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Jun 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Judge Michael G. Nettles

Appellant Case No. 2022-001741

Michael Qualls Appellant

v.

Town of McBee..... Respondent.

RECORD OF APPEAL

June 5, 2023

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	Civil Action No.: 2020-CP-13-____
	)	
Michael Qualls,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
Town of McBee,	)	
	)	
Defendant.	)	

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office as 1281 Russell Street, Post Office Box 1084, Orangeburg, South Carolina, 29115, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

September 12, 2020
Orangeburg, South Carolina

/s/ Skyler Hutto #102741
Skyler B. Hutto, Esquire
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, South Carolina 29116
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	Civil Action No.: 2020-CP-13-____
	)	
Michael Qualls,	)	
	)	
	)	COMPLAINT
Plaintiff,	)	(Jury Trial Demanded)
	)	
vs.	)	
	)	
Town of McBee,	)	
	)	
Defendant.	)	

PLAINTIFF, complaining of the acts of DEFENDANT above-named, would respectfully show unto the court as follows:

1. Plaintiff is a citizen and resident of Florence County.
2. Defendant Town of McBee is a governmental entity operating pursuant to the laws of the State of South Carolina and is a municipality subject to suit pursuant to S.C. Code Ann. §15-78-10 *et seq.*
3. Defendant Town of McBee operates the McBee Police Department (“MPD”) and is responsible for the actions of the employees and agents employed therein.
4. Defendant Town of McBee is responsible for the McBee Municipal Court (“MMC”).
5. The alleged incidents occurred in Chesterfield County, South Carolina.
6. Jurisdiction and venue are proper with this Court, the Chesterfield County Court of Common Pleas.
7. On or about July 8, 2019, in the early morning hours, Dep. Justin Reichard ticketed Plaintiff with several Traffic violations and arrested him. He was released on a Personal Recognizance Bond the following day.

8. Plaintiff's tickets had an appearance date set for September 12, 2019, which Plaintiff attended.

9. Plaintiff did not plead guilty; Plaintiff requested a Jury Trial.

10. Plaintiff's request for a Jury Trial was denied.

11. Minimal if any record was kept of these proceedings.

12. Agents of MPD and MMC engaged in impermissible fact finding in a "bench trial" for Plaintiff, such as calling a DMV employee by phone to check Plaintiff's driving record for use in court.

13. Plaintiff was never read his Faretta warnings.

14. Plaintiff was not represented by an attorney.

15. Plaintiff was never offered a public defender.

16. Upon information and belief, MMC has no public defender and has no contractual relationship with a public defender's office.

17. Plaintiff was found guilty and sentenced to jail time after an impermissible bench trial in which Defendant participated in and presented evidence.

18. Plaintiff's father paid full fines for Plaintiff to be released from jail.

19. As a result of Defendant's grossly negligent and/or reckless conduct, Plaintiff has experienced suffering, mental and emotional anguish, anxiety, and financial harm.

20. As a result of the false imprisonment and constitutional violations made by Defendant, Plaintiff has experienced suffering, mental and emotional anguish, anxiety, and financial harm.

21. As a result of malicious prosecution, Plaintiff suffered unnecessarily.

FIRST CLAIM FOR RELIEF
(Gross Negligence)

22. Plaintiff repeats and re-alleges each of the allegations of paragraphs 1 through 21 as if set forth verbatim.

23. Defendant, by and through the acts of their agents/employees/servants, undertook a duty to Plaintiff as a member of the public and recipient of services offered and provided by MPD and MMC.

24. Defendant through MPD, MMC, and their agents breached its duty in the following particulars:

- a. In failing to adequately train, monitor, and supervise their employees, agents, and/or servants to account for the public's rights and safety;
- b. In failing to adequately train, monitor, and supervise their employees, agents, and/or servants to handle the events giving rise to Plaintiff's injuries;
- c. In failing to adequately train, monitor, and supervise their employees, agents and/or servants to properly effect detention of Plaintiff;
- d. In failing to adequately train, monitor, and supervise their employees, agents, and/or servants to properly recognize constitutional violations;
- e. In failing to adequately train, monitor, ad supervise their employees, agents, and/or servants to properly provide not to Plaintiff of his rights;
- f. In failing to have appropriate policies and protocols in place to provide for the safety, rights, and wellbeing of Plaintiff and other members of the public;
- g. If such policies exist, in failing to follow the same;
- h. In failing to ensure that Plaintiff was aware of his rights as required under State law;

- i. In failing to provide a system of public defense for Plaintiff and other's similarly situation as required;
- j. In engaging in improper fact finding practices and participating in depriving plaintiff of his rights;
- k. In jailing Plaintiff without following adequate procedures;
- l. In depriving Plaintiff of due process;
- m. In failing to protect Plaintiff; and
- n. In such other particulars as the evidence at trial may show.

25. The injuries Plaintiff were a direct and proximate result of, and were occasioned by, the gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendant, by and through its agents, employees, and/or servants.

26. Defendants are liable to Plaintiff for actual and consequential damages, the costs of this action, and for such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF
(Breach of South Carolina Constitutional Rights)

27. Plaintiff repeats and re-alleges each of the allegations of paragraphs 1 through 26 as if set forth verbatim.

28. Defendant's actions set forth above violate Plaintiff's Constitutional Rights.

29. Pursuant to the South Carolina Constitution, Plaintiff has the right to due process and to be free from and cruel and unusual punishment.

30. At the time of Plaintiff's arrest, he was treated in an unreasonable manner by MPD and MCC agents.

31. No reasonable officers or employees could have believed this conduct was appropriate or constitutional, especially in light of South Carolina case law.

32. At the time of Plaintiff's seizure, the rules and law on seizures was clearly established.

33. As a direct and proximate result of the constitutional violations made by Defendant, Plaintiff has experienced suffering, mental and emotional anguish, anxiety, and financial harm.

THIRD CLAIM FOR RELIEF
(False Imprisonment)

34. Plaintiff repeats and re-alleges each of the allegations of paragraphs 1 through 33 as if set forth verbatim.

35. Defendant's actions set forth above constitute a false imprisonment.

36. MPD officers and MCC agents intended to restrain Plaintiff.

37. MPD and MCC together imprisoned Plaintiff without adequate process.

38. As a direct and proximate result of the false detention made by Defendant, Plaintiff has experienced suffering, mental and emotional anguish, anxiety, and financial harm.

SIXTH CLAIMS FOR RELIEF
(Malicious Prosecution)

39. Plaintiff repeats and re-alleges each of the allegations of paragraphs 1 through 38 as if set forth verbatim.

40. Defendant, through MPD, initiated and continued legal proceedings against Plaintiff.

41. Officers of MPD continued with this prosecution knowing fully that Plaintiff had not been offered due process and that Defendant was engaging in improper fact-finding.

42. Legal proceedings were initiated and continued merely because agents of Defendant found Plaintiff annoying.

43. As a direct and proximate result of this prosecution by Defendant, Plaintiff has experienced suffering, mental and emotional anguish, anxiety, and financial harm.

WHEREFORE, having fully set forth his complaint above, Plaintiff prays for judgment against Defendant for actual damages in an amount that a trier of fact deem just and proper.

Respectfully submitted,

/s/ Skyler B. Hutto #102741
Skyler B. Hutto
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ATTORNEYS FOR PLAINTIFFS

October 6, 2020
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	CASE NO: 2020-CP-13-00672
	)	
Michael Qualls,	)	
	)	
Plaintiff,	)	
	)	ANSWER OF DEFENDANT
vs.	)	TOWN OF MCBEE
	)	
Town of McBee,	)	
	)	
Defendant,	)	
	)	

The Defendant, Town of McBee, by and through the undersigned counsel, answers the Complaint of the Plaintiff as follows:

1. Unless affirmatively answered herein, all of the allegations of the Complaint are denied.
2. The Defendant has no knowledge as to the allegations of Paragraph 1 and would therefore deny same.
3. The Defendant admits so much of the allegations of Paragraph 2 as alleges that Defendant is a governmental entity operating pursuant to the laws of the State of South Carolina.
4. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 3 and 4 and would therefore deny same.
5. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraph 5 and would therefore deny same.
6. The allegations of Paragraph 6 are jurisdictional and do not require a response from the Defendant.

7. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraph 7 - 11 and would therefore deny same.

8. The allegations of Paragraph 12 are denied.

9. The allegations of Paragraph 13 are denied.

10. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraph 14 and would therefore deny same.

11. The allegations of Paragraph 15 are denied.

12. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraph 16 and would therefore deny same.

13. The allegations of Paragraph 17 are denied.

14. The Defendant has no knowledge as to the allegations of Paragraph 18 and therefore denies same.

15. The allegations of Paragraphs 19, 20, and 21 are denied.

AS TO THE FIRST CLAIM FOR RELIEF

16. Defendant denies every allegation that is not expressly admitted, qualified or explained.

17. The Defendant denies the allegations of Paragraphs 23, 24, 25, and 26.

AS TO THE SECOND CLAIM FOR RELIEF

18. Defendant denies every allegation that is not expressly admitted, qualified or explained.

19. The allegations of Paragraph 28 are denied.

20. The allegations of Paragraph 29 are admitted.

21. The allegations of Paragraph 30 are denied.

22. The allegations of Paragraph 31 are denied.

23. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraph 32 and would therefore deny same.

24. The allegations of Paragraph 33 are denied.

AS TO THE THIRD CLAIM FOR RELIEF

25. Defendant denies every allegation that is not expressly admitted, qualified or explained.

26. The Defendant denies the allegations of Paragraphs 35 - 38.

AS TO THE SIXTH CLAIM FOR RELIEF

27. Defendant denies every allegation that is not expressly admitted, qualified or explained.

28. The Defendant does not have sufficient information to form a belief as to the truth of the allegations contained in Paragraph 40 and would therefore deny same.

29. The Defendant denies the allegations of Paragraphs 41 - 43.

30. The Defendant denies that the Plaintiff is entitled to relief as set forth in this Prayer For Relief.

FOR A FIRST DEFENSE

31. Defendant is entitled to sovereign immunity from suit.

FOR A SECOND DEFENSE

32. The Plaintiff's claims are governed by the exclusive provisions of the *South Carolina Tort Claims Act*, S.C. Code Ann. §§ 15-78-10 *et seq.*, and this Defendant is entitled to the

limitations, defenses, and immunities contained within the Act, including but not limited to, those set forth in S.C. Code Ann. §15-78-30, §15-78-60, §15-78-70, §15-78-110, §15-78-120, and §15-78-200.

FOR A THIRD DEFENSE

33. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

34. This Defendant's acts, conduct, and/or omissions were objectively reasonable.

FOR A FIFTH DEFENSE

35. The acts, conduct, and/or omissions of this Defendant were legally justified.

FOR A SIXTH DEFENSE

36. The publications by this Defendant, if any, concerning the Plaintiff were truthful.

FOR A SEVENTH DEFENSE

37. The Plaintiff's injuries and damages, if any, were due to and proximately caused by the Plaintiff's sole, primary, and/or contributing negligence, gross negligence, willfulness, and/or wantonness. As such, the Plaintiff's claims are barred. Alternatively, the Plaintiff's recovery, if any, should be reduced in proportion to his negligence, gross negligence, willfulness, and/or wantonness.

FOR AN EIGHTH DEFENSE

38. Plaintiff suffered no actual injury as a result of the claims alleged.

FOR A NINTH DEFENSE

39. Plaintiff's claims may be barred by the doctrines of *res judicata* and/or collateral estoppel.

FOR A TENTH DEFENSE

40. Plaintiff's claims may be barred by the equitable doctrines of waiver, estoppel, laches, and unclean hands.

FOR AN ELEVENTH DEFENSE

41. The acts, conduct, and/or omissions, complained of by the Plaintiff were both constitutional and lawful.

FOR A TWELFTH DEFENSE

42. Any and all personal injuries claimed by the Plaintiff were the result of a natural disease process.

FOR A THIRTEENTH DEFENSE

43. Plaintiff assumed the risk for his acts, conduct, and/or omissions.

FOR A FOURTEENTH DEFENSE

44. Any arrest, imprisonment, and/or detention of the Plaintiff were supported by both probable cause and valid under the law.

FOR A FIFTEENTH DEFENSE

45. Plaintiff's alleged injures, if any, were proximately and solely caused by an independent, efficient and/or intervening cause or causes, for whom or for which this Defendant is neither liable nor responsible.

FOR A SIXTEENTH DEFENSE

46. The process and/or sufficiency of process upon the Defendant is/was insufficient.

FOR A SEVENTEENTH DEFENSE

47. This Defendant cannot be held liable for employee conduct outside the scope of

his/her official duties or which constitute actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

FOR AN EIGHTEENTH DEFENSE

48. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A NINETEENTH DEFENSE

49. Any communications and actions made and taken by Defendant were privileged and may not form the basis of Plaintiff's claims.

FOR A TWENTIETH DEFENSE

50. Any communications made by Defendant were true and not actionable.

FOR A TWENTY- FIRST DEFENSE

51. Defendant is entitled to privilege and absolute immunity to the extent that Plaintiff bases liability on communication and conduct during or related to court proceedings.

FOR A TWENTY- SECOND DEFENSE

52. The South Carolina Tort Claims Act must be liberally construed in favor of limiting the liability of this Defendant in this matter.

WHEREFORE, having fully Answered the Plaintiff's Complaint herein, this Defendant prays that this Honorable Court deny the relief requested by the Plaintiff, dismiss this action in its entirety against it, enter judgment in its favor, award it all reasonable attorney's fees and costs, and grant such other and further relief as this Honorable Court deems just, equitable and proper.

WILLCOX, BUYCK & WILLIAMS, P.A.

December 8, 2020

/s/ Katherine M. Ryan

Katherine M. Ryan

I.D. No.: 101063

248 West Evans Street

P.O. Box 1909 (29503-1909)

Florence, South Carolina 29501

Telephone: (843) 662-3258

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Email: kryan@willcoxlaw.com

ATTORNEY FOR DEFENDANT

TOWN OF MCBEE

CERTIFICATE OF ELECTRONIC SERVICE

On December 8, 2020, Defendant served the Answer on Plaintiff and any other party who has appeared in this action by filing the pleading in the Court's electronic filing system.

s/Katherine M. Ryan

Katherine M. Ryan

State of South Carolina
County of Chesterfield

Common Pleas Court

Michael Qualls,
 plaintiff,

V.

#2020-CP-13-00672

Town of McBee,
 defendant.

Videoconference Deposition of: Michael Qualls

Location of Deponent: 1281 Russell Street
 Orangeburg, South Carolina

Date: Wednesday, July 21, 2021

Time: 10:03 a.m. - 11:35 a.m.

Court Reporter: Wade Matthews

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina Rules of Civil Procedure.

Q & A COURT REPORTING SERVICES
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For the Plaintiff: (via Zoom)
Williams & Williams Attorneys at Law
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By: Skyler B. Hutto, Esq.
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For the Defendant: (via Zoom)
Willcox, Buyck and Williams, P.A.
248 West Evans Street
Florence, South Carolina 29501
By: Katherine M. Ryan, Esq.
kryan@willcoxlaw.com

For the Defendant: (via Zoom)
Sweeny, Wingate & Barrow
115 Cargill Way
Hartsville, SC 29550
By: Martin S. Driggers, Esq
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pg/ln	ex.	description
	(no exhibits proffered.)	

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** Uh-huh = Affirmative
   Huh-uh  = Negative

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1 S T I P U L A T I O N S

2 It is stipulated among Counsel that this
3 deposition is being taken pursuant to the South
4 Carolina Rules of Civil Procedure; and that all
5 objections, except as to the form of the question,
6 are reserved until the time of trial.

7 It is also stipulated among Counsel for the
8 respective parties and the deponent that the
9 deponent will waive the right to read and sign
10 this transcript.

11 THEREUPON,

12 Michael Qualls,
13 being first duly sworn by the court reporter, as
14 hereinafter certified, testified as follows:

15 E X A M I N A T I O N

16 By Ms. Ryan:

17 Q All right. Mr. Qualls, good morning.
18 How are you doing?

19 A Good morning. How are you doing?

20 Q Good, thank you. So I have some
21 questions for you. Have you ever had your
22 deposition taken before?

23 A No, ma'am.

24 Q Okay. Do you understand that you're
25 under oath?

1 A Yes, ma'am.

2 Q Okay. And that means that you're
3 sworn to tell the truth. Do you understand that?

4 A Yes, ma'am.

5 Q Okay. And even though we're in an
6 informal setting in our own offices, your answers
7 have the force and effect as if we were in a
8 courtroom with a judge and a jury.

9 A Okay.

10 Q Do you understand that?

11 A Yes, ma'am. I do.

12 Q Okay. And are you prepared to answer
13 my questions truthfully and honestly today?

14 A Yes, ma'am.

15 Q Okay. And there's nothing that will
16 prevent you from giving me your full attention,
17 like, you're not taking medications or narcotics,
18 drugs or alcohol. Is that correct?

19 A Correct.

20 Q Okay. And if you don't understand one
21 of my questions, will you let me know?

22 A Yes, ma'am.

23 Q Okay.

24 A I understand.

25 Q All right. And if you need to take --

1 take a break at any time, tell me and we can
2 certainly take a break. Is that okay?

3 A That's okay.

4 Q Okay. And if you can, please, after
5 my questions, rather than shake your head or nod
6 your head yes or no, please try to verbalize and
7 use the words yes or no, so that our court
8 reporter can record your answers.

9 A Okay. I will.

10 Q Okay. All right. What did you do to
11 prepare for your deposition?

12 A Nothing. I -- I didn't do anything --

13 Q Okay.

14 A -- to prepare.

15 Q And just as a definition that -- when
16 I use the word incident, that's just referring to
17 the events which form the basis of your claims in
18 this case, so if I refer to incident, that's what
19 I mean. So now I want to just get some personal
20 information from you. How old are you?

21 A I'm 35.

22 Q Okay. And what is your birthday?

23 A November 6th, 1985.

24 Q Okay. And a little bit about your
25 family, are you married?

1 A No, ma'am.

2 Q Okay. Have you ever been married?

3 A No, ma'am.

4 Q Okay. And do you have any children?

5 A No, ma'am.

6 Q Okay. Okay. Do you have any other

7 relatives that are living in Chesterfield County

8 over the age of 18?

9 A No, ma'am.

10 Q Okay. And where are you employed?

11 A I'm not working right now.

12 Q Okay. Where -- where was your last

13 place of employment?

14 A My last place of employment was --

15 Q I'm sorry. Can you say it a little

16 bit louder?

17 A Olive Garden.

18 Q Olive Garden?

19 A Yes, ma'am.

20 Q Okay. And what -- what -- where is

21 that located?

22 A Florence, South Carolina.

23 Q Florence. Okay. And when did you

24 work there?

25 A About --

1 Q How long ago did you work there?

2 A Probably about a year or so.

3 Q Okay. And -- and how long were you
4 employed there?

5 A About a year.

6 Q A year. Okay. And -- and why did you
7 leave that job?

8 A I had some things to take care of and
9 I wouldn't have been able to get there any more.

10 Q Okay. So you left that job in
11 appro--- in 2020?

12 A Yes.

13 Q Okay. Do you remember approximately
14 the month?

15 A No, I don't.

16 Q Okay. All right. And can you tell me
17 about your education? What is -- did you go to
18 college?

19 A Yes, ma'am. I went.

20 Q Okay. Where did you go?

21 A Denmark Tech.

22 Q Denmark Tech?

23 A Yes, ma'am.

24 Q Okay. Where is that?

25 A In Denmark.

1 Q Okay. What did you study there?

2 A I really didn't -- a major -- I was
3 going to choose an major later, but I never really
4 decided on what I -- I stopped -- I stopped going.
5 I didn't finish.

6 Q Okay. How many years did you go?

7 A I was there for a half a semester. I
8 was at Voorhees for a year and Denmark Tech for
9 half a semester.

10 Q Where were are you before Denmark?

11 A Voorhees.

12 Q Okay. Can you spell that? I -- I'm
13 just having a little trouble hearing.

14 A Voorhees College. It's in Denmark
15 also. They're right across the street from each
16 other.

17 Q Okay. Okay. So you said you went
18 there for how long?

19 A I went to Voorhees for a year and
20 Denmark Tech was a semester.

21 Q Okay. Got it. And why was it that
22 you left Denmark?

23 A I just -- wanted to just start making
24 money, so I just started working to make an
25 income.

1 Q Okay. And where did you go work from
2 there?

3 A I started working at a plant.

4 Q I don't -- did you say a bank?

5 A A plant.

6 Q A plant. Okay.

7 A Yes.

8 Q What -- okay. What was -- what plant
9 was that?

10 A Core, it was called Core.

11 Q So where was that located?

12 A That was in Lugoff, South Carolina.

13 Q Where in South Carolina?

14 A Lugoff.

15 Q Okay.

16 A It's in Kershaw County.

17 Q Okay. Okay. Did you ever serve in
18 the military?

19 A No, ma'am.

20 Q Okay. And have you ever been arrested
21 before?

22 A Yes, I have.

23 Q Okay. Was it for a felony or a
24 misdemeanor?

25 A Both.

1 Q Okay. And can you tell me where that
2 was?

3 A I've been arrested in Kershaw County,
4 Richland County.

5 Q So Kershaw County and Richland County,
6 anywhere else?

7 A In Orangeburg also. Orangeburg.

8 Q And what were the charges?

9 A I had drugs charges. I had speeding
10 tickets.

11 Q Okay. So drug charges and speeding
12 tickets, anything else?

13 A I had -- I had a few -- if you want, I
14 could print something off for you and find out
15 exact--- it names every single charge, but I
16 cannot tell you.

17 Q Okay. Did you plead from -- from the
18 drugs or the speeding, did you plead guilty or go
19 to trial?

20 A My previous charges, I -- some were
21 dropped, some I pled to.

22 Q Okay. Okay.

23 A You're talking about the one before,
24 you're not talking about current charges.

25 Correct?

1 Q Correct. I'm talking about your prior
2 arrests.

3 A Okay.

4 Q Okay. So you didn't go to trial for
5 any of those?

6 A I had a couple of charges that I was
7 going to go to trial for, but it was dropped
8 before they went.

9 Q Okay. Okay. Okay. And do you have
10 -- did you -- have you ever filed any prior
11 lawsuits?

12 A Filed lawsuits besides this case?

13 Q Right. Have you ever sued anybody
14 else?

15 A No, ma'am.

16 Q Okay. Did you file a lawsuit against
17 Calvin's Auto and Tires in Orangeburg?

18 A Yes, ma'am.

19 Q Okay. And what was that for?

20 A Unlawful arrest, which was dropped.
21 So I was going to try to be reimbursed for, you
22 know, things that the incident had caused, but
23 that went to trial for a case and I won at jury
24 trial.

25 Q Okay. And was -- anything else or is

1 that the only one?

2 A Yes, but that was put on pause, so
3 that's why I didn't say that 'cause I technically
4 didn't go to court or anything for that. The
5 process had just started.

6 Q Okay. Okay. So now, we're going to
7 talk about the -- the incident. Can you -- can
8 you tell me about how the incident occurred?

9 A The incident occurred at -- what's
10 it -- court. I had requested a jury trial and I
11 was told that if I didn't pay the fines right then
12 and there, that I would be put in jail.

13 Q Okay. Mister -- Mr. Qualls, if we can
14 back up, tell me about the initial traffic stop
15 and -- and the arrest and that sort of thing. And
16 then we'll get to the court part?

17 Mr. Hutto: And I
18 sincerely apologize. There's -- there's like a
19 drumming going on outside. I don't know if that's
20 messing with you, Mr. Court Reporter. I'm going
21 to see what's going on. There's a -- there's a
22 loud noise coming from right outside this window.
23 One -- just one moment.

24 Ms. Ryan: Okay. I can't hear it on
25 my end --

1 Court Reporter: Yeah.

2 I'm -- I'm not get any drumming on this end
3 either.

4 MR. Hutto: If -- if you
5 can't hear it, that's fine. It looks like
6 there's, like, a kids summer camp thing going on
7 outside of our office. I don't know what that is,
8 but, anyway --

9 Court Reporter: Yeah. It's
10 not --

11 Mr. Hutto: Go ahead.

12 Court Reporter: -- on my end, so --

13 Mr. Hutto: I'm sorry.

14 Court Reporter: -- I think we're --
15 we're all right.

16 Ms. Ryan: Okay. And Wade, you
17 can -- you're okay your hearing of everything?

18 Court Reporter: Yes -- yes, ma'am. I
19 don't hear any drumming.

20 Ms. Ryan: Okay.

21 By Ms. Ryan:

22 Q Okay. So Mr. Qualls, if you can tell
23 me about the initial traffic stop, did this -- do
24 you agree that this was on July 8th, 2019?

25 A Right now I can't remember the exact

1 dates, but I can tell you that the reason I was
2 there because I got arrested on -- I was charged
3 with about six charges and that's why I was in
4 court at McBee.

5 Q Okay. Well, if you can tell me about
6 the day that you were driving when -- when you got
7 pulled over on July 8th, 2019. Do you recall
8 where you were going on that day?

9 A No.

10 Q Okay. What kind of car were you
11 driving?

12 A Nissan Altima.

13 Q Okay. And whose car was it?

14 A It was mine.

15 Q It was your car?

16 A Yes.

17 Q Okay. And do you recall if you were
18 speeding?

19 A No, I can't recall if I was speeding.

20 Q Okay. And do you -- do you remember
21 when you noticed Deputy Reichart behind you?

22 A I remember he was in front of me and
23 he started slowing down and then I started to slow
24 down. And then I was going in the store, so I did
25 -- I didn't know what the -- the officer was

1 doing. So, I guess he was trying to wait for me
2 to pass him and I didn't and then that's when he
3 had cut on his lights and started to get behind
4 me.

5 Q Okay. So when --

6 A He was -- he was in front of me.

7 Q So when you noticed that he was
8 slowing down, did you take a turn off that road?

9 A Yes, ma'am. I did.

10 Q Okay. And why did you turn off that
11 road?

12 A Because I didn't -- I didn't know what
13 the officer was doing, so the I felt very
14 uncomfortable to be near him, so that's why turned
15 off -- off of the road.

16 Q Why did that make you uncomfortable?

17 A Because I was -- I was curious as why
18 he kept slowing down and I felt like he wanted me
19 to pass him. And I felt like he wanted to pass
20 him, so he could put the lights on me.

21 Q Okay.

22 A Because --

23 Q And when --

24 A -- when he was slowing down, the --
25 the blue lights wasn't on. So for him to slow

1 down like that and not have any lights on for any
2 reason, I just thought that was odd.

3 Q Okay.

4 A So I probably moved the opposite way.

5 Q How fast were you going when you
6 noticed that he started to slow down?

7 A The exact miles, I'm not sure.

8 Q What did you say? I'm sorry. I
9 didn't hear you --

10 A The exact miles per hour I was going,
11 I'm not sure.

12 Q Okay. Do you think you were going
13 faster than the speed limit?

14 A Not sure.

15 Q Okay. And did you -- when you made
16 that turn, did you turn on your turn signal or did
17 you just turn immediately?

18 A Not sure.

19 Q And what happened once you took that
20 turn?

21 A I pulled over at someone's house
22 because, like I said, I was uncomfortable and I
23 wanted someone to be around in case something
24 happened.

25 Q Okay.

1 A So that's why I pulled over to
2 someone's house.

3 Q Okay. Do you know whose driveway it
4 was that you turned into or --

5 A No, I don't.

6 Q Okay. And -- and what did you do once
7 you pulled over?

8 A I had stepped out of the car 'cause I
9 was going to knock on the person's door. And when
10 I stepped out of the car, they were telling me not
11 to move, but that's why I pulled into the person's
12 house because I wanted someone to come out and
13 watch everything that was going on to make sure
14 nothing happened.

15 Q Okay. Why did you want somebody to
16 come out and --and watch what was going on?

17 A To make sure that my -- to make sure I
18 was safe.

19 Q Okay. Okay. So when you got out of
20 the car, what did you -- what did you say to him
21 as soon as you stepped out of the car?

22 A I was told don't move.

23 Q Okay. So had you -- when you exited
24 the car, had you traveled some distance or were
25 you standing just right beside the car?

1 A I was -- I was near the car. I can't
2 remember everything --

3 Q Okay.

4 A -- scene for scene.

5 Q Okay. Did you attempt to run at all
6 or -- or sort of get away from the officer at that
7 point?

8 A Like I said, I can't remember the
9 scene -- the scene, but I know that in my mind, I
10 was thinking to go to somebody house and get them
11 to come outside, so I was going -- my plan was to
12 get out of the car and go to up to the door.

13 Q Okay. I'm sorry to ask you to repeat
14 yourself again, it's just not -- I can't hear that
15 well. Can you --

16 A I was -- I was -- I was saying that I
17 can't remember scene for scene -- that, but I knew
18 that -- my original thoughts was to get to
19 someone's house and to get them to come outside
20 and -- and -- because I was worried about my
21 safety. All right. So you got the police officer
22 had just stopped in front of me without cutting on
23 his lights, so that -- that made me think that he
24 wanted me to pass him, so he could get behind me
25 to cut the lights on.

1 Q Okay.

2 A So that's why I turned. And whenever
3 he tried to get behind me during that process,
4 that's what made me say to myself, to make sure I
5 was safe, to go to someone's house.

6 Q Okay. Okay. I can hear you better
7 now.

8 Mr. Hutto: And -- and
9 Mr. Qualls, if you want to move closer to this
10 thing. I think this is the receiver. I -- if
11 you -- it doesn't have a button to tell me if it's
12 on, but I think that's it.

13 Ms. Ryan: Okay. Is that better
14 Wade for you too to hear it? Okay.

15 Mr. Hutto: I can -- we
16 can hear you fine.

17 Ms. Ryan: Okay.

18 By Ms. Ryan:

19 Q Okay. So tell me what happened once
20 you got out of the car and Deputy Reichart
21 approached.

22 A I remember they were asking me, like,
23 who does the car belong to and this and that and,
24 you know, they're thinking that it's stolen. And
25 I'm telling them that it's my vehicle.

1 Q Okay. Was the car registered to you?
2 The -- the tag that's on your car, was it
3 registered in your name?

4 A No. It was -- I don't think it was
5 registered yet.

6 Q Okay. Where -- did you -- where did
7 the car come from?

8 A I had bought it from someone.

9 Q Okay. Do you remember the name of the
10 person you bought it from?

11 A No, I don't.

12 Q Okay. Did -- were they -- did they
13 live in South Carolina, the person you bought it
14 from?

15 A No, they didn't.

16 Q Where did they live?

17 A They lived in North Carolina.

18 Q Okay. Colleen Stewart, would that be
19 who you bought the car from?

20 A I can't remember the name.

21 Q Okay. Do -- do you know when you
22 bought the car or what approximate date?

23 A No, I don't.

24 Q Okay. Had you owned it for a year or
25 two years --

1 A I had recently purchased it whenever
2 the -- that incident had happened. I didn't have
3 it long.

4 Q Okay. So the -- that year -- so you
5 bought it in 2019, probably?

6 A Yes, ma'am.

7 Q Okay.

8 A Whenever the -- like, during that
9 point -- like, when the incident happened, I -- I
10 just had purchased the car when I -- I -- I got it
11 from a guy. I can't remember his name, but it was
12 in North Carolina.

13 Q And did you -- how did -- did you --
14 how did you pay for the car?

15 A Cash.

16 Q Okay. Do you remember how much you
17 paid for it?

18 A No, I don't.

19 Q Okay. Did you know that the car was
20 not insured?

21 A I had talked to the insurance
22 company -- maybe they didn't transfer it over in
23 time, but I -- I thought that they did.

24 Q So at that time, you thought it was
25 insured --

1 A Yes, ma'am.

2 Q -- when you were driving?

3 A Yes, ma'am.

4 Q Okay. What was the insurance company?

5 A At this time, I'm not sure what
6 insurance company I was with.

7 Q Okay. Okay. And back to the -- the
8 arrest and he pulled you over, did you have any
9 idea why he pulled you over?

10 A No, ma'am. 'Cause like I say, I
11 originally seen him slowing down in front of me
12 and when I seen him slow down in front of me, I
13 slowed down some. And then he went because super
14 slow and that made me nervous and that's when I
15 turned -- turned off to the road.

16 Q Okay.

17 A Because I've had experiences with the
18 -- with police harassment in the past, so to
19 avoid, you know, anything extra, I just thought it
20 was just best for my safety to go the opposite
21 way.

22 Q Okay. And so he ultimately tried to
23 handcuff you. Did you -- did you struggle when he
24 was trying to do that?

25 A I can't remember exactly, but it -- it

1 -- it -- it -- it could have been. I wouldn't too
2 much doubt it 'cause, you know, I'm -- generally
3 -- generally, around the police, I get nervous.
4 So I can't remember exactly what I did or didn't
5 do as far as like, movement, but I -- I wouldn't
6 doubt it.

7 Q And when he's trying to get you in the
8 patrol car, did you resist getting in the car?

9 A I can't remember exactly. I would
10 have to watch the -- the -- the camera footage and
11 I'd be able to better tell you better as far as
12 everything -- exactly everything that happened.

13 Q Okay. So at that time when you were
14 driving, did you know that your license was
15 suspended?

16 A No, ma'am.

17 Q Okay. Okay.

18 A Matter of the fact, whenever I had
19 found out that it was suspended, I went to the
20 D.M.V. and I paid for a six month temporary
21 license, but after these charges from McBee went
22 through, it -- it canceled it. Because while you
23 have a temporary license, you can't get any -- any
24 other tickets. Matter of fact, I got the
25 temporary license about the next day or so.

1 Q You got the temporary license the day
2 after you were pulled over?

3 A Yes, ma'am, like a day or two
4 afterwards.

5 Q Okay.

6 A Because I had -- I had my temporary
7 license whenever I had went to -- went to court,
8 but like I say, it got canceled once the new
9 charges had went through from that stop.

