evidence room at the Richland
22 County Sheriff's Department and she retrieves the alarm
23 box and she gives it a second inspection, and as Your
24 Honor can see on Exhibit 1 you can see a picture of the
25 alarm box and she notices that this ADS decal, this

1 yellow decal that looks like a stop sign, an octagon,
2 she then takes her fingernail and maneuvers it and she
3 starts -- it comes off, peels off, and under it
4 completely flush with the ADS decal was an ADT sticker
5 that was -- was right under the ADS. So she then sees
6 that ADS slapped on this sticker to represent that ADS
7 either had some sort of -- owned the equipment or
8 operated the equipment or whatever.

9 Investigator Rains then calls the manager of ADS
10 for a third time. He tells the investigator well, this
11 was not a new system as opposed to what Mr. Ardab
12 believed, that he thought he was a buying a new system.
13 What he explained is that it was something called a
14 system takeover. That what that meant was that he
15 changes everything out, the wiring, the guts of the
16 alarm system, and that they retain the metal box and the
17 shell, and it's not unusual for them to slap a sticker
18 on. This was something that the -- the investigator
19 had no information because she reasonably relied on her
20 knowledge -- historical knowledge and her conversations
21 with the manager.

22 She then contacts the warrant division and she takes
23 care -- Investigator Rains, she takes care of things
24 internally so that the warrant can be dismissed. Again,
25 an odd set of circumstances, but that's what happened.

1 Particularly from a law enforcement perspective.

2 So what the plaintiff has done in this case is that
3 he has sued for three causes of action, one being a false
4 arrest claim, and in Exhibit 4 -- and this is for the
5 Court's convenience. Your Honor, I know there are
6 countless times you've heard me make this argument over
7 the years. I don't have a law book in -- or statutes in
8 front of me, but I just did this for the Court's -- for
9 instructive reasons.

10 So we have 15-78-60. We've got the forty exceptions
11 to the waiver of sovereign immunity and there are many
12 that we listed in support of summary judgment. There
13 are really two that I would like to key in on for
14 purposes of our summary judgment. One would be, and
15 we've highlighted it, it would highlighted, it would be
16 15-78-60, Subsection 3, which is the entity not being
17 liable when there's a loss resulting from the execution,
18 enforcement or implementation of the orders of any court.

19 Here we have the plaintiff's lawsuit against the
20 sheriff based on an arrest warrant issued by a Richland
21 County Magistrate. Plain and simple. Taking the facts
22 in the light most favorably to the plaintiff, and I'm
23 looking at this arrest warrant, I see that Judge Edmond
24 -- it came before him. That if -- if Your Honor would
25 look at the signature, you can see on Exhibit 3 that

1 this may have been Her Honorable Valerie Stroman, who's
2 a longtime magistrate, she may have signed in proxy or
3 she issued this arrest warrant.

4 Regardless, there was a determination that probable
5 cause existed to arrest the plaintiff. This was -- from
6 looking at this, there is no reason to think that this
7 was reached in anything other than in an objective
8 capacity, solely in a judicial capacity, and it's for
9 those reasons the sheriff should be afforded sovereign
10 immunity from suit for a false arrest claim.

11 There's -- something to that is that there -- to
12 get into case law, and I'm happy to provide this for
13 the Court, but there is a case that I believe is gonna
14 celebrate its 100th anniversary next year. It's one
15 I've argued many times. It is the Bushardt versus the
16 United Investment Company case from 1922, I'll get
17 you a cite in a moment, that simply stands for the
18 proposition, Your Honor, and as Your Honor I -- I would
19 imagine heard me argue this before, is that a false
20 arrest cannot be maintained if the arrest was pursuant
21 to legal authority. The most recent case that addresses
22 Bushardt was one of my cases that I had on the trial
23 level, a very recent case, it's in Exhibit 5, it's
24 Carter versus Bryant. This is one that's also in the
25 plaintiff's brief. It's 429 South Carolina 298. Again,

1 Exhibit 5, and it's Exhibit 5, page 5, in which the
2 Court of Appeals had quoted Bushardt. Again, it's a
3 Court of Appeals case from 2020. And it's -- the case
4 states that it's long been the law that one arrested
5 pursuant to a facially valid warrant has no cause of
6 action for false arrest. It's been definitively decided
7 in this jurisdiction that where one is properly arrested
8 by lawful authority an action for false imprisonment
9 cannot be maintained against the party causing the arrest.

10 Your Honor, in this case there's no dispute that
11 the magistrate was neutral and detached. There's --
12 there's nothing in the plaintiff's complaint, there's no
13 allegations to show that this was any -- that this arrest
14 warrant was void, which you can see from time to time or
15 was facially def -- deficient or not valid facially.
16 False arrest claims should go away for those reasons.

17 The second cause of action is for malicious
18 prosecution and in Exhibit Number 6 I provided the Court
19 the Supreme Court case of Anthony Law versus the South
20 Carolina Department of Corrections. This is also cited
21 in the plaintiff's brief. This is 368 South Carolina 424.
22 This was decided and with a rehearing denied in 2006 by
23 the Supreme -- the South Carolina Supreme Court, and the
24 -- this case, and I have put this in Exhibit 6, and I
25 would direct Your Honor's attention to a portion at the

1 bottom of 7 and the top of 8. I would submit that this
2 is boilerplate language, but just to -- for frame of
3 reference, what the Supreme Court has done here is
4 define malicious prosecution and the six cri -- criteria
5 in which a plaintiff would need to prove in order to
6 sustain this claim, so I would ask the Court to look at
7 two criteria that we would allege that the plaintiff is
8 unable to prove here.

9 One would be the first prong that states that to
10 maintain this action a plaintiff must establish the
11 institution or continuation of original judicial
12 proceedings and the -- and the fifth prong is the lack
13 of probable cause.

14 I think it would make more sense to argue the lack
15 of probable cause first and so we'll address that first.

16 Looking at the plaintiff's brief, it -- it appears
17 -- in looking at the complaint, quite frankly, it appears
18 that the plaintiff's central argument is that his -- the
19 plaintiff's counsel's argument is that the plaintiff was
20 innocent. The way the plaintiff's brief starts out
21 states plaintiff Christopher Shimeld was arrested and
22 thrown in jail for a burglary committed at the Discount
23 Tobacco store in Richland county. There is no doubt he
24 did not commit this burglary.

