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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 IV

John S. Nichols, Esq.
Bluestein Thompson Sullivan, LLC
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599

Mary D. LaFave, Esq.
LaFave Bagley, LLC
2019 Park Street
Columbia, SC 29201
(803) 726-6756

Attorneys for Appellant

W. Michael Hemlepp, Jr., Esq.
City of Columbia
Legal Department
PO Box 667
Columbia, SC 29202

Jacqueline M. Pavlicek, Esq.
Collins & Lacy, PC
1330 Lady Street, 6th floor
Columbia, SC 29201
(803) 256-2660

Attorneys for Defendant
City of Columbia

Brian R. Shealey, Jr., Esq.
Luke A. Shealey, Esq.
Christopher S. Truluck, Esq.
Shealey Law Firm
924 Gervais Street
Columbia, SC 29201
(803) 556-7285

Attorneys for Respondent

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 Outlook

Green v. City of Columbia, et al.

From McGee, Thomas W., III <tmcgeej@sccourts.org>

Date Fri 2/28/2025 4:37 PM

To ctruluck trulucklawfirm.com <ctruluck@trulucklawfirm.com>; mary@lafavebagley.com <mary@lafavebagley.com>; william.hemlepp@columbiasc.gov <william.hemlepp@columbiasc.gov>

Cc McGee, Thomas W., III Secretary (Jessica Dominick) <tmcgeesc@sccourts.org>; McGee, Thomas W., III Law Clerk (Paisleigh Price) <tmcgeelc@sccourts.org>; McGee, Thomas W., III <tmcgeej@sccourts.org>

All,

After reviewing the briefs, exhibits, case law, and my notes from the hearing last week, Defendant Simpson's Motion for Summary Judgment is respectfully denied. For the reasons raised in the briefs and argued last week, I believe there are certain material issues of fact as to elements of the claims against Mr. Simpson including, but not limited to, whether Officer Simpson disclosed sufficient information and/or obtained sufficient information before obtaining a warrant for murder. Therefore, I would ask Mr. Truluck to circulate and file a proposed order within 10 days.

Thank you all for your excellent briefing and oral arguments,
Best,

Billy McGee
Circuit Court Judge

Ps – please forward this email to any other attorneys of record that may need to receive this information.

Billy McGee
Circuit Court Judge

Richland County Courthouse
P.O. Box 192
1701 Main St., Ste. 215
Columbia, SC 29202-0192
(803) 576-1746

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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 May 14 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005620

**RECEIVED**

**May 08 2025**

**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

Civil Action No. 2021-CP-40-05620

Sherman Green,

Respondent,

v.

City of Columbia and George Simpson,

Defendants,

OF WHOM:

George Simpson is the

Appellant.

**NOTICE OF APPEAL**

George Simpson appeals the order denying his Motion for Summary Judgment on the issue of Qualified Immunity by the Honorable Thomas W. McGee, III, dated April 10, 2025. Appellant received written notice of the entry of the order on April 10, 2025, a copy of which is attached. A motion pursuant to Rule 59, SCRCP, to reconsider the decision is pending but counsel for Plaintiff may challenge the procedural aspects of the motion, and specifically compliance with Rule 59(g), though the undersigned asserts the argument to be inconsequential. Nevertheless, this appeal is filed out of an abundance of caution to protect George Simpson's right to appeal the order.

s/Mary D. LaFave

Mary D. LaFave, SC BAR #75366

LAFAVE BAGLEY, LLC

2019 Park Street

Columbia, SC 29201

Phone: 803.726.6756 (Direct)

mary@lafavebagley.com

*Attorney for Defendant, George Simpson*

May 8, 2025

**RECEIVED**

**May 08 2025**

**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

Civil Action No. 2021-CP-40-05620

Sherman Green,

Plaintiff,

v.

City of Columbia and George Simpson,

Defendants,

OF WHOM:

George Simpson is the

Appellant.

PROOF OF SERVICE

I certify that I have caused to be served the Notice of Appeal on all parties by electronic mail, and by depositing a copy of it in the United States Mail, postage prepaid, on May 8, 2025, to the attorneys of record addressed as follows:

Brian R. Shealey, Jr., Esquire  
brian@shealeylaw.com  
Luke A. Shealey, Esquire  
luke@shealeylaw.com  
Christopher S. Truluck, Esquire  
chris@shealeylaw.com  
Shealey Law Firm  
1507 Richland Street  
Columbia, SC 29201  
*Attorneys for Plaintiff*

W. Mike Hemlepp, Jr., Esquire  
william.hemlepp@columbiasc.gov  
City of Columbia  
Post Office Box 667  
Columbia, SC 29202  
*Attorney for Defendant City of Columbia*

Jacqueline M. Pavlicek, Esquire  
jpavlicek@collinsandlacy.com  
Collins & Lacy, PC  
1330 Lady Street, 6<sup>th</sup> Floor  
Columbia, SC 29201  
*Attorney for Defendant City of Columbia*

May 8, 2025

s/ Mary D. LaFave  
Mary D. LaFave, SC Bar No. 75366  
LaFave Bagley, LLC  
2019 Park Street  
Columbia, South Carolina 29201  
(803) 726-6756  
mary@lafavebagley.com

*Attorney for Appellant George Simpson*

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-000902

Sherman Green, ..... Respondent,

v.

City of Columbia and George Simpson, Defendants, of which George Simpson is the Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Sherman Green ("Respondent") moves this Court for an order dismissing the above-captioned appeal 1) pending resolution of George Simpson's ("Appellant") motion for reconsideration of the Honorable Thomas W. McGee, III's order denying Appellant's motion for summary judgment and 2) upon appeal from the Honorable Thomas W. McGee, III's order denying Appellant's motion for summary judgment.

PROCEDURAL HISTORY

On November 15, 2021, Plaintiff filed this action in the Richland County Court of Common Pleas against Appellant pursuant to 42 U.S.C. § 1983 alleging violation of his clearly established rights. 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 the Richland County Court of Common Pleas for defendants' failure to provide timely unambiguous consent to the removal of the

action.

Appellant moved for summary judgment on May 3, 2024. On February 19, 2025, Judge Thomas W. McGee, III, heard Appellant's motion for summary judgment. On February 28, 2025, Judge Thomas W. McGee, III, informed the parties of his decision to deny Appellant's motion for summary judgment and on April 10, 2025, Appellant's motion was denied pursuant to Form 4 order ("Order"). **Exhibit A, Order.** On April 21, 2025, Appellant filed a motion for reconsideration of the Order ("Motion") pursuant to Rule 59(e), SCRCP and on May 8, 2025, filed his notice of appeal from the Order denying his motion for summary judgment. **Exhibit B, Motion.** Appellant's Motion is still pending.

## ARGUMENT

### 1. Dismissal Pending Resolution of Motion for Reconsideration

The Appellant has moved, pursuant to Rule 59(e), SCRCP, the trial court to reconsider the Order now on appeal and Appellant's Motion for reconsideration remains pending. The appellate courts have held that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature).

Because Appellant's Motion has not been ruled upon by the trial court, Respondent respectfully submits the Order is not immediately appealable and this Court should dismiss this

appeal.

## 2. Dismissal of Appeal from Order Denying Summary Judgment

The Order on appeal is an order denying Appellant's motion for summary judgment. "[I]t is well settled that an order denying summary judgment is never reviewable on appeal." *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010) (citing *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003)). An appellate court is "prohibited from reviewing" the denial of a motion for summary judgment because it is "never subject to review, not in an interlocutory appeal [ ] or even after final judgment." *AJG Holdings, LLC v. Dunn*, 392 S.C. 160, 167, 708 S.E.2d 218, 222 (Ct. App. 2011). "A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial." *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). "The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for directed verdict." *Id.*

Because the Order denying a motion for summary judgment is not appealable, this Court should dismiss this appeal.

## CONCLUSION

For the above-stated reasons, Respondent respectfully requests this Court 1) dismiss Appellant's appeal pending resolution of his motion for reconsideration and 2) dismiss Appellant's appeal from denial of his motion for summary judgment.

May 14, 2025

s/ Chris S. Truluck  
Chris S. Truluck, (S.C. Bar 77829)  
924 Gervais Street  
Columbia, SC 29201  
(803) 556-7285  
*Attorney for Respondent*

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

Sherman Green, ..... Respondent,

v.

City of Columbia and George Simpson, Defendants, of which George Simpson is the Appellant.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Respondent's Motion to Dismiss in the above-referenced case has been served upon Mary D. LaFave, Counsel of Record, by delivering the same this date to her by U.S. Mail, postage prepaid, on May 14, 2025, at 2019 Park Street, Columbia, South Carolina 29201 and by electronic email at mary@lafavebagley.com.

The undersigned attorney hereby certifies that a true copy of the Respondent's Motion to Dismiss in the above-referenced case has been served upon W. Mike Hemlepp, Jr., Counsel of Record, by delivering the same this date to him by U.S. Mail, postage prepaid, on May 14, 2025, at Post Office Box 667, Columbia, South Carolina 29202 and by electronic email at william.hemlepp@columbiasc.gov.

TRULUCK LAW FIRM, LLC

May 14, 2025

s/ Chris S. Truluck  
Chris S. Truluck, (S.C. Bar 77829)  
924 Gervais Street  
Columbia, SC 29201  
(803) 556-7285  
Attorney for Respondent

 Outlook

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RE: Green v. City of Columbia, et al. (2021CP4005620) Motion to Reconsider

---

From McGee, Thomas W., III Law Clerk (Paisleigh Price) <tmcgeelc@sccourts.org>

Date Tue 5/6/2025 9:59 AM

To ctruluck trulucklawfirm.com <ctruluck@trulucklawfirm.com>; mary@lafavebagley.com <mary@lafavebagley.com>; Hemlepp, William (Mike) <William.Hemlepp@columbiasc.gov>; brian@shealey.com <brian@shealey.com>; luke@shealey.com <luke@shealey.com>

Cc McGee, Thomas W., III Secretary (Jessica Dominick) <tmcgeesc@sccourts.org>

Good morning,

Our office came across the motion in our routine review of the cases we have heard in the past few months to make sure nothing is outstanding on our end. The motion was not served on our office.

**Paisleigh Price Hemmings**

Law Clerk to The Honorable T. W. McGee, III

Circuit Judge At-Large

1701 Main Street

Columbia, SC 29201

Office: (803) 576-1511

Cell: (803) 360-2198

---

From: ctruluck trulucklawfirm.com <ctruluck@trulucklawfirm.com>

Sent: Monday, May 5, 2025 4:31 PM

To: McGee, Thomas W., III Law Clerk (Paisleigh Price) <tmcgeelc@sccourts.org>; mary@lafavebagley.com; Hemlepp, William (Mike) <William.Hemlepp@columbiasc.gov>; brian@shealey.com; luke@shealey.com

Cc: McGee, Thomas W., III Secretary (Jessica Dominick) <tmcgeesc@sccourts.org>

Subject: Re: Green v. City of Columbia, et al. (2021CP4005620) Motion to Reconsider

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Mrs. Hemmings,

I will do.

Would you please let us know when and how your office was made aware of the Motion to Reconsider filed 4/21/25 for the purposes of Rule 59(g)? To my knowledge, we were not copied on any correspondence informing Judge McGee.

