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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 – VOLUME II

Justin A. Jernigan, Esq.
S.C. Bar No. 74954
302 Pine Cliff Dr.
Seneca, SC 29672
864-710-5029
justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANTS

David L. Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, SC 29204
803-661-6285
david@dmorrison-law.com

ATTORNEY FOR RESPONDENT

EXHIBIT HH

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA
COUNTY OF KERSHAW) C.A. NO. 2022-CP-28-00782
CIRCUIT COURT 5

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:

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleinc.com

APPEARANCES:

Justin A. Jernigan, Esquire
7148 Stirrup Court
Weddington, NC 28104

Attorney for the Plaintiffs.

David Morrison, Esquire
Morrison Law Firm, LLC
7453 Irmo Drive, Ste. B
Columbia, SC 29212

Attorney for the Defendant.

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDING

2 THE COURT: This is a motion for sanctions and
3 contempt by Mr. Jernigan; is that correct?

4 MR. JERNIGAN: Yes, Judge, it's Justin Jernigan.

5 MR. MORRISON: Judge, there are some preliminary
6 matters we probably need to take up, some preliminary
7 housekeeping matters we need to take up before we get started.

8 MR. JERENIGAN: And I would like to approach and offer
9 -- have binders with the filings and I have two copies for the
10 Court. Would the Court like two copies or --

11 THE COURT: Just one.

12 MR. JERNIGAN: Just one copy? Okay. And those are
13 the stamped versions that were printed from the Court. They're
14 not complete but there's the discovery and most of the paperwork
15 is in the binder. Do you have any issues before we get started?

16 MR. MORRISON: Those are the matters I want to take up
17 with this. Assuming this is what was filed, I don't think we'll
18 have any problems with this, but this is what was filed?

19 MR. JERNIGAN: Yes. It's what was filed and there's
20 the -- you know, unless I made a mistake putting things together
21 it should be what it --

22 THE COURT: We'll address it if something comes up
23 that we're not aware of.

24 MR. JERNIGAN: Okay.

25 THE COURT: All right. Preliminary before we get

1 started?

2 MR. MORRISON: Two minute overview so you'll
3 understand the preliminary matters. I can ask these matters
4 when I get to them. This is a FOIA action that arises as a
5 result of Mr. Jernigan's grandmother being at Pinedale
6 residential facility here in Kershaw County. It's basically an
7 assisted living facility.

8 She was placed there by Mr. Jernigan's aunt, his
9 mother's sister who has power of attorney for the care of his
10 grandmother. I understand there are competing powers of
11 attorney as his mother also has power of attorney that was dated
12 earlier than (indiscernible) and was not filed and I understand
13 the mother's answer was filed.

14 There's a separate lawsuit over that, over the
15 competing powers of attorney who has power now to control that
16 medical situation. The Kershaw County Sheriff's involvement
17 came when the director of the Pinedale residential center made
18 a phone call to 911 saying that a resident was being removed
19 from their facility without consent.

20 The Sheriff's office responded. They located the car
21 that was removing the resident. They had left the facility.
22 They may have just pulled off of the premises and may have been
23 down the road a little bit. They stopped and they talked to
24 them. They talked to Justin.

25 This was just the mother and grandmother in the car

1 that was stopped. They talked to them. They talked to Justin
2 Jernigan who is a lawyer in North Carolina, a patent lawyer in
3 North Carolina, and they also talked to the aunt who had the
4 power of attorney. I believe she came to the scene with the
5 power of attorney.

6 They saw the power of attorney. They determined that
7 this was a civil matter. No crime had been committed and
8 everybody go on their way. The aunt took the grandmother back
9 to Pinedale and now there is litigation over her care at
10 Pinedale and who has the power to control that between Mr.
11 Jernigan's mother and his grandmother.

12 And I'm sure he will go into much more detail about
13 all of that, and I'm sure we will but we get into the motion
14 itself. Having said that, in preparing for this hearing, I
15 still (indiscernible) with how to respond to this motion. It
16 wasn't until yesterday that I figured out why I was struggling
17 mightily because I was really struggling -- what am I responding
18 -- what am I fighting, what am I saying, what am I responding to
19 and how am I responding.

20 And yesterday I decided I'm going to start over, go
21 back to page one, go back and read the motion and go through it
22 all again so I could get it straight in my head. And when I did
23 that it dawned on me why I was struggling so badly to respond to
24 this. The motion itself is a six page document that's kind of a
25 rambling narrative of some of this.

1 Typically when we file motions in state court in South
2 Carolina we file a motion, it says we are seeking an order
3 granting this relief on the following grounds and we list our
4 grounds. And that is to comply with Rule 7 of rules of civil
5 procedure which requires that the grounds for a motion be stated
6 with specificity.

7 When I read this motion it's hard to find grounds for
8 the motion, much less grounds for the motion stated with
9 specificity. So I don't believe the motion gave us proper
10 notice of what the grounds for the motion were and the motion
11 itself is not proper.

12 Mr. Jernigan indicated in the motion that he would
13 supplement it at or near the time of the hearing with additional
14 evidence of materials, and he did, and this is what we have. He
15 supplemented on Monday. In fairness, Exhibits A through G had
16 already been filed, that portion of this.

17 The rest of this was a new filing on Monday. In the
18 new filing we have a 30 page memorandum. We had some -- I think
19 it was some seven exhibits, six or seven exhibits filed
20 originally. There was 17 more exhibits filed in an affidavit
21 and when you read the memorandum, in the 30 pages, there is lots
22 of talk about things that aren't really referenced in the
23 motion. And in fairness, we got that on Monday. While
24 I've certainly read it all by now, I certainly have not
25 had the opportunity to digest it all by now because this is

1 complicated and you have to read it carefully because I think
2 there are things that are erroneously stated, maybe
3 misconstrued, and I'll point out what I'm talking about.

4 One of the big issues in this case is that Mr.
5 Jernigan says that there was -- they didn't prepare an incident
6 report for this because it was a civil matter. No incident
7 report was prepared, there was no investigation to be done.
8 There is no incident report. He's asked us to employ you for
9 the report.

10 We told him that none exists. He contends that we are
11 required to prepare one. So we obviously did prepare one and
12 we're hiding it and I'm assisting the Sheriff's Department in
13 hiding it. He cites -- he explains that in his memorandum, and
14 I will read you what he says.

15 MR. JERNIGAN: I think would probably make sense to go
16 through the motion first instead of have rebuttal right now, but
17 however the Court would like to proceed.

18 MR. MORRISON: This is rebuttal. This is showing
19 where it's putting in grounds for the motion in the memorandum
20 on Monday which is untimely. It's showing how I need more time
21 to go through it because of the details that you have to go
22 through it. Again, I'm going to point out one thing that
23 illustrates that detail.

24 It said in the memorandum of page five that the
25 Sheriff's Department knew, based upon our own policies which we

1 submitted to him in discovery, that reports must be prepared on
2 all, quote -- let me put my glasses on so I get it right. Of
3 all, quote, citizen request for services that an officer is
4 dispatched, dot dot dot to investigate.

5 That's a quote from our policy. The dot dot dot is a
6 critical omission. If you read the policy itself
7 (indiscernible) like we were dispatched and we should prepare a
8 report. But if you read the policy itself, the policy itself
9 says that it's department policy to prepare the following
10 categories of incidents.

11 One of the parties quoted from is all citizen requests
12 for services when an officer is dispatched, and here's the
13 ellipses, the part that was left out, and an officer is assigned
14 to investigate or an employee is assigned to take action at a
15 later time.

16 This is a report from criminal matters. You document
17 what happened. The investigation starts based off of that
18 document and it goes forward from that from the initial incident
19 report. The Sheriff's department did not assign anybody to
20 investigate.

21 Did not assign anybody to take later action. That's
22 the phrase that was left out of the quote, which changes the
23 entire meaning of the quote. I'm not alleging that that was
24 intentional. I don't think Mr. Jernigan even understands that
25 because we've had many conversations about whether a report was

1 required or not.

2 So I don't think he understands that, but I have to go
3 through this in great detail and I just got it Monday, and it
4 goes through lots of new grounds that are not stated in the
5 motion. For those reasons we don't think the motion is proper
6 before the Court at this time because there is no statement of
7 grounds with specificity.

8 Many of the grounds weren't stated until we got a
9 memorandum on Monday, that we didn't have an opportunity to
10 review in detail in response to it.

11 THE COURT: Yes, sir. Mr. Jernigan.

12 MR. JERNIGAN: Thank you, Your Honor. I would like to
13 go through the motion. There's really three main points. The
14 Sheriff's office destroyed evidence that they were obligated to
15 preserve. The Sheriff's office did not follow judge -- this was
16 Judge Newman, Judge Jocelyn Newman, in December asked them to
17 respond fully to my Freedom of Information Act request and
18 produce all of the records.

19 Number three, Judge Newman ordered them to serve
20 discovery responses because they had not and Mr. Morrison did
21 not indicate that he would. So we had to talk to the Court
22 about that, too. So nothing has happened in this case. Since I
23 have not talked to Mr. Morrison, he has not returned my calls.

24 I sent a 17 page Rule 11 letter explaining the
25 problems, explaining everything that's really in this -- you

1 know, this memorandum and all -- I filed the memorandum in
2 accordance with the judge's order. So, yeah, none of these are
3 surprises.

4 They are all their documents or public documents. So
5 I believe this motion is properly before the Court and I would
6 like to go through the memorandum or however the Court would
7 like to proceed if the Court has any questions.

8 THE COURT: Let me just back up just factually. When
9 you filed this suit against Kershaw County, was it for a -- was
10 it a FOIA?

11 MR. JERNIGAN: Yes, Your Honor, have you had a FOIA
12 case, or are you familiar with the Freedom of Information Act?
13 Okay. Yeah, so I filed a Freedom of Information Act request
14 pursuant to FOIA on July 22. The FOIA deadline, you have a
15 response deadline within 10 days where you're supposed to
16 address the records that were requested and this will be clear
17 when I go through the background.

18 I do have a background on the Freedom of Information
19 Act. So the three things I mentioned are undisputed. There's
20 been no response filed to my motion, so in my view it's
21 unopposed and everything is in my motion, the exhibits and the
22 memorandum. The three things that I would ask -- I would ask
23 the Court to address those three things, to grant relief.

24 I have specifics that I'm asking for and I would
25 prefer to when I hit those three sections to come back and talk

1 about the potential relief for the three things I mentioned.

2 MR. MORRISON: And Judge, it's our position that if
3 you read the motion itself it does not state the grounds for the
4 motion with specificity. We can try to glean some of those
5 grounds from the memorandum that was filed on Monday. If that's
6 not sufficient (indiscernible) for us to be able to do that with
7 sufficient detail and we need to have the opportunity to respond
8 to what we received on Monday.

9 MR. JERNIGAN: I don't understand the grounds for the
10 motion were not set forth clearly enough or what's your
11 objection?

12 MR. MORRISON: Rule 7 of the South Carolina Rules of
13 Civil Procedure require that any motion state its grounds with
14 specificity. This motion does not. This motion is a rambling
15 six page document talking about the series of events. It never
16 states specific grounds for the motion, and then the memorandum
17 that was filed, we can glean additional grounds from that
18 memorandum that are not stated in the motion.

19 MR. JERNIGAN: Which part of the rule -- sorry, Your
20 Honor. Yeah.

21 MR. MORRISON: There is 30 pages of the memorandum
22 that does that.

23 MR. JERNIGAN: But which rule on what --

24 THE COURT: Mr. Jernigan.

25 MR. JERNIGAN: Yes. Yes, sir.

1 THE COURT: What we're going to do is we'll go forward
2 today with Mr. Jernigan's motion. Anything that was referred to
3 that was turned over Monday we won't refer to that today because
4 -- unless -- there isn't enough time. So anything that was
5 turned over Monday, if it's going to be -- with any motion you
6 want to, you know, not continue it for continuance sake but if
7 they're not prepared with new information that they didn't have,
8 something new additional brought up that they could have been
9 aware of, we just want to make sure that they are prepared.

10 MR. JERNIGAN: That's fair. If there is anything new
11 that would like to be, you know, when I going through it, if
12 there's something that's new or that they weren't aware of and
13 they want to mention that, that's fine.