25 Well, the issue here though, and the problem for

1 the plaintiff, is that he's asking the Court to apply
2 an incorrect analysis. If Your Honor could go back to
3 Exhibit 5, which is the Carter versus Bryant case that
4 I've just reference, a Court of Appeals case, and I've
5 highlighted a portion of this, and this should be page 11
6 of Carter versus Bryant, and the Court of Appeals -- and
7 I'm sorry, Your Honor, I could let the Court be situated
8 first.

9 THE COURT: I'm -- I'm waiting on you.

10 MR. GARFIELD: Okay. I'm sorry. I just -- I know
11 I'm talking fast, but the Court stated probable cause
12 turns not on the individual's actual guilt or innocence,
13 but on whether facts within the officer's knowledge
14 would lead a reasonable person to believe the individual
15 arrested was guilty of a crime. The plaintiff here may,
16 in fact, be absolutely 100 percent innocent, but when it
17 comes to a probable cause assessment our courts are clear
18 that the guilt or innocence in an analysis of whether
19 some -- a suspect is guilty or innocent is irrelevant.
20 The investigation -- an investigator must satisfy what
21 would be a relatively lower threshold -- a much lower
22 threshold than beyond a reasonable doubt, but a relatively
23 low threshold for probable cause.

24 Now in the next exhibit, which is Exhibit 7, is one
25 portion of Vicki Rains' deposition transcript, and it's

1 -- it's fairly short, but it -- I believe it's critical
2 to our argument, and I'm citing from page 21, it will
3 be the third printed page, and this is Mr. Kendrick's
4 examination of Investigator Rains, and he flat-out asks
5 her. Tell me what your probable cause was for the
6 warrant against Mr. Shimeld, and she states into her
7 testimony, so I got the fingerprint match. It said Ardab
8 -- it's misspelled -- I believe it's -- by the court
9 reporter. It should be A-R-D-A-B, I believe, B as in
10 boy. Mr. Ardab, do you know this person and he said no,
11 but I believe it's probably going to be the person that
12 hangs out with him all the time because I think two
13 people would have had to have done this job, and so he
14 described him, and I, at this point, had never showed
15 him a picture or anything. He described what the other
16 person that was always with Mr. Osborne looked like,
17 which was very similar to Mr. Shimeld, and he said that
18 his clerk Jennifer would see him even more often and
19 would definitely be able to identify him. That was the
20 point of doing the photo lineups. They picked him out
21 of a photo line up.

22 It continues on. So after I talked to Mr. Ardab
23 and the clerk, I called the alarm company that had
24 installed the alarm system and spoke to the manager and
25 asked him if a Mr. Shimeld had ever worked there thinking

1 that perhaps if he had installed the alarm system would
2 be why his fingerprints would be there, so he said no,
3 there was no person ever by the name Shimeld that worked
4 for him, and I asked if maybe he was a contractor or
5 something and he said no, there was not a contractor
6 there -- never a contractor there. So I asked him to
7 reassure me that Mr. Shimeld had never worked for the
8 alarm company ADS and he said no, absolutely. He gave
9 me the names of people that did install the system and
10 Mr. Shimeld was not one of them. So at that point I had
11 no reasonable thought of why his fingerprint would be
12 on the alarm box that was ripped from the ceiling.
13 Question: Is that what you took to the judge, the
14 fingerprint and the photo lineup? Investigator Rains
15 stated the fingerprint match and that I had spoke to the
16 alarm company and they had never had him as an employee
17 there and they had installed a new system about a year
18 ago and he had never worked there. He had no reason to
19 be there. I asked Mr. Ardab, he didn't know him, and
20 said that he would never have a reason to be in his
21 office. Last question. So when you talked to Mr. Ardab,
22 he told you he thought it would take two person -- or
23 people to do the job? The answer is yes.

24 So, Your Honor, Investigator Rains was specifically
25 asked about probable cause. I think she -- she

1 eloquently -- she articulated her reasons why she had
2 believed there was probable cause to take that to a
3 magistrate.

4 As far as the next prong, the malicious prosecution
5 criteria, the institution or continuation of original
6 judicial proceedings, I -- I would ask Your Honor to
7 go back to look at 15-78-60 for -- this is one of the
8 exceptions. This would be Subsection 23 and this
9 states institution or prosecution of any judicial or
10 administrative proceeding. And what's really -- what's
11 really profound about this is that in virtually
12 identical language Subsection 23 provides absolute
13 immunity for institution or prosecution of a judicial
14 or administrative proceeding and because an element
15 of a malicious prosecution cause of action falls
16 squarely within an immunity provision, we argue that a
17 governmental entity enjoys absolute immunity for a
18 malicious prosecution.

19 Now I've been following this analysis for several
20 years now, and I can be very clear, specifically eight
21 years now. Judge Joe Anderson, District Court Judge
22 Joe Anderson, applied South Carolina law to a state law
23 claim and he ruled that a malicious prosecution claim
24 was barred by Subjection 23, and I'll -- and I'll get
25 to the cite in a moment, but it's McCoy versus City of

1 Columbia in 2013. Many district judges and circuit
2 court judges have agreed with Judge Anderson's
3 conclusions.

4 Exhibit 8, Your Honor, is -- is -- was a case that
5 -- that you presided over. Your Honor had issued this
6 order in Exhibit 8, an order granting summary judgment
7 as to the town of Johnston, and this is an order dated
8 May 9th of 2019, and the references I have in here are
9 really between pages 2 and 4, and Your Honor here cited
10 McCoy, as well as other authority and analysis -- and a
11 more full analysis. Your Honor stated that in -- in
12 the bottom of page 2, the defendant argues it is immune
13 from suit under the Tort Claims Act because the plain
14 meaning of Subsection 23 negates the first element of
15 a malicious prosecution claim against a governmental
16 entity and then you quote -- cite 23. There is some
17 very detailed analysis that goes on for a while and
18 then Your Honor's conclusion in this case, and it's the
19 last highlighted portion before the -- the conclusion
20 is that Your Honor stated that this Court is persuaded
21 that a claim for malicious prosecution against a
22 governmental entity must fail because the language of
23 Subsection 23 clearly states that the entity, here a
24 law enforcement agency, is not liable for instituting or
25 prosecuting any judicial or administrative proceedings.