10 Q Okay. So you're -- you're --

11 A Because they said that the only reason
12 that my license was suspended at that time was
13 because a tag wasn't turned in, so in South
14 Carolina, if you don't turn the tag in, they
15 charge you, like, five dollars a day up to 400
16 bucks and they suspend your license. That was the
17 only reason because I didn't have no tickets
18 pending or anything, so that's why I didn't know
19 that my license was suspended. The only reason it
20 was because they said that a tag wasn't turned in.

21 Q Okay.

22 A That's why. So I didn't know. That's
23 why I didn't know.

24 Q Okay. So did you turn your tag in?

25 A Yes, ma'am.

1 Q Okay. When did you do that?

2 A I can't -- I can't remember.

3 Q Okay. So in order to get that
4 temporary license, did you have to turn the tag
5 in?

6 A Yes, ma'am. All that had to be --
7 yes, ma'am, the paperwork had to go through.

8 Q Okay. And that was a couple of days
9 after you got pulled over?

10 A Yes, ma'am. It was like a day or
11 two -- it might -- it have been the next day, but
12 no more than, like, two days after, probably.

13 Q Okay. All right.

14 A But like I said, it got canceled after
15 that. And then I went on a suspension for a
16 couple of months.

17 Q And when was it canceled?

18 A As soon as the paper had went through
19 from the six charges from McBee, I got put on
20 suspension for a few months. And then, I had to
21 pay for a defense driving course.

22 Q When did you take that course?

23 A I'm not exactly sure the date, but
24 when it was completed, I had got a certificate. I
25 still got the certificate, but I'm not sure of the

1 date.

2 Q Okay. And when did you reinstate your
3 insurance?

4 A I'm not sure the ex--- exact date, but
5 probably after I was done with my suspension.

6 Q Okay. Okay. So -- and so what is
7 your understanding of -- of why you were pulled
8 over and arrested?

9 A I was told that I was originally
10 pulled over for -- for speeding.

11 Q Uh-huh. And do you think that you
12 were speeding or do you think that you were going
13 the speed limit?

14 A Not too sure, but I -- I would have
15 liked to have seen the -- the -- the -- the radar
16 in court.

17 Q Okay. Did you ask to see it in court?

18 A There -- there was -- there was no
19 need, I wanted a -- a jury trial and that's
20 supposed to go -- whenever you request a jury
21 trial. I'm saying is supposed to be set as a --
22 as a date. So I didn't, you know, request
23 anything at that point.

24 Q Okay. So we'll get to the bench trial
25 in just a second, but in regards to the -- to the

1 speeding, you weren't sure if you sped or not.

2 Did you say anything to Deputy Reichart about how
3 fast you were going?

4 A I might -- I might have. I'm -- I'm
5 not sure my exact words.

6 Q Do you think you would have said, I
7 wasn't speeding or I was going -- telling him how
8 fast you felt you were going or anything to that,
9 though?

10 A I -- I can't remember my exact
11 words --

12 Q Okay.

13 A -- at that time.

14 Q Okay. In your opinion, do you think
15 that you were going the speed limit or do you
16 think you might have been going faster?

17 A Not too sure, that's why I probably
18 would've, you know, tried to see the radar to, you
19 know, just see exactly what it was.

20 Q Okay. And so what happened after you
21 were arrested?

22 A I was taken to jail.

23 Q Okay. And how long were you there?

24 A And my car had got towed also.

25 Q Uh-huh. And how long were you in

1 jail?

2 A I was in jail a few days. I'm not
3 sure of the exact amount. And while I was in
4 jail, I had called my family and told them what
5 had happened. I told them that I requested a jury
6 trial and I was denied. And when that happened,
7 they had called and complained and I was told that
8 if I pay -- because the total amount of fines was
9 the like 22 or 2300 dollars, so I was told if I
10 paid half of that, then I would be released. I
11 paid half of that to -- to get out. So I paid
12 like 12, 1300 bucks.

13 Q Okay. So when you -- when you said
14 you were in jail you requested a jury trial or
15 when did you request that?

16 A No, ma'am. They -- they just did that
17 once my family called to complain, they did that
18 on their own.

19 Q Who -- who did is that?

20 A The -- the -- their magistrate had did
21 it.

22 Q Okay. So the -- you say -- when you
23 said you requested a jury trial, you're talking
24 about when you were actually at court?

25 A Yes, ma'am.

1 Q Okay. And you said that you paid
2 between 1200 and 1300 dollars for the fines. When
3 did you pay that?

4 A During the time that I was in there,
5 my family went to go pay for it for me --

6 Q So --

7 A -- because I was told -- right.
8 Because when they complained about me being denied
9 a jury trial, that's when I was told that they
10 would release me if I pay half the money. They
11 said pay half the money now and half the money
12 later and you will be released.

13 Q So that was -- you were told that
14 before or after the trial?

15 A While -- while I was in jail.

16 Q Okay. When you were in jail before
17 the --

18 A No, after -- after I got sentenced.

19 Q Okay.

20 A I originally had got arrested. When I
21 originally got arrested, I got out on a P.R. bond.

22 Q Okay.

23 A When I originally got arrested.

24 Q Okay.

25 A But on the day that I went to court,

1 when the fine wasn't paid, I was taken to jail.

2 Q Okay. Okay. All right. And do you
3 agree that the -- the trial was on September 12th,
4 2019?

5 A I'm not sure of the exact date.

6 Q Okay. All right. Well, can you tell
7 me about that day in your own words?

8 A Okay. I had asked for a jury trial.

9 Q When did you ask for a jury trial?

10 A As soon as it began, I asked for a
11 jury trial. The officer was saying some things
12 and that's when the judge had took her cell phone
13 and she -- her words was she knew someone that
14 worked at the D.M.V. She had a friend that worked
15 at the D.M.V. She was going to the call them and
16 ask them if my license was suspended at the time.
17 And she was curious to know also how I get another
18 license. She didn't even known that a person
19 could get a temp license. They told her that my
20 license was suspended at the time and she also had
21 called the jail. She called the jail and asked
22 you them what she write on my file paper because
23 she said that she wrote on the bond paper that I
24 had to come in with the money. That's why she let
25 me out on a P.R. bond.

1 Q Okay. So you said as soon as it
2 began, you asked for a jury trial. Who did you
3 say that to?

4 A The judge.

5 Q Okay. And what did the judge say?

6 A That I had to pay the money right then
7 and there or I was going to jail. She told me
8 that she wasn't going to give me a jury trial.

9 Q How did you get to court the day of
10 the trial?

11 A I drove.

12 Q Okay.

13 A Yes. My car got towed when I went to
14 jail on that day also.

15 Q Okay. So when you drove to -- to the
16 court that day, was your license suspended?

17 A No, that's how I had a temporary one.

18 Q Okay.

19 A And when I was getting arrested, I had
20 the temporary license with me.

21 Q And you gave that to the officer when
22 you were arrested?

23 A Yes.

24 Q Okay.

25 A Because the temp license, it lasts for

1 six months, but the thing is, you can't get
2 anything during that time.

3 Q Okay. So would the temporary license
4 have been suspended when you were pulled over --
5 that -- when he pulled you over and arrested you,
6 that would have suspended your temporary license.
7 Correct?

8 A No. No, no, no. My license was
9 suspended -- see, my license was originally
10 suspended for not turning in a tag and it's like a
11 lot of -- if you don't turn in your tag, then they
12 charge you five dollars a day up to 400 bucks, but
13 they automatically suspend your license. At the
14 beginning, I didn't know that until all this stuff
15 started happening. But the D.M.V. told me that I
16 could get a -- a -- a temporary license. So I
17 paid the money to get the temporary license. It
18 costs, like, 600 bucks, but you're able to put,
19 like, two-something down on it.

20 Q Okay. So you got a temporary license
21 after you were pulled over?

22 A Yes, ma'am.

23 Q Okay.

24 A Yes, ma'am.

25 Q Okay. So when you drove to court that

1 day, you had the temporary license and it had not
2 been suspended?

3 A Right. It didn't go -- it didn't get
4 suspended again until I got sentenced and the
5 paperwork went through. That's when it got
6 suspended again.

7 Q Okay. Okay. And did you show your
8 temporary license to the Court during the trial?

9 A I mean, it basically was -- I mean,
10 she basically told me if I didn't pay the money, I
11 was going to get arrested. I knew -- I mean, you
12 know, I -- I really didn't say anything, but I
13 wanted a jury trial. The -- the officer said some
14 things, but I -- that's all I was saying, I wanted
15 a jury trial. I didn't feel like there was a
16 need. I was expressing that I wanted a jury
17 trial. I told the judge that I don't think that I
18 should be arrested. I want a jury trial. I
19 shouldn't have to pay the money now.

20 Q Did -- did the judge ask you how you
21 got to court that day?

22 A Yes.

23 Q Okay. And so did she say that your
24 license was suspended or -- you said that, in
25 terms of the D.M.V., that it was suspended on

1 their end --

2 A Yeah. She was -- she was -- had been
3 curious as far as like how I got to court. But I
4 really didn't think that really mattered.

5 Q And so did you -- so did you show her
6 your temporary license?

7 A I can't remember what -- what -- when
8 they seen it, they -- they did see the temporary
9 license because she was asking me, like, how did I
10 get a license and my license was suspended. And
11 she didn't understand that a person could get a
12 temporary license.

13 Q And so you did show her the -- the
14 physical license card that you had?

15 A Yes, ma'am.

16 Q Okay. So when the judge asked you how
17 you got to court that day, did you tell her that
18 your dad brought you to court?

19 A She was -- had been -- I was asking
20 her, like, what did that have to do with what's
21 going on here? I didn't want to take focus on
22 taking care of this -- I really didn't feel like
23 how I got there was a -- should be a thought.

24 Q Should be what?

25 A A thought. At the point in time while

1 we was in court and she was asking me how did I
2 get there, I thought that was a irrelevant
3 question, so I really didn't want to answer it.
4 'Cause I didn't feel as though, you know, how I
5 got there was of any importance.

6 Q So did you tell her that your dad
7 brought you to court?

8 A I remember telling her during the bond
9 hearing that my dad would -- would come and pick
10 me up. I remember her telling me to call my dad
11 to ask him for the money to pay my fines.

12 Q Do you think you told her that your
13 dad brought you to court that day for the trial?

14 A I don't -- I don't -- I don't think
15 so.

16 Q You don't think so. Is that what you
17 said?

18 A Right. I said, I don't think so.

19 Q Okay. So when she asked you who took
20 you to court, you said that you drove yourself.
21 Is that right?

22 A I -- I did drive myself.

23 Q What did --

24 A That's why when I -- that's why when I
25 got arrested, that's why they towed my car 'cause

1 I drove myself.

2 Q So when the judge asked you who -- how
3 you got to court that day, what did you tell her?

4 A I -- I can't remember my exact words.

5 Q Would you have said that you drove or
6 that your dad dropped you off?

7 A I -- I drove, yes.

8 Q Okay. In regards to court that day,
9 what was, sort of, the procedure? When you first
10 walked in, what did the judge say to you?

11 A She asked me for the money for the
12 fines. I mean, that's basically -- I mean, how it
13 started.

14 Q Did she ask if you wanted a bench
15 trial or a jury trial?

16 A No, she didn't, but I told her that I
17 wanted a jury trial.

18 Q Okay. Well, isn't it true that you
19 didn't ask for the -- the jury trial until you had
20 already been sentenced and were going to be put
21 back in jail?

22 A No, ma'am. She never asked me if I
23 wanted a bench trial or a jury trial. But I had
24 already knew that's what I wanted. Because I
25 looked at it like this, I had six charges, I

1 figured that if anything, you know, I could get
2 some help and find out, you know, what was done
3 right or wrong as far as legal-wise and possibly
4 get some of them dropped. And I was going to get
5 representation because my fine was up to 2,200
6 bucks, so I looked at it as, no matter what, it's
7 going to be less than 2,200 bucks. So to me, it
8 was -- I was going to come out better by getting
9 representation because it was going to end up
10 being less than 2,200, so I really went in there
11 knowing that I didn't want a bench trial because I
12 was going to come out cheaper by doing jury trial.

13 Q Okay. And so did you bring any money
14 to pay for your tickets?

15 A No, ma'am.

16 Q And did the judge ask if you had
17 brought money to pay for your tickets?

18 A Yes, ma'am.

19 Q And so when -- basically, when you
20 were found guilty and -- and ordered back to jail,
21 was that when you started talking about wanting to
22 jury trial?

23 A No, ma'am. I said that from the
24 beginning. And I was complaining for not -- for
25 the jury trial not to be set into place for me to

1 be put down for one.

2 Q Can you repeat that?

3 A I was saying that I had originally
4 asked for a jury trial. Not while I was being
5 arrested, I was saying it while I was being
6 arrested and before that. When I say arrested, I
7 mean, when I got arrested in the courtroom. I got
8 arrested right then and there after -- after I was
9 denied the jury trial.

10 Q Okay. So when you were arrested in
11 the courtroom, is when you said you wanted the
12 jury trial. Is that right?

13 A I said it before then -- during the
14 whole time from the beg--- from when it first
15 started to me being put in handcuffs, I was saying
16 it the whole time.

17 Q Okay. So before you were arrested and
18 put in handcuffs, you asked for a jury trial?

19 A Yes, ma'am.

20 Q Okay. And had you already started
21 talking and testimony had started before you asked
22 for the jury trial?

23 A There was no raise your right hand for
24 this -- there was none of that.

25 Q Okay.

1 A She was just asking me about the
2 fines, me paying off the -- the fines. And the
3 officer said what he had to say about the day that
4 he arrested me, but me on my end, I just kept
5 saying I wanted a jury trial.

6 Q Okay. So they had -- basically, the
7 judge had started talking and was talking and
8 asking you about the fines and the officer talked
9 about the arrest and then that's when you were
10 saying you wanted the jury trial. Is that right?

11 A Like, the way it was done, it was
12 like -- she was just like, asking in general.
13 There was never, could you raise your right hand
14 and it was never nothing like that. It was
15 basically like she was just, like, talking as like
16 regular conversation. Because it was no swearing
17 in, no one was recording nothing or writing
18 nothing down. It was just like, you know, how we
19 talking right now. But we did swear in at the
20 beginning, but, you know, I didn't get sworn in
21 there. That's why --

22 Q Where did they swear you in at the
23 beginning?

24 A They -- they -- they never did because
25 if they did, I would have had to sign a paper

1 waiving my rights to a jury trial, which I never
2 did because I didn't want to waive my right to a
3 jury trial. Before -- before it could even begin
4 -- I might be wrong, but to my knowledge, you're
5 supposed to sign a paper with your initials and
6 initial that you didn't -- you waive your right to
7 a jury trial. I never got that presented in front
8 of me. I never got sworn in to testify about
9 anything. None of that never happened.

10 Q Okay. So you never got sworn in at
11 all before testimony or anything?

12 A Right. Never got sworn in.

13 Q Okay. So basically the judge was
14 talking and she started talking about your fines
15 and the police officer was talking about the
16 arrest and then that's when you said you wanted a
17 jury trial. Is that right?

18 A Yes, ma'am.

19 Q Okay. Okay. And did the -- did the
20 judge tell you that once the testimony had
21 started, you can't -- you couldn't ask for a jury
22 trial after they had already started with a bench
23 trial?

24 A No, she never said that because I -- I
25 was denied from the very start of jury trial

1 because I was saying it from the get-go I wanted a
2 jury trial. So she never said that, well, it
3 already had started.

4 Q Okay. After the officer talked --
5 Dep--- Deputy Reichart, talked about the arrest,
6 did you make -- have any comments or ask him any
7 questions about what he said?

8 A No, I -- I -- I -- I didn't feel like
9 there was a need to --

10 Q Okay.

11 A -- at that point.

12 Q Okay. And after the judge ordered you
13 back to jail since you didn't pay the tickets, was
14 your car towed from the courthouse?

15 A Yes, ma'am, it was. The car was
16 towed, yes.

17 Q Do you have any evidence that you
18 asked for the jury trial in the very beginning and
19 were denied?

20 A Yes, ma'am. As soon as I was able
21 to -- to get on the phone, I called and complained
22 to my family and that phone call conversation is
23 recorded. As soon as I was able to get to a
24 phone, I called my family and complained to them
25 about what happened.

1 Q Okay. Do you have any other evidence
2 that you were denied the jury trial at the very
3 beginning?

4 A Whenever I had first went to the jail,
5 I was complaining -- not on the phone, but where
6 they process you in at, I was complaining about
7 not getting a jury trial. And from my knowledge,
8 that area is recorded.

9 Q And who did you complain to?

10 A I was saying something to the officer
11 and the people that worked there.

12 Q Do you know any of their names?

13 A No, ma'am, but I'm sure it could be
14 looked up and, you know, see who was at the desk.
15 But like I say, I don't know how long they keep
16 the camera footage, but if they keep it for a
17 couple of years, they -- they still might be able
18 to -- to get. I'm not sure how long they keep
19 that stuff.

20 Q Okay.

21 A But I remember I was told that phone
22 conversations do be recorded, so me calling my
23 family complaining soon as I was able to use the
24 phone, that, you know, might show something.

25 Q All right. Let's see. And in regards

1 to medical treatment after the incident, did you
2 have any doctor visits afterwards related to the
3 incident?

4 A I can't remember.

5 Q Okay. So you're not claiming any
6 medical damages. Is that correct?

7 A No.

8 Q Okay. And regarding the allegations
9 and the complaint or the -- your negligence claim,
10 who are you claiming was negligent?

11 A I'm claiming that McBee didn't give my
12 due process. That's what I feel like and I feel
13 like it was more than likely for the color of my
14 skin. And the incident also lost -- was the cause
15 of me to -- to lose a job. Because right before
16 that happened, it's a plant called McCall Farms,
17 they just paid for me to get a forklift license
18 and I do have the license that I got after I
19 completed a course, it was a five hour class. And
20 after this incident happened, they already gave
21 the position away, you know, and I never did --
22 was able to -- to get back to drive the forklift
23 for them. So they was the cause -- this incident
24 caused me to lose my job at McCall Farms driving a
25 forklift. And I do have the license that I did

1 get from the class they had paid for me 'cause
2 they paid for me to take the class at Florence-
3 Darlington Tech. But I was never able to do it
4 because they gave it away for -- from me being
5 gone for a few days.

6 Q So had you started working for McCall
7 Farms?

8 A No, ma'am. I was supposed to have
9 started during the days that I was locked up for
10 this incident.

11 Q Okay. Okay. So for that negligence
12 claim you're saying McBee didn't give you the due
13 process. And is that -- you're saying because
14 they didn't give you the bench trial? Or the --
15 I'm sorry.

16 A They didn't give me a --

17 Q The jury trial.

18 A -- jury trial. And also other people
19 was -- got their fines lower. Other people had a
20 chance to, you know, pay money at a later date,
21 but, you know, with me, it was like, you know --
22 and -- and none of my charges were dropped.
23 Normally, when someone has a few charges, at least
24 one or two is dropped and none of mine's was
25 dropped. And then I was being asked to pay the

1 full 22 right -- right then.

2 Q When you said other people got their
3 fines lowered, who -- can you give me names of who
4 get their fines lowered?

5 A No. No, ma'am. I think one person --
6 they had a ticket and the ticket got turned into
7 another ticket lower.

8 Q And what was that person's name?

9 A I'm not sure.

10 Q Okay. And then your -- your next
11 claim, the breach the South Carolina
12 constitutional rights. What -- what are claims in
13 that one?

14 A I just feel like everybody -- as far
15 as rights, I feel like everybody should, you know,
16 get a fair chance when they go to court. If
17 someone, you know, doesn't want to do a bench
18 trial and requests a jury trial, I believe that,
19 you know, they had the right to. Everybody does.
20 It should -- no one has the power to deny you from
21 my understanding.

22 Q Okay. And -- and what are your
23 damages in -- in regards to that constitutional
24 claim? Is -- is it the same -- the -- the loss of
25 that potential job with McCall Farms?

1 A That and -- you know, like mental
2 anguish, like, it's just, you know, real upsetting
3 whenever you locked up, period. It just takes you
4 into a whole 'nother place. It -- it -- it
5 basically like added to, you know, the -- the --
6 the -- the fear of the police and stuff altogether
7 'cause, you know, like, now whenever I see police,
8 I automatically think, like, they're going to, you
9 know, do something crooked to just try to get
10 money. If you don't give the money, they're going
11 to try to send you to jail. And I had, you know,
12 a few nightmares where incidents happen and
13 dealing with pol--- police and, you know, the
14 incidents ended up being worse than this. So it's
15 like it just adding to it as far as making me feel
16 like -- in the courtroom, you know, it's -- it's
17 not what its supposed to be. That's what it's
18 making me feel like.

19 Q Okay. And any other symptoms from
20 your mental anguish?

21 A No.

22 Q Okay. And have you ever been to a
23 doctor about your anguish?

24 A No.

25 Q And how long were you in jail for

1 this?

2 A A few days. I'm not sure exactly how
3 many.

4 Q And in regards to your -- your false
5 imprisonment allegation, who are you saying
6 deprived you of your liberty?

7 A Say that again, please?

8 Q Who are saying deprived you of your
9 liberty?

10 A McBee, the Town of McBee.

11 Q And so you're saying that -- that you
12 should never -- not have been put in jail at all.
13 Is that right?

14 A Yes, ma'am, that's what I'm saying.
15 If I was to be put in jail for that incident --
16 some wrongdoing was found beside it -- it -- it
17 was never supposed to have been on that particular
18 day. That's what I feel like. Because I showed
19 up to court like I was supposed to.

20 Q And do you think that the officer had
21 a -- a lawful reason to arrest you?

22 A I would feel -- maybe if the -- the
23 radar actually showed that I was speeding, then
24 yes. If not, then no. Because that is what he
25 was claiming he originally stopped me for.

1 Q And when -- when he arrested you, did
2 you ask to see the radar?

3 A I can't really remember. I don't
4 think so, but I really can't remember.

5 Q Okay. So if -- if the radar showed
6 that you were speeding, then he -- he did have a
7 lawful reason to arrest you. Is that correct?

8 A Yes, ma'am --

9 Q Okay.

10 A -- I would say -- I would believe
11 that, yes, ma'am. Because he was in front of me,
12 so it wasn't like he could run a tag or, you know,
13 just -- you know, run my name in his head without
14 even pulling me over, so to me that would be the
15 only reason that I would feel like was valid for
16 him to pull me over, if the radar showed that I
17 was speeding.

18 Q Okay.

19 A And there wasn't no radar paperwork
20 showing that they -- how the -- when I did get
21 arrested, in court, he just said what he had to
22 say and he never showed the judge, like, here he
23 was speeding, this is why I really arrested him,
24 nothing like that was shown.

25 Q He just told judge that?

1 A Yes, ma'am.

2 Q Did you ask him to show some evidence?

3 A No, ma'am. Because I didn't feel the
4 need to. Because I felt as though, you know, they
5 was talking in general 'cause like I said, I never
6 got sworn in and I was never asked, you know, the
7 option. So I felt like, you know, like, how I --
8 I was going to say, I just feel like, you know,
9 she was all like, talking in general.

10 Q Okay. Did you tell the judge that you
11 didn't think you were speeding?

12 A I can't remember if I made a comment
13 or not about the speeding.

14 Q Okay. Okay. So do you agree it was
15 reasonable for the -- the deputy to believe that
16 you were guilty of speeding if -- if he clocked
17 you speeding?

18 A Not if his radar doesn't show -- you
19 know, no one can really -- in my opinion, no one
20 can really say unless the -- the radar's actually
21 shown.

22 Q Okay. So if the -- if his radar
23 showed that you were speeding, then you do think
24 it was -- would it have been reasonable for him
25 to --

1 A Pull me over?

2 Q -- pull you over for speeding?

3 A Yes, ma'am.

4 Q Okay. And if the radar showed that
5 you had been speeding, do you agree that that
6 would not be falsely imprisonment if -- for
7 arresting you?

8 A For that -- do you mean like all
9 together or just right then and there? You -- you
10 talking about from the courthouse? For me going
11 to jail from the courthouse also? Or are you --

12 Q I'm -- I'm --

13 A -- just talking about the original
14 incident?

15 Q I'm talking about just the -- the
16 initial arrest when he pulled you over. If -- if
17 his radar did show that you were speeding, do you
18 agree that that would not have been unreasonable
19 for him to arrest you?

20 A To me, it would have been reasonable,
21 yes, ma'am.

22 Q Okay.

23 A It would have been reasonable.

24 Q And he would have the authority to
25 arrest you on those terms?

1 A Yes, ma'am.

2 Q Okay. All right. And then your last
3 claim, the malicious prosecution. Who -- who are
4 you claiming that against?

5 A Say that again, please?

6 Q Your -- your last claim of malicious
7 prosecution, who are -- who are you claiming -- or
8 alleging that against?

9 A The town of McBee.

10 Q And -- and why?

11 A Because I feel like I was railroaded
12 and due process wasn't done because I was asking
13 for a jury trial. No people was picked to do the
14 jury trial.

15 Q Okay. And your damages for that,
16 would that be the -- the mental anguish as well?

17 A Yes, ma'am. And all the days from
18 today that I could have been be working. I would
19 probably be driving a forklift right now, so, you
20 know, all the lost wages from then. But like I
21 say, I never got a chance to start because they
22 gave it away during the -- they gave my position
23 away during the time that, you know, I was in
24 there. I didn't even get a chance to start.

25 Q Do you have anything from McCall Farms

1 that could -- could show that you were hired or
2 you had a promise to be hired?

3 A Yes, ma'am. If you give you two
4 minutes, I'll go outside and look at --

5 Mr. Hutto: Why don't we do this, can
6 we provide that to you after the deposition?

7 Ms. Ryan: That's fine. That's fine.

8 Mr. Driggers: Well -- well --

9 Mr. Hutto: Okay.

10 Mr. Driggers: Just -- give it to me
11 after and I'll send it.

12 The Deponent: Okay. But yes, ma'am,
13 I have the card that Florence-Darlington Tech had
14 gave me when I -- when I took the test that McCall
15 Farms paid for.

16 By Ms. Ryan:

17 Q Okay. Okay. I'm towards the end. Is
18 there anything else that you think is important
19 that we have not talked about?

20 A No, ma'am. No.

21 Ms. Ryan: Okay. Those are all the
22 questions I have.

23 Mr. Hutto: I do have some questions.
24 I know there's another attorney present, did you
25 intend to ask any questions, sir?

1 Mr. Driggers: No, I -- no questions.

2 Mr. Hutto: Okay.

3 E X A M I N A T I O N

4 By Mr. Hutto:

5 Q Mr. Qualls, I'll -- I'll be brief.

6 You were asked -- do you recall being asked if you
7 had any proof that you requested a jury trial at
8 the outset of your encounter that day in court?

9 A Yes, sir. I -- yes, sir.

10 Q Okay. You do not have a recording of
11 the events in court that day. Is that correct?

12 A Correct.

13 Q All right. Is it your job to record
14 the courtroom?

15 A No, sir.

16 Q Okay. Generally, would that be the
17 job of the courthouse or the court itself to make
18 a record of court?

19 A Yes, sir.

20 Q Okay. You were asked if you were
21 aware of the names of some of the people who went
22 before you in court. Do you recall that?

23 A Yes, sir.

24 Q All right. Is it your job to know the
25 names of the people who appear before you in

1 court?

2 A No, sir.

3 Q Okay. You mentioned a sheet of paper
4 that you're familiar with that somebody would sign
5 before they have a -- a trial. Is that -- do you
6 recall saying that?

7 A Yes, sir, I said that.

8 Q Okay. Do you ever recall the Town of
9 McBee or anybody in that process showing you a
10 document called your Faretta warnings or Faretta
11 rights?

12 A No, sir. No one ever showed -- showed
13 me.

14 Ms. Ryan: I'm sorry. If y'all don't
15 mind for just one second, I'll get that. That
16 ringing it's bothering me -- let's see if I can
17 turn this off. Sorry.

18 Mr. Hutto: No problem.

19 Ms. Ryan: Sorry -- okay. All right.
20 I'm sorry.

21 Mr. Hutto: No problem. I'll -- did
22 we get -- we got through that last question on the
23 -- on the record there about the Faretta. Okay.

24 Ms. Ryan: If you could start back at
25 the sheet that -- that -- to sign before the

1 trial, that's what I last heard.

2 Mr. Hutto: Sure.

3 By Mr. Hutto:

4 Q Mr. Qualls, do you remember mentioning
5 that there's a sheet or a paper that you're shown
6 and perhaps sign before you have a trial.

7 A Yes, sir.

8 Q And I know I just asked these
9 questions, but I'm going to ask you again. Do you
10 ever recall seeing a sheet of paper or a document
11 for you to sign titled Faretta Warnings or Faretta
12 Rights?

13 A No, I was never presented with one.

14 Q Okay. When you were initially
15 arrested -- just the first time, you went to a
16 bond hearing. Is that correct?

17 A Correct. Yes.

18 Q And at that point, you were let out
19 with a P.R. bond?

20 A Yes.

21 Q Do you recall --

22 Ms. Ryan: One more second. I'm
23 sorry. I'm sorry. Let me just get this phone.

24 Mr. Hutto: I had drums and y'all have
25 ringing, so we're -- we're all human.

1 Ms. Ryan: I know, I'm sorry. I just
2 took the phone off the hook, so hopefully that
3 won't happen again.

4 Court Reporter: I was
5 going to say that or just unplug it.

6 Ms. Ryan: I know. Okay. So --

7 Mr. Hutto: Well, the parade outside
8 the office is gone too, so hopefully it will be
9 all right.

10 By Mr. Hutto:

11 Q Mr. Qualls, I was asking you about
12 your bond. You said you got a P.R. bond.
13 Correct?

14 A Correct. Yes, sir.

15 Q All right. When you returned to court
16 later, do you recall the judge commenting about
17 the fact that she gave you a P.R. bond?

18 A Yes, I do. The judge had told me that
19 she wrote on the bond paper that I had to have the
20 money when I come to court. That's why she put it
21 on the P.R. bond and that's when she called -- she
22 actually called the jail. As soon as she called
23 someone that she knew that worked at the
24 D.M.V. and she called the jail.

25 Q So she had already determined that you

1 were guilty at your bond hearing. Is that right?

2 A Yes, sir.

3 Q Okay. And at a bond hearing, you
4 never got the chance to present anything, the
5 officer was not even present. Is that correct?

6 A Correct. Yes.

7 Q All right. Do you recall mentioning
8 to the Court that you wanted a lawyer?

9 A Say that again, please?

10 Q Do you recall mentioning to the Court
11 that you wanted a lawyer?

12 A Yes, I told them I wanted a lawyer. I
13 wanted a jury trial. They kept telling me, no. I
14 had to pay the money right then and there.

15 Q Okay. Did -- when you were there, did
16 you notice any lawyers in the courtroom?

17 A One. The -- the -- the person that
18 got -- they charged turned to something else and
19 lower, they had a lawyer.

20 Q Okay. Did the Court ever tell you
21 that that person was a public defender?

22 A No.

23 Q So you never saw anybody there that
24 was represented to you to be a public defender?

25 A No.

1 Q Okay. Did the Court ever tell you
2 that it had a public defender that you could use
3 if you needed it?

4 A No, they didn't.

5 Q Okay. The Court never told you that
6 it was going to initiate a bench trial against
7 you. Is that right?

8 A Right. Like I said, I was never sworn
9 in, they just started talking as if they was just
10 talking in general.

11 Q Okay. Did the Court ever tell you
12 that you had a right to discovery in this case?

13 A No.

14 Q Did the Court ever tell you that --
15 did they ever mention the words Rule Five or Brady
16 to you?

17 A No, they didn't.

18 Q Okay. You mentioned the judge made a
19 phone call in the middle of your sentencing or
20 trial. Is that right?

21 A Correct. One to someone who she said
22 was a friend of hers that worked at the D.M.V. and
23 she called the jail.

24 Q Okay. Nobody from the D.M.V. was
25 present to be a witness at your trial or whatever

1 proceeding occurred against you. Is that correct?

2 A Correct. She just spoke with them on
3 the phone.

4 Q And nobody from the jail was present
5 at that proceeding either?

6 A Correct. She just spoke with someone
7 on the phone.

8 Q Okay. Did the officer call a witness
9 from the D.M.V.?

10 A No.

11 Q When I say call, the officer did not
12 name somebody in the courtroom to testify on
13 behalf of the D.M.V. Is that correct?

14 A Correct. They didn't.

15 Q And the officer did not name somebody
16 from the jail to testify in the courtroom. Is
17 that correct?

18 A Correct. They didn't.

19 Q So the -- the judge acted of her
20 accord to call witnesses -- potential witnesses by
21 telephone. Is that right?

22 A Correct.

23 Q Okay. There was no prosecutor there
24 that called witnesses against you. Is that right?

25 A Correct.

1 Q Besides you and the officer and the
2 judge, who else was in the courtroom?

3 A There was just us.

4 Q So it was just the three of y'all?

5 A Right.

6 Q There was no clerk. Is that right?

7 A Correct.

8 Q And there was no other lawyer there,
9 public defender, solicitor, nobody like that?

10 A Correct.

11 Q All right. And would that mean that
12 the judge was both running the courtroom and doing
13 whatever other duties might be required by
14 herself?

15 A Correct.

16 Q All right. To your knowledge, the
17 town of McBee did not have anyone there assisting
18 her. Is that right?

19 A Correct.

20 Q All right. The same judge from your
21 bond hearing was the judge in court that day. Is
22 that correct?

23 A Correct.

24 Q All right.

25 Mr. Hutto: I don't have anymore

1 questions at this time.

2 Court Reporter: Ms. Ryan, do you have
3 any follow ups?

4 Ms. Ryan: I do have one.

5 F U R T H E R E X A M I N A T I O N

6 By Ms. Ryan:

7 Q Let's see. Mr. Qualls, did you say
8 that the arresting officer was at court the day of
9 your trial or was not?

10 A He was there. Yes, ma'am.

11 Q He was there. Okay.

12 A And he also took me to jail.

13 Q Okay.

14 A That day in court also he took me to
15 jail.

16 Q Okay.

17 Mr. Hutto: And if we could go off the
18 record for a second. My -- when I questioned him
19 about that, he was not present at the bond
20 hearing.

