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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 III

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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
ARTHUR THOMAS

Wednesday, September 25, 2025
 11:02 a.m. - 12:49 p.m.

The deposition of Arthur Thomas, taken on behalf of the Plaintiff at the law offices of Crowe LaFave Garfield & Bagley, LLC, 2019 Park Street, Columbia, South Carolina, on the 25th day of January 2024, before Cortney N. Glover, RPR, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

ARTHUR THOMAS

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1 Q: --- so that I understand what you recall and
2 your role related to this 2019 situation.

3 A: Sure.

4 Q: Can you tell me a little bit about the nature
5 of your relationship as a sergeant to
6 Investigator Simpson about December of 2019?

7 A: All right. I supervise the homicide division
8 and my role as that supervisor is to manage the
9 investigators, manage their case load, all
10 right, and then ensure that everything's
11 communicated throughout up the chain, down the
12 chain, things of that nature. But the
13 investigator works their cases.

14 Q: Okay. So is there anybody higher up the rank
15 than you?

16 A: Yes.

17 Q: Okay.

18 A: To the chief. The chain goes from myself
19 lieutenants, captains, majors, deputy chief,
20 and then the chief.

21 Q: Okay.

22 A: So there's a number of rankings above myself.

23 Q: Does the investigator have any autonomy in his
24 role? Does he make his own decisions at all?

25 A: Yep. The investigator has absolute autonomy.



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1 Again, we manage, try to make sure that they're
2 doing their tasks, help with manpower, collect
3 evidence, whatever. So if he is worn out, I'll
4 send two to three more investigators to help
5 him out with other things, search warrants and
6 things of that nation so ...

7 Q: Now, you've touched on this. Do investigators
8 make the decision whether or not to charge
9 people?

10 A: Correct, yes.

11 Q: Okay.

12 A: They do.

13 Q: Do they make those decisions independent of
14 their sergeants?

15 A: Yes.

16 Q: Okay. And, again, I'm not talking about the
17 specific instance you had. We'll get to that.
18 I just want to understand how it works.

19 A: Uh-huh.

20 Q: Tell me about the role. In this specific case
21 obviously there's a telephone call to a
22 prosecutor, Lamar Fyall, as I understand it,
23 early in the morning either late in the night
24 on December 4th, 2019, or early in the morning
25 December 5th, 2019. What role does the



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1 solicitor play in the dynamic between you and
2 an investigator?

3 A: All right. With murder we develop a
4 relationship with the solicitors office that if
5 we have a case that we believe is a murder, we
6 will communicate with them the probable cause
7 that we have that, night that morning, whenever
8 it is.

9 Q: Uh-huh.

10 A: We'll talk about the elements of crime that we
11 have, any evidence, physical, therefore, and
12 come to an agreement if we have probable cause
13 to charge. That -- the reason we did that
14 'cause it helps their office prepare, get
15 somebody assigned quicker and so forth. But we
16 only do that for murder.

17 Q: Uh-huh.

18 A: Assaults, anything below that, the investigator
19 has the autonomy to go and do the affidavit on
20 his own. We just -- for that particular charge
21 we speak with him to ensure that we have things
22 lined up.

23 Q: So let's talk about the murder then. So you
24 said murder is the one that gets special
25 treatment?



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1 A: Correct.

2 Q: In that situation, does the investigator still
3 have the autonomy to make the decision whether
4 or not to charge murder?

5 A: Yes.

6 Q: Okay. And sometimes I'll -- I forgot to
7 mention this.

8 A: Uh-huh.

9 Q: I'm as bad as anybody, probably -- maybe the
10 worst at asking you complicated questions.
11 Because what I'm asking can be very specific
12 and I'll talk a lot. So stop me if I'm getting
13 confusing.

14 A: Sure.

15 Q: But in this -- this the murder dynamic ---

16 A: Uh-huh.

17 Q: --- you said that the investigator ultimately
18 decides whether or not he charges murder;
19 correct?

20 A: Correct.

21 Q: Okay. Is the prosecutor's role in that -- in
22 this case, Lamar Fyall ---

23 A: Uh-huh.

24 Q: --- is his merely advisory?

25 MS. LaFAVE: Objection.



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1 council delegates to the City of Columbia
2 certain duties to include training programs and
3 things like that?

4 **MR. HEMLEPP:** Object as to the form.

5 A: I'm not -- I can't really answer their policies
6 and so forth to that regard.

7 Q: I understand. I'll ask it a slightly different
8 way. Does the City of Columbia Police
9 Department handle its own training?

10 A: Yes.

11 Q: Okay. To the best of your knowledge, does the
12 City council interfere with that training at
13 all?

14 **MR. HEMLEPP:** Object to the form.

15 A: I have no knowledge of that.

16 Q: Okay. All right. So I'm gonna go into the
17 actual specifics of this case for a second.
18 Well, it's probably for the rest of this
19 deposition really. Do you recall the -- and
20 I'll get real specific. Do you recall the
21 evening and/or the morning of December 4th --
22 December 5th 2019, at all?

23 A: Yes, I do.

24 Q: Okay. I don't want -- I don't need to know
25 specifics about communications or anything, but



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1 video evidence ---

2 A: Uh-huh.

3 Q: --- and you at least had an opportunity to
4 review or watch some of the in-person
5 interviews at headquarters; is that correct?

6 A: Correct.

7 Q: All right. Do you review -- were there any
8 other documents at the time to review?

9 A: No. There was no documents really at that
10 time; no.

11 Q: So having reviewed those two categories of
12 evidence ---

13 A: Uh-huh.

14 Q: --- before you met with Lamar Fyall, did you
15 have a discussion with Investigator Simpson
16 before you had a call with Lamar Fyall?

17 A: The discussion would have been with the whole
18 team, so I'm sure we did; yeah.

19 Q: Okay.

20 A: 'Cause before we make the call, again, we talk
21 about the evidence and discuss the probable
22 cause. 'Cause we're not gonna make the call
23 unless we feel we got accurate probable cause.

24 Q: Okay. To the -- and this is -- I know this is
25 an open-ended question, but I wasn't there, so



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1 Q: Okay. The next question is: Did Investigator
2 Simpson tell you that the decedent had a
3 history of drug problems including going to
4 rehab and swallowing a large amount of cocaine?
5 Did he ever tell you that?

6 A: I think sometime later a family member or
7 something may have mentioned it. I can't
8 remember. I don't recall exactly when that was
9 though.

10 Q: Well, just focusing on before speaking with
11 Lamar Fyall, you said, sometime later. Do you
12 recall him telling you that before you spoke
13 with Lamar Fyall?

14 A: I don't recall.

15 Q: Okay. Do you recall telling Lamar Fyall about
16 that fact?

17 A: No. 'Cause I don't recall knowing that fact.

18 Q: Okay. Do you recall Investigator Simpson
19 telling you that the decedent ---

20 A: Uh-huh

21 Q: --- Mr. Washington, had ingested two doses of
22 cocaine than evening?

23 MS. LaFAVE: Objection.

24 Go ahead.

25 A: I recall the witness advising one of the



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1 investigators during the interview that they
2 participated in some drugs and then
3 participated in other acts.

4 Q: Okay. And let me parse that out though.

5 A: Uh-huh.

6 Q: But do you specifically recall whether or not
7 you were informed that the deceased had used
8 two doses of crack or cocaine?

9 A: I don't recall any doses. I just know there
10 was some participation in that and
11 participation in other acts.

12 Q: Okay. And so -- and I'll ask this question.
13 I think your answer answers it. Let me try
14 anyway.

15 A: Uh-huh.

16 Q: Do you recall you or Investigator Simpson
17 telling Lamar Fyall that the decedent had used
18 two doses of crack or cocaine?

19 A: I believe it was described the same way, is
20 that they participated in drug activity and
21 participated in other activity, in sexual
22 activity.

23 Q: But you don't specifically recall it being
24 clarified further that it was two uses of
25 cocaine?



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1 A: No. I don't recall anything about the uses.
2 It was, I'm sure, a general statement. 'Cause
3 I don't recall what the witness said about how
4 many doses.

5 Q: Okay. Do you recall Investigator Simpson
6 relaying to you that Mrs. Proffit was yelling
7 for help at any time?

8 MS. LaFAVE: Objection.

9 A: I don't recall.

10 MS. LaFAVE: Go ahead.

11 Q: And I know that not recalling whether or not he
12 told you that probably includes the next
13 question, but I'll go ahead and ask.

14 A: Okay.

15 Q: Do you recall Investigator Simpson telling
16 Lamar Fyall that at one point Ms. Proffit was
17 yelling for help?

18 A: I don't recall that.

19 Q: Okay. And do you recall Investigator Simpson
20 ever telling you that the plaintiff had
21 explained to him that he observed the decedent,
22 Mr. Washington, through the window, that he was
23 naked, that people were after him, and that
24 Ms. Proffit had blood on her face where the
25 decedent had attacked her? Do you ever recall



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1 that conversation with Investigator Simpson?

2 **MS. LaFAVE:** Objection.

3 A: I don't recall.

4 Q: Okay.

5 A: I don't recall that; no.

6 Q: And the second part of that: Do you ever

7 recall Investigator Simpson telling Mr. Fyall

8 about that fact?

9 **MS. LaFAVE:** Objection.

10 A: I don't know.

11 Q: I'm sorry. I ---

12 A: I don't recall that.

13 Q: Okay. And you've been doing a great job so

14 far. I forgot to say it. If you don't answer

15 the question, if you inaudible, I'll ask you to

16 answer it sometimes.

17 A: Okay.

18 Q: I know what you're saying 'cause I can read

19 your body language.

20 A: Yeah.

21 Q: But the court reporter can't.

22 A: Gotcha.

23 Q: All right. So you don't recall that coming up

24 in the conversation with Mr. Fyall?

25 A: No.



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1 Q: Okay. Do you recall any statements from
2 Investigator Simpson that Mrs. Proffit was
3 trying to get out of the room, that the
4 decedent was preventing her from doing so?

5 A: I don't recall. I don't recall. The specifics
6 of that nature, I'll be honest. I'm not gonna
7 recall that 'cause I have 400-something murders
8 in my head.

9 So to be honest, I'm not gonna remember in
10 that detail. But go ahead. I'll answer the
11 best I can.

12 Q: I gotcha. And that's what I'm asking.

13 A: Because the investigator would be able to
14 communicate that better with you ---

15 Q: Right.

16 A: --- those type specifics. 'Cause once they
17 make their charges, you know, I go to the next
18 thing and start, you know, dealing with the
19 next headache that's coming through.

20 Q: I gotcha. And I'm not judging you for not
21 knowing. I just got to ask. If I don't ask
22 now, I lose my chance.

23 A: Gotcha.

24 Q: Next part of that same question: Do you recall
25 the investigator telling Lamar Fyall that she



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1 was being prevented from leaving the room?

2 A: I don't recall.

3 Q: Okay. Do you recall Investigator Simpson
4 telling you that the plaintiff had said he
5 assaulted Mr. Washington because he observed
6 the decedent assaulting Ms. Proffit?

7 A: I recall him admitting to the assault. I don't
8 know the details of whatever version he gave of
9 the assault. But I recall there being a
10 witness admitting that he had assaulted the
11 young man and that the suspect admitted that he
12 actually assaulted. But the variations or
13 whatever, I don't recall.

14 Q: Okay. And the second part of that question:
15 Do you recall Investigator Simpson conveying to
16 Lamar Fyall that Mr. Green was attacking the
17 decedent because he had attacked Ms. Proffit?
18 Do you recall that ever being said?

19 A: I don't recall.

20 Q: Okay. Do you ever recall -- and this, as I
21 recall it, would have been in the interview
22 with Ms. Proffit. Do you ever recall
23 Ms. Proffit explaining that Mr. Green was
24 hitting the decedent, quote, like a woman?

25 MR. HEMLEPP: Say that again?



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1 Q: Was he -- do you ever recall Mr. --
2 Investigator -- I'm sorry. Let me back up.

3 Do you ever recall Mrs. Proffit stating
4 that Mr. Green was hitting the decedent, quote,
5 like a woman, end quote?

6 MS. LaFAVE: Objection.

7 A: I don't recall the witness stating that the
8 defendant was beating and stomping and hitting
9 on the victim. I don't recall the manner.

10 Q: Okay. And the next part of that question: Do
11 you recall Investigator Simpson telling Lamar
12 Fyall anything about the intent or the degree
13 of the assault between them?

14 A: Again, just hitting, stomping, and beating.

15 Q: Okay. Did Investigator Simpson ever convey to
16 you that he had no clue what the cause of death
17 was?

18 A: State the question again?

19 Q: I'll say it again. Did Investigator Simpson
20 ever express to you or say to you that he had
21 no idea what caused Darryl [ph] Washington's
22 death?

23 A: No.

24 Q: No? Okay. And now for the second part of that
25 question: Do you ever recall him telling



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1 Mr. Fyall that he had no idea what caused the
2 death of Mr. Washington?

3 A: No.

4 Q: On that particular question, do you think you
5 would have remembered if your investigator had
6 said that?

7 MS. LaFAVE: Objection.

8 A: I don't recall him saying it, so obviously if
9 he said it, I don't remember.

10 Q: Okay. And I'm not trying to press you -- well,
11 not inappropriately press you.

12 A: Right.

13 Q: My question is not so much whether or not you
14 recall him saying that. My question is: Do
15 you think you would have remembered if your
16 investigator who's about to ask for probable
17 cause on an arrest warrant telling you I have
18 no idea what the cause of death is?

19 MS. LaFAVE: Objection.

20 A: That was never said ---

21 Q: Okay.

22 A: --- that I can recall.

23 Q: Okay. Do you recall -- and well -- and let
24 me -- and you said it was never said, so that
25 answers my question about Mr. Fyall.



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1 Do you ever recall Investigator Simpson
2 telling you that he wanted to pursue a
3 manslaughter charge instead of a murder charge?

4 A: No.

5 Q: Okay.

6 A: That would be something -- if they're gonna
7 change charges, that's something he discuss
8 with the solicitor's office.

9 Q: Uh-huh.

10 A: And they talk about it. That happens a million
11 times, of course. But that's not something
12 that he would discuss with me. That's
13 something he would discuss with Lamar,
14 Goldberg, anyone at the solicitor's office if
15 they're gonna do any changes in charges. But
16 we wouldn't have that conversation in that
17 regard ---

18 Q: Well, then let me back up.

19 A: --- particularly that early in the
20 investigation.

21 Q: And let me back it up and put it in more
22 context. Do you recall Investigator Simpson
23 telling you before you contacted Lamar Fyall
24 that he felt more comfortable with a
25 manslaughter charge than a murder charge?



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- 1 A: No. We didn't have the conversation.
- 2 Q: Okay. Do you ever recall him telling Lamar
- 3 Fyall that?
- 4 A: You have to ask him that.
- 5 Q: Well, you were there during the conversation
- 6 with Mr. Fyall, weren't you?
- 7 A: We only spoke about the murder charge and the
- 8 probable cause.
- 9 Q: That's fine. So in other words, you don't
- 10 recall Investigator Simpson saying I feel more
- 11 comfortable with a manslaughter charge, as
- 12 opposed to a murder charge?
- 13 A: During the call we only discussed the probably
- 14 cause for murder ---
- 15 Q: Okay.
- 16 A: --- period.
- 17 Q: Fair enough. Were you -- did you ever become
- 18 aware of whether or not Investigator Simpson
- 19 had contacted Sergeant Valerie Moore after you
- 20 guys spoke with Lamar Fyall about this case?
- 21 A: I don't know what conversation -- she works --
- 22 she's my partner.
- 23 Q: Uh-huh.
- 24 A: Or we handle both teams. So at some point
- 25 she's gonna be communicated about it when comes



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1 to work. I don't know what time she came in,
2 but they -- I'm sure they had a conversation
3 too 'cause I'm sure we all talked about it when
4 she got there. 'Cause we keep everybody
5 informed.

6 Q: Okay. And I'm gonna get more specific.

7 A: Uh-huh.

8 Q: And your answer may be the same. I understand.

9 A: Okay. That's fine.

10 Q: Did you ever hear about Investigator Simpson
11 telling Sergeant Valerie Moore ---

12 A: Uh-huh.

13 Q: --- that he felt more comfortable with a
14 manslaughter charge, as opposed to a murder
15 charge but that you insisted on the murder
16 charge?

17 MR. HEMLEPP: Object to the form.

18 A: No, no. One, the investigators have the
19 autonomy to charge ---

20 Q: Uh-huh.

21 A: --- whatever they choose. The only charge that
22 we even speak to the solicitor about is murder.

23 Q: Uh-huh.

24 A: Any other charge they have the autonomy to make
25 the charge on their own, their own affidavits,



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1 without even speaking to the solicitor's
2 office. Once the charge is made, all right,
3 any charge under that, because it's already
4 made with the solicitor's office, they discuss
5 it with the solicitors, not me. I don't have
6 any control over that or any say over it
7 because it is the investigator's job to
8 determine the charge.

9 Q: And I appreciate you explaining that.

10 A: Okay.

11 Q: Just to make sure I captured your answer
12 correctly ---

13 A: Uh-huh.

14 Q: --- you do not recall learning about
15 Investigator Simpson telling Sergeant Moore
16 that he felt more comfortable with a
17 manslaughter charge and that you insisted a
18 murder charge; is that correct?

19 A: No.

20 Q: Okay. You seem very confident about that?

21 A: Oh, yeah, yeah. No. Yeah. No. I'm very
22 confident about that. 'Cause, again, that's
23 not how that's handled, period.

24 Q: Okay. We previously reviewed the arrest
25 warrant. And I think the copy we have, it



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1 states in there -- I think it's in the first
2 two lines. Yeah. In the end of the second
3 sentence ---

4 A: Uh-huh.

5 Q: --- it says that the victim, which turned
6 physical without being provoked to do so. And
7 I believe the narrative's trying to say that
8 Mr. Green attacked the victim without being
9 provoked. Is that a fair reading of that
10 narrative?

11 A: Yes.

12 Q: Okay. Did Investigator Simpson ever give you
13 any information that the decedent had provoked
14 Mr. Green by attacking Mrs. Proffit? Did he
15 ever tell you about that?

16 A: No.

17 Q: Okay. You know, I'm going off memory too now.

18 A: Uh-huh.

19 Q: So forgive me if I don't recall correctly. But
20 I think earlier when I asked you about the use
21 of drugs you said that you were informed that
22 there was drug use; is that correct?

23 A: Correct.

24 Q: Okay. But you either did not recall or did not
25 specifically recall being told that there



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1 was -- that the decedent had used -- twice used
2 crack cocaine; is that correct?

3 A: I don't recall the amount. I don't. But I
4 know there was drug use and there was sexual
5 intercourse.

6 Q: Do you recall whether or not there was cocaine
7 or crack cocaine use?

8 A: I believe it was crack.

9 Q: You -- so you do believe that you were told it
10 was crack?

11 A: Yeah. I believe it was crack.

12 Q: But you don't recall whether or not there was
13 more than one dose used?

14 A: I don't recall the dosage, no. I'm not sure.

15 Q: I'm sorry. And I can hear you but ---

16 A: Yeah. I don't recall to dosage.

17 Q: Okay. Do you recall being informed that the
18 decedent was exhibiting drug-induced paranoia
19 at any time?

20 A: I don't recall.

21 Q: Okay. Do you recall whether or not you were
22 informed or Mr. Fyall was informed that Narcan
23 was administered on the scene on the decedent?

24 A: Because I wasn't at the scene, I don't recall
25 that either. I don't know what transpired at



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1 the scene, so I don't know.

2 Q: And I understand your answer.

3 A: Uh-huh.

4 Q: But my question is: Do you recall ever
5 Investigator Simpson telling you that Narcan
6 was used on the decedent?

7 A: I don't recall being informed of that; no.

8 Q: Okay. I understand that you don't recall
9 whether or not you sat in on the interviews or
10 you watched the interviews. I completely
11 understand how that works with memory.

12 A: Right.

13 Q: Do you recall or were you informed ---

14 A: Uh-huh.

15 Q: --- about any post-interview statements from
16 Ms. Proffit? And I have to say post-interview.
17 I mean when she had left the interview room.

18 A: No.

19 Q: Okay. Were you -- and this is part of the same
20 question.

21 A: Uh-huh.

22 Q: Do you recall being informed that Mrs. Proffit
23 had recanted or changed any of her testimony
24 after she left the interview room?

25 A: No.



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ARTHUR THOMAS

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1 Q: Okay. Do you think you would have remembered
2 that?

3 MS. LaFAVE: Objection.

4 A: I don't recall it, anything of that happening.
5 So if it was spoken to me, I don't remember.

6 Q: Okay. I'm gonna ask you a broad question. And
7 this could be a total mess. But I'm gonna give
8 it a shot, and we'll try to dwindle it down a
9 little bit, because I just want to let you
10 answer the question openly first.

11 A: Uh-huh.

12 Q: You previously testified that the investigator
13 is totally autonomous in the decision of
14 whether or not to make the charge; correct?

15 A: Correct.

16 Q: Okay. And you're there in a supervisory
17 capacity only; is that correct?

18 A: Correct.

19 Q: Okay. Are you aware of any policy allowing any
20 employee to refuse an illegal order from a
21 supervisor or otherwise?

22 MR. HEMLEPP: I'm gonna object to -- as to form. I
23 didn't understand your question.

24 Q: Do you understand my question?

25 A: I don't know where you're going, but say it



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1 A: Correct.

2 Q: If you told Investigator Simpson he should make
3 a certain charge, would he have the ability to
4 reject that information from you and make his
5 own charge?

6 A: Well, I wouldn't tell anyone to make a charge.
7 If we have probable cause for a charge, that's
8 what we'll charge with. And then if there's
9 any decision to do something different, again,
10 that would be something that investigator and
11 solicitor would discuss. But, no, he could
12 make any charge he chose.

13 Q: Okay. Now, I think you previously testified
14 that you never had any communications with
15 Dr. Durso but only with Coroner Watts; is that
16 correct?

17 A: Correct.

18 Q: Okay.

19 A: After the autopsy and the miscommunication
20 about why that body was there.

21 Q: Okay. Was it ultimately your recollection that
22 Lamar Fyall approved probable cause for the
23 charge of murder for Investigator Simpson?

24 A: We agreed that they had proximate cause; yes.

25 Q: Okay. And you certainly answered the



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1 questions, I think, as best as you could
2 possibly answer them. And I understood them.
3 But tell me what your role was in that
4 telephone call. Was it just to participate and
5 observe Investigator Simpson and Lamar Fyall's
6 call? What was your role in the telephone
7 call?

8 A: Yes.

9 Q: Okay.

10 A: Yes. And it's not -- it was everybody that was
11 in the interviews and so fourth. So I can't
12 remember -- whatever investigators I had out
13 that night -- I think Montgomery was one of
14 them, but I can't remember everybody -- but
15 once we get the corroborative evidence that we
16 think we have for probable cause, I have a team
17 come in, put Lamar on speaker, and give
18 probable cause.

19 Q: So how many people, to the best of your
20 recollection, were in the room while Lamar was
21 on the phone with Investigator Simpson?

22 A: Probably between three to four.

23 Q: Okay.

24 A: That's about the team that we can afford to
25 have out. But I can't remember everybody.



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1 this time.