Sincerely,

Chris S. Truluck, Esq.  
924 Gervais Street  
Columbia, SC 29201  
Phone: 803-556-7285  
Fax: 843-620-0502  
[TruluckLawFirm.com](http://TruluckLawFirm.com)

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From: McGee, Thomas W., III Law Clerk (Paisleigh Price) <[tmcgeelc@sccourts.org](mailto:tmcgeelc@sccourts.org)>  
Sent: Monday, May 5, 2025 3:43 PM  
To: [mary@lafavebagley.com](mailto:mary@lafavebagley.com) <[mary@lafavebagley.com](mailto:mary@lafavebagley.com)>; Hemlepp, William (Mike) <[William.Hemlepp@columbiasc.gov](mailto:William.Hemlepp@columbiasc.gov)>; [brian@shealeylaw.com](mailto:brian@shealeylaw.com) <[brian@shealeylaw.com](mailto:brian@shealeylaw.com)>; [luke@shealeylaw.com](mailto:luke@shealeylaw.com) <[luke@shealeylaw.com](mailto:luke@shealeylaw.com)>; [ctruluck@trulucklawfirm.com](mailto:ctruluck@trulucklawfirm.com) <[ctruluck@trulucklawfirm.com](mailto:ctruluck@trulucklawfirm.com)>  
Cc: McGee, Thomas W., III Secretary (Jessica Dominick) <[tmcgeesc@sccourts.org](mailto:tmcgeesc@sccourts.org)>  
Subject: Green v. City of Columbia, et al. (2021CP4005620) Motion to Reconsider

Good afternoon,

Our office was just made aware of the Motion to Reconsider filed 4/21/25 on Judge McGee's ruling on Plaintiff's Motion for Summary Judgment. Plaintiff's counsel, please file any response within 10 days.

Thank you,

**Paisleigh Price Hemmings**

Law Clerk to The Honorable T. W. McGee, III

Circuit Judge At-Large

1701 Main Street

Columbia, SC 29201

Office: (803) 576-1511

Cell: (803) 360-2198

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1 can you tell me what you did and who you talked
2 to that evening? And I'll give you an example.
3 For example, my understanding is that you were
4 at one of the police stations and you may or
5 may not have spoken to some of the witnesses.
6 And that's an example. Can you give me an
7 example of what you did that night?

8 A: And, again, it's five years so ---

9 Q: I understand.

10 A: I don't recall going to the scene on this
11 particular case.

12 Q: Uh-huh.

13 A: And what I recall is possibly getting a
14 call-out that we had, a case where a subject
15 was deceased at the complex there or what have
16 you.

17 Q: Uh-huh.

18 A: Team rolled out, started the initial
19 investigation. I recall meeting the team at
20 headquarters. And I believe at that point they
21 may have been bringing suspect, witness, and
22 any of the evidence that they had at that time
23 to headquarters ---

24 Q: Uh-huh.

25 A: --- for interviews and things of that nature.

Page 18

Page 20

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.

1 Q: Okay. Do you know when you had conversations
2 with him about that?

3 A: I'm sure we conversed a number of times.
4 'Cause we still had -- I mean, it was early in
5 the case, so I had probably about four or five
6 investigators out there. So we were delegating
7 tasks, so I'm sure we spoke about many
8 different things. I can't be specific.

9 Q: Sure. Oh, it's okay.

10 A: But I'm sure we spoke about many things in the
11 delegation of search warnings, getting
12 evidence, processing the scene. It's just --
13 it was very early in the investigation at that
14 time so ...

15 Q: Did -- do you recall -- you say it in a way to
16 where -- I'm sure that you did have
17 conversation with him. Do you actually recall
18 having conversations with Investigator Simpson
19 after your telephone call with Lamar Fyall?

20 A: I don't recall anything specific, like I said.

21 Q: Okay. Do you have any information that would
22 indicate -- documents or otherwise that would
23 indicate specific conversations with
24 Investigator Simpson after the ---

25 A: No.

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

5 (Pages 17 to 20)

Page 21

Page 23

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

Page 22

Page 24

1 a more remote ---
 2 A: I'm sure I saw them when they were brought in
 3 possibly -- brought 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?

1 Q: Yes.
 2 A: Well, we communicate with the chain on any case
 3 of that nature. So lieutenant, captain,
 4 everybody was informed of the incident, of the
 5 arrest; yes.
 6 Q: Would that have been within approximately 24
 7 hours of the arrest warrant, or were you
 8 referencing a longer time period?
 9 A: No. It's within the morning of the arrest.
 10 Q: Okay.
 11 A: Uh-huh.
 12 Q: Outside of that morning of the arrest, past 24
 13 hours, do you recall any communications with
 14 anyone other than Investigator Simpson?
 15 A: Yeah. In the chain, Coroner Watts I spoke
 16 with. Of course, Lamar. That's all I can
 17 think of ---
 18 Q: Okay.
 19 A: --- presently.
 20 Q: And I'll throw a couple more out just to see.
 21 A: Uh-huh.
 22 Q: Do you recall ever speaking to Dr. Durso about
 23 the incident?
 24 A: Durso?
 25 Q: And I'll represent to you Dr. Durso was the

1 doctor who initially performed the autopsy --
 2 ultimately performed the autopsy.
 3 A: No. I didn't speak directly with Durso.
 4 Q: Okay. So you spoke with Coroner Watts. Do you
 5 know when about you spoke with Coroner Watts?
 6 A: No. I can't say a specific time, but it was
 7 shortly after the autopsy. Sometime after the
 8 autopsy.
 9 Q: So that would have been -- so you mean the
 10 initial autopsy?
 11 A: Yes.
 12 Q: Okay. So maybe within 24, 48 hours of the
 13 arrest warrant?
 14 A: Approximately.
 15 Q: Okay. Do you recall the nature of that
 16 conversation?
 17 A: Yes.
 18 Q: Do you -- can you tell me what you and Coroner
 19 Watts discussed?
 20 A: It was communicated to me that there was
 21 miscommunication at the coroner's office about
 22 the body and that the body was just a body in
 23 the parking lot deceased, possibly drug related
 24 or something of that nature, and that it had
 25 not been communicated to the coroner that --

6 (Pages 21 to 24)

Page 25

Page 27

1 and it might be Durso. I'm not sure -- that
 2 there was a assault that was committed on that
 3 body prior to the body becoming deceased,
 4 right? And I want to say that when we found
 5 that that communication had not been properly
 6 dealt with that particular doctor, I spoke with
 7 Watts about that and he said he would check
 8 into it and things of that nature. So we kind
 9 of went from there.
 10 Q: Okay. Is there ---
 11 A: That was a concern of mine.
 12 Q: Is there anything else that you and Coroner
 13 Watts discussed?
 14 A: We expressed, again, the nature of what
 15 happened to the young man prior to dying, which
 16 is there was this assault in the room, kicking,
 17 stomping, beating, slinging him against the
 18 wall of the unit. And then as he struggled out
 19 of the room, he literally fell dead. And then
 20 when speaking with Watts and discussing things
 21 that could cause that is when, you know, he
 22 discussed -- I can't think of the term thing
 23 right now -- excited delirium.
 24 Q: Uh-huh.
 25 A: Yes. That's kind of what our conversation was.

Page 26

Page 28

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

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

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

7 (Pages 25 to 28)

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

Civil Action No. 2021-CP-40-05620

Sherman Green,

Respondent,

v.

City of Columbia and George Simpson,

Defendants,

OF WHOM:

George Simpson is the

Appellant.

NOTICE OF APPEAL

George Simpson appeals the order denying his Motion for Summary Judgment on the issue of Qualified Immunity by the Honorable Thomas W. McGee, III, dated April 10, 2025. Appellant received written notice of the entry of the order on April 10, 2025, a copy of which is attached. A motion pursuant to Rule 59, SCRCP, to reconsider the decision is pending but counsel for Plaintiff may challenge the procedural aspects of the motion, and specifically compliance with Rule 59(g), though the undersigned asserts the argument to be inconsequential. Nevertheless, this appeal is filed out of an abundance of caution to protect George Simpson's right to appeal the order.

s/Mary D. LaFave

Mary D. LaFave, SC BAR #75366

LAFAVE BAGLEY, LLC

2019 Park Street

Columbia, SC 29201

Phone: 803.726.6756 (Direct)

mary@lafavebagley.com

Attorney for Defendant, George Simpson

May 8, 2025

FORM 4

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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ 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 SCRCPP 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 May 08 11:28 AM - RICHLAND - COMMON PLEAS - CASE#2021CP4005620

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND * TRANSCRIPT OF RECORD

3 -----X
SHERMAN GREEN, *

4 Plaintiff, *

5 vs. * Case No. 2021-CP-40-005620

6 CITY OF COLUMBIA and *

7 GEORGE SIMPSON, *

8 Defendants. *

-----X

9 February 19, 2025

10
11 B E F O R E:

12 The Honorable Thomas W. McGee, Presiding Judge

13 A P P E A R A N C E S:

14 Christopher Truluck, Esq.

15 Luke Shealey, Esq.

Attorneys for the Plaintiff

16 W. Mike Hemlepp, Jr., Esq.

Attorney for Defendant City of Columbia

17 Mary D. LaFave, Esq.

18 Attorney for Defendant Simpson

19
20
21
22
23 Recorded by: OWL In-Courtroom Recording System

24 Court Transcriber: Bobbi Fisher, RPR
25 SC Official Court Reporter III

I N D E X

| DESCRIPTION | PAGE |
|-------------|------|
| Proceedings | 3 |

E X H I B I T S

(None.)

COURT REPORTER LEGEND

| | |
|--------------------------------|---|
| Dash (--) | Indicates an interruption in speech |
| Ellipses (...) | Indicates trailing off in speech |
| (ph) | Indicates phonetic word |
| [Verbatim] | Indicates the word is said as written |
| (Indiscernible)[Transcription] | Indicates word(s) is not known due to audio recording quality |

P R O C E E D I N G S

MS. LaFAVE: Your Honor, we have a video in this case that has some mature content to it. I'll say that for anyone in the room that might be of delicate constitution.

THE COURT: Is Billy okay with that?

I'll come down there so I can see it a little better.

First of all, if we could, could we get everybody to introduce themselves and who they represent on the record, please.

MS. LaFAVE: Your Honor, this is the defendant George Simpson's Motion for Summary Judgment. My name is Mary LaFave.

THE COURT: All right.

MR. TRULUCK: Your Honor, Chris Truluck on behalf of the plaintiff, Sherman Green, and co-counsel, Luke Shealey.

THE COURT: All right.

MR. HEMLEPP: Your Honor, Mike Hemlepp on behalf of the City of Columbia. This is not our motion, so I won't belabor the Court with my voice, but I am here.

THE COURT: All right. Thank you, sir.

SERGEANT SIMPSON: Sergeant George Simpson from the City of Columbia Police Department.

THE COURT: Yes, sir. Good to see you.

All right. Well, I have reviewed the Complaint and submission. I also notice that the City has already had its

1 summary judgment argued and denied, and I know there was a
2 Motion to Reconsider right now with Judge Hayes, I think.
3 Does that have any bearing on us moving forward today? I
4 don't think it does, but, again, I just want to make sure
5 before we do that.

6 MR. HEMLEPP: There's a lot of cracks in this case, Your
7 Honor, and I'm sure the facts are going to overlap, but as you
8 can imagine, the defenses of the City of Columbia in a tort
9 claims act are very different from the defenses of an
10 individual employee of the City. So I would not imagine that
11 there's going to be any legal overlap, although there may be
12 factual overlap.

13 THE COURT: Well, I just want to make sure that nobody is
14 taking the position that we needed to wait for Judge Hayes to
15 issue an Order on your -- the City's Motion to Reconsider
16 before we move forward. I mean, that's not anyone's position,
17 is it?

18 MS. LaFAVE: No, Your Honor.

19 THE COURT: Okay. All right. And are we going to start
20 with that, or do you want to -- I mean, or just let me know
21 and I'll come down just so I can see it better.

22 MS. LaFAVE: I think Athena is going to help me get my
23 computer plugged into the technology so we'll address that, if
24 that's okay with the Court.

25 THE COURT: All right. Happy to hear from you,

1 Ms. LaFave.

2 MS. LaFAVE: Thank you, Your Honor.

3 Just to give the Court a little bit of an outline of my
4 argument because it will be in depth today, I'm going to go
5 through some concerns that I have about the record, and then
6 I'll provide the Court with a background, although I know the
7 Court has reviewed some of the submissions. Then I would like
8 to talk about some of the undisputed facts in this case, and
9 then talk about probable cause and the defendant George
10 Simpson's request for qualified immunity.