1 This is clearly the first element of a malicious
2 prosecution claim.

3 So, Your Honor, I -- this Court is not alone in
4 reaching this conclusion is the point and Your Honor can
5 see that the Court's -- Your Honor's rationale in page 3
6 lists various authority that has addressed this issue.
7 We would respectfully submit that Your Honor correctly
8 ruled at that time and would be similarly correct in
9 reaching the same result here; therefore, the sheriff
10 should be afforded sovereign immunity from suit.

11 The final cause of action is a negligent training,
12 supervision and retention, and this gets to the final two
13 exhibits. One would be Exhibit 9 and the other would be
14 10. This is both case law. The Exhibit 9 is a Supreme
15 Court case in 2008. From everything I've argued over
16 the last few years, this is sort of the watershed case
17 and one of these negligent employee -- employment cases,
18 and this is James versus Kelly Trucking Company, 377
19 South Carolina 628, it's a 2008 case, and I would be
20 reading from printed page 3 of Exhibit 9, and the
21 Supreme Court talks about what these cases are in that
22 employer should know -- knows or should have known that
23 its employment of the specific person created an undue
24 risk of harm to the public. A plaintiff may claim that
25 the employer was itself negligent in hiring, supervising

1 or training the employee or that the employer acted
2 negligently in entrusting its employee with a tool that
3 created an unreasonable risk of harm to the public.

4 This goes hand in hand with Exhibit Number 10, and
5 this is another case in 2005, but it's a Court of Appeals,
6 South Carolina, Doe vs. ATC, Inc., 367 South Carolina
7 199.

8 And just for housekeeping, Your Honor, since these
9 are produced, we are going to take this in one batch and
10 right after this hearing we're gonna file all of this as
11 exhibits to our summary judgment or at least file this
12 in the appropriate manner as one batch, but Exhibit 10
13 and I'll be -- show Your Honor this would be printed
14 page 4, and in the first highlighted portion the Court
15 talks about from a practical standpoint these elements
16 are analyzed in terms of the number and nature of prior
17 acts of wrongdoing by the employee and the nexus of
18 similarity -- nexus or similarity, I'm sorry, between
19 the prior acts and the ultimate harm caused.

20 In this case, the plaintiff's allegation as to a
21 negligent supervision or training and negligent employment
22 theory doesn't make a whole lot of sense. First of all,
23 the plaintiff has never pled nor can he demonstrate that
24 there were any prior acts on the part of Investigator
25 Rains. Any prior acts on her part that the sheriff or

1 someone in her chain or command or a supervisor would
2 have knowledge that she was a bad investigator or she
3 was a problem or she was posing an unreasonable risk of
4 harm, you know, those are the kind of circumstances that
5 the Court and juries normally see and in this case there
6 is no such evidence. For instance, Vicki Rains had never
7 been disciplined. They're not showing that she had been
8 subject to any disciplinary action, that she was subject
9 to -- to an IA complaint or investigation or she was
10 personally named in a lawsuit.

11 This -- this last little highlight here on
12 Exhibit 10 in this last page that you may have pulled up,
13 Judge, the Court states nevertheless, the Court should
14 dispose of the matter on a dispositive motion when no
15 reasonable factfinder could find the risk foreseeable or
16 the employee -- employer's conduct to have fallen below
17 the acceptable standard.

18 In this case, there is no such allegations or any
19 sort of threshold showing, and for those reasons we
20 believe that the third cause of action similar to the
21 first two should be dismissed as a matter of law.

22 And I've gone on for a while and I really do thank
23 the Court and Mr. Kendrick as well. We'd ask for a
24 complete summary judgment in this case.

25 THE COURT: Mr. Kendrick.

1 MR. KENDRICK: Thank you, Your Honor.

2 I will be fairly brief. I -- some of this I have
3 not heard until this morning, so I've caught up while I
4 was listening and I think I can address it all right now.
5 The motion or the memo in opposition that I filed is
6 pretty detailed and I think it addresses almost all of
7 the arguments that were made.

8 I'll start with an easy issue. When the statute of
9 limitations is not an issue, I will typically bring a
10 false arrest and a malicious prosecution action together,
11 but I will concede that I probably do not need both and
12 that it be granted summary judgment on just the false
13 arrest case. That would likely clean the case up. I
14 would probably dismiss it anyway. So I think that that's
15 a -- a simple issue.

16 After that it seems like there are two arguments
17 the sheriff's department is making. And when I say two,
18 maybe a better way, there are two theories.

19 The first theory is that you cannot bring a
20 malicious prosecution case against the government. I
21 think I've laid out pretty succinctly why that is
22 incorrect and, Your Honor, if -- if we look at
23 specifically what I have just seen this morning, which
24 is your circuit court opinion that I think the defendant
25 argued might say that. It looks like you issued this

1 in 2019, I think, so if you would go to -- hold on.

2 Sorry. I'm trying to look at these exhibits.

3 So if you would look at Exhibit 5 that the
4 plaintiff -- I'm sorry, the defendant filed, the Carter
5 v. Bryant case, that they just sent you, so this case
6 comes in 2020, which is after you issued your order and
7 it seems to support what I said at the beginning, that,
8 you know, the -- the warrant being facially valid needs
9 to probably go under a false arrest claim regardless of
10 the facts.

11 So the highlighted part on part 5, the very next
12 sentence, I think clears this issue up pretty easily.
13 In the event no probable cause exists, then the remedy
14 is to sue for malicious prosecution, not false arrest.

15 So essentially what they're saying is you've --
16 you've simply chosen the wrong cause of action, but that
17 there is a cause of action. So it would make little
18 sense for the Court to make that statement when it's so,
19 according to the sheriff's department, blindingly clear
20 that there is no malicious prosecution against the
21 government. Because that's what they're talking about
22 in Carter v. Bryant. They're talking about a case
23 against the police.

24 So I -- I don't run into this that often. In --
25 in Federal court, there's a rule that a district court

1 judge can rule one way one day and the exact opposite
2 way the next day. Their own opinions do not bind them.
3 I don't know how that plays out in state circuit court,
4 but I suspect that Your Honor -- I can reconcile your
5 2019 opinion with asking you to do the opposite today
6 because in the intervening time the Court has -- the
7 appellate courts have spoken and said this is the cause
8 of action you need to bring and it doesn't really make
9 sense that they would have said that if you couldn't.