2 Q: Right.

3 A: You know, if you had me about four years ago,
4 I would spit it out to you.

5 Q: Sure.

6 A: But right now ...

7 Q: Well, let me ask you more generally. Would you
8 expect your investigators to take all the facts
9 in their possession into consideration before
10 they make a -- made a criminal charge against
11 somebody?

12 A: That's what we did; yes.

13 Q: Okay. So yes? Is that a "yes"?

14 A: Yes, absolutely.

15 Q: Okay. Do you feel that your superiors would
16 expect the same of you?

17 A: Yes.

18 Q: Okay. You still have Exhibit 1, plaintiff's
19 exhibit, only exhibit, the warrant?

20 A: Uh-huh.

21 Q: I know you've reviewed the narrative.

22 A: Uh-huh, yes.

23 Q: I'll represent to you I don't see it in there,
24 so I'm not trying to be tricky. But can you
25 point out to me in the narrative what



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1 Investigator Simpson asserts to the magistrate
2 is the cause of death pursuant to this murder
3 charge warrant?

4 A: Well, the assault.

5 Q: Okay. Can you show me where he tells the
6 magistrate the assault is the cause of death?

7 A: Let me view back into this little thing here.
8 Hold on a second.

9 Where he speaks that the victim -- hold on
10 a second.

11 All right. All right. After the verbal
12 confrontation became physical, individual ...
13 struck several times ... then proceed to grab
14 the victim ... and location ... Cause the
15 victim to ... the wall ... after being
16 assaulted.

17 Then it describes that the victim
18 collapsed. And, again, this print is a little
19 small -- and was presume deceased.

20 Let's see, it just says that the incident
21 was captured on video. Well, that's pretty
22 much the gist of it. Ang, again, I'll be
23 honest. It just describes the incident and
24 that because of the incident, the subject
25 was he just fell dead.



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1 Q: I know it's a tough question because ---

2 A: Uh-huh.

3 Q: I'm sure preliminary hearings put you in the
4 mindset of wanting to be able to answer that
5 question but ---

6 A: Uh-huh.

7 Q: --- I already spoiled it for you. Are you able
8 to point out where the narrative it identifies
9 cause of death?

10 A: Well, in the narrative identifies a probable
11 cause to charge. The coroner's office will
12 give us any further information. But they gave
13 the probable cause to charge for murder.

14 Q: Okay.

15 A: Yeah.

16 Q: I understand.

17 A: Uh-huh.

18 Q: But can you identify what the investigator is
19 saying is the cause of death in that narrative?
20 Can you point to that?

21 A: Yes. Just that the assault occurred -- and
22 after the assault, the defendant died.

23 Q: Okay.

24 A: That's pretty much what the narrative is
25 saying.



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1 Is that a correct recitation of your response?

2 **MS. LaFAVE:** Objection.

3 A: Say the question again now?

4 Q: Sure. And I'll try to break it up a little

5 bit.

6 A: Yeah.

7 Q: And if I'm getting it wrong, you tell me that

8 too.

9 A: Okay.

10 Q: I believe Mr. Hemlepp asked you if you had a

11 duty to investigate the case.

12 A: Uh-huh.

13 Q: And I believe you responded you did ---

14 A: Uh-huh.

15 Q: --- is that correct?

16 A: Right.

17 Q: Okay. And then he asked you about how far you

18 had to go to investigate?

19 A: Uh-huh.

20 Q: Do you remember that question?

21 A: Okay.

22 Q: Okay. Do you remember that?

23 A: Yeah. Go ahead.

24 Q: Do you remember that he asked you do you have

25 to investigate it through to convection? And



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1 I recall you saying, no, you don't have to
2 investigate it to prove conviction; is that
3 correct?

4 **MS. LaFAVE:** Objection.

5 A: Correct.

6 Q: Okay. And then I think. the question led to,
7 did you have to investigate it to a point of
8 where you establish probable cause. Do you
9 remember that question?

10 A: Correct.

11 Q: Okay. Do you agree with that, that your duty's
12 only to go as -- to a point where you must
13 establish probable cause?

14 A: Not only.

15 Q: Okay. Tell me ---

16 A: But we go through the investigation and
17 complete the investigation. Part of it is to
18 ensure that we have appropriate probable cause.

19 Q: Okay.

20 A: And then even after that we still investigate
21 further 'cause we want to build the case
22 stronger for court for trial.

23 Q: Okay.

24 A: Yes.

25 Q: So would you agree that the duty of the City of



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1 Columbia Police Department investigators is to
2 investigate to probable cause and include
3 continuing to investigate to make the case?

4 A: Continue to investigation until they complete
5 the case.

6 Q: Okay.

7 A: Right.

8 Q: Would that include exploring information that
9 might exonerate the defendant?

10 A: Complete the investigation.

11 Q: All right. So is that a "yes"? And I don't
12 mean -- I'm pretty sure you are, but it sounds
13 like you're saying ---

14 A: Yes.

15 Q: --- yes. All of it?

16 A: Yeah.

17 Q: Okay. Were you ever informed by Investigator
18 Simpson that the initial autopsy reports
19 indicated that the cause of death was not due
20 to blunt force trauma? Did he ever tell you
21 that?

22 MS. LaFAVE: Objection.

23 A: Not -- no ---

24 Q: Not that you know of?

25 A: Not -- the coroner's report wasn't completed



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1 was informed that blunt force trauma was not
2 the cause of death, would that be relevant to
3 the investigation?

4 **MS. LaFAVE:** Objection.

5 A: So if he was informed, would it be relevant?

6 Q: Yes.

7 A: I feel that any information is relevant. But
8 it would still have to be looked into, and the
9 final conclusion of the coroner's office would
10 need to be prompted from there.

11 Q: Well, I mean specifically in this case ---

12 A: Uh-huh.

13 Q: --- where I think you have recited that there
14 was an assault; there was a death; and you felt
15 there was probable cause for murder; correct?

16 A: Correct.

17 Q: Okay. If Investigator Simpson learned from the
18 coroner or the forensic pathologist that blunt
19 force trauma was not the cause of death, would
20 that specific fact be relevant in a murder
21 investigation?

22 A: The concludes [sic] report. We still have to
23 wait on tox to come back and so forth. So they
24 wouldn't be relevant until I got a complete
25 report ---



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1 Q: Okay.

2 A: --- to me.

3 Q: Okay.

4 A: Yeah.

5 Q: Do you believe that the investigators have any
6 responsibility to inform the solicitors or
7 supervisors ---

8 A: Uh-huh.

9 Q: --- about changes in the evidence?

10 A: I'm sure they discussed it; yes.

11 Q: Well, I'm asking you if they have a
12 responsibility to discuss it. Do you think
13 that an investigator has a responsibility to
14 inform a prosecutor or a supervisor about a
15 change in the evidence?

16 A: To discuss all evidence; yes.

17 Q: Okay. If an investigator learned that a person
18 charged with murder ---

19 A: Uh-huh.

20 Q: --- was not the person who caused the death, do
21 you feel that he would have a duty to inform
22 either his supervisor or the solicitor about
23 that information?

24 MS. LaFAVE: Objection.

25 A: If he concluded that -- if the evidence



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1 A: Uh-huh.

2 Q: --- should be discussions between the
3 investigator and the solicitor?

4 A: Correct.

5 Q: I understand that.

6 A: Uh-huh.

7 Q: Should the investigator, as part of his
8 investigation, be informing the solicitor about
9 any exculpatory evidence in the case?

10 A: They should talk about any evidence in the
11 case; yes.

12 Q: Okay. Thank you. I have no further questions.
13 Unless they have questions, you made it.

14 MS. LaFAVE: I have a couple of exhibits being
15 printed.

16 (A break was taken from 12:45 p.m. until
17 12:48 p.m.)

18 MR. THOMAS - REEXAMINATION BY MS. LaFAVE:

19 Q: Sergeant Thomas, just a couple of follow-up
20 questions on Mr. Truluck's line of questioning.

21 A: Yes.

22 Q: And that is he was asking you whether an
23 investigator had an obligation to inform a
24 solicitor after of -- he used the term
25 "exculpatory evidence." You said any evidence



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE MAGISTRATE'S COURT
) 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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APPEARANCES

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 Attorney for the Plaintiff

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Brian Shealey, Esquire
 THE SHEALEY LAW FIRM, LLC
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 Columbia, South Carolina 29201
 Attorneys for the Defendant

Investigator Simpson
 1230 Columbia Avenue
 5623 Two Notch Road, 29223
 Richland County Sheriff's Department

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



STATE V. GREEN

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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 tucked 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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DEFENDANT'S MOTION:

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

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

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

THE COURT: Okay.

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



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



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



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



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.)
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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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DAN GOLDBERG

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1 A: I don't recall. It's possible it's in this
2 file. I don't remember. I could look in my
3 file.

4 Q: No, no. It's okay.

5 A: I don't remember if it's in here or not.

6 Q: That's okay. Dan, I know you're a fast reader.
7 Will you skim through that real quick and I'll
8 represent to you that it's -- it's his notes
9 about conversation with you and -- and the
10 family in this case.

11 A: This is -- okay. Okay.

12 Q: So -- and -- and I just wanted you to have an
13 opportunity to read that. Again, that, to the
14 best of my recollection would be Investigator
15 Simpson's notes about at least some, if not all
16 of the conversations he might've had with you
17 about that -- that period in time. Those two
18 documents together and what you've already told
19 us -- and I think you've said this, but let me
20 make sure I understand. Are -- are you aware
21 of any conversations you would've had, not to
22 say that you may or may not have had them, but
23 are you aware of any conversations you would've
24 had with Investigator Simpson before February
25 of 2020?



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DAN GOLDBERG

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1 A: Not that I recall.

2 Q: Okay. So I'm going to operate largely all in
3 the evidence we've been given so far, that
4 conversation would've come after the prelim.
5 If -- if I'm asking questions and you remember
6 any other conversations or communications with
7 Investigator Simpson before February of 2020,
8 will you please let me know?

9 A: Sure.

10 Q: Okay. As a general background, I -- I
11 genuinely don't know this, I should know, but
12 -- it's my understanding, according to
13 Investigator Simpson's testimony that he would
14 have uploaded, transmitted in some form what he
15 would refer to as his case file to the
16 Solicitor's Office on or about December of
17 2019. Are you generally familiar with the
18 process of investigators delivering those files
19 to your office or -- or making them available
20 in some way?

21 A: I'm generally aware of that process.

22 Q: Can you give me an idea so I can frame my
23 questions moving forward of how that works?
24 And I -- and I don't need you to go outside
25 this case, I'm not trying ---



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DAN GOLDBERG

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1 scientifically as well as the community, or the
2 community doesn't understand?

3 A: The way that I -- the way that I took that was
4 that it's not something that she's en- -- she
5 had encountered often in her career. And the
6 part about not being completely understood, I
7 took that to mean that the medical community as
8 a whole was still learning about it. Not that
9 it's not accepted, just that it's something
10 that doesn't come up that often, and so it's
11 still something that's -- learning as time goes
12 on. That's kind of the way I interpreted it.

13 Q: Okay. Now, again, according to your
14 conversation with her in these notes, it -- it
15 looks like you asked her to be, I guess, pretty
16 specific about her observations, where you went
17 on to note that there were no bruises to the
18 scalp, he didn't hit his head hard enough to
19 even bruise, no bleed to the brain, no trauma
20 to the brain, rib fractures, and comma, "There
21 is no evidence that he was beaten to death."
22 Is that a correct summary of the conversation
23 you had with Dr. Durso?

24 A: Yes.

25 Q: Okay. I think it's the third line, typed third



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DAN GOLDBERG

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1 line from the bottom, "If he was not high on
2 cocaine, he would've walked away from this
3 altercation; the cocaine is what caused his
4 demise." Is that a moralization of the
5 information that she gave you during this
6 conversation?

7 A: Yes.

8 Q: And I -- I note the last typed line, "She
9 called this the most 'unprosecutable case in
10 her career that was actually labeled a
11 homicide.'" I noticed you put that in quotes.
12 Because I -- I know you personally and because
13 I know your profession, is that exactly what
14 she said?

15 A: I would -- I would take those quotation marks
16 to mean that.

17 Q: Okay. I -- I wanna take the statement on its
18 own, but I'm gonna ask you, how did you
19 interpret that statement from her? And -- and
20 I ask that in the context of, did she just mean
21 just in regards to a homicide, or -- or was she
22 using the term homicide to relate to her
23 analysis about the cause of death?

24 MS. LAFAVE: Object to the form.

25 MS. PAVLICEK: Objection.



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DAN GOLDBERG

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1 specific evening, or are you talking about
2 autopsy in the sense of evaluating everything
3 over that next three month period?

4 A: My understanding is during the actual
5 procedure.

6 Q: Okay.

7 A: That Dr. Durso conducts on the body.

8 Q: Gotcha.

9 MR. TRULUCK: If you guys could just give me a
10 second. I don't even need to stop, I just
11 wanna look at my notes. I might be done.

12 (A short break was taken from 10:42 a.m. until 10:45
13 a.m)

14 MR. TRULUCK: Back on the record.

15 Q: Dan, I've only got a couple more questions.
16 And ultimately, you had the responsibility to
17 make a decision whether or not to proceed with
18 indictment, is that correct.

19 A: Yes. So whether or not to proceed with a
20 direct presentment indictment, since the case
21 had been dismissed at preliminary hearing.

22 Q: And you -- you decided not to do that, is that
23 correct?

24 A: That's correct.

25 Q: The last question I have, and -- and I don't --



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DAN GOLDBERG

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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



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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #: 2021-CP-40-0562

Sherman Green,)
)
 Plaintiff,)
)
v.)
)
City of Columbia, and)
George Simpson,)
)
 Defendants.)
-----)

DEPOSITION OF
AMY DURSO, M.D.

Tuesday, December 12, 2023
1:16 p.m. - 2:21 p.m.

The deposition of Amy Durso, M.D., taken on behalf of the Plaintiff at Professional Pathology Services, One Science Court, Suite 200, Columbia, South Carolina, on the 12th day of December, 2023 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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AMY DURSO, M.D.

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1 and or any other information that's related to
2 him. Were you the person in charge of the
3 autopsy for Mr. Dara Washington on December
4 5th, 2019?

5 A: Yes.

6 Q: Okay. And -- and again, I'm not kidding when
7 I -- when I say don't know. Is there anybody
8 else who is in -- in more senior a role when
9 you're conducting that autopsy on the morning
10 of December 5th, 2019?

11 A: No. So usually the people at the autopsy would
12 be me, an autopsy assistant, and a
13 representative from the Coroner's Office.

14 Q: Okay. But you would be the -- the primary
15 person conducting ---

16 A: Right. I am the one doing the actual autopsy
17 and writing the report.

18 Q: Okay. I think you might already have one of
19 these documents, and have already given copies
20 to my colleagues. We're gonna go through some
21 of these, and -- and some of it may be
22 duplicative because I understand that at least
23 initial reports get amended and or finalized
24 over time. Is that correct?

25 A: Yes.



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AMY DURSO, M.D.

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1 A: Yes.

2 Q: --- correct? Okay. Was there any -- anything
3 else that you were looking for to make the
4 ultimate determination of the cause of death?

5 A: So at this point I was told that there was
6 cocaine involved per the investigators. So --
7 and I didn't find anything else to explain his
8 death during my autopsy. So at the end of that
9 is when I put pending tox.

10 Q: Okay.

11 A: Because I need more information.

12 Q: And in that form, did you note at all that the
13 pending toxicology was most probably going to
14 look at cocaine use?

15 A: Yes. And that is just based on the history
16 given that he was doing cocaine prior to his
17 death.

18 Q: Okay. I wanna stay with that moment. But let
19 me go ahead and -- and at least hand you
20 another document and see if you had anything to
21 do with generating this. I'm handing you what
22 is the Professional Pathology Services PC. It'
23 a one-of-three page document, Plaintiff's
24 Exhibit 2.

25 (Plaintiff's Exhibit Number 2 was marked for



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AMY DURSO, M.D.

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1 A: We do them on everybody.

2 Q: And I think you said, and correct me if I'm
3 wrong, that there was no other indication of a
4 cause of death and that's why you requested the
5 toxicology results?

6 A: We request toxicology results on anyone -- I'm
7 sorry, on everyone that's a coroner's case if
8 we're able to get samples for it.

9 Q: Uh-huh.

10 A: But in this case, like if he had had an acute
11 heart attack or if he had a bullet through his
12 head, I would probably have written acute
13 myocardial infarction or I would write gun shot
14 wound to the head, but the toxicology results
15 would still be pending. But here I had no
16 pulmonary cause of death because without the
17 toxicology results I can't explain his death
18 just based on the autopsy alone.

19 Q: Okay. You've answered my question very well
20 for the toxicology part of the question. Let
21 me back it up and break it up for the -- the
22 cause issue. Was it your initial impression,
23 toxicology aside, that you -- you could not
24 make a determination as to the cause of death?

25 A: Correct.



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AMY DURSO, M.D.

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1 had not mentioned that. Because it was not
2 mentioned in the ED or per the information they
3 were told. So there's a few other things that
4 I need to be concerned about. Now I ruled out
5 direct blunt force trauma because, you know, he
6 had some scratches on him but he does not have
7 bleeding in his head, nothing's -- there's no
8 fatal -- directly fatal blunt force injuries
9 from the fight. But this is good information
10 for me to know. So the other things now that
11 are kind of working in my brain that I need
12 more information before I can put it all
13 together is something called excited delirium
14 that you can get when people are already on
15 cocaine or methamphetamine or in an -- in an
16 altercation. And there's another thing called
17 alcoholic concussive syndrome where if
18 someone's drunk, even within ranges that
19 wouldn't have necessarily have killed them, if
20 they get clonked on the head, they can get this
21 syndrome where they just become apneic and stop
22 breathing. So, again, I don't have a cause of
23 death for this person, so I want all the
24 information I can get and need before I
25 determine a cause of death.



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AMY DURSO, M.D.

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1 laceration or abrasion to the head, and that
2 with the alcohol. So that still in my frame of
3 reference. So, again, I don't know. I need
4 more information before I can determine the
5 cause of death in this case.

6 Q: Okay. You talked a little about other deputies
7 being there at the time. Do you have any idea
8 what the identity of the other deputies were
9 that were there?

10 MS. PAVLICEK: Objection.

11 Q: You can answer.

12 A: The deputies from ---

13 Q: That were there ---

14 A: --- CPD or from -- I do because of this sheet.

15 Q: Okay.

16 A: So Hannah Jefferson was the name of the
17 Richland County Coroner's deputy.

18 Q: Uh-huh.

19 A: And then the two CPD people that came were
20 Zachary Jackson and George Simpson. And then
21 that -- yes, that -- that answers your
22 question.

23 Q: Yes. Do you recall having any conversations
24 with any of those individuals before or af- --
25 well, let's just call it December 5th. Do you



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AMY DURSO, M.D.

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1 recall having any conversations with those
2 individuals that day?

3 A: Well Hannah Jefferson was just there to take
4 pictures and document things. She was not the
5 responding deputy. And then I remember CPD --
6 someone telling me that he had been in an
7 altercation, which I did not know beforehand.

8 Q: Do you remember about when he would have told
9 you that an altercation was involved?

10 A: I do not remember.

11 Q: And I -- and I'll -- I'm gonna lead you a
12 little bit. Don't let my leading place an
13 answer in your head. Do you know if you had a
14 discussion with anybody about a potential
15 assault during the autopsy, before the autopsy,
16 after the autopsy?

17 A: At some point in the morgue someone told me
18 that he was in an altercation, because I
19 remember -- that's the part I do remember about
20 this case is I was wondering why the deputy
21 coroner didn't mention that in her report.

22 Q: When you say in the morgue -- and again, this
23 is -- this is my own ignorance. Does that --
24 is the morgue -- indicate that that's where you
25 perform your autopsy or is the morgue



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AMY DURSO, M.D.

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1 well?

2 A: Yes.

3 Q: Okay. Do you think that learning about -- let
4 -- let's just say for argument's sake that you
5 would have learned about the information about
6 altercation middle of the autopsy.

7 A: Okay.

8 Q: If that were true, would that have impaired
9 your ability to conduct an appropriate autopsy?

10 MS. LaFAVE: Objection.

11 A: No.

12 Q: Okay. You say that rather confidently. Is --
13 is there -- is there any stage during an
14 autopsy that learning that a prior altercation
15 may have occurred would have interfered with
16 you conducting a proper autopsy?

17 MS. LaFAVE: Objection.

18 A: No. I do the same procedure, start to finish,
19 each time. But it's always good to know kind
20 of what the history is going in. I think the
21 more you know the better you'll come out with
22 the correct cause of death.

23 Q: But you would have felt as confident knowing or
24 not knowing that information that you were --
25 what you're observing was accurate and the



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1 proper procedure, correct?

2 MS. LaFAVE: Objection.

3 A: Correct.

4 Q: Okay. Let's go ahead and jump to what I
5 believe is the -- I believe is the final. I'll
6 mark this Plaintiff's Exhibit 3.

7 (Plaintiff's Exhibit Number 3 was marked for
8 identification purposes.)

9 Q: This would be the Professional Pathology
10 Services Final Anatomical Diagnosis page 1
11 through 4. And, Doctor, tell me if I'm
12 correct, AMD 2/19/20 electronically signed.
13 Would that be your signature in the middle of
14 the page?

15 A: Yes.

16 Q: Okay. Is this the final autopsy report?

17 A: Yes.

18 Q: Okay. So this wouldn't have been issued until
19 February 19th, 2020. Is that correct?

20 A: That's correct.

21 Q: Okay. Would you have formed an opinion about
22 the cause of death before this date?

23 A: No.

24 Q: Okay. So this is the date and before this the
25 cause of death was unknown, correct?



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AMY DURSO, M.D.

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1 A: Correct.

2 Q: Okay. And what was it that you ultimately made
3 the determination was the cause of death?

4 A: Excited delirium due to acute cocaine abuse and
5 physical altercation.

6 Q: Okay. And -- what -- let me ask this in parts
7 I guess. So excited delirium, is that
8 something that you can observe from a body
9 during the autopsy?

10 A: No. So that would require information given by
11 the investigators. Which is why the
12 investigation is so important to find all the
13 information out and put it all together at the
14 end. Because there's some things we just
15 wouldn't know. I mean even like knowledge of
16 a seizure history would be good to know because
17 you can't see seizure at death because it's
18 electrical, and there's no more electrical
19 activity. Which again is why I like everything
20 to be well investigated by the Coroner's Office
21 and put in their report, yeah.

22 Q: Is excited delirium something that can be
23 determined without conducting an autopsy?

24 A: No. I think that you would need to rule out
25 other things. So what if he did have a massive



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AMY DURSO, M.D.

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1 or the fact that he had to take notes so that
2 he didn't forget. If you'd like, you can take
3 a moment to read through this real quick. I
4 wanna ask you some questions, or I can just
5 jump right in and ask you ---

6 A: Sure. Go ahead.

7 Q: Okay.

8 A: I can speed read.

9 Q: Sure. So according to his notes he did ask you
10 about excited delirium. Of course everything
11 that you're saying matches up with some of the
12 things that he wrote down. He did note that --
13 and again, I have to understand this is notes
14 that he took from information from you, that
15 excited delirium is pretty rare. It's still
16 something that is still not completely
17 understood scientifically. Would you agree
18 that you might have said that or do you agree
19 with that statement at all?