11 To begin, Your Honor, does the Court have or wish to have
12 a hard copy of my memorandum?

13 THE COURT: I have got it right here in front of me.

14 MS. LaFAVE: Okay. I do have a hard copy.

15 THE COURT: If you'd like to bring it up.

16 MS. LaFAVE: It's quite voluminous, so I wanted the Court
17 to have the ability to reference it.

18 THE COURT: That's all right. Thank you very much.

19 MS. LaFAVE: Thank you, Judge.

20 I will not touch on every aspect of my brief, Your Honor.
21 I will rely on it for anything that I omit today. I will
22 start with some concerns that I have that relate to the
23 plaintiff's brief. And the reason I'm going to start there is
24 because, when I was reviewing the plaintiff's submission, I
25 became very concerned about what I see to be is a kaleidoscope

1 of the record reflected in Plaintiff's brief.

2 THE COURT: Are you talking about the Amended Memorandum
3 in Opposition?

4 MS. LaFAVE: The Amended Memorandum in Opposition that
5 was filed on December 5th.

6 THE COURT: Okay. And I've got that in front of me as
7 well.

8 MS. LaFAVE: So, Your Honor, when I was reviewing this, I
9 was quite surprised by the way that some things were worded,
10 and although I'm not going to belabor the Court with every
11 example that I encountered, I felt like it was important to
12 point some things out for the record.

13 Beg the Court's indulgence.

14 So the memorandum has three major issues. First is that
15 some of the quotes by witnesses are misleading. If the Court
16 will look at Page 3, there's a reference there at the bottom
17 of the paragraph. This is where Plaintiff is explaining the
18 testimony of George Simpson.

19 THE COURT: That is on page...

20 MS. LaFAVE: Three, Your Honor.

21 THE COURT: Three. And you said it's the last paragraph
22 -- last full paragraph?

23 MS. LaFAVE: Last full paragraph, four lines from the
24 bottom. And I quote, "Plaintiff eventually gained entry into
25 the room and engaged Decedent such that he, quote, 'he's not

1 hitting him to cause him to bleed and he's hitting him like a
2 woman,' end quote."

3 That is then cited to Simpson at 140. The quotations
4 there are actually Mr. Truluck's question and not the
5 witness's answer. The witness's answer, although affirmative
6 in part, qualified exactly what the witness's position was.

7 That is an improper reference in this memorandum. And
8 that is the first issue that I have with -- that plagues the
9 plaintiff's brief -- amended brief. Excuse me.

10 THE COURT: All right.

11 MR. TRULUCK: Your Honor, I --

12 MS. LaFAVE: Page 8 --

13 THE COURT: Hold on for a second.

14 MR. TRULUCK: I just wanted to say, if we're going to --
15 if these are allegations that I'm misrepresenting some
16 statements, can we take these one at a time if there are a few
17 of them?

18 THE COURT: I think she said there's three of them. Why
19 don't I hear from those and then -- I'll be able to do that,
20 and then I promise I'll let everybody get a word in before we
21 move forward.

22 MR. TRULUCK: Thank you, Your Honor.

23 THE COURT: So that's the first one.

24 MS. LaFAVE: The second one is on page 8. This is the
25 discussion of Mr. Fyall's deposition at the bottom of the last

1 paragraph of that section before it gets to "See Arthur
2 Thomas," there's a question that was proposed to Mr. Fyall
3 that says, "When you're making an assessment of a case on
4 whether there's probable cause, you're not assessing whether
5 someone might have a legal defense to that charge, are you?"

6 The brief says, "Fyall replied, 'Sometimes, yes.' Fyall
7 at 68."

8 Mr. Fyall actually did say, "sometimes, yes," but he also
9 had another paragraph of his explanation, which totally
10 changes the substance of his answer to that question.

11 THE COURT: All right.

12 MS. LaFAVE: The next page is paragraph -- or is page 9,
13 the first full paragraph. It starts with, "On the evening of
14 December 4th." And this touches on the third issue that I
15 have with this brief and the conclusions that are contained
16 therein.

17 Mr. Truluck's questions quite often would start with, "Do
18 you recall" to the witness, and the witness would say, "I do
19 not recall." And so Mr. Truluck would go through and say that
20 the witnesses didn't remember these things and then
21 erroneously concludes that that means they did not happen.

22 So, for purposes of summary judgment, it's important that
23 we protect the integrity of the record and the admissible
24 evidence that's being presented to the Court, and the fact
25 that several witnesses do not remember a conversation that was

1 not memorialized four or five years later is not admissible
2 evidence as to my client and whether he conducted a proper
3 investigation or communication with his superior officers.

4 THE COURT: All right. So as to this one in the first
5 full paragraph that begins on --

6 MS. LaFAVE: Yes.

7 THE COURT: So what you're saying is, where he says,
8 "Fyall did not recall," and then, one, the decedent's history
9 of drug use, and then it goes through up to No. 8, so you're
10 saying that the deponent said, no, he didn't recall, and that
11 this is drafted in a way that makes it sound like that those
12 eight things happened and he didn't recall that it happened?

13 MS. LaFAVE: Correct. And the question was proposed to
14 the witness -- all of these witnesses in that way, "Do you
15 recall?" And the witness would say -- sometimes they would
16 have a definitive answer, and I'm not challenging those. But
17 in this particular instance, the witnesses did not remember.
18 As opposed to -- strike that.

19 Instead of explaining that the witnesses did not
20 remember, this brief, instead, erroneously concludes that that
21 means that my client did not inform these witnesses of these
22 things.

23 The other issue is -- and I'm only going to give one
24 example because I just wanted to make sure that I drew the
25 Court's attention to these concerns. For example, in No. 2

1 there on the fourth full line down, "Decedent consuming two
2 doses of crack."

3 THE COURT: Right.

4 MS. LaFAVE: While Mr. Truluck is correct that Sergeant
5 Thomas did not recall whether the decedent consumed two doses
6 of crack, he most certainly testified on page 46 of his
7 deposition that he did know that the decedent was on crack.
8 And it is important to this case that his superior officers
9 knew that he had been taking drugs that particular night.

10 But this is communicated to the Court in a way that this
11 witness did not know that this individual was on drugs and
12 that is not the case.

13 I have -- in order to highlight these issues -- and, Your
14 Honor, I bring these issues respectfully. I have known
15 Mr. Truluck and Mr. Shealey for quite some time and have great
16 respect for them, but I also have a duty to my client, who is
17 a 14-year veteran of the Columbia Police Department, and I'm
18 here to make sure that the truth is presented to the Court. I
19 have these concerns, and I have printed out for the Court's
20 review and reference a full copy of each one of these
21 deposition transcripts.

22 The deposition citations for Dr. Durso cites to a page
23 that was not provided by the Court -- provided to the Court,
24 rather, and so I felt that that would assist the Court in the
25 review of this case. So, if I may approach, I do have a copy

1 of those deposition transcripts.

2 THE COURT: Okay. Sure. Thank you.

3 MS. LaFAVE: Thank you, Judge.

4 THE COURT: These are my copies?

5 MS. LaFAVE: Those are your copies, sir. Thank you.

6 THE COURT: Thank you.

7 These are copies of the depositions that are being cited,
8 so, I guess, for completeness, sort of being able to check?

9 MS. LaFAVE: Yes, sir.

10 THE COURT: All right.

11 MS. LaFAVE: The other thing I'll mention is the
12 plaintiff's deposition is not in there because Mr. Truluck did
13 not cite or reference his own client's deposition at all in
14 his brief. I also have a USB copy of the videos that have
15 been filed with the Court. Judge Hayes was unable to locate
16 those, and so I brought a copy specifically for Your Honor.
17 So I do have that whenever we get there.

18 THE COURT: All right. And is this a good time to allow
19 Mr. Truluck to jump in before we get moving? I think you said
20 you had three things that you wanted to address.

21 MS. LaFAVE: Yes, sir.

22 THE COURT: Okay. We'll do that and then we'll move on.
23 Yes, sir.

24 MR. TRULUCK: Thank you, Your Honor. I don't know that
25 Mrs. LaFave is saying that I'm trying to intentionally mislead

1 the Court.

2 THE COURT: That's not (indiscernible).

3 MR. TRULUCK: Okay. And I didn't quite hear that either,
4 Your Honor. And so I tried to use quotations wherever I can.
5 In fact, I think my brief is littered probably with more
6 quotations than actual -- my writing, or at least close to
7 50/50.

8 For that very purpose, because I don't want to
9 misrepresent anything to the Court, Ms. LaFave has not brought
10 this to my attention until just now. This motion has been on
11 there for quite a long time, and this brief has been filed for
12 quite a while.

13 So, to that extent, I don't believe I've made any
14 misrepresentations. If Ms. LaFave disagrees with my
15 characterization, which was within the bounds of my
16 representation, then I understand that. I disagree with her
17 characterization.

18 She has called my client an admitted liar. In the brief,
19 she has made statements that her officer was directly
20 instructed by his supervisor, Thomas, to make a charge for
21 murder, which the supervisor Thomas has rejected that.

22 Ms. LaFave and I are going to disagree about the
23 interpretation of certain statements, Your Honor, but I don't
24 believe that I've made any misrepresentations to the Court,
25 and so I am prepared for her full characterization of those

1 statements in her light, but, Your Honor, I'm going to make it
2 in my light, and I've tried to get this exactly right.

3 As Ms. LaFave pointed out, it says, "Two doses of crack."
4 It says that because that is what, according to my review of
5 the record, was not relayed to Supervisor Thomas. That there
6 was drug use? Absolutely, Your Honor. And I can cite exactly
7 where Simpson testified about that.

8 But the reason that -- saying that one witness does not
9 recall being told there were two doses of crack is because one
10 dose of crack versus two doses of crack is often the
11 difference between use and overdose. So I'm very specific
12 about the words that I choose, and I hope the Court
13 understands that. I will say that, in the future, if somebody
14 has a problem with the way I'm characterizing it, I'm always
15 happy to address that on the record.

16 But, Your Honor, I like to ask long questions because
17 witnesses who are for the other side, they have a hard time
18 answering -- I'll never get anything out of them if I don't
19 answer a narrative. And I'll tell them that at the outset of
20 the deposition.

21 For example, the one where the question is -- the very
22 first one to Investigator Simpson, "So am I correct that
23 Mrs. Prophet there is just saying that he's not hitting him to
24 cause him to bleed and he's hitting him like a woman?"

25 I'm quoting the -- it, to the best of my recollection.

1 I'm quoting the interview that one of his colleagues is having
2 about the time that they're going to seek an arrest warrant.
3 And his response is, "Yeah, she -- well, she's mentioning that
4 when we first came in the room. She -- he bum-rushed him and
5 he started hitting him at that point."

6 But it's not in dispute, Your Honor. It's in the
7 audio/video interview of Ms. Prophet. So if Your Honor
8 accepts Ms. LaFave's reference to these three citations as
9 requiring clarification from her client's point of view,
10 that's fine, Your Honor. I accept that.

11 THE COURT: Well, I mean, they say what they say. And
12 there's only three of them, and so, you know, to the extent
13 these are critical issues that I need to drill down on
14 (indiscernible) define them.

15 Look, Ms. LaFave's brief is 31 pages. Yours is 41 pages.
16 So it's three issues. I mean, I didn't hear anybody suggest
17 that this was done intentionally or not. I think she just
18 wants to clarify that it may be the same thing, just viewed
19 from a different angle.

20 MR. TRULUCK: If that's all it is, Your Honor --

21 THE COURT: So I'm happy to look at those. If those are
22 issues that I get hung up on, I can certainly drill down and
23 make a determination.

24 MR. TRULUCK: If that's all it is, Your Honor, then I'll
25 rest.

1 THE COURT: Okay. That's how I look at Ms. LaFave's
2 (indiscernible), and I don't want to speak for you, but that's
3 how I look at it.