10 The -- kind of the second theory they seem to be
11 arguing is -- specifically in this case, our claim failed
12 based on the probable cause issue.

13 The reason I started my motion out that way is to
14 make sure Your Honor knows my client didn't commit this
15 crime and was able to very easily prove it the second he
16 was released from detention in Florida. So everything
17 he had would have been available to the investigator.
18 So the question is should she have called. We talked
19 about this in her deposition. I attached it as an
20 exhibit. There is a policy at Richland County Sheriff's
21 Office that you would interview a suspect. In fact,
22 that is exactly what she attempted to do with Mr. Osborne,
23 who she agreed was the main suspect, was interview him
24 prior to arresting him. In fact, despite there being
25 really nothing that points away from his guilt, to this

1 day he's not been arrested because they can't find him.

2 I don't think they've looked for him either.

3 So she gets this information on Mr. Shimeld, which
4 I didn't talk about in the deposition, but I think it's
5 very clear in the exhibit I filed, the very fingerprint
6 card she says supports her probable cause lists the
7 two things we talked about in our response. He's a
8 concealed weapons permit holder, which suggests no
9 criminal record, an ineligibility to possess a firearm,
10 but most importantly it says right there that he works
11 for a company called Summit Alarms.

12 So she has the information right in front of her
13 to say no matter what I have heard, it might be worth at
14 least making a phone call, and she has his phone number
15 readily available to her and she could have run the report
16 that I attached that would have shown Florida, it would
17 have shown a phone number, and she could have extended
18 him the same investigative sort of courtesy that she
19 extended to Mr. Osborne, which is to call and let him
20 make a statement. Had he -- had she done that, she never
21 would have arrested him. And I think that's really what
22 matters here because there was information in front of
23 her that should have caused her to hesitate, and she
24 didn't.

25 So Mr. Garfield has made a very eloquent argument

1 as to why maybe she did no wrong, but that isn't really
2 what we're here to determine. The question right now
3 is can I get to the place where he can make that
4 argument to the jury, and I think the answer is yes,
5 there is a scintilla of evidence here that she absolutely
6 had the information in front of her that suggests this
7 was not probable cause. She had one fingerprint. The
8 way she knew she had the fingerprint, the very medium
9 that she used to learn about the fingerprint, suggests
10 that there's an alternate explanation. And while she's
11 called this person who -- who apparently doesn't know
12 what's going on with the alarm, and -- and then the
13 sticker situation arises, and all that's probably trivial
14 because it doesn't really matter to her analysis, all
15 she has to do is pick up the phone and call Mr. Shimeld.
16 So regardless of whether he has a valid drivers license,
17 once she can't make contact with him, she walks down the
18 hallway to an analyst, she says run this name for me, and
19 then she gets the report that I gave to you, which she
20 eventually does, just not prior to the arrest, and she
21 can make a phone call and he can provide her with all
22 this documentation that he is in Florida a few hours
23 before the burglary and a few hours after the burglary
24 with objective evidence. Because she didn't do that,
25 again, I think that -- I think that answers the question,

1 but we get to a jury to let them decide, and that's
2 really what matters here.

3 So -- so I -- I don't want to go on and on. I
4 think we filed a very comprehensive response to all the
5 arguments that the defendant made. I have listened today
6 to Mr. Garfield's argument, which was very eloquent and
7 detailed, but there's not anything in there that's really
8 new to me other than, again, your -- your order, Your
9 Honor, which I don't have any qualms about telling you
10 to disregard your -- your prior order because the law is
11 different. You have the Court of Appeals saying that,
12 you know, malicious prosecution is available. That
13 applies to -- to Judge Anderson's opinion, too.

14 I -- I've at times found myself in the strange
15 position of arguing this when does a district court get
16 to defer to state law, an it was Erie Doctrine case, but
17 I think it's the same theory as we have here, which is
18 the Federal court has to anticipate what state law might
19 be by using an opinion from the highest court or if
20 that's not available, there's a data point allowed from
21 an intermediate court.

22 So what we have right now in September of 2021 is a
23 suggestion from the Court of Appeals, which we can use
24 as data, that says it allows for malicious prosecution to
25 proceed against the government, so I think you disregard

1 sort of his blanket argument that it's a -- it's an
2 absolute immunity and move on to say is there probable
3 cause to make the arrest here. And I don't mind saying
4 the longer we argue about the facts, I think the more
5 likely it is that a jury needs to listen to them because
6 there are multiple interpretations.

7 So I have provided a scintilla -- I think more than
8 a scintilla, but I don't want to get greedy, I only have
9 to give you a scintilla of evidence that Ms. Rains had
10 in front of her clear information that should have made
11 her hesitate to act and she doesn't do it, and that's in
12 my mind what dictates a ruling on summary judgment.

13 So I think that the malicious prosecution action
14 stands. I've put this in my response as to the negligent
15 supervision that she clearly testifies that she tells
16 her superiors what is going on and they say go ahead and
17 arrest him, so no one up the chain said have you done
18 your job, have you followed the policies of the Richland
19 County Sheriff's Office, have you looked at our
20 investigative and followup procedures and have you
21 carried those out, and by not doing that -- but now I
22 will say this, Your Honor. From a -- from a practical
23 standpoint, I don't know that it matters so much because
24 I have sued the sheriff's department under the Tort
25 Claims Act and I think the malicious prosecution cause

1 stands. I don't anticipate that I would necessarily be
2 asking for a separate damages award, so even if you were
3 to decide the first and third cause don't need to be
4 here, as long as the second one stays, I mean, I think
5 that's what this case is really about.

6 THE COURT: Okay. Thank you.

7 MR. KENDRICK: I'll be -- I'll be happy to answer
8 any questions you have. I don't really have anything
9 else to say, so I'll let you take the lead.

10 THE COURT: Any response, Mr. Garfield?

11 MR. GARFIELD: Yes, ma'am. And I'll -- and I'll
12 try to take it -- make it brief. There are really just
13 two points I'd like to get out.