14 THE COURT: Well, we'll keep it out in consideration.

15 MR. JERNIGAN: You know, I did file this in accord
16 with the instructions so I'm not sure why it would be kept out
17 but we can do it however.

18 THE COURT: All right. Let's go forward with this
19 motion. Yes, sir, Mr. Jernigan.

20 THE COURT: Thank you, Judge. So the background on
21 page two and the tabs, one of the important tabs I believe is
22 actually it's triple I. It's the listing of exhibits because
23 there are not a number of exhibits, but the standard of the
24 Freedom of Information Act, this is pretty much what's in every
25 appellate court opinion.

1 They will set forth the purpose and I can summarize.
2 It's no less than vital in our society that our public bodies
3 are open and that the citizens who are the taxpayers and on the
4 government, it's the government of the people by the people for
5 the people, nothing that the Sheriff's office has or generates,
6 it's all presumptively public records.

7 They do have exceptions. No exceptions have been
8 raised in this case, so we can forget about any FOIA exception.
9 They should have been raised a long time ago. I'm assuming
10 there aren't any. And that's input number one. So the person -
11 - person is defined broadly to include in all individuals, all
12 corporations.

13 Anyone can ask and make a FOIA request and they are
14 entitled to receive a response, and if you turn to page three, I
15 believe this is an important -- FOIA imposes an affirmative
16 duty. An affirmative duty on public body. So it's not the job
17 of members of the public to have to pull things out of public
18 bodies. They are supposed to be open. They have to be open.

19 THE COURT: Let me ask (indiscernible) forward you to
20 Judge Jocelyn Newman has heard this before?

21 MR. JERNIGAN: Yes. So Judge Newman -- Judge, if you
22 look on page three, if you see that paragraph, and I don't know
23 if you have been the chief administrative judge yet or if -- I'm
24 not aware of the duties. Really this is my first time in state
25 court. I'm a patent attorney, as Mr. Morrison mentioned.

1 That's my day job. I've done some federal court
2 litigation in the intellectual property area. I'm a member of
3 South Carolina -- I have represented some clients in Fort Mill.
4 It's been helpful to have the South Carolina Bar. I'm a '06
5 graduate, but never practiced. I've always been practicing in
6 the Charlotte, North Carolina area. So if you take 521 up to
7 Waxall (phonetic) that's about where --

8 THE COURT: Judge Jocelyn Newman's order?

9 MR. JERNIGAN: Yes.

10 THE COURT: Did you have a hearing in front of her?

11 MR. JERNIGAN: So this 10 day -- all that's required
12 by the statute, all violations of the Freedom of Information
13 Act, they must be considered irreparable injuries. That's the
14 second sentence. When I read that sentence it makes me think
15 preliminary injunction.

16 That's the standard to show irreparable injury or
17 temporary injunction so the public body can't drag their feet
18 and use the court process to slow things down and not produce
19 things and make you file motions. They have a requirement that
20 the chief judge set in the initial hearing within 10 days and
21 put this on a fast track to be resolved.

22 I learned that there's not -- in trying to get this
23 initial hearing scheduled you really have to file a motion. If
24 I was going to do it again I would. The hearing wasn't
25 scheduled correctly, so the first judge that heard it was Judge

1 -- who is that, Benjamin, Judge Benjamin heard it on the fifth
2 but she would not proceed with a hearing because she wasn't the
3 chief judge.

4 I emailed the chief judge's law clerk to try to get it
5 scheduled. Mr. Morrison had not made a notice of appearance in
6 the case. The clerk's office set it up -- anyway, the hearing
7 was delayed for three months. But, yes, she issued an order in
8 December which is I have the transcript from the hearing and I
9 have -- the order was just the docket order that says follow --
10 produce everything, respond to his Freedom of Information Act
11 request.

12 Yeah, there was an incident. It was June 29. I
13 called and reported pursuant to the -- well, that's a little bit
14 further. Let me keep going. So this is the -- within 10 days,
15 within 10 business days the public body has to give you written
16 determination, and if I was the public body, this is what --
17 this is my reading of it.

18 You do a search. You determine what records are
19 available. Within 10 days you send the requester, this is what
20 we have relevant to your request. This is what we don't have.
21 They've got 30 days to produce it after they give their
22 determination. This is a copy on page four of the determination
23 that I received.

24 After reviewing your request we do not have any
25 reports regarding the incident you mentioned from June 29, 2022.

1 The only records of this incident are the calls made to our
2 central dispatch, and you will have to obtain those records from
3 them. According to the records in your request you
4 were informed that the issue you were dealing with was a civil
5 matter. So that is why we do not have any records, no records,
6 any records regarding this incident. If you have further
7 questions you are welcome to contact us.

8 Okay. So at the time that I received this from the
9 records department employee that you're supposed to contact with
10 the FOIA request, they knew that there is no exception. Civil
11 issue is not mentioned in FOIA anywhere. It has nothing to do
12 with the Freedom of Information Act. I'm not sure why they
13 included this information.

14 THE COURT: They said this was a civil issue to
15 indicate that not that it doesn't apply but to say that's why
16 nothing exists.

17 MR. JERNIGAN: That's why nothing exists. So there
18 was no -- the Freedom of Information Act, the public records
19 act, every record that's generated, every call, everything has
20 to be stored on a schedule and that's to protect the public --

21 THE COURT: Whether civil or criminal?

22 MR. JERNIGAN: Whether civil or criminal.

23 THE COURT: But the sheriff department does has to be
24 stored.

25 MR. JERNIGAN: Yes.

1 THE COURT: When they say this is a civil case that
2 means that has nothing.

3 MR. JERNIGAN: Yes. Yes. So if it's a criminal --
4 okay, let's say it was a criminal matter.

5 THE COURT: They said that that something might exist
6 for FOIA to apply.

7 MR. JERNIGAN: Which makes no difference. If you call
8 it civil or criminal, the records are still there.

9 THE COURT: My confusion is when they say it's a civil
10 case --

11 MR. JERNIGAN: Yes.

12 THE COURT: -- that's them saying there is nothing --
13 not that we don't turn over civil. Once they hear civil there
14 are no records except for the phone calls and then once they get
15 out there, they're saying that there's nothing to turn over
16 because it's civil because that's how they treat it.

17 MR. JERNIGAN: That's what they're saying. Okay.
18 There is no civil exemption in FOIA and, yeah, let's read that
19 part that Mr. Morrison mentioned. It's on page 10 of Exhibit G.

20 THE COURT: Is this the one that was turned over
21 Monday?

22 MR. JERNIGAN: These are their records. They produced
23 these -- they produced this 15 page chapter January 9.

24 MR. MORRISON: G was filed with the motion, Your
25 Honor. All exhibits through G were filed with the original

1 motion.

2 MR. JERNIGAN: These are documents produced by the
3 Kershaw County Sheriff's office. Okay, so this is under Section
4 209-11. It's about halfway, documentation and do you see this
5 reference, Your Honor, SCLEA 14.5. So the SCLEA, if you go to
6 Exhibit M, Your Honor, in the tab --

7 MR. MORRISON: Judge, I was mistaken. It's A through
8 F was filed with the original motion. All the rest of them were
9 filed with the memorandum Monday.

10 MR. JERNIGAN: Yeah. These are publicly available
11 documents. This is the standards manual.

12 THE COURT: The issue isn't that there -- it's just
13 that for this motion for them to be prepared to -- that's their
14 -- I'll let you go ahead. Go ahead and explain what --

15 MR. JERNIGAN: Yeah, I'm having trouble because there
16 was no briefing schedule other than file by Monday. So if I
17 made a mistake on that, my apologies. And let's look at -- go
18 back to G, Exhibit G, and that's page 10, and the SCLEA manual,
19 the standards manual is what the Kershaw County manual pretty
20 much follows.

21 They don't make their manual public. They make some
22 pages -- this records policy is not a public document. It's not
23 publicly available unless you sue them for FOIA. They don't
24 just give it out. They didn't give it to me until Judge Newman
25 ordered them to do it.

1 So it is the department policy to document the
2 following categories of incident. If they were alleged to occur
3 within the department jurisdiction. Citizen reports of crimes.
4 Formal citizen complaint. So those aren't crimes. Those might
5 be complaints.

6 THE COURT: But move on to the third one which is what
7 you're referring to.

8 MR. JERNIGAN: Yes. All citizen requests for
9 services, when an officer is dispatched, an employee is assigned
10 to investigate. When an officer is dispatched he investigates
11 what he's assigned to do.

12 THE COURT: And an employee is assigned to
13 investigate.

14 MR. JERNIGAN: Yes. When he's dispatched he's
15 assigned to investigate.

16 THE COURT: Well, I think their understanding from the
17 department's policy is that you are assigned to investigate when
18 there is a criminal matter. In a civil matter they are not
19 assigned to investigate and they just say go on your, you know,
20 merry way and deal with it as civil.

21 MR. JERNIGAN: Okay. But they do document. They are
22 required to document every incident. If they disagree and
23 that's not their policy that they don't have to document with
24 some type of report, every incident where an officer is
25 dispatched, if that's what they're saying that's fine.

1 That's their position. It's not particularly relevant
2 other than their policy requires them to have documentation and
3 reports on every incident and an officer is dispatched. When
4 they pulled over my mom on that day, it doesn't matter if they
5 want to call it a civil incident or a criminal incident.

6 They have documentation. Officers were dispatched.
7 There were radio transmissions. There were discussions between
8 the officers. They had dash cameras. They had body cameras. I
9 was at the Sheriff's department while my mother was being pulled
10 over, talking to two officers trying to convince them that, yes,
11 this was a civil matter.

12 There is no criminal jurisdiction for you guys to be
13 involved. Please let my mother and my grandmother go. They
14 refused. I had a 20 to 30 minute discussion with Investigator
15 Myles Taylor and another investigator, Officer Courtney Cochran.
16 They had body cameras. You know, these were things that I asked
17 for.

18 I asked that they be preserved. Mr. Morrison told us
19 and the Court on December 5 that they destroyed all of that
20 information that I asked them to retain multiple times in
21 writing. So that's the first part of my motion is the fact that
22 they destroyed evidence that the county attorney was obligated
23 to have.

24 Parties are obligated to preserve when someone asks.
25 The attorneys are supposed to tell the parties to preserve and

1 they destroyed the body camera. If you turn to Exhibit P,
2 Exhibit P as I understand it, is the retention category
3 scheduled for body camera footage; is that correct, David?

4 MR. MORRISON: Correct.

5 MR. JERNIGAN: Okay. This case was filed September
6 12. I served my FOIA request July 22. There's phone call
7 recordings that I would like to put into the record. I'm just
8 not sure how to put audiovisual into the record.

9 THE COURT: Is it on a USB flash card?

10 MR. JERNIGAN: I have it on both USB and I have disk.

11 THE COURT: Well, has the defense had a chance to
12 review it?

13 MR. JERNIGAN: Yeah, the defense produced it to me.

14 THE COURT: Any objection?

15 MR. MORRISON: Assuming it's what we produced, no
16 objection.

17 MR. JERNIGAN: Do you want a copy of it, too?

18 MR. MORRISON: Sure. Thank you.

19 THE COURT: And that is Court Exhibit 1.

20 (Exhibit 1 was marked)

21 MR. JERNIGAN: And this has the phone call records
22 that were produced to date. There is 11 audio files and there
23 is a dash camera video that's about 45 minutes long.

24 THE COURT: And so you got it?

25 MR. JERNIGAN: I got one view of a dash camera with --

1 I could not hear the audio on my computer speakers. At the
2 hearing we had an argument at the last hearing. There is some
3 audio. It's garbled audio that I can't make much sense of but
4 there is some audio.

5 Those are the main -- that is the main information
6 that I wanted. I want to know why these decisions were made. I
7 was the original reporter. This was a fraudulent power of
8 attorney and like Mr. Morrison said, it's a civil matter.

9 It was no business of the Kershaw County Sheriff's
10 office to get involved. The individual, the nursing home
11 administrator, I had spoken to him the day before about this
12 situation, about the fact that my grandmother in 2006, when her
13 second husband passed away, she went and executed -- she had Bob
14 Sheehan (phonetic) who she worked for.

