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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Case No. 2021-CP-40-05620
Appellate Case No. 2025-000902

Sherman Green,.....Respondent,

v.

City of Columbia and George Simpson,.....Defendants,

of which George Simpson is..... Appellant.

RECORD ON APPEAL - VOLUME II

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SHERMAN GREEN V. CITY OF COLUMBIA & GEORGE SIMPSON
CIVIL ACTION NUMBER: 2021-CP-40-05620
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT GEORGE SIMPSON'S
MOTION FOR SUMMARY JUDGMENT
EXHIBIT M – PRELIM TRANSCRIPT

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
COUNTY OF RICHLAND) C/A #: 2019A4021603910

The State of South Carolina,)
)
 Plaintiff,)
)
 v.)
)
 Sherman Antonio Green, Jr.,)
)
 Defendant.)
-----)

PRELIMINARY HEARING

Wednesday, February 12, 2020
1:36 p.m. - 2:07 p.m.

The preliminary hearing before The Honorable Susan Porter was taken at the City of Columbia Municipal Court, 811 Washington Street, Columbia, South Carolina, 29201 on the 12th day of February, 2020, before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



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Also Present:
Sharon Pope, Court Administrator

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EXHIBITS

(There were no exhibits marked in this hearing.)

STIPULATIONS

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



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1 CALL TO ORDER

2 MS. POPE: Page fourteen, Sherman Green.

3 THE COURT: Investigator Simpson, do you swear or
4 affirm to tell the truth, the whole truth and
5 nothing but the truth so help you God?

6 INVESTIGATOR SIMPSON: I do.

7 INVESTIGATOR BLAND, having been duly sworn, deposes
8 and testifies as follows:

9 THE COURT: State your name for the record.

10 A: Investigator Bland.

11 GEORGE SIMPSON, having been duly sworn, deposes and
12 testifies as follows:

13 INVESTIGATOR SIMPSON - DIRECT-EXAMINATION BY MR.

14 FYALL:

15 Q: Do you have probable cause into the arrest of
16 Sherman Green for the charge of murder?

17 A: Yes. Since that did take place on the December
18 4th, 2019 at 1601 Sunset Drive which is located
19 within the City Limits of Columbia, County of
20 Richland. The Defendant, Mr. Sherman Antonio
21 Green Jr., did act with malice afterthought
22 after escalating a verbal confrontation with
23 the victim which turned physical without being
24 provoked to do so. Mr. Green did strike the
25 victim several times with his hands before



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1 having to be pulled away from the victim by a
2 witness of the incident. The Defendant then
3 proceeded to grab the victim who he then threw
4 out of a room at the location which caused the
5 victim's body to strike a wall, and he fell
6 down after being assaulted. The victim then
7 ran away from the Defendant before collapsing
8 a short distance later where he was found by
9 medical personnel who present- -- who
10 pronounced him deceased at the scene. The
11 Defendant knew that the police were already on
12 the way prior to the assault taking place, and
13 verbally stated to the victim, quote, you
14 better hope the police get here before I get in
15 there, end quote. This happened moments prior
16 to the attack being initiated by the Defendant.
17 The incident was partially captured on
18 surveillance footage and the Defendant was
19 identified at the scene of the incident.

20 Q: Who was the witness to the incident?

21 A: This is a family friend of Mr -- Mr. Green that
22 was also in the residence -- I'm sorry, not the
23 residence, the room with him.

24 Q: The hotel room?

25 A: Yes. And she was the individual, her name is



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1 Ms. Aja Prophet.

2 Q: All right. And Mr. Green was -- somehow got
3 into the room you say?

4 A: And so basically the -- the back story, Ms.
5 Prophet -- Ms. Prophet had already had the room
6 with -- with Mr. Green. The victim was called
7 by Ms. Prophet to come over to the room. She
8 gave him permission to come inside the room.
9 She actually asked Mr. Green to leave. She
10 told the -- she told Mr. Green that the victim
11 was gonna be coming and they were gonna hang
12 out for a little bit. So Mr. Green went to the
13 store, she gave him a few dollars to go to the
14 store to get some merchandise and when he left
15 the victim arrived at the room and he stayed
16 there for a few minutes prior to Mr. Green
17 coming back from the store and entering the
18 room to encounter him.

19 Q: How did Mr. Green get into the room?

20 A: So, when Mr. Green arrived the -- the door was
21 locked. He was able to look through the
22 window, he saw the victim as well as Ms.
23 Prophet inside the room. He was demanding Mr.
24 Green and Ms. Prophet come to the door to open
25 up the door. Neither one would open up the



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1 door. He went to get the property manager.
2 The property manager looked inside. The
3 property manager stated that everything seemed
4 fine inside of the room so he did not open up
5 the door. Ms. Prophet was the one that
6 eventually opened up the door which led to Mr.
7 Green being able to come in.

8 Q: And what happened when he got in?

9 A: So, the basic -- the -- the story that I got
10 from Mr. Green after he was mirandized and
11 agreed to speak to me and waiving his rights,
12 he stated that he first -- initially, when he
13 first arrived to the room he looked through the
14 window and saw the victim assaulting Ms.
15 Prophet and he was trying to get into the room
16 to protect Ms. Prophet from being assaulted by
17 the victim and that was the main reason why he
18 wanted to come in and that was what led to the
19 confrontation. Mr. Green told me initially
20 when he first got into the room and made
21 contact with the victim no physical altercation
22 happened, he didn't put his hands on him, he
23 just strictly asked him to leave the room and
24 the victim left the room while he just escorted
25 him out with his hands just to kinda guide him



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1 out, but he did not say that any assault
2 happened at all. He later, he switched up his
3 story and said that an assault happened. And
4 I did interview Ms. Prophet as well, she stated
5 that Mr -- the victim never assaulted her in
6 her room at any point. He did get a little bit
7 aggressive with her after they had a verbal
8 altercation because he felt that Mr. Green was
9 coming to rob him which is why he didn't want
10 him to come inside the room. He was -- he
11 believed that he was being set up. So, when
12 Mr. Green arrived, he was fearful that he was
13 gonna be robbed if Mr. Green came in. So at
14 the time that Mr. Green did make entry, all
15 parties did verbally state to me that the
16 victim held up his hands, didn't wanna fight,
17 was completely defenseless, he didn't assault
18 either Mr. Green or Ms. Prophet, and it kind of
19 went bad from there once Mr. Green made
20 contact.

21 Q: Who -- who let him into the room with -- you
22 said Ms. Prophet did?

23 A: Yes.

24 Q: All right. And you stated something about the
25 Defendant saying something to the victim about



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1 hope the police get there before he gets in the
2 room ---

3 A: Yes. So, there was -- they were talking back
4 and forth to each other through the window.

5 Q: Uh-huh.

6 A: Mr. Green -- at that time, Mr. Green was still
7 actively trying to get into the room, the
8 victim was trying to keep him out of the room
9 and a caller called 911 due to fearing that a
10 fight was gonna happen if Mr. Green did get
11 into the room. And those statements were
12 overheard on the 911 recording, as the other
13 party that called 911 was trying to get police
14 at the location you can hear Mr. Green on the
15 phone making those threats to the victim.

16 Q: All right. And you state in your initial
17 comments that once he got out of the room, Mr.
18 Green assaulted the victim and threw him
19 against the wall and then he died I'm assuming?

20 A: And so according to Ms. Prophet -- from Ms.
21 Prophet's point of view, when Mr. Green first
22 entered the room the victim put himself into
23 the corner, threw his hands up and immediately
24 just kinda tuckered down, just kind of kneeled
25 down in front of the Defendant. At this -- at



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1 that point Mr. Green began punching the victim
2 several times in the upper body. She said that
3 the assault appeared to her to her -- her exact
4 words, the assault got to a point where it's
5 excessive so she stepped in to try to get Mr.
6 Green off of the victim. And at that point he
7 tried to get up and run out of the room. Mr.
8 Green then grabbed him, drug him out of the
9 room and threw him outside. And there was a
10 brick wall that's just like a couple of feet
11 away from the -- the door, when he threw him
12 out of the -- out of the room he immediately
13 collapsed and crashed into that wall with his
14 head and his body. And he fell down, it is on
15 -- that part, that portion is on video.

16 Q: Uh-huh.

17 A: When he got up he was extremely disoriented,
18 dazed, very unsteady on his feet, he was trying
19 to escape. He could hardly stand. When he
20 made it around the side of the building, made
21 it to the front, he collapsed and never got
22 back up.

23 Q: All right. And he was pronounced dead on the
24 scene?

25 A: Yes.



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1 MR. FYALL: Nothing further.

2 THE COURT: Mr. Shealey?

3 MR. SHEALEY: Thank you, Your Honor, may it please
4 the Court.

5 INVESTIGATOR SIMPSON - CROSS-EXAMINATION BY MR.
6 SHEALEY:

7 Q: Investigator, I -- I don't have any discovery,
8 I -- I do have a -- a search warrant affidavit
9 that you swore out to obtain my client's DNA.
10 So I'm gonna ask you some questions about it,
11 given that it's your sworn testimony to a
12 court. 1601 Sunset Drive, what's the hotel?

13 A: It's called the Budget Inn.

14 Q: Budget Inn? Okay. And what's the victim's
15 name?

16 A: The victim's name is Dara, spelled D-A-R-A,
17 last name is Washington, common spelling.

18 Q: Okay. And on this day in question in December
19 it says that -- on this af- -- sworn affidavit
20 that Aja Prophet, who's the woman inside, had
21 arranged to have some sex, I guess, with Dara
22 Washington, correct?

23 A: Correct.

24 Q: And your investigation would -- would show that
25 Mr. Green and Ms. Prophet had been staying at



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- 1 that hotel for awhile, right?
- 2 A: Correct.
- 3 Q: You had Mr. Green -- records show him on -- on
- 4 the room as the person paying for the room ---
- 5 A: Yes, sir.
- 6 Q: --- registered to the room for a couple months?
- 7 A: Well, according to the property owner it was
- 8 just a couple of weeks that he was on the ---
- 9 Q: Okay. So, couple weeks ---
- 10 A: Yes, sir.
- 11 Q: --- but they were staying for a couple of
- 12 weeks?
- 13 A: Right. And also they had no clue that Ms.
- 14 Prophet was staying with him, but the did say
- 15 that he was ---
- 16 Q: Okay.
- 17 A: --- on a lease there.
- 18 Q: So, when Ms. Green was there -- Mr. Green for
- 19 an extended stay I guess ---
- 20 A: Right.
- 21 Q: --- at the hotel? And Mr. Washington, he -- he
- 22 was not on the lease there, he wasn't living
- 23 there?
- 24 A: No.
- 25 Q: His purpose, as far as you can tell, was some



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- 1 type of arrangement to have sex with Ms.
2 Prophet, right?
- 3 A: Prophet, correct.
- 4 Q: Okay. And that per your investigation she had
5 -- she claims that Mr. Green is, for this, a
6 cousin of hers, friend, cousin?
- 7 A: That's what she initially said, that they were
8 family friends. She first said cousin and then
9 she said family friend because her uncle and
10 his aunt or vice versa are married to each
11 other so their families are connected in that
12 way.
- 13 Q: Okay.
- 14 A: They're not blood related, but family of ---
- 15 Q: Gotcha. Understood.
- 16 A: --- marriage.
- 17 Q: And then she had basically asked Mr. Green to
18 give him some time, go run some errands while
19 this gentleman comes over?
- 20 A: Correct.
- 21 Q: Per your affidavit it says that the victim was
22 using drugs at the time and became very
23 paranoid, that's -- that's correct per the
24 investigation?
- 25 A: Yes.



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- 1 Q: And Mr. Washington was in the room with her?
- 2 A: Correct.
- 3 Q: Alone?
- 4 A: They're -- those are the only two individuals
5 inside the room ---
- 6 Q: Okay.
- 7 A: --- at that point.
- 8 Q: And it says that at which time he refused to
9 leave, right?
- 10 A: That was when Mr. Green arrived at the location
11 and he saw him outside. In his mind he
12 believed that he was being ro- -- set up to be
13 robbed. He believed that Ms. Prophet set him
14 up to be robbed. He thought that Mr. Green was
15 here to beat him up and take his money pretty
16 much. So he didn't wanna leave because he knew
17 that if he went outside he was gonna be
18 confronted by Mr. Green.
- 19 Q: Well, the- -- I mean these are the reasons that
20 you're seeking DNA, this is what you believe is
21 the truth about the investigation ---
- 22 A: Uh-huh.
- 23 Q: --- that he was high on drugs, became paranoid
24 and refused to leave, right?
- 25 A: Correct.



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1 Q: And that her attempts to leave were not
2 permitted. Now, we're talking about Aja
3 Prophet was not allowed to leave by Mr.
4 Washington?

5 A: Correct.

6 Q: Okay. So, she want- -- she's telling you this,
7 I wanted to leave, but he wouldn't let me?

8 A: Correct. And at that point she did stress that
9 the -- his reasoning for not allowing her to
10 leave is because he was fearful that she was
11 gonna allow him to just come inside of the
12 room, Mr., allow Mr. Green to come inside of
13 the room, and he feared that -- he feared for
14 his life at that point that he was gonna be
15 robbed.

16 Q: But you said he was high and paranoid as well.

17 A: Correct.

18 Q: So, it might not be a reasonable belief, right?

19 A: Well, that's just according to Ms. Prophet.

20 Q: Okay. But he wouldn't let her leave, so that
21 -- I mean not letting someone leave is
22 kidnapping, isn't it?

23 A: Well, like -- like I said before, according to
24 Ms. Prophet, her statement was that the reas-
25 -- his reasoning for him not allowing her to



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1 leave is because he was fearful that she was
2 gonna open up the door and there was gonna be
3 a physical confrontation between he and Mr.
4 Green.

5 Q: Right. Whether his reason is rational or a
6 paranoid high mind, but when you don't let
7 someone leave that can be kidnapping, right?
8 You agree with that?

9 A: Yes, I do agree with that.

10 Q: Okay. And I think you've testified that Mr.
11 Green tells you that he sees Ms. Prophet being
12 assaulted by Mr. Washington, that's his
13 statement to you after you come to the scene
14 and investigate, right?

15 A: Correct.

16 Q: Did you have any other indications, the room in
17 disarray or any injuries or bruising to Ms.
18 Prophet?

19 A: No. The only other indications that I
20 received, I did speak to Ms. Prophet, she
21 stated that she was not assaulted. She also
22 stated that she wasn't in fear for her life at
23 any point. And also the property manager, he
24 also stated that he looked inside the room, saw
25 them two just standing in there, did not see



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1 anything out of the ordinary. He did not -- he
2 was -- he was also told that police were
3 already called. And he did let Mr. Green know
4 that police had been called, they were gonna be
5 coming to take care of the situation and for
6 him to wait.

7 Q: And you said on direct that the victim got
8 aggressive with her, I mean, those are your
9 exact words, I wrote them down.

10 A: Correct.

11 Q: Okay. So -- so not being allowed to leave and
12 he got aggressive with her, we can say that?

13 A: Correct.

14 Q: Okay. For the purposes of this hearing. Did
15 you take any picture of her or take any -- did
16 she have any blood on her, anything like that?

17 A: No. She didn't have any injuries. We did get
18 pictures of her. We do have interview footage
19 of her as well. And like I said, just going
20 back to the aggressive nature of their contact,
21 she said the aggression was strictly verbal and
22 it was in reference to him believing that she
23 had set him up to be robbed.

24 Q: After the victim became paranoid and is
25 thinking that he's about to get robbed, whether



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1 that's realistic or not, and not letting her
2 leave, did -- did she ever tell you that she
3 told him to leave, get out of my room?

4 A: She did say at that point where he began
5 consuming the drugs, she said at first she was
6 okay with him consuming the drugs, and then she
7 said that he started beginning to be paranoid
8 when he saw Mr. Green and she did ask him to
9 leave at that point.

10 Q: Okay. And he wouldn't leave?

11 A: Correct.

12 Q: And that at some point she actually let's Mr.
13 Green in, right?

14 A: Correct.

15 Q: And then there's this confrontation whe- --
16 between Mr. Green and Mr. Washington?

17 A: Correct.

18 Q: Did Mr. Green in his statement to you tell you
19 that he as well told Mr. Washington to leave?

20 A: So, at first he did say that he immed- -- well,
21 the very first story that he gave, he
22 immediately confronted Mr. Green, asked him to
23 leave. Mr. Green began to leave on his own, he
24 just strictly kind of used his hands to just
25 guide him out (indicating). And it -- that was



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1 pretty much it, that was the first account that
2 he gave, but he gave a different account later
3 on during the interview.

4 Q: Okay. So, you would press him and ultimately
5 he would say that Mr. Washington wouldn't leave
6 so he used some force on Mr. Washington?

7 A: Well, there was no pressing at all. I was just
8 strictly just having a conversation with him.
9 I did let him know that I had spoken with Ms.
10 Prophet. And he did later state that he was
11 upset, he was angry throughout the whole course
12 of him trying to get into the room and not
13 being able to, and that's -- basically it did
14 -- he did admit that the assault did take place
15 inside of the room.

16 Q: Again, because he claimed that he had witnessed
17 this man assaulting his friend and he couldn't
18 get in and then the man wouldn't leave?

19 A: Correct.

20 Q: Okay. From his perspective?

21 A: Correct.

22 Q: And then per this it talks about punches to the
23 body and -- and throwing him out of the room.
24 Throw him outta there, right?

25 A: Uh-huh.



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1 Q: I mean, is that part, on the outside of the
2 room in the hallway, is that on video?

3 A: On- -- the only thing that's on video is just
4 literally everything from the doorway out. So,
5 nothing on the inside of room is under the
6 recording. The surveillance footage picks up
7 from the time you leave the room and outside
8 into the hallway area.

9 Q: Okay. And you mentioned there was like a
10 neighbor in a room that calls police, right?

11 A: Correct.

12 Q: Is it a man or a woman?

13 A: It's a female.

14 Q: Okay. She -- does Sherman Green say to you in
15 your investigation I told her to call police?

16 A: He did state that he asked a individual to call
17 the police to allow them -- allow him to come
18 inside of the room due that, due to Ms. Prophet
19 being assaulted, he did tell me that.

20 Q: Okay. And then after Mr. Washington is thrown
21 out -- I mean, his -- wherever he collapses in
22 the parking lot, that's how far from the room?

23 A: I would say pro- -- it was less than 300 feet.
24 Just basically you make -- as soon as you leave
25 the room -- as soon as you leave the room you



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1 make a left, you go just a short distance down
2 the hall, and the parking lot's right there at
3 the front; so, a very short distance away.

4 Q: And you don't have any evidence that any
5 weapons were used by Mr. Green or Mr.
6 Washington?

7 A: No.

8 Q: No knives, no guns, no brass knuckles, nothing
9 like that?

10 A: No.

11 Q: What you -- you have evidence of is -- is
12 punching about the body I guess?

13 A: Yeah. Just like I said obviously you can't
14 speak to Mr. Washington and get his side of the
15 story, but just according to Ms. Prophet, she
16 stated that it was a very excessive amount of
17 assault -- the assault appeared to be excessive
18 to her so -- which prompted her to step in
19 because she began to feel as if it was getting
20 to that point to where it was a little bit too
21 much. So, she did step in and she didn't say
22 that any weapons were used, but did say that
23 they were punches to the head area, he got
24 down, there were kicks as well where he was
25 just trying to cover up his head to protect



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- 1 himself.
- 2 Q: So, obviously the ambulan- -- I guess EMS
- 3 responds. Did they do any Narcan treatment for
- 4 this gentleman who's high on drugs?
- 5 A: I don't have their report back yet -- give me
- 6 a second, let me check. And they don't
- 7 indicate that Narcan was used. The lab -- the
- 8 lab results are still pending, but they did --
- 9 they did -- yeah, they don't come back that any
- 10 kind of Narcan or anything was used, but I'm
- 11 still waiting on the full report to come back.
- 12 Q: In -- in terms of this being investigated and
- 13 sent up to the pathologist for an autopsy, what
- 14 was is -- what is the official cause of death?
- 15 A: It hasn't been officially term- -- determined
- 16 just yet. Like I said, just the blood -- blood
- 17 that was taken is being analyzed and I haven't
- 18 received that full report back. But once I get
- 19 the full report back it will show the exact
- 20 cause, but I haven't received it yet.
- 21 Q: Well, it's been a couple of months, and I know
- 22 -- I u understand that sometimes lab tec- --
- 23 testing takes a while, but, you know, the --
- 24 you don't have any preliminary indications from
- 25 the -- from the pathologist to say this is



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1 blunt force trauma which caused bleeding on the
2 brain or exsanguination due to the any- -- what
3 is it? I mean, what is it?

4 A: Well, like I said, I can't speak to anything
5 official because don't I have a official
6 document, but I can speak to what Coroner Gary
7 Watts mentioned to me was that there was blunt
8 force trauma involved, he did have presence of
9 cocaine metabolites in his system, but the
10 cocaine metabolites weren't at a level to where
11 they would be fatal. So that's the only the
12 only thing I can speak of at this point.

13 Q: Well I guess in terms of today's hearing and
14 evidence that you can under oath say for
15 certain, you can't say that those punches were
16 the cause of death today under oath, you can't
17 say that?

18 A: Well what I can say is that those -- that
19 assault contributed to the fact that Mr.
20 Washington was pronounced deceased. I can
21 attest to the fact that mentions were made by
22 by Mr. Green, recorded on -- the individual
23 that called the police is recorded on the
24 dispatch log that he stated, quote, you better
25 hope the police get here before I get in there.

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1 That was prior to the ---

2 Q: I'm not talking about an intent.

3 A: --- assault.

4 Q: I'm not talking about words exchanged. What
5 I'm asking you today, which is important for
6 this hearing, is you, because you don't have
7 anything from the pathologist one way or the
8 other, you can't say that there is a medical
9 professional saying the cause of death to this
10 gentleman is due to assault, you don't have the
11 ---

12 A: Well, what I was trying to do was just give you
13 contacts in reference to all of the things that
14 I can attest to that contributes to probable
15 cause for this hearing.

16 Q: I'm talking about a cause of death, because
17 there has to be a cause of death that's
18 attributable to an unlawful assault for it to
19 be murder. So this man is high on drugs, we
20 don't know whether he had any underlying
21 issues, but what I'm saying is you can't say it
22 today under oath as a matter of fact that
23 medically a professional is saying that this
24 assault is his cause of death, you can not say
25 that.



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- 1 A: I mean, I understand where you're getting from
2 -- I understand where you're coming from, I
3 really do, but I also can't say that it ---
- 4 Q: I'm just asking you to answer my question, not
5 to answer your own question. One more time ---
- 6 A: That ---
- 7 Q: You may not give it to me, I'm gonna ask it one
8 more time.
- 9 A: Uh-huh.
- 10 Q: You, today, for probable cause purposes, don't
11 have evidence that a medical professional is
12 saying that these punches are in fact the
13 proximate cause of this man's death?
- 14 A: Like I said, just for probable cause purposes,
15 that's still pending so I can't say it, but I
16 also can't not say.
- 17 Q: Okay. You can't say -- you don't know, how
18 'bout that, you don't know?
- 19 A: Well, that's -- like I said it's pending, it
20 will be released when I'm able to get it ---
- 21 Q: All right.
- 22 A: --- from the Coroner's Office.
- 23 MR. SHEALEY: I don't have anything further, I do
24 have a motion.
- 25 THE COURT: Okay. Go with the motion.



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1 DEFENDANT'S MOTION:

2 **MR. SHEALEY:** Now, as a murder prelim measure where
3 murder is the unlawful killing of another with
4 malice aforethought -- so I'm -- I'm attacking
5 this from kinda two fronts here. I think the
6 most important thing is the one we ended on.
7 You know, we don't even have probable cause to
8 say that this killing, number one, is a
9 proximate cause of this altercation. What we
10 know is that there's a man who was high, who
11 was, quote, paranoid, who was acting bizarrely,
12 who refused to leave a room that was in the
13 name of my client and this other female, Ms.
14 Prophet. And my client wasn't there, but per
15 this Officer's Sworn Affidavit to a Judge that
16 the victim was using drugs, became paranoid, he
17 refused to leave, victim, this man's
18 essentially residence ---

19 **THE COURT:** So, you're a making a self-defense
20 argument?

21 **MR. SHEALEY:** Well, that's gonna be the second
22 argument.

23 **THE COURT:** Okay.

24 **MR. SHEALEY:** The -- the first argument is that --
25 and then he basically held the other woman



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1 against her will. Her attempts to leave were
2 not permitted. But so in the context of this,
3 still we can't say that his ejection -- the
4 force he used, which is described as punches,
5 caused the death of this gentleman. So to go
6 forward today to show that -- that his actions
7 were the proximate cause of someone to be
8 deceased, given that we also know he was very
9 high, we can't say whether it was a drug
10 overdose or not. And, you know, the
11 investigator's being very clever with me at the
12 end and I'm really just trying to figure out
13 how you make a murder arrest without a doctor
14 saying the cause of death is bleeding on the
15 brain due to this. I mean it's been two
16 months, they would have some preliminary in- --
17 indication, they're just trying to see -- I
18 think, well we don't have that so let's see if
19 -- what the tox screen says. I understand that
20 can take some time, but so I would -- I would
21 say number one, you haven't linked whether
22 these -- these -- whether this assault was
23 lawful or unlawful, you can't say that a
24 proximate cause of death of this gentleman,
25 number one. But number two, what has been

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1 described as textbook protected under our
2 statutory law with the Protections of Persons
3 and Property Act, and our 200 year common law
4 about defense of habitation. I mean just
5 statutorily, 16-11-440, I can't decide whether
6 it would be more better suited to Section A or
7 Section C, but Section A just says that a
8 person is presumed to have a reasonable fear of
9 imminent death or great bodily injury to
10 himself or another person when using deadly
11 force, if that person against whom force is
12 used is in the process of unlawfully and
13 forcefully entering of unlawfully and
14 forcefully entering or has unlawfully and
15 forcefully entered, and, you know, you know
16 that that unlawful and forceful entry or
17 unlawful or forceful act is occurring. So, I
18 would say that this guy is probably allowed in,
19 for sure, but then ha- -- is high and is
20 paranoid and refuses to leave. The testimony
21 is that both Ms. Aja Prophet, who is his sexual
22 partner, is telling him to leave and he won't
23 leave; and Mr. Green is trying to get him to
24 leave once he gets in because he claims she's
25 being assaulted. And I asked the Officer, like

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1 well if you don't -- if the victim is not
2 letting her leave, that's kidnaping; and he
3 said, yes. So, you know, that's an unlawful
4 act that's occurring. I don't think what my
5 client used could be considered deadly force
6 because it's just fists and punches and things.
7 I think he would have been entitled to, so I
8 think he would be protected if he had pulled,
9 produced a gun and shot the man. But I think
10 it also would be under Section C, if you're --
11 if you're not engaged in unlawful activity, and
12 attacked in a place that you have a right to
13 be, including your business, you don't have a
14 duty to retreat, you have the right to stand
15 your ground and meet force for force, which is
16 what happened here, including deadly force.

17 **THE COURT:** Mr. Shealey, let me -- and I'm not
18 trying to cut you off.

19 **MR. SHEALEY:** Right.

20 **THE COURT:** I get your argument. I don't think I
21 have jurisdiction to decide the stand-your-
22 ground argument. I think that goes to the
23 General Sessions Judge.

24 **MR. SHEALEY:** Well ---

25 **THE COURT:** But I do think -- I do wanna hear the

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1 Solicitor's response to the probable cause
2 argument, which is where I think you need to
3 focus.

4 **MR. SHEALEY:** I'll sit down, but I -- I disagree
5 with what Your Honor just said because Section
6 16-11-450 says that law enforcement may not
7 arrest the person for using deadly force unless
8 probable cause exists that the deadly force was
9 unlawful. So, it meant they have to assess
10 self-defense and decide that this is not self-
11 defense. And I just -- here it's clear they
12 don't understand self-defense because both of
13 these people told him to leave, he refused, and
14 -- and Mr. Green would be entitled to use
15 deadly force to eject him from where he lives.
16 So, I -- I -- respectively, I would say that
17 that's an analysis under Protections of Persons
18 and Property Act that he has to get right, say
19 it's not self-defense, and then also prove that
20 the attack is the proximate cause of the death.
21 So, respectively I would disagree on that. I
22 think that some- -- that's a threshold they
23 have to overcome. And essentially, pursuant to
24 Section A or C, he's trying to remove somebody
25 and eject them that was per his version

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1 committing assault, per neutral version
2 committing a kidnapping and wouldn't leave, in
3 a paranoid, bizarre belief.

4 **THE COURT:** Well, but you've got a victim saying ---

5 **MR. SHEALEY:** The victim hasn't ---

6 **THE COURT:** --- she was -- I'm sorry.

7 **MR. SHEALEY:** So ---

8 **THE COURT:** You've got Ms. Prophet saying she wasn't
9 afraid and who wasn't being assaulted, so
10 you've got a discrepancy there. Nevertheless,
11 I wanna hear the Solicitor regarding probable
12 cause -- regarding the causation of death,
13 what's -- what's your position, Solicitor?

14 **SOLICITOR'S POSITION:**

15 **MR. FYALL:** Yes, Your Honor. Based on the testimony
16 given, it was more than just punches. I
17 believe the Officer testified that he punched
18 him and then he threw him out of the room into
19 a brick ---

20 **THE COURT:** Again, I'm not talking about the actual
21 assault. I don't think there's any dispute
22 that he was assaulted.

23 **MR. FYALL:** Yes.

24 **THE COURT:** My question to you is, what evidence has
25 been presented relating this gentleman's death

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1 to the assault?

2 **MR. FYALL:** I think it's the proximity from a
3 temporal standpoint, Your Honor. He assaults
4 the man, throws his head against the wall
5 outside the building, which the Officer says is
6 caught on camera, and he manages to get up and
7 then dies right there at the incident location.
8 From a probable cause standpoint I think that
9 is evidence to indicate that the reason for his
10 death was that assault. And he also asked him
11 about the toxicology and he said he -- the
12 Investigator said he spoke with the Coroner and
13 said there was cocaine metabolites in the
14 gentleman's system but not enough to cause an
15 overdose. I believe that was the testimony.

16 **THE COURT:** Well, do we have -- we do not have a
17 determination of death, correct?

18 **MR. FYALL:** Not from the pathologist, Your Honor,
19 that's correct.

20 **THE COURT:** All right. How about an autopsy? Is it
21 -- has an autopsy been completed, but there's
22 no report?

23 **MR. FYALL:** Based on his testimony, I -- I believe
24 he said it was pending the tox screen getting
25 back to the pathologist before he can give an



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1 official response. And I believe that's what
2 he said af- -- after Mr. Shealey questioned
3 him.