14 First of all, as he's talking about the Carter v.
15 Bryant case. The Court of Appeals case that's in our
16 Exhibit Number 5. As I stated, I'm very familiar with
17 this case. I was the lead counsel on the trial level.
18 This was a case about the York County Sheriff's Office
19 that had arrested an individual in his home or outside
20 of his home and the individual had claimed that he was
21 innocent based on the -- the Castle Doctrine.

22 It's a very interesting case. There was a
23 plaintiff's verdict in this case, we appealed it and the
24 Court of Appeals reversed it and instituted dismissal of
25 the case, and what the Court of Appeals -- the issues on

1 appeal were very much the lack of probable cause
2 requirement that would need to be proven in a malicious
3 prosecution claim.

4 As Your Honor could see from Exhibit Number 5,
5 Subsection 23, in fact, I don't believe any South Carolina
6 Tort Claims Act subsection was ever even considered by
7 the Court because they never reached it, so what
8 Mr. Kendrick is saying is well, Judge, because this is
9 not addressed in this one hearing, then, therefore, it
10 doesn't exist. It absolutely exists. The Court has not
11 reached any conclusion on this over the years and what
12 we have is a consensus of authority, you know, district
13 level, circuit courts, Your Honor, that Subjection 23
14 is dispositive of a malicious prosecution claim.

15 And speaking of -- of -- I guess I could get to --
16 I'm sorry -- for a second point here goes back to
17 probable cause. It's -- he could say scintilla all day
18 long. Probable cause clearly exists here. It -- he --
19 he doesn't demonstrate an issue of fact otherwise, but
20 what he does in this case is he tries to carve out a
21 theory of liability and this is where he says Judge,
22 there are so many things that a jury could consider.
23 Well, all these things that a jury could consider is
24 based on his theory that investigators -- Investigator
25 Rains' investigation and her arrest were careless and

1 negligent.

2 In his brief, and I'm just reading off of pages 8
3 and 10 and 11, he says that the issue is that she was
4 damaged -- or his client was damaged by the acts of the
5 defendant in failing to properly investigate the matter
6 before arresting him, and in page 10 and 11 is that he --
7 Investigator Rains should have tipped her off -- evidence
8 should have tipped her off that more investigation was
9 needed prior to an arrest and had the defendant done even
10 a basic investigation he wouldn't have been arrested or
11 a suspect. It -- could've, would've, should've. She
12 should have picked up the phone, she should have dug
13 deeper. You know, those things may be true, but those
14 things exist in almost every criminal investigation.

15 Your Honor is well aware that there is no cause of
16 action in South Carolina for a negligent investigation or
17 negligent arrest simply because the appropriate standard
18 is whether the restraint was lawful and whether probable
19 cause existed, and this is a theory that's come up from
20 time to time and I -- I've been reticent about showing
21 Your Honor, as any judge, look, this is what you've done
22 in the past, but I guess I've been doing this for twenty
23 years now and this is the same argument I've made in so
24 many of these cases, and this one is no different, and I
25 have a -- two supplement exhibits that I've e-mailed you

1 and Mr. Kendrick, and one is Exhibit 11 and one is
2 Exhibit 12, and these are gonna be the last two
3 exhibits.

4 Exhibit 11 is the James McKinney case that's
5 fifteen years old. I know it very well because we went
6 to the Fourth Circuit in the Federal aspect of it and
7 this was the state law version of it, and this is an
8 order by Your Honor where you simply state in printed
9 page 5 there is no case law holding that South Carolina
10 law even recognizes a cause of action for a negligent
11 arrest or investigation. Your Honor continues on in
12 certain respects, which I won't go into, but Your Honor
13 can see that, it's based on Wyatt v. Fowler, that stands
14 for the proposition that the police are -- the public
15 duty rule allows police to make a mistake once in a while,
16 that they don't have to have a perfect investigation.
17 Anything under a perfect investigation doesn't give rise
18 to that cause of action.

19 And then there was a case a few years later, it
20 was the Horton case, and Your Honor maybe very well
21 remembers this one, and it's Subsection 7 -- excuse me,
22 it's printed page 7 and 8, in Exhibit 12, and at the
23 bottom of 7 and the top of 8, and you -- Your Honor
24 states that the plaintiff must prove the absence of
25 probable cause is an element of the action. The courts

1 of this state have not adopted an alternative tort
2 theory for wrongful arrest with a negligence standard
3 for liability. Other courts have considered this issue
4 and rejected claims of this nature.

5 And the -- the whole point here is that, you know,
6 he -- if we go to trial in this case, he -- he is left
7 with the argument don't look at whether there was
8 probable cause, look at all the things the investigator
9 should have done. That is 100 percent an argument for
10 a negligent investigation and if you're looking -- Your
11 Honor looks appropriately at the standard for which the
12 arrest was lawful, which was the existence of probable
13 cause, we believe that it clearly exists in this case.
14 And it's unfortunate what happened to Mr. Shimeld. I
15 think Investigator Rains acted appropriately and
16 expeditiously after things came to light, but that is
17 not the standard for probable cause and that's -- for
18 those reasons, again, thank Your Honor, and we would ask
19 the Court to dismiss the action against the sheriff.

20 THE COURT: Okay. What I'm gonna do, gentlemen,
21 is ask you-all for proposed orders and I'll ask that you
22 -- you don't have to -- you don't have to e-file them,
23 just -- you can just e-mail them to me by -- I'm giving
24 you, I guess, a little bit more than ten days -- October
25 the 8th, which is a week from this coming Friday.

1 MR. GARFIELD: Yes, ma'am.

2 THE COURT: And just e-mail them to my office and
3 then I will review them and that way we have everybody's
4 arguments in -- in writing so to speak and I can go from
5 there.

6 MR. KENDRICK: Thank you, Judge.

7 THE COURT: I appreciate it.

8 MR. GARFIELD: Thank you, Your Honor.

9 THE COURT: All right. I'll look forward to
10 receiving your orders. Thank you.

11 (Whereupon, the proceedings were concluded at
12 11:35 AM.)
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court on
the 27th day of September, 2021, recorded by the Digital
Court Reporter Program, and transcribed by me to the
best of my ability.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

September 2, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Christopher Shimeld,

Docket No.: 2019-CP-40-01299

Plaintiff,

v.

ORDER

Richland County Sheriff's Office,

Defendant.