20 A: Sounds like something that I could've said,
21 yes.

22 Q: Do you agree with that statement?

23 A: Yes.

24 Q: Okay. All right. You -- he goes on to have
25 typed in his notes that the altercation



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AMY DURSO, M.D.

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1 heightens the possibility of a medical issue
2 but -- and he's saying she, I believe you,
3 cannot say that is the reason he died. She
4 called it a gray area, gray area, to label it
5 a homicide. Does that sound like a correct
6 statement regarding excited delirium?

7 **MS. LaFAVE:** Objection.

8 A: Yes.

9 Q: Okay. Going on to the next paragraph after
10 that, regarding the altercation there were
11 minor scrapes -- and I'm gonna jump down here
12 -- there is no evidence that he was beaten to
13 death, pictures of his body and head were taken
14 to support this. That sounds like his
15 language. But did you say anything to that
16 effect?

17 **MS. PAVLICEK:** Objection.

18 **MS. LaFAVE:** Objection.

19 A: I have no recollection whether I did that or
20 not.

21 Q: Okay. Do agree or disagree with his statement
22 that there was no evidence that he was beaten
23 to death?

24 **MS. LaFAVE:** Objection.

25 A: I agree.



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AMY DURSO, M.D.

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1 Q: That sounds very administrative compared to
2 your role being very medical. Is that a fair
3 statement?

4 A: Yes. So they're an investigative agency.

5 Q: Okay. But Coroner Watts wouldn't be in a
6 position to make any medical determination. Is
7 that fair?

8 A: No. That's why he pays us to do the autopsies.

9 Q: Sure. Doctor, if we can just take a quick
10 break for me. That might be all my questions.
11 I just wanna make sure.

12 A: Okay.

13 (Off the record from 1:57 p.m. until 1:58 p.m.)

14 Q: Doctor, to the best of your recollection, other
15 than the deputies or officers in the morgue on
16 December 5th, 2019, until the issuance of the
17 final report in February of 2020, did you speak
18 to anybody else about this autopsy, that you
19 know of?

20 A: Not that I recall.

21 Q: Okay. And I can take that as a global
22 response. But let me break it up in little
23 parts just to be sure. Do you recall speaking
24 to any officers or deputies within that time
25 frame?



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2010-10-28-01

The Supreme Court of South Carolina

RE: Summary Court Pretrial Detainees

ORDER

I FIND THAT direction is needed in cases where a defendant is incarcerated on a summary level offense(s), is unable to make bond, and is detained pretrial for the maximum amount of time that the defendant would be subject to if convicted for the offense(s).

Therefore, pursuant to Article V, Section 4, S.C. Constitution,

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. Nothing herein affects the defendant's right to contest the charge against him, including trial by jury. When determining the maximum amount of time a defendant would receive if convicted of a summary level offense(s) for purposes of this Order, time off for good behavior, as provided in S.C. Code Ann. §24-13-210, shall not be considered so as to reduce the maximum amount of time.

IT IS FURTHER ORDERED that the chief magistrate in each county and the chief municipal court judge of each municipality shall coordinate with their detention facility employees so as to ensure that the court is notified of all defendants who are nearing or who have reached the maximum amount of time to which they are subject if convicted on a summary level offense(s).

I take this opportunity to remind all summary court judges that when setting bond on a person charged with a noncapital offense triable in magistrate, municipal, or circuit court, S.C. Code Ann. §17-15-10 requires that the defendant be released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If a summary court judge determines that a personal recognizance bond is not appropriate and requires a surety bond, the judge shall indicate in the designated section of Bond Form II the determinative factors in that decision.

The provisions of this Order are effective immediately and shall remain in effect unless amended or revoked by further Order of the Chief Justice.

s/Jean Hoefer Toal
The Honorable Jean Hoefer Toal
Chief Justice

October 28, 2010
Columbia, SC

ARREST WARRANT

2019A4021603910

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of

City of Columbia

THE STATE

1600035076

Sherman Antonio Green, Jr.

Address:

Phone: (803) 63-9411

Sex: M Race: B Height: 5'10"

DL State: SC DL #: 16-03-0020

DOB: 11/11/1980 Agency ORI #: SC0400100

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: George Simpson - S00363

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County ☐ Municipality of

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

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable or Sheriff's Office

RETURN WARRANT TO:

Columbia Municipal Court
811 Washington Street
Columbia, SC 29201

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of

City of Columbia

Personally appeared before me the undersigned George Simpson

being duly sworn deposes and says that defendant Sherman Antonio Green, Jr.

did violate the criminal laws of the State of South Carolina for ordinance of 12/4/2019

in the following particulars: ☐ County ☒ Municipality of City of Columbia

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that from a probable cause to believe that the defendant named above has committed the crime set forth and the probable cause is based on the following facts:

On 12/04/2019 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 with his hands before having to be pulled away from the victim by a witness of the incident. The def. then proceeded to grab the victim who he then threw out of a 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.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of

City of Columbia

Affiant's Address: #1 Justice Square
Columbia, SC 29201-

Affiant's Telephone:

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/4/2019

did violate the criminal laws of the State of South Carolina for ordinance of

☐ County ☒ Municipality of City of Columbia

as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

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

Sworn to and subscribed before me

on 12/5/2019

Signature of Judge

Angela L. Ladson

Judge Code: 6846

Judge's Address: P.O. Box 644

Columbia, SC 29202

Judge's Telephone: (803) 545-3128

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

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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

ORDER DENYING GEORGE SIMPSON'S
MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court by way of George Simpson's ("Simpson") motion for summary judgment. A hearing on this motion was held, in person, on February 19, 2025. Present at the time and presenting oral arguments were counsel for Sherman Green ("Plaintiff"), Chris S. Truluck, Esq. and Luke A. Shealey, Esq., and for Simpson, Mary D. LaFave, Esq. W. Mike Hemlepp, Jr., Esq. appeared on behalf of the City of Columbia as an observer. For the reasons discussed herein and upon review of the briefs, exhibits, and applicable law, this Court respectfully denies Defendant's motion.

I. PROCEDURAL BACKGROUND

On November 15, 2021, the Plaintiff filed an action in this court against Simpson pursuant to 42 U.S.C. § 1983 alleging violation of his clearly established rights for Simpson's 1) failure to investigate prior to arrest of Plaintiff, 2) failure to disclose exculpatory evidence to the assigned solicitor following Plaintiff's arrest, 3) failure to disclose, or omitting, material information to the magistrate judge in obtaining Plaintiff's arrest warrant for murder, 4) false arrest, and 5) malicious prosecution.¹ On December 20, 2021, this action was removed to the United States District Court

¹ Plaintiff also alleged claims against the City of Columbia pursuant to the South Carolina Tort Claims Act for negligence, false imprisonment and malicious prosecution; such claims which are not before the Court at this time.

for the District of South Carolina and on May 23, 2022, remanded to this court for defendants' failure to provide timely unambiguous consent to the removal of the action.

After extensive discovery, Simpson and the City of Columbia filed motions for summary judgment on May 3, 2024, and May 6, 2024; respectively. On December 6, 2024, Judge Mark Hayes heard the City of Columbia's motion for summary judgment and denied the same on January 15, 2025, stating "the existence of probable cause is a factual dispute." On January 27, 2025, the City of Columbia moved for reconsideration of denial of its motion for summary judgment; such motion for reconsideration remains to be scheduled. Simpson's motion for summary judgment is now before this Court.

II. FACTUAL BACKGROUND

The facts viewed in the light most favorable to the Plaintiff are as follows:

On the evening of December 4, 2019, Plaintiff and his co-resident, Aja Prophet ("Prophet"), had been sharing a room at the Budget Inn at 1601 Sunset Drive in Columbia, South Carolina ("Room") for approximately a month. Shortly before 8:00 p.m., Plaintiff left the Room to go to the store and where Prophet was expecting company later identified as Dara Washington ("Decedent"). Plaintiff returned approximately thirty (30) minutes later and found the Room locked, disheveled, Decedent naked and acting irregularly, and Prophet with apparent injuries yelling for Plaintiff to help. Plaintiff was unable to get into the locked Room and yelled to Prophet to lock herself into the bathroom which she did. Approximately fifteen (15) minutes later, Prophet was able to get to the Room's front door to unlock it and let Plaintiff in. Plaintiff entered the Room and a physical altercation ensued between him and the Decedent. Plaintiff then drug the naked Decedent out of the room where Decedent fell into the wall opposing the Room's front door and

before stumbling into the parking lot.² EMS arrived and administered Narcan on Decedent in the parking lot before he ultimately died.

When Simpson arrived on the scene, and after speaking to the other investigators, he was informed that Plaintiff and Prophet were witnesses and/or persons of interest related to the death of Decedent and that Plaintiff had been “detained” for “assaulting the decedent.” 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 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 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 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 was also informed that Plaintiff “observed the [Decedent] through the window naked and yelling that people were after him. And . . . , Ms. Prophet had blood on her face from where the victim had attacked her.”

Simpson next reviewed the Budget Inn closed circuit video footage of Plaintiff outside the Room and his subsequent ejection of Decedent (“Video”). Plaintiff and Prophet were then transported into Simpson’s custody for interrogation where Plaintiff was “held without an arrest warrant” and “not free to go” for approximately six (6) hours. Simpson conducted Plaintiff’s interrogation and other officers conducted Prophet’s, however, “Investigator Montgomery and

² At hearing on Simpson’s motion, the Court reviewed the relevant portions of the Video.

Investigator Davidson gave [Simpson] a full list of everything that they spoke about” with Prophet. 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, [] Prophet, and he felt he needed -- or need to protect her from the victim.” Plaintiff initially referred to the assault as “tussling” and when Simpson was asked “tussling indicates a physical altercation, doesn't it?,” Simpson affirmed; Plaintiff did “admit that to me [at] the very tail end of the interview, then he finally told me that he punched him.” Simpson also confirmed that he “didn't have any knowledge as far as what caused the [Decedent’s] death. [Simpson] just knew that he had been assaulted before dying. And also that he had consumed drugs before dying.” Simpson, otherwise agreed, that if Plaintiff had not caused Decedent’s death, he would have issued a magistrate charge against Plaintiff. Simpson also agreed “that if you're acting lawfully and defending yourself, that you shouldn't be charged or arrested” When Simpson was asked at deposition, “[d]o you know for certain who hit Mr. Washington in the face?,” he answered that “I do -- I do know for certain that both hit Mr. Washington in the face.” When Simpson was asked if Prophet told him that she drew blood from Mr. Washington, he responded in the affirmative.

In Prophet’s interview with investigators, she explained that Decedent had taken two doses of crack cocaine and “freaked out” while they were in the room. At deposition Simpson was asked, “[s]o, 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?” Simpson responded, “[y]es, that's what she mentioned in that interview right there.” Prophet further stated that Decedent was not letting her leave the room and was assaulting her. 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.”³ 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.” 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 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 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”).⁴ 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.

³ 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.”

⁴ 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.” Additional examination revealed that Simpson claimed drug use and possible prostitution were also conveyed to Fyall.

Following the call with Fyall, Simpson personally delivered the proposed Warrant to Magistrate Judge Ladson for execution on the morning of December 5, 2019 and, thereafter, formerly charged Plaintiff with murder for which he was held for sixty-nine (69) days until dismissal at preliminary hearing. However, Simpson “felt that voluntary manslaughter” was the more appropriate charge. Simpson stated, “[I] wasn’t comfortable with it. And [Sergeant Valerie Moore] basically said that she was going to look into it for me.” Thomas and Simpson both failed to inform Fyall that Simpson was uncomfortable with the murder charge. Simpson explained that he “didn’t personally feel like that in itself was set in stone, malice aforethought.” Although Simpson once testified that he and Thomas relegated the final determination of whether probable cause existed to Fyall, Simpson confirmed that “[n]o, no one, to my knowledge, would have known the case better than me at that time” and Thomas and Fyall were not responsible for his actions.

Simpson next proceeded to the autopsy of Decedent being conducted by the forensic pathologist, Dr. Amy Durso (“Durso”), about 9:00 in the morning of December 5, 2019. 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[] . . . [where] no assault was suspected” by Durso. Simpson explained Durso was under the impression it was just a cocaine overdose. When Simpson was 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, otherwise, did not recall any discussions with prosecutors from the time of Plaintiff’s arrest to the dismissal of Plaintiff’s charges at the preliminary hearing.

At Fyall’s deposition, Fyall provided a narrative of the conversation between himself, and Simpson 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 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 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.

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 did not recall the reason for the animosity between Plaintiff and Decedent. Upon these narratives, Fyall approved a probable cause determination for murder leading to the Warrant.

To the contrary of the narrative above, Fyall did not recall 1) thinking that the use of cocaine had any bearing on his analysis, 2) did not recall Simpson ever expressing to him that he did not believe the charge should be murder instead of involuntary manslaughter but agreed that Simpson's belief was relevant to his analysis of probable cause for murder, 3) did not recall Simpson ever informing him that the Decedent was exhibiting drug induced paranoia, 3) did not recall Simpson ever informing him of the reason Plaintiff was trying to enter the hotel room but

Fyall agreed that the Plaintiff's motivation for entering the hotel room was relevant, 4) Fyall did not recall being informed that Prophet was afraid of Decedent; "I don't -- I don't recall being told that," or 5) did not recall that Ms. Prophet had been struck by the Decedent such that she was bleeding or that she was being kidnapped.⁵ "All I remember is there was some conversation about something going on between them in the room, and Mr. Green wanting to get in." Finally, Fyall also was not aware that Prophet had described Plaintiff's altercation with Decedent as hitting him like a woman. Fyall commented, "if 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." When asked if "Investigator Simpson ever convey[ed] 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." 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."

At Thomas's deposition, 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." 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.

During Simpon's call to Fyall, Thomas also did not recall 1) Decedent's history of drug use, 2) Decedent consuming two doses of crack⁶, 3) Prophet was yelling for help, 4) that Decedent

⁵ The Court notes Simpson's objection to any characterization by Plaintiff that suggests Fyall and Thomas' failures to recall establish conclusive evidence they were not so informed.

⁶ The Court notes Simpson's objection to any characterization by Plaintiff that suggests Simpson did not inform Thomas of Decedent's crack cocaine use as opposed to knowing Decedent used two doses of crack cocaine while in the Room.

had been naked, paranoid and Prophet had blood on her face, 4) Prophet was trying to get out of the room, 5) Prophet was prevented from leaving the room, 6) Plaintiff was ineffectually hitting decedent, 7) Prophet made a post-interview statement conflicting with her previous testimony, or that 8) Narcan was administered to Decedent at the scene. When specifically asked if Simpson ever told Thomas or Fyall "that [Simpson] had no idea what caused [Decedent's] death?" Thomas replied, "[n]o." When Thomas was asked if he recalled Simpson telling him before they contacted Lamar Fyall that Simpson felt more comfortable with a manslaughter charge than a murder charge, Thomas answered, "[n]o. We didn't have the conversation." Otherwise, Thomas confidently denied Simpson informing him that Simpson preferred to charge Plaintiff with manslaughter. Thomas similarly denied Simpson ever informing him that Plaintiff was provoked by Decedent's attack on Prophet. 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.

At Dan Goldberg's ("Goldberg") deposition, the assistant solicitor assigned to prosecute the Warrant, Goldberg confirmed his conversation with Durso and that she stated, "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 similarly confirmed that Durso said, "this the most unprosecutable case in her career that was actually labeled a homicide." Goldberg ultimately decided not to revive the action for prosecution. 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."⁷

At Durso's deposition, 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 further testified that toxicology aside, that she could not make a determination as to the cause of death. 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." She further agreed that the cocaine alone could have killed Decedent.

On February 12, 2020, at Green's preliminary hearing for murder, Municipal Court Judge Susan Porter determined the Simpson lacked probable cause to charge Green stating, "[t]here's no evidence in the record, whatsoever, that the assault caused the death." Plaintiff's murder charge was contemporaneously dismissed, and he was released after sixty-nine (69) days of pre-trial incarceration.

III. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "In

⁷ The Court notes Simpson's objection to Plaintiff's recitation of Goldberg's failure to recall observing Plaintiff committing other crimes where Goldberg later admitted a classification of assault and battery was "possible."

determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). In any event, the weight to be given the testimony and the assessment of the credibility of the witnesses is for the jury. *Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 885 (1951); *Johnson v. Painter*, 307 S.E.2d 860 (S.C., 1983). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

IV. DISCUSSION

a. 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. Specifically, Simpson identifies the criminal charges of manslaughter, assault and battery, third degree, public disorderly conduct and breach of peace, and obstruction of justice. 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. 556, 558 (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 for summary judgment should be denied.

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. "A law enforcement agency . . . may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful." S.C. Code 16-11-450(B). "[T]he existence of probable cause is normally a question for the jury, material fact." *Garris v. Rowland*, 678 F.2d 1264, 1270 (5th Cir.), cert. denied, 459 U.S. 864 (1982).

"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. Burris*, 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 above, 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 Prophet's Room after witnessing Decedent confine and assault Prophet following her calls for help. Simpson's review of the Video recording of Plaintiff trying to get into the hotel room further corroborated Plaintiff's account. In the interrogation room, over the course of six (6) hours, Simpson and investigators questioned Plaintiff and Prophet where they learned additional details about how Decedent had used drugs, demonstrated drug-induced paranoia and had confined Prophet until Plaintiff finally entered the Room and ejected Decedent. Save for Plaintiff's late admission that he punched decedent, as opposed to "tussled" with him, which Prophet described as non-life threatening, Simpson believed Plaintiff's account. Simpson similarly testified 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."

i. 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).

Notwithstanding the existence of evidence of Plaintiff's self-defense and/or self-defense of others, whether Simpson sought a charge for murder, voluntary or involuntary manslaughter, there exists a genuine issue of material fact whether Simpson possessed probable cause that Plaintiff caused Decedent's death as supported by Simpson's own admissions regarding his lack of knowledge of the cause of death, and Durso's observation that the Decedent did not exhibit any signs of death by blunt force trauma.

ii. Magisterial Offenses

The United States Supreme Court recently clarified that probable cause for some other crime will not vitiate a claim for malicious prosecution.

[I]f 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.

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 . . .

Chiaverini v. City of Napoleon, 602 U.S. 556, 558 (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).⁸

In South Carolina, the damages stemming from magisterial 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 either of the plausible proximation standards contemplated by the Court in *Chiaverini* to alternate probable cause for magisterial offenses, the Plaintiff's claim for malicious prosecution would still survive a finding of probable cause with only thirty (30) days of the sixty-nine (69) days of incarceration being excluded from the calculation of Plaintiffs damages pursuant to the stricter standard.

⁸ The Court in *Chiaverini* identified three possible standards for establishing proximate damages in a malicious prosecution case where there may exist probable cause for one or more alternate charges; 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 is actionable, and 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.

iii. 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 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).

The Video established from the outset of Simpson’s investigation that there was a physical altercation between Plaintiff and Decedent. 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?”, he affirmed. Plaintiff did “admit that to [Simpson at] the very tail end of the interview, then he finally told me that he punched him.” 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. Alternatively, Simpson was arguably 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*. *State v. Smith*, 592 S.E.2d 302, 357 S.C. 182, 186 (2004). 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). It does not stand to reason that the court in *Wright v. Bailey* would 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 if Simpson acted without probable cause in the pre-warrant investigation and detention. Finally, Simpson testified that if Plaintiff had not caused Decedent's death, he would have pursued a magistrate charge, without the need for a magisterial warrant, against Plaintiff.⁹

Accordingly, the Court finds that a genuine issue of material facts exists whether 1) Simpson obtained sufficient evidence for probable cause to seek the Warrant for Plaintiff's arrest for murder, or to charge Plaintiff with any other criminal charges, while Plaintiff was defending his residence and/or his co-resident and friend, or 2) if Simpson obtained sufficient evidence of probable cause to charge Plaintiff with any other charge, those charges would have proximately harmed him to the degree as an improper murder warrant. Simpson's motion to dismiss for the existence of probable cause for murder or other various offenses is respectfully denied.

⁹ 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.

b. Qualified Immunity & Advice of Counsel

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,”¹⁰ pursuant to the holding in *Torchinsky v. Siwinski* and where Simpson sought advice of counsel before obtaining a warrant for Plaintiff’s arrest for murder. 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 disclosure of all material facts known to him in seeking legal advice.

In the absence of probable cause pursuant to arrest, the burden shifts to Simpson to show that the arrest was not contrary to clearly established law. *Thurston v. Frye*, 99 F.4th 665, 676 (4th Cir. 2024) (citing *Stanton v. Elliot*, 25 F.4th 227, 233 n.5 (4th Cir. 2022)). “[T]he unlawfulness of seeking out and executing a warrant after learning facts establishing a suspect’s innocence was clearly established by [the] holding in *Merchant v. Bauer*, 677 F.3d 656.” *Thurston*, 99 F.4th at 678. In *Merchant v. Bauer*, the court held that qualified immunity was not appropriate where “the officer lacked probable cause to conduct the arrest, despite the issuance of a warrant, because he knew information before applying for the warrant that both undermined any other evidence the officer might have had and tended to exonerate the plaintiff of the crime.” *Id.* In qualifying the application of *Torchinsky*, the court in *Merchant v. Bauer* refused to grant qualified immunity in finding investigator’s “conversation with the state’s lawyer does not—as a matter of law—overcome the unreasonableness of the criminal charge and its lack of probable cause.” *Merchant v. Bauer*, 677 F.3d 656, 665 (4th Cir. 2012). A solicitor’s “authorization to apply for a

¹⁰ Simpson admits in his brief that the right to be free from arrest absent probable cause was clearly established at the time of Plaintiff’s arrest.

warrant ‘does not automatically cloak [defendant] with the shield of qualified immunity.’” *Shrewsbury v. Williams*, No. 20-1268, 5 (4th Cir. Feb 11, 2021). Favorable evidence of reasonableness in seeking legal advice follows “a full presentation of the known facts, *Kelly v. Borough of Carlisle*, 622 F.3d 248, 255 (3d Cir. 2010) (quoting *Cox v. Hainey*, 391 F.3d 25, 32 (1st Cir. 2004))” *Thurston*, 99 F.4th at 679 (citing *Messerschmidt v. Millender*, 565 U.S. 535, 555, 132 S.Ct. 1235, 182 L.Ed.2d 47 (2012)).

As recited above and in addition to Simpson’s own admissions regarding his lack of knowledge as to the cause of death or his hesitation in supporting a probable cause finding of malice, 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 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 also did not recall Simpson ever informing him that the Decedent was exhibiting drug induced paranoia. 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 was also not informed that Plaintiff’s roommate, Prophet, was afraid of Decedent; “I don’t -- I don’t recall being told that.” Fyall also did not recall that Ms. Prophet had been struck by the Decedent such that she was bleeding or that she was being restrained. Regarding provocation, Fyall stated “[a]ll I remember is there was some conversation about something going on between them in the room, and Mr. Green wanting to get in.” Fyall also was not aware that Ms. Prophet had described Plaintiff altercation with Decedent as hitting him like a girl. Fyall explained, “if 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.” When asked if “Investigator Simpson ever convey[ed] 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.” 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.” Finally, Simpson’s allegations in the Warrant evince a mistake of law where it asserts Plaintiff suffered no provocation although Plaintiff witnessed Decedent restraining an injured Prophet against her will in the Room during her pleas for help.