4 **MR. SHEALEY:** And Your Honor, respectively, I've
5 done many, many cases like this, and there
6 always is a preliminary autopsy and then
7 they'll -- they might be pending some
8 toxicology, but we don't even have evidence
9 that's presented at this hearing to causally
10 link this assault to the death of this
11 gentleman. It's not like the pathologist is
12 telling in his report to this Investigator that
13 we've got bleeding on the brain, but you know
14 what, until we get the tox we can't say whether
15 it was due to chronic drug use and just
16 happened to have a stroke during his excited
17 period or whether it's due to blunt force
18 trauma which caused that. So, we're not even
19 at that point, we just have nothing. And so
20 there does have to be evidence presented at
21 this hearing that establishes a -- a proximate
22 cause, a causal link between an assault and a
23 death. Otherwise, I understand your -- your
24 feelings on whether this is self-defense or
25 whether you -- that's your call to make right

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1 now, but they haven't met the threshold just
2 for -- as you're rightfully questioning --
3 questioning to determine whether the linkage is
4 there.

5 DISPOSITION OF THE CASE:

6 **THE COURT:** All right. So, what -- and I'm gonna
7 address 'em backwards, but looking at 16-11-
8 450, and specifically the State v. Douglas,
9 which is a Court of Appeals case from 2014, 411
10 South Carolina 307, the -- the Defendant must
11 prove that they were entitled to immunity from
12 prosecution based on the statute from the Trial
13 Court. I am not the Trial Court, I'm not.

14 **MR. SHEALEY:** We're not -- sure. I agree when
15 you're seeking immunity and you make that
16 motion that's the Defendant's burden, but --
17 but because of ---

18 **THE COURT:** Well -- and let me go further in ---

19 **MR. SHEALEY:** Sure.

20 **THE COURT:** --- in State v. Sims, which is a 2018
21 Court of Appeals case which says the right to
22 immunity from prosecution does not
23 spontaneously appear, and instead it is a
24 statutory right a Defendant must prove he is
25 entitled to. Again, I'm back to -- I just



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1 don't have -- I'm not -- I'm not gonna decide
2 self-defense at this stage 'cause I don't think
3 I have jurisdiction to do that.

4 **MR. SHEALEY:** Well, I totally understand what you're
5 saying Your Honor ---

6 **THE COURT:** Based on the two cases I've cited.

7 **MR. SHEALEY:** Sure.

8 **THE COURT:** So, unless you have a case to contradict
9 those two cases.

10 **MR. SHEALEY:** State v. Bryant. It's a hundred ---

11 **THE COURT:** Do you have ---

12 **MR. SHEALEY:** It's a very old defense of habitation,
13 Your Honor. Basically it says if ---

14 **THE COURT:** I've got State v. Sims from 2018, I'm
15 going ---

16 **MR. SHEALEY:** It's not immunity ---

17 **THE COURT:** --- I'm going with that.

18 **MR. SHEALEY:** --- it's not immunity, Judge. I'm
19 just -- I guess part I'm making is -- is to ---

20 **THE COURT:** You -- you cited the statute.

21 **MR. SHEALEY:** I did ,and then I was gonna talk about
22 the common law as well. I'm just saying
23 generally they have a duty to figure out if
24 it's self-defense or not.

25 **THE COURT:** I don't disagree with you Mr. Shealey,

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1 but they've decided it's not. So now it is
2 incumbent upon you and your client to prove
3 otherwise based under the statute that you
4 cited and the two cases that I cited to a Trial
5 Court which has jurisdiction.

6 **MR. SHEALEY:** I understand.

7 **THE COURT:** All right. Now, back to probable cause.
8 I don't think you've got it, you don't have a
9 manner of death here. You don't know if he had
10 a bad heart and the cocaine caused the heart to
11 stop which resulted in the death, we just don't
12 know. There's no evidence in the record
13 whatsoever that the assault caused the death.
14 Therefore at this time it's dismissed.

15 **MR. SHEALEY:** Thank you, Judge.

16 **MR. FYALL:** Thank you, Your Honor.

17 (There being nothing further, the hearing concluded
18 at 2:07 p.m.)
19
20
21
22
23
24
25



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SHERMAN GREEN V. CITY OF COLUMBIA & GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT GEORGE SIMPSON'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT N – GOLDBERG DEPO

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #: 2021-CP-40-05620

Sherman Green,)
)
Plaintiff,)
)
v.)
)
City of Columbia & George Simpson,)
)
Defendant.)
-----)

DEPOSITION OF
DAN GOLDBERG

Tuesday, November 28, 2023
10:03 a.m. - 11:38 a.m.

The deposition of Dan Goldberg, taken on behalf of the Plaintiff at the office of Shealey Law Firm, 1507 Richland Street, Columbia, South Carolina, on the 28th day of November, 2023 before Elizabeth L. Holt, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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EXHIBITS

(Plaintiff's Exhibits 1 and 2 were marked prior to the deposition. Defendant's Exhibit 1 was marked at the conclusion of the deposition. Exhibits are referenced as follows:)

Plaintiff's Exhibit Number 1	10, 21
(Notes by Dan Goldberg)	
Plaintiff's Exhibit Number 2	11, 19, 32
(Investigative notes by Investigator Simpson)	
Defendant's Exhibit Number 1	48
(Hotel surveillance footage)	



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1 Q: D you have an opinion about his abilities as a
2 solicitor in your office?

3 A: Very confident.

4 Q: When a solicitor receives a call from a police
5 officer looking for probable cause, do they ask
6 questions, typically?

7 A: Typically.

8 Q: And if those conversations need to have ano- --
9 another solicitor brought in, let's say someone
10 who is a more senior solicitor such as
11 yourself, do you sometimes get that phone call?

12 A: Sometimes.

13 Q: You did not get that phone call as it relates
14 to this case?

15 A: Not that I recall.

16 Q: And you've reviewed the case jacket and your
17 case file completely before today?

18 A: Yes.

19 Q: And Lamar Fyall was the assistant solicitor
20 that was called for the probable cause
21 discussion, is that your recollection from your
22 file?

23 A: I did not recall that. Doesn't -- I -- I don't
24 disagree, but I -- I did not recall that.

25 Q: All right. So I'll represent to you that Lamar



1 was the assistant solicitor that took the
2 probable cause call, if we can call it that,
3 from Investigator Simpson and his superiors
4 around the time that they responded to the
5 call, okay?

6 A: Okay.

7 Q: When you've reviewed the file, they did not
8 have the benefit of the tox screen at the time
9 that they issued the warrant, is that your
10 understanding?

11 A: That's my understanding.

12 Q: Okay. And absent the tox screen and Dr.
13 Durso's completed autopsy, do you agree that
14 there was probable cause for the warrant as
15 Lamar recommended at that time?

16 A: Can you state that again?

17 Q: Sure. Because there was no tox screen, and Dr.
18 Durso's autopsy was not complete, the solicitor
19 at the time, Lamar, had to go on the
20 information that they had during the probable
21 cause call. Is that your understanding?

22 A: Correct.

23 Q: And generally speaking, you are having a
24 conversation with an officer who's either on-
25 scene or in the middle of an investigation and



1 they're relaying to you everything that they
2 have at the time, right?

3 A: I wouldn't say that they're relaying
4 everything. They're relaying what they think
5 is relevant to the conversation.

6 Q: That's fair. And they're answering any
7 questions that the solicitor may present to
8 them?

9 A: Correct.

10 Q: Okay. But, if there is enough information for
11 probable cause, the solicitor makes a
12 recommendation for a warrant, is that right?

13 A: The solicitor, we -- they -- the solicitor can
14 tell them if they feel it appropriate that in
15 their legal opinion they think there is enough
16 ---

17 Q: Okay.

18 A: --- probable cause for arrest.

19 Q: All right. Do you agree that there was enough
20 probable cause for a warrant for murder at the
21 time that Lamar took this call?

22 A: The -- the issue that I have in answering that
23 is I don't know what exactly they told him.

24 Q: I understand. In your review of the file, your
25 decision not to prosecute was based on the



1 results of the tox screen, is that right?

2 A: My decision not to prosecute was based on the

3 complete file, which inc- -- would include the

4 final autopsy report as well as the toxicology

5 screen.

6 Q: And the toxicology screen -- and -- is it your

7 understanding that the toxicology screen formed

8 the basis for the determination by Dr. Durso

9 that he died due to excited delirium?

10 A: My understanding is that was a contributing

11 factor to that, yes.

12 Q: All right. And based on your review of the

13 file, did you discuss charging Mr. Green with

14 anything else with Investigator Simpson?

15 A: Investigator Simpson would've raised the

16 possibility at some point in our conversation

17 of whether or not there should be a charge of

18 involuntary manslaughter.

19 Q: Okay. And you did not want to pursue

20 involuntary manslaughter?

21 A: That's correct.

22 Q: And that decision was also based on Dr. Durso's

23 completed autopsy, which included the

24 toxicology screen?

25 A: That would be based upon the complete file



1 including ---

2 Q: Yes.

3 A: --- that, yes.

4 Q: Okay. Fair enough. Did you ever review
5 surveillance footage?

6 A: Yes.

7 Q: In the surveillance footage, did you ever
8 witness any other crimes by Mr. Green?

9 A: Not that I recall.

10 Q: Did you observe Mr. Green throw Dara Washington
11 into a wall?

12 A: I recall seeing a video in which Mr. Washington
13 came out of a hotel room and made contact with
14 a wall. The video does not show what occurs on
15 the inside of the room, that I recall.

16 Q: If I showed you that video, would you recognize
17 it?

18 A: Sure.

19 **MS. LAFAVE:** Give me just a second. Let's take a
20 break, 'cause I have to find it.

21 **(A break was taken from 10:54 a.m. to 11:13 a.m.)**

22 **MS. LAFAVE:** Okay. All right. Back on the record.
23 **(Defendant's Exhibit Number 1 was referenced at this**
24 **time.)**

25 Q: Mr. Goldberg, I'm showing you what's marked as



1 Defendant's Exhibit Number 1. This is at
2 approximately fourteen and a half minutes into
3 the surveillance. Do you recognize this as the
4 surveillance footage from your case file?

5 (Video plays.)

6 A: Yes.

7 Q: And did you recognize the guy in the orange
8 shirt go into the room there just now? Do you
9 want me to replay it?

10 A: Sure.

11 Q: I'll represent to you that the guy in the
12 orange shirt and hat is Mr. Green, okay?

13 A: Okay.

14 Q: Can you see Mr. Green leaned up against the
15 left-hand wall?

16 A: Yes.

17 Q: What does he appear to be doing, to you?

18 A: Talking or ... Well, now he goes into the room
19 in a hurried manner.

20 Q: What did you see now? It's 15:06.

21 A: I see him shove, or push, or throw, however you
22 want to describe it, Mr. Washington out of the
23 room.

24 Q: And just based on your experience as a
25 prosecutor, what you've seen on this video,



1 would that be classified as a potential assault
2 and battery?

3 A: It's possible.

4 Q: If Mr. Green had admitted to having scales that
5 are commonly used to weigh drugs in that hotel
6 room, would that also be a crime in South
7 Carolina?

8 A: Scales?

9 Q: Scales.

10 A: I don't think so. I think possession of scales
11 alone is not enough, I don't think.

12 Q: What about scales plus an illegal substance in
13 the room?

14 A: If he had an illegal substance on his person,
15 then yeah, that would be a violation of law.

16 Q: If he had an illegal substance in the room and
17 stated that it was his property that was in the
18 room, would that also be considered -- plus the
19 scales -- a potential crime in South Carolina?

20 A: Potentially.

21 Q: If Mr. Green was screaming and making a lot of
22 noise at night, disturbing other people, is
23 that also a crime in South Carolina?

24 A: Potentially.

25 Q: Potentially disturbing the peace?



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A: Potentially.

Q: Did you discuss other than murder or involuntary manslaughter with Investigator Simpson?

A: Not that I recall.

Q: Okay. Do you have an opinion as you sit here today, based on your review, about whether any of those other crimes could've been charged?

A: It's possible, depending upon a review of all the facts surrounding the -- those potential charges, I suppose.

Q: When you get a call from an officer on-scene that's wanting to get a recommendation from you on probable cause and you recommend a warrant for murder, is that recommendation usually followed?

A: If we offer our legal opinion, stating that in our legal opinion we believe there's probable cause for an arrest, it is usually followed and there's usually an arrest.

Q: Okay. Have you personally ever had circumstance where you made a recommendation for an arrest and it was not done?

A: I can think of a few, here or there, but not -- not -- it's the exception to the rule.

1 Q: Okay. Would Lamar be the best person who took
2 the call from the officer on-scene to have a
3 determination on probable cause from your
4 office?

5 A: What do you mean?

6 Q: In other words, would the solicitor who's
7 directly taking the call with the officers and
8 asking them questions be in the best position
9 to say whether probable cause existed at the
10 time for an arrest warrant?

11 A: Most of the time, yes. But there -- there can
12 be some instances when those phone calls
13 require additional consultation between the
14 assistant solicitor that takes the call and
15 other, perhaps, more senior folks just to make
16 sure that they're looking at it the right way,
17 or asking all the right questions, or gotten
18 all of the relevant information they need. So
19 that -- that can happen, but it doesn't always.

20 Q: All right. And do your assistant solicitors
21 know that they have the ability to do that if
22 they feel it's necessary?

23 A: To call someone else?

24 Q: Yes.

25 A: Yes, they do.



1 Q: In your experience, about how long does it take
2 for a toxicology screen to come back?

3 A: I think within about a week.

4 Q: Okay.

5 A: If I had to guess.

6 **MS. LAFAVE:** All right, Solicitor Goldberg, I don't
7 have any further questions for you. Thank you.
8 Please answer any questions Ms. Pavlicek may
9 have.

10 Off the record, just a minute.

11 (Off the record.)

12 **MR. GOLDBERG - DIRECT EXAMINATION BY MS. PAVLICEK:**

13 Q: All right, Solicitor Goldberg. Good morning,
14 or what is left of it. My questions more so
15 kinda can center on the role of the prosecutor
16 and factors unrelated to probable cause that
17 can go into the decision on whether or not to
18 present an indictment to a grand jury to move
19 forward.

20 How -- to -- to your recollection, at this
21 point in time when the -- the charges were, you
22 know, before you, how would you have applied
23 any sort of obligation to seek justice instead
24 of maybe just a conviction or how -- how does
25 that play into your -- your ultimate decision

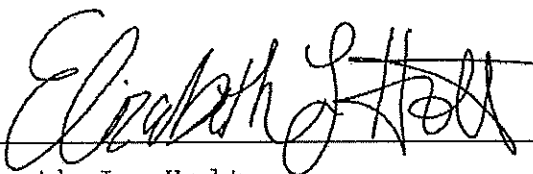


CERTIFICATE

This is to certify that the deposition of DAN GOLDBERG, consisting of sixty-four (64) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 2, 2024.



Elizabeth L. Holt
Court Reporter

Notary Public for South Carolina
My Commission Expires: September 6, 2033



SHERMAN GREEN V. CITY OF COLUMBIA & GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT GEORGE SIMPSON'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT O – SEARCH WARRANTS

STATE OF SOUTH CAROLINA

Search Warrant # 519-812

County of Richland

ORIGINAL

SEARCH WARRANT

Sheman Antonio Green
Black Male

Date Of Birth [REDACTED]

Case Number 19-35076

Date December 5, 2019

Officer Inv. G. Simpson

Simpson_H_0002

CPD IA Docs (rec'd 12-3-2021)
Page 1 of 175

STATE OF SOUTH CAROLINA

COUNTY OF Richland

SEARCH WARRANT

Form Approved by
U.S. Attorney General
No. 68-17-13-100
March 19, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF City Of Columbia, 811 Washington Street, Columbia, SC 29201

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure
under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Shaman Antonio Green

Black Male

Date Of Birth: [REDACTED]

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize
such property if found:

DESCRIPTION OF PROPERTY

A buccal swab which is collected in a non-invasive manner by swabbing the inside of an individual's mouth with a q-tip. In addition to
the buccal swab the clothing that the suspect is currently wearing, which is a orange in color shirt and black jogging pants.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

City Of Columbia, 811 Washington Street, Columbia, SC 29201

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy
of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such
search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person
in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy
shall be attached to a prominent place on such premises.

Columbia

S. C.

Search Warrant # 519-812

December 5,

2019

[Signature]

Signature of Judge

(I.S.)

SCCA 613
(3-78)

Simpson_H_0003

CPD IA Docs (rec'd 12-2-2021)
Page 169 of 175

STATE OF SOUTH CAROLINA

COUNTY OF Richland

AFFIDAVIT

Personally appeared before me, one Inv. G. Simpson who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

A buccal swab which is collected in a non-intrusive manner by swabbing the inside of an individuals mouth with a q-tip. In addition to the buccal swab the clothing that the suspect is currently wearing, which is a orange in color shirt and black jogging pants.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Sherron Antonio Green

Black Male

Date of Birth [REDACTED]

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On December 4, 2019 at approximately 2230 Hours the Columbia Police Department received a call for services to 1601 Sunset Drive, which is in the city limits of Columbia, County of Richland. Once on scene reporting officer found the victim to be lying in the front of the business area unresponsive. The victim was transported to Prisma Health and eventually pronounced deceased. During the course of the investigation it was uncovered that the victim was meeting an individual by the name of Aja Profit at the location for consensual sex. The victim who was using drugs at the time became very paranoid at which time he refused to leave and her attempts to leave were not permitted. Sherron Green who Aja Profit identifies her "cousin" was outside of the room during the initial altercation. After a short period of time Aja Profit was able to open the door to allow Mr. Green to gain entry into the room. Once in the room Mr. Green began to assault the victim by excessively punching him in the body. Once the assault was completed the victim was physically thrown out of the room by Mr. Green where he began to walk away and eventually stumbled to his death. A collection of Sherron Green's DNA and clothing is necessary for additional processing in the case.

Sworn to and Subscribed before me: this 5 day of December, 2019 }
[Signature] (L.S.)
Signature of Judge

Search Warrant # 519-812

[Signature]
Affiant

Address 1 Justice Square

Columbia, SC 29201

Phone (803) 545-3500

Simpson_H_0004

519-812
RETURN

I received the attached Search Warrant 12/5 20 19 and have executed it as follows:
On 12/5/19 20 19 at 0815 o'clock A M, I searched
(the person) described in this warrant and (the premises)

I left a copy of the warrant with Suzanna Green
Name of person searched or "at the place of search" with
together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- 1 Buccell Sungl
- 1 Orange shirt
- 1 pair black jogging pants

This inventory was made in the presence of Go Simpson
AND _____

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 5th
day of December 20 19
[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

Search Warrant # 519-811

County of Richland

ORIGINAL

SEARCH WARRANT

Blueish multi color Samsung Phone
Model: SM-A505U

IMEI: 355671103763438

S/N: R17VK372ICLG

Case Number: 19-35076

Date: December 5, 2019

Officer: Inv. G. Simpson

Simpson, H_0006

gpp/ja/Doss_filed:12/22/2021
Page 172 of 176

STATE OF SOUTH CAROLINA

COUNTY OF Richland

SEARCH WARRANT

Form Approved by
S.C. Attorney General
September 27, 1990
March 15, 1978

ELECTRONICALLY FILED - 2024 Aug 23 3:15 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005620

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OR Columbia, SC

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Blueish multil color Samsung Phone

Model: SM-A505U

IMBI: 355671103763438

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all data stored on the internal storage of the device, including, but not limited to, word documents, photographs, internet browser history, temporary files, call logs, text messages, multimedia messages, contacts, voice mails and any other data stored on the device. Also any data stored on removable storage devices (such as SD cards) attached to the cellular telephone.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Columbia Municipal Court, 811 Washington Street, Columbia, SC 29201

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia

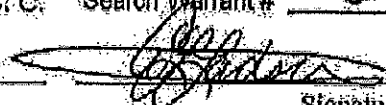
S. C.

Search Warrant #

519-811

December 5,

20 19



(L.S.)

Signature of Judge

SCCA/513
(3-78)

Simpson_H_0007

CPD IA Docs (rev'd 12-2-2021)
Page 173 of 175

STATE OF SOUTH CAROLINA

COUNTY OF Richland

AFFIDAVIT

I, Personally appeared before me, one Inv. G. Simpson
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all data stored on the internal storage of the device, including, but not limited to, word documents, photographs, internet
browser history, temporary files, call logs, text messages, multimedia messages, contacts, voice mails and any other data stored on the
device. Also any data stored on removable storage devices (such as SD cards) attached to the cellular telephone.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Bluish multi color Samsung Phone

Model: SM-A505U

IMEI: 355671103763438

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On December 4, 2019 at approximately 2230 Hours the Columbia Police Department received a call for service to 1601 Sunset Drive, which is in the
city limits of Columbia, County of Richland. Once on scene reporting officer found the victim to be lying in the front of the business area
unresponsive. The victim was transported to Prisma health and eventually pronounced deceased. During the course of the investigation it was
uncovered that the victim was meeting an individual by the name of Aja Profit at the location for consensual sex. The victim who was using drugs at
the time became very paranoid at which time he refused to leave and her attempts to leave were not permitted. Sherman Green who Aja Profit
identifies as her "cousin" was outside of the room during the altercation. After a short period of time Aja Profit was able to open the door to allow Mr.
Green to gain entry into the room. Once in the room Mr. Green began to assault the victim by excessively punching him in the body. Once the assault
was completed the victim was physically thrown out of the room by Mr. Green where he began to walk away and eventually stumbled to his death. A
search of the victims phone will aide in the investigation by helping determine the context of the victims contact with the suspect.

Sworn to and Subscribed before me
this 5th day of December, 20 19
[Signature] (L.S.)
Signature of Judge

Search Warrant # 519-811

[Signature]
Affiant

Address 1 Justice Square
Columbia, SC 29201

Phone Simpson_H_0008

CPD JA Docs (recd 12/2/2021)
Page 174 of 175

RETURN

I received the attached Search Warrant 519-818 20 19, and have executed it as follows:
On 12-5 20 19 at 12:25 o'clock A M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Reynolds
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- (1) Brown wallet under vest on chair 12:27 AM
 - (1) Black cell phone with charger (fox) on chair 12:28 AM
 - (1) Black cell phone (Samsung) on floor 12:29 AM
 - (1) Black wallet keys on key ring & Blue lighter on floor 12:30 AM
 - Red-Blue shorts, Gray underwear, white T-shirt & Gray plaid shirt
 - Gray sweat pants, Blue Black Flip Flop on floor 12:31 AM
 - (1) White towel with blood on floor behind door 12:32 AM
 - (1) Crack pipe on floor behind door 12:33 AM
- Nothing follows

This inventory was made in the presence of DC Versaw
AND CAF Schmitt

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 5
day of December 20 19

[Signature]
Signature of Judge

(L.S.)

[Signature] [Signature]

(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Sherman Green,

Plaintiff,

vs.

City of Columbia & George Simpson,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO: 2021-CP-40-05620

MEMORANDUM IN OPPOSITION TO
GEORGE SIMPSON AND CITY OF
COLUMBIA’S MOTIONS FOR
SUMMARY JUDGMENT

FACTS

1. Pre-Warrant Detention

i. George Simpson

On October 4, 2023, Sherman Green (“Plaintiff”), through counsel, conducted the deposition of George Simpson (“Simpson”) regarding his investigation into probable cause against Plaintiff for murder on the evening of December 4, 2019 and Simpson’s application for a warrant for murder the following morning on December 5th, 2019. When Simpson arrived on the scene and after speaking to the other investigators on scene, he was informed that Plaintiff and Ms. Aja Prophet (“Aja”) were witnesses and/or persons of interest related to the death of Dara Washington (“Decedent”) and that Plaintiff had been “detained” for “assaulting the decedent.” Simpson at 21. Simpson was also informed that Decedent had a history of drug problems and had even gone to rehab and swallowed a large amount of cocaine. Simpson at 95. Simpson agreed that he was told on the scene that Plaintiff “told Brewer that he needed to go contact the victim because he was high and just assaulted his cousin.” Simpson at 100. Simpson was also informed that “EMS administered Narcan” and Plaintiff “informed [] responding officer, that his cousin was Prophet was just assaulted by the victim and he got him out of the room. The victim was high on crack.” Simpson at 102, 104. Simpson was further informed that “[Decedent] had taken crack and believes

that is why he's acting out. She states that [Prophet] started yelling for help. And there was a 911 call placed by a third party named Jessica, who states that she heard a woman yelling for help on the bottom floor. Simpson at 104. Simpson was also informed that Plaintiff "observed the [Decedent] through the window naked and yelling that people were after him. And going down about four more sentences, Ms. Prophet had blood on her face from where the victim had attacked her." Simpson at 106.

Simpson next reviewed the hotel closed circuit video footage ("Video") of the incident as it occurred from just outside Plaintiff and Prophet's hotel room in which they resided. Simpson at 23, 136. Plaintiff and Prophet were then transported into Simpson's custody for interrogation where Plaintiff was currently being "held without an arrest warrant" and "not free to go" for approximately six (6) hours. Simpson at 45-46, 148, 157. Simpson conducted Plaintiff's interrogation and other officers conducted Prophet's, however, "Investigator Montgomery and Investigator Davidson gave [Simpson] a full list of everything that they spoke about" with Prophet. *Id.* During Simpson's interview of Plaintiff, "[Plaintiff] stated that he assaulted the victim because he observed the victim physically assaulting a witness who was also inside the room, Ms. Aja Prophet, and he felt he needed -- or need to protect her from the victim." Simpson at 88. Plaintiff initially referred to the assault as "tussling" and when Simpson was asked "tussling indicates a physical altercation, doesn't it? A: Yes." Simpson at 156. Plaintiff did "admit that to me [at] the very tail end of the interview, then he finally told me that he punched him." Simpson at 91. Simpson did confirm that when he's "telling him that you have no clue how he died, and we talked about this. You don't want to -- you want to be straight with him, right? A: Yes. Q: Okay. So, is that statement true at the time, you have no clue why he died? A: (Nods head.) Yes." Simpson at 169. "I didn't have any knowledge as far as what caused the death. I just knew that he had been

assaulted before dying. And also that he had consumed drugs before dying.” *Id.* Simpson, otherwise agreed, that if Plaintiff had not caused Decedent’s death, he would have issued a magistrate charge against Plaintiff. Simpson at 172. Simpson also agreed “that if you're acting lawfully and defending yourself, that you shouldn't be charged or arrested” Simpson at 184-185. “Do you know for certain who hit Mr. Washington in the face? A: I do -- I do know for certain that both hit Mr. Washington in the face.” Simpson at 249. Now, Ms. Prophet told you that she drew blood from Mr. Washington, is that right? A: Yes.” Simpson at 250.

In Ms. Prophet’s interview, she explains that Decedant had taken two doses of crack cocaine and “freaked out” while they were in the room. Simpson at 121. “So, there she's trying to express to [Plaintiff] who's outside the room that she's in danger and she needs help. Is that correct? Yes, that's what she mentioned in that interview right there.” Simpson at 126. Ms. Prophet further stated that Decedent was not letting her leave the room and was assaulting her. Simpson at 127. Simpson elaborated that “she started attacking him and using her hands to punch him in the face and to get him to open up the door. but he still was pushing her off and wouldn't let her out . . . she was mentioning that to Mr. Green, who was outside of the room trying to get him to help her to get out of the room.” Simpson 128-129.¹ Plaintiff eventually gained entry into the room and engaged Decedent as “he's not hitting him to cause him to bleed and he's hitting him like a woman.” Simpson at 140. With the exception of the late admission from Plaintiff regarding punching Decedent, Simpson found Plaintiff’s statements truthful and/or corroborated. Simpson at 91-92.

¹ Simpson expressed that “[Decedent] is not committing a crime because he's afraid Mr. Green is coming to hurt him? A: Not under this context it would not be kidnaping.”

Simpson and his supervisor, Sgt. Aurthur Thomas (“Thomas”), then both called Lamar Fyall (“Fyall”) on speaker phone, the on-duty Fifth Circuit Solicitor, to discuss whether Fyall believed Simpson had probable cause to charge Plaintiff with murder. Simpson and Thomas spoke to Fyall. Simpson at 31-33. Simpson initially averred in his deposition that he conveyed to Fyall “exactly what’s stated in the arrest warrant, that would have been the items of information that we had available to us that would have been relayed to him to ask him if that was sufficient for probable cause” for murder only (“Warrant”).² Simpson at 34. The Warrant’s narrative recited:

On 12/4/2019 at 1601 Sunset Dr. located within the city limits of Columbia, county of Richland, the def. did act **with malice** aforethought after escalating a verbal confrontation with the victim which turned physical **without being provoked** to do so by striking the victim several times which his hands before **having to be pulled away** from the victim by a witness to the incident. The def. then proceeded to grab the victim who he then threw out of the room at the location which caused the victim’s body to strike a wall and fall down after being assaulted. The victim then ran away from the def. before collapsing a short distance later where he was found by medical personnel who **pronounced him deceased on scene**. The def. knew that police were already on the way and still verbally stated to the victim “you better hope the police get here before I get in there” moments prior to the attack being initiated. The incident was partially captured on surveillance footage. The def. was identified at the scene of the incident.

Warrant. Simpson personally delivered the proposed Warrant to Magistrate Judge Ladson for execution on the morning of December 5, 2019. Simpson at 38. However, Simpson “felt that voluntary manslaughter³ was the more appropriate charge. “[I wasn’t comfortable with it. And [Sergeant Valerie Moore] basically said that she was going to look into it for me.” Simpson at 54-55. Thomas and Simpson both failed to inform Fyall that Simpson was uncomfortable with the

² Further examination of Simpson developed testimony where Simpson claimed “[i]t would have been a full account of everything. A full detailed account of everything that we encountered, everything that we collected, everything that we saw or heard.” Simpson at 61. Additional examination revealed that drug use and possible prostitution were also conveyed to Fyall. Simpson at 64.

³ It should be noted that Simpson alternates between voluntary and involuntary manslaughter as the charge he felt was more appropriate.

murder charge. Simpson at 55. Simpson "didn't personally feel like that in itself was set in stone, malice aforethought." Simpson at 59. Simpson testified, however, that "our policy is set up is we can refuse an order that's not legal or lawful" but that "if [Simpson] had said, no, I'm going to charge involuntary, could you have done that? A: No." Simpson at 65, 67. However, Thomas and Simpson relegated the final determination of whether probable cause existed to Fyall; "[Thomas] told me that once Solicitor Fyall agreed with it, he told me that that was the charge we was going to go with." Simpson at 56, 65. Simpson confirmed that "[n]o, no one, to my knowledge, would have known the case better than me at that time." Simpson at 174. "Do you contend that Sergeant Thomas or Lamar are responsible for your actions? A: No." Simpson at 268. "I mean, I would have to say that the Solicitor's Office made the determination that probable cause existed and if that determination wasn't given from them, we would have never went forward with -- either me or Sergeant Thomas would have ever went forward with the murder one." Simpson at 270. "I'm not saying I didn't agree with murder, but I wanted involuntary manslaughter. I personally felt like it was a better fit. But I understand that probable cause existed for murder." Simpson at 273.