4 MS. LaFAVE: Yes, Your Honor. And I think really it's
5 just to make sure that the Court understands my concerns, and
6 Mr. Truluck has said -- again, just reiterating his response,
7 one of the things that's of great concern to me is that a
8 witness not remembering something doesn't mean that it didn't
9 happen. And he repeated here and said this was not related to
10 Sergeant Thomas when that is not the witness's testimony.

11 And, in fact, Mr. Truluck even recognized that there was
12 going to be an admissibility issue with that type of testimony
13 and actually went back to Sergeant Thomas and said -- after a
14 break on page 54 of Arthur Thomas's deposition -- said, "I
15 just want to ask you something real quick. To the best of
16 your memory, any of the 'do not recall' answers that you gave,
17 are you essentially saying you just don't recall these facts
18 being conveyed to you? Is that what you mean when you say, 'I
19 do not recall'?"

20 Answer: "I do not recall the conversation or the
21 question -- of the question that you asked. I just don't
22 remember anything of that nature."

23 And that's important because saying something did not
24 happen or that my client intentionally withheld information is
25 a completely different conclusion than a witness who says they

1 simply don't remember.

2 THE COURT: Right.

3 MS. LaFAVE: So that's all I'll add, Your Honor, and then
4 we can move on.

5 THE COURT: I'll look at these and draw my own
6 conclusions, but I appreciate y'all raising that. Again, it's
7 is a lot of briefing and a lot of testimony and a lot of
8 citations, so I'm happy to (indiscernible).

9 MS. LaFAVE: Thank you, Your Honor. We appreciate the
10 Court's diligence.

11 THE COURT: Sure.

12 MS. LaFAVE: All right. Just by way of factual
13 background, I know the Court has reviewed the briefs. I went
14 through and tried to make sure whatever was in one brief was
15 in another brief, and I did the best that I could. I don't
16 think that the facts are in dispute here, Your Honor.

17 On December the 4th, 2019, at the Budget Inn on
18 1601 Sunset Drive here in Richland County, the plaintiff,
19 Sherman Green, and his cousin or sometimes described as his
20 friend, Aja Prophet, they were sharing a room -- Room 115 --
21 at the Budget Inn. This room was across a sidewalk from a
22 concrete retaining wall. It was on the first floor. It had a
23 window and a door, and it faced the sidewalk next to the
24 concrete retaining wall.

25 At this time, the plaintiff is out on bond for a separate

1 and unrelated murder charge. There is a surveillance camera
2 that focuses right down the hallway and captures what was
3 going on outside of the motel room. There's nothing -- we
4 don't have any recordings of the inside of the hotel room.

5 The plaintiff testified that at approximately 8:00 p.m.
6 that day, after having some marijuana and some whiskey, he
7 decided to go and get something to eat. Ms. Prophet was
8 having what he described as company over. That would be the
9 decedent, Dara Washington.

10 Mr. Washington and Ms. Prophet had sex repeatedly and
11 enjoyed themselves some crack cocaine, and the events that
12 resulted following Sherman Green's return to the motel
13 resulted in a multiple disciplinary response and is the
14 subject of this lawsuit.

15 The events that night can be divided into three separate
16 parts: The plaintiff returns at first and he notices that
17 Mr. Washington is acting funny and being paranoid, looking out
18 the window. He said he had a crazed look on his face. And he
19 noticed that Aja Prophet was uncomfortable or maybe possibly
20 even scared, and so he told her to go into the bathroom and
21 lock herself into the bathroom, which she did.

22 The video surveillance shows him kicking the door,
23 yelling, screaming. He admitted to all of those things and
24 said that he was trying to get in there.

25 And once she locks herself into the bathroom, 911 gets

1 called by multiple people. 911 gets called by Mr. Washington.
2 I believe that Mr. Green might have called 911. The manager
3 of the hotel responds. He will not open up the door because,
4 at that point, we are into Phase 2 of the events where
5 everything is calm, and so the manager did not think that
6 there was a need to get into the hotel room.

7 And so, at one point, Mr. Green is actually seen across
8 the sidewalk up against the concrete wall. He's so relaxed at
9 this point, he's looking at his phone. He's got his leg
10 propped up on the wall. He's chilling, waiting on whatever is
11 going to happen inside to dissolve or for the police to get
12 there, because he was aware that the police were on their way.

13 THE COURT: And that's on page 4 of your brief.

14 MS. LaFAVE: Yes, sir.

15 THE COURT: Okay.

16 MS. LaFAVE: At some point, he inexplicably approaches
17 the door of the hotel room. And we're not really exactly sure
18 -- and I don't know that he remembered why he, all of a
19 sudden, came over to the hotel room door, by Aja Prophet, at
20 some point, unlocks the door.

21 Once the door is unlocked and the plaintiff describes
22 that he "bum-rushes" -- that's his word -- into the room and
23 to jack up Mr. Washington, who is naked, who is on the floor,
24 and I don't know -- I would say he was probably out of it from
25 the drugs. That's the way that the witnesses described him,

1 was on the floor, kind of crumpled in the corner.

2 And, at that point, Mr. Green begins hitting Dara
3 Washington in the shoulders, chest, back, and head. And
4 there's some dispute about whether those hits were severe
5 enough to cause any damage or not, but Aja Prophet
6 unquestionably tells Investigator Simpson later that she had
7 to pull Mr. Green off of Mr. Washington.

8 At that point, the video shows Mr. Green pull
9 Mr. Washington out of the room and he slinks him into the
10 concrete retaining wall. Mr. Green admits that Mr. Washington
11 hit both his head and his hand into the wall.

12 Mr. Green goes back into the hotel room, and that's the
13 last contact he has with Mr. Washington that night.
14 Mr. Washington crumples to the ground, gets up, and stumbles
15 and is extremely disoriented. He stumbles towards the camera
16 in a somewhat untoward position, which is why I mentioned the
17 mature conduct on the video, and then he goes into the parking
18 lot next door and dies. He dies within seconds or maybe even
19 a couple of minutes of his head hitting the concrete wall.

20 So that is the final altercation between Mr. Green and
21 Mr. Washington. EMS, at that point -- this is the police and
22 EMS are getting on the scene about that time. They do
23 administer Narcan. He does pass away at that moment.

24 We do have video of the other side of the building as
25 well, but it's not really obstructive, Your Honor.

1 So the investigation begins. The investigator assigned
2 to the case is my client, Mr. George Simpson, and he is in
3 charge of the investigation and begins collecting physical
4 evidence. He makes sure that the autopsy is conducted. He
5 goes to the autopsy whereupon he discovers that they are
6 conducting just another -- kind of another dead crackhead
7 autopsy, and he explains that they have evidence of an
8 assault. And physical evidence from the autopsy will reveal
9 that there were cuts, abrasions, and evidence of a physical
10 altercation by Mr. Washington from that evening.

11 The cause of death is pending. Toxicology is sent off.
12 Whether it was COVID-19, we're unsure, Your Honor, but it did
13 not come back until after the preliminary hearing in this
14 case. And the plaintiff's brief is silent about that
15 particular fact. That was outside of my client's control,
16 outside of the City of Columbia's control. COVID hits in
17 early January, and so testing for the toxicology on
18 Mr. Washington, I assume, took a back seat.

19 For about six hours, Mr. Green is questioned at the
20 station. Mr. Green initially lies about whether he assaulted
21 Mr. Washington when he went into the hotel room. That's not a
22 word that I (indiscernible) in this case, Your Honor.
23 Mr. Green actually admitted that he initially lied about that.
24 He admits that he lied about that because he was out on bond
25 for that unrelated murder charge, and he didn't really want to

1 get wrapped up into something else.

2 Eventually, however, he comes clean and admits that he
3 actually did physically assault him, and, at that point, my
4 client consults with his supervisor, Sergeant Arthur Thomas,
5 and Lamar Fyall, the Fifth Circuit Solicitor, who was on-call
6 that night.

7 According to my client, he provided them with all the
8 material information about what had happened and the events of
9 that evening, and all of those witnesses have testified that
10 they went with a charge of murder. My client testified very
11 truthfully about the fact that he thought that involuntary
12 manslaughter was a more appropriate charge. He did not feel
13 like that he could go against his superior officer, though, he
14 admits that the investigating officer, as he was in his role
15 for this case, gets the ultimate decision. But he's a company
16 guy, and that's what his superior and Lamar Fyall advised him
17 to do, and that's what he did.

18 He took out a warrant, and the plaintiff was arrested on
19 that warrant. Again, he was out on bond for another murder
20 charge, but he was arrested for murder. And so the
21 circumstances that he knew at the time were set out in the
22 warrant. Your Honor, there's no allegations that my client
23 ever misrepresented any of those facts, that he invented facts
24 that he didn't have, that he alleged that he knew the cause of
25 death, he knew that the autopsy was pending.

1 And at that point for Investigator Simpson, this is a
2 circumstantial case. He has a suspect who has thrown someone
3 into the wall who stumbles off and dies. There's no way to
4 know what was going on in Mr. Washington's body at that point,
5 but the investigation was ongoing.

6 So, at this point, Your Honor, the crux of the
7 plaintiff's case against my client was twofold. First, that
8 he did not conduct a thorough investigation by waiting on the
9 autopsy, and then, second, that he somehow did not report
10 facts to his superior officers and Mr. Fyall.

11 And so I began my argument talking about my concern about
12 witnesses not remembering being converted to it not happening.
13 And the reason that that's so important here is because a
14 witness saying they don't remember something is completely
15 different than "no, he did not tell me that." And while I
16 think Mr. Truluck wants it to be the latter, we just never
17 actually get to that point.

18 Furthermore, the missing elephant in the room here is
19 that Mr. Truluck never asked and it's never in the record that
20 any of that information would have given pause to anybody --
21 Mr. Fyall, Sergeant Thomas, or Investigator Simpson -- about
22 whether probable cause existed that night. There's not a
23 single witness that says, "You know what? If I had known
24 that, I would have said 'don't charge him with murder.'"
25 That's not in the record because it didn't happen.

1 THE COURT: What information are you talking about?

2 MS. LaFAVE: So it would be whether it was two doses of
3 crack as opposed to smoking crack. If it was how much
4 Mr. Green hit Mr. Washington when he came into the room.
5 Those are the -- those bits of information that Mr. Truluck
6 has relied on, if I may, in his brief about Investigator
7 Simpson not communicating these things to his superior
8 officers, they're simply not material enough for any of these
9 witnesses to change their opinion.

10 And he never actually even asked any of them in their
11 depositions. "If you had known this was two doses of crack
12 instead of one dose of crack, would that have changed your
13 opinion about whether to charge him with murder?" Not a
14 single witness has testified to that. Because the things that
15 he's chosen to focus on, Your Honor, I would submit, are not
16 material to the analysis of probable cause.

17 So we are at a juncture here where I think the video
18 would be helpful, Your Honor, to see it. It's about 15
19 minutes.

20 THE COURT: Sure.

21 MS. LaFAVE: If we could get my computer plugged into the
22 -- or I can just show it to Your Honor, if you want me to,
23 since it's just us.

24 THE COURT: (Indiscernible) I mean, this way, everybody
25 can see it.

1 All right. Mr. Tolbert (ph), there might be some
2 language in this thing so we don't want to offend you.

3 MS. LaFAVE: It's not language, it's visual.

4 THE COURT: Or visual. All right. Okay.

5 (Pause in the proceedings while setting up video
6 presentation.)

7 THE COURT: So his cousin/friend is in a room with
8 Mr. Washington right now; is that right?

9 MR. TRULUCK: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. LaFAVE: So where we're going to be looking, Judge,
12 is he's walking this way, and the actual hotel room is, like,
13 two up from where my finger is.

14 THE COURT: Got it.

15 MS. LaFAVE: So we'll see him come back in just a second.

16 THE COURT: And, at this time, does he know that
17 Washington is in the room?

18 MS. LaFAVE: He testified that, as he walked by, you kind
19 of saw him check his shoulder. He heard some commotion going
20 on in there.