In addition to evidence as provided above tending to create a genuine issue of material fact whether Simpson made a full disclosure to Fyall, “*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.” *Merchant* 677 F.3d at 664-665. Accordingly, much like in *Merchant v. Bauer*, Simpson’s motion is respectfully denied where there exists a genuine issue of material fact, in the light most favorable to the Plaintiff, as to whether 1) Simpson’s charge of murder was supported by probable cause and/or, 2) the decision to charge murder, if ultimately relegated to the Solicitor, was reasonably obtained upon a complete disclosure of the material facts.¹¹

c. Warrant

Simpson next argues that the finding of probable cause by a neutral and detached magistrate is prima facie evidence of the existence of probable cause. However, “obtaining an arrest warrant does not provide per se evidence of objective reasonableness.” *Torchinsky v. Siwinski*, 942 F.2d 257, 262 (4th Cir. 1991). “[K]nowledge of sufficiently exculpatory information

¹¹ As provided in the holding in *Merchant v. Bauer*, Simpson is “entitled to reassert the defense at trial, pursuant to which the jury could resolve the disputed facts in his favor, such that qualified immunity applies.” *Merchant v. Bauer*, 677 F.3d 656, 665, fn. 6 (4th Cir. 2012); *See also ACLU of Maryland v. Wicomico County*, 999 F.2d 780, 784 (4th Cir. 1993) (when “the defendant’s entitlement to immunity turns on a factual dispute, that dispute is resolved by the jury at trial”).

trumps the inculpatory evidence of the warrant.” *Thurston v. Frye*, 99 F.4th 665, 678 (4th Cir. 2024) (citing *Merchant v. Bauer*, 677 F.3d 656, 665 (4th Cir. 2012)).

The Warrant alleges Plaintiff “act[ed] with malice aforethought after escalating a verbal confrontation with the victim which turned physical without being provoked to do so” However, Simpson testified that he “didn’t personally feel like that in itself was set in stone, malice aforethought” and that “[Plaintiff] stated [to him] that he assaulted the victim because he observed the victim physically assaulting a witness who was also inside the room, [] Prophet, and he felt he needed -- or need to protect her from the victim.” While the meaning of the facts in Simpson’s possession prior to obtaining the Warrant may be disputed, it appears, to a substantial degree, the facts are not in dispute which at least rebut the allegations contained in the Warrant in a light most favorable to the Plaintiff. Notably, the Warrant is also silent on Decedent’s cause of death or whether Plaintiff was the cause. This observation is further supported by Judge Porter’s determination that “[t]here’s no evidence in the record, whatsoever, that the assault caused the death,” and Judge Haye’s order denying the City of Columbia’s motion for summary judgment stating, “the arrest warrant, itself, is questionable—if it established probable cause for the arrest of the plaintiff on the charge of murder—though a summary judgement, lens it does not allege that plaintiff caused the victim’s death and fails to identify the cause of death.” Alongside other evidence provided above tending to create a genuine issue of material fact as to probable cause, Simpson’s allegation that the Warrant is prime facie evidence of the existence of probable cause must fail at the summary judgment stage.

Simpson’s argument here also fails 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. Accordingly, there exists evidence, in the light most favorable to the Plaintiff, tending to create a genuine issue of material fact whether Simpson obtained sufficient information to establish probable cause to request the Warrant and or properly disclosed material evidence to the magistrate in seeking the Warrant such that Simpson's motion for summary judgment is respectfully denied.

d. Misconduct of Sgt. Thomas

Finally, Simpson argues that Plaintiff's claims 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 and subsequently incarcerated. 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. Specifically, but not exclusively, 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 further 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."

Accordingly, in the light most favorable to the Plaintiff, there exists at least a genuine issue of material fact whether Simpson acted pursuant to Thomas' instruction or autonomously in

obtaining Plaintiff's arrest warrant for murder such that Simpson's motion for summary judgment is respectfully denied.

V. CONCLUSION

IT IS, THEREFORE ORDERED that the Defendant's motion for summary judgment is respectfully denied.

SO ORDERED.

(Signature page to follow)



Matthew C. LaFave+ | Mary D. LaFave+ | Lee Ellen Bagley*
 Douglas E. Leadbitter | Laura R. Baer | Alyssa R. McMahon | Brian J. Anderson**

March 21, 2025

VIA E-FILING AND EMAIL

Judge Thomas W. McGee, III
 tmcgee@sccourts.org

Re: Sherman Green v. City of Columbia and George Simpson
C/A No.: 2021-CP-40-05620

Dear Judge McGee:

This letter is to memorialize the Defendant George Simpson's objections to the March 10, 2025, proposed Order regarding Defendant Simpson's Motion for Summary Judgment which was before this Honorable Court for hearing on February 19, 2025. At the beginning of this process, I attempted to address some of these issues with my colleagues but found that conversation to be respectful but unproductive. Unfortunately, my issues are so widespread that I do not believe that further consultation is warranted and that this letter is necessary to protect the truth and the rule of law¹.

OBJECTION #1: Plaintiff Cannot Rely on Surmise, Conjecture, or Speculation

At the outset of the hearing, I expressed my grave concerns regarding the representation of the record in the Plaintiff's brief. Those concerns, which have now predictably metastasized in the Plaintiff's proposed Order, are so significant that they must be addressed formally and my client's position made part of the record. Plaintiff's recitation of facts is heavily reliant on the lack of memory by witnesses. Plaintiff makes lists of what witnesses "do not recall" and then draws factual findings for the Court to adopt. A witness does know or does not remember does not establish a fact for which a reasonable inference can be drawn. Rather, it only establishes that the witness does not remember and nothing more. Speculation and inadmissible testimony are insufficient to establish a question of fact for purposes of Summary Judgment. *See Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382,

¹ Excerpts of witness depositions are enclosed herewith for the Court's ease of reference but all were previously made part of the record on brief or at the hearing.

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 **only licensed in VA

701 S.E.2d 776 (Ct. App. 2010) *citing McKnight v. Dep't of Corr.*, 385 S.C. 380, 389-390, 684 S.E.2d 566, 571 (Ct. App. 2009) (applying the directed verdict standard to a summary judgment motion and holding “[a] jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror.... ‘However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation.’”).

Here, a witness’s testimony that they do not “recall” the fact stated in a question can only be admissible for the fact that the witness does not have a memory. This concept appears twenty-four (24) times throughout the proposed Order. Plaintiff’s proposed Order erroneously interprets a witness’s failure to remember as a conclusion Simpson did not act appropriately. That is not construing the facts in the light most favorable to the Plaintiff but allowing the Plaintiff to rely on surmise, conjecture, and speculation to conclude a fact that is not proven or even disproven by a witness’s testimony. The requirement that the Court be able to draw a “reasonable inference” or a “genuine” fact from the record is required by the seminal case on summary judgment, *Kitchen Planners*. See *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023).

A lack of memory by a witness is not evidence properly before the Court and those references should be removed from the proposed Order as they are improper. To highlight the severity of the impact this has on the Court’s decision, I will refer to the testimony of Sgt. Arthur Thomas, Simpon’s superior:

Q: I just want to ask you real quick. To the best of your memory, any of the do-not-recall answers you gave, are you essentially saying you just don’t recall these facts being conveyed to you? Is that what you mean when you say I do not recall?

A: I do not recall the conversation or – well, of the question you asked. I just don’t remember anything of that nature.

Q: Okay. Is there anything that I asked you about where you said you do not recall you think you would have recalled? Again, I went through a lot of facts. I can go through them again. But is there anything that stuck out in your mind that you did not recall you and thought, well, I might have recalled that?

A: No.

Thomas Depo, p. 54-55.

The proposed Order improperly contains this witness's lack of memory and lists the things he does not remember as part of the factual recitation:

During Simpon's call to Fyall, Thomas also did not recall 1) Decedent's history of drug use, 2) Decedent consuming two doses of crack², 3) Prophet was yelling for help, 4) that Decedent had been naked, paranoid and Prophet had blood on her face, 4) Prophet was trying to get out of the room, 5) Prophet was prevented from leaving the room, 6) Plaintiff was ineffectually hitting decedent, 7) Prophet made a post-interview statement conflicting with her previous testimony, or that 8) Narcan was administered to Decedent at the scene. When specifically asked if Simpson ever told Thomas or Fyall "that [Simpson] had no idea what caused [Decedent's] death?" Thomas replied, "[n]o."

Proposed Order, pp. 8-9.

This is not evidence that Thomas did not know this information, but that he doesn't remember. Moreover, this is certainly not a "fact" that is construed in favor of the Plaintiff that Thomas did not know; rather, it is *the absence of a fact for which no reasonable inference can be drawn other than the witness doesn't remember*. This is a settled rule of evidence in South Carolina. See *Bank of Aynor v. Adams*, 132 S.C. 107, 128 S.E. 168 (1925) (Supreme Court affirmed a trial court's ruling that a witness's testimony "I do not recall" did not serve as positive evidence of the fact in issue). Though not authoritative, this is a settled principle of law in other jurisdictions. See *Western Pride Builders, Inc. v. Zicha*, 320 N.E.2d 181 (Ill. App. 1974) in which the Court held "negative testimony does not raise an issue of fact" so that a witness's testimony "I don't recall" was negative (and did not positively prove a fact in issue).

At the heart of this case, Plaintiff alleges that Defendant Simpson "failed to disclose exculpatory evidence" to the assigned solicitor and the magistrate judge. Plaintiff's "evidence" against Simpson is only based on witnesses stating that they do not remember and a coroner's report that was not known to Simpson at the time of the warrant. These concerns permeate and obscure the Court's understanding of the record on brief, in oral argument, and in the proposed Order.

² The Court notes Simpson's objection to any characterization by Plaintiff that suggests Simpson did not inform Thomas of Decedent's crack cocaine use as opposed to knowing Decedent used two doses of crack cocaine while in the Room.

OBJECTION #2: Lack of Citation to the Record

Defendant Simpson objects that the proposed Order does not contain citations to the record and testimony of the witnesses. If the Court is making findings of fact, the proper procedure is for the Court to cite to the record. Defendant Simpson has a right to appeal, and specifically the denial of qualified immunity, and the failure to cite to the record in Plaintiff's proposed Order is in error and prejudicial to the Defendant seeking Qualified Immunity as an officer. This is particularly significant when this defendant is repeatedly expressing concerns that the record has not been accurately relayed to the tribunal.

OBJECTION #3: The Order is Improper and Overly Broad in Scope and Holdings

Defendant Simpson also objects to the proposed Order in its entirety because it does not provide an accurate recitation of the Court's ruling and the issue before the Court for decision. It includes holdings that the Court did not issue. For example, that the Warrant "evinced a mistake of law." See Proposed Order, p. 21. This is not a finding of fact related to the denial of the Defendant's Motion but, rather, something that the Plaintiff is trying to use to try his case in the Court's Order on Defendant's Motion. The Court's Order was that there was a question of fact whether Defendant Simpson fully relayed the witness statements to his supervisor. Plaintiff takes numerous liberties with the Court's instruction to try to bootstrap issues that were not part of the Motion before the Court or the Court's rulings.

OBJECTION #4: Erroneous Factual Recitations and Conclusions Even in Construing the Facts in the Light Most Favorable to the Plaintiff

As previously mentioned, Plaintiff relies on the testimony in the case of multiple witnesses who did not, after five (5) years, remember some of the information about the investigation of the case. Plaintiff makes the following recitations of "fact" in his brief that he has now populated into the proposed Order for this Court's signature. The following examples, which are illustrative and not exclusive, highlight this problem which now underlies the Court's decision:

I. DECEDENT FELL INTO A WALL

Factual Assertion: That the decedent "fell into a wall." Proposed Order, p. 2. There is no evidence in the record that the decedent fell on his own into a wall which is how this fact is portrayed in the proposed Order. It is not an accurate statement based on any reasonable construction of the video which was shown to the Court.

Lamar Fyall Testimony: Recounting what he saw on the video was that the Plaintiff “throws him” into a concrete pillar. Fyall Depo, p. 10, ln. 1. Stating that the probable cause for the arrest for murder was the confluence of the “assault that led up to the throwing” of the decedent into the wall. Fyall Depo, p. 22, ln. 10; p. 23, ln. 15. “He (Plaintiff) threw him against the wall...”. Fyall Depo, p. 23, ln. 20. “You see on the surveillance Mr. Green throwing Mr. Washington (decedent) – into the brick (wall).” Fyall Depo, p. 45, ln. 23. The importance of the facts that “I was given is that the guy was thrown against the wall – after an assault, and then died soon after.” Fyall Depo, p. 56, ln. 17-20.

II. SIMPSON DID NOT INFORM FYALL

Factual Assertion: That Simpson did not inform Fyall that he “had no idea what the cause of death was on the morning of December 5th.” Proposed Order, p. 8 and p. 9.

George Simpson Testimony: “The assault led to him being found deceased.” Simpson Depo, p. 171, ln. 1-2.

Q: Ok. So we agree we need a medical professional to make the cause of death right?

A: Essentially, yes. Simpson Depo, p. 215, ln. 4-6.

Sgt. Arthur Thomas Testimony: “The assault was the cause of death”

Q: Where I think you have recited that there was an assault; there was a death; and you felt there was probable cause for murder; correct?

A: Correct.

Q: Okay. If investigator Simpson learned from the coroner that the forensic pathologist that blunt force trauma was not the cause of death, would that specific fact be relevant in a murder investigation?

A: ... We still have to wait on tox to come back and so forth. So they wouldn't be relevant until I got the complete report... Thomas Depo, p. 86, ln. 22-25. We didn't have a complete report, so I am not gonna suggest anything changes without a complete coroner's report. Thomas Depo, p. 88, ln. 12 – 14. That is something we would discuss with the solicitor's office... Thomas Depo, p. 88, ln. 22-24.

Q: And most, if not all, the time when you charge someone with murder, an investigation may still be ongoing?

A: It is absolutely ongoing. Thomas Depo, p. 91, ln. 8-12.

Lamar Fyall Testimony:

Q: Did Investigator Simpson make any representations about the cause of death to the best of your knowledge on December 5th?

A: “I don't think that I had an official cause of death.” The information “I had was that there was an altercation, pretty much thrown against the wall, and then died on scene with whatever we had at that point was probable cause.” Fyall Depo. p. 63, ln. 1-9.

III. SIMPSON DID NOT INFORM HIS SUPERVISOR OF WITNESS STATEMENTS

A. GENERALLY SUPERVISOR WATCHED INTERVIEWS FIRST HAND

Factual Assertion: That Simpson did not inform his supervisor of witness information.

Sgt. Arthur Thomas Testimony: He recalled watching or participating in the interviews of witnesses. Thomas Depo, p. 18, ln. 2-3; p. 20, ln. 17; p. 21, ln. 4-5.

A: I don't recall being in the box... with any of them this time. I think I may have been watching. 'Cause you can watch (witness interviews) from my desk..." Thomas Depo, p. 21, ln. 1.

Q: So is it fair to say that you recall the interviews; you just don't recall whether or not you were physically in them?

A: Correct. Thomas Depo, p. 22, ln. 14.

Q: They're bringing in witnesses that your investigator believes has relevant testimony?

A: Right.

Q: You were either watching the interviews in the room or watching interviews from the -- from a remote monitor?

A: Correct.

Q: And at what point did that change? And I'll represent to you my understanding is that some point you guys had a telephone call with Lamar Fyall. But at what point did you stop watching the videos and start doing something else?

A: I would say that it would probably be after all the interviews were done. And the witness made her statements of the assault and how things were interacting prior to. And I believe the -- your client had also given a statement in regards to the fact that he did assault the young man. And then we had the video evidence that we reviewed so once we reviewed. So once we reviewed everything that we had, video evidence; witness statement; suspect statement; we had CSI collecting the physical evidence, blood evidence, and so forth, we went in and had a conversation on it with Lamar, that is what I recall.

Q: You say we reviewed?

A: uh-huh.

Q: I think -- I'm clear that you, whether in part or in whole, reviewed the witness interviews whether in person or remotely.

A: uh-huh.

Q: Did you review anything else other than the interviews?

A: (sic in original) Video Evidence. Thomas Depo, p. 26, ln. 11 – p. 27., ln. 24.

Q: ... and you at least had an opportunity to review or watch some of the in-person interviews at headquarters; is that correct?

A: Correct. Thomas Depo, p. 28, ln. 3-6.

Q: To the best of your recollection, what do you recall the discussion being in this team meeting before you contacted Lamar Fyall?

A: Again, discussing the evidence that we had before us, witness statements, suspect statement, physical evidence at the scene, blood evidence and so forth, video evidence, everything that we felt was appropriate probable cause to make the call.

...

Q: What specifically do you recall, if anything --- and I mean specific communications about what was said from Investigator Simpson to you? What do you recall if anything, that he told you before you called Lamar Fyall?

A: I don't recall anything specific from Simpson or any of the guys. Just general information... about the probable cause we had.

Q: Just the case as we understand it today?

A: Right.

...

Q: Okay let's move on to the telephone call with Lamar Fyall.

A: Uh-huh.

Q: What, if anything, specifically do you remember I the telephone call being said?

A: Just reiterated. We discussed each interview, the video evidence, and evidence at the scene, and pretty much what is in the warrant about the assault and so forth, and explained that after – the victim came in happy-go-lucky, skipping almost. And he exited dizzy, you. Know, naked. His head was slammed against the wall of a hotel prior to him falling dead beside his car in the parking lot or something like that. But it was that type of conversation. Thomas Depo, p. 29, ln. 3 – p. 30, ln. 20.

B. SPECIFICS WERE KNOWN BY SUPERVISOR AND SOLICITOR

This information was gleaned directly from the interview of Aja Prophet but the Plaintiff has failed to properly present the facts to the Court.

i. KIDNAPPING

Factual Assertion: That Simpson did not inform his supervisor or the solicitor that the decedent kidnapped Aja Prophet. Proposed Order, pp. 8-9.

Lamar Fyall Testimony:

Q: ... were you informed of any facts lending themselves to establish that Mr. Washington, the victim, was kidnapping or otherwise preventing Ms. Prophet from leaving the room?

A: Again. I don't recall that. I – I do recall being told about something going on in the room that was causing Mr. Green to want to go in, I just don't recall the specifics of it.

Q: Do you think you'd remember if it was a kidnapping allegation when you were being asked about probable cause for murder?

A: Do I think I would remember? I don't know. Fyall Depo, p. 43, ln. 14 – p. 44, ln. 4.

Q: But as you said, the most significant part of that was the video showing him being thrown into a concrete wall?

A: That in conjunction with, as I was told, whatever threat or issue with Ms. Prophet having been resolved... as I understood it, the – whatever threat Mr. Washington had posed wasn't there anymore. Fyall Depo, p. 78, ln. 2-14.

ii. TWO DOSES OF CRACK COCAINE

Factual Assertion: That Simpson failed to inform his superior and the solicitor that the decedent consumed two doses of crack cocaine, and that the decedent was suffering from drug induced paranoia to imply that this would have undermined probable cause. Proposed Order, pp. 8-9.

Sgt. Arthur Thomas Testimony:

Q: Do you recall Investigator Simpson telling you that the decedent... Mr. Washington, had ingested two doses of cocaine that evening?

A: I recall the witness advising in one of the investigators during the interview that they participated in some drugs and then participated in some other acts.

Q: But do you specifically recall whether or not you were informed that the deceased had used two doses of crack or cocaine?

A: I don't recall any doses. I just know there was some participation in that and participation in other acts. Thomas Depo, p. 33, ln. 21 – p. 34; ln 9.

Q: Do you recall you or Investigator Simpson telling Lamar Fyall that the decedent had used two doses of crack or cocaine?

A: I believe it was described the same way, is that they participated in drug activity...

Q: But you don't specifically recall it being clarified further that it was two uses of cocaine?

A: No. I don't recall anything about the uses. It was, I'm sure, a general statement. 'Cause I don't recall what the witness said about how many doses. Thomas Depo, p. 34, ln. 16 – p. 35, ln. 4.

Lamar Fyall Testimony:

Q: But isn't it true that you already knew that he had taken at least two hits of crack earlier that night, right?

A: Yes. That he had smoked crack twice. Fyall Depo, p. 78, ln. 21-24.

...

Q: But even if the response had been: Well, he had had two hits of crack, that wouldn't have changed your determination on probable cause for murder in this case, would it?

A: If the sole response was: We administered Narcan because he had two hits of crack without any other context, then no. Fyall Depo, p. 79, ln. 16-22.

iii. DECEDENT WAS BEING "HIT LIKE A WOMAN"

Factual Assertion: That Simpson withheld information that the assault was minor and was the decedent being hit "like a woman." This information was in the interview that Thomas was watching by video at his desk and was known to him at the time. This description was also not an accurate description of the assault as has been portrayed to the Court. The portion of the assault that was described as "like a woman" was only a small portion of the witness interviews.

George Simpson Testimony:

Q: She described it further as my licks for a woman.

A: So, my interpretation of this was she's referring to him hitting him more after she had stepped in. She stepped in once it got obsessive, according to her, that is what she mentioned. She stepped in because she felt it was excessive. He had learned his lesson.

Q: Did she ever describe any of the hits as being strong than, as she describes, as hitting like a woman? I know I'm paraphrasing, but does she ever describe him (Plaintiff) as hitting him (decedent) hard or anything like that?

A: Yeah, so the initial attack, she mentioned that it was excessive. She mentioned that directly to me, like when I was escorting her out, she said it was excessive, and that's what caused her to get in to try and separate Mr. Green from Mr. Washington, because she didn't want him to get hit anymore from that point. She just wanted him to leave." Simpson Depo, p. 141, ln. 22 – p. 142, ln. 25.

...

Q: She doesn't use any kind of language in her statement. And I would say that she characterizes it as being a light assault in the video. Can you explain to me why she is now using this excessive language and aggressive assault and stuff?

A: I mean, in the video she does say that she had already stepped in to break them up and then the light attacks continued to happen. Then she said those licks were for a woman at that point after she stepped in. So, it was basically just me wanting to clarify everything that I had gotten from the two investigators, and I just wanted to clarify everything that I saw in the video. Simpson Depo, p. 146.

Fyall Testimony:

The proposed Order states: "Finally, Fyall also was not aware that Prophet had described Plaintiff's altercation with Decedent as hitting him like a woman. Fyall commented, 'if 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.'" Importantly, this witness's testimony on this topic is located on Page 55, ln. 15-18 of Lamar Fyall's deposition. That portion of the deposition was counsel for the Plaintiff *reading from another witness's deposition where the video was being played to the other witness*. This portion of the deposition was wrought with objections. Fyall had never seen the video and Plaintiff is misconstruing the witness's statements, the deponent's statements, and the facts in the record.

Fyall testified that he "thought was the more important thing was that the assault was going on and then Ms. Prophet was like: Okay. We should – this needs to stop." Fyall Depo, p. 76, ln. 1-4.