Simpson next proceeded to the autopsy of Decedent being conducted by Amy Durso ("Durso") as the forensic pathologist about 9:00 in the morning of December 5, 2019. Simpson at 47-48. Simpson arrived just as Durso was making her first incisions and informed her that the suspected cause of death was do to "assault" to which he received a look of "surprise[.]" Simpson at 49-50. "[N]o assault was suspected." Simpson at 53. "[W]hen I initially approached [Durso] and asked her if she was seeing anything in reference to an assault, she was not under the impression that an assault happened. And she physically told me that she was under the impression it was just a cocaine overdose." Simpson at 258. Upon review of the preliminary finding from the autopsy, Simpson stated "I mean, I can't -- I can't say whether or not it will be fatal. I mean, on

the surface it wouldn't appear to, but obviously without knowing the full context, it will be hard to say for sure.” Simpson at 204-205. “I couldn't -- I mean, couldn't say that either just looking at this. I'm not a medical professional. Q: So, we agree we need a medical professional to make the cause of death, right? A: Essentially, yes.” Simpson at 215. When asked, “[d]id you ever tell them that, in your own words, in your own memorandum, to the solicitor's office that you were told right after that it's a suspected cocaine overdose?,” to which he answered it would have been with Dan Goldberg after the preliminary hearing. Simpson at 223-224. Simpson still disagrees with Durso's determination that Decedent did not die from traumatic injury. Simpson at 259.

“[F]rom pre arrest warrant until a prelim, whether it's one day plus or minus, you didn't speak to any other prosecutors during that time? A: I'm not sure if I did or not. I don't --- Q: You don't recall? A: Yeah.” Simpson at 70.

ii. Lamar Fyall

On November 28, 2023, Plaintiff conducted the deposition of Lamar Fyall (“Fyall”) for his role in communicating with Simpson and Sgt. Aurthur Thomas, Simpson's supervisor, in the very early hours of December 5, 2024, regarding Simpson's foundation for probable cause for the charge of Murder as against Plaintiff. Fyall provided a narrative of the conversation that morning as follows:

So the victim was dead, the individual in the room was sharing the room with the Defendant, and you know, the -- told that the -- Mr. Green was asked to leave, or somehow left so that the victim and whoever the young woman is in the room could share the room. The -- my understanding is they were having -- having sex in there. According to that person, the young lady, they had sex and then the victim did some crack. Mr. Green comes back, is trying to get in the room, the victim does not want him to come in the room. Eventually, the lady lets Mr. Green in. Mr. Green starts assaulting the victim inside the room -- this is according to the young lady. Outside, you can see the assault continue and Mr. Green strikes the victim several times and then throws him in -- onto a concrete pillar, wall, something. He takes a few more steps and then he dies. EMS is called, he's pronounced dead.

And that's -- that's all I remember him telling me that day.

Fyall at 9-11. Fyall continued to recall, “[t]here was some indication that Mr. Washington was like, un- -- unwilling, or did not want to fight Mr. Green, and that Ms. Prophet tried to intervene or interject or just stop -- stop Mr. Green from continuing.” Fyall at 19. Fyall indicated probable cause for murder existed:

[a]t this point, the indication was the assault, followed by him throwing a person into the pillar, and then the pil- -- person dying right there on-scene approximate to that assault, is that probable cause for murder. And so that's the -- those are the -- that's the reason . . . something, but that the young lady thought the assault was getting serious enough to where she wanted to intervene and say stop.

Fyall at 21, 23. When asked about whether Plaintiff was unprovoked, Fyall explained that Plaintiff “was trying to get into the room because he had, obviously, some animosity toward Mr. Washington for some reason.” Fyall at 25. Fyall did not recall the reason for the animosity between Plaintiff and Decedent. Upon these narratives, Fyall approved a probable cause determination for murder.

To the contrary of the narrative above, Fyall did not recall thinking that the use of cocaine had any bearing on his analysis once speaking with Simpson. Fyall at 30-31. Fyall did not recall Simpson ever expressing to him that he did not believe the charge should be murder but rather involuntary manslaughter and further agreed that Simpson’s belief was relevant to his analysis of probable cause for murder. Fyall at 31-32. Fyall also did not recall Simpson ever informing him that the Decedent was exhibiting drug induced paranoia. Fyall at 32. Fyall also did not recall Simpson ever informing him of the reason Plaintiff was trying to enter the hotel room and Fyall agreed that the Plaintiff’s motivation for entering the hotel room was relevant. Fyall at 34, 37. Fyall was also not informed that Plaintiff’s roommate, Ms. Prophet, was afraid of Decedent; “I don't -- I don't recall being told that.” Fyall at 39. Fyall also did not recall that Ms. Prophet had

been struck by the Decedent such that she was bleeding or that she was being kidnapped. Fyall at 41. "All I remember is there was some conversation about something going on between them in the room, and Mr. Green wanting to get in." Fyall at 45. Fyall also was not aware that Ms. Prophet had described Plaintiff altercation with Decedent as hitting him like a woman. Fyall at 54. "[I]f she said in the video interview with Investigator Simpson he was being hit like a girl and that's all she said about it, then that would be important." Fyall at 55. When asked if "Investigator Simpson ever convey to [Fyall] that he had no idea what the cause of death was on the morning of December 5th," Fyall answered "[n]o. I don't think so. I would remember that." Fyall at 56-57. When asked if Fyall was ever informed that Narcan was administered to the Decedent at the scene, Fyall replied, "I don't think so. I don't -- I just don't recall that." Fyall at 63. Finally, when asked by Simpson's counsel if "when you are making a -- an assessment of a case on whether there's probable cause, you're not assessing whether someone might have a legal defense to that charge, are you?" Fyall replied, "Sometimes, yes." Fyall at 68.

iii. Arthur Thomas' Deposition Remains Outstanding

To the extent Defendants move for summary judgment on any issue which may be affected by the outcome of the deposition of Sgt. Arthur Thomas, Plaintiff respectfully objects and submits this motion should be denied and/or continued until such time as the deposition may be conducted. Summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a "fishing expedition.""*Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

2. Post-Warrant & Preliminary Hearing Dismissal

i. Dan Goldberg

On November 28, 2023, Plaintiff conducted the deposition of Dan Goldberg (“Goldberg”), Fifth Circuit Assistant Deputy Solicitor, regarding his recollection of the prosecution of Plaintiff as the solicitor assigned to Plaintiff’s case. Initially, Goldberg was unable to recall any communications between himself and Simpson following his assignment to Plaintiff’s case until it’s ultimate dismissal for lack of probable cause on February 12, 2020. Goldberg at 12-13. On May 18, 2020, Goldberg spoke with Amy Durso (“Durso”), the forensic pathologist solely responsible for Decedent’s cause of death, to discuss her conclusions. He confirmed with Durso that “there is no evidence that he was beaten to death” and that “[i]f he was not high on cocaine, he would've walked away from this altercation; the cocaine is what caused his demise.” Goldberg at 26-27. Goldberg similarly confirmed that Durso said, “this the most unprosecutable case in her career that was actually labeled a homicide.” Goldberg at 27. Goldberg ultimately decided not to revive the action for prosecution. Goldberg at 39. On cross examination by Simpson’s counsel, Goldberg was asked, “In the surveillance footage, did you ever witness any other crimes by Mr. Green?,” to which Goldberg responded, “Not that I recall.” Goldberg at 48.

ii. Amy Durso

On December 12, 2023, Plaintiff conducted the deposition of Dr. Amy Durso (“Durso”), forensic pathologist, regarding her initial examination and autopsy of the Decedent as the sole determiner of the cause of death and her conversations with Simpson on the morning of December 5, 2019, following Plaintiff’s arrest for murder. Durso at 10. When Durso was asked about her preliminary determination of the cause of death on the morning of December 5th, she confirmed that she “was told that there was cocaine involved per the investigators. So --and I didn’t find anything else to explain his death during my autopsy.” Durso at 13. Durso further testified that

toxicology aside, that she could not make a determination as to the cause of death. Durso at 17. Notwithstanding, Durso “ruled out direct blunt force trauma because . . . he had some scratches on him but he [did] not have bleeding in his head, nothing’s -- there’s no fatal -- directly fatal blunt force injuries from the fight.” Durso at 19.

Durso also confirmed that Zachary Jackson and Simpson were in attendance the morning of the autopsy about the time she either initiated, or was conducting the autopsy, and was informed that the Decedent was involved in an altercation. Durso 22-23. Durso noted that information regarding the altercation did not impair her ability to conduct the autopsy, however, did not recall any other conversations regarding the Decedent. Durso at 32, 43. Durso testified that she would not have formed an opinion about the cause of death until February 19th, 2020, and that a contributing factor in the final determination of death for cocaine use, excited delirium⁴, could not and should have been determined during the autopsy. Durso at 33-34.

Next, Durso recalled a conversation with Dan Goldberg on May 18, 2020, where she may have informed him that there was no evidence that the Decedent was beaten to death; a position with which she ultimately agreed. Durso at 39. She further agreed that the cocaine alone could have killed Decedent. Durso at 40.

iii. Preliminary Hearing

On February 12, 2020, at Green’s preliminary hearing (“Hearing”) for murder, Municipal Court Judge Susan Porter (“Porter”) determined the Department lacked probable cause to charge Greene stating, “[t]here’s no evidence in the record, whatsoever, that the assault caused the death.” Preliminary 36.

⁴Dr. Durso noted that excited delirium is rare, a gray area, and not completely understood. Durso at 38-39.

Specifically, Simpson testified as follows:

A: . . . turned physical without being provoked to do so . . .

Q: But you said he was high and paranoid as well.

A: Correct

Q: . . . but when you don't let someone leave that can be kidnapping, right? You agree with that?

A: Yes, I do agree with that.

Q: . . . And I think you've testified that Mr. Green tells you that he sees Ms. Prophet being assaulted by Mr. Washington, that's his statement to you after you come to the scene and investigate, right?

A: Correct.

Q: And you said on direct that the victim got aggressive with her, I mean, those are your exact words, I wrote them down.

A: Correct.

Q: And at some point she actually let's Mr. Green in, right?

A: Correct.

Q: . . . does Sherman Green say to you in your investigation I told her to call police?

A: He did state that he asked a individual to call the police to allow them -- allow him to come inside of the room due that, due to Ms. Prophet being assaulted, he did tell me that.

Q: . . . Did they do any Narcan treatment for this gentleman who's high on drugs?

A: . . . The lab -- the lab results are still pending, but they did -- they did -- yeah, they don't come back that any kind of Narcan or anything was used, but I'm still waiting on the full report to come back.

Q: . . . what was is -- what is the official cause of death?

A: It hasn't been officially term -- determined just yet. . . .

Q: . . . you don't have any preliminary indications from the -- from the pathologist to say this is blunt force trauma which caused bleeding on the brain or exsanguination due to the any-- what is it? I mean, what is it?

A: . . . Coroner Gary Watts mentioned to me was that there was blunt force trauma involved, he did have presence of cocaine metabolites weren't at a level to where they would be fatal.

A: Well what I can say is that those – that assault contributed to the fact that Mr. Washington was pronounced deceased.

Preliminary at 4, 15-17, 20, 22-23.

STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “Material facts are those necessary to establish the elements of a party’s cause of action,” and “a genuine issue of material fact exists if, in viewing the record and all reasonable inferences drawn therefrom in a light most favorable to the non-moving party, a reasonable fact-finder could return a verdict for the non-movant.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 317, 325, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). The moving party bears the burden of proving that no genuine issue as to any material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). In determining whether a genuine issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in the light most favorable to the nonmoving party.

DISCUSSION

1. FEDERAL CLAIMS AGAINST GEORGE SIMPSON

“[T]here are two essential elements which must be proven by plaintiff in order to state a claim in a § 1983 suit. First, the conduct complained of must have been done by some person acting under color of law; and second, such conduct must have subjected the complainant to the deprivation of rights, privileges, or immunities secured to him by the Constitution and the laws of the United States. *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

a. Failure to Investigate

Plaintiff has pleaded a federal claim pursuant to *Sevigny v. Dicksey* alleging Simpson caused Plaintiff's arrest without properly investigating the case regardless of the existence of probable cause. *Sevigny v. Dicksey*, 846 F.2d 953, 11 Fed. R. Serv. 3d 315 (4th Cir. 1988) (holding an officer who neglected to "avail himself of readily available information" which would have exculpated the plaintiff, where the officer "belie[ved] that Sevigny was lying" but "did not questions neighbors who would have confirmed her version of the story," was not entitled to qualified immunity for unlawful arrest). "At all times as provided above, **Simpson acted under color of state law**, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations **and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence**, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, willfully or recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor's Office and/or used excessive force against Plaintiff **in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights**. Plaintiff's Complaint at 6.

"A warrantless arrest made either because of an unreasonable misapprehension of the arrestee's conduct or of the scope of the crime thought to have been committed, or certainly of both in combination, could not be one made on the basis of a reasonably held belief that the arrest was justified." *Sevigny v. Dicksey*, 846 F.2d 953, 956-957 (4th Cir. 1988)

It is evident that had Dicksey made even rudimentary inquiries of neighbors then on the scene, they would have verified Sevigny's assertion that her child, not she, had done the property damage. It is further evident that in his impatience and irritation with Sevigny, Dicksey simply did not bother to do what any police officer acting reasonably in the circumstances would have done to clarify the factual situation. There was no exigency which prevented his doing so, there being no apparent danger that were Sevigny not immediately arrested on some basis, she

would somehow evade prosecution. See supra n. 6. Had Dicksey learned what easily could have been learned, and in common prudence should have been, there is reason to doubt that any arrest would have been made. To the extent, therefore, that Dicksey made his arrest on a misapprehension of the facts confronting him, his misapprehension was not a reasonable one.

Id. at 957.

In the absence of any argument by Simpson tending to resolve any material issue of fact or law to Plaintiff's allegations, supported by the record, that Simpson failed to reasonably investigate the cause of death with Durso, just hours away, before proceeding with charging Plaintiff with murder, Simpson's motion for summary judgment should be denied.

b. Failure to Disclose

Plaintiff has pleaded a federal claim pursuant to *Evans v. Chalmers* for Simpson's failure to disclose to, or withheld from, the Fifth Circuit Solicitor's Office the Coroner's determination that the preliminary cause of death was due to overdose and not the actions of Plaintiff. *Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012). "At all times as provided above, **Simpson acted under color of state law**, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, **willfully or recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor's Office** and/or used excessive force against Plaintiff **in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights**. Plaintiff's Complaint at 6.

"[W]hen . . . a prosecutor retains all discretion to seek an indictment, police officers may be held to have caused the seizure and remain liable to a wrongfully indicted defendant under certain circumstances. In particular, officers may be liable when they have . . . failed to disclose

exculpatory evidence to the prosecutor.” *Evans v. Chalmers*, 703 F.3d 636, 648-649 (4th Cir. 2012).

In the absence of any argument by Simpson tending to resolve any material issue of fact or law to Plaintiff’s allegations, supported by the record, that Simpson failed to reasonably disclose to the Solicitor’s Office that he had no idea what was the cause of death, Simpson’s motion for summary judgment should be denied.

c. Material Omission or Representation in Obtaining Arrest Warrant

Plaintiff has pleaded a federal claim pursuant to *Franks v. Delaware* for Simpson’s failure to inform Magistrate Ladson or, otherwise, withheld from Magistrate Ladson material evidence which would have resulted in rejection of Simpson’s application for Greene’s arrest warrant for murder. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (198). **“At all times as provided above, Simpson acted under color of state law, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, willfully or recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor’s Office and/or used excessive force against Plaintiff in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights. Plaintiff’s Complaint at 6.**

“Obtaining an arrest warrant does not provide per se evidence that the warrant was proper or that the officer was objectively reasonable in believing so.” *Ferrara v. Hunt*, 2010 U.S. Dist. LEXIS 137739, 11, 2010 WL 5479655 (4th Cir. 2010) (internal citations & quotation marks omitted). A search warrant obtained upon information obtained with reckless disregard for the

truth, will not justify the existence of a warrant if the affidavit considered without the false or reckless information lacks probable cause. *Franks v. Delaware*, 438 U.S. 154 (1978). To prove a seizure was unreasonable because it followed from a deficient warrant, a plaintiff is required to prove defendants deliberately or with a “reckless disregard for the truth” made material false statements in the affidavit, “or omitted from that affidavit ‘material facts with the intent to make, or with reckless disregard of whether [she] thereby made, the affidavit misleading.’” *Miller v. Prince George’s County, MD*, 475 F.3d 621, 627 (4th Cir. 2007) (citing *United States v. Coakley*, 899 F.2d 297, 300 (4th Cir. 1990)). “[I]n order to violate the Constitution, the false statements or omissions must be ‘material,’ that is, ‘necessary to the [neutral and disinterested magistrate’s] finding of probable cause.” *Id.* at 628 (citing *Franks*, 438 U.S. at 155–56).

The Warrant provides:

On 12/4/2019 at 1601 Sunset Dr. located within the city limits of Columbia, county of Richland, the def. did act **with malice** aforethought after escalating a verbal confrontation with the victim which turned physical **without being provoked** to do so by striking the victim several times which his hands before **having to be pulled away** from the victim by a witness to the incident. The def. then proceeded to grab the victim who he then threw out of the room at the location which caused the victim’s body to strike a wall and fall down after being assaulted. The victim then ran away from the def. before collapsing a short distance later where he was found by medical personnel who **pronounced him deceased on scene**. The def. knew that police were already on the way and still verbally stated to the victim “you better hope the police get here before I get in there” moments prior to the attack being initiated. The incident was partially captured on surveillance footage. The def. was identified at the scene of the incident.

Warrant. The Warrant 1) fails to allege Plaintiff caused Decedent’s death, 2) falsely alleges he did so with malice when Simpson disagreed with that conclusion, 3) falsely asserts Plaintiff acted without being provoked, 4) fails to identify any cause of death, 5) fails to inform Magistrate Ladson of the evidence of drug overdose and use of Narcan on the scene , 6) fails to inform Magistrate Ladson of the kidnapping and assault event between Decedent and Prophet, 7) fails to inform

Magistrate Ladson of the lack of severity in Plaintiff's altercation with Decedent, 8) or that Plaintiff acted within his rights to defend his residence and Prophet from Decedent's drug induce attack and kidnapping.

In addition to the material omissions to Fyall to include, but not exclusively, that Simpson had no idea what the cause of death was and that he supported a charge of manslaughter, Simpson's motion for summary judgment should be denied as to Plaintiff's *Franks v. Delaware* claim.

d. False Arrest

Plaintiff has pleaded a federal claim for false arrest regarding the period of his custodial detention prior to Defendants obtaining an arrest warrant for murder. **"At all times as provided above, Simpson acted under color of state law, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff,** performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, willfully or recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor's Office and/or used excessive force against Plaintiff in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights. Plaintiff's Complaint at 6.

The Fourth Amendment protects individuals from unreasonable searches and seizures by the government and requires warrants be issued only upon a finding of probable cause. U.S. Const. amend. IV. To establish a § 1983 claim for false arrest or imprisonment in violation of the Fourth Amendment, the plaintiff must show the seizure of his person was unreasonable, i.e., he must show she was arrested without probable cause. *See Rogers v. Pendleton*, 249 F.3d 279, 294 (4th Cir. 2001) (stating that claims for false arrest and false imprisonment "are essentially claims alleging

a seizure of the person in violation of the Fourth Amendment”); *see also Brown v. Gilmore*, 278 F.3d 362, 367 (4th Cir. 2002) (stating that to establish an unreasonable seizure under the Fourth Amendment, the plaintiff must show she was arrested without probable cause). Importantly, “a public official cannot be charged with false arrest when he arrests a defendant pursuant to a facially valid warrant.” *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998) (citing *Brooks v. City of Winston-Salem*, 85 F.3d 178, 183 (4th Cir. 1996)); *see also Baker v. McCollan*, 443 U.S. 137, 144-45 (1979) (finding the plaintiff’s false imprisonment claim failed because he was arrested pursuant to a facially valid warrant, which satisfied probable cause). In such a situation, “[a]llegations that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for the period after legal process issued—e.g., post-indictment or arraignment—are considered a § 1983 malicious prosecution claim” rather than a false arrest or imprisonment claim. *Brooks v. City of Winston-Salem*, 85 F.3d 178, 182 (4th Cir. 1996).

As addressed in more detail below at Section “i. Probable Cause,” where there either does not exist probable cause to have arrested Plaintiff or there exists a genuine issue of material fact, Simpson’s motion for summary judgment should be denied.

e. Malicious Prosecution & Alternate Probable Cause

Plaintiff has pleaded a federal claim for malicious prosecution. **“Simpson and/or Department further caused Plaintiff to be seized pursuant to legal process, sufficiently or insufficiently, unsupported by probable cause and that process terminated in Plaintiff’s favor.”** Plaintiff’s Complaint at 7.

“A malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort.” *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012) (quoting *Lambert v. Williams*, 223

F.3d 257, 261 (4th Cir. 2000)) (internal quotation marks omitted). However, the plaintiff need not satisfy the specific elements of a South Carolina state cause of action for malicious prosecution, which, for instance, includes an element of malice. *See Medows v. City of Cayce*, C/A No. 3:07-409-HFFBHH, 2008 WL 2537131, at *3 (D.S.C. June 24, 2008) (citing *Lambert*, 223 F.3d at 261-62 & n.2). Rather, to state a constitutional claim for malicious prosecution, “a plaintiff must allege that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in plaintiff’s favor.” *Evans*, 703 F.3d at 647 (citing *Durham v. Horner*, 690 F.3d 183, 188 (4th Cir. 2012)). The United States Supreme Court also recently clarified that probable cause for some other crime will not vitiate a claim for malicious prosecution for a baseless crime.

Under the Fourth Amendment, a pretrial detention counts as an unreasonable seizure, and so is illegal, unless it is based on probable cause. *See Manuel v. Joliet*, 580 U. S. 357, at 364–369. Even when a detention is justified at the outset, moreover, it may become unreasonably prolonged if the reason for it lapses. *Rodriguez v. United States*, 575 U. S., 348, 354–357. **So if an invalid charge causes a detention to start or continue, then the Fourth Amendment is violated. Bringing the invalid charge alongside a valid one does not categorically preclude this possibility.** As the starkest possible example, consider a person detained on a drug offense supported by probable cause and a gun offense that is not. If the prosecutor drops the gun charge, leaving the person in jail on the drug charge alone, then the baseless charge has caused a constitutional violation by unreasonably extending the detention. **The person should not be categorically barred from bringing a Fourth Amendment malicious-prosecution claim just because the baseless charge was brought along with a good one.**

The same conclusion follows from the common-law principles governing malicious-prosecution suits. This Court has analogized claims like Chiaverini’s to the common-law tort of malicious prosecution, and has explained that the tort can inform courts’ understanding of this type of claim. *Thompson v. Clark*, 596 U. S. 36, 43–44. A plaintiff bringing a common-law malicious-prosecution suit had to show that an official initiated a charge without probable cause. But **he did not have to show that every charge brought against him lacked an adequate basis.** *See, e.g., Barron v. Mason*, 31 Vt. 189, 198 (it was no “defen[s]e that there was probable cause for part of the prosecution”).

These uncontested points suffice to doom the Sixth Circuit’s categorical rule barring a Fourth Amendment malicious-prosecution claim if any charge is valid. **Of course, a Fourth Amendment malicious-prosecution suit depends not just on an unsupported charge, but on that charge’s causing a seizure—like the arrest and three-day detention here.**

Chiaverini v. City of Napoleon, 602 U.S. ___, at 2 (2024) (holding when a government official brings multiple charges, only one of which lacks probable cause, the valid charges do not insulate the official from a Fourth Amendment malicious-prosecution claim relating to the invalid charge).⁵

In South Carolina, the damages stemming from misdemeanor charges possessing probable cause after October of 2010 are limited to thirty (30) days concurrent pre-trial detention where Supreme Court Order 2010-10-28-01 mandates releases after detention in an amount equivalent to the maximum sentence:

IT IS ORDERED that when a defendant charged with a summary level offense(s) is unable to make bond and is detained pretrial for the maximum amount of time the defendant would receive if convicted for the offense(s), the on-call bonding magistrate or municipal court judge shall immediately convert the defendant’s surety bond to a personal recognizance bond and discharge the defendant.

S.C. Supreme Court Order, 2010-10-28-01. Whether applying any of the proximation standards contemplated by the Court in *Chiaverini*, the Plaintiff’s claim for malicious prosecution would survive with only thirty (30) days of the sixty-nine (69) days of incarceration being excluded from the calculation of Plaintiffs damages in the pursuant to the most strict standard. Accordingly, Simpson’s motion for summary judgment should be denied.

⁵ The Court in *Chiaverini* identified three standards for establishing proximate damages in a malicious prosecution case where there may exist probable cause for one or more charges without adoption; 1) an arrest made without probable cause as to one charge is actionable, 2) arrest made where one baseless charge independently caused some of the deprivation, 3) an arrest accompanied by probable cause that a magistrate could, as opposed to would, have authorized is inactionable. The latter being inconsistent with the Court’s determination that the Sixth Circuit’s “categorical rule” bars all.

f. Defenses

i. Probable Cause

The standard for probable cause is objective; it exists when “at the time the arrest occurs, the facts and circumstances within the officer's knowledge would warrant the belief of a prudent person that the arrestee had committed or was committing an offense.” *Barfield v. Kershaw Cnty. Sheriff's Office*, No. 15-1198, 11 (4th Cir. Jan 07, 2016). Probable cause is determined by a “totality-of-the-circumstances” approach. *Illinois v. Gates*, 462 U.S. 213, 230, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). “While probable cause requires more than bare suspicion, it requires less than that evidence necessary to convict.” *United States v. Gray*, 137 F.3d 765, 769 (4th Cir. 1998) (internal quotation marks omitted). “It is an objective standard of probability that reasonable and prudent persons apply in everyday life.” *Id.* A court should only consider the information the officers had at the time they sought the warrant. *Graham v. Gagnon*, 831 F.3d 176, 184 (4th Cir. 2016). Yet the probable-cause inquiry “examine[s] the facts within the knowledge of arresting officers to determine whether they provide a probability on which reasonable and prudent persons would act; we do not examine the subjective beliefs of the arresting officers to determine whether they thought that the facts constituted probable cause.” *Id.* at 185. **“While the existence of probable cause is normally a question for the jury, material fact.”** *Melton v. Dermota*, 940 F.2d 652, fn. 5 (4th Cir. 1991).

A. Death Related Offenses

“‘Murder’ is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10 (2015).” *State v. Campbell*, 28219, Appellate Case 2022-000349, 5 (S.C. Jul 17, 2024). “Voluntary manslaughter is the ‘unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation.’” *State v. Wharton*, 624 S.E.2d 654, 655 (S.C. 2005)

Involuntary manslaughter is defined as (1) the unintentional killing of another without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice but while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Burriss*, 334 S.C. 256, 264-265, 513 S.E.2d 104, 109 (1999). The negligent handling of a loaded gun will support a charge of involuntary manslaughter. *Id.* (citing *State v. White*, 253 S.C. 475, 478-479, 171 S.E.2d 712 (1969)).

State v. Mekler, 664 S.E.2d 477, 379 S.C. 12 (S.C. 2008).

Whether the charge was murder, voluntary or involuntary manslaughter, probable cause for each is baseless and plaintiff's claims survive where "[t]here's no evidence in the record, whatsoever, that the assault caused the death." Preliminary 36.

B. Assault and Battery, Breach of Peace, Public Disorderly Conduct & Defense of Others

"Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense." *State v. Long*, 325 S.C. 59, 64 480 S.E.2d 62 (1997). "[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Mekler*, 626 S.E.2d 890, 368 S.C. 1 (S.C. App. 2005). "A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person . . ." S.C. Code § 16-11-440(C) (emphasis added).

For any of the proposed criminal charges in Simpson's memorandum, Plaintiff's defense of Prophet and/or his residence serves to defeat defendant's probable cause base or, at least, creates a genuine issue which should be addressed by a jury. Additionally, in South Carolina, the damages

stemming from misdemeanor charges possessing probable cause after October of 2010 are limited to thirty (30) days concurrent pre-trial detention where Supreme Court Order 2010-10-28-01 mandates releases after detention in an amount equivalent to the maximum sentence:

IT IS ORDERED that when a defendant charged with a summary level offense(s) is unable to make bond and is detained pretrial for the maximum amount of time the defendant would receive if convicted for the offense(s), the on-call bonding magistrate or municipal court judge shall immediately convert the defendant's surety bond to a personal recognizance bond and discharge the defendant.

S.C. Supreme Court Order, 2010-10-28-01. Whether applying any of the proximation standards contemplated by the Court in *Chiaverini*, the Plaintiff's claim for malicious prosecution would survive with only thirty (30) days of the sixty-nine (69) days of incarceration being excluded from the calculation of Plaintiffs damages in the pursuant to the most strict standard.

C. Obstruction of Justice

Where the information concealed exculpates the individual questioned, the 5th amendment privilege does not bar a misprision charge. *State v. Carson, supra*. **Where, however, the speaker reasonably believes that the information concealed could be used against [him] in a criminal prosecution as an accessory or principal in the underlying felony, then the privilege bars a misprision prosecution.**

State v. Smith, 357 S.C. 182, 186, 592 S.E.2d 302 (S.C. 2004).

Petitioner's belief that revealing all she knew about the crimes could expose her to prosecution as an accessory after the fact or as a principal in the murder and armed robbery of the grocery store proprietor was reasonable. She was therefore entitled to a directed verdict on the misprision charge because her concealment of inculcating information was protected by her privilege against self-incrimination. *State v. Carson, supra*.

State v. Smith, 357 S.C. 182, 187, 592 S.E.2d 302 (S.C. 2004).

Plaintiff initially referred to the assault between him and Decedent as "tussling" and when Simpson was asked "tussling indicates a physical altercation, doesn't it? A: Yes." Simpson at 156. Plaintiff did "admit that to me [at] the very tail end of the interview, then he finally told me that he punched him." Simpson at 91. The hinderance Simpson alleges, Plaintiff's failure to

disclose that he “punched” decedent as opposed to “tussling” with him, creates at best a genuine issue of fact as to whether or not the distinction is an actual lie or if it actually hindered the investigation. In any event, Simpson was not entitled to charge Plaintiff with obstruction of justice for only withholding incriminating evidence during Simpson’s investigation of Plaintiff for murder as provided in *State v. Smith*. Similarly, much like a resisting arrest, “if it were unlawful, [Plaintiff] had a right forcibly to resist arrest,” Simpson could not lawfully assert Plaintiff obstructed the administration of justice when Simpson acted without probable cause in the pre-warrant detention. *Wright v. Bailey*, 544 F.2d 737, 740 (4th Cir. 1976). Administration of injustice would not suffice for probable cause for obstruction of justice.

iii. Qualified Immunity, Advice of Counsel Defense & *Torchinsky v. Siwinski*

A solicitor’s “authorization to apply for a warrant ‘does not automatically cloak [defendant] with the shield of qualified immunity.’” *Shrewsbury v. Williams*, No. 20-1268, 5 (4th Cir. Feb 11, 2021). An advice of counsel defense shields the defendant when he proves:

that he sought advice of counsel with an honest purpose of being informed of the law, that **he made a full, correct and honest disclosure of all material facts known to him** or which he should reasonably have known, and that he acted in good faith guided by the advice given by counsel. **This defense usually presents a jury question** unless reasonable minds cannot differ that advice of counsel has been established.

Id. at 6.

Alternatively, Simpson’s reading of *Torchinsky* that supervisory authorization shields Simpson is similarly incorrect where *Torchinsky* has suffered significant erosion and/or does not factually apply to this action where 1) Simpson’s charge of murder was baseless and/or, 2) the decision to charge murder was ultimately relegated to the Solicitor.