21 Ms. Ryan: Got it.

22 Mr. Hutto: He was --

23 Ms. Ryan: Okay. Okay. Thank you.

24 By Ms. Ryan:

25 Q And Mr. Qualls, you said -- you did

1 testify that you didn't ask for an attorney?

2 A Yes, ma'am. I was telling her that I
3 wanted representation. I wanted a jury trial and
4 I kept being told no, that I had to pay the money
5 right then and there or I would be taken to jail.

6 Q Okay. And was that after -- was that
7 after they had that gen--- what you called the
8 general conversation? You didn't realize that was
9 the trial, but after that general communication,
10 that's when you asked for the lawyer?

11 A I said it before then. While we was
12 talking, I kept being told -- but I kept -- I said
13 it a lot 'cause I knew that's what I wanted.
14 'Cause I felt like, you know, something that could
15 be written down and I could leave. But I had
16 other stuff I wanted to do.

17 Q Okay. So you asked for a lawyer in
18 the very beginning?

19 A Yes, ma'am. I told them that I wanted
20 my representation and I was going to have a jury
21 trial, but they just telling me, no.

22 Q Okay. So when you first walked in,
23 that's when -- is that when you said this?

24 A At first, she was like, looking for
25 some papers or whatnot and I let had her know

1 then. And I -- I think she started reading, maybe
2 like, some notes that she -- that the officer
3 wrote saying like, I was rude and she was -- you
4 know, making her personal comments about notes
5 that the officer wrote about me being rude.

6 Q So it was after when she went through
7 those notes and discussed it, that's when you said
8 you wanted a lawyer?

9 A No, before that while she was like --
10 'cause I wanted -- I wanted to do other things, so
11 when it was my turn, I said that -- and she was,
12 like, hold on -- and she was, you know, trying to
13 find some -- I guess she was trying to find the
14 papers with my name on it, as far as like, my
15 arrest stuff, I guess. I guess them was the
16 papers that she was trying to find. But during
17 that process, that's when everything started being
18 like I said, as far as like, her, you know,
19 calling the people, but before that, I was saying
20 I wanted a -- a jury trial.

21 Q Okay. I'm just trying to get a
22 timeframe of when actually -- the -- the first
23 time you asked for the lawyer and representation.

24 A It was before she started looking
25 through the papers. I kept saying it over and

1 over again, the whole time I was there. Because
2 she was saying, no. And when I first mentioned
3 it, she kept saying I had to pay the money. She
4 said either I had to pay the money or she said
5 either my dad would pay the money for me 'cause, I
6 guess she kept mentioning him because I said at
7 the bond hearing that, you know, that he'll come
8 and pick me up. So, I guess that's why she was
9 saying, call your dad and get the -- the money
10 from him.

11 Q Okay. So when she was talking about
12 -- telling you to call your dad, had she already
13 called and talked -- addressed the courtroom
14 and -- and talked with the Officer Reichart? Had
15 the -- the judge and Officer Reichart talked
16 before that?

17 A Yes, ma'am. Because she was trying to
18 get me to give her the money. I said, I wasn't
19 paying it.

20 Q Okay. So basically, the judge talked
21 and Officer Reichart talked and then after that is
22 when you asked --

23 A Like she --

24 Q -- for the lawyer?

25 A -- asked me -- no, she told me to call

1 my dad and ask for the money.

2 Q And when did you -- was it after that,
3 that you said you wanted a lawyer?

4 A No, no, no. I said it before she even
5 started looking through her papers, before any
6 conversation on her end was really done, I
7 mentioned before then that I wanted a jury trial.
8 My -- her making a comment about my dad didn't
9 come till like, afterwards. Then when she found
10 the papers, that's when she was, I guess reading
11 some of his side notes and, you know, she was
12 making her personal comments, as far as like, me
13 being rude to the officer or the officer felt like
14 I was out of order with him during my arrest or
15 whatnot. And that's when she started making her
16 phone calls and the mention my dad, I believe came
17 after the phone calls.

18 Q And then, when did you say you wanted
19 a lawyer?

20 A Before she even started looking
21 through her papers.

22 Q Okay. Okay. Okay.

23 Ms. Ryan: That's all the questions I
24 have.

25 Mr. Hutto: I've -- I've just got one

1 follow-up, if that's all right?

2 Ms. Ryan: Sure.

3 F U R T H E R E X A M I N A T I O N

4 By Mr. Hutto:

5 Q Did the arresting officer ever try to
6 stop the proceedings against you?

7 A They was like -- it seems as though
8 they was like in cahoots because he was, you know,
9 telling her that I was being, you know, very rude
10 at the point of me getting arrested and it's --
11 it's me -- I felt like they was a team. That's
12 what I felt like. He didn't stop nothing, he was
13 encouragement.

14 Q Did he ever say anything to the effect
15 of, Your Honor, I can't offer testimony at this
16 point because Mr. Qualls has requested a jury
17 trial or has requested a lawyer?

18 A No.

19 Q Okay.

20 Mr. Hutto: That's all I've got.

21 (Deponent excused.)

22 (Whereupon, at 11:35 a.m.,
23 the taking of the foregoing
24 deposition was concluded.)

25

1 CERTIFICATE OF REPORTER

2 State of South Carolina

3 County of Florence

4

5 I, Wade Matthews, Court Reporter and Notary
6 Public for the State of South Carolina, do hereby
7 certify that the deponent in the foregoing
8 deposition was, by me, first duly sworn to testify
9 to the truth, the whole truth and nothing but the
10 truth; that said deposition transcript contains a
11 true record of the deposition of said deponent.

12 I further certify that I am neither attorney
13 nor Counsel for, nor related to or employed by any
14 of the parties connected to the action, nor am I
15 financially interested in the action.

16 Witness my hand at Florence, South Carolina,
17 this the 17th day of August, 2021.

18

19

Wade Matthews

20

MY COMMISSION EXPIRES:
December 12, 2029

21

22

23

24

25

COUNTY OF CHESTERFIELD

Michael Qualls,
Plaintiff,

Town of McBee

Defendant.

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Plaintiff's Exhibit Number 1.	40
(Bail Proceeding Form 2, Bates Stamp Number 35 and 36)	

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the deposition is being conducted by remote means and the court reporter is not present with the witness.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 JUDGE BARBARA LISEBY, having been duly sworn,
2 deposes and testifies as follows:

3 **JUDGE LISEBY- EXAMINATION BY MR. HUTTO:**

4 Q: All right. Judge, I'm Skyler Hutto. I'm an
5 attorney in Orangeburg. I represent Michael
6 Qualls. And, I wanted to ask you -- I, I
7 believe you said you may not remember him
8 personally, I'll ask that again. But I just
9 wanted to ask questions today generally about
10 what you recall about the structure and
11 function of the Town of McBee's Court, and any
12 specifics that we can add to that. But before
13 we get to that point, I'll let you know, first
14 of all, you're not trapped answering questions
15 and on end-on-end. I don't anticipate asking
16 so many questions that we'd be here for a
17 tremendous amount of time, but if at any point
18 you need to take a break, get water, coffee, go
19 to the bathroom, any other important thing that
20 you need to do, stretch you legs, let me know,
21 we can stop with whatever question we're on and
22 then start with the next question after a five,
23 ten minute break. And I'll try and move
24 quickly through this process.

25 If at any point you do not understand



1 anything I'm asking you, I ask that you ask me
2 to rephrase it. If at any point you give an
3 answer that I may have felt like the court
4 reporter could not have heard, I may ask you to
5 repeat that answer. As you can see, she is
6 taking down a transcription of what we're
7 talking about in a recording for the record.
8 And so, if you could, give verbal answers, yes,
9 no, or any other appropriate response rather
10 than shaking your head or nodding you head.
11 That way, Ms. Barrs can write it down or have
12 it recorded for us in case there's any question
13 about it after the fact.

14 During this time, Ms. Ryan may ask you
15 questions after me. You cannot talk with her
16 in any intermediate period if we took a break.
17 If y'all need to talk after the deposition,
18 that would be fine. But again, if you have any
19 questions about those kind of ground rules
20 please let me know. Otherwise, I'm just gonna
21 start with some basics about, about your
22 background.

23 A: Go ahead.

24 Q: All right. You've already stated your name, I
25 believe, but just for the record you are



1 Barbara Linsenby? [sic]

2 A: Lisenby, yes.

3 Q: Lisenby. I apologize. I have that written
4 down correctly and saying it incorrectly. Can
5 you tell me, how long have you been working in
6 the legal system generally?

7 A: I think it's 35 years.

8 Q: All right. Can you give me some of the
9 background that you've had over those 35 years,
10 including becoming a Municipal Judge?

11 A: Well, that's -- the 35 years is when I became
12 a Municipal Judge.

13 Q: All right.

14 A: I've been in -- (technical audio interference)
15 ---

16 Q: I apologize. Continue.

17 A: I have been in different towns during that
18 time.

19 Q: All right. Let me start kind of from the
20 beginning. Can you give me your educational
21 background, dating back to college?

22 A: Coker College, Hartsville, South Carolina.

23 Q: And what is your degree in?

24 A: Business.

25 Q: Okay. And, what were you doing prior to being



1 a Municipal Judge?

2 A: Actually, I was a clerk for the Municipal Judge
3 in the Town of Chesterfield. And then I moved
4 -- he was an attorney, and when I left his
5 office I went to the Chesterfield High School
6 to start work there and that's when I became a
7 Municipal Judge.

8 Q: And, was -- where, where was that?

9 A: Chesterfield, South Carolina.

10 Q: Okay. And you've been a Municipal Judge in
11 Chesterfield, McBee, anywhere else?

12 A: Pageland, Jefferson, and the Town of Kershaw.

13 Q: All right. And what years or time frames were
14 you the Municipal Judge in the Town of McBee?

15 A: I don't recall the exact years.

16 Q: Do you recall approximately how many years you
17 would have been the judge in the Town of McBee?

18 A: Maybe 12 to 15, son. I'm not real sure.

19 Q: Okay. And would that have included 2010 to
20 2019 time frame, approximately?

21 A: Yes.

22 Q: Okay. What kind of cases do you hear as a
23 Municipal Judge?

24 A: Normally cases that are written on the ticket.

25 Q: Okay. So would you say a lot of traffic



1 tickets?

2 A: (No audible response.)

3 Q: Is that correct?

4 A: Yes.

5 Q: And you could hear simple assault, potentially.
6 And some times, depending on the law on
7 domestic violence 3rd, shoplifting, things of
8 that nature?

9 A: Yes.

10 Q: Okay. No civil cases, correct?

11 A: No. None.

12 Q: Okay. During your time as a Municipal Judge,
13 have you always been responsible for bond court
14 with the various municipalities?

15 A: Yes.

16 Q: Okay. In -- when did McBee hold its bond court
17 every day?

18 A: We had to go to the jail first thing in the
19 morning and in the afternoon. Or I did as a
20 Municipal Judge, according to court
21 administration.

22 Q: Okay. So you would go twice per day. Did
23 y'all do like 9:00 and 2:00, or another time
24 frame?

25 A: Actually, I went all during the day. Just



1 whenever they called and said I had someone, I
2 went over to see about.

3 Q: Okay. What about -- during that same time,
4 with that same detention center, would you
5 have, let's say 2010 to 2019, would you've been
6 holding bond court for the Town of McBee and
7 any other towns concurrently?

8 A: Yes.

9 Q: What towns would've been having bond court
10 during that time frame that you would have been
11 presiding over?

12 A: Jefferson, Chesterfield and Pageland and
13 Kershaw, I think, would ---

14 Q: Do they ---

15 A: --- would fit in that time frame.

16 Q: They could, they could all have had bond court
17 on a given day?

18 A: Yes.

19 Q: Did that require you to go to multiple
20 detention centers?

21 A: No, just one.

22 Q: Okay. Gotcha. And you estimate, on an average
23 -- well, let's say an average week, about how
24 many people would come through your bond court?

25 A: In a week?



1 Q: You can do a day, a week. I'm just trying to
2 get a picture of how many people are coming
3 through bond court on a regular basis for that,
4 that level that perhap- -- could -- using five
5 towns at once.

6 A: Maybe, seven to eight.

7 Q: Seven to eight a day, or seven to eight a week?

8 A: Seven to eight a week, so.

9 Q: Okay. Can you describe, generally, if you --
10 when you held bond court, were you -- let me
11 strike that and ask in a different way.

12 When you were holding bond court would you
13 be typically holding it for just one defendant
14 at a time, because of the volume?

15 A: Most definitely one defendant, one on one.

16 Q: All right. Can you describe what introductory
17 remarks you would give them at bond court?

18 A: First, I would tell them who I was. And tell
19 them what they had been charged with, why they
20 were there. And go into the bond hearing.

21 Q: Okay. And when you say, why they were there,
22 you mean, describing what the bond hearing was?

23 A: What was giv- -- had been giving to me by the
24 jail.

25 Q: Okay. So that would be usually a -- some type



1 of charging document. Is that right?

2 A: Yes. Their file from the jail with the
3 charges.

4 Q: Did officers typically also get you criminal
5 records, or was that something that you usually
6 went without?

7 A: No, I didn't get any records from the officers.

8 Q: Okay. Did officers typically show up to your
9 bond hearings?

10 A: No.

11 Q: Was there ever a victim's advocate at these
12 bond hearings?

13 A: If requested, yes. There was one there at the
14 jail.

15 Q: Okay. When, when you would go through this
16 process of explaining to them what was going
17 on, what paperwork did you give to each
18 defendant?

19 A: At the end I gave them their bond paper,
20 whether it be one or two. I gave them their --
21 if it was for a general session's charge, I
22 gave them a preliminary hearing form. I gave
23 them the form showing how to get in touch with
24 a -- (technical audio interference) ---

25 *(Video and audio connection lost.)*



1 Q: Oh. It -- judge it looks like you may have
2 frozen.

3 A: (No audible response.)

4 **MR. HUTTO:** So we can see if it fixes itself.

5 **COURT REPORTER:** Do you want me to get off the
6 record while she's frozen?

7 **MR. HUTTO:** Yeah, that's fine.

8 **COURT REPORTER:** Okay.

9 (Off the record from 12:19 p.m. until 12:26 p.m.)

10 **COURT REPORTER:** Okay.

11 A: That -- when I went through all of it, that we
12 were given by court administration, those were
13 the forms that they're given at the bond
14 hearing.

15 Q: Okay. All right. What documents did you keep
16 out of what defendants were given to sign?

17 A: The things that I kept would've been, the bond
18 paper and the checklist, and if they had
19 requested a public defender or anything of that
20 nature. Then I would've had those paper- --
21 that paperwork also. I would keep a copy of
22 whatever he had, yes, or she.

23 Q: All right. And they kept their preliminary
24 hearing form and a copy of the bond checklist?

25 A: Well, that was if they were a general sessions



1 case, the preliminary hearing form, otherwise,
2 they would not get one. But yes, the
3 checklist, they got a copy of that. They got
4 a copy of their bond paper releasing them on
5 bond.

6 Q: All right. Do you ever deny bond?

7 A: No, sir.

8 Q: Okay.

9 **COURT REPORTER:** Was that a ---

10 Q: Did you ever ask defendants about their cases
11 during bond court?

12 A: No I -- no, sir. Now, I was told, but I never
13 asked.

14 Q: Okay. What questions would you ask to make
15 inquiry into their -- any defendant's financial
16 status or ability to make bond?

17 A: First of all, if they're not employed then I,
18 pretty much, know that they need an attorney to
19 go through all of that, of telling them how to
20 get an attorney. Or, if they don't want to use
21 an appointed attorney then one can be -- they
22 can get their own. But they are qualified for
23 a court-appointed attorney, and I tell them
24 where to go to get that. Give them the
25 instructions on how to go and get the attorney



1 to represent them. And that's essentially it.

2 I just read the charges that's been made
3 against them to tell them why they're there and
4 then why I'm placing the bond on them for
5 certain -- a certain amount.

6 Q: And what factors did you consider in setting
7 the amount for bond?

8 A: Actually, I don't. I deal with the individual
9 and the person that I'm -- if they're not
10 employed and they're not from the county or
11 from somewhere else, then I usually ask them
12 for a bond amount for what their charges would
13 be.

14 Q: Okay. Are you aware of any Statute that sets
15 forth what you're required to consider at bond
16 hearing?

17 A: What I'm required to -- to do what?

18 Q: Are you aware of any Statute that sets forth
19 any requirement about what you are supposed to
20 consider at a bond hearing, in terms of setting
21 a bond amount?

22 A: Most definitely.

23 Q: Okay. What factors are in that Statute?

24 A: The fact of the employment, the charges that
25 they have against them, any back- -- their



1 family ... Things of that nature.

2 Q: All right. I, I want to specifically ask you
3 some things about the Town of McBee.

4 Do you know how many -- while you were
5 there, and let's -- and I know you were there,
6 maybe, longer than this, but let's say around
7 2010 up 'til 2019, 2020, or whenever that last
8 point was. How many police officers did the
9 Town of McBee employ during that time?

10 A: Well, until the sheriff's department took over,
11 the --the same -- I mean, they just had the
12 police department there and mostly the same
13 officers. The only time they changed is when
14 the sheriff's department took over and they --
15 you know, different ones came in to the town,
16 they were assigned to the town.

17 Q: All right. So at, at some point the Town of
18 McBee closed down its police department and
19 wrote municipal charges through the sheriff's
20 office. Is that right?

21 A: Well, the -- yes. Absolut- -- then the
22 sheriff's department became their police
23 department.

24 Q: And they would -- they could still write
25 tickets for everything including municipal



1 ordinances in their ---

2 A: Yes.

3 Q: Okay. Before that, at any given time, how big
4 was the Town of McBee's police department?
5 Three officers, four officers, five? Anything
6 in that range?

7 A: Two.

8 Q: Okay.

9 A: Two to three. At the most, I think two would
10 be it.

11 Q: Okay. And how many people worked for the
12 municipal court?

13 A: Worked for the municipal court?

14 Q: Yes.

15 A: Me and the clerk.

16 Q: All right. Was there one clerk during that
17 time, or was there a series of clerks?

18 A: A series of clerks.

19 Q: Do you remember who the clerk would've been
20 around 2018, 2019 time frame?

21 A: No, sir. I can't say for sure.

22 Q: Did the clerk come to court?

23 A: The clerk came to court when there was a trial.

24 Q: Okay, a jury trial or a bench trial?

25 A: Jury trials -- I never had but a couple of jury



1 trials, then. Yes, bench trials. Definitely.

2 Q: Okay. How did the clerk keep records for the
3 municipal court, to the best of your knowledge?

4 A: On a comput- -- well, the last several years,
5 on a computer program that was set up for the
6 towns through the court administration.

7 Q: Okay. So they -- y'all -- they were using the
8 electronic system that was available to
9 municipalities through court administration?

10 A: Yes.

11 Q: Okay. Would the clerk been -- have been the
12 one mostly dealing with that software, or did
13 you use it as well?

14 A: I did not use it in the Town of McBee, at all.

15 Q: Did the Town of McBee ever have a prosecutor?

16 A: At one time. But, son, please don't ask me who
17 he was.

18 Q: All right. Would he have been gone before
19 2015, perhaps? Or would he have -- would he
20 stick around for longer than that?

21 A: I think he was still there.

22 Q: Okay. How long -- when -- how long was the
23 prosecutor there? Was he there until the end
24 of -- while you were acting as the judge?

25 A: Oh, whoa, whoa, whoa. You mean in the



1 courtroom? No, no, no. Sorry.

2 Q: Yes, sor- -- I -- and I understand. Let me
3 clarify. I understand that there was an
4 elected solicitor that would have had cases
5 come to him or her ---

6 A: Yes.

7 Q: Okay.

8 A: But he never showed up in court until we had a
9 jury trial.

10 Q: Okay. So when -- if there was jury trial in
11 the Town of McBee, then the solicitor's office
12 would send an assistant solicitor of some kind
13 to help try the case?

14 A: Yes.

15 Q: Okay. Was that usually the same person or --
16 or did it vary?

17 A: It's been so long, that I'm -- can't remember
18 if it was the same person.

19 Q: All right. Was there a -- who was the Public
20 Defender for the Town of McBee?

21 A: The Town of McBee Public Defenders would be
22 Chesterfield County.

23 Q: Okay. How often did Chesterfield County Public
24 Defenders appear in the Town of McBee, for
25 trial, or Court?



1 A: Whenever they were contacted by the defendant

2 ---

3 Q: Okay.

4 A: --- to represent them.

5 Q: All right. How often did that happen?

6 A: Every time we had a trial, but we didn't have
7 that many jury trials. Most of the people that
8 came in there were the defendant's attorneys.

9 Q: As in they hired private attorneys?

10 A: Yes.

11 Q: Okay. Do you know how the Town of McBee
12 contracted to have a public defender?

13 A: Through the Public Defender's Office in
14 Chesterfield County, the same way that the
15 other towns do.

16 Q: Okay. Do they pay a flat fee or per case
17 through that contract?

18 A: As far as I know, I don't know. I just know
19 that it was done through the town with the
20 county public defender's office.

21 Q: Do you know who would have documentation of the
22 contract between the Town of McBee and
23 Chesterfield County Public Defender's Office?

24 A: No, sir, I do not. I have no clue.

25 Q: Okay. And the Town of McBee never had a



1 contract with an individual attorney to be
2 their public defender, is that correct?

3 A: If they did, he was not in my courtroom.

4 Q: He wouldn't have been doing a very good job if
5 that was the case, I suppose. I noticed that
6 -- well, what if somebody in court asked you
7 for a public defender, what did you do?

8 A: I gave them the information and let them get
9 one.

10 Q: Okay. And that information would've been --
11 what would that ---

12 A: Same thing I do at a bond hearing.

13 Q: Okay. So, you give them ---

14 A: Tell them where he was, how to contact him and
15 all of that. Most of mine walked in off the
16 street, they did not come through the bond
17 court, so to speak. I -- if they went to jail,
18 it was for a charge that they had to be jailed
19 on. Most of them just came in off the street
20 and I asked them -- told them what they were
21 charged with, asked them how they wished to
22 plead. If at any time they said not guilty,
23 then I told them immediately what they needed
24 to do about getting their attorney and having
25 him to contact my Court.



1 Q: Okay. How were they -- if somebody said they
2 were, they wanted a public defender, how would
3 they have been screened, do you know?

4 A: How would they have been screened?

5 Q: Did you court screen them? Did the public
6 defender's office screen them?

7 A: The public defender's office would have
8 screened them if they came in off the street.
9 Now, if it was someone in the, that was in
10 jail, I'd -- pretty well, gave them that
11 screening and it was done by the public
12 defender's office as well. I gave them a paper
13 to go to see the public defender if they
14 requested it.

15 Q: All right. And that would have been the
16 municipal court and in -- when you had a bond
17 hearing for a general sessions case?

18 A: Yes.

19 Q: Okay. Do you know if the Town of McBee had an
20 appointment list for a, any public defenders or
21 lawyers or anything of that nature, or was it,
22 it was all through the public defender's
23 office?

24 A: They didn't need -- the Town of McBee did not
25 need a public defender. The town, the county



1 handled that. I, as the judge, sent them to
2 the public defender's office and made sure that
3 they got one if they requested it.

4 Q: Okay. Did you ever encounter a situation where
5 somebody went to go apply for a public defender
6 through Chesterfield County and were told that
7 McBee did not have an active contract with,
8 with Ches- -- with Chesterfield County Public
9 Defender for them to be able to appoint
10 somebody?

11 A: Never.

12 Q: Okay.

13 A: Because I would've made sure they got an
14 attorney, and that didn't happen.

15 Q: All right. How frequently did you have
16 somebody with a mental illness appear before
17 you in your munic- -- in your capacity as a
18 Municipal Court Judge, with traffic tickets and
19 simple assault and things of that nature?

20 A: It's hard to answer. A mental illness is very
21 hard to pick up on. But ---

22 Q: Sure.

23 A: --- sometimes I could. And I always gave them
24 the benefit of the doubt.

25 Q: All right. I understand that. Did -- how



1 about -- how frequently did you have a homeless
2 person appear in front of you in the Town of
3 McBee in, in your capacity as Municipal Judge?

4 A: I can't say for sure, it might be -- if I ever
5 even had a homeless person there. Now, I did
6 in the other towns but I'm not real sure about
7 McBee.

8 Q: Okay. How would you ensure that somebody who
9 was experiencing homelessness was given an
10 attorney?

11 A: He'd get an attorney if he wanted one. Or
12 there'd be no court.

13 Q: All right. You mentioned jury trials. How,
14 how many jury trials have you presided over in
15 the course of you being a Municipal Judge?

16 A: Oh, son, I don't have a clue.

17 Q: What about in the Town of McBee, you said you
18 had a couple or a handful?

19 A: Maybe, yeah, maybe a handful.

20 Q: You think it's probably five or more? Or less
21 than five?

22 A: It would be more than five. Certainly, because
23 -- yes, more than that. I don't mean -- it
24 wasn't an every day thing, but ---

25 Q: Right.



1 A: --- you know, but more than five. Sure.

2 Q: Do you think you had more than one a year?

3 A: Jury trial in McBee?

4 Q: In McBee, yes.

5 A: No.

6 Q: Okay. If somebody requested a jury trial in
7 McBee, what was the procedure for striking the
8 jury, setting the trial? Wha- -- what was the
9 procedure?

10 A: There has to be a -- the trial has -- the jury
11 has to be drawn, and then of course we had to
12 notify the attorney and make sure that they had
13 a copy of the jury list and I had one. And
14 then we would set up a date to strike the jury
15 and watch, they were all seated with the
16 alternates, then we could go forward with
17 setting up a date.

18 Q: And -- so you did paper strikes in advance of
19 actually calling the jury in?

20 A: Yes.

21 Q: Okay. When do you, approximately, do you think
22 would have been the last time you presided over
23 a jury trial in the Town of McBee?

24 A: That's what I can't answer, son. That's why
25 I'm saying mor- -- I just don't know.



1 Q: Was there -- I mean, do you think it would've
2 been 2017, '18 time frame, before that? How --
3 -

4 A: I don- -- I don't know. I do not -- I know
5 that I had them but I do not remember. I don't
6 recall. I'm sorry.

7 Q: All right. Wh- -- do you know who -- is that
8 something that perhaps the, the Clerk of Court
9 for the Town of McBee would have in their
10 records?

11 A: Well, they would -- they should have. Yes.

12 Q: Okay. And you said something to the effect of,
13 if somebody couldn't get a public defender you
14 weren't going forward with court. Is that
15 right?

16 A: If they wanted an attorney, they got one. I
17 made sure of that.

18 Q: Do you have the same, same policy as far --
19 when, when it comes to jury trials?

20 A: Absolutely. If they want an attorney, they
21 gonna have an attorney.

22 Q: And a jury trial?

23 A: Yes.

24 Q: Okay. And somebody could request a jury trial
25 on anything, even like speeding tickets,



1 correct?

2 A: Absolutely, they surely can.

3 Q: All right.

4 A: And they have.

5 Q: All right. I've seen, I've seen plenty myself.
6 I've come close to doing one, so, I understand
7 that.

8 A: Yes, sir.

9 Q: When, when you would start court, for a term of
10 -- if there's any term of court in McBee, a
11 regular term, was there an introduction that
12 you gave to the, to the people gathered in
13 court to explain what was going on?

14 A: I introduced them to me, and told them that
15 they were there with their charges and we would
16 take them up by the docket. And that's what we
17 did, we started calling them off the docket, it
18 was printed and given to me.

19 Q: All right. And, was that -- was the docket
20 done in chronological order, alphabetical
21 order, ticket numbers? How did y'all handle
22 that?

23 A: Ticket -- well, sometimes it was ticket
24 numbers, it depended on the court and I can't
25 remember which. Sometimes it was chronological



1 order, sometimes it was ticket number. It was
2 just different ways.

3 Q: And you -- your policy was typically to just
4 start at the top of the docket and go down?

5 A: Absolutely. Unless there was someone there
6 that had asked to go first or needed to leave
7 or something, then I would take that into
8 consideration.

9 Q: How -- on any given term of court in McBee,
10 how, how many people would actually come to
11 court, if you could give a range?

12 A: Usually, I usually had a room full.

13 Q: A room full?

14 A: Yeah.

15 Q: Okay.

16 A: (Laughter.) Not a good answer, but I'm sorry,
17 that's ---

18 Q: No, no, that's all right. I under- -- I
19 understand. I've been -- I do night court all
20 the time for municipal -- various
21 municipalities. What, what time was court in
22 McBee usually?

23 A: 2:00.

24 Q: Okay. And ---

25 A: Now, that's when, you know -- yeah. I'm not



1 sure that I started out years ago at two, but
2 I believe that I did.

3 Q: Okay. And when you say, a room filled, we're
4 talking about potentially more than 20 on some
5 occasions?

6 A: No, no, no, no, no. Maybe 15 to 16 people
7 would come the court, the rest would just
8 forfeit bond.

9 Q: Okay. Did you explain what bond forfeiture was
10 to people when they came to -- before you in
11 bond court, or if they showed up ahead of time
12 in court and paid their ticket?

13 A: They paid before they came to court.

14 Q: Okay.

15 A: I mean, they didn't come to court they just
16 paid.

17 Q: That -- that's what you mean by bond forfeiture
18 that you get essentially ---

19 A: Yes.

20 Q: --- a speeding ticket and you just go pay it
21 and you never come to court?

22 A: Huh-uh. That's right.

23 Q: Okay. The people that actually showed up to
24 court, was there a offense that was more or
25 less common for you to see?



1 A: I didn't understand the question?

2 Q: Of the people who actually wanted an appearance
3 before you in court, was there any particular
4 set of charges that was more or less common for
5 you to hear?

6 A: Driving under suspension, they wanted help to
7 -- they didn't -- most of them declared they
8 didn't know and they wanted time to get it
9 straightened out and come back to court. And
10 that -- most of it was driving under suspension
11 and most of them did not know.

12 Q: All right. How did you handle that situation
13 where somebody wants a continuance for driving
14 under suspension or no insurance or no
15 registration, one of those kind of charges?

16 A: How did I handle it?

17 Q: Did you typically grant that continuance?

18 A: Most definitely. Always.

19 Q: How many times would you continue it on average
20 for somebody to be able to fix an issue like
21 that?

22 A: There's no end to it, unless I realized that
23 they were using me and I, I belie- -- I want
24 them drive, I want them to be able to go to
25 work, but they can't do it without a license.



1 So, there's no end to how long I would continue
2 it.

3 Q: Okay. When each individual defendant came up
4 as you called them, was there any introduction
5 that you gave to them before -- I mean, did you
6 just ask them, are you here to plead guilty or
7 not guilty? What ---

8 A: No, sir. I did not.

9 Q: Okay.

10 A: No, sir.

11 Q: How did you handle it when an individual
12 defendant came up at municipal court?

13 A: When they came up I gave them the charge that
14 had been placed against them and asked them, at
15 this time do you plead guilty or not guilty to
16 this charge? And when they told me they plead
17 guilty, I took it from there. If it's not
18 guilty, then we went through the whole thing
19 again about the public defender, the attorney,
20 or whatever.

21 Q: Okay. How would -- if somebody plead not
22 guilty and you gave them their various
23 admonitions, how would they know that trial had
24 started against them?

25 A: If they plead not guilty?



1 Q: Yes.

2 A: How would they know a trial had started?

3 Q: Well, if you plead not guilty you have -- you
4 could, in theory, ask for a continuance, I
5 assume.

6 A: Yes, you ---

7 Q: Basically, like you were telling me before.

8 A: Right.

9 Q: But if they -- if they ask you to hear the
10 case, if you were going to have a bench trial
11 ---

12 A: Ask for a bench trial?

13 Q: Yes, how ---

14 A: Well, then I'd ---

15 Q: --- would they not ---

16 A: --- I'd make -- I get the officer and swear him
17 in and let him tell me what he knows, what
18 happened. And same thing with the defendant.

19 Q: Okay. And how do you handle testimony from
20 that point, the beginning of the bench trial?

21 A: At a bench trial?

22 Q: Yes.

23 A: It is either recorded on a tape or the clerk
24 was there to write it down. But most of the
25 time this old Judge wrote it down herself to



1 make sure.

2 Q: So for a bench trial there should -- there
3 would be either an audio recording or the clerk
4 would be in the room to help with making a
5 record of what was going on?

6 A: Yes, most definitely.

7 Q: Okay. And that's kind of a requirement of a
8 summary court, right? That there has to be
9 record keeping in some fashion because there's
10 no court reporter?

11 A: Yes.

12 Q: Okay. Was it your policy to use a tape
13 recorder as often as you could?

14 A: I don't particularly care for a tape recorder.
15 I was -- would rather have it in writing. But
16 yes, I have used a tape recorder.

17 Q: Okay. Would there -- was there a particular
18 circumstance where you were more likely to use
19 a tape recorder versus having the clerk make
20 notes as you went?

21 A: If the clerk wasn't in there I'd be using the
22 tape recorder.

23 Q: I see. So, you either -- it was, it was either
24 or at any point, you would never not have one?

25 A: Not at a bench trial, no sir.



1 Q: Okay. What about for a guilty plea? How did
2 -- was -- would that have been on an audio
3 recording? Would the clerk have written that
4 down? How was that handled?

5 A: No. They just -- they, they plea- -- they
6 plead guilty and then I tell them what the
7 charges are, and ...

8 Q: Okay ---

9 A: And that was not on the recording.

10 Q: Okay. When you do start a bench trial and
11 you've got either the clerk in the room or the
12 -- or the recorder going, how do you proceed
13 from there?

14 A: Swear in the officer. Let him give me his
15 testimony. Also, let the defendant question
16 him if he wants to. I, I know what's going on
17 before I leave that courtroom.

18 Q: All right. Would you say that as a, as a Judge
19 you were kind of acting as -- I know, I
20 understand you would act as the fact-finder in
21 the legal sense, correct? If there was no jury
22 there for a bench trial.

23 A: Yes.

24 Q: All right. Did you -- based on what you just
25 said, did you consider it your duty to, kind



1 of, search for the truth or find the truth of
2 the situation?