15 She retired from the (indiscernible) building. She
16 worked for state government her whole career. She was on the
17 speaker's staff. He prepared a will 50/50, my mom and my aunt.
18 He prepared a power of attorney, general power of attorney. My
19 mom lives in Seneca (phonetic).

20 She's not here today because it's a long round-trip.
21 My aunt lives in Camden. My grandmother always lived in Camden.
22 My grandmother had to retire because of dementia and Alzheimer's
23 in 2013 or 2012. There is a new power of attorney for 2013.
24 There is a medical power of attorney in 2016. The same law
25 firm, this time Stephen Smo (phonetic) prepares a new will.

1 THE COURT: For background purposes.

2 MR. JERNIGAN: For background purposes, I called and
3 reported this as a crime. It's called exploitation of a
4 vulnerable adult. It's under the code. I called the --

5 THE COURT: (Indiscernible) familiar --

6 MR. JERNIGAN: Yes.

7 THE COURT: -- with that, but as to this FOIA hearing?

8 MR. JERNIGAN: Yes. That has relevance because I
9 called and reported this as a crime to the Kershaw County
10 Sheriff's office. I left two phone messages with investigators.
11 One of the investigators was Courtney Cochran. She forwarded
12 this message on the 29th, the morning before -- this was around
13 nine o'clock, nine o'clock timeframe.

14 The traffic stop happens around 11 o'clock. I'm
15 traveling down to meet my mother at this assisted living place
16 after speaking with the administrator the day before about the
17 situation and having him confirm that this is a free country.

18 A power of attorney -- my grandmother has not been
19 declared incompetent. She has all of the rights of a free
20 citizen and these rights were not respected. I ask the Court to
21 please take a look at Exhibit P. If you look at the second
22 page, the retention period, the retention duration for traffic
23 stops is 180 days. It's 180 days.

24 Undisputed there was a traffic stop. I have dash
25 camera I presented to the Court with garbled audio that they

1 don't, you know, apparently want people to know what decision
2 they made or what the basis was.

3 THE COURT: Well, after the -- you know, when you come
4 to the existence is different than the weight of the evidence.
5 They turned over the body camera, correct? The garbled --

6 MR. JERNIGAN: No, they turned over the dash camera.
7 They deleted the body camera.

8 THE COURT: Okay.

9 MR. JERNIGAN: And if you turn to the first page, do
10 you see Code 12? On the first page of Exhibit P?

11 THE COURT: Yes.

12 MR. JERNIGAN: So 60 days is basically the shortest
13 duration on this sheet, other than accidental activation. If
14 you turn to Exhibit I -- oh, wait a second. I'm sorry. Exhibit
15 J. This is called a CFS command log. This is a postdoc thing
16 that's created.

17 It's not as it was recorded at the time. I've gotten
18 different versions of this from the Kershaw County Sheriff's
19 office. The earlier version is not in the notebook, but it's in
20 the exhibits. They decide what information they want to put on
21 these.

22 And if you turn, Your Honor, to page two, and there is
23 a time and date stamp. It's at 6/29/22 and that would be 8:25.
24 It's in military time or standard time. It says C12, Code 12,
25 civil issue. We just looked at Exhibit P. It was a 60 day code

1 that's applied for warrant attempts, escort. It's completely
2 inapplicable so I'm not sure why my criminal complaint was coded
3 with a C12 but, yes, this was the basis for Judge Newman's
4 order. I have been given some information. There's never
5 been a determination that says this is what we have, this
6 is what we don't have. This is everything relevant to what
7 you're asking for.

8 We have nothing because this is a civil matter and
9 that was back to page four of the brief. So these guys knew --
10 they knew they had records. They produced them later. They
11 told me originally they had no records and for me to get lost.
12 It's a complete stonewall.

13 If it was a member of the public that's not an
14 attorney -- I'm a patent attorney. I have some, you know, legal
15 knowledge. I've been to court several times in federal court,
16 but that's it, and there's nobody in this area that wanted to
17 represent me on this.

18 If there were still a room full of attorneys I would
19 ask for recommendations because I contacted my law school friend
20 network, you know, to come up kind of empty. So this response
21 on page four, this is their official response to my FOIA
22 request.

23 THE COURT: What page. Page four?

24 MR. JERNIGAN: Page four of the memorandum, Your
25 Honor. We have no records. We have call records in our system,

1 but you have to obtain those from somewhere else. This was a
2 civil issue. We don't have any records. I presented records.
3 I put records into evidence.

4 There is records in the notebook. They had records
5 they did not want to give me. They begrudgingly turned over
6 redacted records with what they wanted me to have. They don't
7 want to give me the information. Why did they make a negative
8 decision against me and my family when I was the one that
9 reported this as a crime originally?

10 THE COURT: Let me ask you this. As of today, is
11 there something that you have not received that you think still
12 exists?

13 MR. JERNIGAN: Yes.

14 THE COURT: What is that? Have you put that in
15 writing to the defense?

16 MR. JERNIGAN: I've asked in discovery for them to
17 describe all of the records, all the different categories they
18 have because I don't know what -- I am not a police officer. I
19 have never -- I have never dealt with the police --

20 THE COURT: Yes, you have.

21 MR. JERNIGAN: Yes.

22 THE COURT: I'm going to interrupt. You're saying you
23 don't know what you don't know.

24 MR. JERNIGAN: Well, I know from now, like trying to
25 learn -- they're required to have records under the public

1 records act. They're required to have categories of records.
2 They're required to keep them on a schedule and not delete them
3 until the schedule expires.

4 THE COURT: As a former prosecutor, I'm aware of that.
5 That doesn't mean that always happens for --

6 MR. JERNIGAN: Yes.

7 THE COURT: -- FOIA purposes over -- do the records
8 exist. Do they exist, turn them over. If they don't exist then
9 they don't exist and if they were unlawfully deleted then that's
10 a separate issue.

11 MR. JERNIGAN: That is the issue, yes.

12 THE COURT: One issue you bring up is about discovery
13 responses --

14 MR. JERNIGAN: Yes.

15 THE COURT: -- that they didn't respond but they
16 weren't verified. Is that what --

17 MR. JERNIGAN: We can go -- I would like to go through
18 the responses. I consider their responses to be nonresponses
19 because they're not verified. Mr. Morrison is not swearing
20 under penalty of perjury that the facts are true.

21 THE COURT: Well, if they do swear --

22 MR. JERNIGAN: If they do, I think they will be
23 committing perjury. So I want them to answer discovery and I
24 want them to tell the truth and to keep going through -- the
25 policy manual says what it says.

1 If they want to have somebody come in and testify that
2 says we don't prepare any reports. We don't keep any
3 documentation when we consider it to be a civil matter. I think
4 as a solicitor you've got Brady obligation.

5 If this was a traffic stop, this information, the guy
6 is going to go brief. You don't turn it over. It doesn't cease
7 to exist because someone calls it a civil matter.

8 THE COURT: Well, I can tell you the stuff that --
9 I've had many fights with public defenders trying to get stuff
10 and I had to get it because of Brady and Rule 5 and the stuff
11 sometimes does not exist whether it's contrary policy, whether
12 it's a (indiscernible) policy, and that would be the issue.

13 The first issue, does it exist, does it not exist, and
14 if it doesn't exist, then it doesn't exist and the reason they
15 keep saying civil is to explain why -- because FOIA doesn't
16 apply if nothing exists, correct? I think I'm saying -- well,
17 assume that --

18 MR. JERNIGAN: Okay. So the records that requires
19 everything to be -- if they don't have what they're required to
20 have under the records act they violated the records act. So I
21 want everything that they're required to have under the records
22 act. If they didn't create it and they were required to create
23 it by their policy, I want everything that's relevant to my
24 being --

25 THE COURT: I think that's where y'all disagree about

1 when they say -- when we talk about the ellipses, the dot dot
2 dot, which I tend to agree with -- just because they want the
3 contact between law enforcement and the public doesn't mean an
4 incident report is going to be created.

5 MR. JERNIGAN: Yes.

6 THE COURT: Until the next step which is there is a
7 criminal act that I have to investigate or someone else has to
8 investigate it. If there is a contact, an officer comes up to
9 me and says hello, which he's allowed to do.

10 MR. JERNIGAN: Yes.

11 THE COURT: They don't have to create a report.

12 MR. JERNIGAN: They -- yes.

13 THE COURT: (Indiscernible) what you were just saying.

14 MR. JERNIGAN: Yeah.

15 THE COURT: Where it talks about if they fail to do
16 something, I think that's where the disagreement per their
17 policy, they're saying they do not have to create that record,
18 and on top of that they did not create that record.

19 MR. JERNIGAN: Well, it's not -- I don't want to get
20 caught up on that sentence because what you mentioned they do
21 have also reports that are called public contacts, when they
22 make contact. What the criminal side brings is a different
23 level of reporting.

24 There's more reporting that needs to be required, but
25 they have reports. Exhibits I and J are reports. They are call

1 for service reports. The fact that they would say that they
2 have no reports, they have no information to produce, no
3 relevant information, is a fraud.

4 It's a complete lie and it violates their policy. If
5 you read the policy it clarifies. I believe that there's
6 different levels of reporting, different things that need to
7 happen, but it doesn't mean the body camera didn't exist because
8 they said it was civil.

9 The dash camera doesn't exist. All the radio channels
10 of communication that are being reported, they're being reported
11 and this is being done to protect the officers from the public
12 because I'm sure there's a lot of times people make false
13 accusations.

14 These recording equipment, they're also supposed to be
15 there to protect us. I'm a patent attorney in Charlotte. I
16 have no ill will toward Kershaw County Sheriff's Department. I
17 respect the office. I respect what the elected Sheriff Bonan
18 (phonetic) has on the website about his principles.

19 The standards they have in place, I would like to get
20 all of the relevant what I've asked for in discovery. I want to
21 get all of their policies and all of the public records that say
22 what they're supposed to have. So that way when they tell me
23 they don't have anything, I want a declaratory judgment that
24 says they were supposed to have it and they don't.

25 But I also want them to say under oath what they have

1 and what they don't have.

2 THE COURT: FOIA (indiscernible) future declaratory
3 judgment file.

4 MR. JERNIGAN: No. So there's two claims and the FOIA
5 claim is the first count and then there is a declaratory
6 judgment claim, but if I need to amend the complaint to make it
7 a public records act claim then I want a declaratory judgment
8 that they violated the public records act.

9 If that's not considered encompassed with the notice
10 that was given, it's in the information that's been exchanged to
11 date. So that is my track to go forward in discovery because
12 this is a case where there is an affirmative duty. The Supreme
13 Court has said this many times, the South Carolina Supreme
14 Court. Affirmative duty on the part of public bodies, I
15 don't know what is in the attic at the Sheriff's department. I
16 don't know what's in my neighbor's attic. I know what's in a
17 court file. I should get a complaint, an answer. These things
18 I understand.

19 I don't understand all of the recording equipment they
20 have, all of the different channels they record on, how they --
21 if you watch the dash camera, if you try to listen to what's
22 going on, they have all of this information recorded that's
23 required to be.

24 They just won't give it to me and what they gave me is
25 redacted. If you listen to the phone records, and I can play

1 some of them, the redactions are obvious. They won't answer
2 discovery about this because they say they don't have control of
3 their own communication records.

4 We have another case and I can send the subpoena to
5 the call center, but they have access to these records. For Mr.
6 Moore -- to suggest that the sheriff, the chief law enforcement
7 officer does not have the ability to give me the phone records
8 that are relevant to this and the communications on the two-way
9 radios, it's ludicrous.

10 And it's against their own policies that they have not
11 given me. When they give them to me it will confirm, but if you
12 turn to -- yeah, this was a new exhibit submitted Monday.
13 Exhibit M which is the standards manual of the South Carolina
14 law enforcement accreditation program.

15 So I do have that manual and it's pretty much
16 consistent in every way because the Sheriff's office manual is
17 based on that manual. It incorporates the provisions of that
18 manual. So they are the ones that control the recording
19 procedures that the call center carries out on their behalf.