***Torchinsky* is distinguishable because it involved a mistake of fact, i.e., an assault victim's misidentification of his attackers, rather than (as here) a mistake of law.** Although there may have been reason to doubt the validity of the

victim's account, in that he had changed his initial story and was undergoing hospital treatment, the victim's statement was unequivocal and his lucidity was confirmed by the hospital staff. Consequently, it was arguable that probable cause actually existed in *Torchinsky*, and, in fact, the district court so concluded. See *id.* at 261 (“The federal district court reviewed the evidence and determined that summary judgment should be granted **because [the defendant detective] had indeed established probable cause.**”); see also *McKinney v. Richland Cnty. Sheriff's Dep't*, 431 F.3d 415, 418 (4th Cir.2005) (concluding that probable cause justified issuance of arrest warrant based on victim's allegations supported by physical evidence). **Here, by contrast, Officer Bauer's legal conclusion of probable cause was patently deficient.**

A key distinction between *Wadkins* and this case is that the defendant in *Wadkins* **did not have access to exculpatory evidence** (because he had reasonably opted not to pursue it), and, as a result, his actions, taken as a whole, were not rendered unreasonable. Conversely, **Bauer actually discovered information tending to exonerate** Dr. Merchant but nevertheless pursued the charge against her. Moreover, that a magistrate issued an arrest warrant at Bauer's request is not determinative “where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” *Torchinsky*, 942 F.2d at 261 (quoting *Malley v. Briggs*, 475 U.S. 335, 344–45, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)).

Considering the totality of the circumstances, we conclude that **no prudent person would have believed that [Plaintiff] violated the [] Statute. It follows, then, that her arrest lacked probable cause and was unreasonable.**

Merchant v. Bauer, 677 F.3d 656, 664-665 (4th Cir. 2012).

Thomas and Simpson, otherwise, relegated the final determination of whether probable cause existed to Fyall; “[Thomas] told me that once Solicitor Fyall agreed with it, he told me that that was the charge we was going to go with.” Simpson at 56, 65. Simpson confirmed that “[n]o, no one, to my knowledge, would have known the case better than me at that time.” Simpson at 174. “Do you contend that Sergeant Thomas or Lamar are responsible for your actions? A: No.” Simpson at 268. “I mean, I would have to say that the Solicitor's Office made the determination that probable cause existed and if that determination wasn't given from them, we would have never went forward with -- either me or Sergeant Thomas would have ever went forward with the murder one.” Simpson at 270. “I'm not saying I didn't agree with murder, but I wanted involuntary

manslaughter. I personally felt like it was a better fit. But I understand that probable cause existed for murder.” Simpson at 273.

Finally, Simpson should not be shielded from suit where he did not fully and fairly disclose all the material facts to the solicitor. Fyall did not recall thinking that the use of cocaine had any bearing on his analysis once speaking with Simpson. Fyall at 30-31. Fyall did not recall Simpson ever expressing to him that he did not believe the charge should be murder but rather involuntary manslaughter and further agreed that Simpson’s belief was relevant to his analysis of probable cause for murder. Fyall at 31-32. Fyall also did not recall Simpson ever informing him that the Decedent was exhibiting drug induced paranoia. Fyall at 32. Fyall also did not recall Simpson ever informing him of the reason Plaintiff was trying to enter the hotel room and Fyall agreed that the Plaintiff’s motivation for entering the hotel room was relevant. Fyall at 34, 37. Fyall was also not informed that Plaintiff’s roommate, Ms. Prophet, was afraid of Decedent; “I don’t -- I don’t recall being told that.” Fyall at 39. Fyall also did not recall that Ms. Prophet had been struck by the Decedent such that she was bleeding or that she was being kidnapped. Fyall at 41. “All I remember is there was some conversation about something going on between them in the room, and Mr. Green wanting to get in.” Fyall at 45. Fyall also was not aware that Ms. Prophet had described Plaintiff altercation with Decedent as hitting him like a woman. Fyall at 54. “[I]f she said in the video interview with Investigator Simpson he was being hit like a girl and that’s all she said about it, then that would be important.” Fyall at 55. When asked if “Investigator Simpson ever convey to [Fyall] that he had no idea what the cause of death was on the morning of December 5th,” Fyall answered “[n]o. I don’t think so. I would remember that.” Fyall at 56-57. When asked if Fyall was ever informed that Narcan was administered to the Decedent at the scene, Fyall replied, “I don’t think so. I don’t -- I just don’t recall that.” Fyall at 63.

Accordingly, Simpson's motion for summary judgment should be denied.

2. FEDERAL *MONELL* CLAIM AGAINST CITY OF COLUMBIA

"In *Monell v. Dept. of Social Servs. of City of New York*, 436 U.S. 658, 690-91 (1978), the Supreme Court held that municipalities face liability under § 1983 if a municipal policy or custom itself causes a deprivation of constitutional rights."

While municipal "policy" is found most obviously in municipal ordinances, regulations and the like which directly command or authorize constitutional violations, *see, e.g., Monell, id.*, at 661, 694, 98 S.Ct. at 2020, 2037 (official pregnancy leave policy) it may also be found in formal or informal ad hoc "policy" choices or decisions of municipal officials authorized to make and implement municipal policy, *see Pembaur v. City of Cincinnati*, 475 U.S. 469, 106 S.Ct. 1292 1301, 89 L.Ed.2d 452 (1986) (single "policy" decision by county prosecutor).

Spell v. McDaniel, 824 F.2d 1380, 1385-1386 (4th Cir. 1987). Simpson testified that "our policy is set up is we can refuse an order that's not legal or lawful" but that "if [Simpson] had said, no, I'm going to charge involuntary, could you have done that? A: No." Simpson at 65, 67.

Where City of Columbia only argues that Plaintiff's claim for 42 U.S.C. 1983 liability should fail for failure to identify an act of City Counsel, its motion should be denied where the court in *Spell v. McDaniel* establish to the contrary.

3. STATE CLAIMS AGAINST CITY OF COLUMBIA

a. Negligence

"The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C. Code § 15-78-40; *See Wyatt v. Fowler*. 326 S.C. 97, 484 S.E.2d 590 (1997) (holding generally there is no common law duty to act [but]an affirmative legal duty, however, may be created by statute, contract, status, property interest, or some other special

circumstance). “An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Edwards v. Lexington Cty. Sheriff’s Dep’t*, 386 S.C. 285, 688 S.E.2d 125, 128 (S.C. 2010). “A plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law.” *Id.* “[W]hen the duty is founded on the common law, we refer to this as a legal duty arising from ‘special circumstances.’” *Edwards v. Lexington County Sheriff’s Dep’t*, 386 S.C. 285, 688 S.E.2d 125, 128 (S.C. 2010). *See, Crowley v. Spivey*, 285 S.C. 397, 329 S.E.2d 774, 780 (S.C. Ct. App. 1985) (“[O]ne who assumes to act even though under no obligation to do so, may become subject to the duty to act with due care.”). *Jones v. Am. Fid. & Cas. Co.*, 210 S.C. 470, 43 S.E.2d 355, 359 (S.C. 1947); *see also Best v. Duke Univ.*, 337 N.C. 742, 448 S.E.2d 506, 511 (N.C. 1994) (“In a negligence action, a law enforcement officer is held to the standard of care that a reasonably prudent person would exercise in the discharge of official duties of a like nature under like circumstances.”).

South Carolina does recognize a law enforcement officer is held to the standard of care that a reasonably prudent person would exercise in the discharge of official duties of a like nature under like circumstances when he engages a party. *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) (holding that there, generally, there is no common law duty to act. An affirmative legal duty, however, may be created by statute, contract, status, property interest, or some other special circumstance). “An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Edwards v. Lexington Cty. Sheriff’s Dep’t*, 386 S.C. 285, 688 S.E.2d 125, 128 (S.C. 2010). “A plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law.” *Id.* “[W]hen the duty is founded on the common law, we refer to this as a legal

duty arising from ‘special circumstances.’” *Edwards v. Lexington County Sheriff’s Dep’t*, 386 S.C. 285, 688 S.E.2d 125, 128 (S.C. 2010). See, *Crowley v. Spivey*, 285 S.C. 397, 329 S.E.2d 774, 780 (S.C. Ct. App. 1985) (“[O]ne who assumes to act even though under no obligation to do so, may become subject to the duty to act with due care.”). *Jones v. Am. Fid. & Cas. Co.*, 210 S.C. 470, 43 S.E.2d 355, 359 (S.C. 1947); see also *Best v. Duke Univ.*, 337 N.C. 742, 448 S.E.2d 506, 511 (N.C. 1994) (“In a negligence action, a law enforcement officer is held to the standard of care that a reasonably prudent person would exercise in the discharge of official duties of a like nature under like circumstances.”).

Like private citizens, governmental employees are subject to the common law principles that, while one may not be required to act under the public duty rule, one assuming to act must do so reasonably which includes the duty not to arrest without probable cause. This Court should deny Defendant’s Motion where there exists a genuine issue of material fact evidence whether Officer arrested Plaintiff without probable cause upon a duty to act otherwise in effectuating Plaintiff’s arrest.

b. False Imprisonment

“To establish the tort of false arrest, a party must prove his arrest was unlawful. **If [Plaintiff] had been arrested without a warrant, he would have to prove there was a lack of probable cause for his arrest, a question a jury ordinarily must answer.**” *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523, 530 (S.C. App. 2020); see also, *Payton v. New York*, 445 U.S. 573, 576, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). “Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense.” *State v. Long*, 325 S.C. 59, 64 480 S.E.2d 62 (1997). “[A] person can be acting lawfully, even if he is in

unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.” *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Mekler*, 626 S.E.2d 890, 368 S.C. 1 (S.C. App. 2005). “A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person” S.C. Code § 16-11-440(C) (emphasis added). Further, “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). See *State v. Rash*, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936) (“[The defendant] doesn’t have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.”). This language has been interpreted to mean a defendant does not have to wait until actually fired upon to use force to defend his life. *State v. Nichols*, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997); see also *Starnes*, 340 S.C. at 322, 531 S.E.2d at 913 (holding that once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act). *State v. Harris*, 674 S.E.2d 532, 382 S.C. 107 (S.C. App. 2009).

As addressed in more detail above at Section “i. Probable Cause,” where there either does not exist probable cause to have arrested Plaintiff or there exists a genuine issue of material fact, Simpon’s motion for summary judgment should be denied.

c. Malicious Prosecution

In order to maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Parrott v. Plowden Motor Company*, 246 S.C. 318, 143 S.E.2d 607 (1965).

Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person. Moreover, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. **In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.**

Law v. S.C. Dep't of Corrections, 368 S.C. 424, 437 (2006). "[O]ne need not show actual malice in order to successfully maintain an action for malicious prosecution." *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 855 (finding the circuit court erred in concluding that a cause of action for malicious prosecution is barred by section 15-78-60(17) because of its elements.).

As addressed in more detail above at Section "i. Probable Cause," where there either does not exist probable cause to have arrested Plaintiff or there exists a genuine issue of material fact, Simpson's motion for summary judgment should be denied.

d. Negligent Supervision

An employer is liable under a theory of negligent supervision when an employee:

(1) is upon the premises of the employer, or is using a chattel of the employer, (2) the employer knows or has reason to know that he has the ability to control his

employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control.

Moore by Moore v. Berkeley Cty. Sch. Dist., 486 S.E.2d 9, 12 (S.C. Ct. App. 1997) (citing *Degenhart v. Knights of Columbus*, 420 S.E.2d 495, 496 (S.C. 1992)). **These cases “will ordinarily be determined by the factfinder, and not as a matter of law.”** *Doe v. ATC*, 624 S.E.2d 447, 450 (S.C. Ct. App. 2005); *see also Godfrey v. Iverson*, 559 F.3d 569, 573 (D.C. 2009) (affirming Plaintiff’s verdict for negligent supervision where “the individual with supervisory authority . . . was present when his employee . . . committed the tortious acts”).

As addressed in more detail above at Section “i. Probable Cause,” where Thomas supervised Simpson during the formation of the arrest warrant and there either does not exist probable cause to have arrested Plaintiff or there exists a genuine issue of material fact, Simpon’s motion for summary judgment should be denied.

f. Defenses

i. Probable Cause

“‘Probable cause’ is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.” *Gathers v. Harris Teeter Supermarket*, 282 S.C. 220, 317 S.E.2d 748 (Ct.App.1984). **“[P]robable cause is typically an issue for the jury in a malicious prosecution case”** *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (S.C. App. 2020). **“[W]hen the existence of probable cause depends on the credibility of witnesses, the question of probable cause is for the jury.”** *Still v. K-Mart Corp.*, 865 F.2d 255 (4th Cir. 1988).

ii. Institution or Prosecution of any Judicial or Administrative Proceeding

“Precedent explains ‘one arrested pursuant to a facially valid warrant has no cause of action for false arrest.’ *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 528 (Ct. App. 2020). If the

arrest nevertheless lacked probable cause, the appropriate claim is for malicious prosecution. *Id.*” *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 444 853 S.E.2d 508 (S.C. App. 2020). It has long been the law that one arrested pursuant to a facially valid warrant has no cause of action for false arrest. *Bushardt v. United Inv. Co.*, 121 S.C. 324, 330, 113 S.E. 637, 639 (1922) (“It has been definitely decided in this jurisdiction that where one is ‘properly arrested by lawful authority,’ ‘an action for false imprisonment cannot be maintained against the party causing the arrest.’”). In the event no probable cause existed, the remedy is to sue for malicious prosecution, not false arrest. *See Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996) (“At common law, allegations that a warrantless arrest or imprisonment was not supported by probable cause advanced a claim of false arrest or imprisonment. ... However, allegations that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for the period after legal process issued, are analogous to the common-law tort of malicious prosecution.”); *see also Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998) (accord). *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523, 528 (S.C. App. 2020). To establish a claim for malicious prosecution, a plaintiff must prove the following elements by the greater weight of the evidence: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of the proceedings in plaintiff's favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

As provided above, the courts of this state have never applied the affirmative defense of 15-78-60(23) to claims for malicious prosecution where it requires proof beyond mere “institution” by way of “lack of probable cause.” In the absence of authority to the contrary, City of Columbia’s motion should be denied.

CONCLUSION

Based upon the reasons stated above, Plaintiff respectfully requests this Court deny Simpson and City of Columbia's motions for summary judgment.

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Columbia, South Carolina
August 26, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Sherman Green,

Plaintiff,

vs.

City of Columbia & George Simpson,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO: 2021-CP-40-05620

AMENDED MEMORANDUM IN
OPPOSITION TO GEORGE SIMPSON
AND THE CITY OF COLUMBIA'S
MOTIONS FOR SUMMARY JUDGMENT

FACTS

1. Pre-Warrant Detention

a. George Simpson

On October 4, 2023, Sherman Green (“Plaintiff”), through counsel, conducted the deposition of George Simpson (“Simpson”) regarding his investigation into probable cause against Plaintiff for murder on the evening of December 4, 2019, and Simpson’s application for a warrant for murder the following morning on December 5th, 2019. When Simpson arrived on the scene and after speaking to the other investigators on scene, he was informed that Plaintiff and Ms. Aja Prophet (“Aja”) were witnesses and/or persons of interest related to the death of Dara Washington (“Decedent”) and that Plaintiff had been “detained” for “assaulting the decedent.” Simpson at 21. Simpson was also informed that Decedent had a history of drug problems and had even gone to rehab and swallowed a large amount of cocaine. Simpson at 95. Simpson agreed that he was told on the scene that Plaintiff “told [Officer] Brewer that he needed to go contact the victim because he was high and just assaulted his cousin.” Simpson at 100. Simpson was also informed that “EMS administered Narcan” on Decedent and Plaintiff “informed [] responding officer, that his cousin was Prophet was just assaulted by the victim and he got him out of the room. The victim was high on crack.” Simpson at 102, 104. Simpson was further informed that “[Decedent] had

taken crack and believes that is why he's acting out. She states that [Prophet] started yelling for help. And there was a 911 call placed by a third party named Jessica, who states that she heard a woman yelling for help on the bottom floor.” Simpson at 104. Simpson was also informed that Plaintiff “observed the [Decedent] through the window naked and yelling that people were after him. And going down about four more sentences, Ms. Prophet had blood on her face from where the victim had attacked her.” Simpson at 106.

Simpson next reviewed the hotel closed circuit video footage (“Video”) of the incident as it occurred from just outside Plaintiff and Prophet’s hotel room in which they resided. Simpson at 23, 136. Plaintiff and Prophet were then transported into Simpson’s custody for interrogation where Plaintiff was currently being “held without an arrest warrant” and “not free to go” for approximately six (6) hours. Simpson at 45-46, 148, 157. Simpson conducted Plaintiff’s interrogation and other officers conducted Prophet’s, however, “Investigator Montgomery and Investigator Davidson gave [Simpson] a full list of everything that they spoke about” with Prophet. *Id.* During Simpson’s interview of Plaintiff, “[Plaintiff] stated that he assaulted the victim because he observed the victim physically assaulting a witness who was also inside the room, Ms. Aja Prophet, and he felt he needed -- or need to protect her from the victim.” Simpson at 88. Plaintiff initially referred to the assault as “tussling” and when Simpson was asked “tussling indicates a physical altercation, doesn't it? A: Yes.” Simpson at 156. Plaintiff did “admit that to me [at] the very tail end of the interview, then he finally told me that he punched him.” Simpson at 91. Simpson did confirm that when he’s “telling [Plaintiff] that you have no clue how he died, and we talked about this. You don't want to -- you want to be straight with him, right? A: Yes. Q: Okay. So, is that statement true at the time, you have no clue why he died? A: (Nods head.) Yes.” Simpson at 169. “I didn't have any knowledge as far as what caused the death. I just knew that he

had been assaulted before dying. And also that he had consumed drugs before dying.” *Id.* Simpson, otherwise agreed, that if Plaintiff had not caused Decedent’s death, he would have issued a magistrate charge against Plaintiff. Simpson at 172. Simpson also agreed “that if you're acting lawfully and defending yourself, that you shouldn't be charged or arrested” Simpson at 184-185. “Do you know for certain who hit Mr. Washington in the face? A: I do -- I do know for certain that both hit Mr. Washington in the face.” Simpson at 249. “Now, Ms. Prophet told you that she drew blood from Mr. Washington, is that right? A: Yes.” Simpson at 250.

In Ms. Prophet’s interview, she explains that Decedent had taken two doses of crack cocaine and “freaked out” while they were in the room. Simpson at 121. “So, there she's trying to express to [Plaintiff] who's outside the room that she's in danger and she needs help. Is that correct? Yes, that's what she mentioned in that interview right there.” Simpson at 126. Ms. Prophet further stated that Decedent was not letting her leave the room and was assaulting her. Simpson at 127. Simpson elaborated that “she started attacking him and using her hands to punch him in the face and to get him to open up the door but he still was pushing her off and wouldn't let her out . . . she was mentioning that to Mr. Green, who was outside of the room trying to get him to help her to get out of the room.” Simpson 128-129.¹ Plaintiff eventually gained entry into the room and engaged Decedent such that “he's not hitting him to cause him to bleed and he's hitting him like a woman.” Simpson at 140. With the exception of the late admission from Plaintiff regarding punching as opposed to tussling with Decedent, Simpson found Plaintiff’s statements truthful and/or corroborated. Simpson at 91-92.

¹ Simpson expressed that “[Decedent] is not committing a crime because he's afraid Mr. Green is coming to hurt him? A: Not under this context it would not be kidnaping.”

Simpson and his supervisor, Sgt. Aurthur Thomas (“Thomas”), then both called the on-duty Fifth Circuit Solicitor, Lamar Fyall (“Fyall”), on speaker phone to discuss whether Fyall believed Simpson had probable cause to charge Plaintiff with murder. Simpson at 31-33. Simpson initially averred in his deposition that he conveyed to Fyall “exactly what’s stated in the arrest warrant, that would have been the items of information that we had available to us that would have been relayed to him to ask him if that was sufficient for probable cause” for murder only (“Warrant”).² Simpson at 34. The Warrant’s narrative recited:

On 12/4/2019 at 1601 Sunset Dr. located within the city limits of Columbia, county of Richland, the def. did act **with malice** aforethought after escalating a verbal confrontation with the victim which turned physical **without being provoked** to do so by striking the victim several times which his hands before **having to be pulled away** from the victim by a witness to the incident. The def. then proceeded to grab the victim who he then threw out of the room at the location which caused the victim’s body to strike a wall and fall down after being assaulted. The victim then ran away from the def. before collapsing a short distance later where he was found by medical personnel who **pronounced him deceased on scene**. The def. knew that police were already on the way and still verbally stated to the victim “you better hope the police get here before I get in there” moments prior to the attack being initiated. The incident was partially captured on surveillance footage. The def. was identified at the scene of the incident.

Warrant.³ Simpson personally delivered the proposed Warrant to Magistrate Judge Ladson for execution on the morning of December 5, 2019. Simpson at 38. However, Simpson “felt that voluntary manslaughter⁴” was the more appropriate charge. “[I] wasn’t comfortable with it. And [Sergeant Valerie Moore] basically said that she was going to look into it for me.” Simpson at

² Further examination of Simpson developed testimony where Simpson claimed “[i]t would have been a full account of everything. A full detailed account of everything that we encountered, everything that we collected, everything that we saw or heard.” Simpson at 61. Additional examination revealed that drug use and possible prostitution were also conveyed to Fyall. Simpson at 64.

³ Sgt. Thomas was unable to identify a passage in the warrant that identified the cause of death. Thomas at 61-62.

⁴ It should be noted that Simpson alternates between voluntary and involuntary manslaughter as the charge he felt was more appropriate.

54-55. Thomas and Simpson both failed to inform Fyall that Simpson was uncomfortable with the murder charge. Simpson at 55. Simpson “didn't personally feel like that in itself was set in stone, malice aforethought.” Simpson at 59. Simpson testified, however, that “our policy is set up is we can refuse an order that's not legal or lawful” but that “if [Simpson] had said, no, I'm going to charge involuntary, could you have done that? A: No.” Simpson at 65, 67. However, Simpson once testified that he and Thomas relegated the final determination of whether probable cause existed to Fyall; “[Thomas] told me that once Solicitor Fyall agreed with it, he told me that that was the charge we was going to go with.” Simpson at 56, 65. Simpson confirmed that “[n]o, no one, to my knowledge, would have known the case better than me at that time.” Simpson at 174. “Do you contend that Sergeant Thomas or Lamar are responsible for your actions? A: No.” Simpson at 268. “I mean, I would have to say that the Solicitor's Office made the determination that probable cause existed and if that determination wasn't given from them, we would have never went forward with -- either me or Sergeant Thomas would have ever went forward with the murder one.” Simpson at 270. “I'm not saying I didn't agree with murder, but I wanted involuntary manslaughter. I personally felt like it was a better fit. But I understand that probable cause existed for murder.” Simpson at 273.

Simpson next proceeded to the autopsy of Decedent being conducted by Amy Durso (“Durso”) as the forensic pathologist about 9:00 in the morning of December 5, 2019. Simpson at 47-48. Simpson arrived just as Durso was making her first incisions and informed her that the suspected cause of death was due to “assault” to which he received a look of “surprise[.]” Simpson at 49-50. “[N]o assault was suspected.” Simpson at 53. “[W]hen I initially approached [Durso] and asked her if she was seeing anything in reference to an assault, she was not under the impression that an assault happened. And she physically told me that she was under the impression

it was just a cocaine overdose.” Simpson at 258. Upon review of the preliminary finding from the autopsy, Simpson stated “I mean, I can't -- I can't say whether or not it will be fatal. I mean, on the surface it wouldn't appear to, but obviously without knowing the full context, it will be hard to say for sure.” Simpson at 204-205. “I couldn't -- I mean, couldn't say that either just looking at this. I'm not a medical professional. Q: So, we agree we need a medical professional to make the cause of death, right? A: Essentially, yes.” Simpson at 215. When asked, “[d]id you ever tell them that, in your own words, in your own memorandum, to the solicitor's office that you were told right after that it's a suspected cocaine overdose?,” to which he answered it would have been with Dan Goldberg after the preliminary hearing. Simpson at 223-224. Simpson still disagrees with Durso’s determination that Decedent did not die from traumatic injury. Simpson at 259.

“[F]rom pre arrest warrant until a prelim, whether it's one day plus or minus, you didn't speak to any other prosecutors during that time? A: I'm not sure if I did or not. I don't --- Q: You don't recall? A: Yeah.” Simpson at 70.

b. Lamar Fyall

On November 28, 2023, Plaintiff conducted the deposition of Lamar Fyall (“Fyall”) for his role in communicating with Simpson and Sgt. Aurthur Thomas, Simpson’s supervisor, in the very early hours of December 5, 2024, regarding Simpson’s foundation for probable cause for the charge of Murder as against Plaintiff. Fyall provided a narrative of the conversation that morning as follows:

So the victim was dead, the individual in the room was sharing the room with the Defendant, and you know, the -- told that the -- Mr. Green was asked to leave, or somehow left so that the victim and whoever the young woman is in the room could share the room. The -- my understanding is they were having -- having sex in there. According to that person, the young lady, they had sex and then the victim did some crack. Mr. Green comes back, is trying to get in the room, the victim does not want him to come in the room. Eventually, the lady lets Mr. Green in. Mr. Green starts assaulting the victim inside the room -- this is according to the young lady. Outside,

you can see the assault continue and Mr. Green strikes the victim several times and then throws him in -- onto a concrete pillar, wall, something. He takes a few more steps and then he dies. EMS is called, he's pronounced dead.

And that's -- that's all I remember him telling me that day.

Fyall at 9-11. Fyall continued to recall, “[t]here was some indication that Mr. Washington was like, un- -- unwilling, or did not want to fight Mr. Green, and that Ms. Prophet tried to intervene or interject or just stop -- stop Mr. Green from continuing.” Fyall at 19. Fyall indicated probable cause for murder existed:

[a]t this point, the indication was the assault, followed by him throwing a person into the pillar, and then the pil- -- person dying right there on-scene approximate to that assault, is that probable cause for murder. And so that's the -- those are the -- that's the reason . . . something, but that the young lady thought the assault was getting serious enough to where she wanted to intervene and say stop.

Fyall at 21, 23. When asked about whether Plaintiff was unprovoked, Fyall explained that Plaintiff “was trying to get into the room because he had, obviously, some animosity toward Mr. Washington for some reason.” Fyall at 25. Fyall did not recall the reason for the animosity between Plaintiff and Decedent. Upon these narratives, Fyall approved a probable cause determination for murder.

To the contrary of the narrative above, Fyall did not recall thinking that the use of cocaine had any bearing on his analysis once speaking with Simpson. Fyall at 30-31. Fyall did not recall Simpson ever expressing to him that he did not believe the charge should be murder but rather involuntary manslaughter and further agreed that Simpson’s belief was relevant to his analysis of probable cause for murder. Fyall at 31-32. Fyall also did not recall Simpson ever informing him that the Decedent was exhibiting drug induced paranoia. Fyall at 32. Fyall also did not recall Simpson ever informing him of the reason Plaintiff was trying to enter the hotel room and Fyall agreed that the Plaintiff’s motivation for entering the hotel room was relevant. Fyall at 34, 37.

Fyall was also not informed that Plaintiff's roommate, Ms. Prophet, was afraid of Decedent; "I don't -- I don't recall being told that." Fyall at 39. Fyall also did not recall that Ms. Prophet had been struck by the Decedent such that she was bleeding or that she was being kidnapped. Fyall at 41. "All I remember is there was some conversation about something going on between them in the room, and Mr. Green wanting to get in." Fyall at 45. Fyall also was not aware that Ms. Prophet had described Plaintiff altercation with Decedent as hitting him like a woman. Fyall at 54. "[I]f she said in the video interview with Investigator Simpson he was being hit like a girl and that's all she said about it, then that would be important." Fyall at 55. When asked if "Investigator Simpson ever convey to [Fyall] that he had no idea what the cause of death was on the morning of December 5th," Fyall answered "[n]o. I don't think so. I would remember that." Fyall at 56-57. When asked if Fyall was ever informed that Narcan was administered to the Decedent at the scene, Fyall replied, "I don't think so. I don't -- I just don't recall that." Fyall at 63. Finally, when asked by Simpson's counsel if "when you are making a -- an assessment of a case on whether there's probable cause, you're not assessing whether someone might have a legal defense to that charge, are you?" Fyall replied, "Sometimes, yes." Fyall at 68.

c. Arthur Thomas

On September 25, 2024, Plaintiff conducted the deposition of Sgt. Arthur Thomas ("Thomas") for his role in communicating with Simpson, as Simpson's supervisor, on or about the very early hours of December 5, 2024, to determine whether Simpson would charge Plaintiff with murder. Thomas identified his role at the City of Columbia as a supervisor at "the homicide division and my role as that supervisor is to manage the investigators, manage their case load, all right, and then ensure that everything's communicated throughout up the chain, down the chain, things of that nature. But the investigator works their cases." Thomas at 11. Thomas specifically

testified in the affirmative when ask if “[t]he investigator has absolute autonomy” and “investigators make the decision whether or not to charge people . . . independent of their sergeants.” Thomas at 11-12. He further explained that solicitors were only employed in an advisory capacity to aid the investigator’s determination of a murder charge, otherwise, investigators were ultimately left to decide whether to seek murder warrants and were left entirely on their own to seek warrants for lesser charges. Thomas at 13-14.⁵

On the evening of December 4th and morning of December 5th, Thomas recalled having a “discussion . . . with the whole team, so I’m sure we did; yeah,” prior to calling Fyall to discuss probable cause for charging Plaintiff with murder. Thomas at 28. During Simpon’s call to Fyall, approximately “three or four” of the “team” was present where Thomas did not recall 1) Decedent’s history of drug use, 2) Decedent consuming two doses of crack, 3) Aja was yelling for help, 4) that Decedent had been naked, paranoid and Aja had blood on her face, 4) Aja was trying to get out of the room, 5) Aja was prevented from leaving the room, 6) Plaintiff was ineffectually hitting decedent, 7) Aja made a post-interview statement conflicting with her previous testimony, or that 8) Narcan was administered to Decedent at the scene. Thomas at 33-39, 46, 47-48, 51. When specifically asked if Simpson ever told Thomas or Fyall “that [Simpson] had no idea what caused [Decedent’s] death? A: No.” Thomas at 39-40. “Do you recall Investigator Simpson telling you before you contacted Lamar Fyall that he felt more comfortable with a manslaughter charge than a murder charge? A: No. We didn't have the conversation.” Thomas at 41-42. Otherwise, Thomas confidently denied Simpson informing him that Simpson preferred to charge Plaintiff with manslaughter. Thomas at 43-44. Thomas similarly denied Simpson ever informing him that

⁵ Thomas similarly testified in the affirmative when asked if “the City of Columbia Police Department handle[d] its own training.” Thomas at 16.

Plaintiff was provoked by Decedent's attack on Aja. Thomas at 45. Finally, Thomas denied exerting, or having any, control over Simpson's final decision whether to pursue charges for murder, manslaughter, or other lesser charges within the magisterial jurisdiction.