This matter comes before the Court on a motion for summary judgment on behalf of the Defendant Richland County Sheriff's Office (RCSD).¹ A hearing on this motion was conducted on September 27, 2021, via videoconference in Columbia, South Carolina. Appearing at the time and presenting oral arguments were counsel for Plaintiff, Joshua S. Kendrick, Esq., and for the Defendant, Robert D. Garfield, Esq. For the reasons discussed herein, this Court grants the Defendant's motion.

FACTUAL BACKGROUND

Taking the facts in a light most favorable to Plaintiff, during the early morning hours of Thursday, March 1, 2018, a burglary occurred at Discount Tobacco, a commercial establishment operating on Two Notch Road in Columbia, South Carolina. Pl.'s Ex. 1. Mr. Ismat Ardab, the owner of the business, represented to responding deputies that the suspect cut through an inner drywall to gain entry. Pl.'s Ex. 1. While inside the store, the subject rummaged through the office and stole cash and miscellaneous merchandise, including roughly 162 cartons of cigarettes. Pl.'s Ex. 1. The suspect also cut wires to the alarm box and surveillance camera located in the inner office. Pl.'s Ex. 1. This rendered the alarm system inoperable and as a result, there was no immediate notification to police dispatch. Pl.'s Ex. 1. RCSD deputies collected fingerprints on items in Ardab's office, including the alarm box, which prominently contained an ADS alarm company decal. Rains Dep. 13:9-18; Def's Ex. 1.

¹ Defendant Richland County Sheriff's Office (also referred herein as "Richland County Sheriff's Department" or "RCSD") is not a legal entity of the State. The proper entity is the Sheriff of Richland County in his official capacity. His office constitutes a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* This Court has been informed that Plaintiff has consented to a substitution to reflect the appropriate party-Defendant.

RCSD Investigator Vicki Rains was assigned this criminal matter. Rains Dep. 8:13-19. She first spoke with Ardab. Rains Dep. 9. Ardab suggested that a person of interest was an individual named Hank Osborne. Rains Dep. 11. According to Ardab, Osborne had initially installed the security system. Rains Dep. 12. Additionally, he returned to the store on several occasions, including Ardab's office area. Rains Dep. 12. Rains' several attempts to locate Osborne were unsuccessful. Rains Dep. 13; *see also* Rains Dep. Ex. 1.

During her investigation, the fingerprint analysis revealed that the alarm box contained fingerprints. Rains Dep. 13. A latent print was tested and positively matched those on file for Plaintiff. Rains Dep. 13. The positive match and identification were shared with Rains at that time. Rains Dep. 13. Thereafter, Rains obtained a Department of Motor Vehicles ("DMV") Report which included Plaintiff's personal identifying information. Rains Dep. 13-14. Specifically, Plaintiff had a valid South Carolina driver's license and resided in a local apartment complex. Rains Dep. 13-14; Rains Dep. Ex. 1.

Rains went to Plaintiff's apartment referenced in the DMV report. Rains Dep. 13-14. According to the apartment management, Plaintiff moved and did not provide contact information, such as a forwarding address or telephone number. *See* Rains Dep. 16.

Rains then re-interviewed Ardab, who advised Rains that the burglary was likely conducted by two individuals. Rains Dep. 23. Rains then prepared photo lineups which included Plaintiff and Osborne. Rains Dep. 21-22. The photo lineups were shown to Ardab and the store clerk, both selected Plaintiff and Osborne as the two males who frequently hung out together. Rains Depo. 14; *see also* Def's Ex. 2.

On March 13, 2018, Rains contacted the manager of ADS to obtain background information regarding the alarm system at Discount Tobacco. Rains Dep. Ex. 1. The manager informed Rains that a new ADS alarm system had been installed at the location. Rains Dep. 45-46. Most critically, the manager advised Rains that Plaintiff had never been employed by ADS. Rains Dep. 22. Rains contacted the manager a second time. Rains Dep. Ex. 1, at 4. Again, the manager insisted that Plaintiff had never worked for ADS and their service technicians are employees of ADS, not contracted by third parties. Rains Dep. Ex. 1, at 4.

On March 16, 2018, Rains applied for an arrest warrant with the Richland/Upper Township Magistrate. Rains Dep. 40-46. In Rains' arrest warrant affidavit, she described the burglary was effectuated by:

[F]orce(d) entry by cutting through the back of the business and entering through the office where the camera was unplugged & the alarm system was torn from the ceiling & destroyed. There is a fingerprint match for the defendant on the alarm box that was torn from the ceiling. I spoke with the manager of the alarm company who installed the alarm system and he stated he has never heard of the defendant nor has the defendant ever been employed by the alarm company who installed the alarm. The victim stated the defendant has never been in the office with the alarm system and he does not know the defendant. The estimated amount of Theft is \$28,000.

Def's Ex. 3. The Magistrate Judge found that probable cause existed and issued a warrant for Plaintiff's arrest for the offense of Burglary (Non-Violent) in the Second Degree. Def's Ex. 3. According to the Complaint, Plaintiff was arrested on April 6, 2018 in the State of Florida and was held in a local detention center for a period of time. Compl. ¶ 13.

Plaintiff brought suit against the Defendant RCSD for false imprisonment², malicious prosecution, and negligent training, supervision, and retention.

LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545 (1991). In a case where the burden of proof is a preponderance of the evidence, to survive a motion for summary judgment the non-moving party is required to submit a mere scintilla of evidence. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

² Plaintiff has conceded and did not challenge Defendant's argument regarding false imprisonment. Therefore this Court treats the false imprisonment cause of action as withdrawn and/or abandoned. Consequently, this Court grants summary judgment as to the false imprisonment cause of action without further discussion.

DISCUSSION

A. MALICIOUS PROSECUTION CLAIM

The elements of malicious prosecution under state law are: "(1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *See Broyhill v. Resolution Mgmt. Consultants, Inc.*, 401 S.C. 466, 736 S.E.2d 867, 870-71 (Ct. App. 2012). The Defendant contends that Plaintiff is unable to demonstrate a lack of probable cause. *See Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 665, n. 4 (Ct. App. 2005) ("[A] malicious prosecution action fails if Plaintiff cannot show malice and lack of probable cause.")

