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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Appellate Case No. 2024-000833

Christine Jernigan and Justin Jernigan……...……..…..……Appellants,

v.

Kershaw County Sheriff's Office….…….……..…….…..……...Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan and Justin Jernigan, *Plaintiffs,* v. *Kershaw County Sheriff's Office,* *Defendant.*	NO. 2022-CP-___-_____ **SUMMONS** **(Non-Jury)**

TO: THE ABOVE NAMED DEFENDANT

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 this Complaint on Plaintiffs Christine Jernigan and Justin Jernigan, via attorney Justin A. Jernigan, at 7148 Stirrup Ct., Weddington, NC 28104, within thirty (30) days from the date of such service, and if you fail to answer the Complaint within this time period, Plaintiffs will apply to the Court for judgment by default for the relief requested.

Date: September 12, 2022

Respectfully submitted,

By: /s/Justin A. Jernigan

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PRO SE AND ATTORNEY FOR MRS. JERNIGAN

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Christine Jernigan and Justin Jernigan, *Plaintiffs,* v. *Kershaw County Sheriff's Office,* *Defendant.*	NO. 2022-CP-___-_____ **COMPLAINT** **Freedom of Information Act Disclosure of BWC Data (Non-Jury)**

Plaintiffs respectfully submit this Complaint alleging, based on personal knowledge as to their own actions and based on information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff Christine Jernigan ("Mrs. Jernigan") is a citizen and resident of Seneca, South Carolina, Oconee County.

2. Plaintiff Justin Jernigan ("Mr. Jernigan") is a citizen residing in Weddington, North Carolina, Union County. Mr. Jernigan is a patent attorney and is licensed in the states of North and South Carolina.

3. Defendant Kershaw County Sheriff's Office maintains its principal office at 821 Ridgeway Road, Lugoff, South Carolina, 29078, and may be served with process through its chief officer, Sheriff Lee Boan.

4. At all times relevant to the facts discussed herein, Defendant Kershaw County Sheriff's Office acted by and through its chief officer, secondary officers, communications operators, employees, agents, authorized representatives, and/or attorneys (collectively, "KCSO").

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JURISDICTION AND VENUE

5. This is an action pursuant to the Court's authority under S.C. Code §§ 15-3-310, *et seq*., 15-53-10, *et seq*., 30-4-10, *et seq*. ("FIOA"), and 23-1-240(g)(5).

6. This Court has personal jurisdiction over KCSO, and venue is proper under S.C. Code §§ 15-7-10, *et seq*., because KCSO's principal office is in Kershaw County and the matters complained of herein occurred in Kershaw County.

FACTS

7. KCSO meets the definition of a public body under FOIA, S.C. Code § 30-4-20(a).

8. FOIA protects the public from secret government activity by KCSO by providing for the disclosure of public records and information.

9. The provisions of FIOA must be construed to make it possible for Plaintiffs, and other citizens or their representatives, to learn and report on the investigative and enforcement activities of KCSO at a minimum cost or delay.

10. FOIA creates an affirmative duty on KCSO to disclose records and other public information.

11. Public records subject to disclosure by KCSO include all types of records and data, including digital or electronic data, prepared, owned, used, in the possession of, or retained by KCSO.

12. KCSO may, but is not required to, exempt certain limited public data from disclosure under FOIA.

13. Any FOIA exemptions claimed by KCSO must be narrowly interpreted and applied.

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14. KCSO bears the burden of proof with respect to any claimed FOIA exemptions and must point specifically to the language of a statute or other provision rather than making general or blanket exemption claims.

15. KCSO cannot lawfully withhold any non-exempt public information or data.

16. On July 22, 2022, Mr. Jernigan, individually and on behalf his mother Mrs. Jernigan, properly submitted a FOIA request to KCSO (the "7.22.22 Request"). Ex. A.

17. The 7.22.22 Request seeks, *inter alia*, all records concerning KCSO's interactions with Plaintiffs and third parties that accused Plaintiffs of alleged improper, unlawful, or criminal conduct during June 2022 to present.

18. Mr. Jernigan initially requested and attempted to obtain certain of these public records during visits to KCSO's principal office, and phone calls with KCSO, during the afternoon and evening of June 29, 2022.

19. Mr. Jernigan first arrived at KCSO's principal office at approximately 12:00pm on June 29, 2022 to intervene in KCSO's pursuit and stop of Mrs. Jernigan's vehicle, and subsequent seizure and detention of Mrs. Jernigan and her mother Mrs. Martin, a vulnerable adult, in the vehicle for approximately 45 minutes.

20. Upon Mr. Jernigan's arrival at KCSO's principal office on June 29, 2022, KCSO's seizure and detention had been ongoing for approximately 20 minutes.

21. KCSO denied Mr. Jernigan's numerous requests on June 29, 2022, to release his mother, Mrs. Jernigan, and grandmother, Mrs. Martin.

22. KCSO denied Mr. Jernigan's numerous requests on June 29, 2022, to document its actions in writing and the alleged reasons or justifications for its investigative and enforcement actions.

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23. At the conclusion of the approximately 45-minute seizure and detention of Mrs. Jernigan and Mrs. Martin on June 29, 2022, KCSO officers required Mrs. Martin to exit Mrs. Jernigan's vehicle.

24. KCSO required Mrs. Martin to return to a privately-owned, community residential care facility ("CRCF") doing business under the fictious name Pinedale Residential Center ("Pinedale") at 798 Hermitage Pond Road, Camden, Kershaw County.

25. Pinedale's Administrator informed Mr. Jernigan on June 28, 2022, that Mrs. Martin was free to voluntarily travel away from Pinedale with her daughter Mrs. Jernigan.

26. After Mrs. Martin voluntarily traveled away from Pinedale with her daughter Mrs. Jernigan on June 29, 2022, multiple KCSO marked vehicles pursued and stopped Mrs. Jernigan's vehicle within approximately one mile of Pinedale's exit.

27. KCSO's response on June 29, 2022, was triggered by presently unknown third party allegations of improper, unlawful, or criminal activity against Plaintiffs.

28. KCSO has refused all requests to disclose public records and data concerning the third-party allegations against Plaintiffs which triggered KCSO's investigative and enforcement activities of June 29, 2022.

29. The officers in the KCSO-marked emergency vehicles that rapidly engaged and began enforcement activity pursuant to the third-party allegations against Plaintiffs on June 29, 2022, were required to use recording, communications, and other KCSO vehicle related equipment through the conclusion of such activities. *See*, *e.g.*, S.C. Code §§ 56-5-170, 760, 4700, and 4970.

30. State laws, regulations, and KCSO policies necessitate generation of public records, via vehicle recording equipment, vehicle communications equipment, and otherwise,

with respect to KCSO's actions on June 29, 2022, for example, communications between dispatch and patrolling officers leading to initiation of KCSO's response, communications between other officers, such as supervising officers, during KCSO's response, and reports regarding the same. *See, e.g.*, S.C. Code § 56-5-760(e); KCSO Policy Manual, Chapter 404.

31. Additionally, State laws, regulations, and KCSO policies must be followed by KCSO officers concerning use of body-worn cameras ("BWCs") during investigative and enforcement activities. *See, e.g.*, KCSO Policy Manual, Chapter 508.

32. BWCs are expected to result in greater accountability and transparency with respect to KCSO's activities.

33. BWCs shall be worn and placed in the ON, or always buffering, position whenever KCSO officers are in uniform and have a reasonable expectation of interacting with the public, in-person or via phone calls, and BWCs shall be activated and utilized during all investigative or enforcement contacts.

34. If citizen interactions or enforcement contacts could result in a citizen complaint or complaints being filed against KCSO, the officers involved should bring the relevant BWC data to the attention of a supervisor and, if no crime report or supplementary report is being prepared, details should be documented via information report or memorandum.

35. The 7.22.22 Request also seeks public records and data concerning the names, ranks, dates of service, and other human resource related information concerning the KCSO officers, employees, or agents having personal involvement with KCSO's actions of June 29, 2022, or otherwise having interactions with Plaintiffs or the third parties involved, from June 2022 to present. Ex. A; *see also* S.C. Code § 30-4-50(a)(1) (requiring disclosure of "names, sex, race, title, and dates of employment of all employees and officers of public bodies").

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36. The 7.22.22 Request further seeks, for those KCSO officers, employees, or agents personally involved, public records and data concerning training, classes, certifications, or instructions with respect to probable cause, reasonable suspicion, or other indications of criminal activity required before taking investigative or enforcement actions against private citizens. Ex. A at 2.

37. Mr. Jernigan contacted 1-888-CARE4US (1-888-227-3487) on the morning of June 28, 2022, and the representative indicated to Mr. Jernigan that KCSO was the appropriate entity for reporting his concerns regarding suspected exploitation of a vulnerable adult, his grandmother Mrs. Martin, pursuant to the Omnibus Adult Protection Act ("OAPA"), S.C. Code §§ 43-35-5, *et seq*.

38. The 7.22.22 Request additionally seeks public records and data concerning Mr. Jernigan's reporting to KCSO, on June 28-29, 2022, of suspected exploitation of a vulnerable adult under the OAPA, and, for those KCSO officers, employees, or agents personally involved, relevant training, classes, certifications, or instructions with respect to the OAPA. Ex. A at 1-2.

39. The 7.22.22 Request states that it would be further explained, limited, or clarified, as may be appropriate or to the extent necessary for KCSO to fulfill its disclosure obligations under FOIA. Ex. A at 2.

40. KCSO indicated or requested that the 7.22.22 Request needed to be further explained, limited, or clarified in order to fulfill its disclosure obligations under FOIA.

41. Upon receipt of the 7.22.22 Request, KCSO was required to provide a written response within 10 days, excepting Saturdays, Sundays, and legal public holidays, with its determination as to the records and information requested therein. S.C. Code § 30-4-30(c).

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42. KCSO provided its only written determination as to the records requested within required the 10-day period under FOIA on July 25, 2022, stating as follows (emphasis added):

> After reviewing … [the 7.22.22] request, *we do not have any reports regarding the incident you mentioned from June 29, 2022*. The *only records* of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that *the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident*. If you have any further questions or concerns, you are welcome to contact us.

43. FIOA does not contain any "civil issue" exemption, much less a civil issue exemption that could potentially be applied to specific records of the 7.22.22 Request.

44. The 7.22.22 Request must be considered granted due to KCSO's failure to provide the written determination required under FOIA as to the availability of the requested records within the required 10-day period.

45. It is a crime to unlawfully remove, deface, or destroy public records under S.C. Code § 30-1-30 and Mr. Jernigan has been requesting, since June 29, 2022, that KCSO provide public records relating to its investigative and enforcement actions.

46. KCSO provided another reply with respect to the 7.22.22 Request on July 27, 2022, as follows:

> I've added the County Attorney [H. Thomas Morgan, Jr. ("Mr. Morgan")] on to this email thread. From this point forward, please refer to him for anything further so that we can assure all of your needs are met.

47. Accordingly, on July 27, 2022, Mr. Morgan began serving as KCSO's counsel and authorized representative with respect to the 7.22.22 Request and related issues.

48. Related non-FIOA issues raised with KCSO and Mr. Morgan include: (*i*) KCSO providing some kind of assurance that it would not take such enforcement actions next time Mrs. Martin chooses to voluntarily travel away from Pinedale with Mrs. Jernigan; (*ii*) the suspected

exploitation of a vulnerable adult reported to KCSO pursuant to the OAPA; (*iii*) Plaintiffs being the victims of potential crimes as a result of the presently unknown accusations of alleged improper, unlawful, or criminal activity to KCSO; and (*iv*) that details concerning KCSO's enforcement actions should potentially be reported to the State Law Enforcement Division ("SLED").

49. Between July 27 to August 17, 2022, Mr. Jernigan followed up with KCSO regarding the 7.22.22 Request and other related issues many times.

50. On August 12, 2022, KCSO's counsel Mr. Morgan indicated that he would investigate these matters and would try to call Mr. Jernigan to discuss later that day.

51. KCSO's counsel did not call Mr. Jernigan on August 12, 2022, to discuss the 7.22.22 Request or related non-FIOA matters raised.

52. On August 18, 2022, Mr. Morgan indicated that dispatch operator or E-911 communication records, and possibly dash camera video, responsive to the 7.22.22 Request were being mailed and should be received within approximately one week or so.

53. On August 18, 2022, Mr. Morgan also indicated that KCSO considered all FOIA and non-FOIA issues raised to be closed at that time, even though KCSO never provided any substantive responses with respect to other records clearly encompassed by the 7.22.22 Request or with respect to the non-FOIA issues raised.

54. After receiving the KCSO dispatch operator or E-911 communication telephone records mailed by KCSO's counsel on August 18, 2022, and Mr. Morgan's Cover Letter stating that these were all the "non-exempt" communication related records falling within the 7.22.22 Request, Mr. Jernigan contacted Mr. Morgan on August 22, 2022, because the records provided only concerned, or involved, Mr. Jernigan and his own phone conversations with KCSO.

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55. Portions of the incomplete communications related records mailed by KCSO's counsel on August 18, 2022, had also been redacted for entirely unknown and unexplained reasons.

56. On August 22, 2022, Mr. Jernigan and KCSO's counsel Mr. Morgan discussed the 7.22.22 Request and the incomplete communications related records mailed on August 18, 2022.

57. The Parties' conversations on August 22, 2022, were not productive with respect to the FOIA issues because KCSO's counsel had not read or considered the 7.22.22 Request.

58. On August 23, 2022, Mr. Jernigan followed up with KCSO's counsel via email proposing that KCSO provide, as soon as possible, all records of the 7.22.22 Request with respect to the third parties and their allegations of improper, unlawful, or criminal conduct reported to KCSO against Plaintiffs. If KCSO would agree to do this, the August 24, 2022, deadline pursuant to S.C. Code § 30-4-30(c) could be extended for the additional public records and data of the 7.22.22 Request yet to be addressed or provided by KCSO. KCSO rejected this proposal on the evening of August 23, 2022.

59. On August 24, 2022, Mr. Jernigan contacted KCSO's counsel and proposed that KCSO, rather than providing or mailing copies, allow inspection of the public records of the 7.22.22 Request. KCSO implicitly rejected the August 24, 2022, proposal because it failed to provide any response at all.

60. On August 26, 2022, Mr. Jernigan received a dash camera video that was mailed by KCSO's counsel on August 23, 2022.

61. The dash camera video mailed by KCSO's counsel on August 23, 2022, shows a rear perspective view of the approximately 45-minute seizure and detention of Mrs. Jernigan and

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Mrs. Martin in Mrs. Jernigan's vehicle, and KCSO requiring Mrs. Martin to exit Mrs. Jernigan's vehicle, but omits all portions of KCSO's response and pursuit of June 29, 2022, and does not include any associated audio regarding KCSO's investigative and enforcement activities of June 29, 2022.

COUNT I
FOIA Violations (S.C. Code § 30-4-100)

62. Plaintiffs incorporate each of the foregoing allegations by reference as if fully set forth herein.

63. An actual, present, and justiciable controversy exists concerning the 7.22.22 Request. Ex. A.

64. KCSO's written determination of July 25, 2022, at Paragraph 42 above, and its incomplete disclosure of requested public records of the 7.22.22 Request (Ex. A), including the records as generally described at Paragraphs 17, 35-36, and 38 above, do not meet the statutory requirements of FOIA.

65. KCSO's FOIA violations are irreparable injuries for which no adequate remedy at law exists.

66. Plaintiffs seek a declaration from this Court that KCSO has violated FIOA.

67. Plaintiffs seek injunctive relief requiring KCSO to provide all requested public records of the 7.22.22 Request.

COUNT II
Disclosure of BWC Data (S.C. Code § 23-1-240(g)(5))

68. Plaintiffs incorporate each of the foregoing allegations of Paragraphs 1-61 by reference as if fully set forth herein.

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69. State law and KCSO's policies provide that those persons who are the subjects of BWC data may request and must receive such data pursuant to a court order. S.C. Code § 23-1-240(g)(5)

70. Plaintiffs seek an order from this Court requiring disclosure of BWC data pursuant to S.C. Code 23-1-240(g)(5) by KCSO.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

A. Schedule an initial hearing within 10 days of the date of service of this Complaint pursuant to 30-4-100(A);

B. Declare that KCSO's written determination and limited disclosure in response to the 7.22.22 Request are in violation of FIOA with respect to the public records requested (Ex. A) and generally described at Paragraphs 17, 35-36, and 38;

C. Declare that any exemptions, including purported "civil issue" exemptions, claimed by KCSO are in violation of FOIA;

D. Issue an order restraining and enjoining KCSO from continuing to violate FOIA with respect to matters described herein;

E. Issue an order that KCSO immediately disclose the public records requested (Ex. A) and generally described at Paragraphs 17, 35-36, and 38;

F. Issue an order requiring KCSO to disclose BWC data to Plaintiffs pursuant to S.C. Code 23-1-240(g)(5).

G. Issue an order awarding Plaintiffs all costs and expenses incurred in this action, including reasonable attorneys' fees, as provided in S.C. Code § 30-4-100; and

H. Grant such other or further relief to which Plaintiffs may be entitled as a matter of law or equity, or which the Court may deem just and proper under the circumstances.

Date: September 12, 2022

Respectfully submitted,

By: /s/Justin A. Jernigan

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PRO SE & ATTORNEY FOR MRS. JERNIGAN

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EXHIBIT **A**

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KERSHAW COUNTY SHERIFF'S OFFICE

SHERIFF LEE BOAN

Freedom of Information Act Request Form

Requestor: Justin Jernigan Phone: 864-710-5029

Address: 7148 Stirrup Ct. Weddington NC 28104

Email: justin.a.jernigan@gmail.com

Pursuant to S.C. Code Section §30-3-40, the South Carolina Freedom of Information Act (SC FOIA) I am requesting copies of the following public records:
(Note: Data recorded by a body-worn camera is not a public record subject to disclosure under the Freedom of Information Act. S.C. Code Ann. §23-1-240(G) (1).)

Records Sought: (Please be as SPECIFIC as possible-include any names, addresses, dates of births, case numbers if known, specific dates and/or date range, type of report, etc.)

Case/Report #: Unknown

Please see attached.

Pursuant to SC Code Section 30-2-50, obtaining or using public records under the Freedom Information Act for the commercial solicitation of any person in this State is prohibited by law and subject to criminal penalty. No person or private entity shall obtain or distribute personal information obtained from a public record for commercial solicitation.

Fee Schedule:	Return Request in Person, Via U.S. Mail or by Email to:
$15.00 per hour for search, retrieval and redaction	Kershaw County Sheriff's Office
$5.00 for each incident report	ATTN: FOIA Officer
$10.00 per CD/DVD	821 Ridgeway Road/ PO Box 70 Lugoff, SC 29078
$5.00 per statement	Email: KCSO@kershaw.sc.gov
Method of Payment: Cashier's Check or Cash	

Signature 7/22/22 Date

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KERSHAW COUNTY SHERIFF'S OFFICE
SHERIFF LEE BOAN

Freedom of Information Act Request Form

Requestor: Justin Jernigan

Date: 7/22/22

Records Sought Information (continued from Department's Form):

The dates for the incidents requested are generally from June 1, 2022, to present. Certain portions of this request, however, are outside this date scope concerning the relevant training or certifications of the Department employees personally involved.

The only reference information I received from the Department (Dispatch Operator) was CAD Number 2022-39001 with respect to my phone calls to and messages left with the Department on June 28, 2022, and the return phone call I received from Deputy Branham on June 29, 2022, who accepted my reporting of suspected exploitation of a vulnerable adult, my grandmother, at around 10:30am via phone.

I would respectfully request all public records relating to my reporting of suspected exploitation of a vulnerable adult, my grandmother, Ann Berry Martin, 86 years old, who is presently located in Kershaw County at the Pinedale Residential Care Facility (Rm 104). The requested records include, but are not limited to, call logs, notes, investigation file reference number(s) assigned, information concerning officers assigned to investigation(s), etc.

I would also respectfully request all public records concerning Department actions involving my mother (Christine Pratt Jernigan, 302 Pine Cliff Dr., Seneca SC 29672), and grandmother (Ann Berry Martin) on June 29, 2022, or otherwise relating to myself. These records also include, but are not limited to, records relating to my aunt/uncle, Sharon/Jim Wright of Camden, and the Pinedale facility, that are relevant to this matter.

More specifically, on June 29, 2022, at approximately 11:30 am, my 86-year-old-grandmother, Ann Berry Martin, was traveling with her daughter, Christine Pratt Jernigan, along Hermitage Pond Rd toward Bishopville Hwy in Camden, Kershaw County. As my Mom/Grandmother were nearing this intersection, oncoming Kershaw County Sherriff's Department vehicles drove past, quickly changed directions, and directly pursued with flashing blue lights and sirens. My mother and grandmother were detained and questioned for one hour or so. I drove to the Sheriff's Department in Lugoff and arrived approximately 20mins into the stop/detention. I requested officers I spoke with at the Office to release my mother and grandmother unless

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charged with a crime. Neither Deputy Branham (who was on the scene and whom I spoke with via phone) nor the other officers at the Kershaw County Sherriff's Office – which included at least Officer Taylor (1st shift, whom I believe to have been the ranking officer in charge at that time) and a younger female officer - ever mentioned any suspected or potential criminal charges.

I would respectfully request all public records concerning my interactions with the Department during the relevant time of June 1, 2022, to present. More specifically, on the evening of June 29, 2022, I also contacted the Department dispatch line. I requested to speak with an officer regarding an incident report with respect to the actions taken with respect to my mother and grandmother and involving myself also. I was on hold for approximately 30 minutes before hanging up and calling dispatch again. I was eventually connected by dispatch to Corporal Taylor (2nd Shift). Corporal Taylor (2nd Shift) stated that no incident report could or would be generated because no criminal conduct or potential criminal conduct was ever at issue. According to Officer Taylor (2nd Shift), this was a "civil matter," and the Department does not prepare any reports in situations that never involved the possibility of criminal charges. Officer Taylor (2nd Shift), however, also declined to specify if the Department would take the same conduct if a similar situation arose.

I also respectfully request records concerning the names, ranks, dates of service, and/or related public information concerning all Department employees having any personal involvement regarding the above-described incidents that occurred in or around late June 2022 to present. Included in this request are training classes taken by these individuals, required, or respective certifications concerning constitutional rights of private citizens in connection with stops, detentions, arrests, use of police powers, etc. (e.g., regarding probable cause, reasonable suspicion, or indications of unlawful conduct required before taking such steps). I would also respectfully request similar training or certification information for all such individuals with respect to investigating abuse of the elderly or otherwise disabled/vulnerable adults.

In conclusion, I respectfully note that the essential purpose of the FOIA is to protect the public from secret government activity. *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct.App.2003); *see also Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001) ("FOIA was enacted to prevent the government from acting in secret."); Wiedemann v. Town of Hilton Head Island, 330 S.C. 532, 535 n. 4, 500 S.E.2d 783, 785 n. 4 (1998) (noting that "[t]he purpose of the FOIA is to protect the public from secret government activity").

Please contact me regarding any questions or concerns regarding this FOIA request. I will gladly explain, limit, and/or clarify the above request as may be appropriate. The purpose of this request is simply to obtain sufficient records to protect the public, including my family, from secret government activity because I was informed that no Department report would otherwise be prepared or provided.

Lastly, the Department Form (attached hereto) indicates that body-worn cameras are not public records under SC Code Ann. 23-1-240(G)(1). I would respectfully request that body-worn camera records, if any, be preserved pending resolution of this FOIA request. I would also

respectfully note that any non-body-worn camera recordings, audio recordings of any type, dashboard cameras, etc., relevant to the above request, and falling within the definition of public records under FOIA, are within the scope of this request.

Sincerely,

Justin A. Jernigan



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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan and Justin Jernigan,	)	C/A #: 22-CP-28-00782
Plaintiffs,	)	
v.	)	**ANSWER OF DEFENDANT (Jury Trial Demanded)**
Kershaw County Sheriff's Office,	)	
Defendant.	)	

The Defendant, Kershaw County Sheriff's Office, answers the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Complaint fail to state facts sufficient to state a cause of action. The Defendant reserves to file a motion pursuant to Rule 12(b)(6) SCRCP. The Defendant also reserves the right to file a motion pursuant to Rule 12(b) contesting jurisdiction or to assert that service of process is improper so that personal jurisdiction has not attached.

FOR A SECOND DEFENSE

2. Defendant denies every allegation of Plaintiffs' Complaint not hereinafter specifically admitted.

3. Paragraph 1 is admitted upon information and belief.

4. Paragraph 2 is admitted upon information and belief.

5. As to Paragraph 3 and 4, Defendant admits only the Kershaw County Sheriff is a constitutional officer of the State of South Carolina and acts through its officers and agents. The Defendant asserts that service of process is improper and not in compliance with the South Carolina Rules of Civil Procedure.

6. As to Paragraph 5 and 6, Defendant does not contest subject matter jurisdiction and venue as the events surrounding the requested production of documents in this litigation occurred in Kershaw County, South Carolina. Personal jurisdiction is absent due to improper service of process.

7. As to Paragraph 7, Defendant admits the Kershaw County Sheriff's Office meets the definition of "public body" as defined in S.C. Code § 30-4-20.

8. Paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 state legal conclusions which require no response.

9. Paragraphs 16 and 17 are admitted only to the extent Mr. Jernigan submitted a FOIA Request as an attorney on behalf of his mother on July 22, 2022.

10. Paragraphs 18, 19, 20, 21, 22 and 23 are admitted to the extent Mr. Jernigan was present, according to information and belief, at the Kershaw County Sheriff's Office on June 29, 2022 for some period of time. None of these allegations are relevant to the relief sought in this action.

11. As to Paragraph 24, Defendant admits upon information only that Mrs. Martin resides at 798 Hermitage Pond Road Camden, Kershaw County.

12. Paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 are denied as to the factual allegations. The legal conclusions require no response.

13. Paragraphs 35 and 36 are admitted to the extent Mr. Jernigan submitted a FOIA Request on July 22, 2022. The Defendant craves reference to the request itself as to its contents and denies any allegations herein that are contrary to the request itself.

14. As to Paragraph 37, Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of those allegations, and therefore denies those allegations.

15. As to Paragraphs 38 and 39, the Defendant admits only that Mr. Jernigan submitted a FOIA Request on July 22, 2022.

16. As to Paragraph 40, the Defendant admits that the request needed fur clarification as it is vague.

17. Paragraph 41 states legal conclusions which require no response. Any factual allegations are denied.

18. Paragraph 42 accurately quotes a part of KCSO's response. The Defendant craves reference to the entire document as the best evidence of its contents and context.

19. Paragraphs 43, 44, and 45 contain legal conclusions which require no response. The Defendant denies the allegations of Paragraph 44.

20. As to Paragraph 46, Defendant admits only a Kershaw County employee sent an email on July 27, 2022, at 10:58am EST.

21. Paragraph 47 is admitted.

22. Paragraph 48 relates to information outside of Mr. Jernigan's FOIA Request and is irrelevant, requiring no response. Otherwise, the factual allegations are denied as stated.

23. Paragraph 49 is denied by Defendant as stated.

24. As to Paragraphs 50 and 51, Defendant admits only Mr. Morgan made every attempt in good faith to speak with Mr. Jernigan by phone call, despite performing the numerous duties required to represent Kershaw County.

25. As to Paragraphs 52 and 53, Defendant admits only Mr. Morgan sent an email to Mr. Jernigan on August 18, 2022, at 12:32pm EST. As to the legal conclusions, they require no response.

26. Paragraphs 54, 55, and 56 are denied as stated. The legal conclusions require no response.

27. Paragraph 57 is denied as stated.

28. As to Paragraph 58, Defendant admits only an email was sent from Mr. Jernigan to Mr. Morgan on August 23, 2022, at 11:37am EST. Any remaining factual allegations are denied.

29. As to Paragraphs 59, 60, and 61 Defendant denies as stated.

30. As to Paragraph 62, Defendant re-states and incorporates each affirmative defense and response contained in this Answer as if stated verbatim here.

31. Paragraphs 63, 64, 65, 66, and 67 state legal conclusions which require no response. Any factual allegations in those paragraphs are denied.

32. As to Paragraph 68, Defendant re-states and incorporates each affirmative defense and response contained in this Answer as if stated verbatim here.

33. As to Paragraph 69, Defendant admits only S.C. Code § 23-1-240(g)(5) identifies persons who may request and must receive data recorded by a body-worn camera.

34. Paragraph 70 states a legal conclusion which requires no response.

FOR A THIRD DEFENSE

35. Plaintiffs' claims are barred pursuant to Rule 4(d)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

36. Plaintiff Jernigan lacks capacity to bring this action.

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

MORRISON LAW FIRM, LLC

By: *s/ David L. Morrison*

David L. Morrison (Bar #4101)
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

Attorney for Defendant

Columbia, South Carolina

October 28, 2022

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Kershaw
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2800782

Christine Jernigan et al
PLAINTIFF(S)

Sheriffs Office Kershaw County
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:

Following a hearing on December 19, 2022, the Court ordered that Defendants shall fully comply with the South Carolina Freedom of Information Act vis-a-vis Plaintiff's requests within 20 days of the hearing.

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 12/28/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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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.

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Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Electronic Form 4

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative Purposes, Court of Common Pleas, 5th Judicial Circuit

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW)	**CASE NO.: 2022-CP-28-00782**
)	
Christine Jernigan, et al.,)	
)	
Plaintiffs,)	
)	**NOTICE OF MOTION AND MOTION**
v.)	**FOR SANCTIONS/COMTEMPT**
)	
Kershaw County Sheriff's Office,)	
)	
Defendant.)	
)	

TO: DAVID MORRISON, ESQ., ATTORNEY FOR DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE ("KCSO")

PLEASE TAKE NOTICE THAT Plaintiffs hereby move this Court for entry of Sanctions/Contempt against Defendant Kershaw County Sheriff's Office ("KCSO") for discovery abuses and violations of Orders of the Honorable Jocelyn C. Newman, Court of Common Pleas, Fifth Judicial Circuit, at the Hearing on December 19, 2022.[1] After the Hearing on December 19, 2022, at which Judge Newman issued Orders from the Bench, the Court issued its general Order, dated December 28, 2022, as follows:

> Following a hearing on December 19, 2022, the Court ordered that Defendant [KCSO] fully comply with the South Carolina Freedom of Information Act vis-a-vis Plaintiff[s] requests within 20 days of the hearing.

The present Motion for Sanctions/Contempt is filed pursuant to Rules 11, 33, 34, and 37, SCRCP, and the Court's inherent authority. Respectfully, our civil justice system requires strict compliance with, and enforcement of, the SCRCP, the Court's prior Orders, and the South Carolina Freedom of Information Act ("FOIA"), S.C. Code §§ 30-4-10, *et seq*. Although

[1] The Official Transcript of the December 19. 2022, Hearing before Judge Newman should, upon information and belief, be available and/or delivered to Plaintiffs on or around March 3, 2023, from eScribers, LLC (38 pages total).

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"sanctions" are not a palatable subject, recalcitrant defendants – such as KCSO – will otherwise abuse and thwart "the just, speedy, and inexpensive determination" mandated by Rule 1, SCRCP and FOIA, S.C. Code 30-4-100 ("an initial hearing within ten days of the service on all parties … establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing"). The present Motion for Sanctions/Contempt will be further supported by additional evidence, and Memoranda of Law, provided at or before, and propounded upon and explained at, the hearing for the present Motion (to-be-scheduled).

Plaintiffs' First Set of Interrogatories (Nos. 1-15), and Request for Production (No. 1), attached hereto as Exhibits B and C, were served on October 29, 2022, via email and UPS. No responses, or any objections, were provided by KCSO "within 30 days after the service of the interrogatories," or within five (5) days thereafter, i.e., by December 5, 2022. Rule 33, *see also* Rules 6 and 34, SCRCP.

Counsel for the Parties discussed KCSO's failure to provide any responses/answers to Plaintiffs' October 29, 2022, First Set of Interrogatories and Request for Production on December 15, 2022, for purposes of, potentially, avoiding the necessity of this Court's intervention. KCSO would not voluntarily agree to provide discovery when counsel for the Parties discussed the matter on December 15, 2022.

KCSO's failure to voluntarily provide any discovery at and/or after the December 5, 2022, initial deadline was in bad faith. For instance, KCSO produced documents, without bates number, bearing the date/time stamp "11/30/22, 2:34 PM" and "Retention Categories" in its header on pages 1-2. Ex. A at 5. These seem to be important policies regarding KCSO's Axon Digital Recording Systems (e.g., body-worn-cameras, vehicle recording systems, audio recording systems, video recording systems, etc.).

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KCSO waived any objections that it *may* have had to the subject matter of the First Set of Interrogatories (Nos. 1-15) and Request for Production (No. 1). *See* Rules 33, 34(b) ("The party upon whom the request [for production] is served shall serve a written response within 30 days after the service of the request."), SCRCP. In any case, the Instructions of Plaintiffs First Set of Interrogatories (Nos. 1-15) and Request for Production (No. 1) state that "counsel is available to discuss, clarify, and/or potentially limit towards the goal of amicably resolving good faith objections." Ex. B at 4. KCSO's counsel never contacted Plaintiffs' counsel to "discuss, clarify, and/or potentially limit" the First Set of Interrogatories (Nos. 1-15) and Request for Production (No. 1).

At the Hearing on December 19, 2022, Judge Newman ordered KCSO to provide Plaintiffs with the requested discovery of the First Set of Interrogatories (Nos. 1-15) and Request for Production (No. 1) within 20-days; i.e., by January 9, 2023. On the Court-imposed extended deadline for providing the requested discovery – January 9, 2023 – KCSO served *unsworn* discovery responses/answers, attached hereto as Exhibits D and E.

KCSO's January 9, 2023, unsworn discovery responses/answers, clearly, did not meet the "fully in writing under oath" requirements of Rule 33(a), SCRCP. *See* Ex. D. Pursuant to Rule 37(a)(3), SCRCP, KCSO's January 9, 2023, unsworn responses/answers are evasive and/or incomplete discovery responses/answers. Accordingly, KCSO's January 9, 2023, discovery responses/answers must be considered the same as a "failure to answer" pursuant to Rule 37(a)(3), SCRCP.

Plaintiffs sent emails to KCSO's counsel of record David Morrison, Esq., and counsel not-yet-formally-of-record Cameron DeBoy, Esq., on January 10 and 12, 2023, attached hereto at Exhibit F. Plaintiffs January 10 and 12, 2023, Emails requested, *inter alia*, that KCSO provide

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verified answers, under oath, as required pursuant to Rule 33(a), SCRCP. Ex. F. Plaintiffs January 10 and 12, 2023, Emails requesting that KCSO voluntarily provide verified answers were ignored by KCSO.

On February 9, 2023, Plaintiffs served their Rule 11(a), SCRCP, 10-Day-Letter of, attached hereto as Exhibit A, outlining deficiencies with respect to KCSO's responses/answers. Each of KCSO's responses/answers to the First Set of Interrogatories (Nos. 1-15) and Request for Production (No. 1) required, and still require, amendment, supplementation, and/or correction to provide a full, complete, and understandable response/production. *See id.* at 3-15.

On the afternoon of February 20, 2023, at 4:24pm, KCSO's counsel responded to Plaintiffs February 9, 2023, Rule 11(a) Letter as follows (via email, emphasis added):

> "We received your [February 9, 2023,] SCRCP Rule 11 or 10-Day Letter [Ex. A, hereto] concerning discovery and other issues. We are attempting to secure the verification to discovery responses sought per your previous email[s] (below [from January 10 and 12, 2023]). We anticipate completing the verification *within the next day or two*. We apologize for the delay; however, *we are trying our best* to satisfy your request."

Ex. F.

Plaintiffs responded, on February 20, 2023, at 4:35pm by, *inter alia*, requesting details regarding KCSO's basis, and/or citations to authority, supporting any further extension of the initial response/answer deadline, December 5, 2022, and/or the Judge Newman's imposed January 9, 2023, extended discovery deadline. Ex. F. As of the date of this Motion, Plaintiffs have not received any response to Plaintiffs February 20, 2023, Emails Ex. F (e.g., "[i]f KCSO opposes Plaintiffs [present] motion for sanctions/contempt under (at least) Rule 37, [p]lease provide KCSO's full basis, reasons, explanations, etc., with citations to all supporting authorities, for any such contention."). KCSO's purported "completing the verification *within the next day*

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or two," as KCSO's counsel stated on February 20, 2023, has not occurred to date (i.e., with two days).

Plaintiffs respectfully seek entry of Sanctions/Contempt against KCSO pursuant to Rule 37(b)(2), SCRCP, in pertinent part (cleaned-up/modified quotations):

> If [KCSO] … fails to obey an [O]rder to provide … discovery, the [C]ourt … may make such orders in regard to the failure as are just, and among others the following:
> …
> **(**B**)** An [O]rder refusing to allow [KCSO] to … oppose [Plaintiffs' Counts I & II]…
>
> **(**C**)** An [O]rder striking out [KCSO's Answer] or parts thereof, or staying further proceedings until the [O]rder is obeyed … or rendering a judgment by default against [KCSO];
>
> **(**D**)** In lieu of any of the foregoing [O]rders or in addition thereto, an [O]rder treating as a contempt of [C]ourt the failure to obey an[] [O]rder[] …
>
> In lieu of any of the foregoing…, the [C]ourt shall require [KCSO] … or [David Morrison, Esq.] or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the [C]ourt finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

At the Hearing on December 19, 2022, Judge Newman ordered KCSO to respond to Plaintiffs' July 22, 2022, FOIA Request within 20 days; i.e., by January 9, 2023. *See* Compl., Ex. A; Exhibit A hereto at 16-17. KCSO has never attempted to provide the written determination, or reasons therefore, as to the public availability of all the records, data, and/or information of the 7.22.22 Request. *See* S.C. Code § 30-4-30(c).

KCSO has also never provided any date certain upon which all the records/information of the 7.22.22 Request would/will be produced. *Id.* Yet, KCSO also, apparently, does not contend that any records/data of the July 22, 2022, FOIA Request are exempt under FOIA, or otherwise properly withheld pursuant to any additional laws and/or regulations. *See*, *e.g.*, Ex. D, KCSO's Answer #9.

After the submission of Plaintiffs' FOIA Request to KCSO on July 22, 2022, the statutory clock – within which KCSO was required to provide its written determination, and thereafter all responsive records – started running. S.C. Code § 30-4-30(c). In this case, KCSO is approximately five (5) months past the statutory deadlines of FOIA, and over a month past the extended FOIA/discovery deadline set by Judge Newman at the December 19, 2022, Hearing.

Notably, with respect to Plaintiffs' July 22, 2022, FOIA Request, KCSO did not "file a request for hearing with the [C]ircuit [C]ourt to seek relief from [alleged] unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request[,] but it is unable to make a good faith determination as to whether the information is exempt from disclosure." FOIA, S.C. Code § 30-4-100(a). Accordingly, KCSO waived any right it may have to assert any such excuses with respect to the 7.22.22 FOIA Request long ago. In any case, Plaintiffs' counsel has spent hours conferring and corresponding with KCSO's counsel regarding further details/information, even though KCSO has a much larger share of the relevant information on its own side.

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RULE 11, SCRCP CERTIFICATION

The undersigned counsel of record, by the signing and filing of this Notice of Motion and Motion for Sanctions/Contempt, hereby certifies, pursuant to SCRCP Rule 11, that he either 1) attempted to resolve this Motion with opposing counsel prior to filing the same, or 2) maintains a good faith belief that such attempts to resolve the matter prior to the filing of this Motion would serve no useful purpose.

Respectfully submitted,

Dated: February 23, 2023

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Court.
Weddington, NC 28104
Ph: 864-710-5029

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

EXHIBIT **A**

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February 10, 2023
sent via email: david@dmorrison-law.com

Justin A. Jernigan, Esq.
7148 Stirrup Ct.
Weddington, NC 28104
justin.a.jerngian@gmail.com
864-710-5029

David Morrison, Esq.
Morrison Law Firm LLC
7453 Irmo Drive, Suite B
Columbia, SC 29212

Re: **Rule 11(a), SCRCP**; *Christine Jernigan, et al., v. Kershaw County Sheriff's Office*, No. 2022-CP-28-00782 (Fifth Judicial Circuit, Sept. 12, 2022)

Dear David,

In an attempt to avoid formal motion practice as required pursuant to Rule 11(a), SCRCP, please attend to the discovery and other issues discussed herein by no later than 10 days (February 20, 2023).

Supplemental Reporting to KCSO

First, consistent with the reporting requirements of the South Carolina Omnibus Adult Protection Act ("OAPA"), Plaintiffs provide additional information concerning Ann B. Martin ("Mrs. Martin"), a vulnerable adult resident of Kershaw County. *See* S.C. Code § 43-35-25(a). Plaintiffs previously emailed KCSO the Verified Complaint filed November 2, 2022, in the pending, and related, civil case. *Christine Jernigan, et al., v. Sharon Wright*, No. 2022-CP-28-00967, Kershaw County Court of Common Pleas, Fifth Judicial Circuit (the "967 case").

Certain initial financial, medical, and/or other relevant records relevant to the 967 case can be provided which are not publicly-filed. A related South Carolina Criminal Justice Academy ("SCCJA") course "details the definitions, duties, responsibilities and authority officers have when investigating cases of vulnerable adult" abuse, neglect, and exploitation under the OAPA. SCCJA Training Catalog.

On the evening of December 4, 2022, when KCSO first produced the E911/KCSO CFS2022-39009 Report pursuant to FOIA, Plaintiffs were not expecting to discover that it was the Pinedale Residential Center ("Pinedale") Administrator, Phillip Hudson ("Mr. Hudson"), who first made false reports to E911/KCSO on the morning of June 29, 2022. In this regard, Mr. Hudson is/was acting with, and/or at the direction of, Sharon Wright ("Mrs. Wright"). Attached as Exhibit A is a chain totaling four emails sent to Mr. Hudson, respectively, on August 11, 15,

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and 18, 2022. Mr. Hudson received, read, and discussed these emails with Mrs. Wright. *See*, *e.g.*, Ex. A at 1-2.

Mr. Hudson, however, never responded or returned any of the August 2022 emails (Ex. A), or telephone calls and messages left with Pinedale's staff, concerning the rights and safety of Mrs. Martin. Mrs. Martin is the resident and the resident's welfare are supposed to be, and are legally required to be, Administrator Hudson's primary concern. As documented in the August 2022 emails, when Mr. Hudson and I spoke on June 28, 2022, Mr. Hudson immediately agreed that Mrs. Martin was, of course, free to voluntarily travel away from Pinedale with her daughter, Mrs. Jernigan, if Mrs. Martin wished to do so. *Id.* at 4.

Mr. Hudson's profession, Community Residential Care Facility ("CRCF) Administrator, is subject to licensing and regulatory requirements. The relevant standards of conduct, at Principle No. 1, require Administrator Hudson to practice with "compassion and respect for the dignity of the individual, with primary commitment to the resident." Ex. A, 1-2. Mr. Hudson is legally obligated to ensure all of his staff members are properly trained regarding, and fully complying with, the OAPA and other well-established protections for vulnerable adults under state laws and regulations. *See*, *e.g.*, S.C. Code Regs. 64-84.1001. Accordingly, a CRCP Administrator certainly should know that it is a felony, and has been for ~30 years, to misuse/abuse a power of attorney ("POA") "against the reasonable and rational wishes of the vulnerable adult" and/or "for the profit or advantage of that person or another person." S.C. Code § 43-35-10(3)(a)-(c) (effective June 12, 1995).

Mr. Hudson's company is continuing to receive approximately $5,000/month from Mrs. Martin's assets. In this case, Mrs. Martin is paying for the privilege of being confined to an assisted living facility against her known, reasonable, and rational wishes. Even worse, however, is the neglect and abuse Mrs. Martin has suffered due to her unreasonable confinement at Pinedale.

Mrs. Martin has lost ~15% of her original body weight (i.e., ~20lbs total) since May 2022. Mrs. Martin has also experienced dehydration requiring visits to the emergency room to receive IV-fluids and other health problems. Mrs. Martin has also suffered psychological and emotional abuse. One such incident, where Mrs. Wright forced Mrs. Martin to call Mrs. Jernigan and recite a "script" she had prepared demanding that Mr. Jernigan stop "harassing" Mr. Hudson, is documented in the August 2022 emails to Mr. Hudson. Ex. A at 1-2. Other incidents of

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psychological abuse are outlined in a cease-and-desist letter to Mrs. Wright dated January 19, 2023. A copy of the January 19, 2023, Letter is attached hereto as Exhibit B.

Plaintiffs October 29, 2022, First Set of Interrogatories and Request for Production

Plaintiffs First Set of Interrogatories and Request for Production were served on October 29, 2022. No responses, or objections, were provided by KCSO before the expiration of the December 5, 2022, response deadline. KCSO would not voluntarily agree to provide discovery when counsel for the parties discussed the matter on December 15, 2022, which required Plaintiffs to seek relief from the Court. At the hearing on December 19, 2022, the Court ordered KCSO to provide the requested discovery within 20 days (January 9, 2023).

On the court-imposed extended deadline to provide discovery, KCSO served unsworn discovery responses. KCSO's unsworn responses clearly do not meet the requirements of Rule 33(a), SCRCP. Pursuant to Rule 37(a)(3), SCRCP, these incomplete responses must be considered the same as a "failure to answer." Plaintiffs sent emails on January 10 and 12, 2023, requesting that KCSO provide verified answers. Plaintiffs' emails have, to date, been ignored by KCSO's counsel.

KCSO must provide Answers it can and will stand behind. KCSO must affirm under penalty of perjury that its Answers and all the responsive information it provides therein are truthful. Other issues and obvious deficiencies must also be addressed, as discussed in more detail below.

INTERROGATORY NO. 1 - Please identify your records officer and other persons having legal responsibility for the categories or types of requested records falling within the reasonable scope of the 7.22.22 Request.

ANSWER #1 - Records Officer(s), or Other Persons Assisting in Response for the Kershaw County Sheriff's Office are: (1) Autumn Furniss; (2) Chelsea Cockrell; AND (3) Captain Kevin Lynch (Admin Captain).

Please amend KCSO's Answer #1 to affirmatively identify KCSO's records officer. For example, and if truthful, KCSO should affirmatively identify its Captain of Administration, Kevin Lynch, as KCSO's records officer. KCSO's records officer is the person appointed with respect to certain legal responsibilities and duties under the Records Act and Regulations.

Please supplement KCSO's Answer #1 to fully explain those legal responsibilities of the other persons listed as to the categories/types of records falling within the 7.22.22 FOIA

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Request, as this is presently unclear. Please also note the relevant time frames of the Instructions for Plaintiffs First Set of Interrogatories (e.g., primarily June 2022 to present). In connection with amending/supplementing its Answers to Plaintiffs First Set of Interrogatories, including but not limited to KCSO Answers #1, please identify the relevant time periods (e.g., periods of service for the records officer and/or others appointed with legal responsibilities) where appropriate to provide complete and understandable response to the respective Interrogatories.

INTERROGATORY NO. 2 - Please identify all KCSO Records Policies [i.e., records policies which pertain or apply to the categories or types of records falling within the reasonable scope of the 7.22.22 Request]. For example, any such public records policies supplementing, enlarging, and/or otherwise differing from the requirements, schedules, and/or standards of the Records Regulations [i.e., State regulations … issued by the S.C. Department of Archives and History].

ANSWER #2 - Kershaw County Sheriff's Office Policy Manual: Chapter 209 – Records.

The only record or policy identified in KCSO's Answer #2 – a single 15-page policy extracted from the overall Policy Manual, Chapter 209 (Records) – itself refers to additional records or policies "which pertain or apply to the categories or types of records falling with the reasonable scope of the 7.22.22 Request." *See* Interrogatory Definitions.

KCSO should identify its relevant and responsive records or policies "which pertain or apply to" (at least): public contact activities; field reporting; patrol officer responsibilities and procedures for response; officer reporting/documentation; vehicle pursuits and stops of any type; constitutional rights; citizen calls and/or complaints (e.g., of crimes, potential crimes, incidents, discrimination, violations of constitutional rights, misconduct); communications processes and requirements by, between, or amongst dispatchers, officers, employees, and citizens/complainants (e.g., via E911, telephone, cell phone, radio, and similar); vulnerable/disabled adults (e.g., adults having cognitive impairments and/or diminished capacity); emergency vehicle-based camera and microphone recording systems (e.g., interior and exterior cabin microphones); body-worn cameras ("BWC"); security camera systems and/or audio recording systems (e.g., covering locations at KCSO's primary office where Investigator Myles Taylor and Officer Courtney Cochran took official KCSO actions on June 29, 2022); computer-aided dispatch ("CAD") systems; the records management and associated systems

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("RMS"), software, records retrieval procedures, and the like; and the Axon Video and Audio Record Systems.

Answer #2 also fails to identify the policies and procedures provided to, and receipt thereof acknowledged by, Deputy Branham, with no date of acknowledgement listed on the acknowledgement form, provided with the *very* belated FOIA Production on January 9, 2023. Bates no. 0867-0123 ("The following [KCSO] Policies: Section 1 … Section 10").

Answer #2 additionally fails to, for example, identify another document KCSO produced on January 9, 2023, without bates numbering, bearing the date/time stamp "11/30/22, 2:34 PM" and "Retention Categories" in its header on pages 1-2. The record or policy bears a footer indicating that it is a only a subpage of the primary domain at kershawcountysc.evidence.com. The policy document is clearly part of a more comprehensive, and understandable, set. For instance, the Axon Recording systems.

INTERROGATORY NO. 3 - Please identify and describe, based upon the governing Records Regulations [i.e., State regulations … issued by the S.C. Department of Archives and History] and/or KCSO Records Policies (e.g., in response to IROG No. 2), those categories or types that apply, correspond, or potentially apply to requested records falling within the reasonable scope of the 7.22.22 Request. For example, the follow[ing] categories under the relevant Records Regulations and/or KCSO Records Policies: incident, supplemental, memorandum, or informational reports, daily shift reports, training files, dispatch records, complaint cards, radio logs, emergency call records to KCSO, and 911 phone logs involving KCSO.

ANSWER #3 - Please see Defendant's Answer #2 [i.e., Kershaw County Sheriff's Office Policy Manual: Chapter 209 – Records]. The policies speak for themselves. Plaintiff and Plaintiff's counsel can interpret the policies.

KCSO, just like all other public bodies, is a legal custodian of public records and is required to comply with all governing Records Laws and Regulations under penalty of law (criminal/civil). The Records Laws require public bodies to retain ***all*** public records, regardless of format, that concern public business. The Records Laws prevent the government from acting in secret as such actions are (for good reasons) presumed to be unlawful actions.

In this case, everything requested of KCSO concerns public business as opposed to, for example, the private lives or affairs of its officers, employees, or agents. Accordingly, ***all*** such public records regardless of format were required to have been retained by KCSO unless and until properly destroyed, and documented, under applicable schedules.

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KCSO has specialized knowledge with respect to (at least): its own records management systems; those categories or types of records it is required by law to have; and how to search and retrieve all of such records (i.e., its own records) quickly and easily. Otherwise, KCSO's RMS is not a functional system. The SCRCP require KCSO, based upon all of its knowledge, to conduct a good faith search/inquiry of all available sources, and to respond fully and in good faith based upon all of its knowledge/information, to the subject matter of Interrogatory No. 3. Please supplement KCSO's response to identify and describe its types/categories of records that apply or correspond to records of the types/categories falling within the reasonable scope of the 7.22.22 Request.

KCSO first produced Chapter 209 (Records), one 15-page chapter extracted from its primary Policy Manual, on January 9, 2023, over a month after the December 5, 2022, initial deadline. KCSO's bare assertion in Answer #9 that the 15-pages of Chapter 209 "speak for themselves" in response to Interrogatory No. 3 is an evasive and incomplete response.

INTERROGATORY NO. 4 - If any public records falling within the reasonable scope of the 7.22.22 Request have been destroyed or otherwise rendered unavailable, please identify such records and describe the underlying circumstances, including how and/or if the requirements, schedules, and/or standards for disposal were met or not met based upon the governing Records Regulations [i.e., State regulations … issued by the S.C. Department of Archives and History] and/or KCSO Records Policies.

ANSWER #4 - Kershaw County Sheriff's Office is an agency of limited resources. Often the Kershaw County Sheriff's Office will utilize various methods to assist the citizens of Kershaw County effectively and efficiently, including: (1) the Kershaw County Sheriff's Office retains records of non-criminal incidents ("Public Contact") on a limited basis, and this call was not recorded; AND (2) the Kershaw County Sheriff's Office will also utilize the cellular telephones of its employees to assist the citizens of Kershaw County. Incidents and information from June 28, 2022, and June 29, 2022, falling within these common methods of operation for the Kershaw County Sheriff's Office are: (1) Mr. Jernigan's attempt to report exploitation of a vulnerable adult to Kershaw County Sheriff's Office does not exist as no recording was made; (2) Phone Call from a Kershaw County Sheriff's Office investigator to Deputy Branham does not exist because recordings between personal cell phones of Kershaw County Sheriff's Office employees are not recorded; (3) Phone Call from Deputy Branham to Mr. Justin Jernigan does not exist because recordings of calls between personal cellular telephones are not recorded; AND (4) Body-Worn Cameras associated with incidents occurring on June 29, 2022, involving responding officers concerned non-criminal matters and are no longer retained. The standards for retention were met.

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KCSO's Answer #4 (at lines 1-11 above) suggests that KCSO does not take the records laws and regulations seriously. For example, on the morning of June 29, 2022, Dispatch Operator Tina Hand contacted/sent Deputy Branham an assignment to investigate a report of suspected felony exploitation of a vulnerable adult residing in Kershaw County. Thereafter, since KCSO "will also utilize the cellular telephones of its employees to assist the citizens of Kershaw County," Deputy Branham therefore always uses his own personal cell phone in the performance of his official duties? Even more surprising, all of the more senior officers involved in the relevant incidents also exclusively used their personal cell phone exclusively in the performance of their official duties as well?

Interrogatory No. 4 requests *identification* of records of the 7.22.22 FOIA Request that have been destroyed or rendered unavailable by KCSO, a *description* of the underlying circumstances, and a *description* regarding how and/or if all of the governing laws, regulations, and/or policies for disposal were properly met and documented. KCSO, like all public bodies, is required to retain all public records, regardless of format, unless and until properly disposed in accord with the governing laws, regulations, and/or policies. If its public officers/employees are generating public/electronic records in the performance of their official duties and activities, such as electronic cell phone records, then these public officers/employees become the responsible custodians of these public records. In any case, KCSO's Answer #4 requires amendment and supplementation to clearly and completely identify those records of the 7.22.22 Request that KCSO has destroyed or rendered unavailable. KCSO's amended Answer #4 must provide a full description of the underlying circumstances, including how and/or if the legal requirements for disposal were met, or were not met, according to governing laws, regulations, and/or policies.

BWC data is, more specifically, the subject of Interrogatory No. 14. In any case, BWC data is also *generally* identified in Answer #4 as having been destroyed. KCSO has not, however, identified which BWC data was available or described the underlying circumstances including how and/or if the requirements for disposal were met. For example, for the BWC data available, when was the BWC data available; what, if any, efforts were made to retain this important evidence as legally required; dates/times of destruction; how was it destroyed; and/or any failures of safeguards in place to prevent destruction of records KCSO is legally required to retain. (e.g., risk mitigation). In sum, for the BWC data that is identified by KCSO as having

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been destroyed, KCSO must "describe the underlying circumstances, including how and/or if the requirements, schedules, and/or standards for disposal were met or not met based upon the governing Records Regulations and/or KCSO Records Policies."

The 7.22.22 FOIA Request states that Plaintiffs "would respectfully request that all body-worn camera records, if any, be preserved." Compl., Ex. A, at 2-3. An email to KCSO's counsel, County Attorney Tommy Morgan, sent August 1, 2022, states as follows: "Understand there is FOIA exemption for body cam video, but respectfully request preservation." KCSO's blanket assertion in Answer #4 that "standards for retention were met" is evasive and incomplete, including in view of known facts and governing laws/regulations.

County Attorney Morgan, on behalf of KCSO, know the importance of audio and visual recording evidence, both taken from the officer's perspective, dash camera, and/or otherwise. County Attorney Morgan, on behalf of KCSO, have been sanctioned by the D.S.C, and affirmed by the Fourth Circuit, for providing evasive discovery responses with respect to audio/visual recording evidence. County Attorney Morgan, on behalf of KCSO, also know the impact and importance of audio/visual recording evidence due the misconduct by former KCSO Officer Goldsmith, certain misconduct of which would have otherwise been covered up by fraudulent KCSO public records.

The Records Regulations, S.C. Code of Regs. 12-500, require that "[b]efore disposing of public records under these general schedules, county governments should insure that the records have no further audit, legal, or fiscal value." Moreover, South Carolina Rule of Prof. Resp. 3.4(a) states that an attorney shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." This obligation of County Attorney Morgan, and KCSO, exists independent of any explicit preservation request, and in this case preservation was explicitly requested on several occasions to KCSO and its counsel.

INTERROGATORY NO. 5 - Please provide KCSO's basis, reasons, and/or explanations, and describe the circumstances of the underlying decision-making process, with respect to KCSO's assertions via email on July 25, 2022, that there are no public records falling within the reasonable scope of the 7.22.22 Request to provide or make available for inspection.

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ANSWER #5 - Please see Defendant's Answer #4 [i.e., Kershaw County Sheriff's Office is an agency of limited resources…].

KCSO's Answer #5 is a complete dodge. Interrogatory No. 5 requires KCSO to provide its "basis, reasons, and/or explanations," and to "describe the circumstances of the underlying decision-making process, with respect to KCSO's assertions via email on July 25, 2022, that there are no public records falling within the reasonable scope of the 7.22.22 Request to provide or make available for inspection." This is obviously important information, for instance, under S.C. Code § 35-4-110(f), "[i]f the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record," additional penalties/remedies may be imposed.

Although Answer #5 is a complete and total dodge of the subject matter requested in Interrogatory No. 5, KCSO's Answers to other Interrogatories of Plaintiffs First Set make bare assertions that KCSO purportedly searched in "good faith," went through "exhaustive efforts" to respond fully/properly pursuant to FIOA, and/or similar conclusory/unsupported contentions. KCSO must provide actual Answers to the subject matter of the respective Interrogatories of the First Set rather than self-serving labels. KCSO's labels are non-responsive, and meaningless, without any description of the underlying circumstances, basis for support, and/or citations to authority, as requested by Plaintiffs' First Set of Interrogatories.

For each Interrogatory of the First Set, KCSO must answer separately and fully as required by the SCRCP. KCSO must conduct a good faith and reasonable search/inquiry of all sources available to it. KCSO must answer based upon all of its knowledge and information. KCSO must also answer under oath, affirming, under penalty of perjury, that it stands behind its responses/Answers and all the information it provides therein.

INTERROGATORY NO. 6 - Please provide KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities, for the assertion in KCSO's FOIA Production Cover Letter dated August 18, 2022, that all "non-exempt" communications related records falling within the reasonable scope of the 7.22.22 Request were provided or produced therewith.

ANSWER #6 - Each relevant document and/or record in the possession of the Kershaw County Sheriff's Office and/or the Kershaw County Attorney were provided in good faith to Mr. Justin Jernigan to the best of our knowledge and ability based on the information provided in the FOIA Request on July 22, 2022.

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Interrogatory No. 6 requests KCSO's "basis, reasons, and/or explanations, including citation to any supporting authorities," for its assertions that ***all*** "non-exempt" communications records responsive to the 7.22.22 Request were provided with the August 18, 2022, Cover Letter sent by County Attorney Morgan on behalf of KCSO. KCSO's Answer #6 provides unsupported conclusions such as "provided in good faith" and "to the best of our knowledge and ability." These are not actual response/Answers.

Moreover, it remains unclear whether (or not) communications records were/are being withheld by KCSO as "exempt" given that County Attorney Morgan, on behalf of KCSO, states in the August 18, 2022, Letter all that "non-exempt" records are being provided therewith.

INTERROGATORY NO. 7 - Please provide the identity of the KCSO personnel or other persons having responsibility for timely providing public records falling within the reasonable scope of the 7.22.22 Request pursuant to FOIA, and describe the communications, steps, and/or processes taken with respect to searching, obtaining, locating, and/or producing these public records pursuant to the legal requirement of FOIA.

ANSWER #7 - Please see Defendant's Answer #1 [i.e., (1) Autumn Furniss; (2) Chelsea Cockrell; AND (3) Captain Kevin Lynch (Admin Captain)]. The person who initially responded to Mr. Jernigan's July 22, 2022, FOIA Request is no longer employed with the Kershaw County Sheriff's Office; therefore, we do not have access to the information requested.

Please supplement and amend KCSO's Answer #7 to affirmatively identify those "KCSO personnel or other persons having responsibility for timely providing public records" since June 2022. KCSO must also describe the "communications, steps, and/or processes taken with respect to searching, obtaining, locating, and/or producing these public records pursuant to the legal requirement of FOIA." KCSO is required, based upon its knowledge, to conduct a reasonable search/inquiry of all sources and to respond in good faith fully/completely to Interrogatory No. 7, based upon all of its knowledge and information.

Otherwise, KCSO must describe the good faith investigation it conducted and explain why, despite its efforts, it is unable to identify the responsible persons and/or to describe the communications, steps, and/or processes KCSO made to comply with the requirements of FOIA.

INTERROGATORY NO. 8 - Please provide the basis, reasons, and/or explanations, including citation to any supporting authorities, with respect to KCSO's assertions via email on August 18, 2022, that it considered all FOIA and non-FOIA matters raised by Plaintiffs to be "closed" at such time.

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ANSWER #8 - Kershaw County Sheriff's Office's statement via email on August 18, 2022, stating "[that it considered] all FOIA and non-FOIA matters raised by Plaintiffs to be 'closed' at such time" was made in good faith by the Kershaw County Sheriff's Office through the Kershaw County Attorney after exhaustive efforts were made above and beyond the statutory requirements to satisfy Mr. Jernigan's FOIA Request on July 22, 2022.

Interrogatory No. 8 requests KCSO's "basis, reasons, and/or explanations, including citation to any supporting authorities," for its assertions on August 18, 2022, that all FOIA and non-FOIA matters raised by Plaintiffs were considered "closed." KCSO's Answer #8 makes conclusory assertions that KCSO, through its counsel County Attorney Morgan, acted "in good faith" and that KCSO and its counsel made "exhaustive efforts were made above and beyond the statutory requirements" of FOIA. These assertions lack any "basis, reasons, and/or explanations," or citations to authority.

INTERROGATORY NO. 9 - If KCSO contends that Plaintiffs are not entitled to receive any of the requested records falling within the reasonable scope of the 7.22.22 Request, please provide KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities.

ANSWER #9 - Kershaw County Sheriff's Office has not made a statement in any fashion relating to the stance Plaintiffs are not entitled to receive any of the requested records pertaining to Mr. Justin Jernigan's FOIA Request on July 22, 2022.

Interrogatory No. 9 is a contention interrogatory. KCSO must respond by taking an affirmative position as to whether it contends Plaintiffs are not entitled to receive any of the requested records of the 7.22.22 FOIA Request. KCSO's Answer #9 evasively responds that (emphasis added) it "has not made *a statement*" of "any *fashion* relating to *the stance*" that Plaintiffs "are not entitled to receive any of the requested records." Answer #9 is non-responsive, KCSO has not affirmatively taken any position at all. Please amend Answer #9 to, if truthful, state that KCSO does not "contend[] that Plaintiffs are not entitled to receive any of the requested records falling within the reasonable scope of the 7.22.22 Request."

INTERROGATORY NO. 10 - Please identify, respectively, all portions of the communications-related records produced in response to the 7.22.22 Request under KCSO's Cover Letter dated August 18, 2022, and the dash camera video under KCSO's Cover Letter dated August 24, 2022, that have been redacted, removed, and/or omitted and, for all identified redacted/omitted portions, describe KCSO's basis, reasons, and/or explanations, including

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citation to any supporting authorities, for all such redactions, removals, and/or omissions of public records (e.g., pursuant to FOIA).

ANSWER #10 - Kershaw County Sheriff's Office and the Kershaw County Attorney at no time redacted any information and/or records which are not protected by privacy law(s). We are not aware of any redactions to videos or audio. Redactions on paper are apparent and appropriate.

KCSO's Answer #10 acknowledges that KCSO has, in fact, made certain redactions to public records under certain "privacy law(s)," of which KCSO does not provide any citations or explanations. KCSO must amend and supplement Answer #10 to "describe KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities, for all such redactions" as requested by Interrogatory No. 10.

Moreover, Interrogatory No. 10 seeks identification of all portions of the communications and/or recording systems records "that have been redacted, removed, and/or omitted." KCSO responds by stating that it is (emphasis added) "not *aware* of any *redactions* to videos or audio." KCSO must conduct a reasonable search/inquiry of all sources and fully/affirmatively respond in good faith to Interrogatory No. 10 based upon its collective knowledge/information. Otherwise, KCSO must describe the reasonable and good faith investigation it conducted and explain why, despite its efforts, it lacks sufficient information necessary to provide a complete response.

KCSO's Answer #10 also does not provide any response with respect to portions of communications and dash camera recording systems that have been removed and/or omitted (i.e., as opposed to "redacted"). Only one camera recording system video has been provided to date by KCSO *despite* multiple KCSO emergency vehicles having recording systems responding on June 29, 2022. These KCSO emergency vehicle recording systems include interior/exterior microphones. The audio portions from the one camera video provided by KCSO to date have been entirely omitted. The one dash camera video provided also does not begin until after all vehicles are already stopped (e.g., removed and/or omitted portions).

With respect to removed and/or omitted communications related records by, between, and/or amongst all of the many KCSO officers, employees, and/or agents involved, dispatch/E911, no radio, audio, telephone or other communications records have been provided at all. The only communications related audio records provided to date are Plaintiff Mr. Jernigan's conversations with KCSO on June 29, 2022, and certain portions have been removed and/or omitted from those as well. Additionally, the CFS2022-39001 report KCSO first

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provided on December 4, 2022, shows additional communication related information listed thereon that does not appear in/on the earlier version that was provided by KCSO via County Attorney Morgan's August 18, 2022, Letter.

INTERROGATORY NO. 11 - Please identify and describe the roles of your records officer or other persons having legal responsibility for maintaining, retaining, and disposing of your BWC data pursuant to State Law, Regulations, or KCSO BWC data policies, with respect to all BWC data falling within the reasonable scope the BWC sought in the Complaint.

ANSWER #11 - Please see Defendant's Answer #1 [i.e., Autumn Furniss; Chelsea Cockrell; AND Captain Kevin Lynch (Admin Captain)].

KCSO Answer #11 is incomplete. KCSO has not, for instance, identified and described the roles of those persons having responsibility for maintaining, retaining, and disposing of KCSO's BWC data during the relevant time periods requested by the Instructions of the First Set of Interrogatories (June 2022 to present).

INTERROGATORY NO. 12 - Please identify all governing BWC data policies relating to or affecting the creation, maintenance, retention, and/or disposal with respect to BWC data falling within the reasonable scope sought in the Complaint.

ANSWER #12 - Kershaw County Sheriff's Office Policy Manual: Chapter 508 – Body Worn Cameras.

Please supplement to identify all governing BWC data policies responsive to Interrogatory No. 12. For example, to include at least those policies or records relating to the "Retention Categories" document KCSO produced on January 9, 2023, without bates numbering. For example, the records or policies of the Axon Audio/Video Recording System.

INTERROGATORY NO. 13 - Please provide your basis, reasons, and/or explanations, including citation to any alleged supporting authorities, as to why Plaintiffs are not entitled to receive any portions of the BWC data falling within the reasonable scope sought in the Complaint.

ANSWER #13 - There is nothing to produce because data was written over in accordance with policy.

KCSO allowed the BWC data to be "written over," i.e., to be destroyed. This was after Plaintiffs specifically requested that all the BWC data be preserved by KCSO (see, e.g., 7.22.22 FOIA Request). The specific date/time, and other underlying circumstances, upon which all of

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the relevant BWC data was destroyed by KCSO have previously been requested (e.g., Interrogatory No. 4) but remain unknown/unanswered. The December 5, 2022, hearing in this case was around three months *after* the Complaint was filed, served, and assigned to counsel. Prior to the December 5, 2022, hearing KCSO's counsel never mentioned that the BWC data, for which preservation had been requested, had been destroyed.

Plaintiffs' First Set of Discovery Requests were served on October 29, 2022, which was about a month before the December 5, 2022, hearing. Please supplement Answer #13 to provide KCSO's "basis, reasons, and/or explanations, including citation to any alleged supporting authorities, as to why Plaintiffs" were not, or would not be, entitled to receive the BWC data under S.C. Code 23-1-240(G)(5)(a)-(f); i.e., if the BWC data had been preserved consistent with legal obligations and the Records Act.

KCSO has asserted in Answer #13 that the BWC data, for which preservation was requested, was destroyed "in accordance with policy;" e.g., at some unknown time/date between July 24, 2022 and December 5, 2022. Please identify all applicable policies, governing laws, and/or regulations that KCSO is subject to and the reasons in support of its contention that all BWC evidence was destroyed or knowingly allowed to be written over "in accordance with policy."

Please preserve all correspondence, and any other relevant information, records, documents, or otherwise with respect the alleged destruction of the BWC data. This includes, but is not limited to, communications, records, opinions, documents, and/or other evidence, by or between the KCSO and its attorneys. Plaintiffs reserve the right to seek *in camera* inspection as to any assertions of attorney-client/work-product privilege.

INTERROGATORY NO. 14 - If any of the BWC data falling within the reasonable scope sought in the Complaint has [been] destroyed or otherwise rendered unavailable, please identify all such BWC data and describe the underlying circumstances including how or if applicable BWC disposal policies were or were not followed in this regard.

ANSWER #14 - Please see Defendant's Answer #12 [Kershaw County Sheriff's Office Policy Manual: Chapter 508 – Body Worn Cameras].

KCSO's Answer #14 is evasive and incomplete. KCSO must "identify all such BWC data" and, with respect to the data sets identified, "describe the underlying circumstances including how or if applicable BWC disposal policies were or were not followed in this regard."

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INTERROGATORY NO. 15 - If you contend that KCSO should not be required to bear the costs, expenses, and/or fees of this action pursuant to FOIA, please provide your basis, reasons, and/or explanations, including citation to any alleged supporting authorities.

ANSWER #15 - Kershaw County Sheriff's Office should not be required to bear the costs, expenses and/or fees of this action related to Mr. Justin Jernigan's FOIA Request dated July 22, 2022, based on the fact the Kershaw County Sheriff's Office and the Kershaw County Attorney made every effort, in good faith, to go above and beyond the required actions of a Kershaw County employee to satisfy the requests of Mr. Justin Jernigan based on the information provided in the FOIA Request on July 22, 2022. Further, Christine Jernigan is not a property party entitled to costs and fees, as she never served a FOIA Request. Justin Jernigan is not a property party entitled to fees as he is not a resident of South Carolina and therefore, is not entitled to bring an enforcement action.

KCSO's Answer #15 must be amended and supplemented to provide a full/complete response. Please provide KCSO's full "basis, reasons, and/or explanations, including citation to any alleged supporting authorities" if it contends that it should not be required to bear the costs, expenses and/or fees of this action. *See*, *e.g.*, Rule 11, SCRCP. KCSO has made judicial admissions in its Answer, and/or other inconsistent admissions/concessions that are not consistent with statements of KCSO's Answer #15. These matters, and the plain statutory language, do not support any apparent Rule 11 basis for Answer #15.

REQUEST FOR PRODUCTION NO. 1 - Please produce the available records or documents referred to or relied on in connection with your answers to any Interrogatory served by Plaintiffs in this litigation. This request is limited to only such records or documents as are not presently publicly available online.

RESPONSE TO REQUEST #1 - By way of supplementation, these documents are being provided….

KCSO, in Response to Request #1, improperly lists public records/data that KCSO has or is (very belatedly) producing under FOIA in response to the 7.22.22 FOIA Request. Please amend KCSO's Response to Request #1 to remove all such non-responsive records presently listed therein. KCSO's obligations to fully respond and provide all responsive records of the 7.22.22 Request, pursuant to FOIA, is a separate matter from discovery under the SCRCP. Respectfully, it is not appropriate to combine FOIA matters together with the discovery process provided under the SCRCP.

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Plaintiffs' 7.22.22 FOIA Request

At the hearing on December 19, 2022, the Court ordered KCSO to respond to Plaintiffs' July 22, 2022, South Carolina Freedom of Information Act ("FOIA") Request within 20 days; *i.e.*, by January 9, 2023. *See* S.C. Code §§ 30-4-10, *et seq.*; Compl., Ex. A. KCSO has not attempted to provide the written determination, or reasons therefore, as to the public availability of all the records, data, and/or information of the 7.22.22 Request. S.C. Code § 30-4-30(c). KCSO has also never provided any date certain upon which all the records/information of the 7.22.22 Request would/will be produced. *Id.* Yet, KCSO also (apparently) does not contend that any records/data of the 7.22.22 Request are exempt under FOIA, or otherwise properly withheld pursuant to additional laws and/or regulations. *See*, *e.g.*, KCSO's Answer #9.

After the submission of Plaintiffs' FOIA Request to KCSO on July 22, 2022, the statutory clock – within which KCSO was required to provide its written determination, and thereafter all responsive records – started running. S.C. Code § 30-4-30(c). In this case, KCSO is presently around 4-5 months past the statutory deadlines of FOIA, and around one-month past the deadline set by the Court.

KCSO did not "file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request[,] but it is unable to make a good faith determination as to whether the information is exempt from disclosure." S.C. Code § 30-4-100(a). Accordingly, KCSO waived any right it *may* have to assert any such excuses with respect to the 7.22.22 FOIA Request long ago. In any case, Plaintiffs' counsel has spent many hours conferring and corresponding with KCSO's counsel regarding further details/information, even though KCSO has a much larger share of the relevant information on its own side.

KCSO's January 9, 2023, FOIA production of certain training related files for Deputy Branham (bates nos. 0867-0005 to 0126) is very incomplete. S.C. Code Regs. 12-502.22(a), Training Files, states:

> A. Description: Summary training information of all commissioned personnel. Information includes appointment/commission; copies of application for Police Academy, including photo copies of High School Diplomas, GED or official transcript, certified copy of driver history, NCIC I and II, pre-placement medical history, and birth certificate; certification letter from Police Academy; list of training completed, including firearms, emergency vehicle operations, blood borne pathogens, cores, legal, baton certification, cap-stun certification, crime to

courts (including written and practical exercises); any other outside agency training received while employed by the Sheriff's office; hepatitis B testing and results; equipment issue; equipment order; and disciplinary actions which relate to training.

Plaintiffs also have questions regarding certain of the limited records for Deputy Branham provided to date (e.g., misdated forms/certifications, undated forms/certifications, FTO Manager's Signatures on empty forms, etc.).

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

ATTORNEY FOR MRS. JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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EXHIBIT **B**

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, et al., *Plaintiffs*, v. *Kershaw County Sheriff's Office*, *Defendant*.	C.A. No. 2022-CP-28-00782

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE

Pursuant to Rule 33, SCRCP, Plaintiffs, by and through undersigned counsel, hereby request that Defendant Kershaw County Sheriff's Office ("KCSO" or "Defendant") respond to this First Set of Interrogatories under oath by serving written responses on undersigned counsel within thirty (30) days of service.

I. INTRODUCTION

In addition to the definitions and instructions set forth in Rule 33, SCRAP, the following definitions, and instructions apply to these interrogatories.

A. DEFINITIONS

1. "You," "your," "KCSO," or "Defendant" means Defendant Kershaw County Sheriff's Office, including its chief officer, secondary officers, deputies, employees, attorneys, agents, representatives, and other persons or entities acting or purporting to act for, with, on behalf of, or under the control of, the foregoing.

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2. "Complaint" means the active complaint in Kershaw County, Court of Common Pleas, Fifth Judicial Circuit, Civil Action No. 2022-CP-28-00782.

3. "This litigation" means the present case in Kershaw County, Court of Common Pleas, Fifth Judicial Circuit, Civil Action No. 2022-CP-28-00782.

4. "Person" means any natural person or legal entity, whether private or public/governmental, and shall include anyone else acting on the person or entity's behalf.

5. "Third party" means any person or entity other than Defendant or Plaintiffs.

6. "Communication" means the act or fact of any transfer of information, and the memorialization of discussions, meetings, or agreements between or among persons or entities, including written or electronic, face-to-face discussions, telephone, and recorded video or audio.

7. "Concerning," "relating to," or "regarding" means being logically or factually connected to the subject of the interrogatory, either directly or indirectly, in whole or in part.

8. The terms "and," "and/or," and "or" shall each be deemed to refer to both their conjunctive and disjunctive meanings.

9. "Any" means "all" and/or "each," and vice versa, to the extent necessary to bring within the scope of the interrogatories information that might otherwise be construed in good faith to be outside their scope.

10. "Date" means the exact date, if known, or the closest approximation as can be specified, e.g., year, month, part of a month, or week.

11. The use of the singular form of any term includes the plural and vice versa.

12. "FOIA" means the Freedom of Information Act, S.C. Code §§ 30-4-10, et seq.,

13. "Public record," "record," "public information," or "public data," as used herein, are as defined in FOIA, S.C. Code § 30-4-20(c), which "includes all books, papers, maps,

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photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." *See also* S.C. Code § 30-1-10 (incorporating FOIA's definition by reference into the Records Act)

14. The "7.22.22 Request" means the FOIA request submitted to KCSO on July 22, 2022, which is attached to the Complaint as Exhibit A and incorporated by reference herein. The 7.22.22 Request generally, includes within its scope those respective categories of records summarized at Paragraphs 17, 35-36, and 38 of the Complaint:

- "[R]ecords concerning KCSO's interactions with Plaintiffs and third parties that accused Plaintiffs of alleged improper, unlawful, or criminal conduct during June 2022 to present."
- "[R]ecords and data concerning the names, ranks, dates of service, and other human resource related information concerning the KCSO officers, employees, or agents having personal involvement with KCSO's actions of June 29, 2022, or otherwise having interactions with Plaintiffs or the third parties involved."
- "[F]or those KCSO officers, employees, or agents personally involved, public records and data concerning training, classes, certifications, or instructions with respect to … [upholding citizens' Fourth Amendment rights]."
- "[R]ecords … concerning Mr. Jernigan's reporting to KCSO, on June 28-29, 2022, of suspected exploitation of a vulnerable adult under the OAPA, and, for those … personally involved, relevant training, classes, certifications, or instructions with respect to the OAPA."

15. The "Records Act" means S.C. Code §§ 30-1-10, *et seq*.

16. "BWC(s)" mean body-worn cameras with, at least, audio and video data recording capabilities, having utilization, data retention, and data preservation requirements pursuant to state laws, regulations, and KCSO policies (e.g., KCSO Policy Manual, Chapter 508).

17. The "Records Regulations" mean those State regulations (e.g., minimum schedules for retention, etc.) issued by the S.C. Department of Archives and History that apply

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to public bodies such as KCSO, and which pertain or apply to the categories or types of records falling within the reasonable scope of the 7.22.22 Request. For example, the Records Regulations of S.C. Code of Regs. §§ 12-500 ("Introduction and General Matters; Application of Schedule"), 12-502.1 ("Incident Reports"), 12-502.21 ("Daily Shift Report"), 12-502.22 ("Training Files"), 12-502.23 ("Dispatch Records"), 12-502.24 ("Complaint Cards"), 12-502.28 ("Radio Logs"), 12-515.2 ("Dispatch Cards for 911 Emergency Call Records [to KCSO]"), 12-515.3 ("911 Phone Logs [to KCSO]"), and 12-515.4 ("Radio Logs [to KCSO]").

18. The "KCSO Records Policies" mean those specific and in-force records policies which pertain or apply to the categories or types of records falling within the reasonable scope of the 7.22.22 Request. For example, those specific records policies approved for KCSO use by and/or in corporation with the S.C. Department of Archives and History or other State Agency.

B. INSTRUCTIONS

1. The primary time applicable to these interrogatories is, generally, June 2022 to present with respect to the relevant occurrences (e.g., communications, events, etc.), but certain of the training record subject matter extends further back for a presently unknown number of relevant years with respect to the officers or employees personally involved (e.g., dependent upon dates of employment).

2. Each interrogatory shall be answered based on your knowledge, from all sources, after an appropriate and good faith inquiry and search have been conducted.

3. If the answer, information, or records provided in response to any interrogatory is incomplete, please provide all of which you are now aware.

4. If you have any good faith objection(s), please state your objection(s) with particularity, whether the objection applies to the entire interrogatory or only a part thereof, and

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respond subject to your objection (*e.g.*, in accordance with the good-faith scope or meaning you deem unobjectionable). Undersigned counsel is available to discuss, clarify, and/or potentially limit towards the goal of amicably resolving good faith objections.

5. If you withhold any responsive information or records, in whole or in part, on the grounds of attorney-client privilege, work product immunity, or any other privilege, doctrine, or exemption, please identify at such time or within a reasonable time thereafter:

(a) the nature of the privilege, doctrine, or exemption that is being asserted;

(b) for records, (i) the type (e.g., policy, memorandum, report, etc.), (ii) the general subject matter, (iii) the date(s) prepared and/or transmitted, (iv) the author(s), (v) the sender and all recipients if applicable, (vi) where not apparent, the relationship of the author(s), sender(s), and recipient(s) to each other, and (vii) any and all attachments or enclosures appurtenant; and

(c) for oral communications, (i) the means by which the communication was made (e.g., in person, telephone, video conference, etc.), (ii) the general subject matter of the communication, (iii) the names of all participants to the communication, (iv) the date and place of the communication, (v) the name(s) of all other persons privy to the communication or present when the communication was made, and (vi) where not apparent, the relationship of the participants to each another and to any other persons privy to the communication or present when the communication was made.

6. These interrogatories are of continuing effect and to the extent that you, after answering, become aware of or otherwise acquire additional responsive information or records, please provided at such time and/or produce or within a reasonable time thereafter.

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INTERROGATORIES

INTERROGATORY NO. 1

Please identify your records officer and other persons having legal responsibility for the categories or types of requested records falling within the reasonable scope of the 7.22.22 Request.

RESPONSE:

INTERROGATORY NO. 2

Please identify all KCSO Records Policies. For example, any such public records policies supplementing, enlarging, and/or otherwise differing from the requirements, schedules, and/or standards of the Records Regulations.

RESPONSE:

INTERROGATORY NO. 3

Please identify and describe, based upon the governing Records Regulations and/or KCSO Records Policies (e.g., in response to IROG No. 2), those categories or types that apply, correspond, or potentially apply to requested records falling within the reasonable scope of the 7.22.22 Request. For example, the follow categories under the relevant Records Regulations and/or KCSO Records Policies: incident, supplemental, memorandum, or informational reports, daily shift reports, training files, dispatch records, complaint cards, radio logs, emergency call records to KCSO, and 911 phone logs involving KCSO.

RESPONSE:

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INTERROGATORY NO. 4

If any public records falling within the reasonable scope of the 7.22.22 Request have been destroyed or otherwise rendered unavailable, please identify such records and describe the underlying circumstances, including how and/or if the requirements, schedules, and/or standards for disposal were met or not met based upon the governing Records Regulations and/or KCSO Records Policies.

RESPONSE:

INTERROGATORY NO. 5

Please provide KCSO's basis, reasons, and/or explanations, and describe the circumstances of the underlying decision-making process, with respect to KCSO's assertions via email on July 25, 2022, that there are no public records falling within the reasonable scope of the 7.22.22 Request to provide or make available for inspection.

RESPONSE:

INTERROGATORY NO. 6

Please provide KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities, for the assertion in KCSO's FOIA Production Cover Letter dated August 18, 2022, that all "non-exempt" communications related records falling within the reasonable scope of the 7.22.22 Request were provided or produced therewith.

RESPONSE:

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INTERROGATORY NO. 7

Please provide the identity of the KCSO personnel or other persons having responsibility for timely providing public records falling within the reasonable scope of the 7.22.22 Request pursuant to FOIA, and describe the communications, steps, and/or processes taken with respect to searching, obtaining, locating, and/or producing these public records pursuant to the legal requirement of FOIA.

RESPONSE:

INTERROGATORY NO. 8

Please provide the basis, reasons, and/or explanations, including citation to any supporting authorities, with respect to KCSO's assertions via email on August 18, 2022, that it considered all FOIA and non-FOIA matters raised by Plaintiffs to be "closed" at such time.

RESPONSE:

INTERROGATORY NO. 9

If KCSO contends that Plaintiffs are not entitled to receive any of the requested records falling within the reasonable scope of the 7.22.22 Request, please provide KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities.

RESPONSE:

INTERROGATORY NO. 10

Please identify, respectively, all portions of the communications-related records produced in response to the 7.22.22 Request under KCSO's Cover Letter dated August 18, 2022, and the

dash camera video under KCSO's Cover Letter dated August 24, 2022, that have been redacted, removed, and/or omitted and, for all identified redacted/omitted portions, describe KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities, for all such redactions, removals, and/or omissions of public records (e.g., pursuant to FOIA).

RESPONSE:

INTERROGATORY NO. 11

Please identify and describe the roles of your records officer or other persons having legal responsibility for maintaining, retaining, and disposing of your BWC data pursuant to State Law, Regulations, or KCSO BWC data policies, with respect to all BWC data falling within the reasonable scope the BWC sought in the Complaint.

RESPONSE:

INTERROGATORY NO. 12

Please identify all governing BWC data policies relating to or affecting the creation, maintenance, retention, and/or disposal with respect to BWC data falling within the reasonable scope sought in the Complaint.

INTERROGATORY NO. 13

Please provide your basis, reasons, and/or explanations, including citation to any alleged supporting authorities, as to why Plaintiffs are not entitled to receive any portions of the BWC data falling within the reasonable scope sought in the Complaint.

RESPONSE:

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INTERROGATORY NO. 14

If any of the BWC data falling within the reasonable scope sought in the Complaint has destroyed or otherwise rendered unavailable, please identify all such BWC data and describe the underlying circumstances including how or if applicable BWC disposal policies were or were not followed in this regard.

INTERROGATORY NO. 15

If you contend that KCSO should not be required to bear the costs, expenses, and/or fees of this action pursuant to FOIA, please provide your basis, reasons, and/or explanations, including citation to any alleged supporting authorities.

RESPONSE:

Date: October 29, 2022

s/Justin A. Jernigan

Justin A. Jernigan

Pro se, and attorney for Plaintiff Mrs. Jernigan

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document via U.S. Mail to all attorneys of record.

Date: October 29, 2022 s/Justin A. Jernigan

EXHIBIT C

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, et al., *Plaintiffs*, v. *Kershaw County Sheriff's Office*, *Defendant*.	C.A. No. 2022-CP-28-00782

PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE

Pursuant to Rule 34, SCRCP, Plaintiffs, by and through undersigned counsel, hereby requests that Defendant Kershaw County Sheriff's Office ("KCSO" or "Defendant") produce the following documents and things for inspection and copying at 7428 Stirrup Court, Weddington, NC 28104, on December 9, 2022, at 11:00am or at another mutually agreed upon time and/or place.

I. INTRODUCTION

In addition to the definitions and instructions set forth in Rule 34, SCRAP, the following definitions and instructions apply to each of the Requests set forth herein and are deemed to be incorporated in each of the Requests.

DEFINITIONS

Please see the Definitions as set forth in Plaintiffs' First Set of Interrogatories to KCSO dated October 29, 2022 and served herewith.

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INSTRUCTIONS

1. In responding to each request, furnish all records or documents available to you or subject to your reasonable inquiry.

2. If any record or document is withheld on the basis of attorney-client privilege, the work-product doctrine, or any other exemption or privilege, state or identify with respect to each such document:

(a) the privilege or doctrine upon which you are relying and, if the privilege is governed by state law, indicate the state privilege rule being invoked;

(b) the type of document (*i.e.*, letter, memorandum, etc.);

(c) the date of the document;

(d) the subject matter(s) of the document;

(e) the author(s) of the document;

(f) the addressee(s) of the document;

(g) all persons who received a copy of the document; and

(h) where not apparent, the relationship of the author, addressees, and recipients to each other.

5. If any document or record cannot be produced in full, produce it to the extent possible, specifying your reasons for your inability to produce the remainder and stating whatever information, knowledge, or belief you have concerning the unproduced portion.

6. If and to the extent any request is objected to, state with specificity all grounds for the objection.

7. If you claim that any particular request is beyond the scope of permissible discovery, specify in detail each and every ground for such a claim.

9. Each document request is continuing. If, after producing documents or records, you obtain or become aware of any further documents or records responsive to these requests, you are requested to produce such additional documents.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

Please produce the available records or documents referred to or relied on in connection with your answers to any Interrogatory served by Plaintiffs in this litigation. This request *is limited to only* such records or documents as are not presently publicly available online.

RESPONSE:

Date: October 29, 2022

s/Justin A. Jernigan

Justin A. Jernigan

Pro se, and attorney for Plaintiff Mrs. Jernigan

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document via U.S. Mail to all attorneys of record.

Date: October 29, 2022 s/Justin A. Jernigan

EXHIBIT D

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan and Justin Jernigan,	)	C/A #: 22-CP-28-00782
Plaintiffs,	)	
v.	)	**ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**
Kershaw County Sheriff's Office,	)	
Defendant.	)	

TO: JUSTIN A. JERNIGAN, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Pursuant to Rule 33, Defendant Kershaw County Sheriff's Office responds to Plaintiffs' First Set of Interrogatories as follows:

1. Please identify your records officer and other persons having legal responsibility for the categories or types of requested records falling within the reasonable scope of the 7/22/22 request.

Answer #1: Records Officer(s), or Other Persons Assisting in Response for the Kershaw County Sheriff's Office are: (1) Autumn Furniss; (2) Chelsea Cockrell; AND (3) Captain Kevin Lynch (Admin Captain).

2. Please identify all KCSO records policies. For example, any such public records policies supplementing, enlarging and/or otherwise differing from the requirements, schedules and/or standards of the records regulations.

Answer #2: Kershaw County Sheriff's Office Policy Manual: Chapter 209 – Records.

3. Please identify and describe, based upon the governing records regulations and/or KCSO records policies (e.g., in response to IROG No. 2), those categories or types that apply,

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correspond, or potentially apply to requested records falling within the reasonable scope of the 7/22/22 request. For example, the following categories under the relevant records regulations and/or KCSO records policies: incident, supplemental, memorandum or informational reports, daily shift reports, training files, dispatch records, complaint cards, radio logs, emergency call records to KCSO and 911 phone logs involving KCSO.

Answer #3: Please see Defendant's Answer #2. The policies speak for themselves. Plaintiff and Plaintiff's counsel can interpret the policies.

4. If any public records falling within the reasonable scope of the 7/22/22 request have been destroyed or otherwise rendered unavailable, please identify such records, and describe the underlying circumstances, including how and/or if the requirements, schedules and/or standards for disposal were met or not met based upon the governing records regulations and/or KCSO records policies.

Answer #4: Kershaw County Sheriff's Office is an agency of limited resources. Often the Kershaw County Sheriff's Office will utilize various methods to assist the citizens of Kershaw County effectively and efficiently, including: (1) the Kershaw County Sheriff's Office retains records of non-criminal incidents ("Public Contact") on a limited basis, and this call was not recorded; AND (2) the Kershaw County Sheriff's Office will also utilize the cellular telephones of its employees to assist the citizens of Kershaw County. Incidents and information from June 28, 2022, and June 29, 2022, falling within these common methods of operation for the Kershaw County Sheriff's Office are: (1) Mr. Jernigan's attempt to report exploitation of a vulnerable adult to Kershaw County Sheriff's Office does not exist as no recording was made; (2) Phone Call from a Kershaw County Sheriff's Office investigator to Deputy Branham does not exist because recordings between personal

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cell phones of Kershaw County Sheriff's Office employees are not recorded; (3) Phone Call from Deputy Branham to Mr. Justin Jernigan does not exist because recordings of calls between personal cellular telephones are not recorded; AND (4) Body-Worn Cameras associated with incidents occurring on June 29, 2022, involving responding officers concerned non-criminal matters and are no longer retained. The standards for retention were met.

5. Please provide KCSO's basis, reasons and/or explanations and describe the circumstances of the underlying decision-making process, with respect to KCSO's assertions via email on July 25, 2022, that there are no public records falling within the reasonable scope of the 7/22/22 request to provide or make available for inspection.

Answer #5: Please see Defendant's Answer #4.

6. Please provide KCSO's basis, reasons and/or explanations, including citation to any supporting authorities, for the assertion in KCSO's FOIA production cover letter dated August 18, 2022, that all "non-exempt" communications related records falling within the reasonable scope of the 7/22/22 request were provided or produced herewith.

Answer #6: Each relevant document and/or record in the possession of the Kershaw County Sheriff's Office and/or the Kershaw County Attorney were provided in good faith to Mr. Justin Jernigan to the best of our knowledge and ability based on the information provided in the FOIA Request on July 22, 2022.

7. Please provide the identity of the KCSO personnel or other persons having responsibility for timely providing public records falling within the reasonable scope of the 7/22/22 request pursuant to FOIA and describe the communications, steps and/or processes taken

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with respect to searching, obtaining, locating and/or producing these public records pursuant to the legal requirements of FOIA.

Answer #7: Please see Defendant's Answer #1. The person who initially responded to Mr. Jernigan's July 22, 2022, FOIA Request is no longer employed with the Kershaw County Sheriff's Office; therefore, we do not have access to the information requested.

8. Please provide the basis, reasons and/or explanations, including citation to any supporting authorities, with respect to KCSO's assertions via email on August 18, 2022, that it considered all FOIA and non-FOIA matters raised by Plaintiffs to be "closed" at such time.

Answer #8: Kershaw County Sheriff's Office's statement via email on August 18, 2022, stating "all FOIA and non-FOIA matters raised by Plaintiffs to be 'closed' at such time" was made in good faith by the Kershaw County Sheriff's Office through the Kershaw County Attorney after exhaustive efforts were made above and beyond the statutory requirements to satisfy Mr. Jernigan's FOIA Request on July 22, 2022.

9. If KCSO contends that Plaintiffs are not entitled to receive any of the requested records falling within the reasonable scope of the 7/22/22 request, please provide KCSO's basis, reasons and/or explanations, including citation to any supporting authorities.

Answer #9: Kershaw County Sheriff's Office has not made a statement in any fashion relating to the stance Plaintiffs are not entitled to receive any of the requested records pertaining to Mr. Justin Jernigan's FOIA Request on July 22, 2022.

10. Please identify, respectively, all portions of the communications-related records produced in response to the 7/22/22 request under KCSO's cover letter dated August 18, 2022, and the dash camera video under KCSO's cover letter dated August 24, 2022, that have been redacted, removed and/or omitted and for all identified redacted/omitted portions, describe

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KCSO's basis, reasons and/or explanations, including citation to any supporting authorities, for all such redactions, removals and/or omissions of public records (e.g., pursuant to FOIA).

Answer #10: Kershaw County Sheriff's Office and the Kershaw County Attorney at no time redacted any information and/or records which are not protected by privacy law(s). We are not aware of any redactions to videos or audio. Redactions on paper are apparent and appropriate.

11. Please identify and describe the roles of your records officer or other persons having legal responsibility for maintaining, retaining and disposing of your BWC data pursuant to State Law, Regulations and KCSO BWC data policies with respect to all BWC data falling within the reasonable scope the BWC sought in the Complaint.

Answer #11: Please see Defendant's Answer #1.

12. Please identify all governing BWC data policies relating to or affecting the creation, maintenance, retention and/or disposal with respect to BWC data falling within the reasonable scope sought in the Complaint.

Answer #12: Kershaw County Sheriff's Office Policy Manual: Chapter 508 – Body Worn Cameras.

13. Please provide your basis, reasons and/or explanations, including citation to any alleged supporting authorities, as to why Plaintiffs are not entitled to receive any portion of the BWC data falling within the reasonable scope sought in the Complaint.