3 A: I did find it, one way or the other.

4 Q: Okay. I'm gonna ask you briefly, about your
5 cell phone. I men- -- I mentioned you're on
6 your cell phone right now, I don't want to ask
7 you about that cell phone in particular, but
8 how long have you had that cell phone number?
9 The one associated with the number you're
10 calling in on.

11 A: Oh gosh. I think -- son, I don't know. It's
12 a long ---

13 Q: Since ---

14 A: --- time.

15 Q: --- since you -- it would've been like since
16 you had a cell phone, basically, it's had this
17 phone number?

18 A: Yes.

19 Q: Okay. And would that've been going back to
20 well before, like, 2010 let's say?

21 A: I guess.

22 Q: Okay. ---

23 A: I can't remember. If you wanna know the truth,
24 son. I don't remember when I got this phone.
25 My daughter purchased it and said, here mom.



1 Q: Gotcha. And you -- have you upgraded it and
2 changed it a few times and kept the same
3 number?

4 A: She has, yes.

5 Q: Okay. Do you -- we can, we can go off the
6 record for, for this part.

7 (Off the record discussion.)

8 Q: And what cell carrier do you have?

9 A: Verizon.

10 Q: Okay. And you as the judge, I understand you
11 said driving under suspension came up in front
12 of you frequently, is that right?

13 A: Yes, sir. Most of the people in, in the State
14 of South Carolina are driving under suspension
15 (laughter).

16 Q: Believe me, I know. I, I've -- that is
17 probably ---

18 A: It's unreal.

19 Q: --- half that I get appointed to is driving
20 under suspension.

21 So, is it fair to say that that's a yes,
22 that you frequently would see driving under
23 suspension?

24 A: Yes, sir.

25 Q: All right. And did you have a -- any way where



1 you, yourself, would contact the DMV to figure
2 out if somebody's license was suspended or not
3 suspended?

4 A: Oh, yes.

5 Q: Can you tell me about ---

6 A: Most definitely. You can't take somebody
7 else's word for that.

8 Q: Well, can you tell me about that process? How
9 would you verify if people's licenses were
10 suspended?

11 A: I didn't have to unless they pushed me to the
12 limit. I did not ever use my phone to contact
13 anybody about any --- you can't do that. The
14 only way I would do that was if somebody had
15 come in and said they were not driving under
16 suspension and they had been falsely arrested
17 ---

18 Q: Okay.

19 A: --- and I was -- I'd just check them out.

20 Q: And then any- -- okay, so somebody said they
21 had been falsely arrested for driving under
22 suspension. How would you figure out whether
23 they were telling you the, the truth or not?

24 A: Normally, the officer hands me the paperwork
25 showing me.



1 Q: Okay. Did you ever contact anybody at the DMV
2 to verify a suspension?

3 A: Yes, I did.

4 Q: Okay. How did you do that?

5 A: I called the DMV.

6 Q: Was there a particular point of contact that
7 you had there? Did you call like a general
8 line?

9 A: I just called the general line.

10 Q: And I'm not asking you for your exact words
11 but, generally, how would you tell them the
12 information that you needed to get?

13 A: I would identify myself, say that that person
14 is standing here with me and says that his
15 license is not suspended, can you tell me
16 whether that's correct or not?

17 Q: Okay. Would you do that during a -- ever do
18 that during a bench trial or jury trial, or at
19 the end of a bench trial or jury trial?

20 A: I don't remember ever doing that but one time.

21 Q: Okay. What one time was that?

22 A: When the defendant had lied to me.

23 Q: Do remember anything about that, that case or
24 the defendant in particular?

25 A: I don't recall anything except he was brought



1 in from outside and he had been caught driving,
2 and I had released him to go work on getting
3 his license fixed, and given him another court
4 date to return.

5 Q: And that was at -- a, a male defendant?

6 A: Yes, it was.

7 Q: Was he black or white?

8 A: He was black.

9 Q: Okay. Do you recall anything ---

10 A: I also worked with this young man and released
11 him to his parents. I had made sure that they
12 come and got him. He couldn't -- he didn't
13 have the money for his bond. And then ---

14 Q: All right.

15 A: --- he begged me to let him out to, to go and
16 get his license fixed. And I said, son, I
17 can't do that 'cause you don't have a job, you
18 don't have anything. But I released him into
19 his dad's custody to make sure he would come
20 back to court. And he came to court on that
21 day, whoever he was, and he told me that he did
22 not have time to get his license fixed. And I
23 asked him, why did he come to court? And he
24 said because you told me to. And that was
25 true. I had told him to make sure he appeared



1 in court. And he just needed more time, and I
2 gave it to him.

3 Q: And then what happened that day in court?

4 A: He left. Court was over. So far as he was
5 concerned, so far as anything was concerned,
6 everything was over and I was fixing to leave
7 with my docket in hand to give to the clerk.
8 They ---

9 Q: And then he ---

10 A: --- brought this young man in.

11 Q: They brought him back in? Okay.

12 A: Uh-huh. And he told me -- the officer said he
13 was driving. He had his vehicle there, driving
14 or something -- I didn't see him driving, but
15 he told me what the young man had said was a
16 lie. Because I looked right straight at him
17 and I remember saying, son, you lied to me.
18 And that's when he started screaming for a jury
19 trial.

20 Q: Had he already ---

21 A: That is ---

22 Q: --- put -- go ahead, sorry.

23 A: He had told me on numerous occasions that he
24 was guilty, he just needed time to get it paid.
25 He just needed to get out. He just kept



1 telling me that. And I kept giving him time to
2 get his stuff straightened out. Hopefully,
3 that he would be able to drive his -- I think
4 he had a -- a interview or something. I can't
5 remember, son. I just really cannot.

6 Q: Sure. And -- so you recall him requesting a
7 jury trial at that point before -- I think as
8 he ---

9 A: Yes, he surely did. Yes, sir. But it was too
10 late, he'd already lied to this old Judge ---

11 Q: Understood.

12 A: --- and plead guilty.

13 Q: He plead guilty? When did he plead guilty?

14 A: On numerous occasions. At the bond hearing he
15 said, judge, I'm guilty, but if you'll just let
16 me out I can get it straightened out.

17 Q: Did he ever answer ---

18 A: And I let him out ---

19 Q: --- a formal guilty plea where he ---

20 A: --- and he said -- sorry?

21 Q: Did he ever enter a formal guilty plea where he
22 signed a -- one of the court administration's
23 guilty plea forms?

24 A: Court administration's guilty plea forms? No.
25 Huh-uh.



1 Q: Okay. I want to ask you about -- I think I've
2 got the -- some paperwork that you, you
3 actually may have just referenced, and I wanted
4 to see about that.

5 **MR. HUTTO:** Madam court reporter, I am gonna share
6 my screen, and I can e-mail this to you after
7 the fact, if that works? This is Bate stamped
8 as part of the Defendant's Discovery.

9 Ms. Ryan, I'm gonna refer to the Bail
10 Proceeding Form 2.

11 **MS. RYAN:** Okay.

12 **MR. HUTTO:** That's Bate Stamp Number 35 and 36. Let
13 me see here. Screen 3, right here.

14 Q: All right. I'm not very good at this screen
15 share thing, but I think it's showing what I
16 needed to show at this point with reference to
17 this document. So is this your -- ma'am, can
18 you see this document?

19 A: I can.

20 Q: Okay.

21 **MR. HUTTO:** I'm going to introduce it as Exhibit 1.
22 I may have already said that, but I'm going to
23 say it again for the record.

24 **(Plaintiff's Exhibit Number 1 was marked for**
25 **identification purposes.)**



1 Q: Is this your handwriting, here on this form?

2 A: Yes, it is.

3 Q: And this is your signature?

4 A: Yes, it is.

5 Q: And this references a Michael Qualls, who was
6 charged with -- well, it looks like disobeying
7 an officer, it's just -- something ... A
8 suspended tag, driving under suspension,
9 turning unlawfully. The expired, I'm assuming
10 that's registration or something of that
11 nature, uninsured and speeding. Is that
12 correct?

13 A: That is correct. Yes, sir.

14 Q: Okay. And you made a note up here that said
15 jury bond 2500 B-A-L, is that correct?

16 A: Uh-huh.

17 Q: What -- and those are your initials?

18 A: Those are my initials, to let the jail know
19 what I had him under.

20 Q: All right. And you marked here that you were
21 not giving him a PR bond because releasing him
22 on his own recognizance would not reasonably
23 assure his appearance as required?

24 A: That's correct.

25 Q: Okay. And then he had a court date set -- this



1 was, it looks like, this court date where you
2 filled this out, was -- does that say January
3 8, 2019?

4 A: No. That's July the 8th ---

5 Q: Oh, I'm sorry.

6 A: --- 2019.

7 Q: I, I see that it's a seven and for some reason
8 I said January. So let me reflect. You --
9 that's a seven meaning July, correct?

10 A: Yes, sir.

11 Q: Okay. And his court date was for August 8th of
12 2019, is that right?

13 A: Yes, sir.

14 Q: Okay. And on this next page, there is an
15 acknowledgment of -- by the Defendant, that he
16 is receiving this type of bond and he signed it
17 on that July 8th date, is that right?

18 A: Yes.

19 Q: Okay. Now, I see that there's a portion after
20 that with special conditions and a custodian.
21 Can you -- is that the -- his parents that you
22 were referring to?

23 A: His dad, is the one he got in contact with, and
24 that's the one that I released him to.

25 Q: Okay. So rather -- he -- did he ever post the



1 \$2500 surety bond or was he released to his
2 father?

3 A: No, son. He couldn- -- he didn't have the \$250
4 to hold to, to be able to afford to pay a
5 bondsman the 10 percent. And that's when he
6 asked me to please -- you know, he had to get
7 out and get it straightened out. And he
8 contacted his dad, and he identified himself as
9 his dad who came -- (technical audio
10 interference.) ---

11 Q: All right.

12 A: --- and I let him go.

13 Q: And do you -- basically, in this situation,
14 allowed the father to act as the bondsman for
15 him?

16 A: Yes.

17 Q: Okay. That's the, that's the questions I have
18 about that at this time. (Technical audio
19 interference.) So I'm going to stop the share
20 -- screen share on that. Let me go back over
21 just a few things. And I think I'm almost
22 done.

23 What kind of judicial training did you go
24 through in order to become a judge?

25 A: South Carolina Court Administration.



1 Q: And how long -- did -- I know people used to
2 call that judge school, is that what you're
3 referring to?

4 A: Yes.

5 Q: How long was that course?

6 A: I can't tell you how long it was, but it's been
7 ongoing for 30 years.

8 Q: Yes, ma'am. I, I understand that. What -- do
9 you, do you recall the last time that you had
10 to go to continuing education as Municipal
11 Judge?

12 A: Every year you have to go.

13 Q: And, for municipal judges, all of your training
14 has to be in the -- on the criminal side, is
15 that right?

16 A: Just- -- yes, sir. We have to go to everything
17 that the -- my battery's running out, son.

18 Q: (Laughter.) I'll, I'll try and hurry up then.

19 A: Okay.

20 Q: Hopefully, we can ... But, just to finish
21 that question, all your training has to be on
22 the criminal side, is that right?

23 A: That's correct, yes.

24 Q: Okay. Do you have any reason to know -- well,
25 actually I guess we answered that. At bond



1 court, do you recall ever speaking with Mr.
2 Qualls or his father, making a statement to the
3 effect of you were going to let him go because
4 he's agreed to pay his fines and take care of
5 the situation?

6 A: No. I told him to come back to court.

7 Q: Okay. Do you agree that generally it's the
8 State's responsibility to call witnesses
9 against the defendant?

10 A: Yes.

11 Q: Okay. Would you agree it would be improper for
12 you to act as a witness against a defendant?

13 A: No. Unless he lied to me.

14 Q: And that was the situation with Mr. Qualls?

15 A: That -- well, that's the situation with that
16 black guy that I had -- I'd done everything I
17 could to help him, and he had both -- just,
18 never mind, it just -- yes, sir.

19 Q: Okay. Did you ever hold him in contempt?

20 A: No, sir. I did not hold him in contempt. I
21 said, son, I cannot believe you have lied to
22 me. You're going to jail on all these charges.
23 And that's when we heard about the jury trial.

24 Q: All right. Understood.

25 **MR. HUTTO:** Ms. Ryan, I don't have -- (technical



1 audio interference) -- Judge, thank you for
2 your time. Ms. Ryan, if you have any questions
3 I'll turn it over to you.

4 **JUDGE LISENBY - EXAMINATION BY MS. RYAN:**

5 Q: All right. So, Judge Lisenby, the first time
6 that individual requested a jury trial was
7 after they were found guilty, and you said that
8 they were going to jail. Is that correct?

9 A: After he plead guilty on numerous occasions and
10 I had let him go outside the door to go home to
11 get it straightened out, to get in the car with
12 the people he said brought him, and they caught
13 him driving.

14 Q: That's it. I don't have any more questions.

15 **MR. HUTTO:** Thank you again, judge. I've -- I guess
16 either Ms. Ryan or I can explain. You have
17 the, the right to what's called read and sign
18 your deposition. You can't change the content
19 of anything that was recorded or written, but
20 if there's a scrivener's error, you have the
21 right to correct that. You have -- you can use
22 that right. You can waive that right. Most
23 people waive it. However, you are not either
24 a witness, technically, for me or, I suppose,
25 for Ms. Ryan, so it would be up to you to



1 determine whether you wanted to read and sign
2 or not read and sign the deposition before it's
3 published.

4 **JUDGE LISEBY:** I do not want to read it and sign
5 it. I trust you, and I'm under oath, as God as
6 my witness. So, no. You can go ahead and do
7 whatever you need to do.

8 **MR. HUTTO:** All right. I appreciate it, ma'am.
9 Thank you. Thank you for your time and, I may,
10 may resolve this, may not. Ms. Ryan and I will
11 find out, but thank you.

12 **(There being no further questions, the deposition**
13 **concluded at 1:18 p.m.)**

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CRIMINAL CHARGING DOCUMENT NO.

BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF Chesterfield
STATE OF SOUTH CAROLINAIN THE CRIMINAL COURT of Mc Bee

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Michael Qualls
NAME OF DEFENDANTOffense Charged: Prob. off, Susp. Taq, Dis. Turbulently
At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
- That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of 2500.00

3. That the defendant shall appear at (check one):	
☐	the term of <u>COURT OF GENERAL SESSIONS</u> beginning on _____ at _____ o'clock, _____ at _____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☒	the session of <u>Municipal</u> <u>CRIMINAL COURT</u> <u>of Mc Bee</u> beginning on <u>8-8-2019</u> at <u>2</u> o'clock <u>P.M.</u> at <u>38 W. Juniper Ave, Mc Bee, SC</u> . If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.
INITIALS OF DEFENDANT <u>[Signature]</u>	

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

[Signature]
SIGNATURE OF JUDGE1-8-2019
DATEORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
SCC/V511A (Revised 3/2013) Original Copy For The Trial Court - Copy For The Defendant

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

[Signature]
SIGNATURE OF DEFENDANT

DATE

TELEPHONE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:

Michael O'Neill
ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

[Signature]
SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
on _____ on condition that he return to the custody of _____
at _____ as designated.
DATE(S) NAME OF PERSON OR ORGANIZATION
LOCATION

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of _____, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY BONDSMAN COMPANY

TELEPHONE

SIGNATURE OF SURETY BONDSMAN

ADDRESS OF SURETY BONDSMAN

CITY/STATE/ZIP

SIGNATURE OF JUDGE

NAME OF INSURANCE COMPANY

DATE

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP

COUNTY OF ORANGEBURG

) COURT OF COMMON PLEAS
) C/A #: 2020-CP-02-00760

Plaintiff,

$$V.$$

Defendant.

MARSH JULIAN

* * * * *

10:04 a.m. - 10:30 a.m.

The virtual deposition of MARSH JULIAN, being conducted virtually on behalf of the Plaintiff on the 26th day of April, 2022 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

VIRTUAL APPEARANCES

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Certificate	20

EXHIBITS

Plaintiff's Exhibit Number 1.	19
(Letter to the Town of McBee)	
Defendant's Exhibit Number 1.	19
(Chesterfield County Detention Center Release Report)	

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the deposition is being conducted by remote means and the court reporter is not present with the witness.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



1 **MARSH JULIAN**, having been duly sworn, deposes and
2 testifies as follows:

3 **COURT REPORTER:** Thank you. And I forgot to do this
4 before swearing you in. Mrs. Ryan and Mrs.
5 Slaughter, do y'all have any objections to me
6 swearing in the witness via videoconference?

7 **MS. SLAUGHTER:** No.

8 **MS. RYAN:** No.

9 **COURT REPORTER:** Thank you so much.

10 **MR. JULIAN - EXAMINATION BY MS. SLAUGHTER:**

11 Q: All right. Mr. Julian, I am Maya Grace
12 Slaughter. An attorney with Williams &
13 Williams I represent Mr. Michael Qualls in his
14 claim against the Town of McBee. This the a
15 deposition in which I will ask you questions
16 and you must answer them truthfully. Although
17 no judge is present, this is a formal legal
18 proceeding. Just like testifying in court, you
19 are under the same legal obligation to tell the
20 truth, the whole truth, and nothing but the
21 truth.

22 If you don't understand any of my
23 questions, feel free to say so and I am happy
24 to rephrase them. Before the deposition to be
25 used in court, if you so choose, you'll have



1 the opportunity to read over it and correct any
2 mistakes. Do you understand this?

3 A: I do.

4 Q: Awesome. If you could please state for the
5 record your name, the address of your office,
6 and your age.

7 A: My name is Marsh Julian, M-A-R-S-H J-U-L-I-A-N.
8 I work for Smith Ammons Howle Law Firm here in
9 Florence. That's at 614 West Palmetto Street
10 in Florence, South Carolina 29501. And I am
11 37.

12 Q: All right. And are you currently under the --
13 it's always weird to ask this to another
14 attorney. Are you under the influence of any
15 drugs, alcohol that would impair or impact your
16 ability to testify here today?

17 A: No, ma'am.

18 Q: Can you tell me a little bit about your
19 educational background?

20 A: I graduated from Francis Marion University in
21 2013 with a bachelor of science and political
22 science and a minor in history. And then I
23 matriculated to the University of South
24 Carolina Law School and graduated there in
25 2016, and then was licensed to practice in



1 November of 2016.

2 Q: Okay. And how long have you currently been
3 practicing?

4 A: I've been practicing since I was licensed in
5 2016, so going on six years. I guess like five
6 and a half years now.

7 Q: Okay. And you are a criminal defense attorney,
8 correct?

9 A: I do practice in criminal defense, as well as
10 domestic actions, as well as common please.
11 I'm kind of a general practitioner, just a
12 little bit of everything.

13 Q: Okay. And is it in your work -- where are you
14 currently practicing?

15 A: At Smith Ammons in Florence.

16 Q: All right. And in your work at Smith Ammons,
17 is that how you came into contact with
18 Mr. Michael Qualls?

19 A: That's correct.

20 Q: And for what did Mr. Qualls require legal
21 services?

22 A: Mr. Qualls was an existing client for another
23 one of the partners here in the firm. And
24 during one of their conversations he alluded to
25 an issue that he was having with the Town of



1 McBee that involved some traffic citations and
2 some possible issue with not being awarded a
3 jury trial when he had claimed that he had
4 asked for one. At that point the partner asked
5 if I could speak with Mr. Qualls. So that's
6 how I initially met him.

7 Q: And once Mr. Qualls shared with you that he had
8 had some issue obtaining a jury trial with the
9 Town of McBee, what was your next step in
10 representing Mr. Qualls?

11 A: He explained to me what was going on. He
12 claimed that he had been issued several
13 different traffic citations. I believe some --
14 maybe driving under suspension or some minor
15 traffic citations. But he claims that when he
16 was in front of the Judge in McBee, that he had
17 requested a jury trial and that they told him
18 -- he claims that the Judge told him that he
19 was not entitled to a jury trial. That raised
20 a red flag for me, since I had practiced in
21 municipal courts for several years prior to
22 coming into private practice, so I know, I
23 mean, how the process works. So that raised a
24 red flag for me.

25 And based upon that and I filed several



1 motions, and including just my motions for
2 discovery. I filed a letter of representation
3 indicating that I was going to represent Mr.
4 Qualls in these actions, and then also a motion
5 for a new trial under Rule 29 of the Criminal
6 -- Rules for Criminal Procedure, and
7 reinstituted a request for a jury trial and all
8 of that.

9 **MS. SLAUGHTER:** Okay. At this time I'd like to go
10 ahead and enter Exhibit 1 as a letter to the
11 Town of McBee.

12 Q: All right. Are you able to view that?

13 A: I don't see anything right now.

14 **MS. RYAN:** I don't either.

15 A: All right. I can see your screen now.

16 **MS. RYAN:** I can see it too.

17 Q: Beautiful. All right. Could you identify
18 these documents for me, please?

19 A: Yes. The first page of the document is my
20 letter of representation. This is the packet
21 of information that I send in any kind of
22 criminal matter. I cite the case caption and
23 the warrant or ticket numbers. This is a form
24 letter that I created and I use in every one of
25 my traffic or criminal cases. And my typical



1 practice is to send it US mail and via fax,
2 just so I could go ahead and immediately get
3 those over to whatever court. And once filed,
4 I forward to whatever prosecuting agency.

5 But this just indicates -- this is my
6 letter indicating that I'm representing
7 Mr. Qualls. The subsequent documents are the
8 three motions that I file on every criminal and
9 traffic case that I represent a client in.
10 One's a motion under Rule 5, one is a motion
11 under Brady v. US, and the other is a motion
12 under Rule 6 of the Rules of Criminal
13 Procedure. And then lastly I included a motion
14 for a new trial. That's the last motion you
15 should see.

16 Q: Thank you. And can you please describe for me,
17 what happened when you attempted to file these
18 motions with the Town of McBee?

19 A: When I first submitted them via fax I received
20 a very quick phone call from someone that
21 identified themselves as the clerk at the Town
22 of McBee Municipal Court. She just proceeded
23 to yell at me for faxing over so many documents
24 and draining their ink cartridge. That was
25 very strange to me. I've never had anyone get



1 upset over a fax of legal documents.

2 And I believe the next day -- so that was
3 on October 9th when those were sent.
4 October 10th I received a phone call from Judge
5 Lisenby. I don't remember if I'm pronouncing
6 her name correct. She also yelled at me for
7 not pronouncing her name correctly. And that's
8 one of the reasons that this stands out,
9 because I've never really been treated like
10 that and I've never received a phone call from
11 a judge after I've send documents in requesting
12 a trial or requesting evidence. They never did
13 send back any filed copies. The Judge
14 indicated to me on the phone that she refused
15 to issue a new trial. And she said, he had
16 already been heard on everything. She then
17 proceeded to tell me her account of what
18 occurred in court that day and that she was
19 doing Mr. Qualls a favor and she was trying to
20 help him in court and basically that -- telling
21 me that everything that I was told by
22 Mr. Qualls was incorrect and that her account
23 was the actual correct account and that there
24 was no need for a new trial, he just needed to
25 pay his fines.



1 Q: And in your experience as a criminal attorney,
2 are you aware of any authority that a clerk
3 would have to deny an attempted filing in a
4 criminal case?

5 A: Not that I'm aware of. I mean, that should be
6 the Judge's purview. And that's what I told
7 the clerk when she spoke to me. And she said
8 she was refusing to file everything, and she
9 said that I needed to talk to the Judge about
10 it. And I said, well I've requested a hearing.
11 I said, I filed a motion for a new trial. I
12 would imagine there would be a hearing coming
13 with that and so just let me know when the
14 hearing date is. And that's when I received
15 the phone call from the Judge indicating that
16 she was going to deny any motion for a new
17 trial and therefore not file any of my motions.

18 So I've searched our records, I don't have
19 a fax confirmation. We had a different
20 receptionist at the time that received the fax
21 confirmations. It's one of those online faxes,
22 so I searched for those. I don't have the fax
23 confirmation, but I did receive the phone calls
24 and I do have just the e-mail confirmation
25 stating that Judge Lisenby had called in, that



1 was from our previous receptionist. So I have
2 that e-mail where she called, but I don't have
3 anything in terms of a fax confirmation. But
4 I don't have any filed documents, because they
5 refused to file them.

6 Q: Okay. And as a result of your phone
7 conversation with Judge Lisenby on
8 October 10th, is it correct to say that you
9 were unable to continue to represent Mr. Qualls
10 in relation to his violations?

11 A: That's correct. I mean, under -- I mean, at
12 that point I didn't see too much more of a
13 pathway forward. I had kind of just stepped in
14 to assist when a partner had asked me for help.
15 And at that time, I mean, I had spoken to the
16 Judge out there and she had told me that she
17 was denying my motions. And at that point I
18 was like, well, I mean, if she's going to deny
19 it, there's not much point for me to drive out
20 to McBee to continue to pursue this. And so at
21 that point my representation with Mr. Qualls
22 was concluded really before it even started.

23 Q: And again just for clarity purpose, Judge
24 Lisenby never granted you any sort of hearing
25 on any of the motions that you had filed,



1 correct?

2 A: That's correct. They never even filed them.

3 Q: And how did you relay this information to
4 Mr. Qualls that he was not going to be granted
5 a jury trial?

6 A: He came into the office. Like I said, he had
7 another case with one of our partners, so he
8 was in the office a fair amount for that. So
9 one of the time that he stopped in, I took him
10 in a conference room and explained what had
11 happened and explained what the Judge said.
12 And he was steadfast in his account of the
13 story and he -- I know he tried to -- he
14 alleged that his -- the Judge had called
15 several people from the bench from her cell
16 phone. And one of those people was his dad.
17 He tried to get his dad on the phone to
18 corroborate what was going on. And that point
19 I just said, you know, I tried, I was
20 unsuccessful. And, I mean, with my other case
21 load, I didn't have time to continue to pursue
22 what could be or could not be some sort of
23 relief for Mr. Qualls. So I just let him know
24 that I wasn't going to continue to pursue
25 anything and that, since I was already denied



1 by the Judge at least via telephone, that I
2 wasn't going to pursue anything further.

3 Q: And either Judge Lisenby or the clerk with whom
4 you spoke to on the 9th provided you with any
5 legal reasoning as to why Mr. Qualls was not
6 being provided with and opportunity to have a
7 jury trial, correct?

8 A: The clerk didn't provide anything really. She
9 just -- you know, her main contention was that
10 I faxed so many documents and then she just
11 said, you need to talk to the Judge about this.
12 And she then took my phone number and gave it
13 to the Judge. The Judge called me. I could
14 tell she was in her car. And she just -- we
15 probably spoke for about five, ten minutes.
16 And during that time she just went on and on
17 about what had happened in the court room that
18 day and she just claims that she had bent over
19 backwards for Mr. Qualls.

20 And I told her, I said, his main assertion
21 is that he was denied a jury trial request when
22 he requested one. She claims that he requested
23 a jury trial after he had already entered a
24 guilty plea. Mr. Qualls has remained steadfast
25 every time I talk to him that he never entered



1 any guilty plea and that guilty plea was
2 entered for him by the Judge. Judge Lisenby
3 denies that, of course, and -- or denied that
4 on the phone with me and she claims that she
5 was -- did everything in her power to help him
6 and that he just refused her help.

7 And basically just told me to -- like I
8 said, my motions were not going to be granted,
9 so there was no point for me to go to McBee.

10 Q: And after your October 10th phone call with
11 Judge Lisenby, did you have any other
12 interactions with the town of McBee regarding
13 Mr. Qualls?

14 A: I did not.

15 Q: Is there anything further that you could share
16 about your interactions with Mr. -- with the
17 Town of McBee in relation to Mr. Qualls?
18 Anything else you'd like to share?

19 A: Nothing that I can think of.

20 **MS. SLAUGHTER:** I don't have any further questions.
21 Attorney Ryan?

22 **MR. JULIAN - EXAMINATION BY MS. RYAN:**

23 Q: Okay. Who -- do you have the name of the clerk
24 that you spoke to on October 9th?

25 A: I do not. I'm not sure what her name is. I



1 know it was a female. Whoever would have been
2 working as the town clerk that day. And I
3 believe that, you know, since the Town of McBee
4 is so small, it might be roped in with the
5 police department as well. I can't remember
6 for sure though.

7 Q: Okay. And was it -- did you speak to the clerk
8 more than once or just that one time on October
9 9th?

10 A: Just that one time, and then she took down my
11 number and said the Judge was going to be
12 calling me.

13 Q: Okay. All right. And how many times did
14 Mr. Qualls come to your office to meet with
15 you?

16 A: To meet with me, he probably met with me about
17 four or five times, I would say. And he had a
18 phone few calls with me other than that. But
19 most of the time, he was there in person.

20 Q: And when he was there in person, did he ever
21 threaten you?

22 A: No, he didn't -- Michael's a sweet guy. He was
23 never threatening in any way.

24 I mean, I think you can tell and anyone
25 can tell, you know, Michael might have some



1 mental deficiencies, but he's an extremely
2 gentle person and he's never threatening in any
3 way to me or my partner, Josh Howle, who
4 represented him in other cases.

5 Q: So you never had to have him forcibly removed
6 from your office?

7 A: Not me, I've never had -- not that I ever heard
8 of, so.

9 Q: All right. And you mentioned Josh Howle.
10 Besides Josh Howle, were there any other
11 attorneys -- and Attorney Hutto, that you're
12 aware of that represented Mr. Qualls regarding
13 this matter?

14 A: I have an e-mail. It was -- let's see. I
15 thought I saw Patrick McLaughlin's name.
16 That's the only other indication -- he went to
17 see -- I guess he went to see Patrick
18 McLaughlin in December of '19. I got an e-mail
19 from our receptionist asking for -- hold on one
20 second. He needed a letter to give to Patrick
21 saying that I wasn't representing him anymore.

22 Q: Okay. And your partner, Josh Howle, did he
23 represent Mr. Qualls on this matter at all or
24 strictly for separate matters?

25 A: No. It was a separate matter. He never did --



1 Josh doesn't practice anything in criminal
2 defense or any kind of traffic citations, so
3 that's why I was called in for this.

4 Q: Okay. And I have an exhibit, which
5 unfortunately I'm not going to be able to put
6 it on the screen. I can give you the Bates
7 numbers for it. It is 000034. And it is the
8 Chesterfield County Detention Center Release
9 Report, which I'm wondering if I can get it
10 close enough. But basically I just wanted to
11 go over the dates on here. It has his confined
12 date. Does this look to you that it is
13 August 8th, 2019?

14 A: Hold it still for just a second. August 8th,
15 2019 and 19:44 time is what I read.

16 Q: Okay. And then can you see the release date?

17 A: It looks like -- pull it back up. There you
18 go. 8/15/2019.

19 Q: Okay. So do you agree that he was released
20 from jail on August 15th, 2019?

21 A: Yes. And I think that was part of the problem
22 and one of the other red flags that was raised
23 was that he was incarcerated for so long for
24 these traffic citation. And I understand they
25 can carry that, but it was just odd that they



1 would carry some sort of jail time. So he had
2 difficulty explaining to me why that was the
3 case, why he had to go be incarcerated for
4 this.

5 Q: What did he say his reason in his understanding
6 of why he was being incarcerated?

7 A: He thought he made the Judge mad.

8 Q: Did he say what he did to make her mad?

9 A: He argued with her.

10 Q: About -- did he say what they argued about?

11 A: The fact that he requested a trial and she
12 refused it.

13 Q: Okay. And do you agree -- let's see. Your --
14 the motions that you filed, do you agree that
15 those were filed on October 9th of 2019?

16 A: Yeah. That's when I sent them, I know that.
17 But they never did get stamped by the Court.

18 Q: Okay. And do you agree that October 9th, 2019
19 is more than ten days after August 8th, 2019?

20 A: Yes. And I believe -- so Rule 29, subsection
21 B allows for a new trial based upon
22 after-discovered evidence. And that was going
23 to be my argument because I was going to bring
24 evidence in or bring an argument to the Court
25 that he was denied his request for a jury



1 trial. So I was going to -- that was the basis
2 for my motion.

3 Q: Okay. So the -- what was the after-discovered
4 evidence?

5 A: The fact that he was denied his request for a
6 jury trial.

7 Q: Okay. All right. Let's see. I think that may
8 be everything. That is all my questions.

9 A: All right.

10 **MS. SLAUGHTER:** Nothing further.

11 **(Plaintiff's Exhibit Number 1 was marked for**
12 **identification purposes.)**

13 **(Defendant's Exhibit Number 1 was marked for**
14 **identification purposes.)**

15 **(There being no further questions, the deposition**
16 **concluded at 10:30 a.m.)**

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October 9, 2019

VIA U.S. MAIL
AND FACSIMILE
843-335-8393
Clerk of Court
City of McBee Municipal Court
38 W. Juniper Ave.
McBee, SC 29101

RE: State vs. Michael Qualls, II
Warrant/Ticket No.(s): 20191710001548; 1549; 1550; 1551; 1552;
1553; and 1554

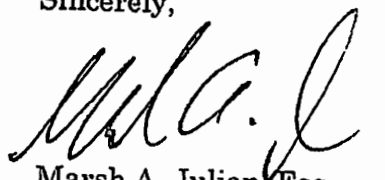
Dear Sir or Madam:

I was retained to represent the above-referenced Defendant regarding the above-cited charges. Please allow this letter to serve as my client's formal request for a jury trial in the above-referenced matter. Enclosed please find the original and one copy of the Request for Disclosure of Evidence Rule 5-6 and Motion for Brady and Other Favorable Material and Incorporated Memorandum. I would appreciate you clocking in all copies and returning the copy to me in the self-addressed, stamped envelope provided.

Thank you for your assistance in this matter.

With kind regards, I am

Sincerely,



Marsh A. Julian, Esq.
Smith Ammons, LLC

Enclosures



STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

State of South Carolina

v.

Michael Qualls, II

Defendant.