In support of his position, Defendant points to Rains' October 22, 2020 deposition testimony in which she was directly examined about probable cause:

Q: Tell me what your probable cause was for the warrant against Mr. Shimeld.

A: [] So I got the fingerprint match. I said, "Mr. Ardab, do you know this person?" And he said, "No, but I believe it's probably going to be the person that hangs out with him all the time because I think two people would have had to have done this job."

And so he described him. And I, at this point, had never showed him a picture or anything. He described what the other person that was always with Mr. Osborne looked like, which was very similar to Mr. Shimeld. And he said that his clerk, Jennifer, would see him even more often and would definitely be able to identify him. That was the point of doing the photo lineups.

So they picked him out of a photo lineup and -- I have to look at -- (Witness examines document).

Q: And just so the record's clear, what you're looking at is the arrest warrant, correct?

A: It is. It's the arrest warrant. So after I talked to Mr. Ardab and the clerk, I called the alarm company that had installed the alarm system and spoke to the manager and asked him if a Mr. Shimeld had ever worked there, thinking that perhaps if he had installed the alarm system (that) would be why his fingerprints would be there.

So he said no, there was no person ever by the name Shimeld that worked for him. I asked if maybe he was a contractor or something, and he said no, that he was never a contractor there.

So I asked him to reassure me that Mr. Shimeld had never worked for their alarm company, ADS. And he said no, absolutely. [He] gave me the names of the people that did install the system, and Mr. Shimeld was not one of them.

So at that point, I had no reasonable thought of why his fingerprint would be on the alarm box that was ripped from the ceiling.

Q: Is that what you took to the judge, the fingerprint and the photo lineup?

A: The fingerprint match and that I had spoke to the alarm company and they had never had him as an employee there. And they had installed a new system about a year ago and he had never worked there. He had no reason to be there. I asked Mr. Ardab. He didn't know him and said that he would never have a reason to be in his office.

Q: So when you talked to Mr. Ardab, he told you that he thought it would take two people to do this job?

A: Yes.

Rains Dep. 21-23.

As the Supreme Court has held, "the proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, *viewed from the standpoint of an objectively reasonable police officer*, amount to probable cause." *Mack v. Lott*, 415 S.C. 22, 23, 780 S.E.2d 761, 761 (2015). (Emphasis added). The requirement of an objective test is mandated by United States Supreme Court and South Carolina case law. In *Ornelas v. United States*, the United States Supreme Court explained that "[t]he principal components of a determination of ... probable cause will be the events which occurred leading up to the ... search [or seizure], and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount ... to probable cause." *Ornelas v. United States*, 517 U.S. 690, 698 (1996).

In *State v. Brockman*, the South Carolina Supreme Court cited favorably from *Ornelas* to the "two-step process" for determining probable cause as articulated in that decision. *State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000). The "two-step process" was explained as follows:

"First, a court must determine the events which occurred leading up to the stop or search. Second, the court must decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." *Brockman*, 528 S.E.2d at 664. Therefore, the first step of the objective test requires the trial court to determine the "historical facts."

As the Supreme Court explained in the landmark case of *Beck v. Ohio*, "[w]hen the constitutional validity of an arrest is challenged, it is the function of a court to determine whether ***the facts available to the officers at the moment of arrest*** would warrant a man of reasonable caution in the belief that an offense has been committed." *Beck v. Ohio*, 379 U.S. 89, 96 (1964)(Emphasis added); *see also Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)(Emphasis added). The United States Supreme Court has described this as a "flexible, common sense standard" which "does not demand any showing that such a belief be correct or more likely true than false." *Texas v. Brown*, 460 U.S. 730, 742 (1983). The appellate courts of this State have cited *Texas v. Brown*, and explained that "[i]n regard to the lawfulness of an arrest, probable cause merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that an offense has been committed and the accused committed it." *In re the Care and Treatment of Brown v. State*, 372 S.C. 611, 619-620, 643 S.E.2d 118, 122 (Ct. App. 2007); *see also State v. Geer*, 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010).

Therefore, in determining the "historical facts", the court must look at the facts available to the officer, i.e. the facts within the officer's knowledge. Once those "historical facts" are determined by the factfinder, the court must then proceed to the second prong of the analysis and decide "whether [those] historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854, 859 (2015), *citing Ornelas*, 517 U.S. at 696.

In a light most favorable to Plaintiff, the facts available to Investigator Rains and within her knowledge are cited herein. Rains had a positive fingerprint match for Plaintiff on the alarm unit which had been torn from the ceiling at the incident location. The alarm unit was affixed with an ADS decal and both Ardab, business owner, as well as the ADS manager confirmed that ADS installed the alarm system at that location. The ADS manager unequivocally stated and assured Rains he had never heard of Plaintiff; Plaintiff never worked for ADS; and Plaintiff would not have been in a position as a non-employee to perform an ADS alarm installation. The business

owner similarly represented that Plaintiff had never been in the office with the alarm system. Finally, Ardab and his store clerk identified Plaintiff as a potential suspect. *See* Rains Dep. 14-16, 21-22.

Based upon these historical facts known to the officer at the time, the question presented is would an objectively reasonable police officer in Rains' position have perceived that Plaintiff participated in the burglary. If an objectively reasonable officer could have perceived that there would have been no plausible or reasonable explanation for Plaintiff's fingerprints to be on the alarm box, then probable cause existed for a burglary charge.

Plaintiff's theory of the case primarily centers on the argument that he was innocent. However, the guilt or innocence of Plaintiff is immaterial in a proper assessment of probable cause. *See Carter v. Bryant*, 429 S.C. 298, 318, 838 S.E.2d 523, 534 (Ct. App. 2020), *reh'g denied* (Feb. 20, 2020), *cert. denied* (Oct. 19, 2020) ("Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime."). Here, Plaintiff's malicious prosecution argument fails since Rains has satisfied the threshold of probable cause.

Plaintiff additionally asserts that he "was not damaged by the acts of whoever actually burglarized the store at issue; he was damaged by the acts of the Defendant in failing to properly investigate the matter before arresting him." *See* Pl's Mem. in Opp'n 8. Plaintiff argues, "the very evidence relied on by the investigator should have tipped her off that more investigation was needed prior to any arrest -- Had the Defendant done even a basic investigation, Shimeld would not have been a suspect in this crime." Pl's Mem. in Opp'n 10-11.