Answer #13: There is nothing to produce because data was written over in accordance with policy.

14. If any of the BWC data falling within the reasonable scope sought in the Complaint has [been] destroyed or otherwise rendered unavailable, please identify all such BWC

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data and describe the underlying circumstances, including how or if applicable BWC disposal policies were or were not followed in this regard.

Answer #14: Please see Defendant's Answer #12.

15. If you contend that KCSO should not be required to bear the costs, expenses and/or fees of this action pursuant to FOIA, please provide your basis, reasons and/or explanations, including citation to any alleged supporting authorities.

Answer #15: Kershaw County Sheriff's Office should not be required to bear the costs, expenses and/or fees of this action related to Mr. Justin Jernigan's FOIA Request dated July 22, 2022, based on the fact the Kershaw County Sheriff's Office and the Kershaw County Attorney made every effort, in good faith, to go above and beyond the required actions of a Kershaw County employee to satisfy the requests of Mr. Justin Jernigan based on the information provided in the FOIA Request on July 22, 2022. Further, Christine Jernigan is not a property party entitled to costs and fees, as she never served a FOIA Request. Justin Jernigan is not a property party entitled to fees as he is not a resident of South Carolina and therefore, is not entitled to bring an enforcement action.

MORRISON LAW FIRM, LLC

By: _____

David L. Morrison (Bar #4101)
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

Attorney for Defendant

Columbia, South Carolina

January 9, 2023

EXHIBIT E

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan and Justin Jernigan,	)	C/A #: 22-CP-28-00782
Plaintiffs,	)	
v.	)	**RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION**
Kershaw County Sheriff's Office,	)	
Defendant.	)	

TO: JUSTIN A. JERNIGAN, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Pursuant to Rule 34, Defendant Kershaw County Sheriff's Office responds to Plaintiffs' First Set of Request for Production as follows:

1. Please produce the available records or documents referred to or relied on in connection with your answers to any Interrogatory served by Plaintiffs in this litigation. This request *is limited to only* such records or documents as are not presently publicly available online.

Response #1: By way of supplementation, these documents are being provided:

1. **E-911 Communication: June 29, 2022, from Justin Jernigan to Kershaw County Sheriff's Office from 9:44am EST to 10:30am EST (previously provided).**
2. **E-911 Communication: June 29, 2022, from Phillip Hudson to Kershaw County Sheriff's Office from 10:55am EST to 11:53am EST (previously provided).**
3. **Deputy Grant Arledge Personnel File (previously provided).**
4. **Deputy Joseph Branham Personnel File (attached).**
5. **Deputy Dustin Tate Personnel File (previously provided).**
6. **Deputy Miles Taylor Personnel File (previously provided).**

7. **Dashcam Video from Deputy Miles Taylor's Patrol Vehicle on June 29, 2022 (previously provided).**
8. **Audio Recordings (Total: #12) of Mr. Jernigan (previously provided).**
9. **Kershaw County Sheriff's Office Policy Manual Ch. 209 – Records (attached).**
10. **Kershaw County Sheriff's Office Policy Manual Ch. 508 – Body Worn Cameras (attached).**
11. **Records Retention Schedule (attached).**

MORRISON LAW FIRM, LLC

By: _____

David L. Morrison (Bar #4101)
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

Attorney for Defendant

Columbia, South Carolina

January 9, 2023

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EXHIBIT F

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Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

Rule 11 Letter Re: Christine Jernigan and Justin Jernigan v. Kershaw County Sheriff's Office

Justin Jernigan <justin.a.jernigan@gmail.com> Fri, Feb 10, 2023 at 1:43 PM
To: Callie Morrison <callie@dmorrison-law.com>
Cc: "Cameron W. DeBoy" <cameron@dmorrison-law.com>, David Morrison <david@dmorrison-law.com>

Dear David,

Please see Plaintiffs attached the Rule 11 or 10-day Letter concerning discovery and other issues.

Also attached are Exhibits A and B with respect to the supplemental reporting on the OAPA, also included in the attached February 10, 2023, Letter.

Best,

Justin

Justin A. Jernigan, Esq.
(864) 710-5029

On Thu, Jan 12, 2023 at 11:02 AM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> David/Cameron,
>
> To follow up, and to if needed to clarify with respect to my email sent earlier today, and prior email of 1/10/23, it does not make sense for Plaintiffs to spend time reviewing/considering KCSO's responses until Plaintiffs either receive: (1) confirmation that these are the "final" responses and verification will be provided by (or should be provided by) a date certain; or (2) Plaintiffs actually receive verification of KCSO's responses as required by Rules 33 and 37. This is resulting in further delay.
>
> The 30 day response period expired over a month ago, and the Court ordered a response to be filed within 20 days after the 12/19/22 Hearing.
>
> Justin
>
> Justin
>
> Justin
>
> On Thu, Jan 12, 2023 at 9:38 AM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:
>
> > David,
> >
> > Until verification of KCSO's IROG Responses are provided, the responses are incomplete and an incomplete answer is equivalent to a failure to answer under Rule 37.
> >
> > Regards,
> >
> > Justin
> >
> > On Tue, Jan 10, 2023 at 4:24 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

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All,

Receipt confirmed with thanks. Have not had a chance to review and consider fully but hope to do so over the week or so. As previously noted, we can agree to email service of .pdf's to save trees, but if mailing is the typical practice, that is ok as well.

David,

Please let me know when plaintiffs can except to receive verification under oath of the responses.

Is anything additional as far as audio/video being produced via disc?

Thanks, and happy new year,

Justin

On Mon, Jan 9, 2023 at 4:02 PM Callie Morrison <callie@dmorrison-law.com> wrote:

> Good afternoon ~ Please find attached the Defendant's Answers to Plaintiffs' First Set of Interrogatories and Responses to Plaintiffs' First Set of Requests for Production and the Certificate of Service in the above-referenced matter. Also attached are PDF documents for production.
>
> *Callie Morrison*
>
> *Office Manager/Legal Asst.*
>
> **Morrison Law Firm, LLC**
>
> 7453 Irmo Drive, Suite B
>
> Columbia, South Carolina 29212
>
> T: (803) 661-6285
>
> F: (803) 661-6289

3 attachments

2.10.23 to David (Reporting, Rule 11).pdf
594K

8.11.22-8.19.22 Emails to Pinedale.pdf
1047K

1.19.23 C&D Abuse Letter to MBM.pdf
3826K

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Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

Rule 11 Letter Re: Christine Jernigan and Justin Jernigan v. Kershaw County Sheriff's Office

Justin Jernigan <justin.a.jernigan@gmail.com> Mon, Feb 20, 2023 at 4:54 PM
To: "Cameron W. DeBoy" <cameron@dmorrison-law.com>
Cc: Callie Morrison <callie@dmorrison-law.com>, David Morrison <david@dmorrison-law.com>

If KCSO opposes Plaintiffs motion for sanctions/contempt under (at least) Rule 37, Please provide KCSO's full basis, reasons, explanations, etc., with citations to all supporting authorities, for any such contention.

Best regards,

Justin
864-710-5029

On Mon, Feb 20, 2023 at 4:35 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> David/Cameron,
>
> Please clarify. Are you asking for an extension?
>
> If so what is the basis for that request so Plaintiffs can consider and respond accordingly?
>
> As of now, Plaintiffs disagree with further extensions for reasons stated in my letter.
>
> Also, regardless, please confirm what type of verifications are KCSO in 1-2days?!? Are these full and completed answers and corrected responses to the RFP?
>
> What about the FOIA Response?
>
> Did you guys agree that the deadlines expired long ago? If not, please explain.
>
> Justin
> 864-710-5029
>
> On Mon, Feb 20, 2023 at 4:24 PM Cameron W. DeBoy <cameron@dmorrison-law.com> wrote:
>
> > Justin,
> >
> > We received your SCRCP Rule 11 or 10-Day Letter concerning discovery and other issues. We are attempting to secure the verification to discovery responses sought per your previous email (below). We anticipate completing the verification within the next day or two. We apologize for the delay; however, we are trying our best to satisfy your request.
> >
> > Thanks,

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Cameron W. DeBoy

Attorney and Counselor at Law

Morrison Law Firm, LLC

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Cell: (803) 834-0820

Fax: (803) 661-6289

From: Justin Jernigan <justin.a.jernigan@gmail.com>
Sent: Friday, February 10, 2023 1:43 PM
To: Callie Morrison <callie@dmorrison-law.com>
Cc: Cameron W. DeBoy <cameron@dmorrison-law.com>; David Morrison <david@dmorrison-law.com>
Subject: Rule 11 Letter Re: Christine Jernigan and Justin Jernigan v. Kershaw County Sheriff's Office

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Justin A. Jernigan, Esq.

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> > > All,
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> > > Receipt confirmed with thanks. Have not had a chance to review and consider fully but hope to do so over the week or so. As previously noted, we can agree to email service

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Is anything additional as far as audio/video being produced via disc?

Thanks, and happy new year,

Justin

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> *Callie Morrison*
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> **Morrison Law Firm, LLC**
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>
> F: (803) 661-6289

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
	)	
COUNTY OF KERSHAW	)	**CASE NO.: 2022-CP-28-00782**
	)	
Christine Jernigan, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
Kershaw County Sheriff's Office,	)	
	)	
Defendant.	)	
	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR SANCTIONS/CONTEMPT

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 24th day of April 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

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APPENDIX OF EXHIBITS

Ex. A: Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter to KCSO

Ex. B: Plaintiffs' First Set of Interrogatories (Nos. 1-15) served October 29, 2022

Ex. C: Plaintiffs' First Set of Requests for Production (No. 1) served October 29, 2022

Ex. D: KCSO's Answers served January 9, 2023, to Plaintiffs' First Set of Interrogatories

Ex. E: KCSO's Responses served January 9, 2023, to Plaintiffs' First Set of Requests for Production

Ex. F: Emails between Counsel for the Parties dated February 20 to 22, 2023

Ex. G: KCSO Policy Manual, Chapter 209 - Records (first produced January 9, 2023)

Ex. H: SCCJA Training Catalog - Omnibus Adult Protection Act (Vulnerable Adults)

Ex. I: CFS2022-39009 (produced December 4, 2022)

Ex. J: CFS2022-39001 (produced December 4, 2022)

Ex. K: August 18, 2022, Cover Letter; Optical Disc; and CFS2022-39001

Ex. L: Letter of South Carolina Attorney General re: FOIA (page 4)

Ex. M: SCLEA Standards Manual, Chapter 15 - Communication

Ex. N: Pre-suit Emails – late July to late August 2022

Ex. O: December 5, 2022, Hearing Transcript before the Honorable DeAndrea G. Benjamin

Ex. P: KCSO Body Worn Camera Retention Schedules (first produced January 9, 2023)

Ex. Q: Orders from *Brown v. Elliot*, 3:14-cv-01188, D.E. 43 & 61 (D.S.C. 2016)

Ex. R: WIS News 10 Article - April 12, 2022

Ex. S: WIS News 10 Article - May 24, 2022

Ex. T: December 19, 2022, Hearing Transcript before the Honorable Jocelyn C. Newman

Ex. U: Affidavit of Justin A. Jernigan – April 24, 2023

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I. INTRODUCTION

The record in this case demonstrates that Defendant Kershaw County Sheriff's Office ("KCSO") has (*i*) destroyed public records it was legally obligated to preserve; (*ii*) refused to comply with the South Carolina Freedom of Information Act ("FOIA"), even after being ordered to do so in December 2022; and (*iii*) refused to provide discovery as required by the South Carolina Rules of Civil Procedure ("SCRCP") after being ordered to do so. In response, Plaintiffs respectfully request that the Court enter an Order imposing civil/contempt sanctions to (*i*) uphold the integrity of the judicial process; (*ii*) compel KCSO to fully comply with the statutory response and disclosure obligations of FOIA; and (*iii*) compel KCSO to fully comply with the discovery requirements of the SCRCP.

More specifically, for the reasons discussed herein and supported by Exhibits A to U, Plaintiffs respectfully request that the Court:

- Order KCSO (again) to fully address and respond with respect to all relevant public records of Plaintiffs' July 22, 2022, FOIA Request (Compl., Ex. A), and to provide unredacted copies of all relevant public records;
- Impose coercive and remedial monetary payment obligations which, if KCSO does not comply in good faith with the above-ordered legal requirements of FOIA (again), must be paid to Plaintiffs;
- Strike KCSO's January 9, 2023, answers and responses to Plaintiffs' October 29, 2022, First Set of Interrogatories Nos. 1-15 and Request for Production No. 1; and Order KCSO to provide full and complete verified answers, responses, and productions thereto (*see, e.g.*, Ex. A, Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter);
- Appoint a special master or referee, at KCSO's expense, to oversee further issues;
- Order that KCSO has waived the attorney-client privilege for the subject matter of this case pursuant to the crime-fraud exception or, alternatively, require submission of any alleged attorney-client privileged communications for *in camera* review by the appointed special master/referee, or the Court;
- Order KCSO's counsel to submit verified statements describing the efforts taken to preserve relevant records/evidence relating to the subject matter of this case and all relevant

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records/evidence that have been erased, destroyed, and/or otherwise rendered unavailable by KCSO; and

- Order KCSO to pay all reasonable attorneys' fees, costs, and expenses.

II. RELEVANT BACKGROUD

A. The South Carolina Freedom of Information Act

The below provisions set forth the purpose and intent of the South Carolina Freedom of Information Act.

> The General Assembly finds that it is *vital* in a democratic society that public business be performed in an open and public manner so that citizens *shall* be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter *must be construed* … to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents.

S.C. Code § 30-4-15 (emphasis added).

Pursuant to FOIA, all "persons" have the right to inspect, copy, or receive an electronic version of any "public record." S.C. Code §§ 30-4-20(b) & (c), 30(a)(1). "[P]ublic record" is broadly defined to include all records, regardless of physical form or format, that are "prepared, owned, used, in the possession of, or retained by a public body."[1] S.C. Code § 30-4-20(c). FOIA is remedial in nature and must "be liberally construed to carry out the purpose mandated by the legislature." *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163 (Ct. App. 2003). The essential purpose of FOIA "is to protect the public from secret government activity." *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843 (1994) (citations omitted).

[1] Certain categories of public records may be withheld by public bodies as exempt from disclosure pursuant to FOIA, or may be subject to redaction to segregate such information. *See* S.C. Code § 30-4-40. No recognized FOIA exemptions have, however, ever been asserted by KCSO in this case.

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FOIA imposes "*an affirmative duty* on the part of public bodies to disclose information." *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (emphasis added). The General Assembly has mandated that all FOIA violations "*must* be considered … an irreparable injury for which no adequate remedy at law exists" by the courts. S.C. Code § 30-4-100(a) (2017) (emphasis added). Accordingly, upon the filing of a cause of action to enforce the provisions of FOIA:

> [T]he chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

Id. In the present case, the ten (10) day initial hearing of Section 30-40-100(a) was delayed for approximately three months, until December 19, 2022, due to scheduling issues.

B. Plaintiffs' July 22, 2022, FOIA Request

Plaintiffs' July 22, 2022, FOIA Request includes all public records that are relevant to certain KCSO police actions/activities of June 29, 2022, described therein. *See* Compl., Ex. A (including all relevant audio/video recordings). The South Carolina Attorney General's Office expects KCSO to act in the spirit of cooperation, and to follow the guiding principle "[w]hen in doubt, disclose the public records," when responding to all FOIA requests. Ex. L at 4. In the present case, however, KCSO has refused to comply with its "affirmative duty … to disclose information" pursuant to FOIA even after being ordered to do so by this Court in December 2022. *Bellamy*, 305 S.C. at 295, 408 S.E.2d at 221; *see infra*, Section III(B).

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C. KCSO's Deceptive/Incomplete July 25, 2022, FOIA Response and Crime-Fraud

Upon receipt of Plaintiffs' FOIA Request on July 22, 2022, KCSO was required, within ten (10) business days, to provide its written determination addressing all relevant records of Plaintiffs' FOIA Request.

> Each public body, upon written request for records made under this chapter, *shall within ten days* (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it…. This determination must constitute the final opinion of the public body as to the public availability of the requested public record[s]. … the record[s] must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided.

S.C. Code § 30-4-30(c) (emphasis added).

Accordingly, within ten (10) business days of receipt, KCSO was required to: (*i*) determine the availability of all public records relevant to Plaintiffs' July 22, 2022, FOIA Request; (*ii*) provide written explanations as to those relevant public records that were available; (*iii*) provide written explanations as to those relevant public records that were not available; and (*iv*) provide a date certain, within thirty (30) calendar days, when copies of the relevant public records would be provided. *Id*. Instead, on July 25, 2022, KCSO provided the deceptive and incomplete FOIA Response copied below, Ex. N at 7:

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

KCSO knew that "civil issue" was not an exemption that exists within FOIA (S.C. Code § 30-4-40); and that public record includes all records, regardless of subject matter, "prepared, owned, used, in the possession of, or retained by" KCSO. S.C. Code § 30-4-20(c). Yet, KCSO

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provided false statements in its July 25, 2022, FOIA Response claiming that it did not have any relevant public records or reports documenting the police-involved incidents because the "issue [Plaintiffs] were dealing with" was a "civil issue." Ex. N at 7.

KCSO knew, based upon its official Policy Manual, Chapter 209 - Records, that reports must be prepared documenting all "citizen requests for services that an officer is dispatched … to investigate," and this is true regardless of the subject matter involved (i.e., criminal, or civil requests). Ex. G at 10.[2] On the morning of June 29, 2022, KCSO Officer #45, Joseph Branham, was the designated "Primary" KCSO patrol officer who was assigned/dispatched to investigate two respective citizen requests for services that are relevant to Plaintiffs' July 22, 2022, FOIA Request. *See* Exs. I at 1, and J at 1. KCSO's police actions in response to the second, and subsequent, of these two relevant citizen requests for services that KCSO acted upon on June 29, 2022, included (*see* Ex. I at 2):

- At 11:07am, KCSO Officers #45 (Primary) and #42 conducted a traffic stop, and seized/detained, Plaintiff Christine Jernigan ("Mrs. Jernigan") and her mother Ann Martin ("Mrs. Martin");
- At 11:22am, KCSO Officer #15 Courtney Cochran indicated that Plaintiff and undersigned counsel Justin Jernigan ("Mr. Jernigan") was at the Kershaw County Sheriff's Department in Lugoff, and that he "wants to let Officers #45 and #42 know;" and
- At 11:53am, KCSO has forced Mrs. Martin to go "back to Pinedale," which is a privately-owned assisted living facility in Kershaw County, and "the others [Plaintiffs] have been told to contact the Court."[3]

At around 2:36pm on June 29, 2022, undersigned counsel spoke with Kershaw County E-911/Dispatch Operator Barry Campbell, and KCSO Officer #45 (Primary), regarding the process

[2] KCSO's Policy Manual, Chapter 209 – Records, was first produced by KCSO in this case on January 9, 2023. Ex. U, ¶16.

[3] A related case, *Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed November 2, 2022) (the "967 case"), is pending before this Court, and the filings/evidence of record in the 967 case are subject to judicial notice in the present case.

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for obtaining copies of reports documenting the earlier police-involved incidents. Ex. J at 2. Pursuant to KCSO's Policy Manual, Chapter 209 - Records, reports documenting the earlier June 29, 2022, police-involved incidents were required to have been prepared by the "Primary" KCSO Officer that was assigned/dispatched prior to the end of the current shift, the reports reviewed/approved by a supervisor, and the reports thereafter furthered reviewed and routed appropriately by KCSO Records' Division officers/employees. Ex. G at 9-10.

On the evening of June 29, 2022, at around 8:14pm, however, KCSO Officer #32, Dustin Tate, falsely asserted that KCSO could not prepare or provide any reports documenting the earlier police-involved incidents of that day because the incidents allegedly concerned "civil issues." *See* Ex. J at 2. The label/category "C12" or Code 12 "civil issue" was applied by KCSO Officer #32 as illustrated by Ex. J at page 2. As discussed in more detail below, the body worn camera audio/video recordings documenting KCSO's June 29, 2022, police actions were destroyed, and therefore permanently concealed, upon expiration of the minimum 60-day retention period applicable for the Code 12 category of KCSO's Body Worn Camera Retention Schedules, Exhibit P hereto. *See infra*, Section III(A).

The record demonstrates that Officer #45 (Primary) had first been dispatched on the morning of June 29, 2022, at 9:46am, in response to undersigned counsel's reporting to KCSO of suspected criminal/felony exploitation of his grandmother Mrs. Martin, who is a vulnerable adult, pursuant to the South Carolina Omnibus Adult Protection Act ("OAPA"). S.C. Code §§ 43-35-5, *et seq*. KCSO Officer #15, Courtney Cochran, at 9:44am on the morning of June 29, 2022, contacted Kershaw County E-911/Dispatch Operator Tina Hand and indicated that undersigned counsel had been referred to KCSO after initially contacting the hotline for the

Vulnerable Adult Investigations Unit of the South Carolina Law Enforcement Division ("SLED"). Ex. U at ¶¶19-23.

The OAPA requires all individuals having actual knowledge of abuse, neglect, and/or exploitation of a vulnerable adult to report this knowledge. S.C. Code § 43-35-25(a) (1993). The failure to report is, in and of itself, a separate criminal/misdemeanor offense under the OAPA. *Id*., at § 43-35-85(a). KCSO's Policy Manual, Chapter 209 - Records, further states: "Incident reports shall be completed on criminal acts that are brought to the attention of a deputy," and "All Incident Reports, regardless of incident type, shall be coded with the appropriate" South Carolina Incident Based Reporting System ("SCIBRS") code. Ex. G at 5, 7. A South Carolina Criminal Justice Academy ("SCCJA") course details the definitions, duties, responsibilities, and authority officers have when investigating cases of vulnerable adult abuse, neglect, and exploitation under the OAPA. *See* Ex. H.

Moreover, KCSO's July 25, 2022, FOIA Response deceptively asserted that, pursuant to the legal requirements of FOIA, Plaintiffs are required to obtain the relevant law enforcement related communications records of the July 22, 2022, FOIA Request from a different entity, i.e., its "central dispatch" or Kershaw County E-911/Dispatch. KCSO has never provided any explanations or support for these assertions and has also refused to identify or produce its own communications policies in response, respectively, to Plaintiffs' October 29, 2022, First Set of Interrogatories No. 2, and Request for Production No. 1. *See* Ex. A at 4-5. Even so, all of the presently known Chapters of KCSO's official Policy Manual are consistent with corresponding provisions of the South Carolina Law Enforcement Accreditation ("SCLEA") Standards Manual. *See, e.g.*, Ex. G, Chapter 209 - Records.

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The SCLEA Standards Manual, Chapter 15 - Communications, requires accredited law enforcement agencies such as KCSO to implement communications standards and procedures (Exhibit M, emphasis added):

> 15.1 If the law enforcement communications function is provided by a shared or multi-jurisdictional entity [e.g. Kershaw County E-911/Dispatch], written agreements or authorizing documents govern the authority and responsibility of both the [law enforcement] agency and the entity, and include, at a minimum, provisions for complying with all applicable standards for this function *on behalf of* the [law enforcement] agency.
>
> Commentary: When the communications function is shared or delegated to another entity [e.g., Kershaw County E-911/Dispatch], it is *necessary to specify accountability* and achieve compliance with this chapter.

The SCLEA Standards Manual also requires KCSO to implement, *inter alia*, "procedures for obtaining and recording relevant information of each [citizen] request for criminal and non-criminal service." Ex. M, at 15.4. The SCLEA Commentary states that implementation of these law enforcement communications recording procedures is "indispensable for auditing" the agency's "communications and records systems." *Id.*

Law enforcement communications functions are being provided on KCSO's behalf by Kershaw County E-911/Dispatch. KCSO maintains ownership, responsibility, and control with respect to its police related communications/records, for instance, to ensure that the applicable SCLEA communications standards and recording requirements are being implemented and followed by Kershaw County E-911/Dispatch. Accordingly, KCSO "prepare[s], own[s], use[s], [is] in the possession of, or retain[s]" communications records of its law enforcement activities as defined pursuant to FOIA. S.C. Code § 30-4-20(c). KCSO must fully address all relevant public records of Plaintiffs' July 22, 2022, FOIA Request, including but not limited to all relevant communications related records.

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Pursuant to S.C. Code § 23-23-150(a)(3)(k), official misconduct by officers/employees includes: "willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form." KCSO's July 25, 2022, FOIA Response included false, misleading, incomplete, deceitful, or incorrect information, as noted above. The laws/regulations prohibiting official misconduct are relevant to KCSO's crime-fraud in the present case.

D. KCSO Retained Counsel to Cover Up, Assist, and/or Further Criminal, Fraudulent, or Tortious Activities

The Kershaw County Attorney, Tommy Morgan, Esq. ("Mr. Morgan") has, since at least 2017 or so, served as KCSO's primary counsel defending claims of alleged police misconduct that have been brought against KCSO, its primary officers, secondary officers, employees, and/or agents. *See infra*, Section III(A). After Plaintiff and undersigned counsel Mr. Jernigan responded by pointing out deficiencies, and raising concerns, regarding KCSO's July 25, 2022, FOIA Response, KCSO retained County Attorney Mr. Morgan to fulfill Plaintiffs' FOIA Request, on July 27, 2022, stating as follows, Ex. N at 6):

> I've added the County Attorney on to this email thread. From this point forward, please refer to him for anything further so that we can assure all of your needs are met.
> Thank you, and have a great day.

KCSO was, as set forth above, engaged in criminal, fraudulent, or tortious activities ("crime-fraud") on July 27, 2022. KCSO also intended on July 27, 2022, when it retained counsel, to unlawfully destroy the relevant body worn camera audio/video recordings evidencing the June 29, 2022, police-involved incidents on August 27, 2022. *See infra*, Section III(A).

It is well established that attorney-client "communications in furtherance of criminal, tortious or fraudulent conduct" will result in the loss of the ability to claim the protections of the attorney-client privilege. *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219 (1981). In the

present case, KCSO obtained legal representation to assist an on-going fraudulent scheme to conceal/destroy public records/evidence documenting the relevant June 29, 2022, KCSO police actions and activities.

In late August 2022, near FOIA's 30-day disclosure deadline, Plaintiffs believed KCSO would prefer to resolve this matter amicably on reasonable terms to avoid wasting time/expense, including tax-payer funds, litigating this case. On August 23, 2022, Plaintiffs offered, as a mutually beneficial solution, to extend the applicable FOIA deadlines of Section 30-4-30(c) if KCSO would simply provide the relevant third-party E-911 call records for the June 29, 2022, police-involved incidents as soon as possible. Otherwise, Plaintiff and undersigned counsel Mr. Jernigan respectfully proposed that KCSO's counsel Mr. Morgan keep Plaintiffs "in the loop" moving forward regarding when KCSO would thereafter be able to provide Plaintiffs with copies of the additional public records relevant to the July 22, 2022, FOIA Request, including the requested personnel/training records for the officers involved. Ex N at 23-24.

Surprisingly, rather than making any efforts in late August 2022 to avoid wasting time, judicial resources, and party/tax-payer resources litigating this matter, KCSO and County Attorney Mr. Morgan rejected Plaintiffs' August 23, 2022, settlement proposal later that night, at 9:00pm. Ex. N at 22-23. KCSO frivolously asserted that the third-party E-911 call records relevant to the June 29, 2022, KCSO-involved incidents were *not included within* Plaintiffs' July 22, 2022, FOIA Request, and purportedly constituted a "new" FOIA request for purposes of the statutorily required deadlines. *Id.*

The next day, on August 24, 2022, undersigned counsel provided an updated settlement proposal/solution to KCSO, via counsel Mr. Morgan, to avoid wasting the time/resources that would otherwise be required by resorting to litigation. Ex. N at 21-22. Specifically, Plaintiffs

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respectfully requested that KCSO's counsel Mr. Morgan set up a date/time for undersigned counsel to personally inspect, and make copies of, the public records relevant to Plaintiffs' July 22, 2022, FOIA Request. *Id.* One of the proposed dates offered by undersigned counsel for inspecting and copying the relevant public records was Sunday August 27, 2022, which is also the same day KCSO destroyed/spoliated all of the body worn camera audio/video recordings documenting its June 29, 2022, police actions. *See infra,* Section III(A).

KCSO's counsel Mr. Morgan never responded to Plaintiffs' August 24, 2022, settlement proposal/solution, forcing Plaintiffs to file their Complaint on September 12, 2022. Accordingly, rather than attempting to resolve this matter reasonably, KCSO's goal was to abuse the judicial process for purposes of further delay. After Plaintiffs filed and served their Complaint on September 12 and 14, 2022, KCSO and Mr. Morgan retained current counsel of record David Morrison, Esq., ("Mr. Morrison") to further assist. KCSO's January 9, 2022, Answer #15 to Plaintiffs' October 29, 2022, First Set of Interrogatories No. 15 is copied below.

INTERROGATORY NO. 15 - If you contend that KCSO should not be required to bear the costs, expenses, and/or fees of this action pursuant to FOIA, please provide your basis, reasons, and/or explanations, including citation to any alleged supporting authorities.

ANSWER #15 - Kershaw County Sheriff's Office should not be required to bear the costs, expenses and/or fees of this action related to Mr. Justin Jernigan's FOIA Request dated July 22, 2022, based on the fact the Kershaw County Sheriff's Office and the Kershaw County Attorney [Mr. Morgan] made every effort, in good faith, to go above and beyond the required actions of a Kershaw County employee to satisfy the requests of Mr. Justin Jernigan based on the information provided in the FOIA Request on July 22, 2022. Further, Christine Jernigan is not a property party entitled to costs and fees, as she never served a FOIA Request. Justin Jernigan is not a property party entitled to fees as he is not a resident of South Carolina and therefore, is not entitled to bring an enforcement action.

It is well established that, even where a public body has acted in good faith, no "good faith exception" exists to foreclose an award of attorneys' fees under FOIA. *See The New York Times v. Spartanburg County School District*, 374 S.C. 307, 312-313, 649 S.E. 2d 28 (2007)

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(observing that the same argument had also previously been rejected in *Society of Prof. Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984)). Yet, KCSO ignores controlling precedent in answer #15 claiming it should not be required to bear the costs, expenses, and/or fees of this FOIA case because it has, purportedly, "made every effort, in good faith, to go above and beyond" the statutory response/disclosure requirements of FOIA. Ex. D. In any case, however, no explanations or details concerning any of the alleged "effort[s]" KCSO has purportedly made to cooperate and comply with the legal requirements FOIA have been included in Answer #15. KCSO's self-laudatory adjectives lack any substance and are meaningless.

KCSO's answer further asserts: Plaintiff "Christine Jernigan is not a property party entitled to costs and fees, as she never served a FOIA Request." KCSO, however, made judicial admissions in its October 28, 2022, Answer, as follows "Paragraphs 16 and 17 [of the Complaint] are admitted only to the extent Mr. Jernigan submitted a FOIA Request as an attorney on behalf of his mother on July 22, 2022." Def.'s Answer ¶9. KCSO's contradictory assertions of its January 9, 2023, Answer #15 are not supported by good grounds and were interposed for purposes of delay. *See infra*, Section III(C); *Riddler v. City of Springfield*, 109 F.3d 288, 293 (6th Cir. 1997) (holding that a litigant has a continuing duty of candor and may be sanctioned for continuing to assert a position that is no longer tenable).

III. DISCUSSION

A. KCSO, Assisted by Counsel, has Concealed and Destroyed Relevant Records/Evidence Documenting the June 29, 2022, Police-Involved Incidents

Courts have held that "[a]side perhaps from per jury, no act serves to threaten the integrity of the judicial process more than the spoliation of evidence." *United Medical Supply Co. v. United States*, 77 Fed. Cl. 257, 259 (Fed. Cl. 2007). The July 22, 2022, FOIA Request explicitly stated that Plaintiffs "respectfully request that all body-worn camera records … be

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preserved" by KCSO. Compl., Ex. A, at 2-3. KCSO's counsel County Attorney Mr. Morgan indicated via email on July 28, 2022, that the relevant body worn camera audio/video recordings of the June 29, 2022, police-involved incidents would not be provided in response to Plaintiffs' July 22, 2022, FOIA Request. Ex. N at 3-4. Plaintiff and undersigned counsel Mr. Jernigan replied, on August 1, 2022, as follows: "Understand [that] there is [a] FOIA exemption for body cam video, but respectfully request *preservation*." Ex. N at 3 (emphasis added).

At the hearing on December 5, 2022, before the Honorable DeAndrea G. Benjamin, KCSO's current counsel of record Mr. Morrison revealed, for the first time, that all the relevant body worn camera audio/video recordings of the June 29, 2022, police-incidents – for which preservation had been explicitly requested on multiple occasions – had instead been destroyed by KCSO.

> I've told the Court and [Plaintiffs' counsel] Justin that there are no body cams in existence. So that's kind of a moot point at this point.

Ex. O, 13:2-4; *see also* 5:4-9.

KCSO had never informed Plaintiffs prior to the hearing on December 5, 2022, that it had destroyed, rather than preserved, all the relevant body worn camera audio/video recordings of the June 29, 2022, police-involved incidents.

> I [Plaintiffs' counsel] asked that [KCSO] preserve the body camera [recordings]. It's in the [July 22, 2022, FOIA] request … and they're required under their own policies to have the body camera and under the records [act].

Id., 15:18-19 and 16:2-3.

In its January 9, 2022, unverified answers to Plaintiffs' October 29, 2022, First Set of Interrogatories Nos. 4 and 13, KCSO has refused to provide any explanations or details with respect to its destruction of the relevant body worn camera audio/video recordings. KCSO's Answers #4 and #13 state, respectively, that "Body-Worn Cameras associated with incidents

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occurring on June 29, 2022, involving responding officers concerned non-criminal matters [i.e., civil issues] and are no longer retained," and that the relevant body worn camera recordings of the police-involved incidents were allegedly "written over in accordance with [KCSO] policy." Ex. A at 6, 13; Ex. D at 3, 5. In other words, rather than preserving the relevant body worn camera audio/video recordings of the police-involved incidents as legally required, KCSO decided that it could destroy this pivotal evidence because the matters were allegedly *civil issues*.

KCSO's Answer #13 presumably contends that the relevant body worn camera audio/video recordings were "written over in accordance with" the "policy" of KCSO's Body Worn Camera Records Retention Schedules ("BWC Retention Schedules").[4] *See* Ex. P. Rather than complying with its BWC Retention Schedules, State Public Records Laws and Regulations, or the legal obligations all parties have to preserve potentially relevant evidence, KCSO took unlawful actions to ensure that all the relevant body worn camera recordings documenting its June 29, 2022, police actions were "written over" once the 60-day minimum retention period of the BWC Retention Schedules expired; i.e., on August 27, 2022.

In contrast, the "Traffic Stop" label of the KCSO BWC Retention Schedules, and its corresponding *180-day* retention period, should at least have applied to all the relevant body worn camera audio/video recordings of KCSO's traffic stop of Plaintiff Mrs. Jernigan and her mother Mrs. Martin on the morning of June 29, 2022. *See* Ex. P at 2. KCSO spoliated evidence and committed crime-fraud by ensuring that all the body worn camera recordings of the June 29, 2022, police-involved incidents were "written over" 120 days *before* expiration of the 180-day retention period that is required for "Traffic Stops." If the correct Traffic Stop category and

[4] KCSO's BWC Records Retention Schedules were first produced on January 9, 2023, without Bates numbers, and bearing the date/time stamp 11/30/22, 2:34pm. *See* Exs. D, U at ¶29. Notably, this date/time is before the initial December 5, 2022, response deadline for Plaintiffs' October 29, 2022, First Set of Discovery Requests. *See infra*, at Section III(C).

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corresponding 180-day retention period had been properly applied, the body worn camera recordings of the June 29, 2022, traffic stop could not have been destroyed prior to December 26, 2022. In other words, all of these body worn camera audio/video recordings *should* have been retained pursuant to the requirements of KCSO's own Body Camera Retention Schedules until:

- At least three weeks after the hearing on December 5, 2022;
- Over three months after Plaintiffs filed/served their Complaint on September 12 and 14, 2022; and
- Over five months after KCSO received Plaintiffs' July 22, 2022, FOIA Request.

No policy or schedule of any kind could, in any case, provide a legally valid excuse for destroying relevant records/evidence knowingly, negligently, and/or intentionally. *See, e.g.*, *Micron Tech. v. Rambus Inc.*, 645 F.3d 1311, 1329-31 (Fed. Cir. 2011) (holding that a pre-litigation policy which included destroying/spoliating relevant evidence to prevent its production during anticipated litigation triggered the crime-fraud exception). KCSO was legally obligated to preserve all relevant records/evidence beginning at the point when a party reasonably should know that the materials may be relevant to anticipated litigation. *See, e.g., Silvestri v. General Motors Corp*., 271 F.3d 583, 590 (4th Cir. 2001); *John B. v. Goetz*, 531 F.3d 448, 459 (6th Cir. 2008) (holding that the duty to preserve evidence is triggered when a "party has notice that the evidence is relevant to litigation or ... should have known that the evidence may be relevant to future litigation"); *Gathers v. South Carolina Elec. & Gas*, 311 S.C. 81, 427 S.E.2d 687 (S.C. Ct. App. 1993).

Moreover, KCSO was legally obligated to retain all relevant records/evidence based upon the statutory requirements of the South Carolina Public Records Act (the "Public Records Act") and the Records Regulations. For instance, "[b]efore disposing of public records … county governments should [en]sure that the records have no further … *legal* … *value*." S.C. Code of

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Regs. 12-500 (emphasis added). Criminal penalties apply to violations of the Public Records Act and are relevant to KCSO's crime-fraud. As the South Carolina Court of Appeals recently observed in the *Ballard v. Newberry County* FOIA case:

> It is a crime to unlawfully remove, deface, or destroy a public record. *See* S.C. Code Ann § 30-1-30 (2007). It is also a crime for a public official to refuse or willfully neglect to perform any of his or her statutory duties. *See* S.C. Code Ann. § 30-1-140 (2007). If someone refuses to surrender a public record to the record's legal custodian or to the Department of Archives, that is a separate crime, and the act empowers certain individuals to bring a civil action for the record's surrender. *See* S.C. Code Ann. § 30-1-50 (2007).

432 S.C. 526, 531, 854 S.E.2d 848, 850 (Ct. App. 2021).

KCSO's attorneys, of course, had ethical obligations to preserve all potentially relevant records/evidence relating to the subject matter of this case, and to inform KCSO of its obligations in this respect. "Membership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *Gadda v. Ashcroft*, 377 F.3d 934, 942-43 (9th Cir. 2004) (citations omitted).

The obligation to safeguard and preserve relevant records/evidence of the June 29, 2022, police-involved incidents flowed to KCSO's counsel Mr. Morgan when he was retained on July 27, 2022, and, thereafter, was required to flow from counsel Mr. Morgan to KCSO. The South Carolina Rules of Professional Responsibility state, *inter alia*, that an attorney shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." S.C. Rule of Prof. Resp. 3.4(a).

In this regard, KCSO and its attorneys are very experienced defending cases asserting claims of alleged police misconduct, and they certainly know the importance of complying with

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their legal obligations to preserve relevant audio/video recording evidence documenting police-involved incidents. KCSO, defended by County Attorney Mr. Morgan, has previously been sanctioned and admonished by courts for providing deceptive/evasive discovery responses concerning audio/video recording evidence. Ex. Q, *Brown v. Elliot*, No. 3:14-cv-01188, DE 43 and DE 61 (D.S.C. 2016), *affirmed by* 876 F.3d 637, 640-46 (4th Cir. 2017).

In the *Brown v. Elliot* case, Plaintiff Ms. Brown requested that KCSO produce "any and all videos, dash cam, body cam, etc., from the officers' body cams and/or vehicles involved in the incident." 867 F.3d at 645; *compare with* Compl., Ex. A at 2-3 (requesting any and all audio/video recordings of the June 29, 2022, police-incidents). If "no videos are produced," Plaintiff Ms. Brown requested that KCSO "explain in detail why there are no videos." KCSO averred in its discovery responses that "[t]here are no dash or body cameras involved in this incident," and that the police "vehicles [involved] were not equipped with dash cams at the time of the incident." *Id.*, 876 F.3d at 645.

Subsequently, Plaintiff Ms. Brown discovered photographic evidence – produced by non-party SLED – establishing that a dash mounted camera *was installed* in one of the police vehicles involved in the incident; i.e., KCSO Officer Threatt's vehicle. Ms. Brown filed motions requesting that the district court sanction KCSO for providing evasive answers, and for concealing/destroying the dash camera recordings of the incident from Officer Threatt's police vehicle. *See id.*; Ex. Q.

In response, KCSO submitted an affidavit averring that the dash camera installed in Officer Threatt's police vehicle had not yet been equipped with the necessary hard drive. As a result, the affidavit averred that the dash mounted camera installed Officer Threatt's police

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vehicle could not save any recordings of the police-involved incident on the date/time that the underlying incident occurred. *Id*. Upon consideration, the district court determined:

> Based on the record before it, the court is constrained to conclude that [Ms. Brown] has failed to establish that any video of the encounter at issue ever actually existed … Nonetheless, *the court shares* [Ms. Brown's] *frustration and chagrin that* [KCSO] *did not accurately respond to her discovery requests regarding the existence of cameras in the police vehicles involved in this cas*e. Amidst a national atmosphere of civil unrest and apprehension toward law enforcement stemming from numerous videos from incidents across the country capturing violent encounters between police and African American citizens, *the repeated lack of a forthright and precise response from* [KCSO] *regarding the presence of a camera in Officer Threatt's police vehicle* <u>*is indeed disturbing*</u>.

Id. (emphasis added, internal footnote omitted).

KCSO, via its counsel Mr. Morgan, appealed the district court's ruling to the United States Court of Appeals for the Fourth Circuit. *Brown*, 876 F.3d at 645-46. KCSO asserted that the district court's ruling should be reversed, and the sanction award vacated, because it was not legally required under the Rules to provide any further details in its discovery responses regarding the dash mounted camera that was installed in Officer Threatt's police vehicle at the time of the incident. According to KCSO, if Ms. Brown was expecting it to specify exactly which *components* of the dash mounted camera were present in Officer Threatt's police vehicle at the time of the incident, and which ones were not, then she should have requested that KCSO provide that level of detail in her discovery requests. *Id.*

The Fourth Circuit, in a published opinion, rejected KCSO's arguments and further admonished KCSO and its counsel Mr. Morgan for providing evasive discovery responses with respect to "pivotal" audio/visual recording evidence of the underlying police-involved incident: "A reasonable person would not think that the statement '[t]here are no dash or body cameras involved in this incident' means the same thing as 'there was a dash camera but it could not record video because it was missing a critical component.'" *Id.* The Fourth Circuit determined

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that KCSO's "inaccurate statements" in its discovery responses were "especially glaring" given that "in cases like this, *a video recording of the incident frequently becomes the pivotal piece of evidence in litigation*." *Id.* at 645-46 (emphasis added). The Fourth Circuit also held, with respect to the fee award, that KCSO had "needlessly prolonged litigation" by providing its evasive discovery responses. As a result, "Ms. Brown and the district court" were unnecessarily forced to "devote resources to the issue." *Id.*

In this case, KCSO cannot claim that its concealment of relevant public records documenting its June 29, 2022, police actions/activities, including its destruction of all the body worn camera audio/video recordings, was not, at least, committed knowingly or negligently. KCSO, particularly after being sanctioned and admonished by the courts, knew that by destroying "pivotal" body worn camera audio/video recordings they were obstructing justice and committing crime-fraud.

As reported by WIS News 10, KCSO has defended additional police misconduct cases over the past several years. Exs. R, S. At least four of these cases concerned claims of alleged misconduct committed by former KCSO Officer Johnathan Goldsmith. Former KCSO Officer Goldsmith was indicted for committing officer-initiated assaults and official misconduct for falsifying documents, forms, and/or records to avoid responsibility and accountability. *Id.*

In April 2022, a couple months prior to the June 29, 2022, police-involved incidents of the present case, KCSO settled a lawsuit filed against it by Tony Simms, who was one of Officer Goldsmith's assault victims. Exs. R, S. Officer Goldsmith's assault of Mr. Simms resulted in injuries including a concussion and broken jaw. KCSO's audio/video recordings of the Goldsmith/Simms incidents, including KCSO body worn camera audio/video recordings, were

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particularly pivotal to Mr. Simms' case because Officer Goldsmith had falsely arrested Mr. Simms to avoid responsibility and accountability. *Id.*

In the present case, KCSO took unlawful actions to ensure that all the body worn camera audio/video recordings documenting its June 29, 2022, police actions and activities were "written over," and thereby permanently concealed, in an effort to avoid responsibility and accountability. The Court has broad discretion to select an appropriate response, including towards the goals of "leveling the evidentiary playing field and … sanctioning the improper conduct." *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995). Appellate courts consider the totality of the circumstances, including the level of the spoliators' intent/fault, in connection with the severity of the sanctions that may be, or should have been, imposed as an appropriate response by the trial courts. *Silvestri*, 271 F.3d at 590; *Kershaw County Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990).

The present record supports, at least, a *prima facie* showing that legal representation has assisted/furthered KCSO's crime-fraud. The knowing involvement and/or assistance by attorneys in clients' crime-fraud, however, is not a necessary requirement for triggering the exception. The crime-fraud exception attaches even in cases where the attorneys may be unaware of their clients' illegal and/or fraudulent intentions and activities. *See, e.g., United States v. Under Seal* 401 F.3d 247, 251 (4th Cir. 2005) ("[I]t is the client's knowledge and intentions that are of paramount concern in our analysis; the attorney need not be aware of any illegality.") (citations omitted); *Allstate Ins. v. Madden*, 601 S.E.2d 25, 37-38 (S.D. W. Va. 2004) (holding that an attorney need not be aware of the client's intentions to commit crime-fraud to trigger the exception). Attorneys may, in some cases, be entirely innocent of any

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wrongdoing and the exception still apply. *See People v. Radojcic*, 998 N.E.2d 1212, 1224 (Ill. 2013).

Plaintiffs respectfully request entry of an Order holding that the attorney-client privilege does not apply to the subject matter of this case due to KCSO's crime-fraud or, alternatively, requiring submission of alleged KCSO attorney-client communications relating to the subject matter of this case for *in camera* review by the appointed special master/referee (or the Court), and requiring submission of verified statements by KCSO's counsel as requested herein.

B. KCSO has Refused to Comply with FOIA and Judge Newman's December 19 and 28, 2022, Orders

At the hearing on December 19, 2022, the Honorable Jocelyn C. Newman ordered KCSO to fully address all records relevant to Plaintiffs' July 22, 2022, FOIA Request within 20 days. Judge Newman stated, in part, "I think that [KCSO] should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request." Ex. T at 15:5-20. On December 28, 2022, Judge Newman issued a written Order stating: "Following a hearing on December 19, 2022, the Court ordered that Defendant [KCSO] fully comply with the South Carolina Freedom of Information Act vis-a-vis Plaintiff[s'] requests within 20 days of the hearing." Complying with the South Carolina Freedom of Information requires:

> Each public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it … This determination must constitute the final opinion of the public body as to the public availability of the requested public record[s] … the record[s] must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided.

S.C. Code § 30-4-30(c).

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Judge Newman's instructions to KCSO at the hearing on December 19, 2022, were consistent with the statutory requirements of FOIA and the controlling case law. Notably, in *Sloan v. South Carolina Dep't of Revenue,* the South Carolina Supreme Court held that the evasive and equivocal FOIA responses provided by the SCDOR failed to comply with the requirements of S.C. Code § 30-4-30(c). 409 S.C. 551, 554-55, 762 S.E.2d 687, 688-89 (2014). Notably, the SCDOR's equivocal and evasive FOIA responses were held to be efforts designed to delay "final determination as to the public availability of the requested documents," best characterized as "'we will get to it when we get to it,' which is manifestly at odds *with the clarity mandated by* section 30-4-30(c)." *Id.* (emphasis added).

Unlike KCSO, however, the SCDOR acted quickly to cooperate and provided all the relevant records approximately three weeks after Sloan was forced to file his complaint. *Id.* Despite forcing Plaintiffs to file suit, and Judge Newman's December 19 and 28, 2022, Orders requiring KCSO to fully comply with the legal requirements of FOIA, KCSO has still refused to provide any written determination setting forth its reasons as to the public availability of all public records relevant to Plaintiffs' July 22, 2022, FOIA Request. *See* Ex. A at 15-17.

Civil contempt may result from willful disobedience of a court order. *State v. Bevilacqua*, 316 S.C. 122, 128, 447 S.E.2d 213, 217 (Ct. App. 1994). The record should clearly reflect the conduct upon which a finding of contempt is based. *Id.* A willful act is one "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law at to be done; that is to say with bad purpose either to disobey or disregard the law." *Id.* (citations omitted). A trial court's decision regarding contempt will only be reversed if made without adequate evidentiary support or if constituting a

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clear abuse of discretion. *Stone v. Reddix-Smalls*, 295 S.C. 514, 516, 369 S.E.2d 840, 840-41 (1988) (citations omitted).

Direct contempt occurs when a person or party interferes with judicial proceedings, exhibits disrespect for the court, or hampers parties or witnesses. *State v. Havelka*, 285 S.C. 388, 389 330 S.E.2d 288, 289 (1985) (citation omitted). Constructive contempt occurs when a person or party interferes with judicial proceedings via conduct occurring outside the presence of the court and, generally, upon issuance of a rule to show cause. *State v. Kennerly*, 331 S.C. 442, 450-52, 503 S.E.2d 214, 219 (Ct. App. 1998) (citation omitted). South Carolina courts have taken an expansive approach with respect to conduct that has been considered to have occurred in the "presence of the court" to interfere with judicial proceedings. *Id.*; *see also Brandt v. Gooding*, 368 S.C. 618, 623-26; 630 S.E.2d 259, 263-64 (2006) (imposing contempt sanctions for filing a fraudulent document that was used in a deposition).

After receiving Plaintiffs' July 22, 2022, FOIA Request the statutory clock started running. S.C. Code § 30-4-30(c). KCSO is presently over seven months past the statutory deadlines of FOIA, and over three months past the extended deadlines set by Judge Newman at the hearing on December 19, 2022. Entry of meaningful civil sanctions, including as presently requested herein, are needed to (finally) coerce and compel KCSO to comply with the statutory response and disclosure requirements of FOIA.

C. KCSO has Refused to Provide Discovery as Required by the SCRCP in Response to Plaintiffs' October 29, 2022, First Set of Interrogatories Nos. 1-15, and Requests for Production No. 1

At the hearing on December 19, 2022, Judge Newman ordered KCSO, within 20-days, to provide answers/responses to Plaintiffs' October 29, 2022, First Set of Interrogatories Nos. 1-15 and Request for Production No. 1. *See*, *e.g.*, Ex. T at 14:20 to 15:5, 25:20-23. On the Court-

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imposed extended deadline, KCSO served unsworn answers to Interrogatory Nos. 1 to 15; and improper/incomplete responses to Request for Production No. 1. *See* Exs. D and E. Plaintiffs sent emails on January 10 and 12, 2023, requesting verified answers as required pursuant to Rule 33(a), SCRCP. *Id*. Plaintiffs' January 2023 emails requesting that KCSO voluntarily provide verified answers were ignored.

On February 10, 2023, Plaintiffs served their Rule 11(a), 10-Day Letter upon KCSO. *See* Ex. A. For the reasons set forth in detail therein, KCSO's answers/responses to the First Set of Interrogatories (Nos. 1-15), and Request for Production (No. 1), are evasive, incomplete, and improper. *See id.* On February 20, 2023, KCSO's counsel responded as follows (*see* Ex. F):

> We received your [February 10, 2023,] SCRCP Rule 11 or 10-Day Letter concerning discovery and other issues. We are attempting to secure the verification to discovery responses sought per your previous email[s] (below). We anticipate completing the verification within the next day or two. We apologize for the delay; however, we are trying our best to satisfy your request.

Plaintiffs requested KCSO's basis supporting any further extension of Judge Newman's January 9, 2023, extended deadlines. Subsequently, Plaintiffs requested: "If KCSO opposes Plaintiffs motion for sanctions/contempt …[p]lease provide KCSO's … basis, reasons, explanations, etc." *See* Ex. F. KCSO never responded to Plaintiffs' February 20, 2023, emails and has not provided any verified discovery answers/responses.

KCSO's January 9, 2023, discovery answers/responses, pursuant to Rule 26(g), SCRCP, are subject to the certification requirements of Rule 11(a), SCRCP. Sanctions may be imposed where an attorney signs discovery responses that are not supported by good grounds, and/or where the discovery responses were submitted for purposes of delay. *See Ex parte Bon Secours*, 393 S.C. 590, 597, 713 S.E.2d 624, 628 (2011) (imposing Rule 11 sanctions for signing and filing frivolous notice of removal for purposes of delay).

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Whenever sanctions are imposed for violations of the Rules, the non-offending party's rights to obtain discovery pursuant to the SCRCP should be protected. *See, e.g.*, *Kershaw County Bd. of Educ.*, 302 S.C. at 394, 396 S.E.2d at 372 (considering whether sanctions imposed by the trial court pursuant to Rule 37(b)(2), SCRCP, were appropriate based upon the circumstances). Discovery is the quintessence of preparation for trial and when discovery rights are trampled prejudice must be presumed. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

Rule 33(a), SCRCP, requires that "[e]ach interrogatory [served upon a party] shall be answered separately and fully in writing under oath." Rule 33(d), SCRCP, specifies that answers to interrogatories can "be used [at trial] to the extent permitted by the rules of evidence." In view of these well-established requirements, KCSO's January 9, 2023, unsworn answers to Interrogatory Nos. 1 to 15 were not based upon good grounds and were interposed for purposes of delay. *See Saria v. Massachusetts Mut. Life Ins. Co*., 228 F.R.D. 536, 538-39 (S.D. W. Va. 2005) (determining that, "since interrogatory responses may be used at trial, they are nothing short of testimony," and that "[w]hen responses are only signed by an attorney, and not by the client, the attorney has effectively been made a witness").

Plaintiffs respectfully request that the Court strike KCSO's discovery answers/responses, impose civil sanctions, and enter an Order compelling discovery pursuant to Rules 26(g), 37(b)(2), and/or 37(a)(2)-(4), SCRCP. Plaintiffs incorporate their February 10, 2023, Rule 11(a), 10-Day Letter, at pages 3-17, with respect to reasons the answers/responses are evasive, incomplete, and/or improper. Certain of KCSO's January 9, 2022, answers/responses are further discussed herein. *See also*, *supra* at 7 (answer #2, response #1), 11-12 (answer #15), and 14 (answers #4, #14). As courts have recognized:

> If a party served with interrogatories fails to answer them on time, or at all, or fails to answer the questions completely and responsively, such action can have a spiraling effect on the future scheduling of discovery, and inject into the litigation collateral disputes which typically require the intervention of the court to resolve. Thus, for interrogatories to work as intended by the drafters of the rules of civil procedure, it is essential that counsel who receives them act with diligence and good faith, and submit timely, responsive and complete answers.

Jayne H Lee, Inc. v. Flagstaff Indus. Corp., 173 F.R.D. 651, 653 (D. Md. 1997).

KCSO's answer to Interrogatory No. 3 is evasive, incomplete, and violates Rule 33(d), SCRCP. Rule 33(d) allows an answering party to refer to their own records when a full/complete answer may be derived or ascertained from those records and the burden of deriving or ascertaining the answer will be substantially the same for either party. Rule 33(d), SCRCP. Such an answer is inappropriate, however, "where the interrogatory calls for the exercise of particular knowledge and judgment on the part of the responding party." *Ayers v. Cont'l Cas. Co*., 240 F.R.D. 216, 226 (N.D.W.Va. 2007) (citation omitted). Plaintiffs' Interrogatory No. 3 calls for the exercise of particular knowledge and judgment on the part of KCSO. Accordingly, KCSO's answer #3 violates Rule 33(d), SCRCP, and is evasive and incomplete, as set forth in Ex. A at 5-6.

At the hearing before Judge Benjamin on December 5, 2022, KCSO's counsel of record Mr. Morrison asserted that there had been some kind of a search term misunderstanding or mix-up amongst the Parties:

> As we talked with [Plaintiffs' counsel] Justin [Jernigan], we're learning other things that he thinks [Plaintiffs' July 22, 2022, FOIA Request] covers that weren't *searchable* under the name Justin Jernigan, and we're producing those, but just … [on December 4, 2022].

Ex. O at 7:5-17 (emphasis added).

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Judge Benjamin accepted Mr. Morrison's representations that these purported search term misunderstandings were disputed issues requiring discovery and court-resolution. Specifically, Judge Benjamin determined, Ex. O at 16:13-21:

> There are matters that are disputed … [Mr. Morrison is] saying that [Plaintiffs] only … requested under your name [Justin Jernigan] and … that's why [KCSO] couldn't find it. So all of those are issues that have to be resolved. And I think [Plaintiffs are] going to have to engage in some limited amount of discovery, and then have a hearing on the declaratory judgment. Because the Court … I will need to have that information.

There is no information contained in KCSO's January 9, 2022, unsworn answers regarding any alleged search term misunderstandings or mix-ups amongst the Parties. Notably, no such information has been provided in KCSO's Answers #5 and #7. *See* Ex. A at 8-10. KCSO's Answers #5 and #7 are not based on good grounds and were interposed for purposes of delay. For instance, in view of the prior inconsistent representations made to Judge Benjamin at the hearing on December 5, 2022.

KCSO's Answers #5 and #7 are also non-responsive as to the subject matter requested by Interrogatory Nos. 5 and 7. KCSO has, in its Answer #5, refused to provide any "basis, reasons, and/or explanations," or "describe the circumstances of the underlying decision-making process," for its July 25, 2022, FOIA Response. In Answer #7, KCSO has refused to "describe the communications, steps, and/or processes taken with respect to searching, obtaining, locating, and/or producing" the public records relevant to Plaintiffs' July 22, 2022, FOIA Request. KCSO's Answers #5 and #7 do not provide any details or information in support of KCSO's July 25, 2022, FOIA Response, as requested, and are not based on good grounds and interposed for purposes of delay. As a result, and for the reasons set forth *supra* at Section II(C), KCSO's deceptive July 25, 2022, FOIA Response is an "arbitrary and capricious" FOIA response pursuant to S.C. Code § 30-4-110(f).

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KCSO has, in its Answer #6, refused to provide any "basis, reasons, and/or explanations" for the assertions in its August 18, 2022, Letter that all "non-exempt" communications records of the July 22, 2022, FOIA Request were provided therewith. In Answer #8, KCSO has refused to provide its "basis, reasons, and/or explanations" for the assertions via email on August 18, 2022, that it was, unilaterally, considering the FOIA and related matters of the present case to be "closed."

KCSO's Answers #6 and #8, instead, provide a string of self-laudatory phrases lacking any actual underlying factual basis at all – "in good faith," "to the best of our knowledge and ability," and "exhaustive efforts were made above and beyond the statutory requirements." If KCSO's Answers #6 and #8 were based on good grounds, and not interposed for purposes of delay, it would have provided the actual "basis, reasons, and/or explanations" allegedly supporting these arbitrarily applied self-laudatory adjective phrases.

INTERROGATORY NO. 9 - If KCSO contends that Plaintiffs are not entitled to receive any of the requested records falling within the reasonable scope of the 7.22.22 Request, please provide KCSO's basis, reasons, and/or explanations, including citation to any supporting authorities.

ANSWER #9 - Kershaw County Sheriff's Office has not made a statement in any fashion relating to the stance Plaintiffs are not entitled to receive any of the requested records pertaining to Mr. Justin Jernigan's FOIA Request on July 22, 2022.

Interrogatory No. 9 is a contention interrogatory. KCSO was required to respond by taking an affirmative position as to whether it contends Plaintiffs are not entitled to receive any of the requested records of the July 22, 2022 FOIA Request. KCSO's Answer #9 evasively responds that it "has not made a statement" of "any fashion relating to the stance" that Plaintiffs "are not entitled to receive any of the requested records." Answer #9 is nonresponsive, evasive, and incomplete as KCSO has not affirmatively taken any position at all.

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As noted above, Plaintiffs also incorporate their February 10, 2023, Rule 11(a), 10-Day Letter, for instance, as to deficiencies of KCSO's answers/responses to the First Set of Discovery Requests not further discussed/summarized herein. Plaintiffs respectfully request that the Court strike KCSO's discovery answers/responses, impose civil sanctions, and enter an Order compelling discovery pursuant to Rules 26(g), 37(b)(2), and/or 37(a)(2)-(4), SCRCP.

IV. CONCLUSION

Upon the foregoing, and supported by Exhibits A-U, Plaintiffs respectfully request that the Court:

- Order KCSO (again) to fully address and respond with respect to all relevant public records of Plaintiffs' July 22, 2022, FOIA Request (Compl., Ex. A), and to provide unredacted copies of all relevant public records;
- Impose coercive and remedial monetary payment obligations which, if KCSO does not comply in good faith with the above-ordered legal requirements of FOIA (again), must be paid to Plaintiffs;
- Strike KCSO's January 9, 2023, answers and responses to Plaintiffs' October 29, 2022, First Set of Interrogatories Nos. 1-15 and Request for Production No. 1; and Order KCSO to provide full and complete verified answers, responses, and productions thereto (*see, e.g.*, Ex. A, Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter);
- Appoint a special master or referee, at KCSO's expense, to oversee further issues;
- Order that KCSO has waived the attorney-client privilege for the subject matter of this case pursuant to the crime-fraud exception or, alternatively, require submission of any alleged attorney-client privileged communications for *in camera* review by the appointed special master/referee, or the Court;
- Order KCSO's counsel to submit verified statements describing the efforts taken to preserve relevant records/evidence relating to the subject matter of this case and all relevant records/evidence that have been erased, destroyed, and/or otherwise rendered unavailable by KCSO; and
- Order KCSO to pay all reasonable attorneys' fees, costs, and expenses.

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Respectfully submitted,

By: /s/Justin A. Jernigan

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This 24th day of April 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

EXHIBIT G

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RECORDS

CHAPTER 209

209 RECORDS (SCLEA 14)

209.1 PURPOSE

To establish procedures for the review, recording, maintenance, control, and retrieval of records which are the responsibility of the Kershaw County Sheriff's Office.

209.2 POLICY

It is the policy of the Kershaw County Sheriff's Office to operate a records system in compliance with state and federal regulations designed to assist the agency in meeting its managerial, operational, and information needs.

209.3 ORGANIZATION

The Records Division is under the command of the Administrative Lieutenant.

The function of the Records Division includes record maintenance, records storage/retrieval, and report control. The Records Division will control the confidentiality, availability, and disclosure of all reports and records within its authority in accordance with applicable laws and agency policy.

209.4 PRIVACY AND SECURITY PRECAUTIONS OF DEPARTMENT RECORDS

JUVENILE RECORDS

Adult and juvenile arrest records will be maintained separately. (SCLEA 14.1a)

Any juvenile records which may be stored electronically will be differentiated from other records and provided additional security measures.

The records will not be open to public inspection, and may be open to inspection only by governmental agencies such as DJJ, DSS, Family Court, Solicitor's Office, and other law enforcement agencies, on a need-to-know basis and as may be required by law.

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Based upon dates of birth as entered into the Department's Records Management System (RMS) juvenile records will automatically be marked "Juvenile" beside the case information and under the juvenile's information. All personnel should be alert to this header and not release any information to unauthorized individuals.

Citizens requesting copies of reports that contain the names of juveniles will require the deletion of the juvenile's identity by the following procedure:

- Records personnel redact the names of juveniles or other information that would reveal the identity of a juvenile.

Juvenile records shall be expunged based upon an order of the court of competent jurisdiction as provided by the judicially ordered expungement of adult records.

Juvenile records will be kept until the juvenile reaches twenty-one (21) years old.

Juvenile Fingerprints and Photographs (SCLEA 14.1b)

Any juvenile charged with any offense may be photographed. These photographs may only be disseminated for criminal justice purposes or to assist the Missing Persons Information Center in the location or identification of a missing or runaway child.

Juveniles who are transported to the Kershaw County Detention Center who are charged as an adult will be fingerprinted and photographed at the Detention Center. The Juvenile Investigator shall be notified prior to transporting to the Detention Center so intake approval is obtained from the Detention Center Director and the Juvenile Solicitor.

Juveniles are fingerprinted and photographed by the Department of Juvenile Justice when there is a detention by law enforcement.

Law enforcement may request a court order to fingerprint a child if either:

- The child is charged with any other offense;
- The law enforcement agency has probable cause to believe the child has committed an offense [§63-19-2030 g].

Fingerprints of juvenile offenders must be kept separate from those of adults.

Juvenile Fingerprints will be electronically uploaded to AFIS.

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Fingerprints are not stored at the Kershaw County Sheriff's Office except when stored as evidence in an investigation.

SECURITY OF RECORDS DIVISION

The Records area shall remain locked at all times and access to that area is restricted to employees with access keycards only. Any employee needing to gain access to agency files in the Records Unit shall contact personnel in the Records Unit. (SCLEA 14.1c)

After hours or when Records Unit personnel are unavailable, employees will enter the pertinent information on a log book outside the area where the files are stored.

Most reports generated by the department are maintained within the RMS. Records maintained in the Records area shall not be removed

Some records, usually are of either a confidential nature or containing such information that renders them more appropriately stored in a specific unit, are maintained outside the Records Unit.

Other reports and records, both official and unofficial, which are maintained by the various components within the department include, but are not limited to the following:

- Administration– personnel records, personal correspondence files, grievance files, disciplinary records, critical incident review files, training & medical records, public information reports, collision files, Use of Force reports and criminal intelligence data.
- Criminal Investigations Division – investigative open case files, criminal intelligence files, confidential informant files.
- Professional Standards – internal affairs files.
- Narcotics Division – active drug investigation files.
- Evidence Room – records for all evidence.

ACCESS TO AGENCY RECORDS

Agency records are confidential. Any release of records information will be in accordance with agency policy, local, state, and federal laws. (SCLEA 14.1d)

Records information is accessible to agency employees 24-hours per day, either through Records personnel during regular business hours or through the password

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protected Records Management System in which all employees have access to. (SCLEA 14.3)

The distribution of reports to the public will be during posted business hours. The Records Division will, upon request, provide copies of incident reports.

Fees charged will be in accordance with fee schedules established by the Department. Victims shall receive copies of reports at no cost.

All requests for reports will be honored in accordance with the Freedom of Information Act, a Court Order, the Rules of Criminal Procedure, and the South Carolina Code of Laws, 1976, as amended.

Reports which are solely the result of, or the fruits of, investigative efforts will not be released to anyone other than law enforcement officers and the courts for official use only until the case is adjudicated. This includes all Supplemental Reports which list witnesses, suspects, informants, opinions, suppositions, hearsay, investigative leads, and any other investigative information.

A deputy is authorized to release a copy on an incident report to the known victim of an incident. It is the responsibility of the deputy to verify the identity of the victim in the incident prior to the release of the report.

RELEASE OF INFORMATION TO OUTSIDE AGENCIES

Information concerning incident or accident investigations, criminal history or personnel matters will not be released to a representative of an outside agency without a written request on agency letterhead, agency fax or NCIC request.

All written or faxed requests for incident or accident investigations will be maintained on file in the Records Unit for a period of ninety (90) days following the request.

RECORDS RETENTION (SCLEA 14.1e)

In accordance with §30-1-90(B) of the Code of Laws of South Carolina, 1976, as amended, and the Archives Division of the State of South Carolina, a schedule of retention and destruction for records has been established. Reports and files relating to the Evidence Preservation Act shall be maintained on a permanent basis by the Evidence Custodian.

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The Records Unit will utilize the following retention schedule prior to destruction:

• Incident Reports	5 years
• Juvenile Records	3 years after subject reaches majority
• Case Files	30 years
• Evidence Case Files	Evidence Preservation Act cases, indefinite Other cases-1 year after final action
• Arrest Warrants	Until warrant is served
• Daily Shift Reports	3 years
• Training Files	5 years after termination of employment
• Uniform Traffic Tickets	3 years
• Public Contact/Warnings	1 year
• Expired Protection Orders	1 year

Records personnel will, upon receipt of a court order outlining the exact offense record that is to be expunged, promptly remove all information identifying that person on the specified offense from agency records.

209.5 SOUTH CAROLINA INCIDENT BASED REPORTING SYSTEM (SCLEA 14.2)

Information on Incident Reports containing crimes included in the Incident-Based Reporting system will be sent to the State Law Enforcement Division (SLED).

The Department participates in the National Incident Based Reporting System (NIBRS) in conjunction with SLED. The South Carolina Incident Based Reporting System (SCIBRS) is the state level NIBRS program for South Carolina.

All Incident Reports, regardless of incident type, shall be coded with the appropriate SCIBRS code. Supervisors are responsible to ensure all incident reports are coded properly according to policies and procedures promulgated by SLED before approval and submission to the Records Unit. The Records Unit will be responsible for submitting all incident reports to SLED monthly.

209.6 CASE NUMBERING SYSTEM

Records will be available through a quick and efficient system of retrieval by knowledgeable and authorized personnel. The procedure must be fast and simple to use in order that officers and support can retrieve vital documents whenever

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they are needed for law enforcement purposes. This procedure permits the Kershaw County Sheriff's Office to comply with federal and state laws, regulations and policies (i.e. FBI/NCIC, SLED/CJICS and UCR/NIBRS requirements).

- The filing and retrieval of Incident Reports will be done by the assigned case number.
- Arrest & Booking Reports will be filed and retrieved by assigned case number.
- The Kershaw County Sheriff's Office original case assignment (OCA) numbers are assigned a unique case number for each case by the Computer-Aided Dispatch (CAD) system. Under this procedure, no case number will be duplicated or omitted. (SCLEA 14.6)
- Records personnel will ensure that OCA/report numbers are accurate.

209.7 MASTER NAME INDEX

The Records Management Software maintains an alphabetical master name index of persons identified in field reports in the agency's RMS. This master name

index includes victims, complainants, suspects, subjects, witnesses, arrestees, and businesses.

RMS maintains index files which include:

- incidents by type;
- incidents by location; and
- stolen, found, recovered, lost, seized, or abandoned property.

209.8 CRIMINAL HISTORY RECORD INFORMATION

The privacy and security precautions for criminal history record information will be released under the guidelines established in U.S. Department of Justice regulations (28 Code of Federal Regulations, Part 20) with regard to dissemination, completeness, accuracy, audits, security requirements, access, and review.

All personnel will adhere to state and federal regulations with respect to the handling and release of SLED/NCIC/CJICS information. Violations of these regulations may result in disciplinary action in accordance with agency policy and

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procedure and/or criminal prosecution. Circumstances considered in the administration of discipline will include the type of record and the record origin (i.e., whether local, state, out of state or federal).

209.9 MASTER NAME INDEX (MNI) NUMBER AND CRIMINAL HISTORY FILES (SCLEA 14.9)

Each person who is custodial arrested by the Department is assigned a computer generated MNI by the Kershaw County Sheriff's Office upon booking into the Kershaw County Detention Center. The MNI number is also referred to a Jacket Number in the RMS. The arrestee is also assigned a State Identification Number (SIN). All fingerprints, mug shots and bookings are referenced to this number.

If the subject has an assigned Jacket Number, the new information is assigned the same number.

Jacket Numbers are issued one time only to a subject. This same identification number is then used for all subsequent custodial arrests of the subject.

If it is discovered that a person has been issued more than one Jacket Number because of using aliases, maiden names, etc., appropriate cross-references will be made and the Jacket Number for the true name will be merged and used from that date on.

All prior arrest data can be accessed through the State and Federal Information System (NCIC).

209.10 FIELD REPORTING SYSTEM

GUIDELINES FOR ACCOMPLISHING REPORTS (SCLEA 14.4a)

Incident reports shall be completed on criminal acts that are brought to the attention of a deputy and occur within their jurisdiction. In some instances, a report should be made even though the complainant does not wish to file charges or have a report made.

FIELD REPORTING FORMS (SCLEA 14.4b)

Incident Reports

Reports of criminal offenses received by the Department which occur within the Department's jurisdiction will be recorded on the Incident Report form regardless of whether the complainant elects to pursue charges.

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Incident Reports will be used to record all arrests and criminal offenses, to include service of Bench Warrants and Fugitive Arrests.

Other incidents that may require an Incident Report include, but not limited to: death investigations; missing persons; civil disturbances; found property; assisting other agencies; and seized, or abandoned property.

Supplemental (Supporting) Report or Investigative Report

A Supplemental Report will be submitted by the investigating officer when it is necessary to explain, expand, or continue with information from the Incident Report, or to record important confidential information not contained in the Incident Report such as investigative leads, names of suspects, and any unsubstantiated information which could be of investigative use.

The Supplemental Report whether submitted with the original Incident Report or at a later time will be filed with the original Incident Report.

Supplemental reports may be used to close a case and when a suspect is arrested on a warrant at a later date.

Supplemental reports may be used for additional information about persons such as complainants, victims, suspects, witnesses, wanted individuals, arrestees, runaways, and/or missing persons.

Arrest Form

An Arrest Form is to be completed for every arrest, including physical arrests for traffic offense and warrants.

The Arrest Form is part of the computerized reporting software included in RMS.

Statement Forms

Written Statement Forms are to be completed by witnesses and/or victims to a crime.

The written statement should be witnessed by the deputy, signed/dated by the statement provider, and a copy given to the statement provider.

The written statement shall be scanned and attached to the corresponding incident report in the Property/Evidence section with the RMS and the original statement shall be forwarded to the Victim's Advocate.

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Uniform Traffic Tickets or Electronic Tickets

Uniform Traffic Tickets or Electronic Tickets are utilized by the Kershaw County Sheriff's Office for the enforcement of traffic and selected criminal offenses.

Public Contact/Warning

Public Contact/Warnings Citations are utilized by the Kershaw County Sheriff's Office to document traffic stops that DO NOT result in an arrest or the issuance of a Uniform Traffic Ticket. (SCLEA 27.1)

REQUIRED INFORMATION (SCLEA 14.4c)

At a minimum, all field reports shall contain the following:

- Date and time of report
- Names, if available, of the victim and/or complainant
- Name of suspect and charges, if any
- Nature of the incident
- Assigned officer's name

Specific instructions and procedures for completion of incident and supplemental reports are available through the Training Division.

COMPLETING FIELD REPORTS (SCLEA 14.4d)

Departmental personnel will complete and submit all reports and documents required in the execution of their duties prior to concluding their tour of duty, except as authorized by a supervisor.

Specific instructions and procedures for completion of incident reports will be covered during an officer's Field Training. Officers are to complete all reports according to SLED reporting guidelines.

SUBMITTING FIELD REPORTS (SCLEA 14.4e)

Written reports completed by Department employees will be reviewed and approved by a supervisor. Reports completed by a supervisor shall be reviewed and approved by another supervisor.

Once the primary officer completes an incident report, the following procedures will be completed:

- The Disposition will be changed to Forward to Supervisor for Approval;
- The Finish All tab will be selected under the Approval section.

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This procedure will send the disposition of the case to "Forward to Supervisor for Approval" and status to "Pending".

The reviewing supervisor will check the report for completeness and accuracy and kick back unsatisfactory reports to the writer for necessary corrections.

Supervisors are responsible for ensuring approved reports are forwarded to the Records Division, Investigations, or to the proper organizational component for processing. Supervisors shall check all subordinates' incident reports daily to ensure all incident reports are completed properly and approved in a timely manner. (SCLEA 14.7)

Records personnel will process each report into the agency's Records Management System (RMS). Reports found deficient will be returned (kicked back) to the writer for corrections with notice to the writer's supervisor.

Records Unit personnel will be authorized to provide copies of reports to the principals identified in the report, their representatives, or through Freedom of Information Act requests.

Records personnel will be responsible for all required NCIC quality control or validation forms on reports processed by Records.

209.11 DOCUMENTATION (SCLEA 14.5)

It is Department policy to document the following categories of incidents, if they were alleged to occur within the Department's jurisdiction:

- citizen reports of crimes;
- formal citizen complaints;
- all citizen requests for services when an officer is dispatched, and an employee is assigned to investigate, or an employee is assigned to take action at a later time;
- criminal and non-criminal cases initiated by or coming to the attention of Department personnel;
- incidents involving arrests; and
- criminal offenses in which a citation is issued for a criminal violation in lieu of a custodial arrest excluding minor traffic offenses.

The reporting officer is responsible for attempting to notify the victim/complainant of any recovered property or located missing person. The officer must document all notification attempts. If the officer is unable to contact the victim/complainant regarding stolen property, the attempts to contact the

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owner may be performed by evidence personnel prior to disposing of the property.

The nature of the incident being reported will determine the required documentation. This documentation of law enforcement activity may be in the form of one or more of the following: (SCLEA 14.4b)

- Incident Report;
- Supplemental Reports (Person, Article, Incident);
- Computer-aided Dispatch log;
- Vehicle Impoundment and Inventory Record;
- Arrest & Booking Report;
- Public Contact/Warning;
- Uniform Traffic Ticket;
- Field Interview Form;
- Voluntary statement form;
- Collision Report

209.12 ARREST RECORDS

An incident or supplemental report and arrest form shall be completed for every individual arrested by a member of the Kershaw County Sheriff's Office. (SCLEA 14.10a)

The incident or supplemental report will contain all pertinent information on the arrestee such as:

- Full name,
- Current address,
- Date of birth,
- Height and weight,
- Date and time of arrest,
- Location of arrest,
- Appropriate charge(s),
- Arresting officer, and
- Case number

Fingerprinting and photographing of all arrestees will be completed by the booking officer at the Kershaw County Detention Center. (SCLEA 14.10b & c)

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209.13 WARRANTS

After a Department warrant is served, the responsible officer will ensure the removal of the wanted entry from NCIC is completed and noted in the incident report in the following procedure:

Arrest Warrant

- A Supplemental/Supporting Report will be completed under the original case report the details the service of an arrest warrant and complete an Arrest Form, if applicable.
- A copy of the arrest warrant will be forwarded to the Warrant Clerk for removal of the wanted person in NCIC during normal business hours.
- After hours, Kershaw County Central Communications will remove the wanted person from NCIC.

Bench Warrant

- An Incident Report and Arrest Form will be generated to detail the service of a bench warrant.
- A copy of the bench warrant and case report number will be forwarded to the Warrant Clerk for removal of the wanted person in NCIC during normal business hours.
- After hours, Kershaw County Central Communications will remove the wanted person from NCIC.

209.14 SECURITY OF COMPUTERIZED RECORDS (SCLEA 14.12)

All computer files are backed up by the system provider (Kershaw County) and comply with record retention laws.

The system provider maintains all appropriately backed up files on a redundant server basis. These servers are maintained by Kershaw County's Information Technology Department.

All initial Domains and Records Management System (RMS) are maintained by the County's Information Technology Department and are password protected.

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All personnel of the Department shall be issued a username and password by the County's Information Technology Department to access the computer network.

All personnel's passwords must be changed every ninety (90) days to ensure system security.

Personnel using computers in common areas shall lock the computer or completely sign off when they leave the computer terminal area.

An annual audit of passwords shall be conducted by the County's Information Technology Department.

209.15 UNIFORM TRAFFIC TICKETS (SCLEA 14.8)

ISSUING UNIFORM TRAFFIC TICKETS

Uniform Traffic Ticket books shall be issued to members of the Kershaw County Sheriff's Office by the Records Unit and proper accounting assured by documentation in a citation log journal provided by the Kershaw County Sheriff's Office for that purpose. (SCLEA 14.8a)

The date of issue will be recorded in the journal and on the ticket book cover by the issuing party.

Partially used uniform traffic ticket books may be re-issued or voided depending on the number of citations remaining and/or age of the book.

No officer shall have more than two uniform traffic ticket books of unissued citations in his possession at any time.

Uniform traffic ticket books are securely stored in the Records Unit storage area. Access to ticket books is limited to Records Unit personnel. (SCLEA 14.8c)

An audit of all uniform traffic ticket books shall be conducted annually by the Records Unit. (SCLEA 14.8d)

Periodic checks shall be made by the Records Unit and Patrol Supervisors to determine the status of citations.

ACCOUNTING OF UNIFORM TRAFFIC TICKETS (SCLEA 14.8b)

As of January 1, 2018, all uniform traffic tickets are submitted to the courts and South Carolina Department of Motor Vehicles (SCDMV) electronically through Report Beam or SCUTTIES portal through SCDMV Online.

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Report Beam

Deputies that have been issued an in-car laptop computer and printer have access to Report Beam.

Report Beam allows deputies to produce electronic citations at the scene to a violator and automatically generates a unique citation number for each offense.

A copy of each citation generated through Report Beam will be forwarded to the court of jurisdiction within three (3) business days.

SCUTTIES

Deputies that do not have access to in-car laptop computers and printers, will issue hand-written uniform traffic tickets to a violator.

Once issued, the written uniform traffic ticket is distributed:

- Blue copy of the uniform traffic ticket issued to violator.
- Green copy of the uniform traffic ticket must be submitted to the court of jurisdiction within three (3) business days.
- Yellow (Driver's Record) and white (Enforcement) copies are maintained by the deputy until the case has been adjudicated or upon completion of the issued uniform traffic ticket book.
    - Completed uniform traffic ticket books shall be forwarded to the Records Unit for storage.

The information from the uniform traffic citation shall be submitted to the SCDMV electronically through the SCUTTIES portal by the end of the deputies' shift.

The uniform traffic tickets will be kept for a period of three (3) years from the date of the violation or until final disposition.

209.15 EXPUNGEMENT OF RECORDS

Upon receipt of a court order giving the exact offense record that is to be expunged, the Records Unit shall promptly remove all information identifying that person from Department's records.

As directed by the order, the arrest and booking records, mug shots and fingerprints must be destroyed; appropriate deletions must be made from other documents (incident and supplemental reports, Case Files etc). In addition, the subject of the expungement order must have their name and identifying

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information removed from **ANY** document where they are listed as a Suspect or Arrestee for the charge that was expunged.

EXHIBIT H

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COURSE

Vehicle Extraction Techniques Utilizing Defensive Tactics

(4.00 CLEE Credit Hours)

Course Description:

The purpose of this course is to instruct officers how to stop resistive behavior by using physical methods of control, using the body's nerve pressure points and nerve motor points. The officer will also be instructed on how to work in teams, using 2- or 3-man drills using these control tactics. In addition, the officer will be instructed in vehicle extraction techniques using these control tactics.

COURSE

Vehicle Tactics

(10.25 CLEE Credit Hours)

Course Description:

The purpose of this course is to discuss the recommended tactics and procedures to employ when conducting "unknown," "suspicious," and "high-risk" vehicle stops, and the proper procedure to use when requesting a wrecker service to tow a vehicle.

COURSE

Victimology

(4.00 CLEE Credit Hours)

Course Description:

The purpose of this course is to provide insight into the victims' responses to crime as a means of increasing understanding while dealing with crime victims. This course is also designed to educate officers of laws concerning crime victims and resources available to assist victims of crime.

COURSE

Vulnerable Adults

(3.50 CLEE Credit Hours)

Course Description:

This course will discuss the Omnibus Adult Protection Act (Title 43 Section 35 of the South Carolina Code of Laws) that details the definitions, duties, responsibilities and authority officers have when investigating cases of vulnerable adult abuse.

EXHIBIT I

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E-911 Communications
515 Walnut Street
Camden, S.C. 29020
803-424-4001

CFS - Command Log — Printed on November 17, 2022

CFS #	CFS2022-39009
Call Taker	Tracie Friday
Location	798 HERMITAGE POND RD, CAMDEN, SC 29020 (PINEDALE RESIDENTAL CENTER)
Location Details	
Primary Incident Code	1049 : CIVIL DISTURBANCE
Mod	
Priority	2
Use Caution	No
Primary Disposition	NO ACTION
Beat	
Zone	
Call Time	06/29/22 10:55:18
Completed Time	06/29/22 11:53:34

Reporters

PHILLIP HUDSON (Initial Reporter)

Sex	
DOB	
Address	
Report Time	06/29/22 10:55:18
How Reported	911
From Phone	(803) 427-3971
Contact Phone	
Comments	

Other Names

Vehicles

Responders

15	Cochran, Courtney	KCSO (Primary)
40	Morris, Brian	KCSO (Primary)
42	Arledge, Grant	KCSO (Primary)
45 (Primary)	Branham, Joseph	KCSO (Primary)

Response Times

Assigned	06/29/22 10:56:47
Enroute	06/29/22 10:57:19
Arrived	06/29/22 11:07:10
Leaving	
Arrived At	
Completed	06/29/22 11:53:34

IR / External Agency Numbers

Command Log Filter: All Commands | Details: Hidden | Units: All Units | Revised Entries: Shown

06/29/22 10:55:18 | Friday, Tracie | New CFS
06/29/22 10:56:13 | Friday, Tracie | FAMILY IS SHOWING OUT ... JUSTIN JERNIGAN ... THEY ARE TRYING TO REMOVE A RESIDENT FROM THERE WITHOUT THE POA .. THE POA HAS TOLD THEM NOT TO TAKE HER AND THEY ARE TAKING HER ANYWAY
06/29/22 10:56:17 | Friday, Tracie | THEY ARE LEAVING OUT THE DOOR NOW ...
06/29/22 10:56:47 | Hand, Tina | 45 | Dispatch
06/29/22 10:57:13 | Friday, Tracie | IT IS VERY VERBAL AT THIS TIME ... THE POA WANTS HER TO STAY THERE AND THE OTHER FAMILY MEMBER DOESN'T SO THEY ARE TAKING HER ...
06/29/22 10:57:19 | Hand, Tina | 42, 45 | Enroute
06/29/22 10:58:23 | Friday, Tracie | THEY ARE GETTING VERBAL WITH THE EMPLOYEES AS WELL ... SAYS THAT HE UPSET THE OTHER RESIDENCES AS WELL ...
06/29/22 11:00:01 | Friday, Tracie | ON LINE WITH THE ADMINISTRATOR ... THEY ARE LOADING HER INTO A VEHICLE .. IN A SILVER IN COLOR ... -- NISSAN IXD788
06/29/22 11:00:54 | Friday, Tracie | **CORRECTION IXV788 ****
06/29/22 11:02:34 | Friday, Tracie | HE IS WANTING TO MAKE A REPORT ABOUT JUSTIN JERNIGAN GOING OFF ON HIM AND THE OTHER STAFF AND YELLING AT THE RESIDENCE...
06/29/22 11:04:18 | Friday, Tracie | THE CURRENT POWER OF ATTORNEY HAS A DOCUMENT FROM 2016 - SHARRON WRIGHT --- MEDICAL AND FINANCIAL
06/29/22 11:05:09 | Friday, Tracie | THEY ARE STILL ARGUING WITH THE ADMIN - NOW ABOUT HER MEDICATION --
06/29/22 11:05:42 | Friday, Tracie | THEY ARE GETTING INTO THE VEHICLE ... GOING TO THE RIGHT ...
06/29/22 11:07:06 | Hand, Tina | 42 | Message - BEHIND THE VEH AT 34/HERMITAGE POND
06/29/22 11:07:10 | Hand, Tina | 42 | On Scene
06/29/22 11:07:53 | Hand, Tina | 45 | On Scene - OUT WITH 42
06/29/22 11:08:26 | Friday, Tracie | PHILLIP ADVISED THAT THE POA WAS NOT THERE AT THIS TIME THEY HAD HER ON THE PHONE -- I ADVISED THEM TO CALL THE POA AND SEE IF SHE CAN COME TO THE FACILITY ...
06/29/22 11:09:52 | Hand, Tina | 40 | On Scene - OUT WITH 42
06/29/22 11:22:06 | Proctor, Tina | 15 | On Scene - JUSTIN IS AT THE SHERIFF DEPT AND WANTS TO LET 42 40 KNOW
06/29/22 11:31:55 | Proctor, Tina | 15 NEEDS EITHER 40 OR 42 TO CALL HER TO TELL HER WHAT IS GOING OJN
06/29/22 11:31:56 | Proctor, Tina | ON
06/29/22 11:32:09 | Friday, Tracie | 42 | Clear Alarms
06/29/22 11:32:14 | Friday, Tracie | 40 | Clear Alarms
06/29/22 11:32:17 | Friday, Tracie | 45 | Clear Alarms
06/29/22 11:32:20 | Friday, Tracie | 15 | Clear Alarms
06/29/22 11:53:34 | Hand, Tina | 15, 40, 42, 45 | Complete - THE ELDERLY FEMALE IS WITH THE POA GOING BACK TO PINEDALE THE OTHERS HAVE BEEN TOLD TO CONTACT THE COURT

CLQ

Requested At
Sent To
Status
Received At
Location ,
Accuracy

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EXHIBIT J

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ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

E-911 Communications
515 Walnut Street
Camden, S.C. 29020
803-424-4001

CFS - Command Log — Printed on November 17, 2022

CFS #	CFS2022-39001
Call Taker	Tina Hand
Location	798 HERMITAGE POND RD, CAMDEN, SC 29020 (PINEDALE RESIDENTAL CENTER)
Location Details	
Primary Incident Code	1021 : CALL BY PHONE
Additional Incident Code(s)	1038 : SPECIAL HOUSE CHECK
Mod	
Priority	3
Use Caution	No
Primary Disposition	NO ACTION
Beat	
Zone	
Call Time	06/29/22 09:44:44
Completed Time	06/29/22 10:38:35

Reporters

JUSTIN JERNIGAN (Initial Reporter)

Sex	
DOB	
Address	
Report Time	06/29/22 09:44:44
How Reported	Admin Line
From Phone	(864) 710-5029
Contact Phone	
Comments	

Other Names

Vehicles

Responders

32	Tate, Dustin	KCSO (Primary)
45 (Primary)	Branham, Joseph	KCSO (Primary)
SO		KCSO (Primary)

Response Times

Assigned	06/29/22 09:46:52
Enroute	06/29/22 10:38:35 *
Arrived	06/29/22 10:38:35 *
Leaving	
Arrived At	
Completed	06/29/22 10:38:35

IR / External Agency Numbers

ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Command Log Filter: All Commands | Details: Hidden | Units: All Units | Revised Entries: Shown

06/29/22 09:44:44 | Hand, Tina | New CFS
06/29/22 09:46:27 | Hand, Tina | MAKE CONTACT WITH HIM REF TO ADULT THAT IS NOT BEING TAKEN CARE OF HE IS THE GRANDSON THEY REC THE CALL FROM THE SLED HOTLINE AT THE OFFICE
06/29/22 09:46:39 | Hand, Tina | GIVE HIM A CALL
06/29/22 09:46:52 | Hand, Tina | 45 | Dispatch
06/29/22 09:47:37 | Hand, Tina | VULNERABLE ADULT
06/29/22 09:52:00 | Hand, Tina | 45 | Waiting
06/29/22 10:14:00 | Hand, Tina | 45 | Dispatch
06/29/22 10:38:35 | Hand, Tina | 45 | Available
06/29/22 14:36:45 | Campbell, Barry | COMPL CALLED BACK AND WANTS #45 TO CALL HIM BACK
06/29/22 14:36:54 | Campbell, Barry | SO | Dispatch
06/29/22 14:37:38 | Campbell, Barry | SO | Available
06/29/22 14:38:22 | Hand, Tina | 45 | Dispatch
06/29/22 17:17:32 | Hand, Tina | 45 | Complete
06/29/22 18:26:48 | Hand, Tina | CALLED BACK AND WANTED TO SPEAK TO SOMEONE HE WANTS A REPORT DONE
06/29/22 18:31:33 | Hand, Tina | 32 | Dispatch
06/29/22 18:32:10 | Hand, Tina | HE JUST WANTS SOME CLARIFICATION AS TO WHAT IS GOING ON
06/29/22 18:55:19 | Navarro, Vanessa | COMP WAS STILL ON HOLD I ADV HIM CPL WOULD CALL HIM TO GIVE HIM FURTHER 1014 ON WHAT CAN BE DONE
06/29/22 19:37:26 | Navarro, Vanessa | COMP CALLED BACK AGAIN REF TO WAITING FOR CALL
06/29/22 19:38:21 | Navarro, Vanessa | 32 | Phone Transfer - TXD TO COMP
06/29/22 20:05:32 | Navarro, Vanessa | 32 | Available
06/29/22 20:08:55 | Combies, Kimberly | CALLER CALLED BACK AND IS TRYING TO EXPLAINING HIMSELF AND HE WANTS TO TALK TO CAPT BOYKIN AND WILL CALL BACK IN THE MORNING TO SPEAK WITH HIM
06/29/22 20:18:44 | Tate, Dustin | 32 - COMPL BEGAN TO IMPLY THAT KCSO WAS ABUSING THEIR AUTHORITY AND THAT WE DIDN'T HAVE ANY AUTHORITY TO CONDUCT A TRAFFIC STOP ON HIS MOTHER EARLIER AND RETURN THE GRANDMOTHER WITH DEMENTIA BACK TO THE FACILITY. I INFORMED HIM SEVERAL TIMES THAT THE ISSUE WAS CIVIL IN NATURE, AND THAT IN ORDER FOR A REPORT TO BE GENERATED, I NEEDED A CRIMINAL OFFENSE TO BEGIN ONE. HE PROVIDED NO CRIMINAL INFORMATION AND CONTINUED TO IMPLY THAT WE HAD TO PROVIDE HIM INFORMATION ABOUT THE STOP, THE VIDEO FOOTAGE AND A REPORT FOR THIS INCIDENT. I SPOKE WITH LT WEST AND THE OWNER OF THE FACILITY WISHES FOR JUSTIN TO NOT RETURN TO THE FACILITY. JUSTIN KEPT REFERRING TO CAPT BOYKIN AND I ADVISED HIM THAT HE WOULD HAVE TO CALL DURING BUSINESS HOURS. HE ADVISED THAT HE WOULD CALL BACK IN AN HOUR, TO WHICH I INFORMED HIM I AM THE HE WOULD SPEAK TO UNTIL 0600 TOMORROW MORNING. C12. CIVIL ISSUE.
06/29/22 20:25:23 | Navarro, Vanessa | Complete
08/18/22 12:05:25 | Crawford, Patricia | Waiting
08/18/22 12:05:35 | Crawford, Patricia | Complete

CLQ

Requested At
Sent To
Status
Received At
Location ,
Accuracy

EXHIBIT K

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SMITH ROBINSON
Forward thinking. Results driven.

Smith Robinson Holler DuBose and Morgan, LLC

COLUMBIA 2530 Devine Street, Columbia, SC 29205 P: 803.254.5445 F: 803.254.5007
SUMTER 126 N. Main Street, Sumter, SC 29151 P: 803.778.2471 F: 803.778.1643
CAMDEN 935 Broad Street, Camden, SC 29020 P: 803.432.1992 F: 803.432.0784

Reply To: Camden

August 18, 2022

Mr. Justin Jernigan
7148 Stirrup Court
Weddington, NC 28104

RE: Freedom of Information Act Request

Dear Mr. Jernigan:

I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. Section 30-4-10, *et seq.* as well as a CD containing the audio.

If you have any other questions or concerns, do not hesitate to contact me.