21 (Video plays.)

22 MR. TRULUCK: Your Honor, just to clarify on your
23 question. I believe Mr. Green left the room because he knew
24 that -- maybe not Mr. Washington specifically but that a
25 person was coming to visit his friend, so that's why he left

1 the room.

2 THE COURT: Got it. Okay. Looks like he went to the
3 store or something?

4 MS. LaFAVE: I think he testified he went to Burger King
5 and something else while Mr. Washington was coming over. You
6 can probably -- of course I think there's a (indiscernible).
7 Are you okay with me skipping through it?

8 (Video continues to play.)

9 THE COURT: I guess he's beating on the door?

10 MS. LaFAVE: He's knocking on the door. Sets his stuff
11 down. In the video, once you look at it on your USB, it's
12 clear, but it's --

13 THE COURT: Okay.

14 MS. LaFAVE: He testified he was trying to get in and the
15 guy wouldn't let him in.

16 (Video continue to play.)

17 THE COURT: Is this inside the room right now where
18 Mr. Washington is telling ---

19 What's her name? Aja?

20 MS. LaFAVE: Aja Prophet.

21 THE COURT: --- Aja Prophet to go in the bathroom and
22 lock it? Or do we know when that happens?

23 MS. LaFAVE: Mr. Green is telling Aja Prophet to lock
24 herself in the bathroom.

25 THE COURT: Oh, he's telling her to do it.

1 MS. LaFAVE: Through the window right there.

2 THE COURT: Okay.

3 (Video continues to play.)

4 MS. LaFAVE: The person in the blue shirt is a neighbor
5 who has not been deposed or identified. She also called 911.

6 THE COURT: Is this another neighbor?

7 MS. LaFAVE: There was another 911 call for a domestic
8 dispute on the second floor of the Budget Inn that night. So
9 there was some confusion with all the 911 calls.

10 THE COURT: (Indiscernible).

11 MS. LaFAVE: Yeah.

12 (Video continues to play.)

13 THE COURT: As far as we know, she's still in the
14 bathroom, and Mr. Washington is sitting on the bed, refusing
15 to open the door or something? Maybe not. I mean, it's not a
16 big deal. I just didn't know if they were shouting at each
17 other.

18 MR. TRULUCK: Mrs. LaFave will correct me if I'm wrong.
19 My understanding is that he's witnessing Mr. Dara Washington,
20 naked, and disheveled. Mrs. Prophet was screaming for help
21 and has some blood on her face.

22 THE COURT: Oh, right.

23 MS. LaFAVE: I don't know that he saw blood on the face
24 but I agree that he -- she was screaming for help and was sent
25 to the bathroom. But this 15 minutes of calm here, she's in

1 the bathroom, locked, and Dara Washington is naked and
2 disheveled. I think he makes a 911 call.

3 This is the manager of the hotel. Mr. Green testified
4 that he would not open the door because it didn't look like
5 there was anything emergent going on. But he also calls 911.

6 (Video continues to play.)

7 THE COURT: I guess he's explaining to him
8 (indiscernible) transpired up until that point.

9 MS. LaFAVE: He said he's asking him to open the door but
10 he wouldn't. And he was explaining to him he just got out of
11 his room or something along those lines.

12 (Video continues to play.)

13 MS. LaFAVE: All right. So we're at 11:30.

14 THE COURT: And you mentioned earlier that the autopsy
15 was, I guess, delayed because of COVID or for whatever reason.
16 What ultimately is the cause of death of the (indiscernible)?
17 Do we know (indiscernible)?

18 MS. LaFAVE: Dr. Durso was deposed about her cause of
19 death. In the thousands of deaths that she's investigated and
20 autopsy reports that she's issued, this is the only one that
21 she concluded was, "Cause of death: Excited delirium."

22 No one, including seasoned prosecutor Dan Goldberg, had
23 any clue what that was. And Dr. Durso's deposition that I
24 provided to the Court explains it's a combination of drug --
25 drugs plus physical altercation, and it's described in the

1 autopsy report.

2 THE COURT: (Indiscernible)?

3 MR. TRULUCK: Excited delirium, Your Honor. It's also
4 what Dr. Durso described as aware, gray area, not completely
5 (indiscernible).

6 MS. LaFAVE: Yeah.

7 MR. TRULUCK: And, Your Honor, also, of course this also
8 came out after the charge of (indiscernible).

9 THE COURT: Right, right, right, yeah.

10 MR. TRULUCK: Which makes it irrelevant at that point.

11 THE COURT: No, no. I was just curious, you know, if it
12 was delayed.

13 (Video continues to play.)

14 THE COURT: But I've never heard that either. It sounds
15 -- it sounds better than (indiscernible).

16 Is this another person staying at the hotel? What was
17 she (indiscernible)?

18 MS. LaFAVE: Yeah.

19 THE COURT: What time was this about, generally?

20 MS. LaFAVE: It was 8:00 when he left, so I think -- I
21 mean, we're probably 9:00, 9:30, something like that.

22 THE COURT: And did he know at this time or did he
23 testify that he knew at this time that somebody had already
24 called 911 and police was on their way or...

25 MS. LaFAVE: He did know that the police were on their

1 way. The girl right there in the purple wrap was on the phone
2 probably about five minutes ago.

3 THE COURT: This is the call you're talking about?

4 MS. LaFAVE: Yeah, that's the --

5 THE COURT: Where he's got his foot up against --

6 MS. LaFAVE: Yep.

7 THE COURT: (Indiscernible).

8 MS. LaFAVE: Yep.

9 (Video continues to play.)

10 THE COURT: And she just let him in.

11 MS. LaFAVE: Yep.

12 THE COURT: Oh, okay. Washington is on the floor, and he
13 gets on top of him, and an altercation --

14 MS. LaFAVE: I don't know that anybody testified that
15 they got on top of him, but there definitely was hits or
16 strikes, slaps; head, shoulders, chest, and back.

17 THE COURT: I thought you said she had to get him off of
18 him.

19 MS. LaFAVE: She did. That's what she --

20 THE COURT: All right. (Indiscernible).

21 (Video continues to play.)

22 MS. LaFAVE: He goes into the parking lot around --
23 around the rectangle of the hotel and drops dead in the
24 parking lot next door.

25 THE COURT: Okay. And that's the end of anything that's

1 relevant?

2 MS. LaFAVE: Yes, sir.

3 THE COURT: All right.

4 MS. LaFAVE: So -- sorry, Your Honor; let me get my
5 bearings.

6 So, Your Honor, after seeing the video, the easiest way
7 to start this is -- about the law is to summarize what the
8 officer knew because that is the focal point of determination
9 for probable cause and qualified immunity.

10 So the officer knew -- and these are all facts that are
11 not in dispute in this case -- that Dara Washington did pass
12 away at the Budget Inn that night or shortly thereafter and
13 that the autopsy was pending. Dara Washington was assaulted
14 and thrown into a wall by the plaintiff seconds or a couple of
15 minutes before his death. Dara Washington was high and had
16 been for over an hour.

17 Aja Prophet described Dara Washington being beat about
18 the face and the head. The plaintiff lied about striking Dara
19 Washington when he bum-rushed into the hotel. The plaintiff
20 admitted that he threatened Dara Washington before getting
21 into the hotel. That's in the plaintiff's deposition.

22 So that's what the officer knew. He had this
23 surveillance video. He had interviewed the witnesses he was
24 able to interview. He had gone and took care to make sure
25 that the autopsy was as informed as possible. He knew that

1 the tox screen had been sent off and was pending, and that was
2 out of his control.

3 So he went to his supervisor. They contact Solicitor
4 Fyall, and they run the situation past him. He tells him
5 about the video and the circumstances surrounding this
6 gentleman's death.

7 So the question is: What is probable cause under these
8 circumstances? And I will point the Court to Michigan v.
9 DeFillippo, which is 99 S.Ct. 2627. And I have a copy of that
10 case for the Court's review.

11 THE COURT: All right.

12 MS. LaFAVE: Thank you, Judge.

13 So probable cause is that the information, the facts and
14 circumstances within the officer's knowledge are sufficient to
15 warrant that the suspect has committed a crime. There's no
16 question that that was present here, even if it's only the
17 assault and battery of Mr. Washington, who was naked and
18 vulnerable on the floor or being thrown into the retaining
19 wall.

20 Probable cause can be based on uncharged conduct, Your
21 Honor. That is the long-established case of Devenpeck v.
22 Alford. And it's important -- I'm going to circle back to
23 this case, if I may approach. I'm going to circle back to
24 this case because there was a change in one aspect of this
25 holding in 2024, but I think it's distinguishable from this

1 case.

2 So between Devenpeck and Michigan v. DeFillippo, the
3 holding is and the law is that the law -- a reasonable law
4 enforcement officer need not resolve every doubt to have
5 probable cause. Michigan v. DeFillippo is very clear about
6 that. And, further, that probable cause can be based on
7 uncharged conduct. So while even if the ultimate cause of
8 death in this case was confusing, to say the least, to
9 everyone, there's no question that there was an assault and
10 battery here. And even Mr. Green admitted that he would have
11 understood if he had been charged with assault and battery.
12 That's his testimony.

13 So, in my brief, I laid out the other offenses that were
14 not charged but could have been charged. Mr. Green admitted
15 to, you know, having possession of everything that was in the
16 hotel room, that included scales and some drug paraphernalia.
17 There's a wide range of things.

18 But, at bottom, we're looking at obstruction of justice
19 and assault and battery, not to mention that Mr. Green was out
20 on bond for another murder charge. And it is academic that,
21 having contact with law enforcement, drinking and doing drugs,
22 is a violation of bond, which will get you arrested.

23 So the plaintiff has argued that the Chiaverini case now
24 prohibits an officer from relying on uncharged conduct, but
25 that is actually a misapplication of the holding in

1 Chiaverini v. City of Napoleon, Ohio. City of Napoleon, Ohio
2 involved a jeweler who was charged with three different
3 charges, and one of those that got him arrested was money
4 laundering. That charge had nothing to do with the two
5 charges that they had some measure of evidence for, which was
6 receiving stolen property and dealing with precious metals
7 without a license.

8 And so the Court said, well, you can't justify this
9 arrest by having two non-arrestable misdemeanors based on
10 completely different facts. Those do not wash away the lack
11 of probable cause for the money laundering.

12 That is not on point with this case. Mr. Green was only
13 charged with murder. A lesser-included offense of that is
14 assault and battery, and so that is not the same line of
15 analysis as the plaintiff would suggest. So it was their
16 position, Judge, that that is distinguishable from the facts
17 in this case.

18 And so, based on the evidence that has been presented to
19 the Court and testimony of the witnesses in this case, along
20 with the recordings and the evidence that my client obtained
21 at the time, there's no question that there was probable
22 cause, which is a different question than whether or not he
23 could have been convicted beyond a reasonable doubt.

24 Probable cause here is only that it's a reasonable
25 inference from the circumstantial evidence that Mr. Green

1 could have committed murder that night, throwing what he knew
2 to be a very intoxicated person into a concrete wall, who
3 subsequently died. After threatening him, I should mention.

4 But that's not where the analysis ends here, Your Honor,
5 because this is a police officer who is entitled to qualified
6 immunity if his actions were objectively reasonable. Denial
7 of qualified immunity for a government official is immediately
8 appealable, and it is something that our courts have taken
9 very dear care to explain.

10 And so, if I may, Your Honor, I have a case called
11 Torchinsky v. Siwinski, which is challenging my ability to
12 pronounce names today. Thank you.

13 To begin having a qualified immunity, Your Honor,
14 officers do not need to resolve all doubt in their
15 investigations. Torchinsky is a 1991 Supreme Court case, and
16 it provides the basic purpose -- explanation of qualified
17 immunity.