IN THE MUNICIPAL COURT FOR THE
CITY OF MCBEE

Warrant/Ticket No.(s): 20191710001548;
1549; 1550; 1551; 1552; 1553; and 1554

**MOTION FOR DISCOVERY AND
INSPECTION**

Pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, the Defendant, by and through his/ her undersigned attorney, respectfully requests the right to inspect and copy or photograph the following:

1. Any written or recorded statements made by the Defendant, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

2. The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;

3. Defendant's prior criminal record and/or driving record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

4. All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecution, and which are material to the defense, or are intended for the use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;

5. All results or reports of physical or mental examinations, and of scientific tests or experiments, or copies and any video tape recordings of Defendant thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial;

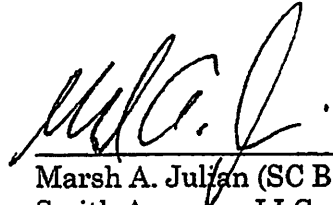
6. The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

The Defendant further moves that compliance with the forgoing request be made within thirty (30) days from the service of this motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge of the Circuit, by Notice and Motion, for an order prohibiting the prosecution from introducing at trial, evidence not disclosed, and if the foregoing is denied, an order permitting the discovery and inspection requested, or a continuance of the trial, or such order as the Court in its discretion deems just under the circumstances.

<Signature Page to Follow>

Page 2 of 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M.A. Julian', is positioned above a horizontal line.

Marsh A. Julian (SC Bar 102750)
Smith Ammons, LLC
614 W. Palmetto Street
Florence, SC 29501
Phone: 843-407-1583
Fax: 888-247-0844
mjulian@smithammonslaw.com
Attorney for Defendant

October 9, 2019
Florence, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

State of South Carolina

v.

Michael Qualls, II

Defendant.

IN THE MUNICIPAL COURT FOR THE
CITY OF MCBEE

Warrant/Ticket No.(s): 20191710001548; 1549;
1550; 1551; 1552; 1553; and 1554

**MOTION FOR BRADY AND OTHER
FAVORABLE MATERIAL AND
INCORPORATED MEMORANDUM OF LAW**

The Defendant, by and through his/her undersigned counsel, files this Motion for Brady and other favorable material and incorporated Memorandum of Law and, as grounds therefore, the undersigned would show as follows:

1. Under the United States Supreme Court decision in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), and refined in United States v. Bagley, 473 U.S. 667 (1995) and Kyles v. Whitley, 514 U.S. 419 (1995) the Solicitor has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.

2. Defendant claims under Brady, and its progeny, as well as the language and spirit of Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972); United States v. Tashman, 478 F.2d 129 (5th Cir., 1973); and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); that he is entitled to any and all records, memoranda and documents, as well as a statement of the Solicitor and all appropriate state, federal and local law enforcement agencies as to:

a. Any and all promises, rewards and inducements made to all witnesses herein, whether or not they have testified before any state or federal Grand Jury, or other investigative agency, and regardless of whether they will testify at the trial herein.

b. Any offers or grants of immunity in this case to any witness from loss of property, fine, forfeiture, prosecution, or punishment in this or any other case, related or otherwise.

c. A list of names and addresses of the psychiatrists or hospitals and copies of any and all relevant records and reports relating to any psychiatric examination or treatment of any witness called before the Grand Jury or who has or will give testimony to the Grand Jury, any investigative agency or at trial.

d. Any "inconsistent" statements of a particular witness or between witnesses.

e. Any and all "rap" sheets or histories of arrests or convictions of any unindicted co-conspirator or State witness.

3. In addition, Defendant requests copies of any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.

4. Defendant also contends that he is entitled to any statement or admissions by a witness for or on behalf of the State with respect to the witness' memory or loss thereof.

5. Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, to seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness' statement of a particular letter or exhibit will "help" the Defendant. The Defendant and her attorney, not the Solicitor, ought to

be the judge of her defense and the documents relevant thereto and necessary in support of same.

6. The extent that Defendant specifically is required to demonstrate the materiality of the requested information, see United States v. Agurs, 427 U.S. 97b (1976), Defendant submits that this requirement is satisfied in this motion.

7. To disclose to counsel for the defense any and all evidence in the actual or constructive possession of the State which is of a favorable character for the Defendant in this case and material to the issue of guilt or innocence or the punishment in this case, pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, the undersigned prays for such Order as is just and proper.

Respectfully submitted,



Marsh A. Julian (SC Bar 102750)
Smith Ammons, LLC
614 W. Palmetto Street
Florence, SC 29501
Phone: 843-407-1583
Fax: 888-247-0844
mjulian@smithammonslaw.com
Attorney for Defendant

October 9, 2019
Florence, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

State of South Carolina

v.

Michael Qualls, II

Defendant.

IN THE MUNICIPAL COURT FOR THE
CITY OF MCBEE

Warrant/Ticket No.(s): 20191710001548;
1549; 1550; 1551; 1552; 1553; and 1554

**REQUEST FOR DISCLOSURE
OF EVIDENCE**

Pursuant to the South Carolina Rules of Criminal Procedure, the Defendant, by and through his/her undersigned attorney, respectfully requests the right to be furnished or to examine, inspect, copy or photograph the following:

1. Any written or recorded statements made by the Defendant, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

2. The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;

3. Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

4. All books, papers, documents, photographs, tangible objects, buildings

or places, or copies or portions thereof, prosecution, and which are material to the defense, or are intended for the use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;

5. All results or reports of physical or mental examinations, and of scientific tests or experiments, or copies and any video tape recordings of Defendant thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial;

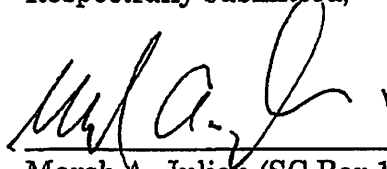
6. The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

7. Make any chemist, analyst, and all persons within the chain of custody appear in Court for the purpose of personally testifying. The Defendant objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, South Carolina Rules of Criminal Procedure.

The Defendant further moves that compliance with the forgoing request be made within thirty (30) days from the service of this motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge of the Circuit, by Notice and Motion, for an order prohibiting the prosecution from introducing at trial, evidence not disclosed, and if the foregoing is denied, an order permitting the discovery and inspection requested, or a continuance of the trial, or

such order as the Court in its discretion deems just under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M.A. Julian', is written over a horizontal line.

Marsh A. Julian (SC Bar 102750)
Smith Ammons, LLC
614 W. Palmetto Street
Florence, SC 29501
Phone: 843-407-1583
Fax: 888-247-0844
mjulian@smithammonslaw.com
Attorney for Defendant

October 9, 2019
Florence, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

State,

v.

Michael Qualls, II.

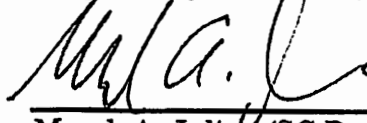
) IN THE MCBEE MUNICIPAL COURT

) TICKET NOs.: 20191710001548; 1549;
) 1550; 1551; 1552; 1553; and 1554

) **NOTICE OF MOTION AND MOTION**
) **FOR NEW TRIAL**

PLEASE TAKE NOTICE, Michael Qualls, II, by and through Marsh A. Julian, counsel for Michael Qualls, files this motion for a new trial pursuant to Rule 29, SCCrimP. Mr. Qualls had requested a trial by jury at his initial court appearance, and this request was denied. Therefore, due to Mr. Qualls constitutionally protected rights being denied, I move for a new trial on the merits.

Respectfully Submitted,



Marsh A. Julian (SC Bar 102750)

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Attorney for Defendant

October 9, 2019
Florence, South Carolina

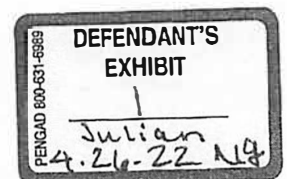
CHESTERFIELD COUNTY DETENTION CENTER

Release Report

QUALLS, MICHAEL II

NameID:		Local Identifier:		CORIS ID:		Local Number:		Projected Release Date: 09/21/2019			
Security Class:		Booking Status: Released		Confined Date: 08/08/2019 19:44		Released Date: 08/15/2019 12:47		Confinement Reason: 44			
Home Address:				Home City:		Home State: SC		Home Zip Code: 29161			
Race:		Sex: Male		Eyes: Brown		Hair: Black		Complexion: Light Brown			
Date of Birth:		Age:		Place of Birth:		Height:		Weight:			
FDI Number:		SID Number:		Military:		Military Status:					
SSN:		Driver's Lic. Number:		DL State: SC		DL Class:				Home Phone:	
Occupation: NA		Employer: NA		Employer Address: NA NA, SC		Employer Phone:					
Next of Kin:				Address:				Phone:			
Emergency Contact:				Address:				Phone:			
Doctor:				Address:				Phone:			
Attorney:				Address:				Phone:			
Confinements:											
Confinement Facility: Chesterfield		Confined Date/Time: 08/08/2019 19:44		Held For Locality: McDee Police Department		Housing Unit:		BookingID:			
Confinement Reason: 44 - BOOK - Booking - General											
Confinement Notes:											
Releasing Officer: TEAL, LINDA		Released Date/Time: 08/15/2019 12:47		Released To: Street		Juvenile When Booked: No					
Release Reason: 54 - RCO - RELEASED BY COURT ORDER											
Release Notes: RELEASED PER COURT ORDER JUDGE B. LISHNDY 20191710001548 SPEEDING / 20191710001549 OPERATING UNINSURED VEHICLE / 20191710001550 DISOBU TO OFFICER / 20191710001551 SUSPENDED TAG / 20191710001552 IMPROPER VEHICLE LICENSE / 20191710001553 DUS IST / 20191710001554 TURNING UNLAWFULLY ALL FOR THE TOWN OF MCDEE											
Property Locations:											
Booking Officer: FREEMAN, PATRICIA		Search Officer: PULICE, DONALD		Fingerprint Officer: FREEMAN, PATRICIA							

Charges:



COUNTY OF CHESTERFIELD

) COURT OF COMMON PLEAS
) C/A #: 2020-CP-13-00672

Plaintiff,

$$V.$$

Defendant.

DEPUTY JUSTIN REICHARD

* * * * *

9:31 a.m. - 10:26 a.m.

The deposition of Deputy Justin Reichard, was being conducted virtually on behalf of the Plaintiff in South Carolina on the 15th day of April, 2021 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

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EXHIBITS

(No exhibits were marked during the deposition.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the deposition is being conducted by remote means and the court reporter is not present with the witness.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



CREEL COURT REPORTING, INC.
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1 **COURT REPORTER:** We're on the record. My name is
2 Sean Cary, court reporter for the deposition
3 today. I am not present with the witness. Is
4 there any objection to the oath being
5 administered remotely by video conference?

6 **MR. HUTTO:** No.

7 **COURT REPORTER:** Ms. Ryan?

8 **MS. RYAN:** No, sir.

9 **COURT REPORTER:** Thank you, ma'am. All right.
10 Deputy Reichard, could you please raise your
11 right hand?

12 **(Witness complies.)**

13 **COURT REPORTER:** Do you solemnly swear or affirm the
14 testimony you're about to give will be the
15 truth, the whole truth and nothing but the
16 truth, so help you God?

17 **MR. REICHARD:** I do.

18 **COURT REPORTER:** Thank you, sir. Appreciate it.

19 **DEPUTY JUSTIN REICHARD,** having been duly sworn,
20 deposes and testifies as follows:

21 **DEPUTY REICHARD - EXAMINATION BY MR. HUTTO:**

22 Q: Good day, Deputy, how are you doing this
23 morning?

24 A: I'm doing good. How are you?

25 Q: Doing well. Before we start with anything



1 else, could I get you to state your name and
2 spell your last name for the record?

3 A: Justin Reichard. Spelling is R-E-I-C-H-A-R-D.

4 Q: Have you ever had your deposition taken before?

5 A: I have.

6 Q: Okay. Well, I'm gonna tell you a few things
7 that everybody probably told you last time you
8 went around with this. And the attorney
9 probably told you beforehand, but I just tell
10 everybody. First of all, you're not trapped on
11 this call with me. If you get -- if you need
12 to get a coffee or water or go to the restroom
13 or anything like that, just let's finish
14 whatever topic we're on and then you're free --
15 we're free to pause and take five minute break
16 or whatever and come back. Okay?

17 A: Okay.

18 Q: And part of the reason that I state it that way
19 is I'm kind of looking for a response from you,
20 and you just did a good job, was that, as you
21 know, there's a court reporter here, everything
22 that we do, we need to state in a way that can
23 be recorded. So rather than using head nods or
24 hand gestures, if you can keep in mind to try
25 and just verbalize everything as best you can.



1 All right?

2 A: Yes, sir.

3 Q: All right. I'm gonna always do my best to let
4 you finish your answer before I start my next
5 question. I do have a bad habit of not doing
6 that sometimes, but I'm gonna do my best to do
7 that. And I -- I've also, if you could, even
8 if you know the answer to the question I'm
9 about to ask you, let me finish the question
10 before you starting to answer it. That way the
11 court reporter can record everything cleanly.
12 Does that make sense?

13 A: Yes, sir.

14 Q: All right. And you've probably heard this
15 before as well, but if -- if at any point
16 you've got a question about something that I
17 asked you, you know, feel free to ask me to
18 restate it. And if you have a question about,
19 procedurally, what's going on with the
20 deposition, pose that question to me first
21 unless it's a matter of attorney client
22 privilege, otherwise I would probably be the
23 correct person to answer your question. All
24 right?

25 A: All right.



1 Q: Okay. Can you tell me -- I see that your title
2 is Deputy, but can you tell me how you're
3 employed?

4 A: I'm employed with Chesterfield County Sheriff's
5 Office.

6 Q: Okay. And how long have you been employed
7 there?

8 A: Two years and s- -- some change.

9 Q: All right. Were you employed there at the
10 Sheriff's Office in September of 2019?

11 A: I was.

12 Q: Okay. And at that point, how long had you been
13 at the Chesterfield Sheriff's Office?

14 A: I started at the Sheriff's Office March of --
15 March 25th of 2019, so.

16 Q: Okay. Where -- what were you doing before
17 that?

18 A: I was a police officer in the City of
19 Hartsville.

20 Q: How long have you been in law enforcement?

21 A: I was -- I began my law enforcement career
22 October of 2016.

23 Q: Besides the County of Chesterfield and the Town
24 of Hartsville, have you worked for any other
25 law enforcement agencies?



1 A: No, sir.

2 Q: Okay. When -- do you recall -- as best as you
3 recall, when did you finish the Criminal
4 Justice Academy?

5 A: May of 2017, I believe it was.

6 Q: So you had actually started working with the
7 Town of Hartsville, in kind of a provisional
8 way, before you actually finished Criminal
9 Justice Academy?

10 A: Yes, sir.

11 Q: All right. What was your position with the
12 City of Hartsville?

13 A: I was a road deputy, a patrol, road patrol.

14 Q: Okay. And I -- what's your p- -- current --
15 current title besides Deputy with the Sheriff's
16 Office?

17 A: I'm a sergeant with patrol. I'm a road
18 supervisor with the Sheriff's Office now.

19 Q: Okay. Now, before we go too much fur- -- I'm
20 gonna ask you a few more things. But before we
21 go too much further, I just want to clarify
22 something. The -- you have never -- have you
23 ever been an employee of the Town of McBee,

24 A: No, sir.

25 Q: Or McBee? How is it that a ticket that you



1 wrote ended up in the McBee Municipal Court?

2 A: So the way that works is, the Town of McBee
3 actually contracts with Chesterfield County
4 Sheriff's Office. And we some -- have an
5 agreement, that's above my pay grade and
6 everything, that they've come up with that we
7 provide as -- the Sheriff's Office provide a
8 service to the Town of McBee for I think, like
9 12 hours or something like that.

10 A: When you say 12 hours, like 12 hours a day?

11 Q: Yeah. It -- it -- well, we -- we cover the
12 town, you know, 24 hours a day, but we put two
13 -- it's two deputies that actually work the
14 town. Usually it's like seven to three and
15 then one comes in like three to twelve or
16 something like that. It's some kind of
17 contract that they had. That -- then I -- they
18 -- they still have it. But like I said, that's
19 -- that's above my pay grade.

20 Q: All right. Well, let's get -- let me get back
21 to a little bit of information about you. How
22 long were you at the Criminal Justice Academy?

23 A: I think it was nine weeks when I was there.

24 Q: All right. Do you remember generally some of
25 the topics that you covered at the Criminal



1 Justice Academy?

2 A: Yeah. Basically, you know, all -- all the
3 rights to laws, BV stuff, the Fourth Amendment,
4 search and seizures, that kind of stuff.

5 Q: Okay. Did you have to do any training on
6 courtroom procedures and courtroom etiquette?

7 A: I believe we did.

8 Q: Do you remember about how long that training
9 was?

10 A: I -- I do not.

11 Q: Okay. But that was a topic at the Criminal
12 Justice Academy?

13 A: I -- I'm almost positive it was.

14 Q: Okay. Was one of the things that you covered
15 in -- with the Criminal Justice Academy,
16 somebody's right to an attorney?

17 A: Yes, sir.

18 Q: Okay. And you familiar with what's called
19 Miranda rights.

20 A: Yes, sir.

21 Q: And you administer those frequently, right?

22 A: Yes, sir.

23 Q: And part of those rights is telling somebody
24 that they've got a right to an attorney, even
25 if they can't afford one, correct?



1 A: Yes, sir.

2 Q: Okay. Let me focus in on the -- this specific
3 situation a little bit more. Do you still
4 patrol in the Town of McBee?

5 A: I -- I -- not -- not as my full time job, no.
6 Now if -- I do go when, you know, there's calls
7 for service and that kind of stuff, yes, I do
8 respond to the Town of McBee.

9 Q: At one point, was that your position within the
10 Sheriff's Office, to make sure that you were
11 present in the Town of McBee?

12 A: Yes, sir.

13 Q: Okay. How long did you do that for?

14 A: From March to October, I think it was.

15 Q: Of 2019?

16 A: Yes, sir.

17 Q: Okay. So basically from when you got to the
18 Sheriff -- when you got to the Sheriff's
19 Office, that was the first position that they
20 gave you.

21 A: Yes, sir.

22 Q: And you had it for several months and then
23 moved on to more general stuff, right?

24 A: Yes, sir.

25 Q: Okay. In general, do they usually put one of



1 the newest deputies in that position?

2 A: That's kind of been some of their practices
3 here lately. I don't know what it was before
4 I, you know, I got to the Sheriff's Office.

5 Q: All right. How often, from your recollection,
6 did the town have Municipal Court?

7 A: Once -- once a month, I do believe.

8 Q: All right. And you would generally have to be
9 present for that, correct?

10 A: Yes, sir.

11 Q: Was it always the same judge who was there?

12 A: Yes, sir.

13 Q: Was there always the same clerk there?

14 A: Yes, sir.

15 Q: Would you be the only officer or would there
16 usually be another officer as well?

17 A: There was another officer, which was my
18 supervisor, who -- who was the day shift guy.

19 Q: You recall his name?

20 A: First Sergeant Jimmy Coombes.

21 Q: Is that C-O-M-B-S?

22 A: It's C-O-O-M-B-E-S, I think it is.

23 Q: All right. Were there ever any other officers
24 there?

25 A: Not that I can remember?



1 Q: D- -- do you recall any other court personnel,
2 like a bailiff or anyone like that, who would
3 have been there?

4 A: No, sir.

5 Q: Okay. So, between March and October, you would
6 have had court five to seven times, something
7 like that?

8 A: Yes, sir.

9 **MR. HUTTO:** All right. One second. All right. I
10 apologize, I just got a notification that my
11 computer is running low on battery. Let me and
12 try and fix that real quick. We can go off the
13 record for -- for two seconds; I'm gonna plug
14 in the computer.

15 **(Off the Record at 9:43 a.m. until 9:44 a.m.)**

16 **MR. HUTTO:** All right. Sorry about that.

17 Q: So Deputy, in -- in the time that you were at
18 McBee Municipal Court, do you ever recall
19 interacting with any defense attorneys for any
20 of the clients that or any defendants that
21 appeared there?

22 A: Not that I recall.

23 Q: Do you recall any sort of general introduction
24 to Court that the Judge or clerk would give
25 before court started or before they started



1 calling cases?

2 A: Normally the Judge would give her little speech
3 before Court.

4 Q: To the best of your recollection, what was that
5 speech?

6 A: Don't quote me, but it's gonna be -- it was
7 something in the sense of, you know, you have
8 the right to an attorney that -- that whole
9 spiel of, you know, the bench trial, the jury
10 trials, you know, kind of the court
11 proceedings.

12 Q: Okay. In your time there, was there ever a
13 jury trial held?

14 A: Not that I remember, no.

15 Q: Okay. You never participated in a jury trial
16 with the Town of McBee, is that correct?

17 A: Yes, sir.

18 Q: Okay. Do you know if First Sergeant Coombes
19 ever had to d- -- participate in a jury trial
20 for the Town of McBee?

21 **MS. RYAN:** Object to form.

22 A: That I can't answer.

23 Q: Okay. Did you ever participate in a jury
24 strike with the Town of McBee?

25 A: No, sir.



1 Q: Have you had to participate in a jury strike in
2 your capacity as a deputy at all?

3 A: Not with the Sheriff's Office, no. I did when
4 was at the City of Hartsville.

5 Q: Okay. Now, did you participate in a jury trial
6 with City of Hartsville?

7 A: I did.

8 Q: Okay. Let me go back to that then. Just
9 briefly, how often did City of Hartsville have
10 -- have Court?

11 A: Usually that was like twice a month.

12 Q: Okay. When you were in that capacity, did you
13 have to ever interact with the Court -- did you
14 ever see a criminal defense attorney in Court?

15 A: I did.

16 Q: Does the City of Hartsville have a public
17 defender to your knowledge?

18 A: They do.

19 Q: Okay. Did you ever see a public defender
20 appear in the Town of McBee?

21 A: Not that I know of.

22 Q: Okay. And I -- I know you mentioned that
23 there's an arrangement above your paygrade
24 earlier, but just to your personal knowledge,
25 does the Town of McBee have any relationship



1 with any public defender?

2 A: I -- I can't answer that; I -- I don't know.

3 Q: Okay. Let me ask you to this specific set of
4 circumstances. You were -- were, I suppose
5 patrolling or working in the Town of McBee in
6 Sep- -- on September 12th of 2019?

7 A: Yes, sir.

8 Q: Okay. Do you recall initiating a traffic stop
9 on a Michael Qualls, II?

10 A: Yes, sir.

11 Q: Can you, in your own words, tell me what you
12 recall about how -- how you came to pull him
13 over?

14 A: Going back -- that -- just kind of backing up
15 a minute. That traffic stop happened in July,
16 correct?

17 Q: Oh, yes. Let me restate the questions. You're
18 correct. I was reading the trial court date.
19 Were you patrolling the -- in the Town of McBee
20 July 8th of 2019.

21 A: Yes, sir.

22 Q: All right. And I thank you for mentioning
23 that. And on July 8th of 2019, did you
24 initiate a traffic court -- a traffic stop on
25 Michael Qualls, II?



1 A: I did.

2 Q: All right. Can you tell me what you recall
3 about why he was -- why you initiated the
4 traffic stop?

5 A: What caught my attention was, I noticed a
6 vehicle approaching me from the rear at a high
7 rate of speed. Once I noticed that, you know
8 I -- I estimated that vehicle speed to be -- I
9 can't remember, it was well above the posted
10 speed limit. I confirmed that speed, changed
11 lanes go get -- to allow the vehicle pass. At
12 that point in time, the vehicle changed lanes
13 behind me and I'm assuming realized that I was
14 a marked patrol unit; I changed lanes back to
15 allow the vehicle to pass. At that point the
16 vehicle made a hard right turn without using a
17 signal. I did loop around and activate my blue
18 lights to conduct a lawful traffic stop at
19 which time the vehicle pulled into a yard, if
20 I remember right, First street, Oak street.
21 And then at that point, you know, I exited my
22 patrol vehicle and then I conducted that
23 traffic stop at that point.

24 Q: All right. Did you -- in your estimation, was
25 the traffic stop initiated because of the



1 failure to signal or because of the speed or
2 both?

3 A: Both.

4 Q: All right. What happened next in your
5 interaction with Mr. Qualls on ---

6 A: As ---

7 Q: --- on that date?

8 A: As I was -- as I was exiting my vehicle, Mr.
9 Qualls went ahead and got out of his vehicle.
10 And I could see -- if I remember I could see a
11 cell phone in his left hand. I could not see
12 his right hand as he was bladed from me. He
13 looked at me; I was giving him loud verbal
14 commands, and due to me not being able to see
15 that right hand I did draw my service weapon
16 and -- and order Mr. Qualls to let me see his
17 hands. Mr. Qualls still kinda had a look in
18 his eye that he was gonna try to run. I
19 advised Mr. Qualls to stop where he was and let
20 me see his h- -- and continued to say, Let me
21 see your hands. I closed the gap on Mr.
22 Qualls, re-holstered my service weapon and was
23 able at that time to get Mr. Qualls in
24 handcuffs after a little -- little struggle
25 with him. He was trying to kinda resist a



1 little bit.

2 Q: And -- understood. Sounds a little bit unusual
3 to already have the defendant in handcuffs at
4 this point, isn't it?

5 A: No, sir. Not -- not when as soon as I conduct
6 a traffic stop that subject jumps out of the
7 vehicle.

8 Q: Okay. So when you said he had a look in his
9 eye like he might run, did you -- were you
10 afraid he was gonna flee on foot?

11 A: At -- at that point, yes. I mean, it -- it was
12 -- the way he jumped out of the vehicle, I mean
13 he never shut his door or anything. And you --
14 and you could tell that he was -- he was -- he
15 was trying to get away from that vehicle and
16 me, you know, in -- in some sort of capacity.

17 Q: All right. So what happened -- what happened
18 after he was detained?

19 A: Once he was detained, I was walking Mr. Qualls
20 back to his car, well, back to my car. He
21 began to fight with me, trying to jerk away
22 from me. Ended up having to kinda pin him in
23 between myself and his vehicle to gain control.
24 Once control was gained back over him,
25 continued to escort him to my patrol vehicle.



1 Once I got him in my patrol vehicle, again he
2 tried to snatch away and fight. Opened the
3 door, Mr. Qualls didn't want to get in.
4 Continued to try and get away from me. Mr.
5 Qualls -- at that point in time Mr. Qualls was
6 -- I -- did advise Mr. Qualls if he did not
7 comply that there would be other means for
8 compliance. At that point, Mr. Qua- -- Mr.
9 Qualls did go ahead and was able to get Mr.
10 Qualls in the vehicle. Mr. Qualls tried to
11 slide all the way across my backseat, was able
12 to try and pull Mr. Qualls back across so I
13 could get a seatbelt on him. And -- and during
14 that process, it was -- it was basically just
15 a fi- -- just -- ain't going to say a fight but
16 it was basically a -- him trying to resist any
17 -- anything that we did as far as, you know,
18 trying to put the seatbelt on him, trying to
19 get him to sit back in the car. At one point,
20 Mr. Qualls did grab my -- my arm, tried to jerk
21 me into the car with him. Several times he --
22 he tried to use his upper body strength to
23 throw me off a balance while -- while trying to
24 pull me into -- back over to the passenger side
25 of the car to seatbelt him in. And then at a



1 certain point, I just kind of let him slide
2 across and let it be what it was. Tried to let
3 him cool off and then come back and revisit the
4 situation.

5 Q: All right. So that struggle mostly continued
6 -- mostly occurred in your vehicle?

7 A: Yes, sir.

8 Q: All right. When you said you advised him that
9 there might be other means to make him comply,
10 were you considering using your Taser or
11 anything else like that?

12 A: It w- -- it was -- I did advise Mr. Qualls that
13 if he did not comply and did not quit resisting
14 that he may be dry stunned using the Taser.

15 Q: Okay. And that would -- can you explain to me
16 the difference between being dry stunned and
17 fully deploying your Taser?

18 A: Dry stunning is where you take the actual
19 cartridge off the end of the Taser and it's
20 just a centralized location of being Tased
21 versus where, fully deploying would be the
22 prongs coming out and -- and, you know, you
23 having two prongs stuck in you and -- and the
24 Taser going off and going through your body and
25 that kind of sort of thing.



1 Q: All right. So, eventually, how did that -- the
2 -- the portion of your action within that was
3 physical struggle, how did -- how did that part
4 end?

5 A: Basically, once I kind of let him have a cool
6 down, another deputy had got there with me,
7 kind of talked with him for a minute and -- and
8 still he did not want to comply. At which
9 time, while I was letting him have his cool
10 off, we looked at the vehicle. Found out that,
11 you know, the tag wasn't right, there wasn't no
12 insurance and all of that, all -- all -- the
13 rest of the steps to the traffic stop. And
14 then once all of that was said and done,
15 another deputy arrived and he stated that he
16 would transport Mr. Qualls to the county jail
17 for me. We were able to get Mr. Qualls out,
18 change out the handcuffs, and get him in that
19 other deputy's car so he could go ahead and
20 take him to the County jail.

21 Q: All right. How many -- how many deputies total
22 were involved?

23 A: There would have been three deputies on scene.

24 Q: Okay. Can you tell me the names of any others
25 that you recall that were there?



1 A: It would have been First Sergeant Gary Munn.

2 Q: Okay.

3 A: And Corporal Randall Kerns.

4 Q: Is that K-E-R-N-S?

5 A: Yes, sir.

6 Q: Okay. Are all of them or both of them, I
7 should say, still employed with Chesterfield?

8 A: Mr. -- or Mr. Munn actually medically retired
9 after having a stroke, and Corporal Kerns has
10 actually left the Sheriff's Office since.

11 Q: All right. Sounds like you need a promotion
12 then. So at what poi- -- at any point did you
13 call for backup or did they show up on -- of
14 their own accord?

15 A: Whenever I advised dispatch that I had one that
16 was of possibly trying to run, and then once I
17 was able to put him in handcuffs, I advised
18 dispatch I had one detained but the subject was
19 still fighting with me, and -- and that's when
20 they showed up.

21 Q: About how long do you think it was between when
22 you pulled over Mr. Qualls' vehicle to when the
23 two other law enforcement officers showed up?

24 A: I'm gonna be honest, I r- -- I -- I don't know.

25 Q: Okay. You issued Mr. Qualls a series of



1 traffic citations; is that correct?

2 A: Yes, sir.

3 Q: Was he issued anything beyond traffic
4 citations?

5 A: Not that I -- no, not that I can recall.

6 Q: Well, let me phrase it a different way. Was he
7 issued anything beyond Municipal Court charges?

8 A: Not that I recall. I don't believe so.

9 Q: All right. I'm gonna go through what I believe
10 the tickets to be. If something doesn't sound
11 right, just tell me. But I'm gonna represent
12 to you that what I'm reading off of I got with
13 -- I got from what was sent to us from -- from
14 the Town. But again, if something doesn't
15 sound right, you just tell me. Do you -- do
16 you recall issuing Mr. Qualls a -- a traffic
17 citation for speeding between 15 to 24 miles
18 per hour over the speed limit?

19 A: Yes, sir.

20 Q: All right. And I believe you've addressed
21 that. How did you make the determination that
22 that was the amount that he was speeding?

23 A: With my -- I confirmed that with my in-car
24 radar.

25 Q: Okay. The disposition to -- wait, keep going.



1 Can you recall issuing a ticket for operating
2 an uninsured vehicle?

3 A: I do.

4 Q: How'd you make the determination that the
5 vehicle was uninsured?

6 A: After talking to Mr. Qualls, once we got him
7 calmed down, the determination of kno- -- he --
8 he didn't have any -- any way to prove that
9 there was insurance. The vehicle was not
10 registered and did not have any tags or
11 anything like that. And there was nothing
12 coming back on -- on the system as that vehicle
13 having any kind of insurance or actually being
14 registered in the state of South Carolina.

15 Q: Did -- and -- and to the best of your
16 recollection, Mr. -- well, I'll ask you about
17 that later. Do you recall issuing Mr. Qualls
18 an ordinance violation or I suppose it could be
19 a ---

20 A: Yeah.

21 Q: --- different citation for disobeying an
22 officer?

23 A: Yes.

24 Q: Okay. I see that it's marked with four points
25 on his driver's license; is that correct?



1 A: I -- I don't recall that.

2 **MS. RYAN:** Object to form.

3 Q: Okay. Do you -- can you explain that -- that
4 citation?

5 A: That citation basically, the Town ordinance for
6 basically like resisting arrest, not complying
7 with the officers orders from where, you know,
8 he was advised to stop, quit run- -- or not
9 really quit running but stop and then where he
10 tried to fight with us, and that kind of sort
11 of thing.

12 Q: Okay. Do you recall issuing him a citation for
13 a suspended tag?

14 A: Yes, sir.

15 Q: Okay. Can you explain how you came to the
16 conclusion that his tag was suspended?

17 A: Once running that tag through our dispatch
18 system, which is connected to South Carolina
19 DMV, it was determined that that tag was
20 suspended for cancellation of insurance.

21 Q: Okay. So you got that information from the
22 DMV, is that correct?

23 A: Yes, sir.

24 Q: Okay. Is that also how you confirmed the
25 insurance issue, through the DMV?



1 A: Yes, sir.

2 Q: Okay. All right. Do you recall issuing Mr.
3 Qualls a citation for vehicle lice- -- or
4 improper vehicle license?

5 A: Yes, sir.

6 Q: Can you explain that ticket, what that is for?

7 A: Again, once I ran that tag through dispatch, I
8 don't remember exactly what vehicle that tag
9 come back to, but it was not that vehicle that
10 it was displayed on.

11 Q: Okay. So, apparently through the DMV, that
12 would have been the wrong tag for that vehicle;
13 is that correct?

14 A: Yes, sir.

15 Q: Okay. Do you recall issuing -- issuing Mr.
16 Qualls a ticket for driving under suspension?

17 A: Yes, sir.

18 Q: Do you recall what level of driving under
19 suspension it was?

20 A: I don't, not right off.

21 Q: Okay. Do you recall how you came to the
22 conclusion that Mr. Qualls had a suspended
23 driver's license?

24 A: Again, once I ran his information through
25 dispatch, it was confirmed that his license was



1 also suspended for cancellation of insurance.