Very truly yours,

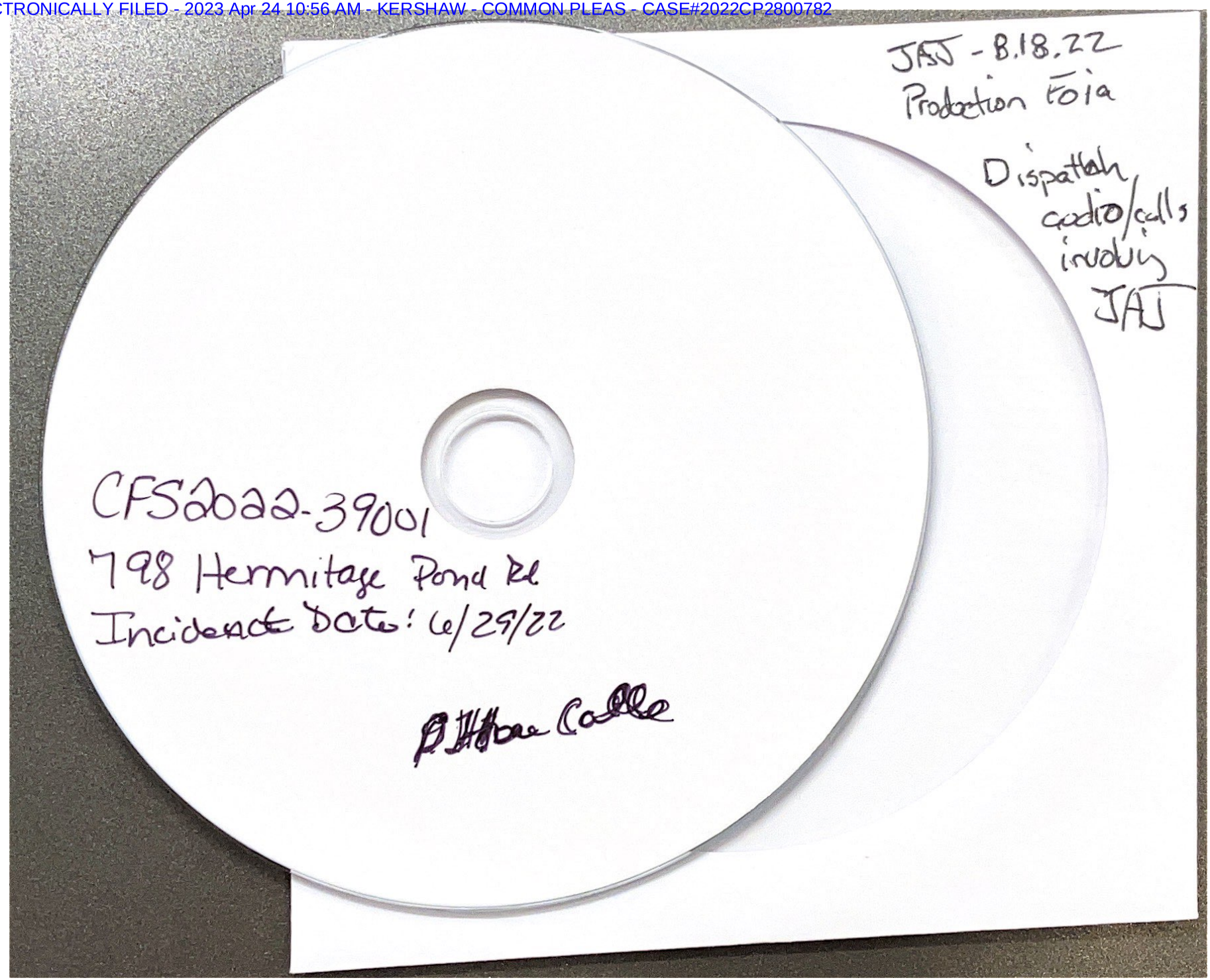
SMITH ROBINSON HOLLER
DuBOSE AND MORGAN, LLC

H. Thomas Morgan, Jr.
Asst. Kershaw County Attorney

HTM, Jr.:srd

Enclosure

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E-911 Communications
515 Walnut Street
Camden, S.C. 29020
803-424-4001

CFS - Unit Response Times — Printed on August 18, 2022

CFS #	CFS2022-39001
Call Taker	Tina Hand
Location	798 HERMITAGE POND RD, CAMDEN, SC 29020 (PINEDALE RESIDENTAL CENTER)
Location Details	
Primary Incident Code	1021 : CALL BY PHONE
Additional Incident Code(s)	1038 : SPECIAL HOUSE CHECK
Mod	
Priority	3
Use Caution	No
Primary Disposition	NO ACTION
Beat	
Zone	
Call Time	06/29/22 09:44:44
Completed Time	06/29/22 10:38:35

Reporters

JUSTIN JERNIGAN (Initial Reporter)

Sex	
DOB	
Address	
Report Time	06/29/22 09:44:44
How Reported	Admin Line
From Phone	(864) 710-5029
Contact Phone	
Comments	

Other Names

Vehicles

Responders

32	Tate, Dustin	KCSO (Primary)
45 (Primary)	Branham, Joseph	KCSO (Primary)
SO		KCSO (Primary)

Response Times

Assigned	06/29/22 09:46:52
Enroute	06/29/22 10:38:35 *
Arrived	06/29/22 10:38:35 *
Leaving	
Arrived At	
Completed	06/29/22 10:38:35

IR / External Agency Numbers

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Unit Response Times

Non Unit Specific Times

06/29/22 09:44:44 | New CFS
06/29/22 09:46:27 | MAKE CONTACT WITH HIM REF TO ADULT THAT IS NOT BEING TAKEN CARE OF HE IS THE GRANDSON THEY REC THE CALL FROM THE SLED HOTLINE AT THE OFFICE
06/29/22 09:46:39 | GIVE HIM A CALL
06/29/22 09:47:37 | VULNERABLE ADULT
06/29/22 14:36:45 | COMPL CALLED BACK AND WANTS #45 TO CALL HIM BACK
06/29/22 18:26:48 | CALLED BACK AND WANTED TO SPEAK TO SOMEONE HE WANTS A REPORT DONE
06/29/22 18:32:10 | HE JUST WANTS SOME CLARIFICATION AS TO WHAT IS GOING ON
06/29/22 18:55:19 | COMP WAS STILL ON HOLD I ADV HIM CPL WOULD CALL HIM TO GIVE HIM FURTHER 1014 ON WHAT CAN BE DONE
06/29/22 19:37:26 | COMP CALLED BACK AGAIN REF TO WAITING FOR CALL
06/29/22 20:08:55 | CALLER CALLED BACK AND IS TRYING TO EXPLAINING HIMSELF AND HE WANTS TO TALK TO CAPT BOYKIN AND WILL CALL BACK IN THE MORNING TO SPEAK WITH HIM
06/29/22 20:18:44 | 32 - COMPL BEGAN TO IMPLY THAT KCSO WAS ABUSING THEIR AUTHORITY AND THAT WE DIDN'T HAVE ANY AUTHORITY TO CONDUCT A TRAFFIC STOP ON HIS MOTHER EARLIER AND RETURN THE GRANDMOTHER WITH DEMENTIA BACK TO THE FACILITY. I INFORMED HIM SEVERAL TIMES THAT THE ISSUE WAS CIVIL IN NATURE, AND THAT IN ORDER FOR A REPORT TO BE GENERATED, I NEEDED A CRIMINAL OFFENSE TO BEGIN ONE. HE PROVIDED NO CRIMINAL INFORMATION AND CONTINUED TO IMPLY THAT WE HAD TO PROVIDE HIM INFORMATION ABOUT THE STOP, THE VIDEO FOOTAGE AND A REPORT FOR THIS INCIDENT. I SPOKE WITH LT WEST AND THE OWNER OF THE FACILITY WISHES FOR JUSTIN TO NOT RETURN TO THE FACILITY. JUSTIN KEPT REFERRING TO CAPT BOYKIN AND I ADVISED HIM THAT HE WOULD HAVE TO CALL DURING BUSINESS HOURS. HE ADVISED THAT HE WOULD CALL BACK IN AN HOUR, TO WHICH I INFORMED HIM I AM THE HE WOULD SPEAK TO UNTIL 0600 TOMORROW MORNING. C12. CIVIL ISSUE.
06/29/22 20:25:23 | Complete

32

06/29/22 18:31:33 | Dispatch
06/29/22 19:38:21 | Phone Transfer - TXD TO COMP
06/29/22 20:05:32 | Available

45

06/29/22 09:46:52 | Dispatch
06/29/22 09:52:00 | Waiting
06/29/22 10:14:00 | Dispatch
06/29/22 10:38:35 | Available
06/29/22 14:38:22 | Dispatch
06/29/22 17:17:32 | Complete

SO

06/29/22 14:36:54 | Dispatch
06/29/22 14:37:38 | Available

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ALAN WILSON
ATTORNEY GENERAL

Dear Public Official:

The Freedom of Information Act (FOIA) was enacted to provide direct access to the functions of government to the general public and the press. Recently, the General Assembly enacted significant amendments to FOIA in furtherance of the State's commitment to open government and as a further recognition that sunlight is essential to the survival of our representative democracy. Government agencies and public officials have a duty to disclose any public information requested through FOIA unless the information is protected from disclosure by law.

While drafting South Carolina's FOIA, the General Assembly found the following:

> *The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.*
>
> *Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.* (S.C. Code § 30-4-15)

As public officials, the people of this State have placed a great amount of trust in our ability to perform the tasks of government. In turn, we have an obligation not only to adhere to the letter of the law, but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public records.

The Attorney General's Office uses and recommends the following FOIA guidelines:

- When in doubt, disclose the public record
- When in doubt, post the time, place, and purpose of the meeting
- When in doubt, open the meetings to the public

The following guide provided by the S.C. Press Association should answer the majority of questions you may have regarding FOIA requests. When fulfilling a request, remember a vigilant press corps is a requisite for good government. As public officials, we have an added obligation to aid members of the media with their quest to properly inform the public.

Sincerely,

Alan Wilson
Attorney General

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

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SOUTH CAROLINA LAW ENFORCEMENT ACCREDITATION



The Standards Manual of

The South Carolina Law Enforcement Accreditation Program

April 2019

4th Edition – V.3

South Carolina Law Enforcement Accreditation, Inc.
Post Office Box 212266
Columbia, South Carolina 29221

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SCLEA makes no warranty, expressed or implied, for the benefit of any person or entity with regard to any aspect of the standards contained herein. These standards were adopted for the sole use of this program and for the exclusive purpose of their application to the agencies seeking to obtain or maintain accreditation. There are no intended third party beneficiaries hereof, expressed or implied. Such is specifically disclaimed.

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These standards are not intended as a substitute or replacement for any legal requirement that may apply to agencies involved in the provision of law enforcement services in the State of South Carolina. Each agency seeking to achieve or maintain accreditation is encouraged to seek independent legal review of all adopted policies, procedures, and practices. SCLEA recognizes that federal, state, and local law, administrative regulations and local ordinances take precedence over these standards.

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CHAPTER 15 - COMMUNICATIONS

The basic function of the communications system is to satisfy the immediate information needs of the law enforcement agency in the course of its normal daily activities and during emergencies. It is the latter situation that places the greatest demands upon the communications system and tests the capability of the system to fulfill its functions.

The system conveys information from the public to the law enforcement agency through communications personnel, to the officer who responds to the call for assistance, to other law enforcement and public service agencies, and to information storage facilities and retrieval subsystems. The speed and accuracy with which information flows through each system are measures of the agency's capability to respond to the needs of the community.

It would be virtually impossible to design a law enforcement communications system that would meet every agency's requirements. Each system must be sufficiently flexible in design to fulfill the needs of the individual agency. However, measures and standards of performance are necessary to assess the effectiveness with which any department, large or small, utilizes available information technology in fulfillment of its missions.

15.1 If the communications function is provided by a shared or multi-jurisdictional entity, written agreements or authorizing documents govern the authority and responsibility of both the agency and the entity, and include, at a minimum, provisions for complying with all applicable standards for this function on behalf of the agency.

Commentary:

When the communications function is shared or delegated to another entity, it is necessary to specify accountability and achieve compliance with this chapter. The agency may rely on documents developed by the outside communications center in proving compliance with these standards.

15.2 The agency provides a single 24-hour, toll free voice and TDD telephone access number for emergency calls for service.

Commentary:

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The public should be able to contact the law enforcement agency at all times for information or assistance that may be needed in emergencies. Agencies that are unable to maintain 24-hour telephone service should arrange for such service through neighboring departments, sheriff's departments, or the state police. Access to emergency services should be toll free within the agency's jurisdiction or permit free access to the operator.

The ability of citizens to telephone quickly and easily for emergency service is critical. If the jurisdiction does not have a 911 system, it should make every effort to adopt an easily remembered phone number to be used by citizens in emergency situations.

The phone number may be prominently displayed in phone books, on agency vehicles, in public phone booths, and in other conspicuous places. Regarding state law enforcement and certain other agencies, multiple points of contact may be required because of the decentralized nature of those agencies, and the large geographical area involved.

15.3 The agency has a 24-hour two-way radio capability providing continuous communication between the communications center and officers on duty. The agency also has multi-channel mobile and/or portable radio equipment capable of two-way operation on a joint public safety frequency or frequencies.

Commentary:

Immediate communications capability provides a measure of safety and security to law enforcement offices and the public.

The intent of this standard is to ensure that on-duty uniformed officers have the means for constant radio communication. In most situations, portable transceivers are required to enable officers on foot patrol and those away from their patrol vehicles to maintain communications with the dispatch center for exchanging information, requesting assistance, receiving orders or instructions, and responding to calls for service. In some remote geographic areas where portable transceivers are ineffective, mobile transceivers may be acceptable.

This does not require 24-hour patrol but rather the resources necessary to handle emergency calls.

15.4 A written directive establishes procedures for obtaining and recording relevant information of each request for criminal and non-criminal service or self-initiated activity, to include:

A. Control number;

B. Date and time of request;

C. Name and address of complainant, if possible;

D. Type of incident reported;

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E. Location of incident reported;

F. Identification of officer(s) assigned as primary and backup;

G. Time of dispatch;

H. Time of officer arrival;

I. Time of officer return to service; and

J. Disposition or status of reported incident.

Commentary:

A control "system" can be a card, log, or computer entry that permits a permanent record to be maintained. Such records permit the agency to establish a control system to ensure a comprehensive field-reporting program. This information should be recorded for all requests, including those received by telephone, letter, in person; self-initiated by officers; or reported to officers in the field.

The control number should be affixed to a communication center control record and the call disposition or result noted thereon. The number may serve as the basis for filing and retrieving subsequent reports of the incident, but it is indispensable for auditing the communications and records systems.

The procedures should encourage eliciting as much information as possible to enhance the safety of the officer and assist in anticipating conditions to be encountered at the scene. This is particularly important in certain categories of calls, and checklists may be provided to obtain additional information (e.g., for bomb threats, crimes in progress).

15.5 Communications personnel have immediate access to at least the following departmental resources:

A. Officer in charge;

B. Duty roster of all personnel;

C. Residential/Cellular telephone number of each agency member;

D. Visual maps detailing the agency's service area;

E. Officer status indicators;

F. Written procedures and telephone numbers for procuring emergency and necessary external services to the agency; and

G. Tactical communication plan.

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Commentary:

Communications personnel are often required to contact agency members both on and off duty. They should, therefore, have immediate access to such information as their working hours and residential telephone numbers.

Officer status indicators allow communications personnel to know the status of every officer under their control. All officers depend on the communications center to recognize when they may be in danger. By monitoring the officer status system, operators know where and how long each officer has been out on a call. When dispatching calls, operators also need to know which cars are available for service. A hand-written form updated by communications personnel would satisfy this standard.

Communications personnel also have the need to call other emergency service agencies, such as those pertaining to fire, rescue, ambulance, and animal control. They should have these and other telephone numbers immediately available by private line, telephone index, book, or other means that should expedite contacting the agencies.

Dispatching plans should include procedures to be followed in directing resources and obtaining information on crimes in progress (e.g. bank robbery, and/or tactical operations, such as roadblocks).

15.6 A written directive establishes procedures for prompt handling and appropriate routing of misdirected emergency calls.

Commentary:

It is common for one agency to receive emergency telephone calls intended for law enforcement or public service agency. Agencies should accept any misdirected emergency call and promptly relay information to the agency having jurisdiction.

15.7 Security measures for the communications center are in place to:

A. Limit access to the communications center to authorized personnel;

B. Protect equipment;

C. Provide for back-up resources; and

D. Provide security for transmission lines, antennas, and power sources.

Commentary:

The capability to maintain communications in all emergency situations dictates that security measures be implemented to protect communications personnel, facilities, and equipment. Protective measures may include locating the center and equipment in areas providing maximum security, installing bullet-resistant glass in areas of public access, and restricting access to the communications center. Providing security for equipment may be

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done with a combination of security cameras, fences, or other measures based on the needs of the agency.

15.8 The agency has the capability of immediate playback of recorded telephone and radio conversations while it maintains a continuous recording of radio transmissions and emergency telephone conversations with the communication center. A written directive establishes procedures for the following:

A. A requirement that recordings be retained for a minimum period of sixty days, per state law (SC Law 23-47-20);

B. Secure handling and storage for recordings; and

C. Criteria and procedures for reviewing and release of recorded conversations.

Commentary: None

15.9 The agency has current Federal Communication Commission (FCC) or applicable regulatory agency licenses and has access to the regulatory agency's current rules and regulations.

Commentary:

Compliance may be observed.

15.10 A written directive establishes procedures for communications between field personnel and the communications center, to include:

A. Specifications of the methods and circumstances requiring communications by field personnel;

B. The recording of the status of field personnel when out of service;

C. The methods used for identifying field personnel during communications;

D. Communication with interacting agencies;

E. Criteria for the assignment of the number of field personnel in response to an incident;

F. Circumstances that require the presence of a patrol supervisor at the scene for the purpose of assuming command; and

G. Responding to a request for emergency assistance from field personnel.

Commentary:

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Identification systems should be based on beat numbers or other assignment numbers, unit identification numbers, or a combination of the two.

15.11 A written directive describes procedures for communication personnel to respond to victim/witness requests for information and/or services to include initial and subsequent requests.

Commentary:

The intent of this standard is to ensure victim/witness callers receive timely and appropriate attention to their immediate needs, especially during non-business hours**.**

15.12 If local, state, and federal criminal justice information systems exist, the agency participates and/or has access to such a system.

Commentary:

Compliance may be observed.

15.13 If an agency utilizes cellular phones, a written directive establishes criteria and procedures for their use.

Commentary: None

15.14 A written directive establishes procedures for monitoring and responding to private security alarms.

Commentary:

The agency should have a formal policy concerning monitoring commercial and private residential alarm systems.

15.15 If the agency has a system for receiving specified crime and incident report information by telephone, mail, internet, and/or emerging technologies in lieu of on-scene response, a written directive specifies the criteria for acceptance.

Commentary:

The intent of this standard is to improve the use of patrol time.

15.16 If the agency authorizes emergency first-aid instruction over the telephone or radio, employees must be trained and have immediate access to approved emergency medical guidelines or materials.

Commentary:

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The training should be approved by a competent authority and should be designed to provide emergency life saving information to callers until emergency medical personnel arrive at the scene.

15.17 The agency has an alternate source of electrical power that is sufficient to ensure continued operation of emergency communication equipment in the event of the failure of the primary power source. A documented inspection and test of the alternate power source is completed at least monthly, or in conformance with manufacturer recommendations, and tested or operated under full load at least once a year.

Commentary:

A documented observation of a self-testing generator's performance once a month will satisfy this requirement.

15.18 The agency's telephone system is designed to separate emergency from non-emergency calls.

Commentary:

The potential for receiving a busy signal on an emergency line can be significantly reduced by routing incoming administrative and outgoing calls to a separate line or lines.

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Justin Jernigan

From: Justin Jernigan
Sent: Tuesday, August 9, 2022 11:25 PM
To: Tommy Morgan
Cc: Shelley Dabney
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Tommy, did not hear from you last Friday, but do want to get the records, etc. We can discuss is helpful, but otherwise let me know when I can expect a complete response.

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 2, 2022 6:11 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Well, there is lower humidity but it's still in the mid-90s so not much different. We did go to Pike's Peak yesterday where there was snow and 42 degrees. That was nice.

From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Tuesday, August 2, 2022 3:33 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Tommy, could do 4pm on Friday, but also ok with pushing until next week. Just let me know by sometime Friday either way.

Hope you and your wife have a great trip. Even though no snow this time of year I'm sure the lower humidity is nice.

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 2, 2022 2:54 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Justin,

I'm currently in Denver with wife for her national legislative conference. When I get back into the office Friday I'm right and proper slammed. However, I ***should*** be able to squeeze you in say 4:00?

Thanks,
TM

From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Monday, August 1, 2022 5:13 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

Tommy,

I propose Friday at 2pm to discuss this week. Other or later dates/times can work as well depending on your schedule.

Tried to make my FOIA request (attached) as specific as possible, and glad to clarify/limit as may be appropriate. I did not see a way to submit the KCSO FOIA Form via online/website submission, just fyi, as noted in your below email. Maybe it is the KC FOIA submissions that you are indicating should be submitted online via KC's website but that you are making exception under circumstances? If so, many thanks.

Understand there is FOIA exemption for body cam video, but respectfully request preservation.

Also, you are 100% correct that I am primarily concerned with what has/is happening regarding my grandmother (e.g., issues you note fall outside of FOIA). Rather than attempt to address that by submitting a complaint to KCSO directly I would respectfully request that you consider these issues (as well as the closely related subject matter of the FOIA request), confer with your client, and let me know if there are potential solutions.

I don't really want to complain right now either. I would simply request some kind of clarification that KCSO will not take such actions again if my aunt Sharon or Pinedale calls KCSO again asking for assistance in preventing me or my family from traveling with my grandmother (Ann) away from Pinedale. Also, please consider as well that it is unlawful for a person (i.e. Sharon/Pinedale) to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another. SC Code 16-17-725.

Thanks,

Justin

From: Justin Jernigan
Sent: Thursday, July 28, 2022 1:08 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy, very much appreciate your prompt response and the helpful information you included. After I've had a chance to consider I will reach back out to you via email later this week or early next week with some proposed dates/times to discuss.

Hope all is well with you also!

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Thursday, July 28, 2022 12:56 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

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Justin,

Hope all is well. Go Class of '06!

As for FOIA and requesting certain documents, here's the lay of the land:

- KCSO: investigative file, incident reports, dash cam video (not body cam as that's exempt per § 23-1-240(G)(1)), personnel records, training records, etc.
- KC: E-911 comms (CAD reports), detention center records (KC operates the jail, not KCSO), etc.

Helpful links and documents:

- KC FOIA Form – email County FOIA Coordinator Lauren Reeder lauren.reeder@kershaw.sc.gov
- KCSO FOIA Form – you would normally would submit online to KCSO but given this situation I'll handle accordingly. I'll have to speak with them to determine what records are available that apply to this situation.
- KCSO Complaint Form – that should be sent directly to Sheriff Lee Boan lee.boan@kershaw.sc.gov and his Chief Deputy Rock Coleman tyrrell.coleman@kershaw.sc.gov.

I understand based on my reading of your correspondence that you have concerns/questions/issues as to the incident involving your grandmother and possible mistreatment at her residential care facility and how events were handled by KCSO. FOIA is not the best way to ask the questions you have so I would prepare a complaint form and submit to KCSO so it can be addressed by Command Staff. I can assure you Sheriff Boan and Chief Coleman are very responsive to these types of inquiries and will likely contact you soon.

After you review this email and feel we need to discuss, let's set up a time to call next week.

Thanks,
Tommy

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www.SmithRobinsonLaw.com

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Thursday, July 28, 2022 12:44 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

Quick follow-up when you have a chance. Alisha (KCSO's FOIA Officer) indicated in her below email of Monday, July 25, 2022, that I would need to contact "central dispatch" with respect to all call related public records she identified. Alisha's email of July 25th also, however, suggests that she accessed, used, etc., KCSO's records with respect

to her conclusion that the incidents were "civil matters," and that I was informed of such during my phone call with Corporal Taylor (2nd Shift) on evening of June 29, 2022.

I certainly do not mind contacting/requesting call records from central dispatch in view of Alisha's email but was also, as noted, confused by Alisha's ambiguous response. In any case, I request your permission, and will otherwise refrain, from contacting any Kershaw County employees without your express approval in view of the below email from Alisha this morning, and my follow up email, noting that I should/will contact you directly going forward regarding these matters.

Also, small/cool world, I looked up your firm bio and discovered that we both graduated USC Law class of 2006. I have been a patent attorney living/practicing in South Charlotte area since we graduated in 2006, other than from '06-'08 when I was law clerk at federal court in Augusta. Still, I believe that I remember you from law school classes we attended together.

So, obviously, criminal and SC FOIA matters are well outside my area of practice, and I certainly never expected or wanted to become personally involved with either this summer. My family and I support and respect law enforcement employees. I am teaching my kids (daughter 9 and son 14) to respect/value law enforcement. It is an often difficult, yet critically important, public service.

Would respectfully submit that my mother, grandmother, and I have, nevertheless, been treated like "scumbag troublemakers" by KCSO at all points prior to this email to you. I do not fully understand why, but know for sure that it was through no fault of our own. I would appreciate discussing this matter with you at your earliest convenience.

Best Regards,

Justin

From: Justin Jernigan
Sent: Wednesday, July 27, 2022 11:02 AM
To: Alisha Joe <alisha.joe@kershaw.sc.gov>; kcso@kershaw.sc.gov
Cc: Tommy <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Thanks Alisha. Will drop you/KCSO from all further correspondence and will confer with counsel directly.

Tommy/Shelley, will await your response or phone call after you have had a chance to review/consider.

Justin

Justin A. Jernigan
Additon, Pendleton & Witherspoon, P.A.
Patent Attorneys
P.O. Box 567
Monroe, NC 28111
T: (704) 945-6734
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jjernigan@apwlaw.us

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From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Wednesday, July 27, 2022 10:58 AM
To: Justin Jernigan <jjernigan@apwlaw.us>; kcso@kershaw.sc.gov
Cc: Tommy <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Mr. Jernigan,

I've added the County Attorney on to this email thread. From this point forward, please refer to him for anything further so that we can assure all of your needs are met.
Thank you, and have a great day.

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Wed, Jul 27, 2022 at 12:20 AM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: Alisha Joe <alisha.joe@kershaw.sc.gov>
Cc: KCSO@kershaw.sc.gov <KCSO@kershaw.sc.gov>

Thanks for your response Alisha.

I respectfully submit some questions and concerns with respect your response. First, should I consider your below email to be KCSO's full, final, and complete response to my 7.22.22 FOIA request?

The response from KCSO seems to only discuss one of the incidents set forth in my FOIA; e.g., KCSO's pursuit, stop, detention, forcing my mom to take and leave my grandmother at Pinedale against both of their expressed wishes, etc., on June 29, 2022. You note that, based on your review of the records, I was, at around 6:30pm-7:00pm on June 29th, "informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident." Is KCSO's position that this was always merely a civil issue or was that not decided until later in the afternoon/evening after these incidents had already occurred? Also, please note that the SC FOIA at Section 30-4-40 discusses certain matter that *may* be exempt from disclosure, but I do not see any "civil matter" exception, so please point to the legal basis in support of this position. The SC General Assembly states that the provisions of the SC FOIA "must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." Section 30-4-40.

My 7.22.22 FOIA request encompasses public records not discussed or addressed in KCSO's below response. The additional requested records include, but are not limited to, public records concerning my reporting of criminal exploitation of a vulnerable adult (my grandmother) to KCSO on June 28-29, 2022? Does KCSO view this to also be merely a civil matter such that KCSO "do[es] not have any records regarding this incident" as well? Please clarify.

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Moreover, what about the records requested in my 7.22.22 relating to the officers/employee's involved, relevant training/certifications in the noted areas, etc.? Surely KCSO maintains records relating to its officers/employees right?

Lastly, please note that the SC FOIA at Section 30-4-20 defines "public record" as including "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." Does KCSO not have access to, possess, use, etc. any such public records concerning my 7.22.22 FOIA? Your below email indicates that "[a]ccording to the records…you were informed…you were dealing with [] a civil issue" on evening of June 29th by Corporal Taylor (2nd Shift). If you reviewed records indicating this information I would respectfully request that those be provided in electronic format, or first made available for inspection and potential copying depending on volume.

Thanks, and please give me a call to discuss if it could be helpful (cell phone number is 864-710-5029). All rights, remedies, etc. are respectfully reserved.

Best Regards,

Justin Jernigan

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

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On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.
>
> Best regards, and hope you have (or had) a great weekend,
>
> Justin
>
> *Justin A. Jernigan*
>
> Additon, Pendleton & Witherspoon, P.A.
>
> Patent Attorneys
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> P.O. Box 567
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> Monroe, NC 28111
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--

Alisha R. Joe

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Sex Offender Registrar

Agency TAC

Records Department

Assistant VA

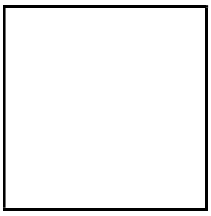
Kershaw County Sheriff's Office

821 Ridgeway Road (PO Box 70)

Lugoff, SC 29078

Phone: (803) 425-1512

Fax: (803) 425-6021



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Alisha R. Joe
Sex Offender Registrar
Agency TAC
Records Department
Kershaw County Sheriff's Office
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Lugoff, SC 29078
P: (803) 425-1512 ext. 1104
F: (803) 425-6021

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Justin Jernigan

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 9, 2022 11:25 PM
To: Justin Jernigan
Subject: Automatic reply: Potential Dates/Times to Discuss: 7.22.22 FOIA Request, Complaint to KCSO

I am out of the office with limited ability to check my emails until my return on Friday, August 12th. As such, please contact my paralegal, Sherry Roth, at Sherry.Roth@smithrobinsonlaw.com and she will assist you in my absence.

Thanks,
Tommy

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ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Justin Jernigan

From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
Attachments: Kershaw Sheriff's Office FOIA, 7.22.22, Jernigan.pdf

Hi Merri,

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

FYI, after Alisha's below email on 7/25/22, KCSO placed me in contact with the County Attorney Tommy. We had a call scheduled to discuss last Friday at 4pm (8/5/22), but I believe Tommy had been traveling and I did not hear from him then. I followed up earlier this week and Tommy is out this week also. Just wanted to keep the ball rolling in the meantime. If I can be of assistance on this please give me a call (cell 864-710-5029).

Thanks

Justin

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.

Best regards, and hope you have (or had) a great weekend,

Justin

Justin A. Jernigan

Additon, Pendleton & Witherspoon, P.A.

Patent Attorneys

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F: (704) 945-6735

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Agency TAC
Records Department
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Lugoff, SC 29078
Phone: (803) 425-1512
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ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Justin Jernigan

From: Justin Jernigan
Sent: Friday, August 12, 2022 10:50 AM
To: Tommy Morgan
Cc: Shelley Dabney; Lauren Reeder
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

No worries. Like I said, just trying to keep the ball rolling given that you have been busy, and I was a little unclear if I needed to make a FOI request to County also given that I sent prior to KCSO, who then said to request from County….

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Friday, August 12, 2022 8:18 AM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I am back in the office and am trying to play catch up. 2 weeks and 2 trips (Denver and Boston) and it's real easy to fall behind.

Let me look into the status of the records themselves. I know you wanted to chat about your concerns. I will do my best to give you a call today but my calendar is pretty tight. Next week it opens back up, however.

I appreciate your understanding.

Thanks,
Tommy

SMITH ROBINSON
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Smith Robinson Holler DuBose and Morgan, LLC
www.SmithRobinsonLaw.com

H. Thomas Morgan, Jr.
Assistant Kershaw County Attorney

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P: 803.432.1992
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Camden Office
935 Broad Street
Camden, SC 29020

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From: Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Sent: Thursday, August 11, 2022 1:30 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Please let me know how you'd like to proceed.

LAUREN

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Thu, Aug 11, 2022 at 12:24 PM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: merri.seigler@kershaw.sc.gov <merri.seigler@kershaw.sc.gov>, lauren.reeder@kershaw.sc.gov <lauren.reeder@kershaw.sc.gov>

Lauren,

I'm copying you in on my below email also as your name is listed "for questions" regarding County FOI.

Thanks,

From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Merri,

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

FYI, after Alisha's below email on 7/25/22, KCSO placed me in contact with the County Attorney Tommy. We had a call scheduled to discuss last Friday at 4pm (8/5/22), but I believe Tommy had been traveling and I did not hear from him then. I followed up earlier this week and Tommy is out this week also. Just wanted to keep the ball rolling in the meantime. If I can be of assistance on this please give me a call (cell 864-710-5029).

Thanks

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Justin

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.
>
> Best regards, and hope you have (or had) a great weekend,
>
> Justin

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Justin A. Jernigan

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Patent Attorneys

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T: (704) 945-6734

F: (704) 945-6735

jjernigan@apwlaw.us

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Alisha R. Joe

Sex Offender Registrar

Agency TAC

Records Department

Assistant VA

Kershaw County Sheriff's Office

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Lugoff, SC 29078

Phone: (803) 425-1512

Fax: (803) 425-6021



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--

Lauren Branham Reeder
PUBLIC INFORMATION & MARKETING OFFICER
Kershaw County Government, SC
515 Walnut Street | Camden, South Carolina 29020
803.425.5320 | Phone
803.729.9663 | Cell



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Justin Jernigan

From: Justin Jernigan
Sent: Wednesday, August 24, 2022 11:55 AM
To: Tommy Morgan
Cc: Shelley Dabney
Subject: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan
Attachments: Kershaw Sheriff's Office FOIA, 7.22.22, Jernigan.pdf; FOI Resolution 2017.pdf

Tommy,

I appreciate your honesty. You have not reviewed the 8.18.22 production which was sent with your cover letter, told me to contact you regarding questions with respect to the production, etc. Since you did not listen to the 8.18.22 production or otherwise look into the matter, we are in agreement that you are not really in a position to make comments on my allegations that portions have been dubbed, clipped out, etc. You also admitted during our phone call that you have never even actually read my 7.22.22 FIOA request. That fact is also apparent from reading your below email of August 23, 2022, at 9:00:16 pm. I've attached my 7.22.22 FOIA request, yet again, for you to review, and I'm including C&P's of two paragraphs in my request below.

> I would also respectfully request all public records concerning Department actions involving my mother (Christine Pratt Jernigan, 302 Pine Cliff Dr., Seneca SC 29672), and grandmother (Ann Berry Martin) on June 29, 2022, or otherwise relating to myself. These records also include, but are not limited to, records relating to my aunt/uncle, Sharon/Jim Wright of Camden, and the Pinedale facility, that are relevant to this matter.

...

> I also respectfully request records concerning the names, ranks, dates of service, and/or related public information concerning all Department employees having any personal involvement regarding the above-described incidents that occurred in or around late June 2022 to present. Included in this request are training classes taken by these individuals, required, or respective certifications concerning constitutional rights of private citizens in connection with stops, detentions, arrests, use of police powers, etc. (e.g., regarding probable cause, reasonable suspicion, or indications of unlawful conduct required before taking such steps). I would also respectfully request similar training or certification information for all such individuals with respect to investigating abuse of the elderly or otherwise disabled/vulnerable adults.

Also attached hereto is your client KC's FOIA Resolution No. 124.2017, with a relevant portion C&P'd below.

> (B) The County shall provide non-exempt requested within thirty (3) calendar days of the initial response and determination/notification for those records less than two (2) years old and within thirty-five (35) calendar days if the records are greater than two (2) years old.

I made what I thought was a very reasonable proposal/offer via email yesterday because you said something about having a busy upcoming schedule. Even so, you flatly rejected my proposal without even reading my 7.22.22 FOIA request! For clarity, my rejected proposal/offer is withdrawn. I would alternatively propose scheduling time on Friday 8/25/22, Saturday 8/26/22 and/or Sunday 8/27/22 for me to review all the requested records personally and obtain my own copies of the requested records. Let me know by the end of the day today.

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NEW FOIA REQUEST: To KC and all of its related or subagencies including KCSO; REQUESTOR: Justin Jernigan (contact info. same as attached cover page from 7.22.22 FOIA requests)

All public records, including but not limited to, contracts or other documents concerning, explaining, etc. the relationship between KC and KC County Attorney Tommy Morgan. For example, job descriptions and responsibilities with respect to assigned FOIA requests and for contested/adversarial legal matters Attorney Morgan becomes aware of involving third-parties against KC, third-party attorneys, etc. This request includes any public records or documentation concerning whether the relationship between KC and Attorney Morgan is governed by the S.C. Rules of Prof. Resp. or if the relationship is more limited in any respect. Including, but not limited to, whether Mr. Morgan can ignore disputed legal issues and request that third-party attorneys contact his client directly regarding disputed legal matters.

All public records concerning training, certifications, etc., with respect to the employees, contractors, or contract employees, etc., involved in the incidents in or around late June 2022 (see attached 7.22.22 FIOA request), or becoming involved in any way thereafter, that relate to KCSO/law enforcement's authority to take police action in civil matters, in matters involving power of attorney (POA) documents, and/or to give legal opinions on civil matters or anything concerning POA documents. This request also includes any applicable training, certifications, etc., with respect to the before mentioned individuals and the Resident's Bill of Rights (SC Code §§ 44-81-20, et seq.), the Protection of Persons Under Disability (SC Code §§ 62-5-101, et seq.), related regulations, and related Federal statutes/regulations.

Best regards,

Justin Jernigan
justin.a.jernigan@gmail.com
864-710-5029

From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Wednesday, August 24, 2022 9:18 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: Re: Proposal RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy, please read my original 7.22.22 request and get back to me. You response below is not understood. I'm not requesting anything "new"!!! You had 10 biz days for a final response. The only response was from Aliesha on 7.25.22. 30 days to produce the non-exempt records. See also KC Resolution 124.2017 as far as time periods.

I assume you are taking no position because you do not disagree.

Get Outlook for iOS

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Tuesday, August 23, 2022 9:00:16 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: RE: Proposal RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I refer you to S.C. Code Ann. § 30-4-30 as to time deadlines for response to requests. I also direct your attention to S.C. Code Ann. § 30-4-100 regarding injunctive relief as to FOIA requests.

I have previously referred your E-911 requests to the Director. I note I had previously provided you with her direct address. Regardless, I'll forward you new request regarding Sharon and/or Jim Wright and have them provide any records should they be available.

I'll reiterate that I have zero control over the production of the audio recordings themselves. In other words, I have zero idea whether they were redacted although I have never known of such taking place in the past. So any "lags" in the recording as you describe might be due to technical difficulties with the cellular transmissions.

I take no position as to your legal representations or arguments surrounding actions involving Pinedale. As I have stated on numerous occasions, FOIA is not a vehicle to discuss or debate allegations or accusations or the validity of actions/inactions.

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www.SmithRobinsonLaw.com

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Assistant Kershaw County Attorney

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935 Broad Street
Camden, SC 29020

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Tuesday, August 23, 2022 11:37 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Proposal RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

Thanks for spending some of your valuable time discussing this matter with me via phone yesterday.

As we discussed, we (me and your client KC/KCSO) presently have a disagreement regarding the response and records provided to my 7.22.22 FOIA request (as well as other disputes). My understanding of FOIA is that the recipient has 10 days to give a complete/final response and 30 days to produce the requested/responsive records. If the requester files a court action after this time period expires, and the recipient subsequently turns over additional responsive records, the requester is entitled to recover attorneys' fees/costs. *Burton v. YCSO*, 594 S.E.2d 888, 358 S.C. 339 (2004).

Proposal: Please provide all the audio/phone-calls, call logs, etc. relating to the noted incident that involve or otherwise concern my aunt Sharon Wright, her husband Jim Wright, and/or Pinedale (anyone associated with Pinedale, including Phillip Hudson, administrator) as soon as possible. If you can, please send the files to me via email or you can transfer to my cloud drive (I will provide a link). I do not expect any redactions, but if the records are redacted, audio chopped out, etc. (like with the disc sent on August 18, 2022), please provide the exemption(s) claimed under FOIA matched up to any portion(s) redacted (e.g., if audio records, please note the time periods that have been omitted and the claimed exemptions).

I do not want to file a lawsuit over FOIA issues as long as you will provide the above asap, and thereafter agree to keep me in the loop regarding the other records requested in my attached 7.22.22 FIOA request (e.g., give me an expected date of receipt, if more time may be needed on any records let me know in advance, etc.). Please respond and let me know if this is acceptable.

Other Matters Discussed:

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My understanding is that you represent KC/KCSO. For example, your client sent both of us the below email on July 25, 2022 (emphasis added):

> Mr. Jernigan,
>
> I've added the County Attorney on to this email thread. *From this point forward, please refer to him for anything further so that we can assure all of your needs are met*.
> Thank you, and have a great day.

My assumption was that you were the person I should contact "for anything further so that we can assure all of your needs are met." If this is incorrect please let me know. You also noted in your Letter to me dated August 18, 2022, that if I had any questions regarding the FOIA response/production that I should contact you.

We also (potentially) disagree regarding whether your client had any legal justification for taking any action at all based simply on a lay person's legal opinion with respect to "rights" that were allegedly taken away from my Ann under a POA. Your client had no authority or jurisdiction to pursue, stop, detain, etc. my mother Chris and my grandmother Ann without any reasonable suspicion, probable cause, etc., regarding criminal activity. Your client is, of course, not certified to make legal determinations or take any action with respect to civil matters.

The General Assembly recognized that residents residing in facilities (e.g., my grandmother Ann) retain their individual rights and personal freedoms as fully as other citizens, that it is necessary to preserve the dignity and personal integrity of residents, and that each resident's need for self-determination must be safeguarded against encroachments. SC Code § 44-81-20. At the time Ann was admitted to Pinedale in late May 2022, my aunt Sharon should have been given oral and written explanations by Pinedale regarding Ann's rights and signed a written acknowledgement that these rights were explained to her by Pinedale. S.C. Code § 44-81-40(A). Written notices relating to certain of the residents' rights are required to be posted in conspicuous locations in and around Pinedale. *Id.* The written notice provided on DHEC's website explains, for instance, that a resident may voluntarily choose to relocate from a facility (e.g., Pinedale) at any time. See https://scdhec.gov/sites/default/files/docs/Health/docs/Residents%20Bill%20of%20Rights.pdf (14 lines or so up from the last line). Pinedale is, of course, not an institution, prison, etc. that can force its resident to remain against their reasonable, rational, and expressed wishes (e.g., exploitation of a vulnerable adult).

Only a court, following legal proceedings that are conducted consistent with Ann's due process rights, can decide that certain rights and freedoms be taken away. S.C. Code § 62-5-101(9) (vested instead to "a person appointed by the court as guardian"). Ann retains, for example, the following rights and personal freedoms: the right to reside in a place of her choosing, the right to travel, the right to visit family away from Pinedale, and the right to make decisions regarding her medical care and treatment. S.C. Code § 62-5-304A.

If you disagree or have any questions please let me know.

Thanks,

Justin
864-710-5029 (cell)
justin.a.jernigan@gmail.com

From: Justin Jernigan
Sent: Monday, August 22, 2022 8:25 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>

ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Tommy,

Hope you had a good weekend. This is the last week before school starts back for the kids up here, so I'm a little bit bummed out about getting back in the drop-off lines, which is where I will be this time next week.

I am writing to ask if you intend to respond to any or my allegations regarding your client and/or anything else? If so, please let me know when I can expect to receive a response, including with respect to the additional allegations below.

I believe that you should respond because, in my view, you are assisting in a continuing coverup of the underlying facts. I assume that you are the one that listened to and prepared the woefully incomplete disc/response to my 7.22.22 FOIA request because your client (Alisha/KCSO) told me to deal with you directly on these matters on July 25th (see email chain below).

I've attached hereto the text summary of the complete 11 audio files I received. These are surely not the only audio/video and/or other records that exist and fall within the scope of my request. For instance, why were no audio/video files included showing who called KCSO and falsely reported criminal activity against my mother and/or myself? Where are the audio files concerning KCSO sending three county owned vehicles and KCSO officers to pursue my mother/grandmother and stop, detain, falsely imprison, kidnap, etc., on June 29th? Where are dashcam video/audio and the video/audio of my discussions at the KCSO with officers on June 29th? These records surely exist, but if they somehow do not for reasons I am currently unaware of, please explain. As present, I consider KCSO's "responses" to my 7.22.22 FIOA as additional evidence of bad faith and willfulness.

For example, based on what I received in response to my 7.22.22 FOIA request, it seems that you must have delegated the task back to KCSO/KC because I would not expect this kind of response from an attorney knowledgeable in FOIA. The only records I received concern conversations between myself and your client; i.e., nothing I didn't already know. It is still unclear from the records provided "why" KCSO decided it was appropriate to stop, detain, falsely imprison, kidnap, etc., my mother and grandmother on June 29th. Does KCSO still believe my mother and grandmother are not citizens that possess the same rights and freedoms as you and I do? If my mother picks up my grandmother tomorrow is KCSO planning to take similar action if the perpetrator makes a similar request? The person/entity who called KCSO concerning non-criminal actions of myself and my mother is not named in any KCSO's public records? The only person/entity identified in the records as calling KCSO regarding this matter is myself.

You/KCSO have even redacted portions of the 11 audio files/conversations you provided concerning myself. I was, of course, personally involved in most of these conversations but KCSO even redacted portions of my conversations with KCSO from the audio files! For example, why would KCSO redact portions of my conversation with Corporal Tate on the evening of June 29th (I previously thought the dispatcher operator called him Corporal "Taylor" as noted in my 7.22.22 FOIA). At one point during our conversation Corporal Tate said that by requesting a report I was basically asking KCSO to create evidence against their own interests!?! I explained in response that I just wanted what happened to be documented and that maybe I'm somehow the one at fault. That, of course, is not an accusation of impropriety against KCSO which is what Officer Tate accused me of personally at that time and also in the call notes provided with respect to the call (not attached hereto). Corporal Tate told me that since I was accusing KCSO of acting outside its jurisdiction then I needed to contact the Attorney General's office. Tate then hung up on me.

FYI, I did subsequently contact the Attorney General's office as instructed by Corporal Tate. I received a very nice response explaining that the Attorney General's office does not handle such matters, so KCSO again gave me bad information on June 29th resulting in further time wasted.

I spoke to the receptionist, dispatch, and Deputy Branham at around 2:30pm on June 29th before leaving Lugoff. I also left another message with Captain Boykin (I think). All, or at least the receptionist and Branham, indicated that a report

would be prepared by the end of first shift. That was the information I was given by KCSO so, naturally, when I called back that evening as instructed, I expected that someone would send me a copy of the report. It seems like KCSO was intending to prepare the previously mentioned "report" until the end of the shift when KCSO realized there was no "criminal code" that they could write on the report, hence, KCSO then decided it was a "civil matter." In other words, a matter that KCSO had no jurisdiction to be involved in at all. Not only that, because it was a "civil matter" KCSO decided there were no public record that needed to be produced in response to my 7.22.22 FOIA.

This is unprofessional behavior. Professionals, unfortunately, make mistakes sometimes. When they inevitably do, the only reasonable/rational response is to stand up and own up to it. Trying to cover it up just makes it worse. It is very dangerous for law enforcement to act outside their jurisdiction, as I'm sure you know, because citizens have the right to defend themselves, someone could get seriously hurt, etc.

As always, if you disagree, please fully explain and provide justifications in writing.

Thanks,

Justin

From: Justin Jernigan
Sent: Thursday, August 18, 2022 1:57 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

I do not understand your below email. You represent KCSO right? I have submitted complaints to you right? Therefore, I have already submitted my complaints to your client KCSO.

Are you saying that you have chosen to ignore everything that does not concern, specifically, FOIA? You are withholding all other information from your client and ignoring it? You are also telling an attorney to contact your client directly? I'm fine with you forwarding these emails to KCSO and dealing with them directly if those are your instructions. Send me the emails of who I should forward to unless you are willing to forward and make the introductions.

I also do not appreciate your non-response on behalf of your client to the serious (e.g., felony) issues I have raised below. Since you represent KCSO, respectfully, your response is also on their behalf and is noted. If you disagree with that please let me know.

Also, please read the case of BURTON v. YORK COUNTY SHERIFF'S DEPT, 594 S.E.2d 888, 358 S.C. 339 (2004). In that case Burton requested public records under FOIA including: "Employment Records. Burton asked to review the employment information for the named deputy sheriffs, including dates of employment, title, rank, pay-rate schedule, copies of disciplinary letters, records of suspension and all other information as provided by law." This information should have been disclosed and the YCSO was liable for costs and attorney's fees. Id. I have made similar requests for information concerning the officers/employees involved in my 7.22.22 FOIA request. You have also identified other officer's (Deputies Tate and Arledge) with are included in my request, plus the other employees personally involved (dispatch operators, etc).

I do not consider any of these matters to be closed, and you should not either. Like I have been requesting, you can always call me to discuss (864-710-5029). Your unilateral decision to "close these matters" is not accepted.

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Justin

Justin A. Jernigan
Additon, Pendleton & Witherspoon, P.A.
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From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Thursday, August 18, 2022 12:32 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Tommy Morgan <tommy@smithrobinsonlaw.com>
Subject: RE: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I picked up the audio files from E-911 and that disc will be going out in the mail today (possibly tomorrow).

I believe there's dash cam – not 100% certain – based on my discussions of the incident with Deputies Tate and Arledge. They were going to pull those and as soon as I receive the video I'll mail to you. As previously mentioned, no body cam footage will be provided pursuant to S.C. Code Ann. § 23-1-340(G)(1).

As previously noted, there is no incident report from KCSO.

Finally, per your continued allegations below, should you believe a crime was committed, please contact law enforcement. I have already provided you contact info for any complaints that need to be directed to KCSO.

FOIA is not intended to discuss allegations and refutations of claims – rather, it is to provide access to public documents or meetings. *See generally* S.C. Code Ann. § 30-4-15. Accordingly, KCSO considers this request as completed and is closing the matter. Please let me know if you do not receive the disc videos within the next week or so and we'll re-transmit.

Tommy

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Assistant Kershaw County Attorney

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Wednesday, August 17, 2022 3:02 PM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Following up Regarding 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Tommy,

Checking back in again on the FOIA request and other related issues. Give me a call if I can be of assistance in moving this along. I am also writing to follow up and further explain my request for an explanation from you regarding why KCSO did not commit kidnapping, conspiracy, etc. that should be reported to SLED/FBI? I am not a criminal attorney, have never been a prosecutor, and have never worked in law enforcement. These offenses are, however, defined in Title 16, Chapter 3, Article 9 quoted below (emphasis added):

ARTICLE 9
Kidnapping

SECTION 16-3-910. Kidnapping.

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person *by any means whatsoever* *without authority of law*, except when a minor is seized or taken by his parent, is *guilty of a felony* and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.

HISTORY: 1962 Code Section 16-91; 1952 Code Section 16-91; 1942 Code Section 1122; 1937 (40) 137; 1966 (54) 2151; 1974 (58) 2361; 1976 Act No. 684; 1991 Act No. 117, Section 1.

SECTION 16-3-920. Conspiracy to kidnap.

If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of Section 16-3-910 and any of such persons *do any overt act towards carrying out such* *unlawful* *agreement, confederation, or conspiracy, each such person shall be guilty of a felony* and, upon conviction, shall be punished in like manner as provided for the violation of Section 16-3-910.

HISTORY: 1962 Code Section 16-92; 1952 Code Section 16-92; 1942 Code Section 1122; 1937 (40) 137; 1991 Act No. 117, Section 1.

You, of course, are the only one presently who has access to the records, officers/employees involved, etc. In any case, based on my personal knowledge, the additional evidence will confirm seizure, detention, carrying away by *unlawful* force, etc., of another person (e.g., my grandmother Ann) by KCSO and my aunt Sharon. Sharon is an ordinary citizen who is not an attorney, prosecutor, member of law enforcement, etc. Still, it seems that Sharon must have called 911 and somehow defrauded KCSO into believing that a 2013 POA gives her/KCSO the right to confine Ann against her expressed wishes using the force of law (i.e., three KCSO vehicles were sent to pursue, stop, detain, seize, etc. my mother Chris and my grandmother Ann).

Sharon's unlawful assertions of such "authority" under the 2013 POA were first directed at us in late June 2022 (i.e., myself, my mother Chris, and my father Dan). Sharon, and my uncle Jim Wright, informed us that they never actually enrolled Ann for a "one month trial period" at Pinedale as they previously claimed was the case (e.g., fraud, willful misrepresentations, etc.). My parents had planned to pick Ann up at the end of the fictional one-month trial period on June 30, 2022. I spoke to the facility administrator Phillip Hudson on June 28, 2022, who indicated that Ann was free to voluntarily leave with her daughter Chris, same as with all the other residents that were free to leave voluntarily. I explained this to Deputy Branham on the morning of June 29, 2022, when I also reported my additional knowledge regarding exploitation of a vulnerable adult (Ann) by my aunt/uncle. Sharon certainly

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knew/knows Ann was free to voluntarily leave Pinedale when she contacted KCSO because it was required by law to have been explained to her, orally and in writing, prior to Ann's enrollment at Pinedale. S.C. Code §§ 44-81-20, et seq.; see also https://scdhec.gov/sites/default/files/docs/Health/docs/Residents%20Bill%20of%20Rights.pdf (14 lines or so up from the last line).

Sharon/Jim revealed to us in late June 2022 that their true plan was to unlawfully force Ann to remain at Pinedale 100% of the time (e.g., Ann was on Pinedale's waiting list for a year or so, as records will confirm, and they apparently enrolled Ann quickly to not lose their "spot"). Sharon/Jim's alleged justification for their unlawful detention of Ann was the purported authority granted under the 2013 POA. The 2013 POA was unknown to us until late June 2022. The 2013 POA was prepared by my aunt/uncle's personal friend/attorney in December 2013 (see, e.g., KC ROD online records). December 2013 was after Ann was "gracefully forced" to retire in November because her Alzheimer's/dementia had progressed to a point that she could no longer perform required job-related tasks she previously performed without issue. Ann's co-workers, according to Sharon/Jim, reached out to them because they were "covering" for Ann.

It was unlawful for KSCO to agree that Ann does not possess the same rights and freedoms as other citizens. S.C. Code § 44-81-20. Ann's rights are even more worthy of KCSO's protection because Ann is a vulnerable adult who is unable to protect herself. Id.

KCSO's subsequent actions, however, were possibly worse. My mother and grandmother were clearly the only victims. Yet, officer Taylor (e.g., believed to be the ranking officer at the KCSO during the unlawful detention) refused my repeated, and very reasonable, requests that my mother and grandmother be released unless charged with a crime. It seems that your client would have recordings of these discussions. During these discussions officer Taylor engaged in unauthorized practice of law by providing an incorrect legal opinion that the 2013 POA "overruled" Ann's earlier, validity-executed and acknowledged, 2006 POA appointing Chris as co-agent with authority to act independently. No one, to date, has even asserted that the 2006 POA has been revoked and it was certainly prepared when Ann was of sound mind, made the appointment herself, etc.

Sadly, there has been a continued lack of accountability by KCSO regarding any "mistakes" on their part. Even worse still, KCSO's purportedly "complete" response to my FOIA request on 7/25/22 was another effort to cover up a matter of public importance.

It is unclear why. This was obviously not our fault. My mother and grandmother are the victims. KCSO appears unconcerned by the unlawful actions by its officers/employees, much less those of the third-party bad actors.

It you disagree with the above, please explain the reasons, fully support with contrary evidence, details, etc.

Best Regards,

Justin

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From: Justin Jernigan <jjernigan@apwlaw.us>
Sent: Saturday, August 13, 2022 2:08 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

As you know, I do have a bunch of "worries" the least of which is that my FOIA request has not been handled reasonably or in a timely manner, all rights reserved.

Particularly, with respect to dispatch records and other public records identifying the employees involved.

Can you please explain how KCSO has not engaged in kidnapping and a criminal conspiracy to do same?

The "complete" response from KCSO on 7.25.22 about there being no public records because this is a "civil matter" was, viewed objectively, in bad faith. If you disagree, please explain.

The full details regarding this matter should be reported to SLED and to the FBI/DOJ for investigation. If you disagree, please explain.

Would respectfully request the public records I requested as soon as possible. This is also a matter of substantial public importance so I would also submit that a waiver of fees would be warranted.

Please give this matter your prompt attention now that your schedule has opened following your planned travels, etc,

Thanks, and hope you had a good weekend back in SC!

Justin

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From: Justin Jernigan
Sent: Friday, August 12, 2022 10:50:20 AM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>
Cc: Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Tommy,

No worries. Like I said, just trying to keep the ball rolling given that you have been busy, and I was a little unclear if I needed to make a FOI request to County also given that I sent prior to KCSO, who then said to request from County….

Justin

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Friday, August 12, 2022 8:18 AM

To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I am back in the office and am trying to play catch up. 2 weeks and 2 trips (Denver and Boston) and it's real easy to fall behind.

Let me look into the status of the records themselves. I know you wanted to chat about your concerns. I will do my best to give you a call today but my calendar is pretty tight. Next week it opens back up, however.

I appreciate your understanding.

Thanks,
Tommy

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From: Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Sent: Thursday, August 11, 2022 1:30 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Please let me know how you'd like to proceed.

LAUREN

---------- Forwarded message ---------
From: **Justin Jernigan** <jjernigan@apwlaw.us>
Date: Thu, Aug 11, 2022 at 12:24 PM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: merri.seigler@kershaw.sc.gov <merri.seigler@kershaw.sc.gov>, lauren.reeder@kershaw.sc.gov <lauren.reeder@kershaw.sc.gov>

Lauren,

I'm copying you in on my below email also as your name is listed "for questions" regarding County FOI.

Thanks,

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From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Hi Merri,

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

FYI, after Alisha's below email on 7/25/22, KCSO placed me in contact with the County Attorney Tommy. We had a call scheduled to discuss last Friday at 4pm (8/5/22), but I believe Tommy had been traveling and I did not hear from him then. I followed up earlier this week and Tommy is out this week also. Just wanted to keep the ball rolling in the meantime. If I can be of assistance on this please give me a call (cell 864-710-5029).

Thanks

Justin

From: Alisha Joe <alisha.joe@kershaw.sc.gov>
Sent: Monday, July 25, 2022 2:34 PM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: KCSO@kershaw.sc.gov
Subject: Re: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Good Afternoon,

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

On Fri, Jul 22, 2022 at 5:47 PM Justin Jernigan <jjernigan@apwlaw.us> wrote:

> Dear FOIA Officer,
>
> Please consider my attached request and contact me at your earliest convenience after you have had a chance to review/consider. My cell phone number is 864-710-5029.
>
> Best regards, and hope you have (or had) a great weekend,
>
> Justin
>
> *Justin A. Jernigan*
> Additon, Pendleton & Witherspoon, P.A.

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EXHIBIT O

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ELECTRONICALLY FILED - 2023 Apr 24 10:56 AM - KERSHAW - COMMON PLEAS - CASE#2002CP2800782

State of South Carolina)
) Court of General Sessions
County of Kershaw) 2002-CP-28-782

Christine Jernigan, et al.

vs. Transcript of Record

KC Sheriff's Office

December 5, 2022
Kershaw, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Associate Judge.

A P P E A R A N C E S:

Justin Jernigan, Esq.
Plaintiffs

David L. Morrison, Esq.
Cameron DeBoy, Esq.
Defendant

Debra Price
Transcriber

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THE COURT: All right. Are we ready on our status conference?

MR. JERNIGAN: Judge --

MR. MORRISON: Yes.

MR. JERNIGAN: -- the Plaintiffs are ready.

MR. MORRISON: Yes, Judge. This is David Morrison and Cameron DeBoy for the Defendant. Now my camera is not working for some reason, but everything seems (indiscernible) working.

THE COURT: I had the same issue earlier. Okay. Was nothing -- yeah, this is just status conference, nothing you all need to put on the record, right?

MR. MORRISON: No, I don't believe so.

THE COURT: Mr. Jernigan is raising his hand. Yes, sir?

MR. JERNIGAN: I would present that the proper way to proceed is under section 30-4-100, 30-4-100, subsection A. "Upon the filing of the request for a declaratory judgment or injunctive relief related to the provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of service of all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude action for all pursuant to this chapter within six months of initial filing".

Plaintiffs -- and I don't know that David -- Mr. Morrison, would disagree -- would present that this -- we

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should proceed under this section and consider this the initial hearing.

THE COURT: Okay. Mr. Morris (sic)?

MR. MORRISON: Judge, that statute also says that if the court is unable to make a final ruling at the initial hearing, then a scheduling order shall be established. I don't think there's any dispute between Justin and I since we're not even ready to present this in a trial format and there's nothing that's been finalized yet.

The sheriff's department received a FOIA request in the name of Justin Jernigan. And we are learning as we go back and forth with him that there are other documents that are not under the name Justin Jernigan that he wants. In fact, he produced one of those just last week where we were producing it -- a call to the sheriff's department from someone else that we learned that's one of the things he wanted.

So we're not in a position for a final order at this point. So really, the only thing we can do right now is to issue a scheduling order. Justin and I have been able to work together very well. I think we can probably draft up a scheduling order and submit it, or we can (audio interference).

THE COURT: We lost you. Are you there, Mr. Morrison?

Did we lose him?

THE CLERK: He's gone.

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MR. JERNIGAN: I don't want to ex parte Mr. Morrison at all, but I also had trouble this morning. The first camera I had was not compatible with the Webex program, so I thought I was going to have to attend by phone. So I'm glad you guys went forward with the other matter. It gave me time to track down a camera that I could make work this morning.

THE COURT: Okay. We will wait for him to come back on.

MR. JERNIGAN: Yes, ma'am.

THE COURT: All right. I'm going to sign off.

(Off the record at 10:03 a.m. until 10:09 a.m.)

MR. MORRISON: I did, but I can hear you now.

THE COURT: Okay. Yeah, I don't know, the technology has been a challenge today. So --

(Court and clerk confer)

THE COURT: Okay. Mr. DeBoy, can you hear me?

MR. DEBOY: I can hear you, Judge. We're working on it.

THE COURT: Okay. I can --

(Pause)

MR. MORRISON: Can you all hear us? Maybe we're on mute. Can you all hear us?

THE COURT: Yes.

MR. JERNIGAN: There is a call-in number.

(Pause)

(Court and clerk confer)

THE COURT: Okay. We gotcha. Yay.

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MR. MORRISON: Think we got it. All right.

Judge, you still with us, too?

MR. JERNIGAN: I am here.

MR. MORRISON: Judge De --

MR. JERNIGAN: Is that you, David?

MR. MORRISON: Yes.

MR. JERNIGAN: Okay. Great.

THE COURT: All right. Give me one second, okay. I'm here.

MR. MORRISON: Okay. How you doing today, Justin?

MR. JERNIGAN: I'm doing pretty good. I had the same technology problems, you guys might have noticed, first. So I'm glad the other guys went, you know, and were available, so it gave me time to get ready.

MR. MORRISON: Well, the other thing that's going on is I lost -- mine froze up, and I went out and came back in and it was working until I started to talk, I think, then it went away.

MR. JERNIGAN: I restarted mine two or three times, you know, to try to get it to fix. But yeah, you guys seem to be coming in, you know, but I don't know if your audio maybe wasn't working. I'm not sure.

MR. MORRISON: It's working now. We're good.

MR. JERNIGAN: Yeah, I had a good time at the game this weekend.

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MR. MORRISON: That had to be a fun game.

MR. JERNIGAN: Yeah. It was kind of like the old days where you never know what's going to happen, you know. You go from the low of the low -- I thought it was going -- I thought we were going to get smoked.

MR. MORRISON: Yeah, but a 98-yard pick six will change the trajectory of the game.

MR. JERNIGAN: That is true. I do like their quarterback, though. He's really good, Bentley.

MR. MORRISON: He's a freshman. He's going to be good.

MR. JERNIGAN: Yeah. He led the NCAA in yardage this year by --

THE COURT: Reading over the statute and looking at the summons and complaint akin, so I'm a little confused because Mr. Jernigan filed this on September 12th, 2022. And you're supposed to have -- the statute says, you must have within ten days an injunctive hearing and it has to be scheduled by the chief administrative judge for final pleas. That's not me. Not yet. I will be in about 20 or 30 days, about -- yeah, about 30 days, but it's not me just yet.

And so -- and then it says, if at that injunctive or declaratory judgment hearing if the judge cannot rule, then a scheduling order must be set and it -- but it still must be resolved within six months.

Is that the understanding of everyone here?

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MR. JERNIGAN: That's my understanding, Your Honor.

THE COURT: Okay. And so Mr. Morrison, you're suggesting that we -- because we're beyond the ten days. So you're suggesting that we just do a scheduling order?

MR. MORRISON: Yes, Judge. I don't think we're in a position for a final ruling today. And let me just -- just a brief background. This was filed as a FOIA request by Justin Jernigan. He's seeking documents that were indexed in other names. There's a Pinedale nursing home that's involved in this. And this was a civil matter that did not result in any incident report at the sheriff's department, so when they got the FOIA request, they did a search under the name Justin Jernigan and produced what should be produced under that name.

As we talked with Justin, we're learning other things that he thinks this covers that weren't searchable under the name Justin Jernigan, and we're producing those, but just over some of the last week.

I don't think we're -- I think Justin will agree, we're not in a place we can even try the case today. We're certainly not in a place for a final order. So we need to establish a scheduling order and -- I -- again, I can work one out, but he suggested we might need to talk about what goes into it today, but I don't think you can stipulate a trial date or a trial not before date -- or trial not after date, either way. But I think that's about all we can accomplish

here today.

Now, I'm certainly willing to hear from Justin as to what he thinks should go in the scheduling order.

MR. JERNIGAN: Your Honor, as I believe your reading of the appropriate statute and understanding of it is correct, I think that we can agree today that I submitted a FOIA request on behalf of myself and my mother. There's an issue we resolved. I'm in my representative capacity on behalf of my mother for the Count I.

For Count II, that's the body camera footage that I -- I think we can address that first. I don't think there's any dispute that an order should be entered to disclose the body camera footage. You know, the statute says must. It's written in mandatory language. I don't think Mr. Morrison disagrees with that. I'm not sure what else needs to be done, other than an order to produce the relevant body camera footage.

MR. MORRISON: Judge, we go back to the time that the FOIA request was submitted. And I understand Justin, he can certainly (indiscernible) presented on behalf of himself and his mother, but the document itself says Justin Jernigan. If we go back to the time this was requested, typically body camera footage is not subject -- the public directory is not producible as a point.

There's an exception for that if you are a subject of the

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recording and there is a subpoena, a criminal case proceeding, or a civil case proceeding. At the time the request was made and responded to, there was no subpoena, there was no civil case proceeding, and there was no criminal case pending. All of this is kind of a moot point at this point because there is no body camera footage that exists at this point. But at the time the request was submitted, there was no civil action pending so I don't think the exemption applies because that's the way the statute reads.

And I don't know if we need to be doing this with you or if we need to be going back to Judge Benjamin. Since she -- Judge, I don't have any problem doing it with you, but I don't know how to do it --

THE COURT: Well, I mean, the statute says the chief administrative judge and that's giving me a little bit of concern. I'm not the chief administrative judge.

MR. JERNIGAN: Yes, Your Honor.

THE COURT: I'm concerned about the -- where it says, "must have it within ten days". I mean, we're way past ten days and so I don't -- I don't know why it wasn't scheduled within ten days. I mean, that's usually what happens is if we have preliminary injunctions or temporary restraining orders, we schedule them for a preliminary injunction. It's scheduled within ten days. So I'm not sure why it's not -- it wasn't scheduled within ten days.

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MR. JERNIGAN: I'm not sure either, Your Honor. I called the clerk -- you know, after ten days, I called. I was informed that they don't have court very often and maybe they're short a judge in Kershaw County, and that the earliest was December. I emailed the chief judge's law clerk, Judge Newman, because he was out to lunch when I called to ask about the appropriate way, you know -- my reading of the statute, the chief administrative judge of the circuit court must schedule an initial hearing within ten days.

So I was not -- I don't believe the chief judge needs to hear, but it's the chief judge's job to schedule.

THE COURT: That's correct.

MR. JERNIGAN: And I -- the reason that I requested 30 minutes is because I believed this was the initial hearing. And I believe I discussed that with Cheryl (phonetic) at the clerk's office because if I believed it was a final trial -- but I cannot explain why the hearing wasn't held. My understanding is that's being at the proper procedure, and I requested that in the complaint, and in the prayer for relief.

The clerk's office did mention that I should have maybe included some notes, and I did not with the filing. I was not aware that any motion, nor do I know what motion would be filed given the language of the statute. But I believe this can be resolved within six months and that we can resolve a lot of it here at the hearing today.

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THE COURT: Well, the problem is is this is -- this is not the initial hearing because we're way beyond the ten days. So that's my only concern is --

MR. JERNIGAN: Okay.

THE COURT: Yeah, this is not -- and so I don't even know if -- I'm not sure what happened, but usually -- and I know you're in North Carolina. Usually what we do is is you -- I think it probably has to be filed and request a hearing immediately within ten days. Whenever we have these matters here, they're filed electronically. Because it's filed electronically, but the Court really has no way of knowing unless there's something that flags it and says we need it. We need an expedited hearing, Your Honor.

MR. JERNIGAN: Yes, ma'am, Your Honor. I was not aware of the procedure and I apologize. I practice -- I practice in federal court. But I don't see where the -- the court must schedule an initial hearing within ten days of the service on all parties. Yes, I would agree that was not scheduled and I'm not sure why, because I did inquire about getting the hearing scheduled within ten days, as soon as possible, and I was told this was the earliest date available.

We can treat the hearing -- I believe it should be treated. It is the initial hearing, and I think it's appropriate to proceed as the statute indicates from here on out. And I think we can resolve it within the six months of

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filing.

THE COURT: Mr. Morrison?

MR. MORRISON: I'm not sure what we can resolve here today. When Justin and I were talking about this as an initial trial last week, we agreed we weren't in a position to try the case. I think that Justin knows everything that I know about what's available and what's not available. We explained to him what's not available. He keeps insisting there should be other things available.

This is a decision to determine what should or shouldn't be available. It seems to be determined what is available, produce what is available, or what's partly producible. I'm not sure we can make any progress on that here today, but we can certainly establish a scheduling order here today to proceed forward with the case.

We probably spent -- Justin and I and Cameron have probably spent five hours or more on the telephone talking to each other about these issues. There's a lot of issues here. Justin is here in a case representing himself as a pro se party and representing his mother as a lawyer. He's also potentially a witness in the case. And we've discussed some issues to that can give rise to, and we talked about ways to avoid that so that we don't, you know, jump into that box with discovery. We can probably avoid doing that.

But as far as what we can resolve here today, I'm not

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sure if there is anything we can resolve here today. He brought up the body cams. I've told the Court and Justin that there are no body cams in existence. So that's kind of a moot point at this point. There's nothing (indiscernible) to be like this. So that's kind of a moot point. So I'm not sure we get anywhere today on discussing what -- making headway on the issues in the case.

This is a -- the case is about what is available and should be produced, and we say we've produced it, and Justin says there should be more. And he and I can continue (indiscernible) on what should be. I can go back and check again. I've been back three times now to check, but I think we've produced everything that is producible and available.

THE COURT: Okay. So what -- are you asking for a scheduling order? Because I mean, you said six months of filing, Mr. Jernigan. We're already, what, three months in. This was filed in September?

MR. JERNIGAN: Yes. My position under the statute is that the reason they have the ten days, the failure to disclose information requested is considered a irreparable injury -- or irreparable injury by statute. So I believe that's why they said it. You know, when there's a public event that occurs with public officials and the public officials do not want to disclose the information or will not disclose the information without forcing the -- sorry about

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that -- forcing the party to file a lawsuit, that should be resolved very quickly.

Mr. Morrison has made a number of representations, and I think one thing is undisputed: I submitted -- and my name is on the request. I submitted a Freedom of Information Act request and it's attached as an Exhibit A to the complaint. The idea that when I submit a complaint, they only search for my name for records is ridiculous. And if they had searched for my name, I just found out last week who called 911 and caused the incident. My name is in this report that was just produced on Friday to me.

This is the individual who -- he's a third party in this case. And I learned, when was it, Wednesday from Mr. Morrison that this report of the incident that I asked for while the incident was occurring at the sheriff's office that evening with the sheriff's office, I would be -- I would like it be -- this is incorrect what Mr. Morrison has said has occurred. And if you view my -- so it's Exhibit A.

THE COURT: Mr. Jernigan, one second. Mr. Jernigan, so what I think needs to happen, as you all probably did, if you can agree to engage in discovery --

MR. JERNIGAN: Yes.

THE COURT: -- because he's saying one thing, you're saying another, I can't -- I mean, you engaged -- I'm not sure I can rule upon that -- anything today on top of the fact that

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I'm -- I just don't know if I have jurisdiction at this point because we're way beyond the ten days where we were supposed to have a hearing.

And so what I think you all need to do is engage in discovery based on the next 30 or 60 days, and then put in your scheduling order a date to have this matter tried on a declaratory judgment action. I think that's what needs to happen.

You all haven't done any discovery, have you?

MR. JERNIGAN: I have served written discovery. I did not really expect this to -- this is a -- you know, it's basically a discovery request. I think it's undisputed that I submitted a discovery request, a FOIA request. All the information was not produced within the time period required, which is 30 days. They were required to give a written determination within ten days telling me what they had and what they did not have.

I asked that they preserve the body camera. It's in the request. I'm very concerned about what this public body -- I think it's clear I submitted the request. I was not given the documents. I think there can be an order entered on that today, and that they are required to produce all of the documents that were requested.

They're required to tell me what they have and what they don't have. The body camera, I think there's an order that

needs to be entered that they do not have the body camera -- and they're required under their own policies to have the body camera and under the records policy. So the discovery that -- you know, I think those are undisputed. If there are issues that that can be resolved, I would ask that Mr. Morrison identify those so that I know what to seek in discovery.

THE COURT: Okay. Mr. Morrison, I think what's going to happen (indiscernible) take is my understanding is this was supposed to be a scheduling -- a status conference scheduling. What I want to instruct you all to do is to get a scheduling order. That's going to have to move really quickly on the discovery.

There are matters that are disputed because he's saying that they don't have the body cam. He's saying that you only had -- he's saying that you only requested under your name and that that's why they couldn't find it.

So all of those are issues that have to be resolved. And I think you're going to have to engage in some limited amount of discovery, and then have a hearing on the declaratory judgment. Because the Court -- I have to -- I will need to have that information.

MR. JERNIGAN: And I believe I can also brief that on summary judgment.

THE COURT: I don't have a summary judgment motion today before me. So why don't you all -- I mean, you can put in

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your scheduling order a date where motions have to be filed for summary judgment. A deadline motions for summary judgment, dispositive motions, and then whatever the six months is -- I'm guessing it's March.

MR. JERNIGAN: Yes, ma'am.

THE COURT: We have a schedule. And so if you look at the schedule -- I don't have it in front of me -- it should tell you exactly the weeks that we have court in Kershaw County. And so I would suggest trying to pick one of those weeks to have this -- to have it heard.

MR. JERNIGAN: That's agreeable to me.

MR. MORRISON: (Indiscernible), Judge.

THE COURT: All right. But I can't sign the scheduling order at this point because I'm not the chief administrative judge. So you'll need -- if it's before -- if you get it done before the end of December, you'll need to send it to Judge Jocelyn Newman. If after January 1st, if it comes, I can sign it.

MR. MORRISON: We will take care of that, Judge.

THE COURT: All right. Thank you.

MR. JERNIGAN: Thank you.

MR. MORRISON: Thank you.

THE COURT: All right.

(End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Kershaw)

I, DEBRA PRICE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Kershaw County, South Carolina, on the 5th day of December, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 13, 2022

Debra Price
Transcriber

EXHIBIT P

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NAME	RETENTION DURATION	CATEGORY RESTRICTIONS
Uncategorized	60 days	Unrestricted
10-50	90 days	Unrestricted
Accidental Activation	1 week	Unrestricted
Arrest	1 year	Unrestricted
Assist Other Agency	180 days	Unrestricted
Civil Paper Service	60 days	Unrestricted
Code 12 (Warrant Attempt,Escort, etc)	60 days	Unrestricted
Complaint On Deputy	Until manually deleted	Unrestricted
Field Interview	90 days	Unrestricted
Incident Report	180 days	Unrestricted
Officer Injury	Until manually deleted	Unrestricted
Pending Review	Until manually deleted	Unrestricted
TASER FIRING LOG	3 years	Unrestricted

NAME	RETENTION DURATION	CATEGORY RESTRICTIONS
Traffic Stop	180 days	Unrestricted
Traffic Stop (UTT Issued/Arrest)	180 days	Unrestricted
Traffic Stop (Warning Issued)	180 days	Unrestricted
Training Demo	1 week	Unrestricted
Use of Force	Until manually deleted	Unrestricted

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EXHIBIT Q

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Arlean K. Brown, *as the Personal Representative of Melvin K. Lawhorn*, Plaintiff, v. Brian Elliot; Jim Matthews, *both individually and in his official capacity as the Sheriff of Kershaw County*; Kershaw County Sheriff's Office; and Kershaw County, Defendants.	)	C/A No. 3:14-1188-JMC-PJG **ORDER**

This matter is before the court on the plaintiff's motion for sanctions, including default judgment and other relief, against the defendants for alleged spoliation of evidence.[1] In support of her motion, the plaintiff contends that the defendants repeatedly responded in the negative to her discovery requests as to whether the police vehicles involved in the encounter at issue were equipped with dashboard cameras. Subsequently, the plaintiff discovered photographic evidence depicting a camera in Officer Threatt's vehicle. In opposition to the plaintiff's motion, the defendants have presented an affidavit from Sheriff Matthews explaining that while a camera head unit was installed in Officer Threatt's vehicle, it was not operational at the time because the Sheriff's Department was transitioning to a different brand of video recording equipment for its vehicles and, at the time of the events at issue, Officer Threatt's vehicle had not yet been equipped with the new hard-drive storage system necessary to record any video. (Matthews Aff. ¶¶ 9-13, ECF No. 35-1 at 2.)

[1] For a discussion of the facts giving rise to this case, see the court's Report and Recommendation entered July 20, 2016. (ECF No. 43 at 2-3.)

PJG

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Based on the record before it, the court is constrained to conclude that the plaintiff has failed to establish that any video of the encounter at issue ever actually existed. Moreover, in light of the court's conclusions in the Report and Recommendation issued contemporaneously herewith, the plaintiff's request for a default judgment based on alleged spoilation of evidence would appear to be moot, since no material dispute of fact exists for video evidence to assist in resolving. Nonetheless, the court shares the plaintiff's frustration and chagrin that the defendants did not accurately respond to her discovery requests regarding the existence of cameras in the police vehicles involved in this case. Amidst a national atmosphere of civil unrest and apprehension toward law enforcement stemming from numerous videos from incidents across the country capturing violent encounters between police and African-American citizens,[2] the repeated lack of a forthright and precise response from the defendants regarding the presence of a camera in Officer Threatt's police vehicle is indeed disturbing. The court therefore finds it appropriate to award the plaintiff the attorney's fees and costs she incurred in connection with pursuing the instant motion. See Fed. R. Civ. P. 37(c). The plaintiff shall file an affidavit of fees and costs for the court's review on or before August 10, 2016.

IT IS SO ORDERED.

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

July 20, 2016
Columbia, South Carolina

[2] The record indicates that in this case both the officer and the plaintiff's decedent were African American.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Arlean K. Brown, *as the Personal Representative of Melvin K. Lawhorn*, Plaintiff, v. Brian Elliot; Jim Matthews, *both individually and in his official capacity as the Sheriff of Kershaw County*; Kershaw County Sheriff's Office; and Kershaw County, Defendants.	)	C/A No. 3:14-1188-JMC-PJG **ORDER**

This matter is before the court for review of the plaintiff's affidavit of fees (ECF No. 51) submitted in response to the court's July 20, 2016 Order granting in part plaintiff's motion for sanctions (ECF No. 44). In its Order, the court directed the plaintiff to submit an affidavit detailing the attorney's fees and costs incurred in connection with pursuing the plaintiff's motion for default judgment.

It is well established that the allowance of attorney's fees is within a judge's discretion. See Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 (4th Cir. 1978). Generally, in calculating an appropriate attorney's fee award, the court begins with the lodestar amount, that is, "the number of hours reasonably expended . . . multiplied by a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). When an attorney has met his burden of showing that the requested rate and number of hours are reasonable, the resulting product is presumed to be a reasonable fee. See Blum v. Stenson, 465 U.S. 886, 887 (1984). In determining whether any adjustment to this calculation is

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necessary, the court may consider twelve factors originally established in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir.1974), and adopted by the United States Court of Appeals for the Fourth Circuit in Barber v. Kimbrell's, Inc., 577 F.2d 216 (4th Cir. 1978). These factors include:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber, 577 F. 2d at n.28.

The plaintiff's attorney has submitted an affidavit in which he requests attorney's fees incurred from preparing and filing the plaintiff's motion for default judgment in the amount of $11,550.00, which is calculated based on 42 hours of time at a rate of $275 per hour.[1] (Aff. of Att'y's Fees ¶ 18, ECF No. 51 at 3.) The plaintiff's attorney justifies the time required to prepare the motion by explaining that the motion was lengthy, contained over one hundred pages of annotated exhibits, and necessitated a reply brief that also contained annotated exhibits. (Id. ¶¶ 8-13, ECF No. 51- at 2.) Additionally, the plaintiff's attorney details his sixteen years of legal experience and avers that his requested hourly rate is reasonable given his experience and the nature of the case. (Id. ¶¶ 2-7, 14-15, 17, ECF No. 51 at 1-3.) The defendants have filed no objection to the amount

[1] The plaintiff's attorney does not specify or request costs associated with filing the motion for default judgment and waives paralegal time.

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requested for attorney's fees and have not challenged either the hourly rate requested or the reasonableness of the hours expended.

Accordingly, based on the foregoing factors and the information before the court, the court finds the sum of $11,5550.00 for attorney's fees to be reasonable. It is therefore

ORDERED that the plaintiff is awarded attorney's fees against the defendants in the amount of $11,550.00.

IT IS SO ORDERED.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

September 30, 2016
Columbia, South Carolina

EXHIBIT R

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Kershaw County Sheriff settles use of force lawsuit



Watch WIS News 10 at 7 p.m. Monday through Friday.

By Nevin Smith and Chris Joseph

Published: Apr. 12, 2022 at 8:41 AM EDT | Updated: Apr. 12, 2022 at 9:55 PM EDT

COLUMBIA, S.C. (WIS) - A lawsuit against Kershaw County's Sheriff and a deputy involving an alleged assault has been settled for $1.5 million.

Sheriff Lee Boan and former Deputy Johnathan Goldsmith were sued over an October 2020 incident where Goldsmith allegedly assaulted Tony Sims following a suspicious vehicle call.

Footage from the arrest showed Goldsmith used a taser, pepper spray, repeatedly hit Goldsmith, and closed a patrol car door on his leg.

Goldsmith was fired in November and SLED agents arrested him on charges of misconduct and second-degree assault. Sims launched a civil lawsuit against Boan and Goldsmith, saying his civil rights had been violated.

Sims' attorney Brett Perry and S.C. Association of Counties Executive Director Tim Winslow confirmed the $1.5 million figure. Neither Boan nor county attorney Tommy Morgan returned a request for confirmation.

The association administers a trust which operates at Kershaw County's insurance. Winslow said it's unclear (and potentially unlikely) the incident will impact the county's premiums (impacting taxpayer funds).

Winslow said premiums are based off periods of time, and single incidents by themselves would not cause significant changes.

Boan said in a statement,

"I am pleased that the lawsuit filed by Mr. Tony Sims has been settled and is in the process of being finalized in the courts. It was the right thing to do. I hope he has closure and can move on with his life. I sincerely apologize to Mr. Sims and the citizens of Kershaw County for the actions of my former deputy. He was hired by me. Like all deputies, he was my responsibility.

I was the first person to publicly admit my former deputy's actions with Mr. Sims were unacceptable. He was terminated three months before SLED's investigation was completed. I do not condone his actions. Unfortunately, I cannot go back in time and change what happened. We can only make every effort to prevent this type of incident from reoccurring in the future.

This one incident does NOT reflect the culture of your KCSO. We have responded to over 100,000 calls since I took office. The action of one former deputy during one incident does NOT define your KCSO. It is unfortunate in today's society that a single bad incident gets more attention than thousands of good encounters law enforcement officers to have with citizens every day. I am in no way trying to overlook or downplay this bad incident. However, I ask that you do not let all the good encounters your KCSO deputies do daily get overlooked or downplayed either."

PREVIOUS COVERAGE:

- Kershaw County sheriff, former deputy named in lawsuit over alleged assault
- SLED issues warrant for ex-Kershaw Co. deputy accused of assault and battery
- Allegations of excessive force brought against current, former Kershaw Co. deputies
- KCSO documents show 2nd instance where Sheriff knew of deputy's behavior before alleged assault

Perry told WIS, Sims is pleased with the agreement which will help finance his recovery.

"He recently had a surgery that was associated with the injuries that he suffered on this night. He continues to recover, unfortunately he'll probably never be the same after this but he is doing better and again he's very pleased with the results," he said.

Goldsmith and Boan have subsequently been sued in several lawsuits for Goldsmith's alleged behavior (all filed by Perry). Goldsmith has also been the subject of additional SLED investigations.

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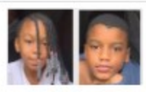
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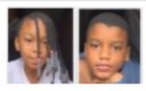
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EXHIBIT S

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Kershaw Co. Sheriff created “greatest hits” video of officer who would go on to be charged for assault



Watch WIS News 10 at 6 p.m. Monday through Friday.

By Chris Joseph

Published: May. 24, 2022 at 6:06 PM EDT

COLUMBIA, S.C. (WIS) - WIS has obtained court documents and video showing how then-Camden Police Department Captain Lee Boan created a “greatest hits” video of a then-Camden Police Officer tackling a suspect, complete with music and football highlights.

Boan would go on to be elected Kershaw County Sheriff and hire the officer, Johnathan Goldsmith, as a deputy.

Goldsmith is now facing an assault charge and a misconduct in office charge over an October 2020 incident while he served at KCSO.

He is the subject of three ongoing SLED investigations and was sued (along with Boan) over the October 2020 incident which resulted in a $1.5 million lawsuit civil settlement.

The October 2020 incident involved Goldsmith allegedly assaulting a suspect by knocking him out, tasing him, closing a car door on the man’s leg and failing to render aid immediately.

Boan and Goldsmith face two additional civil lawsuits over Goldsmith’s alleged use of force on the job for separate incidents.

Court documents refer to the video Boan created as “Goldsmith’s greatest hits.”

The video contains a series of violent football tackles and ends with then-Camden Police Officer Johnathan Goldsmith tackling a suspect on June 18, 2018, set to the song “Here comes the boom” by rapper Nelly.

Court documents show he downloaded the video of Goldsmith’s tackle on July 16, 2018. According to court records, Boan admitted to the best of his recollection he made the video that month and kept it on his personal iPad.

Camden Police Department records show on June 26, 2018 the tackle incident was reviewed for other tactics that could have been used.

Camden Police department records show on July 31, 2018 then-Camden Police Department Capt. Boan submitted a document to Camden Police Chief Joe Floyd recommending Goldsmith receive de-escalation training.

An October 1, 2018 review was also scheduled.

But Goldsmith left the Camden Police Department for the Fairfield County Sheriff’s Office before the October review was completed.

Boan then hired him to KCSO in January 2019.

A WIS investigation in November 2021 found Boan was alerted at least twice to concerns about Goldsmith’s use of force before the incident which led to criminal charges.

The new court records show at least six documented instances of concerns being raised about Goldsmith’s conduct, with at least four where Boan or his Chief Deputy Tyrrell “Rock” Coleman were notified before Goldsmith was fired.

WIS is running two follow-up investigations into Boan and his knowledge/views of Goldsmith on Wednesday, May 25 and Thursday, May 26.

THE JOHNATHAN GOLDSMITH TIMELINE



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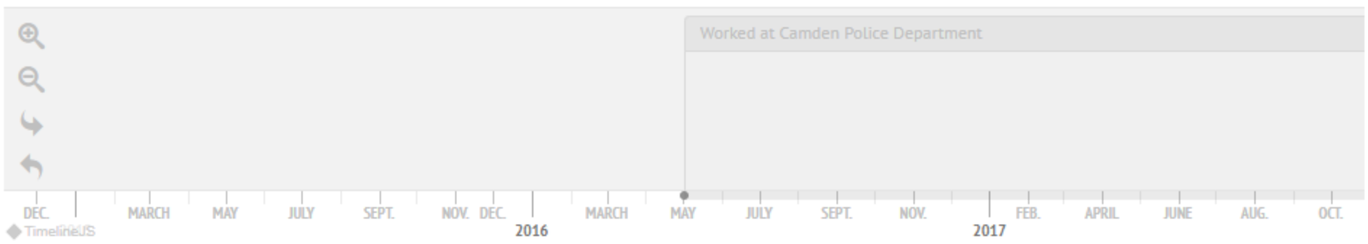
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Neither Boan nor Goldsmith's attorney responded to requests for comments on this story.

Boan did post this on Facebook in relation to the October 2020 incident:



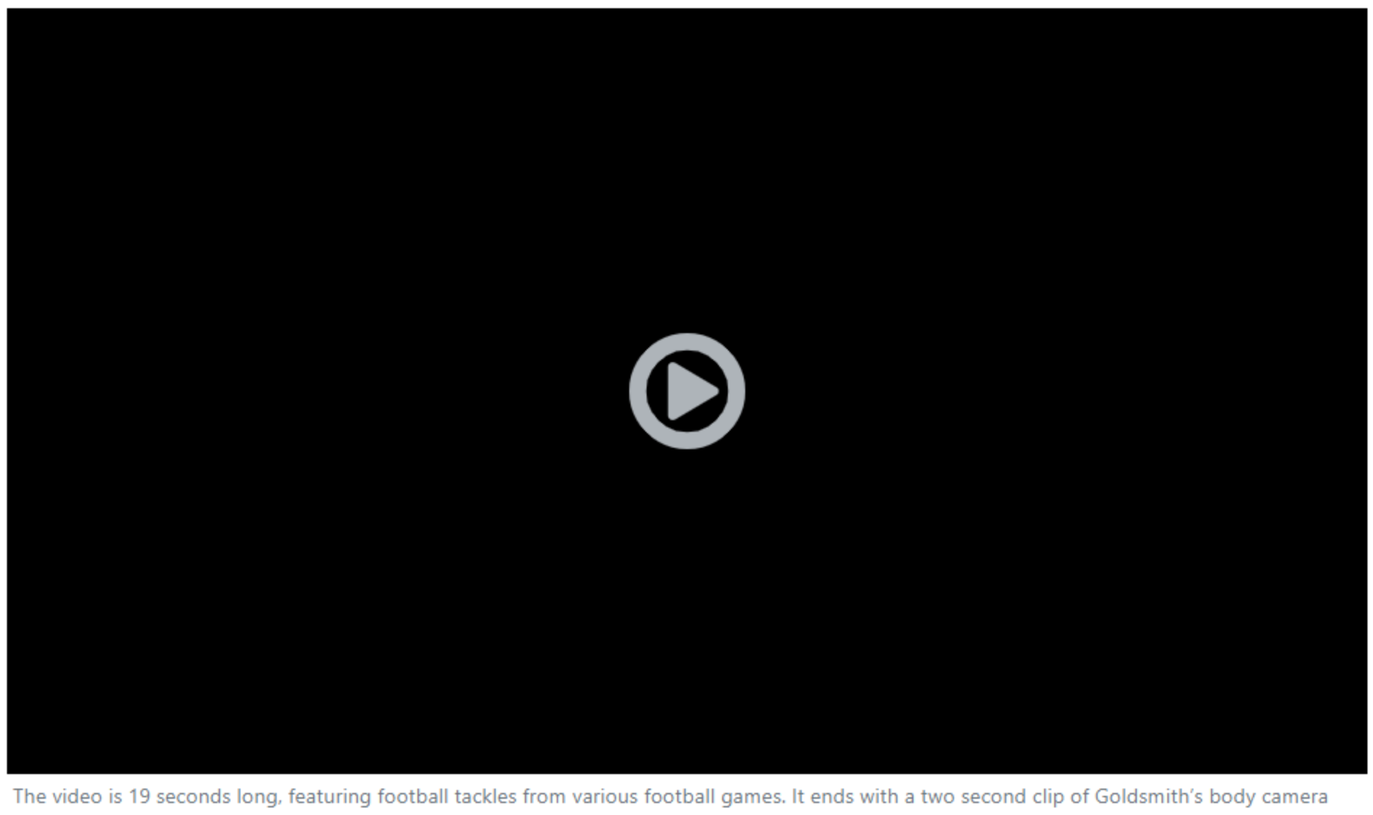
He wrote:

I am pleased that the lawsuit filed by Mr. Tony Sims has been settled and is in the process of being finalized in the courts. It was the right thing to do. I hope he has closure and can move on with his life. I sincerely apologize to Mr. Sims and the citizens of Kershaw County for the actions of my former deputy. He was hired by me. Like all deputies, he was my responsibility.

I was the first person to publicly admit my former deputy's actions with Mr. Sims were unacceptable. He was terminated three months before SLED's investigation was completed. I do not condone his actions. Unfortunately, I cannot go back in time and change what happened. We can only make every effort to prevent this type of incident from reoccurring in the future.

This one incident does NOT reflect the culture of your KCSO. We have responded to over 100,000 calls since I took office. The action of one former deputy during one incident does NOT define your KCSO. It is unfortunate in today's society that a single bad incident gets more attention than thousands of good encounters law enforcement officers have with citizens every day. I am in no way trying to overlook or downplay this bad incident. However, I ask that you do not let all the good encounters your KCSO deputies do daily get overlooked or downplayed either.

The video and the surrounding context



The video is 19 seconds long, featuring football tackles from various football games. It ends with a two second clip of Goldsmith's body camera footage from June 18, 2018.

The video is 19 seconds long, featuring football tackles from various football games. It ends with a two second clip of Goldsmith's body camera footage from June 18, 2018.

Goldsmith rushes up to a suspect being held by another officer, appearing to tackle him.

The suspect in the video is then 50-year-old Camden resident Roosevelt Lee.

Goldsmith filed an incident report citing Lee for possession of crack cocaine and resisting arrest on West Dekalb Street.



The report states units were dispatched to the area in front of the Wendy's for three people who were unlawfully in the roadway.

Additionally, the report says a caller stated one suspect was on a bike and acting aggressively.

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Goldsmith wrote that he approached three suspects, who left in different directions.

Goldsmith wrote Lee began to ride away and Goldsmith wrote he told Lee to come back. He continued by stating he asked Lee to get off the bike as he tried to ride away.

Goldsmith wrote:

I grabbed the seat on the bike so he would not flee. Lee then jumped off the bike pushed it to the ground in front of me to impede any pursuit and fled on foot West bound towards Cheap Way. Cpl Olson arrived on scene in an unmarked patrol vehicle in the west bound lane of Dekalb St and while almost at a complete stop, Lee ran in to the driver's side front quarter panel which stopped Lee's flight and allowed me to catch up to him.

I escorted Lee to the ground to prevent him from being able to flee once again.

Goldsmith described Lee as resisting, non-compliant and aggressive. He wrote Lee resisted attempts to be searched, so Goldsmith delivered four knee strikes to "major muscles."