18 The grant of qualified immunity -- this is on page 2 of
19 Torchinsky under subsection A. "The basic purpose of
20 qualified immunity bears repeating. The grant of qualified
21 immunity to government officials ensures that these officials
22 can perform their duties free from the specter of endless and
23 debilitating lawsuits. Without such an immunity, the
24 operations of government would be immobilized. Permitting
25 damages suits against government officials can entail

1 substantial social costs, including the risk that fear of
2 personal monetary liability and harassing litigation will
3 unduly inhibit officials in the discharge of their duties.
4 These concerns are particularly acute when officials are
5 police officers investigating a crime."

6 So, Your Honor, my client exercised his official duties
7 that night in his discretion as an investigating officer, and
8 the heart of the plaintiff's case is that he did not wait on a
9 full autopsy before making an arrest. It's the only thing in
10 the case that actually has any tangible evidence. But
11 Torchinsky stands in the way of that proposition and that
12 attempt to bar my client from being entitled to qualified
13 immunity, because Torchinsky says officers do not need to
14 resolve all doubt and an incomplete investigation does not
15 abrogate immunity.

16 The facts in Torchinsky are slightly different. That
17 officer did not conduct an interview that would have been
18 exculpatory. That was, in that case, something the officer
19 could have done. My client could not have rushed the
20 toxicology results. He could only go with the circumstances
21 that were presented to him at the time.

22 There's also the case of Pritchett v. Alford, Your Honor,
23 and that is the sequitur for my point that I just made, which
24 is this analysis focuses on the information known to the
25 officer at the time.

1 THE COURT: Let me ask you a quick question ---

2 MS. LaFAVE: Yes, sir.

3 THE COURT: --- on the autopsy. I'm looking at the
4 preliminary (indiscernible). It says, "Date of death,
5 12/4/2019. Date of autopsy, 12/5/2019."

6 MS. LaFAVE: Yes, sir.

7 THE COURT: And then (indiscernible), it says, on
8 December 5 (indiscernible) conducted the autopsy.

9 MS. LaFAVE: She conducted the physical autopsy on
10 December the 5th. And if you look at her deposition, Your
11 Honor, she actually was asked if her autopsy was incomplete up
12 until the moment that the toxicology was received, and she
13 agreed with that. She was unable to determine cause of death
14 until February 20th, which was after the date of the
15 preliminary hearing.

16 THE COURT: 2/20?

17 MS. LaFAVE: I believe that's right, Your Honor.

18 THE COURT: 2020.

19 MS. LaFAVE: 2020, yes, sir.

20 THE COURT: So her finding was final on
21 February 20, 2020.

22 MS. LaFAVE: Yes, sir.

23 THE COURT: And the preliminary hearing was
24 February 12th, 2020?

25 MS. LaFAVE: The conclusion and the autopsy was not known

1 to the officer, Mr. Green, or anybody by the time that the
2 preliminary hearing was held. It did come in shortly
3 thereafter, but it was already -- the case had already been
4 dismissed for lack of probable cause at the preliminary
5 hearing because of no cause of death, and then it came in
6 right after that.

7 THE COURT: Right. So what is December 5, 2024, then?

8 MS. LaFAVE: That is when she conducted the physical
9 assessment of what the organs weighed.

10 THE COURT: So that didn't have any bearing on the --
11 (Counsel confer off the record.)

12 MS. LaFAVE: No, 2019.

13 THE COURT: Page 10 at the top, it says, "On December 5,
14 2024" --

15 MS. LaFAVE: Sorry, Your Honor. It should be 2019.

16 THE COURT: No, no, that's fine. I'm just --

17 MS. LaFAVE: Thank you, Chris.

18 That should be 2019.

19 THE COURT: Got it. Okay.

20 MS. LaFAVE: Yeah, she conducted the autopsy -- the
21 physical autopsy. Investigator Simpson and a colleague went
22 to that that night -- that following night to make sure that
23 she was provided with the information regarding the assault
24 and the altercations that he had been involved in. And then
25 she testified -- her deposition is relatively short. She

1 testified that her autopsy was not conclusive until she got
2 the toxicology back the following February, which was, like,
3 three months later.

4 THE COURT: Understood.

5 MS. LaFAVE: Yes, sir. Sorry about that.

6 THE COURT: No, no. That's fine. That's fine.

7 MS. LaFAVE: So Pritchard v. Alford, Your Honor, just to
8 put a pin in that, the decisive fact is not whether the cause
9 of death eventually proved the conclusions of the officer
10 wrong looking back in hindsight. That's not the issue.

11 The issue is whether the facts known to the officer at
12 the time substantiated probable cause and whether the question
13 was open. If Investigator Simpson had misrepresented the
14 cause of death and had been telling people, "No, he didn't do
15 any cocaine, he couldn't possibly have had too much cocaine,"
16 maybe we'd be talking about something different, but that's
17 not what happened. He did communicate to his superior officer
18 that drugs were involved that night.

19 Mr. Truluck has often cited to two doses of crack
20 cocaine. I have absolutely no idea what that means. I know
21 two doses of Benadryl can vary depending on who is pouring it.
22 So I don't know whether, you know, two hits of crack is deadly
23 or not. Certainly my client is not a medical examiner nor do
24 we have specifics on any of that.

25 THE COURT: Right.

1 MS. LaFAVE: So with that being said, Your Honor, the --
2 I would ask the Court to seek guidance from those three cases,
3 which I think are instructive, on point with this case, and
4 establish that my client had the probable cause to charge
5 Mr. Green that night with murder.

6 But even if, Your Honor, the probable cause is lacking
7 here, which it's not, but Mr. Simpson is entitled to qualified
8 immunity as long as his actions were objectively reasonable.
9 Objective reasonability is relied on by the Supreme Court and
10 the courts in the state to add a uniform approach to looking
11 at the decisions made by our law enforcement officers, who are
12 in the heat of the moment and so as to not try to Monday
13 morning quarterback what someone's subjective intentions might
14 have been.

15 So, in looking at this, Your Honor, the threshold is that
16 Investigator Simpson has to be able to show that he had
17 arguable probable cause. And what we have here is a suspect
18 who lied about his contact with Mr. Washington. We have a
19 suspect who is out on bond for a separate murder.

20 THE COURT: Is that relevant? That's one of my questions
21 that I've got written down. Did your client and his
22 supervisor know that he was out on bond for murder? Either
23 way, is that something that I can consider on determining
24 whether or not probable cause --

25 MS. LaFAVE: So whenever there's contact with law

1 enforcement in a situation like this, it is standard protocol
2 to search for someone's criminal background and their criminal
3 record.

4 THE COURT: Right.

5 MS. LaFAVE: And so, if you're dealing with someone who
6 is suspected of dealing drugs and you find out they have a
7 history of drug dealing, well, that person, you know, is more
8 likely to be involved in something like that.

9 And so, certainly, a criminal background check was
10 tantamount to try to understand what was going on in this
11 case. Aja Prophet also did not have a completely clean record
12 and neither did Mr. Washington.

13 THE COURT: Before the warrant was issued, did your
14 client know that he was out on bond for another murder charge?

15 MS. LaFAVE: I believe -- yes, Your Honor. I wanted to
16 be absolutely sure so I asked my client and yes.

17 THE COURT: And I'm sorry to ask a couple of questions
18 here (indiscernible). But so a warrant is issued on December
19 5th. Is he already in custody or did he -- did they go out
20 and get him then?

21 MS. LaFAVE: So Mr. Green was taken to headquarters and
22 interviewed there for about six hours. Part of the delay was
23 that he was not truthful about what had happened for quite
24 some time.

25 THE COURT: When did they do that? When did they pick

1 him up?

2 MS. LaFAVE: They took him from the scene that night. So
3 the people that are leaving the scene are Aja Prophet, Sherman
4 Green, and then the deceased, Dara Washington. They take them
5 down to the station and interview them. Aja Prophet changes
6 her story a little bit at some point and so that did cause
7 some delay. There was calls with Solicitor Fyall and Sergeant
8 Thomas, and then the warrant was issued and he was arrested.

9 THE COURT: Okay. And so, from December 4th, he's taken
10 into custody. Is he in custody, I assume, from that time
11 until the preliminary hearing?

12 MS. LaFAVE: I believe it was 69 days.

13 THE COURT: Okay. And so, at the preliminary hearing on
14 February 12th, 2020, the Solicitor's Office declined to move
15 forward with a murder charge?

16 MS. LaFAVE: At the preliminary hearing, the Magistrate
17 Judge found -- because we did not know the cause of death at
18 that point -- that the case should be dismissed. So they
19 dismissed the case.

20 Once the cause of death was determined and the autopsy
21 was completed, Solicitor Dan Goldberg engaged with Dr. Durso
22 to find out what is excited delirium. No one knows what that
23 is. And he decided ultimately that he thought that the cause
24 of death was -- had weakened the case to the point where he
25 did not feel like he could confidently obtain a verdict beyond

1 a reasonable doubt.

2 THE COURT: And was he charged -- was Mr. Green charged
3 with anything else as a result of this incident?

4 MS. LaFAVE: No, Your Honor.

5 THE COURT: So he was in jail for 69 days. When did he
6 get out? I guess he was out on bond.

7 MR. SHEALEY: He was not out on bond.

8 THE COURT: When he (indiscernible).

9 MR. SHEALEY: Oh, he was out on a prior bond.

10 THE COURT: Right. On the prior bond.

11 MR. SHEALEY: (Indiscernible).

12 THE COURT: (Indiscernible).

13 MR. SHEALEY: Until the prelim gets dismissed.

14 THE COURT: Right. The prelim gets dismissed. And then
15 is he released then?

16 MR. TRULUCK: Yes, Your Honor. And, I'm sorry, I'm not
17 trying to interrupt.

18 THE COURT: No, no, no. I was just asking a couple of
19 questions to catch up chronologically for me. And then I
20 promise I'll get back to you. But I've got this timeline and
21 it kind of trails off right there.

22 And so (indiscernible) decline to prosecute is made
23 ultimately by Mr. Goldberg after speaking with Dr. Durso and
24 then he's released back out on bond?

25 MR. TRULUCK: No, Your Honor.

1 MR. SHEALEY: He was on bond.

2 MR. TRULUCK: Right.

3 MR. SHEALEY: And I think -- I don't think the State ever
4 moved to revoke his bond. So then this charge went away, and
5 I think he was just re-released.

6 THE COURT: He was released and still subject to whatever
7 bond he was on.

8 MR. SHEALEY: Right. Oh, yes.

9 THE COURT: Some of that may not be any -- any relevance,
10 but I just want to get the whole play out there.

11 Okay. Got it. I'm sorry. Go ahead.

12 MS. LaFAVE: No, Your Honor, I welcome the questions, and
13 I agree with Mr. Shealey about what my recollection was about
14 the bond issue.

15 So, again, to be entitled to qualified immunity,
16 Investigator Simpson only has to have arguable probable cause
17 taken objectively from the facts. And I was just going
18 through some of the things that we've already talked about,
19 Your Honor, if I may be allowed to (indiscernible).

20 THE COURT: (Indiscernible).

21 MS. LaFAVE: That we had a suspect who was lying about
22 what had happened, the physical contact he had. He had a
23 video that very clearly shows him striking his head into a
24 concrete wall. He crumbles to the ground, gets up, and was
25 very disoriented. I don't think anybody looking at that can

1 say that he doesn't look disoriented.

2 And even when questions were asked of some of the
3 witnesses, "Have you ever seen someone who was on crack act
4 like this?" no one had ever seen anything like this, including
5 the coroner, who -- this excited delirium.

6 And so -- but my client is not able to know what's going
7 on inside of his body, so he's putting together the
8 circumstances and the facts that are given to him.

9 Aja Prophet is saying she had to pull Mr. Green off of
10 Mr. Washington. She said, "That's enough. You've done
11 enough." And he's hitting him about the head and the face.

12 She does end up having blood on her. We're not sure
13 whose blood that was or where it came from or when it came
14 from, but...