If you told Investigator Simpson he should make a certain charge, would he have the ability to reject that information from you and make his own charge? A: Well, I wouldn't tell anyone to make a charge. If we have probable cause for a charge, that's what we'll charge with. And then if there's any decision to do something different, again, that would be something that investigator and solicitor would discuss. But, no, he could make any charge he chose.

Thomas at 50. Notwithstanding, Thomas affirmed that he expected "investigators to take all the facts in their possession into consideration before they make a -- made a criminal charge against somebody." Thomas at 60.

2. Post-Warrant & Preliminary Hearing Dismissal

a. Dan Goldberg

On November 28, 2023, Plaintiff conducted the deposition of Dan Goldberg ("Goldberg"), Fifth Circuit Assistant Deputy Solicitor, regarding his recollection of the prosecution of Plaintiff as the solicitor assigned to Plaintiff's case. Initially, Goldberg was unable to recall any communication between himself and Simpson following his assignment to Plaintiff's case until its ultimate dismissal for lack of probable cause on February 12, 2020. Goldberg at 12-13. On May 18, 2020, Goldberg spoke with Amy Durso ("Durso"), the forensic pathologist solely responsible for the determination of Decedent's cause of death, to discuss her conclusions. He confirmed with Durso that "there is no evidence that he was beaten to death" and that "[i]f he was not high on cocaine, he would've walked away from this altercation; the cocaine is what caused his demise." Goldberg at 26-27. Goldberg similarly confirmed that Durso said, "this the most unprosecutable case in her career that was actually labeled a homicide." Goldberg at 27. Goldberg ultimately decided not to revive the action for prosecution. Goldberg at 39. On cross examination by

Simpson's counsel, Goldberg was asked, "[i]n the surveillance footage, did you ever witness any other crimes by Mr. Green?" to which Goldberg responded, "Not that I recall." Goldberg at 48.

b. Amy Durso

On December 12, 2023, Plaintiff conducted the deposition of Dr. Amy Durso ("Durso"), forensic pathologist, regarding her initial examination and autopsy of the Decedent as the sole determiner of the cause of death and her conversations with Simpson on the morning of December 5, 2019, following Plaintiff's arrest for murder. Durso at 10. When Durso was asked about her preliminary determination of the cause of death on the morning of December 5th, she confirmed that she "was told that there was cocaine involved per the investigators. So --and I didn't find anything else to explain his death during my autopsy." Durso at 13. Durso further testified that toxicology aside, that she could not make a determination as to the cause of death. Durso at 17. Notwithstanding, Durso "ruled out direct blunt force trauma because . . . he had some scratches on him but he [did] not have bleeding in his head, nothing's -- there's no fatal -- directly fatal blunt force injuries from the fight." Durso at 19.

Durso also confirmed that Zachary Jackson and Simpson were in attendance the morning of the autopsy about the time she either initiated, or was conducting the autopsy, and was informed that the Decedent was involved in an altercation. Durso 22-23. Durso noted that information regarding the altercation did not impair her ability to conduct the autopsy, however, did not recall any other conversations regarding the Decedent. Durso at 32, 43. Durso testified that she would not have formed an opinion about the cause of death until February 19th, 2020, and that a contributing factor in the final determination of death for cocaine use, excited delirium⁶, could not and should have been determined during the autopsy. Durso at 33-34.

⁶Dr. Durso noted that excited delirium is rare, a gray area, and not completely understood. Durso at 38-39.

Next, Durso recalled a conversation with Dan Goldberg on May 18, 2020, where she may have informed him that there was no evidence that the Decedent was beaten to death; a position with which she ultimately agreed. Durso at 39. She further agreed that the cocaine alone could have killed Decedent. Durso at 40.

c. Preliminary Hearing

On February 12, 2020, at Green's preliminary hearing ("Hearing") for murder, Municipal Court Judge Susan Porter ("Porter") determined the Department lacked probable cause to charge Greene stating, "[t]here's no evidence in the record, whatsoever, that the assault caused the death."

Preliminary 36. Specifically, Simpson testified as follows:

A: . . . turned physical without being provoked to do so . . .

Q: But you said he was high and paranoid as well.

A: Correct

Q: . . . but when you don't let someone leave that can be kidnapping, right? You agree with that?

A: Yes, I do agree with that.

Q: . . . And I think you've testified that Mr. Green tells you that he sees Ms. Prophet being assaulted by Mr. Washington, that's his statement to you after you come to the scene and investigate, right?

A: Correct.

Q: And you said on direct that the victim got aggressive with her, I mean, those are your exact words, I wrote them down.

A: Correct.

Q: And at some point she actually let's Mr. Green in, right?

A: Correct.

Q: . . . does Sherman Green say to you in your investigation I told her to call police?

A: He did state that he asked a individual to call the police to allow them – allow him to come inside of the room due that, due to Ms. Prophet being assaulted, he did tell me that.

Q: Did they do any Narcan treatment for this gentleman who’s high on drugs?

A: . . . The lab – the lab results are still pending, but they did – they did – yeah, they don’t come back that any kind of Narcan or anything was used, but I’m still waiting on the full report to come back.

Q: . . . what was is – what is the official cause of death?

A: It hasn’t been officially term - -- determined just yet. . . .

Q: . . . you don’t have any preliminary indications from the – from the pathologist to say this is blunt force trauma which caused bleeding on the brain or exsanguination due to the any- -- what is it? I mean, what is it?

A: . . . Coroner Gary Watts mentioned to me was that there was blunt force trauma involved, he did have presence of cocaine metabolites weren’t at a level to where they would be fatal.

A: Well what I can say is that those – that assault contributed to the fact that Mr. Washington was pronounced deceased.

Preliminary at 4, 15-17, 20, 22-23.

STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “Material facts are those necessary to establish the elements of a party’s cause of action,” and “a genuine issue of material fact exists if, in viewing the record and all reasonable inferences drawn therefrom in a light most favorable to the non-moving party, a reasonable fact-finder could return a verdict for the non-movant.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 317, 325, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). The moving party bears the burden of proving that no genuine issue as to any material fact exists. *Celotex Corp. v. Catrett*, 477 U.S.

317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). In determining whether a genuine issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in the light most favorable to the nonmoving party.

DISCUSSION

3. FEDERAL CLAIMS AGAINST GEORGE SIMPSON

“[T]here are two essential elements which must be proven by plaintiff in order to state a claim in a § 1983 suit. First, the conduct complained of must have been done by some person acting under color of law; and second, such conduct must have subjected the complainant to the deprivation of rights, privileges, or immunities secured to him by the Constitution and the laws of the United States. *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

a. Failure to Investigate

Plaintiff has pleaded a federal claim pursuant to *Sevigny v. Dicksey* alleging Simpson caused Plaintiff’s arrest without properly investigating the case regardless of the existence of probable cause. *Sevigny v. Dicksey*, 846 F.2d 953, 11 Fed. R. Serv. 3d 315 (4th Cir. 1988) (holding an officer who neglected to “avail himself of readily available information” which would have exculpated the plaintiff, where the officer “belie[ved] that Sevigny was lying” but “did not questions neighbors who would have confirmed her version of the story,” was not entitled to qualified immunity for unlawful arrest). “At all times as provided above, **Simpson acted under color of state law, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, willfully or recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor’s Office and/or used excessive force against Plaintiff in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights.** Plaintiff’s Complaint at 6.

“A warrantless arrest made either because of an unreasonable misapprehension of the arrestee's conduct or of the scope of the crime thought to have been committed, or certainly of both in combination, could not be one made on the basis of a reasonably held belief that the arrest was justified.” *Sevigny v. Dicksey*, 846 F.2d 953, 956-957 (4th Cir. 1988)

It is evident that had Dicksey made even rudimentary inquiries of neighbors then on the scene, they would have verified Sevigny's assertion that her child, not she, had done the property damage. It is further evident that in his impatience and irritation with Sevigny, Dicksey simply did not bother to do what any police officer acting reasonably in the circumstances would have done to clarify the factual situation. There was no exigency which prevented his doing so, there being no apparent danger that were Sevigny not immediately arrested on some basis, she would somehow evade prosecution. See supra n. 6. Had Dicksey learned what easily could have been learned, and in common prudence should have been, there is reason to doubt that any arrest would have been made. To the extent, therefore, that Dicksey made his arrest on a misapprehension of the facts confronting him, his misapprehension was not a reasonable one.

Id. at 957.

Where Simpson failed to reasonably investigate the cause of death in communicating with Durso, just hours away, before proceeding with charging Plaintiff with murder, Simpson's motion for summary judgment should be denied.

b. Failure to Disclose

Plaintiff has pleaded a federal claim pursuant to *Evans v. Chalmers* for Simpson's failure to disclose to, or withheld from, the Fifth Circuit Solicitor's Office the Coroner's determination that the preliminary cause of death was due to overdose and not the actions of Plaintiff. *Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012). “At all times as provided above, **Simpson acted under color of state law**, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant

for Plaintiff, willfully or recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor's Office and/or used excessive force against Plaintiff in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights. Plaintiff's Complaint at 6.

"[W]hen . . . a prosecutor retains all discretion to seek an indictment, police officers may be held to have caused the seizure and remain liable to a wrongfully indicted defendant under certain circumstances. In particular, officers may be liable when they have . . . failed to disclose exculpatory evidence to the prosecutor." *Evans v. Chalmers*, 703 F.3d 636, 648-649 (4th Cir. 2012).

In the absence of any argument by Simpson tending to resolve any material issue of fact or law to Plaintiff's allegations that Simpson failed to reasonably disclose to the Solicitor's Office that he had no idea what the cause of death was, that Durso's preliminary determinations led to substance abuse overdose, and/or that Plaintiff was acting in defense of his residence and family/friend, Simpson's motion for summary judgment should be denied.

c. Material Omission or Representation in Obtaining Arrest Warrant

Plaintiff has pleaded a federal claim pursuant to *Franks v. Delaware* for Simpson's failure to inform Magistrate Ladson or, otherwise, withheld from Magistrate Ladson material evidence which would have resulted in rejection of Simpson's application for Greene's arrest warrant for murder. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (198). "At all times as provided above, Simpson acted under color of state law, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, willfully or

recklessly withheld or misrepresented evidence to the Fifth Circuit Solicitor's Office and/or used excessive force against Plaintiff **in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights**. Plaintiff's Complaint at 6.

"Obtaining an arrest warrant does not provide per se evidence that the warrant was proper or that the officer was objectively reasonable in believing so." *Ferrara v. Hunt*, 2010 U.S. Dist. LEXIS 137739, 11, 2010 WL 5479655 (4th Cir. 2010) (internal citations & quotation marks omitted). A search warrant obtained upon information obtained with reckless disregard for the truth, will not justify the existence of a warrant if the affidavit considered without the false or reckless information lacks probable cause. *Franks v. Delaware*, 438 U.S. 154 (1978). To prove a seizure was unreasonable because it followed from a deficient warrant, a plaintiff is required to prove defendants deliberately or with a "reckless disregard for the truth" made materially false statements in the affidavit, "or omitted from that affidavit 'material facts with the intent to make, or with reckless disregard of whether [she] thereby made, the affidavit misleading.'" *Miller v. Prince George's County, MD*, 475 F.3d 621, 627 (4th Cir. 2007) (citing *United States v. Coakley*, 899 F.2d 297, 300 (4th Cir. 1990)). "[I]n order to violate the Constitution, the false statements or omissions must be 'material,' that is, 'necessary to the [neutral and disinterested magistrate's] finding of probable cause.'" *Id.* at 628 (citing *Franks*, 438 U.S. at 155–56).

The Warrant provides:

On 12/4/2019 at 1601 Sunset Dr. located within the city limits of Columbia, county of Richland, the def. did act **with malice** aforethought after escalating a verbal confrontation with the victim which turned physical **without being provoked** to do so by striking the victim several times which his hands before **having to be pulled away** from the victim by a witness to the incident. The def. then proceeded to grab the victim who he then threw out of the room at the location which caused the victim's body to strike a wall and fall down after being assaulted. The victim then ran away from the def. before collapsing a short distance later where he was found by medical personnel who **pronounced him deceased on scene**. The def. knew that police were already on the way and still verbally stated to the victim "you

better hope the police get here before I get in there” moments prior to the attack being initiated. The incident was partially captured on surveillance footage. The def. was identified at the scene of the incident.

Warrant. The Warrant 1) fails to allege Plaintiff caused Decedent’s death, 2) falsely alleges he did so with malice when Simpson disagreed with that conclusion, 3) falsely asserts Plaintiff acted without being provoked, 4) fails to identify any cause of death, 5) fails to inform Magistrate Ladson of the evidence of drug overdose and use of Narcan on the scene , 6) fails to inform Magistrate Ladson of the kidnapping and assault event between Decedent and Prophet, 7) fails to inform Magistrate Ladson of the lack of severity in Plaintiff’s altercation with Decedent, 8) or that Plaintiff acted within his rights to defend his residence and Prophet from Decedent’s drug induce attack and kidnapping.

In addition to the material omissions to Fyall to include, but not exclusively, that Simpson had no idea what the cause of death was and that he supported a charge of manslaughter, Simpson’s motion for summary judgment should be denied as to Plaintiff’s *Franks v. Delaware* claim where several material and elemental representations were omitted or misrepresented in Plaintiff’s arrest warrant.

d. False Arrest

Plaintiff has pleaded a federal claim for false arrest regarding the period of his custodial detention prior to Defendants obtaining an arrest warrant for murder. **“At all times as provided above, Simpson acted under color of state law, . . . was at all times lacking . . . sufficient evidence to establish probable cause for homicide . . . or any other criminal violations and Simpson unlawfully arrested Plaintiff, performed a deficient investigation of known exculpatory evidence, made material omission(s) or misrepresentation(s) in the presentation of information to Judge Ladson in obtaining arrest warrant for Plaintiff, willfully or recklessly withheld or**

misrepresented evidence to the Fifth Circuit Solicitor's Office and/or used excessive force against Plaintiff in proximate violation of his First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights. Plaintiff's Complaint at 6.

The Fourth Amendment protects individuals from unreasonable searches and seizures by the government and requires warrants be issued only upon a finding of probable cause. U.S. Const. amend. IV. To establish a § 1983 claim for false arrest or imprisonment in violation of the Fourth Amendment, the plaintiff must show the seizure of his person was unreasonable, i.e., he must show she was arrested without probable cause. *See Rogers v. Pendleton*, 249 F.3d 279, 294 (4th Cir. 2001) (stating that claims for false arrest and false imprisonment “are essentially claims alleging a seizure of the person in violation of the Fourth Amendment”); *see also Brown v. Gilmore*, 278 F.3d 362, 367 (4th Cir. 2002) (stating that to establish an unreasonable seizure under the Fourth Amendment, the plaintiff must show she was arrested without probable cause). Importantly, “a public official cannot be charged with false arrest when he arrests a defendant pursuant to a facially valid warrant.” *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998) (citing *Brooks v. City of Winston-Salem*, 85 F.3d 178, 183 (4th Cir. 1996)); *see also Baker v. McCollan*, 443 U.S. 137, 144-45 (1979) (finding the plaintiff's false imprisonment claim failed because he was arrested pursuant to a facially valid warrant, which satisfied probable cause). In such a situation, “[a]llegations that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for the period after legal process issued—e.g., post-indictment or arraignment—are considered a § 1983 malicious prosecution claim” rather than a false arrest or imprisonment claim. *Brooks v. City of Winston-Salem*, 85 F.3d 178, 182 (4th Cir. 1996).

As addressed in more detail below at **Section f. Simpon's Defenses i. Probable Cause**, where there either does not exist probable cause to have arrested Plaintiff or there exists a genuine

issue of material fact as to the issue of probable cause, Simpson's motion for summary judgment should be denied for causing the detention of Plaintiff for approximately six (6) hours prior to serving on him the arrest warrant for murder and/or for false arrest for approximately sixty-nine (69) days where the warrant is rendered facially deficient.

e. Malicious Prosecution & Alternate Probable Cause

Plaintiff has pleaded a federal claim for malicious prosecution. **"Simpson and/or Department further caused Plaintiff to be seized pursuant to legal process, sufficiently or insufficiently, unsupported by probable cause and that process terminated in Plaintiff's favor."** Plaintiff's Complaint at 7.

"A malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort." *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012) (quoting *Lambert v. Williams*, 223 F.3d 257, 261 (4th Cir. 2000)) (internal quotation marks omitted). However, the plaintiff need not satisfy the specific elements of a South Carolina state cause of action for malicious prosecution, which, for instance, includes an element of malice. *See Medows v. City of Cayce*, C/A No. 3:07-409-HFFBHH, 2008 WL 2537131, at *3 (D.S.C. June 24, 2008) (citing *Lambert*, 223 F.3d at 261-62 & n.2). Rather, to state a constitutional claim for malicious prosecution, "a plaintiff must allege that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in plaintiff's favor." *Evans*, 703 F.3d at 647 (citing *Durham v. Horner*, 690 F.3d 183, 188 (4th Cir. 2012)). The United States Supreme Court also recently clarified that probable cause for some other crime will not vitiate a claim for malicious prosecution for a baseless crime.

Under the Fourth Amendment, a pretrial detention counts as an unreasonable seizure, and so is illegal, unless it is based on probable cause. *See Manuel v. Joliet*,

580 U. S. 357, at 364–369. Even when a detention is justified at the outset, moreover, it may become unreasonably prolonged if the reason for it lapses. *Rodriguez v. United States*, 575 U. S., 348, 354–357. **So if an invalid charge causes a detention to start or continue, then the Fourth Amendment is violated. Bringing the invalid charge alongside a valid one does not categorically preclude this possibility.** As the starkest possible example, consider a person detained on a drug offense supported by probable cause and a gun offense that is not. If the prosecutor drops the gun charge, leaving the person in jail on the drug charge alone, then the baseless charge has caused a constitutional violation by unreasonably extending the detention. **The person should not be categorically barred from bringing a Fourth Amendment malicious-prosecution claim just because the baseless charge was brought along with a good one.**

The same conclusion follows from the common-law principles governing malicious-prosecution suits. This Court has analogized claims like Chiaverini’s to the common-law tort of malicious prosecution, and has explained that the tort can inform courts’ understanding of this type of claim. *Thompson v. Clark*, 596 U. S. 36, 43–44. A plaintiff bringing a common-law malicious-prosecution suit had to show that an official initiated a charge without probable cause. But **he did not have to show that every charge brought against him lacked an adequate basis.** See, e.g., *Barron v. Mason*, 31 Vt. 189, 198 (it was no “defen[s]e that there was probable cause for part of the prosecution”).

These uncontested points suffice to doom the Sixth Circuit’s categorical rule barring a Fourth Amendment malicious-prosecution claim if any charge is valid. **Of course, a Fourth Amendment malicious-prosecution suit depends not just on an unsupported charge, but on that charge’s causing a seizure—like the arrest and three-day detention here.**

Chiaverini v. City of Napoleon, 602 U.S. ___, at 2 (2024) (holding when a government official brings multiple charges, only one of which lacks probable cause, the valid charges do not insulate the official from a Fourth Amendment malicious-prosecution claim relating to the invalid charge).⁷

⁷ The Court in *Chiaverini* identified three standards for establishing proximate damages in a malicious prosecution case where there may exist probable cause for one or more charges without adoption; 1) an arrest made without probable cause as to one charge is actionable, 2) arrest made where one baseless charge independently caused some of the deprivation, 3) an arrest accompanied by probable cause that a magistrate could, as opposed to would, have authorized is inactionable. The latter being inconsistent with the Court’s determination that the Sixth Circuit’s “categorical rule” bars all.

In South Carolina, the damages stemming from misdemeanor charges possessing probable cause after October of 2010 are limited to thirty (30) days concurrent pre-trial detention where Supreme Court Order 2010-10-28-01 mandates releases after detention in an amount equivalent to the maximum sentence:

IT IS ORDERED that when a defendant charged with a summary level offense(s) is unable to make bond and is detained pretrial for the maximum amount of time the defendant would receive if convicted for the offense(s), the on-call bonding magistrate or municipal court judge shall immediately convert the defendant's surety bond to a personal recognizance bond and discharge the defendant.

S.C. Supreme Court Order, 2010-10-28-01.

Whether applying any of the proximation standards contemplated by the Court in *Chiaverini*, the Plaintiff's claim for malicious prosecution would, at minimum, still survive with only thirty (30) days of the sixty-nine (69) days of incarceration being excluded from the calculation of Plaintiffs damages pursuant to the strictest *Chiaverini* standard. Accordingly, Simpson's motion for summary judgment should be denied.

f. Simpson's Defenses

i. Probable Cause

Simpson first argues that Plaintiff's federal claims should be dismissed where Simpson possessed probable cause to arrest for "murder [or] various other criminal charges" pursuant to the alternate charging doctrine and/or the uncharged offense doctrine. Simpson Memo at 1, 14. Plaintiff respectfully submits that 1) the current law on 42 U.S.C. 1983 malicious prosecution no longer accepts the strict application of alternate charging doctrine pursuant to *Chiaverini v. City of Napoleon*, 602 U.S. ___, at 2 (2024) and/or 2) there did not exist probable cause to charge Plaintiff for murder or other criminal charges or, if there was probable cause to charge Plaintiff with a charge other than murder, those other charges would not have harmed the Plaintiff to the same

degree as the improper murder charge and Simpson's motion to dismiss should be denied. In either event, the existence of probable cause is normally a question for the jury" *Melton v. Dermota*, 940 F.2d 652, fn. 5 (4th Cir. 1991).

The standard for probable cause is objective; it exists when "at the time the arrest occurs, the facts and circumstances within the officer's knowledge would warrant the belief of a prudent person that the arrestee had committed or was committing an offense." *Barfield v. Kershaw Cnty. Sheriff's Office*, No. 15-1198, 11 (4th Cir. Jan 07, 2016). Probable cause is determined by a "totality-of-the circumstances" approach. *Illinois v. Gates*, 462 U.S. 213, 230, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). "While probable cause requires more than bare suspicion, it requires less than that evidence necessary to convict." *United States v. Gray*, 137 F.3d 765, 769 (4th Cir. 1998) (internal quotation marks omitted). "It is an objective standard of probability that reasonable and prudent persons apply in everyday life." *Id.* A court should only consider the information the officers had at the time they sought the warrant. *Graham v. Gagnon*, 831 F.3d 176, 184 (4th Cir. 2016). Yet the probable-cause inquiry "examine[s] the facts within the knowledge of arresting officers to determine whether they provide a probability on which reasonable and prudent persons would act; we do not examine the subjective beliefs of the arresting officers to determine whether they thought that the facts constituted probable cause." *Id.* at 185. **"While the existence of probable cause is normally a question for the jury, material fact."** *Melton v. Dermota*, 940 F.2d 652, fn. 5 (4th Cir. 1991).

"Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense." *State v. Long*, 325 S.C. 59, 64 480 S.E.2d 62 (1997). "[A] person can be acting lawfully, even if he is in unlawful possession of a

weapon, if he was entitled to arm himself in self-defense at the time of the shooting.” *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Mekler*, 626 S.E.2d 890, 368 S.C. 1 (S.C. App. 2005). “A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person” S.C. Code § 16-11-440(C) (emphasis added). Further, “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). See *State v. Rash*, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936) (“[The Plaintiff] doesn’t have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.”). This language has been interpreted to mean a defendant does not have to wait until actually fired upon to use force to defend his life. *State v. Nichols*, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997); see also *Starnes*, 340 S.C. at 322, 531 S.E.2d at 913 (holding that once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act). *State v. Harris*, 674 S.E.2d 532, 382 S.C. 107 (S.C. App. 2009).

As provided above in more detail in Section 1. **Pre-Warrant Detention a. George Simpson**, Simpson arrived on the scene before taking Plaintiff into custodial detention and learned from other investigators, and Plaintiff, that Decedent had been “high [on crack] and just assaulted [Plaintiff’s] cousin,” that Plaintiff had removed Decedent from his and Aja’s hotel room after

witnessing Decedent confine and assault Aja in the room and following Aja's calls for help. Simpson next reviewed the hotel's Video recording of Plaintiff trying to get into the hotel room further corroborating Plaintiff's account. In the interrogation room, over the course of six (6) hours, Simpson and investigators questioned Plaintiff and Aja where they learned additional details about how Decedent had used drugs, demonstrated drug-induced paranoia and had kidnapped Aja until Plaintiff finally entered the room and, through force, ejected Decedent. Save for Plaintiff's late admission that he punched decedent, as opposed to "tussled" with him, which Aja described as non-life threatening, Simpson believed Plaintiff's account. Simpson maintains that he "didn't have any knowledge as far as what caused the death" but wanted to charge "involuntary manslaughter." According to Durso, "there is no evidence that he was beaten to death" and that "[i]f he was not high on cocaine, he would've walked away from this altercation; the cocaine is what caused his demise." Goldberg reported that Dr. Durso said, "this the most unprosecutable case in her career that was actually labeled a homicide." Goldberg additionally testified that he did not recall witnessing Plaintiff committing any other crimes. At the preliminary hearing on February 12, 2020, Judge Porter determined there was a lack of probable cause for murder in stating, "[t]here's no evidence in the record, whatsoever, that the assault caused the death."

Where there is at least a genuine issue of material fact whether probable cause existed to charge Plaintiff with murder, or any other criminal charge, during his lawful defense of his residence and of others, Simpson's motion should be denied.

A. Death Related Offenses

"'Murder' is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10 (2015)." *State v. Campbell*, 28219, Appellate Case 2022-000349, 5 (S.C. Jul

17, 2024). “Voluntary manslaughter is the ‘unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation.’” *State v. Wharton*, 624 S.E.2d 654, 655 (S.C. 2005)

Involuntary manslaughter is defined as (1) the unintentional killing of another without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice but while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Burriss*, 334 S.C. 256, 264-265, 513 S.E.2d 104, 109 (1999). The negligent handling of a loaded gun will support a charge of involuntary manslaughter. *Id.* (citing *State v. White*, 253 S.C. 475, 478-479, 171 S.E.2d 712 (1969)).

State v. Mekler, 664 S.E.2d 477, 379 S.C. 12 (S.C. 2008).

Whether the charge was murder, voluntary or involuntary manslaughter, probable cause for each is baseless and plaintiff’s claims survive where “[t]here’s no evidence in the record, whatsoever, that the assault caused the death.” Preliminary 36.

B. Assault and Battery, Breach of Peace, Public Disorderly Conduct & Defense of Others

“Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense.” *State v. Long*, 325 S.C. 59, 64 480 S.E.2d 62 (1997). “[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.” *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Mekler*, 626 S.E.2d 890, 368 S.C. 1 (S.C. App. 2005). “A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person” S.C. Code § 16-11-440(C) (emphasis added).

For any of the proposed criminal charges in Simpson's memorandum, Plaintiff's defense of Prophet and/or his residence serves to defeat defendant's probable cause argument or, at least, creates a genuine issue which should be addressed by a jury. Additionally, in South Carolina, the damages stemming from misdemeanor charges possessing probable cause after October of 2010 are limited to thirty (30) days concurrent pre-trial detention where Supreme Court Order 2010-10-28-01 mandates releases after detention in an amount equivalent to the maximum sentence:

IT IS ORDERED that when a defendant charged with a summary level offense(s) is unable to make bond and is detained pretrial for the maximum amount of time the defendant would receive if convicted for the offense(s), the on-call bonding magistrate or municipal court judge shall immediately convert the defendant's surety bond to a personal recognizance bond and discharge the defendant.

S.C. Supreme Court Order, 2010-10-28-01.

Whether applying any of the proximation standards contemplated by the Court in *Chiaverini*, the Plaintiff's claim for malicious prosecution would survive with only thirty (30) days of the sixty-nine (69) days of incarceration being excluded from the calculation of Plaintiffs damages in the pursuant to the strictest standard.

C. Obstruction of Justice

"At common law it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979)

(defining obstruction of justice). Much like obstruction of justice, misprision of felony is:

[A] criminal neglect either to prevent a felony from being committed or to bring the offender to justice after its commission, but without such previous concert with, or subsequent assistance of, him as will make the concealer an accessory before or after the fact.

State v. Carson, 274 S.C. 316, 262 S.E.2d 918 (1980).

As the Supreme Court of South Carolina acknowledged in *State v. Carson*, "there are situations where the defendant's 5th amendment privilege against self-incrimination will bar a

misprision prosecution. The privilege acts as a bar where the information concealed would incriminate the defendant as an accessory or principal in the underlying felony.” *State v. Smith*, 592 S.E.2d 302, 357 S.C. 182, 186 (2004) (reversing denial of directed verdict on charge of misprision of felony for withholding inculpatory evidence pursuant to the 5th Amendment protections).

Where the information concealed exculpates the individual questioned, the 5th amendment privilege does not bar a misprision charge. *State v. Carson, supra*. **Where, however, the speaker reasonably believes that the information concealed could be used against [him] in a criminal prosecution as an accessory or principal in the underlying felony, then the privilege bars a misprision prosecution.**

State v. Smith, 357 S.C. 182, 186, 592 S.E.2d 302 (S.C. 2004).

Petitioner's belief that revealing all she knew about the crimes could expose her to prosecution as an accessory after the fact or as a principal in the murder and armed robbery of the grocery store proprietor was reasonable. She was therefore entitled to a directed verdict on the misprision charge because her concealment of inculpatory information was protected by her privilege against self-incrimination. *State v. Carson, supra*.

State v. Smith, 357 S.C. 182, 187, 592 S.E.2d 302 (S.C. 2004).

Plaintiff initially referred to the assault between him and Decedent as “tussling” and when Simpson was asked “tussling indicates a physical altercation, doesn't it? A: Yes.” Simpson at 156. Plaintiff did “admit that to me [at] the very tail end of the interview, then he finally told me that he punched him.” Simpson at 91. The obstruction Simpson alleges, Plaintiff's failure to disclose that he “punched” decedent as opposed to “tussling” with him, creates at best a genuine issue of fact as to whether or not the distinction is an actual lie or if it actually hindered the investigation. In any event, Simpson was not entitled to charge Plaintiff with obstruction of justice for only withholding inculpatory evidence during Simpson's investigation of Plaintiff for murder as provided in *State v. Smith*. Similarly, much like a resisting arrest, if Plaintiff's detention was “unlawful, [Plaintiff] had a right forcibly to resist arrest” *Wright v. Bailey*, 544 F.2d 737, 740

(4th Cir. 1976). The holding in *Wright v. Bailey* surely could not stand for the proposition that the unlawfully detained can forcibly resist but cannot withhold inculpatory information. Simpson, otherwise, could not lawfully assert Plaintiff obstructed the administration of justice when Simpson acted without probable cause in the pre-warrant investigation and detention.⁸

Accordingly, Plaintiff respectfully submits that 1) Simpson did not have probable cause to charge Plaintiff with murder or, for elemental or self-defense/defense of other reasons, to charge Plaintiff with any other criminal charges while he was defending his residence and/or his co-resident and friend, and 2) if probable cause existed to charge Plaintiff with any other charge, those charges would not have proximately harmed him to the degree as the improper murder warrant. Simpson's motion to dismiss for the existence of probable cause for murder or other various offenses should be denied.

ii. Qualified Immunity, Advice of Counsel Defense, Arrest Warrant & *Torchinsky v. Siwinski*

Simpson next argues that he is entitled to qualified immunity, notwithstanding that "at the time of this incident, the right to be free from arrest absent probable cause was clearly established,"⁹ pursuant to the holding in *Torchinsky v. Siwinski* and where Simpson sought advice of counsel preceding obtaining a warrant for Plaintiff's arrest for murder. Simpson Memo at 23. Plaintiff respectfully submits Simpson is not entitled to qualified immunity for 1) violating Plaintiff's clearly established right to be free from arrest absent probable cause, and 2) where Simpson did not make a full, correct and honest disclosure of all material facts known to him in seeking legal advice. Simpson's arguments are addressed together below.