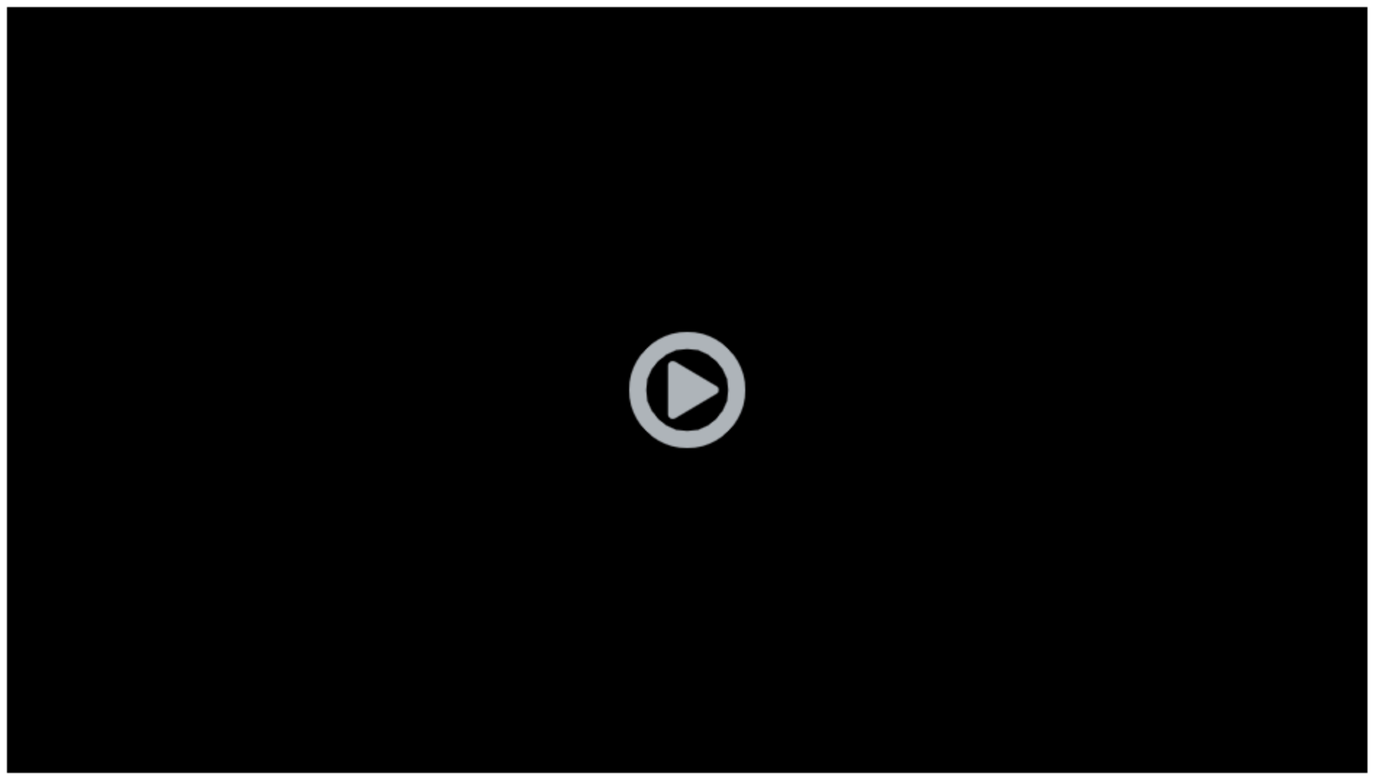
Goldsmith wrote he applied "mandibular angle pressure" to get him to calm down and comply.

Goldsmith wrote he removed a baggy which appeared to contain crack cocaine. Goldsmith wrote he escorted Lee to the police car and later administered a test to confirm the substance was crack cocaine.

An incident report supplemental written by Officer Carl Olson supported Goldsmith's narrative. He wrote the drivers' side mirror of his patrol vehicle had been damaged when Goldsmith took Lee to the ground.

WIS obtained Goldsmith's four-and-a-half-minute body camera video of the incident.

The body camera footage



The interaction begins with Goldsmith asking Lee's name (which Lee did not provide) and informing Lee that he had been told someone had almost hit him, which Lee denied.

The video shows Lee attempting to leave and Goldsmith telling him he needs to talk to him.

Goldsmith asks Lee to get off the bike. After stating he did anything wrong, and Lee asked "for what?" Lee pushes down the bike and begins to run.

The video shows Olson grabbed Lee and Goldsmith proceeded to take him to the ground.

The body camera is on the ground with nothing visible for roughly 20 seconds.

It then shows Lee being arrested while asking why Goldsmith had used force and denying he had done anything wrong.

The officers asked why Lee ran, and he said he was afraid of them.

Lee continues to verbally protest and states he had been hit in his groin.

Kershaw County court records show Lee has criminal history dating back more than two decades.

Lee is facing three pending drug-related charges from 2018 and 2019.

Kershaw County court records show Lee was not prosecuted for the crack cocaine charge, and there are no records for resisting arrest for the incident reflected in Goldsmith's body camera footage.

WIS met with Lee on May 4. He said he had not seen Goldsmith's body camera footage from the incident nor the "greatest hits" video.

WIS showed him the body camera footage and the "greatest hits" video.

"I think it's disrespectful. I get beat for nothing then you sit around make videos of it. Doing things to me like that, I don't think that's correct and I think something needs to be done about it," he said.

He said he did interpret the video as a joke.

"I feel bad as hell right now. Right now, I want to go down to the police station and cuss all them out. That's how angry I am bruh. You making videos? You're supposed to be our sheriff? Lee Boan? Come on man. How do you think I feel man?"

He said the incident resulted in a shoulder injury.

The creation of the video and what KCSO knew

WIS obtained the videos and corresponding documents as part of a civil lawsuit filed by Tony Sims against Boan and Goldsmith stemming from the same alleged assault which led to the criminal charges.

Camden Police Department documents show Boan downloaded the video at 11:24 a.m. on July 16, 2018.

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Court Exhibit 48 by Nevin Smith on Scribd

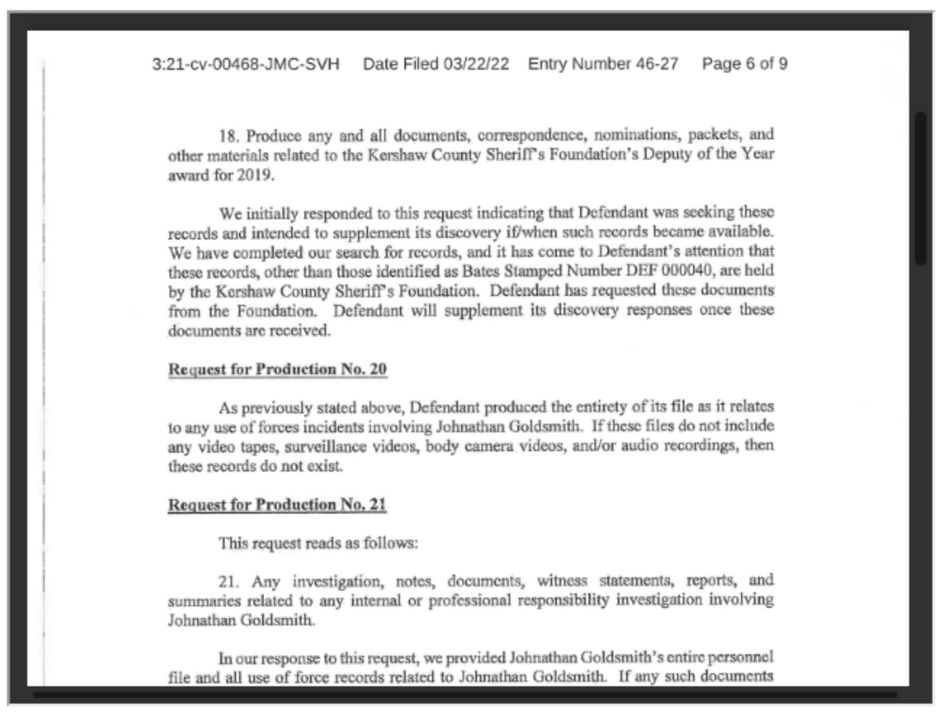
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EXHIBIT 48

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Court documents contain a Sept. 13, 2021 letter from county attorney Alyssa Iglesias.

It states the video was located on Boan's personal iPad and he made the video on an old iPhone which he no longer has possession of.



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18. Produce any and all documents, correspondence, nominations, packets, and other materials related to the Kershaw County Sheriff's Foundation's Deputy of the Year award for 2019.

We initially responded to this request indicating that Defendant was seeking these records and intended to supplement its discovery if/when such records became available. We have completed our search for records, and it has come to Defendant's attention that these records, other than those identified as Bates Stamped Number DEF 000040, are held by the Kershaw County Sheriff's Foundation. Defendant has requested these documents from the Foundation. Defendant will supplement its discovery responses once these documents are received.

Request for Production No. 20

As previously stated above, Defendant produced the entirety of its file as it relates to any use of forces incidents involving Johnathan Goldsmith. If these files do not include any video tapes, surveillance videos, body camera videos, and/or audio recordings, then these records do not exist.

Request for Production No. 21

This request reads as follows:

21. Any investigation, notes, documents, witness statements, reports, and summaries related to any internal or professional responsibility investigation involving Johnathan Goldsmith.

In our response to this request, we provided Johnathan Goldsmith's entire personnel file and all use of force records related to Johnathan Goldsmith. If any such documents

Boan's attorneys filed responses to questions by Sims' attorneys on Feb. 8, 2022 stating to the best of Boan's recollection, he created the video in July 2018 and made no other similar videos.

Court Exhibit 59 by Nevin Smith on Scribd

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EXHIBIT 59

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In a Feb. 3, 2022 deposition of KCSO Capt. Chris Boykin, an attorney for Sims asked him about the "Greatest hits" video.

Boykin said he'd "heard there was one" from Tyrrell Coleman, KCSO Chief Deputy.

Coleman has not responded to a request for comment on this investigation.

Boykin said Coleman never played it for him.

He said:

We were in the office talking about something and he -- he said, yeah, the sheriff had a video of that on his computer.

A separate deposition on Feb. 3, 2022 with KCSO Lt. William West also involved questions about the video.

He said he had never seen it but had heard about it "in the office."

West stated:

Somebody said that, "Have y'all seen the greatest hits?" I have no idea, ma'am. It's like locker room talk; you walk in and you hear and you -- I didn't even know what it was. I still has yet to seen it.

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He proceeded to be asked a series of questions about the circumstances he heard about the video he said he did not know answers for.

He said:

It was just a greatest hits video. They were asking has anyone seen it. And I don't believe anyone in that office had seen it.

West said "or that's the way I took them talking."

A Feb. 3, 2022 deposition of KCSO Lt. Jarrett Greenway laid out how Greenway said the video was "common knowledge."

He said he'd heard about the video, but never seen it.

Included in the court filings was the Camden Police Department Policy and Procedure Manual.

General Order 2.13 is the following:

2.13 USE OF DEPARTMENT REPORTS, RECORDS, AND COMMUNICATIONS

No written communication with reference to police business shall be made by a police officer or civilian employee except upon the authority of a properly designated superior officer. Copies of such dispatch shall be filed within the department.

A. No department record shall be removed from any building or office without the written permission of the Chief of Police, nor shall any department report be copied for any purpose without the Permission of the Chief of Police.

B. All requests for copies of incident reports, accident reports, and dissemination of reports and records will be made to the Records Office Administrator.

WIS contacted Camden Police Chief Joe Floyd for comment on this story.

Floyd only stated the first he'd heard of the video was WIS' reporting on it in March and did not comment further.

The court documents also included Kershaw County Sheriff's Office General Orders.

Chapter 1 reads in part:

4. Personal Devices: No personal devices shall be synced with or connected to any computer, terminal system or wifi network at any time for the purposes of charging, viewing images or content, or transferring any type of data.

Section 300.18 under Chapter 1 reads in part:

V. AXON MEDIA STORAGE

A. The Axon will be placed in the Evidence Transfer Machine (ETM) at the end of their work rotation for

charging and uploading unless otherwise approved by their supervisor.

B. The media captured via the AXON will only be uploaded to EVIDENCE.COM.

C. Each event must be categorized according to event type so that proper retention periods will be applied.

D. Video and audio captured via the AXON will be used for official purposes only.

E. No footage captured by any on-officer recording device shall be used for purposes other than those within

the scope of legitimate law enforcement interests.

On June 26, 2018, Camden Police leadership reviewed the incident with Goldsmith, discussing different sections of video and explored other tactics which could have been used.

Email from Boan

Boan did not respond to multiple interview requests for this story.

A source with direct knowledge of the Kershaw County Sheriff's Office operations and culture did forward WIS screenshots of what appears to be an email Boan sent to deputies.

The email is dated March 9, but the year is not present.

WIS has requested confirmation from Boan that he sent the emails.

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YOU ARE ALWAYS ON VIDEO... ALWAYS BE THE BEST ACTOR!!!

I know you have heard me say multiple times to "always be the best actor" on video. Let me explain it again for those in the back row:

Rule #1: Always do the right thing.
Rule #2: Assume you are always on video.
Rule #3: Assume your mother is watching (also assume she doesn't like unnecessary violence, profanity, policy violations, and unprofessional activity).

With all due respect, *and I did say with all due respect (in my Ricky Bobby voice)*, some of you have not even been mediocre

A Screenshot of Sheriff Lee Boan's email. (Source with direct knowledge of KCSO)

12:56 LTE

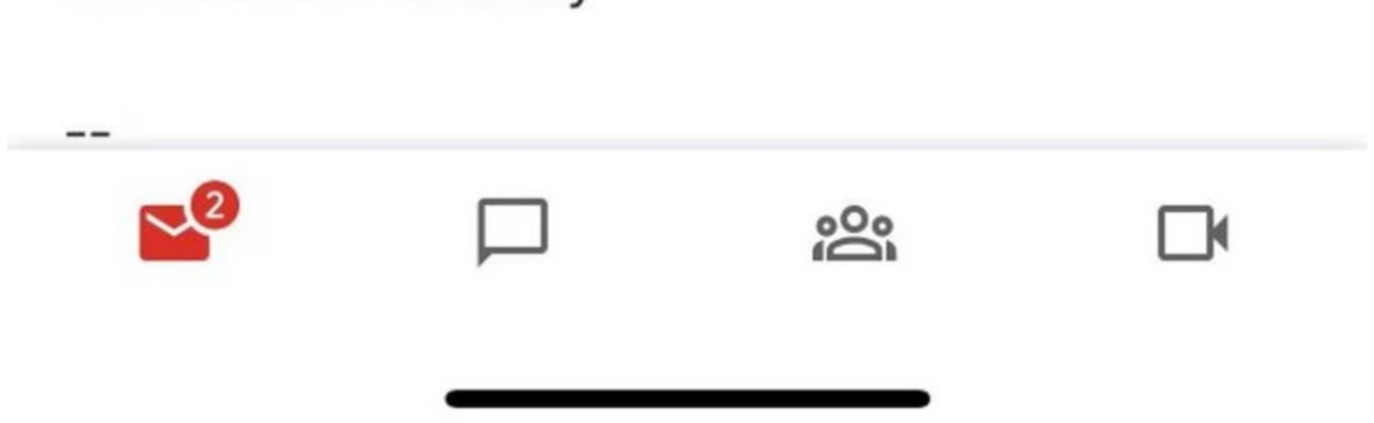
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With all due respect, *and I did say with all due respect (in my Ricky Bobby voice)*, some of you have not even been mediocre actors in a low budget, class B film. We have to do better. Don't do or say anything you don't want WIS to run a story on. Believe it or not, WIS has a 'Man Crush' on me. They love running any trashy story they can on me. All of you are extensions of my arm. Don't make me amputate you.

Your conduct in or out of uniform represents our entire agency as well as the entire law enforcement profession. Several people are out there looking to drag us through the mud. Don't give them the mud.

Love always,
Your favorite sheriff currently serving in all of Kershaw County



A screenshot of Sheriff Boan's email message. (Source with direct knowledge of KCSO)

It appears Boan writes in part:

Don't do or say anything you don't want WIS to run a story on. Believe it or not, WIS has a 'Man Crush' on me. They love running any trashy story they can on me. All of you are extensions of my arm. Don't make me amputate you.

What the lawyers suing Boan say

Sims' attorneys Brett Perry and Robert Butcher filed the lawsuit against Goldsmith and Boan over Goldsmith's alleged behavior in the October 2020 incident.

They are also working together on a second lawsuit against Boan and Goldsmith involving a Feb. 2020 traffic stop for a different plaintiff.

Perry filed a third lawsuit over a Nov. 2019 traffic stop for a third plaintiff.

The court documents in WIS' possession are from the first lawsuit (Oct. 2020) which led to the criminal charges and the $1.5 million settlement.

Perry said they were informed of the video by sources in the community.

"It was very much like a leprechaun or a unicorn. A lot of people had said that they had heard about it or had said that somebody else had told them that they had seen it, but we couldn't find anybody who actually said 'I saw the video, I've watched the video," he said.

Perry said he was surprised the video was obtained, given his offices' reliance on the sheriff's office handing it over.

He credited former Chief Deputy Steve Knafelc for making it public.

"My understanding is that Steve's integrity is the reason that we have that video," Perry said.

Perry described Knafelc as a "fine law enforcement officer" and a "tremendous loss" to the sheriff's office.

Knafelc served at the sheriff's office for varying periods between Oct. 20, 1995 to Nov. 12, 2021. His Criminal Justice Academy records show he resigned to join the Department of Revenue.

Knafelc declined an interview request.

Butcher said he believes the video shows Boan displayed a "flippant attitude" towards police use of force.

"That severely undermines his policies and actually the law itself in legitimizing and glorifying use of force against the general public," Butcher said.

Butcher pointed to the depositions of KCSO deputies, questioning the message the video sent to deputies.

In Perry's view, Boan's download of the body camera footage and subsequent creation of the video violated Camden Police Department policies.

"The only purpose that I can come up with for retaining, for first of all obtaining, and second of all retaining, a video such as the one that we're discussing, would be if you either found it humorous and/or in some way condoned that behavior. No one keeps videos of things they abhor," Perry said.

However, Butcher conceded they did not find any evidence specifically stating Boan viewed the video was a joke.

"No, but it's an attitude. What he equated use of force with is Chris Berman on SportsCenter showing the Top 10 plays," he said.

Perry also conceded Roosevelt Lee had a criminal record and was "no angel," but said Lee's actions that night did not merit Goldsmith's treatment nor Boan's video.

"How we treat those that we deem the least worthy, is sort of the measure of who we are as a society," he said.

Boan did not respond to multiple requests for comment.

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State of South Carolina	)	
	)	Court of Common Pleas
County of Kershaw	)	2022-CP-28-00782
Christine Jernigan, et al.	)	
	)	
vs.	)	Transcript of Record
	)	
Kershaw County Sheriff's Office	)	
	)	

December 19, 2022
Kershaw County, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge.

A P P E A R A N C E S (All present by video or telephone):

Justin A. Jernigan, Pro se
Attorney for the Plaintiffs

David L. Morrison, Esquire
Attorney for the Defendant

A L S O P R E S E N T:

Cameron W. DeBoy, Esquire

Dana Knight
Transcriber

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THE COURT: All right. Good morning, folks.

Bailey, you can go ahead and make both Mr. Morrison, Mr. Jernigan, panelists. I think those are the only two, maybe, we'll have this morning.

This is a Term of the Common Pleas, nonjury, for Kershaw County. The only matter on the roster is 2022-CP-28-00782, Christine Jernigan v. the Kershaw County Sheriff's Office. And I don't know exactly what the matter is, because there -- I know it's contained within the complaint, but no separate motion was filed.

Mr. Jernigan, are you there?

MR. JERNIGAN: I am, Your Honor. Can you hear me? Hi, I'm here. Can you guys hear me?

THE COURT: I can hear you. Can't see you, though. If you would turn on -- there we go. Hi. All righty. Tell me why we're here, Mr. Jernigan.

MR. JERNIGAN: Okay. Yes, Your Honor, thanks for scheduling this hearing. I submitted a pretrial brief last week about this matter. This is a Freedom of Information Act case. And there's a provision in the statute that requires a hearing to be set within ten days, an initial hearing, and that is in 30-4-100, Subsection (A). And this is a case where a Freedom of Information Act request was submitted on July 22nd. The required statutory provisions were not followed for the response, and the documents requested were not produced,

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so the plaintiffs are asking for an order from the Court requiring Kershaw County Sheriff's Office to provide all the documents requested. No exemptions were ever claimed.

So the case is simple, on the Freedom of Information Act request. If there was a motion required to be filed, my apologies. I was not sure, and tried to get instructions about how to get this hearing scheduled. And there wasn't solid instructions or an understanding about what should be done on that. So that's kind of why we're here today.

THE COURT: Okay. Thank you, sir.

Mr. Morrison, talk to me.

MR. MORRISON: Judge, first a couple of housekeeping matters. This matter was brought by Christine Jernigan and Justin Jernigan. Justin is a North Carolina lawyer, lives in Charlotte, graduated from USC, went to school here.

As a noncitizen, I find -- and Justin and I have discussed this, I told him get the Court on the same page with us. As a noncitizen, he doesn't have any rights to enforce FOIA, FOIA's only enforceable by citizens. His mother does have a right to enforce FOIA, and he is acting as her lawyer in this case. However, the Freedom of Information Act was submitted -- the Freedom of Information Act request was submitted by Just-igan -- by Justin Jernigan, not by Christine Jernigan. So as a little housekeeping matter, I don't think Justin's a proper party. And I don't think Christine Jernigan

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has submitted a FOIA request at all. Despite that, we have responded. We've been trying to work this out with Justin, to accommodate him.

I'm not sure why he says the timeframes were not met. The Freedom of Information request, if my memory is correct, was served July -- let me take a look, I have it here in my notes -- was on July 22nd, and the response from the Kershaw County Sheriff's Department was three days later, July 25th. Their response was --

This all surrounds an incident where Justin and his mother went to a nursing home to get his grandmother. His mother's sister, Justin's aunt, holds a power of attorney over his grandmother's care and treatment, and she didn't want his grandmother to leave the nursing home, and refused to allow her to leave the nursing home. The nursing home called the police. The police considered this to be a civil matter, that it was between the parties to resolve in court, in probate court or wherever, but it was a civil matter. There was no incident report prepared.

By the time the police got there, Justin and his mother had left the nursing home with his grandmother. They were subjected to a traffic stop to work it all out. They got the powers of attorney on scene, where the police could review them. They talked with the aunt, Justin's aunt and his mother's sister, about that. They talked -- at some point, I

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believe, they talked to the nursing home person that may have been the initial call. I don't know if they talked to them again after that or not. But in any event, they determined it was a civil matter and let everybody go on their way. Grandmother went back to the nursing home through the aunt, I believe.

The initial response to Justin was that this was a civil matter; there was no incident report prepared. Justin had requested four or five categories of documents. And the respondent said this was a civil matter, there had been no incident report prepared. Less than 30 days after that, they responded through Tommy Morgan with a response -- I think Justin and Tommy had had some phone conversations about what Justin was seeking in the meantime. And they responded, through Tommy Morgan, with a response to the request. So I'm not sure, when Justin says the sheriff's department didn't respond timely, I'm not sure what he intends by that, because there are responses.

Now, he may contest the adequacy of the responses, but there were responses. And if you contest the adequacy of the responses, we've had further conversations with him since the lawsuit was filed, where we have provided him additional information.

One of the issues here is regarding the audio recordings. And Justin has asked us for an additional audio recording, and

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we are in the process of checking on that. Cameron DeBoy, who you can see seated in my background, another lawyer in my office, was checking on that. He had COVID in his house; he was out sick last week. He tells me he tested negative, but I'm convinced he was out with COVID. He probably had it in his house for about two or three days before he got sick. And I know when I had it, I didn't test positive until day two or three of having it. But in any event, Cameron's back today.

We owe Justin discovery responses that we were working on. We had anticipated having them to him last week, they were due Friday before last. On that Friday, we asked him if we could have a couple of additional days. Cameron was working on that and then Cameron ended up being out most of last week.

I think you were here Monday and maybe part of the --

MR. DEBOY: Part of Tuesday, yeah.

MR. MORRISON: And then was out the rest of the week after that. Today's his first day back. I'm staying far away from him because I'm going to visit my elderly parents over Christmas and I don't want to expose them.

But in any event, we can wrap that discovery up and get it to him in a couple of days. Some of the things he requested are audio recordings that are kept by central dispatch, by Kershaw County. That is not part of the Kershaw County Sheriff's Department. Justin was told that at the

outset and was told he could go to central dispatch to get those recordings.

Tommy Morgan then went above and beyond and went to central dispatch to get them for him, and got them -- even though it's not the Kershaw County Sheriff's Department's responsibility to get them for him. Justin has asked us for an additional one and we are doing the same thing and going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that.

Again, we thought we would have that last week, but Cameron was out with the sickness last week. We could probably get that done in a matter of days. I'm presuming -- this is -- since this is the week before Christmas, I presume we can get that done in a matter of a few days. I'm hoping to be out of here Wednesday afternoon, because I'm going to visit my elderly parents over Christmas.

In any event, we had a hearing two weeks ago to date, that was -- that was misconstrued by all of us. When I got the notice, it looked like a trial to me. I called Justin, I said I don't think this is ready for trial. He agreed. He thought this was the ten-day hearing, but it wasn't in front the administrative judge. And I'm not sure if the statute requires it to be or if the statute just requires the administrative judge to set a hearing before any judge. But

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it wasn't -- so we had this hearing two weeks ago. I thought we were finished with it. At that point, we were going to go through some discovery and come up for a trial in three months. Because we're about three months out from a trial date, I think, on this case.

And then Justin requested another hearing. I didn't realize until I talked to him on Thursday that he had requested this hearing. So I'm here to do whatever the Court wants to do. I think we've had this hearing. I think we've -- I don't think we have any real disputes in this case other than spins on the facts --

Can you still hear me? My camera's frozen on my end.

THE COURT: Yeah, I can hear you though.

MR. MORRISON: Okay. So I don't think we have any real disputes other than spins on the facts.

But we did respond within three days. I think the initial response was due within ten days. They responded within three days to tell him this was a civil matter; they didn't have any incident report on this. And then Tommy responded, in less than 30 days after that, by providing records. We have provided additional records since then. I've had five or six phone conversations with Justin that have lasted over an hour.

A lot of this is personal to Justin, and our conversations get fairly animated. And I understand that,

this is his grandmother. And his mother and grandmother we're talking about, so I get that. So I understand that, I sympathize with him, it's a bad situation where his mother and aunt are fighting over who has the ability to control. There are dueling powers of attorney, but I believe only one of them is actually recorded. And they're -- and the second power of attorney that is recorded, that's in favor of his aunt, is after the initial power of attorney that I don't believe is recorded.

But we're not here to resolve that dispute, I just give that as background information on why Justin and I get so animated on the phone sometimes. And he gets animated and -- he's accused me of kidnapping his grandmother and I told him back off, you can't do that. We get along very well. So we've had, like I say, we had several hour-long phone conversations, and if Justin didn't get unanimated about as quickly as he gets animated, we probably wouldn't have had those conversations for that long, so I'm -- I recognize that it's emotional for him, he's got a personal interest in it.

But I think we have responded. I think there is one personnel file that may have been initially omitted, and we've got that to send him. We've got that with the training records of the officer involved. I think the initial response was telling him that this was a civil matter and there was no incident report. The sheriff's department didn't prepare

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anything for this. Assuming that, if there was anything prepared, he would want anything.

One other issue we do have, and I don't think it's a proper issue for this proceeding, but it's an issue we have. And that is that he initially recognized that his initial FOIA request, that body cam is protected by FOIA, and body cams were not -- recognized that the sheriff's department would take the position, body cams are not producible. And that is the position they take. They take the position that the statute says that a person that is the subject of a body cam, which would be in this part -- in part, Christine. Justin was not at the scene where this all took place. That that person can request the body cam, if there is a civil proceeding, a criminal proceeding, or a court order. Here there was no civil proceeding, no criminal proceeding, no -- and no court order.

I have told Justin, in this proceeding, that the body cams no longer exist. There was no incident report for them to be tied to, there was nothing flagged to them to save them. I recognize that Justin put in his FOIA request, he asked that they be preserved. And all I can tell him is that they were not. They were not destroyed, as Justin would put it, but they were written over, as a -- as a matter of business practice. And when they were written over, they no longer exist.

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And that's -- if he wants to sue the sheriff's department for some other proceeding and ask for an instruction in that proceeding, he may be entitled to it. But I don't think it's something for us to go into detail in in this proceeding, because our job in this proceeding is to produce documents. I can tell him that those documents were not properly producible at the time he made the request, and that since then they no longer exist.

So that's where we are. I've got discovery responses that I had told Justin I would try to get to him before this hearing, then Cameron was out and I didn't -- Cameron was working on it and didn't end up getting to them. Cameron's back today so we can get back to work on that, and we're very close to be being finished. We got to go get -- Justin wants them verified, so we have to go get someone to verify them from the sheriff's department. That's kind of where we are. I'm not sure what else we should be doing here today.

THE COURT: Mr. Jernigan, tell me -- I mean, respond, of course, to what Mr. Morrison said, but tell me what relief you're requesting today?

MR. JERNIGAN: I'm requesting an order requiring the sheriff's department to disclose all records of the request that was submitted on 7/22.

THE COURT: Okay. And are these -- I guess we probably need to be more specific as to what you have and what you

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don't have. Because I understand they've already produced some items.

MR. JERNIGAN: Yes. It would be all the records in the request that are submitted, that's attached to the complaint. There should be radio -- and that's also the subject of my discovery. There's a certain amount of records that are required to be kept by the Records Act, which precedes the Freedom of Information Act. That's the subject of my discovery. I want to get the complaint cards, the audio for the 911 callers that reported this. I was also on body camera, myself, because I was at the sheriff's department asking them to release my mother and my grandmother. Because I think during Mr. Morrison's discussion, he never mentioned any criminal charges that were filed.

So that's my main problem, is that the police did take action. They pulled over my mother and my grandmother; three cars were there. There's dash camera video where the audio has been removed. There should be three dash camera -- there really just needs to be an order entered requiring the sheriff's office to disclose all the records that were requested, because until that happens, they will not disclose those records. It's been several months and they've disclosed minimal information.

THE COURT: Right. And I guess I'm sort of trying to get a little bit ahead of that, because I can issue the order. I

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mean, the statute requires them to disclose the thing, you know, whatever they have. I can issue an order requiring them to disclose what they have. But then will -- there will be a next step, I assume, where you contend that they have not produced everything, and they'll say yes we have. And I feel like we're at that stage now, and so that's why I'm trying to parse out what you believe is still outstanding and separate that from what has already been produced to you, so that I can be more specific, as -- and let's take, for example, the body-worn camera footage. The court doesn't do futile things; right? So I'm not going to order them to produce what they say does not exist.

So I sort of want to get more specific so that I know what the court is ordering them to produce. And if that means we have to go through your request, sort of item by item, then so be it. Maybe you don't know the full scope of what you're asking for, I don't know. But let's get a little bit more specific, if you can, Mr. Jernigan.

MR. JERNIGAN: Yes, and the requirements of FOIA are that I do not know what is in their record system. It's not really the public's job to know what records the sheriff's department holds, but I requested all audio recordings, all video recordings, all call logs, all radio logs between the people involved, the 911 calls, the complete audio.

All of the calls -- I was actually the initial

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complainant in this case, because this is actually exploitation of a vulnerable adult, which is a felony. You know, the police, law enforcement has no power to get involved in a civil matter, so they should not have pulled over my mother and my grandmother. There's records of all of this, there's a -- these are required to be kept, as the Court probably knows, you know, it's very important that law enforcement keep accurate records on their activities; they're public officials. These are public events where somebody called 911 on me and my mother, and my grandmother, and the police took action.

They've provided me -- before I filed suit, the only call, and the only records of calls that were provided were my own. And those were redacted. So I think the Court should issue an order requiring them to disclose all the records requested, and then there will be some contempt power if they do not, because the requirements of the law are not going to be followed by the Kershaw County Sheriff's Office until such time.

THE COURT: All right. Mr. Morrison, can we -- I'm not, of course, seeing a discovery request, but now that this is in litigation, I would propose that we attack it this way. And that is that, within ten days, you get to Mr. Jernigan, any outstanding records that should have been disclosed pursuant to his FOIA request. And at the same time, I want you to get

him discovery responses. And with that, I think that the -- whatever documents are produced, in response to a request for production, should be Bates labeled. That's just for convenience. But also, maybe we can go through --

And I'll ask you to do this, Mr. Morrison. If you will go through the FOIA request and really -- I feel like the department needs to give -- or the sheriff's office, needs to give, sort of, a written response that can refer to Bates labeled documents. And/or give an explanation in writing as to whether these -- you know, if they're not produced, any objection, any statutory objection, or explanation that they -- it doesn't exist anymore, like the body-worn camera footage, or whatever.

And that may be exactly what is asked for in interrogatories and requests for production, I don't know because I've not seen those things. But to the extent that that's not the way it's requested or what's requested, I think that the sheriff's office should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request. Does that make sense and -- or am I duplicating work for you, or -- talk to me about that.

MR. MORRISON: Judge, I -- let's talk about that for just a minute. Frankly, that's kind of a redo. We have produced documents. Some of them, they were produced before I was

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involved, through Tommy Morgan who's the Kershaw County attorney. He had produced the majority of this stuff before we were involved.

We have found a couple of more things, in talking with Justin, that Justin thought should be out there. When we have searched it at the sheriff's department, we don't have an incident report to go search by, so we have to go search for individual things. And there's no -- nothing that tells us what individual things are there, because Justin has made very broad requests. He's asked for requests involving any public records involving him or any public records involving his mother. So we've produced what we believe is -- exists and is available.

I've had several conversations with Justin where I've said, what else do you think is there? And, for example, we redacted information in the personnel files. And he tells us -- I've asked -- he tells me that's not proper, and I says, tell me what was improper. This was done by Tommy Morgan, before I was involved, so tell me what's improper. And he says, well, that's not my burden. Well, I don't know how to respond to that.

But I have trouble responding in this matter because communication is lacking at some points, because I don't know how to respond to it. We think we have produced everything. I have one more personnel file to get to him. And I have

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the -- I have told him that we will go back to central dispatch. Which is not our responsibility, that's a separate entity, that's not Kershaw County Sheriff's Department.

But I've told him, and I will; I will go back to central dispatch and see if there was -- if there is an audio recording for when the director of the nursing home called the police while they were there to pick up grandma and he was telling him they can't take her, and they were telling them they were. And he was telling him he has power of attorney, they say you don't have power of attorney, you can't -- the power of attorney says no, she can't leave. And they were telling him they were taking her anyway, and they did. And I've told him I would check to see if there was audio of that recording, and I will.

Other than that, I think we have produced everything. And if we go back and -- and pursuant to some order, say we've produced everything he has requested, we can go through the same exercise we've already gone through, but we'll be at the same place we are. We have produced everything that we think is there. Justin has asked in discovery about why some other things aren't there. And I'm happy to answer those. We are working on that, we'll have that done, completed very shortly. So I think --

THE COURT: Okay. So --

MR. MORRISON: I think that will take care of that

process. I think that discovery will likely take care of that process, because otherwise I will simply be redoing what we've already done, I believe. It has not been --

THE COURT: What --

MR. MORRISON: -- Bates numbered in the past.

THE COURT: Right, and so -- frankly, I just think that Bates numbering is just a good practice. I wish everyone did it. I don't mean to create some burden on you or your firm, but I just think that it just needs to be done. I've even suggested it in criminal cases. I actually think it's more important in criminal cases, so that people know what's been produced and what hasn't. Because the stakes are higher, someone's liberty is at stake. Anyway, I digress.

I was just trying to think of a way to make it simple for the court. Because, as you said, and as I suggested earlier, we'll probably be back here again, because Mr. Jernigan's going to say, well, I don't have this and I don't have that. And all I know that he has identified with specificity is what's in the FOIA request. And I know that there's sentences that say things like, "included, but not limited to," but at least there's a list of things that he believes should probably be there. And I guess the same with the request for production, to the extent that there are any, I just -- I want the -- to make it easy for the next judge, whether that's me or someone else, to be able to identify what's missing, if

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anything, and why? And I'm just trying to think of the best way to do that.

MR. JERNIGAN: May I speak to that, for a second?

THE COURT: Yes, sir. Yes, sir.

MR. JERNIGAN: Yes, Your Honor, Judge Newman. I believe in the Freedom of Information Act Statute, if you look at 30-4-30, and it's Subsection (C), which discusses the written determination that's supposed to be provided. And I cited some case law in the brief -- pretrial brief I submitted.

What you described should have been provided by Kershaw County Sheriff's Office. They should have gone through the request, within ten business days, and explained what was available, what was not available, what they were claiming was exempt, and the date that they would produce it. Or the date that they would not produce it. That should have been done within ten business days. They produced what they wanted to produce, and they redacted things, out of my own phone calls with them, that they wanted to redact.

So I am in this position because I have never been told what they have and what they don't have. So I am trying to take discovery to figure out what the department of records and archives requires that the sheriff's office and the 911 center keeps. Because I've submitted requests to both places. They produce things from both places, so if I need them in the complaint and add the 911 center, I will.

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But yeah, this is supposed to be an easy process that has not been made easy by the sheriff's department. By not following what the law requires and what the law says. And if they destroyed the body camera, I would ask for the Court to, in its order, say that there was a request made for it, it was not preserved, and then we can deal with that down the road, I suppose.

THE COURT: Mr. Morrison?

MR. MORRISON: Judge, that's the first I've heard that he has sent a FOIA request to the -- to central dispatch. If he sent a FOIA request to central dispatch, I'm repeating the work by going to central dispatch myself to try to get him the same things that he should be getting from them. Did I misunderstand --

MR. JERNIGAN: (Indiscernible) --

MR. MORRISON: -- that, Justin?

MR. JERNIGAN: It's in the -- I emailed central dispatch the same request as I emailed Kershaw County, when I was told, well, there's records at central dispatch that apparently the sheriff's office cannot access, which seems ridiculous. But this is the runaround that I've been getting. And I'm happy to resolve it, but I would just like an order for them to produce everything and then see what they produce. Because until there's an order entered, we're just going to run around in circles, and it's, like, I'm kind of tired of doing that

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after this many months.

THE COURT: Mr. Morrison?

MR. MORRISON: I'm not sure that that answered my question, but I will go back to central dispatch again myself and -- to see if that audio recording exists.

MR. JERNIGAN: I want all the audio recordings and all the communication on the radios that were going on during the police stop. I want -- the dash camera has audio on the exterior of the car and the interior of the car. These are records that Kershaw County has that they have not produced. They don't want to produce it because they made a mistake.

Everybody makes mistakes, but it doesn't mean the incident did not happen, and it doesn't mean they don't have records.

MR. MORRISON: Judge, again, we keep going back to arguments over what we have. I have -- the dash cam was produced by Tommy Morgan. It does have audio on it. It's not the audio he wishes, it has interior car --

MR. JERNIGAN: They took --

MR. MORRISON: -- audio --

MR. JERNIGAN: -- all the audio off it.

MR. MORRISON: There is --

THE COURT: Go ahead, Mr. Morrison.

MR. MORRISON: There is audio from the interior of the car, there is no audio from the exterior, and that has been

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produced. So --

MR. JERNIGAN: (Inaudible response.)

THE COURT: Go ahead, Mr. Morrison.

MR. MORRISON: My understanding, from talking with people at the sheriff's department, from talking with Tommy Morgan, from central dispatch, is -- other than this one audio recording of the initial caller from central dispatch that may exist, my understanding is everything has been produced. We have produced everything that does exist. Justin keeps saying there has to be more, but until we get into a place like this, where he mentions something like that -- and he's mentioned the dash cam, exterior recording, before. But he doesn't tell us -- when he says there's more, he doesn't tell us what more there is.

And I don't have an efficient way, with there being no file, no incident report, to go back and search for that. But he keeps saying there should be something more, and I say, well, this is -- we've been told this is everything. And he won't tell us what. He tells us we shouldn't have redacted. I've asked him, well, what shouldn't have been redacted? He said, well, that's not my burden.

He just wants an order, without talking with us about what it is. Like I said, we've had lengthy phone calls, but they've mostly been -- we have very productive phone calls, in large part, but at points they become Justin ranting and

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raving for a while -- and I understand that, and I'm not criticizing for that, because I probably would be too if I were in his situation. It's a sad situation; the underlying situation here is a sad situation between his mother and his aunt.

But he's asking for an order, ordering us to tell us -- we've produced him everything, who we've told him that a dozen times already, and then saying he wants to beat us over the head with the order later, without telling us what it is he thinks we haven't produced. And I don't have an efficient way of getting that, unless he tells us what it is he thinks we haven't produced. And I guess I could send him discovery and ask him that, but I thought we could do that through phone calls.

THE COURT: And that's sort of why I suggested treating the FOIA request like a request for production, with written responses, Bates labels, so that -- because at some point, whether it's today or in a month, someone's going to have to parse out whether there has been compliance. If I issue an order today, the order will be quite generic, that simply requires Kershaw County Sheriff's Office to comply with the provisions of FOIA.

And I guess maybe that's what needs to happen and there will be a subsequent determination as to whether that's happened. I think the Bates labeling and the written

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responses would probably get -- I guess, I don't know, that would -- that would be for the next step. It would be the work that you will probably need to do when that next step comes, but I'm not going to require that it be done now, I just thought it would be simpler that way.

But I'm happy to issue a really, sort of, generic order that requires the Kershaw County Sheriff's Office to respond, in full, to Mr. Jernigan's FOIA request dated July 22nd, 2022. That response must be delivered within ten days or -- yeah, he doesn't have to receive it in ten days but it needs to be sent to him within ten days. And then, I guess the next step will be the next step, to determine whether there has been full compliance.

I guess that's where the conversations come in and, you know, you maybe heard something additional today, Mr. Morrison, that maybe needs to be produced, maybe not. I guess I'm not going to get into the particulars of it. Yeah, that is what it is, and another judge on another day can determine whether a document's missing, whether an audio recording that should have been produced has not been produced, whether it exists or doesn't exist. I don't know. I guess I won't get into the specifics of it, that will be another hearing for another day.

Mr. Jernigan?

MR. JERNIGAN: Yes, and I would ask that if the sheriff's

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department wants to make any deletions to the audio files or take anything out, they need to justify the exemptions based on the Freedom of Information Act. To tell me that I need to tell them why they're deleting things and I disagree with it is an unreasonable burden. It's simple to ask them, and it's required by FOIA, if you're going to make any redactions, explain why you're redacting it and why you're justified in redacting it, otherwise I have no idea.

And there had been redactions made to my own phone calls, between Kershaw County and the central dispatch, and they've never been explained. The only explanation is they don't want them to be in the record, they don't like the fact that these calls were recorded, and they don't want to give them to me. So I believe this order, with the proviso that they -- you know, if they're going to redact any of the -- you know, if they're going to take out the audio from the dash camera, they need to justify why, because there's nothing in FOIA saying that's exempt. And I think that this will help move things along.

And also the requirement that they provide the discovery responses that were due -- I guess, two Fridays ago -- within ten days as well.

THE COURT: I'm happy to include the discovery responses.

Mr. Morrison?

MR. MORRISON: Judge, first, let me address the one thing

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he just said, I'm trying to remember what it was. The redactions of audio recordings that he's claiming. I don't have any reason to believe they're redacted; I can't swear to it one way or another. Tommy Morgan received recordings from central dispatch and forwarded them along as received. I don't believe central dispatch would have had any reason to redact. I know the sheriff's department didn't redact, because they were received from -- by Tommy Morgan from central dispatch, from Kershaw County. And they were sent on as they were. So as far as redactions, I'm not aware of any, have no reason to believe they were done. If they were done, it would have been by central dispatch, and I don't know why they would have had any reason to do that.

As far as -- the only question I have is the ten days. We've got Christmas and New Year's coming up. I was planning on taking off Wednesday through Friday of this week, because my elderly parents live in North Carolina and I'm going to see them. I would like to get a little bit more time, because that doesn't leave many working days between Christmas and New Year's and me being off a little bit.

THE COURT: Mr. Jernigan, what say you?

MR. JERNIGAN: My position is that this should have just been done a long time ago. Mr. Morrison is correct, we've had a lot of conversations, where I've explained in detail my interactions that should be documented, based on the Records

Act. I believed, in good faith, that they were searching for these records, but they haven't provided me -- they provided me one CAD report, a report of one phone call, two Fridays ago, with no audio attached to it, that was the 911 call I had asked for months ago.

So I'm fine with the extension to that -- you know, a reasonable extension, but I'm also -- and I do have one housekeeping matter to mention. And Mr. Morrison mentioned, there is a -- there is another civil case before the court, it involves my mother and my grandmother against my aunt. And the last three digits on that one are 967. It's Christine Jernigan, Ann Martin v. Sharon Wright.

And there was a motion for a preliminary injunction filed earlier this month, and I just wanted to note that that has been filed. I'm not the representative attorney on that. But I know -- if that can be scheduled at a surrounding circuit or court, given that there's no more term -- civil term for this month in Kershaw County.

THE COURT: Yeah, there's no more court at all, circuit court, for the remainder of 2023, including today. I just heard that there was an issue with this case and the clerk's office contacted me. In fact, I was out with COVID at the time they contacted me and I just told you -- told them fine, I'll have Webex today, just for this matter. So nothing is going to be scheduled before January 3rd, I believe --

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MR. JERNIGAN: Okay.

THE COURT: -- is the next court term. But I mean --

MR. JERNIGAN: Would --

THE COURT: -- I don't even know that Kershaw has court then.

MR. JERNIGAN: Yes, and so would that -- the procedure for getting a hearing scheduled -- so the motion has been filed. Should we follow up with the -- I'm not sure if you're the chief judge next month; it sounds like you're rotating off.

THE COURT: Rotating off. So Judge Benjamin will be chief administrative judge, starting in January. And it looks like -- I mean, she may do a special term of court for purposes of hearing that, but it looks like civil court is not scheduled in Kershaw until the week of January 30th.

MR. JERNIGAN: Okay.

THE COURT: That's the next available term of court, and that looks like a jury term.

MR. JERNIGAN: Okay.

THE COURT: That doesn't mean that motions may not be scheduled, there may not be any jury trials ready. So it could possibly be heard the week of January 30th --

MR. JERNIGAN: Okay.

THE COURT: -- but that's the next term of court there.

MR. JERNIGAN: Okay. Thank you, Judge Newman. And --

THE COURT: You're welcome.

MR. JERNIGAN: -- would a 20 day -- or 20 days is fine, give Mr. Morrison for the holidays.

THE COURT: Okay. Let's do 20 --

MR. MORRISON: Thank you, Justin --

THE COURT: -- days, then.

MR. MORRISON: -- I appreciate that.

THE COURT: All right. Then I will issue a short Form 4 Order. And I'm sure I will see you all, or somebody will see you all, back on another motion, not -- at some point. Hopefully not. Maybe this resolves it, but we'll see.

MR. JERNIGAN: Thank you, Judge Newman.

THE COURT: Thank you.

MR. MORRISON: Thank you.

THE COURT: Thank you. All right. You all take care.

MR. JERNIGAN: Bye.

THE COURT: Bye-bye.

(End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Kershaw)

I, DANA KNIGHT, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Kershaw County, South Carolina, on the 19th day of December, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 18, 2023

Dana Knight

Dana Knight, CDLT-283
Transcriber

EXHIBIT U

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW)	**CASE NO.: 2022-CP-28-00782**
)	
Christine Jernigan, et al.,)	
)	
Plaintiffs,)	**Affidavit of Justin A. Jernigan**
v.)	
)	
Kershaw County Sheriff's Office,)	
)	
Defendant.)	
)	

Personally appeared before me the undersigned, I, Justin A. Jernigan, being duly sworn and under oath, deposes and states as follows:

1. I am over 18 years of age and otherwise competent to make this Affidavit.
2. I reside in Weddington, North Carolina, in the County of Union.
3. I am a patent attorney and member of the South and North Carolina Bars.
4. I am counsel for Plaintiff Christine Jernigan ("Mrs. Jernigan") in the above-captioned case, and *pro se*.
5. This affidavit is submitted with respect to Plaintiffs' Motion for Sanction/Contempt, filed February 23, 2023, in the above-captioned case.
6. Notably, this affidavit is submitted to confirm that the respective Exhibits submitted in support of Plaintiffs' Motion for Sanction/Contempt filed February 23, 2023, in the above-captioned case are, based upon personal knowledge, information, and belief, true and correct copies thereof.
7. Exhibits A to F were originally filed as Exhibits with Plaintiffs' Motion for Sanction/Contempt on February 23, 2023.
8. An Appendix of Exhibits, including Exhibits A to F as previously filed and G to U as presently filed, is submitted herewith as page iii of Plaintiffs' Memorandum in Support.
9. Exhibit A is a copy of Plaintiffs' Rule 11(a) Letter dated February 10, 2023, to counsel of record for Defendant Kershaw County Sheriffs' Office ("KCSO").
10. Exhibit B is a copy of Plaintiffs' First Set of Interrogatories Nos. 1 to 15 served October 29, 2022.

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11. Exhibit C is a copy of Plaintiffs' Plaintiffs' First Set of Requests for Production No. 1 served October 29, 2022.

12. Exhibit D is a copy of KCSO's Answers, served January 9, 2023, to Plaintiffs' First Set of Interrogatories Nos. 1 to 15.

13. Exhibit E is a copy of KCSO's Responses, served January 9, 2023, to Plaintiffs' First Set of Requests for Production No. 1.

14. Exhibit F includes copies of emails between counsel of record for the Parties in this case dated February 20 to 22, 2023.

15. Exhibit G is a copy of one chapter of KCSO's official Policy Manual, specifically Chapter 209 - Records, which was first produced on January 9, 2023.

16. Exhibit H is a copy of a portion of the 2022-2023 SCCJA Mobile Training Catalog, which is publicly available, listing a South Carolina Omnibus Adult Protection Act ("OAPA") Course for law enforcement officers/agencies relating to abuse of vulnerable adults. An annotated pointing arrow has been included on page 4.

17. Exhibit I is a copy of a Call for Service ("CFS") Report, CFS2022-39009, which indicates that it was printed November 17, 2022. This Report was later first produced on December 4, 2022.

18. Exhibit J is a copy of CFS2022-39001, which indicates that it was printed November 17, 2022. This Report was first produced by KCSO on December 4, 2022.

19. Exhibit K includes, respectively, scans/copies of (*i*) the August 18, 2022, FOIA Production Cover Letter from County Attorney Tommy Morgan; (*ii*) an optical storage disc containing Audio Files Nos. 0 to 11, which are portions of redacted phone calls of June 29, 2022, from Kershaw County E-911/Dispatch relating to and/or involving myself and officers/employees; and (*iii*) CFS2022-39001, which indicates that it was first printed on August 18, 2022.

20. Below is a Table summarizing certain information regarding Audio Files Nos. 0 to 3 of the phone call records noted above.

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File No.	Type	Console No.	Date	Start Time	Duration
0	Audio	4	6/29/2022	9:44:37	0:26
1	Audio	4	6/29/2022	9:45:04	0:47
2	Audio	4	6/29/2022	9:45:58	0:27
3	Audio	4	6/29/2022	9:46:38	0:14

21. With respect to the above Table, Audio File Nos. 0 to 3 are redacted portions of a phone call from KCSO Officer #15 Courtney Cochran to Kershaw County E-911/Dispatch Operator Tina Hand, beginning at 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am as noted above.

22. In Audio File Nos. 0 to 3, KCSO Officer #15 indicates that I, Justin Jernigan, had been referred to KCSO after initially contacting the hotline for the Vulnerable Adult Investigations Unit of the South Carolina Law Enforcement Division ("SLED").

23. On June 28, 2022, I contacted the hotline for the Vulnerable Adult Investigations Unit of SLED, and thereafter also KCSO, to report suspected criminal/felony exploitation of my grandmother Ann Martin ("Mrs. Martin"), a Kershaw County resident and a vulnerable adult pursuant to the South Carolina Omnibus Adult Protection Act ("OAPA"). *See* S.C. Code §§ 43-35-5, *et seq*.

24. Exhibit L is a copy of a portion of the 2017 South Carolina Guide to Complying with the Freedom of Information Act ("FOIA") including, on page 4 thereof, a Letter from the Office of South Carolina Attorney General Alan Wilson.

25. Exhibit M is a copy of a portion of the 2019 South Carolina Law Enforcement Accreditation ("SCLEA") Standards Manual, specifically, Chapter 15 - Communications.

26. Exhibit N includes copies of email correspondence of late July to late August 2022 (pre-suit). Annotated page numbering has been added at the lower right corner of each page of Exhibit N for references purposes.

27. Exhibit O is a copy of the transcript of the hearing on December 5, 2022, before the Honorable DeAndrea G. Benjamin.

28. Exhibit P is a copy of KCSO's Body Worn Camera Retention Schedules ("BWC Retention Schedules"), first produced on January 9, 2023, and bearing the date/time stamp 11/30/22, 2:34pm.

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29. Exhibit Q includes copies of two publicly available orders in the case of *Brown v. Elliot*, 3:14-cv-01188 (D.S.C. 2016), specifically, DE 44 and DE 61.

30. Exhibit R is a copy of a publicly available news article published by WIS News 10 on April 12, 2022.

31. Exhibit S is a copy of a publicly available news article published by WIS News 10 on May 24, 2022.

32. Exhibit T is a copy of the transcript for the hearing on December 19, 2022, before the Honorable Jocelyn C. Newman.

33. Under penalty of perjury, I certify that the information given by me in this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

Sworn to and Subscribed before me this

24 day of April, 2023

Irene Renee Owens
Notary Public for North Carolina

Signature of Affiant – Justin A. Jernigan

My Commission expires 12/28/25

IRENE RENEE OWENS NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

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Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

2022CP2800782; Jernigan, et al. v. KCSO; Motion for Sanctions/Contempt; Hearing Date 4/27/23

Justin Jernigan <justin.a.jernigan@gmail.com> Tue, May 23, 2023 at 2:24 PM
To: Judge Cobel <dcoblesc@sccourts.org>, "Coble, Daniel Law Clerk (Victoria Elgin)" <dcoblelc@sccourts.org>
Cc: "Cameron W. DeBoy" <cameron@dmorrison-law.com>, David Morrison <david@dmorrison-law.com>

Dear Judge Coble,

I represent Plaintiffs in the above-referenced FOIA case. The Court heard Plaintiffs' pending Motion for Sanctions/Contempt on April 27, 2023. Counsel of record for Defendant Kershaw County Sheriff's Office ("KCSO"), David Morrison, Esq., is copied on this email.

Plaintiffs' initial (incorrect) understanding was that the Court set a 30-day period following the hearing for the Parties to, respectively, submit response/reply briefing via email. Plaintiffs' counsel reached out to counsel for KCSO in an effort to narrow the scope of issues for further briefing, but no agreement could be reached. Thereafter, Ms. Elgin's below email dated May 9, 2023, clarified that both Parties were provided with the option, if desired, to submit supplemental briefing during the 30-day period following the hearing.

Plaintiffs respectfully submit this supplemental brief to address three secondary issues that were raised during the hearing: (*i*) KCSO's oral Motion pursuant to Rule 7(b)(1), SCRCP; (*ii*) the documentation/reporting requirements of KCSO's Policy Manual at Section 209.11 (Ex. G); and (*iii*) KCSO's oral Motion seeking leave to amend Paragraph 9 of its October 28, 2022, Answer.

A. Plaintiffs Respectfully Request Reconsideration of the Court's Initial Ruling Granting KCSO's Oral Motion Pursuant to Rule 7(b)(1), SCRCP

KCSO submitted an oral Motion at the beginning of the hearing on April 27, 2023, asserting that Plaintiffs' April 24, 2023, Memorandum in Support and Exhibits G-U violated the particularity requirement of Rule 7(b)(1), SCRCP, by introducing previously unknown grounds. The Court made an initial ruling at the hearing granting KCSO's oral Motion. Plaintiffs respectfully request that the Court reconsider based upon the following facts/law that were not considered at the hearing.

Attached as Exhibit V hereto is a copy of Plaintiffs' December 16, 2022, Pre-Hearing Brief and Exhibits A-E (beginning, respectively, at pages 10, 44, 55, 59, and 62). Subject matter and the Exhibits of Plaintiffs' December 2022 Brief were incorporated into Plaintiffs' April 24, 2023, Memorandum and filed as supporting Exhibits I, J, L, N, and O.

The grounds/exhibits referenced in Plaintiffs' February 2023 Motion and Exhibit A, Rule 11(a), 10-day Letter were, collectively, also incorporated into Plaintiffs' April 24, 2023, Memorandum. Undersigned counsel previously provided a copy of Plaintiffs' supporting Exhibit T - the transcript of the December 19, 2023, hearing before the Honorable Jocelyn C. Newman - to counsel for KCSO in March 2023.

Plaintiffs respectfully submit that, based upon the prior filings, history, and circumstances of this case, KCSO had sufficient knowledge/notice of the grounds underlying Plaintiffs'

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April 24, 2023, Memorandum. Notably, Plaintiffs submit that KCSO had sufficient knowledge/notice of the alleged (*i*) destruction of records/evidence; (*ii*) FOIA violations; and (*iii*) discovery violations underlying Plaintiffs' April 24, 2023, Memorandum.

The South Carolina Supreme Court has interpreted and applied the particularity requirement of Rule 7(b)(1), SCRCP, in the context of post-trial motions to alter/amend. *See*, *e.g.*, *Camp v. Camp,* 386 S.C. 571, 689 S.E.2d 634 (2010) (Toal, C.J.). In *Camp*, the Court determined that the particularity requirement must be applied flexibly (i.e., not in an overly technical manner), and that the inquiry should focus on whether the alleged lack of particularity had resulted in actual/identifiable prejudice to any party. 386 S.C. at 574-76 (citations omitted). The *Camp* Court found that the appellant's one-sentence motion did not violate the particularity requirement given that, based on the record, the subsequent filing of the appellant's memorandum in support did not result in any actual/identifiable prejudice to the respondent. *Id.* In other words, the appellant's one-sentence motion in *Camp* was a technical violation of the type that Rule 7(b)(1), SCRCP, was not intended to protect against.

Plaintiffs respectfully submit that KCSO's oral Rule 7(b)(1), SCRCP, Motion was (at best) directed towards unspecified technical violations that fall outside the purpose/intent of Rule 7(b)(1), SCRCP, pursuant to *Camp*.

B. KCSO's Policy Manual, Chapter 209 - Records, Requires Documentation/Reporting of all Incidents an Officer is Dispatched/Assigned to Investigate

At the hearing on April 27, 2023, KCSO objected to the following sentence on page 5 of Plaintiffs' April 24 2023, Memorandum: "KCSO knew, based upon its official Policy Manual, Chapter 209 - Records, that reports must be prepared documenting all 'citizen requests for services that an officer is dispatched ... to investigate,' and this is true regardless of the subject matter involved (i.e., criminal, or civil requests)." Ex. G at 10. Specifically, KCSO asserted that the cited provisions of its Policy Manual, at Section 209.11, only require documentation/reporting for *criminal* requests that an officer/employee has been dispatched/assigned to investigate.

A copy of the SCLEA Standards Manual, Chapter 14 - Records, is attached as Exhibit W hereto. KCSO's Policy Manual at Section 209.11 follows Section 14.5 of the SCLEA Standards Manual. The SCLEA Standards Manual at Section 14.5 states: "A written directive requires the reporting of every incident in one or more of the following categories if the incident is alleged to have occurred in the agency's service area: … Incidents resulting in an employee being dispatched or assigned." Ex. W.

KCSO's Policy Manual at Section 209.11 states: "It is Department Policy to document the following categories of incidents, if they were alleged to occur within the Department's jurisdiction: … all citizen requests for services that an officer is dispatched, and an employee is assigned to investigate." Ex. G at 10. This phrase of Section 209.11 is not limited to incidents of *criminal* requests for services as KCSO asserted at the hearing. Rather, consistent with the requirements of the SCLEA Standards Manual at Section 14.5, the plain language of KCSO's Policy Manual at Section 209.11 necessarily includes "all" criminal and *non-criminal* citizen requests for services, as accurately asserted on page 5 of Plaintiffs' April 24 2023, Memorandum.

Plaintiffs respectfully submit that KCSO's Policy Manual at Section 209.11 does, in fact, require documentation/reporting of all criminal and non-criminal citizen requests for services if such incidents are alleged to occur in KCSO's jurisdiction and result in an officer/employee being dispatched/assigned to investigate. Ex. G at 10.

C. KCSO's Oral Motion to Amend Paragraph 9 of its October 28, 2022, Answer

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Plaintiffs' April 24, 2023, Memorandum in Support, on page 12, states that "KCSO … made judicial admissions in its October 28, 2022, Answer as follows: 'Paragraphs 16 and 17 [of the Complaint] are admitted only to the extent Mr. Jernigan submitted a FOIA Request as an attorney on behalf of his mother on July 22, 2022.'" Def.'s Answer ¶9. At the hearing, however, KCSO submitted an oral motion requesting leave to amend Paragraph 9 of its October 28, 2022, Answer. Specifically, KCSO asserted that Paragraph 9 of its Answer included typographical errors with respect to its admission that the July 22, 2022, FOIA Request was, at least, submitted by undersigned counsel Mr. Jernigan as an attorney on behalf of his mother Plaintiff Mrs. Jernigan. The Court denied KCSO's oral Motion seeking leave to amend Paragraph 9 of its Answer.

To clarify, KCSO's admission of Paragraph 9 relates to the alleged lack of "capacity" - or lack of standing - defense that is contained in its Answer at Paragraph 36 (i.e., Fourth Defense). Notably, although FOIA clearly provides every "person" the right to copy/inspect any public record possessed by a public body (*see* S.C. Code §§ 30-4-20(b) & 30), S.C. Code § 30-4-100(a) states that "a citizen of the State" can file a civil action to enforce violations of the provisions of FOIA. Plaintiffs' counsel is not presently aware of any case law interpreting, applying, and/or reconciling these provisions of FOIA.

As Plaintiffs' counsel briefly noted at the hearing, and as documented in Plaintiffs' attached December 2022 Pre-Hearing Brief on page 3 (Exhibit V, hereto), counsel for the Parties conferred in Fall 2022 and reached an amicable resolution with regard to KCSO's alleged lack of capacity/standing defense contained in its October 28, 2022, Answer at Paragraph 36 (Fourth Defense). Specifically, it was agreed that the July 22, 2022, FOIA Request was (at least) submitted by Plaintiff Mr. Jernigan as an attorney on behalf of his mother Plaintiff Mrs. Jernigan. As a result, it was agreed that KCSO's alleged lack of capacity/standing defense was moot.

As an aside, Plaintiffs' counsel believes that the "citizen of the State" provision of S.C. Code § 30-4-100(a) may date to a time period when attorneys were required to maintain a residence and/or an office within the State. For instance, the Official Note to the 1986 Amendments of Rule 11(a), SCRCP, states: "The requirement that an attorney of record must be a resident or maintain an office in the State is deleted. The conditions under which a person may appear ... are more properly within the exclusive power of the Supreme Court to govern the admission to practice, rather than a matter of trial court procedure."

Plaintiffs' April 24, 2023, Memorandum in Support (at page 16), and December 16, 2022, Pre-Hearing Brief (at pages 6-7, Ex. V hereto), cite/discuss the published opinion of the Court of Appeals in the *Ballard v. Newberry County* FOIA case. 432 S.C. 526 (Ct. App. 2021) (determining that certain relevant/requested public records had been *inadvertently* destroyed by Newberry County before the FOIA request was filed). In that FOIA case, Columbia-area attorney Desa Ballard, Esq. submitted the underlying/written FOIA request to Newberry County on behalf of her client, who was a former part-time chief magistrate judge in Newberry County. Even so, Ms. Ballard filed the FOIA case/complaint in her own name and represented herself *pro se* on appeal. Although not an issue for resolution in the present case, Plaintiffs would respectfully submit that an interpretation of S.C. Code § 30-4-100(a) which would prohibit a non-resident member of the South Carolina Bar (such as undersigned counsel) from filing a FOIA case and proceeding in the same manner as Ms. Ballard does not make much sense from a logical/practical perspective.

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)

7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 23rd day of May 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

[Quoted text hidden]

2 attachments

5.23.23, Ex. V-12.16.22 Pre-Hearing Brief.pdf
4638K

5.23.23, Ex. W-SCLEA, Ch. 14 Records.pdf
325K

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EXHIBIT V

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Plaintiffs' Pre-Hearing Brief; 2022CP2800782; 12.19.22 (11:00am)

Justin Jernigan <justin.a.jernigan@gmail.com> Fri, Dec 16, 2022 at 12:44 AM
To: jnewmansc@sccourts.org
Cc: jnewmanlc@sccourts.org, David Morrison <david@dmorrison-law.com>

Dear Judge Newman,

Please consider the attached Plaintiffs' Pre-Hearing Brief, and Exs. A-E, for the Hearing scheduled for 12.19.22 at 11:00am.

Counsel for KCSO, Mr. Morrison, is copied on this email.

Respectfully,

Justin Jernigan
(864) 710-5029

Plaintiffs Pre-Hearing Brief (12.19.22 FOIA).pdf
11245K

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STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Christine Jernigan, et al., *Plaintiffs,* v. *Kershaw County Sheriff's Office,* *Defendant.*	NO. 2022-CP-28-00782 (NON-JURY) **PLAINTIFFS' PRE-TRIAL HEARING BRIEF** **(12.29.22, 11:00AM)** SERVED VIA EMAIL, NOT FILED

PLAINTIFFS' PRE-TRIAL HEARING BRIEF

Plaintiffs respectfully submit this brief in advance of the Pre-Trial Hearing in the above-captioned matter, scheduled to be held virtually on December 19, 2022, at 11:00am. *See* S.C. Code 30-4-100(A) and Rule 16(c), SCRCP.

INTRODUCTION

At a high level, this is a very simple case. This is a non-jury action for equitable relief against Defendant Kershaw County Sheriff's Office ("KCSO"). This Court applies the facts and the relevant law.

Defendant Kershaw County Sheriff's Office ("KCSO") received a FOIA request on July 22, 2022 (the "7.22.22 Request"). *See* S.C. Code 30-4-10, *et seq.*; Compl., Ex. A. KCSO did not meet the statutory deadlines. Count One seeks declaratory and injunctive relief pursuant to FOIA. Compl. (Count One). The 7.22.22 Request states in part that: "[Plaintiffs] would respectfully request that all body-worn camera records, if any, be preserved." Compl., Ex. A, at 2-3.

Plaintiffs are/were the subjects of body-worn-camera ("BWC") data created/taken by KCSO officers on June 29, 2022. Count Two of the Complaint seeks an Order from this Court,

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pursuant to S.C. Code 23-1-240(G)(5), requiring KCSO to provide all such BWC data. The relevant provisions list those categories of persons that are "entitled to request and receive" BWC data from KCSO pursuant to an Order of this Court. *Id.* Those persons entitled to request and receive BWC data include persons that are themselves subjects of KCSO BWC recordings, and their attorneys; i.e., Plaintiffs. *See id;* Compl. ¶¶ 17-31, 37-38, 68-70.

Plaintiffs respectfully request, upon the foregoing, that judgement be entered on Counts One and Two of the Complaint at the hearing on December 19, 2022, at 11:00am.

(1) A concise, non-argumentative statement of the facts of the case.

Pre-Suit Correspondence, referenced in the Complaint at ¶¶41-61, is attached hereto at Exhibit A.

Upon receipt of the 7.22.22 Request, KCSO was required to provide the written response required pursuant to S.C. Code § 30-4-30(c) within 10 or 15 business days (as applicable). In other words, KCSO was required to provide its final determination and the reasons therefore as to the public availability of the records/information requested therein, and the date upon which such records/information would be produced (i.e., within 30 or 35 days after the written determination, as applicable). *Id.*

KCSO did not provide the written determination or any date upon which KCSO would produce the records of the 7.22.22 Request, as required under S.C. Code § 30-4-30(c). Consequently, the 7.22.22 Request was, as a matter of law, "approved as to nonexempt records or information." *Id.* KCSO has not asserted that records/information of the 7.22.22 Request are exempt under FOIA and/or other State or Federal laws. *See, e.g.*, S.C. Code 30-4-40. KCSO did not produce the records of the 7.22.22 Request within 30 days (for records less than two years old) or 35 days (for records greater than two years old). *See* S.C. Code § 30-4-30(c).

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With respect to Count Two, S.C. Code 23-1-240(G)(5)(a)-(f) lists those categories of persons that are "entitled to request and receive" BWC data from KCSO pursuant to an order of this Court. Those persons entitled to request and receive BWC data include persons that are themselves subjects of KCSO BWC recordings, and their attorneys (i.e., Plaintiffs). *See id*; Compl. ¶¶ 17-31, 37-38, 68-70.

(2) An objective statement of the facts in controversy.

Plaintiffs are not aware of any operative or material facts in controversy. Even so, Plaintiffs' October 29, 2022, First Set of Interrogatories to KCSO, specifically Nos. 9, 13, and 15, requested KCSO's basis, if any, for opposing the relief sought in Counts One and Two of the Complaint. Plaintiffs have not, to date, received responses, under oath, from KCSO to the October 29, 2022, Interrogatories (e.g., Nos. 9, 13, and 15).

On the morning of December 13, 2022, Plaintiffs' counsel requested that KCSO's counsel provide a time/date to conduct a conference as required under Rule 11, SCRCP, with respect to KCSO's failure to provide responses to Plaintiffs' October 29, 2022, Interrogatories. Undersigned counsel, Justin A. Jernigan ("Mr. Jernigan"), discussed the discovery matter with KCSO's counsel, David Morrison ("Mr. Morrison"), on the evening of December 15, 2022. Plaintiffs' counsel excepts, and hopes, to receive responses from KCSO, under oath, on December 16, 2022, or otherwise prior to the hearing scheduled for December 19, 2022.

(3) The legal issues involved. This includes the law applicable to the cause of action and the defense.

The South Carolina Freedom of Information Act, S.C. Code 30-4-10, *et seq*., and S.C. Code 23-1-240(G)(5). With respect to the defense, KCSO raised defenses in its Answer that counsel for the Parties discussed in good faith and were able to resolve amicably.

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As to FOIA, the S.C. General Assembly imposed tighter response/production deadlines on public bodies, such as KCSO, via the 2017 amendments. For instance, S.C. Code 30-4-100(A) was amended as follows:

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

Plaintiffs respectfully submit that the 2017 FOIA amendments were implemented to prevent public bodies, such as KCSO, from misusing (or abusing) the litigation process to further delay production of public records well beyond statutory deadlines. Two relevant FOIA cases (pre-2017 amendments) are included below.

- Sloan v. SCDOR., 409 S.C. 551, 762 S.E.2d 687 (2014) (holding that "[w]hile DOR did respond to Sloan, its equivocal and evasive response was not a final opinion on the public availability of the requested documents and did not state whether the information requested by Sloan was publicly available for inspection," and that DOR's belated production of records after Sloan was required to file suit could not, consistent with the purposes of FOIA, render Sloan's request for attorneys' fees moot).; and

- Burton v. York County Sheriff's Dept., 358 S.C. 339, 594 S.E.2d 888 (S.C. App. 2004) ((affirming that "employment information for the named deputy sheriffs, including dates of employment, title, rank, pay-rate schedule, copies of disciplinary letters, records of suspension and all other information as provided by law," were not exempt from disclosure under FOIA and remanding to the trial court "for a full and proper consideration of the attorney's fees request."

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

Potential Exhibits, for which no disagreement is expected, are listed below:

- Pre-Suit Correspondence of Exhibit A ((attached hereto, between and amongst undersigned counsel, KCSO's Records Officer Alisha Joe; Kershaw County FOIA Officers (Lauren/Merri), and County Attorney Tommy Morgan ("Mr. Morgan"));

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- Pre-Suit FOIA production by KCSO (scans attached hereto): Exhibit B ((CFS2022-39001, with eleven E911 audio files (redated)) and Exhibit C (redacted dash camera video, audio removed); and

- Post-Suit FOIA production by KCSO (scans attached hereto): Exhibit D (CFS2022-39009) produced by KCSO on December 2, 2022.

Potential witnesses are identified in Exhibits A-D attached hereto, whose addresses and phone numbers are known to KCSO's counsel but have not been disclosed, to date, to undersigned counsel.

(5) Any unusual problems relating to evidence to be introduced, such as "Business Records as Evidence Act," hearsay, use of depositions, etc.

No problems are anticipated.

(6) Any unusual question or matter which should be brought to the attention of the court.

A transcript of the Hearing on December 5, 2022, before Judge Benjamin, in the above-captioned case is attached hereto as Exhibit E. At the 12.5.22 Hearing, KCSO's counsel Mr. Morrison states, with respect to the BWC data of Count Two, as follows:

> All of this is kind of a moot point at this point because there is no body camera footage that exists at this point. But at the time the request was submitted, there was no civil action pending so I don't think the exemption applies because that's the way the statute reads.

Ex. E, 5:4-9.

> I've told the Court and [Plaintiffs' counsel] Justin that there are no body cams in existence. So that's kind of a moot point at this point.

Id., 13:2-4.

Plaintiffs' counsel Mr. Jernigan had, in fact, never been told prior to the 12.05.22 Hearing that the BWC data, for which preservation has been explicitly requested, had been destroyed by KCSO. Plaintiffs' counsel responded, in part, as follows:

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> I asked that they [KCSO] preserve the body camera. It's in the [7.22.22] request. … they're required under their own policies to have the body camera and under the records policy.

Id., 15:18-19, 16:2-3.

As noted above, the 7.22.22 Request states that: "[Plaintiffs] would respectfully request that all body-worn camera records, if any, be preserved." Compl., Ex. A, at 2-3. The Pre-Suit Correspondence of Exhibit A hereto also states: "Understand there is FOIA exemption for body cam video, but respectfully request preservation." Email Dated 8.01.22.

South Carolina Rule of Professional Resp. 3.4(a) states that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." This obligation exists independent of any explicit preservation request, which was made in the present case.

Plaintiffs also respectfully note that the Court of Appeals observed in *Ballard v. Newberry Cnty*., 432 S.C. 526, 534, 854 S.E.2d 848, 852 (S.C. App. 2021), that, rather than the inadvertent destruction of public records at issue in that case, the "[d]estruction of pertinent documents covered by a then-pending FOIA request could very well present a different question." Otherwise, the *Ballard* Court stated that "[w]e highly doubt our holding will in any way encourage public bodies to violate the Public Records Act." *Id.*

The Public Records Act consists of Sections 30-1-10 through -180 of the South Carolina Code. Among other things, the Public Records Act identifies the legal custodian of public records and explains that the Department of Archives and History is responsible for establishing efficient and economical "standards, procedures, techniques, and schedules." *Id.* Plaintiffs respectfully submit that, to the extent the "standards, procedures, techniques, and schedules" of

the Public Records Act have been violated as to public records of the 7.22.22 Request, this Court should extend the holding of the *Ballard* Court to the facts of this case.

(7) A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

Plaintiffs have requested settlement on numerous occasions but, to date, have never received any response, much less any settlement proposal from KCSO

Respectfully submitted,

By: /s/Justin A. Jernigan

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PRO SE AND ATTORNEY FOR MRS. JERNIGAN

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EXHIBIT W

SOUTH CAROLINA LAW ENFORCEMENT ACCREDITATION



The Standards Manual of

The South Carolina Law Enforcement Accreditation Program

April 2019

4th Edition – V.3

South Carolina Law Enforcement Accreditation, Inc.
Post Office Box 212266
Columbia, South Carolina 29221

CHAPTER 14 - RECORDS

The central records function is important to the effective delivery of law enforcement services. In this chapter, the standards address those records functions that are basic to meeting the management, operational, and informational needs of the agency. The standards are principally concerned with the administration, field reporting, and central records activities, and do not address the secondary records activities attendant to functions or components within the agency carried on in support of this function.

14.1 A written directive establishes privacy and security precautions for the agency's records and at a minimum, includes the following:

A. Procedures for the separation of juvenile criminal records from adult criminal records;

B. Procedures for the collection, dissemination, and retention of fingerprints, photographs, and other forms of identification pertaining to juveniles;

C. Physical security and controlling access to agency files;

D. Procedures and criteria for the release of agency records; and

E. Stipulation for records retention.

Commentary:

The privacy and security precautions for the central records function should be in accord with agency policy, local ordinance, and/or state statutes. The privacy and security of criminal history record information should be in accord with appropriate state and national regulations in regard to dissemination, completeness and accuracy, audits, security requirements, access and review.

The agency specifically identifies juvenile criminal and identification records and adult criminal records to prevent unauthorized access and release. This identification may include specially marked index cards, computer files (that are marked and/or access restricted), or separate files. Dissemination should meet legal requirements that apply in some jurisdictions. The procedures should also provide guidelines for the disposition of juvenile records when the juvenile reaches adult age and for the expungement of records when ordered by the court.

The agency should determine the physical security requirements for the facility and decide who is authorized to access agency files. Facility and file security ensure the integrity of the system and the information it contains.

14.2 A written directive establishes procedures for collecting and submitting crime data to the South Carolina Incident Based Reporting System (SCIBRS).

Commentary:

SCIBRS collects 100% of the National Incident Based Reporting System (NIBRS) data as required by the FBI's national program plus additional information collected for law enforcement in South Carolina. Participation in the SCIBRS program helps promote the development of good record-keeping and aids in the effort to establish a local, state and national data base of crime statistics. The standard should be satisfied if the agency reports required SCIBRS data to the South Carolina Law Enforcement Division (SLED) for subsequent inclusion in the national system.

14.3 Central records information is accessible to operations personnel at all times.

Commentary:

In large agencies, where records personnel are always available, this is usually accomplished with minimal planning or expense. However, in smaller agencies the accessibility of records during evening and early morning hours becomes problematic. In these instances, specific persons working these hours should be given authority to access central records information.

14.4 A written directive establishes a field-reporting system to include:

A. Guidelines to indicate when reports must be written;

B. Forms to be used in field reporting;

C. Information required in field reporting;

D. Procedures to be followed in completing field reports; and

E. Procedure for submitting and processing field reports.

Commentary:

This directive may be in the form of a field-reporting manual that describes and illustrates the information to be included on report forms. The document should be all inclusive and serve as the complete user's guide, as well as a resource guide in all field-reporting situations.

A suggested set of field-reporting forms would include the following: offense report; supplemental report; traffic accident report; arrest report: property report; prosecution

report and complainant control and miscellaneous incident report. The forms may be more specialized than those listed, e.g., crimes against persons, crimes against property.

The forms may also be consolidated to serve the purposes identified in this standard. The complainant control and miscellaneous incident report can be initiated by dispatchers and may serve as a control document and/or as the full report of a miscellaneous incident.

The agency should adopt a set of forms approved by SLED to standardize field reporting and structure them to ensure that basic information is captured for all crimes and incidents. Samples of the forms should be included, with clear instructions for filing out and submitting the field reports.

If the agency is using a computerized system, the guide should address procedures for use.

14.5 A written directive requires the reporting of every incident in one or more of the following categories if the incident is alleged to have occurred in the agency's service area:

A. Citizen reports of crime;

B. Formal citizen complaints;

C. Incidents resulting in an employee being dispatched or assigned;

D. Criminal and non-criminal cases initiated by law enforcement employees; and

E. Incidents involving arrests, citations, or summons.

Commentary:

The purpose of this standard is to require a comprehensive reporting system. A record should be made of actions taken by law enforcement personnel whether in response to a request for service or for self-initiated actions. If two or more persons report the same incident, only one case report should be required.

The directive should establish procedures to ensure that proper action is taken to investigate complaints, evaluate suggestions, correct deficiencies, or refer them to proper authorities for correction. The person making the complaint or suggestion should be notified of the action taken. This may be contained in the agency's general field-reporting document.

14.6 A written directive establishes a case numbering system with provisions for the assignment of a unique number to every case.

Commentary:

A single numbering series (case or incident number) should be employed for all incidents of law enforcement service, including traffic accident investigations, criminal investigations, and miscellaneous calls for law enforcement service. Some activities, such as the issuance of uniform tickets, need not be recorded as numbered cases; the ticket itself serves as the report. The numbering system should be designed to ensure that all cases receive a number, that no numbers are omitted, and that no numbers are duplicated.

14.7 A written directive requires supervisory review of reports to ensure specific procedures are being followed as outlined in the field-reporting system required in standard 14.4.

Commentary:

Supervisory review should be required as the first step in the submission process, and the form should be designed for the signature or initials of the reviewing supervisor. Typically, supervisory review is a function of the first-line supervisor and is intended to ensure that the assignment has been satisfactorily completed and reported consistent with the field reporting system.

14.8 A written directive establishes procedures for maintaining records of uniform traffic tickets, to include:

A. Issuing ticket books to officers;

B. Accounting for tickets;

C. Storing tickets in a secure area; and

D. an Annual ticket audit.

Commentary:

Issuing and accounting for uniform tickets should be rigidly controlled. Copies of citations issued should be filed in agency records.

14.9 The agency has a system for assigning an identification number and maintaining a criminal history file for each person arrested.

Commentary:

An identification number is a person-oriented number and is assigned to a specific person. Once a person has been assigned an identification number, all subsequent arrests and information concerning that person should be referenced to his or her identification number. Each person who has been arrested should have only one identification number, although the individual may have been arrested on a number of different occasions and thus have different case and booking report numbers relating to them. The system should include a procedure ensuring that identification numbers are not duplicated or skipped.

The criminal history file is often referred to as an identification file or jacket and should include the following documents: criminal fingerprint card (red and white card), criminal history transcripts (state and federal), photograph (if available), and copy of arrest report. The file may be sequenced by identification number.

The criminal history transcripts may be excluded from the agency files if they are accessible through state (SLED's) or federal information systems. (To ensure that SLED has assigned an individual State Identification (SID) Number, the agency must provide SLED with a criminal fingerprint card for each arrest made by the agency.) It is not necessary to have all documents in one file as long as a cross-reference points to the location of each document.

14.10 A written directive establishes criteria for recording arrest information, to include:

A. Preparing reports;

B. Fingerprinting; and

C. Photographing.

Commentary:

The written directive should specify those offenses for which fingerprints and photographs are required. Additionally, the directive should provide guidance in keeping existing file information current for persons subsequently arrested, e.g., address, photograph.

14.11 A written directive establishes procedures for maintaining a warrant and wanted persons file, to include:

A. Establishing criteria for entering notices in regional, state, and federal information systems;

B. Establishing criteria for receiving information from other jurisdictions;

C. Recording the information in agency files;

D. Verifying information;

E. Canceling information; and

F. Requiring 24-hour access to the warrant section.

Commentary:

The procedure should include the mechanics of initiating a case report, assigning the case, and filing warrants in a way that ensures immediate accessibility. Warrants and the master name index should be cross-referenced.

Some agencies may place this responsibility with central records; others may have specialized functions, such as warrant and fugitive or civil process units. If the agency is accomplishing the requirements in any fashion, it is sufficient for compliance with all applicable standards.

14.12 The agency ensures protection of the central records computer system through data backup and storage, secured system access, password protection, and an annual audit of passwords.

Commentary:

The protection of computerized records and data are critical to the agency's operations and compliance with state law. System access should be controlled through passwords, encryption, and other electronic controls. Physical security and system maintenance must be maintained at all times.

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan and Justin Jernigan,	)	C/A #: 22-CP-28-00782
Plaintiffs,	)	
v.	)	**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS/CONTEMPT**
Kershaw County Sheriff's Office,	)	
Defendant.	)	

Defendant Kershaw County Sheriff's Offices files this response in opposition to Plaintiffs' Motion for Sanctions/Contempt.

I. INTRODUCTION

Plaintiffs filed a Motion for Sanctions/Contempt and a hearing was held by this Court before the Honorable Daniel Coble on Thursday, April 27, 2023. During the hearing the Court provided Defendant with 30 days to respond to Plaintiffs' allegations of: (1) violation of Judge Jocelyn Newman's Order; and (2) discovery abuses through a supplemental briefing. Below is Defendant's response to the opportunity provided by the Court to resolve this situation.

II. BACKGROUND

July 22, 2022, Plaintiff Justin Jernigan submitted a Freedom of Information Act ("FOIA") request to Defendant, Kershaw County Sheriff's Office ("KCSO"), (Compl. Ex. A.). The FOIA request submitted by Plaintiff Justin Jernigan centers on an encounter between Plaintiff Christine Jernigan, Mrs. Ann Martin and Plaintiff Justin Jernigan, and Defendant on June 29, 2022. The requestor, Plaintiff Justin Jernigan sought public records from "June 1, 2022, to present" which translates to June 1, 2022, to July 22, 2022, for information requested from Defendant.

June 29, 2022, at 10:56am (Exhibit I), Plaintiff Christine Jernigan attempted to remove her mother, Mrs. Ann Martin, from Pinedale Residential Center, which is located at 798

Hermitage Pond Road, Camden, South Carolina, 29020. Plaintiff Christine Jernigan's actions were in direct contradiction against the directives provided through Mrs. Martin's General Power of Attorney. Mrs. Martin's General Power of Attorney appointed Sharon P. Wright as the lawful attorney in fact for Mrs. Martin on December 19, 2013. Through this appointment, Mrs. Wright exercised her authority granted to her, and requested Mrs. Martin remain at Pinedale Residential Center and not be removed. At 11:05am Plaintiff Christine Jernigan entered her vehicle and attempted to remove Mrs. Martin, from the Pinedale Residential Center which created the need to notify Defendant (Exhibit I). Defendant was informed Mrs. Martin was being removed from the facility in a Nissan (SC License Plate: IXV788) against the wishes of Mrs. Wright. After being made aware of this information, Kershaw County Sheriff's Deputies Courtney Cochran, Brian Morris, Grant Arledge and Joseph Branham attempted to locate and stop the vehicle.

At 11:07am, Kershaw County Sheriff's Deputies Grant Arledge and Joseph Branham observed a Nissan (SC License Plate: IXV788) on Hermitage Road with a driver and a passenger, located approximately one (1) mile away from the Pinedale Residential Center. After identifying the vehicle as the same vehicle which left Pinedale Residential Center, Deputy Arledge initiated his blue lights and proceeded to have the driver pull the vehicle off to the side of the road. Once the vehicle was pulled over, Deputies Arledge and Branham approached the vehicle to inquire and assess the situation. Deputy Arledge's initial inquiry determined the driver of the vehicle was in fact Christine Jernigan and the passenger was in fact Mrs. Ann Martin.

During the follow-up questioning by Deputy Arledge, Plaintiff Christine Jernigan presented him with a Power of Attorney identifying herself and Mrs. Sharon Wright as Co-Power of Attorneys for Mrs. Martin. Upon learning this information, Deputy Arledge identified the situation involving Plaintiff Christine Jernigan, Mrs. Sharon Wright, and Mrs. Ann Martin as

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a civil issue which required assistance from the judicial system (e.g., the probate court), as opposed to a criminal issue which would benefit from the direct involvement of Defendant.

Two separate FOIA requests were entertained. Only the July 22, 2022 request is the subject of this motion. Plaintiff has argued many matters outside of that scope. The Defendants will cite each paragraph from the July 22, 2022 FOIA request and then set forth the response. KCSO respectfully notes that any other issues cited by Mr. Jernigan in his memorandum and email submission are not before the court.

III. DISCUSSION

A. Defendant Followed Orders by the Honorable Jocelyn C. Newman and Did Not Violate FOIA According to the Records Act.

December 28, 2022, Judge Jocelyn C. Newman issued an Order from the Bench which states, "Following a hearing on December 19, 2022, the Court ordered that Defendants shall fully comply with the South Carolina Freedom of Information Act vis-à-vis Plaintiff's requests within 20 days of the hearing." Based on the Order of the Court, Defendant complied with the Order to the best of its ability and in good faith.

Friday, July 22, 2022, at 5:47pm Plaintiff Justin Jernigan filed a FOIA request with Defendant. The requestor, Plaintiff Justin Jernigan sought public records from "June 1, 2022, to present" which breaks down to June 1, 2022, to July 22, 2022. The FOIA request submitted by Plaintiff Justin Jernigan was responded to by Defendant on Monday, July 25, 2022, which is less than one (1) full business day after the FOIA request was submitted.

Plaintiff Justin Jernigan's FOIA request consists of 10 written paragraphs for the Sheriff's Department to decipher as to records requested. The Sheriff's Department responded in good faith and timely as demonstrated by our response on July 25, 2022.

PARAGRAPH 1: The dates for the incidents requested are generally from June 1, 2022, to present. Certain portions of this request, however, are outside this date scope concerning the relevant personnel/training files of the Department employees personally involved.

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EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. Based on the FOIA request, Defendant identified its search parameters for information as directed by Plaintiff Justin Jernigan and attempted to gather each record in the possession of Defendant based on the name of the Requestor: Justin Jernigan. Defendant searched each record in its possession; however, there were no documents under the name Justin Jernigan in the possession of Defendant. This first paragraph of his request simply stated the time frames involved.

PARAGRAPH 2: The only reference information I received from the Department (Dispatch Operator) was CAD Number 2022-39001 with respect to my phone calls to and messages left with the Department on June 28, 2022, and the return phone call I received from Deputy Branham on June 29, 2022, who accepted my reporting of suspected exploitation of a vulnerable adult, my grandmother, and around 10:30am via phone.

EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. Based on the information Defendant was provided by Plaintiff Justin Jernigan. As indicated above, there were no documents in the possession of Defendant attached to the name Justin Jernigan. Defendant indicated in its response to Plaintiff Justin Jernigan on July 25, 2022, "After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us." (Plaintiff's Motion in Support of Motion for Sanctions/Contempt pg. 4). According to this response by Defendant, it was clear at that time that Plaintiff Justin Jernigan must contact central dispatch to retrieve any phone calls which may be relevant to his request because Defendant did not possess the call information. Kershaw County operates in such a fashion where Kershaw County operates the 911 Emergency Call Center, not the Kershaw County Sheriff's Office. Despite this method of operation and the

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instruction by the FOIA response, Defendant, and specifically, Kershaw County Attorney Mr. Tommy Morgan went above and beyond his formal duties to assist Plaintiff Justin Jernigan in receiving these call and call logs to circumvent any more time and energy Plaintiff Justin Jernigan would have to spend on this request in order to help with the request made. After the efforts of Kershaw County Attorney Mr. Tommy Morgan, the phone records of the Kershaw County 911 Emergency Call Center were delivered to Plaintiff Justin Jernigan on August 18, 2022, bearing CAD Number 2022-39001. The other phone call mentioned in this paragraph was made by personal cell phone with no recording made. That has been explained to Plaintiff on numerous occasions.

PARAGRAPH 3: I would respectfully request all public records relating to my reporting of suspected exploitation of a vulnerable adult, my grandmother, Ann Berry Martin, 86 years old, who is presently located in Kershaw County at the Pinedale Residential Care Facility (Rm. 104). The requested records include, but are not limited to, call logs, notes, investigation file reference numbers(s) assigned, information concerning officers assigned to investigation(s), etc.

EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. In addition to Kershaw County Attorney Mr. Tommy Morgan going above and beyond his duties, he continued to assist Plaintiff Justin Jernigan even though he was not required to do so. Mr. Tommy Morgan was able to utilize the inter-departmental relationship of Kershaw County to assist Plaintiff Justin Jernigan by acquiring CAD #2022-39001 (also identified as: Command Log CFS2022-39001), as well as 13 phone recordings of Plaintiff Justin Jernigan with the Kershaw County 911 Emergency Call Center and delivered those to Plaintiff Justin Jernigan on August 18, 2022. Mr. Tommy Morgan was able to deliver the information to Plaintiff Justin Jernigan after Defendant offered a written response to Plaintiff Justin Jernigan on July 25, 2022. This response and production by Mr. Tommy Morgan was only possible after Mr. Tommy Morgan personally contacted the Kershaw County 911 Emergency Call Center (A separate entity from the Sheriff's Department) on his own initiative to acquire this material for Plaintiff Justin Jernigan.

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PARAGRAPH 4: I would also respectfully request all public records concerning Department actions involving my mother (Christine Pratt Jernigan, 302 Pine Cliff Dr., Seneca, SC 29672), and grandmother (Ann Berry Martin) on June 29, 2022, or otherwise relating to myself. These records also include, but are not limited to, records relating to my aunt/uncle, Sharon/Jim Wright of Camden, and the Pinedale facility, that are relevant to this matter.

EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. Defendant, as acknowledged in Paragraph 2 and Paragraph 3, determined all the public records in related to Defendant under the name of the FOIA Requestor, Justin Jernigan and informed Plaintiff Justin Jernigan where those records could be retrieved. Those records consisted of call logs identified in paragraph 3 above. Defendant also informed Plaintiff Justin Jernigan there was no report prepared because this was a "civil matter", as he mentions in Paragraph 6. Therefore, there were no records for Christine Jernigan or Ann Berry Martin to be produced. Defendant will prepare a report when there is a "criminal matter" which requires the immediate attention of Defendant, as opposed to a "civil matter" which is handled through Probate Court (e.g. matters involving a valid power of attorney).

June 29, 2022, involved an incident involving Plaintiff Christine Jernigan and Mrs. Ann Martin being involved in a investigative stop with Defendant. Any information regarding this incident involves Defendant being notified by Pinedale Residential Center one of its residents, Mrs. Ann Martin, was being removed unlawfully from her residence against the wishes of the Power of Attorney, Mrs. Sharon Wright. As Defendant was notified at approximately 11:05am and Defendant stopped Plaintiff Christine Jernigan and Mrs. Ann Martin at approximately 11:07am. Immediately upon approaching the driver side of the vehicle driven by Plaintiff Christine Jernigan, it was apparent to Defendant this was indeed a "civil matter." Defendant was informed of a Power of Attorney by Plaintiff Christine Jernigan and how the document Plaintiff Christine Jernigan was the proper Power of Attorney for Mrs. Martin and not the document in the possession of Pinedale Residential Center. Upon hearing this information, Defendant was well aware this was a "civil matter." Defendant's best course of action, was its only course of

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action, which was to obtain a copy of the Power of Attorney on file with Pinedale Residential Center. To complete this action, Defendant made sure to the vehicle driven by Plaintiff Christine Jernigan and carrying Mrs. Ann Martin stayed on the side of the road while Defendant sent another employee to Pinedale Residential Center to obtain a copy of the Power of Attorney is had on file and return to the site of the stop to ensure the information was correct and Mrs. Ann Martin was not in harm's way, as it does for all citizens of Kershaw County. Unfortunately, this verification process required Plaintiff Christine Jernigan and Mrs. Ann Martin to stay on the side of the road for approximately 45 minutes; however, it was imperative to ensure the safety of Mrs. Ann Martin. The Officers were also dealing with phone calls from Justin Jernigan while attempting to resolve the situation. Once a copy of the Power of Attorney in the possession of Pinedale Residential Center was returned to the scene where Plaintiff Christine Jernigan and Mrs. Ann Martin were located, the next move Defendant was required to take was to contact the Power of Attorney on the current document authorizing Mrs. Sharon Wright to act in the best interest of Mrs. Ann Martin. This situation is clearly not a "criminal matter" and is a "civil matter" which does not require the immediate intervention of Defendant. In recognizing this situation as a "civil matter" Defendant determined it was in the best interest of everyone to handle this matter with the Probate Court and contacted Mrs. Sharon Wright to decide what Mrs. Ann Martin should do for health, safety, and welfare.

The situation on June 29, 2022, is a "civil matter" as explained above; therefore, Defendant has no formal record of the situation. Defendant's practice is to write reports for situations involving a "criminal matter" and not ones involving a "civil matter." At no point in time is Defendant attempting to hide any information from Plaintiffs. Again, Defendant simply cannot provide information it does not possess. After a diligent search, all documents known to the Sheriff's Department that in its possession that have any relation to this situation have been produced to Plaintiff!

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PARAGRAPH 5: More specifically, on June 29, 2022, at approximately 11:30am, my 86-year-old-grandother, Ann Berry Martin, was traveling with her daughter, Christine Pratt Jernigan, along Hermitage Pond Road, toward Bishopville Highway in Camden, Kershaw County. As my Mom/Grandmother were nearing this intersection, oncoming Kershaw County Sheriff's Department vehicles drove past, quickly changed directions, and directly pursued with flashing blue lights and sirens. My mother and grandmother were detained and questioned for one hour or so. I drove to the Sheriff's Department in Lugoff and arrived approximately 20mins into the stop/detention. I requested officers I spoke with at the Office to release my mother and grandmother unless charged with a crime. Neither Deputy Branham (who was on the scene and whom I spoke with via phone) nor the officers at the Kershaw County Sheriff's Office – which included at least Office Taylor (1st shift, whom I believe to have been the ranking officer in charge at that time) and a younger female officer – ever mentioned any suspected or potential criminal charges.

EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. Defendant cannot provide an articulate response to Paragraph 5 because Plaintiff Justin Jernigan does not make a request of Defendant. Again, after a diligent search, all documents known to the Sheriff's Department in its possession that have any relation to this situation have been produced to Plaintiff.