2 Q: All right. So that was -- dispatch was running
3 this through DMV, not you personally getting on
4 SCDMV online and ...

5 A: That -- so the -- the way I identified that
6 subject was once the tag was ran, we -- we were
7 able to pull up Mr. Qualls through SCDMV
8 online. Once that was done, his information
9 was run through dispatch. And so it was kind
10 of like a -- I seen that it was suspended on
11 DMV online, but I confirmed that the suspension
12 was still -- through dispatch.

13 Q: Did dispatch run an NCIC check as well, to your
14 knowledge?

15 A: I -- I don't remember, to be honest.

16 Q: Okay. And you also I- -- issued Mr. Qualls a
17 ticket for turning unlawfully; is that correct?

18 A: Yes, sir.

19 Q: All right. And that was for the turn that he
20 made while he was behind you?

21 A: Yes, sir.

22 Q: Okay. Do you recall Mr. Qualls' ini- --
23 original or initial court date?

24 A: I do, but I don't remember what day it was on.

25 Q: Okay. I -- I'm gonna represent to you that



1 there's a note on the uniform traffic citation
2 that says, August 8th, 2019, Judge continued to
3 September 12th, 2019. Would August 8th, 2019
4 have been a normal bench trial date for
5 somebody who received a ticket on July 8th?

6 A: That would have been the initial court date.
7 I don't -- I don't know what the reasoning for
8 the continuance was or anything like that.

9 Q: Do you recall that -- so let's -- let's get to
10 that then. Do you recall Mr. Qualls appearing
11 in Court at any point?

12 A: I do.

13 Q: Do you recall how many times he appeared in
14 Court?

15 A: The only time I remember him appeared was the
16 day he -- that he was sent back to jail.

17 Q: Okay. And he was -- when -- when you
18 interacted with him and gave him these tickets,
19 he was arrested and booked, correct?

20 A: Yes, sir.

21 Q: All right. Do you know when he was -- when he
22 appeared in Bond Court?

23 A: I believe the next day, that next morning.

24 Q: Would -- to your knowledge would that have been
25 in front of Judge Lisenby?



1 A: I believe so.

2 Q: Okay. Were you present at Bond Court that day?

3 A: No, sir.

4 Q: Did you ever go to Bond Court for the City of
5 McBee?

6 A: No, sir.

7 Q: Okay. Who else would have been present at Bond
8 Court, besides the Judge?

9 A: Should have just been the Judge. Normally --
10 our -- our normal practice aren't for the
11 deputy or officers to go to Bond Court unless
12 it's something that we're trying to get like,
13 bond denied for or like, you know, major cases,
14 that kind of stuff.

15 Q: Understood. But would a clerk have been there
16 or anybody else like that?

17 A: Not -- not to my knowledge, no.

18 Q: Okay. So you recall seeing Mr. Qualls in
19 Court, just the -- just the day that he was
20 taken into custody again; is that correct?

21 A: Yes, sir.

22 Q: All right. I want to ask you a series of
23 things about that. Your recollection, and I
24 apologize, I gave you the wrong date earlier
25 about when you pulled him over. But his



1 ultimate court date was September 12th of 2019?

2 A: Sounds about right.

3 Q: Do you recall that day, what the docket was
4 like? Was it big docket, a small docket, a lot
5 of strange cases, anything like that?

6 A: I -- I don't recall.

7 Q: Do you recall how many people were in the
8 courtroom that day, approximately?

9 A: I know there was at least four. That was
10 myself, the Judge, First Sergeant Coombes, and
11 Mr. Qualls. And I -- I couldn't tell you the
12 rest.

13 Q: Would the clerk have been there that day, too?

14 A: She should have been there. Normally --
15 normally, she didn't sit in the courtroom.
16 Normally, she was in the front part of the
17 office. So that basically once they seen the
18 Judge, they would go up there and go ahead and
19 pay her. Like, you know, the fines and that
20 kind of stuff.

21 Q: Okay. So the Judge was doing her own
22 administrative paperwork from the bench. Is
23 that your recollection?

24 A: Yes, sir.

25 Q: Okay. Do you recall when Mr. Qualls appeared



1 before the Judge on that day?

2 A: I -- I remember when he come up there and talk
3 to the Judge.

4 Q: You recall if the Judge had given her normal
5 introduction to Court on that day?

6 A: She did.

7 Q: Okay. Do you recall Mr. Qualls saying that he
8 would like to be appointed indigent counsel or
9 public defender?

10 A: I don't -- well, take that back. That -- he --
11 when he started requesting that is whenever he
12 was already placed in the handcuffs and was
13 being escorted to my patrol vehicle, after
14 being told that he was going back to jail.

15 Q: And do you recall him ever requesting a jury
16 trial on these charges?

17 A: Again, once he was placed in the handcuffs and
18 was already advised that he was going back to
19 County jail.

20 Q: All right. Can you tell me to -- and I
21 understand you don't have the video of this or
22 anything. To the best of your recollection,
23 how did that interaction go between Mr. Qualls
24 and the Court?

25 A: As far as I can remember, Mr. Qualls come in,



1 he come before the Judge. She asked him about
2 the charges. Mr. Qualls advised that he didn't
3 have any money. And she asked him how he
4 planned on taking care of it. And he said that
5 he -- he wasn't sure, that he was trying to get
6 some money. She asked him how he had got
7 there, and he advised that he had drove there
8 and his license were still suspended at that
9 time. He -- she -- she was going over some
10 stuff with him, and I can't remember exactly
11 what all she was going over, but I do remember
12 her asking if he wanted a bench trial or jury
13 trial; he said he wanted a bench trial. The
14 Judge conducted her -- her business, and at
15 that point is when she advised Mr. Qualls that
16 he would be going back to jail. And once she
17 advised us that he would be going back to jail,
18 we went ahead and detained him. And we were
19 escorting him out of the courtroom and that's
20 when he started saying that he wanted an
21 attorney and he wanted a jury trial and -- and
22 that -- that sorta manner. But again, like I
23 said, that was after everything had already
24 happened.

25 Q: And when you said the Judge conducted her



1 business, what do you mean by -- what'd you
2 mean by that? I'm sorry, either I'm frozen or
3 you're frozen. Can you hear me?

4 **MS. RYAN:** I'm sorry, we're -- we're kind of losing
5 our connection. Can you repeat that con- --
6 that question?

7 **MR. HUTTO:** Yes. I was -- I one -- I could tell one
8 of us was frozen, I'll say it again.

9 Q: When you said the Judge went about her business
10 with a bench trial, what -- what happened?

11 A: That- -- that's where the Judge kind of gave
12 him the whole speech. You know, that he had
13 the right to request a jury trial, I think the
14 self representation. She went over the whole
15 legality of the bench trial, and then asked him
16 if he wanted to continue. He stated, Yes. She
17 listened to what he had to say and asked if we
18 had anything. We advised -- I advised her of
19 what happened and then at that point in time
20 was whenever she instructed us to go ahead and
21 take him into custody, that he would be going
22 back to jail.

23 Q: Okay. So Mr. Qualls testified before you
24 testified at the bench trial?

25 A: If I remember right, yes.



1 Q: Okay. Did Mr. Qualls ever asked you any
2 questions about what happened during the bench
3 trial?

4 A: Not that I remember, no.

5 Q: Okay. Was Mr. Qualls given the opportunity to
6 make a closing statement at his bench trial, to
7 your recollection?

8 A: I don't know.

9 Q: Okay. You ever tried cases in another
10 jurisdiction?

11 A: I have.

12 Q: Okay. Would you agree with me that normally
13 the State presents first at any criminal trial?

14 A: Yes ---

15 **MS. RYAN:** Object to form.

16 **MR. HUTTO:** Okay. Can you explain the objection?

17 **MS. RYAN:** Excuse me?

18 **MR. HUTTO:** Can you explain the objection, please?

19 **MS. RYAN:** Well, can you clarify it for him in terms
20 of not using your legal terms?

21 **MR. HUTTO:** Okay.

22 Q: You said you've been present at other court
23 dates, for example, in the City of Hartsville;
24 is that correct?

25 A: Yes, sir.



1 Q: All right. In a normal bench trial, the State
2 or the police officer is obligated to give
3 their reasons for probable cause, initiating a
4 traffic stop and anything that they found in
5 their investigation first. That would be
6 normal, correct?

7 A: Yes, sir.

8 Q: Okay. Are you familiar with the right under
9 the Constitution that somebody has to cross-
10 examine the witness against them?

11 A: Yes, sir.

12 Q: All right. And Mr. Qualls did not ask you any
13 questions at -- during this interaction that
14 you had in Court; is that correct?

15 A: Not that I remember.

16 Q: Do you recall if the Judge asked him if he
17 wanted to ask you any questions?

18 A: I -- I don't remember.

19 Q: Okay. Do you recall in the City of Hartsville,
20 the Judge ever making a phone call during
21 Court?

22 A: I think they have a few times, and it was just,
23 you know, either trying to find out what
24 another judge had done, like bond hearing.
25 Because when I was at -- when I was at the City



1 of Hartsville we got three judges. So I -- if
2 I remember correctly, they might have made a
3 phone call to ask the other judge, Hey, what
4 did you do with this one, or if the other judge
5 was the Sitting Judge on another court date and
6 it was continued, think that kind of stuff, but
7 that -- that's the only thing I can remember.

8 Q: And, how about in the Town of McBee, do you
9 recall the Judge ever making the phone call at
10 any point during Court proceedings there?

11 A: To be honest, I don't remember.

12 Q: Okay. Let me ask you a more specific question.
13 Do you recall the Judge making inquiries into
14 whether people's driver's license was suspended
15 or not suspended?

16 A: I think she did, but again I -- I don't
17 remember.

18 Q: Okay. And I -- I understand your previous
19 answer, but I'll just ask it one other way. Do
20 you recall the Judge ever calling an
21 acquaintance at the Department of Motor
22 Vehicles during Court to confirm whether or not
23 somebody's driver's license was suspended?

24 A: Again, I -- I ---

25 **MS. RYAN:** Object to form. He's already answered



1 this question.

2 Q: Okay. Did you create an incident report in
3 relationship to this arrest?

4 A: The one from the court date or the initial
5 traffic stop?

6 Q: The initial traffic stop.

7 A: Yes, sir.

8 Q: Okay. Who would have that?

9 A: It's on record at the Sheriff's Office.

10 Q: Okay. But the town doesn't have a record of
11 it?

12 A: Not that I can recall. We still -- so the --
13 per the contract, it -- it go- -- we still
14 record anything through Sheriff's Office side.

15 Q: Okay. Who would have a copy of that contract
16 where the Sheriff handles the policing in the
17 town?

18 A: That would be between the Sheriff's Office and
19 the Town Administration.

20 Q: Okay. Do you recall ever requesting any
21 certified copy of -- of a driving record with
22 a signature from a record keeper at the
23 Department of Motor Vehicles?

24 A: Not that I recall, no.

25 Q: You recall ever seeking a certified copy of a



1 letter that would notify somebody of a
2 suspension accompanied by a signature from
3 somebody at the Department of Motor Vehicles?

4 A: Again, not that I recall.

5 Q: Okay. And none of those would have been
6 presented in Court; is that correct?

7 A: No, sir.

8 Q: Okay. Did you present any documentation in
9 Court on the day of Mr. Qualls bench trial or
10 was it just verbal testimony?

11 A: I think it was just all verbal testimony.

12 Q: Okay. Do you recall what the town ordinance on
13 disobeying an officer says?

14 A: I -- I don't know, right off.

15 Q: Okay. Do you recall the Judge ever making a
16 comment to Mr. Qualls or anybody else about the
17 amount of their bond when they appeared in
18 Court?

19 A: Not that I recall, no.

20 Q: Okay. Do you recall the Judge expressing any
21 surprise to see Mr. Qualls in Court on that
22 day?

23 A: No, sir.

24 Q: Okay. Do you recall her making any remarks to
25 the effect of, she thought that he was just



1 going to pay these traffic tickets?

2 A: Not that -- not that I remember, no.

3 Q: Okay. Was there ever a recorder on in the
4 courtroom in the Town of McBee?

5 A: No, sir.

6 Q: And safe to say there was not a stenographer
7 there either?

8 A: No, sir.

9 Q: Okay. Do you -- if you needed to go into the
10 records of something that happened in the town
11 court there, what would you do?

12 A: That I don't have an answer for.

13 **MR. HUTTO:** Okay. I'm just gonna check through my
14 notes real quick; I may be about to wrap up.
15 We -- if anyone else needs to, I'm just gonna
16 take a break. Can we go -- I want to go off
17 the record, but just for a moment.

18 **MS. RYAN:** Okay.

19 **(Off the Record at 10:22 a.m. until 10:23 a.m.)**

20 **MR. HUTTO:** All right. I'm ready to go back on the
21 record. And, Deputy, it looks like y'all are
22 muted.

23 Q: Okay. I just have a few more questions. I'm
24 sure you're -- you're anxious to -- to get back
25 on the road or get in bed or whatever it is



1 that you need to do. I'm not sure what shift
2 you're coming off of, and then your -- your
3 attorney may have some questions as well. Are
4 you familiar with what's called Faretta
5 Warnings?

6 A: I'm familiar with them, yes.

7 Q: Okay. Te- -- can you tell me what they are?

8 A: Yes. If I remember correctly, that's the --
9 it's basically they have the right to an
10 attorney, what is it, self representation, that
11 kind of thing.

12 Q: Right. That's correct. Do you recall if Mr.
13 Qualls was ever presented a document about
14 Feretta Warnings by the Town of McBee.

15 A: I -- I don't know on that one.

16 Q: Are you familiar with the standard Faretta
17 Warning sheet that the -- the Court
18 Administration issues for Municipal Courts?

19 A: I -- I can't say I am.

20 Q: Okay. I don't think I have any more questions.
21 Ms. Wilson, if you have anything I'll be happy
22 to cede the questioning to you. Sorry, Ms.
23 Ryan.

24 **MS. RYAN:** Yeah, I was wondering about the Wilson.

25 **MR. HUTTO:** I know. There's a Katherine Wilson who



1 practices here.

2 **DEPUTY REICHARD - EXAMINATION BY MS. RYAN:**

3 Q: Okay. Just a question back to about the --
4 after pulling over Mr. Qualls. After he opened
5 the car door and got out of the car, did he
6 move from the car or was he just standing right
7 outside of the car?

8 A: No, he moved from the vehicle. He was, if I
9 had to guess, about 15 to 20 feet from -- from
10 the vehicle.

11 Q: And was that towards you or away from you, as
12 if he were trying to get away from ---

13 A: Away from me and the car.

14 Q: And was -- and did -- did it appear -- it
15 appear to you that he was trying to flee?

16 A: Yes, ma'am.

17 Q: That's -- that's all I have. Thank you.

18 **MR. HUTTO:** All right. Deputy thank you for being
19 here. I don't have anything else on cross or
20 anything else.

21 **(There being nothing further, the virtual deposition**
22 **concluded at 10:26 a.m.)**

23

24

25



STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF ORANGEBURG) CASE NO. 2020-CP-13-00672

September 14, 2022

BEFORE: The Honorable Michael Nettles

Michael Qualls,
Plaintiff,
vs.
Town of McBee,
Defendant.

APPEARANCES:

Skyler Bradley Hutto, Esq.
Attorney for the Plaintiff.

Katherine McLean Ryan, Esq.
Attorney for the Defendant.

Official Court Reporter/Transcriber
Cynthia D. Weaver

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: All right. I'll be glad to hear from
7 the moving party.

8 MS. RYAN: Your Honor, I'm Katherine Ryan and I'm
9 here on behalf of the Town of McBee. Defendant filed a
10 motion for summary judgment on November 21st, 2021. And
11 this action arises out of an arrest of Michael Qualls for
12 driving with a suspended license and other traffic
13 violations and the handling of the legal proceedings
14 subsequent to the arrest. Barbara Lisenby was the Municipal
15 Judge for the Town of McBee and handled the post arrest
16 hearings.

17 Plaintiff was arrested on July 8th, 2019, and the
18 arresting officer was Deputy Reichard, who is a
19 Deputy Sheriff with the Chesterfield County Sheriff's Office
20 and he's never been an employee of the Town of McBee. Also
21 on July 8th, 2019, plaintiff appeared for a bond --

22 THE COURT: Say that again. Say that last point
23 again.

24 MS. RYAN: That the arresting officer was
25 Deputy Reichard who is a Deputy Sheriff with the

1 Chesterfield County Sheriff's Office and he has never been
2 an employee of the Town of McBee.

3 THE COURT: Okay.

4 MS. RYAN: Also on July 8th, 2019, plaintiff
5 appeared for a bond hearing before Municipal Court
6 Judge Barbara Lisenby. And plaintiff alleges he was never
7 read his Faretta Warnings or offered a public defender and
8 that his request for a jury trial was denied.

9 However, at this time, Judge Lisenby informed
10 plaintiff verbally and in writing of his right to a trial by
11 jury, charges against him, and the nature of the charges,
12 his right to counsel, and right to court appointed counsel
13 if financially unable to employ counsel, and instructions on
14 how to get counsel.

15 And this was on the bond checklist for Magistrates
16 and Municipal Judges, which was Exhibit 5 to the Memo. And
17 plaintiff's signature is on this checklist which
18 acknowledges his receipt of the information in oral and
19 written form. And upon receiving that notice he was given
20 the opportunity to request a jury trial and request court
21 appointed counsel and he did not do so.

22 According to Judge Lisenby's affidavit he pled
23 guilty at this July 8th appearance. He asked for more time
24 to pay his fines, get his insurance straightened out and
25 have his license reinstated, it was suspended.

1 So Judge Lisenby gave him 30 more days and he came
2 back to appear for her -- in front of her on August 8th,
3 2019. And at this time he told the judge he still had
4 not -- he did not have the money to pay his fines. He had
5 not fixed his insurance or his license. And he, in fact,
6 drove to court that day with a suspended license, so he was
7 ultimately sent to jail and was incarcerated from
8 August 8th, 2019 to August 15th, 2019. And he was released
9 when his fines were paid.

10 And he filed the lawsuit against Town of McBee
11 alleging constitutional violations and that specifically
12 alleges that defendant was negligent, grossly negligent,
13 violated constitutional rights, falsely arrested and
14 imprisoned him, and engaged in malicious prosecution. And
15 the Town of McBee denies these claims and moves for a
16 summary judgment.

17 And under Rule 56, South Carolina Rules of Civil
18 Procedure, a party is entitled to judgment as a matter of
19 law of the pleadings, depositions and admissions on file,
20 together with the affidavit show that there was no genuine
21 issue as to any material facts. And the party seeking
22 summary judgment has the initial burden of demonstrating the
23 absence of the genuine issue of material fact. And
24 plaintiff must come forward with specific facts showing that
25 there is a genuine issue for trial. And let's see...

1 And first, plaintiff's claims against defendant
2 McBee failed because McBee is entitled to absolute judicial
3 immunity. Municipal courts are part of the South Carolina
4 Unified Judicial System and courts have absolute immunity
5 from a claim -- for damages arising out of any adjudicative
6 act within its jurisdiction. And, also, judges have
7 absolute immunity from a claim arising out of their judicial
8 action.

9 THE COURT: That's a pretty good rule there.

10 MS. RYAN: Yes. A judge is not, however, entitled
11 to immunity if they did not have jurisdiction to act, the
12 act did not serve a judicial function, or the suit is for a
13 prospective injunctive relief only.

14 And the plaintiff alleges the Town of McBee was
15 grossly negligent through Judge Lisenby's handling of
16 judicial proceedings. However, Judge Lisenby's affidavit
17 shows that she was a municipal judge who's acting within the
18 scope of her employment during plaintiff's judicial
19 proceedings and she had jurisdiction to act. The plaintiff
20 never alleges or failed to plead sufficient facts that
21 Judge Lisenby acted without jurisdiction, that any of her
22 acts did not serve a judicial function, and that the suit is
23 for injunctive relief.

24 All of the allegations specifically relate to
25 actions taken within the courtroom and these are precisely

1 the judicial acts to which the immunity applies. Therefore,
2 the Town of McBee is absolutely immune from suit, no genuine
3 material of fact exists in this regard, and summary judgment
4 in favor of McBee is appropriate on this basis.

5 Also, the --

6 THE COURT: Was there any appeals filed of the
7 conviction in the incarceration any appeals? That or the
8 issue of representation?

9 MS. RYAN: Yes, Your Honor.

10 THE COURT: There was an appeal of the criminal
11 convictions?

12 MS. RYAN: Well, I'll let plaintiff talk on that.

13 THE COURT: Okay. We'll hear from him on that.

14 Is there anything -- anything further?

15 MS. RYAN: There's other -- the false arrests
16 fails because Town of McBee was an improper defendant. The
17 arresting officer was an employee of Chesterfield County.
18 And the false arrest and false imprisonment are subject to
19 summary dismissal because the plaintiff's arrest was
20 supported by probable cause. In order to fail on false --
21 or prevail on the false imprisonment claim, the plaintiff
22 must establish defendant -- restrain the plaintiff, the
23 restraint was intentional and the restraint was unlawful.

24 Here, he had lawful -- Deputy Reichard had lawful
25 authority to arrest because there he had probable cause

1 because he personally observed plaintiff committing the
2 various traffic violations and defendant -- or, excuse me,
3 plaintiff did not deny committing any of these charges and
4 admitted also to the charges in his deposition. And let's
5 see...

6 Also his claim for negligence and gross negligence
7 fails as a matter of law. He has not been able to show that
8 defendant had a duty of care, breached this duty by a
9 negligent act, and was the actual proximate cause of the
10 injury.

11 THE COURT: What was the injury?

12 MS. RYAN: Excuse me?

13 THE COURT: What was the injury?

14 MS. RYAN: He was incarcerated for eight days, I
15 believe, and he's claiming also he did not receive due
16 process.

17 THE COURT: There's no physical injury?

18 MS. RYAN: No, sir.

19 THE COURT: Okay.

20 MS. RYAN: And let's see...

21 The sworn affidavit shows that he was -- that
22 neither the deputy or the judge were negligent or grossly
23 negligent in any manner. And let's see... And the claim
24 for the negligent supervision is also subject for summary
25 dismissal on the same reasons.

1 Plaintiff's claims are also barred by the
2 Doctrines of Sovereign Immunity in the South Carolina Tort
3 Claims Act. And the relevant exceptions to the waiver of
4 immunity are South Carolina Code Section 15-78-60, Section
5 1, where McBee is not liable for a loss resulting from
6 judicial action or inaction, which the allegations in the
7 complaint relate to the judicial action or inaction on the
8 part of Judge Lisenby. As such, no genuine issue of
9 material facts exists in this regard, so summary judgment
10 should be granted.

11 In Section 15-78-60, Section 3, McBee is not
12 liable for loss resulting from the execution, enforcement,
13 or implementation of the Court's orders or execution or
14 implementation of any judicial process. Again, the
15 complaints relate to her performance in the judicial
16 process.

17 Subsection 4, McBee is not liable for loss
18 resulting from a failure to adopt or enforce any written
19 policies. And in his complaint plaintiff claims that McBee
20 failed to have appropriate policies in place to provide for
21 the safety, rights, and wellbeing of the plaintiff and
22 failed to follow the same and here they are provided
23 immunity.

24 Also Section 5, McBee is not liable for the
25 exercise of discretion or judgment by the governmental

1 entity or employee. And here Judge Lisenby exercised
2 discretion in where she allowed plaintiff 30 more days to
3 reinstate his license and he failed to do so and she also
4 applied her training and professional standards to conduct
5 his court proceedings.

6 And Section 17, McBee is not liable for loss
7 resulting from employee conduct outside the scope of his
8 official duties which constitutes actual fraud, malice,
9 intent to harm or crime of immoral torpitude. To the extent
10 plaintiff does allege employee conduct outside of the scope
11 of their official duties, McBee is not liable.

12 And Section 23, McBee is not liable for the
13 institution -- or prosecution of any judicial proceedings.

14 And also the constitutional violations should be
15 dismissed. Undisputed facts reflect that plaintiff was
16 provided with verbal and written notice of his rights and he
17 signed the checklist showing that he received this. And
18 deposition testimony and affidavits show that plaintiff was
19 given the opportunity to request a trial and court appointed
20 attorney and failed to do so.

21 And ultimately he did after he was told he was
22 going back to jail put in handcuffs and was being out of the
23 courtroom, he did ask for a jury trial and a lawyer, but at
24 that point everything was over.

25 His claim for malicious prosecution is also

1 subject to summary dismissal. In order to establish a claim
2 he must show the institution of continuation of original
3 judicial proceedings by the defendant. Termination of the
4 proceedings in plaintiff's favor, malice instituting the
5 proceedings, lack of probable cause, and resulting injury.
6 He's failed to prove these elements. The undisputed facts
7 reflect that probable cause existed for plaintiff's arrest
8 and the termination of the proceedings were not in
9 plaintiff's favor. No genuine issue of fact exists in this
10 regard and for these reasons the summary judgment should be
11 granted.

12 THE COURT: Yes, sir. I'll be glad to hear from
13 you.

14 MR. HUTTO: Thank you, Your Honor.

15 Sort of at a loss of where to begin, because I
16 can't disagree more with some of the characterizations of
17 the facts that the defendant has put forth. I laid some of
18 this out in a memo to Your Honor. And I apologize to the
19 Court and also to opposing counsel, it's probably a little
20 argumentatively worded.

21 I received their memorandum yesterday morning. I
22 was in the Aiken County Detention Center, so I didn't have
23 an opportunity to respond in writing until last night, and I
24 submitted that to your office this morning and it was
25 E-filed this morning. And that lays out several citations

1 through various deposition testimony that is quite contrary
2 to the -- what has been set forth by the defendant and its
3 motion for summary judgment.

4 What we have here and what the defendant has
5 claimed are grossly negligent are failure to -- well, on
6 many levels fall as constitutional rights, but also state
7 statute policy --

8 THE COURT: Let's stop right there.

9 What case do you have that says you can bring a
10 civil action against a judge for improper criminal
11 procedure?

12 MR. HUTTO: Your Honor, we have not sued the
13 Judge, we sued the Town, and this an important distinction.

14 We did -- first of all, obviously, the judge is
15 not a named suit in this action. And numerous of the
16 violations that would be --

17 THE COURT: But you indicated that the fault that
18 you're alleging is that they didn't warn -- give him the --

19 MR. HUTTO: Faretta Warnings?

20 THE COURT: Right. That and did not honor his
21 constitutional rights.

22 MR. HUTTO: The Faretta Warnings was a very small
23 part of our complaint. I -- it was indicated at the time
24 that he had not had them in discovery. We did receive a
25 copy of the Faretta Warnings.

1 THE COURT: What are you saying the judge did
2 wrong?

3 MR. HUTTO: Your Honor, it's numerous things. May
4 I pass up just a portion of her deposition?

5 THE COURT: Yes.

6 MR. HUTTO: Okay. This is sort of -- to me it
7 could be her -- this is just a portion of her deposition.

8 Your Honor, from start to finish and not just in
9 literal proceedings at court, but also in the Town's entire
10 procedure on how this operation was set up, from start to
11 finish, there -- you could write kind of a what not to do on
12 how to set up a court system in a municipality.

13 And, yes, we did allege the failure of the Faretta
14 Warnings. We would withdraw that, they've produced the
15 Faretta Warnings. But, again, that was one small component
16 of what was going on.

17 Judge Lisenby, in her deposition, admitted that
18 she did not provide plaintiff a public defender. And that
19 he requested a jury trial, which she summarily denied. The
20 Town of --

21 THE COURT: Was that before or after the
22 conviction?

23 MR. HUTTO: Your Honor, that is an issue of fact
24 and that's part of the problem here. Plaintiff in his
25 deposition stated that he requested a jury trial well before

1 this. I believe the Deputy's deposition stated that he did
2 not do it until after the conviction.

3 THE COURT: Let me -- let me ask you this: Did
4 you appeal the conviction?

5 MR. HUTTO: Your Honor, that's -- if I may, I feel
6 like we're kind of jumping around, but I did not. He had an
7 attorney appeal it and that is another component of the --
8 again, the kind of text book that you could write on how
9 this is not to be handled. When this --

10 THE COURT: Well, I think that's the remedy for
11 improperly applying criminal procedure --

12 MR. HUTTO: Your Honor, when this was appealed the
13 Town refused to cooperate with the appeal. That is in a
14 deposition from the lawyer that appealed it that I have
15 submitted to the Court as an exhibit to my memorandum.

16 When the appeal was initiated via a Motion to
17 Reconsider and Letter of Representation, Rule 5, all of
18 those things submitted by an attorney Julian Marsh out of
19 Florence. The Town called him and informed him they would
20 not be participating in any appeal, they were refusing all
21 of his filings, told him it was a waste of paper, a waste of
22 ink, and they were not going to have anything to do with him
23 or Mr. Qualls and he characterizes them as berating him.

24 THE COURT: Well, let me ask -- let me ask you
25 this.

1 MR. HUTTO: Yes.

2 THE COURT: What was the result of the appeal?

3 MR. HUTTO: The -- he -- the attorney was unable
4 to file an appeal because there was no record made of this
5 entire proceeding. That is another -- besides the motion to
6 reconsider that he attempted to file.

7 THE COURT: An appropriate remedy, if that were
8 the case, would be to file an appeal with the Clerk of
9 Court's Office, and then you could file a motion to settle
10 the record.

11 MR. HUTTO: Your Honor, the --

12 THE COURT: I mean, the remedies that to all of
13 those problems are within the criminal procedure and the
14 right to appeal. And there's no way in the world that a
15 municipality can prevent any lawyer from perfecting an
16 appeal. And if they did not provide a transcript, you can
17 file a motion for it being incumbent upon the appellant to
18 produce a record to support their allegations. And if you
19 can't do that, then you have to -- what you have to do would
20 be to file a motion to settle the record.

21 And, at that juncture, if they refuse to do that,
22 then the circuit court would probably remand it for a new
23 trial to make a record. And apparently he did not follow
24 through but there is a mechanism of by which he could do
25 that which would remedy all of the problems that you're

1 talking about.

2 And then as I -- it doesn't stop here, it goes
3 from here to the Court of Appeals to the Supreme Court,
4 perhaps the United States Supreme Court.

5 MR. HUTTO: Your Honor, I don't know --

6 THE COURT: None of that was done, was it?

7 MR. HUTTO: I was not his attorney, but the only
8 appeal that was filed was within the Town of McBee, who,
9 again, called the attorney for, berated him, informed him
10 they would not cooperate with him. That is in the
11 deposition, again, that I have submitted to the Court as an
12 exhibit. But --

13 THE COURT: I'm not even questioning that. But
14 the issue is what is the remedy? And the remedy is within
15 the criminal procedure as my understanding. And what case
16 do you have that says that if a judge doesn't follow
17 appropriate criminal procedure that you can sue them?

18 MR. HUTTO: Again, I would like to characterize
19 this more -- the way that we would characterize it is that
20 we've not sued the judge. We've sued the Town for the
21 entire set of policies that they used to create this system,
22 not having a public defender, never having a contract for a
23 public defender. In Judge Lisenby's deposition --

24 THE COURT: Well, let me ask you this: Is there a
25 constitutional mandate that you have a lawyer for

1 misdemeanor offenses?

2 MR. HUTTO: There are -- I can provide them to the
3 Court. The Town of Bluffton was sued on that. And, yes,
4 you have a constitutional right to a lawyer in any case
5 where you can receive jail time. And that is something that
6 I'm happy to supplement.

7 The Town of McBee had no intention of doing that.
8 Depositions testimony reveal that they had not had a public
9 defender at all, I don't believe, ever. I believe
10 Judge Lisenby's words were, We don't need one. And
11 Mr. Qualls, I believe they admit, requested a jury trial,
12 requested an attorney and it was denied.

13 Again, there's an issue of fact about how that
14 happened. But, actually, Judge Lisenby contradicts herself,
15 in her affidavit, yes, she states that he pled guilty. In
16 her deposition she admits that she simply found him guilty
17 with no pleading, no trial. I believe she was simply
18 annoyed with him by her characterization she believed he was
19 a liar and was simply going to find him guilty.

20 But, again, we have not sued her specifically for
21 that.

22 THE COURT: But you're suing because of her
23 actions or inactions?

24 MR. HUTTO: We're suing because of the Town's
25 failure to create anything that could be --

1 THE COURT: The Town doesn't -- the Town does not
2 regulate the conduct of judges or court administration --

3 MR. HUTTO: But they do potentially regulate the
4 conduct of their clerks who refuse filings, the clerk was --

5 THE COURT: I disagree with that. I think that's
6 all mandated by court administration.

7 MR. HUTTO: Your Honor, I understand your
8 position. That would -- that potentially acts as a total
9 bar for remedy for --

10 THE COURT: That's exactly what she's saying, it
11 is a total bar. But it does not prevent you from pursuing
12 your right to appeal. And I don't know who the lawyer was,
13 apparently it was not you, but they didn't do it
14 effectively. The lawsuit might be against them.

15 MR. HUTTO: Potentially, I understand that
16 position.

17 THE COURT: But the remedy for all the conduct
18 that you're talking about would be through appeal, you file
19 a grievance against -- the judge is subject to grievances
20 just like lawyers are. But filing a lawsuit I don't believe
21 is the way -- is -- I don't think that is actionable.

22 MR. HUTTO: Understood, Your Honor.

23 THE COURT: What else -- in all -- in the cause of
24 action that you're alleging, essentially revolves around the
25 conduct of the judge, and the fact that initially you allege

1 there was no Faretta Warnings.

2 MR. HUTTO: That -- that's, again --

3 THE COURT: And the fact that she did not
4 cooperate whether or not she gave him -- explained to him
5 the right to a jury trial, all of those things. That's
6 essentially what your allegation is about; is that right?

7 MR. HUTTO: Your Honor, I would say it's a little
8 bit more than that. There's about eight, I would say, major
9 violations of how a courtroom procedure simply cannot occur
10 for a criminal defendant to receive a fair trial, and it is
11 not just on the level of what the judge said in the
12 courtroom.