⁸ S.C. Code §§ 56-7-10 and 22-3-550 require that a charge of obstruction of justice be issued upon application to a magistrate by way of arrest warrant.

⁹ Simpson admits that the right to be free from arrest absent probable cause was clearly established at the time of Plaintiff's arrest. Simpson Memo at 13.

A solicitor's "authorization to apply for a warrant 'does not automatically cloak [defendant] with the shield of qualified immunity.'" *Shrewsbury v. Williams*, No. 20-1268, 5 (4th Cir. Feb 11, 2021). An advice of counsel defense shields the defendant when he proves:

that he sought advice of counsel with an honest purpose of being informed of the law, that **he made a full, correct and honest disclosure of all material facts known to him** or which he should reasonably have known, and that he acted in good faith guided by the advice given by counsel. **This defense usually presents a jury question** unless reasonable minds cannot differ that advice of counsel has been established.

Id. at 6.

Simpson's reading of *Torchinsky's* holding that supervisory authorization shields Simpson is incorrect where *Torchinsky* has suffered significant erosion and/or does not factually apply to this action where 1) Simpson's charge of murder was without probable cause and/or, 2) the decision to charge murder, if ultimately relegated to the Solicitor, was upon an incomplete representation of the material facts.

***Torchinsky* is distinguishable because it involved a mistake of fact, i.e., an assault victim's misidentification of his attackers, rather than (as here) a mistake of law.** Although there may have been reason to doubt the validity of the victim's account, in that he had changed his initial story and was undergoing hospital treatment, the victim's statement was unequivocal and his lucidity was confirmed by the hospital staff. Consequently, it was arguable that probable cause actually existed in *Torchinsky*, and, in fact, the district court so concluded. *See id.* at 261 ("The federal district court reviewed the evidence and determined that summary judgment should be granted **because [the defendant detective] had indeed established probable cause.**"); *see also McKinney v. Richland Cnty. Sheriff's Dep't*, 431 F.3d 415, 418 (4th Cir.2005) (concluding that probable cause justified issuance of arrest warrant based on victim's allegations supported by physical evidence). **Here, by contrast, Officer Bauer's legal conclusion of probable cause was patently deficient.**

A key distinction between *Wadkins* and this case is that the defendant in *Wadkins* **did not have access to exculpatory evidence** (because he had reasonably opted not to pursue it), and, as a result, his actions, taken as a whole, were not rendered unreasonable. Conversely, **Bauer actually discovered information tending to exonerate** Dr. Merchant but nevertheless pursued the charge against her. Moreover, that a magistrate issued an arrest warrant at Bauer's request is not

determinative “where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” Torchinsky, 942 F.2d at 261 (quoting *Malley v. Briggs*, 475 U.S. 335, 344–45, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)).

Considering the totality of the circumstances, we conclude that **no prudent person would have believed that [Plaintiff] violated the [] Statute. It follows, then, that her arrest lacked probable cause and was unreasonable.**

Merchant v. Bauer, 677 F.3d 656, 664-665 (4th Cir. 2012).

Assistant Solicitor Fyall did not recall thinking that the use of cocaine had any bearing on his analysis once speaking with Simpson regarding the probable cause for murder. Fyall at 30-31. Fyall did not recall Simpson ever expressing to him that he did not believe the charge should be murder but rather involuntary manslaughter and further agreed that Simpson’s belief was relevant to his analysis of probable cause for murder. Fyall at 31-32. Fyall also did not recall Simpson ever informing him that the Decedent was exhibiting drug induced paranoia. Fyall at 32. Fyall also did not recall Simpson ever informing him of the reason Plaintiff was trying to enter the hotel room and Fyall agreed that the Plaintiff’s motivation for entering the hotel room was relevant. Fyall at 34, 37. Fyall was also not informed that Plaintiff’s roommate, Ms. Prophet, was afraid of Decedent; “I don’t -- I don’t recall being told that.” Fyall at 39. Fyall also did not recall that Ms. Prophet had been struck by the Decedent such that she was bleeding or that she was being kidnapped. Fyall at 41. “All I remember is there was some conversation about something going on between them in the room, and Mr. Green wanting to get in.” Fyall at 45. Fyall also was not aware that Ms. Prophet had described Plaintiff altercation with Decedent as hitting him like a woman. Fyall at 54. “[I]f she said in the video interview with Investigator Simpson he was being hit like a girl and that’s all she said about it, then that would be important.” Fyall at 55. When asked if “Investigator Simpson ever convey to [Fyall] that he had no idea what the cause of death was on the morning of December 5th,” Fyall answered “[n]o. I don’t think so. I would remember

that.” Fyall at 56-57. When asked if Fyall was ever informed that Narcan was administered to the Decedent at the scene, Fyall replied, “I don't think so. I don't -- I just don't recall that.” Fyall at 63.

Lastly, Simpson asserts that the finding of probable cause by a neutral and detached magistrate is prime facie evidence of the existence of probable cause. Simpson's argument again must fail where Plaintiff has pleaded both false arrest for Plaintiff's pre-warrant seizure for approximately six (6) hours and malicious prosecution for his post-arrest warrant seizure for approximately sixty-nine (69) days, or in the alternative, false arrest for Simpson's facially invalid arrest warrant resulting in Plaintiff's false arrest for approximately sixty-nine (69) days. Additionally, Judge Porter's determination that “[t]here's no evidence in the record, whatsoever, that the assault caused the death” refutes Simpson's allegation of prima facie probable cause pursuant to the arrest warrant. *Baker v. McCollan*, 443 U.S. 137 (1979), otherwise, appears to have no application in defeating this action where it involved a claim for false imprisonment pursuant to the Fourteenth Amendment for deprivation of liberty without due process of law as opposed to a Fourth Amendment claim for false arrest. “Obtaining an arrest warrant does not provide per se evidence that the warrant was proper or that the officer was objectively reasonable in believing so.” *Ferrara v. Hunt*, 2010 U.S. Dist. LEXIS 137739, 11, 2010 WL 5479655 (4th Cir. 2010) (internal citations & quotation marks omitted).

Accordingly, in the absence of probable cause and where there exists substantial testimony that Simpson did not properly inform Fyall of all the material facts before securing Fyall's advice, Simpson's motion for summary judgment should be denied.

iii. Sgt. Thomas's Misconduct

Finally, Simpson argues that Plaintiff's 42 U.S.C. 1983 claims against him should be dismissed where it was not Simpson's misconduct but the misconduct of his supervisor, Sgt. Thomas, which resulted in Plaintiff's being charged with murder. Simpson Memo at 29. Plaintiff respectfully submits that there is ample evidence that Simpson was solely responsible for Plaintiff's arrest both before obtaining the arrest warrant for murder and after.

Sgt. Thomas denied exerting, or having any, control over Simpson's final decision whether to pursue charges for murder, manslaughter, or other lesser charges within the magisterial jurisdiction.

If you told Investigator Simpson he should make a certain charge, would he have the ability to reject that information from you and make his own charge? A: Well, I wouldn't tell anyone to make a charge. If we have probable cause for a charge, that's what we'll charge with. And then if there's any decision to do something different, again, that would be something that investigator and solicitor would discuss. But, no, he could make any charge he chose.

Thomas at 50. Thomas specifically testified in the affirmative when ask if "[t]he investigator has absolute autonomy" and "investigators make the decision whether or not to charge people . . . independent of their sergeants." Thomas at 11-12.

Simpson's motion should be denied where there exists at least a genuine issue of fact whether he or Sgt. Thomas obtained the arrest warrant without probable cause and where there appears no dispute that Simpson alone effected Plaintiff's pre-arrest warrant detention.

2. SCTCA CLAIMS AGAINST CITY OF COLUMBIA

a. False Imprisonment

The City of Columbia ("City") first argues that Plaintiff's claim for false imprisonment must fail for the existence of "verifiable facts supporting the determination of probable cause . . . [where] any reasonable person would believe the fight caused or hastened [Decedent's] death [and]

... this arrest was pursuant to a facially valid warrant.” City Memo at 10-12. Plaintiff respectfully submits that probable cause is, at least, a question for the jury and that either 1) Plaintiff was unlawfully detained without warrant for approximately six (6) hours prior to issuance of the arrest warrant or 2) the arrest warrant was facially invalid rendering the entire period of incarceration for approximately sixty-nine (69) days one subject to a claim for false imprisonment.

“To establish the tort of false arrest, a party must prove his arrest was unlawful. If [Plaintiff] had been arrested without a warrant, he would have to prove there was a lack of probable cause for his arrest, a question a jury ordinarily must answer.” *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523, 530 (S.C. App. 2020); *see also, Payton v. New York*, 445 U.S. 573, 576, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). As addressed in more detail above at **Section f. Simpson’s Defenses i. Probable Cause**, there either does not exist probable cause to have arrested Plaintiff, especially taking into his right to self-defense, or there exists a genuine issue of material fact as to the issue of probable cause and Simpson’s motion for summary judgment as to Plaintiff’s claim for false imprisonment should be denied. Additionally, Simpson’s motion should be denied where Plaintiff was detained for approximately six (6) hours prior to the issuance of his arrest warrant for murder and/or the arrest warrant for murder was facially deficient as addressed in more detail above at **c. Material Omission or Representation in Obtaining Arrest Warrant** pursuant to Plaintiff’s claims for Simpson’s violation of *Franks v. Delaware*.

b. Malicious Prosecution

The City next argues that Plaintiff’s claim for malicious prosecution must fail for Plaintiff’s inability to “prove each of the required elements by a preponderance of the evidence, including a lack of probable cause [and] . . . malice on the part of the City or any of its employees in obtaining this warrant.” City Memo at 14-15. Plaintiff respectfully submits that probable cause is, at least,

a question for the jury and that a lack of probable cause satisfies the necessary element of malice by inference in a malicious prosecution claim.

In order to maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) **malice** in instituting such proceedings; (5) **lack of probable cause**; and (6) resulting injury or damage. *Parrott v. Plowden Motor Company*, 246 S.C. 318, 143 S.E.2d 607 (1965).

Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person. Moreover, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. **In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.**

Law v. S.C. Dep't of Corrections, 368 S.C. 424, 437 (2006). "[O]ne need not show actual malice in order to successfully maintain an action for malicious prosecution." *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 855 (finding the circuit court erred in concluding that a cause of action for malicious prosecution is barred by section 15-78-60(17) because of its elements.).

As addressed in more detail above at **Section f. Simpon's Defenses i. Probable Cause**, there either does not exist probable cause to have arrested Plaintiff or there exists a genuine issue of material fact as to the issue of probable cause and so the element of "malice" is at issue such that Simpon's motion for summary judgment as to Plaintiff's malicious prosecution claim should be denied.

c. Negligence

The City next argues that Plaintiff's claim for negligence must fail where the City had no "actionable duty" and "[t]here is no cause of action for 'negligent investigation' in South Carolina."¹⁰ City Memo at 20. Plaintiff respectfully submits that a duty of reasonableness exists not to arrest without probable cause and, as established by the 4th Circuit and Sgt. Thomas' testimony, there exist duties to material truthfulness in seeking an arrest warrant, and to investigate and disclose relevant and exonerating evidence throughout the pendency of a criminal action.

"The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C. Code § 15-78-40; *See Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) (holding generally there is no common law duty to act [but] an affirmative legal duty, however, may be created by statute, contract, status, property interest, or some other special circumstance). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Edwards v. Lexington Cty. Sheriff's Dep't*, 386 S.C. 285, 688 S.E.2d 125, 128 (S.C. 2010) (holding the Lexington County Sheriff's Department (Lexington) owed Plaintiff a duty of care because Lexington created a situation in which it was foreseeable that Plaintiff would be harmed). "A plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law." *Id.* "[W]hen the duty is founded on the common law, we refer to this as a legal duty arising from 'special circumstances.'" *Id.*; *See Crowley v. Spivey*, 285 S.C. 397, 329

¹⁰Although disclaiming the existence of an actionable claim for "negligent investigation" in South Carolina, the City cites no authority for this conclusion.

S.E.2d 774, 780 (S.C. Ct. App. 1985) (“[O]ne who assumes to act even though under no obligation to do so, may become subject to the duty to act with due care.”); *see also Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (denying officers motion for judgment on the pleadings where they assumed, but discontinued, care where “under common law, even where there is no duty to act but an act is voluntarily undertaken, the actor assumes the duty to use due care.”); *Trousdell v. Cannon*, 572 S.E.2d 264, 351 S.C. 636 (concluding Public Duty Rule is not implicated in negligence action against sheriff when the duty allegedly breached is a common law duty, such as the one to exercise reasonable care); *see also Best v. Duke Univ.*, 337 N.C. 742, 448 S.E.2d 506, 511 (N.C. 1994) (“In a negligence action, a law enforcement officer is held to the standard of care that a reasonably prudent person would exercise in the discharge of official duties of a like nature under like circumstances.”).

[A] police officer's paramount duty is to protect the public. We acknowledge circumstances exist when it is reasonable for a police officer to adopt a course of conduct which causes a high risk of harm to the public. Nevertheless, such conduct is not justified if the public is subjected to unreasonable risks of injury as the police carry out their duties.

Clarke v. South Carolina Department of Public Safety, 362 S.C. 377, 386, 608 S.E.2d 573 (rejecting officer’s S.C. Code § 15-78-20(4-5)’s affirmative defenses and approving the trial court’s jury charge on the general principles of negligence law in a negligent officer pursuit action).

In this action, Thomas specifically testified that investigators have a “duty to investigate the case . . .” at least until establishing probable cause but to include discovering information that might “exonerate” a defendant. Thomas at 81-83. Thomas further opined that if the cause of death for blunt force trauma had been ruled out, that information would have been relevant and that investigators have a duty to discuss “change[s]” in evidence or “exculpatory” evidence with the solicitor. Thomas at 86-87, 90. In addition to Plaintiff’s argument that probable cause was lacking,

the record provides no such discussions between Simpson and the assigned solicitor; Dan Goldberg.

Like private citizens, governmental employees are subject to the common law principles that, while one may not be required to act under the public duty rule, one assuming to act must do so reasonably which includes the duty not to arrest without probable cause and disclosing “exonerating” evidence to the assigned solicitor. Accordingly, this Court should deny City’s motion to dismiss Plaintiff’s claim for negligence where there exists, at least, a genuine issue of material fact evidence whether Simpson caused Plaintiff’s arrest without probable cause or, as discussed in more detail in **Sections 1.a – 1.c** above, failed to investigate, failed to disclose and/or made material misrepresentation in obtaining Plaintiff’s arrest warrant for murder.

d. City’s Defenses

i. Probable Cause & Uncharged Offenses

To the extent the City argues that probable cause existed for murder or other crimes, please refer to **Section f. Simpon’s Defenses i. Probable Cause**. Additionally, “[p]robable cause’ is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.” *Gathers v. Harris Teeter Supermarket*, 282 S.C. 220, 317 S.E.2d 748 (Ct.App.1984). “[P]robable cause is typically an issue for the jury in a malicious prosecution case” *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (S.C. App. 2020). “[W]hen the existence of probable cause depends on the credibility of witnesses, the question of probable cause is for the jury.” *Still v. K-Mart Corp.*, 865 F.2d 255 (4th Cir. 1988).

**ii. Institution or Prosecution of any Judicial or Administrative Proceeding & Loss
Resulting from Civil Disobedience**

Finally, the City argues that the affirmative defenses created by the South Carolina Tort Claims Act (“SCTCA”) in 1986, namely S.C. Code § 15-78-20(6) and S.C. Code § 15-78-20(23), require dismissal of Plaintiff’s claims based on liabilities for losses from the “institution or prosecution of any judicial or administrative proceeding,” and “civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of manner of police or fire protection,” where the South Carolina tort claim for malicious prosecution includes the element of the “institution or continuation of original judicial proceedings.” City Memo at 18-19. Plaintiff respectfully submits that City’s motion should be denied where the SCTCA does not provide an affirmative to defense to a claim for malicious prosecution which has, otherwise, been repeatedly recognized by the Courts in a SCTCA context and/or a claim for malicious prosecution is distinguishable from the affirmative defense of S.C. Code § 15-78-20(23) where it requires proof of a lack of probable cause in addition to the institution of proceedings. Plaintiff, otherwise, cannot reconcile the City’s purported applicability of S.C. Code § 15-78-20(6) in this action.

The burden of establishing an exception to the waiver of immunity is on the governmental entity asserting the defense. *Niver v. South Carolina Dept. of Hwy. & Pub. Transp.*, 302 S.C. 461, 395 S.E.2d 728 (Ct.App.1990). “Precedent explains ‘one arrested pursuant to a facially valid warrant has no cause of action for false arrest.’ *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 528 (Ct. App. 2020) (declining to address appellant’s argument that the trial court erred in denying the sheriff’s JNOV plaintiff’s malicious prosecution claim upon S.C. Code § 15-78-20(23)). “If the arrest nevertheless lacked probable cause, the appropriate claim is for malicious prosecution.” *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 444 853 S.E.2d 508 (S.C. App. 2020). It has long been the law that one arrested pursuant to a facially valid warrant has no cause

of action for false arrest. *Bushardt v. United Inv. Co.*, 121 S.C. 324, 330, 113 S.E. 637, 639 (1922) (“It has been definitely decided in this jurisdiction that where one is ‘properly arrested by lawful authority,’ ‘an action for false imprisonment cannot be maintained against the party causing the arrest.’”). In the event no probable cause existed, the remedy is to sue for malicious prosecution, not false arrest. *See Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996) (“At common law, allegations that a warrantless arrest or imprisonment was not supported by probable cause advanced a claim of false arrest or imprisonment. ... However, allegations that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for the period after legal process issued, are analogous to the common-law tort of malicious prosecution.”); *see also Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998) (accord). *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523, 528 (S.C. App. 2020). To establish a claim for malicious prosecution, a plaintiff must prove the following elements by the greater weight of the evidence: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of the proceedings in plaintiff's favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

As provided above, the appellate courts of this state have consistently recognized a claim for false arrest for a warrantless arrest without probable cause or a claim for malicious prosecution for arrest upon warrant without probable cause but have, otherwise, not applied the affirmative defense of S.C. Code § 15-78-60(23), or S.C. Code § 15-78-20(6), to claims for malicious prosecution most probably where malicious prosecution requires elemental proof beyond mere “institution” by way of “lack of probable cause.” In the absence of authority to the contrary, City of Columbia’s motion should be denied.

CONCLUSION

Based upon the reasons stated above, Plaintiff respectfully requests this Court deny Simpson and City of Columbia's motions for summary judgment.

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s/ Chris S. Truluck
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Attorney for Petitioners

Columbia, South Carolina
December 5, 2024

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	C/A #: 2021-CP-40-05620
)	
Sherman Green,)	
)	
Plaintiff,)	
)	
v.)	
)	
City of Columbia and)	
George Simpson,)	
)	
Defendants.)	
)	
-----)	

DEPOSITION OF
GEORGE SIMPSON

Wednesday, October 4, 2023
10:05 a.m. - 3:52 p.m.

The deposition of GEORGE SIMPSON, taken on behalf of the Plaintiff, at the law offices of Crowe LaFave, 2019 Park Street, Columbia, South Carolina, on the 4th day of October, 2023 before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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1 A: I don't remember.

2 Q: Okay. After you got there, what did you do
3 next?

4 A: Just assess the scene, see what the crime scene
5 looked like, see what witnesses were available
6 to speak to. I do recall them saying that the
7 -- they had a person of interest that they had
8 detained, which was Mr. Green ---

9 Q: Uh-huh.

10 A: --- and Ms. Prophet, they mentioned that they
11 had got information that she saw something
12 related to the case that would be something I
13 would need to follow-up with.

14 Q: And let me stop you right there. You said that
15 they had detained Mr. Green. So, did they have
16 him in custody at the time?

17 A: So, yeah, they mentioned that he was a part of
18 the assault as far as assaulting the decedent
19 after he was pronounced deceased. So, once I
20 had that information, we didn't know how far he
21 was into it, but we did know that he was a
22 person of interest at the time. And he was
23 detained and brought to headquarters.

24 Q: Okay. So, you arrive on the scene. You find
25 -- and you've listed all the investigators and



GEORGE SIMPSON

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1 Q: Okay. Is this about the time that you would
2 have taken an opportunity to review the videos
3 that he had access to?

4 A: Yes.

5 Q: Okay. And I don't intend to show this video
6 today, but if we can describe it sufficiently
7 that will probably be good enough.

8 A: Uh-huh.

9 Q: Is -- is this a video that you would have
10 viewed and I believe there's a video of you
11 reviewing it and the video you reviewed in
12 everybody's possession. Would this be the
13 video where there's a camera focused at the
14 hotel room where the incident occurred?

15 A: Yes.

16 Q: Okay. And correct me, I'm not trying to create
17 a false memory. But is this roughly a video
18 capturing Mr. Green outside the room, going in
19 the room, and then Mr. Dara Washington coming
20 out of the room?

21 **MS. LAFAVE:** Objection.

22 Q: Do you understand the question?

23 A: Yes, I understand the question.

24 Q: Okay. Is that a correct, although brief,
25 representation of the video?



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- 1 A: You mean while I was speaking to ---
- 2 Q: Mr. Green, yes.
- 3 A: I don't recall ---
- 4 Q: Okay.
- 5 A: --- the exact time he left. I know he was
6 there during the course of the investigation.
7 I don't know what time he left though.
- 8 Q: Okay. Did you speak to anybody else From the
9 moment that you started the investigation -- or
10 I'm sorry, the interview with Mr. Green until
11 Mr. Green was officially charged with murder?
- 12 A: Yeah, would have been a solicitor.
- 13 Q: Do you recall who that solicitor was?
- 14 A: Solicitor Lamar.
- 15 Q: Lamar Fyall?
- 16 A: Yes.
- 17 Q: And do you -- I didn't notice any in the
18 discovery that was produced, but do you have
19 any specific records of the communication with
20 Mr. Fyall?
- 21 A: Not specifically. Sergeant Thomas was the one
22 that made the call to him, happened in his
23 office. I was in attendance with Sergeant
24 Thomas. And I don't remember exactly what time
25 it happened or at what point, but there was a



1 point in the interview where I came back in to
2 let Mr. Green know that the solicitor had been
3 spoken with.

4 Q: Uh-huh.

5 A: So, whatever that timestamp is, it would have
6 been just before that.

7 Q: Okay. So, we're -- again, we'll look at this,
8 and you can correct me if I'm misrepresenting
9 this, but so it would have probably been in the
10 early morning of about December 5th, about the
11 time you're getting to -- kind of to the second
12 half of the interview with Mr. Green, right?

13 A: Yes.

14 Q: Okay. And so, you had a communication with
15 Sergeant Thomas and Lamar Fyall and yourself,
16 or was Lamar -- and I call him Lamar, I know
17 him personally, so, I don't mean to be
18 disrespectful. Was Lamar on speaker phone or
19 is he just speaking to Sergeant Thomas?

20 A: He was on speaker phone.

21 **MS. LAFAVE:** Objection. Go ahead.

22 A: He was on speaker phone.

23 Q: Okay. Do you recall, did Sergeant Thomas do
24 all the talking in this conversation or did you
25 participate?



1 MS. LAFAVE: Objection.

2 A: No, he did not.

3 Q: So, you participated in the conversation?

4 A: Yes, I did.

5 Q: Okay. To the best of your recollection, and
6 I'll ask this same question for you, do you
7 recall what you -- what Sergeant Thomas told
8 Lamar Fyall?

9 MS. LAFAVE: Objection.

10 A: Yes. The conversation would have been exactly
11 what's stated in the arrest warrant, that would
12 have been the items of information that we had
13 available to us that would have been relayed to
14 him to ask him if that was sufficient for
15 probable cause.

16 Q: Okay. So, the facts of relevance that were
17 relayed to Lamar were the facts that were
18 recited in the arrest warrant?

19 A: Correct.

20 Q: Okay. And is that the same as -- is that
21 equally true for the information that you
22 represented to Lamar?

23 A: That's correct.

24 Q: Okay. I'm gonna say this another way, and you
25 tell me if this is unfair, and correct me if



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1 I'm saying it a different way. So, I know you
2 guys didn't just literally read the paragraph
3 that you want to put in the arrest warrant, but
4 would that substantially represent what you
5 told Lamar?

6 A: It would have been a casual -- it wouldn't have
7 been verbatim as how it was in the arrest
8 warrant, but a casual conversation explaining
9 exactly the way it is on the arrest warrant.
10 So, we would have said, you know, it happened
11 here in the City of Columbia. This is what
12 happened, this happened, and then we would have
13 asked for his legal opinion.

14 Q: Okay. And to put it another way, is it almost
15 a conversation to vet the arrest warrant to
16 make sure it's going to pass muster?

17 A: Yes.

18 Q: Okay. And I don't want to assume, so I have to
19 ask, his ultimate advice to you was that this
20 arrest warrant is sufficient for the charge of
21 murder?

22 A: Yes.

23 Q: Okay. Did that conclude the call or did you
24 guys talk about anything else?

25 A: That would have been it.



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1 against Mr. Green, and another search warrant
2 for DNA from Mr. Green?

3 A: Yes.

4 Q: Does that sound about right?

5 A: Yes.

6 Q: Okay. Were those obtained -- those were all
7 signed by Judge Ladson to the best of your
8 knowledge, is that correct?

9 A: I don't recall the judge that signed 'em.

10 Q: Did you take the warrants to the judge to be
11 signed?

12 A: The arrest warrant I did.

13 Q: Okay.

14 A: But I don't believe I did the search warrants.

15 Q: Okay. And you may not have, but we'll look at
16 that in a second. It appears as though Judge
17 Ladson signed all of them. I wasn't there, so,
18 that's why I have to ask you.

19 A: It would have been the same judge. So, whoever
20 the judge was that was there would have been
21 the judge to sign all three.

22 Q: I'm kind of embarrassed to have to ask this
23 after all my years -- well, not many years, but
24 they're pretty intense with the PD's office.
25 So, Judge Ladson was on call on those late



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in the interview video?
A: It should be.
Q: Okay. So, any communications you had with him is video recorded as far as we know?
A: Yes.
Q: Okay.
A: And it should be -- it's also going to be on video me saying I'm going to the autopsy and then leaving. And I never came back from there.
Q: Okay. So, the next step now is to go into the autopsy. Is that to meet with Mrs. White or Durso -- it was Dr. Durso. I don't know what their credentials are.
A: Yes, Dr. Durso was there.
Q: Okay. Let me pause that for a second. Let's go back to Montgomery and Davidson.
A: Uh-huh.
Q: When they came out of the room -- well, let me ask you this, did you ever get a chance to review Ms. Prophet's interview recorded video before you went to go -- to submit the affidavit for the arrest warrant?
A: I didn't physically watch the -- her interview. From start to finish, I did not. I did ask for

1 those two investigators to speak with her just
2 because I had a lot of other stuff going on
3 myself. I did speak with them after they spoke
4 with her. And Investigator Montgomery and
5 Investigator Davidson gave me a full list of
6 everything that they spoke about.

7 Q: Okay. So, did they summarize it for you in
8 writing?

9 A: Yes.

10 Q: Okay.

11 A: Well, not in writing, but just verbally.

12 Q: Okay. Since you've had an opportunity to
13 review Ms. Prophet's interview -- am I correct,
14 you did have an opportunity to review that?

15 A: Yes, I have.

16 Q: Okay. Did you find that they -- and I mean, in
17 any varying degree that you can recall, do you
18 find that they stated anything differently
19 about what Ms. Prophet told them?

20 A: No.

21 Q: Okay. And so, after you've met with Mr. Green
22 for the last time -- is this the last time you
23 see Mr. Green?

24 A: Yes. I believe so.

25 Q: Okay. Then you went to go see is it Dr. Durso?



1 A: Yes.

2 Q: Okay.

3 A: Well, I don't know if Mr. Green was at the
4 preliminary hearing or not. I would have saw
5 him there if he would have showed up.

6 Q: Okay.

7 A: But other than that, I haven't had any
8 sightseeing or contact with him that I know of.

9 Q: And I don't know if he was there or not either.
10 So, then you went to go meet with Dr. Durso?

11 A: Yes.

12 Q: And was this with the investigator or officer
13 Zachary Johnson, was he with you?

14 A: It was Jackson, CSI technician.

15 Q: Zachary Jackson.

16 A: Yes.

17 Q: Okay. CSI Crime Scene?

18 A: Yes.

19 Q: Okay. Again, we'll come back and flush, you
20 know, some of the finer details out about
21 this. So, you met with Dr. Durso. What
22 happened after you met with Dr. Durso?

23 A: Well, the -- I don't remember exactly
24 everything that would have happened. But I do
25 recall getting to the autopsy on time.



1 Q: About what time was that? I'm sorry to
2 interrupt you.

3 A: I don't remember the exact time. It would have
4 probably been somewhere around 9:00 or
5 somewhere, 9:30, 9:00, somewhere around there
6 in the morning. I remember getting there with
7 Officer Jackson, the autopsy starting, and I
8 remember having conversations with him as far
9 as the autopsy looking weird as far as we would
10 be notified before they start as far as taking
11 pictures. And ---

12 Q: Let me stop you there. What do you mean? When
13 you say he, you're talking to Officer Jackson?

14 A: Officer Jackson, yeah.

15 Q: And what do you mean by weird?

16 A: So, normally, when it's a homicide, and we have
17 an autopsy, they -- they will come out and ask
18 us to take photographs before they start doing
19 anything with the body; they will ask us
20 questions like preliminary questions before
21 they begin. And I did notice that they hadn't
22 done that. They just began the autopsy. So,
23 I kind of talked to him about it and asked him
24 if he felt that was weird, and he agreed that
25 it was weird. So, then I stepped in at that



- 1 point to speak with Dr. Durso.
- 2 Q: And so they were already removing organs by the
3 time you got there?
- 4 A: Yes.
- 5 Q: Okay.
- 6 A: Well, not -- not by the time I got there, but
7 once I realized that they hadn't started, they
8 -- they had just start to make their first
9 incisions.
- 10 Q: Okay. Since we're on this point, I don't want
11 to lose it. So, what happened in your
12 conversation, the best of your knowledge, with
13 Dr. Durso when you said, hey, you guys have
14 started without talking to us?
- 15 A: Yeah. So, I saw the first incisions made; I
16 saw the first organs removed. I don't recall
17 what organs they took out first, but I stepped
18 in, and I asked if they were seeing anything
19 that would need our attention at that moment.
20 And I recall her saying that they were just
21 told it was an overdose, and they weren't aware
22 of any assault that had been suspected.
- 23 Q: And at that point you informed her that there
24 was an allegation of assault?
- 25 A: Yes.