This Court finds that Plaintiff's theory of liability amounts to a "negligent investigation," for which no cognizable cause of action exists. In *Wyatt v. Fowler*, the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997). The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for a negligent performance of a criminal investigation.

"[A]lthough the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion." *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 660 (Ct. App. 2005). Based on the undisputed evidence contained in the record, there was probable cause that Plaintiff participated in a burglary on March 1, 2018. Therefore, summary judgment for the Defendant RCSD is appropriate.

Moreover, under the provisions of the South Carolina Tort Claims Act, the Defendant RCSD enjoys absolute immunity for malicious prosecution. One of the six elements that Plaintiff needs to prove is "the institution or continuation of original judicial proceedings." In virtually identical language, S.C. Code Ann. § 15-78-60(23) provides absolute immunity for the "institution or prosecution of any judicial or administrative proceeding." *See* S.C. Code Ann. § 15-78-60(23). Therefore, because an element of a malicious prosecution cause of action falls squarely within an immunity provision, a governmental entity enjoys absolute immunity for this cause of action. Several United States District Courts have considered the same issue and determined that the Tort Claims Act provides immunity for a governmental entity for malicious prosecution.³

For these reasons, Plaintiff's malicious prosecution claim is dismissed.

B. NEGLIGENT TRAINING, SUPERVISION, RETENTION CLAIM

In *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992), the South Carolina Supreme Court described the elements of a negligent supervision claim as follows:

[A]n employer may be liable for negligent supervision if the employee intentionally harms another when the employee: (1) is upon the premises of the employer, or is using a chattel of the employer, (2) the employer knows or has reason to know that he has

³ The United States District Court, by and through various District Court judges, has ruled that the governmental entity enjoys immunity for malicious prosecution under the provisions of the Act. *See McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013) ("The City contends that it is immune from liability for McCoy's malicious prosecution ... 'the institution or prosecution of a judicial proceeding.' [citation omitted] The Magistrate Judge recommended that the court grant the City's motion ... because McCoy's cause of action for malicious prosecution plainly falls within this express exception. The court agrees."); *Terrell v. City of Spartanburg*, No. 7:17-CV-2738-BHH, 2018 WL 4775579 at *4 (D.S.C. Oct. 3, 2018) ("[T]he City is immune from liability for malicious prosecution under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-60(23) ..."; *see also Thompson v. City of Columbia*, No. CV 3:05-1605-CMC, 2005 WL 8164911, at *4 (D.S.C. July 21, 2005) ("It is fairly clear from the plain language of the statute, particularly § 15-78-60(23), that the legislature intended to exclude claims for malicious prosecution from the waiver of immunity for governmental entities in the Tort Claims Act."); *see also Palmer v. Santanna*, No. 2:16-CV-3350-PMD-MGB, 2018 WL 1477600, at *5 (D.S.C. Mar. 27, 2018) ("The Town of Summerville is immune from liability on this claim (as a result of) S.C. Code Ann. § 15-78-60(23); ... While the Court recognizes that Plaintiffs experienced significant consequences as a result of Mr. Palmer's arrest and detention, the Defendants are nonetheless immune from suit ..."; *see also Brown v. Dorchester Cty. S.C.*, No. 2:16-CV-01311-MBS-MGB, 2017 WL 9673618, at *6 (D.S.C. Nov. 29, 2017) ("[T]he crux of Plaintiff's claim against Defendant is that the criminal charges against him were maintained for many months after the Solicitor's Office was made aware that probable cause was lacking. Such a claim falls squarely within § 15-78-60(1) and § 15-78-60(23).").

the ability to control his employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control.

Plaintiff has not pled nor produced evidence to support the elements of this claim. In *James v. Kelly Trucking Co.*, 377 S.C. 628; 661 S.E.2d 329, (2008), the Supreme Court held that:

Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort.

In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.

As this recitation suggests, the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct.

James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330-331 (2008) (Internal citations omitted).

However, our Courts have addressed the type of wrongdoing which would provide suitable notice to the employer. Thus, any prior act must bear key similarities to the consequent ultimate harm, *to wit*:

Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements -- knowledge of the employer and foreseeability of harm to third parties. These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. ***From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.*** Such factual considerations -- especially questions related to proximate cause inherent in the concept of foreseeability -- will ordinarily be determined by the fact finder, and not as a matter of law. ***Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.***

Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) (emphasis added). The Court of Appeals further explained that the applicable standard is "whether the employer knew the offending employee was in the habit of misconducting himself in a manner dangerous to others." 624 S.E.2d at 450-451. Thus, it is necessary that Plaintiff "demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." 624 S.E.2d at 451.

Defendant argues that Plaintiff has not met his burden of proof. Specifically, Plaintiff has not presented evidence that Sheriff Lott or Rains' supervisors knew or should have known that Rains engaged in previous conduct for which to place the RCSD on notice that Rains effectuated unlawful arrests and, consequently, created an unreasonable or undue risk of harm to the public. For instance, according to Defendant, the record is devoid of any evidence that Rains had been the subject of a disciplinary action or an internal affairs investigation. In short, there is no evidence that Rains had the propensity for this type of alleged improper behavior or had engaged in such a course of conduct in the past sufficient to put the Sheriff or Rains' supervisors on notice of the possible danger to third parties. This Court agrees and finds that Plaintiff's claim for negligent supervision fails for a lack of evidence of foreseeability. In the absence of evidence that the RCSD knew or should have known of the necessity to exercise control over its employee, there can be no liability for negligent supervision. *See Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993).

CONCLUSION

Based upon the foregoing reasons, **IT IS THEREFORE ORDERED** that the Defendant's Motion for Summary Judgment is **GRANTED** and that all causes of action against the Defendant RCSD are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

Signature page to follow



Richland Common Pleas

Case Caption: Christopher Shimeld vs Richland County Sheriffs Office

Case Number: 2019CP4001299

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2022-03-14 18:01:40 page 11 of 11

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 16, 2023

/s/ Joshua Snow Kendrick
Joshua Snow Kendrick (70453)
Post Office Box 6938
Greenville, SC 29606
(864) 760-4000
Attorney for Appellant

RECEIVED

APR 19 2023

SC Court of Appeals