20 THE COURT: Do you think the protocol center --
21 because I know in Richland County it's shared between the city
22 and the county. So I don't know --

23 MR. JERNIGAN: You know, that's a good question, too.
24 It's like --

25 THE COURT: That's a question that you have to answer

1 since you're searching for that. The Sheriff's department --

2 MR. JERNIGAN: I know.

3 THE COURT: -- and if it's controlled by the city or
4 kif it's a city county partnership then the sheriff might have
5 no control over it. You say he has the authority, which he
6 might politically or personally, but legally if it does not fall
7 under his jurisdiction, under the authority, then for our
8 purposes that would be why they said you have to go to them to
9 get it because legally they can't force them to do something,
10 but I could be wrong. I don't know.

11 MR. JERNIGAN: Yeah, if you --

12 MR. MORRISON: Can I short-circuit this part of the
13 (indiscernible), Judge?

14 THE COURT: Yes, sir.

15 MR. MORRISON: Judge, the dispatch is controlled by
16 the county. Not by the sheriff. The sheriff is a
17 constitutional officer of the state. We told Mr. Jernigan that.
18 The prior attorney involved in this case before the suit was
19 filed, Tommy Morgan, told him that despite that Tommy Morgan
20 went to the dispatch center and got the tapes and provided them
21 and when Mr. Jernigan said, well there has to be more --

22 MR. JERNIGAN: That's not correct.

23 THE COURT: Well, Mr. Morrison listened and did not
24 interrupt. So let's just --

25 MR. JERNIGAN: Oh, sorry. That is a misstatement --

1 THE COURT: Let Mr. Morrison finish, please.

2 MR. JERNIGAN: I will.

3 MR. MORRISON: After I got involved he told me there
4 had to be more because somebody from Pinedale, somebody had to
5 make the initial call that got the Sheriff's department to
6 respond. He said so you're telling me I've got to file a new
7 FOIA action.

8 I said, Justin, before you go to that trouble, let me
9 make a phone call and let me see if I can get it without you
10 going to that trouble. It's not my burden, but I'll do that,
11 and we did that. We had the Sheriff's department call to get
12 it. We got those logs from Pinedale so the call came from
13 Pinedale and we produced those.

14 As far as we are concerned and as far as we can tell
15 we have produced everything that exists. There was one item
16 that did exist that no longer exists of the FOIA and that was a
17 body cam video of that day out there. That body cam, since
18 there was no incident report prepared it was not tied to
19 anything.

20 It was on a 60 day automatic write over in the system
21 and after 60 days it was written over. In candor, Mr. Jernigan
22 did request in his initial FOIA request that was within that 60
23 days that anybody can preserve. And so somebody probably should
24 have pulled it and preserved it.

25 But that's for another court another day in any future

1 case where they are claiming that there is a presumption that it
2 would have been negative to us if we didn't maintain it for
3 subsequent litigation. That's for a future court and another
4 day but in candor, yes, he did make the request and it probably
5 should have been pulled and it wasn't.

6 It was written over not with intent by anybody, but as
7 a part of the program that rewrites to clear room because
8 they've got cameras running all the time, so they download every
9 day. But for this part of what he's arguing about we have
10 produced it. We've been and gotten the records from dispatch.
11 He says they've been monkeyed with. We produced exactly what we
12 got from county dispatch.

13 THE COURT: Very well.

14 MR. JERNIGAN: Judge, the part that I would dispute,
15 either in the emails if you go to Exhibit N these are the
16 precinct emails.

17 MR. MORRISON: Not all of them.

18 MR. JERNIGAN: They're all precinct emails.

19 MR. MORRISON: But that's not all of the precinct
20 emails.

21 MR. JERNIGAN: What are the other ones?

22 MR. MORRISON: There is a lot of other precinct --

23 MR. JERNIGAN: Between who? If you turn to page four,
24 Your Honor, of Exhibit N, after I raised questions about the
25 FOIA response that said we have nothing. We have no

1 recordings. We have zero information to give you. I was
2 referred to the county attorney, who I graduated law school with
3 that I, okay, great, the county attorney is involved. He's
4 going to help.

5 He mentions Kershaw County 911 communications has
6 information. I filed the request with Kershaw County as well.
7 The same attorney represents the Sheriff's office and 911 on
8 this. But if you look at the standards in Exhibit N the law
9 enforcement require -- the South Carolina law enforcement
10 association standards require the Sheriff's office to follow
11 certain communication policies, standards, recording standards,
12 so they can do their job.

13 They have to have the ability to record multiple lines
14 at the same time, two-way communications to play back at the
15 same time. The employees go to the South Carolina Criminal
16 Justice Center Academy. I really don't know the relationship.
17 I want them to state on the record reasons or under oath that
18 they don't have access to these records and they don't have to
19 give them to me under FOIA because FOIA requires everything that
20 they own, that they are responsible for, that they use, that
21 they are in possession of.

22 So for them to say we don't have to give you this law
23 enforcement related information. I never knew that anyone -- I
24 never dealt with anyone at the county. I only dealt with people
25 with the Kershaw County Sheriff's office. Other than the people

1 that were on the dispatch line that I didn't know they weren't
2 Kershaw County employees, I think it would be a ridiculous
3 multiplication of these proceedings for me to have sued the
4 county, too, when I'm not seeking -- I'm seeking law enforcement
5 records.

6 THE COURT: Mr. Jernigan, for the smaller version of
7 this when it comes to what happened in June when your
8 grandmother was pulled over, those records for that day --

9 MR. JERNIGAN: Yes.

10 THE COURT: -- which I think it all encompasses around
11 this.

12 MR. JERNIGAN: Yes.

13 THE COURT: Now, I know there's records about --
14 records to prove that they should have kept records or that they
15 did keep records, the main contention, Mr. Morrison, an officer
16 of the Court, whether it's under oath or not under oath, an
17 officer of the Court has stood up and just gave an explanation
18 about what was turned over, what they do have and the one body
19 camera that was not turned over within the 60 days and why it
20 was not turned over and the explanation for that.

21 But an officer of the Court he has stood up and said
22 we have turned over everything. We do not have anything else.
23 He knows that he is under an ongoing obligation to turn over
24 anything if it were to exist. For that purpose, though, what
25 more for the items of that day that you got the body cam, the

1 audio, while garbled, for whatever reason it happened, it is
2 what it is.

3 That video was turned over. They got you the 911
4 calls. I'm just viewing this under discovery purposes of
5 getting discovery.

6 MR. JERNIGAN: Yes. This whole case is really a
7 discovery dispute.

8 THE COURT: And so you saw the discovery dispute we
9 had earlier this morning and they wanted the finances from when
10 the new business was opened, they wanted this and there was an
11 issue about what had been turned over and what had not been
12 turned over.

13 This issue falls very similar lines of all the
14 criminal cases you want to handle in general sessions. We get
15 these same type of arguments over and over again and sometimes
16 you are right where they don't turn over stuff, or they say it
17 doesn't exist and it does exist, but that is what a law
18 enforcement officer is saying.

19 When the prosecutor or an officer of the Court stands
20 up and says it doesn't exist or it does exist or this is what
21 happened to it there is some weight and credibility behind that,
22 especially when there is an order from a previous circuit court
23 judge back in December from Judge Newman stating that you have
24 this obligation to comply, and there will be another order again
25 from the bench, from a written motion, from a written order

1 stating that the Sheriff's department is under an ongoing
2 obligation to comply with discovery to turn over whatever it is
3 that they are required to turn over and if it doesn't exist, it
4 doesn't exist.

5 And they have given you explanation as to that.

6 MR. JERNIGAN: Yes. And I would like them to respond
7 in writing to my FOIA request, which they never have. They gave
8 me one answer that we looked at.

9 THE COURT: An email.

10 MR. JERNIGAN: Yes. That is not a written
11 determination that says we got your request. We did a search.
12 This is what we have. They won't tell me what search they did,
13 where they searched. If I can, I'll move back to --

14 THE COURT: Well, let me ask you this. If they were
15 to send -- I mean as a circuit court judge if someone, an
16 officer of the court sends an email saying something, whether
17 that's under oath or not under oath, as an officer of the court,
18 there's still the same liability exists if it's not factually
19 accurate.

20 So while understanding it might be better if it was
21 under oath or sworn or something, if an officer of the Court
22 emails carries some weight with it, but let me ask Mr. Morrison
23 about have the they turned over everything?

24 MR. MORRISON: Judge Cameron DeBoyd (phonetic), who
25 works with me, he had asked together or separately have been to

1 Kershaw County Sheriff's Department four or five times going
2 through this stuff making sure we got everything. To the best
3 of our knowledge we've got everything that exists and we have
4 turned it all over.

5 There has been nothing withheld. The body cam is the
6 only thing that has not been turned over and I explained that.
7 We are not aware of anything else. We have ample inquiries. We
8 have made ample trips and talked with them. I've had ample
9 conversations with Mr. Jernigan that lasted over an hour each at
10 least five or six, hour or hour and a half long conversations
11 with Mr. Jernigan.

12 This is personal to him. I get it and we've had that
13 battle from the very first of this case to the very first email
14 he sent me where he accused me of kidnapping his grandmother
15 because I'm now in concert with the Kershaw County Sheriff's
16 Department and he cited me the kidnapping statutes.

17 I wrote him back and told him I'm a lawyer handling
18 the case. I will be honest with you. I will be up or upfront
19 with you, but I'm not going to play games with you and stuff
20 like that, and I'm not going to respond to stuff like that. It
21 varies. Most of the time he and I can deal with each other
22 fairly well.

23 He does degenerate sometimes when he gets emotional
24 about it and cause us to go on forever and he rants and I stop
25 responding when he does that. When he says emails like that I

1 stop responding to those. I'm not going to do that. I'm not
2 going to get in on that level but as far as what has been
3 produced, we are aware of nothing.

4 Nothing has been withheld under the claim of
5 privilege. He mentioned redactions. We've had redacted
6 personal identifying information. It's plainly apparent where
7 the black magic marker line exists, what was in that
8 information, things like date of birth, Social Security number,
9 medical records.

10 We have redacted what is properly redactable under
11 state law and Mr. Jernigan wants the Court to order us to
12 produce unredacted copies so he can get all of that information.
13 He hasn't told us anything that is improperly redacted in what
14 he has requested.

15 So we believe we have fully complied with FOIA to the
16 best of our abilities. The original request, the original FOIA
17 request I would like to mark it and hand it up because that's
18 not something he has included in all of his exhibits.

19 MR. JERNIGAN: It's in the complaint. It's attached
20 to the complaint.

21 THE COURT: Well, we can mark it as Court's Exhibit 2.

22 (Exhibit 2 was marked)

23 MR. JERNIGAN: And I'm not here to go through -- I'm
24 not here on the final hearing for the FOIA. I'm here on
25 discovery matters.

1 THE COURT: Very well.

2 MR. MORRISON: A lot of what we are talking about
3 today is --

4 THE COURT: Oh, let's do --

5 MR. MORRISON: I'm sorry. I'm sorry.

6 THE COURT: That's all right. We're working her to
7 death already so -- all right. Mr. Jernigan, we're coming up on
8 an hour and I have your written motion so I have plenty to -- I
9 have plenty to go on after I've taken this under advisement
10 which I intend to do. So I'm going to let you wrap this up, Mr.
11 Jernigan.

12 MR. JERNIGAN: Sure.

13 THE COURT: Point me -- because I'm going to take this
14 binder and review it. We can be here all day. I mean I clearly
15 -- there is a lot going on and obviously it's the first I've
16 seen of this case. It's the first time I jumped into it so I
17 have a lot to review but I want you to wrap this up and to kind
18 of point me if there's something else.

19 MR. JERNIGAN: Yes, it's all in the brief and I will
20 stand on my brief. There's three things. They destroyed
21 evidence they should have preserved. I asked in writing
22 multiple times to their attorneys. If you read the FOIA
23 statute, you know, it's in the brief, page 21, it discusses
24 Judge Newman's order, which she ordered them to do.

25 They have never provided a FOIA response. The

1 response is required by statute. They like to say they don't
2 have anything. I would like for them to respond and tell me
3 what they have, whenever someone is pulled over they don't -- if
4 they they want to state that they can't access the phone records
5 and I have to serve a subpoena because they don't have their own
6 law enforcement records, that's fine.