13 It is the Town's failure to have a record keeping
14 system. It's the Town's failure to have a public defender.
15 It is the Town's failure, and I believe it's outlined in our
16 memorandum as well, to go through multiple forms of
17 preparation that are needed to even have a judicial system.

18 Your Honor, the Town of McBee is -- and this is
19 not part of our complaint, but it's just something I would
20 note as, in my opinion strange and potentially ripe for
21 creating problems -- they're running a municipal court,
22 writing town ordinances, violations, sentencing people, they
23 don't have a municipal police officer.

24 We did not sue for false arrest, by the way,
25 that's a mischaracterization in the complaint, and I noted

1 that in my memorandum. There's a large portion of the
2 defendant's memorandum dedicated to why this is not a false
3 arrest case. We have not alleged false arrest. We do not
4 question that there may have been probable cause, we're not
5 getting into that. It's a question of what happened after
6 that, Your Honor.

7 THE COURT: Okay. Anything further from the
8 defendant?

9 MS. RYAN: Yes, Your Honor. I mean, as we
10 previously discussed, there's an absolute bar for judicial
11 immunity. And all of these losses that he is still
12 reiterating all have to do with the judicial process, the
13 judicial action or inaction, as well as a lack of written
14 policies or failure to follow these procedures. All of
15 these are exceptions to the Waiver of Immunity and the Tort
16 Claims Act.

17 MR. HUTTO: Your Honor, I don't mean to interrupt
18 you, I'm sorry. There was one thing I printed out that was
19 not submitted with my memorandum, I'd like to hand it up, if
20 I could?

21 THE COURT: Yes.

22 MR. HUTTO: Just for the record.

23 THE COURT: Okay.

24 MR. HUTTO: I'm sorry, I only have one copy of
25 these for the Court. I don't have one for opposing counsel.

1 And the reason I am showing these to the Court is because,
2 again, it shows the material -- one of the material issues
3 of fact here that the Court has been totally unwilling to
4 characterize whether or not it gave Mr. Qualls a trial or
5 whether he pleaded guilty.

6 As you can see, these are disposition sheets where
7 they claim that he was given a trail. And as you can see
8 from the memorandum from the defendant, as well as
9 affidavits previously submitted, they can't agree on whether
10 he was given a trial, whether he pleaded guilty, anything of
11 that nature, and I just submit that to show any potential
12 issue of fact.

13 THE COURT: All right. It does seem to be some
14 ambiguity with regard with whether there was a trial or
15 whether or not he pled guilty. But, nonetheless, I'm going
16 to grant the summary judgment motion consistent with your
17 argument.

18 I find that all of the conduct alleged on the
19 ground that the conduct of the McBee Municipal Court and the
20 remedies for that would be to file an appeal. If you
21 indicated there was improper conduct, ethical conduct of
22 some sort, there's a mechanism by which you could do that,
23 you can file a grievance against them.

24 But I find that judicial immunity protects the
25 Judge. Although you sued the city, all of the delicts and

1 improper actions were that of the Municipal Judge. And I
2 think that the Judge is protected by Judicial Immunity and
3 the Tort Claims Act. And I going to ask that you prepare an
4 order to that affect.

5 And, Mr. Hutto, you might prove me wrong. And
6 you're protected on the record in all respects.

7 Good luck to you.

8 END OF REQUESTED PROCEEDINGS

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CERTIFICATE OF TRANSCRIBER

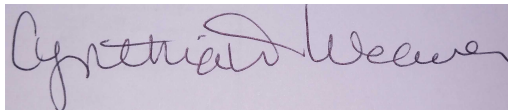
Case Name/Number: Michael Qualls v. Town of McBee,
2020-CP-13-00672

Date of Hearing: September 14, 2022

Court Reporter/Monitor: Elise Peruzzi, DCRP

I, Cynthia Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

February 3, 2023



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	CASE NO: 2020-CP-13-00672
	)	
Michael Qualls,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF JUSTIN REICHARD
vs.	)	
	)	
Town of McBee,	)	
	)	
Defendant,	)	
	)	

PERSONALLY APPEARED before me, Deputy Justin Reichard, who first being duly sworn, deposes and says:

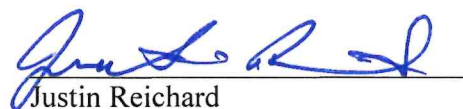
1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed with the Chesterfield Sheriff's Office on or about July 8, 2019. At that time, I held the rank of Deputy Sheriff.
3. I have never been an employee of the Town of McBee.
4. On July 8, 2019, I personally observed a vehicle being operated by the Plaintiff approaching from behind at a high rate of speed. I changed lanes to allow the vehicle to pass me, and observed the vehicle make a hard right turn without using a turn signal. I activated the blue lights on my patrol vehicle and proceeded to conduct a lawful traffic stop due to speeding and failure to signal. As I exited my vehicle, Plaintiff jumped out of his vehicle and looked like he was going to flee. It appeared that Plaintiff was trying to get away from the vehicle and from me. I was unable to see Plaintiff's left hand, so I drew my service weapon and issued multiple verbal commands for Plaintiff to show me his hands. I closed the gap between myself and Plaintiff, holstered my service weapon, and, after a struggle, managed to put Plaintiff in handcuffs. Even after Plaintiff was put in handcuffs, he continued to fight me. While I tried to put Plaintiff into the back of my patrol vehicle, Plaintiff continued to try to escape. Even after I got Plaintiff into my patrol vehicle, Plaintiff continued to resist and fight, and slid to the other side of the vehicle so I could not put the seatbelt on him. At one point, Plaintiff grabbed my arm and tried to jerk me into the patrol car, attempting to use his upper body strength to throw me off balance and pull me into the patrol car. I decided to let Plaintiff sit in the patrol car without a seatbelt in hopes he would cool off and calm down. Thereafter, Deputy Randall Kerns arrived on the scene and Plaintiff continued to refuse to comply. I verified through dispatch that Plaintiff did not have a valid driver's license and that the vehicle was not registered and did not have insurance. Plaintiff knew the vehicle was not registered and voluntarily informed me that he did not have insurance on the vehicle. Consequently, I placed the Plaintiff under arrest.

Deputy Kerns helped me take Plaintiff out of my vehicle and put him in Deputy Kerns' vehicle. Deputy Kerns transported the Plaintiff to the County Jail. I completed an Incident Report and the full contents of the Incident Report are reiterated as if fully set forth herein. (Ex. A - Incident Report).

5. As a result of the July 8, 2019 lawful traffic stop, Plaintiff was charged with Speeding between 15 and 24 miles per hour over the speed limit, Turning Unlawfully, Operating Uninsured Vehicle, Vehicle License Improper, Suspended Tag, Driving Under Suspension, and Disobedience to Officer (Ex. B - Tickets).
6. I personally witnessed the commission of the above-listed offenses. As such, neither I nor the Town of McBee acted inappropriately and/or unlawfully in arresting the Plaintiff.
7. Probable cause existed for the Plaintiff's arrest and/or imprisonment.
8. Based upon my personal observation of the commission of multiple offenses, I utilized my discretion in arresting Plaintiff.
9. I have reviewed the Complaint filed in this action and vehemently deny that either I or the Town of McBee ever violated the Plaintiff's civil and/or constitutional rights.
10. Neither I nor the Town of McBee were negligent or grossly negligent in any manner whatsoever. At all times relevant hereto, my actions were objectively reasonable and all actions taken by me were taken to merely control the situation. I personally witnessed Plaintiff's commission of multiple offenses and had probable cause for his arrest.
11. At all times relevant hereto, I was acting within the scope of my official duties.
12. Judge Lisenby informed Plaintiff orally and in writing of his right to trial by jury, the charges against him and the nature of the charges, his right to counsel and right to court-appointed counsel if financially unable to employ counsel, and instructions on how to obtain court appointed counsel. Upon receiving notice of his rights, Plaintiff was given the opportunity to request a jury trial and to request court-appointed counsel, yet he failed to do so.
13. Despite being provided with detailed oral and written instructions on how to obtain court appointed counsel, Plaintiff did not appear before the Clerk of Court for indigency screening.
14. Neither I nor the Town of McBee deprived Plaintiff of his right to due process.
15. Judge Lisenby gave Plaintiff 30 days to reinstate his insurance and remedy the suspension on his driver's license.
16. Plaintiff failed to remedy the suspension on his driver's license and drove to court with a suspended driver's license.

16. Plaintiff did not request an attorney and/or a jury trial until after he was taken into custody and was being escorted to jail.
17. Plaintiff was incarcerated at Chesterfield County Detention Center on August 8, 2019 and released on August 15, 2019 when his father paid his fines.
18. I understand that making any false statements within this affidavit may subject me to criminal liability.
19. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.


Justin Reichard

Sworn to before me this 17
day of August, 2022


Notary Public, State of South Carolina
My commission expires: 10/21/22

AGENCY I.D.
SC0130000

CHESTERFIELD COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

CASE NUMBER

NCIC

19 - 2516

INC. ENT.

E V E N T	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. 90Z - DISOBEDIENCE TO A POLICE OFFICER				☒ YES ☐ NO	☐ YES ☐ NO	13		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☒ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.
	2. N13 - DRIVING UNDER SUSPENSION				☒ YES ☐ NO	☐ YES ☐ NO	13		
	3. N18 - OPERATING UNINSURED VEHICLE				☒ YES ☐ NO	☐ YES ☐ NO	13		
I N C I D E N T	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE	
	N181ST STREET / OAK AVENUE, MCBEE SC						29101		
	INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	DISPATCH DATE/TIME 24 HR CLOCK	DISPATCH TIME	TIME ARRIVED	DEPART TIME
	07/08/2019	1049		07/08/2019	1231	07/08/2019	1049	1049	1231
V I C T I M	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
	SHERIFFS DEPT, CHESTERFIELD					J S O U			
	ADDRESS			CITY		STATE	ZIP CODE	LOCATION NO	
	203 WATSON ST			CHESTERFIELD		SC	29709		
V I C T I M	VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
	SOCIETY					J S O U			
	ADDRESS			CITY		STATE	ZIP CODE	LOCATION NO	
# 1	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN --								
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. DRUGS ☐ YES ☒ NO ☐ UNK.								
	☐ TWO-MAN VEH ☐ ONE-MAN VEH ☐ DETECTIVE/PLASMT ☐ OTHER ☐ ALONE ☐ ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown								
S U B J E C T	☒ SUSPECT				SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE
	☐ RUNAWAY				QUALLS, MICHAEL II		B	M	33
	☐ WANTED				FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
	☐ WARRANT				ADDRESS		CITY	STATE	ZIP CODE
# 1	☒ ARREST				207 W BYRD STREET		TIMMONSVILLE	SC	29161
	☐ JAIL				SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☒ UNK.		ARRESTED NEAR OFFENSE SCENE: ☒ YES ☐ NO		DATE/TIME OF OFFENSE
	☒ SUMMONS				DRUGS ☐ YES ☐ NO ☒ UNK. TYPE		TOTAL # ARRESTED		DATE/TIME OF ARREST
							1		07/08/2019 1049 07/08/2019 1139
N A R R A T I V E	Offenses:								
	DISOBEDIENCE TO A POLICE OFFICER								
	DRIVING UNDER SUSPENSION								
	OPERATING UNINSURED VEHICLE								
SPEEDING									
SUSPENDED LICENSE PLATE									
IMPROPER LICNSE PLATE									
UNAWFUL TURN									
07/08/2019- Day Shift									
Car 234									
In Car and Body Camera Activated during complete incident									
Traffic- Light									
Daytime 1048 in the morning									
Sunny with a little overcast									
Subject:									

Print Date: 04/14/2021 04:27:02 PM				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
P	TYPE (GROUP)										TOTAL VALUE
R	Burned										
O	Count/Forged										
P	Dest/Damaged										
E	Recovered										
R	Seized										
T	Stolen										
Y	Unknown										
A	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18		
D	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER		
M	REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY										
I	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		
N	DEPUTY JUSTIN REICHARD		07/08/2019		133		CAPT SPENCE VAUGHN		07/08/2019		
I	FOLLOW-UP INVESTIGATION OFFICER										
S	☐ YES ☐ NO										

Defendant's Discovery Documents, Bates Stamped No: 0022

Exhibit A

AGENCY I.D. SC0130000 CHESTERFIELD COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

CASE NUMBER

19 - 2516

NCIC

INQ. ENT.D.

Michael Qualls II
11/06/1985

Vehicle information:
2007 Nissan Altima
Green in color
VIN # 1N4AL21E47N415231

Registered Owner:
Colleen A Stewart
604 Beauhaven Lane
Waxhaw NC 28173

Tag on vehicle:
SC Tag QKT837
2006 Merz
Suspended for Cancellation of Insurance
Suspension date begin 05/28/2019

On 07/08/2019, I Deputy Reichard while on motorized patrol noticed vehicle closing in on me from the rear at a high rate of speed. I estimated that speed to be 55mph in a 35mph I was able to confirm that speed to be 55mph in a 35mph. I changed lanes from the number one lane to the number two lane due to the vehicle being in the number one lane. The vehicle noticed that I was a patrol vehicle and changed lanes behind me trying to stay behind me. I then changed lanes back to the number one lane and slowed down in hopes the vehicle would pass me so that I could conduct a lawful traffic stop. Once the vehicle realized what I was doing the vehicle immediately made a right turn onto 1st Street without providing a turn signal. I immediately activated my blue lights and turned onto 1st Street behind the vehicle and advised dispatch that I would be conducting a traffic stop at 1st Street and Oak Avenue. Once at the intersection of 1st Street and Oak Avenue the vehicle made a right into the yard of 89 N 1st Street. As I exited my patrol vehicle the driver later identified as Michael Qualls, exited his vehicle. Qualls looked at me and then looked towards the wood line as if he was getting ready to run. I could not see Qualls' right hand and immediately drew my service weapon and advised Qualls to show me his hands. As I approached Qualls I could continue to see his hands and he had his phone in left hand and something else that I could not identify. I closed the gap on Qualls and re-holstered my service weapon and detained Qualls in handcuffs. Qualls did not want to go into handcuffs and began to try and jerk away from me. I was able to get both handcuffs on Qualls and once the handcuffs were on Qualls tried to call someone on his phone. I had to forcibly take Qualls' phone from his left hand. I then tried to escort Qualls over to my patrol vehicle at which time he began to fight with me. I placed Qualls against his vehicle and to gain control over him. Once I had control over Qualls I escorted him the passenger side of my patrol vehicle and attempted to place him in the rear of my patrol vehicle. Qualls did not want to go in and began to resist once again. I advised Qualls that I would take him and to get into the rear of my patrol vehicle. Qualls continued to resist and I removed the cartridge from the end of my taser and advised Qualls again to sit in the rear of my patrol vehicle or he would be tased. Qualls still failed to comply and I spark tased my taser behind me and advised him the next one would be on him and to sit down. Qualls then complied and sat in the rear of my patrol vehicle and tried to scoot all the way to the driver side. I pulled Qualls back over to me and attempted to put the seatbelt on him to keep him from moving around in the back seat. Qualls then attempted to stand up in my car and pull away from me. At that time I pulled Qualls back towards me and he tried to come out of the vehicle. Qualls would keep trying to pull away from me trying to get me off of balance so that he could get me in the car with him or him to get out. I pulled Qualls to me again and he tried to pull me off balance using his upper body and I pulled Qualls to me causing him to come out of my patrol vehicle. I did grab Qualls around the upper chest area until I could get control of the situation and then tried to place Qualls back in the vehicle. Once again I tried to place Qualls back in the vehicle and he continued to try and fight me. I advised Qualls once again he would be tased if he did not sit back in the vehicle. Once back in the vehicle I tried to place the seatbelt on Qualls and he attempted to grab my right arm. I pulled my arm out and advised Qualls not to do that again and then attempted to place the seatbelt on Qualls once again so that I could control his movements in the back seat. Qualls then again tried to grab my right arm at which time I decided to just let him be for now and shut the door. I then advised dispatch to run the tag due to how Qualls was acting it may have been stolen. I conducted a quick search of the vehicle to make sure there were no weapons or other contraband in the vehicle. I then returned to my patrol vehicle and I asked Qualls for his name and he just stated Michael and would not state anything else. I advised Qualls that he needed to tell me his name and he just kept stating call my father or Pee Dee mental health.

Dispatch finally advised me that the tag came back to another vehicle and was showing suspended for cancellation of insurance. I then advised dispatch of

Print Date: 04/14/2021 04 27 02 PM				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
P	TYPE (GROUP)						TOTAL VALUE
R	Burned						
O	Count / Forged						
P	Dist / Damaged						
E	Recovered						
R	Seized						
T	Stolen						
Y	Unknown						
A	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM CLOSED	☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	☐ EX-CLEAR UNDER 18
D					☐ UNFOUNDED	☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
M	REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY						
I	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
S	DEPUTY JUSTIN REICHARD	07/08/2019	133	CAPT SPENCE VAUGHN		07/08/2019	
T	FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO						

Defendant's Discovery Documents, Bates Stamped No: 0023

Exhibit A

229

AGENCY I.D.
SC0130000

CHESTERFIELD COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

CASE NUMBER		NCIC	
1	9	-	2516
IND	ENTD.		

the vin number and it came back registered to a Colleen Stewart out of Waxhaw NC. The tag that was on the vehicle came back to a 2006 Mercedes but the tag was on a 2007 Nissan Altima. Again I confirmed that it was suspended through DMV online. I advised dispatch to go ahead and get the next tow truck on rotation. Other units began to arrive at this time and FSGT Munn spoke to Qualls and he still would not give any information. I then pulled the name on the tag for the vehicle and was able to identify Qualls through DMV online. I was then able to run Qualls information through dispatch and she advised that he was suspended for cancelation of insurance and that he did not have any warrants. I then returned to my patrol vehicle and advised Qualls that he was under arrest for driving under suspension, improper tag, and suspended tag and probably several more charges. Deputy Kerns arrived and stated that he would transport Qualls to the county jail for me. I removed Qualls from the rear of my patrol vehicle and conducted another search on him. I located money and a card in his right front pocket and I counted the money in front of Qualls and Deputy Kerns to be \$202. At that time we changed handcuffs and Deputy Kerns transported Qualls to the county jail for me.

Also located in the vehicle was a title for NC in the glove compartment. The title matched the vehicle and the vin number but was registered to a Colleen A Stewart out of Waxhaw NC. The title was signed on the back by Stewart but did not have any dates or any markings on the title as if it was recently sold.

I waited on Jimmy's towing to arrive and take possession of the vehicle. Once Jimmy's arrived and loaded the vehicle I cleared the incident location.

Nothing further to add.

Print Date: 04/14/2021 04:27:02 PM				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
P	TYPE (GROUP)						TOTAL VALUE
R	Burned						
O	Count/Forged						
P	Dest/Damaged						
E	Recovered						
R	Seized						
T	Stolen						
Y	Unknown						
A	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
M	REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY						
I	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
S	DEPUTY JUSTIN REICHARD	07/08/2019	133	CAPT SPENCE VAUGHN		07/08/2019	
T					FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO		

Defendant's Discovery Documents, Bates Stamped No: 0024

Exhibit A

AGENCY I.D.
SC0130000

CHESTERFIELD COUNTY SHERIFF'S OFFICE

CASE NUMBER

NCIC

SUPPLEMENTAL INCIDENT REPORT

19 - 2516

INFO ENTD.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☒ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE 1	
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY		

V I C T I M S U B J O V E R F L	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☒ VICTIM # 002	REICHARD, JUSTIN		#1	#2	#3	J S O U	W	M	00		N	
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE				
	☐ WANTED	203 WATSON ST		CHESTERFIELD	SC	29709		(843) 623-2101 H					
	☐ WARRANT	☒ VICTIM NO. 002 VIOLENCE INJURY: ☒ NO ☐ YES		VICTIM USING ALCOHOL: ☒ NO ☐ YES ☐ UNK		☐ TWO MAN VEH ☐ DETECTIVE/FLASHIT ☐ ALONE							
	☐ ARREST	EXPLAIN:		DRUGS: ☒ NO ☐ YES TYPE:		☐ UNK ☐ ONE MAN VEH ☐ OTHER		☐ ASSISTED					
	☐ JAIL	☐ SUBJECT NO		USING ALCOHOL: ☐ NO ☐ YES									
	☐ SUBPOENAS			USING DRUGS: ☐ NO ☐ YES TYPE:				☐ UNKNOWN					
	☐												
N A R R A T I V E													
						JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				

A D M I N I S T	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ 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							
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
	DEPUTY JUSTIN REICHARD		07/08/2019	133	CAPT SPENCE VAUGHN		07/08/2019	
FOLLOW-UP INVESTIGATION OFFICER								
☐ YES ☐ NO								

Defendant's Discovery Documents, Bates Stamped No: 0025

Exhibit A

USE OF FORCE REPORT

(To be completed for EVERY Incident involving Use of Force, both Lethal and Non-Lethal.)

INCIDENT	DATE	07/08/2019	TIME	1048	CASE NO.	19-2516		
	LOCATION	N FIRST STREET AND OAK AVENUE						
SUBJECT	NAME	MICHAEL QUALLS II						
	ADDRESS	207 W BYRD STREET						
	CITY	TIMMONSVILLE			STATE	SC	ZIP	29161
	SEX	M	RACE	B	DOB	11/06/1985	WEIGHT	160
							HEIGHT	6-1
CHARGES								
DIOBEDIENCE TO A POLICE OFFICER, DRIVING UNDER SUSPENSION, OPERATING UNINSURED MOTOR VEHICLE, SPEEDING, IMPROPER TAG, SUSPENDED LICENSE PLAT, UNLAWFUL TURN								
REASON FOR INITIAL CONTACT								
SPEEDING 55/35 AND UNLAWFUL TURN								
TYPE OF FORCE USED								
☒ COMPLIANCE ☐ CHEMICAL ☐ BATON ☒ FIREARM ☒ TASER ☐ OTHER (SPECIFY) _____								
EFFECT (IF CHEMICAL OR TASER)								
☐ IMMOBILIZED ☐ NO EFFECT ☒ OTHER (SPECIFY) <u>COMPLIED</u> # OF TIMES USED <u>2</u>								
MEDICAL TREATMENT FOR SUBJECT REQUIRED?								
☐ YES ☒ NO IF YES, COMPLETE BELOW:								
	PHYSICIAN							
	LOCATION							
OFFICER INJURED? ☐ YES ☒ NO								
OFFICER'S NAME								
MEDICAL TREATMENT FOR OFFICER REQUIRED?								
☐ YES ☒ NO IF YES, COMPLETE BELOW:								
	PHYSICIAN							
	LOCATION							
WITNESS(S) INFORMATION								
NAME		ADDRESS		CITY/STATE/ZIP		TELEPHONE		
SIM TYNER		89 N FIRST STREET AVE		MCBEE SC 29101		(843) 335-8474		
OFFICER(S) USING FORCE								
Primary: DEPUTY JUSTIN REICHARD -- J. REICHARD								
OFFICER'S SIGNATURE							DATE	
SUPERVISOR'S SIGNATURE							DATE	

USE OF FORCE REPORT

(Additional Narrative)

INCIDENT	DATE	07/08/2019	TIME	1048	CASE NO	19-2516
	LOCATION	N FIRST STREET AND OAK AVENUE				

Upon conducting a lawful traffic stop with the stop ending in the yard of 89 N First Street, the subject who was later identified as Qualls by SCDMV online exited his vehicle. I ordered Qualls to sit back in his vehicle and he did not and at which time I could not see his right hand. I did draw and point my service weapon at Qualls and ordered him to show me his hands. Once I could see Qualls hands I closed the distance and placed Qualls into handcuffs. I then used pressure point in the hand and finger to get Qualls to let go of his phone which was in his left hand as he attempted to try and call someone. I then escorted Qualls to my patrol vehicle after gaining control over him and used loud verbal commands for him to sit in my patrol vehicle. Qualls did not want to sit down and at which time I did remove my taser and advised him he would be tased. I removed the cartridge from the end of the taser and advised him he would be tased if he did not get into the vehicle. I did spark test my taser to let him know it was out and working and I would dry stun him if he did not comply. Qualls heard the spark test and complied with orders and sat down in the patrol vehicle. I then attempted to place the seatbelt around him due to him trying to get to the other side of the car, and he kept trying to pull me off balance. I then pulled him to me and got him situated so that I could place the seatbelt on him and he once again tried to pull away trying to cause me to loose my balance. At that time i did pull Qualls and cause him to come out of the car and at which time he tried to fight with me and i did grab Qualls around his upper chest to neck area to gain control. Once control was gained Qualls was released and then again told to sit in the patrol vehicle. Qualls would not sit back in the patrol vehicle at which time i did advise him he would be tased. Qualls continued to fight and i did preform a standing knee strike to Qualls' right leg and Qualls did at that time sit back down in the vehicle. I did attempt to put the seatbelt around Qualls again and Qualls tried to grab my right hand and pull me into the vehicle. At that time i backed out and shut the door and just kept an eye on Qualls to make sure he did not try and kick a window out or try and get out of the vehicle.

No contact with the taser was ever used on Qualls nor was there ever a shot fired out of my duty weapon. Both taser and duty weapon were a show of force to control the situation at hand.

[illegible]

UNIFORM TRAFFIC TICKETS TO BE USED

8/8/2019 Judge continued to 9/12/2019

5

ENFORCEMENT RECORDS COPY

[illegible]

Defendant's Discovery Documents, Bates Stamped No: 013

Exhibit B

235

[illegible]

Defendant's Discovery Documents, Bates Stamped No: 015

Exhibit B

236

[illegible]

UNIFORM TRAFFIC TICKETS TO BE USED

8/8/2019 Judge continued to 9/12/2019
9/2/19 Judge ruled Time Served

1

ENFORCEMENT RECORDS COPY

[illegible]

UNIFORM TRAFFIC TICKETS TO BE USED

51627/15 of perquiao adpm 1510729/8
8/6/2019 judge continued to 9/12/2019

15

ENFORCEMENT RECORDS COPY

AGENCY TROOP- MCSER POLICE DEPARTMENT

[illegible]

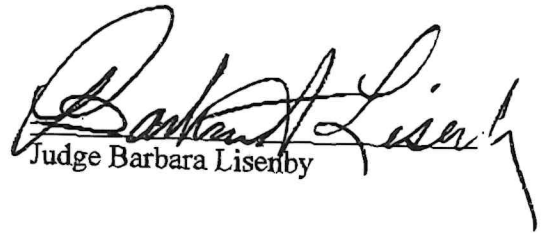
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	CASE NO: 2020-CP-13-00672
	)	
Michael Qualls,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF JUDGE
vs.	)	BARBARA LISENBY
	)	
Town of McBee,	)	
	)	
Defendant,	)	
	)	

PERSONALLY APPEARED before me, Judge Barbara Lisenby, who first being duly sworn, deposes and says:

1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. At all times relevant hereto, I was employed as a Municipal Judge for the Town of McBee.
3. I have been a Municipal Judge for approximately 35 years. I have been a Municipal Judge in the Town of McBee for approximately 15 years.
4. Plaintiff appeared before me on July 8, 2019 for his bond hearing. I informed Plaintiff orally and in writing of his right to trial by jury, the charges against him and the nature of the charges, his right to counsel and right to court-appointed counsel if financially unable to employ counsel, and instructions on how to obtain court appointed counsel. Upon receiving notice of his rights, Plaintiff was given the opportunity to request a jury trial and to request court-appointed counsel, yet he failed to do so. I asked him how he wished to plead, and Plaintiff pled guilty. Plaintiff then asked me to give him more time to get his license and insurance reinstated, so I gave him 30 days and scheduled for him to appear before me again on August 8, 2019.
5. Plaintiff appeared before me again on August 8, 2019. At this time, Plaintiff explained to me that he had failed to remedy the suspension on his driver's license or reinstate his insurance. Plaintiff told me that he did not drive to court. Plaintiff asked for more time to reinstate his license and insurance, so I gave him 30 days and set another court date for September 8, 2019. After he was released from court, it was then discovered that Plaintiff had lied to the Court and had in fact driven to court even though his driver's license was suspended. He was brought back before me by officers for driving with a suspended license. At this time, I informed him he was going to jail.

6. Plaintiff never appeared before the Clerk of Court for indigency screening, which is a prerequisite to obtaining court appointed counsel.
7. Plaintiff did not request an attorney and/or a jury trial at his bond hearing on July 8, 2019. Plaintiff did not request an attorney and/or a jury trial when he appeared before me in court again on August 8, 2019.
8. Plaintiff did not request an attorney and/or a jury trial until after he was taken into custody and was being escorted to jail on August 8, 2019.
9. Plaintiff was incarcerated at Chesterfield County Detention Center on August 8, 2019 and released on August 15, 2019 when his fines were paid.
10. I have reviewed the Complaint filed in this action and vehemently deny that either I or the Town of McBee ever violated the Plaintiff's civil and/or constitutional rights.
11. Neither I nor the Town of McBee deprived Plaintiff of his right to due process.
12. At all times relevant hereto, I was acting within the scope of my official duties and my role as a judge and I had jurisdiction to act.
14. All of my actions were serving a judicial function.
15. I honored my duty to exercise that degree of care and skill ordinarily exercised by my profession under similar conditions and in similar circumstances. Accordingly, I specifically deny that I deviated from the generally accepted standards, practices, and procedures exercised by competent municipal judges. Furthermore, I specifically deny that my actions caused Plaintiff any injury whatsoever.
16. I exercised discretion and professional judgment in conducting Plaintiff's judicial proceedings.
17. Neither I nor the Town of McBee were negligent or grossly negligent in any manner whatsoever.
18. Any arrest, imprisonment, and/or detention of the Plaintiff was supported by both probable cause and valid under the law.
19. I understand that making any false statements within this affidavit may subject me to criminal liability.
20. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.


Judge Barbara Lisenby

Sworn to before me this 12th
day of September, 2022

Betty Lynn Watson
Notary Public, State of South Carolina
My commission expires: 3/21/22



CRIMINAL CHARGING DOCUMENT NO.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF C. Field
STATE OF SOUTH CAROLINA

IN THE CRIMINAL COURT

of Mc Bee

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Michael Qualls
NAME OF DEFENDANT

Offense Charged:

Prob. to off, Susp. Tag, D.C.S. Turn in hands fully
prob. to off, Susp. Tag, D.C.S. Turn in hands fully

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

(Consideration: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of 2500.00

3. That the defendant shall appear at (check one):

☐ the term of _____ COURT OF GENERAL SESSIONS beginning on _____ at _____ o'clock, _____ at _____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☒ the session of _____ MUNICIPAL COURT beginning on 8-8-2019 at 2 o'clock P.M. at 33 W. Juniper Ave, Mc Bee, S.C. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT Michael Qualls

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

BAL
SIGNATURE OF JUDGE

7-8-2019
DATE

Michael Qualls
Name of Defendant

Warrant/Ticket No.

County/Municipality of

McBee

Charges: <u>Disobey Off, Speeding, Driving on Suspended License, DWI</u>	Trial Court: <u>Zone</u>
--	--------------------------

INSTRUCTIONS FOR MAGISTRATES AND MUNICIPAL JUDGES
Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

☒ BAIL PROCEEDING ☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☒ Bond Form II (surety, cash, percentage) ☐ None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
 - ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - ☒ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
☐ Orally ☒ In writing (NOTE: Defendant must be informed of right both orally and in writing.)
- ☒ 4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - ☒ a. Charges against defendant and nature of the charges.
 - ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (meet most federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before Mark K. Edwards located at 38 W. 5th St, Ste 200, Asheville, NC for indigency screening. Defendant is responsible for a statutory fee of \$ 70 for indigency screening.
- ☐ 6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.

Appearance or
Hearing Date:

7-8-2019

Judge's Signature

[Signature]

SCCA/507 (Rev. 8/2008)

[Signature]

1	STATE OF SOUTH CAROLINA	IN THE FAMILY COURT
2	COUNTY OF CHESTERFIELD	CASE NO.2020CP1300672
3		
4	MICHAEL QUALLS	
5	Plaintiff,	
6	-vs-	<u>TRANSCRIPT OF RECORD</u>
7	TOWN OF MCBEE	
8	Defendant.	
9		
10		December 12, 2022
11		By Webex
12	BEFORE:	
13	The Honorable Michael Nettles, Judge.	
14		
15	APPEARANCES:	
16	Skyler Hutto	
17	Attorney for Plaintiff	
18	Katherine Ryan	
19	Attorney for Defendant	
20		
21		
22		
23		Emily H. Walker, CVR
24		Court Reporter
25		

1 THE COURT: I'll be glad to hear from the
2 moving party.

3 MR. HUTTO: Your Honor, this is my motion to
4 reconsider. You heard us in person a couple of
5 months ago up in Chesterfield. And this relates to,
6 if I could just briefly refresh your memory, a
7 complaint for gross negligence filed by
8 Mr. Michael Qualls. And we did not get fully into
9 the facts, although, we got several of them out
10 there in that initial hearing. But I want to
11 provide just a brief synopsis.

12 Mr. Qualls was pulled over for various traffic
13 violations, and was cited for those violations,
14 along with issues with his license and insurance.
15 He bonded out and appeared in court. And this is
16 where we have alleged that there are numerous issues
17 of gross negligence on behalf of the town of McBee.

18 He appeared, his case was continued, his case
19 was set to be continued again, and the judge called
20 him back into the courtroom, and this is contested
21 but -- parts of it -- parts of it are contested and
22 parts of it are admitted in her deposition, and in
23 my client's deposition. I provided a full copy of
24 the deposition this morning to Your Honor because I
25 believe the clerk of court only scanned in the odd

1 pages. It must have been a double-sided deposition.

2 But to simplify what happened, the Court
3 informed him he would no longer be offered the
4 opportunity to be heard on his case. The judge was
5 going to find him guilty. She began calling the DMV
6 to confirm that his license was still suspended,
7 things of that nature. And then she put him in
8 jail. He was never -- he asked for a public
9 defender, he asked for a jury trial, he was not
10 provided those things. We allege, of course, all of
11 that is improper. It is certainly not how I think
12 any magistrate, or municipal, or general sessions
13 judge hearing a criminal case is aware that those
14 things can proceed.