OBJECTION #5: Additional Case Law Not Presented on Brief or Oral Argument

Plaintiff has cited to *Thurston v. Frye*, 99 F.4th 665, 676 (4th Cir. 2024) (upon the court's finding a constitutional violation once plaintiff establishes a lack of probable cause, the burden shifts to the defendant to show the arrest was not contrary to clearly established law) in the proposed Order which was not raised on brief or during oral argument by either party. This is an improper injection of law that was not presented to the Court and not part of the Court's determination. Mr. Truluck takes the position that adding this case has no "material effect" on this matter; however, that is not the case. Plaintiff relies on *Thurston* to shift the burden to the Defendant "in the absence of probable cause." See Proposed Order, p. 19. There is no exculpatory evidence in the record that would have "established the suspect's innocence" as the proposed Order erroneously suggests because of this case. Defendant Simpson is prejudiced by including this citation and not having had an opportunity to address it. Finally, it was not part of the Court's decision and should not be included.

OBJECTION #6: Ruling on Withdrawn Argument Related to the Warrant

At the outset of the hearing, Simpson withdrew his argument III "WHETHER A FINDING OF PROBABLE CAUSE BY A NEUTRAL AND DETACHED MAGISTRATE IS *PRIMA FACIE* EVIDENCE OF THE EXISTENCE OF PROBABLE CAUSE." This was withdrawn due to a motion to reconsider pending by the City challenging a ruling by a different judge. It should not be included in this Court's Order. See Proposed Order, p. 21.

OBJECTION #7: Errors of Law

Plaintiff misapplies the legal standard for probable cause. First, probable cause is evaluated at the time of the arrest and the officer does not have to exhaust every avenue of investigation. Plaintiff misstates the law on this issue and focuses on the officer having knowledge of "exculpatory evidence" which is not in the record. See *Torchinsky v. Siwinski*, 942 F.2d 257, 262 (4th Cir. 1991). Even if the coroner's report that concluded that the cause of death was "excited delirium and physical altercation," this is not exculpatory evidence since Plaintiff concedes that he was in a physical altercation with the decedent. Second, probable cause is evaluated from the standpoint of the **objectively reasonable officer**. Plaintiff's proposed Order never accurately sets forth this standard. *Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir. 2003). Instead, it erroneously relies on the law of excessive force – which is not a claim or defense in the present matter. See Proposed Order p. 12. Specifically, Plaintiff cites to *State v. Long*, 325 S.C. 59, 64, 480 S.E.2d 62 (1997); *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Mekler*, 368 S.C. 1, 626 S.E.2d 890 (Ct. App. 2005); S.C. Code Ann. § 16-11-440(C); *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)); and *State v. Rash*, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936).

Plaintiff misapplies the legal standard for qualified immunity. Plaintiff's improper and inaccurate recast of the lack of memory by the supervisor to mean a lack of meaningful consultation by Defendant Simpson develops into an error of law. Plaintiff fails to cite to the proper standard that Defendant Simpson need only show "arguable probable cause" and that consultation with his supervisor is precisely a scenario when qualified immunity should be extended to the officer. *See also Gomez v. Atkins*, 296 F.3d 253, 264 (4th Cir. 2002). This case was cited by the Defendant, applies to this case, and sets forth the proper standard. Yet, it is not included in the proposed Order.

Plaintiff misapprehends the law applicable to qualified immunity as "[T]he existence of probable cause is normally a question for the jury, material fact." *Garris v. Rowland*, 678 F.2d 1264, 1270 (5th Cir. 1982), cert. denied, 459 U.S. 864 (1982). That is not the full standard for a motion regarding qualified immunity. As here, "when there is no dispute about the historical facts—the who, what, where and when of what happened—the objective reasonableness of officers' conduct is a matter of law to be decided by the court." *Armstrong v. Hutcheson*, 80 F.4th 508, 513 (4th Cir. 2023), citing *Scott v. Harris*, 550 U.S. 372 (2007), *Henry v. Purnell*, 652 F.3d 524 (4th Cir. 2011) and *Cloaninger ex rel Cloaninger v. McDevitt*, 555 F.3d 324 (4th Cir. 2009). "In Fourth Amendment cases, disputes over historical facts can be material. So, if there are genuine disputes over what happened factually, courts must construe all historical facts in favor of the non-moving party to determine whether the dispute affects the outcome under governing law. That is no different in Fourth Amendment cases than in any other civil case. But unlike in tort law, in Fourth Amendment cases, objective reasonableness [of an officer's actions] is not a jury question—it is a question of law. Said differently, the court must decide, under the nonmovant's version of the facts, the purely legal issue of whether a constitutional violation has occurred." *See Scott*, 550 U.S. at 381 n.8; *Putman v. Harris*, 66 F.4th 181, 186–87 (4th Cir. 2023); *Henry*, 652 F.3d at 531; and *Cloaninger*, 555 F.3d at 333. The reasonableness of the officer's actions is not a jury question as the proposed Order states, and the proposed Order is deficient because it never, at any point, finds that an objectively reasonable officer would have rendered a different conclusion than Investigator Simpson under the circumstances.

This letter is intended to set out the objections on behalf of my client Defendant Simpson, it is not an attempt to contest the Court's ruling.

I appreciate the Court's time and attention to this correspondence.

Sincerely,



Mary D. LaFave

SHERMAN GREEN V. CITY OF COLUMBIA AND GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

MARCH 21, 2025 LETTER TO JUDGE THOMAS W. McGEE, III

Excerpts from the deposition of Arthur Thomas

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

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

DEPOSITION OF
ARTHUR THOMAS

* * * * *

Wednesday, September 25, 2025
11:02 a.m. - 12:49 p.m.

The deposition of Arthur Thomas, taken on behalf of the Plaintiff at the law offices of Crowe LaFave Garfield & Bagley, LLC, 2019 Park Street, Columbia, South Carolina, on the 25th day of January 2024, before Cortney N. Glover, RPR, Certified 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 Exhibit Number 1 was marked prior to the deposition and introduced as follows:

Plaintiff's Exhibit 1	31
(Warrant)	



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ARTHUR THOMAS

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1 Q: Okay.

2 A: And I recall kind of looking at some of the
3 interviews, I believe.

4 Q: Okay.

5 A: Uh-huh.

6 Q: Staying with that theme about just general
7 participation.

8 A: Uh-huh.

9 Q: Do you recall having a telephone conversation
10 with Investigator Simpson and prosecutor, Lamar
11 Fyall?

12 A: Yes.

13 Q: Okay. Do you -- did you have any
14 communication, to the best of your knowledge,
15 after that telephone conversation with Lamar
16 Fyall and investigator Simpson?

17 A: That day or any time ---

18 Q: Even after that incident. About this.
19 Obviously you must have run into Investigator
20 Simpson and managed him, but did you have any
21 communication with Investigator Simpson about
22 this case, to the best of your knowledge, after
23 you had a telephone conversation with Lamar
24 Fyall?

25 A: Yes.



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1 Q: --- first ones?

2 Okay. I understand -- well, you've --
3 you're testifying -- and correct me if I'm
4 wrong. You're testifying to how -- as to how
5 you run this, but you don't remember specific
6 conversations after the arrest warrant call?

7 A: Huh-uh, I don't.

8 Q: Okay. You mentioned that you were at
9 headquarters, to the best of your
10 understanding, when this was getting prepared
11 for the arrest warrant for the call with Lamar
12 Fyall; is that correct?

13 A: Correct.

14 Q: Okay. I think you mentioned that you may have
15 either watched or participated in interviews
16 with some of the witnesses; is that correct?

17 A: Yes.

18 Q: Okay. Do you -- I -- my understanding is that
19 they were both were options, that you could
20 watch the video recordings of the witnesses
21 and/or be in the room with witnesses. Do you
22 know whether or not -- which one you might have
23 done?

24 A: I really can't recall, because I do both in so
25 many of the cases. I may actually be in the



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1 box with them. I don't recall being in the
2 box ---

3 Q: Okay.

4 A: --- with any of them this time. I think I may
5 have been watching. 'Cause you can watch from
6 my desk, pretty much ---

7 Q: Okay.

8 A: --- and see the interviews. But I don't recall
9 specifically.

10 Q: Okay. And you may have just answered my next
11 question, but I'm gonna ask it just a different
12 way to make sure I get the answer I'm looking
13 for.

14 My understanding in this case is that
15 Investigator Simpson and/or his team ---

16 A: Uh-huh.

17 Q: --- were interviewing Ms. Aja Proffit [ph] and
18 himself, Sherman Green. Did you -- to the best
19 of your knowledge, did you ever observe them in
20 person, as opposed to video?

21 MS. LaFAVE: Objection.

22 Go ahead.

23 A: I don't recall. When you say observed them in
24 person, meaning being in the interview?

25 Q: Yes. As opposed to watching them on video from



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ARTHUR THOMAS

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1 a more remote ---

2 A: I'm sure I saw them when they were brought in
3 possibly -- bought out. But I can't
4 remember ---

5 Q: Okay.

6 A: --- you know, if I actually -- 'cause I don't
7 remember your client at all.

8 Q: That's fine. So is it fair to say that you
9 recall the interviews; you just don't recall
10 whether or not you were physically in them?

11 A: Correct.

12 Q: Okay. That's fair. You -- I asked you about
13 communications with Investigator Simpson.

14 A: Uh-huh.

15 Q: I'm gonna ask a even broader question. Did
16 you -- after the arrest warrant, of course,
17 after speaking with Lamar Fyall ---

18 A: Uh-huh.

19 Q: --- did you have any communications that you
20 recall ---

21 A: Uh-huh.

22 Q: --- not as a matter of habit but that you
23 recall having specific communications with
24 anyone else other than Investigator Simpson?

25 A: In reference to the case itself?



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1 But he said it would take time to get
2 everything together. They ran through tox and
3 all kind of things to get a final disposition
4 on what happened with the body.

5 Q: Okay. Now, I want to back up a little bit.
6 And we're really talking about -- basically
7 what you're talking about, a 24, 48 hour
8 period. So I'm gonna back up. You're at
9 headquarters.

10 A: Uh-huh.

11 Q: They're bringing in witnesses that your
12 investigator believes has relevant testimony?

13 A: Right.

14 Q: You were either watching interviews in the room
15 or watching interviews from the -- from a
16 remote monitor?

17 A: Correct.

18 Q: And at what point did that change? And I'll
19 represent to you my understanding is at some
20 point you guys had a telephone call with Lamar
21 Fyall. But at what point did you stop watching
22 the videos and start doing something else?

23 A: I would say that it would probably be after all
24 the interviews were done, if I recall
25 correctly, 'cause I think each interview took



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1 a little time. And the witness made her
2 statements of the assault and how things were
3 interacting prior to. And I believe the --
4 your client had also given a statement in
5 regards to the fact that he did assault the
6 young man. And then we had the video evidence
7 that we reviewed so once we reviewed.

8 So once we reviewed everything that we
9 had, video evidence; witness statement; suspect
10 statement; we had CSI collecting the physical
11 evidence, blood evidence, and so forth, we went
12 in and had a conversation on it with Lamar,
13 what is what I recall.

14 Q: You say we reviewed?

15 A: Uh-huh.

16 Q: I think -- I'm clear that you, whether in part
17 or in whole, reviewed the witness interviews
18 whether in person or remotely.

19 A: Uh-huh.

20 Q: Did you review anything else other than the
21 interviews?

22 A: Of video evidence.

23 Q: Of the hotel video evidence?

24 A: Correct.

25 Q: Okay. So you had a chance to review the hotel



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1 video evidence ---

2 A: Uh-huh.

3 Q: --- and you at least had an opportunity to
4 review or watch some of the in-person
5 interviews at headquarters; is that correct?

6 A: Correct.

7 Q: All right. Do you review -- were there any
8 other documents at the time to review?

9 A: No. There was no documents really at that
10 time; no.

11 Q: So having reviewed those two categories of
12 evidence ---

13 A: Uh-huh.

14 Q: --- before you met with Lamar Fyall, did you
15 have a discussion with Investigator Simpson
16 before you had a call with Lamar Fyall?

17 A: The discussion would have been with the whole
18 team, so I'm sure we did; yeah.

19 Q: Okay.

20 A: 'Cause before we make the call, again, we talk
21 about the evidence and discuss the probable
22 cause. 'Cause we're not gonna make the call
23 unless we feel we got accurate probable cause.

24 Q: Okay. To the -- and this is -- I know this is
25 an open-ended question, but I wasn't there, so



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1 I got to ask it this way.

2 A: Sure.

3 Q: To the best of your recollection, what do you
4 recall the discussion being in this team
5 meeting before you contacted Lamar Fyall?

6 A: Again, discussing the evidence that we had
7 before us, witness statements, suspect
8 statement, physical evidence at the scene,
9 blood evidence and so forth, video evidence,
10 everything that we felt was appropriate
11 probable cause to make the call.

12 Q: I understand that. And you're answer's not
13 missing my question. Let me ask my question a
14 bit more pointed.

15 A: Uh-huh.

16 Q: What specifically do you recall, if anything --
17 and I mean specific communications about what
18 was said from Investigator Simpson to you?
19 What do you recall, if anything, that he told
20 you before you called Lamar Fyall?

21 A: I don't recall anything specific from Simpson
22 or any of the guys. Just general
23 information ---

24 Q: Okay.

25 A: --- about the probable cause that we had.



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1 Q: Just the case as we understand it today?

2 A: Right.

3 Q: Okay.

4 A: And then we discussed it and then made the
5 call.

6 Q: Okay. Let's move on to the telephone call with
7 Lamar Fyall.

8 A: Uh-huh.

9 Q: What, if anything, specifically do you remember
10 in that telephone call being said?

11 A: Just reiterated. We discussed each interview,
12 the video evidence, and evidence at the scene,
13 and pretty much what's in the warrant about the
14 assault so forth, and explained that after --
15 the victim came in happy-go-lucky, skipping
16 almost. And he exited dizzy, you know, naked.
17 His head was slammed against the wall of the
18 hotel prior to him falling dead beside his car
19 in the parking lot or something like that. But
20 it was that type of conversation.

21 Q: Okay. I've handed your counsel and Ms. LaFave
22 a copy of the arrest warrant. I had this
23 marked as Exhibit 1. Will you take a look at
24 the narrative. And if you need to read all the
25 way through, please do. If you don't, just let



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1 Q: Okay. The next question is: Did Investigator
2 Simpson tell you that the decedent had a
3 history of drug problems including going to
4 rehab and swallowing a large amount of cocaine?
5 Did he ever tell you that?

6 A: I think sometime later a family member or
7 something may have mentioned it. I can't
8 remember. I don't recall exactly when that was
9 though.

10 Q: Well, just focusing on before speaking with
11 Lamar Fyall, you said, sometime later. Do you
12 recall him telling you that before you spoke
13 with Lamar Fyall?

14 A: I don't recall.

15 Q: Okay. Do you recall telling Lamar Fyall about
16 that fact?

17 A: No. 'Cause I don't recall knowing that fact.

18 Q: Okay. Do you recall Investigator Simpson
19 telling you that the decedent ---

20 A: Uh-huh

21 Q: --- Mr. Washington, had ingested two doses of
22 cocaine than evening?

23 MS. LaFAVE: Objection.

24 Go ahead.

25 A: I recall the witness advising one of the



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1 investigators during the interview that they
2 participated in some drugs and then
3 participated in other acts.

4 Q: Okay. And let me parse that out though.

5 A: Uh-huh.

6 Q: But do you specifically recall whether or not
7 you were informed that the deceased had used
8 two doses of crack or cocaine?

9 A: I don't recall any doses. I just know there
10 was some participation in that and
11 participation in other acts.

12 Q: Okay. And so -- and I'll ask this question.
13 I think your answer answers it. Let me try
14 anyway.

15 A: Uh-huh.

16 Q: Do you recall you or Investigator Simpson
17 telling Lamar Fyall that the decedent had used
18 two doses of crack or cocaine?

19 A: I believe it was described the same way, is
20 that they participated in drug activity and
21 participated in other activity, in sexual
22 activity.

23 Q: But you don't specifically recall it being
24 clarified further that it was two uses of
25 cocaine?



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1 A: No. I don't recall anything about the uses.
2 It was, I'm sure, a general statement. 'Cause
3 I don't recall what the witness said about how
4 many doses.

5 Q: Okay. Do you recall Investigator Simpson
6 relaying to you that Mrs. Proffit was yelling
7 for help at any time?

8 MS. LaFAVE: Objection.

9 A: I don't recall.

10 MS. LaFAVE: Go ahead.

11 Q: And I know that not recalling whether or not he
12 told you that probably includes the next
13 question, but I'll go ahead and ask.

14 A: Okay.

15 Q: Do you recall Investigator Simpson telling
16 Lamar Fyall that at one point Ms. Proffit was
17 yelling for help?

18 A: I don't recall that.

19 Q: Okay. And do you recall Investigator Simpson
20 ever telling you that the plaintiff had
21 explained to him that he observed the decedent,
22 Mr. Washington, through the window, that he was
23 naked, that people were after him, and that
24 Ms. Proffit had blood on her face where the
25 decedent had attacked her? Do you ever recall



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ARTHUR THOMAS

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1 MR. TRULUCK: Guys, can we take about a ten-minuter?

2 MS. LaFAVE: Sure.

3 (A break was taken from 11:52 a.m. until
4 12:07 p.m.)

5 Q: Investigator, thanks for the break. I'm not
6 picking on you. A lot -- not even a lot. I
7 would say a percentage of your answers have
8 resulted in I do not recall.

9 A: Uh-huh.

10 Q: I understand that.

11 A: Uh-huh.

12 Q: I just want to ask you real quick. To the best
13 of your memory, any of the do-not-recall
14 answers you gave, are you essentially saying
15 you just don't recall these facts being
16 conveyed to you? Is that what you mean when
17 you say I do not recall?

18 A: I do not recall the conversation or -- well, of
19 the question that you asked. I just don't
20 remember anything of that nature.

21 Q: Okay. Is there anything I asked you about
22 where you said you do not recall you think you
23 would have recalled? Again, I went through a
24 lot of facts. I can go through them again.
25 But is there anything that stuck out in your



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ARTHUR THOMAS

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- 1 mind that you did not recall you and thought,
2 well, I might have recalled that?
- 3 A: No.
- 4 Q: Okay. So just did not recall?
- 5 A: (Witness shakes head.)
- 6 Q: Okay. Let me ask you -- I touched on policy
7 before. I know you're not on City council. I
8 know you're not the chief of police.
- 9 A: Uh-huh.
- 10 Q: I know there are a lot of people between you
11 and the chief of police.
- 12 A: Uh-huh.
- 13 Q: Do you -- did you as a sergeant, do you undergo
14 any training while you were employed there?
- 15 A: Of course.
- 16 Q: Okay. How often did you undergo training?
- 17 A: We have to do it yearly.
- 18 Q: Okay. So it's a annual thing?
- 19 A: Uh-huh.
- 20 Q: About how long the event?
- 21 A: A week.
- 22 Q: Week. Do the investigators do it too?
- 23 A: Yeah. Everyone in the department has some sort
24 of training.
- 25 Q: For the purpose of training, would you and



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1 was informed that blunt force trauma was not
2 the cause of death, would that be relevant to
3 the investigation?

4 **MS. LaFAVE:** Objection.

5 A: So if he was informed, would it be relevant?

6 Q: Yes.

7 A: I feel that any information is relevant. But
8 it would still have to be looked into, and the
9 final conclusion of the coroner's office would
10 need to be prompted from there.

11 Q: Well, I mean specifically in this case ---

12 A: Uh-huh.

13 Q: --- where I think you have recited that there
14 was an assault; there was a death; and you felt
15 there was probable cause for murder; correct?

16 A: Correct.

17 Q: Okay. If Investigator Simpson learned from the
18 coroner or the forensic pathologist that blunt
19 force trauma was not the cause of death, would
20 that specific fact be relevant in a murder
21 investigation?

22 A: The concludes [sic] report. We still have to
23 wait on tox to come back and so forth. So they
24 wouldn't be relevant until I got a complete
25 report ---



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1 concluded that in its totality, sure. He
2 should.

3 Q: So you're saying in totality. So let's say
4 it's only a statement from a forensic
5 pathologist telling an investigator this person
6 was not beaten to death. Would you find that
7 information should be relayed to a solicitor or
8 supervisor if you were the investigator?

9 MR. HEMLEPP: Object to the form.

10 A: Again, I would a complete report.

11 Q: Okay. So being told that ---

12 A: We didn't have a complete report, so I'm not
13 gonna suggest anything changes without a
14 complete coroner's report.

15 Q: Okay. Is that just how you feel, or is that
16 how the City of Columbia Department would work?
17 Are -- you're not establishing that on your
18 own? Is that a police department policy to
19 wait until the conclusion?

20 MR. HEMLEPP: Object as to form.

21 A: I'm not saying it's a policy; no. I'm saying
22 collective total -- totality evidence. Then
23 you move forward. And, again, that would be
24 something they would discuss with the
25 solicitor's office, to be honest with you.



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ARTHUR THOMAS

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1 is what we have an obligation to inform the ---

2 A: Correct.

3 Q: --- solicitor's office about?

4 Okay. But an investigator can't inform
5 the solicitor's office about information that
6 he doesn't have; is that right?

7 A: That is correct.

8 Q: And most, if not all, the time when you charge
9 someone with murder, an investigation may still
10 be ongoing?

11 A: It is absolutely ongoing.

12 Q: All right. I don't have any further questions.

13 MR. TRULUCK: You made it.

14 (There being no further questions, the deposition
15 concluded at 12:49 p.m.)
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SHERMAN GREEN V. CITY OF COLUMBIA AND GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

MARCH 21, 2025 LETTER TO JUDGE THOMAS W. McGEE, III

Excerpts from the deposition of Lamar Fyall

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
Defendants.

DEPOSITION OF
LAMAR FYALL

* * * * *

Tuesday, November 28, 2023
2:07 p.m. - 3:40 p.m.

The deposition of Lamar Fyall, 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

(All Exhibits were marked prior to the deposition and are referenced as follows:)

Plaintiff's Exhibit Number 1	15,26
(Affidavit and arrest warrant)	
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STIPULATIONS

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

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page 81.



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LAMAR FYALL

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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



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LAMAR FYALL

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1 that you had with Investigator Simpson that led
2 you to believe there was probable cause for the
3 murder charge?

4 **MS. LAFAVE:** Objection.

5 A: I'm sorry. I have to get used to that.

6 Q: Yeah.

7 A: Not -- not just the throwing, but the assault
8 -- assault that led up to the throwing. So
9 just the confluence of all of those things
10 ending with the throwing into the wall led to
11 him asking me if that would be probable cause
12 for murder.

13 Q: Okay. Again, I'm -- I'm gonna try to get as
14 much information that ---

15 A: Uh-huh.

16 Q: --- I can before I give you other facts. So
17 I'm gonna identify the latter part of that as
18 proximity, so the hitting the wall ---

19 A: Uh-huh.

20 Q: --- and then being dead shortly thereafter as
21 being one of those reasons why you think there
22 was probable cause. You said the other one was
23 him going to the room and the assault was being
24 that the -- kind of big part of the ---

25 A: Uh-huh.



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LAMAR FYALL

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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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LAMAR FYALL

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1 had opened the window, he saw Mr. Green trying
2 to get in the room. Question, line 19: But
3 effectively, he's not letting her leave as
4 well, right? Answer: Right.

5 Now, I'm familiar with the concept of
6 kidnapping in South Carolina, I know you are.
7 If somebody wants to leave and can't leave the
8 room, under the facts that I've told you so
9 far, does that lend itself to a possible charge
10 of kidnapping?