7 Let them say that and I can do that but I cannot
8 accept these weaselly where they don't -- in the last part of
9 the discovery I've got all of the discovery requests and I've
10 got my 17 page Rule 11 letter that they did not even respond to.
11 Mr. Morrison has not called me back since I filed this motion.
12 I didn't want to file this motion.

13 THE COURT: And normally people will never respond to
14 Rule 11 so --

15 MR. JERNIGAN: Well, you know, it's a required letter
16 and, yeah, to --

17 THE COURT: And they couldn't get to those.

18 MR. JERNIGAN: Yeah. I call it the Rule 11 ten day
19 letter. I'm not sure what y'all call but, yes, Rule 11 is an
20 issue through Rule 27G. So, yes, that's my discovery

21 THE COURT: That's the discovery from --

22 MR. JERNIGAN: Yes.

23 THE COURT: -- from -- you won't have to --

24 MR. JERNIGAN: Yes.

25 THE COURT: What I'm going to do is I'm going to --

1 anything further Mr. Morrison? I'm ready to take it under
2 advisement.

3 MR. MORRISON: I would like the opportunity to respond
4 to what we have received in writing because most of this we just
5 received on Monday.

6 THE COURT: Very well. I'm going to take -- I'm
7 giving you 30 days to respond. Obviously any emails you will cc
8 each other and you will email my law clerk, and they're not
9 going to be lengthy, back-and-forth emails that tend to happen,
10 but if there is a response, obviously you can respond.

11 So I'll give you 30 days to respond to send in the
12 responses that you got this stuff Monday. If you need to
13 respond again --

14 MR. MORRISON: Thank you.

15 THE COURT: But I'm going to try to address those
16 three main issues about destroying evidence. The FOIA response
17 and then the discovery response.

18 MR. JERNIGAN: Thank you, Your Honor.

19 THE COURT: And I understand, you know, this is a lot.
20 This is -- it's been going on for a while and there's a lot to
21 it on both sides so I want to try to bring some finality to this
22 issue. The cases (indiscernible).

23 MR. JERNIGAN: Yes. I would like to put this on a
24 track to resolve which --

25 THE COURT: A scheduling order or is this going to

1 trial or this --

2 MR. MORRISON: There is no scheduling order.

3 MR. JERNIGAN: Yeah, and I was expecting to get
4 discovery and then maybe take a deposition or two. Now I'll
5 probably serve some requests for admission once I get this
6 resolved, but I think this case was continuing after the hearing
7 with Judge Newman on the assumption that Mr. Morrison was going
8 to respond and provide responses under oath.

9 He is not and they haven't responded to my questions
10 or even tried to address my letters so that's why I'm here
11 asking for the Court's help.

12 THE COURT: Very well. I'm going to review the
13 discovery questions and their responses because I'm not aware
14 that a verification is required under oath but I need to review.

15 MR. JERNIGAN: Yes, Your Honor.

16 THE COURT: Under the South Carolina rules.

17 MR. MORRISON: Judge, we will provide a verification.
18 I've never done one in 39 years of practicing law.

19 MR. JERNIGAN: That's part of my confusion.

20 MR. MORRISON: Nobody else has ever asked me and I've
21 never asked anybody else but the rule does say you're supposed
22 to do it. So if he asks for it, we will do that. We are in the
23 process of doing that. We need three signatures. We've already
24 gotten two of them.

25 MR. JERNIGAN: I've never been in state court

1 obviously but I've never done discovery in federal court where
2 someone hasn't verified the answers.

3 MR. MORRISON: One additional matter. One additional
4 matter, Judge.

5 THE COURT: Yes, sir.

6 MR. MORRISON: In his memorandum Mr. Jernigan pointed
7 out a mistake I made in my excerpt. He said that I had made a
8 judicial admission in my answer that he served a FOIA request on
9 behalf of his mother and when I go back and review the answer he
10 is correct. I did make that mistake.

11 I orally moved to amend the answer to correct that
12 because as you can see from the FOIA request in the record it
13 was served by Justin Jernigan. It was not on behalf of his
14 mother. It was solely him --

15 THE COURT: Mr. Jernigan?

16 MR. JERNIGAN: Yes.

17 THE COURT: The court reporter can't record when two
18 people are talking over each other.

19 MR. JERNIGAN: Sorry. I'm sorry, Your Honor.

20 THE COURT: I'm going to let Mr. Morrison finish his
21 point and then you can --

22 MR. JERNIGAN: I'm not very good at this process.

23 THE COURT: If you're going to be in court requesting
24 these serious allegations against the Kershaw County Sheriff's
25 Department you have to be familiar.

1 MR. JERNIGAN: Yes.

2 THE COURT: Yes, sir, Mr. Morrison?

3 MR. MORRISON: So, Your Honor, I would like the
4 opportunity to correct my (indiscernible) that it's clearly
5 apparent on the FOIA request that I handed up a minute ago that
6 the requester was Justin Jernigan. It was on behalf of Justin
7 Jernigan and it was signed by Justin Jernigan. There was no one
8 else, which I need to correct.

9 MR. JERNIGAN: I would say if you read that paragraph
10 it says on this date I submit a FOIA request on behalf of myself
11 and on behalf of my mother. The admission was I admit that you
12 submitted one on behalf of your mother but he's saying that I
13 cannot submit a request because I'm not a South Carolina
14 resident, which is not what the statute says.

15 This is really not an issue I think that we need to
16 bring up and decide today. This should be briefed if he wants
17 to withdraw his judicial admission. And let me respond.

18 MR. MORRISON: To amend to conform to the facts that
19 are already in the record that are clearly stated here, and if
20 I'm wrong going that then we don't own -- then he can prove me
21 wrong. I'm just saying that he has to prove that. I don't want
22 to admit it because that's not what the document shows.

23 MR. JERNIGAN: We had a conference and I can submit
24 the emails where Mr. Morrison objected to me having standing to
25 bring this FOIA action on behalf of myself. We resolved this by

1 saying I'm representing my mother. I filed it on behalf of her.
2 If he wants to remove his admission in the face of, you know,
3 our emails where we resolved this issue, I consider this to be
4 another in a long line of stonewalling and bad tactics.

5 THE COURT: I will take this under advisement.

6 MR. JERNIGAN: Thank you, sir.

7 THE COURT: I'm going to take it under advisement.

8 MR. MORRISON: The oral motion (indiscernible) as
9 well.

10 THE COURT: Yes. Take it under --

11 MR. MORRISON: Thank you, Your Honor.

12 THE COURT: All right. Thank you all. Thank you for
13 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

Barbara J. Enneking, CVR-M

Transcriber

1 STATE OF SOUTH CAROLINA) IN SOUTH CAROLINA CIRCUIT COURT 5
2 COUNTY OF RICHLAND COUNTY) COURT C.A NO. 2002-CP-28-00782
3
4 Christine Jernigan, et al,)
5 Plaintiffs,)
6 Versus)
7 Kershaw County Sheriff's Office,)
8 Defendant.)
9

10 H E A R I N G
11

12 DATE: October 11, 2023
13

14 LOCATION: South Carolina Circuit Court 5
15

16 JUDGE: Honorable Daniel Coble
17

18 TRANSCRIBED BY: ERIN REILLY
19

20 LEGAL EAGLE

21 Post Office Box 5682 Greenville,
22 South Carolina 29606 864-467-1373
23 depos@legaleagleinc.com
24
25

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APPEARANCES:

Attorney for the Plaintiffs.

Justin Jernigan, Esquire

7148 Stirrup Ct.

Weddington, NC 28104

Attorney for Defendant.

David Morrison, Esquire

Morrison Law Firm, LLC

7453 Irmo Dr., Ste. B

Columbia, SC 29212

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: All right, this is Jernigan among others vs.
2 Kershaw County Sheriff's Department, case 2022-CP-28-00782.
3 And as way of background, I heard this case, the original
4 motion when I was in Kershaw County. It was a motion for, and
5 I know y'all correct me if I'm wrong, a motion for sanctions
6 for a FOIA violation. I heard that earlier this year.
7 Subsequently, after taking it under advisement, I notified the
8 parties that I was denying the motion. I asked for proposed
9 orders from both parties. Mr. Jernigan had asked for some
10 clarification about that process, and we scheduled a
11 conference call to kind of explain how proposed orders would
12 work in these cases. Just prior to that, Mr. Jernigan filed I
13 believe it was a motion to reconsider, as well as a motion to
14 recuse myself for this case. So, we have before us the motion
15 to recuse and the motion to reconsider. So, Mr. Jernigan,
16 I'm happy to hear from you at this time.

17 MR. JERNIGAN: Yes, sir. And just by way of
18 clarification, the initial motion, it was originally filed in
19 February 2023. It was a motion for sanctions in contempt for
20 FOIA violations, discovery violations, and also for spoliation of
21 evidence. Those were the three issues that were heard on the
22 27th of April. Yes, as you mentioned, there was a Form 4 order denying
23 the motion on June 2, 2023. There were instructions from
24 your law clerk indicating that the motion was denied, and that
25 the parties should submit a proposed order denying the relief

1 requested. As you mentioned, I followed up to understand, you
2 know, what the grounds for the proposed order were, tried to
3 discuss with Mr. Morrison. I did not discuss the matter with
4 him. As you noted, approximately, I guess it was about a month
5 and a half 20 July the 19th, 2023, there was a conference scheduled. I
6 was going to be out of town on vacation that week. Under the
7 circumstances being that a motion was denied and there were not
8 grounds from forthcoming, I did not feel comfortable having a
9 motion that, you know, it's law of the case. The motion was
10 denied to appear at the hearing without having some -- you
11 know, a motion on the table to recuse or reconsider, as you
12 mentioned. So that's the background of the motion. There's
13 some -- if you have, did you receive the brief, the memorandum
14 in support? It's a second memorandum that was filed on 10/6

15 THE COURT: [Crosstalk]

16 MR. JERNIGAN: Last Friday.

17 THE COURT: You said it was filed?

18 MR. JERNIGAN: Yes. Filed on 10/6.

19 THE COURT: Yes, I have it here. And I had -- I've had a
20 previous one. Is this one updated?

21 MR. JERNIGAN: Yes, Your Honor. So, the -- this hearing
22 was previously scheduled by your former law clerk, but I assume
23 was somehow in the process, you know, it didn't get calendared.
24 So, we had a previous hearing scheduled for these motions on
25 August the 23rd. Plaintiff submitted what was a first

1 memorandum in support, which in actuality was a response to the
2 supplemental post-hearing brief filed by defendant on May 30th, prior
3 to your Form 4 June 2, 2023, order. So not raising any new
4 matters there responding to what was on the record, I believe
5 this 7/14 motion was fully supported. The defendant filed a
6 response to the 7/14 motion on 8/21 prior to the hearing, and
7 somewhat of a reply in response to the 8/20th memorandum. This
8 10/6 memorandum that you pulled up is plaintiff's supplemental
9 memorandum in support of the 7/14 motion. And it addresses
10 issues that were raised in response by defendant. And with --
11 along with that, it attaches the hearing transcript, which was
12 not previously attached. That is Exhibit HH, to kind of
13 explain the motion, there were -- you know, there's some
14 matters that relate to the hearing, some comments during the
15 hearing that going along with the denial that, you know, didn't
16 seem to be supported by the record are mentioned. These were
17 mentioned generally, there's a standard on Page 2, kind of, the
18 introduction where's it noted. So, under State vs. Shaw,
19 there's a standard that when a Judge hears a motion to recuse,
20 the facts are given. You know, they kind of defer to the facts
21 as alleged on a motion to recuse. I believe that's probably
22 more applicable when there's not a record. In this case,
23 there's a record and it's the hearings and it's the hearing,
24 and the subsequent email correspondence related to the proposed
25 order. So, these general matters, I did not believe required