PARAGRAPH 6: I would respectfully request all public records concerning my interactions with the Department during the relevant times of June 1, 2022, to present. More specifically, on the evening of June 29, 2022, I also contacted the Department dispatch line. I requested to speak with an officer regarding an incident report with respect to the actions taken with respect to my mother and grandmother and involving myself also. I was on hold for approximately 30 minutes before hanging up and calling dispatch again. I was eventually connected by dispatch to Corporal Taylor (2nd Shift). Corporal Taylor (2nd Shift) stated that no incident report could or would be generated because no criminal conduct or potential criminal conduct was ever at issue. According to Officer Taylor (2nd Shift), this was a "civil matter," and the Department does not prepare any reports in situations that never involved the possibility of criminal charges. Officer Taylor (2nd Shift), however, also declined to specify if the Department would take the same conduct in a similar situation arose.

EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. Defendant acknowledged and provided the information requested above when Plaintiff Justin Jernigan states, "I would respectfully request all public records concerning my interactions with the Department during the relevant times of June 1, 2022, to present. More specifically, on the evening of June 29, 2022, I also contacted the Department dispatch line." Again, these records were provided to Plaintiff Justin Jernigan.

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First, Plaintiff Justin Jernigan requests "…all public records concerning my interactions with the Department during the relevant times of June 1, 2022, to present." Plaintiff Justin Jernigan's interactions with Defendant during the relevant times involve his phone call on June 28, 2022, his phone calls on June 29, 2022, and his in-person visit to Defendant on June 29, 2022.

The phone call on June 28, 2022 was not recorded by the Sheriff's Department.

The existing phone call records/logs from June 29, 2022, were provided to Plaintiff Justin Jernigan as received from Central Dispatch. Jernigan now complains that the calls have been redacted. The Sheriff's Department is not aware of any redaction.

There is no recording of the in-person visit by Plaintiff Justin Jernigan to the Sheriff's Department on June 29.

Despite Plaintiff's protests, no incident report exists. In Plaintiff's recent email submission dated May 23, 2023 at Paragraph B, plaintiff again mis-states Kershaw County policy. This was discussed in detail at the original hearing on this motion. Plaintiff's original memorandum in support of this motion for sanctions at page 5 states that the KCSO knew based on Chapter 209 of its policy manual referring to records that reports must be prepared documenting all "citizen requests for services that an officer is dispatched … to investigate". Plaintiff mis-quotes the policy. This is a fundamental issue in this case as Plaintiff has contended throughout that the KCSO is lying and hiding records that must exist because the policy requires that. However, the omission of language from that quote is quite telling. The actual quote from Policy 209 is:

> It is Department policy to document the following categories of incidents, if they were alleged to occur within the Department's jurisdiction:
>
> > all citizen requests for services when an officer is dispatched, ***and an employee is assigned to investigate, or an employee is assigned to take action at a later time;***
>
> (emphasis added as this was the language omitted by plaintiff's counsel)

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See, Plaintiff's Exhibit G @ p.11 of 16 (p. 10 of policy)

In Paragraph B of Plaintiff's recent email submission, he continues to argue that the policy requires that an incident report be prepared in this situation. To justify his argument, he completely ignores KCSO Policy 209 and instead cites to the model policy issued by South Carolina Law Enforcement Accreditation, Inc. Admittedly, KCSO's policy cites to the model policy. However, KCSO did not adopt the language of the model policy. Instead, it includes the language that Plaintiff here keeps trying to omit or avoid. The model policy obviously has been used as a guide in preparing KCSO policy, but has not been completely adopted. Instead, it was modified to meet the needs of KCSO. The model policy has not been adopted by law enforcement statewide. Instead, each department adopts its own policy to meet the needs and requirements of its own circumstances and citizenry.

Regardless, no incident report was prepared for this particular incident. There is no report to be produced.

The remainder of Paragraph 6 makes no request for Defendant. Therefore, there this no information Defendant can search for to provide to Plaintiff Justin Jernigan. Again, Defendant cannot provide information it does not possess.

PARAGRAPH 7: I also respectfully request records concerning the names, ranks, dates of service, and/or related public information concerning all Department employees having any personal involvement regarding the above-described incidents that occurred in or around late June 2022 to present. Included in this request are training classes taken by these individuals, required, or respect certifications concerning constitutional rights of private citizens in connection with stops, detentions, arrests, use of police powers, etc. (e.g., regarding probable cause, reasonable suspicion, or indications of unlawful conduct required before taking such steps). I would also respectfully request similar training or certification information for all such individuals with respect to investigating abuse of the elderly or otherwise disabled/vulnerable adults.

EXPLANATION: Defendant responded to Plaintiff Justin Jernigan in good faith. Defendant identified Deputies Tate, Arledge Taylor and Branham as those individuals involved in the incident on June 29, 2022, involving Plaintiff Christine Jernigan and Mrs. Ann Martin.

After identifying these individuals their personnel/training files were delivered (redacted in accordance with law) to Plaintiff Justin Jernigan by Mr. Tommy Morgan on August 24, 2022. However, an error occurred by Defendant and the personnel/training file of Deputy Branham was delivered on January 9, 2023, through the discovery process. Defendant acknowledges it made a mistake in the previous submission of personnel/training files to Plaintiff Justin Jernigan; however, once we learned of that mistake we corrected the situation. The personnel files and Kershaw County training files for those individuals have been produced.

PARAGRAPH 8: In conclusion, I respectfully note that the essential purpose of the FOIA is to protect the public from secret government activity. *Campbell v. Marion County Hosp. Dist.*, 345 S.C. 274, 580 S.E.2d 163 (Ct.App.2003); see also *Quality Towing, Inc. v. City of Myrtle Beach,* 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2002) ("FOIA was enacted to prevent the government from acting in secret."); *Wiedemann v. Town of Hilton Head Island*, 330 S.C. 532, 535 n. 4, 500 S.E.2d 783, 785 n. 4 (1998) (noting that "the purpose of the FOIA is to protect the public from secret government activity").

EXPLANATION: Defendant cannot properly respond to Plaintiff Justin Jernigan in Paragraph 8 because he does not make a request to Defendant.

PARAGRAPH 9: Please contact me regarding any questions of concerns regarding this FOIA request. I will gladly explain, limit, and/or clarify the above request as may be appropriate. The purpose of this request is simply to obtain sufficient records to protect the public, including my family, from secret government activity because I was informed that no Department report would otherwise be prepared or provided.

EXPLANATION: Defendant cannot properly respond to Plaintiff Justin Jernigan in Paragraph 9 because he does not make a request to Defendant. Note however, that Mr. Jernigan was informed from the outset that no incident report would be prepared.

PARAGRAPH 10: Lastly, the Department Form (attached hereto) indicates that body-worn cameras are not public records under SC Code Ann. 23-1-240(G)(1). I would respectfully request that body-worn camera records, if any, be preserved pending resolution of this FOIA request. I would also respectfully note that any non-body-worn camera recordings, audio recordings of any type, dashboard cameras, etc., relevant to the above request, and falling within the definition of public records under FOIA, are within the scope of this request.

EXPLANATION: Body worn cameras are not subject to FOIA. Justin Jernigan was the requestor. There was no incident report under the name Justin Jernigan and therefore no incident report to utilize to identify a body camera. Justin Jernigan did however request preservation.

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Unfortunately, the body worn camera was written over in accordance with the Kershaw County Sheriff's Department retention schedule. It was not pulled for preservation.

B. Discovery Responses by Defendant Were Appropriate in the Normal and Recognized Practice of Law in South Carolina

Defendant was served Plaintiffs' First Set of Interrogatories (1-15) and Request for Production (1) on October 29, 2022, which Defendant did provide, in good faith to Plaintiffs. Unfortunately, the responses by Defendant did not meet the satisfaction of Plaintiff Jernigan. Below is a list of Plaintiffs' requests, Defendant's response, and Defendant's explanation of the responses.

INTERROGATORY #1: Please identify your records officer and other persons having legal responsibility for the categories or types of requested records falling within the reasonable scope of the 7.22.22 Request.

ANSWER #1: Records Officer(s), or Other Persons Assisting in Response for the Kershaw County Sheriff's Office are: (1) Autumn Furniss; (2) Chelsea Cockrell; AND (3) Captain Kevin Lynch (Admin. Captain).

EXPLANATION #1: Defendant provided Answer #1 in good faith. At the time the discovery requests were made the initial employee of Defendant who handled Plaintiff Justin Jernigan's July 22, 2022, FOIA Request no longer worked for Defendant. Autumn Furniss and Chelsea Cockrell who were and are currently employed by Defendant combined to pick up any professional gap left by the recently departed employee. Kevin Lynch (Admin. Captain) is the individual responsible for the administrative tasks and duties for Defendant.

Plaintiffs have asked Defendant to "Please amend KCSO's Answer #1 to affirmatively identify KCSO's records officer (Exhibit A). Alicia Joe was the original records officer at the time the request was made. However, she is no longer employed. Now, when a FOIA request is made, the interim designees for responses are Autumn Furniss and Chelsea Cockrell. They work under the supervision of Captain Kevin Lynch.

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INTERROGATORY #2: Please identify all KCSO Records Policies. For example, any such public records policies, supplementing, enlarging, and/or otherwise differing from the requirements, schedules, and/or standards of the Records Regulations.

ANSWER #2: Kershaw County Sheriff's Office Policy Manual: Chapter 209 – Records

EXPLANATION #2: Defendant provided Answer #2 in good faith. At the time the discovery request was made Defendant provided Plaintiffs with Chapter 209, in its entirety, which covers Records for the Kershaw County Sheriff's Department. That is the records policy and includes all policies relevant to the reporting records Plaintiff is requesting.

INTERROGATORY #3: Please identify and describe, based upon the governing Records Regulations and/or KCSO Records Policies (e.g., in response to IROG No. 2), those categories or types that apply, correspond, or potentially apply to requested records falling within the reasonable scope of the 7.22.22 Request. For example, the follow categories under the relevant Records Regulations and/or KCSO Records Policies: incident, supplemental, memorandum, or informational reports, daily shift reports, training files, dispatch records, complaint cards, radio logs, emergency call records to KCSO and 911 phone logs involving KCSO.

ANSWER #3: Please see Defendant's Answer #2. The policies speak for themselves. Plaintiff and Plaintiff's counsel can interpret the policies.

EXPLANATION #3: Defendant provided Answer #3 in good faith. Answer #3 refers to Answer #2 due to the fact Plaintiffs again are asking for records. If Plaintiffs have any question(s) regarding records it is most advantageous for Plaintiffs to review Chapter 209 – Records provided by Defendant. At no time is Defendant attempting to provide an "off-key" answer to Plaintiffs.

INTERROGATORY #4: If any public records falling within the reasonable scope of the 7/22/22 request have been destroyed or otherwise rendered unavailable, please identify such records, and describe the underlying circumstances, including how and/or if the requirements, schedules and/or standards for disposal were met or not met based upon the governing records regulations and/or KCSO records policies.

ANSWER #4: Kershaw County Sheriff's Office is an agency of limited resources. Often the Kershaw County Sheriff's Office will utilize various methods to assist the citizens of Kershaw County effectively and efficiently, including: (1) the Kershaw County Sheriff's Office retains records of non-criminal incidents ("Public Contact") on a limited basis, and this call was not recorded; AND (2) the Kershaw County Sheriff's Office will also utilize the cellular telephones of its employees to assist the citizens of Kershaw County. Incidents and information from June 28, 2022, and June 29, 2022, falling within these common methods of operation for the Kershaw County Sheriff's Office are: (1) Mr. Jernigan's attempt to report exploitation of a

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vulnerable adult to Kershaw County Sheriff's Office does not exist as no recording was made; (2) Phone Call from a Kershaw County Sheriff's Office investigator to Deputy Branham does not exist because recordings between personal cell phones of Kershaw County Sheriff's Office employees are not recorded; (3) Phone Call from Deputy Branham to Mr. Justin Jernigan does not exist because records of calls between personal cellular telephones are not recorded; AND (4) Body-Worn Cameras associated with incidents occurring on June 29, 2022, involving responding officers concerned non-criminal matters and are no longer retained. The standards for retention were met.

EXPLANATION #4: Defendant provided Answer #4 in good faith. Defendant, emphatically takes the records laws and regulations seriously, and any remarks to the contrary are disrespectful to law enforcement in Kershaw County. Plaintiffs are asking for any records which may have been destroyed and/or which may be unavailable. Through numerous and lengthy conversations Defendant's good faith belief was Plaintiffs are attempting to locate: (1) video recordings of Plaintiff Justin Jernigan while he is at the Kershaw County Sheriff's Office; (2) Audio Recording(s) of Kershaw County Sheriff's Deputies Grant Arledge and Joseph Branham while Plaintiff Christine Jernigan and Mrs. Martin are stopped after leaving the Pinedale Residential Center; and (3) recordings of phone conversations between Plaintiff Justin Jernigan and Deputy Joseph Branham on June 29, 2022, by utilizing the body-worn camera recordings from Deputy Branham's body-worn camera.

Kershaw County Sheriff's Office utilizes cameras at the main entrance of its primary office located at 821 Ridgeway Road, Lugoff, South Carolina 29078. On the morning of July 22, 2022, Plaintiff Justin Jernigan learned Plaintiff Christine Jernigan and Mrs. Martin were, based on probable cause, involved in a investigative stop by the Kershaw County Sheriff's Office. Once Plaintiff Justin Jernigan learned of this incident, he proceeded to the Kershaw County Sheriff's Office to speak with anyone who may be able to educate Plaintiff Justin Jernigan as to the situation as it unfolded and the relevant circumstances. Although Plaintiff Justin Jernigan is correct, there are cameras utilized at the entrance of the Kershaw County Sheriff's Office, this information is not recorded. Since the information is not recorded it is not able to be produced by Defendant.

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While Plaintiff Christine Jernigan and Mrs. Martin were engaged with Defendant during the stop, Plaintiff Christine Jernigan used her cell phone and spoke with Plaintiff Justin Jernigan on his cell phone. During the stop Deputy Branham, while standing in the rain, stood next to the passenger side of the vehicle to keep Mrs. Martin calm, and engaged in casual conversation with Mrs. Martin to ensure she was comfortable during the encounter. At some point during this encounter, Plaintiff Christine Jernigan volunteers her cell phone through the passenger side of her car to Deputy Branham for the sole purpose of allowing Deputy Branham to speak with Plaintiff Justin Jernigan. This conversation was, at all times, carried out through the use of personal cell phones of Plaintiff Justin Jernigan and Plaintiff Christine Jernigan. There is no record of this phone conversation. It is Defendant's belief; Plaintiff Justin Jernigan requested the body-worn camera of Deputy Branham for the purpose of capturing any information from this phone call. Unfortunately, this information is not available. It is not reasonable to believe the Kershaw County Sheriff's Office would record personal phone calls without probable cause.

June 28, 2022, Plaintiff Justin Jernigan called the Kershaw County Sheriff's Office allegedly to report a concern he had regarding the potential exploitation of a vulnerable adult, Mrs. Martin, at the Pinedale Residential Center. Plaintiff Justin Jernigan's phone call was placed by his personal cell phone. Deputy Branham was the person who was given the message to call Plaintiff Justin Jernigan to follow-up on the inquiry. Deputy Branham, utilizing his personal cell phone, contacted Plaintiff Justin Jernigan, and spoke with him about any concerns Plaintiff Justin Jernigan may have about the exploitation of a vulnerable adult. Deputies with the Kershaw County Sheriff's Office are not given cell phones to use for business purposes. Deputy Branham, was trying to use his personal resources to ensure the citizens of Kershaw County are being protected and cared for by any means available to him. Again, this phone conversation took place between two (2) personal cell phones; therefore, no recording of this conversation is available for Plaintiff Justin Jernigan to view. Defendant had no probable cause to record this

conversation, so a recording does not exist. Again, Defendant cannot provide Plaintiffs with more information than is available to Defendant and/or in Defendant's possession.

Plaintiffs' final request is for Defendant to provide any recording via body-worn cameras from Defendant regarding any encounters between Plaintiff Christine Jernigan and Defendant on June 29, 2022. Policies of the Kershaw County Sheriff's Office mandate the retention of body-worn cameras in certain situations. One of those situations involves retaining information for a specified period of time when it relates to a specific report number for an incident. As previously stated, this incident between Plaintiff Christine Jernigan and Defendant was identified by Deputy Arledge and Deputy Branham as a civil issue; therefore, no criminal report was generated. Without a criminal report, any information obtained by Defendant through a body-worn camera during the normal course of business will be downloaded at the end of each shift to a CD. The information located on the CD of each deputy will be purged to create space for new information in accordance with the records retention policy. Based on these circumstances, a stop involving a civil issue, with no corresponding report number was deleted from Defendant's system according to the times provided in Chapter 209 – Records.

INTERROGATORY #5: Please provide KCSO's basis, reasons and/or explanations and describe the circumstances of the underlying decision-making process, with respect to KCSO's assertions via email on July 25, 2022, that there are no public records falling within the reasonable scope of the 7/22/22 request to provide or make available for inspection.

ANSWER #5: Please see Defendant's Answer #4.

EXPLANATION #5: Defendant provided Answer #5 in good faith. Defendant's Answer #5 refers to Answer #4 because they deal with the same inquiry requesting the same information, however worded slightly different.

INTERROGATORY #6: Please provide KCSO's basis, reasons and/or explanations, including citation to any supporting authorities, for the assertion in KCSO's FOIA production cover letter dated August 18, 2022, that all "non-exempt" communications related records falling within the reasonable scope of the 7/22/22 request were provided or produced herewith.

ANSWER #6: Each relevant document and/or record in the possession of the Kershaw County Sheriff's Office and/or the Kershaw County Attorney were provided in good faith to Mr.

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Justin Jernigan to the best of our knowledge and ability based on the information provided in the FOIA Request on July 22, 2022.

EXPLANATION #6: Defendant provided Answer #6 in good faith. Defendant provided Plaintiffs with the only explanation it could in this situation. Defendants have in fact turned over each document in Defendant's possession or known to Defendant relating to the interactions of Plaintiff Justin Jernigan and Plaintiff Christine Jernigan with Defendant on June 28, 2022, and June 29, 2022. Again, Defendant cannot provide Plaintiffs with more information than is available to Defendant and/or in Defendant's possession. The only exempt record was the body camera footage that is no longer available.

INTERROGATORY #7: Please provide the identity of the KCSO personnel or other persons having responsibility for timely providing public records falling with in the reasonable scope of the 7/22/22 request pursuant to FOIA and describe the communications, steps and/or processes taken with respect to searching, obtaining, locating and/or producing these public records pursuant to the legal requirements of FOIA.

ANSWER #7: Please see Defendant's Answer #1. The person who initially responded to Mr. Jernigan's July 2022, FOIA Request, is no longer employed with the Kershaw County Sheriff's Office; therefore, we do not have access to the information requested.

EXPLANATION #7: Defendant provided Answer #7 in good faith. Defendant referred Plaintiffs to Answer #1 because Plaintiffs are essentially asking the same question as they posed in Interrogatory #1. Although this question was previously asked, Defendant's answer is the same as the previous version of the question because it is the only answer Defendant can provide. Again, Defendant cannot provide Plaintiffs with more information than is available to Defendant and/or in Defendant's possession.

INTERROGATORY #8: Please provide the basis, reasons and/or explanations, including citation to any supporting authorities, with respect to KCSO's assertions via email on August 18, 2022, that it considered all FOIA and non-FOIA matters raised by Plaintiffs to be "closed" at such time.

ANSWER #8: Kershaw County Sheriff's Office's statement via email on August 18, 2022, stating "all FOIA and non-FOIA matters raised by Plaintiffs to be 'closed' at such time" was made in good faith by the Kershaw County Sheriff's Office through the Kershaw County Attorney after exhaustive efforts were made above and beyond the statutory requirements to satisfy Mr. Jernigan's FOIA Request on July 22, 2022.

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EXPLANATION #8: Defendant provided Answer #8 in good faith.

INTERROGATORY #9: If KCSO contends that Plaintiffs are not entitled to receive any of the requested records falling within the reasonable scope of the 7/22/22 request, please provide KCSO's basis, reasons and/or explanations, including citation to any supporting authorities.

ANSWER #9: Kershaw County Sheriff's Office has not made a statement in any fashion relating to the stance Plaintiffs are not entitled to receive any of the requested records pertaining to Mr. Justin Jernigan's FOIA Request on July 22, 2022.

EXPLANATION #9: Defendant provided Answer #9 in good faith. Defendant provided Answer #9, which accurately although succinctly states Defendant has at no time provided any statement implying or stating Plaintiffs were not entitled to receive any information. Again, Defendant cannot provide Plaintiffs with more information than is available to Defendant and/or in Defendant's possession.

INTERROGATORY #10: Please identify, respectively, all portions of the communications-related records produced in response to the 7/22/22 request under KCSO's cover letter dated August 18, 2022, and the dash camera video under KCSO's cover letter dated August 24, 2022, that have been redacted, removed and/or omitted and for all identified redacted/omitted portions, describe KCSO's basis, reasons and/or explanations, including citation to any supporting authorities, for all such redactions, removals and/or omissions of public records (e.g. pursuant to FOIA).

ANSWER #10: Kershaw County Sheriff's Office and the Kershaw County Attorney at no time intentionally redacted any information and/or records which are not protected by privacy law(s). Those redactions were not related to communications records but to personnel files. We are not aware of any redactions to videos or audio. Redactions on paper are apparent and appropriate. The audio recordings were obtained from Central Dispatch and passed on to Plaintiff Jernigan in the same condition as received.

EXPLANATION #10: Defendant provided Answer #10 in good faith. Redactions to personnel files were made in accordance with law. If Plaintiff believes that any specific redaction is improper, the Defendant will consider that and respond appropriately. However, a blanket demand that all redactions are illegal is improper. Any records received from Central Dispatch were passed on to Plaintiff as received and without redaction. KCSO is not aware of any redactions being made by Central Dispatch.

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INTERROGATORY #11: Please identify and describe the roles of your records officer or other persons having legal responsibility for maintaining, retaining and disposing of your BWC data pursuant to State Law, Regulations and KCSO BWC data policies with respect to all BWC data falling within the reasonable scope the BWC sought in the Complaint.

ANSWER #11: Please see Defendant's Answer #1.

EXPLANATION #11: Defendant provided Answer #11 in good faith. The reason Defendant responded by referring Plaintiffs to Answer #1 is Plaintiffs are essentially asking the same questions regarding the same employees of Defendant.

INTERROGATORY #12: Please identify all governing BWC data policies relating to or affecting the creation, maintenance, retention and/or disposal with respect to BWC data falling within the reasonable scope sought in the Complaint.

ANSWER #12: Kershaw County Sheriff's Office Policy Manual: Chapter 508 – Body Worn Cameras.

EXPLANATION #12: Defendant provided Answer #12 in good faith. Defendant answered the question to the best of its ability based on the information in the possession of Defendant. At the time the question was answered it is impossible to understand exactly what Plaintiffs may be searching for regarding body-worn cameras. The best possible way to provide Plaintiffs with information is to provide them with the Chapter 508 – Body Worn Cameras utilized by the Kershaw County Sheriff's Office. The retention policy has also been provided.

INTERROGATORY #13: Please provide your basis, reasons and/or explanations, including citation to any alleged supporting authorities, as to why Plaintiffs are not entitled to receive any portion of the BWC data falling within the reasonable scope sought in the Complaint.

ANSWER #13: There is nothing to produce because data was written over in accordance with policy.

EXPLANATION #13: Defendant provided Answer #13 in good faith. See also S.C. Code Section 23-1-240(G)(1) and (g)(5) which provides that body worn cameras are not subject to FOIA and that a person that is the subject of a body worn camera or a civil litigant can request the recording pursuant to the South Carolina Rules of Civil Procedure the South Carolina Rules of Criminal Procedure or a court order. At that time, Plaintiff did not make a request pursuant to

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any pending proceeding under the rules of court or any court order as there was no such proceeding pending in General Sessions or Common Pleas. Therefore, body worn camera video was not subject to FOIA.

INTERROGATORY #14: If any of the BWC data falling within the reasonable scope sought in the Complaint has been destroyed or otherwise rendered unavailable, please identify all such BWC data and describe the underlying circumstances, including how or if applicable BWC disposal policies were or were not followed in this regard.

ANSWER #14: Please see Defendant's Answer #12.

EXPLANATION #14: Defendant provided Answer #14 in good faith. Further, throughout this proceeding and the discovery responses, Plaintiff has been informed that the body worn camera was not pulled for preservation and was written over in accordance with the retention schedule.

INTERROGATORY #15: If you contend that KCSO should not be required to bear the costs, expenses and/or fees of this action pursuant to FOIA, please provide your basis, reasons and/or explanations, including citation to any alleged supporting authorities.

ANSWER #15: Kershaw County Sheriff's Office should not be required to bear the costs, expenses and/or fees of this action related to Mr. Justin Jernigan's FOIA Request dated July 22, 2022, based on the fact the Kershaw County Sheriff's Office and the Kershaw County Attorney made every effort, in good faith, to go above and beyond the required actions of a Kershaw County Employee to satisfy the requests of Mr. Justin Jernigan based on the information provided in the FOIA Request on July 22, 2022. Further, Christine Jernigan is not a proper party entitled to costs and fees, as she never served a FOIA Request. Justin Jernigan is not a proper party entitled to fees as he is not a resident of South Carolina and therefore, is not entitled to bring an enforcement action.

EXPLANATION #15: Defendant provided Answer #15 in good faith. Defendant based all its actions from the July 22, 2022, FOIA request submitted by Plaintiff Justin Jernigan. As the requestor on the FOIA request, Plaintiff Justin Jernigan was the primary source Defendant used to search each record in its possession. As his requests were clarified over time, additional information has been submitted. At this point, KCSO believes that all information in existence responsive to his FOIA requests has been produced.

C. Motion to Amend Answer to Conform to the Evidence.

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At the hearing on this matter, the Defendant orally moved to be allowed to amend its answer to confirm to the evidence. In responding to the complaint, this Defendant admitted that Justin Jernigan filed the FOIA request on behalf of his mother. His mother is a Plaintiff in this proceeding. However, in reviewing the actual FOIA request, he did not file it on behalf of his mother. He was the only requestor. See Exhibit 1. That certainly is relevant to the response to the request. The Plaintiff is not prejudiced by correcting the pleadings to accurately reflect who the requestor was on the underlying FOIA request.

Amendments to the pleadings are to be liberally granted unless there is legal prejudice. A simple amendment to the answer causes no legal prejudice here. The KCSO should be allowed to amend to reflect the true FOIA requestor as that is certainly relevant to their responses and this action.

IV. CONCLUSION

Defendant is now, and at all times during the course of each interaction with Plaintiffs, acting and has acted in good faith with Plaintiffs towards the resolution of this situation. Defendant followed the Order of Judge Jocelyn Newman and adhered to as well as fully complied with the South Carolina Freedom of Information Act vis-à-vis Plaintiffs' requests withing the required 20 days from the hearing on December 19, 2022. Defendant has provided Plaintiffs with discovery responses, appropriate and timely in the legal community in South Carolina based on the normal customs and courtesies. Although, in retrospect, Defendant may have been able to provide answers with more detail than previously stated, at no time were any answers or requests for production done so in bad faith. Defendant has provided each document requested which exists in Defendant's possession.

(Signature to follow on page 22)

MORRISON LAW FIRM, LLC

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Attorney for Defendant

Columbia, South Carolina

May 30, 2023

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Kershaw
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2800782

Christine Jernigan et al
PLAINTIFF(S)

Sheriffs Office Kershaw County
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:

Plaintiff's Motion for Sanctions/Contempt, heard on April 27th, 2023 is denied. Formal order to follow.

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 06/02/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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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.

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Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW	)	**CASE NO.: 2022-CP-28-00782**
	)	
Christine Jernigan, et al.,	)	
	)	
Plaintiffs,	)	
	)	**NOTICE OF MOTION AND**
v.	)	**MOTION TO RECUSE, VACATE,**
	)	**AND REASSIGN; OR,**
Kershaw County Sheriff's Office,	)	**ALTERNATIVELY, TO RECONSIDER**
	)	**INTERLOCUTORY ORDER**
Defendant.	)	
	)	

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
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Email: justin.a.jernigan@gmail.com

This 14th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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APPENDIX OF EXHIBITS

- **Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt**

Ex. A: Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter to KCSO

Ex. B: Plaintiffs' First Set of Interrogatories (Nos. 1-15) served October 29, 2022

Ex. C: Plaintiffs' First Set of Requests for Production (No. 1) served October 29, 2022

Ex. D: KCSO's Answers served January 9, 2023, to Plaintiffs' First Set of Interrogatories

Ex. E: KCSO's Responses served January 9, 2023, to Plaintiffs' First Set of Requests for Production

- **Plaintiffs' April 24, 2023, Memorandum in Support of Motion for Sanction/Contempt**

Ex. F: Emails between Counsel for the Parties from January/February 2023

Ex. G: KCSO's Policy Manual, Chapter 209 - Records (first produced January 9, 2023)

Ex. H: SCCJA Training Catalog - Omnibus Adult Protection Act (Vulnerable Adults)

Ex. I: CFS2022-39009 (produced December 2, 2022)

Ex. J: CFS2022-39001 (produced December 2, 2022)

Ex. K: August 18, 2022, Cover Letter; Optical Disc; and CFS2022-39001

Ex. L: Letter of South Carolina Attorney General re: FOIA (page 4)

Ex. M: SCLEA Standards Manual, Chapter 15 - Communication

Ex. N: Pre-suit Emails – late July to late August 2022

Ex. O: December 5, 2022, Hearing Transcript before the Honorable DeAndrea G. Benjamin

Ex. P: KCSO Body Worn Camera Retention Schedules (first produced January 9, 2023)

Ex. Q: Orders from *Brown v. Elliot*, 3:14-cv-01188, D.E. 43 & 61 (D.S.C. 2016)

Ex. R: WIS News 10 Article - April 12, 2022

Ex. S: WIS News 10 Article - May 24, 2022

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Ex. T: December 19, 2022, Hearing Transcript before the Honorable Jocelyn C. Newman

Ex. U: April 24, 2023, Affidavit of Justin A. Jernigan

- **Plaintiffs' May 23, 2023, Post-Hearing Supplemental Email Brief**

Ex. V: Email Brief with Plaintiffs' Dec. 16, 2022, Pre-Hearing Brief, Attached

Ex. W: Email Brief with SCLEA, Chapter 14 – Records, Attached

- **Plaintiffs' July 14, 2023, Motion to Recuse, Vacate, and Reassign; or, Alternatively, to Reconsider Interlocutory Order**

Ex. X: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd

Ex. Y: Feb. 20, 2023, Affidavit of Susan Martin

Ex. Z: Order Approving Wrongful Death Settlement, *Blakely v. KCSO, et al.*, 3:10-cv-00707-JFA, D.E. 138 (D.S.C, March 22, 2013)

Ex. AA: Text Version of May 6, 2016, Washington Post article entitled "South Carolina's poisonous police culture: The death of Lori Jean Ellis"

Ex. BB: Definitions of "Might" and "May," Merriam-Webster's Online Dictionary, <www.merriam-webster.com>

Ex. CC: August 29, 2019, Memorandum to Attorneys/Parties with Discovery Motions, the Honorable Roger M. Young, Sr., South Carolina Circuit Court of the Ninth Judicial Circuit

Ex. DD: May 8, 2023, to May 9, 2023, Emails re: 30-Day Supplemental Briefing Schedule

Ex. EE: June 2, 2023 to July 5, 2023 Emails re: June 2, 2023, Order denying Plaintiffs' Motion for Sanction/Contempt

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PLEASE TAKE NOTICE THAT, pursuant to Judicial Canon 3E(1), CJC, Rule 501, SCACR, Plaintiffs respectfully move this Court: (*i*) for recusal of the Honorable Daniel M. Coble (the "Judge"); (*ii*) to vacate the Judge's June 2, 2023, Order denying Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt and further briefing (collectively, the "Underlying Motion"); and (*iii*) for the Underlying Motion to be reassigned for resolution.

Alternatively, pursuant to Rule 54(b), SCRCP, Plaintiffs respectfully move this Court for reconsideration, revision, and/or modification of the interlocutory June 2, 2023, Order denying the Underlying Motion.

I. INTRODUCTION

Judges must approach each case with an open mind, fairly enforce the rule of law, and render unbiased decisions. It is equally important for a judge to avoid conduct that would raise objectively reasonable questions as to whether his or her decision-making process was conducted in a fair and impartial manner. *See* John P. Freeman, Appearance of Impropriety, Recusal, and the Segars-Andrews Case, 62 S. C. L. Rev. 485 (2011). When a judge engages in conduct that places the impartiality of his or her decision into reasonable doubt, public faith in the integrity and independence of our judicial system is damaged.

Plaintiffs respectfully submit that a well-informed party, attorney, and/or judicial ethics observer (the "well-informed observer") would have reasonable questions regarding whether the Judge's decision-making process for the June 2, 2023, Order denying the Underlying Motion was fair and impartial. *See id.* at 488-89. As discussed herein below, the Judge's conduct and communications at the April 27, 2023, hearing and thereafter place the impartiality of the June 2, 2023, Order denying the Underlying Motion into reasonable doubt. *See infra*, §V. at ¶¶43, 50-51, 53, 64-79, and 82-84,

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Undersigned counsel has not only a duty to his client, but also an "independent responsibility as an officer of the court" to raise these appearance-based concerns so that the issues can be directly confronted, fully addressed, and resolved in a timely manner. *In re Bernard*, 31 F.3d 842, 847 (9th Cir. 1994). Taking any other course of action would risk "undermining public confidence in our judicial system." *Id.*

Alternatively, Plaintiffs respectfully submit that reconsideration, revision, and/or modification of the interlocutory June 2, 2023, Order is warranted pursuant to Rule 54(b), SCRCP, for the reasons of record and as further discussed below.

II. BACKGROUND

The present Motion is submitted to raise reasonably perceived appearance-based impartiality concerns from the perspective of the well-informed observer and does not question the Judge's subjective intentions or personal integrity.

A. The Parties and the Surrounding Circumstances

Defendant Kershaw County Sheriff's Office ("KCSO") is a county law enforcement agency which is believed to total around one-hundred officers, employees, and/or agents, including officers who provide security services during this Court's proceedings in Kershaw County. KCSO is represented in this case by experienced litigation counsel of record David Morrison, Esq. Mr. Morrison is a well-known local area attorney and has been defending cases filed against law enforcement agencies for over thirty years.

In contrast, Plaintiffs are private citizens who do not live in the local area and are appearing as strangers before this Court. Undersigned counsel is a North Carolina patent attorney making his first appearance in state court in the present case.

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In view of the status of the respective Parties and counsel in this case, and the surrounding circumstances, maintaining the appearance of judicial impartiality is particularly critical. This Court's decisions must be, and must appear to be, based solely on the facts of record and the law rather than inappropriate factors such as the identity or status of the respective parties or attorneys that appear before the Court.

B. The Relevant JMSC Records

The well-informed observer would be familiar with the relevant publicly available records of the South Carolina Judicial Merit Selection Commission ("JMSC").[1] The JMSC records show that the Judge previously served as an assistant solicitor for this Judicial Circuit for approximately five years, from November 2012 to July 2017. *See* 2021 JMSC Report at 50. Given that Kershaw County is part of this Judicial Circuit, and solicitors work in partnership with law enforcement on criminal matters, it would be reasonable for the well-informed observer to expect a higher level of care in the present case to avoid potential appearance-based partiality towards KCSO.

As also indicated in the JMSC records, before nomination and election to this Judicial Circuit beginning in January 2023, the Judge's prior civil discovery experience – i.e., the subject matter of the Underlying Motion – was relatively limited. As a candidate, the Judge candidly acknowledged and addressed the fact that the discovery rules of the SCRCP were a specific area that he would need to focus on if he were to be elected to the Circuit Court bench. *See* Nov. 17, 2020, JMSC Hearing Tr. at 129:25 to 130:7; Nov. 16, 2021, JMSC Hearing Tr. at 74:2-14.

The Judge's oral communications and conduct at the hearing on April 27, 2023, however, suggested that he took a dim view of Plaintiffs' February 10, 2023, "Rule 11" Letter (Ex. A) and

[1] The relevant JMSC reports and transcripts are accessible via the South Carolina Legislature's website. *See* <www.scstatehouse.gov/JudicialMeritPage/GeneralInfoJMSC/Judmerit.php>.

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the "serious allegations" leveled against KCSO and its attorneys via the Underlying Motion. *See infra*, §V. at ¶¶51-54. Undersigned counsel respectfully notes that he had never previously been forced to resort to motion practice to obtain written discovery and document production, much less to raise issues with respect to an opposing party and its counsels' concealment/destruction of relevant evidence. Attorneys have an ethical obligation to preserve and not to obstruct another party's access to potentially relevant evidence pursuant to S.C. R. Prof. Cond. 3.4, Rule 407, and to work with opposing counsel to resolve discovery matters without taking up this Court's valuable time and resources pursuant to the SCRCP. Undersigned counsel takes these important obligations seriously.

C. History of Plaintiffs' Dispute with KCSO

We are all fortunate to live in a country where we are born with certain inalienable natural rights. Our Founding Fathers believed that these rights are part of what it means to be a person. The Founders also understood that governments were only legitimate to the extent that they protected these rights, and that those that arbitrarily take them away have no moral authority.

On June 29, 2022, KCSO granted itself the unprecedented authority to "civilly commit" Plaintiffs' beloved mother and grandmother Ann Martin ("Mrs. Martin") to a privately-owned for-profit assisted living facility located in Kershaw County ("Pinedale"). *See*, *e.g.*, Ex. X hereto, Nov. 21, 2022, Aff. of Lt. Col. Billie Schreck, USAF, Ret'd.[2] Thereafter, neither KCSO nor its attorneys would agree to contact Pinedale and explain that they had made a mistake. Specifically, that it was unlawful for KCSO, Pinedale, or anyone other than a court of competent

[2] As previously noted in Plaintiffs' April 24, 2023, Memo at 5, n.3, a related case is pending before this Court, *Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (the "967 case"). Lt. Col. Billie Schreck's November 21, 2022, Affidavit, Ex. X hereto, is also of record in the 967 case.

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jurisdiction to prevent Mrs. Martin from exercising her fundamental rights, including her right to voluntarily leave the privately-owned for-profit facility with members of her own family (i.e., Plaintiffs).

In the present case, KCSO has concealed and destroyed evidence, and abused the discovery/FOIA process, to cover up the true facts and details of its cruel and senseless actions. Notably, KCSO destroyed all the first-hand body-worn camera evidence for which preservation was explicitly requested by Plaintiffs' counsel – orally and in writing – on multiple occasions. *See* Pls. April 24, 2023, Memo at 12-16.

Moreover, KCSO and its agent Kershaw County E-911/Dispatch have continued to conceal the June 29, 2022, audio recording of the Pinedale Administrator's approximately one-hour E-911 call. *See* Pls. April 24, 2023, Memo, Ex. I (CFS2022-39009). Specifically, on the morning of June 29, 2022, Pinedale's Administrator Phillip Hudson accused Plaintiffs of committing the "crime" of standing up for Mrs. Martin and her fundamental rights as a person to voluntarily leave his ~$5,000/month private prison. *Id.*; Feb. 20, 2023, Ex. Y hereto, Aff. of Susan Martin.[3] At this late date, Plaintiffs question whether the audio recording evidence of Mr. Hudson's fraudulent June 29, 2022, E-911 call still exists, or if this evidence has also been destroyed to cover up the true facts and details. *See* Pls. April 24, 2023, Memo at 10-11 & Ex. N at 21-24.

D. KCSO's History of Misconduct and Abusive Discovery/Litigation Tactics

South Carolina courts have long allowed evidence of prior or subsequent incidents to prove intent or lack of mistake. Under Rule 404(b), SCRE, evidence of prior or subsequent wrongful acts is admissible to prove a defendant's motive, the existence of a common scheme or

[3] Susan Martin's February 20, 2023, Affidavit, Ex. Y hereto, is also of record in the 967 case.

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plan, the absence of mistake or accident, and/or intent. *State v. Wiles*, 383 S.C. 151, 679 S.E.2d 172, 176 (2009). In sum, the existence of prior or subsequent acts provides some evidence as to the existence of similar acts. *Pittman v. Galloway*, 281 S.C. 70, 74-76, 313 S.E.2d 632, 635-36 (Ct. App. 1984); *Tate v. Mauldi*n, 157 S.C. 392, 403-04, 154 S.E. 431, 435 (1930).

Plaintiffs have submitted evidence demonstrating that KCSO and its pre-suit counsel, County Attorney Tommy Morgan, have a history of abusive discovery practices. These abusive discovery practices include conduct that the District of South Carolina has described in orders as "disturbing." Pls. April 24, 2023, Memo at 18 & Ex. Q. Moreover, the U.S. Court of Appeals for the Fourth Circuit described KCSO's "inaccurate statements" in discovery as "especially glaring" given that "in cases like this, *a video recording of the incident frequently becomes the pivotal piece of evidence in litigation*." *Id*. at 18-19, quoting *Brown v. Elliot*, 876 F.3d 637, 645-46 (4th Cir. 2017) (emphasis added).

KCSO's current counsel of record Mr. Morrison has also previously represented KCSO in a disturbing case which is the subject of a May 6, 2016, Washington Post article entitled "South Carolina's poisonous police culture: The death of Lori Jean Ellis." *See* Ex. Z, hereto, Order Approving Wrongful Death Settlement, *Blakely v. KCSO, et al.*, 3:10-cv-00707-JFA, D.E. 138 at 2 (D.S.C., March 22, 2013). Plaintiffs have attached a text version of the 2016 Washington Post article as Ex. AA hereto[4] but note that the official version is free to view by providing an email address.[5] The official online version of the Washington Post article includes

[4] The text version of the Article is available at <web.archive.org/web/20221206134141/https://www.washingtonpost.com/news/the-watch/wp/2016/05/06/south-carolinas-poisonous-police-culture-the-death-of-lori-jean-ellis/>.

[5] The official version of the Article is available at <www.washingtonpost.com/news/the-watch/wp/2016/05/06/south-carolinas-poisonous-police-culture-the-death-of-lori-jean-ellis/>.

chilling excerpts of video deposition testimony of the impartial South Carolina Law Enforcement Division ("SLED") investigators involved.[6]

KCSO's concealment and destruction of relevant evidence and abuse of the discovery/litigation process in this case is not a mistake or an accident. KCSO's concealment and destruction of evidence and abuse of the discovery/litigation process in this case is a calculated, intentional, and willful strategy. Borrowing the well-known baseball analogy, Plaintiffs are requesting that this Court serve as a neutral umpire by calling "balls and strikes;" i.e., fairly, and impartially, applying the governing law to the facts of record.

III. LEGAL STANDARDS

The Preamble of the South Carolina Judicial Canons begins, "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us." Judicial independence and fairness – and the risks that appearances of impropriety/partiality pose to public confidence in our legal system – are fundamental principles set forth in the aspirational heading statements of the first three judicial canons themselves: Canon 1 ("uphold the integrity and independence of the judiciary"), Canon 2 (avoid "the appearance of impropriety"), and Canon 3 ("perform duties … impartially"). The Preamble further specifies that "[w]hen the text uses 'shall' or 'shall not,' it is intended to impose binding obligations;" and "[w]hen 'should' or 'should not' is used, the text is intended as … a statement of what is or is not appropriate conduct but not as a binding rule."

A. Judicial Canon 3E(1) imposes a binding obligation on a judge to recuse when his or her impartiality might reasonably be subject to question

The text of Judicial Canon 3E(1) states that a judge "shall disqualify himself or herself" whenever "the judge's impartiality *might* reasonably be questioned" (emphasis added), and lists

[6] The KCSO officer who fired the fatal shot in the Ellis case currently serves as KCSO's Chief Deputy.

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non-limiting examples at subparts (a)-(d). Merriam-Webster's online dictionary indicates that "might" is used as the past tense of "may," and that "may" is "used to indicate possibility or probability;" e.g., "you *may* be right," or the "things you *may* need." Ex. BB, Definition 1(a), hereto.

Accordingly, recusal is the appropriate course "whenever the judge's impartiality" is, possibly or probably, subject to reasonable question. The commentary of Judicial Canon 3B(5) provides that:

> A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

B. The text of Judicial Canon 3D(1)-(2) collectively states that a "judge who receives information indicating a substantial likelihood that a lawyer [or judge] has committed a violation of the Rules of Professional Conduct [or the CJC] … should take appropriate action"

The above-quoted "should" text of Judicial Canon 3D(1)-(2) is intended as a statement as to what the appropriate course of judicial conduct is when a judge receives information indicating a substantial likelihood that a lawyer or judge has committed a violation of the Rules of Professional Conduct or the CJC. The commentary to Judicial Canon 3D(1)-(2) (emphasis added) explains that – upon receiving information indicating a substantial likelihood that a lawyer or judge has committed a violation – the appropriate course of judicial conduct may include "direct communication with the judge or lawyer who has committed the violation, *other direct action if available*, and reporting the violation to the appropriate authority or other agency or body."

Plaintiffs have provided information to this Court indicating a substantial likelihood that relevant records/evidence have been unlawfully concealed and destroyed, or spoliated, in

violation of at least S.C. R. Prof. Cond. 3.4, Rule 407, SCACR. *See* Pls. April 24, 2023, Memo at 12-21. The relief requested in Plaintiffs' April 24, 2023, Memorandum constitutes "other direct action," pursuant Judicial Canon 3D(2), that is presently available to this Court in order to uncover the true facts and resolve whether, and/or to what extent, the Rules of Professional Conduct have been broken. Notably, the relief requested in Plaintiffs' April 24, 2023, Memorandum includes: "Order KCSO's counsel to submit verified statements describing the efforts taken to preserve relevant records/evidence relating to the subject matter of this case and all relevant records/evidence that have been erased, destroyed, and/or otherwise rendered unavailable by KCSO." *Id.* at 1-2.

C. Interlocutory orders are subject to revision any time prior to entry of final judgment pursuant to Rule 54(b), SCRCP

With respect to Plaintiffs' alternative request for reconsideration, revision, and/or modification of the interlocutory June 2, 2023, Order denying the Underlying Motion, Rule 54(b), SCRCP, states that "any order or other form of decision, however designated, which adjudicates fewer than all the claims … is subject to revision at any time before the entry of judgment adjudicating all the claims." The South Carolina courts do not appear to have interpreted and applied Rule 54(b), SCRCP, but the Fourth Circuit has held, with respect to Fed. R. Civ. P. 54(b), that "a district court retains the power to reconsider and modify its interlocutory judgments … at any time prior to final judgment when such is warranted." *American Canoe Ass'n v. Murphy Farms, Inc*., 326 F.3d 505, 515 (4th Cir. 2003). Accordingly, the power to reconsider and modify interlocutory orders is a matter committed to the discretion of the trial courts.

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IV. STANDARD OF REVIEW

The South Carolina Supreme Court, in *Shaw v. State*, held: "After much consideration of the authorities, we conclude that as a general rule the judge, in determining whether to proceed [or recuse], must accept as true the factual allegations of a motion to disqualify." 276 S.C. 190, 192-93, 277 S.E.2d 140, 141-42 (1981) (citations omitted). The allegations relating to the hearing on April 27, 2023, for the Underlying Motion are necessarily cast in general terms currently because Plaintiffs do not have a copy of the official transcript. Plaintiffs respectfully defer to the relevant portions of the official transcript as to the specific communications at the hearing on April 27, 2023, which are generally described herein below.

Judicial bias or prejudice is improper when it stems "from extrajudicial sources;" i.e., "considerations other than what the judge learned from his [or her] participation in the case" based upon the record before the court. *Mallett v. Mallett*, 323 S.C. 141, 145-46, 473 S.E.2d 804, 807-808 (Ct. App. 1996) (citations omitted). The South Carolina Supreme Court has also held that "a judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record." *Ellis v. Procter and Gamble Distributing Co*., 433 S.E.2d 856, 857, 315 S.C. 283, 285 (1993).

V. ALLEGATIONS AND ARGUMENT

Plaintiffs will not restate all the reasons supporting the relief requested by the Underlying Motion but provide a summary below at ¶¶1 to 37. The well-informed observer is assumed to possess knowledge regarding the record in this case and the controlling legal standards applicable to the Underlying Motion.

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A. The Underlying Motion

1. Plaintiffs' First Set of Interrogatories (Nos. 1 to 15) and Requests for Production (No. 1) were served on October 29, 2022. Pls. Feb. 23, 2023, Mot., Exs. B & C.
2. "An affirmative duty does exist to answer interrogatories and respond to requests to produce." *CFRE, LLC v. Greenville County Assessor LLC v. Greenville County Assessor*, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011).
3. No answers, responses, or objections were, however, provided by KCSO before the expiration of the December 5, 2022, deadline as required by the SCRCP.
4. KCSO's counsel would not voluntarily agree to provide discovery as required by the SCRCP when counsel for the Parties discussed the matter pursuant to the requirements of Rule 11(a), SCRCP, on December 15, 2022.
5. Discovery pursuant to the requirements of the SCRCP, like a lawsuit itself, "is not a children's game, but a serious effort on the part of adult human beings to administer justice." *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992).
6. KCSO's failure to provide any timely objections to Plaintiffs' First Set of Discovery Requests resulted in waiver of all objections. *See Mills v. E. Gulf Coal Preparation Co*., 259 F.R.D. 118, 132 (S.D. W. Va. 2009) ("Failure to state objections specifically in conformity with the Rules will be regarded as a waiver of those objections."); *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006) ("[F]ailure to make particularized objections to document requests constitutes a waiver of those objections.").[7]
7. The South Carolina Court of Appeals has held that "the text of Rule 37 SCRCP tells us a party does not even need to file a motion to compel to request a sanction for another party's

[7] *See also* Ex. CC, hereto, August 29, 2019, Memo to Attorneys/Parties with Discovery Motions at 2, n.2, the Honorable Roger M. Young, Sr., South Carolina Circuit Court of the Ninth Judicial Circuit.

failure to answer a properly served discovery request." *Richardson v. Twenty-One Thousand & no/100 Dollars ($21,000.00) United States Currency & Various Jewelry*, 430 S.C. 594, 598-99, 846 S.E.2d 14, 16 (Ct. App. 2020).

8. At the hearing on December 19, 2022, Plaintiffs requested that the Honorable Jocelyn C. Newman order KCSO to respond to Plaintiffs' outstanding First Set of Discovery Requests pursuant to the requirements of the SCRCP. *See* Pls. April 24, 2023, Memo., Ex. T.
9. At the hearing on December 19, 2022, KCSO's counsel stated that KCSO's answers, responses, and document productions were "very close to being finished. … [Plaintiffs' counsel] Justin [Jernigan] wants them [i.e., the interrogatory answers] verified, *so we have to go get someone to verify them* from the sheriff's department." *Id.*, Ex. T at 11:12-16 (emphasis added).
10. The above quoted statements by KCSO's counsel to Judge Newman at the December 19, 2022, hearing demonstrate that KCSO agreed to provide verified interrogatory answers to Plaintiffs in compliance with the requirements of Rule 33(a), SCRCP.
11. Judge Newman ordered KCSO to provide its answers, responses, and productions – and to fully respond with respect to the relevant records of Plaintiffs' July 22, 2022, FOIA Request (Compl, Ex. A) – within 20 days, i.e., by January 9, 2023.
12. Judge Newman's December 19 and 28, 2022, Orders were orders "to provide or permit discovery" pursuant to Rule 37(b)(2), SCRCP. *See Kershaw County Bd. of Ed. v. US Gypsum Co*., 302 S.C. 390, 96 S.E.2d 369 (1990) (holding that an order that was entered during a pre-suit hearing requiring the plaintiff to notify the defendant prior to beginning asbestos abatement work was an order "to provide or permit discovery" pursuant to Rule 37(b)(2), SCRCP).

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13. On January 9, 2023, however, KCSO served unverified, evasive, and incomplete answers to Interrogatory Nos. 1 to 15, and improper/incomplete responses to Request for Production No. 1. *See* Pls. Feb. 23, 2023, Mot., Ex. A at 3-17 (quoting Exs. B, C, D and E).

14. Rule 37(a)(3), SCRCP, states that "an evasive or incomplete answer is to be treated the same as a failure to answer."

15. KCSO also failed to provide any responses addressing the relevant records of Plaintiffs' July 22, 2022, FOIA Request by the court-imposed January 9, 2023, extended deadline.

16. Plaintiffs' counsel followed up by sending emails on January 10 and 12, 2023, to KCSO's counsel requesting verified interrogatory answers, as required by Rule 33(a), SCRCP – and as agreed to by KCSO's counsel in December 2022 – but undersigned counsel's January 2023 email correspondence was ignored by KCSO's counsel. *See* Pls. Feb. 23, 2023, Mot., Ex. F.

17. On February 10, 2023, Plaintiffs served their Rule 11(a), 10-Day Letter describing KCSO's discovery and FOIA deficiencies, and requesting supplementation, correction, and/or clarification to address these issues. *See id.*, Ex. A at 3-17.

18. Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter provided KCSO with a fully integrated document that, in summary: (*i*) quoted all of Plaintiffs' respective Interrogatories and Requests for Production that were at issue; (*ii*) inserted the relevant definitions into the text of the Interrogatories, in brackets, for each of the defined terms of Plaintiffs' First Set of Interrogatories (i.e., the capitalized terms) for the convenience of the reader; (*iii*) quoted all of KCSO's respective unverified Answers and Responses at issue; and (*iv*) provided reasons why supplementation by KCSO was needed to provide full, complete, and understandable

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answers, responses, and productions in the context of the present case and pursuant to the SCRCP. *See* Pls. Feb. 23, 2023, Mot., Ex. A at 3-17.

19. Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter was submitted to KCSO in a good faith effort to fully address and amicably resolve the outstanding discovery and FOIA matters in accord with the requirements of Rule 11(a), SCRCP.

20. KCSO did not, however, respond by addressing any of the discovery or FOIA deficiencies described in Plaintiffs' Rule 11(a), 10-Day Letter, and did not otherwise reach out to Plaintiffs' counsel to discuss these issues.

21. KCSO's counsel did, however, send a brief email to Plaintiffs' counsel on the afternoon of February 20, 2023, indicating that KCSO was planning to provide its verified interrogatory answers "within the next day or two;" i.e., by February 22, 2023. *See* Pls. Feb. 23, 2023, Mot., Ex. F.

22. KCSO, yet again, failed to provide verified interrogatory answers on February 22, 2023.

23. KCSO's counsel did not otherwise contact Plaintiffs' counsel on February 22, 2023, to discuss the outstanding discovery/FOIA issues.

24. Plaintiffs were forced to file their Motion for Sanctions/Contempt on February 23, 2023, because of KCSO's above-described refusal to meaningfully participate in the discovery/FOIA process.

25. Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt cited and was supported by Plaintiffs' attached February 10, 2023, Rule 11(a), 10-Day Letter (Ex. A); Plaintiffs' First Set of Discovery Requests (Ex. B & C); KCSO's unverified Answers and Responses (Exs. D & E); and related January to February 2023 email correspondence between counsel for the Parties (Ex. F).

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26. Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt described Plaintiffs efforts to resolve the outstanding discovery and FOIA matters without the need for seeking this Court's intervention, and KCSO's corresponding failure to respond or otherwise meaningfully participate.
27. Plaintiffs' counsel reached out to KCSO's counsel in reference to Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt within the subsequent weeks after the Motion was filed.
28. Plaintiffs' counsel did not receive any response from KCSO's counsel regarding the pending Motion at that time, but opposing counsel's office manager kindly noted that Plaintiffs' Motion would automatically be scheduled for hearing by the Clerk's Office in due course.
29. Thereafter, on March 28, 2023, the Clerk's Office published and circulated a Motions Roster setting Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt for hearing on April 27, 2023.
30. The March 28, 2023, Motions Roster indicated that Plaintiffs' supporting memorandum should be filed by April 24, 2023.
31. Plaintiffs' Memorandum with attached Exhibits G to U was filed on the morning of April 24, 2023, in accord with the instructions that were provided on March 28, 2023, via the Motions Roster.
32. Rule 6(d), SCRCP, states that supporting "affidavits may be served not later than two days before the hearing."
33. Plaintiffs' Exhibit U is an affidavit of undersigned counsel verifying that supporting Exhibits A to T are, based upon personal knowledge, true and correct copies as indicated.
34. Pursuant to Rule 6(d), SCRCP, Plaintiffs' Exhibit U was a timely-filed supporting affidavit.

35. Plaintiffs' Exhibits G, H, P, Q, R, and S were previously referred to in Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter (*see* Ex. A at 1, 4, 5, and 8), and the then yet-to-be-received December 19, 2022, hearing transcript (Ex. T) was referenced in the February 23, 2023, Motion for Sanctions/Contempt on page 1, n.1.

36. Certain of Plaintiffs' Exhibits G to T were previously submitted to Judge Newman and KCSO with (Exhibit V, hereto) Plaintiffs' December 16, 2022, Pre-Hearing Brief (i.e., Exs. I, J, L, N, and O) and to KCSO in February/March 2023 (Exs. H and T); certain others were previously produced by or otherwise within KCSO's custody, control, and/or knowledge (Exs. G & M); and certain others were District of South Carolina court orders involving KCSO (Exs. Q), a Letter of the S.C. Attorney General re: FOIA (Ex. L), and April/May 2022, WIS News articles concerning recent litigation involving KCSO (Exs. R & S).

37. As was previously the case with Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter, KCSO did not file any response to Plaintiffs' Motion or Memorandum prior to the hearing on April 27, 2023.

38. Plaintiffs' counsel prepared tabbed/labeled three-ring binders with copies of Plaintiffs' as-filed Cover Page, Table of Contents, Appendix of Exhibits, Memorandum, and most pages of Exhibits A to U to assist the Judge's review of the Underlying Motion.

39. The tabbed/labeled three-ring binders prepared by Plaintiffs' counsel were distributed to counsel for KCSO on April 27, 2023, during the morning recess and to the Judge at the beginning of the hearing.

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B. The April 27, 2023, Hearing for the Underlying Motion

40. At the beginning of the hearing on April 27, 2023, KCSO's counsel made an oral Motion asserting, for unspecified and unknown reasons, that Plaintiffs' Underlying Motion failed to satisfy the particularity requirements of Rule 7(b)(1), SCRCP.

41. KCSO's oral Rule 7(b)(1), SCRCP, Motion suggested that Plaintiffs' April 24, 2023, Memorandum and Exhibits G to U had unfairly surprised and prejudiced KCSO by raising previously unknown grounds.

42. Plaintiffs' timely-filed April 24, 2023, Memorandum, however, addressed well-known grounds previously addressed in Plaintiffs' December 16, 2022, Pre-Hearing Brief (Ex. V, hereto); February 10, 2023, Rule 11(a), 10-Day Letter (Ex. A); and February 23, 2023, Motion for Sanctions/Contempt.

43. The Judge granted KCSO's oral Motion pursuant to Rule 7(b)(1), SCRCP, without discussing or addressing the factual findings or conclusions of law supporting the ruling. *But see Ellis*, 433 S.E.2d at 587, 315 S.C. at 285.

44. After granting KCSO's oral motion pursuant to Rule 7(b)(1), SCRCP, the Judge indicated that both Parties would be allowed an additional thirty (30) day period following the hearing to submit supplemental briefing via email. *See also* Exs. DD, hereto, May 8, 2023, to May 9, 2023, Emails re: 30-Day Supplemental Briefing Schedule.

45. After the hearing on April 27, 2023, Plaintiffs' counsel discovered that Rule 7(b)(1), SCRCP, has been interpreted to require that the movant establish resulting prejudice as a consequence of any alleged violation of Rule 7(b)(1), SCRCP; e.g., by identifying responsive arguments that the moving party was unjustly precluded from asserting due to the alleged violation. *See*, *e.g.*, Ex. V, hereto; *M & M Group, Inc. v. Holmes*, 666 S.E.2d 262, 265, 379 S.C. 468

(Ct. App. 2008) (holding that although the defendant did not comply with the technical requirements of Rule 7(b)(1), SCRCP, the plaintiff waived the argument by failing to argue/show the trial court that the technical violation "prejudiced it or caused unfair surprise in any way") (citation omitted).

46. KCSO did not suffer any known/identifiable unfair surprise or prejudice, and, in any case, the additional thirty (30) day supplemental briefing period gave KCSO a full opportunity to present any potentially viable responsive arguments.

47. A cursory review of KCSO's May 30, 2023, supplemental brief/Response to the Underlying Motion reveals that – rather than opposing the relief requested by Plaintiffs' Underlying Motion – KCSO responded instead by providing *some* additional information which, of course, Plaintiffs were forced to file the Underlying Motion to obtain.

48. Rule 37, SCRCP, is drafted using mandatory "shall" language and should be fairly applied as written.

49. The South Carolina Supreme Court has reminded circuit court judges that "it is the duty of the circuit court to address and resolve discovery disputes" and that the "seldom-utilized rule for awarding fees and imposing sanctions, SCRCP 37, is available to deter discovery abuses." South Carolina Supreme Court, Administrative Order, 2021-06-03-02 (June 3, 2021).

50. Plaintiffs' counsel believes that the Judge, based upon unconscious extrajudicial sources/influences, expected that Plaintiffs' counsel was to blame for the fact that KCSO and its counsel were appearing before the Court facing an unopposed Motion for Sanctions/Contempt at the hearing on April 27, 2023.

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51. At the hearing on April 27, 2023, the Judge made troubling comments suggesting that KCSO's counsel likely ignored Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter because the Letter included "Rule 11" in its title which is generally associated with alleged attorney misconduct.

52. The Official Note to the 1989 Amendment to Rule 11(a), SCRCP, provides that "Rule 11(a) requires that a movant make a 'good faith' effort to resolve any dispute before filing a motion and to so certify in the motion unless the consultation would serve no useful purpose or could not be timely held. This is similar to the Local Federal Rule. … Consultation may be oral or written."

53. The Judge also expressed what Plaintiffs' counsel perceived to be disapproval of Plaintiffs' Underlying Motion at the hearing on April 27, 2023, stating that Plaintiffs were coming before the Court making "serious allegations" against KCSO and its counsel via the Underlying Motion.

54. The Underlying Motion is an unfortunate byproduct of the concealment/destruction of evidence and abusive discovery/litigation tactics that KCSO has voluntarily chosen to employ in this case, and in other cases.

55. After failing to file any response to the Underlying Motion prior to the hearing on April 27, 2023, KCSO also did not oppose or otherwise attempt to address any of the substantive spoliation of evidence, discovery, or FOIA matters of the Underlying Motion during the hearing itself.

56. At the hearing on April 27, 2023, KCSO only tried to oppose two background issues.

57. On May 23, 2023, Plaintiffs responded via supplemental email briefing with respect to Rule 7(b)(1), SCRCP, and the two background issues that were raised by KCSO's counsel at the

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April 27, 2023, hearing. Plaintiffs' May 24, 2023, supplemental email brief and the two supplemental supporting exhibits attached/appended thereto are attached as Exhibits V and W, hereto.

58. The primary background issue that was disputed by KCSO's counsel at the hearing on April 27, 2023, was the fact that KCSO's Policy Manual, Chapter 209 – Records, includes documentation/reporting requirements with respect to non-criminal citizen requests for services that KCSO officers are dispatched/assigned to investigate. *See* Pls. April 24, 2023, Memo. at 5.

59. KCSO's Policy Manual, Chapter 209 - Records, explicitly states that "documentation of law enforcement activity may be in the form of" CAD Reports, i.e., "Computer-aided Dispatch" logs/reports. *See* Pls. April 24, 2023, Memo, Ex. G at 11.

60. On December 2, 2022, KCSO did belatedly provide Plaintiffs with copies of two CAD (or CFS) Reports documenting KCSO's law enforcement actions taken on June 29, 2022, in response to the two relevant citizen requests for services it received, respectively, on June 28 and 29, 2023; i.e., CFS2022-39001 and CFS2022-39009. Pls. April 24, 2023, Memo, Exs. I & J.

61. It is obvious that KCSO's Records Department attempted to deceive Plaintiffs by falsely asserting in its July 25, 2022, FOIA Response that there were *no* records or reports documenting KCSO's relevant June 29, 2022, police activities because KCSO considered these incidents to be non-criminal, or so-called "civil," matters (i.e., crime-fraud).

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62. KCSO's July 25, 2022, FOIA Response stated in full:

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

Pls., April 24, 2023, Memo., Ex. N at 7.

63. Contrary to the record and KCSO's Policy Manual, Chapter 209 - Records, KCSO's counsel continued to assert at the hearing on April 27, 2023, that KCSO does not have any documentation or reporting requirements with respect to non-criminal citizen requests for services that KCSO officers are dispatched to investigate (e.g., CAD Reports). *But see Riddler v. City of Springfield*, 109 F.3d 288, 293 (6th Cir. 1997) (holding that a litigant has a continuing duty of candor and may be sanctioned for continuing to assert a position that is no longer tenable).

64. At the April 27, 2023, hearing, Plaintiffs' counsel suggested that KCSO's counsel submit a declaration from a KCSO Records Department officer/employee having personal knowledge stating, under penalty of perjury, that KCSO does not have any documentation or reporting requirements with respect to non-criminal citizen requests for services (e.g., CAD Reports).

65. The Judge's reaction and oral communications at the April 27, 2023, hearing in response to Plaintiffs' above-noted suggestion raise reasonable appearance-based partiality concerns when viewed objectively.

66. In response to undersigned counsel's above-noted suggestion, the Judge stated that opposing counsel Mr. Morrison was "an officer of the court," and indicated that opposing counsel's attorney arguments must therefore be accepted by Plaintiffs and the Court at face value.

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67. It is well established by the South Carolina courts, however, that attorney statements – "whether made during oral argument or in written briefs or memoranda" – are not evidence. *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986) (citation omitted).

68. Although the Judge may consider the arguments of counsel at the hearing, Plaintiffs respectfully submit that the Court must rely on the record created by the filings in this case, the SCRCP, FOIA, and the controlling case law to render its findings of fact and legal conclusions.

69. The Judge's reaction and oral communications at the April 27, 2023, hearing in response to Plaintiffs' above-noted suggestion improperly elevated opposing counsel's attorney statements or arguments into irrefutable evidence.

70. The Judge's reaction and oral communications at the April 27, 2023, hearing in response to Plaintiffs' above-noted suggestion equally suggest extrajudicial bias to undersigned counsel's own statements/arguments, which were also submitted in good faith as an officer of the court as well as pursuant to Rule 11(a), SCRCP, via the Underlying Motion.

71. At the hearing on April 27, 2023, the Judge also indicated that, in his prior experience serving as an assistant solicitor for this Judicial Circuit, defense attorneys had requested law enforcement records that they believed should exist but, upon discussion with law enforcement, the records did not exist (e.g., *Brady* material).

72. The Judge's above-noted oral communications suggest that the Judge's June 2, 2023, Order denying the Underlying Motion was swayed by extrajudicial sources outside of the record in this case.

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73. Near the conclusion of the hearing on April 27, 2023, the Judge stated that he would need to review Rule 33(a), SCRCP, to determine if KCSO was required to submit verified interrogatory answers.

74. KCSO's counsel Mr. Morrison stated that in his years of practice he had rarely, if ever, been asked to provide verified interrogatory answers pursuant to Rule 33(a), SCRCP.

75. As demonstrated above, however, Mr. Morrison had never previously objected to providing verified interrogatory answers as required by Rule 33(a), SCRCP, and had indicated to Judge Newman at the December 19, 2022, hearing that KCSO was going to provide verified interrogatory answers as requested by Plaintiffs.

76. Plaintiffs' counsel responded by noting that in his limited prior federal court experience verified interrogatory answers had always been exchanged pursuant to the same/similar language of the Fed. R. Civ. P. Rule 33(a)(3) counterpart, i.e., "Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath."

77. The Judge indicated that undersigned counsel's above-noted discovery experience under the Fed. R. Civ. P. Rule 33(a)(3) counterpart must be the "problem" with respect to the Underlying Motion.

78. Rule 33(a), SCRCP, however, explicitly requires that (emphasis added) "[e]ach interrogatory *shall be answered* separately and *fully in writing under oath*."

79. Given that the Judge's June 2, 2023, Order denied the Underlying Motion despite the explicit language of Rule 33(a), SCRCP, requiring verified interrogatory answers – and based upon the Judge's above-noted oral communications at the hearing – the decision-making process appears to have been improperly influenced by extrajudicial sources. *See Ellis,* 433 S.E.2d at

587, 315 S.C. at 285 ("a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record").

C. Communications Regarding the June 2, 2023, Order

80. On June 2, 2023, the Judge's law clerk instructed counsel for the Parties to prepare and submit a draft/proposed written order that supports the Judge's decision to deny Plaintiffs' Underlying Motion. Ex. EE, hereto, June 2, 2023, to July 5, 2023, Emails re: June 2, 2023, Order denying Plaintiffs' Motion for Sanction/Contempt, at 6.

81. Plaintiffs' counsel reached out to KCSO's counsel and briefly discussed the requested draft/proposed written order with opposing counsel's office manager, but did not receive any response from opposing counsel.

82. Plaintiffs' counsel followed up with the Judge's law clerk several times over the subsequent weeks requesting the findings that support the June 2, 2023, Order denying the Underlying Motion for purposes of preparing the requested draft/proposed written order. Ex. EE at 3-6.

83. On July 5, 2023, a WebEx virtual conference call was scheduled for July 19, 2023, to discuss the proposed written order denying the Underlying Motion. *Id.* at 2.

84. Viewing the circumstances from the perspective of the well-informed observer, the communications relating to preparing the draft/proposed written order to support the June 2, 2023, Order – and the lack of communication from KCSO's counsel – would likely raise objectively reasonable suspicions that "the fix is in." Freeman, 62 S. C. L. Rev. at 505.

85. Despite the appearance-based concerns discussed above with respect to Judicial Canon 3E(1) and the June 2, 2023, Order denying the Underlying Motion, Plaintiffs appreciate that the Judge issued his ruling within approximately one month after the hearing on April 27, 2023, as he had previously indicated that he planned to do.

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86. The text of Judicial Canon 3B(8) states that a "judge shall dispose of all judicial matters promptly, efficiently and fairly," and Plaintiffs respect the Judge's dedication to moving cases/motions forward promptly and efficiently.

87. In the related 967 case, Plaintiff Christine Jernigan – individually and as Mrs. Martin's representative – filed a Motion for Temporary Injunction on December 6, 2022, seeking temporary relief to prevent Mrs. Martin from suffering irreparable harm pending final resolution.

88. The most significant temporary relief requested via the December 6, 2022, Motion for Temporary Injunction was for this Court to confirm that Mrs. Martin is a citizen who possesses fundamental individual rights, including the right to voluntarily leave the privately-owned for-profit Pinedale facility with Plaintiffs, and to enjoin third parties from continuing to confine her to the Pinedale facility against her expressed and well-known wishes.

89. At present, the Motion for Temporary Injunction in the 967 case has been pending before this Court for a total of 220 days with no indication as to when or if any ruling will be issued. *But see* Judicial Canon 3B(8); *In re Atwater*, 397 S.C. 518, 528, 725 S.E.2d 686, 691 (2012) ("To use an oft-quoted phrase, justice delayed is justice denied.").

VI. CONCLUSION

For the reasons set forth above, Plaintiffs' faith in the integrity and independence of our judicial system has been damaged. Plaintiffs believe that the appropriate course is for the Judge to recuse himself, vacate the June 2, 2023, Order denying the Underlying Motion, and for the Underlying Motion to be reassigned for resolution. Alternatively, Plaintiffs respectfully request reconsideration, revision, and/or modification of the June 2, 2023, Order denying the Underlying Motion.

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RULE 11(a), SCRCP CERTIFICATION

Undersigned counsel of record, by the signing and filing of the above-captioned Notice of Motion and Motion, certifies pursuant to Rule 11(a), SCRCP, that he either (*i*) attempted to resolve this Motion with opposing counsel prior to filing the same, or (*ii*) maintains a good faith belief that such attempts to resolve the matter prior to the filing of this Motion would serve no useful purpose.

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029

This 14th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

EXHIBIT X

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW** Christine P. Jernigan and Ann B. Martin, by Christine P. Jernigan as her Agent, Plaintiffs, v. Sharon Wright, Defendant.	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT** **CASE NO.: 2022-CP-28-00967** **AFFIDAVIT OF LIEUTENANT COLONEL BILLIE SCHRECK, USAF, RET'D**

Personally, appeared before me the undersigned, who after being duly sworn, deposes, and says:

1. My name is Billie Schreck and I reside at 1302 Patriots Colony Drive, Williamsburg, VA 23188.
2. I retired as a Lieutenant Colonel from the United States Air Force on April 1, 1992, where I served as a Transportation Officer from June 30, 1971 to April 1, 1992.
3. After retiring from the United States Air Force, I began working at the South Carolina State House Blatt Building ("State House Building") as a legislative aide in 1999. I then served as executive assistant to the House Labor Commerce and Industry Committee until I stopped working there in August 2015.
4. I know Ann B. Martin ("Annie") personally and spent 17 years commuting from the Camden, SC area to the State House Building in downtown Columbia, SC with her to work while she was Manager of the State House Building and I served in my various roles.

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5. During our 70 miles of commuting each work day, Annie and I discussed everything from her family, her estate plan, her plans for her later years, her successes, her failures, how to solve the world's problems and everything in between.

6. I moved to Williamsburg, Virginia in September of 2015 and have resided there since that time.

7. At least two years prior to Annie's retirement in late 2013, she was showing signs of significant mental changes including repeating things and being confused.

8. During that period in approximately 2011, Annie would constantly repeat stories over and over without realizing that she already told the same story prior to retelling it again.

9. During that period in approximately 2011, Annie was also often confused about what day of the week it was and would get up to go to work on Sundays without realizing that Sunday is not a work day because she simply didn't realize it was Sunday.

10. Prior to Annie retiring in late 2013, I had many discussions with other workers at the State House Building about Annie's mental decline, her inability to perform work tasks, and that her co-workers were covering work tasks for her as much as they possibly could because they loved her and didn't want to see her embarrassed by not being able to perform those work tasks properly and being called out on that inability.

11. Annie discussed her estate plan, expectations for her later years and her wishes for her later years with me on many occasions during our friendship and commutes back and forth to the State House Building.

12. Annie's primary expectation was to be lovingly cared for by her two daughters and she was absolutely certain that neither one of them would ever place her in a facility in her later years.

13. Annie dreaded the idea of being put in a facility and told me emphatically, on numerous occasions, that she did not want to ever want to live in a facility.

14. Annie made it clear to me on many occasions that she planned to not be put in a facility at any point in her later years and that her plan was for her sweet daughters to take care of her.

15. Annie took me to see the mother-in-law suite, or detached garage with finished room above the garage, at Sharon's residence on two occasions.

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16. Annie took me to see it once when it was being built and then another time once it was completed.
17. Annie expressed to me her excitement that the finished room over the detached garage was going to be her home in her later years.
18. Annie stated that she paid for the construction of the detached garage and finished room over the garage because she was going to live in it in her later years.
19. Prior to the construction of the detached garage and finished room over the garage at Sharon's home, Annie expressed to me how much she loved staying with Christine, having her own space there at Christine's house, spending time with Christine's family and their dogs in Seneca as well.
20. Annie also told me that her estate plan was to leave all of her property and assets equally to both of her daughters and have them equally involved in carrying out her wishes.
21. Annie expected that leaving everything equally to both daughters would ensure that everything would be okay between them in her later years.
22. Annie absolutely did not want to move to the South Hill Condo from her Laurens Street House in 2013 when she made that move.
23. Annie wanted to stay in her house next door to her friends.
24. I wanted Annie to move to the South Hill Condo so I could keep an eye on her as I lived next door to the South Hill Condo, I was worried about her living alone and I knew I could walk next door to check on her if she lived right next to me.
25. When she lived at the South Hill Condo, I would watch for her car to come back every time she went out due to my worrying about her.
26. Annie told me the South Hill Condo was an investment property for Sharon and Jim and she only paid the utilities while she lived there.
27. I was very close friends with Annie while I lived in the Camden, SC area.
28. I moved to Williamsburg, Virginia in September 2015.
29. By the time I moved, Annie's mental decline was so severe that she wouldn't know who I was a lot of times when we would speak to each other.

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30. I talked to Annie a few times on the phone after I moved, but Annie didn't remember who I was on most of those occasions so I have lost touch with her since moving since talking to her now is nothing like talking to her before her mental decline.

31. I did call her once in the middle of a year after I moved and she thought it is was Valentine's Day even though it was June or July of that year.

32. When I first met Annie, she was sharp as a whip, a tough cookie and she ran the State House Building with an iron fist or as a tight ship.

33. It was heartbreaking for me to witness Annie's mental decline and her inability to know who I was when spoke as her mental decline progressed over the years.

34. Annie trusted Sharon and Christine to take care of her, never put her in a facility and share equally in the fruits of her labor.

35. I am saddened to hear that Annie now lives in a facility against her clearly expressed wishes and her daughters are in a contentious situation with each other.

Further the Affiant Sayeth Not.

Lt. Col. Billie Schreck, USAF, Ret'd

Sworn to before me on this the

21st **day of** November **, 2022.**

(L.S.)
Notary Public for State of Virginia

My Commission Expires: 03/31/2023

ERIN CAITLIN McCANTS
NOTARY PUBLIC
REG # 7847854
MY COMMISSION EXPIRES
3/31/2023
COMMONWEALTH OF VIRGINIA

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EXHIBIT Y

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW** Christine P. Jernigan and Ann B. Martin, by Christine P. Jernigan as her Agent, Plaintiffs, v. Sharon Wright, Defendant.	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT** **CASE NO.: 2022-CP-28-00967** **AFFIDAVIT OF SUSAN MARTIN**

Personally appeared before me the undersigned, Susan Martin, who being duly sworn, deposes and states as follows:

1. I am over the age of 18, of sound mind and competent to attest to the matters alleged herein.

2. I reside in the County of Kershaw at 1114 Laurens Street, Camden, SC 29020.

3. I am related to Mrs. Ann Martin ("Mrs. Martin") through marriage as she was married to my late father, Laurence ("L.K.") Martin from June 28, 1980 through his death on June 14, 2005.

4. I have known Mrs. Martin and her two adult daughters, Christine P. Jernigan ("Mrs. Jernigan") and Sharon Wright ("Mrs. Wright"), for approximately 60 years.

5. Mrs. Martin is my step-mother and Mrs. Jernigan and Mrs. Wright are my step-sisters.

6. I have spent many happy holidays and beach vacations with Mrs. Martin and my step-sisters and I have participated in other memorable events with them over the years.

7. I have a lot of love and affection for both Mrs. Martin and my step-sisters.

8. I had little contact with Mrs. Martin between March 2006 and July of 2017, but have been involved in Mrs. Martin's life since I met her other than during that period.

9. I have visited with Mrs. Martin many times since we reconnected in July of 2017.

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10. Over the years, I have worked as a legal secretary/ paralegal; as a life and disability claims administrator for Social Security Disability and for the Companion Life division of Blue Cross/Blue Shield of South Carolina ("Companion Life"); as warrants clerk for the Kershaw County Sherriff's Office; and as activities therapist for Karesh Long Term Care and Rehab ("Karesh").

11. During my years with Social Security Disability, Companion Life and at Karesh, I received training and provided care to patients with diagnoses of Alzheimer's Syndrome and dementia.

12. My purpose in providing this affidavit is to make sure that Mrs. Martin's health and well-being are protected.

13. I have no personal knowledge of any medical diagnoses Mrs. Martin may have received and this affidavit is based strictly on my personal interactions with, and observations of, Mrs. Martin.

14. I have seen a significant decline in Mrs. Martin's physical, psychological and emotional well-being since she was placed at Pinedale Residential Care Facility ("Pinedale") in May of 2022.

15. Pinedale is an assisted living facility, or residential care facility, as opposed to a nursing home.

16. As an assisted living facility, Pinedale is not equipped or staffed to provide they type of hands-on care Mrs. Martin appears to need at this stage in her life.

17. Mrs. Martin has lost a significant amount of weight since she was placed at Pinedale to the point where she is visibly emaciated.

18. I have personally observed that Mrs. Martin does not independently leave her room at meal time to eat and she requires encouragement to leave her room to go to the dining room to eat.

19. Mrs. Martin seems to not recognize that it is meal time when it is meal time, and she usually replies either that she has just eaten or that she does not care for anything when asked if she is hungry at meal time even if she hasn't eaten anything.

20. I have personally observed trays of food being brought to Mrs. Martin's room and left on her dining room table in her room at meal times in lieu of her walking down to the dining room to eat.

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21. When the trays of food are left on Mrs. Martin's dining room table in her room at meal times, she is usually sitting on her couch watching television and Pinedale's staff will tell her to enjoy the meal then they will leave the room with the tray of food on the dining room table.

22. If Mrs. Martin does not have a visitor with her who encourages her to eat, at the time the tray of food is left in her room during meal time, the tray of food will sit there untouched until staff return and remove from Mrs. Martin's room.

23. Mrs. Martin is significantly better at eating when she eats with others as she will watch other people eating in her presence then eventually mimic that eating behavior if those present encourage her to eat.

24. I believe Mrs. Martin's inability to recognize hunger, to independently navigate her way to the dining room and to independently eat food which is placed before her have contributed to her significant and observable weight loss over the past nine months.

25. Pinedale does not have the capability to properly manage Mrs. Martin's needs regarding encouraging her to eat on a meal by meal basis due to a lack of staff, lack of training and their institutional inability as an assisted living facility rather than a nursing home.

26. Mrs. Martin has always been a gregarious, fun-loving person who enjoys being around family and friends.

27. I have personally observed that Mrs. Martin enjoys herself when in the company of others in the dining room, activity room and on the porch at Pinedale, but she is currently unable to independently get herself to the dining room, activity room, porch or any other area of Pinedale to enjoy other people's company.

28. Pinedale's staff can remind Mrs. Martin of meals, but they cannot devote or expend the time necessary to ensure that Mrs. Martin actually leaves her room and arrives at any particular destination or event including meals.

29. In accordance with the above-outlined factors, Mrs. Martin spends the vast majority of her time at Pinedale inside her room with the door locked and the blinds closed watching television.

30. It appears Mrs. Martin is not capable at this time to independently initiate telephone calls as she does not appear to be able to look up telephone numbers and then place a call to that number, or even look up a number in her contacts in her phone and call that contact.

31. If Mrs. Martin's telephone rings, she is capable of answering it, but I am not aware of whether she possesses a telephone of her own at this time.

32. Since Mrs. Martin has been placed in Pinedale, I have seen a significant negative change in her emotional and psychological well-being.

33. When I go to visit Mrs. Martin at Pinedale, I have to knock on the door, explain to her who I am through the door in order to get her to open the door, and then she will allow me in once she verifies that she knows who I am by barely cracking the door and peeking out at me.

34. Mrs. Martin's placement at Pinedale is stunting her emotionally and I believe she is currently in jeopardy physically, emotionally and psychologically.

35. While I am not a doctor, it is obvious to me that Pinedale cannot provide for Mrs. Martin's current specific needs and I am concerned that Mrs. Martin cannot expect to enjoy her best quality of life while in Pinedale.

36. Mrs. Martin does generally flourish and thoroughly enjoy her life when she is outside of the facility and surrounded by family and friends.

37. I have observed Mrs. Martin during her interactions with each of her daughters over the last several months and she exhibits very different attitudes with each daughter.

38. I have noticed significant differences in Mrs. Martin's emotional and psychological well-being and state of mind depending on who she is visiting with between her two daughters and where they are located physically.

39. When Mrs. Martin is outside of Pinedale with Mrs. Wright, Mrs. Martin smiles, seems to enjoy herself and will even make conversation with strangers as they pass by, but her demeanor changes in a negative way very quickly when Mrs. Wright admonishes her or tells her to hurry up.

40. When Mrs. Martin is with Mrs. Wright and myself at Pinedale, Mrs. Martin is anxious, uncertain and she continually watches Mrs. Wright as though waiting for permission or for cues as to what to say or do.

41. Mrs. Martin is not her usual chatty and friendly self when she is with Mrs. Wright in the room at Pinedale.

42. Mrs. Martin is very much relaxed and more of her normal chatty, friendly self when she is with Mrs. Jernigan to the point that she will carry on conversations with complete strangers and she constantly reminisces about certain events in her past.

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43. During our family years together, I never observed such a stark and distinct behavioral difference in Mrs. Martin depending on which daughter she was in the presence of at that time.

44. I have observed these behavioral changes in Mrs. Martin depending on who she is in the presence of since July of 2017, but the changes have been significantly intensified since Mrs. Martin has been living at Pinedale.

45. Mrs. Martin is also very relaxed when I am visiting with her at Pinedale by myself.

46. Mrs. Martin and I never discussed her desires concerning estate planning or her living situation in her later years, but in all of my years being part of her family, I have never known Mrs. Martin to be anything other than fiercely protective of both of her daughters and she has always treated her daughters equally in all respects I have observed.

47. It is my belief that Mrs. Martin would want each of her daughters to be equally involved in any decisions concerning her care.

48. In fact, I believe that Mrs. Martin would be upset and find it unacceptable if either of her daughters were provided favoritism in their dealings with her.

49. One of the first indications I had of the change in Mrs. Martin's ability to independently care for herself or make decisions concerning her life and her care occurred in 2013 when I was working for the Kershaw County Sheriff's Office.

50. In 2013, Roderick Todd contacted me to advise me that Mrs. Martin had deeded her life estate in the property located at 1114 Laurens St ("Laurens Street Home") back to my brother and myself.

51. Prior to the day Roderick Todd called me and told me about the disclaiming of the life estate in the Laurens Street Home by Mrs. Martin, I was told by some family members and long-time friends that Mrs. Martin was exhibiting signs of Alzheimer's and/or dementia.

52. At the time of the disclaiming of the life estate in the Laurens Street Home by Mrs. Martin in 2013, I had no real contact with Mrs. Martin, Mrs. Wright or Mrs. Jernigan for approximately the prior seven years.

53. In the weeks following Roderick Todd's telephone call to me, Mrs. Wright told me on one occasion that Mrs. Martin needed to move from the Laurens Street Home because she was afraid to live there.

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54. On another date, Mrs. Wright told me that she and her husband had purchased the condominium where Mrs. Martin moved to after disclaiming her life estate in the Laurens Street Home because Mrs. Wright and her husband needed the tax write-off.

55. At the time and still currently, I have had great difficulty and an inability to understand why a previously strong-willed woman would elect to move out of her home of 30 years, which she owned free and clear to my understanding, and from the neighborhood she had lived in for 60 years to being a life in a condominium located in an area of town she had never lived and didn't know any of the neighbors to my knowledge.

Further the Affiant Sayeth Not!

Susan Martin

Susan Martin

Sworn to before me on this the

20 **day of** February, **2023.**

(L.S.)

Notary Public for State of South Carolina

My Commission Expires: 08/03/2032

MARY RAMEY
My Commission Expires
NOTARY
PUBLIC
August 3, 2032
SOUTH CAROLINA

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EXHIBIT Z

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Deloris Blakely, As Personal Representative of the Estate of Lori Jean Ellis, Plaintiff, vs. Kershaw County Sheriff's Office; Tyrell Coleman; South Carolina Department of Natural Resources; and Gregg Lowery, Defendants.	Civil Action No.: 3:10-cv-00707-JFA **ORDER APPROVING WRONGFUL DEATH SETTLEMENT**

This matter comes before the Court on a Petition of the above named Personal Representative seeking approval of a proposed settlement of a wrongful death and survival claim involving four defendants in the aggregate settlement amount of Two Million ($2,000,000.00) Dollars in actual damages. *See* ECF No. 130.

The Plaintiff filed the instant underlying action on February 12, 2010 as Personal Representative of the Estate of Lori Jean Ellis, alleging a claim for Wrongful Death on behalf of statutory beneficiaries and the estate pursuant to S.C. CODE ANN. §§ 15-51-10 through -60, and survival. Plaintiff alleged that certain of the Defendants shot and killed Lori Jean Ellis, the Plaintiff's decedent and her natural sister, on or about April 21, 2008 while they were attempting to serve four Magistrate's Court bench warrants at the home of Decedent during the nighttime. The Plaintiff alleged in her Complaint that the Defendants South Carolina Department of Natural Resources (SCDNR) and Kershaw County Sheriff's Department (KCSD) were negligent and grossly negligent in their training supervision and service of the warrants and that Defendants

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Coleman and Lowery, acting under color of state law, violated Decedent's Fourth Amendment rights to be free from excessive force while being arrested. Specifically, Plaintiff alleges that Defendants Coleman and Lowery used lethal force (by firing their weapons at Decedent) against the Decedent when she was not posing a threat of serious bodily injury or death to Defendants Coleman and Lowery. Plaintiff alleged that the use of this lethal force by Coleman and Lowery and the gross negligence of SCDNR and KCSD combined and concurred to proximately cause the death of the Decedent and resulting damages.

The Defendants all contest both the Plaintiff's assertion of liability and the material allegations in the Plaintiff's Complaint.

The court held a hearing on the Petition on March 21, 2013. Present at the hearing were Robert V. Phillips, attorney for the Plaintiff, and Michael Wren for Defendants SCDNR and Lowery and David Morrison for Defendants KCSD and Coleman. Plaintiff was also present.

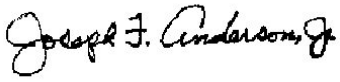
Having reviewed the Petition and the pleadings in the underlying wrongful death and survival action, having heard and considered the representations of counsel, and having heard the testimony of the Plaintiff, the court finds that the settlement of the action for a total payment of Two Million ($2,000,000.00) Dollars is in the best interest of the estate, which, other than a remaining balance of funeral expenses of Six Thousand Four-Hundred Seventy-One and 00/100 ($6,471.00) Dollars, has no creditors. The court finds that the allocation of the settlement proceeds, attorney fees and costs, and disbursements set forth in the Petition are reasonable and fair.

IT IS THEREFORE ORDERED that the settlement and payment of settlement proceeds, attorney fees and costs, and disbursements as set forth in the Petition be, and hereby are,

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approved. The Plaintiff is authorized to accept said sums and disburse them as directed by the Probate Court and execute a Release which will fully and finally settle the controversy between the parties.

IT IS SO ORDERED.



March 22, 2013
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

EXHIBIT AA

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Opinion South Carolina's poisonous police culture: The death of Lori Jean Ellis

By Radley Balko | May. 6th, 2016

Send to Kindle

Editor's note: This is part 1 of a four-part series.

Correction: *An earlier version of this post stated that Sean Groubert and Michael Slager both initially faced murder charges. However, the man Slager shot, Levar Jones, survived the shooting. Groubert was initially charged with assault and battery of a high and aggravated nature, the same charge to which he pleaded guilty.*

"To this day, if you live in Kershaw County and saw those media reports, you'd still think Lori Jean Ellis was just some crazy old black lady who opened fire on a bunch of cops," says Robert Phillips. "You'd think she got what she deserved."

Phillips is an attorney in Rock Hill, S.C., just across the border from Charlotte. He represented Ellis's estate in a lawsuit after her death. Ellis, 52, was killed on April 21, 2008, when an officer from the state's Department of Natural Resources (DNR) and two Kershaw County sheriff's deputies served a series of warrants on her home at about 11 pm.

Story continues below advertisement

In the ongoing national discussion about police brutality and lethal force, a common reform recommended by advocacy and activist groups is that police shootings be investigated by an outside organization. Police agencies shouldn't be trusted to investigate internally, the thinking goes, and prosecutors are too close to and dependent on local police to be impartial. Wisconsin recently passed a bill requiring all police shootings investigations be led by a law enforcement agency other than those involved in the shooting. The new policy has been well-received by both police groups and advocates for reform.

But the practice of outside agencies investigating officer-involved shootings has already long been common in South Carolina. With the exception of Richland County, all police shootings in the state are investigated by the South Carolina Law

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Enforcement Division (SLED), the free-floating police department that's commonly seen as the state's version of the FBI. In addition to officer-involved shootings, SLED has a panoply of other responsibilities, including terrorism investigations, technical training for other agencies, drug investigations, support for local agencies, arson investigations and alcohol regulation. SLED also conducts statewide investigations at the request of the governor or attorney general. Currently, local police agencies invite SLED in to investigate officer-involved shootings as a sort of custom, but the South Carolina legislature is now considering a bill that would require this in all officer-involved shootings in the state.

But within South Carolina, attorneys who handle police abuse cases say that not only isn't the model working, it may be allowing wayward law enforcement officers and agencies to operate with a sense of invincibility. Policing experts who reviewed the Ellis shooting and several other cases for this series seemed to agree: The model isn't working. There is no doubt that a proper oversight agency can do a lot of good. But an inept one can do a lot of harm — especially an inept agency that's perceived as competent.

Story continues below advertisement

On the night Lori Jean Ellis died, DNR Officer Gregg Lowery and Deputy William Sowell arrived at her home first, then radioed Deputy Tyrell Coleman for backup. According to the officers, they then rode Lowery's mostly unmarked DNR truck over Ellis' fence and around to the back of her home. They then maced her dog. They claimed to have called out to Ellis several times. When she didn't respond, they ripped open her back door with an animal control pole. That's when they say Ellis fired a high-powered rifle at them, and they responded with gunfire. Lowery fired two shots: one missed, and one grazed the top of Ellis's shoulder. Coleman fired the fatal shot, which struck Ellis in the back of the head.

The next day, Kershaw County Sheriff's Department spokesman Cpl. David Thomley told WISTV in Columbia that Ellis had an "extensive criminal history" dating back to 1972. He told WLTX TV that the officers "knew of her violent past so it was absolutely a necessity to have more than one officer go out there." He added that the county's residents should be both thankful for the officers' sacrifice and grateful that they escaped the raid unharmed. "It's also unfortunate for these officers that had to go through that and it's gonna be a tough time for them as well, but at the same time, you have to stop and give thanks that it didn't turn out any differently," he said.

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Within hours SLED investigators were on the scene in Kershaw County. The three deputies signed their statements at 2:20 a.m. the morning after the raid. Lowery described seeing a puff of smoke from the barrel of Ellis's gun. Coleman stated that he saw a muzzle flash. Sowell wrote that he heard a shot, and would later say his face was less than 10 feet away from the gun barrel when she fired what sounded to him like an SKS semi-automatic rifle, a weapon similar to an AK-47. All three officers claimed to have seen Ellis pointing the gun at them.

Three-and-a-half months later, SLED sent its report to W. Barney Giese, then the solicitor for South Carolina's Fifth Judicial District. (In South Carolina, district attorneys are called solicitors.) Based on SLED's report, Giese determined that the two officers who shot Lori Jean Ellis "were in reasonable fear for their lives," and therefore "were justified in discharging their firearms." All three officers were cleared of any wrongdoing. (Giese, incidentally, is now in private practice. He's currently the defense attorney for Sean Groubert, the former state trooper now awaiting sentencing for shooting unarmed motorist Levar Jones during a traffic stop. He did not return a request for comment.)

Despite Giese's decision, one needn't delve too far into the case to see some red flags. The warrant for which Lowery went to Ellis's home that night was a bench warrant for failure to appear in court for an open-container violation. The officers found three other outstanding warrants for Ellis, but all for what might be called "poverty crimes" — nonviolent crimes more the result of having little money than criminal intent. One was for driving on a suspended license, another for failure to turn over a suspended license and the last was for bouncing a $219 check.

Story continues below advertisement

Oddly, Lowery was off duty on the night of the raid. According to deposition transcripts, earlier in the day he had attended a city employee appreciation event on the other side of the county. Phillips estimates that Lowery drove about two hours out of his way to pull and serve the open-container warrant on Ellis.

The biggest red flag of all was that high-powered rifle that all three officers claimed they saw, the one that allegedly produced a muzzle flash, smoke and a 140-decibel boom — the equivalent of standing about 10 feet behind a jet engine. But Ellis's gun wasn't an an SKS rifle, or an AK-47 or a firearm at all. It was a BB gun. Because a pellet gun uses air pressure instead of gunpowder to propel its projectile, it isn't capable of producing a muzzle flash, a loud boom or a plume of smoke. The state crime lab also found no fingerprints on the weapon, according to

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the SLED report, despite the fact that the shellacked wood from which it was made should have been conducive to retaining prints. In fact, the lab couldn't even get the gun to function.