15 Several of the allegations, I think, are
16 relatively disturbing, and they are confirmed
17 through the judge's own deposition. She confirmed
18 that, for example, that she was no longer going to
19 give Mr. Qualls the right to be heard. She was
20 simply going to find him guilty because she had
21 determined that he was guilty without a trial and
22 she didn't need to do anything else.

23 Subsequently, when Mr. Qualls attempted to have
24 an attorney, Mr. Marsh from Florence, begin the
25 reconsideration process because of these problems,

1 the clerk and the judge both informed him that he
2 would not be allowed to make any filings on
3 Mr. Qualls' behalf. They referred to it, according
4 to Mr. Marsh, as a waste of time and paper. And so
5 he was not able to have that case reconsidered.

6 Now this is a case brought for the negligent
7 actions of the town. And there are two things that
8 I want to point out to you that I don't know were
9 fully contemplated at the last hearing, partially
10 because you asked me a question, in particular, that
11 I did not have a good response to. And I would like
12 to fully address it, or point you to where it is
13 fully addressed in our memorandum.

14 You asked could I give any examples of cases
15 that were like this one. And, Your Honor, I've
16 cited several now in our motion to reconsider. The
17 key to a case like this is when the judge is A: when
18 there is only injunctive relief sought, which is not
19 the case here. Or B and C: when either the judge
20 goes outside of their authority or outside of their
21 jurisdiction, and that, I think, we can point to
22 several examples of and relate them to this case.
23 And I don't want to be exhaustive, but if you look
24 at page -- beginning on Page 3 of our motion to
25 reconsider and go through Pages 4 and 5 are numerous

1 examples of when entities, courts, et cetera have
2 been sued because of a judge exceeding their
3 authority or their jurisdiction.

4 And a lot of, not all, but a lot of the cases
5 that are cited here rely on something that is very
6 relevant to this case, and that is the judge
7 stepping into a prosecutorial function. When the
8 judge steps into a prosecutorial function they have
9 stepped outside of the realm of judicial immunity,
10 and made themselves a separate and distinct part of
11 the system. There are examples that we cite, too,
12 here. For example, when a judge signs a warrant and
13 then takes part in the search using that warrant.
14 There are a few examples of that and there are
15 numerous others that we listed.

16 THE COURT: In that instance, the Judge was
17 sued and a monetary verdict was given?

18 MR. HUTTO: Those are for monetary recoveries,
19 yes.

20 THE COURT: There was a monetary recovery?

21 MR. HUTTO: Your Honor, I don't -- they are
22 published opinions. I don't know to the extent that
23 there was a recovery, but on the extent immunity
24 applied, the court discusses that. There are,
25 there's -- we give examples from outside the circuit

1 and within the Fourth Circuit of this premise. I
2 can rattle off some to you here if you would like a
3 little bit more specifics on that. If I can get my
4 mouse to cooperate.

5 So I'll quote another example. A magistrate
6 took it upon himself to investigate the destruction
7 of city property. This is an alleged situation
8 where a pipe had been cut, and then took part in
9 swearing out the complaint. In that circumstance
10 the Fifth Circuit Court found that judicial immunity
11 does not apply. I mentioned the example about a
12 judge becoming a member of a search party. There is
13 also the example of a judge actively taking part in
14 the use of a search warrant that they signed.

15 When the judge steps into this prosecutorial
16 function, or wears two hats, they no longer enjoy
17 the benefits of immunity. And in this case, Your
18 Honor, the judge overstepped both levels of that
19 boundary between jurisdiction and role. First of
20 all, the judge admitted that Mr. Qualls requested a
21 jury trial. Now at that point it would be outside
22 of a judge's authority or jurisdiction to commence
23 with a bench trial. He has a constitutional right
24 to that jury trial. And, certainly, there is no
25 authority to skip either of those phases and go

1 straight into sentencing, which is what
2 Judge Lisenby admitted that she did. And
3 importantly she did not find him in contempt, which
4 she might have had the power to do, but instead
5 adjudicated the underlying charges.

6 The second thing that she did was begin and
7 complete the action of becoming a prosecutor when
8 she became an independent fact finder, providing
9 facts to herself for that type of determination.
10 She admitted that she had become frustrated with
11 Mr. Qualls, and called the DMV herself to find out
12 about his driver's license, and any other
13 suspensions that were pending against him.

14 When she does that she steps into the role of
15 the prosecutor. That is typically, I don't know how
16 much you have dealt with driving under suspension
17 cases in general sessions, but there's very specific
18 statutes on how that information has to be provided
19 to the court. It has to come in the form of
20 certified records, with copies by certified mail,
21 and that is to be done by the prosecutor, or a
22 police officer if no prosecutor is available.

23 So the judge steps into that role as prosecutor
24 in her effort to determine that Mr. Qualls is guilty
25 of driving under suspension. She undertook that

1 step. So, Your Honor, we think that judicial
2 immunity in this case would have been waived through
3 both of those routes.

4 Now, then you get to the other major point that
5 I told you I wanted to address, and that is the sort
6 of immunity that applies through the Tort Claims
7 Act. And in particular, there is a set of cases
8 that we cited. I've referred to them colloquially
9 as Chakrabarti and Revco -- or Retco sorry. Your
10 Honor may know them as another line of cases. But
11 what these cases stand for is the premise that when
12 a gross negligence standard is applied through any
13 element of the Tort Claims Act, it applies through
14 all immunities in that case.

15 Chakrabarti is a case, for example, that was
16 from Orangeburg. It was actually one of our firm's
17 cases. It involved the un-permitted destruction of
18 a home by the City of Orangeburg. They did not
19 notice the destruction of the home. They merely
20 undertook it's demolition. And there were numerous
21 immunities that could have applied to that, and on
22 their face would have applied through the Tort
23 Claims Act. However, Chakrabarti stands for the
24 preposition -- or proposition that once the gross
25 negligence standard is applied to another element of

1 the Tort Claims Act it applies throughout those
2 immunities. And we have cited that line of cases
3 for your there. There are other cases that outline
4 that same sentiment.

5 So, Your Honor, we do not think that -- we
6 think that we have shown the possibility of gross
7 negligence as a matter -- as a factual matter for
8 the jury to consider, and that that should no
9 longer -- that that possibility should apply through
10 all of those judicial -- all of those presented
11 immunities that are listed within the Court's first
12 order.

13 Now there's one other element that I want to
14 address for the Court, and that is this element of
15 quasi-judicial immunity that's discussed in this
16 case. Quasi-judicial immunity comes in because of
17 the city and the clerk's role here. And one thing
18 that South Carolina Supreme Court has confirmed, and
19 I will give you the cite for it because I did not
20 cite it in my, in my brief -- if I can get my mouse
21 to appear -- is the State versus Barnes -- or Barnes
22 versus State. And I'm happy to send this to the
23 court but that's 433 S.C. 399.

24 Part of why that case is so crucial here is
25 because it clarifies that clerks and court staff

1 are, when filing documents, not acting in a judicial
2 or even quasi-judicial capacity. They are acting in
3 ministerial capacity, and, thus -- and as such, are
4 compelled to perform those duties. So, Your Honor,
5 when the clerk A: does not appear for court as they
6 admitted in their deposition, the clerk did not
7 appear for court the majority of the time, and then
8 subsequently refused to file documents, they are not
9 acting in any sort of judicial role. They are
10 violating a ministerial role for which there should
11 be no immunity. Besides that Barnes case I just
12 cited to you, all of that is outlined, as well,
13 within our motion to reconsider.

14 So, Your Honor, when viewing the facts in the
15 light most favorable to the plaintiff, we think
16 there are numerous issues of potential gross
17 negligence that are matters of fact for the jury to
18 consider whether or not the city can be held liable
19 for these extrajudicial and extra quasi-judicial
20 actions on behalf of the judge, and on behalf of the
21 clerk and other city employees.

22 THE COURT: We'll hear from the defense.

23 MS. RYAN: Your Honor, I'm Katherine Ryan with
24 Wilcox Law Firm, and first we'd like to reiterate
25 that all of the acts taken by Judge Lisenby were

1 judicial acts, and she is entitled to judicial
2 immunity. All of her acts were centered around the
3 case, which had already been initiated. Everything
4 occurred in court, or in chambers, and the acts
5 complained of, all of her actions were in her
6 official capacity, not as a private citizen.

7 And in regards to his request for an attorney
8 or a jury trial, we have provided testimony, sworn
9 affidavits and deposition testimony, that his,
10 Plaintiff's, request for an attorney and a jury
11 trial never occurred until after he was sentenced --
12 was put in handcuffs and was being escorted out of
13 the courtroom, and all proceedings had been
14 concluded. And we have provided evidence that that
15 was the very first time that that was requested.

16 In regards to the non -- in regards to the
17 prosecutorial nature of the actions, the case law
18 that Plaintiff provided, the judge was taking
19 actions outside the courtroom. He -- in one case he
20 traveled to a store, and directed policeman to
21 obtain property. In another the judge took the
22 parties on a field trip to a residence to search and
23 seize property. All of these cases were involving
24 leaving the courtroom, and actions taken outside.
25 In this situation, any actions complained of took

1 place within the courtroom, and were within
2 Judge Lisenby's judicial function.

3 And let's see. In regards to calling the DMV,
4 that is also taking judicial notice of public
5 records, which is a judicial function. Under
6 Rule 201 of the South Carolina Rules of Evidence the
7 court may take judicial notice of a fact that is
8 either generally known within the territorial
9 jurisdiction, or capable of accurate and ready
10 determination, resort to sources whose accuracy
11 cannot be reasonably questioned. So again making
12 any sort of -- making a credibility determination is
13 a judicial function to which she is entitled to
14 judicial immunity.

15 Let's see. Again, with regards to the clerk,
16 once again -- that is, everything complained of, was
17 dealing with judicial functions within the court,
18 filing papers anything of that matter has -- is
19 within the court, and is a judicial or
20 quasi-judicial function, and they are entitled to
21 immunity under the Tort Claims Act. And in general,
22 the Tort Claims Act covers all actions that have
23 been complained of.

24 And in regards to the, the waiver -- the gross
25 negligence manner that was discussed in -- for the

1 Tort Claims Act, the exceptions of the Tort Claims
2 Act that we cited, none of those include a gross
3 negligence standard. So that case law where he
4 cited that if gross negligence applies to one
5 exception, it would then apply to all exceptions.
6 None of our exceptions, that we are including, have
7 a gross negligence standard in them.

8 THE COURT: All right, Mr. Hutto.

9 MR. HUTTO: Yes, Your Honor.

10 THE COURT: You very well might be right, but
11 I've thought about it, I've studied the matter, and
12 I think under these specific circumstances that
13 judicial immunity applies. And I anticipate that if
14 I'm wrong I'll be straightened out by the fellow
15 next to you. But I think, I think that these
16 circumstances warrant the application of judicial
17 immunity. And it was a very good presentation on
18 both, on both -- on behalf of both parties. And I'm
19 going to stand by my ruling, and wish both of you
20 the best of luck.

21 MR. HUTTO: All right. Thank you, Your Honor.

22 MS. RYAN: Thank you, Your Honor.

23 END OF TRANSCRIPT OF RECORD
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF CHESTERFIELD)

5 I, the undersigned Emily H.
6 Walker, official Court Reporter for the 4th Judicial
7 Circuit of the State of South Carolina, do hereby
8 certify that the foregoing is a true, accurate, and
9 complete transcript of the record of all proceedings
10 had and evidence introduced in the hearing of the
11 captioned case, relative to appeal, in the Circuit
12 Court for Chesterfield County, South Carolina, on
13 the 6th of December, 2022.

14 I do further certify that I am
15 neither kin, counsel, nor interest to any party
16 hereto.

17 In witness whereof, I have
18 hereunto subscribed my name, this 25th of February,
19 2023.

20
21
22
23 Emily H. Walker, CVR
24 Court Reporter
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	CASE NO: 2020-CP-13-00672
	)	
Michael Qualls,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING
	)	DEFENDANT TOWN OF MCBEE'S
	)	SUMMARY JUDGMENT
Town of McBee,	)	RECEIVED
	)	Dec 13 2022
Defendant,	)	SC Court of Appeals
	)	

This matter comes before me upon the motion of Defendant Town of McBee ("Town of McBee") for summary judgment filed on March 16, 2018. This motion was heard in the Chesterfield County Court of Common Pleas on June 7, 2018. After careful review of the brief, the law and notes from the hearing, the Court hereby grants Town of McBee's Motion for Summary Judgment.

Statement of Facts

On July 8, 2019, as a result of a lawful traffic stop, Deputy Justin Reichard¹ (hereinafter "Dep. Reichard") arrested Plaintiff on charges of multiple traffic violations, including driving under suspension. Plaintiff did not deny any of the charges, and the undisputed facts reflect that probable cause existed for Plaintiff's arrest.

On July 8, 2019, Plaintiff appeared at the Town of McBee bond court before Municipal Court Judge Barbara Lisenby. Plaintiff alleges that he was never read his *Faretta* warnings or offered a public defender. (Complaint ¶¶13, 15). However, Plaintiff's signature on the Bond Checklist proves that he received same in oral and written form. Upon receiving notice of his

¹ Dep. Reichard is Deputy Sheriff with the Chesterfield Sheriff's Office. Dep. Reichard has never been an employee of the Town of McBee.

rights, Plaintiff had the opportunity to request a jury trial and court-appointed counsel, yet he failed to do so. Additionally, despite being provided with detailed oral and written instructions on how to obtain court-appointed counsel, Plaintiff failed to appear before the Clerk of Court for the prerequisite indigency screening.

Plaintiff asked for more time to pay his fines, reinstate his insurance, and remedy the suspension on his driver's license, so Judge Lisenby gave Plaintiff thirty days to do so. Plaintiff appeared again before Judge Lisenby on August 8, 2019. Plaintiff drove to the court appearance with a suspended license. Due to this and the fact that Plaintiff had not complied with her previous conditions, Judge Lisenby advised Plaintiff that he was to be taken to jail. It was not until after Plaintiff was advised he was going back to jail, taken into custody, and being escorted out of the courtroom that he requested an attorney and a jury trial for the first time. Plaintiff was incarcerated at Chesterfield County Detention Center on August 8, 2019 and released on August 15, 2019 when his fines were paid.

Due to the fact that Town of McBee provided evidence showing that Plaintiff was given his *Farreta* warnings and offered court-appointed counsel, Plaintiff withdrew these claims at the summary judgment hearing. Plaintiff makes multiple claims against Town of McBee regarding alleged improper actions and/or inactions taken by Judge Lisenby, all of which occurred during Plaintiff's judicial proceedings.

Applicable Standard

Under Rule 56, SCRCP, 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. "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and

inferences to be drawn from the facts are undisputed." McClanahan v. Richland County Council, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). If triable issues exist, those issues must be submitted to the jury. Young v. S.C. Dept. of Corrections, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

Order

I. The Court finds that Plaintiff's claims against Defendant Town of McBee fail because Town of McBee is entitled to absolute immunity.

Municipal courts are part of the South Carolina unified judicial system. See S.C. Code Ann. §§ 14-1-40, 14-1-70(8). Courts have absolute immunity from a claim for damages arising out of any adjudicative act within its jurisdiction. See Plyler v. Burns, 373 S.C. 637, 643 (2007) (stating that when a court undertakes any adjudicative act within its jurisdiction, regardless of allegations of malicious or corrupt motive, the act is considered a judicial function for which the court will have absolute immunity). Judges also have absolute immunity from a claim for damages arising out of their judicial actions. See Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991) (stating that judges are immune from civil suit for actions taken in their judicial capacity, unless “taken in the complete absence of all jurisdiction”); Stump v. Sparkman, 435 U.S. 349, 351–64, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) (“A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.”); Pressly v. Gregory, 831 F.2d 514, 517 (4th Cir.1987) (dismissing a suit against two Virginia state magistrates); Chu v. Griffith, 771 F.2d 79, 81 (4th Cir.1985) (“It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.”); see also Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 at 540–41 (S.C.2002) (recognizing judicial and quasi-judicial immunity under the South Carolina Tort Claims Act and South Carolina common law); Thomas v. Charleston, 2017 WL 11562553 at * 4 (D.S.C. Sept. 5, 2017) (recognizing absolute judicial immunity for judicial actions). Absolute immunity is “an immunity from suit rather than a mere defense to liability.” Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

A judge is not entitled to judicial immunity if: “(1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only.” Stump, 435 U.S. at 357; Faile, 566 S.E.2d at 540–41; Plyler, 373 S.C. at 645.

In this case, Plaintiff alleges that Town of McBee was grossly negligent through Judge Lisenby’s handling of Plaintiff’s judicial proceedings. Judge Lisenby is a municipal judge who was acting within the course and scope of her employment as a municipal judge, and she had jurisdiction to act. Plaintiff never alleges that any action taken by Judge Lisenby was outside the scope of her employment as a municipal court judge. Plaintiff never alleges that Judge Lisenby did not have jurisdiction to act, that any of her acts did not serve a judicial function, and the suit is not for injunctive relief. Plaintiff’s allegations against Town of McBee specifically relate to actions and/or inactions taken within the courtroom. Plaintiff admits that the acts were judicial functions in his complaint by complaining that the proceedings were an “impermissible bench trial,” and with his allegations of malicious prosecution during the legal proceedings (Complaint ¶¶ 17 and 40). These acts are precisely the type of judicial acts to which immunity applies.

Plaintiff, therefore, has failed to plead sufficient facts that Judge Lisenby acted “in the clear absence of all jurisdiction” or satisfied any recognized exception to the state’s application of judicial immunity. While Plaintiff appears to allege malice in his complaint, as the Supreme Court has noted, this is insufficient.² Accordingly, Judge Lisenby is absolutely immune from suit for monetary damages, even if her actions were done in error, maliciously, or in excess of their authority. See Stump, 435 U.S. 357 n. 7; Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir. 2005); Plyler, 373 S.C. at 646. Furthermore, Town of McBee has absolute immunity from

² “[The judge’s] errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.” *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967).

Plaintiff's claims regarding judicial action and/or inaction. As such, the Town of McBee is entitled to summary judgment as a matter of law.

II. Plaintiff's claims for false imprisonment are subject to summary dismissal because his arrest was supported by probable cause.

Although Plaintiff submits that he did not plead false arrest, out of an abundance of caution, it is still determined that any claim for false arrest would fail as a matter of law. 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); 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); 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).

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. 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. State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996); Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983). Probable cause is determined as of the time of the

arrest, based on facts and circumstances--objectively measured--known to the arresting officer. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). The determination of probable cause is not an academic exercise in hindsight. George, 323 S.C. at 509, 476 S.E.2d at 911; Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 415-16 (1982); State v. Goodwin, 351 S.C. 105, 110, 567 S.E.2d 912, 914 (Ct. App. 2002); State v. Robinson, 335 S.C. 620, 634, 518 S.E.2d 269, 276-77 (Ct. App. 1999); 5 Am. Jur. 2d Arrest § 40; 6A C.J.S. Arrest § 25 (2004). "Evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." Horton v. California, 496 U.S. 128, 138, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990). 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.

In this case, probable cause undeniably existed for the Plaintiff's arrest. As the record reflects, as a result of a lawful traffic stop, Dep. Reichard arrested Plaintiff on charges of multiple traffic violations. Plaintiff did not deny any of the charges, and the undisputed facts reflect that probable cause existed for Plaintiff's arrest. The undisputed evidence of record reflects that Plaintiff was restrained pursuant to lawful authority and therefore Plaintiff cannot establish that Town of McBee is liable for false imprisonment. No genuine issue of material fact exists in this regard. As such, Town of McBee is entitled to summary judgment as a matter of law.

III. The Court finds that Plaintiff's claim for negligence/gross negligence fails as a matter of law.

In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by negligent act or omission, (3) the defendant's

breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999); Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977). "Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994); accord Jinks v. Richland County, 355 S.C. 341, 344, 585 S.E.2d 281, 283 (2003); Worsley Cos., Inc. v. Town of Mount Pleasant, 339 S.C. 51, 57, 528 S.E.2d 657, 661 (2000); Marietta Garage, Inc. v. S.C. Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). It is the failure to exercise even the slightest care. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 331-32, 566 S.E.2d 536, 544 (2002); Rakestraw v. S.C. Dep't of Highways and Public Transp., 323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996). "Gross negligence...means the absence of care that is necessary under the circumstances." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000).

In this case, Plaintiff fails to demonstrate a breach of any duty occurred at Plaintiff's judicial proceedings. The sworn affidavit of Dep. Reichard reflects that neither he and/or Defendant were negligent or grossly negligent in any manner whatsoever. Judge Lisenby exercised that degree of care and skill ordinarily exercised by municipal judges under similar conditions and in similar circumstances. Judge Lisenby did not deviate from the generally accepted standards, practices, and procedures exercised by competent municipal judges in municipal court proceedings. Accordingly, Plaintiff fails to establish the breach of any duty owed to him. As such, the Town of McBee is entitled to summary judgment as a matter of law.

IV. The Court finds that the Plaintiff's Claim for Negligent Supervision is also Subject to Summary Dismissal.

Negligent supervision is a tort in which an employer may be held liable for the conduct of an employee outside the scope of employment where the employer is under a duty to exercise reasonable care to control the conduct of this employee. Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). An 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 the ability to control his employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control. Id. at 115-17, 420 S.E.2d at 496. In South Carolina, employees may bring such a claim against a former employer. Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231 (2002).

In the present case, Plaintiff fails to put forth any evidence that Defendant negligently supervised anyone. Defendant provided Plaintiff with fair judicial proceedings. Neither Defendant nor Judge Lisenby deprived Plaintiff of his right to due process. Plaintiff fails to demonstrate a breach of any duty occurred at any judicial proceeding to justify such a claim. As such, the Town of McBee is entitled to summary judgment as a matter of law.

V. *The Court finds that Plaintiff's Claim for Malicious Prosecution is Subject to Summary Dismissal.*

To establish a claim for malicious prosecution, the 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). Plaintiff has failed to do so. No genuine issue of material fact exists in this regard. For this reason, these Defendant's motion for summary judgment should be granted.

Plaintiff cannot maintain his claim for malicious prosecution because the legal proceedings upon which his claims are based were not terminated in his favor. *See eg. Campbell v. Smith*, Civil Action No. 9:08-4078-DCN-BM, 2009 U.S. Dist. LEXIS 103247 at * 18-20 (D.S.C., Oct. 1, 2009), affirmed by, summary judgment granted by, dismissed by *Campbell v. Smith*, 2009 U.S. Dist. LEXIS 103137 (D.S.C. Nov. 4, 2009) (Plaintiff's entry of a guilty plea to some charges, with the remaining charges then being dismissed or *nolle prossed*, is not a favorable disposition of the other charges, under South Carolina law); *Medows v. City of Cayce*, Civil Action No. 3:07-409-HFF-BHH, 2008 U.S. Dist. LEXIS 112487 at *9 (D.S.C. Feb. 28, 2008) adopted by, objection overruled by, summary judgment granted by *Medows v. City of Cayce*, 2008 U.S. Dist. LEXIS 52936 (D.S.C. June 24, 2008) (*nolle prosse* "with leave to re-indict" is not a circumstance which implies or is consistent with the innocence of the accused)(citing *Jackson v. Gable*, Civil Action No. 0:05-2592-HFF-BM, 2006 U.S. Dist. LEXIS 35169, 2006 WL 1487047 at *6 (D.S.C. May 25, 2006); *Hudson v. Sims*, C/A No. 3:06-2115-GRA-JRM, 2006 U.S. Dist. LEXIS 89948 at *3 (D.S.C. Sept. 25, 2006) (where Plaintiff produced no evidence that *nolle prosequi* was entered under circumstances indicative of innocence, the magistrate judge's recommendation that suit be dismissed without prejudice was adopted by this District Court); *Stokes v. Moorman*, 2010 U.S. Dist. LEXIS 101966, *23-24, 2010 WL 3862568 (D.S.C. Aug. 17, 2010).

Plaintiff has failed to prove the elements required to support his claim for malicious prosecution. Plaintiff suggests that Town of McBee engaged in a form of malicious prosecution by failing to allow subsequent filings but has failed to produce any evidence that subsequent

filings were denied. Plaintiff noted that Town of McBee did not return a filed copy of a motion to reconsider to Plaintiff, but the South Carolina Criminal Rules on motions include no requirement for the court to send back a filed copy of a motion. Plaintiff also submits that Town of McBee engaged in malicious prosecution by denying Plaintiff the opportunity to appeal his case. Town of McBee never denied Plaintiff the opportunity to appeal his case. Instead, Plaintiff failed to properly file an appeal with the circuit court as required by Magistrate Court Rule 18.

Here, as a result of a lawful traffic stop, Plaintiff was charged with multiple traffic violations. Probable cause existed for his arrest and Plaintiff did not deny any of the charges. Plaintiff was incarcerated at Chesterfield County Detention Center on August 8, 2019 and released on August 15, 2019 when his fines were paid. The payment of Plaintiff's fines indicates Plaintiff pled guilty to the crimes he was charged with. Furthermore, Plaintiff was convicted of the crimes alleged. Clearly the legal proceedings were not terminated in Plaintiff's favor.

Accordingly, Plaintiff's claim for malicious prosecution is subject to summary dismissal because the undisputed facts reflect that probable cause existed for his arrest and the termination of the proceedings was not in Plaintiff's favor.

VI. The Court finds that Plaintiff's Claims are barred by both the doctrine of sovereign immunity and the South Carolina Tort Claims Act.

"The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." Proctor v. Dep't of Health & Envtl. Ctrl., 368 S.C. 279, 290, 628 S.E.2d 496, 502 (Ct. App. 2006) (quoting Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005)). "The State, an agency, a political subdivision, and a governmental entity

are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained" within the SCTCA. S.C. Code Ann. § 15-78-40. However, the General Assembly did not intend to waive all its sovereign immunity. "The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20(b). Thus, the Act waives sovereign immunity "while also providing specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances." Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998). Relevant exceptions to the waiver of immunities are as follows:

A. The Court finds that Town of McBee is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction pursuant to S.C. Code Ann. § 15-78-60(1).

Plaintiff's allegations arise from complaints related to judicial action or inaction on the part of Judge Lisenby. All of her actions were taken serving a judicial function. As such, Town of McBee is immune from suit because it cannot be liable for Plaintiff's alleged loss resulting from judicial action or inaction pursuant to S.C. Code Ann. § 15-78-60(1). *See Plyler v. Burns*, 373 S.C. 637, 652 (2007). The exceptions outlined within the Act must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-20(f). For this reason, Town of McBee is entitled to summary judgment as a matter of law.

B. The Court finds that Town of McBee is not liable for a loss resulting from execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process pursuant to S.C. Code Ann. § 15-78-60(3).

Plaintiff's allegations arise from complaints related to Judge Lisenby's performance of her duties as a part of the judicial process. All of her actions were taken serving a judicial function. As such, Town of McBee cannot be liable for Plaintiff's alleged loss resulting from execution or lawful implementation of judicial process pursuant to S.C. Code Ann. § 15-78-60(3).

Plaintiff also alleges that Defendant violated his rights by unlawfully restraining him. However, the Defendant at all times relevant hereto was merely enforcing and implementing the order of the court. As such, Town of McBee cannot be liable for Plaintiff's alleged loss resulting from enforcing or implementing an order of the court. *See Jackson v. S.C. Dep't of Corr.*, C.A. No. 3:14-2262-MGL-SVH, 2016 WL 403588, at *2 (D.S.C. Jan. 12, 2016) (finding that the SCTCA precluded SCDC's liability on the plaintiff's claim for false imprisonment), *R&R adopted by* 2016 WL 374826 (D.S.C. Feb. 1, 2016). Again, the exceptions outlined within the Act must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-20(f). As such, the Town of McBee is entitled to summary judgment as a matter of law.

C. The Court finds that Town of McBee is not liable for a loss resulting from 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 pursuant to S.C. Code Ann. § 15-78-60(4).

S.C. Code Ann. § 15-78-60(4) provides that a governmental entity, such as Town of McBee, is not liable for a loss resulting from:

(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.

S.C. Code Ann. § 15-78-60(4).

Likewise, when interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. The words used in the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Gilstrap v. S.C. Budget and Control Bd., Op. No. 23711 (S.C. Sup. Ct. filed September 15, 1992) (Davis Adv. Sh. No. 21 at 5, 8).

This subsection provides immunity for failure to adopt or enforce written policies, which is what Plaintiff blames for his alleged injuries. Plaintiff alleges that Defendant failed to have appropriate policies in place to provide for the safety, rights, and well-being of Plaintiff and other members of the public, and if such policies exist, failed to follow the same (Complaint ¶ 24). As such, Town of McBee cannot be liable for an alleged loss resulting from the failure to adopt or enforce written policies or if such policies exist, in failing to follow the same, pursuant to S.C. Code Ann. § 15-78-60(4). *See Adkins v. Varn*, 439 S.E.2d 822, 824 (S.C. 1993) (“the provisions of Section 15-78-60(4) are clear and unambiguous on their face and are not subject to judicial interpretation. The statute clearly exempts from liability any loss resulting from the failure to enforce an ordinance.”). For this reason, Town of McBee is entitled to summary judgment as a matter of law.

D. The Court finds that Town of McBee is not liable for 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 pursuant to S.C. Code Ann. § 15-78-60(5).

Under the Tort Claims Act, sovereign immunity is abrogated, inter alia, as to ministerial acts by governmental entities. Jensen v. Anderson County Dep’t of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991). In contrast, the Tort Claims Act provides a governmental entity is not liable for a loss resulting from the exercise of discretion by the governmental entity or employee or the performance or failure to perform any act which is in the discretion or judgment

of the governmental entity or employee. S.C. Code Ann. § 15-78-60(5). To sustain immunity under section 15-78-60(5), the governmental entity must show that when faced with alternatives, it actually weighed competing considerations and made a conscious decision to act or not to act, and that it used accepted professional standards appropriate to resolve the issue before it. Strange v. South Carolina Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). *See also* Niver v. South Carolina Dep't of Highways & Pub. Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct. App. 1990).

In this case, Judge Lisenby exercised discretion and professional judgment in conducting Plaintiff's judicial proceedings, which is precisely what Plaintiff blames for his alleged injuries. At all relevant times, Judge Lisenby was an employee of the Town of McBee. Judge Lisenby weighed competing considerations and made a conscious decision to allow Plaintiff more time to reinstate his license. She was also faced with making the judgment call regarding whether to send Plaintiff to jail after she had given him more time to rectify his license and he drove while his license was suspended. Judge Lisenby applied her training and accepted professional standards to conduct Plaintiff's court proceedings. Accordingly, Town of McBee is not liable for 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 pursuant to S.C. Code Ann. § 15-78-60(5). For this reason, Town of McBee is entitled to summary judgment as a matter of law.

E. The Court finds that Town of McBee is not liable for a loss resulting from 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 employee pursuant to S.C. Code Ann. § 15-78-60(17).

A governmental entity is not liable for a loss resulting from 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. S.C. Code Ann. § 15-78-60(17). Therefore, to the extent that the Plaintiff alleges that Judge Lisenby's conduct was outside the scope of her official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, Town of McBee is not liable for a loss resulting from same. For this reason, Town of McBee is entitled to summary judgment as a matter of law.

F. The Court finds that the Town of McBee is not liable for a loss resulting from the institution or prosecution of any judicial or administrative proceeding pursuant to S.C. Code Ann. § 15-78-60(23).

A governmental entity is not liable for a loss resulting from the institution or prosecution of any judicial or administrative proceeding. S.C. Code Ann. § 15-78-60(23). Plaintiff alleges losses resulting from Town of McBee's performance of its duties as part of the judicial process, therefore Town of McBee is also not liable for these losses. For this reason, Town of McBee is entitled to summary judgment as a matter of law.

VII. The Court finds that Plaintiff's claims for Constitutional Violations should be dismissed.

Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). In regard to Plaintiff's court proceedings, the undisputed facts reflect that the Plaintiff received his *Faretta* warnings and was given an opportunity request a court-appointed attorney, which he failed to do. Plaintiff was also given an opportunity to request a jury trial, which he also failed to do. Plaintiff was provided the opportunity to appear before Judge Lisenby twice, and Plaintiff was provided the opportunity to introduce evidence. During both appearances, Plaintiff informed Judge Lisenby that he needed more time to rectify his insurance and suspended license and requested more time to do so. This is sufficient to satisfy any requirement of due process.

In regard to Plaintiff's claims against Town of McBee in his opposition concerning a lack of procedures for motions to reconsider, the South Carolina Criminal Rules on motions include no requirement for the Clerk of Court to send back a filed copy of a motion or letter of representation. Plaintiff has cited no constitutional right, statute, law, or even procedure requiring the Town of McBee to provide him with a filed copy of a motion or letter of representation.

In regard to Plaintiff's claims against Town of McBee in his opposition concerning a lack of procedures for other potential appeals, these procedures are found in the South Carolina Magistrate Court Rules. Magistrate Court Rule 18 contains the requisite appeal procedures, which Plaintiff's counsel failed to follow as he failed to properly file an appeal with the circuit court. As such, Plaintiff's claims that Town of McBee denied Plaintiff the opportunity to appeal his case are simply unfounded. None of Town of McBee's actions constitute a violation of any constitutional right. For this reason, Town of McBee is entitled to summary judgment as a matter of law.

Conclusion

IT IS THEREFORE ORDERED that Defendant Town of McBee's motion for summary judgment is granted.

AND IT IS SO ORDERED.



Chesterfield Common Pleas

Case Caption: Michael Qualls VS Town Of Mcbee

Case Number: 2020CP1300672

Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-10-04 13:51:58 page 18 of 18

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Chesterfield
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1300672

Michael Qualls
PLAINTIFF(S)

Town Of Mcbee
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Motion to Reconsider is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/06/2022 .

Katherine McLean Ryan for Town Of Mcbee
Skyler Bradley Hutto for Michael Qualls

RECEIVED
Dec 13 2022
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Chesterfield Common Pleas

Case Caption: Michael Qualls VS Town Of Mcbee

Case Number: 2020CP1300672

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-12-06 14:01:17 page 3 of 3