11 A: If she was actually being prevented from
12 leaving by someone else, then yes. Confinement
13 is an element of kidnapping.

14 Q: Okay. And to -- again, to make this
15 examination easier, were you informed of any
16 facts lending themselves to establish that Mr.
17 Washington, the victim, was kidnapping or
18 otherwise preventing Ms. Prophet from leaving
19 the room?

20 MS. LAFAVE: Objection.

21 A: Again, I don't recall that. I -- I do recall
22 being told about something going on in the room
23 that was causing Mr. Green to want to go in, I
24 just don't remember the specifics of it.

25 Q: Do you think you'd remember if it was a



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LAMAR FYALL

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1 kidnapping allegation when you were being asked
2 about probable cause for murder?

3 **MS. LAFAVE:** Objection.

4 A: Do I think I would remember? Don't know. But
5 ... But I'm not sure whatever that ... The
6 question would be whatever that was, was it
7 resolved or not, right? So that's why I say
8 it's hard to say. It is a fact relevant in
9 isolation, how does it relate to everything
10 else that happened before or after?

11 Q: Okay. Well let me -- let me break it up a
12 little bit. If Mr. Green is going in because
13 he believes Ms. Prophet is being kidnapped ---

14 A: Uh-huh.

15 Q: --- is that a relevant fact?

16 **MS. LAFAVE:** Objection.

17 A: Yes, as far as how he gets into the room, or
18 his ---

19 Q: Right.

20 A: --- motives for getting into the room. Yes.

21 Q: Okay. And although you can't rule out it was
22 never said, is it fair to say you don't recall
23 that part of the conversation with Investigator
24 Simpson?

25 **MS. LAFAVE:** Objection.



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LAMAR FYALL

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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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LAMAR FYALL

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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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LAMAR FYALL

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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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LAMAR FYALL

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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 intervene. What I thought was the more
2 important thing was that the assault was going
3 on, and then Ms. Prophet was like: Okay. We
4 should -- this needs to stop. So the police
5 coming, that would depend on what exactly was
6 going on in the -- in the room. I don't think
7 he necessarily had a -- a duty to wait till the
8 police came, but, you know, it's -- what's more
9 important to me as I'm looking at it was the
10 fact that the assault happened and then at some
11 point, Ms. Prophet, based on her actions of
12 trying to break it up, didn't feel like there
13 was a danger.

14 Q: So based on what you analyzed as being Ms.
15 Prophet intervening in the altercation between
16 Mr. Green and Mr. Washington, Mr. Washington
17 being thrown into the wall and dying shortly
18 thereafter, you had probable cause for an
19 arrest for murder?

20 A: Yes. I think those actions at that point
21 indicated the wall was the reason for his --
22 his death, or those facts indicated.

23 Q: And -- okay. Sorry. Strike that.

24 What does it mean to you -- I didn't quite
25 understand the line of questioning about being



LAMAR FYALL

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1 interview? I think I would wanna just see it.

2 Q: But as you said, the most significant part of
3 that was the video showing him being thrown
4 into a concrete wall?

5 A: That in conjunction with, as I was told,
6 whatever threat or issue with Ms. Prophet
7 having been resolved to the extent that it
8 wasn't, or that he was actively trying to
9 attack Ms. Prophet or, you know, do something,
10 and Mr. Green had, you know, the right from a
11 self-defense standpoint to -- or defense of
12 others standpoint to continue the assault. But
13 as I understood it, the -- whatever threat Mr.
14 Washington had posed wasn't there anymore.

15 Q: And when Mr. Truluck was asking you about
16 Narcan, that if you had known Narcan was
17 administered, and I -- I'm gonna try to
18 remember exactly what you said, but you said:
19 I would've asked some questions.

20 A: I'd've asked why they administered Narcan.

21 Q: But isn't it true that you already knew that he
22 had taken at least two hits of crack earlier in
23 the night, right?

24 A: Yes. That he had smoked crack twice.

25 Q: So it would've been standard procedure if they



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LAMAR FYALL

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1 had known of a -- of a hit of crack, that they
2 would've administered Narcan as a -- out of an
3 abundance of precaution, isn't that right?

4 A: I don't know the answer to that.

5 Q: What other questions would you have other than:
6 Was he on drugs?

7 A: So, if they said -- if I was told that EMS had
8 administered Narcan, I would've asked, like:
9 Why? Is it just their protocols to admin- --
10 administer Narcan when they think someone is --
11 they have an indication that someone is using
12 drugs, like are there any symptoms or issues
13 with the patient that led them to say: Oh, this
14 is a Narcan case? I just -- I would just wanna
15 know why.

16 Q: But even if the response had been: Well, he had
17 had two hits of crack, that wouldn't have
18 changed your determination on probable cause
19 for murder in this case, would it?

20 A: If the sole response was: We administered
21 Narcan because he had two hits of crack without
22 any other context, then no.

23 MS. PAVLICEK: I don't have any further questions.
24 Thank you, Lamar.

25 MS. LAFAVE: I don't have any further questions.



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SHERMAN GREEN V. CITY OF COLUMBIA AND GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

MARCH 21, 2025 LETTER TO JUDGE THOMAS W. McGEE, III

Excerpts from the deposition of George Simpson

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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STIPULATIONS

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

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page 281.



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GEORGE SIMPSON

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1 Q: All right. So, I want to make sure this is
2 right. So, she says he's jerking the man
3 around, is that right?

4 A: Uh-huh.

5 Q: Talking about Mr. Green and Mr. Washington?

6 A: Uh-huh.

7 (Video played.)

8 Q: After he's done hitting him, a couple of small
9 hits, not too much ---

10 A: Uh-huh.

11 Q: --- is that correct?

12 A: Yes.

13 (Video played.)

14 Q: He didn't have any cuts on him, I'll guarantee
15 you that. Is that right?

16 A: That's what she mentioned.

17 Q: Okay. Well, and I want to make sure I get that
18 right because you found her to be a credible
19 witness, right?

20 A: Uh-huh.

21 (Video played.)

22 Q: She described it further as my licks for a
23 woman.

24 A: So, my interpretation of this was she's
25 referring to him hitting him more after she had



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GEORGE SIMPSON

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1 stepped in. She stepped in once it got
2 obsessive, according to her, that's what she
3 mentioned. She stepped in because she felt
4 that it was excessive. He had learned his
5 lesson.

6 Q: Did she say that, obsessive -- excessive?

7 A: That's how I interpreted that it had gotten
8 obsessive, which is why she would need to get
9 in. And she did mention, stop hitting him;
10 he's learned his lesson. And then she mentions
11 that there were some more hits after that,
12 which were like smaller hits after the fact.

13 Q: Did she ever describe any of the hits as being
14 stronger than, as she describes, as hitting
15 like a woman? I know I'm paraphrasing, but
16 does she ever describe him as hitting him hard
17 or anything like that?

18 A: Yeah, so the initial attack, she mentioned that
19 it was excessive. She mentioned that directly
20 to me, like when I was escorting her out, she
21 said it was excessive, and that's what caused
22 her to get in to try to separate Mr. Green from
23 Mr. Washington, because she didn't want him to
24 get hit anymore from that point. She just
25 wanted him to leave.



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GEORGE SIMPSON

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1 She said that he was -- he was actually
2 assaulting him pretty good. She stepped in to
3 break it up.

4 Q: Let me stop you for second. Is this -- so,
5 what we're talking about right now, this is the
6 post interview conversation you had with her?

7 A: Yes.

8 Q: Okay. Did you ask her why she changed her --
9 why she's telling you this information now she
10 didn't tell you in the interview or she didn't
11 tell you in the statement?

12 A: I don't understand that question.

13 Q: She doesn't use any of that kind of language in
14 her statement. And I would say that she
15 characterizes it as being a light assault in
16 the video. Can you explain to me why she now
17 is using this excessive language and aggressive
18 assault and stuff?

19 MS. LAFAVE: Objection.

20 A: I mean, in the video she does say that she had
21 already stepped in to break them up and then
22 the light attacks continued to happen. Then
23 she said those licks were for a woman at that
24 point after she had stepped in. So, it was
25 basically just me wanting to clarify everything



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GEORGE SIMPSON

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1 the basis for the charge. The assault led to
2 him being found deceased.

3 Q: Okay. Understanding your analysis of intent,
4 and that aside, if you knew that -- if you
5 knew, and this is a hypothetical, if you knew
6 that Mr. Green was not the cause of death,
7 would you have charged him with a death-based
8 charge?

9 A: If I knew 100 percent that the assault did not
10 result to his death, is that -- is that ---

11 Q: Yes.

12 A: --- what you're ---

13 Q: Yes.

14 A: Yes. Oh, well, he would not have been charged
15 with like a murder. If I could definitively
16 say that the assault did not lead to his death
17 in that moment, I would not have charged him
18 with murder.

19 Q: Would you charged him with involuntary
20 manslaughter?

21 A: No.

22 Q: Okay.

23 A: Not in that -- in that scenario.

24 Q: Scenario, I understand. And this may seem
25 obvious, but I'm going to ask anyway, would you



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GEORGE SIMPSON

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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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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	C/A No.: 2021-CP-40-05620
Sherman Green,	)	
	)	
Plaintiff,	)	
	)	GEORGE SIMPSON'S MOTION FOR
v.	)	RECONSIDERATION
	)	
City of Columbia & George Simpson,	)	
	)	
Defendant.	)	
	)	

THE DEFENDANT GEORGE SIMPSON hereby most respectfully moves this Honorable Court under Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its ruling denying Defendant George Simpson's Motion for Summary Judgment. A Form 4 Order was served upon the parties by ECF on April 10, 2025, and is attached hereto as Exhibit A rendering this Motion timely filed within ten (10) days of receipt.

PROCEDURAL POSTURE

This action was filed on November 15, 2021, in the Richland County Court of Common Pleas. Defendant George Simpson moved for Summary Judgment on May 3, 2024, and the motion came for hearing before the Honorable Judge Thomas W. McGee, III, on February 19, 2025. On April 10, 2025, Defendant Simpson's Motion for Summary Judgment was denied. This Motion to Reconsider follows.

BACKGROUND

Plaintiff maintains one cause of action against this Defendant for a Fourth Amendment claim for unlawful arrest (although there are other tort claims against the Defendant City of Columbia to include malicious prosecution). Defendant Simpson moved for Summary Judgment on the grounds that he is entitled to judgment as a matter of law on the ground that 1) Plaintiff

cannot show that the officer lacked probable cause to arrest the Plaintiff; 2) Defendant George Simpson is entitled to qualified immunity; and 3) George Simpson cannot be held individually liable for following the instructions of his supervisor.¹

The Court's Form 4 Order denying Defendant Simpson's Motion for Summary Judgment filed on April 10, 2025, (hereinafter "the Order") set forth that the Court held that genuine issues of material fact exist on the questions presented as follows:

- 1) Whether Simpson conducted a sufficient investigation;
- 2) Whether Simpson fully disclosed all relevant, known information before seeking a warrant;
- 3) Whether Simpson's actions in seeking and obtaining a warrant for murder included any material omissions or representations;
- 4) Whether Simpson's acts or omissions caused or contributed to a false arrest of Plaintiff; and
- 5) Whether Simpson's acts and/or omissions caused and/or contributed to a malicious prosecution of Plaintiff.

Defendant Simpson hereby files this Motion to Reconsider asking the Court to reconsider its decision on the motion, including but not limited to, the following grounds:

1. That the Court has erroneously applied the ordinary negligence standard in its Order which is a misapplication of the standard for probable cause which is that of an "objectively reasonable officer". Unlike in tort law, in Fourth Amendment cases, objective reasonableness [of an officer's actions] is not a jury question—it is a question of law. Said differently, the court must decide, under the nonmovant's version of the facts, the purely legal issue of whether a constitutional violation has occurred." *See Scott v. Harris*, 550 U.S. 372, 381 n.8; *Putman v. Harris*, 66 F.4th 181, 186–87 (4th Cir. 2023); *Henry*, 652 F.3d at 531; and *Cloaninger v. McDevitt*, 555 F.3d 324, 333

¹ Defendant Simpson withdrew the issue of whether the warrant was *prima facie* evidence of probable cause due to procedural issues as to the City of Columbia.

(4th Cir. 2009). Further, that the standard of care by the City of Columbia for negligence under the South Carolina Tort Claims Act is commingled with the constitutional claims against the officer, which requires a separate analysis.

2. That the Court failed to address the critical and wholly dispositive issue of whether George Simpson, individually and not in his official capacity, is entitled to Qualified Immunity and is absolutely immune from suit. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The Court was required to employ the two-step process as set forth in *Saucier v. Katz*, 533 U.S. 194 (2001) and the Court did not conduct the analysis or make a ruling on this issue. *See also Parrish v. Cleveland*, 372 F.3d 294, 301 (4th Cir. 2004); *Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir. 2003); *Owens v. Lott*, 372 F.3d 267 (4th Cir. 2004). In the context of probable cause to arrest, actual probable cause is a more stringent standard than objective reasonableness and the Court failed to make this distinction. Even law enforcement officers who reasonably, but mistakenly, conclude that probable cause is present are entitled to immunity. *See Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991); *Hunter v. Bryant*, 502 U.S. 224 (1991). To receive qualified immunity, this defendant only had to show “arguable probable cause” under *Gomez v. Adkins* and the Court failed to conduct an analysis and/or rule on this issue under the appropriate less stringent standard of care. 296 F.3d 253 (4th Cir. 2002). Officers are not liable for bad guesses in gray areas. *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992).
3. That the Court has overextended the standard for investigatory practices for officers. Officers are not required to answer every question prior to arrest. Although an officer may not ignore exculpatory evidence, failure to pursue a potentially exculpatory lead

is not sufficient to negate probable cause. Plaintiff argues that Simpson did not wait for the toxicology report, but he is not required to under the law. *See Wadkins v. Arnold*, 214 F.3d 535, 543 (4th Cir.2000) (“The question before us is not whether [the officer] exhausted every potential avenue of investigation.”); *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir. 1991) (“It will, of course, always be possible to contend in court that an arresting officer might have gathered more evidence, but judges cannot pursue all the steps a police officer might have taken that might have shaken his belief in the existence of probable cause.”). Just because Simpson was aware of the existence of a pending toxicology test does not establish that Simpson was aware of, much less that he ignored, exculpatory evidence. *See Wadkins*, 214 F.3d at 541 (“Although an officer may not disregard readily available exculpatory evidence of which he is aware, the failure to pursue a potentially exculpatory lead is not sufficient to negate probable cause.”). *See McKinney v. Richland Cty. Sheriff's Dep't*, 431 F.3d 415, 418-19 (4th Cir. 2005) (“The district court erred in concluding that the officer ignored exculpatory evidence when he failed to conduct more interviews or discuss the incident with the school's representatives. At most, these omissions amounted to a failure to pursue potentially exculpatory leads, and such does not negate probable cause.”) *See Battle v. Jones*, No. 6:15-CV-4960-BHH-KDW, 2016 WL 7800306, at *6 (D.S.C. Dec. 20, 2016), report and recommendation adopted, No. CV 6:15-4960-BHH, 2017 WL 167930 (D.S.C. Jan. 17, 2017) (“Were the court to find otherwise and place a duty on an officer to investigate further despite having sufficient probable cause for a warrant, any suspect could defeat probable cause and delay an arrest simply by saying, ‘I didn't

do it.””); *see also*, *Ruszala v. Walt Disney World Co.*, 95 F. Supp.2d 1323, 1326 (M.D. Fla. 2000).

4. That the court relied on surmise, conjecture, and/or speculation which is improper for consideration in a Motion for Summary Judgment pursuant to South Carolina law. *See Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 701 S.E.2d 776 (Ct. App. 2010) *citing McKnight v. Dep't of Corr.*, 385 S.C. 380, 389-390, 684 S.E.2d 566, 571 (Ct. App. 2009) (applying the directed verdict standard to a summary judgment motion and holding “[a] jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror.... ‘However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation.’”).
5. The Court improperly relied on the absence of a witness’s memory stating they “did not recall” and using that as evidence to create a question of fact. This is a settled rule of evidence in South Carolina. *See Bank of Aynor v. Adams*, 132 S.C. 107, 128 S.E. 168 (1925) (Supreme Court affirmed a trial court’s ruling that a witness’s testimony “I do not recall” did not serve as positive evidence of the fact in issue). Though not authoritative, this is also a settled principle of law in other jurisdictions. *See Western Pride Builders, Inc. v. Zicha*, 320 N.E.2d 181 (Ill. App. 1974) in which the Court held “negative testimony does not raise an issue of fact” so that a witness’s testimony “I don’t recall” was negative (and did not positively prove a fact in issue).

6. The Court failed to consider that the record reflects that Defendant Simpson's supervisor was fully aware of the video and all the witness statements (which formed the basis of Plaintiff's arrest) because the evidence shows, without contradiction, that the supervisor actually remotely witnessed those interviews and reviewed the video. Defendant Simpson pointed out to the Court the repeated miscarriage of the facts in the briefings on this issue at the hearing and in its objections to the Plaintiff's Proposed Order (which was not signed). Those objections are attached hereto and incorporated in their entirety by this reference as Exhibit B, Objections by Simpson.
7. The Court misapplied the holding of *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024) which is distinguishable in meaningful ways. The Court failed to consider and rule on the issue of whether probable cause existed for involuntary or voluntary manslaughter if Plaintiff did not intend to cause the death of the decedent. *See* S.C. Code Ann. §16-3-50 and §16-3-50. Defendant Simpson needed only probable cause to arrest for any crime that would carry jail time, and both involuntary and voluntary satisfy the law's criteria.
8. The Court applied the wrong standard in evaluating the facts regarding consultation with a supervisor which does not require that all facts be presented to the supervisor as Plaintiff alleges, and Plaintiff has no evidence of a misrepresentation of the facts to Sargent Thomas who, based on his own testimony, personally witnessed all the witness interviews. *See Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991); *Gomez v. Atkins*, 296 F.3d 253 (4th Cir. 2002).
9. Finally, the Court found a question of fact whether George Simpson's actions or inactions caused or contributed to the malicious prosecution of the Plaintiff. No proper

cause of action for malicious prosecution is brought against George Simpson under the South Carolina Tort Claims Act as the Order implies; rather, the only cause of action in the present matter is under 42 U.S.C. §1983 for a Fourth Amendment Violation which required the constitutional analysis that has been omitted from the Court's ruling.

Defendant Simpson prays that this Honorable Court reconsider its decision on summary judgment to apply the correct legal standard, separately consider the issue of Qualified Immunity, and further address the issues outlined herein. This motion is based upon the pleadings, the discovery responses of the parties, the deposition(s), oral arguments of counsel, memoranda, exhibits and applicable law.

Respectfully Submitted,

s/Mary D. LaFave

Mary D. LaFave, SC Bar #75366

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Attorney for Defendant George Simpson

SHERMAN GREEN V. CITY OF COLUMBIA & GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

GEORGE SIMPSON'S MOTION FOR RECONSIDERATION

EXHIBIT A – FORM 4 ORDER ISSUED APRIL 10, 2025

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4005620

Sherman Green
PLAINTIFF(S)

City Of Columbia et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

On 2/19/25, an in-person hearing was held on Defendant Simpson's Motion for Summary Judgment. Chris Truluck argued on behalf of the Plaintiff and Mary LaFave argued on behalf of the Defendant. Judge McGee reviewed all relevant pleadings, memoranda/exhibits, and other evidence properly before the Court, and also heard arguments from both sides.

Pursuant to SCRPC 56, A Motion for Summary Judgment will be denied where, when viewed in the light most favorable to the non-moving party, there is found to be a genuine issue of material fact. Upon such a finding, the moving party is not entitled to a judgment as a matter of law.

Judge McGee found certain material issues of facts as to the elements of all claims against Mr. Simpson including, but not limited to: (1) whether Simpson conducted a sufficient investigation of the incident before seeking and obtaining a warrant for murder;

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/10/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

(2) whether Simpson fully disclosed all relevant, known information before seeking and obtaining a warrant for murder; (3) whether Simpson's actions in seeking and obtaining a warrant for murder included any material omissions or representations; (4) whether Simpson's acts and/or omissions caused or contributed to a false arrest of Plaintiff; and/or (5) whether Simpson's acts and/or omissions caused and/or contributed to a malicious prosecution of the Plaintiff.

Because the Court finds that there are genuine issues of material fact regarding the claims against Defendant Simpson, this Defendant's Motion for Summary Judgment is respectfully DENIED.



Richland Common Pleas

Case Caption: Sherman Green vs City Of Columbia , defendant, et al
Case Number: 2021CP4005620
Type: Order/Electronic Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

Electronically signed on 2025-04-10 10:16:14 page 3 of 3

ELECTRONICALLY FILED - 2025 Apr 10 11:25 AM - RICHLAND - COMMON PLEAS - CASE#2021CP4005620
ELECTRONICALLY FILED - 2025 Apr 21 1:58 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005620

SHERMAN GREEN V. CITY OF COLUMBIA & GEORGE SIMPSON

CIVIL ACTION NUMBER: 2021-CP-40-05620

GEORGE SIMPSON'S MOTION FOR RECONSIDERATION

EXHIBIT B – OBJECTIONS BY SIMPSON



Matthew C. LaFave+ | Mary D. LaFave+ | Lee Ellen Bagley*
Douglas E. Leadbitter | Laura R. Baer | Alyssa R. McMahon | Brian J. Anderson**

March 21, 2025

VIA E-FILING AND EMAIL

Judge Thomas W. McGee, III
tmcgee@sccourts.org

Re: Sherman Green v. City of Columbia and George Simpson
C/A No.: 2021-CP-40-05620

Dear Judge McGee:

This letter is to memorialize the Defendant George Simpson's objections to the March 10, 2025, proposed Order regarding Defendant Simpson's Motion for Summary Judgment which was before this Honorable Court for hearing on February 19, 2025. At the beginning of this process, I attempted to address some of these issues with my colleagues but found that conversation to be respectful but unproductive. Unfortunately, my issues are so widespread that I do not believe that further consultation is warranted and that this letter is necessary to protect the truth and the rule of law¹.

OBJECTION #1: Plaintiff Cannot Rely on Surmise, Conjecture, or Speculation

At the outset of the hearing, I expressed my grave concerns regarding the representation of the record in the Plaintiff's brief. Those concerns, which have now predictably metastasized in the Plaintiff's proposed Order, are so significant that they must be addressed formally and my client's position made part of the record. Plaintiff's recitation of facts is heavily reliant on the lack of memory by witnesses. Plaintiff makes lists of what witnesses "do not recall" and then draws factual findings for the Court to adopt. A witness does know or does not remember does not establish a fact for which a reasonable inference can be drawn. Rather, it only establishes that the witness does not remember and nothing more. Speculation and inadmissible testimony are insufficient to establish a question of fact for purposes of Summary Judgment. *See Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382,

¹ Excerpts of witness depositions are enclosed herewith for the Court's ease of reference but all were previously made part of the record on brief or at the hearing.

701 S.E.2d 776 (Ct. App. 2010) *citing McKnight v. Dep't of Corr.*, 385 S.C. 380, 389-390, 684 S.E.2d 566, 571 (Ct. App. 2009) (applying the directed verdict standard to a summary judgment motion and holding “[a] jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror.... ‘However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation.’”).