1 Q: Did you get any more feedback from her at that
2 time?

3 A: Yeah. So, I saw the look on her face of
4 surprise. I looked at the other gentleman that
5 would have been -- I don't recall his title,
6 but just the technician that actually do the
7 incisions, he had a surprised look on his face,
8 but they didn't mention it or anything, they
9 just basically said that they would try to do
10 their best to uncover what they could as far as
11 looking for evidence of an assault. But by
12 that time, I saw that at least one of the
13 organs had already been removed. And there was
14 -- there was blood already inside of the body.
15 One of the big things I was going to be looking
16 for is internal bleeding, see if that existed
17 beforehand. But by the time that had took
18 place, we didn't have any pictures or anything
19 to show that because they weren't aware that we
20 would be suspecting that.

21 Q: Do you have any reason to believe that they
22 wouldn't be able at that point to still assess
23 whether or not there was internal bleeding?

24 A: I'm not sure what their process is or what
25 their -- their training is, so, I couldn't



1 about that issue. Was there anything else you
2 spoke to Sergeant Thomas about at that time?

3 A: I don't recall exactly what else we would have
4 discussed. But after that conversation, he
5 would have started the process of reaching out
6 to Coroner Watts to get a further explanation.

7 Q: Okay. Did you have any other communications
8 with the coroner until the preliminary hearing
9 in February of 2020?

10 A: I don't recall if we spoke or not.

11 Q: Did you -- and I know there were some
12 communications with Dan Goldberg, but do you
13 recall any communications with any other
14 officers or solicitors or witnesses before the
15 preliminary hearing in 2020?

16 A: Yes.

17 Q: Okay. Who did you speak with?

18 A: I spoke with Sergeant Moore, Valerie Moore.
19 She was the second supervisor over the
20 Investigations Bureau.

21 Q: Uh-huh.

22 A: And that would have been the very next working
23 day after the murder happened.

24 Q: And what was that conversation about?

25 A: I just discussed to her that my issue that I

1 ran into with -- with Sergeant Thomas as far as
2 me not wanting to charge murder. I let her
3 know I felt that voluntary manslaughter was the
4 more appropriate charge. And he told me that
5 I was going to charge murder. So, I just
6 wanted to let her know that I wasn't
7 comfortable with it. And she basically said
8 that she was going to look into it for me.

9 Q: Did -- when did this occur? When did Sergeant
10 Thomas tell us to tell you that you're going to
11 charge murder as opposed to a lesser charge?

12 A: So, that would have been as Mr. Green was
13 there, the breaks that I would have been coming
14 out of the interview room, like the long
15 extended breaks, it would have happened some
16 time in -- in that -- that timeframe.

17 Q: Did Sergeant Thomas ever tell Lamar Fyall that
18 you as the investigator had wished to charge
19 something less than murder?

20 **MS. LAFAVE:** Objection.

21 A: No.

22 Q: Did you ever tell Lamar Fyall that you wished
23 to charge something less than murder?

24 A: No.

25 Q: Is there a reason why -- I can't -- I know you



1 probably can't speak to Sergeant Thomas, if you
2 can, please tell me, but is there a reason why
3 neither of you spoke up?

4 A: So, he -- I spoke up to him as far as ---

5 Q: Sergeant Thomas?

6 A: To Sergeant Thomas.

7 Q: And I don't mean to be rude, I just got to keep
8 track of the hes.

9 A: Yes, I'm sorry. Yeah, I spoke to Sergeant
10 Thomas about why I felt that involuntary
11 manslaughter was the more appropriate charge.
12 He explained his reasoning as to why he did not
13 feel it -- feel the same way I felt. And he
14 said that he was going to be reaching out to
15 the solicitor's office to make sure that murder
16 was the appropriate charge. And he told me
17 that once Solicitor Fyall agreed with it, he
18 told me that that was the charge we was going
19 to go with.

20 Q: What did -- what did -- other than speaking to
21 you, what did Sergeant Thomas do to make the
22 determination that murder was the appropriate
23 charge? Did he speak to any of the officers
24 individually or review any videos or interview
25 any of the witnesses to the best of your



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1 upset, and ---

2 Q: Who's he?

3 A: Sherman Green.

4 Q: Okay.

5 A: He was upset, and I didn't personally feel like
6 that in itself was set in stone, malice
7 aforethought, even though I'm just -- I
8 understand that it does look like that. And,
9 obviously, the solicitor agreed that it was and
10 I could see how it could be perceived that way.
11 I just didn't feel 100 percent comfortable
12 because I felt like it was a little bit -- a
13 little bit weak. And I personally, I never
14 like to make cases that could have any weakness
15 in it to where it gets dropped down. And I
16 felt like if the case is going to get dropped
17 down, I should just drop it myself to the
18 lowest -- the next level that would be
19 appropriate.

20 Q: You mentioned that there were some -- it's not
21 the solicitor's call, but the solicitor never
22 got a chance to review the videos, though,
23 correct?

24 A: No, the solicitor did not look at the videos at
25 the time of that phone conversation.



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1 with that, or were you at risk of getting in
2 trouble?

3 A: No. So, basically, the way I ---

4 Q: I'm sorry. Let me break that up.

5 MS. LAFAVE: It's a compound question.

6 Q: Yeah. So, and you -- and I'm sure you answered
7 well, and I'm sure you understood the version,
8 but it was kind of compound there. I don't
9 even need for Mary to object. I'm with her.
10 Can you refuse Sergeant Thomas' instruction to
11 you to charge murder if you think a different
12 charge is more appropriate?

13 A: Yeah, that's what I was going to explain. The
14 way our policy is set up is we can refuse an
15 order that's not legal or lawful. Like, say,
16 for instance, he asked me to go out and harm
17 someone for no reason, I could say, no, I'm not
18 going to do that. But with the solicitor
19 saying that there was probable cause for the
20 murder, and him saying that that's the charge
21 that I want you to go forward with, I couldn't
22 refuse that in that moment, just because it
23 wasn't a unlawful order. But I did not agree
24 with it. I just couldn't refuse it. So, to
25 put it another way, the City of Columbia does



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1 not give you discretion as long as it's not
2 illegal?

3 **MS. PAVLICEK:** Objection to form.

4 **MS. LAFAVE:** Objection.

5 Q: In other words, if it's legal, you need to
6 follow your supervisor?

7 **MS. LAFAVE:** Objection.

8 A: Well, we have discretion. I just was not able
9 to use mine at that moment.

10 Q: Why ---

11 A: Under certain circumstances that aren't
12 illegal, some supervisors will be more
13 understanding, and they will understand where
14 you're coming from, they will give you more
15 autonomy to make your own decisions, and some
16 supervisors don't.

17 Q: Okay. I've been there. If you had said no to
18 Sergeant Thomas, I'm the investigator on this
19 case, I'm -- I'm meeting with these people
20 individually. I know you're watching them on
21 a closed circuit, I think the appropriate
22 charge is involuntary. Would you have been
23 able to do that?

24 A: If that was done, and his -- the way he
25 overrode that was just basically saying that we



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1 have to charge his men- -- his mentality is we
2 have to charge what will -- his mentality
3 explained to me in that moment was he wanted me
4 to charge what we have probable cause for and
5 allow the solicitors to make that determination
6 if they see it fit to reduce the charge later
7 on.

8 Q: I understand what Sergeant Thomas -- I'm asking
9 you, though, do you -- if you had said, no, I'm
10 going to charge involuntary, could you have
11 done that?

12 A: No.

13 **MS. LAFAVE:** Objection.

14 Q: Okay. Would the consequence maybe be that you
15 got in trouble or dismissed or suspended or
16 something like that?

17 A: I'm honestly not sure what would have happened.

18 Q: Okay. Are you aware of any specific protocol
19 with the City of Columbia that addresses this
20 issue between sergeants and investigators
21 determining charges?

22 **MS. LAFAVE:** Objection.

23 A: Yes, our policy as far as what I mentioned, as
24 far as being able to say no to unlawful orders,
25 but this particular situation, I'm not aware if



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- 1 Q: Okay. Let me ask it this way. Do you recall
2 if you spoke to him before the prelim?
- 3 A: I don't recall.
- 4 Q: Okay. And we know you spoke to him afterwards
5 in some form, correct?
- 6 A: I believe I did.
- 7 Q: Okay. Did you speak with any other solicitor
8 about this case until you spoke to Dan
9 Goldberg?
- 10 A: I do -- I do recall speaking to Dan Goldberg.
11 I don't recall speaking to any other solicitor
12 other than Lamar initially over the phone.
- 13 Q: Okay. So, from pre arrest warrant until a
14 prelim, whether it's one day plus or minus, you
15 didn't speak to any other prosecutors during
16 that time?
- 17 A: I'm not sure if I did or not. I don't ---
- 18 Q: You don't recall?
- 19 A: Yeah.
- 20 Q: Okay. Did you speak to any other supervisors
21 about this case that you recall?
- 22 A: No, not other than Sergeant Thomas and Sergeant
23 Moore.
- 24 Q: What we've already discussed, though?
- 25 A: Yes.



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1 Green stated that he assaulted the victim
2 because he observed the victim physically
3 assaulting a witness who was also inside the
4 room, Ms. Aja Prophet, and he felt he needed --
5 or need to protect her from the victim. Is
6 that still a true statement about your
7 observation of this case?

8 A: That's what he mentioned to me during my
9 interview with him.

10 Q: Do you -- do you believe that to be true or
11 not?

12 A: That was his version of the events. I can't
13 speak to what was true or not because I wasn't
14 physically there, but that was just his side of
15 what happened.

16 Q: Well, I guess let me ask it this way, so, you
17 -- you're in a position where you have to
18 decide what information you receive is
19 believable or not, or more believable than not,
20 the value of the credibility, correct?

21 A: Yes.

22 Q: Okay. Did you find that information to be
23 uncredible or did you believe it to be
24 believable?

25 MS. LAFAVE: Objection.



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1 Mr. Washington. He didn't admit that to me
2 until the very tail end of the interview, then
3 he finally told me that he punched him.

4 Q: This ---

5 A: Mr. Green finally told me that he punched Mr.
6 Washington, he kicked Mr. Washington, and he
7 wanted to do more than that to him.

8 Q: And, again, we're about to start looking at
9 some of these documents specifically. Do you
10 recall him -- was there anything else other
11 than punching and kicking Mr. Washington that
12 was inconsistent in your mind about what he
13 told you?

14 A: Meaning Mr. Green?

15 Q: Yes.

16 A: Can you repeat that ---

17 Q: Sure.

18 A: --- question?

19 Q: With the exception of his late statement about
20 punching and kicking Mr. Washington, was there
21 anything else about what he told you
22 unbelievable?

23 **MS. LAFAVE:** Objection.

24 A: Not that I can recall. I wouldn't be able to
25 say for certain right -- right now.



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1 Q: Well, and I'm -- and I can represent to you and
2 then we'll look at this here in a second, from
3 the videos, it does appear like the one fact
4 that's a sticking point for you is that it's
5 his inability to tell you, yes, I punched or
6 kicked Mr. Washington. Is that a fair
7 statement about your investigation?

8 A: Yes.

9 Q: Okay. And, otherwise, Ms. Prophet and Mr.
10 Green appeared to be substantially on the same
11 page with all the other facts, correct?

12 A: Yes. But also, it wasn't just the mere fact
13 that he punched or kicked him, Mr. Washington.
14 I was also trying to figure out what was his
15 motive behind punching and kicking him, and I
16 never could get that out of him either. I'm
17 referring to Mr. Green.

18 Q: Did you ever get a motive of why he punched or
19 kicked him from Ms. Prophet?

20 A: No.

21 Q: All right. Let's go manual today. All right.
22 Seeing all this memorandum, in this, you
23 indicated to the solicitor's office that Ms.
24 Prophet -- and this is the second paragraph,
25 first sentence, that she did not feel her life



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1 A: Yes.

2 Q: Okay. And if we can go to the second page,
3 City 0186, at the very bottom, now, this
4 appears to be your investigation of Mr.
5 Washington and some of his drug history, is
6 that correct?

7 A: Yes, these are notes from interaction with
8 Barbara Winston, which I believe this was his
9 wife, Mr. Washington's wife.

10 Q: Or girlfriend ---

11 A: Girlfriend or something along those lines.

12 Q: And she explained to you that he had been a
13 habitual drug user, I'm paraphrasing, tell me
14 if this is unfair, and that he had gone to
15 rehab and actually swallowed a large amount of
16 cocaine at one point previously, not that night
17 necessarily.

18 A: Yes, she mentioned that to me.

19 Q: Okay. So, at least at this point, you're in
20 your memorandum, you are aware that Mr.
21 Washington has had a history of drug problems,
22 is that fair to say?

23 A: Not personally I wasn't, but just from what I
24 was told by Ms. Winston and as well as Ms.
25 Prophet saying that he used drugs inside of the



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you?

A: Yes.

Q: Okay. So, starting on 196, and tell me if I'm reading this correctly, would this be Brewer's narrative? It doesn't say Brewer at the top and it says supplemental Brewer.

A: Yes. This should be Brewer's initial narrative, as well.

Q: Okay. So, Brewer and purportedly, if you don't recall, it's fine, but let's just -- how it would normally happen, Brewer would have told you on the scene that paragraph two, Mr. Green contacted him and told Brewer that he needed to go contact the victim because he was high and just assaulted his cousin. Is that correct?

A: This is what she mentioned in the report.

Q: Raven, yeah. Raven.

A: Yes. I'm sorry.

Q: Raven Brewer. Sorry. All right. But, again, going by the logic of what you've told me is that if this stuff was before, you know, you came on the scene, they would have told you this information, correct?

A: Yes.

Q: Okay. Do you recall Mrs. -- Officer Brewer

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1 get him. Mr. Green informed me, responding
2 officer, that his cousin was Prophet was just
3 assaulted by the victim and he got him out of
4 the room. The victim was high on crack. Is
5 that correct?

6 A: Yes.

7 Q: And then another about five, six lines down,
8 responding officer asked if he was on anything
9 or known to take anything and she replied all
10 she knew of was correct. Now, this is
11 obviously speaking to Mrs. Winston. And EMS
12 administered Narcan, is that all correct?

13 **MS. PAVLICEK:** Object to the form.

14 A: Yes, that's -- that's in the report.

15 Q: Okay. And so ---

16 **COURT REPORTER:** I'm sorry. I didn't hear who
17 objected.

18 **MS. PAVLICEK:** I -- I objected to the form.

19 **COURT REPORTER:** Thank you. Thank you. I just
20 wasn't sure.

21 **MS. LAFAVE:** Can we stipulate for the record that
22 one objection by us is adopted by both?

23 **MR. TRULUCK:** Sure.

24 **MS. LAFAVE:** Thank you.

25 Q: And so should -- and you tell me if you



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1 important fact. Did you recall being told that
2 he had been administered Narcan before he was
3 removed?

4 A: Yes.

5 Q: And I -- and I'm sorry, Mr. Washington. Okay.
6 If we can go to 197, that will be the next
7 page. And so this would still be Officer
8 Brewer, correct?

9 A: Yes.

10 Q: So, we're in the second paragraph about halfway
11 down, and this is her investigation, it's what
12 she's getting, the victim became enraged and
13 started hitting her. And that would be Ms.
14 Prophet, correct?

15 A: Yes, it says Ms. Prophet.

16 Q: Okay. So, hitting her. States that he had
17 taken crack and believes that is why he's
18 acting out. She states that she started
19 yelling for help. And there was a 911 call
20 placed by a third party named Jessica, who
21 states that she heard a woman yelling for help
22 on the bottom floor. Is that correct?

23 A: Yes.

24 Q: Okay. So, and I'll ask you first, so, this is
25 information that should have been relayed to



1 Ms. Prophet, so, go up to the first line,
2 responding officer then went to speak to Ms.
3 Prophet. She states that during the course of
4 the incident, the victim became enraged and
5 started hitting her. So, this set would have
6 come from Ms. Prophet, correct, to responding
7 Officer Brewer?

8 A: Yes, according to her report.

9 Q: So, responding officer Brewer would have told
10 you that Ms. Prophet was calling for help and
11 was having a physical altercation with Mr.
12 Washington, is that correct?

13 A: Yes.

14 Q: Okay. In the second paragraph, Mr. Green
15 states that he observed the victim through the
16 window naked and yelling that people were after
17 him. And going down about four more sentences,
18 Ms. Prophet had blood on her face from where
19 the victim had attacked her. Is that correct?

20 A: Is -- are you referring to is that what Mr.
21 Green mentioned to Brewer that she wrote in
22 this report?

23 Q: Yes.

24 A: Yes, that's what she mentioned in the report.

25 Q: And then in the last paragraph, the victim had

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1 Q: Okay. And does that to you indicate that he
2 had taken two uses? I know you're not saying
3 what amounts, but two uses of crack cocaine in
4 that narrative right there?

5 A: Yes, two different puffs of crack cocaine.

6 Q: Okay. And I know we don't know what the
7 amounts are, but there were two occasions where
8 he used the drug.

9 A: Just based on her saying he hit the crack pipe,
10 you would assume just one time and then she's
11 -- you know, she said she -- he hit the crack
12 pipe again. Assume that would be a second
13 time.

14 Q: We agree.

15 (Video plays.)

16 Q: And to the best of your understanding, when she
17 says cousin, is she referring to Mr. Green?

18 A: Yes, I believe she's referring to Mr. Green
19 because they both refer to each -- they both
20 refer to each other as their cousin.

21 Q: And so she's saying that he's freaked out.
22 They're in the room together. He's just had a
23 second dose of crack and the cousin's returning
24 to the room, is that fair?

25 A: Yes. She said he -- she said that he came --



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1 presumably fight Mr. Washington or somebody in
2 the room. I was never able to talk to that 911
3 caller.

4 Q: Uh-huh.

5 A: We tried to make contact with Ms. Jessica. She
6 didn't want to cooperate in the investigation.

7 Q: Okay.

8 A: She stayed completely out of it, wouldn't talk
9 to us at all. So, I was never able to confirm
10 or deny who she was referring to, who she was
11 calling about.

12 Q: Okay. Getting back to this, so, we just had
13 the second use of crack, and he's freaking out.
14 Mr. Washington is freaking out, right.

15 A: Uh-huh.

16 (Video played.)

17 Q: Okay. So, there she's trying to express to Mr.
18 Green who's outside the room that she's in
19 danger and she needs help. Is that correct?

20 A: Yes, that's what she mentioned in that
21 interview right there.

22 Q: Okay, Now, we talked about this earlier, you
23 found Ms. Prophet to be particularly credible,
24 is that fair?

25 A: Yes.



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1 Q: Okay. So, would it be fair to say that she's
2 -- that she's saying that she's afraid of Mr.
3 Washington at the time?

4 A: She mentioned that she wanted to show Mr. Green
5 that she felt like she was in danger at that
6 moment.

7 Q: Okay.
8 (Video played.)

9 Q: Okay. So, based on that testimony there, he's
10 not letting her leave the hotel room, and,
11 according to her, she's saying he's pushing.
12 Is that accurate?

13 A: Yeah, she was mentioned that in the context
14 that she had opened the window. He saw Mr.
15 Green trying to get into the room. He didn't
16 want the door to get open for Mr. Green to come
17 in, which is why he didn't want her to come out
18 because he didn't want Mr. Green to come in.

19 Q: But, effectively, he's not letting her leave,
20 as well, right?

21 A: Right.

22 Q: And she's telling your investigators that he's
23 physically shoving her, right?

24 A: Yes, to get her away from the door. She was
25 mentioning she was trying to push past him to



1 (Video plays.)

2 Q: Well, and right there, please help me, that's
3 what I'm talking about. And we could look at
4 in a second, and you can tell me whether or not
5 you know, but the 911 call where a woman is
6 asking for help, that would be consistent with
7 what Ms. Prophet said right there that she's
8 saying, please help me.

9 A: She was -- from my understanding, she was
10 mentioning that to Mr. Green, who was outside
11 of the room trying to get him to help her to
12 get out of the room.

13 Q: Right. And she would be projecting that to the
14 outside ---

15 A: To Mr. Green, yeah.

16 Q: And someone -- someone else might hear that, as
17 well, is that fair?

18 A: Yes.

19 (Video played.)

20 Q: And, again, right there, she's testifying that
21 he's -- he's falling to the floor. How did you
22 interpret that?

23 **MS. PAVLICEK:** Object to the form. Go ahead.

24 A: I didn't have any interpretation to that.

25 Q: Okay. That didn't make you concerned that he



1 Ms. Prophet and Mr. Green were residing in that
2 hotel room?

3 A: Yes.

4 Q: Were they residing in that hotel room?

5 A: Yes.

6 Q: Okay, so both of them, that was their
7 residence. Is that fair?

8 A: I don't know how long they were there for, but
9 it was under -- I can't remember whose name it
10 was. It was under either Ms. Prophet's name or
11 Mr. Green's name. I believe Mr. Green, but I'm
12 not a hundred percent sure.

13 Q: But you don't have any reason to disbelieve
14 that that was their residence, correct?

15 A: No.

16 Q: Okay. And Mr. Washington, it was not his
17 residence, correct?

18 A: No. He was just a guest invited over.

19 Q: All right. And that -- that invitation had
20 been rescinded by Ms. Prophet, correct?

21 **MS. LAFAVE:** Objection.

22 A: I don't understand that.

23 Q: He was no longer a welcome guest by Ms.
24 Prophet?

25 A: She -- she never mentioned that to me. She



1 from Mr. Green?

2 A: Well, that she said that he left after he was
3 bum-rushed by Mr. Green.

4 Q: Right. But that he got up and left, not that
5 he was thrown out.

6 A: Well, that was after the whole incident. Mr.
7 Green did mention that he threw him out and
8 then he got up and left after he was thrown
9 out.

10 Q: Okay. So, you interpret that as being after he
11 hit the wall?

12 A: Yes.

13 Q: He got up and left. Okay.

14 (Video played.)

15 Q: Okay. So, am I correct that Ms. Prophet there
16 is just saying that he's not hitting him to
17 cause him to bleed and he's hitting him like a
18 woman? Is that what she's saying?

19 **MS. LAFAVE:** Objection.

20 A: Yeah, she -- well, she is mentioning that when
21 he first came into the room, he bum-rushed him
22 and then started hitting him at that point.

23 Q: But she's describing right now how -- we can
24 back this up -- how he's hitting.

25 (Video played.)



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1 A: Yeah, that should be about right.

2 Q: Okay. Now, I think we already established and
3 I think you mentioned in here, he's not free to
4 go, right?

5 A: No.

6 Q: Okay. And you get the arrest warrant sometime
7 in the early morning of December 5th, right?

8 A: Yes.

9 Q: Okay. So, I'm not asking you to comment on the
10 legality of it, but he is currently being held
11 without an arrest warrant, is that accurate?

12 A: Yes, he was under investigation -- investigator
13 retention.

14 Q: I do have to bounce around here. This is nine
15 hours, so bear with me. And hopefully just to
16 save us a little bit of time, do we agree that
17 the biggest or the most important discussion in
18 these interviews you have with Mr. Green is the
19 difference between him saying that he had a
20 physical assault on Mr. Washington, is that the
21 most important difference between his statement
22 and Ms. Prophet's?

23 A: Yes, the disagreement was just the
24 discrepancies between his statement and Ms.
25 Prophet's statement.



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1 going to jump forward to 5:28:45. It's
2 5:28:02.

3 (Video played.)

4 Q: I know it's hard to hear. Let me know if you
5 can hear it. What I'm hearing is he's using
6 this word tussle ---

7 A: Uh-huh.

8 Q: Okay. So, he's telling you they're tussling.
9 I understand that you make a distinction, the
10 difference between tussling and him punching
11 him or kicking him. But he is telling you that
12 they are having a -- tussling indicates a
13 physical altercation, doesn't it?

14 A: Yes.

15 Q: Okay.

16 (Video played.)

17 Q: And I'll represent to you my interpretation,
18 you tell me if it's wrong, and essentially, I
19 would say almost 90 percent, if not more, of
20 y'all's conversation is really just trying to
21 hash out this I believe you have an assault --
22 assault situation that you're not being as
23 clear with me on, is that fair?

24 A: Yes.

25 Q: Now, I can -- well, let me -- let me see if I



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1 can figure this out. We're at about 4:00
2 o'clock in the morning on December 5th, 2019.
3 And if you need me to try and go to it, I'll be
4 happy to show you, but you're telling me he's
5 been held. We've already established this.
6 He's been held for at least near six hours now
7 from when the interview began. Is that
8 correct?

9 A: He was under investigative detention.

10 Q: And that's fine. You can call it that, but I'm
11 calling he's been held. He can't go, that's
12 right?

13 A: Yes. That's correct.

14 Q: For approximately six hours now, he's been
15 held. He didn't go anywhere. Do you know
16 about when you would have served the warrant on
17 him or was a warrant being requested? How's
18 that being worked out? Did you have to leave
19 to go -- you had to leave to go get it from
20 Judge Ladson, didn't you?

21 A: Yes.

22 Q: Okay. Do you serve it on him in this room?

23 A: I did not serve it upon him, because I had went
24 to the autopsy. Another investigator served
25 it. I believe it was Investigator Hilton.



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1 Q: Okay, picking up with Mr. Green's interview.

2 (Video played.)

3 Q: Okay. So, let's talk about that. You're
4 telling him that you have no clue how he died,
5 and we talked about this. You don't want to --
6 you want to be straight with him, right?

7 A: Yes.

8 Q: Okay. So, is that statement true at the time,
9 you have no clue why he died?

10 A: (Nods head.) Yes.

11 Q: Okay.

12 A: I didn't have any knowledge as far as what
13 caused the death. I just knew that he had been
14 assaulted before dying. And also that he had
15 consumed drugs before dying.

16 Q: Okay. Did you believe that a possibility was
17 that -- and I -- I think this is obvious, but
18 I want to ask, did you believe that the
19 possibility was that Mr. Green had struck him
20 so hard in the room that that is what caused
21 his death?

22 A: I was under that impression at the -- at the
23 time of the interview, yes.

24 Q: Okay. Is that the basis for charging him with
25 the murder charge?



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1 have charged him with any death-based crime if
2 he was not the -- if Mr. Green's actions were
3 not the cause of Mr. Washington's death?

4 A: It wouldn't have been a death-based crime, but
5 it still would have been a crime that he would
6 have been charged with.

7 Q: If you were able to determine that Mr.
8 Washington was not killed by the actions of Mr.
9 Green, what might you have charged him with?

10 A: Just assuming the whole thing played out
11 exactly the way it did, except for Mr.
12 Washington not dying, is that what you're
13 asking me?

14 Q: Or you knowing that he didn't die from Mr.
15 Green, either one, you know, he doesn't die or
16 he doesn't die from Mr. Green, what would you
17 consider charging him with?

18 A: Yeah, so, if it played out the exact way that
19 it did, but Mr. Washington lived, he would have
20 been charged with either assault or disorderly
21 conduct or something along those lines.

22 Q: So, possibly, something in the magistrate
23 realm?

24 A: Yes.

25 Q: Okay.



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1 MS. LAFAVE: Objection.

2 A: No, no one, to my knowledge, would have known
3 the case better than me at that time.

4 Q: Okay.

5 A: Other than the -- obviously, Mr. Green, no one
6 else ---

7 Q: Or Ms. Prophet or ---

8 A: Yeah.

9 Q: But he doesn't -- he certainly doesn't know the
10 answer to that ultimate question either,
11 whether or not anything he did caused the death
12 either. He's -- he's in the same dark as you
13 are on that, right?

14 MS. LAFAVE: Objection.

15 MS. PAVLICEK: Objection.

16 A: Well, he didn't mention it to me directly, but
17 through his actions of withholding that
18 information, it led me to believe that he
19 believed that -- well, it led me to believe
20 that it will be reasonable for me to assume
21 that he knew that his assault would have more
22 than likely lead to it which is why he wanted
23 to withhold it, but that -- that's how I
24 thought about it.

25 Q: Okay. I'm going to jump to 5:48, so that's



1 to defend yourself. Is that right?

2 A: Yes.

3 Q: Okay. And is it true what you're saying there
4 is that the right to defend yourself means that
5 you can't be charged or arrested if you're
6 acting lawfully?

7 **MS. LAFAVE:** Objection.

8 A: Can you repeat the question?

9 Q: Is what you're saying there is that if you're
10 acting lawfully and defending yourself, that
11 you shouldn't be charged or arrested?

12 **MS. LAFAVE:** Objection.

13 A: I mean, it would depend on the ---

14 Q: Well, I'm asking what you're saying right
15 there.

16 A: --- the facts.

17 Q: I mean, you're making -- you're making a
18 contingent of law. I'm not asking for like
19 very particular facts, but, broadly, is that
20 what you're saying right there? You're giving
21 an example, is that true?

22 A: Well, no, what I was doing there actually was
23 an investigative tactic to try to get him to be
24 forthcoming. And just basically, that was me
25 giving him an out, just a self defense out,



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1 just to see if he would take it. But he still
2 didn't take it at that point.

3 Q: Do you believe that statement you made,
4 regardless of what you were using it for?

5 A: Depending on the circumstance, it is true. But
6 the factors -- the facts -- I mean, the
7 elements of the case would ultimately decide.

8 Q: Would that apply in the scenario of defense of
9 others?

10 A: It would pretty much be the same thing that it
11 would depend on the other facts of the case and
12 what else was done.

13 Q: Okay.

14 A: I mean, in this particular case, I had no
15 indications that he was defending himself, so,
16 I was just throwing that out there just to see
17 if he would take it as a tactic. That was just
18 a tactic to see if he would take the bait as
19 far as trying to say, okay, yeah, I was acting
20 in self defense.

21 Q: As much as I would agree with you that defense
22 of others and self defense are -- are basically
23 the same thing, there's some tweaks there, I
24 admit, but the concept's the same. Self
25 defense doesn't apply me applies to me, applies



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1 Q: Okay. So, probably the last five sentences
2 there, the decedent's right hand has a linear
3 scrape on the inside of the hand near knuckle,
4 blood is located on the hospital floor dripping
5 from his right hand. The decedent's right foot
6 has a cut on the big toe and a gash at the top
7 of the foot. Decedent's knees both have
8 scrapes and cuts on them. Probably an average
9 person can answer that, but I know that you
10 have a lot more experience than the average
11 person. Is there anything in that statement
12 that would lead you to believe to a fatal
13 injury?

14 A: Well, it would -- there is also no -- nothing
15 indicating what the internal damage was, which
16 wouldn't have been on this report. And that
17 would have more bearing on it than outer
18 injuries.

19 Q: Agree. Agree. But what we're looking at right
20 now, is there anything in there that would lead
21 you to believe there was a fatal injury? Just
22 there. I'm not asking you to comment on what
23 else may have been injured.

24 MS. LAFAVE: Objection.

25 A: I mean, I can't -- I can't say whether or not



1 it will be fatal. I mean, on the surface it
2 wouldn't appear to, but obviously without
3 knowing the full context, it will be hard to
4 say for sure.

5 Q: Sure. But you wouldn't go to your -- your
6 superiors and say that a scrape on a hand or
7 foot is your basis for a fatal injury, would
8 you?