The more Phillips dug, the more problems he found. There was plenty of evidence inconsistent with the officers' narrative. The bullet trajectories (as calculated by SLED investigators, then confirmed by investigators for Phillips) rendered the officers' version of events next to impossible. And then there were the tactics themselves: Why did the officers drive a black, mostly unmarked DNR truck at 11 p.m. at night through Ellis's fence and into her back yard, mace her dog, and rip open her door with an animal-control pole, all to serve misdemeanor warrants for nonviolent crimes?

Such stories about botched raids, questionable police shootings and implausible statements from law enforcement officers aren't uncommon. But there was an additional and especially troubling component to Ellis's death. SLED investigators are supposed to be objective and impartial. Yet when looking into Ellis's death, they didn't pursue any of these inconsistencies, contradictions or questionable tactics.

Ellis certainly did have a criminal record, mostly for bouncing checks and failure to pay fines for traffic violations. She had a couple arrests for domestic violence, which Phillips says was the result of a relationship that while sometimes volatile, wasn't actually violent. "They'd have arguments, get angry, and one would call the cops on the other," Phillips says. None of those arrests resulted in a conviction. Ellis's only felony conviction was possessing a car that had been reported stolen. Phillips looked into the allegation and thinks that too was the result of an argument. "In poorer parts of South Carolina, people don't sell cars with all the paperwork. So someone doesn't pay someone back, or bounces a check for the agreed amount of the sale, and the seller might report the car stolen. It isn't like she hot-wired some car off the street." Ellis was convicted and given a sentence that was suspended if she paid the balance of what she owed on the car — about $400.

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Ellis was also a veteran who served as a nurse in the 1991 Gulf War and suffered from PTSD as a result, according to Phillips. She appears to have medicated with alcohol. One neighbor who otherwise remembered Ellis fondly added that she was often intoxicated, although not in a threatening way. She mostly lived off her

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pension and disability benefits. Neighbors described her as kind and generous with what she had. Ellis loved animals, and kept a lot of them on her property — chickens, pigs, goats, the occasional llama. In one deposition given several years later, a neighbor likened Ellis's home to Noah's ark. Ellis had no children of her own, but she welcomed neighbor children to her house. Photos of the inside of her apartment the night she died showed a collection of toys. She would sometimes surprise her neighbors by mowing their lawns while they were away.

In 2013, Kershaw County settled with Ellis's estate for $2 million — a hefty sum for a county of 60,000 people. It's an especially large settlement given that Ellis had no close relatives and died almost instantly. Damages are typically based on the survivors' relationship to the victim, and the amount of pain and suffering the victim endured. In Ellis's case, the money went to several half-siblings she hadn't seen in years. Nor did Ellis suffer much. She died within seconds.

"The county knew this was bad," Phillips says. "They wanted this case to go away."

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Outside oversight: no panacea

"There are two things you're looking for by having an outside agency investigate these shootings," says Seth Stoughton, a former police officer who now studies law enforcement and police law at the University of South Carolina School of Law. "You want the appearance of independence — you want the investigation to be legitimate in the eyes of the public. But you also want actual accuracy and objectivity. You need to have both."

An outside agency that doesn't achieve both may be worse than no outside agency at all. If the investigating agency has only the reputation of integrity and independence, but doesn't demonstrate either in practice, misconduct doesn't just go unpunished, it gets papered over. The public gets a false sense of security. Watchdog groups, journalists and social justice groups may be less likely to question shootings, or they'll be taken less seriously when they do. That can create a culture in which abuse and corruption flourish.

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Phillips, other attorneys across the state who have represented victims of police brutality and policing experts consulted for this series say there are signs that this is what's happening in South Carolina.

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"I like most cops," says Brian Gambrell, an attorney in Columbia who has litigated police abuse cases. "We need cops. I think most cops are hard-working people who have tough jobs and try to do the right thing. But we let the bad cops get away with things here. The policies I'm talking about don't protect the well-intentioned, hardworking cops. They protect the bad ones. Some of them start to think they're bulletproof."

Judging by recent headlines, South Carolina would seem to be a place where police shootings are taken seriously and where officers who shoot in error are held accountable. In just the past two years, two high-profile shootings resulted in criminal charges for a police officer: the shooting of Walter Scott by North Charleston police officer Michael Slager last April, and the shooting of Levar Jones by former state trooper Sean Groubert in September. Both shootings were caught on video. In March, Groubert pleaded guilty to assault and battery of a high and aggravated nature. He faces a possible sentence of up to 20 years in prison. Slager was indicted for murder in June. His trial is scheduled for October.

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There have been other incidents, too. In late 2014, Eutawville's then-police chief Richard Combs was charged with murder in the death of an unarmed Walter Bailey near a courthouse in 2011. After one mistrial, Combs in September pleaded guilty to misconduct. He was sentenced to a year of home detention. And North Augusta Officer Justin Craven is due to be tried on felony charges in the death of 68-year-old Ernest Satterwhite. Craven had tried to pull Satterwhite over on suspicion of driving under the influence. Satterwhite instead drove home. As he approached Satterwhite's car, Craven claims to have seen Satterwhite reaching for a gun. He fired through the passenger-side window, killing Satterwhite. But Satterwhite was unarmed. In each of these cases, the police officer was white, the victim was black, and the victim was unarmed. (**UPDATE**: In April, Craven pled guilty to "misconduct in office" — a misdemeanor.)

These particular high-profile cases from just the past few years seem to suggest that at least parts of South Carolina are more willing than most jurisdictions around the country to charge police officers with crimes after unjustified shootings and other incidents of excessive force. But critics such as Phillips say they're the exceptions that prove the rule. They argue that these are just especially egregious examples that attracted national attention and scrutiny, and that — with the exception of the Bailey shooting — have been captured on video.

Richard Harpootlian, a former Fifth Judicial Circuit solicitor who now works in private practice, says SLED investigations can be hit or miss, depending on the investigating agents. “You have regional officers who handle these cases, sometimes involving a department they used to work for,” he says. “It used to be that cops thought internal affairs departments were out to get them, that the investigators were looking to put a notch in their belt. SLED often errs too far the other way. We need something in between.”

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SLED investigations also only look at whether police officers committed a crime. They don’t look for civil rights or constitutional violations, or for patterns of excessive force with a particular police officer or agency, and they don’t make judgments about questionable tactics or use-of-force policies. But they’re commonly seen as the last word in these cases. A SLED investigation may only clear a police officer of criminal wrongdoing, but the public perception is that if SLED investigated and the cop was cleared, there’s nothing more to discuss.

To complicate matters, the final word on whether or not to charge a police officer rests not with SLED, but with the local solicitor. So when it comes to making the decision on whether to press charges, the alleged independence that comes with a SLED investigation is no longer relevant. “The local solicitors work with law enforcement every day,” says Harpootlian. “Those relationships can distort the sort of justice that you get in these cases.”

A solicitor can decline to press charges even when SLED finds significant wrongdoing on the part of a police officer. The Zachary Hammond case is a good example. Hammond was shot and killed by Seneca police officer Lt. Mark Tiller in a fast-food restaurant parking lot last July. According to Eric Bland, who represented Hammond’s family in their lawsuit, the SLED investigation found that Tiller put himself in harm’s way, then engaged in unnecessarily reckless behavior when he shot and killed Hammond as the teenager drove away. But two months later, 10th Judicial Circuit Solicitor Chrissy Adams declined to press charges against Tiller.

“We were mostly satisfied with the SLED report,” says Bland. “There were some problems with transparency, but the report itself was comprehensive. It was the solicitor’s refusal to press charges that was baffling.”

This can create a double layer of protection from criminal liability for the state’s law enforcement officers. If SLED finds no evidence of a crime, it’s unlikely that a

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local prosecutor will conduct a separate investigation. But even when SLED finds wrongdoing on the part of a police officer, which is rare, the local prosecutor — the same prosecutor that works with that department on a daily basis — can still decline to indict.

"In the end, I think police officers in South Carolina get the sort of presumption of innocence that everyone ought to get," says Harpootlian. "Unfortunately, it's only police officers who seem to get it."

The death of Lori Jean Ellis is a vivid illustration of the problem. Though SLED investigators showed up at the scene of the shooting within hours, the three officers were then permitted to sit in a room together unmonitored before a SLED investigator interviewed them and took their statements. That already is problematic. "You just don't do that," says law professor Stoughton. "It's investigation 101, whether you're investigating police officers, suspects, or witnesses. You separate them to be sure you get independent statements."

But a recent investigation by a team of reporters at the (Charleston) Post and Courier found that SLED routinely lets officers collaborate, talk to their attorneys and take a night or two to "sleep on it" before they're asked to give a statement or sit for an interview. One officer was allowed to wait 28 days before giving a statement. Others gave statements via email.

Despite the fact that there were five houses around Ellis's, SLED investigators only interviewed one of her neighbors. One neighbor they didn't interview, a juvenile justice officer and former corrections officer, would later testify in a deposition that she heard the raid go down. By her account, there were just three shots fired, not four, which would have been necessary to verify the officers' account. (She did say she heard an initial shot well before she heard the subsequent three shots in a row. Phillips says he thinks one of the deputies initially shot out the security light in Ellis's yard. The officers say it was shot out by the SWAT team that responded after the raid. The neighbor's account corroborates Phillips's theory.)

The SLED investigators took measurements of the bullet trajectories, but they made no apparent effort to determine whether the trajectories were consistent with the officers' accounts. A more thorough investigation would have found that trajectories strongly suggest that the raid couldn't have happened the way the officers claim it did. Deputies Coleman and Sowell said Ellis was standing at the door with her gun when she fired at them; Lowery claimed she pointed it at them

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as she charged down a short hallway. But based on the trajectory and height of the bullet that grazed her shoulder, for Ellis to have been at the door when the officers fired their weapons, her shoulder would had to have been less than three feet off the ground. When standing, Ellis's shoulder was 5 feet from the ground. By the officers' version of events, she would have had to have been in a semi-squatting position. That isn't a natural position to stand under any scenario, but certainly not while holding a rifle. On the night of the shooting Ellis's blood-alcohol percentage was 0.28. So it's also unlikely stance for a woman who was severely intoxicated.

According to an animation of the raid based on the bullet trajectories commissioned by the officers' own attorneys, it also seems unlikely that the officers could have seen Ellis through her doorway at all. From the position where Lowery and Coleman fired their guns, there's no line of sight to the back doorway. In fact, the only officer who could have seen through the doorway was Sowell, who was in the back of the truck. He was the one officer who *didn't* fire.

The trailer itself was also pitch black. There were no lights on inside, and Ellis's home is in a rural area with no ambient light. One plaintiff's expert who visited the trailer at night described the conditions as "total darkness."

Phillips and the experts he hired believe Ellis was likely in a drunken sleep in her bedroom when the officers arrived, shot out her security light and maced her dog. She likely awoke when they ripped open her door and proceeded to her bedroom door to see what was happening. They say the forensic evidence suggests she was standing behind her bedroom door when the first bullet went through the outer wall to the trailer, through the door and grazed the top of her shoulder. That's consistent with the bullet trajectories, as well as a fresh scratch on her face that was consistent with a piece of wood found in the bedroom that was ejected from the door as the bullet went through it. Phillips and his experts believe Ellis opened the bedroom door and walked toward the back door to investigate the commotion, then likely turned and retreated back to her bedroom when she realized she was being fired upon. That's likely when Coleman's bullet struck her in the back of the head.

As for the BB gun, it was found in the doorway. That's consistent with testimony from Ishmail Stokes, Ellis's boyfriend at the time, that she kept the gun leaning against the door frame so it would be handy when she needed to scare off wild animals. "My guess is that when they pried open the door, the gun fell, and one of

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the officers yelled 'Gun!,' " Phillips says. "And then Lowery and Coleman panicked and fired their weapons."

Ellis's gun is also the subject of some of the more disturbing shortcomings in the SLED investigation. Once the agents learned that the rifle was a pellet gun, not a high-powered firearm, impartial investigators should have tried to re-interview the deputies to ask them to explain the discrepancy. How could they have seen a muzzle flash, seen smoke and heard a deafening sound from a pellet gun that was incapable of producing any of those things?

The SLED investigators never asked any of these questions. In incredible depositions taken of the SLED investigators in 2011 and 2012, Phillips tried to figure out why they didn't. In one exchange, Phillips asked SLED captain Paul Grant, who supervised the SLED investigators in the case, if the officers would have been justified in shooting Ellis if she had never fired her "weapon." Grant refused to speculate. Phillips pressed him. What Grant said next is remarkable.

> Phillips: Let's just assume these cops aren't telling the truth . . .
> Grant: But they are telling the truth.
> Phillips: How do you know that?
> Grant: Because they're police officers and I believe what they're telling me . . .

Grant believes them, simply because they're police officers.

"I understand why an investigator might feel some some camaraderie with the police officers he's investigating," says Stoughton. "But his job isn't to clear these officers. It's to develop an objective record of facts to determine if they committed a crime."

Stephen Downing, a former deputy chief of police for the Los Angeles Police Department who now advocates for police and drug reform, is far more blunt. "He is incompetent," Downing said after reviewing the case. "He doesn't know the difference between an opinion and a fact, yet he treats a police officer's statement as fact. His bias is transparent and rather ugly."

Later in the deposition, Phillips asked Grant about the muzzle flash, the sound and the smoke the officers claimed to have seen from the pellet gun. "So when this one says 'I saw something like smoke come out of the end of the gun,' that didn't cause you any concern at all?" Grant replied, "No."

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Phillips then turned to Coleman's claim to have seen a muzzle flush.

> Phillips: Have you ever seen a BB gun or a pellet gun create a flash?
> Phillips: Have you ever seen a high-powered rifle create a flash?
> Grant: I haven't seen one, but I know they probably do.
> Phillips: So the deputy involved in the shooting says, "I saw a flash," and then the next day we find out that it wasn't a high-powered rifle, it was actually a BB gun. That didn't cause you any concern?
> Grant: The officer thinks he's being shot at by a high-powered rifle. We're all unable to see the same things. I've seen that over my years of experience. If something happened in this room right there, all of us are not going to recount it the same way.

Phillips tried the question from a different angle. He got the same result.

> Phillips: Okay, let me ask if you this. If something happens in this room, and one of us testified to something that was physically impossible, do you think all of us are being truthful?
> Grant: I can't answer that either. I'm saying that you see things a certain way than somebody else sees it.

Phillips pressed on. He asked if Grant believed the statements from the officers about seeing a flash, seeing smoke and hearing a shot from the BB gun were "highly unlikely." Grant replied, "No. I would not agree." Phillips asked why not. Grant replied, "Because people see things differently. We've got three differently people who see things differently. The bottom line is, they all saw a high-powered rifle being pointed out the door at them."

Grant didn't say the officers *claimed* to see a high-powered rifle. He said they did see one. He took everything the officers said at face value. Their word was truth, and the investigation proceeded from there.

"All he is doing here is shrugging and saying, 'That's what he said,' " says Downing. "If that is all that is needed in a competent investigation, then you don't need an investigator with 20 years' experience. A note taker would suffice."

Stoughton sees the exchange similarly: "This isn't a matter of trusting or believing the officers. If they're claiming to have seen things that couldn't have happened, you have to at least try to determine if those claims are reasonable. If they aren't, then you have a problem."

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Phillips's deposition of SLED chief case officer James Flowers produced the same sorts of answers. Flowers wouldn't admit that a pellet gun is incapable of producing a flash. He conceded only that he personally has never seen it happen. Phillips continued:

> Phillips: So did anything prevent you, from the moment that you found out it was a mere BB gun, to say, "I want to go back and talk to this deputy . . ."
> Flowers: Nothing prevented me from doing that.
> Phillips: Okay. Why didn't you go back?
> Flowers: Because I didn't feel it necessary.
> Phillips: So someone telling you something that you've never seen before, that doesn't compel you to maybe follow up?
> Flowers: No. Not in all cases . . .
> Phillips: . . . so if I tell you something that can't physically happen, you're just going to take my word for it?
> Flowers: See, here's the thing. As the lead investigator for the state's premiere law enforcement agency, it is my responsibility to put this case together. After looking at this information, I deemed that it was not necessary to interview that officer again. And that was the decision that I made.

"The arrogance here is stunning," Downing says. "This response either reveals Flowers's incompetence or his bias. Either way, he should not be conducting investigations of officer-involved shootings."

Later, Phillips asked Flowers what decision-making process he went through to conclude that it wasn't necessary to follow up on the portions of the officers' statements that directly contradicted the forensic evidence. Flowers replied, "I looked at the information, and I didn't deem it necessary. It's pretty much — it's pretty simple, honestly." Flowers gave a similar answer when Phillips asked why he only interviewed one neighbor when there were five houses that had lines of sight to the shooting. He simply didn't think he needed to.

Flowers also admitted he wasn't aware of the bullet that grazed Ellis's shoulder. He thought the bullet that killed her was the only bullet that struck her. He also didn't know which officer fired the fatal bullet, and he mistakenly believed that one of the bullets had gone through Ellis's front door. (They all went through the wall to the side of the door, which is why it would have been difficult for the officers to have

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seen Ellis when they fired their weapons.) Flowers also admitted he never saw or inspected Ellis's gun. He admitted that he hadn't read the entire forensics reports — nor does he in most of the cases he investigates.

> Phillips: Well, when you signed off on [the SLED report] —
> Phillips: — had you read the firearms, the latent prints, and the fingerprints —
> Flowers: I don't read those whole reports, no.
> Phillips: You don't read these reports?
> Flowers: I get a synopsis of those reports from the people who provide — who do those reports.
> Phillips: That's not procedure for you to read what's in these reports?
> Flowers: Not those full reports, no.
> Flowers: That's just how it is.

This testimony would be unnerving enough if it had come from a sheriff or police chief. But Flowers was working for the agency in charge of investigating police shootings. And he was talking about a case for which he was the lead investigator.

"You absolutely have to read the forensic evidence," says Stoughton, the law professor. "You can't conduct a proper investigation if you don't."

Two months prior to the raid on Ellis's home, Lowery was involved in another incident in which he discharged his weapon but failed to report it. He was suspended for five days by the Department of Natural Resources. The SLED investigators didn't look into that incident as part of their investigation of the Ellis shooting, even though it may have raised questions about Lowery's credibility.

Ken Katsaris, a former law enforcement officer and trainer with over 30 years of experience, was another of Phillips's experts for Ellis's family. Katsaris is no hired gun for plaintiffs. He testifies in defense of police officers about three times more often than he testifies against them. He also wrote one of the reports that cleared the officer who shot Tamir Rice. In this case, Katsaris seem baffled by what he learned. In his deposition, Katsaris said the idea that an officer investigating a police shooting wouldn't read all of the forensics reports is "almost beyond incredible."

Then Katsaris laid into Flowers:

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> [Flowers] says it is not important to interview the officers about whether Ms. Ellis actually fired the gun or not. Not important. He never looked at the fingerprint reports. He has no opinions about whether the gun was or was not fired. He has never even seen the gun that Ms. Ellis had. He has no idea whether the gun that Ms. Ellis has can smoke or flash. He's the case agent. He's turning this over to the solicitor.
> You've got a gun that conceivably doesn't smoke and certainly doesn't flash, and he doesn't even know. He didn't ask questions about whether the gun flashed or smoked or that the officer said that the gun flashed and smoked . . .
> He got information after the fact, and even though it was contraindicated to what the officer said, he said he didn't go back and ask any follow-up questions. He said his decision about following up is just something that is not necessary no matter what you find out.
> He found it irrelevant to interview witnesses at the scene who may be there or who may have heard something. He doesn't even have an answer as to why the neighbors weren't interviewed . . .
> He doesn't actually know which officer actually shot Ms. Ellis. He's giving the solicitor information about whether a crime or not has occurred. He doesn't even know at the time of his deposition which officer actually shot. He says it's not important to know the trajectory or shot placement. Not important. He doesn't know about the bullet holes or the trajectory. He said angles of the trajectory are not troubling to him. He said he never looked for an explanation on how her gun could have flashed.

Lowery also told SLED investigators that he had made several prior attempts to serve the warrants (the first of which was issued on April 2) on Ellis during the daytime, but she had avoided him. But while Lowery's worklogs for April 2008 included such items as inspecting boats, litter duty, checking the bait in turkey traps and attending city employee appreciation parties, they make no mention of attempts to serve the bench warrants for Ellis. That's surprising, given that the police would later describe Ellis essentially as a violent fugitive. Notably, it was Phillips who obtained Lowery's worklogs during discovery for the lawsuit. It's another inconsistency in the officers' story that SLED investigators never checked out.

More protectors than investigators

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Last year, an investigation by Clif LeBlanc of the State newspaper in Columbia found that of the 209 incidents in which South Carolina police officers fired their weapons over the previous five years, only a few resulted in criminal charges. Those few cases had only occurred over the previous year or so, and none to that point had resulted in a conviction. The paper consulted attorneys who in prosecutor's offices and others who defend police officers accused of misconduct. All told the paper that until 2014, they couldn't remember a single instance in which a police officer had been charged for a shooting.

Of course, that could be because all or almost all of those police shootings were justified. The State noted that "the vast majority of the suspects shot at in South Carolina during the past five years have been armed." That's consistent with national FBI data showing that the vast majority of police shootings involved armed suspects. But that would also mean that the state's law enforcement officers only recently began shooting people without justification. That seems unlikely. The other, more likely, possibility: It's been happening all along, but the emergence of video has forced state officials to take a closer look.

The State also noted that in most shooting cases, "records ... are sometimes incomplete, which leaves key details to be ferreted from individual police agencies."

The Ellis shooting demonstrates why those details are so critical to assessing the legitimacy of a police shooting — and why "armed suspect" statistics can be so misleading. For the purposes of the FBI data, Ellis would have been considered "armed." That says very little about her death, the unanswered questions about the events leading up to it, or whether the officers were justified in shooting her.

"Too often, SLED investigators don't question inconsistencies in reports or statements from police officers," says defense attorney Christopher Mills. "They'll let the officer corroborate their stories. They're great at finding evidence that clears police, but you don't see much effort to find evidence that incriminates them. There was a time when internal affairs officers were disliked by other police officers. In South Carolina, other cops tend to see SLED investigators as their protectors."

The current head of SLED, Mark Keel, has said made some public statements that seem to support Mills's characterization of the agency as more of a protector of law enforcement officers. As part of its investigation last year, the State newspaper

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interviewed Keel. Paraphrasing him, the paper wrote that he "worries . . . whether increased public scrutiny might result in more officer deaths as people second-guess the officers' split-second decisions."

That sentiment — that merely scrutinizing police shootings will result in more officer deaths — is one commonly expressed by police unions and advocacy groups. Agree with it or not, it's a strange view coming from the head of an agency entrusted to investigate police shootings fairly and objectively. Keel then told the paper, "as long as individuals continue to not follow the instructions of law enforcement ... there's going to continue to be these confrontations. The public has to understand to be more compliant."

Melvin Tucker is former police chief in Tallahassee, Fla., and now works as a litigation consultant. He has consulted in over 500 cases, including 21 in South Carolina. He was a consultant for Phillips in the Ellis case. "To hear that from the head of SLED bothers me," Tucker says. "It makes an assumption right off the bat that any shooting or incident of excessive force was the citizen's fault, not the police officer's. You have to question whether there's any objectivity."

Tucker and other policing experts interviewed for this series reviewed several cases, many previously unreported, and found a pattern of inaccurate statements, misleading reports and at times what appeared to them to be rather brazen attempts to cover up misconduct. The reviewers generally concluded that the SLED investigations into these cases were too deferential to the accused officers, incomplete and at times showed little interest in looking beyond the statements of police officers. As readers will see over the course of this series, the false statements and reports were often not just from individual officers, but occurred at an institutional level.

"Practice here long enough, and you start to see patterns of deceit," says Mills. "In some of these departments, there's little hesitation about hiding or even manipulating evidence."

SLED's investigations generally don't look into that, either. In short, while SLED meets the first of Stoughton's criteria for credible outside investigations — the appearance of independence — there's good evidence that it falls short on the second, *actual* independence, accuracy and objectivity.

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The Post and Courier investigation last year, for example, concluded that SLED's handling of police shootings amounted to "an investigative system stacked in favor of officers who use their guns." In one example, the paper looked at the shooting of Bryant Heyward, a 26-year-old black man in Hollywood, S.C. Heyward dialed 911 last May as his home was being invaded by two gunmen. Heyward quickly grabbed his handgun and exchanged fire with the men. When the police arrived, a deputy mistook Heyward for one of the assailants and shot him, paralyzing him. The discrepancy in how Heyward and the deputy were treated is telling. Heyward was interrogated by an officer who climbed into the ambulance with him on the way to the hospital. When the paper's article ran nearly three weeks later, the deputy still hadn't been questioned.

Of the 235 SLED investigations of officer-involved shootings, the Post and Courier found 168 in which investigators documented the amount of time that had lapsed before the officers were asked to give a statement. Of those, 104 officers were given two or more days before talking to investigators. Only 35 were required to give a statement the same day.

As Richard Harpootlian pointed out above, SLED typically assigns investigators by region — a SLED agent from the southern part of the state will usually get cases from that area. The theory is that those agents will have local knowledge of the area and local sources that could aid in their investigation. But Tucker explains that presents a lot of problems too.

"How is an agency like SLED staffed?" Tucker asks. "With police officers. Where do those officers come from? Other police departments. The same police agencies that SLED investigates. I had a case where the SLED investigator had just worked as a deputy for the same department he was investigating. You can say an agency like that is independent, I guess. But I don't know that it means much." The attorneys and experts interviewed for this series say while such a direct conflict of interest isn't always the case, it also isn't uncommon.

The Post and Courier review also found that as in the Ellis case, SLED officers rarely looked into an officer's disciplinary history or at other evidence to determine if the officer is reliable. Nor did the agency look into the history and patterns of particular police departments. Each case was typically looked at in isolation, with a great deal of weight and trust put on the officers' statements.

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Phillips was so troubled by Ellis's death that he brought it to the attention of South Carolina U.S. Attorney William Nettles. "He seemed disturbed by it, and said he'd look into it," Phillips says. A couple months later, Phillips received a curt voice mail from the FBI agent assigned to investigate the case, telling him he had found no evidence that the deputies had violated Ellis's civil rights. Phillips later discovered that prior to joining the FBI, the same agent had been a deputy with the Kershaw County Sheriff's Department.

In the end, despite the $2 million settlement, neither Gregg Lowery, William Sowell or Tyrell Coleman was ever disciplined or reprimanded for the death of Lori Jean Ellis.

"It's bad here," Phillips says. "There's a culture of not just brutality, but invincibility. There's no oversight. You see blatant lying, not just from individual officers, but from entire agencies. They think they can get away with anything. And they usually do."

(Note: The Kershaw County Sheriff's Department and the South Carolina Department of Natural Resources did not respond to a request for an interview. A public information officer with the South Carolina Law Enforcement Division initially agreed to set up an interview with chief Mark Keel, but then didn't call back.)

Coming in Part 2: The power of video.

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https://www.washingtonpost.com/news/the-watch/wp/2016/05/06/south-carolinas-poisonous-police-culture-the-death-of-lori-jean-ellis/

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EXHIBIT BB

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may 1 of 3 auxiliary verb

ˈmā

past **might** ˈmīt ; *present singular and plural* **may**

1 a → used to indicate possibility or probability

> you *may* be right
>
> things you *may* need

→ sometimes used interchangeably with *can*

> one of those slipups that *may* happen from time to time
> – Jessica Mitford

→ sometimes used where *might* would be expected

> you *may* think from a little distance that the country was solid woods
> – Robert Frost

b : have permission to

> you *may* go now

: be free to

> a rug on which children *may* sprawl
> – C. E. Silberman

→ used nearly interchangeably with *can*

c **archaic** : have the ability to

might 1 of 2 auxiliary verb

'mīt

Synonyms of *might* >

past tense of MAY

1 → used to express permission, liberty, probability, or possibility in the past

> The president *might* do nothing without the board's consent.

2 → used to say that something is possible

> We *might* get there before it rains.
>
> I *might* go, but then again, I *might* not.

3 → used to express a present condition contrary to fact

> If you were older you *might* understand.

4 **a** → used as a polite alternative to *may*

> *Might* I ask who is calling?

b → used as a polite alternative to *ought* or *should*

> You *might* at least apologize.
>
> I *might* have known she'd be late.

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State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

Roger M. Young, Sr.
Judge

Charleston County Judicial Center
100 Broad Street, Suite 368
Charleston, SC 29401
Phone: (843) 958-2015
Fax: (843) 958-5108
ryoungj@sccourts.org

MEMORANDUM

To: Attorneys and Parties with Discovery motions

From: Judge Roger Young

Subject: Preparation for discovery motions

Date: August 29, 2019

The following may assist you in preparation for your hearing. If you have resolved your motions, please advise the Clerk's office.

Boilerplate or generalized objections are tantamount to no objection at all

Each discovery response, whether to an interrogatory or discovery response, whether to an interrogatory or discovery production is to be answered or objected to separately. The rule is clear that each interrogatory "shall "shall be answered separately and fully in writing..." SCRCP, Rule 33(a). If there are objections to interrogatories or requests for interrogatories or requests for production, "the reasons for objection shall be stated…" SCRCP, Rules 33(a) and 34(b). Whether the reasons are satisfactory is to be decided on a case by case basis. However, keeping in mind the general purposes and concepts stated in the rules can help combat frivolous and obfuscatory objections.

"An affirmative duty does exist to answer interrogatories and respond to requests to produce." *CFRE, LLC v. Greenville County Assessor LLC v. Greenville County Assessor,* 395 S.C. 67, *395 S.C. 67,* 83, 716 S.E.2d 877, 885 (2011)83, 716 S.E.2d 877, 885 (2011). Objections to interrogatories must be specific and supported by a detailed explanation why the interrogatories are improper or may result in waiver of the objections. *In re Folding Carton Antitrust Litigation.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979). The mere statement by a party that the by a party that the interrogatory was "overly broad, burdensome, oppressive and irrelevant" is not adequate to voice a successful objection to an interrogatory. *Josephs v. Harris Corp.* 677 F.2d 985, 992 (3d Cir. 1982). Parties shall not make nonspecific, boilerplate objections. **Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by the court.** A party objecting must explain the specific and particular way in which a given request is vague, overly broad, or unduly

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burdensome.[1] *Curtis v. Time Warner Entm't-Advance/Newhouse* P *'ship,* 2013 WL 2099496, at *2 (D.S.C. May 14, *2013*). Parties should not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons and then state that, "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserve nothing and serves only to waste the time and resources of both the parties and the court. Such practice leaves the requesting party uncertain as to whether the question has actually been actually been fully answered or whether only a portion of the question has been answered. *Id.* citing 2004 A.B.A. Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18. One objecting to discovery must show specifically how, despite the broad and liberal construction afforded the discovery rules, each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. *Roesberg v. Johns-Manville Corp.,* 85 F.R.D. 292, 296 (E.D. Pa. 1980). It is not proper to object merely because answering interrogatories may require expending considerable time, effort or expense or may interfere with business operations. *Id.* at 97.

"General objections" that purportedly apply to all discovery responses are improper. These general objections do not comply with the letter or spirit of the rules as they do not provide the specificity required to each request.[2]

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[1] [1] *Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); *see also Steed v. EverHome Mortg. Co.*, 308 Fed. Appx. 364, 371 (11th Cir. 2009) ("[B]oilerplate objections may border on a frivolous response to discovery requests."); *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) ("[T]o say an interrogatory was overly broad, burdensome, oppressive and irrelevant [is] not adequate to voice a successful objection to an interrogatory." (internal quotations omitted)); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory."); *Adelman v. Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011) ("[B]oilerplate objections [are] legally inadequate or meaningless."); *Nissan N. Am., Inc. v. Johnson Elec. N. Am., Inc.*, 2011 WL 669352, at *2 (E.D. Mich. Feb. 17, 2011)("Boilerplate or generalized objections are tantamount to no objection at all ...."); *Hager v. Graham*, 267 F.R.D. 486, 498 (N.D. W. Va. 2010) ("The objection is only a general statement that does not specify how the [request for production] is vague, ambiguous, and overly broad. Therefore, the objection is improper."); *Enron Corp. Sav. Plan v. Hewitt Assocs., L.L.C.*, 258 F.R.D. 149, 159 (S.D. Tex. 2009) ("Boilerplate objections are not acceptable; specific objections are required ...." (internal quotations omitted)); *A. Farber & P'rs, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) ("[G]eneral or boilerplate objections such as 'overly burdensome and harassing' are improper—especially when a party fails to submit any evidentiary declarations supporting such objections.").

[2] *Mills v. E. Gulf Coal Preparation Co., LLC*, 259 F.R.D. 118, 132 (S.D. W. Va. 2009) ("Failure to state objections specifically in conformity with the Rules will be regarded as a waiver of those objections."); *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006) ("[F]ailure to make particularized objections to document requests constitutes a waiver of those objections."); *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979) ("General objections may

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For an objecting party to carry its burden, the objection must be specific, the party making it must explain why it applies on the facts of the case to the request being made, and if the party is providing information subject to the objection, the party must articulate how it is applying the objection to limit the information it is providing.[3] In short, objections should be plain enough and specific enough so that the Court can understand in what way the discovery is claimed to be objectionable. *See generally Curtis v. Time Warner Entmt'-Advance/Newhouse P'ship*, 2013 WL 2099496, at *2 (D.S.C. May 14, 2013). *See generally* Kosieradzki & Rahimi, *supra*, at 30–31 ("Objections must be sufficiently particular to advise the requesting party and the court to what extent the discovery request is objectionable.").

General objections to requests as excessive, overbroad, and unduly burdensome, without more detail as outlined herein, are considered by the Court as *per se* insufficient. The objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden. *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997); *accord Roesberg v. Johns–Manville Corp.*, 85 F.R.D. 292, 29–97 (E.D. Pa. 1980) (explaining that an objecting party "must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive ... by submitting affidavits or offering evidence revealing the nature of the burden" (internal citations omitted)). Responses which provide no information whatsoever in support of these assertions are very likely to be overruled and may be sanctionable if deemed to be abusive violations by the Court.

Use of Standard Interrogatories – Abusive Objections

Rule 33(b) lists specific interrogatories that are allowed "[i]n all cases…" and should be served. Attorneys responding to these standard interrogatories with paragraphs of copy and paste generic objections are engaging in dilatory conduct. Neither attorneys nor courts should tolerate such obstructive behavior.

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result in waiver of the objections."). *See generally* Wise, *supra*, at 569 ("[B]ecause general objections are nonspecific and 'hide the ball' with respect to what information or material is being provided and what information or material is being withheld and why ... [they] have been universally condemned by courts for this very reason."); Mark Kosieradzki & Kara Rahimi, *Keep Discovery Civil: When Opposing Counsel Obstructs or Deflects Your Access to Evidence, Look to the Rules and Long–Settled Case Law for Relief. Both Are on Your Side*, Trial, June 2008, at 32 ("[C]ourts have held that asserting numerous general objections obscures any valid objections and may result in a waiver of the valid objections absent a showing of good cause.").

[3] *See Josephs*, 677 F.2d at 992 (explaining that a party's objections must "show specifically how each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive" (internal quotations and alterations omitted)); *DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008)(explaining that if party's objections "are not applied with sufficient specificity to enable this Court to evaluate their merits ... this Court will overrule [the party's] objections in their entirety"); *Folding Carton*, 83 F.R.D. at 264 ("Objections to interrogatories must be specific and [be] supported by a detailed explanation why the interrogatories are improper.").

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Rule 33(b) requires responding with important facts known or observed by witness so that the summary is restricted to the actual knowledge of the witness. Note to Rule 33(b). The rules make it clear that specific objections and reasons are required when responding. There can be no good reason to objecting to standard interrogatories.

Production of Documents

As to documents produced in response to discovery requests, the responding party shall produce them "as" they are kept in the usual course business or shall organize and label them to correspond with the categories in the request." SCRCP, Rule 34(b). If the form for producing the information is not specified or otherwise agreed upon, the responding party must produce the information in a form which it is ordinarily maintained that is reasonably usable. SCRCP, Rule 34(b)(1). When dealing with electronic discovery, it "must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes." Notes to 2011 Amendment, SCRCP, Rule 34.

Duty to Consult Before Moving to Compel

One submitting discovery requests may move for an order under Rule 37(a) with respect to any objection to or other failure to answer the interrogatory or request for production. SCRCP, Rule 33(a) and 34(b). If the discovery responses received are improper, consult with the other party and try to resolve the issues. Rule 11 requires that before filing a motion, one communicate with opposing counsel and attempt in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose or could not be timely held. SCRCP, Rule 11(a). After consulting, compromises may be reached so that only the actual controversies are presented to the court.

The rule requires that the movant's counsel affirm that consultation has taken place. Attaching correspondence showing the attempts to resolve the matter with the articulated reasons from both sides can help demonstrate the issues for the court.

Burden — Motion to Compel

After consulting as required, one needs to move to compel the other side to sufficiently respond to your requests. As part of the motion, provide the court with both the request and the responses at issue, and explain why the responses are deficient in the context of the case. Articulate specific reasons, not generalities as to why the discovery sought is proper. Generally, the initial burden is on the party moving to compel to inform the court (1) which discovery requests are the subject of the motion, (2) which responses are disputed, (3) why the party believes the responses are deficient, (4) why any objections are not justified, and (5) why the information sought through discovery is discoverable. After the moving party has met its burden, the party resisting discovery must show specifically how each interrogatory or request for production is not relevant or how each is overly broad, burdensome or oppressive. If claims of privilege or work product are made, the factors and facts supporting such claims should be supported with specifics, not

generalities, in the form of a privilege log that will provide enough information for you and the court to evaluate the objection.

Opinions and Contentions Proper

The rules allow one to serve discovery designed to eliminate the need for depositions or other expensive ways of establishing opinions or contentions of the parties. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law. SCRCP, Rule 33(d). Similarly, requests for admission may be served for purposes of the pending action only concerning any matters within the scope of Rule 26(b) that relate to statements or opinions of fact or of the application of law, including the genuineness of any documents described in the request. SCRCP, Rule 36(a). Further, opinions of experts are proper subjects of discovery as well. SCRCP, Rule 26(b)(4)(A).

Privilege Log - Express Claims of Privilege or Trial Preparation

A party may withhold information otherwise discoverable by expressly claiming such material is privileged or subject to protection as trial preparation material. SCRCP, Rule 26(b)(5). The claim shall be made expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. SCRCP, Rule 26(b)(5)(A-B). *See also* Note to 1996 Amendment. The Rules expressly require the disclosure of the nature of evidence prior to any claim of privilege so other parties may assess the applicability of the privilege or protection. *Samples v. Mitchell,* 329 S.C. 105, 111, 495 S.E.2d 213, 216 n.5 (Ct. App. 1997). The obligation to describe what is being withheld and why also applies to non-parties when responding to a subpoena, under SCRCP, Rule 45(d)(2). SCRCP, Rule 26(b)(5) Note to 1996 Amendment.

For, example, the work product rule would not excuse the failure to disclose the existence of a surveillance video tape pursuant to the standard interrogatories. If an attorney believed the other side had no right to this evidence, either because of relevancy or because of the work product rule, she should have either objected to the interrogatory or disclosed the existence, but not the content, of the evidence and moved for a protective order. *Samples v. Mitchell,* 329 S.C. 105, 111, 495 S.E.2d 213, 216 (Ct. App. 1997). The decision whether a document is privileged is for the court, not the party. Privileged Matter—Assertion of Privilege, 8 Fed. Prac. & Proc. Civ. § 2016.1 (3d ed.). In making determinations as to the adequacy of the privilege log, the court should be guided by a sense of reasonableness in deciding what should be required. *Id.*

The use of a "privilege log" by party withholding the material is designed to satisfy the requirement that the claim to be made expressly and provide the other party with an opportunity to assess the applicability of the claimed privilege or protection. The description should provide a feasible means of understanding why each document is privileged or protected. Depending on the case, a privilege log may consist of details like a description and date of the document along with who created and received it. The required detail of the privilege log should be decided on a

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case by case basis. However, the log should not generically assert privilege or simply use words like "privileged document."

Attorney-Client Privilege

Generally, the party asserting the privilege must establish the confidential nature of the communication. *State v. Doster,* 276 S.C. 647, 653, 284 S.E.2d 218, 220 (1981). To establish an attorney-client privilege, the person asserting the privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature for the purpose of obtaining legal advice. *Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204, 207-08 (Ct. App. App. 2003). The essential elements giving rise to the privilege were stated by Wigmore to be: "(1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219-20 (1981).

The privilege must be tailored to protect only confidences disclosed within the relationship. And the court must determine the question of privilege without first requiring disclosure of the substance of the communication. *Id.* Not every communication within the attorney and client relationship is privileged. The privilege does not extend to communications in furtherance of criminal, tortious or fraudulent conduct. *Id.*

Attorney Work Product and Limitations

"The attorney work product doctrine protects discovery documents prepared in anticipation of litigation, unless a substantial need can be shown by *the requesting party." Stokes Craven—Holding Corp. v. Robinson,* 416 S.C.517, 537, 787 S.E.2d 485, 495 (2016). "Generally, in determining whether a document has been prepared 'in anticipation of litigation,' most courts look to whether or not the document was prepared because of the prospect of litigation." *Id.*

"The document must be prepared *because* of the prospect of litigation when the preparer faces an actual claim or a potential claim following an actual event or series of events that reasonably could result in litigation." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992). Thus, materials prepared in the ordinary course of business or pursuant to regulatory requirements or for other non-litigation purposes are not documents prepared in anticipation of litigation within the meaning of Rule *26(b)(3). Id. See also, Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010). A party must show more than a statute governing the party's actions considers the possibility of future litigation or concerns litigation. *Id.*

Motion for Protection

If the discovery process threatens to become abusive or create a particularized harm to a litigant or third party, the trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." *Hollman v. Woolfson,* 384 S.C. 571,

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578, 683 S.E.2d, 495, 498(2009). "The person requesting protection from the court or Commission must initially show good cause by alleging a particularized harm which will result if the challenged discovery is had...Once the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm, the party seeking the discovery must come forward and show that the information that is sought 'is both relevant and necessary to the case. When both parties meet their burden of proof, the court must weigh the opposing factors.'" *Hamm v. SCPSC*, 312 S.C. 238, 439 S.E.2d 852, 854 (1994); *see also, Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009).

Duty To Supplement

A party who has responded to a discovery request under Rules 31, 33, 34 and 36 with a response that was complete when made is under a duty to promptly transmit to the other party information sought which comes to the knowledge of a party, his representative or attorney after the original answers have been submitted. SCRCP, Rule 26(e). "This duty to supplement does not apply to discovery under Rule 30 Depositions Upon Oral Examination."
"[T]here is an additional duty to provide supplemental information on expert witnesses and witnesses with knowledge of the facts of the case regardless of the form of the discovery request. The obligation to supplement prior discovery responses includes the duty to amend or supplement answers which are found to be incorrect or misleading…" SCRCP, Rule 26(e) Note to 1996 Amendment.

Conclusion

The moving party shall provide an affidavit detailing the attempts to resolve the motion prior to the hearing shall be presented. The affidavit should list a statement of services rendered which details the time and fees generated from pursuit of the discovery sought in the Motion to Compel. **Affidavits, briefs and proposed Orders** granting the requested relief and leaving a blank for the amount of fees and costs to be awarded **shall be presented to the court at the hearing** and shall also be served on opposing counsel prior to the hearing. **Failure to comply may result in denial of the relief.**

As to any objection to discovery on the basis that the information sought is either privileged or work product, the objecting party shall prepare and present at the time of the hearing their **privilege log** detailing the basis for the claim to privilege or reason why it should be excluded from production.

At a minimum, the privilege log should detail the date of the communication/statement, who prepared or made the statement, to whom the statement was directed to and finally, the specific basis for the privilege should be included in the log. While this will necessitate much more work on the part of the party claiming the privilege, **failure to prepare and bring** this log to the hearing will result in the **privilege claimed considered waived** by the court and the **motion to compel shall be granted**.

The Motion to Compel hearing shall constitute a hearing under Rule 37(d) 4, SCRCP.

EXHIBIT DD

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Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

2022CP2800782; Jernigan, et al. v. KCSO; Motion for Sanctions/Contempt; Hearing Date 4/27/23

6 messages

Justin Jernigan <justin.a.jernigan@gmail.com> Mon, May 8, 2023 at 1:57 PM
To: dcoblelc@sccourts.org
Cc: David Morrison <david@dmorrison-law.com>, "Cameron W. DeBoy" <cameron@dmorrison-law.com>

Dear Ms. Elgin,

I am counsel for Plaintiffs in the above-referenced case.

Judge Cobel heard Plaintiffs' Motion for Sanctions/Contempt on April 27, 2023. At the beginning of the hearing, Defendant made an oral Motion asserting that the Motion for Sanctions/Contempt failed to meet the requirements of Rule 7(b)(1), SCRCP. Judge Cobel issued an oral ruling granting this Motion and indicated that Defendant could submit additional briefing, to which Plaintiffs could respond, over the next thirty-days.

No written order or briefing schedule has, however, been entered by Judge Cobel (to date). Plaintiffs respectfully believe that the oral ruling should be reconsidered in view of, for instance, South Carolina Supreme Court case law interpreting the "particularity" requirement of Rule 7(b)(1), SCRCP. *See*, *e.g., Camp v. Camp*, 689 S.E.2d 634, 386 S.C. 571 (2010). Plaintiffs do not, however, believe that a motion requesting reconsideration of Judge Cobel's oral ruling under Rule 7(b)(1), SCRCP, can be filed until the oral ruling is finalized/entered.

Plaintiffs would respectfully request that the Court enter a written order with a schedule clarifying the respective deadlines for the additional briefing to be submitted.

thanks,

Justin A. Jernigan (Plaintiffs' counsel)
864-710-5029

Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org> Tue, May 9, 2023 at 9:22 AM
To: Justin Jernigan <justin.a.jernigan@gmail.com>
Cc: David Morrison <david@dmorrison-law.com>, "Cameron W. DeBoy" <cameron@dmorrison-law.com>

Good morning,

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At the conclusion of the hearing on April 27th, Judge Coble gave each party an additional 30 days for any supplemental briefing if desired. At the conclusion of the 30 days from the date of the hearing, Judge Coble will rule on the motion.

Thank you and please let me know if I can be of any further assistance.

Sincerely,

Victoria Elgin

Law Clerk for The Honorable Daniel Coble

Fifth Judicial Circuit

Richland County Judicial Center

1701 Main Street, Room 214

Columbia, SC 29201

Office: 803-576-1774

Fax: 803-576-1744

From: Justin Jernigan <justin.a.jernigan@gmail.com>
Sent: Monday, May 8, 2023 1:58 PM
To: Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org>
Cc: David Morrison <david@dmorrison-law.com>; Cameron W. DeBoy <cameron@dmorrison-law.com>
Subject: 2022CP2800782; Jernigan, et al. v. KCSO; Motion for Sanctions/Contempt; Hearing Date 4/27/23

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

[Quoted text hidden]
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Justin Jernigan <justin.a.jernigan@gmail.com> Tue, May 9, 2023 at 11:33 AM
To: "Coble, Daniel Law Clerk (Victoria Elgin)" <dcoblelc@sccourts.org>
Cc: "Cameron W. DeBoy" <cameron@dmorrison-law.com>, David Morrison <david@dmorrison-law.com>

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Dear Ms. Elgin,

Thank you for clarifying the briefing schedule. Plaintiffs will respectfully submit the below noted Rule 7(b)(1), issues for Judge Cobel's consideration via supplemental briefing.

Best,

Justin
[Quoted text hidden]

Justin Jernigan <justin.a.jernigan@gmail.com> Tue, May 23, 2023 at 2:24 PM
To: Judge Cobel <dcoblesc@sccourts.org>, "Coble, Daniel Law Clerk (Victoria Elgin)" <dcoblelc@sccourts.org>
Cc: "Cameron W. DeBoy" <cameron@dmorrison-law.com>, David Morrison <david@dmorrison-law.com>

Dear Judge Coble,

I represent Plaintiffs in the above-referenced FOIA case. The Court heard Plaintiffs' pending Motion for Sanctions/Contempt on April 27, 2023. Counsel of record for Defendant Kershaw County Sheriff's Office ("KCSO"), David Morrison, Esq., is copied on this email.

Plaintiffs' initial (incorrect) understanding was that the Court set a 30-day period following the hearing for the Parties to, respectively, submit response/reply briefing via email. Plaintiffs' counsel reached out to counsel for KCSO in an effort to narrow the scope of issues for further briefing, but no agreement could be reached. Thereafter, Ms. Elgin's below email dated May 9, 2023, clarified that both Parties were provided with the option, if desired, to submit supplemental briefing during the 30-day period following the hearing.

Plaintiffs respectfully submit this supplemental brief to address three secondary issues that were raised during the hearing: (*i*) KCSO's oral Motion pursuant to Rule 7(b)(1), SCRCP; (*ii*) the documentation/reporting requirements of KCSO's Policy Manual at Section 209.11 (Ex. G); and (*iii*) KCSO's oral Motion seeking leave to amend Paragraph 9 of its October 28, 2022, Answer.

A. Plaintiffs Respectfully Request Reconsideration of the Court's Initial Ruling Granting KCSO's Oral Motion Pursuant to Rule 7(b)(1), SCRCP

KCSO submitted an oral Motion at the beginning of the hearing on April 27, 2023, asserting that Plaintiffs' April 24, 2023, Memorandum in Support and Exhibits G-U violated the particularity requirement of Rule 7(b)(1), SCRCP, by introducing previously unknown grounds. The Court made an initial ruling at the hearing granting KCSO's oral Motion. Plaintiffs respectfully request that the Court reconsider based upon the following facts/law that were not considered at the hearing.

Attached as Exhibit V hereto is a copy of Plaintiffs' December 16, 2022, Pre-Hearing Brief and Exhibits A-E (beginning, respectively, at pages 10, 44, 55, 59, and 62). Subject matter and the Exhibits of Plaintiffs' December 2022 Brief were incorporated into Plaintiffs' April 24, 2023, Memorandum and filed as supporting Exhibits I, J, L, N, and O.

The grounds/exhibits referenced in Plaintiffs' February 2023 Motion and Exhibit A, Rule 11(a), 10-day Letter were, collectively, also incorporated into Plaintiffs' April 24, 2023, Memorandum. Undersigned counsel previously provided a copy of Plaintiffs' supporting Exhibit T - the transcript of the December 19, 2023, hearing before the Honorable Jocelyn C. Newman - to counsel for KCSO in March 2023.

EXHIBIT EE

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

ELECTRONICALLY FILED - 2023 Jul 14 5:22 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

Re: Jernigan, et al. v. KCSO 2022CP2800782

1 message

Justin Jernigan <justin.a.jernigan@gmail.com> Wed, Jul 5, 2023 at 3:54 PM
To: Callie Morrison <callie@dmorrison-law.com>
Cc: cameron@dmorrison-law.com, david@dmorrison-law.com, dcoblelc@sccourts.org

Dear Ms. Elgin,

9:30am on July 19, 2023, works for me also.

Thank-you for setting up the virtual conference call.

Justin

Justin Jernigan
864-710-5029
Justin.A.Jernigan@gmail.com

On Wed, Jul 5, 2023 at 2:27 PM Callie Morrison <callie@dmorrison-law.com> wrote:

> Good afternoon ~ David is available on July 19th at 9:30 a.m. Thank you and have a nice day. 😊
>
> *Callie Morrison*
>
> *Office Manager/Legal Asst.*
>
> **Morrison Law Firm, LLC**
>
> 7453 Irmo Drive, Suite B
>
> Columbia, South Carolina 29212
>
> T: (803) 661-6285
>
> F: (803) 661-6289
>
> ---
>
> **From:** Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org>
> **Sent:** Wednesday, July 5, 2023 11:08 AM
> **To:** Justin Jernigan <justin.a.jernigan@gmail.com>
> **Cc:** Cameron W. DeBoy <cameron@dmorrison-law.com>; David Morrison <david@dmorrison-

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law.com>
Subject: RE: Jernigan, et al. v. KCSO 2022CP2800782

Good morning,

I am reaching out to schedule a conference call for the above-captioned case. Judge Coble is available for a virtual conference call on Wednesday, July 19th, 2023 at 9:30 AM. Please confirm whether this date/time works for you.

Thank you,

Victoria Elgin

Law Clerk for The Honorable Daniel Coble

Fifth Judicial Circuit

Richland County Judicial Center

1701 Main Street, Room 214

Columbia, SC 29201

Office: 803-576-1774

Fax: 803-576-1744

From: Justin Jernigan <justin.a.jernigan@gmail.com>
Sent: Thursday, June 29, 2023 11:43 AM
To: Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org>
Cc: Cameron W. DeBoy <cameron@dmorrison-law.com>; David Morrison <david@dmorrison-law.com>
Subject: Re: Jernigan, et al. v. KCSO 2022CP2800782

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. Elgin,

Please let me know regarding a schedule for the conference call at your earliest convenience.

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Thank you,

Justin

On Tue, Jun 20, 2023 at 1:17 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Thank you for the update.
>
> Hope everyone has a good rest of the week.
>
> On Tue, Jun 20, 2023 at 10:57 AM Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org> wrote:
>
> > Good morning Mr. Jernigan,
> >
> > Thank you for following up on this matter. Judge Coble is on vacation this week but I have passed your messages along to him and I will reach out to you next week to schedule a conference call.
> >
> > Thank you and please let me know if I can be of any further assistance at this time.
> >
> > Sincerely,
> >
> > *Victoria Elgin*
> >
> > Law Clerk for The Honorable Daniel Coble
> >
> > Fifth Judicial Circuit
> >
> > Richland County Judicial Center
> >
> > 1701 Main Street, Room 214
> >
> > Columbia, SC 29201
> >
> > Office: 803-576-1774
> >
> > Fax: 803-576-1744

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From: Justin Jernigan <justin.a.jernigan@gmail.com>
Sent: Monday, June 19, 2023 11:41 AM
To: Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org>
Cc: Cameron W. DeBoy <cameron@dmorrison-law.com>; David Morrison <david@dmorrison-law.com>
Subject: Re: Jernigan, et al. v. KCSO 2022CP2800782

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Victoria,

I'm writing to follow up on my below emails/questions over the past couple weeks concerning instructions for preparing the proposed order initially requested on June 2, 2023.

For purposes of moving preparation/entry of the proposed order forward, Plaintiffs would respectfully request a short conference call to discuss with Judge Coble at his earliest convenience.

Thank-you,

Justin Jernigan

864-710-5029

justin.a.jernigan@gmail.com

On Mon, Jun 12, 2023 at 12:10 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Victoria,
>
> Writing to follow up. Could you please provide further instructions for preparing the proposed order initially requested on June 2, 2023?
>
> Specifically, could you please provide the factual findings and conclusions of law for preparing the proposed order, and the time period within which the parties are required to submit the proposed order requested?
>
> Thank you,

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Justin

864-710-5029

On Fri, Jun 2, 2023 at 6:51 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> Dear Victoria,
>
> Can you please provide the grounds for the proposed order?
>
> Best,
>
> Justin
>
> On Fri, Jun 2, 2023 at 12:38 PM Coble, Daniel Law Clerk (Victoria Elgin) <DCobleLC@sccourts.org> wrote:
>
> > Good afternoon,
> >
> > I am emailing regarding Plaintiff's Motion for Sanctions/Contempt in the above-captioned case, which Judge Coble heard on April 27th, 2023. Judge Coble is denying this motion. His Honor requests that you submit a proposed order accordingly. You may submit the proposed order to me via email, for Judge Coble's review.
> >
> > Thank you and please let me know if you have any questions.
> >
> > Sincerely,
> >
> > ***Victoria Elgin***
> >
> > Law Clerk for The Honorable Daniel Coble
> >
> > Fifth Judicial Circuit
> >
> > Richland County Judicial Center
> >
> > 1701 Main Street, Room 214
> >
> > Columbia, SC 29201

Office: 803-576-1774

Fax: 803-576-1744

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW	)	**CASE NO.: 2022-CP-28-00782**
Christine Jernigan, et al.,	)	
Plaintiffs,	)	**MEMORANDUM IN SUPPORT OF MOTION TO RECUSE, VACATE, AND REASSIGN; OR, ALTERNATIVELY, TO RECONSIDER INTERLOCUTORY ORDER**
v.	)	
Kershaw County Sheriff's Office,	)	
Defendant.	)	

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE ("KCSO")

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 20th day of August 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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APPENDIX OF EXHIBITS

- **Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt**

Ex. A: Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter to KCSO

Ex. B: Plaintiffs' First Set of Interrogatories (Nos. 1-15) served October 29, 2022

Ex. C: Plaintiffs' First Set of Requests for Production (No. 1) served October 29, 2022

Ex. D: KCSO's Answers served January 9, 2023, to Plaintiffs' First Set of Interrogatories

Ex. E: KCSO's Responses served January 9, 2023, to Plaintiffs' First Set of Requests for Production

- **Plaintiffs' April 24, 2023, Memorandum in Support of Motion for Sanction/Contempt**

Ex. F: Emails between Counsel for the Parties from January/February 2023

Ex. G: KCSO's Policy Manual, Chapter 209 - Records (first produced January 9, 2023)

Ex. H: SCCJA Training Catalog - Omnibus Adult Protection Act (Vulnerable Adults)

Ex. I: CFS2022-39009 (produced December 2, 2022)

Ex. J: CFS2022-39001 (produced December 2, 2022)

Ex. K: August 18, 2022, Cover Letter; Optical Disc; and CFS2022-39001

Ex. L: Letter of South Carolina Attorney General re: FOIA (page 4)

Ex. M: SCLEA Standards Manual, Chapter 15 - Communication

Ex. N: Pre-suit Emails – late July to late August 2022

Ex. O: December 5, 2022, Hearing Transcript before the Honorable DeAndrea G. Benjamin

Ex. P: KCSO Body Worn Camera Retention Schedules (first produced January 9, 2023)

Ex. Q: Orders from *Brown v. Elliot*, 3:14-cv-01188, D.E. 43 & 61 (D.S.C. 2016)

Ex. R: WIS News 10 Article - April 12, 2022

Ex. S: WIS News 10 Article - May 24, 2022

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Ex. T: December 19, 2022, Hearing Transcript before the Honorable Jocelyn C. Newman

Ex. U: April 24, 2023, Affidavit of Justin A. Jernigan

- **Plaintiffs' May 23, 2023, Post-Hearing Supplemental Email Brief**

Ex. V: Email Brief with Plaintiffs' Dec. 16, 2022, Pre-Hearing Brief, Attached

Ex. W: Email Brief with SCLEA, Chapter 14 – Records, Attached

- **Plaintiffs' July 14, 2023, Motion to Recuse, Vacate, and Reassign; or, Alternatively, to Reconsider Interlocutory Order**

Ex. X: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd

Ex. Y: Feb. 20, 2023, Affidavit of Susan Martin

Ex. Z: Order Approving Wrongful Death Settlement, *Blakely v. KCSO, et al.*, 3:10-cv-00707-JFA, D.E. 138 (D.S.C, March 22, 2013)

Ex. AA: Text Version of May 6, 2016, Washington Post article entitled "South Carolina's poisonous police culture: The death of Lori Jean Ellis"

Ex. BB: Definitions of "Might" and "May," Merriam-Webster's Online Dictionary, <www.merriam-webster.com>

Ex. CC: August 29, 2019, Memorandum to Attorneys/Parties with Discovery Motions, the Honorable Roger M. Young, Sr., South Carolina Circuit Court of the Ninth Judicial Circuit

Ex. DD: May 8, 2023, to May 9, 2023, Emails re: 30-Day Supplemental Briefing Schedule

Ex. EE: June 2, 2023 to July 5, 2023 Emails re: June 2, 2023, Order denying Plaintiffs' Motion for Sanction/Contempt

- **Plaintiffs' August 20, 2023, Memorandum in Support of Motion to Recuse, Vacate, and Reassign; or, Alternatively, to Reconsider Interlocutory Order**

Ex. FF: October 14, 2022, Cover Letter; Optical Disc - Officers Tate, Taylor, and Arledge

Ex. GG: Nov. 8, 2022, Email between Counsel for the Parties re: 11/4/22 Conference Results

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Plaintiffs respectfully submit this Supplemental Memorandum in Support of their July 14, 2023, Motion to Recuse or Reconsider. Notably, this Memorandum is submitted to address and correct the record with respect to KCSO's May 30, 2023, Supplemental Brief ("Brief" or "Br."). Plaintiffs also respectfully provide notice to KCSO and request that KCSO remedy and/or cure the misrepresentations that are contained within its May 30, 2023, Supplemental Brief pursuant to Rule 11(a), SCRCP, and S.C. Code Ann. § 15-36-10.

KCSO's May 30, 2023, Supplemental Brief is captioned as a "Response in Opposition" to Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt. KCSO, however, knowingly chose to default by failing to file any timely "response" at all to Plaintiff's Motion. Plaintiffs' February 23, 2023, Motion was calendared for hearing via the March 28, 2023, Motions Roster, and the hearing was held on April 27, 2023, before the Honorable Daniel Coble. KCSO has not – and could not based upon the underlying record – make any showing of prejudice to justify granting a continuance for KCSO to file an out-of-time, post-hearing initial response to Plaintiff's Motion. *See* Pl.'s July 14, Motion at 17-18.

Plaintiffs, of course, had no opportunity whatsoever to address KCSO's later-filed May 30, 2023, "Response in Opposition" at the April 27, 2023, hearing. Plaintiffs also did not have an opportunity to do so prior to the Court's June 2, 2023, Form 4 Order denying Plaintiff's February 23, 2023, Motion for Sanctions/Contempt.

KCSO filed its May 30, 2023, Supplemental Brief at 3:03pm on day number thirty-three (33) of the 30-day supplemental/e-mail briefing period following the April 27, 2023, hearing. *See* Rule 6(a) (weekend/holiday rule), SCRCP; Ex. DD at 1-2 ("Judge Coble gave each party an additional 30 days for any supplemental briefing if desired. At the conclusion of the 30 days from the date of the hearing, Judge Coble will rule on" Plaintiffs' motion.). Plaintiffs had filed

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their Supplemental Brief a week earlier, on May 23, 2023, via email as Judge Coble had instructed the Parties to do at the hearing (if desired). Exs. V & W. Plaintiffs' May 23, 2023, Supplemental Brief addressed the only three issues that KCSO had raised in "response" to Plaintiffs' Motion for Sanctions/Contempt at the April 27, 2023, hearing. *See id.*

I. INTRODUCTION

KCSO's May 30, 2023, Supplemental Brief begins by acknowledging the fact that KCSO took police action against law-abiding citizens on June 29, 2022. Br. at 1-3. Specifically, on the morning of June 29, 2022, KCSO took unlawful police action against Plaintiff Christine Jernigan ("Mrs. Jernigan") and Plaintiffs' respective mother and grandmother, Ann Martin ("Mrs. Martin"), who is a vulnerable adult. *See* Ex. I. KCSO admits on the record in its May 30, 2023, Supplemental Brief that the only reason KCSO took these police actions on June 29, 2022, is because Plaintiff Mrs. Jernigan and her mother Mrs. Martin were acting in a manner that was "against the wishes of Mrs. [Sharon] Wright" (and Pinedale's Administrator Phillip Hudson, *see* Ex. I). Br. at 2.

If KCSO genuinely believes that it has the authority and jurisdiction to interpret and enforce private contracts against law-abiding citizens – i.e., general/financial power of attorney ("POA") documents – based upon the "wishes" of third-party private citizens, then KCSO needs to also explain on the record where exactly such unheard-of-in-civilized-society police authority came from. This purported "police power," where law enforcement acts as an arm to enforce the "wishes" of private citizens against other private citizens based upon private contracts, has no place within our (or any other) law-based, democratic society. KCSO certainly does not have any lawful jurisdiction to usurp the role of this Court by unilaterally enforcing its own views regarding the construction and application of Title 62 of the South Carolina Probate Code,

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Article 8, the South Carolina Uniform Power of Attorney Act ("UPOAA"). S.C. Code Ann. §§ 62-8-101 (2017), *et. seq.*

Mrs. Martin served as the office manager and chief receptionist for the South Carolina House of Representatives, Solomon Blatt Building, for over three decades until her retirement in 2013 due to age-related cognitive decline. H. 4594, 120th Session (2013-2014); Ex. X, Nov. 2022, Aff. of Lt. Col. Billie Schreck. During Mrs. Martin's thirty-three (33) year career, the South Carolina legislature enacted laws that were meant to ensure that Mrs. Martin's rights as a vulnerable adult were protected against encroachment on June 29, 2022, including but not limited to the South Carolina Bill of Rights for Residents of Long-Term Care Facilities:

> The General Assembly finds that persons residing within long-term care facilities are isolated from the community and often lack the means to assert *their rights fully as individual citizens*. The General Assembly recognizes the need for these persons to live within the least restrictive environment possible in order to *retain their individuality and personal freedom*. The General Assembly further finds that it is *necessary* to *preserve the dignity and personal integrity* of residents of long-term care facilities through the recognition and declaration of *rights safeguarding against encroachments upon each resident's need for self-determination*.

S.C. Code Ann. § 44-81-20 (1985) (emphasis added); *see also* S.C. Code Ann. §§ 43-35-5 (1993)*, et. seq.*, i.e., the South Carolina Omnibus Adult Protection Act ("OAPA").

Mrs. Martin's rights were entitled to a higher level of deference and respect by KCSO on June 29, 2022, pursuant to, at least, these well-established State laws. *See id.*; Exs. H & N at 28-29. Not even a court of competent jurisdiction – after ensuring full compliance with the considerable due process protections mandated by Title 62 of the South Carolina Probate Code, Article 5, Part 3 ("Guardians of Incapacitated Individuals") – could have lawfully taken away Mrs. Martin's "rights guaranteed by the Bill of Rights for Residents of Long-Term Care Facilities" on the morning of June 29, 2022. S.C. Code Ann. § 62-5-304A(c) (2019). KCSO has

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decided for itself that the rights of Kershaw County's vulnerable adults are meaningless and entitled to no respect in the face of third-party private citizens wielding the purported "authority" of general/financial POA documents (i.e., private contracts) under the UPOAA.

Tellingly, KCSO's narrative description of the events that occurred on the morning of June 29, 2022, abruptly ends after KCSO indicates that the Officers "identified the situation" as "a civil issue," i.e., a situation for which KCSO had no probable cause or reasonable suspicion of criminal activity to justify taking any police actions at all. Br. at 2-3; *but see* Ex. H at 4, SCCJA Training Catalog, OAPA – Crimes Against Vulnerable Adults. KCSO conveniently leaves out the next part where – well after the KCSO has admitted that the Officers involved "identified the situation" as "a civil issue" – KCSO nevertheless forced Mrs. Martin to exit her daughter's vehicle in order to be returned to the privately-owned, for-profit Pinedale assisted living facility "against the reasonable and rational wishes of the vulnerable adult," Mrs. Martin. S.C. Code Ann. § 43-35-10(3)(a) (1993); Exs. I & X. KCSO did not give Mrs. Martin's well-known, reasonable, rational, and presently expressed wishes any consideration at all on June 29, 2022. Of course, KCSO's twenty-one (21) page, May 30, 2023, Supplemental Brief also does not bother to mention or give any respect to Mrs. Martin's fundamental rights either.

KCSO's unlawful police actions on June 29, 2022, forced Mrs. Martin – against her well-known, reasonable, rational, and presently expressed wishes – to continue purchasing what were, at best, unwanted and useless services from the Pinedale facility at the "bargain" price to Mrs. Martin of ~$5,000/month. As a result of KCSO's police actions on June 29, 2022, Mrs. Martin became a hostage (or a slave) who was thereafter forced to continue paying ~$5,000/month "for the profit or advantage of the seller or another person," i.e., for the profit and advantage of Pinedale and Mrs. Wright (and to Mrs. Martin's severe disadvantage). S.C. Code Ann. § 43-35-

10(3)(c); *see* Ex. X, Aff. of Lt. Col. Billie Schreck. Even worse, KCSO's unlawful police actions on June 29, 2022, subjected Mrs. Martin to neglect by Pinedale and Mrs. Wright, and to further psychological/emotional abuse by Mrs. Wright, during the next approximately nine months. *See* Ex. A at 1-3.

On August 17, 2022, undersigned counsel proposed that KCSO's pre-suit counsel, County Attorney Tommy Morgan, Esq., report and send records documenting the events of June 29, 2022, to SLED for consideration/investigation. Ex. N at 28-29. KCSO decided the better course would be to follow its standard playbook by concealing and destroying records, including the first-hand body-camera recordings, documenting its police actions of June 29, 2022. *See*, *e.g.*, Pl.'s July 14, 2023, Motion at 5-7.

KCSO's May 30, 2023, Supplemental Brief mistakenly indicates that KCSO Officer #15 "Courtney Cochran" – along with KCSO Officers #40 Brian Morris, #42 Grant Arledge, and #45 Joseph Branham – attempted to locate and stop the vehicle in which Plaintiff Mrs. Jernigan and her mother Mrs. Martin were traveling on the morning of June 29, 2022. Br. at 2. KCSO Officer #15 Courtney Cochran, however, was actually at the primary Sheriff's Department office in Lugoff when the events on the morning of June 29, 2022, took place. Notably, at 11:22am on June 29, 2022, KCSO Officer #15 Countney Cochran – via Kershaw County ("KCSC") Dispatch Operator Tina Proctor – reached out to the Officers that were detaining Plaintiff Mrs. Jernigan and her mother Mrs. Martin on the side of the road to reveal that undersigned counsel "Justin [Jernigan] is at the Sheriff Dept. and wants to let 42 and 40 know." Ex. I at 2. Specifically, undersigned counsel was at KCSO's main office in Lugoff requesting that KCSO release his mother and grandmother unless they were suspected of and/or being charged with a criminal

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offense. *Compare* Compl. ¶¶19-21 *with* Answer ¶10 (admitting, by failing to specifically meet/deny, the allegations of Compl. ¶¶19-21).

II. DISCUSSION

A. KCSO Clearly Violated FOIA and Judge Newman's December 2022 Orders

The Honorable Joselyn Newman issued oral rulings from the bench on December 19, 2022, and a December 28, 2022, Form 4 Order, requiring KCSO to (very belatedly) "fully comply with the South Carolina Freedom of Information Act" within twenty 20 days. Judge Newman stated at the hearing, in part, "I think that [KCSO] should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request." Pls.' April 24, 2023, Memo at 21 (citing Ex. T at 15:5-20). KCSO was, in fact, legally obligated to respond and fully address the public availability of all the records of the July 22, 2022, FOIA Request approximately four months earlier, in August 2022, pursuant to the requirements of S.C. Code § 30-4-30(c). *See Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (interpreting and applying S.C. Code § 30-4-30(c) with respect to the DOR's "equivocal and evasive" FOIA response).

At the December 19, 2022, hearing, Judge Newman initially ordered KCSO to fully comply with the legal requirements of FOIA within 10 days, but graciously extended this period to 20 days based on KCSO's counsel of record, David Morrison, Esq., having previously planned to visit his elderly parents during the upcoming Christmas and New Year holiday season. Ex. T, 26:14-50 Undersigned counsel consented to Mr. Morrison's request for a reasonable extension of time to visit with his family during the holidays when Judge Newman asked for Plaintiffs' position as to the requested additional time for KCSO to fully comply with the legal requirements of FOIA. Ex. T at 29:2-7.

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KCSO's May 30, 2023, Supplemental Brief states that KCSO "complied with" FOIA and Judge Newman's December 2022 Orders. Br. at 3. The *only* support that KCSO is able to offer in its May 30, 2023, Supplemental Brief for its conclusory assertion that it "complied with" FOIA and Judge Newman's December 2022 Orders, however, is that KCSO "responded" to the July 22, 2022, FOIA Request (Compl., Ex. A) "on Monday, July 25, 2022, which is less than one (1) full business day after the [July 22, 2022] FOIA request was submitted." *Id.* No reasonable attorney could, or ever would, characterize KCSO's July 25, 2022, FOIA Response (copied below, Ex. N at 32) as anything close to meeting the legal requirements and clarity mandated by S.C. Code § 30-4-30(c). *See Sloan*, 762 S.E.2d at 688 (holding that the DOR's equivocal and evasive FOIA response was "manifestly at odds with the clarity mandated by section 30–4–30(c)").

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

The above-quoted purported FOIA "Response" provided by KCSO's Records Department on July 25, 2022, is a complete and total dodge with respect to the public records of the July 22, 2022, FOIA Request (Compl., Ex. A). *See Sloan*, 762 S.E.2d at 688 ("While DOR did *respond* to Sloan, its equivocal and evasive response was not a final opinion on the public availability of the requested documents and did not state whether the information requested by Sloan was publicly available for inspection, copying, or production") (emphasis added). Even so, Plaintiffs believed that KCSO's pre-suit counsel Attorney Morgan would subsequently respond in a reasonable manner, agree to help resolve Mrs. Martin's false imprisonment at the hands of KCSO, and disclose the requested third-party E-911 public records/recordings of June

29, 2022. Compl., Ex. A. If Attorney Morgan had responded in a reasonable manner, the Parties, the taxpayers, and this Court could have avoided wasting considerable time/expense on the present case.

Rather than responding reasonably, however, Attorney Morgan responded instead by stating on August 18, 2022, that "KCSO [unilaterally] considers this request as completed and is closing the matter." Ex. N at 27. As to Mrs. Martin's unlawful confinement by KCSO to the private, for-profit Pinedale assisted living facility on June 29, 2022, Attorney Morgan and his clients refused to even consider or discuss this matter at all. Attorney Morgan, on behalf of his clients KCSO and KCSC, took the entirely irrational position on August 18, 2022, that "FOIA is not intended to discuss allegations and refutations of claims." *Id.* In other words, KCSO and its counsel (*i*) decided that KCSO did not need to bother exerting any efforts to comply with the law and resolve these matters amicably; (*ii*) demanded that Plaintiffs must simply accept its evasive July 25, 2022, FOIA Response and its limited, redacted, and cherry-picked FOIA disclosures it chose to provide; and (*iii*) adopted a "so sue me" attitude regarding its unlawful imprisonment of Mrs. Martin, a vulnerable adult, by exercising its police power to carry out the "wishes" of third-party private citizens. *See* Ex. N at 21-27.

The phrase "good faith" appears in KCSO's 21-page, May 30, 2023, Supplemental Brief a total of thirty (30) times. Repeating the phrase "good faith" like a mantra, however, does nothing to change the actual reality that is established by the underlying record in this case. KCSO, and its agent/partner that provides law enforcement communications services on its behalf, i.e., KCSC, have "arbitrarily and capriciously violated the provisions of [FOIA] by refusal or delay in disclosing or providing copies of" requested public records. S.C. Code § 30-4-110(f); *Jernigan v. Kershaw County*, 2023-CP-28-00538 (filed July 24, 2023).

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KCSO's Official FOIA Request Form states: "Please be as SPECIFIC as possible-include any names, addresses, dates of birth, case numbers if known, specific dates and/or date range, type of report, etc." Compl., Ex. A at 1. Plaintiffs carefully followed these instructions to the best of their ability in the July 22, 2022, FOIA Request, including by listing the "original case assignment" number (i.e., CFS2022-39001) provided by KCSC Dispatch on June 29, 2022. Exs. G at 6 & J. Yet, KCSO's May 30, 2023, Supplemental Brief suggests that the July 22, 2022, FOIA Request was an intricate puzzle that KCSO was required "to decipher." Br. at 3. The actual truth is that the July 22, 2022, FOIA Request explicitly states that undersigned counsel would "*gladly* explain, limit, and/or clarify" the FOIA Request "as may be appropriate." Compl., Ex. A at 2 (emphasis added). KCSO never reached out to undersigned counsel at all to discuss any clarity-related concerns with respect to the July 22, 2022, FOIA Request. The unspecified "to decipher" clarity-related grumblings of KCSO's May 30, 2023, Supplemental Brief are feeble attempts to shift the blame for KCSO's blatant FOIA violations. Remarkably, KCSO is implicitly raising clarity-related excuses *for the first time* approximately *one-year* after its FOIA response and disclosure of all requested records were required to have been provided pursuant to the legal requirements of S.C. Code § 30-4-30(c). Br. at 3.

At the bottom of page 3 of KCSO's May 30, 2023, Supplemental Brief KCSO again asserts, in conclusory fashion, that it "responded in good faith and timely *as demonstrated by our response on July 25, 2022*." Br. at 3 (emphasis added). For the reasons discussed above, in Plaintiffs' February 23, 2023, Motion (at 5-6), and in Plaintiffs' April 24, 2023, Memo (at 21-23) no reasonable attorney could ever characterize KCSO's July 25, 2022, FOIA Response (*supra* at 7, Ex. N at 32) as a "good faith" response consistent with the legal requirements and clarity that is mandated by S.C. Code § 30-4-30(c). *See Sloan*, 762 S.E.2d at 688.

KCSO spends the next eight pages of its Supplemental Brief trying to "explain" that its July 25, 2022, FOIA Response (*supra* at 7, Ex. N at 32) did, by hook or by crook, comply with the legal requirements of S.C. Code § 30-4-30(c) and Judge Newman's December 2022 Orders, which were issued approximately *five months later*. *See* Br. at 4-12. KCSO's "arguments" in this respect are disgraceful.

KCSO proceeds by breaking apart the July 22, 2022, FOIA Request (Compl., Ex. A) into ten separate, individual paragraphs. Br. at 4-12. KCSO then "responds" to each of the individual paragraphs of the July 22, 2022, FOIA Request by providing an "explanation" as to why it imagines that KCSO's July 25, 2022, FOIA Response (*supra* at 7, Ex. N at 32) fully satisfies the legal requirements of S.C. Code § 30-4-30(c) and Judge Newman's December 2022 Orders. KCSO's purported "explanations" attempting to support its insupportable July 25, 2022, FOIA Response are virtually unintelligible and, in any case, are contradicted by the actual record.

KCSO asserts that "there were no documents in the possession of Defendant *attached to the name Justin Jernigan*." Br. 4 (emphasis added). Indeed, the name "Justin Jernigan" appears in KCSO's 21-page, May 30, 2023, Supplemental Brief a total of seventy-eight (78) times, which equates to ~3.7 uses of "Justin Jernigan" per page. It is not clear how or why KCSO believes that repeating undersigned counsel's name *ad nauseam* throughout its May 30, 2023, Supplemental Brief is going to help support its unfounded claims that KCSO's July 25, 2022, FOIA "Response" (*supra* at 7, Ex. N at 32), which was a complete and total stiff-arm, resembles something that could possibly be viewed as complying with the legal requirements of S.C. Code § 30-4-30(c) and Judge Newman's December 2022 Orders.

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KCSO's "attached to the name Justin Jernigan" contentions are meaningless nonstarters. KCSO's Supplemental Brief does not make any effort whatsoever to explain what KCSO thinks the significance of the phrase "documents … attached to the name Justin Jernigan" has to do with its July 25, 2022, FOIA Response purportedly meeting the legal requirements of S.C. Code § 30-4-30(c) and Judge Newman's December 2022 Orders. KCSO apparently believes that by employing the phrase "no documents attached to the name Justin Jernigan" it can magically transform its July 25, 2022, FOIA Response (*supra* at 7, Ex. N at 32) into an actual FOIA response that meets the legal requirements of S.C. Code § 30-4-30(c) and Judge Newman's December 2022 Orders.

KCSO's May 30, 2023, Supplemental Brief does not make any attempt, much less provide any supporting evidence, to explain KCSO's "under the name" assertions, preferring instead to leave these matters entirely open to speculation and guesswork. *See* Br. 4. One wonders how exactly any KCSO records would become "attached to" the name "Justin Jernigan" in the first place? Why in the world would a presumably competent KCSO Records Department officer/employee, acting under the training and supervision of KCSO's Administrative Captain Kevin Lynch, come to the baffling conclusion that the July 22, 2022, FOIA Request (Compl., Ex. A) *only* includes KCSO public records that are "attached to" the name Justin Jernigan? How exactly does a KCSO Records Department officer/employee go about the task of *only* searching for those specific KCSO records that are "attached to" the name Justin Jernigan? How would a KCSO Records Department officer/employee then determine that there were, in fact, *no* records "attached to the name" Justin Jernigan as KCSO asserts in its Supplemental Brief? Br. 4. All such matters are left as open questions due to KCSO's failure to provide any explanations or evidence to support its "under the name" assertions. *See* Br. 4-12.

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Nevertheless, despite KCSO's complete and total failure to explain or provide any supporting evidence for its conclusory assertions that "there were no documents in the possession of Defendant *attached to the name Justin Jernigan*," KCSO makes this excuse repeatedly. *See* Br. at 4 ("based on the name"), 4 ("under the name"), 4 ("attached to the name"), 5 ("under the name"), 6 ("under the name"), 11 ("under the name"). KCSO initially made these still-yet-to-be explained, and still completely unsupported, "attached to the name" or "under the name" excuses to the Honorable DeAndrea Benjamin at the December 5, 2022, hearing. Pls.' July 24, 2023, Memo at 26-27. Judge Benjamin indicated that Plaintiffs should seek and obtain discovery from KCSO to resolve KCSO's peculiar "attached to the name" excuses. *Id.* (citing Ex. O at 16:13-21). KCSO's unsworn Interrogatory Answers #5 and #7 do not provide *any information whatsoever* that relates to, explains, and/or describes KCSO's purported "attached to the name" excuses. *Id.*; Ex. A at 8-9, 10 (copied below, emphasis added); *see also* Exs. B at 7-8 & D at 3-4.

INTERROGATORY NO. 5: Please provide KCSO's *basis, reasons, and/or explanations, and describe the circumstances of the underlying decision-making process*, with respect to KCSO's assertions via email on July 25, 2022, that there are *no public records* falling within the reasonable scope of the 7.22.22 Request to provide or make available for inspection.

ANSWER #5: Please see Defendant's Answer #4 [i.e., Kershaw County Sheriff's Office is an agency of limited resources…].

INTERROGATORY NO. 7: Please provide *the identity* of the KCSO personnel or other persons having *responsibility* for *timely providing* public records falling within the reasonable scope of the 7.22.22 Request pursuant to FOIA, and *describe the communications, steps, and/or processes taken with respect to searching, obtaining, locating, and/or producing these public records pursuant to the legal requirement of FOIA*.

ANSWER #7: Please see Defendant's Answer #1 [i.e., (1) Autumn Furniss; (2) Chelsea Cockrell; AND (3) Captain Kevin Lynch (Admin Captain)]. The person who initially responded to Mr. Jernigan's July 22, 2022, FOIA Request is no longer employed with the Kershaw County Sheriff's Office; therefore, we do not have access to the information requested.

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KCSO is obligated to give full/complete interrogatory answers, under oath, in response to Plaintiffs' Interrogatory Nos. 5 and 7 by, for instance, (*i*) providing "KCSO's basis, reasons, and/or explanations," and "the circumstances of the underlying decision-making process" for its July 25, 2022, FOIA Response; and (*ii*) describing "the communications, steps, and/or processes taken with respect to searching, obtaining, locating, and/or producing" the requested records of the July 22, 2022, FOIA Request "pursuant to the legal requirement of FOIA." Until it actually does so, KCSO's "attached to the name" excuses are nothing more than unsupported and unintelligible attorney argument.

In any case, a search "under the name" Justin Jernigan via KCSO's Record Management System/Software ("RMS") on July 25, 2022, would surely have at least yielded the public records/reports of Exs. I (CFS2022-39009) and J (CFS2002-39001). KCSO belatedly disclosed these CAD/CFS Reports on December 2, 2022. Exs. I & J. How exactly was KCSO able to search for, obtain, and disclose these CAD/CFS Reports (Exs. I & J) on December 2, 2022, after it was unable to do so on July 25, 2022, because these reports were purportedly not "attached to the name" Justin Jernigan?

Another feeble and meaningless excuse offered up by KCSO in its May 30, 2023, Supplemental Brief is its assertion that KCSO and KCSC's pre-suit counsel Attorney Morgan purportedly went "above and beyond his formal duties" to search for and disclose records of the July 22, 2022, FOIA Request (Compl., Ex. A). *See* Br. at 5 ("went above and beyond his formal duties"), 5 ("efforts of Kershaw County Attorney Mr. Tommy Morgan"), 5 ("Mr. Tommy Morgan going above and beyond his duties"), 5 ("Tommy Morgan was able to utilize the inter-departmental relationship of Kershaw County"), and 5 ("was only possible after Mr. Tommy Morgan personally contacted" KCSC).

KCSO cannot continue sticking its head into the sand and imagining that the July 22, 2022, FOIA Request was not submitted to *both* KCSO and KCSC. Ex. N at 12, 15-17. This is an indisputable fact. *Id.* Given that both KCSO and KCSC were represented pre-suit by Attorney Morgan, Mr. Morgan's "duties" ***required*** him to respond and produce records on behalf of both of his clients pursuant to FOIA, i.e., KCSO and KCSC. *Id.* KCSO and KCSC are also both currently represented by counsel of record in this case, Mr. David Morrison, Esq., in pending FOIA cases concerning the July 22, 2022, FOIA Request (Compl., Ex. A). *See also Jernigan v. Kershaw County*, 2023-CP-28-00538 (filed July 24, 2023).

Additionally, as required pursuant to the South Carolina Law Enforcement Accreditation ("SCLEA") Standards Manual, Chapter 15 Communications, written agreements, or authorizing documents, that govern the authority and responsibility of both the law enforcement agency (i.e., KCSO) and the shared or multi-jurisdictional entity (i.e., KCSC E-911/Dispatch) exist between KCSO/KCSC. Pls.' April 24, 2023, Memo at 8 (citing Ex. M at 15.4). KCSO's communications records, processes, and policies were requested by Plaintiffs' First Set of Discovery Requests, but KCSO has refused to identify and disclose these relevant communications records, policies, and/or agreements *See* Ex. A at 4. An "inter-departmental [agency] relationship" clearly exists between KCSO and KCSC with respect to law enforcement communications services. It is specious for KCSO to withhold all requested discovery with respect its communications policies/procedures on one hand, while at the same time continuing to make the claim that KCSO has no authority whatsoever with respect to its own law enforcement related communications records. *See* S.C. Code § 30-4-20(c) (defining "public record" to include all records "regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained a public body").

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KCSO indicates that certain relevant phone calls that are encompassed by the July 22, 2022, FOIA Request (Compl., Ex. A) were "made by personal cell phone with no recording made." Br. at 5. Regardless of whether "made by personal cell phone," or otherwise, relevant call related records, logs, etc., certainly exist with respect to these phone calls. All requested call related records, whether "made by personal cell phone" or otherwise, must be disclosed by KCSO pursuant to the legal requirements of FOIA. These requested call related records were generated by public officials/employees in connection with performing KCSO-related responsibilities and duties. The requested call-related records for the relevant phone calls were obviously not made by the officers involved for personal reasons. Br. at 5.

KCSO's July 25, 2022, FOIA Response explicitly stated that "we do not have *any* reports." *Supra* at 7, Ex. N at 32 (emphasis added). KCSO's July 25, 2022, statements asserting that "we do not have *any* reports" that document KCSO's June 29, 2022, police activities are demonstrably false statements that were intended to deceive Plaintiffs. *See* Ex. G at 11 ("documentation of law enforcement activity may be in the form of …"). KCSO belatedly produced Exs. I (CFS2022-39009) & J (CFS2002-39001) on December 2, 2022. These public records are CAD or CFS "Reports" that document KCSO's June 29, 2022, police activities pursuant to KCSO's Policy Manual, Chapter 209 – Records. Ex. G at 11.

Even so, KCSO's May 30, 2023, Supplemental Brief refuses to accept the reality that is established by the underlying record. Specifically, KCSO continues to restate its ill-defined and misleading assertion that "no report was prepared" numerous times. *Compare* Br. at 4 (KCSO's July 25, 2022, FOIA Response deceptively stated that "we do not have *any* reports") *with* Br. at 6 ("no report [was] prepared because this was a 'civil matter'"), 6 ("Defendant will prepare a report when there is a 'criminal matter'"), 7 ("Defendant's practice is to write reports for

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situations involving a 'criminal matter'"), 9 ("no incident report exists"), 10 ("no incident report was prepared"), 11 ("no incident report would be prepared"), and 11 ("no incident report under the name Justin Jernigan").

There is no need for KCSO to continue playing silly word games by suggesting that *criminal incident reports* are the only "reports" that KCSO was required to generate documenting its June 29, 2022, police activities. KCSO's own Policy Manual, Chapter 209 – Records, explicitly states that "*documentation of law enforcement activity* may be in the form of one or more of the following … Computer-aided Dispatch log," i.e., CAD or CFS "Reports." Ex. G at 11 (emphasis added). KCSO can stop pretending that "no reports" documenting its June 29, 2022, police activities existed on July 25, 2022, simply because no *criminal incident* reports were prepared with respect to KCSO's June 29, 2022, police actions. *Id.*; Exs. I (CFS2022-39009) & J (CFS2002-39001).

KCSO, pursuant to its Policy Manual, Chapter 209 – Records, is also required to generate Public Contacts/Warnings to document KCSO traffic stops that *do not* result in an arrest or the issuance of a traffic ticket. Ex. G at 9 (copied below).

> Public Contact/Warning
>
> Public Contact/Warnings Citations are utilized by the Kershaw County Sheriff' s Office to document traffic stops that DO NOT result in an arrest or the issuance of a Uniform Traffic Ticket. (SCLEA 27.1)

Pursuant to the legal requirements of FOIA, KCSO is required to disclose the Public Contact/Warning Citation that it generated pursuant to the requirements of its Policy Manual, Chapter 209 – Records (page 9) for the traffic stop that KCSO conducted on the morning of June 29, 2022. *See* Compl., Ex. A.

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KCSO's May 30, 2023, Supplemental Brief indicates that KCSO "sent another employee to Pinedale Residential Center" on the morning of June 29, 2022, while the other KCSO Officers detained, peaceful, law-abiding private citizens Plaintiff Mrs. Jernigan and her mother Mrs. Martin "on the side of the road." Br. at 7. The fact that KCSO officer(s)/employee(s) traveled to and visited Pinedale on the morning of June 29, 2022, is completely new and previously undisclosed information that has been provided for the first time ever in KCSO's May 30, 2023, Supplemental Brief. *Id.* The identity of the KCSO officer(s)/employee(s) is surreptitiously left to speculation by KCSO's Supplemental Brief. Br. at 7. Pursuant to the legal requirements of FOIA, KCSO is required to disclose all public records with respect to the KCSO officer(s)/employee(s) traveling to and visiting Pinedale on June 29, 2022. *See* Compl., Ex. A.

KCSO's May 30, 2023, Supplemental Brief states: "Defendant [KCSO] determined it was in the best interest of everyone to handle this matter with the Probate Court[1] and *contacted Mrs. Sharon Wright* to decide what Mrs. Ann Martin should do." Br. at 7 (emphasis added). The fact that KCSO contacted Mrs. Wright on June 29, 2022, to ask her for instructions as to what KCSO "should do" with respect to Mrs. Martin is completely new and previously undisclosed information that has been provided for the first time ever in KCSO's May 30, 2023, Supplemental Brief. Br. at 7. The identity of the KCSO officer(s)/employee(s) that contacted Mrs. Wright on June 29, 2022, is surreptitiously left to speculation by KCSO's Supplemental Brief. Br. at 7. Pursuant to the legal requirements of FOIA, KCSO is required to disclose all

[1] KCSO's May 30, 2023, Supplemental Brief refers exclusively to UPOAA matters being "handled through Probate Court" and/or seeking the assistance of the "probate court." Br. at 3, 6, & 7. The probate court is, however, a court of limited jurisdiction. Under the UPOAA, "[t]he probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article." S.C. Code § 62-8-401. As previously noted in Pls. April 24, 2023, Memo at 5 n.3, and as KCSO's counsel of record Mr. Morrison has known since November 2022, a related case is currently pending before *this* Circuit Court, rather than the probate court, that involves UPOAA as well as other causes of action. *See Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (the "967 case").

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public records with respect to the KCSO officer(s)/employee(s) contacting and requesting that Mrs. Wright "decide what" KCSO "should do" with respect to Mrs. Martin on June 29, 2022. Br. at 7; Compl., Ex. A.

KCSO's repeated references in its May 30, 2023, Supplemental Brief relating to Mrs. Wright and *her* "wishes," while completely ignoring Mrs. Martin's wishes, indicates that KCSO does not understand the purpose, fiduciary responsibilities, and legal limitations of the UPOAA. *See* Br. at 2 ("appointed Sharon P. Wright as the lawful attorney in fact"), 2 ("Mrs. Wright exercised her authority granted to her"), 2 ("against the wishes of Mrs. Wright"), 6 ("against the wishes of the Power of Attorney, Mrs. Sharon Wright"), 7 ("authorizing Mrs. Sharon Wright to act"), and 7 ("contacted Mrs. Sharon Wright to decide"). As fiduciaries for Mrs. Martin pursuant to general/financial POA documents, Plaintiff Mrs. Jernigan and Mrs. Wright are bound, *inter alia*, to act "in accordance with the principal's [i.e., Mrs. Martin's] reasonable expectations to the extent actually known," and always in Mrs. Martin's best interests. S.C. Code § 62-8-144(a)(1). Mrs. Wright's "wishes" and her personal "interests" in the matter are completely irrelevant under the UPOAA. Neither Mrs. Wright nor anyone else has claimed, or ever could claim, that Mrs. Martin's well-known, reasonable, rational, and presently expressed wishes were or are to spend her later years residing in an assisted living facility (e.g., Pinedale) rather than living with and being cared for by her family members. *See*, *e.g.*, Ex. X, Nov. 2022, Aff. of Lt. Col. Billie Schreck.

KCSO does not grasp the difference between general/financial POA documents pursuant to the UPOAA – which cannot lawfully be misused, misconstrued, or abused in a manner that strips away any fundamental individual rights that all citizens inherently possess – and court-appointed legal guardianship proceedings. *See* S.C. Code Ann. §§ 62-5-301, *et. seq.* ("Guardians

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of Incapacitated Individuals"). A court-appointed legal guardianship can only be imposed upon an incapacitated individual (i.e., a "ward") after compliance with substantial due process procedures/protections, e.g., appointing an attorney to advocate on behalf of the potential ward to fully maintain the ward's fundamental rights based upon the circumstances presented. S.C. Code Ann. § 62-5-303B (2019) ("Procedure for court appointment of a guardian; appointments of counsel").

Mrs. Martin is a human being possessing the same individual rights as everyone else. This will remain true unless and until a court of competent jurisdiction deems it necessary to declare otherwise; take certain of her fundamental rights away on a limited and as-needed basis; and appoint a suitable guardian/fiduciary with respect to such rights. S.C. Code Ann. §§ 62-5-301, *et. seq.* A ward's fundamental individual rights not specifically removed by the court and entrusted to an appointed guardian/fiduciary remain fully intact. S.C. Code Ann. § 62-5-304A(a) (2019) ("The court shall set forth the rights and powers removed from the ward. To the extent rights are not removed, they are retained by the ward. Such rights and powers include the rights and powers to ….").

The troubling assertions of KCSO's May 30, 2023, Supplemental Brief reveal that KCSO does not believe that Mrs. Martin, a vulnerable adult, possesses any fundamental rights and powers because of private contract/POA documents. *See supra* at 18 (citing/quoting Br. at 2, 6 & 7). KCSO believes an adult with a mental disability – in this case an elderly adult suffering from age-related dementia and/or Alzheimer's syndrome – is a piece of property subject to the wishes and whims of third-party private citizens (i.e., dictators) via private contact/POA documents. KCSO stands ready to ensure that the "wishes" of these private citizen dictators are imposed against other law-abiding private citizens by exercising its police power to enforce its

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particular and misguided "understanding" of the UPOAA. In any case, as noted above, not even a court of competent jurisdiction had the authority to take away Mrs. Martin's "rights guaranteed by the Bill of Rights for Residents of Long-Term Care Facilities," which is exactly what KCSO unilaterally decided that it had the authority to do on the morning of June 29, 2022. *But see* S.C. Code Ann. § 62-5-304A(c) (2019).