Here, a witness’s testimony that they do not “recall” the fact stated in a question can only be admissible for the fact that the witness does not have a memory. This concept appears twenty-four (24) times throughout the proposed Order. Plaintiff’s proposed Order erroneously interprets a witness’s failure to remember as a conclusion Simpson did not act appropriately. That is not construing the facts in the light most favorable to the Plaintiff but allowing the Plaintiff to rely on surmise, conjecture, and speculation to conclude a fact that is not proven or even disproven by a witness’s testimony. The requirement that the Court be able to draw a “reasonable inference” or a “genuine” fact from the record is required by the seminal case on summary judgment, *Kitchen Planners*. See *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023).

A lack of memory by a witness is not evidence properly before the Court and those references should be removed from the proposed Order as they are improper. To highlight the severity of the impact this has on the Court’s decision, I will refer to the testimony of Sgt. Arthur Thomas, Simpon’s superior:

Q: I just want to ask you real quick. To the best of your memory, any of the do-not-recall answers you gave, are you essentially saying you just don’t recall these facts being conveyed to you? Is that what you mean when you say I do not recall?

A: I do not recall the conversation or – well, of the question you asked. I just don’t remember anything of that nature.

Q: Okay. Is there anything that I asked you about where you said you do not recall you think you would have recalled? Again, I went through a lot of facts. I can go through them again. But is there anything that stuck out in your mind that you did not recall you and thought, well, I might have recalled that?

A: No.

Thomas Depo, p. 54-55.

The proposed Order improperly contains this witness's lack of memory and lists the things he does not remember as part of the factual recitation:

During Simpson's call to Fyall, Thomas also did not recall 1) Decedent's history of drug use, 2) Decedent consuming two doses of crack², 3) Prophet was yelling for help, 4) that Decedent had been naked, paranoid and Prophet had blood on her face, 4) Prophet was trying to get out of the room, 5) Prophet was prevented from leaving the room, 6) Plaintiff was ineffectually hitting decedent, 7) Prophet made a post-interview statement conflicting with her previous testimony, or that 8) Narcan was administered to Decedent at the scene. When specifically asked if Simpson ever told Thomas or Fyall "that [Simpson] had no idea what caused [Decedent's] death?" Thomas replied, "[n]o."

Proposed Order, pp. 8-9.

This is not evidence that Thomas did not know this information, but that he doesn't remember. Moreover, this is certainly not a "fact" that is construed in favor of the Plaintiff that Thomas did not know; rather, it is *the absence of a fact for which no reasonable inference can be drawn other than the witness doesn't remember*. This is a settled rule of evidence in South Carolina. *See Bank of Aynor v. Adams*, 132 S.C. 107, 128 S.E. 168 (1925) (Supreme Court affirmed a trial court's ruling that a witness's testimony "I do not recall" did not serve as positive evidence of the fact in issue). Though not authoritative, this is a settled principle of law in other jurisdictions. *See Western Pride Builders, Inc. v. Zicha*, 320 N.E.2d 181 (Ill. App. 1974) in which the Court held "negative testimony does not raise an issue of fact" so that a witness's testimony "I don't recall" was negative (and did not positively prove a fact in issue).

At the heart of this case, Plaintiff alleges that Defendant Simpson "failed to disclose exculpatory evidence" to the assigned solicitor and the magistrate judge. Plaintiff's "evidence" against Simpson is only based on witnesses stating that they do not remember and a coroner's report that was not known to Simpson at the time of the warrant. These concerns permeate and obscure the Court's understanding of the record on brief, in oral argument, and in the proposed Order.

² The Court notes Simpson's objection to any characterization by Plaintiff that suggests Simpson did not inform Thomas of Decedent's crack cocaine use as opposed to knowing Decedent used two doses of crack cocaine while in the Room.

OBJECTION #2: Lack of Citation to the Record

Defendant Simpson objects that the proposed Order does not contain citations to the record and testimony of the witnesses. If the Court is making findings of fact, the proper procedure is for the Court to cite to the record. Defendant Simpson has a right to appeal, and specifically the denial of qualified immunity, and the failure to cite to the record in Plaintiff's proposed Order is in error and prejudicial to the Defendant seeking Qualified Immunity as an officer. This is particularly significant when this defendant is repeatedly expressing concerns that the record has not been accurately relayed to the tribunal.

OBJECTION #3: The Order is Improper and Overly Broad in Scope and Holdings

Defendant Simpson also objects to the proposed Order in its entirety because it does not provide an accurate recitation of the Court's ruling and the issue before the Court for decision. It includes holdings that the Court did not issue. For example, that the Warrant "evinced a mistake of law." See Proposed Order, p. 21. This is not a finding of fact related to the denial of the Defendant's Motion but, rather, something that the Plaintiff is trying to use to try his case in the Court's Order on Defendant's Motion. The Court's Order was that there was a question of fact whether Defendant Simpson fully relayed the witness statements to his supervisor. Plaintiff takes numerous liberties with the Court's instruction to try to bootstrap issues that were not part of the Motion before the Court or the Court's rulings.

OBJECTION #4: Erroneous Factual Recitations and Conclusions Even in Construing the Facts in the Light Most Favorable to the Plaintiff

As previously mentioned, Plaintiff relies on the testimony in the case of multiple witnesses who did not, after five (5) years, remember some of the information about the investigation of the case. Plaintiff makes the following recitations of "fact" in his brief that he has now populated into the proposed Order for this Court's signature. The following examples, which are illustrative and not exclusive, highlight this problem which now underlies the Court's decision:

I. DECEDENT FELL INTO A WALL

Factual Assertion: That the decedent "fell into a wall." Proposed Order, p. 2. There is no evidence in the record that the decedent fell on his own into a wall which is how this fact is portrayed in the proposed Order. It is not an accurate statement based on any reasonable construction of the video which was shown to the Court.

Lamar Fyall Testimony: Recounting what he saw on the video was that the Plaintiff “throws him” into a concrete pillar. Fyall Depo, p. 10, ln. 1. Stating that the probable cause for the arrest for murder was the confluence of the “assault that led up to the throwing” of the decedent into the wall. Fyall Depo, p. 22, ln. 10; p. 23, ln. 15. “He (Plaintiff) threw him against the wall...”. Fyall Depo, p. 23, ln. 20. “You see on the surveillance Mr. Green throwing Mr. Washington (decedent) – into the brick (wall).” Fyall Depo, p. 45, ln. 23. The importance of the facts that “I was given is that the guy was thrown against the wall – after an assault, and then died soon after.” Fyall Depo, p. 56, ln. 17-20.

II. SIMPSON DID NOT INFORM FYALL

Factual Assertion: That Simpson did not inform Fyall that he “had no idea what the cause of death was on the morning of December 5th.” Proposed Order, p. 8 and p. 9.

George Simpson Testimony: “The assault led to him being found deceased.” Simpson Depo, p. 171, ln. 1-2.

Q: Ok. So we agree we need a medical professional to make the cause of death right?

A: Essentially, yes. Simpson Depo, p. 215, ln. 4-6.

Sgt. Arthur Thomas Testimony: “The assault was the cause of death”

Q: Where I think you have recited that there was an assault; there was a death; and you felt there was probable cause for murder; correct?

A: Correct.

Q: Okay. If investigator Simpson learned from the coroner that the forensic pathologist that blunt force trauma was not the cause of death, would that specific fact be relevant in a murder investigation?

A: ... We still have to wait on tox to come back and so forth. So they wouldn’t be relevant until I got the complete report... Thomas Depo, p. 86, ln. 22-25. We didn’t have a complete report, so I am not gonna suggest anything changes without a complete coroner’s report. Thomas Depo, p. 88, ln. 12 – 14. That is something we would discuss with the solicitor’s office... Thomas Depo, p. 88, ln. 22-24.

Q: And most, if not all, the time when you charge someone with murder, an investigation may still be ongoing?

A: It is absolutely ongoing. Thomas Depo, p. 91, ln. 8-12.

Lamar Fyall Testimony:

Q: Did Investigator Simpson make any representations about the cause of death to the best of your knowledge on December 5th?

A: “I don’t think that I had an official cause of death.” The information “I had was that there was an altercation, pretty much thrown against the wall, and then died on scene with whatever we had at that point was probable cause.” Fyall Depo. p. 63, ln. 1-9.

III. SIMPSON DID NOT INFORM HIS SUPERVISOR OF WITNESS STATEMENTS

A. GENERALLY SUPERVISOR WATCHED INTERVIEWS FIRST HAND

Factual Assertion: That Simpson did not inform his supervisor of witness information.

Sgt. Arthur Thomas Testimony: He recalled watching or participating in the interviews of witnesses. Thomas Depo, p. 18, ln. 2-3; p. 20, ln. 17; p. 21, ln. 4-5.

A: I don't recall being in the box... with any of them this time. I think I may have been watching. 'Cause you can watch (witness interviews) from my desk..." Thomas Depo, p. 21, ln. 1.

Q: So is it fair to say that you recall the interviews; you just don't recall whether or not you were physically in them?

A: Correct. Thomas Depo, p. 22, ln. 14.

Q: They're bringing in witnesses that your investigator believes has relevant testimony?

A: Right.

Q: You were either watching the interviews in the room or watching interviews from the — from a remote monitor?

A: Correct.

Q: And at what point did that change? And I'll represent to you my understanding is that some point you guys had a telephone call with Lamar Fyall. But at what point did you stop watching the videos and start doing something else?

A: I would say that it would probably be after all the interviews were done. And the witness made her statements of the assault and how things were interacting prior to. And I believe the — your client had also given a statement in regards to the fact that he did assault the young man. And then we had the video evidence that we reviewed so once we reviewed. So once we reviewed everything that we had, video evidence; witness statement; suspect statement; we had CSI collecting the physical evidence, blood evidence, and so forth, we went in and had a conversation on it with Lamar, that is what I recall.

Q: You say we reviewed?

A: uh-huh.

Q: I think — I'm clear that you, whether in part or in whole, reviewed the witness interviews whether in person or remotely.

A: uh-huh.

Q: Did you review anything else other than the interviews?

A: (sic in original) Video Evidence. Thomas Depo, p. 26, ln. 11 – p. 27., ln. 24.

Q: ... and you at least had an opportunity to review or watch some of the in-person interviews at headquarters; is that correct?

A: Correct. Thomas Depo, p. 28, ln. 3-6.

Q: To the best of your recollection, what do you recall the discussion being in this team meeting before you contacted Lamar Fyall?

A: Again, discussing the evidence that we had before us, witness statements, suspect statement, physical evidence at the scene, blood evidence and so forth, video evidence, everything that we felt was appropriate probable cause to make the call.

...

Q: What specifically do you recall, if anything --- and I mean specific communications about what was said from Investigator Simpson to you? What do you recall if anything, that he told you before you called Lamar Fyall?

A: I don't recall anything specific from Simpson or any of the guys. Just general information... about the probable cause we had.

Q: Just the case as we understand it today?

A: Right.

...

Q: Okay let's move on to the telephone call with Lamar Fyall.

A: Uh-huh.

Q: What, if anything, specifically do you remember I the telephone call being said?

A: Just reiterated. We discussed each interview, the video evidence, and evidence at the scene, and pretty much what is in the warrant about the assault and so forth, and explained that after – the victim came in happy-go-lucky, skipping almost. And he exited dizzy, you. Know, naked. His head was slammed against the wall of a hotel prior to him falling dead beside his car in the parking lot or something like that. But it was that type of conversation. Thomas Depo, p. 29, ln. 3 – p. 30, ln. 20.

B. SPECIFICS WERE KNOWN BY SUPERVISOR AND SOLICITOR

This information was gleaned directly from the interview of Aja Prophet but the Plaintiff has failed to properly present the facts to the Court.

i. KIDNAPPING

Factual Assertion: That Simpson did not inform his supervisor or the solicitor that the decedent kidnapped Aja Prophet. Proposed Order, pp. 8-9.

Lamar Fyall Testimony:

Q: ... were you informed of any facts lending themselves to establish that Mr. Washington, the victim, was kidnapping or otherwise preventing Ms. Prophet from leaving the room?

A: Again. I don't recall that. I – I do recall being told about something going on in the room that was causing Mr. Green to want to go in, I just don't recall the specifics of it.

Q: Do you think you'd remember if it was a kidnapping allegation when you were being asked about probable cause for murder?

A: Do I think I would remember? I don't know. Fyall Depo, p. 43, ln. 14 – p. 44, ln. 4.

Q: But as you said, the most significant part of that was the video showing him being thrown into a concrete wall?

A: That in conjunction with, as I was told, whatever threat or issue with Ms. Prophet having been resolved... as I understood it, the – whatever threat Mr. Washington had posed wasn't there anymore. Fyall Depo, p. 78, ln. 2-14.

ii. TWO DOSES OF CRACK COCAINE

Factual Assertion: That Simpson failed to inform his superior and the solicitor that the decedent consumed two doses of crack cocaine, and that the decedent was suffering from drug induced paranoia to imply that this would have undermined probable cause. Proposed Order, pp. 8-9.

Sgt. Arthur Thomas Testimony:

Q: Do you recall Investigator Simpson telling you that the decedent... Mr. Washington, had ingested two doses of cocaine that evening?

A: I recall the witness advising in one of the investigators during the interview that they participated in some drugs and then participated in some other acts.

Q: But do you specifically recall whether or not you were informed that the deceased had used two doses of crack or cocaine?

A: I don't recall any doses. I just know there was some participation in that and participation in other acts. Thomas Depo, p. 33, ln. 21 – p. 34, ln 9.

Q: Do you recall you or Investigator Simpson telling Lamar Fyall that the decedent had used two doses of crack or cocaine?

A: I believe it was described the same way, is that they participated in drug activity...

Q: But you don't specifically recall it being clarified further that it was two uses of cocaine?

A: No. I don't recall anything about the uses. It was, I'm sure, a general statement. 'Cause I don't recall what the witness said about how many doses. Thomas Depo, p. 34, ln. 16 – p. 35, ln. 4.

Lamar Fyall Testimony:

Q: But isn't it true that you already knew that he had taken at least two hits of crack earlier that night, right?

A: Yes. That he had smoked crack twice. Fyall Depo, p. 78, ln. 21-24.

...

Q: But even if the response had been: Well, he had had two hits of crack, that wouldn't have changed your determination on probable cause for murder in this case, would it?

A: If the sole response was: We administered Narcan because he had two hits of crack without any other context, then no. Fyall Depo, p. 79, ln. 16-22.

iii. DECEDENT WAS BEING "HIT LIKE A WOMAN"

Factual Assertion: That Simpson withheld information that the assault was minor and was the decedent being hit "like a woman." This information was in the interview that Thomas was watching by video at his desk and was known to him at the time. This description was also not an accurate description of the assault as has been portrayed to the Court. The portion of the assault that was described as "like a woman" was only a small portion of the witness interviews.

George Simpson Testimony:

Q: She described it further as my licks for a woman.

A: So, my interpretation of this was she's referring to him hitting him more after she had stepped in. She stepped in once it got obsessive, according to her, that is what she mentioned. She stepped in because she felt it was excessive. He had learned his lesson.

Q: Did she ever describe any of the hits as being strong than, as she describes, as hitting like a woman? I know I'm paraphrasing, but does she ever describe him (Plaintiff) as hitting him (decedent) hard or anything like that?

A: Yeah, so the initial attack, she mentioned that it was excessive. She mentioned that directly to me, like when I was escorting her out, she said it was excessive, and that's what caused her to get in to try and separate Mr. Green from Mr. Washington, because she didn't want him to get hit anymore from that point. She just wanted him to leave." Simpson Depo, p. 141, ln. 22 – p. 142, ln. 25.

...

Q: She doesn't use any kind of language in her statement. And I would say that she characterizes it as being a light assault in the video. Can you explain to me why she is now using this excessive language and aggressive assault and stuff?

A: I mean, in the video she does say that she had already stepped in to break them up and then the light attacks continued to happen. Then she said those licks were for a woman at that point after she stepped in. So, it was basically just me wanting to clarify everything that I had gotten from the two investigators, and I just wanted to clarify everything that I saw in the video. Simpson Depo, p. 146.

Fyall Testimony:

The proposed Order states: "Finally, Fyall also was not aware that Prophet had described Plaintiff's altercation with Decedent as hitting him like a woman. Fyall commented, 'if 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.'" Importantly, this witness's testimony on this topic is located on Page 55, ln. 15-18 of Lamar Fyall's deposition. That portion of the deposition was counsel for the Plaintiff *reading from another witness's deposition where the video was being played to the other witness*. This portion of the deposition was wrought with objections. Fyall had never seen the video and Plaintiff is misconstruing the witness's statements, the deponent's statements, and the facts in the record.

Fyall testified that he "thought was the more important thing was that the assault was going on and then Ms. Prophet was like: Okay. We should -- this needs to stop." Fyall Depo, p. 76, ln. 1-4.

OBJECTION #5: Additional Case Law Not Presented on Brief or Oral Argument

Plaintiff has cited to *Thurston v. Frye*, 99 F.4th 665, 676 (4th Cir. 2024) (upon the court's finding a constitutional violation once plaintiff establishes a lack of probable cause, the burden shifts to the defendant to show the arrest was not contrary to clearly established law) in the proposed Order which was not raised on brief or during oral argument by either party. This is an improper injection of law that was not presented to the Court and not part of the Court's determination. Mr. Truluck takes the position that adding this case has no "material effect" on this matter; however, that is not the case. Plaintiff relies on *Thurston* to shift the burden to the Defendant "in the absence of probable cause." See Proposed Order, p. 19. There is no exculpatory evidence in the record that would have "established the suspect's innocence" as the proposed Order erroneously suggests because of this case. Defendant Simpson is prejudiced by including this citation and not having had an opportunity to address it. Finally, it was not part of the Court's decision and should not be included.

OBJECTION #6: Ruling on Withdrawn Argument Related to the Warrant

At the outset of the hearing, Simpson withdrew his argument III "WHETHER A FINDING OF PROBABLE CAUSE BY A NEUTRAL AND DETACHED MAGISTRATE IS *PRIMA FACIE* EVIDENCE OF THE EXISTENCE OF PROBABLE CAUSE." This was withdrawn due to a motion to reconsider pending by the City challenging a ruling by a different judge. It should not be included in this Court's Order. See Proposed Order, p. 21.

OBJECTION #7: Errors of Law

Plaintiff misapplies the legal standard for probable cause. First, probable cause is evaluated at the time of the arrest and the officer does not have to exhaust every avenue of investigation. Plaintiff misstates the law on this issue and focuses on the officer having knowledge of "exculpatory evidence" which is not in the record. See *Torchinsky v. Siwinski*, 942 F.2d 257, 262 (4th Cir. 1991). Even if the coroner's report that concluded that the cause of death was "excited delirium and physical altercation," this is not exculpatory evidence since Plaintiff concedes that he was in a physical altercation with the decedent. Second, probable cause is evaluated from the standpoint of the **objectively reasonable officer**. Plaintiff's proposed Order never accurately sets forth this standard. *Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir. 2003). Instead, it erroneously relies on the law of excessive force – which is not a claim or defense in the present matter. See Proposed Order p. 12. Specifically, Plaintiff cites to *State v. Long*, 325 S.C. 59, 64, 480 S.E.2d 62 (1997); *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Mekler*, 368 S.C. 1, 626 S.E.2d 890 (Ct. App. 2005); S.C. Code Ann. § 16-11-440(C); *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)); and *State v. Rash*, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936).

Plaintiff misapplies the legal standard for qualified immunity. Plaintiff's improper and inaccurate recast of the lack of memory by the supervisor to mean a lack of meaningful consultation by Defendant Simpson develops into an error of law. Plaintiff fails to cite to the proper standard that Defendant Simpson need only show "arguable probable cause" and that consultation with his supervisor is precisely a scenario when qualified immunity should be extended to the officer. *See also Gomez v. Atkins*, 296 F.3d 253, 264 (4th Cir. 2002). This case was cited by the Defendant, applies to this case, and sets forth the proper standard. Yet, it is not included in the proposed Order.

Plaintiff misapprehends the law applicable to qualified immunity as "[T]he existence of probable cause is normally a question for the jury, material fact." *Garris v. Rowland*, 678 F.2d 1264, 1270 (5th Cir. 1982), cert. denied, 459 U.S. 864 (1982). That is not the full standard for a motion regarding qualified immunity. As here, "when there is no dispute about the historical facts—the who, what, where and when of what happened—the objective reasonableness of officers' conduct is a matter of law to be decided by the court." *Armstrong v. Hutcheson*, 80 F.4th 508, 513 (4th Cir. 2023), citing *Scott v. Harris*, 550 U.S. 372 (2007), *Henry v. Purnell*, 652 F.3d 524 (4th Cir. 2011) and *Cloaninger ex rel Cloaninger v. McDevitt*, 555 F.3d 324 (4th Cir. 2009). "In Fourth Amendment cases, disputes over historical facts can be material. So, if there are genuine disputes over what happened factually, courts must construe all historical facts in favor of the non-moving party to determine whether the dispute affects the outcome under governing law. That is no different in Fourth Amendment cases than in any other civil case. But unlike in tort law, in Fourth Amendment cases, objective reasonableness [of an officer's actions] is not a jury question—it is a question of law. Said differently, the court must decide, under the nonmovant's version of the facts, the purely legal issue of whether a constitutional violation has occurred." *See Scott*, 550 U.S. at 381 n.8; *Putman v. Harris*, 66 F.4th 181, 186–87 (4th Cir. 2023); *Henry*, 652 F.3d at 531; and *Cloaninger*, 555 F.3d at 333. The reasonableness of the officer's actions is not a jury question as the proposed Order states, and the proposed Order is deficient because it never, at any point, finds that an objectively reasonable officer would have rendered a different conclusion than Investigator Simpson under the circumstances.

This letter is intended to set out the objections on behalf of my client Defendant Simpson, it is not an attempt to contest the Court's ruling.

I appreciate the Court's time and attention to this correspondence.

Sincerely,



Mary D. LaFave

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

RESPONSE IN OPPOSITION TO GEORGE
SIMPSON'S MOTION FOR
RECONSIDERATION

TO: MARY D. LAFAVE, ATTORNEY FOR GEORGE SIMPSON:

Sherman Green ("Plaintiff"), by and through his undersigned counsel, responds in opposition to George Simpson's ("Defendant") motion for reconsideration ("Motion").

I. PROCEDURAL HISTORY

On November 15, 2021, Plaintiff filed an action in this court against Defendant pursuant to 42 U.S.C. § 1983 alleging violation of his clearly established rights for Defendant's 1) failure to investigate prior to arrest of Plaintiff, 2) failure to disclose exculpatory evidence to the assigned solicitor following Plaintiff's arrest¹, 3) failure to disclose, or omitting, material information to the magistrate judge in obtaining Plaintiff's arrest warrant for murder, 4) false arrest, and 5) malicious prosecution.² On December 20, 2021, this action was removed to the United States District Court for the District of South Carolina and on May 23, 2022, remanded to this court for defendants' failure to provide timely unambiguous consent to the removal of the action.

¹ Upon information and belief, Defendant has only argued, through counsel, at hearing on February 19, 2025, that a finding of probable cause at the pre-arrest stage was dispositive of this claim which the Plaintiff refutes as contradictory to the holding in *Evans v. Chalmers*, 703 F.3d 636, 648-649 (4th Cir. 2012).