9 MS. LAFAVE: Objection.

10 A: Not without additional and accompanying facts
11 that ---

12 Q: Right.

13 A: --- get discovered.

14 Q: And I'm limiting these for you. You know, this
15 is all I'm asking about, right.

16 A: Yes.

17 Q: Without going through it line by line, and you
18 can scan it, the statements taken by Mrs.
19 Winston, Dara Washington's mother, Mrs. Sharon
20 Brown, would you agree that they -- they are
21 reporting to the coroner a history of cocaine
22 addiction for Mr. Washington, having problems
23 with abuse of crack cocaine?

24 A: Yes, that's what it shows here from Deputy
25 Coroner, White stated.



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1 A: I couldn't -- I mean, couldn't say that either
2 just looking at this. I'm not a medical
3 professional.

4 Q: So, we agree we need a medical professional to
5 make the cause of death, right?

6 A: Essentially, yes.

7 Q: Okay. Internal examination of body cavities,
8 and, again, I'm bouncing, so let me know if I'm
9 bouncing too much. No significant fluid. All
10 body organs are present in normal and
11 anatomical position.

12 A: That's what it says, yeah.

13 Q: That's the kind of thing you're looking for,
14 right? If they're abnormal, that's bad for Mr.
15 Green. They're normal, that's possible that
16 the organs weren't injured, is that correct?

17 **MS. LAFAVE:** Objection.

18 A: I couldn't testify to that.

19 Q: Well, if you had seen injury to the organs,
20 would you take that as evidence against Mr.
21 Green?

22 **MS. LAFAVE:** Objection.

23 A: Are you asking did I look at the organs?

24 Q: I'm asking you if this report said there were
25 injuries to the organs, would you take that as



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1 corner's Medical Examiner's Office that it's a
2 suspected cocaine overdose?

3 A: What do you mean by that?

4 Q: Did you ever tell them that, in your own words,
5 in your own memorandum, to the solicitor's
6 office that you were told right after that it's
7 a suspected cocaine overdose? I understand you
8 have reservations about it possibly being
9 assault, but did you ever tell them that the
10 coroner had taken this position in the first
11 document you had gotten from them?

12 A: Yes.

13 **MS. LAFAVE:** Objection.

14 Q: When did you tell them that?

15 A: That would have been when we first met about
16 the case. We had a couple of -- so, let me
17 backtrack. There was the phone call -- phone
18 conversation with Lamar where we got
19 authorization. We did -- we mentioned it to
20 him there as far as the cocaine issue. It
21 would have been with Goldberg.

22 Q: Well, let me stop for just a second. But when
23 you when you met with Lamar, this document
24 hadn't been issued yet?

25 A: No.



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1 Q: Okay. And then you're jumping forward to
2 Goldberg?

3 A: Yes. At some point during my conversation with
4 Goldberg this would have been discussed as far
5 as their decision to not move forward with the
6 case.

7 Q: Okay. And that in all likelihood was after the
8 preliminary hearing?

9 A: Yes.

10 Q: Okay. But you're not aware of any
11 communication of this document specifically
12 anybody in the meantime -- in that time between
13 the arrest and the preliminary hearing, is that
14 correct?

15 A: Correct.

16 **MS. LAFAVE:** Objection.

17 A: And also, the full report wasn't available
18 either in that time.

19 Q: Understood.

20 A: Prior to the prelim.

21 Q: Let's go off the record for just a second.

22 (Off the record discussion.)

23 Q: All right. Investigator, I'm handing you City
24 727 and this would purportedly be Investigator
25 Montgomery's case update ---



1 prevent a guy from coming into a door. Then
2 after the fact, the guy gets in the room --
3 well, Mr. Green gets in the room, beats him up,
4 throws them into a brick wall, he walks out and
5 dies immediately after that. Well,
6 essentially. So, I was -- I was attesting to
7 that.

8 Q: When we were talking earlier, we addressed the
9 issue of whether or not you had identified any
10 injuries to the victim that might support the
11 theory of blunt force trauma. Do you remember
12 that ---

13 A: I remember.

14 Q: --- coroner? Yeah. And you noted that there
15 was an abrasion to the upper forehead, do you
16 remember that?

17 A: Yeah, that was one of the areas.

18 Q: Okay.

19 A: A couple other others too.

20 Q: Hands, feet, upper forehead, some abrasions ---

21 A: Yes.

22 Q: Okay. Do you know for certain who hit Mr.
23 Washington in the face?

24 A: I do -- I do know for certain that both hit Mr.
25 Washington in the face. Ms. Prophet said that



1 she used her hand to him in the face, and she
2 also caused a laceration that caused him to
3 bleed which is why his blood was on her shirt.
4 She said that that was his blood. And also Mr.
5 -- she mentioned that he was punching and
6 kicking him, as well, in the head area while he
7 was on the ground in a fetal position, balled
8 up in a corner.

9 Q: Okay.

10 A: And that was after her assault.

11 Q: Now, Ms. Prophet told you that she drew blood
12 from Mr. Washington, is that right?

13 A: Yes.

14 Q: Did Ms. Washington (sic) ever tell you that Mr.
15 Green drew blood from -- I'm sorry, did Ms.
16 Prophet ever tell you that Mr. Green drew blood
17 from Mr. Washington?

18 A: The way she described it, the assault was
19 pretty bad, bad enough for her to interject,
20 and she said in her interview it was a miracle
21 that he got up after the assault. She stepped
22 in to stop the assault and then he continued
23 with a couple -- couple other punches that were
24 smaller in nature compared to the first round
25 of assault.



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1 clear. No prosecution will not be reopened.
2 Do you ultimately agree with that decision?

3 A: No.

4 Q: Okay. Do you disagree with Dr. Durso's
5 assessment in the previous paragraph that --
6 well, this would be Goldberg's paraphrase of
7 Dr. Durso's conversation, that she was unable
8 to determine whether the assault or that
9 anything else contributed causing the death of
10 Mr. Green. Do you disagree with that?

11 A: Yes, I disagree.

12 Q: Okay. Why do you disagree with that?

13 A: Just because of my initial confrontation --
14 well, not confrontation in a bad way, but when
15 I initially approached her and asked her if she
16 was seeing anything in reference to an assault,
17 she was not under the impression that an
18 assault happened. And she physically told me
19 that she was under the impression it was just
20 a cocaine overdose.

21 Q: Well, in this statement that you're noting now,
22 and correct me if I'm wrong, it indicates that
23 Solicitor Goldberg has had a conversation with
24 Dr. Durso about this, and he's relaying this to
25 you and this would have been post ---



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- 1 A: After the fact, yes.
- 2 Q: Right. And she's still maintaining after
3 having gone back and looked at it, that she
4 just doesn't see evidence of a traumatic death.
5 Do you still disagree with her?
- 6 A: Yes, sir.
- 7 Q: And let's go to that last page there again. I
8 know you haven't seen this, I just want you to
9 be able to read it. I'll represent to you that
10 this is a typed up and partially holographic
11 notation of a call between Dan Goldberg and Dr.
12 Durso. I'm going to read some of these
13 comments for you, you tell me if you disagree
14 with them or not. She noted that excited
15 delirium is pretty rare. It's something that
16 is still not fully understood scientifically.
17 Do you have any opinion on that? Do you
18 understand excited delirium to be more certain
19 or more reliable as a cause of traumatic injury
20 or death?
- 21 A: I don't have any -- any opinion on excited
22 delirium.
- 23 Q: Okay. She said that regarding the altercation,
24 there were minor scrapes on his body but
25 nothing else, no bruises on his scalp; he



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1 Q: So number 6, if defendant, meaning you,
2 contends that any other individual or entity is
3 responsible in full or in part for the actions
4 of Simpson, to include not exclusively any
5 supervisor, advisor, please so identify that
6 individual or entity. And the response is
7 Sergeant Arthur Thomas and Lamar Fyall. Do you
8 contend that Sergeant Thomas or Lamar are
9 responsible for your actions?

10 **MS. LAFAVE:** Objection.

11 A: No.

12 Q: Okay. Can you go to the last page, page 6,
13 paragraph 7? This is worded substantially the
14 same way. It's not a completely different
15 question, but let me ask, if defendant contends
16 -- I guess, defendant being you, Investigator,
17 contends that there exists any indispensable
18 party to which requires joinder, please so
19 identify and state the reason for
20 indispensability. You should rely on you
21 attorney, but I represent that means that this
22 party needs to be in it, so accountability is
23 apportioned the correct way. The response,
24 Sergeant Arthur Thomas, who is defendant
25 Simpson's supervisor, directed defendant



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1 unconstitutional, and, again, I'm playing the
2 if game, would it be your contention that the
3 liability with that would be shared with
4 Sergeant Thomas, or any other party?

5 **MS. LAFAVE:** Objection.

6 A: I mean, I couldn't even say yes to that,
7 because, I mean, I literally hold that nothing
8 that was done was unconstitutional.

9 Q: You have to -- but you have to play with me.
10 If it is determined that it's unconstitutional,
11 I understand you can say that you didn't do
12 anything wrong at any time even if I prove my
13 case and win, so if with me. If I do that,
14 would your position be that liability would be
15 shared with Sergeant Thomas or that if your
16 actions were found to be unconstitutional, that
17 you are the one solely responsible?

18 **MS. LAFAVE:** Objection.

19 A: I mean, I would have to say that the
20 Solicitor's Office made the determination that
21 probable cause existed and if that
22 determination wasn't given from them, we would
23 have never went forward with -- either me or
24 Sergeant Thomas would have ever went forward
25 with the murder one. But just with all the



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1 A: I'm not saying I didn't agree with murder, but
2 I wanted involuntary manslaughter. I
3 personally felt like it was a better fit. But
4 I understand that probable cause existed for
5 murder.

6 Q: I think you focused on the solicitor's office.
7 Let me ask this in terms of Sergeant Thomas.
8 Again, the if scenario, if I prove my case and
9 we were to find that what you did was
10 unconstitutional, and, again, I'm not trying to
11 make this a competition, I'm just -- if we were
12 to prove that, would you say that liability was
13 shared with Sergeant Thomas at all or are you
14 acting on your own?

15 **MS. LAFAVE:** Objection.

16 A: Well, he, obviously, had a say in the -- in the
17 charge and he being my supervisor told me what
18 I was going to charge, so I followed that
19 direction as far as charging.

20 Q: Okay. So, he's in it with you, too?

21 **MS. LAFAVE:** Objection.

22 A: Yes.

23 Q: Okay. If you'll give me just a second. All
24 right. Investigator, I think I questioned
25 myself out and, of course, pending any



1 Simpson and his supervisor December 4th, 2019,
2 or 5th, in the morning.

3 A: So from what I remember, they responded to a
4 hotel where an altercation had occurred and a
5 gentleman was essentially pronounced dead at
6 the scene. The deceased person -- I'll refer
7 to him as victim. I'm sorry.

8 Q: That's fine.

9 A: So the victim was dead, the individual in the
10 room was sharing the room with the Defendant,
11 and you know, the -- told that the -- Mr. Green
12 was asked to leave, or somehow left so that the
13 victim and whoever the young woman is in the
14 room could share the room. The -- my
15 understanding is they were having -- having sex
16 in there. According to that person, the young
17 lady, they had sex and then the victim did some
18 crack.

19 Mr. Green comes back, is trying to get in
20 the room, the victim does not want him to come
21 in the room. Eventually, the lady lets Mr.
22 Green in. Mr. Green starts assaulting the
23 victim inside the room -- this is according to
24 the young lady. Outside, you can see the
25 assault continue and Mr. Green strikes the



1 victim several times and then throws him in --
2 onto a concrete pillar, wall, something. He
3 takes a few more steps and then he dies. EMS
4 is called, he's pronounced dead.

5 Q: Is there -- and, I'm asking this because I --
6 we're gonna talk about some information that's
7 believed to have been in Investigator Simpson's
8 possession about the time he would've been
9 talking to you.

10 A: Uh-huh.

11 Q: So before I -- I talk about the specific bits
12 of information, I wanna -- I wanna drain all
13 the information out of your brain I can before
14 I do that so I don't taint any information.

15 A: Uh-huh.

16 Q: Is there anything else other than what you told
17 me just now that you can remember about the
18 conversation with Investigator Simpson or his
19 sergeant -- I believe Sergeant Thomas -- that
20 morning, any other details?

21 A: That I can remember?

22 Q: Yeah.

23 A: Um ...

24 Q: And the -- and I think inevitably as I go
25 through this you'll probably recall some of

1 them, but if I can get what you know now so --
2 before we move forward.

3 A: No. EMS called, they pronounced him dead. The
4 -- there was something about the -- the young
5 lady trying to break it up or stop it or
6 something.

7 Q: Okay.

8 A: And that's -- that's all I remember him telling
9 me that day.

10 Q: Okay. If -- so I'm gonna move forward with
11 some questions about information that ---

12 A: Uh-huh.

13 Q: --- I obtained from Investigator Simpson at his
14 deposition ---

15 A: Uh-huh.

16 Q: --- that I believe is information according to
17 his transcript that came or was in his
18 possession before he called you.

19 A: Uh-huh.

20 Q: If I mention something that you were aware of
21 before, please let me know. That'll help me
22 craft my questions better.

23 A: Okay.

24 **MS. LAFAVE:** Just a minute before you get started.
25 Can one objection by the Defendants stand for

1 question, but if you have trouble understanding
2 what I'm asking, let me know and I'll break up
3 the question.

4 A: Okay. What -- can ---

5 Q: Now I'm gonna ask the question again. All
6 right. Okay. So the facts you recited to me
7 from free memory alone is that Mr. Green left
8 the room, Ms. Prophet and Mr. Washington had
9 sex, Mr. Washington smoked crack twice, Mr.
10 Green returned, and Mr. Green then -- or, Ms.
11 Prophet let Mr. Green into the room, whereby he
12 engaged in a physical altercation with Mr.
13 Washington.

14 A: Correct.

15 **MS. LAFAVE:** Objection.

16 Q: Is there anything else before I ask you some
17 specific questions that you may not be aware of
18 that you might wanna tell me about what you
19 recall from your conversation with Investigator
20 Simpson?

21 A: There was some indication that Mr. Washington
22 was like, un- -- unwilling, or did not want to
23 fight Mr. Green, and that Ms. Prophet tried to
24 intervene or interject or just stop -- stop Mr.
25 Green from continuing.



1 work for a different agency. So I would say:
2 In my opinion there's probable cause, in my
3 opinion, there's not probable cause, and you
4 take that information and do what you will.

5 At this point, the indication was the
6 assault, followed by him throwing a person into
7 the pillar, and then the pil- -- person dying
8 right there on-scene approximate to that
9 assault, is that probable cause for murder.
10 And so that's the -- those are the -- that's
11 the reason.

12 Q: Okay. So -- and is that a recollection that
13 you had that analysis as a con- -- part of a
14 conversation with Simpson that it was the
15 physical throwing of Mr. Washington into the --
16 let's -- let's call it something. I don't know
17 that it was a pillar, I believe it was a
18 concrete wall.

19 A: Yeah. Something concrete or brick or
20 something.

21 Q: Right. Which wouldn't -- wouldn't change what
22 we're talking about, but ---

23 A: Yeah.

24 Q: --- into something solid, and that he died
25 shortly thereafter. Is that the discussion



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1 Q: --- probable cause, is that right?

2 A: Well, I said it was up to them, and how they
3 was talking to me as sort of one chain of
4 events ---

5 Q: Sure.

6 A: --- sort of one sequence of events. So he goes
7 in the room, assaults him, and -- I can't
8 remember if it was the guy like wasn't fighting
9 back, or wasn't trying to or s- -- something,
10 but that the young lady thought the assault was
11 getting serious enough to where she wanted to
12 intervene and say stop, and then that that
13 assault continued and then the assault
14 continued from that point outside and sort of
15 culminated in the throwing against the wall.
16 So I didn't look at as an isolation of --
17 sorry.

18 Q: No, no. Go ahead. Keep going.

19 A: I didn't look at it as an isolation. He threw
20 it -- he threw him against the wall, and then
21 he died of sort of all of the things leading up
22 to the throwing against the wall.

23 Q: And you mentioned also -- and -- and I -- I
24 follow what you're saying, but you took it and
25 com- -- and you combined the -- the continuous



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- 1 trying to get into the room, could not get in,
2 and Ms. Prophet let him in.
- 3 Q: Uh-huh.
- 4 A: All right. And he was trying to get into the
5 room because he had, obviously, some animosity
6 toward Mr. Washington for some reason.
- 7 Q: And let me stop you right there and let me ask
8 that. So you're not aware of the reason for
9 any animosity between the two?
- 10 A: I don't remember if I was told or not.
- 11 Q: Okay.
- 12 A: But I know -- obviously, he walks into the room
13 and he assaults Mr. Washington, there was some
14 reason for that. And I know he couldn't get
15 into the room 'cause Ms. Prophet had to let him
16 in. So I don't remember if during that call I
17 was told that or not.
- 18 Q: Okay. And let me take back the word
19 unprovoked. How about a non- ---
- 20 A: Uh-huh.
- 21 Q: --- it -- it wasn't a mutual fight, is that a
22 better way for me to put it?
- 23 A: Correct.
- 24 Q: Okay. So non-mutual. And then Ms. Prophet,
25 giving information to Investigator Simpson that



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1 Defendant before collapsing a short distance,"
2 and, "was found by medical personnel who
3 pronounced him," dead on the scene. Is there
4 anything inconsistent about that statement from
5 what your discussion with Investigator Simpson
6 was?

7 A: No.

8 Q: Okay. This next-to-last sentence that he
9 stated to the victim, "You better hope the
10 police get here before I get in there," did
11 that ever come up to the best of your knowledge
12 in your recollection with Investigator Simpson?

13 A: I don't recall that. I know at some point in
14 the case I learned about that, but I don't know
15 if I knew about it that night.

16 Q: Okay. Now some of the things I -- I -- I'm
17 gonna try and scratch some things out that
18 don't necessarily have too much bearing on
19 this. But, do you recall thinking that the --
20 the crack cocaine use had any bearing on the
21 probable cause charge at all?

22 A: Do I recall thinking that?

23 Q: Yeah.

24 A: Not ---

25 Q: Or discussing that, either one.



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1 A: Not with -- not with what I -- the facts I had.

2 Q: Okay. All right. So I'm gonna go into some
3 specific stuff we -- we've gotten since. And
4 some of this probably did come up at the
5 preliminary hearing, and maybe that's some of
6 the -- the recollection you have, I don't know.
7 I know I blend it all together and -- and I'm
8 not as sharp as I used to be.

9 Some of the testimony we got from
10 Investigator Simpson specifically was that he
11 did not want to initially seek a murder charge
12 at all, and it's my understanding he never told
13 you about that. Were you ever informed that he
14 did not believe the charge should be murder?

15 **MS. LAFAVE:** Objection.

16 A: I don't think so.

17 Q: Okay. The transcript kinda wobbles back and
18 forth on whether or not he said involuntary or
19 voluntary manslaughter, but I'll represent to
20 you that he did not want to proceed on the
21 facts that he had in his possession a charge of
22 murder, but rather, either an voluntary or
23 involuntary, again, a manslaughter charge.

24 A: Uh-huh.

25 Q: But you -- you don't recall him ever informing



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1 you of that?

2 **MS. LAFAVE:** Objection.

3 A: No. I think I would've asked why.

4 Q: Do you think that would've been relevant in
5 giving him advice about how to proceed on this
6 charge?

7 **MS. LAFAVE:** Objection.

8 A: Ob- -- obviously, yeah. Yeah.

9 Q: Now they talked about -- I'm -- I'm surprised,
10 but glad to hear that the -- the drug use came
11 up, and that he used drugs twice. Did -- do
12 you recall any information being provided to
13 you that night about Mr. Washington exhibiting
14 signs of drug-induced paranoia?

15 A: No, I'm not -- I'm not sure who -- who could've
16 said that, but definitely not drug-induced
17 paranoia.

18 Q: Okay.

19 A: The -- I don't recall those words.

20 Q: Well I -- and I'm -- I'm using it -- I -- I
21 wasn't there, so I don't know -- if the
22 conversation didn't happen, I'm not sure how
23 else to describe it, but that's what it would
24 amount to if I were to paraphrase it. Were you
25 aware of any behavior by Mr. Washington that



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1 the victim acting weird or delirious or --
2 yeah. So I don't know if it wasn't told to me
3 or if I just don't recall that part, but
4 something was going on in the room for -- for
5 some reason, Mr. Green was trying to get in.

6 Q: But you don't remember what -- the reason he
7 was trying to get in?

8 A: No. Not -- not based on that conversation.

9 Q: And that's one I'm -- I'm most concerned ...

10 A: Yeah.

11 Q: So this is a question I'm -- I'm asking Mr.
12 Simpson in the deposition. And I'm gonna ask
13 you if you are aware of anything that's about
14 this. I don't think you are, but I want you to
15 know what I'm talking about. Mr. Green stated
16 that he assaulted the victim because he
17 observed the victim physically assaulting a
18 witness who was also inside the room, Ms. Aja
19 Prophet. And he felt he needed -- or need to
20 protect her from the victim. Is that still a
21 true statement about your observation of this
22 case?

23 **MS. LAFAVE:** Chris, can you point us to where you're
24 reading from in the transcript and note -- and
25 note it for the record?



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1 MS. LAFAVE: Objection.

2 A: I don't recall it. I recall it coming up at
3 some point, I don't know if -- about that
4 night.

5 Q: Would that have had any bearing on your --
6 would that've been a relevant fact in your
7 analysis in advising about probable cause for
8 a murder charge?

9 MS. LAFAVE: Objection.

10 A: In and of itself, yes. But it would have to be
11 in the context of whatever else was said by Ms.
12 Prophet, whatever is displayed on video,
13 whatever else he said in that same statement.

14 Q: And -- and we're gonna get into some more right
15 now. I'm gonna move as fast as I can, I won't
16 hold you here too long.

17 A: Okay.

18 Q: I know everybody's got stuff going on. I just
19 have through jump these pages so I can try to
20 get the -- the quote right.

21 All right. Okay. So this is page 93 of
22 his -- of -- of Investigator Simpson's
23 examination. Lines 7 through 21. My question,
24 but -- going forward whenever I -- this is the
25 only transcript I'm going to use. Me asking

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1 A: I don't -- I don't recall being told that. I
2 can't say one way or the other.

3 Q: Okay. Do you think you -- you would've
4 recalled that in your probable cause analysis
5 for a murder charge?

6 **MS. LAFAVE:** Objection. Witness says he doesn't
7 remember.

8 Q: You can answer the question.

9 A: So the only caveat I wanna gi- -- caveat that
10 I wanna give about any specific facts is I
11 never decline or authorize -- not really
12 authorize, but tell an -- an officer whether or
13 not they have probable cause, based on one --
14 one fact, all right. So with that caveat, any
15 fact is always relevant. So if I was told that
16 fact, yes, I would've considered it, you know,
17 in the analysis.

18 Q: Okay. And although you can't rule out it was
19 never said, you don't recall that part of the
20 conversation involving this allegation that he
21 was making her feel -- fear for her safety?

22 **MS. LAFAVE:** Objection.

23 A: Not specifically.

24 Q: Okay. I'm gonna try and crop out on some of
25 these. Some of these questions are kinda



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1 MR. TRULUCK: 104, 10 through 22.

2 Q: And I'll start with my question: States that
3 she had -- he had taken crack and believes that
4 that -- that is why he's acting out. She
5 states that she started yelling for help and
6 there was a 911 call placed by a third party
7 named Jessica, who states that she heard a
8 woman yelling for help on the bottom floor, is
9 that correct? Answer: Yes.

10 My question, again, is -- is do you recall
11 being told that information? And we'll call it
12 the December 4th meeting, but at -- on Dec- --
13 or, December 5th meeting. Do you recall being
14 told that information on December 5th?

15 MS. LAFAVE: Objection.

16 A: Not specifically.

17 Q: Okay. Were you ever informed that Miss- -- Ms.
18 Prophet had been struck by the victim, such
19 that she was bleeding before Mr. Green went
20 into the room?

21 MS. LAFAVE: Objection.

22 A: I don't think so.

23 Q: Okay. And I -- I'll tell you what. I'm gonna
24 try and -- I'll try and paraphrase these
25 because it -- I -- it looks like I'm going into



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- 1 A: I don't recall him saying those specific words.
- 2 Q: Do you recall him saying anything about not
3 letting Ms. Prophet leave the room?
- 4 A: All I remember is there was some conversation
5 about something going on between them in the
6 room, and Mr. Green wanting to get in.
- 7 Q: Okay. Did Investigator Simpson ever give you
8 any description of -- of what kind of assault
9 he committed on Mr. Washington, the deceased?
- 10 A: A description?
- 11 Q: Uh-huh. And I'll -- and I'll -- I'll help you
12 out. I -- I'm sure you can answer the
13 question, but did he say, to the best that you
14 recall, punch him in the face, or -- or hit him
15 with a, you know, a blunt force object, or
16 anything like that?
- 17 A: To my recollection, it was like blows to the
18 upper body according to Ms. ...
- 19 Q: Prophet?
- 20 A: Prophet. And that continued until they walked
21 outside and you -- you see on the surveillance
22 Mr. Green throwing Mr. Washington -- that's his
23 name -- into the brick wall, the brick --
24 whatever -- structure.
- 25 Q: And do you recall that Investigator Simpson



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1 in a trial of this case because you're pitting
2 the witnesses, but also, there is no way that
3 anyone listening to you reading can tell
4 whether it's from the video, from the witness,
5 or from your question. So I appreciate you
6 having stated the line items, but it -- as a
7 listener, I agree with Jax. I'm unable to
8 understand exactly what your questions are. I
9 think the witness has expressed a couple of
10 times; he's asked you to reread it. So I would
11 object to any of these questions where you're
12 citing to a deposition transcript that has not
13 been provided to the witness, has not been
14 entered into the record, and is wholly
15 inadmissible under the rules of evidence.

16 **MR. TRULUCK:** Okay.

17 **Q:** Getting back to my line of questioning, do you
18 recall any conversations with Investigator
19 Simpson that would have described the
20 altercation between Mr. Green and Mr.
21 Washington as him being hit like a woman or
22 small hits?

23 **A:** The only thing I recall is that the assault was
24 going on and Ms. Prophet saw it, thought it was
25 enough, and tried to stop it.



1 Q: Okay. Do you think my characterization from
2 the deposition with Investigator Simpson about
3 it being small hits or hitting like a woman, do
4 you think that would be important information
5 for Investigator Simpson to tell you at that
6 December 5th meeting?

7 MS. PAVLICEK: Objection.

8 MS. LAFAVE: Objection.

9 A: If -- that would depend on if -- I don't know
10 how long the interview with Ms. Prophet was or
11 what else she said or didn't say, whether she
12 said something different at some other point
13 during the video, so, yes. Generally, I'd like
14 as much information as I can have, but if she
15 said in the video interview with Investigator
16 Simpson he was being hit like a girl and that's
17 all she said about it, then that would be
18 important. But I would, you know, I would
19 expect officers to give me the, sort of,
20 synopsis of how they viewed the entire --
21 entirety of whatever interview they had with
22 whoever.

23 Q: Okay. And -- now, I switched at some point to
24 an interview between Investigator Simpson and -
25 - and Mr. Green, the Plaintiff in this case.



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1 A: Uh-huh.

2 Q: And I'm asking him about conversations he's
3 having with Mr. Green in the interview room.
4 And during that inves- -- or that deposition,
5 page 169, line 3, I ask: Okay. So let's talk
6 about that. You're telling him that you have
7 no clue how he died? And we talked about this,
8 you don't want -- you don't want -- and you
9 want to be straight with him, right? Yes.
10 Okay. So is that statement true at the time,
11 you have no clue why he died? Answer, line 10:
12 Yes. Did Investigator Simpson ever convey to
13 you that he had no idea what the cause of death
14 was on the morning of December 5th?

15 A: That he personally had no idea?

16 Q: Yes.

17 A: No. I don't think so. But the import of the
18 facts I was given is that the guy was thrown
19 against the wall and then -- after an assault,
20 and then died soon after. The one reasonable
21 conclusion to draw from those facts is that he
22 died after being thrown against the wall. So
23 no, he didn't tell me: I don't know why he
24 died. I think he just told me what -- what
25 happened. But he didn't -- he didn't express



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1 to me: I have no idea why this guy died. I
2 would remember that.

3 Q: Okay. Would you have found that concerning if
4 he had -- had told you that when seeking
5 probable cause for an arrest warrant?

6 A: I would've found it odd. If someone was thrown
7 into a brick structure and, you know, then
8 shortly died and you're saying: I don't know
9 why they died, I would find that odd.

10 Q: Would you want further information from
11 Investigator Simpson if he had told you: I
12 don't know why he died, but I -- I wanna know
13 if I have probable cause for an arrest warrant?

14 **MS. LAFAVE:** Objection.

15 A: Ask again?

16 Q: Would you have wanted more information from
17 Investigator Simpson if he had told you: I
18 don't know why the victim is dead, just before
19 he's asking for probable cause from you for an
20 arrest warrant for -- for murder?

21 A: I would ask him: Why are you unsure why, given
22 whatever you've told me?

23 Q: Did Investigator Simpson, to the best of your
24 knowledge, ever talk to you about any injuries
25 he observed on Mr. Washington, the victim?



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1 was an official cause of death from the
2 pathologist. I think the information I had was
3 that there was an altercation, pretty much
4 thrown against the wall, and then died on the
5 scene with whatever we had at that point was
6 the probable cause. Obviously, some stuff came
7 later on that sort of cast that in a different
8 light, but I don't -- I don't think I had a
9 cause of death, an official cause of death.

10 Q: Did Investigator Simpson, to the best of your
11 knowledge, ever mention to you that when EMS
12 arrived on the scene, they administered Narcan
13 to the victim, to the deceased, Mr. Washington?

14 A: That they administered Narcan?

15 Q: Uh-huh.

16 A: That's a good question. I don't think so. I
17 don't -- I just don't recall that.

18 Q: Would that be a relevant fact in your analysis
19 for a murder charge?

20 A: I would ask why did they administer Narcan.

21 Q: So it would at least create a line of inquiry
22 about it?

23 A: Yeah.

24 Q: Dan has told us that he is the only solicitor
25 actually assigned to the case, formally



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1 A: Yeah, that's strictly up to the -- whoever
2 forwards the warrant out. Whatever they put in
3 there.

4 Q: Okay. And so just because something's not
5 included in the warrant doesn't mean it wasn't
6 discussed in your telephone call with the
7 officers, right?

8 A: That's accurate.

9 Q: As you kind of probably gleaned, Mr. Truluck's
10 legal theory here is that Mr. Green was
11 defending others in trying to get into the
12 hotel room where Mr. Washington and Ms. Prophet
13 were. Have you gathered that today?

14 A: From today, it sort of -- well, and Mr. Shealey
15 at the preliminary hearing -- that sort of ...

16 Q: And when you are making a -- an assessment of
17 a case on whether there's probable cause,
18 you're not assessing whether someone might have
19 a legal defense to that charge, are you?

20 A: Sometimes, yes. So, we've had the discussion
21 with law enforcement, ultimately it's up to a
22 defendant to assert a defense at the proper
23 time. We -- if a case is an obvious sort of
24 self-defense case, or there's an obvious
25 defense that's there, and we have concerns