15 And my client knows that there's a pending autopsy. So
16 he does what he's supposed to do. He runs this up the chain
17 through Sergeant Thomas and Lamar Fyall, and as they both
18 testify, "We decided to charge murder."

19 He's not saying that he couldn't have gone against a
20 direct order if he thought it was unlawful, but that was the
21 decision made by the Department. And he was acting in the
22 course and scope of his official duties during that time. The
23 City of Columbia is a defendant in this case. But he is being
24 sued individually. So that's what we're here to talk about,
25 as to whether he's individually liable.

1 And so individual liability for him cannot stand unless
2 qualified immunity falls away. And as long as he has these
3 facts known to him at the time and acted reasonably under the
4 circumstances, then he is absolutely immune from suit
5 individually. We'd ask that the Court grant our Motion for
6 Summary Judgment.

7 THE COURT: All right. Mr. Truluck, you have been very
8 patient. I'm happy to hear from you. I guess I feel like
9 I've got a good grasp of the facts and chronology at this
10 point.

11 Tell me why -- I mean, what facts do you believe that
12 Officer Simpson had and did not share are problematic here?

13 MR. TRULUCK: Well, Your Honor, that's only one part of
14 the (indiscernible).

15 THE COURT: I'm not trying -- for me, I've got to take it
16 in bite-sized pieces. That's -- my mind is real slow. And so
17 what I want to try to get to is what information did he have
18 that he did not share and then what information did he not
19 have that he should have, in your view, received before
20 proceeding?

21 But let's start with the first one. What facts do you
22 allege he had and did not share with either his superior or
23 the Solicitor's Office or anybody else before the warrant was
24 issued?

25 MR. TRULUCK: Your Honor, I'll answer that question, but

1 I think I need to recalibrate the claims as Mrs. LaFave had
2 stated them. We are not suing Mr. Green -- or suing
3 Mr. Simpson because he didn't -- just didn't disclose the
4 facts. The basis of the lawsuit is because he didn't have
5 probable cause to bring this charge.

6 Your Honor, there's additional claims -- and to answer
7 your question, I've got to tell you this part. The claims
8 that we have that are federal -- and, Your Honor, keep in
9 mind: This is -- what we're dealing with today is the federal
10 lawsuit part.

11 THE COURT: Right. Well, do you concede that, if
12 qualified immunity applies, then he's -- then he is not
13 subject to any of the claims that are pled in the Complaint?

14 MR. TRULUCK: No, that wouldn't be true either. That
15 would be true for a substantial portion of them.

16 THE COURT: If qualified immunity -- if there was a
17 finding that Mr. Simpson was subject to qualified immunity,
18 which claims do you assert would remain against him in the
19 case?

20 MR. TRULUCK: The failure to disclose at least, Your
21 Honor -- let me list them and I'll explain the failure to
22 disclose. We have -- it is -- all the claims against
23 Mr. Simpson or Investigator Simpson are brought under 1903,
24 which is essentially two elements which are: Was there
25 clearly a statutory right and did he violate them? But they

1 break up the subparts, and there's cases for each one of them:
2 Failure to investigate, Your Honor -- that's Sevigny v.
3 Dicksey; failure to disclose -- that's Evans v. Chalmers; and
4 then Franks v. Delaware, which is the failure to properly
5 inform the magistrate of the facts.

6 THE COURT: So you say that those would remain even if he
7 had probable cause?

8 MR. TRULUCK: No, Your Honor. I was listing them. The
9 one that would remain would be failure to disclose.

10 THE COURT: Failure to -- so if he was found to have
11 qualified immunity, the only claim against him that would
12 remain as pled in the Complaint is failure to disclose?

13 MR. TRULUCK: I believe that's correct, Your Honor.

14 THE COURT: Do you concede that?

15 MS. LaFAVE: Absolutely not, Your Honor. Immunity is
16 immunity.

17 THE COURT: Okay. And we're not here to resolve that
18 issue right this second. You know, and, again, I know some
19 people get frustrated when I ask questions, but my mind moves
20 a little slower.

21 Y'all have lived this forever, and you know it backwards
22 and forwards. Up until a few days ago, I have never heard of
23 this, and so it's a lot to take in, a lot of claims, a lot of
24 moving parts, a lot of different things.

25 But go ahead. That was the first kind of big question

1 that I had, and it sounds like that everybody agrees that all
2 of them, except for failure to disclose -- and there's a
3 dispute as to failure to disclose. All right.

4 MR. TRULUCK: And, Your Honor, let me clarify failure to
5 disclose. The failure to disclose is not a failure to
6 disclose to the magistrate. It's a failure to disclose to
7 Dan Goldberg, the prosecuting solicitor. So he actually had a
8 warrant issued to arrest Mr. Green before he met with
9 Dr. Durso that morning.

10 THE COURT: Right.

11 MR. TRULUCK: Before he has even spoken to the forensic
12 pathologist about why this guy is dead ---

13 THE COURT: Right.

14 MR. TRULUCK: --- he had a charge. That was the
15 malicious prosecution claim.

16 After that, he had a conversation with Dr. Druso -- and
17 I'll give you quotes in a moment here, Your Honor. I'm being
18 very general just to give you an idea. That Dr. Durso told
19 him, "I don't see any evidence of blunt force trauma. Death
20 by assault."

21 And Investigator Simpson's only response was -- and I'm
22 paraphrasing -- "Keep looking."

23 Now, between that moment, which is just after the arrest
24 warrant was issued against Mr. Simpson [sic] for his arrest
25 and a 69-day incarceration, there's no evidence that

1 Investigator Simpson spoke to Dan Goldberg that entire time,
2 until the charge is dismissed, and then they had a
3 conversation about what was going on, and then Dan Goldberg
4 chose not to press the charges.

5 THE COURT: Okay. Because the autopsy report was not
6 completed until after the preliminary hearing where the charge
7 was dismissed, I guess I go back to my first question, which
8 is: What do you allege that Officer Simpson knew at the time
9 the warrant was issued that he failed to disclose to anyone
10 else?

11 MR. TRULUCK: Okay. So, Your Honor, that's Franks v.
12 Delaware. That's a different claim.

13 THE COURT: I want the answer to that question. I don't
14 care which case and which claim it deals with. What -- the
15 warrant was issued on 12/5. What did he know -- based on the
16 discovery and what you allege, what did Officer Simpson know
17 at that time that he had failed to disclose to anyone else?
18 That's all I want to know.

19 MR. TRULUCK: I got you, Your Honor. And I've got a
20 complete reply. Okay? Your Honor, one, he alleged malice in
21 the warrant. He admitted, one, that he had doubts. It's not
22 a clear contradiction, but he said I have doubts about malice.
23 He didn't want to charge murder. He wanted to charge
24 manslaughter. He (indiscernible) got involuntary, but he
25 wasn't key on murder, and he indicates that Investigator

1 Thomas made him do it, which is also contradicted by
2 Investigator Thomas, who said, "I didn't do that."

3 He said that Sherman Green attacked Mr. Washington
4 without provocation. That is blatantly false. In the video
5 you just watched, Dara Washington has kidnapped Ms. Prophet.
6 She is hiding in the bathroom. She's screaming for help.
7 According to my recollection, she says she has blood on her
8 face.

9 Investigator Simpson knows all of these facts, and he
10 submitted in the warrant: No provocation. This man is in his
11 residence -- has locked him out of his residence, is
12 physically attacking his guest/co-resident and family member.
13 He's naked. He's trashed the room, and she's hiding in the
14 bathroom. That is self-defense. That is Protection of
15 Properties and Persons Act. He has a right to go in there.

16 And even if he had beaten him to death, he probably would
17 still have been within his rights because he is protecting
18 someone in his room. But that's not what happened.

19 THE COURT: Had he had had that discussion about what you
20 just described -- had he had had that discussion with his
21 supervisor before the warrant was issued?

22 MR. TRULUCK: To my knowledge, no, Your Honor. He says
23 he did, and what Mrs. LaFave started this hearing with was
24 saying that, when I say "do not recall" -- I'm not trying to
25 misrepresent that they specifically say it, you know, he

1 didn't tell me that. No, I said "do not recall" specifically
2 because I said, "Did he tell you that this kidnapping was
3 going on?"

4 "I don't recall that."

5 And I can give you specific examples where Lamar Fyall
6 specifically said -- he's the solicitor who is considering the
7 murder charge -- he says, "I do not think so" on certain of
8 these and said, "I would have remembered that."

9 So it is a matter of Investigator Simpson saying, "I kind
10 of told them everything" and Investigator Thomas saying, "I
11 don't recall being told these things" and Lamar Fyall also
12 saying, "I don't recall these things."

13 Now, he's not saying that he wasn't told. He said, "I
14 just don't recall." And Investigator Fyall does say what he
15 doesn't recall and it doesn't include these things.

16 What it basically -- the only thing it seems to be what
17 they recall is what's in that warrant, which is patently
18 untrue. Mr. Green was trying to get in the room.

19 THE COURT: I understand he is trying to get in the room
20 and, you know, she was -- that she and Green testified that
21 she was in the bathroom and all that. I get that. Again, I'm
22 just trying to take it in bite-sized pieces.

23 So you've got the malice, I guess, that you say that he
24 had not discussed or disclosed what he knew about that aspect
25 of it and that it was unprovoked and that at least your

1 allegation is that he did not disclose that at least two
2 witnesses had said the victim was in a room and locked him out
3 and was holding the girl hostage or had assaulted her or what
4 have you.

5 MR. TRULUCK: They had a physical altercation.

6 THE COURT: Right. Physical altercation.

7 MR. TRULUCK: That, Your Honor, that the investigator
8 testified -- and I want to start giving you quotes, Your
9 Honor, because you need to hear exactly --

10 THE COURT: Well, just tell me first. Is there anything
11 else that you allege that he knew when he was sitting there
12 while the warrant is being drafted or before it's being
13 drafted that he's sitting there and he's thinking, "I know
14 about malice, I know this." And what's No. 3? Is there a
15 No. 3?

16 MR. TRULUCK: Yes, Your Honor. I have no idea what the
17 cause of death is.

18 THE COURT: Okay. Don't know what the cause of death is.
19 But I do feel that I saw a video of him getting thrown into a
20 wall, stumbling over, and then immediately dying.

21 MR. TRULUCK: No, dying in a parking lot. Again, Your
22 Honor, that backs up to all the other facts. We've only
23 covered half of it. But, yes, Your Honor, that --

24 THE COURT: Okay. So the cause of death, he didn't know
25 because the autopsy report didn't come out until -- until

1 February of '20. So he didn't know that at the time of the
2 warrant.

3 MR. TRULUCK: Didn't know what? I'm sorry, Your Honor.

4 THE COURT: You just told me that No. 3 on the list is
5 that he did not know the cause of death.

6 MR. TRULUCK: He had no idea what the cause of death was.

7 THE COURT: Had no idea what that is.

8 What else, if anything?

9 MR. TRULUCK: Your Honor, he doesn't appear to inform
10 anybody that this is literally a self-defense and Protection
11 of Persons Act, which is a totality circumstance analysis.
12 It's not "Can we gather all the information that supports a
13 probable cause." It's every fact.

14 THE COURT: And that kind of dovetails in with him
15 knowing the circumstances of the woman being in the -- locked
16 in the bathroom after a physical altercation, that that is the
17 reason, at least based on what your argument is, is that this
18 altercation between Green and the decedent happened was
19 because he was locked out of his room and there was this
20 altercation, so Mr. Green was entitled to go in, and that's
21 why there was a fight.

22 MR. TRULUCK: She's screaming for help. She's got blood
23 on her face. He's naked. The room is disheveled.

24 THE COURT: Right.

25 MR. TRULUCK: Yes, Your Honor.

1 THE COURT: Right. Okay.

2 MR. TRULUCK: And that's all Protection of Property --
3 Protection of Persons Act. He's entitled to get in there to
4 protect it, just like any of us would be if we had a family
5 member in the house.