KCSO's May 30, 2023, Supplemental Brief asserts that the SCLEA law enforcement standards "are not mandatory" standards that KCSO is required to follow. Br. at 10. The SCLEA's website, however, suggests otherwise. The SCLEA's website states that "[a]ll SCLEA standards are mandatory and have specific requirements the agency must address, the actual way the standards are met is determined by the agency CEO." South Carolina Law Enforcement Accreditation, Inc., *Recognizing dedication, excellence, and professionalism in South Carolina law enforcemen*t, www.sc-lea.org (accessed Aug. 20, 2023).

KCSO's May 30, 2023, Supplemental Brief falsely asserts that KCSO disclosed *all* the requested personnel and training files of the July 22, 2022, FOIA Request (Compl., Ex. A) for *all* the officers/employees that were personally involved with the events of June 29, 2022, approximately one-year ago on August 24, 2022. Br. at 11.[2] When KCSO submitted its May 30, 2023, Supplemental Brief pursuant to Rule 11(a), SCRCP, it knew that on August 23, 2022, undersigned counsel *offered to extend* KCSO's August 24, 2022, FOIA disclosure deadline if KCSO or KCSC would simply disclose the still yet-to-be-disclosed third-party E-911 records and recordings of June 29, 2022, as soon as possible. Ex. N at 23-24. Attorney Morgan rejected Plaintiffs' reasonable proposal on behalf of his clients KCSO and KCSO later that same evening at 9:00pm. *Id.* at 22-23; *but see* S.C. Code Ann. § 30-4-30(c) ("The various … production

[2] As KCSO notes, the personnel/training records for KCSO Officer Branham were belatedly disclosed on January 9, 2023. The relevant records for KCSO Officer Branham, however, are still incomplete. *See* Ex. A at 16-17.

deadlines provided … are subject to extension by written mutual agreement … and this agreement shall not be unreasonably withheld").

As of undersigned counsel's August 23, 2023, proposal offering to extend KCSO's August 24, 2022, FOIA disclosure deadline – which was promptly rejected – KCSO had not disclosed *any* of the personnel and training files for *any* of the officers personally involved on June 29, 2022. Undersigned counsel noted that if Plaintiffs were required to filed suit, and KCSO subsequently disclosed or was ordered to disclose the requested personnel/training records, Plaintiffs would be entitled to recover attorney fees. Ex. N at 23 (citing *Burton v. York County Sheriff's Dept*., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) (reversing and remanding "to the trial court for a full and proper consideration of the attorney's fees request").

Attached hereto as Exhibit FF is a mailer and cover letter by Attorney Morgan dated October 14, 2022, which was sent with a CD optical disc including redacted personnel files for three of the KCSO Officers personally involved in the events of June 29, 2022 (*i.e.*, KCSO Officers Dustin Tate, Grant Arledge, and Miles Taylor). As shown in Exhibit FF at 4, KCSO deceptively wrote the date "August 24, 2022" on the CD optical disc in a transparent effort designed to "trick" the Court into believing these personnel/training records were disclosed by KCSO over *two months earlier*, i.e., prior to expiration of the 30-day FOIA disclosure deadline and before Plaintiffs filed this case on September 12, 2022.

In any event, KCSO has clearly not disclosed the requested personnel/training records with respect to <u>all</u> the officers/employees that its *own records* establish to have been personally involved with the events of June 29, 2022. *See* Exs. I (CFS2022-39009) & J (CFS2002-39001). For instance, no personnel/training files have been disclosed with respect to KCSO Officer #15 Courtney Cochran. Compl., Ex. A. Moreover, no personnel/training records have been

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disclosed for the yet-to-be identified officers/employees that visited Pinedale and contacted Mrs. Wright on June 29, 2022, i.e., facts revealed for the first time ever by KCSO within its May 30, 2023, Supplemental Brief. *Supra* at 17-18 (citing Br. at 7).

KCSO's May 30, 2023, Supplemental Brief asserts that the redactions made to the three personnel/training records of Exhibit FF were purportedly made "in accordance with law." Br. at 11. If KCSO honestly believes that the redactions made to the three personnel/training records of Exhibit FF are lawful, it simply needs to point to the FOIA exemptions that support its opinion in response to Plaintiffs' Interrogatory No. 10, as required by the SCRCP. KCSO's bare assertion that it made the redactions "in accordance with law" is merely its own entirely unsupported opinion. How exactly did KCSO determine that these redactions were made "in accordance with law" if it cannot even point to any actual "law" that supports its opinion at this late date? *See* Br. at 11.

B. KCSO's Discovery Responses and Productions are Evasive, Incomplete, and Unsworn in Violation of the Requirements of the SCRCP

KCSO's May 30, 2023, Supplemental Brief states that KCSO provided its unsworn January 9, 2023, discovery responses and productions "in good faith." Br. at 12. KCSO also notes that its responses/productions, unfortunately, "did not meet the satisfaction of" Plaintiffs." Br. at 12.

KCSO waived all objections to Plaintiffs' October 29, 2022, Interrogatories and Requests for Production by failing to timely respond by the December 5, 2022, deadline as required by the SCRCP. Pls.' July 14, 2023, Motion at 11. KCSO's refusal to voluntarily provide discovery as required by the SCRCP forced Plaintiffs to seek relief from Judge Newman at the December 19, 2022, hearing to simply obtain the unverified, evasive, and incomplete answers to Interrogatory Nos. 1 to 15, and incomplete responses and productions to Request for Production No. 1, that

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KCSO was ordered by the Court to provide by January 9, 2023. Plaintiffs are entitled to full and complete sworn discovery responses and productions as described in Plaintiffs' February 23, 2023, Rule 11(a), 10-Day Letter. Ex. A.

Plaintiffs have made matters easy for KCSO by describing in their February 23, 2023, Rule 11(a), 10-Day Letter (Ex. A) what will be acceptable to fully resolve the discovery matters. Undersigned counsel provided Plaintiffs' February 23, 2023, Rule 11(a), 10-Day Letter (Ex. A) to KCSO in a good faith effort to fully resolve the discovery matters, but KCSO decided instead that it would simply refuse to participate in discovery at all until forced to do so by this Court. KCSO waived all discovery objections and must therefore provide full, complete, and sworn discovery responses and document productions as requested by Plaintiffs' February 23, 2023, Rule 11(a), 10-Day Letter (Ex. A). It is unclear why KCSO considers itself to be exempt and/or immune from actually participating in the discovery process in good faith, and from providing discovery required by the SCRCP, as all other litigants before this Court are obligated and required to do.

C. KCSO's Previously Denied, and Reasserted, Oral Motion to Amend Paragraph 9 of its October 28, 2022, Answer

KCSO's May 30, 2023, Supplemental Brief states as follows at pages 20-21:

> At the hearing on this matter, the Defendant orally moved to be allowed to amend its answer to confirm to the evidence. In responding to the complaint, this Defendant admitted that Justin Jernigan filed the FOIA request on behalf of his mother. His mother is a Plaintiff in this proceeding. However, in reviewing the actual FOIA request, he did not file it on behalf of his mother. He was the only requestor. See Exhibit 1. That certainly is relevant to the response to the request. The Plaintiff is not prejudiced by correcting the pleadings to accurately reflect who the requestor was on the underlying FOIA request.
>
> Amendments to the pleadings are to be liberally granted unless there is legal prejudice. A simple amendment to the answer causes no legal prejudice here. The KCSO should be allowed to amend to reflect the true FOIA requestor as that is certainly relevant to their responses and this action.

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Plaintiffs have already responded with respect to KCSO's Oral Motion to Amend Paragraph 9 of its October 28, 2022, Answer, which was denied at the April 27, 2023, hearing, via Plaintiffs' May 23, 2023, post-hearing Supplemental Brief (submitted via email). Exs. W & V at 3-4. Rather than addressing or attempting to refute Plaintiffs' May 23, 2023, Supplemental Brief, and rather than actually filing a motion seeking to leave to amend Paragraph 9 of its October 28, 2022, Answer, KCSO has attempted to re-file its previously denied oral motion "under the table" via its May 30, 2023, Supplemental Brief, which was submitted at 3:03pm on day number thirty-three (33) of the 30-day supplemental/e-mail briefing period following the April 27, 2023, hearing. *See* Rule 6(a) (weekend/holiday rule), SCRCP; Ex. DD at 1-2. Plaintiffs' May 23, 2023, post-hearing Supplemental Brief (Exs. W & V at 3-4) states in part as follows:

> Plaintiffs' April 24, 2023, Memorandum in Support, on page 12, states that "KCSO … made judicial admissions in its October 28, 2022, Answer as follows: 'Paragraphs 16 and 17 [of the Complaint] are admitted only to the extent Mr. Jernigan submitted a FOIA Request as an attorney on behalf of his mother on July 22, 2022.'" Def.'s Answer ¶9. At the hearing, however, KCSO submitted an oral motion requesting leave to amend Paragraph 9 of its October 28, 2022, Answer. Specifically, KCSO asserted that Paragraph 9 of its Answer included typographical errors with respect to its admission that the July 22, 2022, FOIA Request was, at least, submitted by undersigned counsel Mr. Jernigan as an attorney on behalf of his mother Plaintiff Mrs. Jernigan. The Court denied KCSO's oral Motion seeking leave to amend Paragraph 9 of its Answer.
>
> To clarify, KCSO's admission of Paragraph 9 relates to the alleged lack of "capacity" - or lack of standing - defense that is contained in its Answer at Paragraph 36 (i.e., Fourth Defense). Notably, although FOIA clearly provides every "person" the right to copy/inspect any public record possessed by a public body (*see* S.C. Code §§ 30-4-20(b) & 30), S.C. Code § 30-4-100(a) states that "a citizen of the State" can file a civil action to enforce violations of the provisions of FOIA. Plaintiffs' counsel is not presently aware of any case law interpreting, applying, and/or reconciling these provisions of FOIA.

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As Plaintiffs' counsel briefly noted at the hearing, and as documented in Plaintiffs' attached December 2022 Pre-Hearing Brief on page 3 (Exhibit V, hereto), counsel for the Parties conferred in Fall 2022 and reached an amicable resolution with regard to KCSO's alleged lack of capacity/standing defense contained in its October 28, 2022, Answer at Paragraph 36 (Fourth Defense). Specifically, it was agreed that the July 22, 2022, FOIA Request was (at least) submitted by Plaintiff Mr. Jernigan as an attorney on behalf of his mother Plaintiff Mrs. Jernigan. As a result, it was agreed that KCSO's alleged lack of capacity/standing defense was moot.

KCSO is willing to make any argument and take any position no matter what. KCSO goal is "fighting" to keep from disclosing what are undisputedly public records and for which KCSO is merely a custodian on behalf of the public. KCSO has never asserted that any of the requested records are exempt from disclosure. Accordingly, the requested records are public records that do not belong to KCSO but, rather, belong to the public.

Attached hereto as Exhibit GG is a November 8, 2022, Email between counsel for the Parties. As confirmed therein, on November 4, 2022, the Parties engaged in good-faith negotiations with respect to the potential need for Plaintiffs to file a motion seeking an order for KCSO to re-plead and/or provide a more definite Answer pursuant to Rule 8(b), SCRCP. The Parties were able to resolve these issues, including by agreeing that the July 22, 2022, FOIA Request (Compl., Ex. A) was submitted (at least) by undersigned counsel as an attorney on behalf of Plaintiff Mrs. Jernigan. KCSO *now* seeks to go back on agreements counsel for the Parties negotiated and reached in good faith on November 4, 2022. KCSO's current position is that undersigned counsel *did not* file the July 22, 2022, FOIA Request (Compl., Ex. A) on behalf of his mother simply because Plaintiff Mrs. Jernigan was not *explicitly* identified as the "requestor."

This is another meaningless non-issue that KCSO only seeks to raise at this point for purposes of further obstruction, delay, and distraction from its willful FOIA violations and refusal to participate in discovery as required by the SCRCP. After agreeing resolve the standing

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issue consistent with the admissions of Paragraph 9 of its Answer in November 2022, KCSO's counsel has now twice attempted to backtrack by requesting leave of this Court to undo an agreement that was reached in a good faith effort to avoid the need for motion practice as required pursuant Rule 11(a), SCRCP. As noted in Plaintiffs' May 23, 2023, Supplemental Brief (copied above), KCSO represented to the Court at the April 27, 2023, hearing that it had made a "*typographical error*" in Paragraph 9 of Answer, even though the record clearly establishes that the Parties had conferred and specifically agreed on the matter. KCSO's efforts, on two occasions, to worm its way out of prior agreements it willingly made in November 2022 are shameful.

The imaginary standing dispute that KCSO seeks to create at this late date is also futile because it is directly contrary to controlling case law. Notably, In *Freemantle v. Preston*, the Court reversed and remanded the trial court's dismissal of the plaintiff's FOIA claim for lack of standing, holding as follows:

> The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a)….
> …
>
> The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012); *see also Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) ("this Court has held that standing under FOIA does not require the information seeker to have a 'personal stake in the outcome'") (citation omitted).

III. CONCLUSION

For the reasons stated in Plaintiffs' July 14, 2023, Motion to Recuse or Reconsider and above herein, Plaintiffs respectfully request that the Court vacate the June 2, 2023, Order denying Plaintiffs' Motion for Sanction/Contempt or, alternatively, to reconsider.

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 20th day of August 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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EXHIBIT FF

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Mr. Justin Jernigan
7148 Stirrup Court
Weddington, NC 28104

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Smith Robinson Holler DuBose and Morgan, LLC

COLUMBIA 2530 Devine Street, Columbia, SC 29205
P: 803.254.5445 F: 803.254.5007

SUMTER 126 N. Main Street, Sumter, SC 29151
P: 803.778.2471 F: 803.778.1643

CAMDEN 935 Broad Street, Camden, SC 29020
P: 803.432.1992 F: 803.432.0784

Reply To: Camden

October 14, 2022

Mr. Justin Jernigan
7148 Stirrup Court
Weddington, NC 28104

RE: Freedom of Information Act Request

Dear Mr. Jernigan:

I am responding to your Freedom of Information Act Request dated August 24, 2022 and as a follow up to my letter to you of September 20, 2022 in which you request the following:

> records concerning the names, ranks, dates of service, and/or related public information concerning all Department employees having any personal involvement regarding the above-described incidents that occurred in or around late June 2022 to present. Included in this request are training classes taken by these individuals, required, or respective certifications concerning constitutional rights of private citizens in connection with stops, detentions, arrests, use of police powers, etc. (e.g., regarding probable cause, reasonable suspicion, or indications of unlawful conduct required before taking such steps). I would also respectfully request similar training or certification information for all such individuals with respect to investigating abuse of the elderly or otherwise disabled/vulnerable adults

In that regard, please find enclosed herewith a CD containing all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. Section 30-4-10, *et seq.*

If you have any other questions or concerns, do not hesitate to contact me.

Very truly yours,

SMITH ROBINSON HOLLER
DuBOSE AND MORGAN, LLC

H. Thomas Morgan, Jr.
Asst. Kershaw County Attorney

HTM, Jr.:srd
Enclosure



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EXHIBIT GG

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Gmail Justin Jernigan <justin.a.jernigan@gmail.com>

11.4.22 Pre-Motion Conference Results; FOIA/KCSO Case; NEW Matters

4 messages

Justin Jernigan <justin.a.jernigan@gmail.com> Tue, Nov 8, 2022 at 4:48 PM
To: Callie Morrison <callie@dmorrison-law.com>
Cc: David Morrison <david@dmorrison-law.com>, "Cameron W. DeBoy" <cameron@dmorrison-law.com>

Dear David and Cameron,

I am writing for the purposes of documenting, summarizing, and wrapping-up Plaintiffs' Request for a good-faith pre-Motion Conference to KCSO (dated 10.29.22), KCSO's participation therein (on 11.04.22), and the Parties' resolution thereof (on 11.04.22 during the Conference). In other words, to dispose of "old matters" and, also, to raise "new matters" as set forth below.

OLD MATTERS

The Parties' discussed, *at least*, all of those concerns raised in Plaintiffs' below emails dated 10.28.22 and 10.29.22 (e.g., raising the potential need for Plaintiffs' filing of a motion to re-plead KCSO's Answer under Rule 8(b)). Plaintiffs' counsel very much appreciates KCSO counsels' good-faith discussions of Plaintiffs' below-noted concerns (of Oct. 28-29, 2022). We, the Parties, agreed that such a potential Motion (e.g., under Rule 8(b)), would not be in either Parties' interests with respect to the "just, speedy, and inexpensive determination" of this Case required/mandated under Rule 1, SCRAP.

KCSO was planning to send a response, that Plaintiffs are glad/happy to consider, regarding Plaintiffs' 1st IROG/RFPs Requests served via email/UPS on Oct. 29, 2022. We can discuss via phone rather than in writing at KCSO's preference.

NEW MATTERS

Plaintiffs/KCSO should collaborate, in good faith, on the preparation and submission of a pre-Hearing Memo/Summary to the Court in advance of the 12.5.22 Hearing (at 9:30am). For proposed inclusion therein, the Parties' do not disagree that: (1) the 7.22.22 FOIA Request was made (at least) on behalf of Plaintiff Mrs. Jernigan (i.e., my mother), and (2) some records falling within the 7.22.22 Request have yet to be produced.

My understanding is that KCSO will reserve its "right" not to produce records of the 7.22.22 FOIA Request that do not exist. Plaintiffs do not, because they cannot, disagree with this principle as a matter of logic. On that note, however, Plaintiffs' position is that such a "final determination" as to what records would be produced and, correspondingly, would not, was required to have been made in writing to Plaintiffs within 10-business days of the 7.22.22 FOIA submission pursuant to FOIA. Moreover, if records of the 7.22.22 Request have been destroyed subsequent to request (e.g., since 6.29.22) Plaintiffs believe such would/could violate the Records Act, FOIA, as well as other laws, regs, standards, requirements etc.

Please also note the Verified Complaint in the pending/related Civil Action 2022-CP-28-00967, Kershaw County, Fifth Judicial Circuit, filed Nov. 2, 2022. This is submitted in *further support of* my personal Reporting to KCSO of June 28-29, 2022, in good faith, of Exploitation of a Vulnerable Adult, my grandmother Ann Martin, under the S.C. Omnibus Adult Protection Action. This Complaint also includes averments/evidence of *criminal psychological/emotional abuse*, of a vulnerable adult, my

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grandmother, pursuant to the S.C. Omnibus Adult Protection Act. These are State Laws that I believe KCSO is the relevant jurisdictional authority for pursuing/enforcing.

Plaintiffs request, in the interest of justice, *that KCSO produce all of the third-party related KCSO public records asap* (e.g., third-party 911 Calls). If a Subpoena to KCSO/KC for the relevant third-party records and BWC data from 2022-CP-28-00967 is necessary or would be helpful to obtain such records asap, please let me know.

Best Regards,

Justin
864-710-5029 (cell)

On Fri, Nov 4, 2022 at 3:14 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

> David/Cameron,
>
> Good to touch base with you guys again on the FOIA case and appreciate your assistance with moving this matter forward towards a reasonable resolution.
>
> After considering the current status and our recent discussions, I believe that we should narrow things down considerably to just the 911 calls, dispatch records, CAD Reports, etc., relating to the third-parties identified in 7.22.22 Request.
>
> Would it be possible to get that part resolved asap?
>
> If so, other records could be easily resolved i think.
>
> Justin
>
> On Thu, Nov 3, 2022 at 3:55 PM Callie Morrison <callie@dmorrison-law.com> wrote:
>
> > I have 1:00 o'clock on the calendar for tomorrow.
> >
> > *Callie Morrison*
> >
> > *Office Manager/Legal Asst.*
> >
> > **Morrison Law Firm, LLC**
> >
> > 7453 Irmo Drive, Suite B
> >
> > Columbia, South Carolina 29212
> >
> > T: (803) 661-6285
> >
> > F: (803) 661-6289
> >
> > ---
> >
> > **From:** Justin Jernigan <justin.a.jernigan@gmail.com>
> > **Sent:** Thursday, November 3, 2022 3:17 PM

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF KERSHAW	)	
Christine Jernigan and Justin Jernigan,	)	C/A #: 22-CP-28-00782
Plaintiffs,	)	**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO RECUSE, VACATE AND REASSIGN, OR ALTERNATIVELY, TO RECONSIDER INTERLOCUTORY ORDER**
v.	)	
Kershaw County Sheriff's Office,	)	
Defendant.	)	

Defendant Kershaw County Sheriff's Offices files this response in opposition to Plaintiffs' Motion to Recuse, Vacate and Reassign, or Alternatively, to Reconsider Interlocutory Order and the materials filed in support of that motion on July 14, 2023.

I. INTRODUCTION

Defendant files this Response in Opposition to Plaintiffs' Motion to Recuse, Vacate, and Reassign; or, Reconsider Interlocutory Order filed on Friday, July 14, 2023, and Plaintiffs' Memorandum in Support of Motion to Recuse, Vacate, and Reassign and, partly to respond to his motion to Reconsider Interlocutory Order filed on Sunday, August 20, 2023 and retrieved by these Defendants on Monday, August 21, 2023. Plaintiffs argue Judge Coble should: (1) be recused; (2) vacate and reassign the June 2, 2023, Order denying Plaintiff's February 23, 2023, Motion for Sanctions/ Contempt; and/or (3) reconsider the June 2, 2023, Order for resolution. Plaintiff's claim appears to be based on the fact that the court indicated that it intended to deny his motions rather than on specific evidence of judicial bias. Plaintiffs' claims are wholly without merit, lack evidence and must be dismissed.

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II. BACKGROUND

April 27, 2023, Plaintiffs and Defendant participated in a hearing before Judge Coble at the Kershaw County Courthouse regarding Plaintiff's Motion for Sanctions/Contempt filed on February 23, 2023. During the course of this hearing, Plaintiffs and Defendant each argued their respective cases based on relevant evidence with Judge Coble taking each party's case under advisement. At the conclusion of the hearing each party was granted an opportunity by Judge Coble to file further memoranda in support of their positions. On May 23, 2023, Plaintiffs prepared and submitted a Post-Hearing Supplemental Brief via email. On May 30, 2023, Defendant prepared and submitted via email a Response in Opposition to Plaintiffs' Motion for Sanctions/Contempt and filed it with the court. After each party submitted their responses, Judge Coble considered each party's case and on June 2, 2023, indicated the court's intent to deny Plaintiff's pending motions. Plaintiff immediately began emailing with various requests regarding this ruling. The ultimate result was that a status conference was set. Following the filing of the present motion, the status conference was cancelled and this hearing scheduled.

After the status conference was scheduled, Jernigan filed this Motion To Recuse, Vacate, and Reassign; or, Alternatively, To Reconsider Interlocutory Order on July 14, 2023, with Judge Coble. In anticipation of the Wednesday, August 23, 2023, hearing with the court via WebEx, Defendant has prepared its Response in Opposition to Plaintiff's Motion to Recuse, Vacate and Reassign, or Alternatively, to Reconsider Interlocutory Order.

III. STANDARD OF REVIEW

Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Roche v. Young Bros., Inc.,* 332 S.C. 75, 504 S.E.2d 311 (1998). "As the threshold for a showing of bias is high, a finding of judicial bias

must be based on 'an abiding impression left from a reading of the entire record,' *Offutt v. United States*, 348 U.S. 11, 12, 75 S.Ct. 11, 99L.Ed. 11 (1954), not from particular comments or rulings considered in isolation, *United States v. Twomey*, 806 F.2d 1136, 1140 (1st Cir. 1986)." *Alexander v. Parks*, 834 Fed.Appx. 778 (2020). "It is not sufficient for a party seeking a judge's disqualification to simply allege bias; the party must show some evidence of bias or prejudice." Appellate Court Rule 501, Code of Jud. Conduct, Canon 3, subd. E(1)(a).

In Davis v. Parkview Apartments, 762 S.E.2d 535 (2014), the South Carolina Supreme Court addressed a judicial disqualification issue. The trial judge has disclosed relationships he might have had with the parties' counsel over the years. After actions dispositive to the case, the parties challenged the court's impartiality. The Supreme Court found that the judge's disclosures demonstrated his sensitivity to assuaging any concerns about his impartiality. The court further found that the record supported the judge's orders and there was no evidence presented of bias or prejudice by the judge. The court also noted that it gives great weight to the trial judge's assurance of his own impartiality and the movant has the burden of providing some evidence of the existence of a judge's impartiality. Id. @ 284-85.

In the legal malpractice case of Christensen v. Mikell, 476 S.E. 2d 692 (1996), the court held that the trial judge was not compelled to recuse himself in an alleged malpractice suit of a prominent attorney from the same circuit as the judge, where the Plaintiff failed to present evidence of the judge's impartiality. Id. @ 73. "To compel recusal, the alleged bias of the judge must be personal, as distinguished from judicial, in nature" Id. @ 74. [

IV. ANALYSIS

Plaintiffs make wild accusations regarding the court, Judge Coble, and Defendant throughout their Motion filed on July 14, 2023. However, Plaintiffs fail to provide specific

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evidence against the court, Judge Coble, and Defendant to prove why Plaintiffs' allegations relating to the hearing on April 27, 2023, should be considered further. Frankly, allegations against defense counsel have no bearing on this motion. Plaintiffs' claims and allegations are broad, baseless, and without merit, for these reasons Plaintiffs' Motion should be denied.

A. The Parties and Surrounding Circumstances

Plaintiffs make erroneous and egregious allegations towards the Kershaw County Sheriff's Office ("KCSO"), Kershaw County Attorney Mr. Tommy Morgan, Esq., Defendant's counsel, Mr. David L. Morrison, Esq. and Judge Daniel Coble. Plaintiffs allege, the Kershaw County Sheriff's Office "is a county law enforcement agency…who provide security services during this Court's proceedings in Kershaw County." Pls. Motion at 2. Plaintiffs also allege, "Mr. Morrison is a well-known local area attorney and has been defending cases filed against law enforcement agencies for over thirty years." Id. Plaintiffs continue to state, "Plaintiffs are private citizens who do not live in the local area and are appearing as strangers before this Court. Undersigned counsel is a North Carolina patent attorney making his first appearance in state court in the present case." Id. These descriptions by Plaintiffs appear to paint the South Carolina judicial system as one which is ripe with "home cooking" and run by "the good ole' boy system" which is false and a blatant attack on the South Carolina judiciary and the South Carolina legal profession.

Plaintiffs insinuate these circumstances establish an inherent bias from Judge Coble towards Defendant Kershaw County Sheriff's Office. These allegations could not be further from the truth. Mr. Morrison defends cases throughout South Carolina and occasionally in Kershaw County. Judge Coble was elected in 2022 to fill the vacancy of the Honorable L. Casey Manning for the Fifth Judicial Circuit. During this time Mr. Morrison never appeared before

Judge Coble until the day of this hearing. In fact, he had never met Judge Coble before this hearing. Plaintiffs' allegations relating to the hearing on April 27, 2023, are uninformed, without basis in reality, and without merit.

B. The Relevant JMSC Records

Plaintiff attempts to revisit the court's Judicial Merit Selection Commission to challenge either his qualifications or bias. That attempt in misguided. The Legislature has already passed on the Court's qualifications. Mr. Jernigan cannot second guess the legislative body. This Defendant contends that none of the JMSC records have any relevance to this proceeding.

Plaintiff has offered no evidence of any bias because none exists. Interestingly, Mr. Jernigan did not address this until he learned that the court intended to deny his pending motions. Only after learning that did Mr. Jernigan raise qualification or bias issues. An unfavorable ruling is never evidence of bias. Plaintiff's remedy, if any, is by way of the appellate courts, not by way of attacking the Court.

Despite that, this Defendant will address the JMSC records since Plaintiff has raised that issue. The Honorable Daniel M. Coble, as indicated by the South Carolina Judicial Merit Selection Commission ("JMSC") was a successful and respected member of the Fifth Circuit Solicitor's office during his tenure. These records also reveal a comprehensive and thorough examination of Judge Coble's professional character, fitness for the position he anticipated holding, and his professional qualifications. Plaintiffs allege through a portion of Judge Coble's Judicial Merit Selection Commission materials he is more or less unfit to hear the matter before Court because he stated in the November 17, 2020, JMSC Hearing Tr. At 129:25 to 130:7; Nov. 16, 2021, JMSC Hearing Tr. At 74:2-14, his "prior civil discovery experience – i.e., the subject matter of the Underlying Motion – was relatively limited." Pls. Motion at 3.

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If Plaintiffs examine Judge Coble's March 23, 2022, Report of Candidate Qualifications 2021[1], (pg. 46-55), it is apparent these allegations are unfounded. "Judge Coble reported the percentage of his practice involving civil, criminal, domestic and other matters prior to his serviced on the bench as follows: Civil – 40% and Criminal – 60%. Id. At 52. If one is to examine this information, it is apparent Judge Coble is well versed in civil discovery. Although Judge Coble did admit to having relatively limited experience, it is obvious Judge Coble was trying to be humble and reserved when appearing before the Judicial Merit Selection Commission. Plaintiffs attempt to use one comment from a sitting judge as evidence of his, at best limited, if not lack of knowledge of a subject regarding legal matters is embarrassing and incorrect. If Plaintiffs had examined the Judicial Merit Selection Commission records further, they would have learned Judge Coble identified his most significant orders or opinions. Among these opinions was *Rodriguez v. McDaniel*, Order 5469-2017-5 (Not Reported), which involved Judge Coble hearing a motion involving one party moving for sanctions against another party. This case identifies Judge Coble's knowledge and practical experience with not only the civil discovery process, but with motions for sanctions such as the underlying case for this motion. As with Rodriguez v. McDaniel, Judge Coble also denied a motion for sanctions against another party, the same as he has done with this case. Plaintiffs' allegations related to this material are, again, broad, baseless, and without merit.

C. KCSO's History of Misconduct and Abusive Discovery/Litigation Tactics

Plaintiffs claim Defendant has a reputation during the discovery process for operating in bad faith by relying on South Carolina Rule of Evidence 404(b) which states, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show

[1] (https://www.scstatehouse.gov/JudicialMeritPage/ReportonCandidatestoMembersofGA.php

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action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Although Plaintiffs rely on South Carolina Rule of Evidence 404(b), they do so in vain. "If the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected." *State v. Lyle*, 125 S.C. 406 (1923).

Plaintiffs have not provided any information to the court to prove admissible previous bad acts. Plaintiffs attempt to use a strategy of providing "sound bites" to the court in an effort to use this as a persuasive argument. A discovery sanction against in a different case under different circumstances, does not offer any probative evidence for Plaintiff to prove his claims under FOIA here. The claims here are independent and must stand on their own merit. Plaintiffs' allegations related to this material are, again, broad, baseless, and without merit.

D. The April 27, 2023, Hearing for the Underlying Motion

Plaintiffs claim Judge Daniel M. Coble must recuse himself, reassign the case, and/or at least reconsider the interlocutory order of June 2, 2023. Interestingly, Plaintiff apparently believes it would be appropriate for this court to reconsider his motion, even before a formal order is entered, despite his claims of bias. Plaintiffs attempt to state their case by providing an extensive, although inaccurate, account of the hearing held between Plaintiffs and Defendant on April 27, 2023.

Plaintiffs state their arguments for the Motion filed on July 14, 2023, in paragraphs 40 through 89. These paragraphs are cumbersome when combined with the totality of Plaintiffs' arguments and filings with the court considering the issue is a four (4) page Freedom of Information Act ("FOIA") request made on July 22, 2022. Based on the volume of information,

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Defendant wishes to identify and respond to certain arguments of Plaintiffs' without being argumentative in each paragraph from 40 through 89.

Paragraph 40: *At the beginning of the hearing on April 27, 2023, KCSO's counsel made an oral Motion asserting, for unspecified and unknow reasons, that Plaintiffs' Underlying Motion failed to satisfy the particularity requirements of Rule 7(b)(1), SCRCP.*

Explanation: Plaintiffs are correct, Defendant did make a motion during the hearing on April 27, 2023, which is permitted under the South Carolina Rules of Civil Procedure 7(b)(1) which states, "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefore, and shall set fort the relief or order sought." Defendant did make a motion during the hearing, which is permitted. The defense contended that Plaintiff's motions were not made with sufficient specificity and could not go forward. The court denied that motion and allowed the hearing to go forward. But the court did allow further briefing as was appropriate.

Paragraph 41: *KCSO's oral Rule 7(b)(1), SCRCP, Motion suggested that Plaintiffs' April 24, 2023, Memorandum and Exhibits G to U had unfairly surprised and prejudiced KCSO by raising previously unknown grounds.*

Explanation: Defendant received Plaintiffs' Memorandum in Support of Motion for Sanctions and Exhibits G to U which were filed on April 24, 2023. which consisted of 191 pages of Plaintiffs' argument and would be heard by the court on Thursday, April 27, 2023, at 9:30am in Kershaw County. Although Plaintiff had ample time to prepare its argument, Defendant was provided a minimal amount of time to prepare a proper response on behalf of our client and the court. The court did allow both parties to file subsequent memoranda.

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Paragraph 42: *Plaintiffs' timely-filed April 24, 2023, Memorandum, however, addressed well-known ground previously addressed in Plaintiffs' December 16, 2022, Pre-Hearing Brief (Ex. V, hereto); February 10, 2023, Rule 11(a), 10-Day Letter (Ex. A); and February 23, 2023, Motion for Sanctions/Contempt.*

Explanation: Plaintiffs believe their Motion was timely filed, although it did not provide Defendant enough time to formulate a proper defense for its clients. Judge Coble allowed Defendant and Plaintiffs an additional 30 days in which to provide supplemental briefings to state their cases more thoroughly. This decision was made, ostensibly, based on justice and not politics. Once each party had a chance to make a well-thought-out argument Judge Coble made a ruling.

Paragraph 43: *The Judge granted KCSO's oral Motion pursuant to Rule 7(b)(1), SCRCP, without discussing or addressing the factual findings or conclusions of law supporting the rule. But see Ellis, 433 S.E.2d at 587, 315 S.C. at 285.*

Explanation: Plaintiffs are incorrect, the court denied the motion that would have prevented the Plaintiff's motions from being heard. However, the court did allow further briefing for both parties. Plaintiff complains that the court granted both the parties the right to file additional briefs without discussing or addressing the factual findings or conclusions of law supporting the rule. Judge Coble was able to do this because it clearly states in South Carolina Rules of Civil Procedure 7(b)(1), "An application to the court for an order shall be by motion which, ***unless made during a hearing or trial in open court with a court reporter present,*** shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Defendant did make an oral motion during the April 27, 2023, hearing to Judge Coble. The motion was not immediately and blindly granted. At no time did Judge Coble

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issue a blanketed or blind response. Judge Coble told each party he would take the entire case under advisement and issue a ruling after each party had an opportunity to submit a supplemental briefing. Plaintiffs refer to *Ellis v. Procter and Gamble Distributing Co*., 433 S.E.2d at 857, 315 S.C. 283 (1993), when attempting to make a point about the impartiality of Judge Coble based on Plaintiffs' perceived lack of the court discussing or addressing the factual findings or conclusions of law supporting the ruling. In Ellis, the court was determining whether there was judicial bias based on the court possibly reviewing an ex-parte memo submitted by one party to the court and not to all parties involved in the case. The issue was whether this ex-parte memorandum made the court impartial. Here, Judge Coble was able to review each party's supplemental briefing and the oral motion made by Defendant pursuant to South Carolina Rule of Civil Procedure 7(b)(1). The court, presumably, took all of this information under advisement and made a ruling as is the duty of Judge Coble. Each portion of this is supported by case law and South Carolina law.

Paragraph 71: *At the hearing on April 27, 2023, the Judge also indicated that, in his prior experience serving as an assistant solicitor for this Judicial Circuit, defense attorneys had requested law enforcement records that they believed should exist but, upon discussion with law enforcement, the records did not exist (e.g. Brady material).*

Explanation: Plaintiffs are correct, Judge Coble referred to his previous experience as an assistant solicitor for the Fifth Judicial Circuit. Judge Coble also made this information well known in his South Carolina Judicial Merit Selection Commission ("JMSC") application which Plaintiffs are aware of since they cited them in another portion of their argument. It is not a crime or biased for someone to have personal and/or professional experiences they use to try and help people. In fact, this is exactly what Judge Coble did during the hearing on April 27, 2023,

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when he attempted to use his knowledge in an effort to help educate Plaintiffs as to the reality of the situation involving records in certain arenas of law enforcement. At no point in time was Judge Coble using his previous experience as a tool for bias or prejudice towards Plaintiffs, in fact, the opposite is true. Judge Coble was attempting to relate his previous professional experience to inform Plaintiffs of what may have happened to certain records which Plaintiffs insist exist, without evidence of that, within the Kershaw County Sheriff's Office, but unfortunately do not exist. This explanation and attempt to relate to Plaintiffs at no point in time reflected judicial bias on the part of Judge Coble.

Paragraph 79: *Given that the Judge's June 2, 2023, Order denied the Underlying Motion despite the explicit language of Rule 33(a), SCRCP, requiring verified interrogatory answers – and based upon the Judge's above-noted oral communications at the hearing – the decision-making process appears to have been improperly influenced by extrajudicial sources. See Ellis, 433 S.E.2d at 587, 315 S.C. at 285 ("a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record").*

Explanation: No formal order has been entered. Plaintiff is mistaken. Plaintiffs again attempt to utilize Ellis v. Procter and Gamble Distributing Co., 433 S.E.2d at 857, 315 S.C. 283 (1993), which deals with ex-parte communication by one party with a judge and "if consulted at all, had no bearing on the trial court's decision." Id. At no point in time does Plaintiffs' case relate to Ellis v. Procter and Gamble Distributing Co. Defendant at no point in time has made any ex-parte communications, or extra-curricular communication with Judge Coble, nor did Judge Coble utilize any prohibited means to reach a decision. For Plaintiffs to suggest these actions, or other actions similar to support their case, in light of the court making an adverse ruling is shocking and appalling, not only the court, but the South Carolina judicial system.

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E. Response to Plaintiffs' Memorandum in Support of Motion to Recuse, Vacate, and Reassign; or, Alternatively, to Reconsider Interlocutory Order

Plaintiffs submitted a Memorandum on Sunday, August 20, 2023, at 11:47pm for a hearing scheduled with the court on Wednesday, August 23, 2023, at 9:30am which Defendant will respond to in this section. Defendant will respond to the relevant portions of Plaintiffs' Memorandum in brevity with an intent to assist the court while avoiding the intentional and extensive use of motion practice to burden the court and Defendant further.

1. Defendant's Supplemental Brief Filed on May 30, 2023

Plaintiff is correct, Defendant did file its supplemental brief on Tuesday, May 30, 2023. Mr. Jernigan attempts to create issues at every turn – even where a cursory review would reveal the fallacy of his arguments. Defendant's supplemental brief was filed timely and in accordance with the court's requirements. South Carolina Rule of Civil Procedure 6(a) states, "In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday." Judge Coble granted each party the additional 30-day period, as previously stated, to provide a supplemental hearing. The hearing took place on April 27, 2023, which means the

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first day of the computation period was Friday, April 28, 2023. If one follows South Carolina Rules of Civil Procedure 6(a) properly, you can determine the 30th day would be Saturday, May 27, 2023. Since this day is a Saturday, as indicated by the rule the next day for computation would be Monday, May 29, 2023, however, this day is Memorial Day (Federal Holiday). Therefore, the appropriate day for the computation of the 30-day period would be Tuesday, May 30, 2023. Defendant filed its supplemental briefing on May 30, 2023, at 3:03pm, which makes Defendant's supplemental briefing is timely under the court appointed deadline. This would be easily verifiable by Plaintiff if he took the time to check rather than making unfounded allegations! Even if it were not, there is no legal prejudice to the Plaintiff.

2. **Kershaw County Sheriff's Office Did Not Take Unlawful Police Action**

Plaintiffs allege the Kershaw County Sheriff's Office "took unlawful police action" against Plaintiff Christine Jernigan and Mrs. Ann Martin. The Kershaw County Sheriff and its Deputies are constitutional officers of the State of South Carolina. At no point in time did the Kershaw County Sheriff's Office participate in any unlawful police action involving Plaintiff Christine Jernigan and/or Mrs. Ann Martin. Plaintiffs are not insinuating, they are boldly stating the Kershaw County Sheriff's Office was outside the scope of its authority and performing illegal acts, despite a lack of evidence when Plaintiffs claim: (1) Mrs. Martin was being prevented from being removed Pinedale Residential Center in contrast to the instructions provided by Mrs. Martin's Power of Attorney, Mrs. Sharon Wright; (2) Kershaw County Sheriff's Office forced Mrs. Martin to exist Plaintiff Christine Jernigan's vehicle; (3) Kershaw County Sheriff's Office performed

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actions which resulted in Mrs. Martin becoming "a hostage (or a slave)"; (4) Kershaw County Sheriff's Office performed actions on June 29, 2022, which subjected Mrs. Martin to neglect by Pinedale and resulted in further psychological /emotional abuse; (5) Kershaw County Sheriff's Office "decided the better course would be to follow its standard playbook by concealing and destroying records, including the first-hand body-camera recordings, documents its police actions of June 29, 2022."; and (6) Mrs. Martin's false imprisonment at the hands of Kershaw County Sheriff's Office. These six (6) claims by Plaintiffs are only a few of the gross mischaracterizations made by Plaintiff towards Defendant. In fact, Plaintiffs' allegations could not be farther from the truth. Defendant has attempted through numerous phone calls, hearings, etc. to explain to Plaintiff; however, if the court permits, Defendant would accept an opportunity to reply to Plaintiffs' requests during the hearing on Wednesday, August 23, 2023.

3. **Kershaw County Sheriff's Office Did Not Violate FOIA and/or Judge Newman's December 2022 Order**

Defendant previously stated the ways in which it did not violate Judge Newman's December 2022 Order regarding Plaintiff Justin Jernigan's July 22, 2022, FOIA Request to the Kershaw County Sheriff's Office. Plaintiffs are reminded this issue was heard by Judge Coble during the April 27, 2023, hearing in Kershaw County. Since Judge Coble has heard this issue, considered it under advisement, and informed the parties of his intent to deny Plaintiff's motions on June 2, 2023, Defendant does not need to provide additional information for the court to consider.

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4. **Kershaw County Sheriff's Office Discovery Responses**

Defendant previously stated, as it has with the Plaintiffs' concerns regarding FOIA, the ways it has not violated the discovery responses submitted to Plaintiffs. Plaintiffs are again reminded this issue was heard by Judge Coble during the April 27, 2023, hearing in Kershaw County. Since Judge Coble has heard this issue, consider it under advisement, and issued and will issue an Order after his June 2, 2023, Order which will deny Plaintiffs' Motion for Sanctions/Contempt, Defendant does not need to provide additional information for the court to consider.

5. **Kershaw County Sheriff's Office Oral Motion**

Two oral motions were made. The first, to not hear Plaintiff's motions on the grounds they were not set out with specificity, was denied and the hearing went forward. As a result, the defendant requested additional time for briefing. That was granted appropriately.

V. CONCLUSION

Defendant files this Response in Opposition to Plaintiffs' Motion to Recuse, Vacate, and Reassign; or, Reconsider Interlocutory Order filed on Friday, July 14, 2023, and Plaintiffs' Memorandum in Support of Motion to Recuse, Vacate, and Reassign; or Alternatively to Reconsider Interlocutory Order prior to the scheduled hearing between the parties on August 23, 2023, to provide further explanation to Plaintiffs and support for the court as it formulates its response. Plaintiffs make allegations and bold accusations towards Judge Coble and Defendant, yet Plaintiffs fail to produce evidence. The only tactic used in Plaintiffs' strategy is to make accusations which are unfounded. Judge Coble's Order issued on June 2, 2023, should remain.

Judge Coble should be allowed to preside over this case and any future steps this case may take in the Fifth Judicial Circuit. Plaintiffs' claims and allegations are broad, baseless, and without merit, for these reasons Plaintiffs' Motion should be denied.

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August 21, 2023

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW	)	**CASE NO.: 2022-CP-28-00782**
Christine Jernigan, et al., Plaintiffs, v. Kershaw County Sheriff's Office, Defendant.	)	**SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO RECUSE, VACATE AND REASSIGN; OR, ALTERNATIVELY, TO RECONSIDER INTERLOCUTORY ORDER**

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE ("KCSO")

Respectfully submitted,

By: s/Justin A. Jernigan

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This 6th day of October 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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APPENDIX OF EXHIBITS

Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt

Ex. A: Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter to KCSO

Ex. B: Plaintiffs' First Set of Interrogatories (Nos. 1-15) served October 29, 2022

Ex. C: Plaintiffs' First Set of Requests for Production (No. 1) served October 29, 2022

Ex. D: KCSO's Answers served January 9, 2023, to Plaintiffs' First Set of Interrogatories

Ex. E: KCSO's Responses served January 9, 2023, to Plaintiffs' First Set of Requests for Production

Plaintiffs' April 24, 2023, Memorandum in Support of Motion for Sanction/Contempt

Ex. F: Emails between Counsel for the Parties from January/February 2023

Ex. G: KCSO's Policy Manual, Chapter 209 - Records (first produced January 9, 2023)

Ex. H: SCCJA Training Catalog - Omnibus Adult Protection Act (Vulnerable Adults)

Ex. I: CFS2022-39009 (produced December 2, 2022)

Ex. J: CFS2022-39001 (produced December 2, 2022)

Ex. K: August 18, 2022, Cover Letter; Optical Disc; and CFS2022-39001

Ex. L: Letter of South Carolina Attorney General re: FOIA (page 4)

Ex. M: SCLEA Standards Manual, Chapter 15 - Communication

Ex. N: Pre-suit Emails – late July to late August 2022

Ex. O: December 5, 2022, Hearing Transcript before the Honorable DeAndrea G. Benjamin

Ex. P: KCSO Body Worn Camera Retention Schedules (first produced January 9, 2023)

Ex. Q: Orders from *Brown v. Elliot*, 3:14-cv-01188, D.E. 43 & 61 (D.S.C. 2016)

Ex. R: WIS News 10 Article - April 12, 2022

Ex. S: WIS News 10 Article - May 24, 2022

Ex. T: December 19, 2022, Hearing Transcript before the Honorable Jocelyn C. Newman

Ex. U: April 24, 2023, Affidavit of Justin A. Jernigan

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Plaintiffs' May 23, 2023, Post-Hearing Supplemental Email Brief

Ex. V: Email Brief with Plaintiffs' Dec. 16, 2022, Pre-Hearing Brief, Attached

Ex. W: Email Brief with SCLEA, Chapter 14 – Records, Attached

Plaintiffs' July 14, 2023, Motion to Recuse, Vacate, and Reassign; or, Alternatively, to Reconsider Interlocutory Order ("Motion to Recuse or Reconsider")

Ex. X: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd

Ex. Y: Feb. 20, 2023, Affidavit of Susan Martin

Ex. Z: Order Approving Wrongful Death Settlement, *Blakely v. KCSO, et al.*, 3:10-cv-00707-JFA, D.E. 138 (D.S.C, March 22, 2013)

Ex. AA: Text Version of May 6, 2016, Washington Post article entitled "South Carolina's poisonous police culture: The death of Lori Jean Ellis"

Ex. BB: Definitions of "Might" and "May," Merriam-Webster's Online Dictionary, <www.merriam-webster.com>

Ex. CC: August 29, 2019, Memorandum to Attorneys/Parties with Discovery Motions, the Honorable Roger M. Young, Sr., South Carolina Circuit Court of the Ninth Judicial Circuit

Ex. DD: May 8, 2023, to May 9, 2023, Emails re: 30-Day Supplemental Briefing Schedule

Ex. EE: June 2, 2023 to July 5, 2023 Emails re: June 2, 2023, Order denying Plaintiffs' Motion for Sanction/Contempt

Plaintiffs' August 20, 2023, First Memorandum in Support of Motion to Recuse or Reconsider

Ex. FF: October 14, 2022, Cover Letter; Optical Disc - Officers Tate, Taylor, and Arledge

Ex. GG: Nov. 8, 2022, Email between Counsel for the Parties re: 11/4/22 Conference Results

Plaintiffs' October 5, 2023, Second Memorandum in Support of Motion to Recuse or Reconsider

Ex. HH: April 27, 2023, Hearing Transcript in the Above-Captioned 782 Case

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Plaintiffs respectfully submit this Second Supplemental Memorandum in support of their July 14, 2023, Motion to Recuse or Reconsider the Court's June 2, 2023, Form 4 denial of Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt and further briefing (collectively, the "Underlying Motion").[1] This Memorandum addresses and corrects the record with respect to KCSO's August 21, 2023, Response in Opposition ("Response").[2]

I. INTRODUCTION

Plaintiffs' Motion to Recuse/Reconsider ("present Motion") is based on Canon 3E(1); i.e., circumstances upon which a "judge's impartiality might reasonably be questioned" by a well-informed objective observer. Pls.' Motion at 1-2, 7. Reasonably perceived appearance-based concerns relating to the April 27, 2023, hearing for the Underlying Motion and the June 2, 2023, Form 4 denial are generally described in the present Motion. *Id.* at 10 (*Shaw v. State* standard), 17-19, 21-24. Plaintiffs note, however, that the April 27, 2023, hearing transcript for the Underlying Motion is attached hereto as Exhibit HH, and that Plaintiffs respectfully defer to the details set forth therein.

A primary Canon 3E(1) consideration of the present Motion relates to the South Carolina Supreme Court's holding in *Ellis* (and its progeny) that "[a] judge's impartiality might

[1] The further briefing includes Plaintiffs' April 24, 2023, Memorandum and post-hearing May 23, 2023, Supplemental Brief. Plaintiffs' post-hearing Supplemental Brief was initially submitted via email in accord with the Judge's instructions at the April 27, 2023, hearing. *See* Ex. HH, hereto, at 45:6-13 (The Court: "any emails [counsel of record] will cc each other and you will email my law clerk").

[2] Plaintiffs' August 20, 2023, First Supplemental Memorandum in support of the present Motion was submitted for the purposes of addressing, correcting the record, and requesting that KCSO cure the misrepresentations of fact/law contained in its post-hearing May 30, 2023, Supplemental Brief; i.e., initial Response in Opposition to Plaintiffs' Underlying Motion. For instance, KCSO falsely asserted that it disclosed personnel/training files of the July 22, 2022, FOIA Request (Compl., Ex. A) on *August 24, 2022*, before this case was filed on September 12, 2022. *Compare* Pls.' Aug. 20, Memo at 20-22 (citing Ex. FF) *with* KCSO's May 30, 2023, Br. at 11. KCSO's Supplemental Brief also claims that the SCLEA law enforcement standards "are not mandatory" standards that KCSO is required to follow even though the SCLEA's website states that "[a]ll SCLEA standards are mandatory and have specific requirements the agency must address, the actual way the standards are met is determined by the agency CEO." *Compare* Pls.' Aug. 20, Memo at 20 *with* KCSO's May 30, 2023, Br. at 10.

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reasonably be questioned when his [or her] factual findings are not supported by the record." *Ellis v. Procter and Gamble Distributing Co*., 433 S.E.2d 856, 857, 315 S.C. 283, 285 (1993) (reversing and remanding because the trial judge's findings were not supported by the record); *see also Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) (determining that the trial judge's findings were supported by the record). The Court's June 2, 2023, Form 4 Order, for instance, denied the Underlying Motion despite the explicit language of Rule 33(a), SCRCP, requiring KCSO to submit full/complete verified interrogatory answers to Plaintiffs' October 29, 2022, First Set of Interrogatories (Ex. B) on or before December 5, 2022. Pls.' Motion at 23-24. At present, KCSO's answers to Plaintiffs' First Set of Interrogatories are over *ten months* late. Rule 37(a)(3), SCRCP ("an evasive or incomplete answer is to be treated as a failure to answer").

The Judge has expertise with respect to Code of Judicial Conduct and recusal-related matters. Nov. 17, 2020, JMSC Hearing Tr. at 134:20 to 135:8.[3] The (then-candidate) Judge noted that motions for "recusal[] obviously come up" given that such motions are "part of the job." *Id.* Judge Coble aptly explained that, because granting a motion for recusal necessarily increases another judge's workload, a motion for recusal should be given the appropriate level of scrutiny to avoid "passing the buck" unnecessarily. *Id.* Plaintiffs agree.

The present Motion otherwise seeks reconsideration of the interlocutory June 2, 2023, Form 4 denial of Plaintiffs' Underlying Motion. In this respect, "[a]n abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions." *Father v. South Carolina Dept of Soc. Servs*., 353 S.C. 254, 578 S.E.2d 11 (2003). KCSO cannot credibly oppose reconsideration of the Form 4 denial because KCSO itself would not (and could not) comply with the Court's June 2, 2023, instructions by submitting a proposed

[3] The relevant JMSC records/transcripts are available via the South Carolina Legislature's website: <www.scstatehouse.gov/JudicialMeritPage/GeneralInfoJMSC/Judmerit.php>.

formal/written order with findings/conclusions supporting the Form 4 Order (i.e., based on the underlying record and governing law). Pls.' Motion at 24 & Ex. EE at 2-6.

II. DISCUSSION

A. KCSO's Response Falsely Declares that the Court's June 2, 2023, Form 4 Order Merely *Intended* to Deny Plaintiffs' Underlying Motion

KCSO's Response repeatedly inserts non-existent language into the Court's June 2, 2023, Form 4 Order denying the Underlying Motion. KCSO claims that the present Motion to Recuse/Reconsider "appears to be based on the *fact* that the court indicated that it *intended* to deny" the Underlying Motion. Resp. at 1, 2 ("intent to deny"), 5 ("intended to deny"), 14 ("intent to deny). The Court's Form 4 Order clearly states, however, that a decision has been "rendered" and that the Underlying Motion "is denied" as shown below.

☑ **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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion for Sanctions/Contempt, heard on April 27th, 2023 is denied. Formal order to follow.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

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B. KCSO's Response Misrepresents the Governing Legal Standard of the Present Motion Pursuant to Canon 3E(1)

KCSO's "Standard of Review" section cites an exemplary subsection, Canon 3E(1)**(a)**, that is not relied upon or asserted by the present Motion. Resp. at 3. Subsection **(a)** of Canon 3E(1) requires recusal in the (obvious) "impartiality might reasonably be questioned" scenario where "the judge has a *personal* bias or prejudice concerning a party or a party's lawyer."

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Canon 3E(1)(a) (emphasis added). KCSO also includes irrelevant language from three federal appellate court opinions that address whether the district court's behavior and/or comments demonstrated judicial bias/prejudice on a level that would be considered inconsistent with the right to a fair trial and thereby require reversal; i.e., "the threshold for a showing of *bias* is high, a finding of *judicial bias* must be based on 'an abiding impression left from a reading of the entire record.'"[4] Resp. at 2-3 (emphasis added).

With respect to the South Carolina Supreme Court's well-established holding in *Ellis* that "[a] judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record," 433 S.E.2d at 857, 315 S.C. at 285, KCSO asserts as follows:

> In *Ellis*, the court was determining whether there was judicial bias based on the court possibly reviewing an ex-parte memo submitted by one party to the court and not to all parties involved in the case. The issue was whether this ex-parte memorandum made the court impartial.
> …
> Plaintiffs again attempt to utilize *Ellis* … *which deals with ex-parte communication by one party with a judge and 'if consulted at all, had no bearing on the trial court's decision*.' *Id*. At no point in time does Plaintiffs' case relate to *Ellis*…. Defendant at no point in time has made any *ex-parte* communications, or extra-curricular communication with Judge Coble, nor did Judge Coble utilize any prohibited means to reach a decision. *For Plaintiffs to suggest these actions*, or other actions similar to support their case, in light of the court making an adverse ruling *is shocking and appalling, not only [to] the court, but [to] the South Carolina judicial system*.[5]

Resp. at 10, 11 (emphasis added).

[4] The federal appellate cases that are cited by KCSO's Response at pages 2-3 include: *Offutt v. United States*, 348 U.S. 11, 17 (1954) ("Our concern is with the fair administration of justice"); *United States v. Twomey*, 806 F.2d 1136, 1140-41 (1st Cir. 1986) (determining that the trial judge's "isolated comment" did not interfere with the defendant's right to a fair trial); *Alexander v. Parks*, 834 Fed. Appx. 778 (4th Cir. 2020) (determining that the trial court's comments failed to "show judicial bias" on a level that would require reversal and a new trial).

[5] For the purpose of consistency, KCSO's Response at page 11 should be modified: "For Plaintiffs to suggest these actions, or other actions similar to support their case, in light of the court ~~making an~~ [indicating its *intent* to make an] adverse ruling is shocking and appalling, not only [to] the court, but [to] the South Carolina judicial system. *Cf.* Resp. at 1 ("intended to deny"); 2 ("intent to deny"), 5 ("intended to deny"), 14 ("intent to deny).

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In the *Ellis* case, the South Carolina Supreme Court remanded to the trial judge for findings after the plaintiff discovered – post-judgement and on appeal – that the defendant had submitted an *ex parte* post-trial memorandum (eight-pages long) to the trial court. 433 S.E.2d at 857, 315 S.C. at 284. The trial judge had specifically advised the parties that court did not wish to receive/consider any post-trial briefing. The trial judge responded to the *Ellis* Court's remand request by providing findings indicating that the *ex parte* post-trial memorandum, "if consulted at all, had no bearing on the trial court's decision." *Id.*

The concluding paragraph of the South Carolina Supreme Court's opinion in the *Ellis* case states:

> In the case at hand, *the record does not support the trial judge's factual finding* on the merits of the counterclaim that Ellis failed to account for $40,000 in funds forwarded to him by P&G in connection with the Clasico Soccer Series and that he was liable for this amount. While we accord great weight to the trial judge's assurance of his own impartiality, *we find a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record*. Accordingly, *we find evidence of judicial prejudice in this case*. *Cf. Burgess v. Stern*, *supra* (no evidence of judicial prejudice where factual findings supported by record).

433 S.E.2d at 857, 315 S.C. 284-85 (emphasis added).

The above holding is not limited to cases that involve *ex parte* judicial communications as alleged by KCSO (*see* above). *Ellis* has been relied upon (i.e., cited/quoted) by the South Carolina Supreme Court in a case (i.e., *Davis*) that involved a Canon 3E(1) motion for disqualification. KCSO's Response ("Standard of Review") cites and discusses the *Davis* decision. Resp. at 3; *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014). In *Davis*, the Court addressed whether recusal under Canon 3E(1) was required in view of the trial judge's disclosure of personal/family relationships developed via various interactions with opposing counsel of record over the years. 762 S.E.2d at 545-47. The *Davis* Court determined

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that the disclosed relationships/interactions of the trial judge with opposing counsel of record over the years did not rise to a level for which recusal was required. *Id.* at 547.

In *Davis*, the Court further determined that the record supported the court's orders in the case, and that no prejudice had therefore been shown. *Id.* at 547 (citing *Burgess v. Stern* and *Ellis*). In support, the *Davis* Court cited/quoted by comparison to *Ellis* ("finding a judge's impartiality might reasonably be questioned 'when his factual findings are not supported by the record'and holding that the judge's factual findings in that case were not supported by the record")). KCSO's above-quoted assertions claiming that the holding in *Ellis* is limited to situations that involve *ex parte* communications are incorrect.

C. KCSO's Response Mischaracterizes the Appearance-Based Impartiality Concerns of the Present Motion as Allegations of Personal/Subjective Judicial Bias

KCSO's Response also misrepresents the actual arguments of the present Motion. In sum, KCSO's Response creates a false narrative that the present Motion pursuant to Canon 3E(1): (*i*) is required to establish, (*ii*) has endeavored to establish, and (*iii*) has failed to establish personal/subjective judicial bias on the part of Judge Coble. *See*, *e.g.*, Resp. at 11 ("Judicial bias on the part of Judge Coble").

The present Motion states that "it is submitted to raise reasonably perceived appearance-based impartiality concerns" and, moreover, explicitly states that it "does not question the Judge's *subjective* intentions or *personal* integrity." Pls.' Motion at 2 (emphasis added). Nonetheless, KCSO's Response transforms the appearance-based Canon 3E(1) "impartiality might reasonable be subject to question" concerns of the present Motion into accusations of personal/subjective judicial bias. *See*, *e.g.*, Resp. at 1 ("specific evidence of judicial bias"), 4 ("an inherent bias from Judge Coble"), 5 ("no evidence of any bias"), 7 ("claims of bias"), 10 ("biased"), 11 ("Judicial bias on the part of Judge Coble").

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KCSO's Response claims that "wild accusations" have been asserted by Plaintiffs "throughout their [present] Motion" against Judge Coble. Resp. at 3. Even further, KCSO's Response claims that Plaintiffs' present Motion pursuant to Canon 3E(1) is nothing less than a "false and a blatant attack on the South Carolina judiciary and the South Carolina legal profession." *Id.* at 4. KCSO has stuck its head into the sand and refused to recognize the actual contentions and governing legal standard of the present Motion.

D. KCSO Ignored, and Refused to Comply with, the Court's June 2, 2023, Instructions to Submit a Proposed Formal/Written Order Supporting the Form 4 Denial

On June 2, 2023, the Judge's law clerk instructed counsel of record for the Parties – i.e., mainly KCSO's counsel of record David Morrison, Esq. ("Mr. Morrison") – to prepare and submit a proposed formal/written order supporting the Court's June 2, 2023, Form 4 denial of Plaintiffs' Underlying Motion for Sanctions/Contempt.

> I am emailing regarding Plaintiff's Motion for Sanctions/Contempt in the above-captioned case, which Judge Coble heard on April 27th, 2023. Judge Coble is denying this motion. His Honor requests that you submit a proposed order accordingly. You may submit the proposed order to me via email, for Judge Coble's review.

Pls.' July 14, Motion at 24 & Ex. EE at 6.

KCSO never acknowledged, or attempted to comply with, the Court's June 2, 2023, instructions by submitting the requested proposed formal/written order. *See id.*, Ex. EE at 2-6. KCSO did not, for instance, attempt to prepare/submit the Court-requested draft formal/written order based on the purported grounds of its post-hearing Supplemental Brief filed on May 30, 2023.[6] If it were possible for KCSO to prepare/submit a proposed written order supporting the

[6] KCSO did not file any response opposing Plaintiffs' Underlying Motion prior to the April 27, 2023, hearing. On May 30, 2023, KCSO formally filed its post-hearing Supplemental Brief – captioned as an initial "Response in Opposition" to the Underlying Motion – onto the docket rather than submitting via email as the Judge had instructed counsel for the Parties at the April 27, 2023, hearing. Ex. HH at 45:6-13.

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Form 4 denial of Plaintiffs' Underlying Motion – as the Court requested on June 2, 2023 – KCSO would have done so.

E. KCSO's Response Pretends that the Court's June 2, 2023, Instructions Requesting a Proposed Formal/Written Order Supporting the Form 4 Denial Never Happened

KCSO's Response opposes reconsideration of the June 2, 2023, Form 4 denial by claiming KCSO does "not need to provide additional information for the court to consider" with respect to the Underlying Motion. Resp. at 14. KCSO's position is that Judge Coble will "issue an Order after his June 2, 2023, [Form 4] Order which will deny Plaintiffs' Motion for Sanctions/Contempt." Resp. at 15. KCSO ignores reality by pretending that the Court's June 2, 2023, instructions requesting submission of a proposed formal/written order supporting the Form 4 denial never happened. It is unreasonable for KCSO's Response to suggest that a formal/written order denying the Underlying Motion will be entered *sua sponte* at some unknown future date after KCSO itself could not prepare the requested proposed formal/written order; e,g., based on KCSO's May 30, 2023, post-hearing Supplemental Brief.

F. The Present Motion and KCSO's Response are Incorrect re: Supplemental Briefing Granted at the Hearing

The present Motion states (at 17-18):

> 43. The Judge granted KCSO's oral Motion pursuant to Rule 7(b)(1), SCRCP, without discussing or addressing the factual findings or conclusions of law supporting the ruling. *But see Ellis*, 433 S.E.2d at 587, 315 S.C. at 285.
>
> 44. After granting KCSO's oral motion pursuant to Rule 7(b)(1), SCRCP, the Judge indicated that both Parties would be allowed an additional thirty (30) day period following the hearing to submit supplemental briefing via email. *See also* Exs. DD, hereto, May 8, 2023, to May 9, 2023, Emails re: 30-Day Supplemental Briefing Schedule.
>
> 45. After the hearing on April 27, 2023, Plaintiffs' counsel discovered that Rule 7(b)(1), SCRCP, has been interpreted to require that the movant establish resulting prejudice as a consequence of any alleged violation of Rule 7(b)(1), SCRCP; e.g., by identifying responsive arguments that the moving party was

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> unjustly precluded from asserting due to the alleged violation. *See*, *e.g.*, Ex. V, hereto; *M & M Group, Inc. v. Holmes*, 666 S.E.2d 262, 265, 379 S.C. 468 (Ct. App. 2008) (holding that although the defendant did not comply with the technical requirements of Rule 7(b)(1), SCRCP, the plaintiff waived the argument by failing to argue/show the trial court that the technical violation "prejudiced it or caused unfair surprise in any way") (citation omitted).
>
> 46. KCSO did not suffer any known/identifiable unfair surprise or prejudice, and, in any case, the additional thirty (30) day supplemental briefing period gave KCSO a full opportunity to present any potentially viable responsive arguments.
> …
> 50. Plaintiffs' counsel believes that the Judge, based upon unconscious extrajudicial sources/influences, expected that Plaintiffs' counsel was to blame for the fact that KCSO and its counsel were appearing before the Court facing an unopposed Motion for Sanctions/Contempt at the hearing on April 27, 2023.

As set forth above, Plaintiffs understanding was that the Judge provided KCSO an additional thirty (30) day post-hearing period to respond to the Underlying Motion upon granting (via bench ruling) KCSO's oral Rule 7(b)(1) Motion. KCSO's Response, however, states that "Plaintiffs are incorrect, the court denied the [Rule 7(b)(1)] motion that would have prevented the [Underlying Motion] from being heard. However, the court did allow further briefing for both parties." Resp. at 9.

Plaintiffs ordered/obtained the April 27, 2023, hearing transcript (attached hereto as Exhibit HH) for purposes of clarifying the circumstances upon which KCSO was granted leave to submit its post-hearing May 30, 2023, Response in Opposition.

> THE COURT: What we're going to do is we'll go forward today with Mr. Jernigan's motion. Anything that was referred to that was turned over Monday we won't refer to that today because -- unless -- there isn't enough time. So *anything that was turned over Monday*, if it's going to be -- with any motion you want to, you know, not continue it for continuance sake but if they're not prepared with <u>*new*</u> information *that they didn't have*, something <u>*new*</u> additional brought up that they could [not] have been aware of, we just want to make sure that they are prepared.
>
> MR. JERNIGAN: That's fair. If there is anything <u>*new*</u> that would like to be, you know, when I going through it, if there's something that's <u>*new*</u> or *that they weren't aware of* and they want to mention that, that's fine.

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> THE COURT: Well, we'll keep it out in consideration.
>
> MR. JERNIGAN: You know, I did file this in accord with the instructions so I'm not sure why it would be kept out but we can do it however.
>
> THE COURT: All right. Let's go forward with this motion. Yes, sir, Mr. Jernigan.

Ex. HH at 13:1 to 13:19.

…

> THE COURT: What I'm going to do is I'm going to -- anything further Mr. Morrison? I'm ready to take it under advisement.
>
> MR. MORRISON: I would like the opportunity to respond to what we have received in writing because *most of this we just received on Monday*.
>
> THE COURT: Very well. I'm going to take -- I'm giving you 30 days to respond. Obviously any emails you will cc each other and you will email my law clerk, and they're not going to be lengthy, back-and-forth emails that tend to happen, but if there is a response, obviously you can respond.
>
> So I'll give you 30 days to respond to send in the responses that you got this stuff *Monday*. If you need to respond again --
>
> MR. MORRISON: Thank you.
>
> THE COURT: But I'm going to try to address those three main issues about destroying evidence. The FOIA response and then the discovery response.
>
> MR. JERNIGAN: Thank you, Your Honor.

Ex. HH at 44:25 to 45:13.

As clarified by the April 27, 2023, hearing transcript, no definitive/explicit bench ruling granting (or denying) the oral Rule 7(b)(1) Motion is shown near the beginning of the hearing (Ex. HH at 11:11 to 13:25); the Judge granted KCSO's request for leave to submit supplemental briefing near the conclusion of the hearing (*id.* at 44:25 to 45:13); and the Judge limited supplemental briefing to new matters of Plaintiffs' April 24, 2023, Memorandum that KCSO was

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not previously aware of (*id.* at 11:11 to 13:25 & 44:25 to 45:13). Plaintiffs respectfully withdraw all inconsistent descriptions, assertions, etc., contained within their present Motion. *See*, *e.g.*, Pls.' Motion pages 17-18 & Ex. HH at 11:11-13:25, 44:25-45:13.

G. KCSO's Response Concedes that Plaintiffs' April 24, 2023, Memorandum did not Contain New Information that Unfairly Surprised KCSO

The present Motion establishes (*i*) that Plaintiffs' timely-filed April 24, 2023, Memorandum addressed well-known grounds, and (*ii*) that KCSO did not suffer unfair surprise or prejudice. Pls.' Motion at 15-18; *M & M Group, Inc. v. Holmes*, 666 S.E.2d 262, 265, 379 S.C. 468 (Ct. App. 2008) (holding that although the defendant did not comply with the technical requirements of Rule 7(b)(1), SCRCP, the plaintiff waived the argument by failing to argue/show the trial court that the technical violation "prejudiced it or caused unfair surprise in any way") (citation omitted). KCSO's Response does not dispute this. Resp. at 9 (indicating that the court denied its oral Rule 7(b)(1) Motion). Accordingly, KCSO did not follow the Judge's ruling at the April 27, 2023, hearing limiting the subject matter of its supplemental briefing to new matters of Plaintiffs' April 24, 2023, Memorandum KCSO was not previously aware of. Ex. HH at 11:11-13:25, 44:25-45:13.

III. KCSO'S UNLAWFUL POLICE ACTIONS

KCSO's May 30, 2023, Supplemental Brief admitted that the reason KCSO took police action on June 29, 2022, against Plaintiff Christine Jernigan ("Mrs. Jernigan") and Plaintiffs' respective mother and grandmother Ann Martin ("Mrs. Martin"), a vulnerable adult, is because these law-abiding citizens were acting in a manner that was "against the wishes of Mrs. [Sharon] Wright." *See* Pls.' Aug. 20, 2023, First Memo. at 2 & KCSO's May 30, 2023, Br. at 1-2. Plaintiffs requested that:

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> If KCSO genuinely believes that it has the authority and jurisdiction to interpret and enforce private contracts against law-abiding citizens – i.e., general/financial power of attorney ("POA") documents – based upon the 'wishes' of third-party private citizens, then KCSO needs to also explain on the record where exactly such unheard-of-in-civilized-society police authority came from.

Pls.' Aug. 20, 2023, First Memo. at 2

Rather than attempting to provide a lawful basis to justify its June 29, 2022, police actions, KCSO responds:

> Plaintiffs allege the Kershaw County Sheriff's Office 'took unlawful police action' against Plaintiff Christine Jernigan and Mrs. Ann Martin. The Kershaw County Sheriff and its Deputies *are constitutional officers* of the State of South Carolina. At no point in time did the Kershaw County Sheriff's Office participate in any unlawful police action involving Plaintiff Christine Jernigan and/or Mrs. Ann Martin. Plaintiffs *are not insinuating, they are boldly stating the Kershaw County Sheriff's Office was outside the scope of its authority and performing illegal acts*, despite a lack of evidence when Plaintiffs claim … These six (6) claims by Plaintiffs are only a few of the gross mischaracterizations made by Plaintiff[s] towards Defendant. In fact, Plaintiffs' allegations could not be farther from *the truth*. Defendant has attempted through numerous phone calls, hearings, etc. to explain to Plaintiff[s]; however, if the court permits, Defendant *would accept an opportunity to reply to Plaintiffs' requests* during the hearing on Wednesday, August 23, 2023.

Resp. at 13-14 (emphasis added).

Plaintiffs agree that KCSO's officers are public officials sworn to preserve, protect, and defend the Constitution of this State and of the United States. Plaintiffs believe that KCSO would have already explained why its June 29, 2022, police actions were not "outside the scope of its authority," and thereby "illegal acts," if it could do so. Resp. at 13; Ex. N at 27-29.

In any case, Plaintiffs will certainly consent to KCSO's request that it be allowed an opportunity to finally provide the *lawful* basis for its June 29, 2022, police actions at the hearing for the present Motion on October 11, 2023.

IV. CONCLUSION

For the reasons stated in the present Motion, August 20, 2023, First Supplemental Memorandum, and above herein, Plaintiffs respectfully request that the Court grant the present Motion to Recuse or Reconsider the June 2, 2023, Form 4 denial of Plaintiffs' Underlying Motion.

Respectfully submitted,

By: s/Justin A. Jernigan

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This 5th day of October 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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EXHIBIT HH

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STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA
CIRCUIT COURT 5
COUNTY OF KERSHAW) C.A. NO. 2022-CP-28-00782

Christine Jernigan, et al.)
)
)
Plaintiff,)
Vs.)
)
)
Kershaw County Sheriff's Office,)
)
)
Defendant.)

H E A R I N G

PRESENT: Justin Jernigan, Esq., David Morrison, Esq., and Cameron DeBoy, Esq.

DATE: April 27, 2023

LOCATION: South Carolina Circuit Court 5
1701 Main Street
Columbia, SC 29202

JUDGE: The Honorable Daniel M. Coble

REPORTED BY:

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THE COURT: This is a motion for sanctions and contempt by Mr. Jernigan; is that correct?

MR. JERNIGAN: Yes, Judge, it's Justin Jernigan.

MR. MORRISON: Judge, there are some preliminary matters we probably need to take up, some preliminary housekeeping matters we need to take up before we get started.

MR. JERENIGAN: And I would like to approach and offer -- have binders with the filings and I have two copies for the Court. Would the Court like two copies or --

THE COURT: Just one.

MR. JERNIGAN: Just one copy? Okay. And those are the stamped versions that were printed from the Court. They're not complete but there's the discovery and most of the paperwork is in the binder. Do you have any issues before we get started?

MR. MORRISON: Those are the matters I want to take up with this. Assuming this is what was filed, I don't think we'll have any problems with this, but this is what was filed?

MR. JERNIGAN: Yes. It's what was filed and there's the -- you know, unless I made a mistake putting things together it should be what it --

THE COURT: We'll address it if something comes up that we're not aware of.

MR. JERNIGAN: Okay.

THE COURT: All right. Preliminary before we get

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started?

MR. MORRISON: Two minute overview so you'll understand the preliminary matters. I can ask these matters when I get to them. This is a FOIA action that arises as a result of Mr. Jernigan's grandmother being at Pinedale residential facility here in Kershaw County. It's basically an assisted living facility.

She was placed there by Mr. Jernigan's aunt, his mother's sister who has power of attorney for the care of his grandmother. I understand there are competing powers of attorney as his mother also has power of attorney that was dated earlier than (indiscernible) and was not filed and I understand the mother's answer was filed.

There's a separate lawsuit over that, over the competing powers of attorney who has power now to control that medical situation. The Kershaw County Sheriff's involvement came when the director of the Pinedale residential center made a phone call to 911 saying that a resident was being removed from their facility without consent.

The Sheriff's office responded. They located the car that was removing the resident. They had left the facility. They may have just pulled off of the premises and may have been down the road a little bit. They stopped and they talked to them. They talked to Justin.

This was just the mother and grandmother in the car

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that was stopped. They talked to them. They talked to Justin Jernigan who is a lawyer in North Carolina, a patent lawyer in North Carolina, and they also talked to the aunt who had the power of attorney. I believe she came to the scene with the power of attorney.

They saw the power of attorney. They determined that this was a civil matter. No crime had been committed and everybody go on their way. The aunt took the grandmother back to Pinedale and now there is litigation over her care at Pinedale and who has the power to control that between Mr. Jernigan's mother and his grandmother.

And I'm sure he will go into much more detail about all of that, and I'm sure we will but we get into the motion itself. Having said that, in preparing for this hearing, I still (indiscernible) with how to respond to this motion. It wasn't until yesterday that I figured out why I was struggling mightily because I was really struggling -- what am I responding -- what am I fighting, what am I saying, what am I responding to and how am I responding.

And yesterday I decided I'm going to start over, go back to page one, go back and read the motion and go through it all again so I could get it straight in my head. And when I did that it dawned on me why I was struggling so badly to respond to this. The motion itself is a six page document that's kind of a rambling narrative of some of this.

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Typically when we file motions in state court in South Carolina we file a motion, it says we are seeking an order granting this relief on the following grounds and we list our grounds. And that is to comply with Rule 7 of rules of civil procedure which requires that the grounds for a motion be stated with specificity.

When I read this motion it's hard to find grounds for the motion, much less grounds for the motion stated with specificity. So I don't believe the motion gave us proper notice of what the grounds for the motion were and the motion itself is not proper.

Mr. Jernigan indicated in the motion that he would supplement it at or near the time of the hearing with additional evidence of materials, and he did, and this is what we have. He supplemented on Monday. In fairness, Exhibits A through G had already been filed, that portion of this.

The rest of this was a new filing on Monday. In the new filing we have a 30 page memorandum. We had some -- I think it was some seven exhibits, six or seven exhibits filed originally. There was 17 more exhibits filed in an affidavit and when you read the memorandum, in the 30 pages, there is lots of talk about things that aren't really referenced in the motion. And in fairness, we got that on Monday. While I've certainly read it all by now, I certainly have not had the opportunity to digest it all by now because this is

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complicated and you have to read it carefully because I think there are things that are erroneously stated, maybe misconstrued, and I'll point out what I'm talking about.

One of the big issues in this case is that Mr. Jernigan says that there was -- they didn't prepare an incident report for this because it was a civil matter. No incident report was prepared, there was no investigation to be done. There is no incident report. He's asked us to employ you for the report.

We told him that none exists. He contends that we are required to prepare one. So we obviously did prepare one and we're hiding it and I'm assisting the Sheriff's Department in hiding it. He cites -- he explains that in his memorandum, and I will read you what he says.

MR. JERNIGAN: I think would probably make sense to go through the motion first instead of have rebuttal right now, but however the Court would like to proceed.

MR. MORRISON: This is rebuttal. This is showing where it's putting in grounds for the motion in the memorandum on Monday which is untimely. It's showing how I need more time to go through it because of the details that you have to go through it. Again, I'm going to point out one thing that illustrates that detail.

It said in the memorandum of page five that the Sheriff's Department knew, based upon our own policies which we

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submitted to him in discovery, that reports must be prepared on all, quote -- let me put my glasses on so I get it right. Of all, quote, citizen request for services that an officer is dispatched, dot dot dot to investigate.

That's a quote from our policy. The dot dot dot is a critical omission. If you read the policy itself (indiscernible) like we were dispatched and we should prepare a report. But if you read the policy itself, the policy itself says that it's department policy to prepare the following categories of incidents.

One of the parties quoted from is all citizen requests for services when an officer is dispatched, and here's the ellipses, the part that was left out, and an officer is assigned to investigate or an employee is assigned to take action at a later time.

This is a report from criminal matters. You document what happened. The investigation starts based off of that document and it goes forward from that from the initial incident report. The Sheriff's department did not assign anybody to investigate.

Did not assign anybody to take later action. That's the phrase that was left out of the quote, which changes the entire meaning of the quote. I'm not alleging that that was intentional. I don't think Mr. Jernigan even understands that because we've had many conversations about whether a report was

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required or not.

So I don't think he understands that, but I have to go through this in great detail and I just got it Monday, and it goes through lots of new grounds that are not stated in the motion. For those reasons we don't think the motion is proper before the Court at this time because there is no statement of grounds with specificity.

Many of the grounds weren't stated until we got a memorandum on Monday, that we didn't have an opportunity to review in detail in response to it.

THE COURT: Yes, sir. Mr. Jernigan.

MR. JERNIGAN: Thank you, Your Honor. I would like to go through the motion. There's really three main points. The Sheriff's office destroyed evidence that they were obligated to preserve. The Sheriff's office did not follow judge -- this was Judge Newman, Judge Jocelyn Newman, in December asked them to respond fully to my Freedom of Information Act request and produce all of the records.

Number three, Judge Newman ordered them to serve discovery responses because they had not and Mr. Morrison did not indicate that he would. So we had to talk to the Court about that, too. So nothing has happened in this case. Since I have not talked to Mr. Morrison, he has not returned my calls.

I sent a 17 page Rule 11 letter explaining the problems, explaining everything that's really in this -- you

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know, this memorandum and all -- I filed the memorandum in accordance with the judge's order. So, yeah, none of these are surprises.

They are all their documents or public documents. So I believe this motion is properly before the Court and I would like to go through the memorandum or however the Court would like to proceed if the Court has any questions.

THE COURT: Let me just back up just factually. When you filed this suit against Kershaw County, was it for a -- was it a FOIA?

MR. JERNIGAN: Yes, Your Honor, have you had a FOIA case, or are you familiar with the Freedom of Information Act? Okay. Yeah, so I filed a Freedom of Information Act request pursuant to FOIA on July 22. The FOIA deadline, you have a response deadline within 10 days where you're supposed to address the records that were requested and this will be clear when I go through the background.

I do have a background on the Freedom of Information Act. So the three things I mentioned are undisputed. There's been no response filed to my motion, so in my view it's unopposed and everything is in my motion, the exhibits and the memorandum. The three things that I would ask -- I would ask the Court to address those three things, to grant relief.

I have specifics that I'm asking for and I would prefer to when I hit those three sections to come back and talk

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about the potential relief for the three things I mentioned.

MR. MORRISON: And Judge, it's our position that if you read the motion itself it does not state the grounds for the motion with specificity. We can try to glean some of those grounds from the memorandum that was filed on Monday. If that's not sufficient (indiscernible) for us to be able to do that with sufficient detail and we need to have the opportunity to respond to what we received on Monday.

MR. JERNIGAN: I don't understand the grounds for the motion were not set forth clearly enough or what's your objection?

MR. MORRISON: Rule 7 of the South Carolina Rules of Civil Procedure require that any motion state its grounds with specificity. This motion does not. This motion is a rambling six page document talking about the series of events. It never states specific grounds for the motion, and then the memorandum that was filed, we can glean additional grounds from that memorandum that are not stated in the motion.

MR. JERNIGAN: Which part of the rule -- sorry, Your Honor. Yeah.

MR. MORRISON: There is 30 pages of the memorandum that does that.

MR. JERNIGAN: But which rule on what --

THE COURT: Mr. Jernigan.

MR. JERNIGAN: Yes. Yes, sir.

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THE COURT: What we're going to do is we'll go forward today with Mr. Jernigan's motion. Anything that was referred to that was turned over Monday we won't refer to that today because -- unless -- there isn't enough time. So anything that was turned over Monday, if it's going to be -- with any motion you want to, you know, not continue it for continuance sake but if they're not prepared with new information that they didn't have, something new additional brought up that they could have been aware of, we just want to make sure that they are prepared.

MR. JERNIGAN: That's fair. If there is anything new that would like to be, you know, when I going through it, if there's something that's new or that they weren't aware of and they want to mention that, that's fine.

THE COURT: Well, we'll keep it out in consideration.

MR. JERNIGAN: You know, I did file this in accord with the instructions so I'm not sure why it would be kept out but we can do it however.

THE COURT: All right. Let's go forward with this motion. Yes, sir, Mr. Jernigan.

THE COURT: Thank you, Judge. So the background on page two and the tabs, one of the important tabs I believe is actually it's triple I. It's the listing of exhibits because there are not a number of exhibits, but the standard of the Freedom of Information Act, this is pretty much what's in every appellate court opinion.

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They will set forth the purpose and I can summarize. It's no less than vital in our society that our public bodies are open and that the citizens who are the taxpayers and on the government, it's the government of the people by the people for the people, nothing that the Sheriff's office has or generates, it's all presumptively public records.

They do have exceptions. No exceptions have been raised in this case, so we can forget about any FOIA exception. They should have been raised a long time ago. I'm assuming there aren't any. And that's input number one. So the person -- person is defined broadly to include in all individuals, all corporations.

Anyone can ask and make a FOIA request and they are entitled to receive a response, and if you turn to page three, I believe this is an important -- FOIA imposes an affirmative duty. An affirmative duty on public body. So it's not the job of members of the public to have to pull things out of public bodies. They are supposed to be open. They have to be open.

THE COURT: Let me ask (indiscernible) forward you to Judge Jocelyn Newman has heard this before?

MR. JERNIGAN: Yes. So Judge Newman -- Judge, if you look on page three, if you see that paragraph, and I don't know if you have been the chief administrative judge yet or if -- I'm not aware of the duties. Really this is my first time in state court. I'm a patent attorney, as Mr. Morrison mentioned.

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That's my day job. I've done some federal court litigation in the intellectual property area. I'm a member of South Carolina -- I have represented some clients in Fort Mill. It's been helpful to have the South Carolina Bar. I'm a '06 graduate, but never practiced. I've always been practicing in the Charlotte, North Carolina area. So if you take 521 up to Waxall (phonetic) that's about where --

THE COURT: Judge Jocelyn Newman's order?

MR. JERNIGAN: Yes.

THE COURT: Did you have a hearing in front of her?

MR. JERNIGAN: So this 10 day -- all that's required by the statute, all violations of the Freedom of Information Act, they must be considered irrepairable injuries. That's the second sentence. When I read that sentence it makes me think preliminary injunction.

That's the standard to show irrepairable injury or temporary injunction so the public body can't drag their feet and use the court process to slow things down and not produce things and make you file motions. They have a requirement that the chief judge set in the initial hearing within 10 days and put this on a fast track to be resolved.

I learned that there's not -- in trying to get this initial hearing scheduled you really have to file a motion. If I was going to do it again I would. The hearing wasn't scheduled correctly, so the first judge that heard it was Judge

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-- who is that, Benjamin, Judge Benjamin heard it on the fifth but she would not proceed with a hearing because she wasn't the chief judge.

I emailed the chief judge's law clerk to try to get it scheduled. Mr. Morrison had not made a notice of appearance in the case. The clerk's office set it up -- anyway, the hearing was delayed for three months. But, yes, she issued an order in December which is I have the transcript from the hearing and I have -- the order was just the docket order that says follow -- produce everything, respond to his Freedom of Information Act request.

Yeah, there was an incident. It was June 29. I called and reported pursuant to the -- well, that's a little bit further. Let me keep going. So this is the -- within 10 days, within 10 business days the public body has to give you written determination, and if I was the public body, this is what -- this is my reading of it.

You do a search. You determine what records are available. Within 10 days you send the requester, this is what we have relevant to your request. This is what we don't have. They've got 30 days to produce it after they give their determination. This is a copy on page four of the determination that I received.

After reviewing your request we do not have any reports regarding the incident you mentioned from June 29, 2022.

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The only records of this incident are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records in your request you were informed that the issue you were dealing with was a civil matter. So that is why we do not have any records, no records, any records regarding this incident. If you have further questions you are welcome to contact us.

Okay. So at the time that I received this from the records department employee that you're supposed to contact with the FOIA request, they knew that there is no exception. Civil issue is not mentioned in FOIA anywhere. It has nothing to do with the Freedom of Information Act. I'm not sure why they included this information.

THE COURT: They said this was a civil issue to indicate that not that it doesn't apply but to say that's why nothing exists.

MR. JERNIGAN: That's why nothing exists. So there was no -- the Freedom of Information Act, the public records act, every record that's generated, every call, everything has to be stored on a schedule and that's to protect the public --

THE COURT: Whether civil or criminal?

MR. JERNIGAN: Whether civil or criminal.

THE COURT: But the sheriff department does has to be stored.

MR. JERNIGAN: Yes.

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THE COURT: When they say this is a civil case that means that has nothing.

MR. JERNIGAN: Yes. Yes. So if it's a criminal -- okay, let's say it was a criminal matter.

THE COURT: They said that that something might exist for FOIA to apply.

MR. JERNIGAN: Which makes no difference. If you call it civil or criminal, the records are still there.

THE COURT: My confusion is when they say it's a civil case --

MR. JERNIGAN: Yes.

THE COURT: -- that's them saying there is nothing -- not that we don't turn over civil. Once they hear civil there are no records except for the phone calls and then once they get out there, they're saying that there's nothing to turn over because it's civil because that's how they treat it.

MR. JERNIGAN: That's what they're saying. Okay. There is no civil exemption in FOIA and, yeah, let's read that part that Mr. Morrison mentioned. It's on page 10 of Exhibit G.

THE COURT: Is this the one that was turned over Monday?

MR. JERNIGAN: These are their records. They produced these -- they produced this 15 page chapter January 9.

MR. MORRISON: G was filed with the motion, Your Honor. All exhibits through G were filed with the original

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motion.

MR. JERNIGAN: These are documents produced by the Kershaw County Sheriff's office. Okay, so this is under Section 209-11. It's about halfway, documentation and do you see this reference, Your Honor, SCLEA 14.5. So the SCLEA, if you go to Exhibit M, Your Honor, in the tab --

MR. MORRISON: Judge, I was mistaken. It's A through F was filed with the original motion. All the rest of them were filed with the memorandum Monday.

MR. JERNIGAN: Yeah. These are publicly available documents. This is the standards manual.

THE COURT: The issue isn't that there -- it's just that for this motion for them to be prepared to -- that's their -- I'll let you go ahead. Go ahead and explain what --

MR. JERNIGAN: Yeah, I'm having trouble because there was no briefing schedule other than file by Monday. So if I made a mistake on that, my apologies. And let's look at -- go back to G, Exhibit G, and that's page 10, and the SCLEA manual, the standards manual is what the Kershaw County manual pretty much follows.

They don't make their manual public. They make some pages -- this records policy is not a public document. It's not publicly available unless you sue them for FOIA. They don't just give it out. They didn't give it to me until Judge Newman ordered them to do it.

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So it is the department policy to document the following categories of incident. If they were alleged to occur within the department jurisdiction. Citizen reports of crimes. Formal citizen complaint. So those aren't crimes. Those might be complaints.

THE COURT: But move on to the third one which is what you're referring to.

MR. JERNIGAN: Yes. All citizen requests for services, when an officer is dispatched, an employee is assigned to investigate. When an officer is dispatched he investigates what he's assigned to do.

THE COURT: And an employee is assigned to investigate.

MR. JERNIGAN: Yes. When he's dispatched he's assigned to investigate.

THE COURT: Well, I think their understanding from the department's policy is that you are assigned to investigate when there is a criminal matter. In a civil matter they are not assigned to investigate and they just say go on your, you know, merry way and deal with it as civil.

MR. JERNIGAN: Okay. But they do document. They are required to document every incident. If they disagree and that's not their policy that they don't have to document with some type of report, every incident where an officer is dispatched, if that's what they're saying that's fine.

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That's their position. It's not particularly relevant other than their policy requires them to have documentation and reports on every incident and an officer is dispatched. When they pulled over my mom on that day, it doesn't matter if they want to call it a civil incident or a criminal incident.

They have documentation. Officers were dispatched. There were radio transmissions. There were discussions between the officers. They had dash cameras. They had body cameras. I was at the Sheriff's department while my mother was being pulled over, talking to two officers trying to convince them that, yes, this was a civil matter.

There is no criminal jurisdiction for you guys to be involved. Please let my mother and my grandmother go. They refused. I had a 20 to 30 minute discussion with Investigator Myles Taylor and another investigator, Officer Courtney Cochran. They had body cameras. You know, these were things that I asked for.

I asked that they be preserved. Mr. Morrison told us and the Court on December 5 that they destroyed all of that information that I asked them to retain multiple times in writing. So that's the first part of my motion is the fact that they destroyed evidence that the county attorney was obligated to have.

Parties are obligated to preserve when someone asks. The attorneys are supposed to tell the parties to preserve and

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they destroyed the body camera. If you turn to Exhibit P, Exhibit P as I understand it, is the retention category scheduled for body camera footage; is that correct, David?

MR. MORRISON: Correct.

MR. JERNIGAN: Okay. This case was filed September 12. I served my FOIA request July 22. There's phone call recordings that I would like to put into the record. I'm just not sure how to put audiovisual into the record.

THE COURT: Is it on a USB flash card?

MR. JERNIGAN: I have it on both USB and I have disk.

THE COURT: Well, has the defense had a chance to review it?

MR. JERNIGAN: Yeah, the defense produced it to me.

THE COURT: Any objection?

MR. MORRISON: Assuming it's what we produced, no objection.

MR. JERNIGAN: Do you want a copy of it, too?

MR. MORRISON: Sure. Thank you.

THE COURT: And that is Court Exhibit 1.

(Exhibit 1 was marked)

MR. JERNIGAN: And this has the phone call records that were produced to date. There is 11 audio files and there is a dash camera video that's about 45 minutes long.

THE COURT: And so you got it?

MR. JERNIGAN: I got one view of a dash camera with --

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I could not hear the audio on my computer speakers. At the hearing we had an argument at the last hearing. There is some audio. It's garbled audio that I can't make much sense of but there is some audio.

Those are the main -- that is the main information that I wanted. I want to know why these decisions were made. I was the original reporter. This was a fraudulent power of attorney and like Mr. Morrison said, it's a civil matter.

It was no business of the Kershaw County Sheriff's office to get involved. The individual, the nursing home administrator, I had spoken to him the day before about this situation, about the fact that my grandmother in 2006, when her second husband passed away, she went and executed -- she had Bob Sheehan (phonetic) who she worked for.

She retired from the (indiscernible) building. She worked for state government her whole career. She was on the speaker's staff. He prepared a will 50/50, my mom and my aunt. He prepared a power of attorney, general power of attorney. My mom lives in Seneca (phonetic).

She's not here today because it's a long round-trip. My aunt lives in Camden. My grandmother always lived in Camden. My grandmother had to retire because of dementia and Alzheimer's in 2013 or 2012. There is a new power of attorney for 2013. There is a medical power of attorney in 2016. The same law firm, this time Stephen Smo (phonetic) prepares a new will.

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THE COURT: For background purposes.

MR. JERNIGAN: For background purposes, I called and reported this as a crime. It's called exploitation of a vulnerable adult. It's under the code. I called the --

THE COURT: (Indiscernible) familiar --

MR. JERNIGAN: Yes.

THE COURT: -- with that, but as to this FOIA hearing?

MR. JERNIGAN: Yes. That has relevance because I called and reported this as a crime to the Kershaw County Sheriff's office. I left two phone messages with investigators. One of the investigators was Courtney Cochran. She forwarded this message on the 29th, the morning before -- this was around nine o'clock, nine o'clock timeframe.

The traffic stop happens around 11 o'clock. I'm traveling down to meet my mother at this assisted living place after speaking with the administrator the day before about the situation and having him confirm that this is a free country.

A power of attorney -- my grandmother has not been declared incompetent. She has all of the rights of a free citizen and these rights were not respected. I ask the Court to please take a look at Exhibit P. If you look at the second page, the retention period, the retention duration for traffic stops is 180 days. It's 180 days.

Undisputed there was a traffic stop. I have dash camera I presented to the Court with garbled audio that they

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don't, you know, apparently want people to know what decision they made or what the basis was.

THE COURT: Well, after the -- you know, when you come to the existence is different than the weight of the evidence. They turned over the body camera, correct? The garbled --

MR. JERNIGAN: No, they turned over the dash camera. They deleted the body camera.

THE COURT: Okay.

MR. JERNIGAN: And if you turn to the first page, do you see Code 12? On the first page of Exhibit P?

THE COURT: Yes.

MR. JERNIGAN: So 60 days is basically the shortest duration on this sheet, other than accidental activation. If you turn to Exhibit I -- oh, wait a second. I'm sorry. Exhibit J. This is called a CFS command log. This is a postdoc thing that's created.

It's not as it was recorded at the time. I've gotten different versions of this from the Kershaw County Sheriff's office. The earlier version is not in the notebook, but it's in the exhibits. They decide what information they want to put on these.