² Plaintiff also alleged claims against the City of Columbia pursuant to the South Carolina Tort Claims Act ("SCTCA") for negligence, false imprisonment and malicious prosecution; such claims which are not before the Court at this time.

After extensive discovery, Defendant and the City of Columbia filed motions for summary judgment on May 3, 2024, and May 6, 2024; respectively. On December 6, 2024, Judge Mark Hayes heard the City of Columbia's motion for summary judgment and denied the same on January 15, 2025, stating "the existence of probable cause is a factual dispute." On January 27, 2025, the City of Columbia moved for reconsideration of denial of its motion for summary judgment; such motion for reconsideration remains to be scheduled. On February 19, 2025, Judge Thomas W. McGee, III, heard Defendant's motion for summary judgment. On February 28, 2025, Judge McGee informed the parties of his decision to deny Defendant's motion for summary judgment and on April 10, 2025, Defendant's motion was denied pursuant to Form 4 order ("Order"). **Exhibit A, Preliminary Denial; Exhibit B, Order.** On April 21, 2025, Defendant filed this Motion and on May 8, 2025, filed his notice of appeal of this court's denial of his motion for summary judgment. **Exhibit C, NOA.** On May 14, 2025, Plaintiff filed his motion to dismiss Defendant's appeal in the Court of Appeals 1) as premature pending resolution of this Motion, and 2) where a denial of a motion for summary judgment is not immediately appealable. **Exhibit D, Motion to Dismiss.**

II. STANDARD

"The purpose of Rule 59(e), SCRCP, to alert or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Doran v. Doran*, 288 S.C. 477, 478, 343 S.E.2d 618, 619 n.1 (1986). "A party cannot use Rule 59(e), SCRCP, to present to the trial court an issue the party could have raised prior to judgment but did not. *Crary v. Djebelli*, 321 S.C. 38, 467 S.E.2d 128, 132 (Ct. App. 1995) *reversed on other grounds*, 329 S.C. 385, 496 S.E.2d 21 (1998). "Under Rule 59(f), SCRCP, a rule 59(e) motion 'may in the discretion of the court be determined on the briefs filed by the parties *without oral argument*.'" *Pollard v. County of Florence*, 314 S.C. 397, 444 S.E.2d 534, 536 (Ct. App. 1994).

It is proper for a trial court to deny a motion for reconsideration because the movant failed to provide the motion to the trial judge within ten days of filing. *Smith v. Fedor*, 422 S.C. 118, 126-127, 809 S.E.2d 612 (Ct. App. 2017). “Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.” *Id.* Finally, “pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal.” *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748 (Ct. App. 2019).

III. ARGUMENTS

1. Failure to Comply with Rule 59(g), SCRCP

On February 19, 2025, Judge McGee heard Defendant’s motion for summary judgment and on April 10, 2025, Defendant’s motion was denied pursuant to the Order filed contemporaneously. On Monday April 21, 2025, Defendant filed this Motion. Pursuant to correspondence with Judge McGee’s chambers on May 6, 2025, more than ten (10) days after filing of the Motion, “[t]he motion was not served on [Judge McGee’s] office” as required by Rule 59(g), SCRCP. **Exhibit E, Correspondence.** Plaintiff respectfully requests the court deny Defendant’s Motion for failure to comply with Rule 59(g), SCRCP, as permitted pursuant to the holding in *Smith v. Fedor*, 422 S.C. 118, 126-127, 809 S.E.2d 612 (Ct. App. 2017).

2. No Specificity Required Pursuant to Rule 52(a), SCRCP

Plaintiff respectfully submits that, to the extent Defendant’s Motion seeks to assign error to this court’s Order for failure to state its findings of facts and conclusions of law beyond denying

Defendant's motion for summary judgment, Defendant's Motion should be denied where "pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal." *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748 (Ct. App. 2019). Accordingly, those portions of the Motion that seek to assign error for failure to provide specific findings to include, but not exclusively, 1) paragraph 1 requesting a decision "whether a constitutional violation has occurred," 2) paragraph 2 requesting the court "conduct an analysis and/or rule on th[e] issue under the appropriate less stringent standard of care," and 4) paragraph 7 assigning error for the courts failure to "rule on the issue of whether probable cause existed for involuntary or voluntary manslaughter . . .," should be denied as appropriately addressed in denying Defendant's motion for summary judgment upon the existence of "material issues of facts as to the elements of all claims against [Defendant]" Order at 1.

3. Probable Cause Analysis & Qualified Immunity

Defendant first argues in paragraphs 1 & 2 that this court "erroneously applied the ordinary negligence standard in its Order which is a misapplication of the standard for probable cause which is that of an 'objectively reasonable officer'" . . . and "the Court failed to address the critical and wholly dispositive issue of whether George Simpson . . . is entitled to Qualified Immunity . . ." for "arguable probable cause" pursuant to the "two-step process." Motion at 2,3. Plaintiff respectfully submits that the "objectively reasonable officer" standard is used in evaluating claims of qualified immunity rather than probable cause. Otherwise, the Order's finding that "certain material issue of facts as to the elements of all claims against [Defendant]" is sufficient pursuant to Rule 52,

SCRCF without more and that the issue of probable cause is one for a jury, not the court, when there exists a genuine issue of material fact.

First, 42 U.S.C. § 1983 probable cause analysis is distinct from qualified immunity analysis although the issue of whether probable cause existed often decides whether qualified immunity applies. Nonetheless, the probable cause and qualified immunity standards are similar.

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.

Plt. Am. Memo at 23 (citing *Melton v. Dermota*, 940 F.2d 652, fn. 5 (4th Cir. 1991)). Qualified immunity, however, specifically utilizes the “objectively reasonable officer” standard.

In order to determine whether an officer is entitled to qualified immunity, we must first determine “whether a constitutional right would have been violated on the facts alleged.” *Saucier v. Katz*, 533 U.S. 194, 200, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). If the facts, viewed in the light most favorable to the plaintiff, “do not establish a violation of a constitutional right, the inquiry ends, and the plaintiff cannot prevail.” *Parrish v. Cleveland*, 372 F.3d 294, 301 (4th Cir.2004). “Next, assuming that the violation of the right is established, courts must consider **whether the right was clearly established at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right.**” *Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir.2003).³

³ Defendant admits that the right to be free from arrest absent probable cause was clearly established at the time of Plaintiff's arrest. MSJ at 13.

McKinney v. Richland County Sheriff's Dept., 431 F.3d 415, 417 (4th Cir. 2005).

To the extent Defendant argues that the Order applied a probable cause standard inconsistent with that of an “objectively reasonable officer,” Plaintiff submits that Defendant is improperly relying on the standard for qualified immunity to determine probable cause but is not aware of any argument by the parties that would have, otherwise, led to an erroneous probable cause analysis by this court; or even evidence of error in the language of the Order. In any event, “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). And “[i]f a plaintiff has alleged a clearly established right,” as admitted by Defendant, “summary judgment on qualified immunity grounds is improper as long as there remains any material factual dispute regarding the actual conduct of the defendants.” *Pritchett v. Alford*, 973 F.2d 307, 313 (4th Cir.1992); *see also ACLU of Md., Inc. v. Wicomico County, Md.*, 999 F.2d 780, 784 (4th Cir.1993) (if “the defendant's entitlement to immunity turns on a factual dispute, that dispute is resolved by the jury at trial”); MSJ at 13. There is no evidence this court misapplied the appropriate probable cause standard in its analysis.

Second, to the extent Defendant argues it was error for the court to fail to provide a specific ruling on the issue of qualified immunity, Plaintiff respectfully disagrees and submits that “pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal.” *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748 (Ct. App. 2019).

Accordingly, Plaintiff respectfully submits that Defendant's arguments that the court erred in failing to apply a qualified immunity standard of “objectively reasonable officer” in determining the existence of probable cause, or that the court erred in not providing a specific ruling on the

issue of qualified immunity, are incorrect based on a plain reading of the Order and Rule 52, SCRCRCP and his Motion should be denied.

4. Standard for Investigatory Practices

Defendant next argues in paragraph 3 that “the Court has overextended the standard for investigatory practices for officers” in accepting Defendant’s “failure to pursue a potentially exculpatory lead” in proceeding with Plaintiff’s arrest without the “toxicology report” as a basis to deny summary judgment. Motion at 3-4. Plaintiff respectfully submits that his single claim of failure to investigate pursuant to *Sevigny v. Dicksey* relies on evidence that Defendant admitted he was unaware of the cause of death, aware of evidence of drug overdose and/or failed to previously communicate with Dr. Amy Durso (“Durso”) at the autopsy where he learned of Durso’s opinion that Plaintiff was likely not the cause of Dara Washington’s (“Decedent”) death; notwithstanding the forthcoming toxicology report. Otherwise, there appears no basis to conclude that the Order employed an inappropriate standard in denying Defendant’s motion for summary judgment.

The Court in *Sevigny v. Dicksey* provided that an officer who neglected to “avail himself of readily available information that would have clarified matters to the point that one of the offenses would have been flatly ruled out as factually unsupportable” was not entitled to qualified immunity. *Sevigny v. Dicksey*, 846 F.2d 953, 957, 11 Fed. R. Serv. 3d 315 (4th Cir. 1988). Defendant admitted that he “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.” Defendant at 169. Defendant also admitted to learning at the scene that “EMS administered Narcan” and that the “[Decedent] was high on crack.” Defendant at 102, 104. Defendant was also informed that Plaintiff “observed the [Decedent] through the window naked and yelling that people were after him.” Defendant at 106. At the autopsy of Decedent about 9:00 in the morning of

December 5, 2019, Defendant arrived just as Dr. Amy Durso (“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[.]” Defendant at 49-50. “[N]o assault was suspected.” Defendant at 53. “[W]hen [Defendant] 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.” Defendant at 258. 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.

Plaintiff submits that Defendant’s knowledge at the scene regarding Decedents use of drugs, drug induced behavior, administration of Narcan and readily available information at Decedent’s autopsy are such that Defendant’s failure to investigate creates, at least, a genuine issue of material fact with regard to this claim. Otherwise, the Order does not evince any error of applying an overextended standard for investigatory practices for officers or pursuant to Rule 52, SCRCF and Defendant’s Motion should be denied.

5. Factual Foundation

Defendant next argues in paragraphs 4 and 5 that the court relied on “surmise, conjecture, and/or speculation . . . of a witness’s memory stating they ‘did not recall’ and using that as evidence to create a question of fact.” Motion at 5. Plaintiff respectfully disagrees and submits that he has submitted evidence tending to refute Defendant’s defense of advice of counsel, regardless of “do not recall” statements, such that Defendant has not eliminated genuine issues of material fact and his Motion should be denied. Otherwise, the factual deficiencies Defendant complains of are only

detrimental to his defense of advice of counsel; a burden he must carry in establishing the non-existence of any material fact at the summary judgment stage which he has not done.

“[T]he unlawfulness of seeking out and executing a warrant after learning facts establishing a suspect's innocence was clearly established by [the] holding in *Merchant v. Bauer*, 677 F.3d 656.” *Thurston v. Frye*, 99 F.4th 665, 678 (4th Cir. 2024). In *Merchant v. Bauer*, the court held that qualified immunity was not appropriate where “the officer lacked probable cause to conduct the arrest, despite the issuance of a warrant, because he knew information before applying for the warrant that both undermined any other evidence the officer might have had and tended to exonerate the plaintiff of the crime.” *Id.* In the absence of probable cause pursuant to arrest, the burden shifts to Defendant to show that the arrest was objectively reasonable in seeking advice. *Thurston v. Frye*, 99 F.4th 665 at 676 (citing *Stanton v. Elliot*, 25 F.4th 227, 233 n.5 (4th Cir. 2022)). Alternatively, even seeking the advice of counsel does not overcome the lack of reasonableness in charging Plaintiff without probable cause and

[t]his is especially true when we don't even know what the officers told the district attorney during that conversation. Cf. *Messerschmidt*, 565 U.S. at 553-54 (detailing how the officers "submitted the warrant application for review by [two superiors and a deputy district attorney]"); *Gomez*, 296 F.3d at 264. Thus, the assistant district attorney's suggestion that the officers seek out a warrant against Thurston does not prove the objective reasonableness of their actions.

Thurston v. Frye, 99 F.4th 665, 679 (4th Cir. 2024). Otherwise, as provided in the holding in *Merchant v. Bauer*, Defendant is “entitled to reassert the defense at trial, pursuant to which the jury could resolve the disputed facts in his favor, such that qualified immunity applies.” *Merchant v. Bauer*, 677 F.3d 656, 665, fn. 6 (4th Cir. 2012); *See also ACLU of Maryland v. Wicomico County*, 999 F.2d 780, 784 (4th Cir. 1993) (when “the defendant's entitlement to immunity turns on a factual dispute, that dispute is resolved by the jury at trial”).

In addition to testimony that the witnesses “did not recall” Defendant’s material disclosures, which Plaintiff submits is the sort of evidence *Thurston* found “especially” unavailing in establishing an advice of counsel defense “when we don’t even know what the officers told the . . . attorney,” Plaintiff provided affirmative statements reflecting a lack of material disclosure. On November 28, 2023, Plaintiff conducted the deposition of Lamar Fyall (“Fyall”), assistant solicitor, for his role in communicating with Defendant and Sgt. Arthur Thomas (“Thomas”), Defendant’s supervisor, in the very early hours of December 5, 2024, regarding Defendant’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. Unlike the witness in *Bank of Aynor v. Adams*, 132 S.C. 107, 128 S.E. 168 (1925), as relied upon by Defendant, which did not recall any relevant testimony to dispute the allegations⁴, Fyall sets forth a positive narrative of his recollection and from which many of the necessary material disclosures are absent to include, but not exclusively, 1) evidence of drug-induced

⁴“He did not positively deny because in his testimony he says: ‘I do not recall anything about the Liberty Bonds at the time I paid the \$1,680. I think this is an error.’ This Court cannot accept that statement on his part as better evidence than the positive statements of the cashier of the bank and other officers thereof who leave no doubt as to their memory of the transaction.” *Bank of Aynor*, 132 S.C. at 110

paranoia, 2) evidence of provocation, or 3) evidence of kidnap of Prophet. Furthermore, when asked if Defendant “ever convey[ed] 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. For a recitation of facts beyond “do not recall” statements provided by Thomas, please refer to Plaintiff's response in Section 7. Material Omission to Supervisor. *Infra* at 14-15.

For the above stated reasons, Plaintiff respectfully requests the court deny Defendant's Motion where he has not carried his burden to establish, to the exclusion of any genuine issue of material fact, that he was objectively reasonable in seeking advice to pursue a warrant for murder without probable cause, or even that the defense of advice of counsel should be available when there exists an issue as to whether there existed probable cause for Plaintiff's arrest. Otherwise, Plaintiff has submitted positive evidence tending to refute Defendant's defense.

6. *Chiaverini v. City of Napoleon*

Defendant next argues in paragraph 7⁵ that “the Court misapplied the holding of *Chiaverini v. City of Napoleon* . . . which is distinguishable in meaningful ways” and “failed to rule on the issue of whether probable cause existed for involuntary or voluntary manslaughter” Motion at 6. Plaintiff respectfully submits the Order provides no basis for Defendant's assertion that the holding in *Chiaverini v. City of Napoleon* was misapplied or that the Order is deficient for failing to specifically rule on the existence of probable cause for involuntary or voluntary manslaughter where the *Chiaverini* holding allows for 42 U.S.C. § 1983 claims, notwithstanding alternate

⁵ Please note that Plaintiff addresses Defendant's Sixth argument in Section 7. Material Omission to Supervisor.

probable cause, and Rule 52, SCRCP does not require this court to provide a particularized ruling on the issue.

First, the United States Supreme Court recently clarified that probable cause for some other crime will not vitiate a claim for malicious prosecution.

[I]f 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. 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

Chiaverini v. City of Napoleon, 602 U.S. 556, 558 (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). The Fourth Circuit District Courts have similarly recognized *Chiaverini* to hold that “the existence of probable cause for one charge in a criminal proceeding does not bar a malicious prosecution claim for another, alleged baseless, charge.” *Flottemesch v. Jones*, No. 6:24-cv-01737-HMH-KFM, 6 (D.S.C. Jul. 15, 2024) (citing *Chiaverini v. City of Napoleon*, 602 U.S. ---, 144 S.Ct. 1745, 1750 (2024)). “Rather, for purposes of malicious prosecution, each charge must be supported by probable cause.” *Morell v. Cunningham*, No. 1:23-cv-05528-SAL, fn. 2. (D.S.C. Jan. 25, 2025).

Accordingly, any decision by this court to deny Defendant’s Motion for lack of probable cause for murder would not then avail the Defendant of the defense of alternate probable cause for voluntary or involuntary manslaughter. Additionally, any charge of manslaughter would, in like

kind to that of a charge of murder, require probable cause that Plaintiff caused Decedent's death; a fact, at the least, of genuine dispute at the time of Plaintiff's arrest and thereafter. Otherwise, Defendant's assertion that summary judgment should be granted because "Defendant [] need only probable cause to arrest for any crime that would carry jail time" is not supported by any cited authority following the holding in *Chiaverini v. City of Napoleon*. Motion at 7.

Second, Defendant's argument that the court erred in failing to rule on whether probable cause existed to charge Plaintiff with manslaughter also fails where the court "is not required to state its findings of fact and conclusions of law in decisions on motions [for] summary judgment motions" *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748 (Ct. App. 2019). For these reasons, Plaintiff respectfully requests the court deny Defendant's Motion.

7. Material Omission to Supervisor

Defendant next argues in paragraph 6, and 8 that Sgt. Thomas "witnessed all the witness interviews" and the court "applied the wrong standard in evaluating the facts regarding consultation with a supervisor which does not require that all facts be presented to the supervisor as Plaintiff alleges, and Plaintiff has no evidence of a misrepresentation of the facts to Sargent Thomas" Motion at 6. Plaintiff respectfully submits the Order provides no basis for Defendant's assertion that the court applied the wrong standard or that Plaintiff alleged Defendant's advice of counsel defense requires the submission of all facts to his supervisor as opposed to all material facts. Notwithstanding, Defendant has failed to carry his burden to eliminate any genuine issue of material fact as to whether he made material disclosures to his supervisor in soliciting advice as required pursuant to *Thurston v. Frye* in order to avail himself of favorable treatment in evaluating his qualified immunity defense.

Plaintiff argued that Defendant was required to make “a full, correct and honest disclosure of all material facts known to him” in order to avail himself of favorable treatment in determining his reasonableness in seeking advice pursuant to his assertion of qualified immunity. Plt. Am. Memo at 30. The Court in *Thurston v. Frye* provided, in order to even obtain favorable treatment in analyzing Defendant’s reasonableness for seeking advice of counsel as opposed to categorical dismissal, Defendant must necessarily provide “a full presentation of the known facts” *Thurston v. Frye*, 99 F.4th 665, 679 (4th Cir. 2024) (citing *Messerschmidt v. Millender*, 565 U.S. 535, 555, 132 S.Ct. 1235, 182 L.Ed.2d 47 (2012)).⁶

On September 25, 2024, Plaintiff conducted the deposition of Thomas for his role in communicating with Defendant, as Defendant’s supervisor, on or about the very early hours of December 5, 2024, to determine whether Defendant would charge Plaintiff with murder. 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 In addition to not recalling being informed of many of the material facts of the case to include, but not exclusively, that 1) Aja Prophet (“Prophet”) was prevented from leaving the room, 2) Plaintiff was ineffectually hitting decedent, 3) Prophet made a post-interview statement conflicting with her previous testimony, or

⁶ However, *Thurston* cast into doubt whether even a disclosure of all material facts would overcome a lack of probable cause in stating, “when no reasonable officer would seek out a warrant, an officer’s ‘conversation with the state’s lawyer does not—as a matter of law—overcome the unreasonableness of the criminal charge and its lack of probable cause.’” *Thurston*, 99 F.4th at 679.

that 4) Narcan was administered to Decedent at the scene, when Thomas was specifically asked if Defendant ever told Thomas or Fyall “that [Defendant] had no idea what caused [Decedent’s] death? A: No.”⁷ Thomas at 39-40. “Do you recall [Defendant] 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 Defendant informing him that Defendant preferred to charge Plaintiff with manslaughter. Thomas at 43-44. Thomas similarly denied Defendant ever informing him that Plaintiff was provoked by Decedent’s attack on Prophet. Thomas at 45. “Q: Did Investigator Simpson ever give you any information that the decedent had provoked Mr. Green by attacking Mrs. Proffit? Did he ever tell you about that? A: No.” *Id.* 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.

Where the Order provides, there exists “certain material issues of facts as to the elements of all claims against [Defendant] including, but not limited to: . . . (2) whether [Defendant] fully

⁷ Defendant previously testified that he “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.” Defendant at 169.

disclosed all relevant, known information before seeking and obtaining a warrant for murder . . . ,” such finding was consistent with the holding in *Thurston v. Frye* and supported by the facts provided above such that Defendant’s motion should be denied. Alternatively, Defendant’s Motion fails to identify the standard he contends is proper in evaluating qualified immunity for advice of counsel, or testimony tending to establish Thomas “witnessed all the witness interviews.”⁸

8. Claim(s) for Malicious Prosecution

Defendant finally argues in paragraph 9 that “[n]o proper cause of action for malicious prosecution is brought against George Simpson under the South Carolina Tort Claims Act as the Order implies; rather only the cause of action in the present matter is under 42 U.S.C. § 1983 for a Fourth Amendment Violation” Motion at 7. Plaintiff respectfully submits the Order does not imply a ruling on Plaintiff’s SCTCA malicious prosecution claim properly pleaded against the City of Columbia and/or Plaintiff has pleaded a claim for malicious prosecution pursuant to 42 U.S.C. § 1983 which is appropriately before this court.

As recited in Plaintiff’s complaint, subsection of the first cause of action titled “Violation of 42 U.S.C. § 1983 . . . Malicious Prosecution . . .”, Plaintiff alleges “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

⁸ Thomas’ testimony only tends to establish he was aware of some of the witnesses testimony. Q: “. . . I think you mention that you **may have** either watched or participated in interviews with **some of the witnesses**; is that correct? A: Yes. Q: “. . . Do you know whether or not – which one you might have done? A: **I really can’t recall**, because I do both in so many of the cases. **Exhibit F, Thomas** at 20-21. Q: --- and you at least had an opportunity to review or watch **some of the in-person interviews at headquarters**, is that correct? A: Correct.” *Id.* at 28.

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). 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)). Additionally, Defendant’s memorandum in support of summary judgment admits “Plaintiff was arrested pursuant to a warrant; thus, this claim is analyzed under the rubric of a malicious prosecution claim.” MSJ at 12.

Accordingly, the Order’s finding that “certain material issue of facts as to the elements of all claims against [Defendant] including, but not limited to, . . . whether [Defendant’s] acts and/or omissions caused and/or contributed to a malicious prosecution of the Plaintiff,” is appropriate as relates to Plaintiff’s 42 U.S.C. § 1983 claim for malicious prosecution and Defendant’s Motion should be denied.

IV. CONCLUSION

Based upon the reasons stated above, Plaintiff respectfully requests this Court deny Defendant’s motion for reconsideration

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