1 ordering the transcript, and I also wanted to get the motion on
2 file, you know, before we had the hearing. So that was
3 submitted with the 10/6 memorandum. Just to clarify an issue
4 on that point. So, defendant did not file a response in
5 opposition prior to the hearing on 4/27. There was an
6 objection to plaintiffs' memorandum that was filed on 4/24
7 under Rule 7 as not being properly supported or raising unknown
8 grounds. Grounds that were not previously referred to. And
9 that defendant could not have been aware of. The Judge -- or
10 Your Honor, granted leave to submit supplemental briefing, my -
11 - or the plaintiff's motion to recuse or reconsider
12 mischaracterize that process. I believe that was -- at the
13 hearing, this was handled correctly, and I actually agreed that
14 if there's anything new that was raised that was fair for
15 defendant to respond to, have not had communication with Mr.
16 Morrison this year very much at all, other than after the
17 hearing where between the two of us, I was not aware of
18 anything new, but was fine submitting, even joint briefing, and
19 I would withdraw anything that was incorrectly stated. There
20 was a dispute as to whether the supplemental briefing was just to
21 focus on new matters that were raised, and not matters that
22 were, you know, it's -- I didn't understand your honor's opening
23 up new briefing, you know, to file an initial response brief that
24 we had not had an opportunity to consider. Mr. Morrison had a
25 different opinion that this was, you know, leave to brief

1 whatever. So, we had a dispute. When the motion was denied,
2 My understanding was the Court, you know, agreed with Mr.
3 Morrison, Mr. Morrison's position on that, because there --
4 based on the defendant's response on 8/21, there was not --
5 there's not a dispute that there was anything new raised in the
6 memorandum. It was more, you know, we didn't have time to
7 respond. We didn't file a response to the motion, but we want
8 time to respond, which is understandable. And I didn't mean to
9 raise any new issues. I was following what I believe were the
10 instructions which is why this seven 7/14 motion, I believe is
11 fully supported, other than I did not include the transcript
12 and defer to the transcript as far as what's included there.
13 But as far as the introduction, Your Honor, I know is familiar
14 with the motions to recuse. As far as the judicial standard,
15 my understanding of the standard, it's -- it is in Ellis vs.
16 Procter and Gamble and also other cases. It's what I would
17 refer to as Ellis Burgess is an earlier case. There's
18 later cases. The primary case cited by plaintiffs was
19 Ellis, which says my understanding, it's kind of a harmless
20 error standard. You can allege, you know, there was prejudice --
21 there were statements -- or, you know, things happened. What
22 the Court of appeals cares about is if there's prejudice. So,
23 if they look at the record and say, well, the Judge's findings
24 were supported by the record, you know, that -- I -- there's
25 not been a case yet where they have said the Judge should have

1 | recused himself, that I'm aware of. The standard being what it
2 | is under, you know, this was a motion under Canon 3E1. So,
3 | it's impartiality might be subject to question. So, these --
4 | this motion was filed to say someone looking at this
5 | objectively as a third party, noting that, you know, Justin's
6 | motion was denied. The other side couldn't draft a proposed
7 | order or submit a proposed order. Going before the Court to
8 | discuss, denying a motion that seemingly there was not a basis
9 | to deny the destruction of evidence, the violation of FOIA, and
10 | the discovery, that's the primary consideration of the motion
11 | recused. The comments during the hearing, I -- were -- some
12 | were concerning as far as, you know, I submitted a Rule 11
13 | letter to try to resolve this before without having to file a
14 | motion. This, you know, it's a discovery dispute, FOIA
15 | dispute. What would've been expected was a response, and we
16 | could discuss, there were no objections. Judge Newman,
17 | actually at the 12/19/22 hearing, had to order defendant to
18 | file an initial response because their response was actually
19 | due on the 5th of December. That was around the time Mr.
20 | Morrison and I stopped communicating before that hearing, my
21 | expectation -- well, before the initial hearing, that was on
22 | 12/5 before she's not on the circuit anymore, but Judge
23 | Benjamin, that did not end up going forward because she was not the
24 | chief Judge. This has been a, kind of, an adventure where I've
25 | learned my understanding of the statute that says you must schedule a

1 hearing within 10 days. The chief Judge must -- there are not
2 procedures in place right now to make sure that happens. And
3 there's also a standard that's applied under its Section 30-4-100
4 of the Freedom of Information Act. Every Freedom of Information
5 Act violation is considered it's irreparable -- or irreparable
6 injury, and it must be considered an injury that there's no
7 adequate remedy at law. So, if you're familiar with the
8 preliminary injunction standard, those are two of the elements.
9 The other one is likelihood of success, which is a prima facie
10 showing. So, these are supposed to be cases that are resolved
11 quickly, a lot of times at the initial hearing. The other, so
12 that's count 1 is the Freedom of Information Act claim. Count
13 2 is a claim to receive body camera footage, for which I was a
14 subject, which is why I'm a plaintiff. My mother was also the
15 subject. That's why she's a plaintiff. In addition to the
16 FOIA claim. That is also the law enforcement has discretion.
17 They can withhold body camera footage under FOIA, which is
18 reasonable because if my house, you know, is broken into and
19 the Sheriff's Office comes to my house, you know, I don't think
20 it's appropriate for the public to be able to see those videos,
21 you know, it's a public document. Anyway, there's discretion,
22 you know, this was -- this is a case where you, if you get an
23 attorney and you go to court, it's automatic. They don't have
24 to give it to you before then. You can also send a subpoena if
25 you have another case. There was not another case pending when

1 this case was filed. So yeah, those were the two matters.
2 It's FOIA and receiving the body camera footage that, you know,
3 I was there. My mother was there. There is some dash camera
4 that's been produced. So that's why this case was filed. When
5 Judge Newman entered the order, you know, December 19th, and
6 then she entered a Form 4, you know defendants comply with
7 FOIA. My understanding was that was this case should pretty
8 much be over. That is not what happened. The first part of
9 FOIA is the response requirement. So, when you receive a FOIA
10 request within 10 days, the public body is supposed to respond.
11 And this is a statutorily required response, you know, it's
12 just, we received, you know, plaintiffs, we received your
13 request. This is what you're asking for. These were the
14 officers involved. Here's the duty roster for the day. You
15 know, what the relevant stuff. Here's the training, you know, I
16 - it was -- it can be boiled down to everything associated with
17 myself, my mother, my grandfather -- mother, my aunt, this
18 Pinedale facility that's an assisted living facility in Kershaw
19 County. The administrator of the facility was the original --
20 was the 911 caller on myself and my mother for alleged unlawful
21 acts, which I had reported the day before. I'd left messages
22 with investigators about this elder abuse Omnibus Adult
23 Protection Act reporting that I felt like I was under a legal
24 obligation. If you're aware of actual facts, even though
25 attorneys aren't mandatory reporters, which maybe they should

1 be, if you don't report that to the property -- proper
2 authorities within 48 hours, you can be charged with a
3 misdemeanor. So, on June 28th, I left messages with the couple
4 investigators. I received a return call from an officer on the
5 morning of June 29th, 2022, when we're driving. And I explained the
6 situation that my grandmother -- you know, my aunt has
7 subsequently, you know, after her retirement in 2013 for
8 Alzheimer's and dementia has gotten power of attorney. She got
9 a new will in 2019. These were shocking discoveries for me
10 personally. People I grew up with, you know, spent the
11 summertime with, it's the out of town relative. It's the
12 fastest growing crime in the country. It's going to continue
13 to be, for a number of years. It's going to be important in
14 this state and in the South where there's a lot of retirees
15 moving. And it's because that's where most of the wealth, you
16 know, they hold most of the wealth in this country. You know,
17 there's a temptation I -- my assumption was this was
18 financially motivated based on the gifting provisions that
19 appeared in the 2013 Power of Attorney, that are not in the
20 2006 Power of Attorney. And the, you know, the estate planning
21 documents my grandmother prepared when she was of Sound mind,
22 when her husband passed away that year. So yeah, that -- those
23 were the original contacts. The county attorney is a law
24 school classmate, I didn't know him very well, you know, I did
25 not receive a positive response. I received a response to the

1 FOIA request, from the Sheriff's office that says, you know, we
2 don't have anything get lost, basically. The county attorney I
3 assumed was going to respond reasonably, and, you know, would
4 agree that, "Hey, we might've made a mistake here. We should
5 probably tell the Pinedale facility that, yeah, we didn't
6 really have the authority to pull over his mom and his grandma,
7 you know, and make his grandmother go back to the assisted
8 living facility, because they hadn't committed any crimes." If
9 that would've occurred, you know, I -- there's a very high
10 doubt that any of this would've been in litigation that did not
11 occur. What has occurred is, the So, body camera footage that
12 I asked to be preserved, and, you know, it's required by
13 statute, it's required by their own, you know, this one is
14 Exhibit P to the motions. This was to the April 24 memorandum,
15 that they produced in discovery. They require the body camera
16 footage for any traffic stops to be preserved for 180 days.
17 Now, that did not occur. They say it was a civil matter.
18 Well, there's no such thing as a traffic stop for a civil
19 matter. So, you know, this has been a dishonest effort to hide
20 the ball. And even after Judge Newman's ruling, which was,
21 "Hey, the first step, as I'm mentioned, within 10 days, you
22 file -- you give a response. You know, this is not these are
23 not records that are owned. You know, the Court, the court's
24 records other than records that are sealed, this is all public
25 business. We're not on opposing teams of, you know, I don't

1 want information that is properly withheld under an exemption
2 to the Freedom of Information Act. If there was any, you know,
3 I, I put in the request, you know, I don't -- I want to discuss
4 this, figure out, you know, what you guys have, and get the
5 information. What I got was, here's what we have, you know,
6 kind of take it or leave it. We're closing the matter. And
7 part of what I requested was training and personnel files to
8 identify the individuals that were personally involved. I knew
9 the people that I had personally spoke with, which were three
10 officers. There were other officers on the scene. When the
11 traffic stop occurred, I drove to -- I was, you know, in the
12 area, as I explained to the administrator on the 28th, you
13 know, what was going on. This was meant to be a temporary 30
14 day stay for my grandmother that my aunt set up. Near the end
15 of the 30 days, it was -- we have a power of attorney. Y'all
16 might can pick her up for Christmas, you know, one -- it was
17 unreasonable. There's no basis in a power of attorney to --
18 it's a private contract. I would -- to be a power of attorney
19 for someone, we all understand as attorneys that you're a
20 fiduciary. Everything you do, it's supposed to -- it's for
21 them. If there's something that's going on that doesn't
22 benefit them, you know, it's not consistent with their wishes.
23 If you try to make them, do it, it's a crime. Under the
24 Omnibus Adult Protection Act, a power of attorney is a
25 predicate for a criminal offense. You have to have a power of

1 attorney. Two, you know, violate a power of attorney, and take
2 advantage of someone in a way that's inconsistent with their
3 known and reasonable wishes and best interest. The suggestion
4 that it's appropriate for the Sheriff's Office, to rely upon
5 the wishes of a private citizen to take police action against
6 other private citizens, who have admittedly not violated any
7 laws, is -- you know, it's bad that it happened to begin with.
8 It is worse that there hasn't been any response or recognition
9 that, you know, this was not how things should have gone. You
10 know, we probably should have listened to Justin when he was
11 saying, there's been no crimes. You know, there's no basis for
12 police action. Please let his mother, and his grandmother
13 drive away and go about their business as law abiding citizens.
14 That's why I was before the Court in April was because, yeah,
15 the -- at the hearings in December, one thing that was
16 mentioned was, "Hey, we don't have any of the body camera stuff
17 that you requested." It's in writing. You know, the day of
18 while it was happening, I was asking him to preserve that. I
19 wanted to obtain this to understand, you know, why this took
20 place. You know, I exchanged emails with the county attorney,
21 as I mentioned, it's in the FOIA request. You know, it's like
22 I understand it's not, you know, it's not, I can't demand it
23 under FOIA. They have discretion. You know, it's like, if
24 mistakes happen, let's just lay them on the table. It doesn't
25 -- you know, it doesn't help things to hide the ball. You