And if you turn, Your Honor, to page two, and there is a time and date stamp. It's at 6/29/22 and that would be 8:25. It's in military time or standard time. It says C12, Code 12, civil issue. We just looked at Exhibit P. It was a 60 day code

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that's applied for warrant attempts, escort. It's completely inapplicable so I'm not sure why my criminal complaint was coded with a C12 but, yes, this was the basis for Judge Newman's order. I have been given some information. There's never been a determination that says this is what we have, this is what we don't have. This is everything relevant to what you're asking for.

We have nothing because this is a civil matter and that was back to page four of the brief. So these guys knew -- they knew they had records. They produced them later. They told me originally they had no records and for me to get lost. It's a complete stonewall.

If it was a member of the public that's not an attorney -- I'm a patent attorney. I have some, you know, legal knowledge. I've been to court several times in federal court, but that's it, and there's nobody in this area that wanted to represent me on this.

If there were still a room full of attorneys I would ask for recommendations because I contacted my law school friend network, you know, to come up kind of empty. So this response on page four, this is their official response to my FOIA request.

THE COURT: What page. Page four?

MR. JERNIGAN: Page four of the memorandum, Your Honor. We have no records. We have call records in our system,

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but you have to obtain those from somewhere else. This was a civil issue. We don't have any records. I presented records. I put records into evidence.

There is records in the notebook. They had records they did not want to give me. They begrudgingly turned over redacted records with what they wanted me to have. They don't want to give me the information. Why did they make a negative decision against me and my family when I was the one that reported this as a crime originally?

THE COURT: Let me ask you this. As of today, is there something that you have not received that you think still exists?

MR. JERNIGAN: Yes.

THE COURT: What is that? Have you put that in writing to the defense?

MR. JERNIGAN: I've asked in discovery for them to describe all of the records, all the different categories they have because I don't know what -- I am not a police officer. I have never -- I have never dealt with the police --

THE COURT: Yes, you have.

MR. JERNIGAN: Yes.

THE COURT: I'm going to interrupt. You're saying you don't know what you don't know.

MR. JERNIGAN: Well, I know from now, like trying to learn -- they're required to have records under the public

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records act. They're required to have categories of records. They're required to keep them on a schedule and not delete them until the schedule expires.

THE COURT: As a former prosecutor, I'm aware of that. That doesn't mean that always happens for --

MR. JERNIGAN: Yes.

THE COURT: -- FOIA purposes over -- do the records exist. Do they exist, turn them over. If they don't exist then they don't exist and if they were unlawfully deleted then that's a separate issue.

MR. JERNIGAN: That is the issue, yes.

THE COURT: One issue you bring up is about discovery responses --

MR. JERNIGAN: Yes.

THE COURT: -- that they didn't respond but they weren't verified. Is that what --

MR. JERNIGAN: We can go -- I would like to go through the responses. I consider their responses to be nonresponses because they're not verified. Mr. Morrison is not swearing under penalty of perjury that the facts are true.

THE COURT: Well, if they do swear --

MR. JERNIGAN: If they do, I think they will be committing perjury. So I want them to answer discovery and I want them to tell the truth and to keep going through -- the policy manual says what it says.

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If they want to have somebody come in and testify that says we don't prepare any reports. We don't keep any documentation when we consider it to be a civil matter. I think as a solicitor you've got Brady obligation.

If this was a traffic stop, this information, the guy is going to go brief. You don't turn it over. It doesn't cease to exist because someone calls it a civil matter.

THE COURT: Well, I can tell you the stuff that -- I've had many fights with public defenders trying to get stuff and I had to get it because of Brady and Rule 5 and the stuff sometimes does not exist whether it's contrary policy, whether it's a (indiscernible) policy, and that would be the issue.

The first issue, does it exist, does it not exist, and if it doesn't exist, then it doesn't exist and the reason they keep saying civil is to explain why -- because FOIA doesn't apply it nothing exists, correct? I think I'm saying -- well, assume that --

MR. JERNIGAN: Okay. So the records that requires everything to be -- if they don't have what they're required to have under the records act they violated the records act. So I want everything that they're required to have under the records act. If they didn't create it and they were required to create it by their policy, I want everything that's relevant to my being --

THE COURT: I think that's where y'all disagree about

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when they say -- when we talk about the ellipses, the dot dot dot, which I tend to agree with -- just because they want the contact between law enforcement and the public doesn't mean an incident report is going to be created.

MR. JERNIGAN: Yes.

THE COURT: Until the next step which is there is a criminal act that I have to investigate or someone else has to investigate it. If there is a contact, an officer comes up to me and says hello, which he's allowed to do.

MR. JERNIGAN: Yes.

THE COURT: They don't have to create a report.

MR. JERNIGAN: They -- yes.

THE COURT: (Indiscernible) what you were just saying.

MR. JERNIGAN: Yeah.

THE COURT: Where it talks about if they fail to do something, I think that's where the disagreement per their policy, they're saying they do not have to create that record, and on top of that they did not create that record.

MR. JERNIGAN: Well, it's not -- I don't want to get caught up on that sentence because what you mentioned they do have also reports that are called public contacts, when they make contact. What the criminal side brings is a different level of reporting.

There's more reporting that needs to be required, but they have reports. Exhibits I and J are reports. They are call

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for service reports. The fact that they would say that they have no reports, they have no information to produce, no relevant information, is a fraud.

It's a complete lie and it violates their policy. If you read the policy it clarifies. I believe that there's different levels of reporting, different things that need to happen, but it doesn't mean the body camera didn't exist because they said it was civil.

The dash camera doesn't exist. All the radio channels of communication that are being reported, they're being reported and this is being done to protect the officers from the public because I'm sure there's a lot of times people make false accusations.

These recording equipment, they're also supposed to be there to protect us. I'm a patent attorney in Charlotte. I have no ill will toward Kershaw County Sheriff's Department. I respect the office. I respect what the elected Sheriff Bonan (phonetic) has on the website about his principles.

The standards they have in place, I would like to get all of the relevant what I've asked for in discovery. I want to get all of their policies and all of the public records that say what they're supposed to have. So that way when they tell me they don't have anything, I want a declaratory judgment that says they were supposed to have it and they don't.

But I also want them to say under oath what they have

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and what they don't have.

THE COURT: FOIA (indiscernible) future declaratory judgment file.

MR. JERNIGAN: No. So there's two claims and the FOIA claim is the first count and then there is a declaratory judgment claim, but if I need to amend the complaint to make it a public records act claim then I want a declaratory judgment that they violated the public records act.

If that's not considered encompassed with the notice that was given, it's in the information that's been exchanged to date. So that is my track to go forward in discovery because this is a case where there is an affirmative duty. The Supreme Court has said this many times, the South Carolina Supreme Court. Affirmative duty on the part of public bodies, I don't know what is in the attic at the Sheriff's department. I don't know what's in my neighbor's attic. I know what's in a court file. I should get a complaint, an answer. These things I understand.

I don't understand all of the recording equipment they have, all of the different channels they record on, how they -- if you watch the dash camera, if you try to listen to what's going on, they have all of this information recorded that's required to be.

They just won't give it to me and what they gave me is redacted. If you listen to the phone records, and I can play

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some of them, the redactions are obvious. They won't answer discovery about this because they say they don't have control of their own communication records.

We have another case and I can send the subpoena to the call center, but they have access to these records. For Mr. Moore -- to suggest that the sheriff, the chief law enforcement officer does not have the ability to give me the phone records that are relevant to this and the communications on the two-way radios, it's ludicrous.

And it's against their own policies that they have not given me. When they give them to me it will confirm, but if you turn to -- yeah, this was a new exhibit submitted Monday. Exhibit M which is the standards manual of the South Carolina law enforcement accreditation program.

So I do have that manual and it's pretty much consistent in every way because the Sheriff's office manual is based on that manual. It incorporates the provisions of that manual. So they are the ones that control the recording procedures that the call center carries out on their behalf.

THE COURT: Do you think the protocol center -- because I know in Richland County it's shared between the city and the county. So I don't know --

MR. JERNIGAN: You know, that's a good question, too. It's like --

THE COURT: That's a question that you have to answer

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since you're searching for that. The Sheriff's department --

MR. JERNIGAN: I know.

THE COURT: -- and if it's controlled by the city or kif it's a city county partnership then the sheriff might have no control over it. You say he has the authority, which he might politically or personally, but legally if it does not fall under his jurisdiction, under the authority, then for our purposes that would be why they said you have to go to them to get it because legally they can't force them to do something, but I could be wrong. I don't know.

MR. JERNIGAN: Yeah, if you --

MR. MORRISON: Can I short-circuit this part of the (indiscernible), Judge?

THE COURT: Yes, sir.

MR. MORRISON: Judge, the dispatch is controlled by the county. Not by the sheriff. The sheriff is a constitutional officer of the state. We told Mr. Jernigan that. The prior attorney involved in this case before the suit was filed, Tommy Morgan, told him that despite that Tommy Morgan went to the dispatch center and got the tapes and provided them and when Mr. Jernigan said, well there has to be more --

MR. JERNIGAN: That's not correct.

THE COURT: Well, Mr. Morrison listened and did not interrupt. So let's just --

MR. JERNIGAN: Oh, sorry. That is a misstatement --

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THE COURT: Let Mr. Morrison finish, please.

MR. JERNIGAN: I will.

MR. MORRISON: After I got involved he told me there had to be more because somebody from Pinedale, somebody had to make the initial call that got the Sheriff's department to respond. He said so you're telling me I've got to file a new FOIA action.

I said, Justin, before you go to that trouble, let me make a phone call and let me see if I can get it without you going to that trouble. It's not my burden, but I'll do that, and we did that. We had the Sheriff's department call to get it. We got those logs from Pinedale so the call came from Pinedale and we produced those.

As far as we are concerned and as far as we can tell we have produced everything that exists. There was one item that did exist that no longer exists of the FOIA and that was a body cam video of that day out there. That body cam, since there was no incident report prepared it was not tied to anything.

It was on a 60 day automatic write over in the system and after 60 days it was written over. In candor, Mr. Jernigan did request in his initial FOIA request that was within that 60 days that anybody can preserve. And so somebody probably should have pulled it and preserved it.

But that's for another court another day in any future

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case where they are claiming that there is a presumption that it would have been negative to us if we didn't maintain it for subsequent litigation. That's for a future court and another day but in candor, yes, he did make the request and it probably should have been pulled and it wasn't.

It was written over not with intent by anybody, but as a part of the program that rewrites to clear room because they've got cameras running all the time, so they download every day. But for this part of what he's arguing about we have produced it. We've been and gotten the records from dispatch. He says they've been monkeyed with. We produced exactly what we got from county dispatch.

THE COURT: Very well.

MR. JERNIGAN: Judge, the part that I would dispute, either in the emails if you go to Exhibit N these are the precinct emails.

MR. MORRISON: Not all of them.

MR. JERNIGAN: They're all precinct emails.

MR. MORRISON: But that's not all of the precinct emails.

MR. JERNIGAN: What are the other ones?

MR. MORRISON: There is a lot of other precinct --

MR. JERNIGAN: Between who? If you turn to page four, Your Honor, of Exhibit N, after I raised questions about the FOIA response that said we have nothing. We have no

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recordings. We have zero information to give you. I was referred to the county attorney, who I graduated law school with that I, okay, great, the county attorney is involved. He's going to help.

He mentions Kershaw County 911 communications has information. I filed the request with Kershaw County as well. The same attorney represents the Sheriff's office and 911 on this. But if you look at the standards in Exhibit N the law enforcement require -- the South Carolina law enforcement association standards require the Sheriff's office to follow certain communication policies, standards, recording standards, so they can do their job.

They have to have the ability to record multiple lines at the same time, two-way communications to play back at the same time. The employees go to the South Carolina Criminal Justice Center Academy. I really don't know the relationship. I want them to state on the record reasons or under oath that they don't have access to these records and they don't have to give them to me under FOIA because FOIA requires everything that they own, that they are responsible for, that they use, that they are in possession of.

So for them to say we don't have to give you this law enforcement related information. I never knew that anyone -- I never dealt with anyone at the county. I only dealt with people with the Kershaw County Sheriff's office. Other than the people

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that were on the dispatch line that I didn't know they weren't Kershaw County employees, I think it would be a ridiculous multiplication of these proceedings for me to have sued the county, too, when I'm not seeking -- I'm seeking law enforcement records.

THE COURT: Mr. Jernigan, for the smaller version of this when it comes to what happened in June when your grandmother was pulled over, those records for that day --

MR. JERNIGAN: Yes.

THE COURT: -- which I think it all encompasses around this.

MR. JERNIGAN: Yes.

THE COURT: Now, I know there's records about -- records to prove that they should have kept records or that they did keep records, the main contention, Mr. Morrison, an officer of the Court, whether it's under oath or not under oath, an officer of the Court has stood up and just gave an explanation about what was turned over, what they do have and the one body camera that was not turned over within the 60 days and why it was not turned over and the explanation for that.

But an officer of the Court he has stood up and said we have turned over everything. We do not have anything else. He knows that he is under an ongoing obligation to turn over anything if it were to exist. For that purpose, though, what more for the items of that day that you got the body cam, the

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audio, while garbled, for whatever reason it happened, it is what it is.

That video was turned over. They got you the 911 calls. I'm just viewing this under discovery purposes of getting discovery.

MR. JERNIGAN: Yes. This whole case is really a discovery dispute.

THE COURT: And so you saw the discovery dispute we had earlier this morning and they wanted the finances from when the new business was opened, they wanted this and there was an issue about what had been turned over and what had not been turned over.

This issue falls very similar lines of all the criminal cases you want to handle in general sessions. We get these same type of arguments over and over again and sometimes you are right where they don't turn over stuff, or they say it doesn't exist and it does exist, but that is what a law enforcement officer is saying.

When the prosecutor or an officer of the Court stands up and says it doesn't exist or it does exist or this is what happened to it there is some weight and credibility behind that, especially when there is an order from a previous circuit court judge back in December from Judge Newman stating that you have this obligation to comply, and there will be another order again from the bench, from a written motion, from a written order

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stating that the Sheriff's department is under an ongoing obligation to comply with discovery to turn over whatever it is that they are required to turn over and if it doesn't exist, it doesn't exist.

And they have given you explanation as to that.

MR. JERNIGAN: Yes. And I would like them to respond in writing to my FOIA request, which they never have. They gave me one answer that we looked at.

THE COURT: An email.

MR. JERNIGAN: Yes. That is not a written determination that says we got your request. We did a search. This is what we have. They won't tell me what search they did, where they searched. If I can, I'll move back to --

THE COURT: Well, let me ask you this. If they were to send -- I mean as a circuit court judge if someone, an officer of the court sends an email saying something, whether that's under oath or not under oath, as an officer of the court, there's still the same liability exists if it's not factually accurate.

So while understanding it might be better if it was under oath or sworn or something, if an officer of the Court emails carries some weight with it, but let me ask Mr. Morrison about have the they turned over everything?

MR. MORRISON: Judge Cameron DeBoyd (phonetic), who works with me, he had asked together or separately have been to

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Kershaw County Sheriff's Department four or five times going through this stuff making sure we got everything. To the best of our knowledge we've got everything that exists and we have turned it all over.

There has been nothing withheld. The body cam is the only thing that has not been turned over and I explained that. We are not aware of anything else. We have ample inquiries. We have made ample trips and talked with them. I've had ample conversations with Mr. Jernigan that lasted over an hour each at least five or six, hour or hour and a half long conversations with Mr. Jernigan.

This is personal to him. I get it and we've had that battle from the very first of this case to the very first email he sent me where he accused me of kidnapping his grandmother because I'm now in concert with the Kershaw County Sheriff's Department and he cited me the kidnapping statutes.

I wrote him back and told him I'm a lawyer handling the case. I will be honest with you. I will be up or upfront with you, but I'm not going to play games with you and stuff like that, and I'm not going to respond to stuff like that. It varies. Most of the time he and I can deal with each other fairly well.

He does degenerate sometimes when he gets emotional about it and cause us to go on forever and he rants and I stop responding when he does that. When he says emails like that I

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stop responding to those. I'm not going to do that. I'm not going to get in on that level but as far as what has been produced, we are aware of nothing.

Nothing has been withheld under the claim of privilege. He mentioned redactions. We've had redacted personal identifying information. It's plainly apparent where the black magic marker line exists, what was in that information, things like date of birth, Social Security number, medical records.

We have redacted what is properly redactable under state law and Mr. Jernigan wants the Court to order us to produce unredacted copies so he can get all of that information. He hasn't told us anything that is improperly redacted in what he has requested.

So we believe we have fully complied with FOIA to the best of our abilities. The original request, the original FOIA request I would like to mark it and hand it up because that's not something he has included in all of his exhibits.

MR. JERNIGAN: It's in the complaint. It's attached to the complaint.

THE COURT: Well, we can mark it as Court's Exhibit 2.

(Exhibit 2 was marked)

MR. JERNIGAN: And I'm not here to go through -- I'm not here on the final hearing for the FOIA. I'm here on discovery matters.

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THE COURT: Very well.

MR. MORRISON: A lot of what we are talking about today is --

THE COURT: Oh, let's do --

MR. MORRISON: I'm sorry. I'm sorry.

THE COURT: That's all right. We're working her to death already so -- all right. Mr. Jernigan, we're coming up on an hour and I have your written motion so I have plenty to -- I have plenty to go on after I've taken this under advisement which I intend to do. So I'm going to let you wrap this up, Mr. Jernigan.

MR. JERNIGAN: Sure.

THE COURT: Point me -- because I'm going to take this binder and review it. We can be here all day. I mean I clearly -- there is a lot going on and obviously it's the first I've seen of this case. It's the first time I jumped into it so I have a lot to review but I want you to wrap this up and to kind of point me if there's something else.

MR. JERNIGAN: Yes, it's all in the brief and I will stand on my brief. There's three things. They destroyed evidence they should have preserved. I asked in writing multiple times to their attorneys. If you read the FOIA statute, you know, it's in the brief, page 21, it discusses Judge Newman's order, which she ordered them to do.

They have never provided a FOIA response. The

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response is required by statute. They like to say they don't have anything. I would like for them to respond and tell me what they have, whenever someone is pulled over they don't -- if they they want to state that they can't access the phone records and I have to serve a subpoena because they don't have their own law enforcement records, that's fine.

Let them say that and I can do that but I cannot accept these weaselly where they don't -- in the last part of the discovery I've got all of the discovery requests and I've got my 17 page Rule 11 letter that they did not even respond to. Mr. Morrison has not called me back since I filed this motion. I didn't want to file this motion.

THE COURT: And normally people will never respond to Rule 11 so --

MR. JERNIGAN: Well, you know, it's a required letter and, yeah, to --

THE COURT: And they couldn't get to those.

MR. JERNIGAN: Yeah. I call it the Rule 11 ten day letter. I'm not sure what y'all call but, yes, Rule 11 is an issue through Rule 27G. So, yes, that's my discovery

THE COURT: That's the discovery from --

MR. JERNIGAN: Yes.

THE COURT: -- from -- you won't have to --

MR. JERNIGAN: Yes.

THE COURT: What I'm going to do is I'm going to --

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anything further Mr. Morrison? I'm ready to take it under advisement.

MR. MORRISON: I would like the opportunity to respond to what we have received in writing because most of this we just received on Monday.

THE COURT: Very well. I'm going to take -- I'm giving you 30 days to respond. Obviously any emails you will cc each other and you will email my law clerk, and they're not going to be lengthy, back-and-forth emails that tend to happen, but if there is a response, obviously you can respond.

So I'll give you 30 days to respond to send in the responses that you got this stuff Monday. If you need to respond again --

MR. MORRISON: Thank you.

THE COURT: But I'm going to try to address those three main issues about destroying evidence. The FOIA response and then the discovery response.

MR. JERNIGAN: Thank you, Your Honor.

THE COURT: And I understand, you know, this is a lot. This is -- it's been going on for a while and there's a lot to it on both sides so I want to try to bring some finality to this issue. The cases (indiscernible).

MR. JERNIGAN: Yes. I would like to put this on a track to resolve which --

THE COURT: A scheduling order or is this going to

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trial or this --

MR. MORRISON: There is no scheduling order.

MR. JERNIGAN: Yeah, and I was expecting to get discovery and then maybe take a deposition or two. Now I'll probably serve some requests for admission once I get this resolved, but I think this case was continuing after the hearing with Judge Newman on the assumption that Mr. Morrison was going to respond and provide responses under oath.

He is not and they haven't responded to my questions or even tried to address my letters so that's why I'm here asking for the Court's help.

THE COURT: Very well. I'm going to review the discovery questions and their responses because I'm not aware that a verification is required under oath but I need to review.

MR. JERNIGAN: Yes, Your Honor.

THE COURT: Under the South Carolina rules.

MR. MORRISON: Judge, we will provide a verification. I've never done one in 39 years of practicing law.

MR. JERNIGAN: That's part of my confusion.

MR. MORRISON: Nobody else has ever asked me and I've never asked anybody else but the rule does say you're supposed to do it. So if he asks for it, we will do that. We are in the process of doing that. We need three signatures. We've already gotten two of them.

MR. JERNIGAN: I've never been in state court

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obviously but I've never done discovery in federal court where someone hasn't verified the answers.

MR. MORRISON: One additional matter. One additional matter, Judge.

THE COURT: Yes, sir.

MR. MORRISON: In his memorandum Mr. Jernigan pointed out a mistake I made in my excerpt. He said that I had made a judicial admission in my answer that he served a FOIA request on behalf of his mother and when I go back and review the answer he is correct. I did make that mistake.

I orally moved to amend the answer to correct that because as you can see from the FOIA request in the record it was served by Justin Jernigan. It was not on behalf of his mother. It was solely him --

THE COURT: Mr. Jernigan?

MR. JERNIGAN: Yes.

THE COURT: The court reporter can't record when two people are talking over each other.

MR. JERNIGAN: Sorry. I'm sorry, Your Honor.

THE COURT: I'm going to let Mr. Morrison finish his point and then you can --

MR. JERNIGAN: I'm not very good at this process.

THE COURT: If you're going to be in court requesting these serious allegations against the Kershaw County Sheriff's Department you have to be familiar.

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MR. JERNIGAN: Yes.

THE COURT: Yes, sir, Mr. Morrison?

MR. MORRISON: So, Your Honor, I would like the opportunity to correct my (indiscernible) that it's clearly apparent on the FOIA request that I handed up a minute ago that the requester was Justin Jernigan. It was on behalf of Justin Jernigan and it was signed by Justin Jernigan. There was no one else, which I need to correct.

MR. JERNIGAN: I would say if you read that paragraph it says on this date I submit a FOIA request on behalf of myself and on behalf of my mother. The admission was I admit that you submitted one on behalf of your mother but he's saying that I cannot submit a request because I'm not a South Carolina resident, which is not what the statute says.

This is really not an issue I think that we need to bring up and decide today. This should be briefed if he wants to withdraw his judicial admission. And let me respond.

MR. MORRISON: To amend to conform to the facts that are already in the record that are clearly stated here, and if I'm wrong going that then we don't own -- then he can prove me wrong. I'm just saying that he has to prove that. I don't want to admit it because that's not what the document shows.

MR. JERNIGAN: We had a conference and I can submit the emails where Mr. Morrison objected to me having standing to bring this FOIA action on behalf of myself. We resolved this by

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saying I'm representing my mother. I filed it on behalf of her. If he wants to remove his admission in the face of, you know, our emails where we resolved this issue, I consider this to be another in a long line of stonewalling and bad tactics.

THE COURT: I will take this under advisement.

MR. JERNIGAN: Thank you, sir.

THE COURT: I'm going to take it under advisement.

MR. MORRISON: The oral motion (indiscernible) as well.

THE COURT: Yes. Take it under --

MR. MORRISON: Thank you, Your Honor.

THE COURT: All right. Thank you all. Thank you for being here.

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CERTIFICATE OF TRANSCRIBER

I, BARBARA J. ENNEKING, CVR-M, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5, for Kershaw County, South Carolina, on the 27th day of April, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 5, 2023



Barbara J. Enneking, CVR-M

Transcriber

STATE OF SOUTH CAROLINA) IN SOUTH CAROLINA CIRCUIT COURT 5

COUNTY OF RICHLAND COUNTY) COURT C.A NO. 2002-CP-28-00782

Christine Jernigan, et al,)

Plaintiffs,)

Versus)

Kershaw County Sheriff's Office,)

Defendant.)

H E A R I N G

DATE: October 11, 2023

LOCATION: South Carolina Circuit Court 5

JUDGE: Honorable Daniel Coble

TRANSCRIBED BY: ERIN REILLY

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT: All right, this is Jernigan among others vs. Kershaw County Sheriff's Department, case 2022-CP-28-00782. And as way of background, I heard this case, the original motion when I was in Kershaw County. It was a motion for, and I know y'all correct me if I'm wrong, a motion for sanctions for a FOIA violation. I heard that earlier this year. Subsequently, after taking it under advisement, I notified the parties that I was denying the motion. I asked for proposed orders from both parties. Mr. Jernigan had asked for some clarification about that process, and we scheduled a conference call to kind of explain how proposed orders would work in these cases. Just prior to that, Mr. Jernigan filed I believe it was a motion to reconsider, as well as a motion to recuse myself for this case. So, we have before us the motion to recuse and the motion to reconsider. So, Mr. Jernigan, I'm happy to hear from you at this time.

MR. JERNIGAN: Yes, sir. And just by way of clarification, the initial motion, it was originally filed in February 2023. It was a motion for sanctions in contempt for FOIA violations, discovery violations, and also for spoilation of evidence. Those were the three issues that were heard on the 27th of April. Yes, as you mentioned, there was a Form 4 order denying the motion on June 2, 2023. There were instructions from your law clerk indicating that the motion was denied, and that the parties should submit a proposed order denying the relief

requested. As you mentioned, I followed up to understand, you know, what the grounds for the proposed order were, tried to discuss with Mr. Morrison. did not discuss the matter with him. As you noted, approximately, I guess it was about a month and a half 20 July the 19th, 2023, there was a conference scheduled. I was going to be out of town on vacation that week. Under the circumstances being that a motion was denied and there were not grounds from forthcoming, I did not feel comfortable having a motion that, you know, it's law of the case. The motion was denied to appear at the hearing without having some -- you know, a motion on the table to recuse or reconsider, as you mentioned. So that's the background of the motion. There's some -- if you have, did you receive the brief, the memorandum in support? It's a second memorandum that was filed on 10/6

THE COURT: [Crosstalk]

MR. JERNIGAN: Last Friday.

THE COURT: You said it was filed?

MR. JERNIGAN: Yes. Filed on 10/6.

THE COURT: Yes, I have it here. And I had -- I've had a previous one. Is this one updated?

MR. JERNIGAN: Yes, Your Honor. So, the -- this hearing was previously scheduled by your former law clerk, but I assume was somehow in the process, you know, it didn't get calendared. So, we had a previous hearing scheduled for these motions on August the 23rd. Plaintiff submitted what was a first

memorandum in support, which in actuality was a response to the supplemental post-hearing brief filed by defendant on May 30th, prior to your Form 4 June 2, 2023, order. So not raising any new matters there responding to what was on the record, I believe this 7/14 motion was fully supported. The defendant filed a response to the 7/14 motion on 8/21 prior to the hearing, and somewhat of a reply in response to the 8/20th memorandum. This 10/6 memorandum that you pulled up is plaintiff's supplemental memorandum in support of the 7/14 motion. And it addresses issues that were raised in response by defendant. And with -- along with that, it attaches the hearing transcript, which was not previously attached. That is Exhibit HH, to kind of explain the motion, there were -- you know, there's some matters that relate to the hearing, some comments during the hearing that going along with the denial that, you know, didn't seem to be supported by the record are mentioned. These were mentioned generally, there's a standard on Page 2, kind of, the introduction where's it noted. So, under State vs. Shaw, there's a standard that when a Judge hears a motion to recuse, the facts are given. You know, they kind of defer to the facts as alleged on a motion to recuse. I believe that's probably more applicable when there's not a record. In this case, there's a record and it's the hearings and it's the hearing, and the subsequent email correspondence related to the proposed order. So, these general matters, I did not believe required

ordering the transcript, and I also wanted to get the motion on file, you know, before we had the hearing. So that was submitted with the 10/6 memorandum. Just to clarify an issue on that point. So, defendant did not file a response in opposition prior to the hearing on 4/27. There was an objection to plaintiffs' memorandum that was filed on 4/24 under Rule 7 as not being properly supported or raising unknown grounds. Grounds that were not previously referred to. And that defendant could not have been aware of. The Judge -- or Your Honor, granted leave to submit supplemental briefing, my -- or the plaintiff's motion to recuse or reconsider mischaracterize that process. I believe that was -- at the hearing, this was handled correctly, and I actually agreed that if there's anything new that was raised that was fair for defendant to respond to, have not had communication with Mr. Morrison this year very much at all, other than after the hearing where between the two of us, I was not aware of anything new, but was fine submitting, even joint briefing, and I would withdraw anything that was incorrectly stated. There was a dispute as to whether the supplemental briefing was just to focus on new matters that were raised, and not matters that were, you know, it's -- I didn't understand your honor's opening up new briefing, you know, to file an initial response brief that we had not had an opportunity to consider. Mr. Morrison had a different opinion that this was, you know, leave to brief

whatever. So, we had a dispute. When the motion was denied, My understanding was the Court, you know, agreed with Mr. Morrison, Mr. Morrison's position on that, because there -- based on the defendant's response on 8/21, there was not -- there's not a dispute that there was anything new raised in the memorandum. It was more, you know, we didn't have time to respond. We didn't file a response to the motion, but we want time to respond, which is understandable. And I didn't mean to raise any new issues. I was following what I believe were the instructions which is why this seven 7/14 motion, I believe is fully supported, other than I did not include the transcript and defer to the transcript as far as what's included there. But as far as the introduction, Your Honor, I know is familiar with the motions to recuse. As far as the judicial standard, my understanding of the standard, it's -- it is in Ellis vs. Procter and Gamble and also other cases. It's what I would refer to as Ellis Burgess is an earlier case. There's later cases. The primary case cited by plaintiffs was Ellis, which says my understanding, it's kind of a harmless error standard. You can allege, you know, there was prejude -- there were statements -- or, you know, things happened. What the Court of appeals cares about is if there's prejudice. So, if they look at the record and say, well, the Judge's findings were supported by the record, you know, that -- I -- there's not been a case yet where they have said the Judge should have

recused himself, that I'm aware of. The standard being what it is under, you know, this was a motion under Canon 3E1. So, it's impartiality might be subject to question. So, these -- this motion was filed to say someone looking at this objectively as a third party, noting that, you know, Justin's motion was denied. The other side couldn't draft a proposed order or submit a proposed order. Going before the Court to discuss, denying a motion that seemingly there was not a basis to deny the destruction of evidence, the violation of FOIA, and the discovery, that's the primary consideration of the motion recused. The comments during the hearing, I -- were -- some were concerning as far as, you know, I submitted a Rule 11 letter to try to resolve this before without having to file a motion. This, you know, it's a discovery dispute, FOIA dispute. What would've been expected was a response, and we could discuss, there were no objections. Judge Newman, actually at the 12/19/22 hearing, had to order defendant to file an initial response because their response was actually due on the 5th of December. That was around the time Mr. Morrison and I stopped communicating before that hearing, my expectation -- well, before the initial hearing, that was on 12/5 before she's not on the circuit anymore, but Judge Benjamin, that did not end up going forward because she was not the chief Judge. This has been a, kind of, an adventure where I've learned my understanding of the statute that says you must schedule a

hearing within 10 days. The chief Judge must -- there are not procedures in place right now to make sure that happens. And there's also a standard that's applied under its Section 30-4-100 of the Freedom of Information Act. Every Freedom of Information Act violation is considered it's irreparable -- or irreparable injury, and it must be considered an injury that there's no adequate remedy at law. So, if you're familiar with the preliminary injunction standard, those are two of the elements. The other one is likelihood of success, which is a prima facie showing. So, these are supposed to be cases that are resolved quickly, a lot of times at the initial hearing. The other, so that's count 1 is the Freedom of Information Act claim. Count 2 is a claim to receive body camera footage, for which I was a subject, which is why I'm a plaintiff. My mother was also the subject. That's why she's a plaintiff. In addition to the FOIA claim. That is also the law enforcement has discretion. They can withhold body camera footage under FOIA, which is reasonable because if my house, you know, is broken into and the Sheriff's Office comes to my house, you know, I don't think it's appropriate for the public to be able to see those videos, you know, it's a public document. Anyway, there's discretion, you know, this was -- this is a case where you, if you get an attorney and you go to court, it's automatic. They don't have to give it to you before then. You can also send a subpoena if you have another case. There was not another case pending when

this case was filed. So yeah, those were the two matters. It's FOIA and receiving the body camera footage that, you know, I was there. My mother was there. There is some dash camera that's been produced. So that's why this case was filed. When Judge Newman entered the order, you know, December 19th, and then she entered a Form 4, you know defendants comply with FOIA. My understanding was that was this case should pretty much be over. That is not what happened. The first part of FOIA is the response requirement. So, when you receive a FOIA request within 10 days, the public body is supposed to respond. And this is a statutorily required response, you know, it's just, we received, you know, plaintiffs, we received your request. This is what you're asking for. These were the officers involved. Here's the duty roster for the day. You know, what the relevant stuff. Here's the training, you know, I - it was -- it can be boiled down to everything associated with myself, my mother, my grandfather -- mother, my aunt, this Pinedale facility that's an assisted living facility in Kershaw County. The administrator of the facility was the original -- was the 911 caller on myself and my mother for alleged unlawful acts, which I had reported the day before. I'd left messages with investigators about this elder abuse Omnibus Adult Protection Act reporting that I felt like I was under a legal obligation. If you're aware of actual facts, even though attorneys aren't mandatory reporters, which maybe they should

be, if you don't report that to the property -- proper authorities within 48 hours, you can be charged with a misdemeanor. So, on June 28th, I left messages with the couple investigators. I received a return call from an officer on the morning of June 29th, 2022, when we're driving. And I explained the situation that my grandmother -- you know, my aunt has subsequently, you know, after her retirement in 2013 for Alzheimer's and dementia has gotten power of attorney. She got a new will in 2019. These were shocking discoveries for me personally. People I grew up with, you know, spent the summertime with, it's the out of town relative. It's the fastest growing crime in the country. It's going to continue to be, for a number of years. It's going to be important in this state and in the South where there's a lot of retirees moving. And it's because that's where most of the wealth, you know, they hold most of the wealth in this country. You know, there's a temptation I -- my assumption was this was financially motivated based on the gifting provisions that appeared in the 2013 Power of Attorney, that are not in the 2006 Power of Attorney. And the, you know, the estate planning documents my grandmother prepared when she was of Sound mind, when her husband passed away that year. So yeah, that -- those were the original contacts. The county attorney is a law school classmate, I didn't know him very well, you know, I did not receive a positive response. I received a response to the

FOIA request, from the Sheriff's office that says, you know, we don't have anything get lost, basically. The county attorney I assumed was going to respond reasonably, and, you know, would agree that, "Hey, we might've made a mistake here. We should probably tell the Pinedale facility that, yeah, we didn't really have the authority to pull over his mom and his grandma, you know, and make his grandmother go back to the assisted living facility, because they hadn't committed any crimes." If that would've occurred, you know, I -- there's a very high doubt that any of this would've been in litigation that did not occur. What has occurred is, the So, body camera footage that I asked to be preserved, and, you know, it's required by statute, it's required by their own, you know, this one is Exhibit P to the motions. This was to the April 24 memorandum, that they produced in discovery. They require the body camera footage for any traffic stops to be preserved for 180 days. Now, that did not occur. They say it was a civil matter. Well, there's no such thing as a traffic stop for a civil matter. So, you know, this has been a dishonest effort to hide the ball. And even after Judge Newman's ruling, which was, "Hey, the first step, as I'm mentioned, within 10 days, you file -- you give a response. You know, this is not these are not records that are owned. You know, the Court, the court's records other than records that are sealed, this is all public business. We're not on opposing teams of, you know, I don't

want information that is properly withheld under an exemption to the Freedom of Information Act. If there was any, you know, I, I put in the request, you know, I don't -- I want to discuss this, figure out, you know, what you guys have, and get the information. What I got was, here's what we have, you know, kind of take it or leave it. We're closing the matter. And part of what I requested was training and personnel files to identify the individuals that were personally involved. I knew the people that I had personally spoke with, which were three officers. There were other officers on the scene. When the traffic stop occurred, I drove to -- I was, you know, in the area, as I explained to the administrator on the 28th, you know, what was going on. This was meant to be a temporary 30 day stay for my grandmother that my aunt set up. Near the end of the 30 days, it was -- we have a power of attorney. Y'all might can pick her up for Christmas, you know, one -- it was unreasonable. There's no basis in a power of attorney to -- it's a private contract. I would -- to be a power of attorney for someone, we all understand as attorneys that you're a fiduciary. Everything you do, it's supposed to -- it's for them. If there's something that's going on that doesn't benefit them, you know, it's not consistent with their wishes. If you try to make them, do it, it's a crime. Under the Omnibus Adult Protection Act, a power of attorney is a predicate for a criminal offense. You have to have a power of

attorney. Two, you know, violate a power of attorney, and take advantage of someone in a way that's inconsistent with their known and reasonable wishes and best interest. The suggestion that it's appropriate for the Sheriff's Office, to rely upon the wishes of a private citizen to take police action against other private citizens, who have admittedly not violated any laws, is -- you know, it's bad that it happened to begin with. It is worse that there hasn't been any response or recognition that, you know, this was not how things should have gone. You know, we probably should have listened to Justin when he was saying, there's been no crimes. You know, there's no basis for police action. Please let his mother, and his grandmother drive away and go about their business as law abiding citizens. That's why I was before the Court in April was because, yeah, the -- at the hearings in December, one thing that was mentioned was, "Hey, we don't have any of the body camera stuff that you requested." It's in writing. You know, the day of while it was happening, I was asking him to preserve that. I wanted to obtain this to understand, you know, why this took place. You know, I exchanged emails with the county attorney, as I mentioned, it's in the FOIA request. You know, it's like I understand it's not, you know, it's not, I can't demand it under FOIA. They have discretion. You know, it's like, if mistakes happen, let's just lay them on the table. It doesn't -- you know, it doesn't help things to hide the ball. You

know, let's just talk about them now and try to resolve them. That's not the attitude. And it is really disappointing. But the, you know, the Judge has told me, well, you need to take discovery. You know, he doesn't have the body -- You need to take discovery and figure out what happened. Well, you know, that's what I have tried to do. You know, if the body camera was destroy, you know, why was it not held for 180 days? Like the -- Exhibit P, the schedules that they maintain require, you know, let's just get an explanation. Let's have them say under oath as is required for all interrogatories. And at every hearing, you know, when I was very upset when I found out that what should have been preserved, you know, the attorneys should have preserved this, you know, I called Mr. Morrison, and it's like, you know, statements at a hearing by an attorney. This came up at the last hearing. You know, the Judges do not know the record like the parties do. The Judges have to rely on the parties to honestly say what has gone on in the record. I -- you know, I was upset. I -- you know, it's like I need an answer under oath that actually says that, because Mr. Morrison's representing his clients, what he says at the hearing is not a statement under Rule 11. It's not a statement under oath by the people that actually have knowledge. So, I -- you know, the motion was not opposed prior to the hearing. There were, you know, there was a Rule 7(b)(1) issue. There was an issue that

I had put ellipsis into their records requirement, you know, that requires them to generate records every time an officer is dispatched, and assigned to investigate. And that's based on the state S-C-L-E-A standards. These are state standards. In the response brief filed by defendants on 8/21/23, there's a statement that they don't have to comply with those standards. The website of the SCELA says these are mandatory standards. The CEO of the agency, who would be the sheriff in this case, you know, he has discretion to make some determinations as to how these standards are met. But there is no dispute that every time an officer's dispatched, there's going to be a report of their actions. You know, the response I received was, this is a civil matter, we have no reports or anything. Well, they produced reports, Exhibit I and J, you know, they call them CAD reports or CFS reports, Call For Service reports. There were two, one was mine, you know, then there was the Pinedale administrator. So that was why I was forced to file the motion. There was not a response filed. I did not expect this was a difficult motion under the circumstances. You know, another exhibit I would mention is this was filed with the 7/14 motion. It's Exhibit CC, which is the Honorable Roger Young's memorandum. It's a 2019 standing order that he requires for parties who are coming before the Court, you know, the Circuit Court with discovery motions. You know, what he expects, what's required. Other than, you know, he wants you to come in

with a -- with your fee request with the amount. I believe the original motion in my letter complied with the letter of his pretty strict order. And I agree with all his, you know, there was maybe some discussion that yes, my previous representation was always in Federal Court, and maybe I was relying on Federal Court. You know, the Federal Court cases are cited by Judge Young, because there's not really a body of circuit court decisions that are reported. And, you know, the rules are based on their -- in this case, I don't know that there's any substantial -- substantive differences between the rules that were at issue for my motion. So Judge, the -- this was not -- if we go back to the 10/6th memo, as noted in the introduction, you know, I see the two standards as the Judicial Canons apply, whether or not a motion is ever filed. The issue's, one for you to decide. The motion for reconsideration, the standard is similar. So, you know, if there's any other -- this was not an attempt to impugn the integrity of the Court, the South Carolina legal profession, the South Carolina judiciary, which is mentioned in response. This was a motion for what was -- what I believe an objective person would see as circumstances where impartiality might reasonably be questioned. You know, there was a response that maybe your June 2nd, Form 4 order did not deny the motion -- that it intended to deny the motion. As I mentioned, I believe that the order is definitive, and I don't believe this was something that I was subject to, you

know, come to the hearing and take issue with. So, I wasn't planning to do so, but under the circumstances, I felt like these issues needed to be raised. So, the legal standard, you know, it's impartiality might reasonably be questioned. This was not an allegation that you had personal bias or, you know, subjective bias that was explicitly disclaimed. As noted, you know, as the Ellis holding that I believe is determinative, you know, it's a discovery motion where you're requesting sworn answers. The sworn answers were never provided, even though they'd been coming. At every hearing, there's a mention of -- well, we got one more signature, or we're going to get them. And they don't actually address, you know, the -- those are all in the Rule 11 letter. You know, it's the responses, the -- to the interrogatories and the additional documents that I believe are, were requested and relevant. There was no -- there were no objections -- there's no objections that what was requested wasn't relevant. As we know, discovery is broadly allowed. There was no motion for protective order. Yeah. So not to be confused, Your Honor, there was no -- of course, I respect the judiciary, and, you know, it hurts my feelings to see Judges described in articles now as Republican or Democrat. You know, it's -- these are judges that are here to do a job. It's not a political job. So, I'm not accusing you of personal bias. I'm raising issues that I believe could be cause for concern. You know, the, your law clerk provided the instructions. Those are

quoted on Page 7 of the 10/6 memo. Judge Coble is denying this motion, His Honor, request that you submit a proposed order. Accordingly, you may submit the proposed order to me via email for Judge Coble's review. There was a note about if there's any questions, and there were some subsequent questions from plaintiffs as to the grounds for denying the motion. So, the proposed order could be prepared. The defendant's position in their 8/21 response is that they really don't need to respond as far as the motion to reconsider that the Judge -- Judge Coble will issue an order after his June 2nd, 2023 Form 4 order, which would deny plaintiff's motion for sanctions to, you know, or can, you know, I would say the sanctions come under the discovery rules. The contempt comes under the, "Hey, Judge Newman said, comply with FOIA." The first step of complying with FOIA, you know, is she recognized, is to go through like the case law, like the statute says, respond with respect to what's requested, you know, tell the guy that's asking for it what you have and what you don't have. That, you know, that's a first step that never occurred. Maybe this was somewhat on me for not trying to be more specific. I honestly expected after the initial hearing that this matter would be resolved. I did not anticipate there were going to be further issues once we got the discovery and the, you know, the FOIA response, you know, once we got those issued satisfied. And yes, as I mentioned previously, this is discussed on Page 8. I

assumed that the Judge that you had granted leave to submit unlimited briefing post hearing, that was not what was discussed at the hearing. So, anything on page it's 15 to 17 of the motion to recuse, reconsider suggesting that you know, plaintiffs were prejudiced because you granted a motion Rule 7(b)(1) motion without you know, for them to respond on anything, even though it wasn't new, there was no prejudice. They were aware of it, which I think has now been clarified that defendant agrees that the 7(b)(1) motion was denied, the hearing went forward. I was not aware of any issue. I didn't expect there to be any issues of new matter raised. This was really, the memo is a combination of previously filed. There was a pre-hearing memo in December, before -- in December 22, that plaintiffs filed there's a Rule 11 letter, you know, it's 17 pages 1.5 spaced. You know, there was no attempt to prejudice by filing this, you know, as was instructed the two business days before. But yeah, if there was anything additional that was a surprise, I didn't believe there was. I think based on the response defendants concede there was nothing, you know, that they didn't know or couldn't have known. Their position was, they would just like a little more time to respond, which is an understandable position, but it's also not one that's supported by their 7(b)(1) motion. So, the fact that they were -- you know, the -- if there were any new issues, they were related to the destruction of evidence or the body-worn camera

2 evidence, which was based on a further review of the Exhibit P, which is their own body-worn camera schedules, you know, what they're supposed to keep and for how long. So yeah, in discussing with Mr. Morrison, after the hearing, I expected those would be the issues. You know, we could even jointly brief the issues. There was a dispute on that. So that's not what occurred. And my understanding was that Mr. Morrison must have been right given that the motion was denied based on what was filed after the hearing. Is there anything else before yeah, so that's Page 15. You know, I believe that the 7(b)(1) issue is -- it's been clarified and addressed. There's a subsequent issue. It's on Page 11 of the 10/6 brief, and it's entitled KCSOs Unlawful Police Actions. You know, this was an issue that was raised in the May 30th supplemental brief, which plaintiffs, you know, the order was entered on June 2nd, I scanned the brief, you know, I did not really have an opportunity to respond or really consider, of course, at the hearing or before the order was entered. So, the 8/20 supplemental memorandum, or the first memorandum, address matters that were raised in the brief, including matters that, you know, I don't want to get sidetracked, but there's misstatements that I believe should be corrected. And, you know, those are noted but it is pretty clear. And you know, this, I'm not sure why they went into this much detail, but they've made it very clear that they took their police actions

in their brief on May 30th. You know, they were against the wishes of my aunt, who -- you know, in their professional opinion, under the Uniform Power of Attorney Act, you know, gave somebody the rights that, you know, a power of attorney, as mentioned earlier, it is not a court-imposed guardianship. My grandmother's never been made a Ward even if she was, there's laws in place. There's a bill of rights for residents. Residents have, are free to come and go. You know, they're free to come and go from a private residence, you know, to consider that someone would call the Sheriff's office, you know, on their sister, or, you know, that a administrator whose job it is, you know, part of his training of his staff is on the resident's Bill of Rights, you know, for him to take the position that a one of his residents can be remanded back to his custody, you know, the bargain price of $5,000 a month. This is a -- I'm concerned that you, you know, number one, that this happened, but even more so that this is still going on that the defendants filed a response that they can't support denying the order based on, or they can't file the supporting memorandum with the reasons based on their response, you know, to consider that someone would call, the sheriff's office, you know, on their sister, or, you know, that a administrator whose job it is, you know, part of his training of his staff is on the resident's Bill of Rights. You know, for him to take the position that a -- one of his residents can be remanded back to

his custody, you know, the bargain price of $5,000 a month. This is -- I'm concerned that, you know, number one, that this happened, but even more so that this is still going on that the defendants filed a response that they can't support denying the order based on, either they can't file the supporting memorandum with the reasons based on their response. I think the circumstances are pretty exceptional. I'm not sure that a party has been asked to prepare, you know, their counsel, "Hey, I'm ruling in your favor, you know, give me a supporting order with the reasoning," and they just ignore it. But that's what's happened in this case. And not only that, they oppose reconsideration of that same order. If there's anything else I'd as is your practice and, you know, required under the rule, I'd like to be granted lead to open and close.

THE COURT: All right. Thank you, Mr. Jernigan.

MR. MORRISON: Good morning, Judge. Good morning, Justin.

THE COURT: Good morning.

MR. JERNIGAN: Good morning.

MR. MORRISON: Judge. I'm not sure what I need to go into here because of what I've heard is just a kind of a rambling re argument of what we argued before without going into all of it. We held a hearing months ago, we argued all of the issues Justin raised. He had filed a brief three days in advance of the hearing. I requested permission to be able to respond. You granted that, I responded and Justin responded. We both

filed additional briefs after that, which was only fair and Justin admitted that at the hearing. Now, he's contested and then withdrawn his contesting you're allowing a brief to be filed when he filed one three days of advance of the hearing. But what I'm hearing today is -- Well, let me start with this. Let me go back to talk with prepared to talk about. Justin filed this motion as a motion to recuse, vacate, reassign, or to reconsider after alerting that you denied his motion. He started raising questions about the content of the order. And frankly, in my normal practice, I would've prepared an order and sent it to you. But Justice started raising questions about the content of that, about the grounds for it, about the facts and what was going to happen. And there was email communication going on about that. And I thought I should wait until that played itself out. That's the reason I didn't file an order, was because of the questions Justin was raising. That's the reason I didn't send a proposed order, because of the questions Justin was raising, not because I cannot. Justin then filed this motion to recuse, vacate, reassign, or reconsider. And his very first argument is that the playing field wasn't level to begin with. He argues on Page 2 of his motion that he is a stranger, a private citizen doesn't live in the local area. It is appearing in this Court for the first time, and that I'm a well-known local attorney, been defending cases against law enforcement agencies for over 30 years. He

files that making sweeping allegations of an unlevel playing field without inquiring as to the facts. Had he inquired as to the facts, he would know that at the time this motion was heard, I had this case and maybe one other, I've inherited another case where another lawyer had a conflict in Kershaw County, maybe one other, but that may have been inherited afterwards. I had one or two cases in Kershaw County. He inquired about the facts. I would've told him I had never appeared in front of you. And as far as I can recall, I had never met you. And I don't -- I doubt that you knew of my existence, or do how long I've practiced law. The fact that I'm old doesn't make the playing field a level. So, he is -- he's alleging an unlevel playing field without inquiring into the facts for that. And this's just not true. I've never appeared in front of you. I've -- as far as I know, I've never met you before the day of that hearing. Far as I know, this is the second time I've seen you. Unless we didn't have another hearing in there in the -- you know, I don't believe we did. And then he says that there's a -- an appearance of impropriety and that the court's decisions must appear to be based on the facts in the -- of the record, in the law, rather than inappropriate factors such as the identity or status of the respected parties or attorneys that appear before the Court. There's no factual foundation for that kind of an allegation. That is a litiga who is disappointed with your ruling, raising

something afterwards to contest it without inquiring of anyone, as to whether there's a factual support for that allegation. He then questions your qualifications because he goes into the judicial -- first on a judicial merit selection commission records and questions, your background as a solicitor and why you shouldn't be hearing cases involving police. Every Judge that is appointed in this State has a background. Their background and their record is partly what gets them the position of a Judge. You can't divorce that background from any Judge. There's no impropriety in you having a practice of law before you became a Judge and you working as an attorney before you became a Judge. You wouldn't become a Judge in most circumstances if you didn't. He then claims that you took a dimm view of his motion, his motion for sanctions, for FOIA and for discovery. And all of that was discussed at the hearing, that was gone into, into great length and detail at the prior hearing. There's simply nothing here, nothing in his motion, nothing in this record to demonstrate any reason for this court to consider refusal of itself. It's just not present. And it's certainly not proper, in my view, for a litigant to use that after they learn of an adverse ruling to then say, "Well, the plea -- the playing field was slanted. The Court was biased," rather than telling thing in the merit for [Indiscernible]. He quotes language from the judicial canon about a judge who manifests bias. There's no bias in this

case. There was no manifestation of bias, there's no evidence of bias, there's no basis upon which to assert bias. And then he tries to bootstrap by saying that, well, you can argue bias when there's nothing to support the Judge's ruling in the record. There is -- there are briefs filed before the first hearing. There are discovery responses filed who is contesting them. There are explanations in the response giving the rationale for each of the responses given, we went over those at the prior hearing. There is a mountain of information in this record to justify the denial of the motion. Denial -- the motion was properly denied. Ultimately, what Justin is seeking is he claims that there are records that have to exist that we haven't produced. One is the incident report for this incident. We produced proof at the hearing that the police determined that this was a civil matter, that their policies don't require production of incident reports for civil matters and that none was prepared. And we have stated in court, we've stated to Justin that there was no incident report because no one was assigned to investigate this. There was no investigation to be undertaken. There was no criminal matter at hand. What the police were reacting to was a call, and I may be describing this imprecisely, but the call generally alleging that someone had been taken from a nursing home without permission. They responded to that. And if that's not reasonable suspicion to make a traffic stop of the person who

was leaving, with that resident from the nursing home, I don't know what is. They have to have reasonable suspicion to make a traffic stop. They made a traffic stop. They determined that there was no criminal activity. There was no probable cause to make any arrest, and they left. This is a unfortunate dispute between Justin's mother and her sister, Justin's aunt, about the care and control of their mother, Justin's grandmother. And there are competing powers of attorney for that. Justin's mother has the original power of attorney. Justin's aunt has the more recent, later executed and filed power of attorney. And they've had a civil case going over that between all of members of the family or between certain members of the family about the who has care and control over the mother. And that is still working its way through the Courts. But the police determined there was no criminal activity. There was no arrest to be made. There was nobody assigned to investigate and there was no report prepared. The fact of the matter is Justin wants sanctions for us withholding and concealing that information, when he has no proof that there's been any withholding or concealing. And there has not because it simply doesn't exist. There's no basis in this record for, and there's been no basis asserted here today to justify a reconsideration of your ruling denying his motion for sanctions. And that's what it was. It was a motion for sanctions under FOIA, and under an discovery. There's no evidence in the record of conduct that would warrant

a motion for sanctions. There's been no showing of that here today. There's been no showing of that before. And frankly, you are proper and appropriate in denying the motion. And I'll be happy after this hearing to prepare an order to that effect. I'll need a few days to do it. I'm out of town today. I got to be in Anderson at two o'clock and I'm out of town Friday on a much-needed vacation day for a fishing trip at the beach. I've been looking forward to it for a while, but I'll be glad to prepare an order very quickly. Other than that, I don't know unless you've got specific questions. I don't know what I -- what there is to respond to here. I just don't think there's any basis for the current pending motion.

THE COURT: All right, Mr. Jernigan, can you briefly respond to any points raised if you wish?

MR. JERNIGAN: Yes, I am not sure how Mr. Morrison's going to prepare a motion that says he does not have to submit interrogatory responses under oath, because that's required under the rule. He's promised that he was going to get us those he never has. That's a pretty simple basis on the -- to reconsider the discovery order. As far as the FOIA order, Judge Newman ordered the defendant to follow the law, which the first part of the law, which to provide the actual response that's required by the statute, which is 30-4-30(c) within 10 days. I don't know what's -- what the sheriff's department has. I have a much better idea now. After I got really in

discovery, they gave me their records policy, which is, you know, a section of their much larger manual that they do not make publicly available. I know based on the records of the -- they were not given to me -- No employment records were given to me under FOIA, no personnel or training records for any of the officers. Before I had to file suit on August 24th, or August 23rd, I offered pre-suit counsel, the county attorney, an extension, you know, and I cited the case of York County Sheriff's -- York County Sheriff's Department, it went to the Supreme Court. Part of what they were asking for was personnel information, training information, none of that had been provided. And to claim that, you know, they didn't have that, you know, it was just ridiculous. So, Judge Newman ordered them, you know, as a first step to give me the response, you know, to address, you know, "Who are the officers involved?" "These are the officers involved." They did prepare reports.

THE COURT: [Indiscernible].

MR. JERNIGAN: What are you saying about [Crosstalk] -- yes.

THE COURT: Mr. Jernigan. Any response to Mr. Morrison? I've heard this before in your first initial argument. Anything new otherwise, you know, I'm limited to what Mr. Morrison said for a brief response.

MR. JERNIGAN: Totally, yeah. I was just trying to get across the fact that he's mentioning incident reports. That is

for -- if they want to call it not a criminal matter, it doesn't mean it's not a matter that needs to be documented based on their own policies. It's -- it doesn't mean that they did not prepare reports. There are reports and they've produced them on, December the second. So don't be confused about incident reports that I'm demanding incident reports. That's not what I'm asking for. This suggestion of reasonable suspicion of criminal activity, to justify a police stop. I still haven't heard what it is. What statute, what was the basis for it? The records, you know, the -- there was -- as I mentioned, this was a appearance of impropriety. There were some comments in the, I'm not questioning your background. What I mentioned in the brief was like me, I've never been involved in a case where the other side won't respond, does not want to try to work out discovery issues, and wants to clog up this court with these, kind of, matters. I know Your Honor's about the people's business and wants to move cases forward, attorneys are supposed to work out discovery issues. You know, this was a motion that was filed in February. If I can get the documents in discovery, I'll go forward with the case and ask for a final hearing. But to expect plaintiffs to go forward with the case, you know, without receiving responses under oath to the discovery request is just not a order that I believe can be supported under the record.

THE COURT: All right.

MR. JERNIGAN: And that's really the basis for the motion.

THE COURT: All right, thank you Mr. Jernigan. What I'm going to do is I'm going to take the motions under advisement. I don't need any proposed orders. I'm going to draft my own orders. After I review the memos in support, everything, I'll probably have some to you by the end of the week, and we'll go from there. Thank you all for being here today.

MR. MORRISON: Thank you, Judge.

MR. JERNIGAN: Sounds good. Thank you, your Honor.

THE COURT: Thank you.

[End of Hearing]

CERTIFICATE OF TRANSCRIBER

I, ERIN REILY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5, Richland County, South Carolina, on the 11th day of October, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 9th, 2023

ERIN REILLY

TRANSCRIBER

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	
Christine Jernigan and Justin Jernigan,	)	CASE NO.: 2022-CP-28-00782
	)	
Plaintiff,	)	
	)	**ORDER DENYING PLAINTIFFS' MOTION**
vs.	)	**TO RECUSE, VACATE, AND REASSIGN;**
	)	**OR, ALTERNATIVELY, TO RECONSIDER**
Kershaw County Sheriff's Office,	)	**INTERLOCUTORY ORDER**
	)	
Defendant.	)	
	)	
	)	

This matter is before the Court upon Plaintiffs' Motion to Recuse, Vacate, and Reassign; or Alternatively, to Reconsider Interlocutory Order ("Motion"). The Motion asks this Court to recuse, vacate, and reassign pursuant to Judicial Canon 3E(1), CJC, Rule 501; or, in the alternative, to alter, amend, or reconsider its Interlocutory Order filed June 14, 2023. Plaintiffs argue Judge Coble should: (1) be recused; (2) vacate and reassign the June 2, 2023 Order denying Plaintiff's February 23, 2023 Motion for Sanctions/Contempt; and/or (3) reconsider the June 2, 2023 Order for resolution.

Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998). "As the threshold for a showing of bias is high, a finding of judicial bias must be based on an abiding impression left from a reading of the entire record, not from particular comments or ruling considered in isolation." *Alexander v. Parks*, 834 Fed.Appx. 778 (2020) (internal citations omitted). "It is not sufficient for a party seeking a judge's disqualification to simply allege bias; the party must show some evidence of bias or prejudice." Appellate Court Rule 501, Code of Jud. Conduct, Canon 3, subd. E(1)(a).

After reviewing the applicable law and considering the arguments raised by the parties, the Court finds no evidence of judicial bias or prejudice. Plaintiffs' Motion is based solely on allegations

that are not supported by evidence. Accordingly, the Court concludes that disqualification is unwarranted. As such, Plaintiffs' Motion to Recuse, Vacate, and Reassign is hereby **DENIED.**

Furthermore, after reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiffs' Motion for Reconsideration is hereby **DENIED**,

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

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Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	5TH JUDICIAL CIRCUIT
)	
COUNTY OF KERSHAW)	Case Number: 2022CP2800782
)	
Christine Jernigan and Justin Jernigan,)	
)	
Plaintiffs,)	
)	
)	**ORDER DENYING PLAINTIFF'S MOTION FOR SANCTIONS/CONTEMPT**
VS.)	
)	
Kershaw County Sherriff's Office,)	
Defendant.)	
_____ _)	

This matter comes before the Court upon Plaintiff's Motion for Sanctions/Contempt against Defendant Kershaw County Sheriff's Office (the Motion). Plaintiff filed the Motion on February 23rd, 2023 and later filed a Memorandum in Support of the Motion on April 24th, 2023. Defendant filed a Response in Opposition to the Motion on May 30th, 2023. This Court conducted a hearing on the motion in-person at the Kershaw County Courthouse on April 27th, 2023. Justin Jernigan appeared on behalf of the Plaintiff and David Leon Morrison appeared on behalf the Defendant. Both parties were given the opportunity to be fully heard during the hearing. During the hearing the Court provided Defendant with 30 days to respond to Plaintiffs' allegations of: (1) violation of Judge Jocelyn Newman's December 28th, 2022 Order; and (2) discovery abuses through a supplemental briefing.

On December 28, 2022 Judge Jocelyn C. Newman issued a Form 4 Order (the Order) stating, "Following a hearing on December 19, 2022, the Court ordered that Defendants shall fully comply with the South Carolina Freedom of Information Act vis-à-vis Plaintiff's requests within 20 days of the hearing."

After thoroughly considering all of the arguments made during the April 27th, 2023 hearing and the written submissions of the parties, this Court finds that Defendant complied with the Order to the best of its ability and in good faith. Therefore, Plaintiff's Motion for Sanctions/Contempt is hereby **DENIED**.

IT IS SO ORDERED.

_____
The Honorable Daniel Coble
Presiding Judge

Columbia, South Carolina

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Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF KERSHAW)	
)	**CASE NO.: 2022-CP-28-00782**
Christine Jernigan, et al.,)	
)	**PLAINTIFFS' MOTION TO**
Plaintiffs,)	**RECONSIDER PURSUANT TO**
)	**RULE 59(e), SCRCP**
v.)	
)	
Kershaw County Sheriff's Office,)	
)	
Defendant.)	
)	

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR DEFENDANT KERSHAW COUNTY SHERIFF'S OFFICE ("KCSO")

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
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Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 30th day of October 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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APPENDIX OF EXHIBITS

Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt

Ex. A: Plaintiffs' February 10, 2023, Rule 11(a), 10-Day Letter to KCSO

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Ex. B: Plaintiffs' First Set of Interrogatories (Nos. 1-15) served October 29, 2022

Ex. C: Plaintiffs' First Set of Requests for Production (No. 1) served October 29, 2022

Ex. D: KCSO's Answers served January 9, 2023, to Plaintiffs' First Set of Interrogatories

Ex. E: KCSO's Responses served January 9, 2023, to Plaintiffs' First Set of Requests for Production

Ex. F: Emails between Counsel for the Parties from January/February 2023

Plaintiffs' April 24, 2023, Memorandum in Support of Motion for Sanction/Contempt

Ex. G: KCSO's Policy Manual, Chapter 209 - Records (first produced January 9, 2023)

Ex. H: SCCJA Training Catalog - Omnibus Adult Protection Act (Vulnerable Adults)

Ex. I: CFS2022-39009 (produced December 2, 2022)

Ex. J: CFS2022-39001 (produced December 2, 2022)

Ex. K: August 18, 2022, Cover Letter; Optical Disc; and CFS2022-39001

Ex. L: Letter of South Carolina Attorney General re: FOIA (page 4)

Ex. M: SCLEA Standards Manual, Chapter 15 - Communication

Ex. N: Pre-suit Emails – late July to late August 2022

Ex. O: December 5, 2022, Hearing Transcript before the Honorable DeAndrea G. Benjamin

Ex. P: KCSO Body Worn Camera Retention Schedules (first produced January 9, 2023)

Ex. Q: Orders from *Brown v. Elliot*, 3:14-cv-01188, D.E. 43 & 61 (D.S.C. 2016)

Ex. R: WIS News 10 Article - April 12, 2022

Ex. S: WIS News 10 Article - May 24, 2022

Ex. T: December 19, 2022, Hearing Transcript before the Honorable Jocelyn C. Newman

Ex. U: April 24, 2023, Affidavit of Justin A. Jernigan

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Plaintiffs' May 23, 2023, Post-Hearing Supplemental Email Brief

Ex. V: Email Brief with Plaintiffs' Dec. 16, 2022, Pre-Hearing Brief, Attached

Ex. W: Email Brief with SCLEA, Chapter 14 – Records, Attached

Plaintiffs' July 14, 2023, Motion to Recuse, Vacate, and Reassign; or, Alternatively, to Reconsider Interlocutory Order ("Motion to Recuse or Reconsider")

Ex. X: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret'd

Ex. Y: Feb. 20, 2023, Affidavit of Susan Martin

Ex. Z: Order Approving Wrongful Death Settlement, *Blakely v. KCSO, et al.*, 3:10-cv-00707-JFA, D.E. 138 (D.S.C, March 22, 2013)

Ex. AA: Text Version of May 6, 2016, Washington Post article entitled "South Carolina's poisonous police culture: The death of Lori Jean Ellis"

Ex. BB: Definitions of "Might" and "May," Merriam-Webster's Online Dictionary, <www.merriam-webster.com>

Ex. CC: August 29, 2019, Memorandum to Attorneys/Parties with Discovery Motions, the Honorable Roger M. Young, Sr., South Carolina Circuit Court of the Ninth Judicial Circuit

Ex. DD: May 8, 2023, to May 9, 2023, Emails re: 30-Day Supplemental Briefing Schedule

Ex. EE: June 2, 2023 to July 5, 2023 Emails re: June 2, 2023, Order denying Plaintiffs' Motion for Sanction/Contempt

Plaintiffs' August 20, 2023, First Memorandum in Support of Motion to Recuse or Reconsider

Ex. FF: October 14, 2022, Cover Letter; Optical Disc - Officers Tate, Taylor, and Arledge

Ex. GG: Nov. 8, 2022, Email between Counsel for the Parties re: 11/4/22 Conference Results

Plaintiffs' October 6, 2023, Second Memorandum in Support of Motion to Recuse or Reconsider

Ex. HH: April 27, 2023, Hearing Transcript in the Above-Captioned 782 Case

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Pursuant to Rule 59(e), SCRCP, Plaintiffs respectfully move this Court to reconsider, alter, and/or amend the October 20, 2023, Orders entered in the above-captioned case denying Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt (the "Underlying Motion") and July 14, 2023, Motion to Recuse or Reconsider.

I. INTRODUCTION

The appealability of interlocutory or intermediate orders depends upon whether the order falls within the provisions of S.C. Code Ann. § 14-3-330(1)-(4). The analysis concerns whether the order is one that involves the merits of the action, affects a substantial right in the action, and/or prevents a judgment in the action from which an appeal may later be taken. *Edwards v. Suncom*, 369 S.C. 91, 94-95, 631 S.E.2d 529 (2006) (citation omitted). An interlocutory order is appealable where the order's determination "has the effect of striking out a pleading." *Link v. Sch. Dist. of Pickens County*, 302 S.C.1, 393 S.E.2d 176 (1990). Moreover, an interlocutory order "granting, continuing, modifying, or refusing an injunction" is immediately appealable. S.C. Code Ann. § 14-3-330(4).

The Court's October 20, 2023, 9:44am Order finds that KCSO "complied with" the legal requirements of FOIA, and the Honorable Jocelyn C. Newman's December 28, 2022, Order, "to the best of its ability and in good faith." These determinations are findings that involve the merits of this action, affect substantial rights in this action and/or special proceeding, and prevent judgment in this action from which an appeal may later be taken. The Court's findings that KCSO complied with the legal requirements of FOIA eliminates the Complaint's request for declaratory/injunctive relief on the grounds that "KCSO's written determination of July 25, 2022," fails to comply with and/or violates the written determination requirements of FOIA, Section 30-4-30(c). Compl. at 11 & ¶¶64-66.

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The Court's October 20, 2023, findings that KCSO's July 25, 2022, written determination complies with the requirements of FOIA, Section 30-4-30(c), eliminates the underlying basis for the injunctive/equitable relief granted by Judge Newman's December 28, 2022, Form 4 Order – i.e., that KCSO fully comply with the South Carolina Freedom of Information Act vis-à-vis Plaintiffs' requests within 20 days of the hearing. Judge Newman would not have issued the December 28, 2022, Form 4 Order if KCSO had fully complied with Section 30-4-30(c)'s written determination requirements via its July 25, 2022, FOIA Response.

The South Carolina Supreme Court has identified "two basic situations in which a party should consider filing a Rule 59(e) motion." *Elam v. S.C. Dep't of Transp*., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party *may* wish to file such a motion when [he or] she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id*. (emphasis added). But, "[a] party ***must*** file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

In summary, and as discussed in further detail herein below, Plaintiffs respectfully request that the Court reconsider, and provide explicit findings/rulings on issues and arguments that have not been addressed, as follows: (1) Reconsider the findings that KCSO's July 25, 2022, FOIA Response complied with Section 30-4-30(c)'s written determination requirements and Judge Newman's (subsequent) December 2022 Orders; (2) Find that KCSO violated the discovery requirements of the SCRCP with respect to Plaintiffs' October 29, 2022, First Set of Discovery Requests; (3) Find that there is a likelihood relevant body worn camera ("BWC") records/evidence documenting the June 29, 2022, police-involved incidents of Count II have been spoliated by KCSO; (4) Address the Canon 3E(1) concerns raised by Plaintiffs' July 14,

2023, Motion to Recuse or Reconsider; and (5) Find that Plaintiffs' April 24, 2023, Memorandum did not violate the requirements of Rule 7(b)(1), SCRCP.

II. DISCUSSION

A. Counts I & II of the Complaint

The Complaint in the above-captioned case was filed/served on September 12 and 14, 2022. Count I seeks declaratory/injunctive relief pursuant to the Freedom of Information Act ("FOIA"), S.C. Code §§ 30-4-100(a) & (b). For instance, the Complaint requests a declaratory judgment finding that KCSO's written determination of July 25, 2022, violates the statutory written determination requirements of FOIA, Section 30-4-30(c). Compl. ¶¶62-67 & Ex. A.

FOIA is remedial in nature and should be liberally construed to carry out its purpose. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864-65 (2001). The purpose of FOIA is to make it possible for citizens "to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." S.C. Code Ann. § 30-4-15.

Count II seeks declaratory/equitable relief pursuant to the Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, *et seq.*, and S.C. Code Ann. § 23-1-240(g)(5). Compl. at ¶¶5, 68-70. Subsection (5) specifies that individuals who are themselves the subjects of body worn camera ("BWC") recordings (i.e., Plaintiffs) are "persons who *may request and must receive* data recorded by a body-worn camera … pursuant to the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Civil Procedure, or a court order." S.C. Code Ann. § 23-1-240(g)(5) (emphasis added).

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B. Procedural Requirements and Legal Standards of FOIA, Section 30-4-100(a), Were not Followed

FOIA was amended/updated in 2017 (*i*) to require that all actions seeking to enforce its provisions "*must* be considered to be an irreparable injury for which no adequate remedy at law exists;" and (*ii*) create an expedited track and summary resolution process for FOIA actions. *See* Pls.' April 24, Memo at 3; S.C. Code Ann. § 30-4-100(a) (1976 & Supp. 2017) ("Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. …"). As a result of the legislature's mandate requiring that all FOIA violations must be considered an irreparable injury for which no adequate remedy at law exists, a FOIA plaintiff need only show a likelihood of success on the merits to obtain declaratory/injunctive relief.

A showing of "likelihood of success" does not require a party to "prove an absolute right" to the relief requested; rather, the requesting party "need only present a fair question to raise as to the existence of such a right." *Peek v. Spartanburg Reg'l Healthcare Sys*., 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (citation omitted). Thus, if the party makes a "*prima facie* showing" of entitlement to the requested relief, the trial court should grant the injunction. *Id*. If the hearing court is unable to reach a final resolution at the initial hearing, the hearing court "shall" establish a scheduling order to resolve the FOIA action within six months of initial filing (which may be extended upon a showing of good cause). S.C. Code Ann. § 30-4-100(a).

The South Carolina Supreme Court has explained that the "use of mandatory language is unambiguous" where the duty is specified using terms such as "must" and "shall." *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) ("Under the rules of

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statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement.") (citation omitted). This is true even where a public official possesses broad discretionary authority. *Id.*, 422 S.C. at 308-09, 811 S.E.2d at 767. Sections 30-4-100(a) and 23-1-240(g)(5) include "must" and "shall" language that is mandatory and unambiguous.

C. The December 19, 2022, Initial Hearing and December 28, 2022, FOIA Order

Plaintiffs' September 12, 2022, Compliant requests that the Court "[s]chedule an initial hearing within 10 days of service" as required pursuant to Section 30-4-100(a). The initial hearing in the above captioned case was delayed for approximately three months, until December 19, 2022. The CAJ must schedule the initial hearing and the hearing court shall establish a scheduling order to resolve FOIA actions within six months of initial filing if a final determination cannot be reached at the initial hearing (the six month time period may be extended based upon a showing of good cause).

At the December 19, 2022, initial hearing, Judge Newman stated: "I think that [KCSO] should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request." Ex. F. at 15:5-20. Judge Newman's December 28, 2022, Form 4 Order states that "Defendant[] shall fully comply with the South Carolina Freedom of Information Act vis-a-vis Plaintiff's requests within 20 days of the hearing." Judge Newman's instructions at the December 19, 2022, hearing regarding the written determination required by Section 30-4-30(c) are on point with controlling precedent. *See Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (holding that the DOR's "equivocal and evasive" FOIA response was "manifestly at odds with the clarity mandated by" Section 30-4-30(c)).

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D. Plaintiffs' February 23, 2023, Motion for Sanctions/Contempt

Plaintiffs' Underlying Motion raises three primary issues: (*i*) spoliation of body worn camera ("BWC") records/evidence (Count II); (*ii*) KCSO's compliance with the statutory response and written determination obligations of FOIA, Section 30-4-30(c), and Judge Newman's December 2022 Orders; and (*iii*) KCSO's compliance with the discovery requirements of the SCRCP as to Plaintiffs' October 29, 2022, First Set of Discovery Requests. Pls.' April 24, 2023, Memo.

> THE COURT: …I'm going to try to address those three main issues about destroying evidence. The FOIA response and then the discovery response.
>
> MR. JERNIGAN: Thank you, Your Honor.

Ex. HH, April 27, 2023, Hr. Tr. at 45:15-18.

For example, the Underlying Motion requests that the Court compel KCSO to provide verified answers to Plaintiffs' October 29, 2022, First Set of Interrogatories (Ex. B). *See* Rule 33(a), SCRCP ("Each interrogatory shall be answered separately and fully in writing under oath"). At the April 27, 2023, hearing for the Underlying Motion, Judge Coble indicated that he would review the matter and determine if KCSO was, in fact, required to provide verified answers in response to Plaintiffs' October 29, 2022, First Set of Interrogatories. Pls.' July 14, 2023, Motion at 23-24 & Ex. HH at 46:12-14 (THE COURT: "I'm going to review the discovery questions and their responses because I'm not aware that a verification is required under oath but I need to review"). Even so, Judge Coble entered a Form 4 Order denying all the requested relief of Plaintiffs' Underlying Motion on June 2, 2023 (*see* below).

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion for Sanctions/Contempt, heard on April 27th, 2023 is denied. Formal order to follow.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

E. Plaintiffs' July 14, 2023, Canon 3E(1) Motion to Recuse or, Alternatively, Reconsider the June 2, 2023, Form 4 Denial

The June 2, 2023, Form 4 denial of Plaintiffs' Underlying Motion cannot be supported by the record in this case. KCSO, for instance, did not comply with Rule 33(a), SCRCP, by providing full/complete verified interrogatory answers. The South Carolina Supreme Court has held that a judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record." *Ellis v. Procter and Gamble Distributing Co*., 433 S.E.2d 856, 857, 315 S.C. 283, 285 (1993). Plaintiffs believed the Court would address and resolve the Canon 3E(1) concerns raised by Plaintiffs' July 14, 2023, Motion to Recuse or Reconsider. *See Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535, 547 (2014) (determining that disqualification was not required under Canon 3E(1) given that "the Record supports all of the court's orders in this case, including the Discovery Order and Privilege Order").

F. The Court's Respective October 20, 2023, Orders Deny Plaintiffs' Motion for Sanctions/Contempt and Motion to Recuse or Reconsider

The Court's October 20, 2023, 9:44am Order finalizes the June 2, 2023, Form 4 denial of Plaintiffs' Underlying Motion for Sanctions/Contempt. The 9:44am Order, however, only addresses one of the three primary issues of the Underlying Motion; i.e., failure to comply with the statutory response and written determination obligations of FOIA, Section 30-4-30(c), and Judge Newman's December 2022 Orders (emphasis added):

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> On December 28, 2022 Judge Jocelyn C. Newman issued a Form 4 Order (the Order) stating, 'Following a hearing on December 19, 2022, the Court ordered that Defendant[] shall fully comply with the South Carolina Freedom of Information Act vis-à-vis Plaintiff's requests within 20 days of the hearing.'
>
> After thoroughly considering all of the arguments made during the April 27th, 2023 hearing and the written submissions of the parties, this Court *finds that Defendant complied with the Order to the best of its ability and in good faith*. Therefore, Plaintiff's Motion for Sanctions/Contempt is hereby **DENIED**.

The Court's October 20, 2023, 9:41am Order denies Plaintiffs' July 14, 2023, Motion to Recuse or Reconsider stating:

> Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Roche v. Young Bros., Inc*., 332 S.C. 75, 504 S.E.2d 311 (1998). "As the threshold for a showing of bias is high, a finding of judicial bias must be based on an abiding impression left from a reading of the entire record, not from particular comments or ruling considered in isolation." *Alexander v. Parks*, 834 Fed. Appx. 778 (2020) (internal citations omitted). "It is not sufficient for a party seeking a judge's disqualification to simply allege bias; the party must show some evidence of bias or prejudice." Appellate Court Rule 501, Code of Jud. Conduct, Canon 3, subd. E(1)(a).
>
> After reviewing the applicable law and considering the arguments raised by the parties, the Court finds no evidence of judicial bias or prejudice. Plaintiffs' Motion is based solely on allegations that are not supported by evidence. Accordingly, the Court concludes that disqualification is unwarranted. As such, Plaintiffs' Motion to Recuse, Vacate, and Reassign is hereby **DENIED**.

The October 20, 2023, 9:41am Order does not address the appearance-based Canon 3E(1) concerns raised by Plaintiffs' Motion; e.g., "impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record."

III. STANDARD OF REVIEW

"A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law." *Campbell v. Marion Cnty. Hosp. Dist*., 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003) (citation omitted). "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law *de novo*."

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Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Actions for injunctive relief are equitable in nature and "this Court may make factual findings based on its own view of the preponderance of the evidence. *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 760 S.E.2d 785, 788 (2014) (citation omitted). *Id.* Although an injunction is equitable in nature, the analysis presents a question of law if the matter can be determined based on interpretation and application of FOIA's statutory provisions to the facts of record. *Id.*

In construing a statute, a court examines and enforces the statutory language as written. *See Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) ("It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning. … '[T]here is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning' unless a statutory provision is ambiguous.") (citations omitted).

IV. ARGUMENT

A. KCSO's July 25, 2022, FOIA Response Does not Comply with Section 30-4-30(c)

KCSO's FOIA Response to the initial FOIA Request (Compl. Ex. A) is copied below (Ex. N at 7).

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

Judge Newman's December 28, 2022, Form 4 Order states: "Following a hearing on December 19, 2022, the Court ordered that Defendant[] shall fully comply with the

South Carolina Freedom of Information Act vis-à-vis Plaintiff's requests within 20 days of the hearing." Thereafter, KCSO did not provide any updated written determination towards the goal of satisfying the statutory requirements of Section 30-4-30(c) and Judge Newman's December 2022 Orders. *See*, *e.g.*, *Sloan*, 409 S.C. 551, 762 S.E.2d 687, 688-89.

KCSO's July 25, 2022, FOIA Response was the same on October 20, 2023, as it was ten months earlier on December 28, 2022. The Court's October 20, 2023, 9:44am Order, however, finds "that Defendant complied with the [December 2022] Order to the best of its ability and in good faith."

Judge Newman's December 28, 2022, FOIA Order, at least implicitly, determined that KCSO's July 25, 2022, FOIA Response did not satisfy the statutory requirements of Section 30-4-30(c). Ex. F at 15:5-20 ("I think that [KCSO] should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request." Ex. F. at 15:5-20. The December 2022 Form 4 Order is the law of this case. *Dorchester County Dept. of Social Services v. Miller*, 477 S.E.2d 476, 483, 324 S.C. 445 (Ct. App. 1996) (citations omitted).

The record does not support a finding that KCSO "complied with" the statutory written determination requirements of FOIA and Judge Newman's December 2022 Order "to the best of its ability and in good faith." Even where it is undisputed that a public body has acted in good faith, no "good faith exception" exists to foreclose an award of attorneys' fees under FOIA, much less the failure to respond and disclose public records as legally required. *See The New York Times v. Spartanburg County School District*, 374 S.C. 307, 312-313, 649 S.E. 2d 28 (2007) (citation omitted).

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The phrase "good faith" is included in KCSO's May 30, 2023, post-hearing Response in Opposition to the Underlying Motion thirty (30) times. Factual representations by counsel in written briefs or oral argument does not constitute evidence. *Cobb v. Benjamin*, 235 S.C. 573, 482 S.E. 2d 589 (Ct. App. 1997). Plaintiffs respectfully request that the Court reconsider the October 20, 2023, determinations finding that Defendant's July 25, 2022, FOIA Response met the written determination requirements of S.C. Code Ann. § 30-4-30(c).

B. Discovery Requirements of the SCRCP

The Court's October 20, 2023, Orders do not address the issues and arguments concerning KCSO's failure to comply with the discovery requirements of the SCRCP. Plaintiffs respectfully request that the Court provide explicit rulings on the discovery issues and arguments raised by Plaintiffs' Underlying Motion and July 14, 2023, Motion to Recuse/Reconsider. These discovery matters are important issues with respect to resolving Counts I and II. Plaintiffs request a finding that KCSO violated the discovery requirements of the SCRCP with respect to Plaintiffs' October 29, 2022, First Set of Interrogatories (Nos. 1-15) and Requests for Production (No. 1) based upon the issues/arguments of record.

C. Spoliation of BWC Records/Evidence of Count II

The Court's October 20, 2023, Orders do not address the issues and arguments raised by Plaintiffs' Motions concerning the concealment, destruction, and/or spoliation of relevant BWC records/evidence; i.e., the subject matter of Count II. Plaintiffs respectfully request explicit rulings on the spoliation issues and arguments raised by Plaintiffs' Underlying and July 14, 2023, Motions (e.g., finding a s likelihood that relevant BWC recordings have been unlawfully concealed/destroyed).

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D. Judicial Canon 3E(1)

The Court's October 20, 2023, Orders include the below legal standards, and adopt the below analysis, to deny Plaintiffs' July 14 2023, Motion to Recuse (pursuant to Canon 3E(1)) or Reconsider.

> "As the threshold for a showing of bias is high, a finding of judicial bias must be based on an abiding impression left from a reading of the entire record, not from particular comments or ruling considered in isolation." *Alexander v. Parks*, 834 Fed. Appx. 778 (2020) (internal citations omitted). "It is not sufficient for a party seeking a judge's disqualification to simply allege bias; the party must show some evidence of bias or prejudice." Appellate Court Rule 501, Code of Jud. Conduct, Canon 3, subd. E(1)(a).
>
> After reviewing the applicable law and considering the arguments raised by the parties, the Court finds no evidence of judicial bias or prejudice. Plaintiffs' Motion is based solely on allegations that are not supported by evidence. Accordingly, the Court concludes that disqualification is unwarranted.

Plaintiffs respectfully request that the Court reconsider its citation to, and reliance on, federal appellate opinions addressing whether the district court's behavior and/or comments demonstrated judicial bias/prejudice on a level inconsistent with the right to a fair trial. *Offutt v. United States*, 348 U.S. 11, 17 (1954); *United States v. Twomey*, 806 F.2d 1136, 1140-41 (1st Cir. 1986); *Alexander v. Parks*, 834 Fed. Appx. 778 (4th Cir. 2020). Plaintiffs respectfully request that the Court reconsider citing to Canon 3E(1) subpart (a) because it is not relevant to Plaintiffs' July 14, 2023, Motion, and reconsider including the quotation "It is not sufficient for a party seeking…" because this quote is not included in Canon 3E(1)(a).

The Court's October 20, 2023, Orders do not address issues and arguments raised by Plaintiffs' Canon 3E(1) Motion to Recuse or Reconsider. Plaintiffs respectfully request that the Court provide explicit rulings on the issues and arguments raised by Plaintiffs' July 14, 2023, Canon 3E(1) Motion to Recuse or Reconsider that have not been addressed. For instance, the concerns based on the holding in *Ellis* that "[a] judge's

impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record." *Cf. Davis*, 762 S.E.2d at 547 (determining that "the Record supports all of the court's orders in this case, including the Discovery Order and Privilege Order").

E. Rule 7(b)(1), SCRCP

Plaintiffs respectfully request that the Court reconsider the findings of the October 20, 2023, Orders that – near the end of the April 27, 2023, hearing – the Court granted KCSO a thirty (30) day extension or continuance with respect to previously-known issues (i.e., FOIA/discovery issues) of Plaintiffs' Underlying Motion.

Plaintiffs respectfully request that the Court provide explicit rulings with respect to issues and Rule 7(b)(1), SCRCP, arguments raised by Plaintiffs' May 23, 2023, Supplemental Brief and July 14, 2023, Motion to Recuse or Reconsider that have not been addressed. Plaintiffs respectfully request findings that the April 24, 2023, Memorandum in Support of the Underlying Motion did not raise new issues that resulted in unfair surprise and/or prejudice to KCSO in violation of Rule 7(b)(1), SCRCP.

In further support of this Motion, Plaintiffs incorporate the previous arguments set forth in prior filings and made to the Court on these matters.

V. CONCLUSION

Accordingly, for the foregoing reasons, Plaintiffs respectfully request that the Court reconsider its October 20, 2023, Orders denying Plaintiffs' Underlying Motion and Motion to Recuse or Reconsider.

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Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 30th day of October 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN (COUNTS I & II), AND PRO SE (COUNT II)

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ELECTRONICALLY FILED - 2024 May 03 12:58 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW Christine Jernigan, et al., Plaintiffs, vs. Kershaw County Sheriff's Office, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-28-00782 **ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP**

This matter is before the Court upon Plaintiffs' Motion for Reconsideration Pursuant to Rule 59(e), SCRCP ("the Motion"). The Motion asks this Court to alter, amend, or reconsider its Order entered October 20, 2023, denying Plaintiffs' February 23, 2023 Motion for Sanctions/Contempt and Plaintiffs' July 14, 2023 Motion to Recuse or Reconsider.

After reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiffs' Motion for Reconsideration is hereby **DENIED**, and the Court, pursuant to the discretion afforded by Rule 59 and *Pollard v. County of Florence*, concludes that a hearing is not necessary to rule on Plaintiffs' Motion for Reconsideration. *See* Rule 59(f), SCRCP (stating a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument"); *see also Pollard*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994) (holding there was "no merit in Pollard's assertion that the circuit court committed reversible error in denying her motion to alter or amend the judgment under Rule 59(e) SCRCP,

without first conducting a hearing or allowing [the parties] 'to fully brief' the issues raised in [the] motion").

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

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ELECTRONICALLY FILED - 2024 May 03 12:58 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge
Civil Action No. 2022-CP-28-00782

Christine Jernigan, et. al……..…….…….……Appellants,

v.

Kershaw County
Sheriff's Office…….…….……..……..……...Respondent.

NOTICE OF APPEAL

Appellants Christine Jernigan and Justin Jernigan appeal the lower court's Orders (1) Denying Appellants' Motion for Sanctions/Contempt; (2) Denying Appellants' Motion to Recuse or Reconsider; and (3) Denying Appellants' Motion for Reconsideration. Copies of these Orders are attached hereto. Appellants received notice of the respective Orders denying the Motion for Sanctions/Contempt and Motion to Recuse or Reconsider on October 20, 2023. Appellants timely filed a Rule 59 Motion for Reconsideration and received notice of the Order denying the Motion for Reconsideration on May 3, 2024.

Respectfully submitted,

By: /s/Justin A. Jernigan
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 21st day of May 2024

ATTORNEY FOR APPELLANTS

RECEIVED
May 21 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge
Civil Action No. 2022-CP-28-00782

Christine Jernigan, et. al……..…….…….……Appellants,

v.

Kershaw County
Sheriff's Office…….…….……..……..……...Respondent.

PROOF OF SERVICE

I hereby certify that the foregoing Notice of Appeal is being served by email to counsel for the Respondent David Morrison at david@dmorrison-law.com. A copy of the Notice of Electronic Filing for the notice of appeal filed with the clerk of the lower court is attached.

Respectfully submitted,

By: /s/Justin A. Jernigan
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

This 21st day of May 2024

ATTORNEY FOR APPELLANTS

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP2800782

Official File Stamp:	05-21-2024 04:22:09 PM
Court:	CIRCUIT COURT Common Pleas Kershaw
Case Caption:	Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County
Document(s) Submitted:	Appeal/Notice of Appeal to Court of Appeals - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits
Filed by or on behalf of:	Justin A. Jernigan

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

David Leon Morrison for Sheriffs Office Kershaw County
Justin A. Jernigan for Christine Jernigan et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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SC Court of Appeals

ELECTRONICALLY FILED - 2023 Oct 20 9:44 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	5TH JUDICIAL CIRCUIT
)	
COUNTY OF KERSHAW)	Case Number: 2022CP2800782
)	
Christine Jernigan and Justin Jernigan,)	
)	
Plaintiffs,)	
)	
)	**ORDER DENYING PLAINTIFF'S MOTION FOR SANCTIONS/CONTEMPT**
VS.)	
)	
Kershaw County Sherriff's Office,)	
Defendant.)	
_____ _)	

This matter comes before the Court upon Plaintiff's Motion for Sanctions/Contempt against Defendant Kershaw County Sheriff's Office (the Motion). Plaintiff filed the Motion on February 23rd, 2023 and later filed a Memorandum in Support of the Motion on April 24th, 2023. Defendant filed a Response in Opposition to the Motion on May 30th, 2023. This Court conducted a hearing on the motion in-person at the Kershaw County Courthouse on April 27th, 2023. Justin Jernigan appeared on behalf of the Plaintiff and David Leon Morrison appeared on behalf the Defendant. Both parties were given the opportunity to be fully heard during the hearing. During the hearing the Court provided Defendant with 30 days to respond to Plaintiffs' allegations of: (1) violation of Judge Jocelyn Newman's December 28th, 2022 Order; and (2) discovery abuses through a supplemental briefing.

On December 28, 2022 Judge Jocelyn C. Newman issued a Form 4 Order (the Order) stating, "Following a hearing on December 19, 2022, the Court ordered that Defendants shall fully comply with the South Carolina Freedom of Information Act vis-à-vis Plaintiff's requests within 20 days of the hearing."

After thoroughly considering all of the arguments made during the April 27th, 2023 hearing and the written submissions of the parties, this Court finds that Defendant complied with the Order to the best of its ability and in good faith. Therefore, Plaintiff's Motion for Sanctions/Contempt is hereby **DENIED**.

IT IS SO ORDERED.

_____
The Honorable Daniel Coble
Presiding Judge

Columbia, South Carolina

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ELECTRONICALLY FILED - 2023 Oct 20 9:44 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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SC Court of Appeals

ELECTRONICALLY FILED - 2023 Oct 20 9:41 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW Christine Jernigan and Justin Jernigan, Plaintiff, vs. Kershaw County Sheriff's Office, Defendant.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-28-00782 **ORDER DENYING PLAINTIFFS' MOTION TO RECUSE, VACATE, AND REASSIGN; OR, ALTERNATIVELY, TO RECONSIDER INTERLOCUTORY ORDER**

This matter is before the Court upon Plaintiffs' Motion to Recuse, Vacate, and Reassign; or Alternatively, to Reconsider Interlocutory Order ("Motion"). The Motion asks this Court to recuse, vacate, and reassign pursuant to Judicial Canon 3E(1), CJC, Rule 501; or, in the alternative, to alter, amend, or reconsider its Interlocutory Order filed June 14, 2023. Plaintiffs argue Judge Coble should: (1) be recused; (2) vacate and reassign the June 2, 2023 Order denying Plaintiff's February 23, 2023 Motion for Sanctions/Contempt; and/or (3) reconsider the June 2, 2023 Order for resolution.

Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998). "As the threshold for a showing of bias is high, a finding of judicial bias must be based on an abiding impression left from a reading of the entire record, not from particular comments or ruling considered in isolation." *Alexander v. Parks*, 834 Fed.Appx. 778 (2020) (internal citations omitted). "It is not sufficient for a party seeking a judge's disqualification to simply allege bias; the party must show some evidence of bias or prejudice." Appellate Court Rule 501, Code of Jud. Conduct, Canon 3, subd. E(1)(a).

After reviewing the applicable law and considering the arguments raised by the parties, the Court finds no evidence of judicial bias or prejudice. Plaintiffs' Motion is based solely on allegations

that are not supported by evidence. Accordingly, the Court concludes that disqualification is unwarranted. As such, Plaintiffs' Motion to Recuse, Vacate, and Reassign is hereby **DENIED.**

Furthermore, after reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiffs' Motion for Reconsideration is hereby **DENIED**,

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

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ELECTRONICALLY FILED - 2023 Oct 20 9:41 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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SC Court of Appeals

ELECTRONICALLY FILED - 2024 May 03 12:58 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW)	
)	
Christine Jernigan, et al.,)	CASE NO.: 2022-CP-28-00782
)	
Plaintiffs,)	
)	**ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP**
vs.)	
)	
Kershaw County Sheriff's Office,)	
)	
Defendants.)	
)	

This matter is before the Court upon Plaintiffs' Motion for Reconsideration Pursuant to Rule 59(e), SCRCP ("the Motion"). The Motion asks this Court to alter, amend, or reconsider its Order entered October 20, 2023, denying Plaintiffs' February 23, 2023 Motion for Sanctions/Contempt and Plaintiffs' July 14, 2023 Motion to Recuse or Reconsider.

After reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiffs' Motion for Reconsideration is hereby **DENIED**, and the Court, pursuant to the discretion afforded by Rule 59 and *Pollard v. County of Florence*, concludes that a hearing is not necessary to rule on Plaintiffs' Motion for Reconsideration. *See* Rule 59(f), SCRCP (stating a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument"); *see also Pollard*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994) (holding there was "no merit in Pollard's assertion that the circuit court committed reversible error in denying her motion to alter or amend the judgment under Rule 59(e) SCRCP,

without first conducting a hearing or allowing [the parties] 'to fully brief' the issues raised in [the] motion").

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

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ELECTRONICALLY FILED - 2024 May 03 12:58 PM - KERSHAW - COMMON PLEAS - CASE#2022CP2800782

Kershaw Common Pleas

Case Caption: Christine Jernigan , plaintiff, et al VS Sheriffs Office Kershaw County

Case Number: 2022CP2800782

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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Apr 16 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Appellate Case No. 2024-000833

Christine Jernigan and Justin Jernigan……...…….……Appellants,

v.

Kershaw County Sheriff's Office…….…….……..……..…….....Respondent.

PROOF OF SERVICE

I hereby certify that (*i*) the foregoing Record on Appeal is being served by email to counsel for Respondent, David Morrison, Esq., at david@dmorrison-law.com; and (*ii*) one bound copy is being mailed to the Court as requested by the Clerk's March 18, 2025, Letter at 1220 Senate Street, Columbia, SC 29201.

Respectfully submitted,

By: s/Justin A. Jernigan

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302 Pine Cliff Dr.
Seneca, SC 29672
864-710-5029
justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANTS

April 16, 2025