1 know, let's just talk about them now and try to resolve them.
2 That's not the attitude. And it is really disappointing. But
3 the, you know, the Judge has told me, well, you need to take
4 discovery. You know, he doesn't have the body -- You need to
5 take discovery and figure out what happened. Well, you know,
6 that's what I have tried to do. You know, if the body camera
7 was destroy, you know, why was it not held for 180 days? Like
8 the -- Exhibit P, the schedules that they maintain require,
9 you know, let's just get an explanation. Let's have them
10 say under oath as is required for all interrogatories.
11 And at every hearing, you know, when I was very upset when
12 I found out that what should have been preserved, you know,
13 the attorneys should have preserved this, you know, I called
14 Mr. Morrison, and it's like, you know, statements at a
15 hearing by an attorney. This came up at the last hearing.
16 You know, the Judges do not know the record like the
17 parties do. The Judges have to rely on the parties to
18 honestly say what has gone on in the record. I -- you know, I
19 was upset. I -- you know, it's like I need an answer under
20 oath that actually says that, because Mr. Morrison's
21 representing his clients, what he says at the hearing is not a
22 statement under Rule 11. It's not a statement under oath by
23 the people that actually have knowledge. So, I -- you know,
24 the motion was not opposed prior to the hearing. There were,
25 you know, there was a Rule 7(b)(1) issue. There was an issue that

1 I had put ellipsis into their records requirement, you know,
2 that requires them to generate records every time an officer is
3 dispatched, and assigned to investigate. And that's based on
4 the state S-C-L-E-A standards. These are state standards. In
5 the response brief filed by defendants on 8/21/23, there's a
6 statement that they don't have to comply with those standards.
7 The website of the SCELA says these are mandatory standards.
8 The CEO of the agency, who would be the sheriff in this case,
9 you know, he has discretion to make some determinations as to
10 how these standards are met. But there is no dispute that
11 every time an officer's dispatched, there's going to be a
12 report of their actions. You know, the response I received
13 was, this is a civil matter, we have no reports or anything.
14 Well, they produced reports, Exhibit I and J, you know, they
15 call them CAD reports or CFS reports, Call For Service reports.
16 There were two, one was mine, you know, then there was the
17 Pinedale administrator. So that was why I was forced to file
18 the motion. There was not a response filed. I did not expect
19 this was a difficult motion under the circumstances. You know,
20 another exhibit I would mention is this was filed with the 7/14
21 motion. It's Exhibit CC, which is the Honorable Roger Young's
22 memorandum. It's a 2019 standing order that he requires for
23 parties who are coming before the Court, you know, the Circuit
24 Court with discovery motions. You know, what he expects,
25 what's required. Other than, you know, he wants you to come in

1 with a -- with your fee request with the amount. I believe the
2 original motion in my letter complied with the letter of his
3 pretty strict order. And I agree with all his, you know, there
4 was maybe some discussion that yes, my previous representation
5 was always in Federal Court, and maybe I was relying on Federal
6 Court. You know, the Federal Court cases are cited by Judge
7 Young, because there's not really a body of circuit court
8 decisions that are reported. And, you know, the rules are
9 based on their -- in this case, I don't know that there's any
10 substantial -- substantive differences between the rules that
11 were at issue for my motion. So Judge, the -- this was not --
12 if we go back to the 10/6th memo, as noted in the introduction,
13 you know, I see the two standards as the Judicial Canons apply,
14 whether or not a motion is ever filed. The issue's, one for
15 you to decide. The motion for reconsideration, the standard is
16 similar. So, you know, if there's any other -- this was not an
17 attempt to impugn the integrity of the Court, the South
18 Carolina legal profession, the South Carolina judiciary, which
19 is mentioned in response. This was a motion for what was --
20 what I believe an objective person would see as circumstances
21 where impartiality might reasonably be questioned. You know,
22 there was a response that maybe your June 2nd, Form 4 order did
23 not deny the motion -- that it intended to deny the motion. As
24 I mentioned, I believe that the order is definitive, and I
25 don't believe this was something that I was subject to, you

1 know, come to the hearing and take issue with. So, I wasn't
2 planning to do so, but under the circumstances, I felt like
3 these issues needed to be raised. So, the legal standard, you
4 know, it's impartiality might reasonably be questioned. This
5 was not an allegation that you had personal bias or, you know,
6 subjective bias that was explicitly disclaimed. As noted, you
7 know, as the Ellis holding that I believe is determinative, you
8 know, it's a discovery motion where you're requesting sworn
9 answers. The sworn answers were never provided, even though
10 they'd been coming. At every hearing, there's a mention of --
11 well, we got one more signature, or we're going to get them.
12 And they don't actually address, you know, the -- those are all
13 in the Rule 11 letter. You know, it's the responses, the -- to
14 the interrogatories and the additional documents that I believe
15 are, were requested and relevant. There was no -- there were
16 no objections -- there's no objections that what was requested
17 wasn't relevant. As we know, discovery is broadly allowed.
18 There was no motion for protective order. Yeah. So not to be
19 confused, Your Honor, there was no -- of course, I respect the
20 judiciary, and, you know, it hurts my feelings to see Judges
21 described in articles now as Republican or Democrat. You know,
22 it's -- these are judges that are here to do a job. It's not a
23 political job. So, I'm not accusing you of personal bias. I'm
24 raising issues that I believe could be cause for concern. You
25 know, the, your law clerk provided the instructions. Those are

1 | quoted on Page 7 of the 10/6 memo. Judge Coble is denying this
2 | motion, His Honor, request that you submit a proposed order.
3 | Accordingly, you may submit the proposed order to me via email
4 | for Judge Coble's review. There was a note about if there's
5 | any questions, and there were some subsequent questions from
6 | plaintiffs as to the grounds for denying the motion. So, the
7 | proposed order could be prepared. The defendant's position in
8 | their 8/21 response is that they really don't need to respond
9 | as far as the motion to reconsider that the Judge -- Judge
10 | Coble will issue an order after his June 2nd, 2023 Form 4
11 | order, which would deny plaintiff's motion for sanctions to,
12 | you know, or can, you know, I would say the sanctions come
13 | under the discovery rules. The contempt comes under the, "Hey,
14 | Judge Newman said, comply with FOIA." The first step of
15 | complying with FOIA, you know, is she recognized, is to go
16 | through like the case law, like the statute says, respond with
17 | respect to what's requested, you know, tell the guy that's
18 | asking for it what you have and what you don't have. That, you
19 | know, that's a first step that never occurred. Maybe this was
20 | somewhat on me for not trying to be more specific. I honestly
21 | expected after the initial hearing that this matter would be
22 | resolved. I did not anticipate there were going to be further
23 | issues once we got the discovery and the, you know, the FOIA
24 | response, you know, once we got those issued satisfied. And
25 | yes, as I mentioned previously, this is discussed on Page 8. I

1 assumed that the Judge that you had granted leave to submit
2 unlimited briefing post hearing, that was not what was
3 discussed at the hearing. So, anything on page it's 15 to 17 of
4 the motion to recuse, reconsider suggesting that you know,
5 plaintiffs were prejudiced because you granted a motion Rule 7(b)
6 (1) motion without you know, for them to respond on anything,
7 even though it wasn't new, there was no prejudice. They were
8 aware of it, which I think has now been clarified that defendant
9 agrees that the 7(b)(1) motion was denied, the hearing went
10 forward. I was not aware of any issue. I didn't expect there
11 to be any issues of new matter raised. This was really, the
12 memo is a combination of previously filed. There was a pre-
13 hearing memo in December, before -- in December 22, that
14 plaintiffs filed there's a Rule 11 letter, you know, it's 17
15 pages 1.5 spaced. You know, there was no attempt to prejudice
16 by filing this, you know, as was instructed the two business
17 days before. But yeah, if there was anything additional that
18 was a surprise, I didn't believe there was. I think based on
19 the response defendants concede there was nothing, you know,
20 that they didn't know or couldn't have known. Their position
21 was, they would just like a little more time to respond, which
22 is an understandable position, but it's also not one that's
23 supported by their 7(b)(1) motion. So, the fact that they were
24 -- you know, the -- if there were any new issues, they were
25 related to the destruction of evidence or the body-worn camera

1 2 evidence, which was based on a further review of the Exhibit
2 P, which is their own body-worn camera schedules, you know,
3 what they're supposed to keep and for how long. So yeah, in
4 discussing with Mr. Morrison, after the hearing, I expected
5 those would be the issues. You know, we could even jointly
6 brief the issues. There was a dispute on that. So that's not
7 what occurred. And my understanding was that Mr. Morrison must
8 have been right given that the motion was denied based on what
9 was filed after the hearing. Is there anything else before
10 yeah, so that's Page 15. You know, I believe that the 7(b)(1)
11 issue is -- it's been clarified and addressed. There's a
12 subsequent issue. It's on Page 11 of the 10/6 brief, and it's
13 entitled KCSOs Unlawful Police Actions. You know, this was an
14 issue that was raised in the May 30th supplemental brief, which
15 plaintiffs, you know, the order was entered on June 2nd, I
16 scanned the brief, you know, I did not really have an
17 opportunity to respond or really consider, of course, at the
18 hearing or before the order was entered. So, the 8/20
19 supplemental memorandum, or the first memorandum, address
20 matters that were raised in the brief, including matters that,
21 you know, I don't want to get sidetracked, but there's
22 misstatements that I believe should be corrected. And, you
23 know, those are noted but it is pretty clear. And you know,
24 this, I'm not sure why they went into this much detail, but
25 they've made it very clear that they took their police actions

1 in their brief on May 30th. You know, they were against the
2 wishes of my aunt, who -- you know, in their professional
3 opinion, under the Uniform Power of Attorney Act, you know,
4 gave somebody the rights that, you know, a power of attorney,
5 as mentioned earlier, it is not a court-imposed guardianship.
6 My grandmother's never been made a Ward even if she was,
7 there's laws in place. There's a bill of rights for residents.
8 Residents have, are free to come and go. You know, they're
9 free to come and go from a private residence, you know, to
10 consider that someone would call the Sheriff's office, you
11 know, on their sister, or, you know, that a administrator whose
12 job it is, you know, part of his training of his staff is on
13 the resident's Bill of Rights, you know, for him to take the
14 position that a one of his residents can be remanded back to
15 his custody, you know, the bargain price of \$5,000 a month.
16 This is a -- I'm concerned that you, you know, number one, that
17 this happened, but even more so that this is still going on
18 that the defendants filed a response that they can't support
19 denying the order based on, or they can't file the supporting
20 memorandum with the reasons based on their response, you know,
21 to consider that someone would call, the sheriff's office, you
22 know, on their sister, or, you know, that a administrator whose
23 job it is, you know, part of his training of his staff is on
24 the resident's Bill of Rights. You know, for him to take the
25 position that a -- one of his residents can be remanded back to

1 his custody, you know, the bargain price of \$5,000 a month.
2 This is -- I'm concerned that, you know, number one, that this
3 happened, but even more so that this is still going on that the
4 defendants filed a response that they can't support denying the
5 order based on, either they can't file the supporting
6 memorandum with the reasons based on their response. I think
7 the circumstances are pretty exceptional. I'm not sure that a
8 party has been asked to prepare, you know, their counsel, "Hey,
9 I'm ruling in your favor, you know, give me a supporting order
10 with the reasoning," and they just ignore it. But that's
11 what's happened in this case. And not only that, they oppose
12 reconsideration of that same order. If there's anything else
13 I'd as is your practice and, you know, required under the rule,
14 I'd like to be granted lead to open and close.

15 THE COURT: All right. Thank you, Mr. Jernigan.

16 MR. MORRISON: Good morning, Judge. Good morning, Justin.

17 THE COURT: Good morning.

18 MR. JERNIGAN: Good morning.

19 MR. MORRISON: Judge. I'm not sure what I need to go into
20 here because of what I've heard is just a kind of a rambling re
21 argument of what we argued before without going into all of it.
22 We held a hearing months ago, we argued all of the issues
23 Justin raised. He had filed a brief three days in advance of
24 the hearing. I requested permission to be able to respond.
25 You granted that, I responded and Justin responded. We both

1 filed additional briefs after that, which was only fair and
2 Justin admitted that at the hearing. Now, he's contested and
3 then withdrawn his contesting you're allowing a brief to be
4 filed when he filed one three days of advance of the hearing.
5 But what I'm hearing today is -- Well, let me start with this.
6 Let me go back to talk with prepared to talk about. Justin
7 filed this motion as a motion to recuse, vacate, reassign, or
8 to reconsider after alerting that you denied his motion. He
9 started raising questions about the content of the order. And
10 frankly, in my normal practice, I would've prepared an order
11 and sent it to you. But Justice started raising questions
12 about the content of that, about the grounds for it, about the
13 facts and what was going to happen. And there was email
14 communication going on about that. And I thought I should wait
15 until that played itself out. That's the reason I didn't file
16 an order, was because of the questions Justin was raising.
17 That's the reason I didn't send a proposed order, because of
18 the questions Justin was raising, not because I cannot. Justin
19 then filed this motion to recuse, vacate, reassign, or
20 reconsider. And his very first argument is that the playing
21 field wasn't level to begin with. He argues on Page 2 of his
22 motion that he is a stranger, a private citizen doesn't live in
23 the local area. It is appearing in this Court for the first
24 time, and that I'm a well-known local attorney, been defending
25 cases against law enforcement agencies for over 30 years. He

1 files that making sweeping allegations of an unlevel playing
2 field without inquiring as to the facts. Had he inquired as to
3 the facts, he would know that at the time this motion was
4 heard, I had this case and maybe one other, I've inherited
5 another case where another lawyer had a conflict in Kershaw
6 County, maybe one other, but that may have been inherited
7 afterwards. I had one or two cases in Kershaw County. He
8 inquired about the facts. I would've told him I had never
9 appeared in front of you. And as far as I can recall, I had
10 never met you. And I don't -- I doubt that you knew of my
11 existence, or do how long I've practiced law. The fact that
12 I'm old doesn't make the playing field a level. So, he is --
13 he's alleging an unlevel playing field without inquiring into
14 the facts for that. And this's just not true. I've never
15 appeared in front of you. I've -- as far as I know, I've never
16 met you before the day of that hearing. Far as I know, this is
17 the second time I've seen you. Unless we didn't have another
18 hearing in there in the -- you know, I don't believe we did.
19 And then he says that there's a -- an appearance of impropriety
20 and that the court's decisions must appear to be based on the
21 facts in the -- of the record, in the law, rather than
22 inappropriate factors such as the identity or status of the
23 respected parties or attorneys that appear before the Court.
24 There's no factual foundation for that kind of an allegation.
25 That is a litiga who is disappointed with your ruling, raising

1 something afterwards to contest it without inquiring of anyone,
2 as to whether there's a factual support for that allegation.
3 He then questions your qualifications because he goes into the
4 judicial -- first on a judicial merit selection commission
5 records and questions, your background as a solicitor and why
6 you shouldn't be hearing cases involving police. Every Judge
7 that is appointed in this State has a background. Their
8 background and their record is partly what gets them the
9 position of a Judge. You can't divorce that background from
10 any Judge. There's no impropriety in you having a practice of
11 law before you became a Judge and you working as an attorney
12 before you became a Judge. You wouldn't become a Judge in most
13 circumstances if you didn't. He then claims that you took a
14 dimm view of his motion, his motion for sanctions, for FOIA and
15 for discovery. And all of that was discussed at the hearing,
16 that was gone into, into great length and detail at the prior
17 hearing. There's simply nothing here, nothing in his motion,
18 nothing in this record to demonstrate any reason for this court
19 to consider refusal of itself. It's just not present. And
20 it's certainly not proper, in my view, for a litigant to use
21 that after they learn of an adverse ruling to then say, "Well,
22 the plea -- the playing field was slanted. The Court was
23 biased," rather than telling thing in the merit for
24 [Indiscernible]. He quotes language from the judicial canon
25 about a judge who manifests bias. There's no bias in this

1 case. There was no manifestation of bias, there's no evidence
2 of bias, there's no basis upon which to assert bias. And then
3 he tries to bootstrap by saying that, well, you can argue bias
4 when there's nothing to support the Judge's ruling in the
5 record. There is -- there are briefs filed before the first
6 hearing. There are discovery responses filed who is contesting
7 them. There are explanations in the response giving the
8 rationale for each of the responses given, we went over those
9 at the prior hearing. There is a mountain of information in
10 this record to justify the denial of the motion. Denial -- the
11 motion was properly denied. Ultimately, what Justin is seeking
12 is he claims that there are records that have to exist that we
13 haven't produced. One is the incident report for this
14 incident. We produced proof at the hearing that the police
15 determined that this was a civil matter, that their policies
16 don't require production of incident reports for civil matters
17 and that none was prepared. And we have stated in court, we've
18 stated to Justin that there was no incident report because no
19 one was assigned to investigate this. There was no
20 investigation to be undertaken. There was no criminal matter
21 at hand. What the police were reacting to was a call, and I
22 may be describing this imprecisely, but the call generally
23 alleging that someone had been taken from a nursing home
24 without permission. They responded to that. And if that's not
25 reasonable suspicion to make a traffic stop of the person who

1 was leaving, with that resident from the nursing home, I don't
2 know what is. They have to have reasonable suspicion to make a
3 traffic stop. They made a traffic stop. They determined that
4 there was no criminal activity. There was no probable cause to
5 make any arrest, and they left. This is a unfortunate dispute
6 between Justin's mother and her sister, Justin's aunt, about
7 the care and control of their mother, Justin's grandmother.
8 And there are competing powers of attorney for that. Justin's
9 mother has the original power of attorney. Justin's aunt has
10 the more recent, later executed and filed power of attorney.
11 And they've had a civil case going over that between all of
12 members of the family or between certain members of the family
13 about the who has care and control over the mother. And that
14 is still working its way through the Courts. But the police
15 determined there was no criminal activity. There was no arrest
16 to be made. There was nobody assigned to investigate and there
17 was no report prepared. The fact of the matter is Justin wants
18 sanctions for us withholding and concealing that information,
19 when he has no proof that there's been any withholding or
20 concealing. And there has not because it simply doesn't exist.
21 There's no basis in this record for, and there's been no basis
22 asserted here today to justify a reconsideration of your ruling
23 denying his motion for sanctions. And that's what it was. It
24 was a motion for sanctions under FOIA, and under an discovery.
25 There's no evidence in the record of conduct that would warrant

1 a motion for sanctions. There's been no showing of that here
2 today. There's been no showing of that before. And frankly,
3 you are proper and appropriate in denying the motion. And I'll
4 be happy after this hearing to prepare an order to that effect.
5 I'll need a few days to do it. I'm out of town today. I got
6 to be in Anderson at two o'clock and I'm out of town Friday on
7 a much-needed vacation day for a fishing trip at the beach.
8 I've been looking forward to it for a while, but I'll be glad
9 to prepare an order very quickly. Other than that, I don't
10 know unless you've got specific questions. I don't know what I
11 -- what there is to respond to here. I just don't think
12 there's any basis for the current pending motion.

13 THE COURT: All right, Mr. Jernigan, can you briefly
14 respond to any points raised if you wish?

15 MR. JERNIGAN: Yes, I am not sure how Mr. Morrison's going
16 to prepare a motion that says he does not have to submit
17 interrogatory responses under oath, because that's required
18 under the rule. He's promised that he was going to get us
19 those he never has. That's a pretty simple basis on the -- to
20 reconsider the discovery order. As far as the FOIA order,
21 Judge Newman ordered the defendant to follow the law, which the
22 first part of the law, which to provide the actual response
23 that's required by the statute, which is 30-4-30(c) within 10
24 days. I don't know what's -- what the sheriff's department
25 has. I have a much better idea now. After I got really in

1 discovery, they gave me their records policy, which is, you
2 know, a section of their much larger manual that they do not
3 make publicly available. I know based on the records of the --
4 they were not given to me -- No employment records were given
5 to me under FOIA, no personnel or training records for any of
6 the officers. Before I had to file suit on August 24th, or
7 August 23rd, I offered pre-suit counsel, the county attorney,
8 an extension, you know, and I cited the case of York County
9 Sheriff's -- York County Sheriff's Department, it went to the
10 Supreme Court. Part of what they were asking for was personnel
11 information, training information, none of that had been
12 provided. And to claim that, you know, they didn't have that,
13 you know, it was just ridiculous. So, Judge Newman ordered
14 them, you know, as a first step to give me the response, you
15 know, to address, you know, "Who are the officers involved?"
16 "These are the officers involved." They did prepare reports.

17 THE COURT: [Indiscernible].

18 MR. JERNIGAN: What are you saying about [Crosstalk] --
19 yes.

20 THE COURT: Mr. Jernigan. Any response to Mr. Morrison?
21 I've heard this before in your first initial argument.
22 Anything new otherwise, you know, I'm limited to what Mr.
23 Morrison said for a brief response.

24 MR. JERNIGAN: Totally, yeah. I was just trying to get
25 across the fact that he's mentioning incident reports. That is

1 for -- if they want to call it not a criminal matter, it
2 doesn't mean it's not a matter that needs to be documented
3 based on their own policies. It's -- it doesn't mean that they
4 did not prepare reports. There are reports and they've
5 produced them on, December the second. So don't be confused
6 about incident reports that I'm demanding incident reports.
7 That's not what I'm asking for. This suggestion of reasonable
8 suspicion of criminal activity, to justify a police stop. I
9 still haven't heard what it is. What statute, what was the
10 basis for it? The records, you know, the -- there was -- as I
11 mentioned, this was a appearance of impropriety. There were
12 some comments in the, I'm not questioning your background.
13 What I mentioned in the brief was like me, I've never been
14 involved in a case where the other side won't respond, does not
15 want to try to work out discovery issues, and wants to clog up
16 this court with these, kind of, matters. I know Your Honor's
17 about the people's business and wants to move cases forward,
18 attorneys are supposed to work out discovery issues. You know,
19 this was a motion that was filed in February. If I can get the
20 documents in discovery, I'll go forward with the case and ask
21 for a final hearing. But to expect plaintiffs to go forward
22 with the case, you know, without receiving responses under oath
23 to the discovery request is just not a order that I believe can
24 be supported under the record.

25 THE COURT: All right.

1 MR. JERNIGAN: And that's really the basis for the motion.

2 THE COURT: All right, thank you Mr. Jernigan. What I'm
3 going to do is I'm going to take the motions under advisement.
4 I don't need any proposed orders. I'm going to draft my own
5 orders. After I review the memos in support, everything, I'll
6 probably have some to you by the end of the week, and we'll go
7 from there. Thank you all for being here today.

8 MR. MORRISON: Thank you, Judge.

9 MR. JERNIGAN: Sounds good. Thank you, your Honor.

10 THE COURT: Thank you.

11 [End of Hearing]

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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

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]



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

Electronically signed on 2023-10-20 09:29:40 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	5 TH 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



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)
)
COUNTY OF KERSHAW)
)
Christine Jernigan, et al.,)
)
Plaintiffs,)
)
v.)
)
Kershaw County Sheriff's Office,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-28-00782

PLAINTIFFS' MOTION TO
RECONSIDER PURSUANT TO
RULE 59(e), SCRCP

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 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

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

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

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.

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 SCRCF 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).

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

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)).

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 SCRCF 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), SCRCF ("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).

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):

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*.”

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).

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).

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)

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
vs.	)	FOR RECONSIDERATION PURSUANT TO
	)	RULE 59(e), SCRCP
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]



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

Electronically signed on 2024-05-03 12:46:49 page 3 of 3

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.

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:

May 21 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF KERSHAW)
)
 Christine Jernigan and Justin Jernigan,)
)
 Plaintiffs,)
)
)
 VS.)
)
 Kershaw County Sherriff's Office,)
 Defendant.)
 _____ -)

IN THE COURT OF COMMON PLEAS
 5TH JUDICIAL CIRCUIT

Case Number: 2022CP2800782

**ORDER DENYING PLAINTIFF'S MOTION
 FOR SANCTIONS/CONTEMPT**

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



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

Electronically signed on 2023-10-20 09:30:10 page 3 of 3

May 21 2024

90 Court of Appeals

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]



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

Electronically signed on 2023-10-20 09:29:40 page 3 of 3

May 21 2024

SC Court of Appeals

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
vs.	)	FOR RECONSIDERATION PURSUANT TO
	)	RULE 59(e), SCRPC
Kershaw County Sheriff's Office,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court upon Plaintiffs' Motion for Reconsideration Pursuant to Rule 59(e), SCRPC ("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), SCRPC (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) SCRPC,

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]



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 17 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

Justin A. Jernigan, Esq.
S.C. Bar No. 74954
302 Pine Cliff Dr.
Seneca, SC 29672
864-710-5029
justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANTS

April 16, 2025