6 THE COURT: All right. Anything else that he knew at the
7 time that he did not disclose prior to the warrant being
8 issued, either to a supervisor or to the Solicitor's Office or
9 anybody else?

10 MR. TRULUCK: Beg the Court's indulgence, Your Honor.

11 THE COURT: Sure, sure.

12 MR. TRULUCK: And I will refer you in my brief to
13 Thomas's and Mr. Lamar Fyall's testimony. It is much more
14 exact.

15 THE COURT: Yeah, I'm not holding you to it. Again, I'm
16 just trying to put in one circle what he knew and didn't say,
17 and then, in another circle, what didn't he know that you
18 allege he should have found out about. I mean, to me, it goes
19 -- or, you know...

20 MR. TRULUCK: I understand. I think that hits the main
21 topics, Your Honor.

22 THE COURT: Okay.

23 MR. TRULUCK: But if you'll allow me to give you some
24 specific facts.

25 THE COURT: All right.

1 MR. TRULUCK: So I'm going off Mr. Fyall's deposition.
2 So he's the solicitor that -- Mr. Thomas was there,
3 Investigator Simpson was there. This is what Mr. Fyall says.

4 THE COURT: What page is this that I'm under in your
5 brief?

6 MR. TRULUCK: 7. Page 7, Your Honor, top of the brief.

7 THE COURT: Okay. I'm there.

8 MR. TRULUCK: Mr. Fyall -- this is what he says. This is
9 more akin to a "did not tell him" as opposed to a "do not
10 recall."

11 THE COURT: Got it.

12 MR. TRULUCK: Fyall continued to recall, quote, "There
13 were some indication that Mr. Washington was, like, um,
14 unwilling or did not want to fight Mr. Green, and Ms. Prophet
15 tried to convene or inject him to stop Mr. Green from
16 continuing."

17 And then I asked him about whether the -- when I asked
18 about whether the plaintiff was provoked, Fyall explained that
19 Plaintiff, quote, "was trying to get in the room because he
20 had, obviously, some animosity towards Washington for some
21 reason."

22 That is markedly different, Your Honor, than Mr. Green
23 trying to get in the room because his co-resident and relative
24 has been kidnapped, beaten, and he's naked in there,
25 exhibiting drug-induced paranoia.

1 Also, Your Honor -- and some of these are "do not
2 recall." I'll tell you if it's a specific rebuttal. But
3 Lamar Fyall did not recall thinking that the use of cocaine
4 had any variant on his analysis. He did not recall Simpson
5 ever telling him that he wanted to charge manslaughter and
6 didn't want to charge murder. He doesn't recall ever being
7 told that there was evidence of drug-induced --

8 THE COURT: Is that his decision to make, though? I
9 mean -- and, again, tell me if I'm wrong because I'm not sure.
10 I probably am. But, I mean, the officer comes and says, "This
11 is -- these are the facts as I found them when I showed up at
12 the scene and based on what I've done, Mr. Solicitor, and this
13 is everything that I've been able to determine to date. Don't
14 have the autopsy report, but here's what I'm telling you."

15 And is it up to the solicitor at that point to say,
16 "Well, I don't think that's murder." I mean, she could have
17 taken -- is she going to charge whatever Officer Simpson says?

18 MR. TRULUCK: The solicitor doesn't charge. It's still
19 the investigator that charges on his own. It's just a
20 solicitation for guidance. That's all.

21 THE COURT: Well, it says, "Upon this narrative, Fyall
22 approved the probable cause determination for murder." So, I
23 mean, the way I read that is if she would have said, "It
24 doesn't sound like you don't have this, you don't have that,
25 you don't have this, I don't think that you ought to charge

1 murder."

2 MR. TRULUCK: That's correct. Because he didn't tell the
3 solicitor --

4 THE COURT: Right.

5 MR. TRULUCK: -- all these facts that you just asked him
6 about.

7 THE COURT: Okay.

8 MR. TRULUCK: And that's the problem.

9 THE COURT: All right.

10 MR. TRULUCK: If he had, then -- Lamar Fyall specifically
11 said, "Was not informed that Plaintiff (indiscernible)
12 Ms. Prophet was afraid of defendant." Quote, "I do not
13 recall. I don't recall being told that."

14 Mr. Fyall did not recall if Ms. Prophet had been struck
15 by Decedent, that she was bleeding, or that she had been
16 kidnapped.

17 Quote, "All I remember is there was some conversation
18 about something going on between them in the room, and
19 Mr. Green wanting to get in."

20 THE COURT: Right.

21 MR. TRULUCK: And later, Your Honor, quote, "If she had
22 said" -- and this is what Mrs. Prophet told Mr. Green or the
23 investigator before Mr. Green was charged with a warrant, "If
24 she said in the interview with Investigator Simpson he was
25 being hit like a girl and that's all she said about it, then

1 that would be important." That was not conveyed as far as any
2 of the testimony we have that we know, was conveyed to
3 Mr. Fyall either.

4 When asked if an Investigator Simpson ever conveyed to
5 Fyall that he had no idea what the cause of death was on the
6 morning of December 5th, Fyall answered, "No, I don't think
7 so. I'd remember that."

8 THE COURT: All right.

9 MR. TRULUCK: "When asked if Fyall was ever informed that
10 Narcan was administered to the decedent at the scene, Fyall
11 replied, 'I don't think so. I don't -- I just don't recall
12 that'." Your Honor --

13 THE COURT: (Indiscernible) things have to do with it?

14 MR. TRULUCK: Because, Your Honor, all the evidence is
15 pointing to the fact that this was an overdose, not a murder.

16 And Investigator Simpson was not -- he was just going
17 straight to murder.

18 Your Honor, this is a quote from Investigator Simpson.
19 The question is, "So was the statement true at the time, we
20 have no clue why he died?"

21 Answer: (Nods yes.)

22 Quote: "I didn't have any knowledge as far as what
23 caused the death. I just knew he had been assaulted before
24 dying and also that he had consumed drugs before dying."

25 This is what he knew at the time, Your Honor. And

1 Mrs. LaFave has mentioned that. I don't have anything in
2 there for Mr. Green's deposition because that's irrelevant.
3 Mr. Green's deposition is not the focal point. The focal
4 point is what Investigator Simpson knew and what he solicited
5 the magistrate for. He told the magistrate there was no
6 provocation. He told the magistrate it was malice.

7 That's not the only problem with the warrant, Your Honor,
8 which I've handed you up. If you look at the warrant, he
9 doesn't even -- he doesn't allege that Green killed the
10 individual, and he also doesn't provide any means for how he
11 killed him.

12 THE COURT: So what do you think there was probable cause
13 on December 5th of 2019 to charge him?

14 MR. TRULUCK: Nothing, Your Honor. Why would there be
15 anything to charge him? He's --

16 THE COURT: I'm just asking.

17 MR. TRULUCK: No, no. I'm sorry, Your Honor. I didn't
18 mean to be -- I didn't mean to be --

19 THE COURT: No, no, you're fine. I was just asking what
20 your position was so I could -- I was told earlier that
21 Mr. Green said, "Yeah, I expected to be charged" or "I
22 wouldn't have been surprised if they charged me with assault
23 and battery."

24 MR. TRULUCK: That doesn't mean he agrees with being
25 charged with that, Your Honor.

1 THE COURT: That's why I was asking you if we were on the
2 same page with him or not.

3 MR. TRULUCK: Yes, Your Honor. He did say that, Your
4 Honor. That was in the context of damages. And even if it
5 were, that would drastically change the case, giving the
6 charge of assault and battery third degree, a misdemeanor
7 charge.

8 And that is completely relevant. It goes back to the
9 Chiaverini-City of Napoleon case, Your Honor. And I'll
10 explain that in a second, Your Honor.

11 But if I -- if you'll allow me to give you some more
12 information.

13 THE COURT: Sure.

14 MR. TRULUCK: This is Dr. Durso. Quote: "There is no
15 evidence that he was beaten to death."

16 Quote: "If he was not high on cocaine, he would have
17 walked away from the altercation. The cocaine is what caused
18 his demise."

19 And this is Dan Goldberg citing Dr. Durso for a statement
20 that she said was -- she believed was correct. Quote: "This
21 is the most unprosecutable case in her career that was
22 actually relatable to a homicide."

23 And, Your Honor, Ms. LaFave says that Judge Porter, at
24 the preliminary hearing, dismissed it for lack of cause of
25 death. I agree with her that I'm sure that was part of it,

1 but this is the quote that I got from Judge Porter's
2 preliminary hearing. Quote: "There is no evidence in the
3 record whatsoever that the assault caused the death."

4 And, of course, you've already reflected on this record
5 that Judge Hayes has ruled that the existence of probable
6 cause is a fact in dispute, Your Honor.

7 Also, that Solicitor Goldberg, the solicitor assigned to
8 this case, he was asked, "In the surveillance footage, do you
9 ever witness any other crimes by Mr. Green?" to which
10 Mr. Goldberg responded, quote, "Not that I recall." End
11 Quote.

12 MS. LaFAVE: I object to this, Your Honor. This is
13 precisely the misleading information that I was pointing out
14 at the beginning. Mr. Goldberg was shown the video -- he did
15 not remember it -- and then he went and pointed -- he went
16 through each one and he said, Yes, possibly an assault and
17 battery. Possibly obstruction of justice. Possibly this.
18 Possibly that.

19 And so to pick that out is a complete misrepresentation
20 of Solicitor Goldberg's testimony. And that's why I have
21 provided the Court with a copy of his deposition.

22 Your Honor, I didn't mean to interrupt, but that --

23 MR. TRULUCK: I'm sorry, Your Honor. I just got accused
24 of misrepresentation, so let me, please, repair my
25 credibility.

1 Page 48, Dan Goldberg, questioned by I believe -- this
2 may not (indiscernible) yet. That's still my examination.

3 No, I'm sorry; this would be Ms. LaFave's examination.
4 Quote: "In the surveillance footage, did you ever witness any
5 other crimes of Mr. Green?"

6 Answer: "Not that I recall."

7 Question: "Did you observe Mr. Green throw Dara
8 Washington into the wall?"

9 Answer: "I recall seeing a video in which Mr. Washington
10 came out of the hotel room and made contact with the wall.
11 The video does not show what occurs on the inside of the room.
12 That, I recall."

13 Question: "If I showed you that video, would you
14 recognize it?"

15 Answer: "Sure."

16 Your Honor, I'm sorry; I don't know what I've
17 misrepresented.

18 THE COURT: What page is that?

19 MR. TRULUCK: This is page 48 of Dan Goldberg's
20 testimony.

21 THE COURT: Let me look at it.

22 MR. TRULUCK: Sure. It would be the last page of the
23 exhibit, Your Honor.

24 (Pause in the proceedings while the Court reviews the
25 document.)

1 THE COURT: Right. And I think what Ms. LaFave was
2 saying is that, on page 49, I see that he responds after
3 seeing the video at 1506 -- 1506 seconds, "Decedent shoved,
4 pushed, throw him out of the room? Would that be classified
5 as intentional assault and battery?"

6 "It's possible."

7 "Potentially -- for a potential crime in South Carolina
8 for having illegal substances?"

9 "Potentially."

10 "(Indiscernible) other people. Is that a crime?"

11 "Potentially."

12 "For disturbing the peace?"

13 "Potentially."

14 So, I mean, I think that's -- again, I see where he said
15 exactly what you quoted. I think it's just one of these more
16 -- if this was a trial, that's what you would get him to say,
17 and she would come back up and, for completeness, and say,
18 "What did you say after that?"

19 So I don't think anybody -- let me just make this clear.
20 Nobody, I don't think, is misleading this Court. Y'all are
21 very good, experienced lawyers. Nobody is trying to hide the
22 ball. You're just advocating for your respective clients. I
23 get it. Okay? And so we don't need to get too far afield in
24 those issues.

25 MR. TRULUCK: Thank you, Your Honor.

1 THE COURT: All right. So, continue.

2 MR. TRULUCK: Thank you, Your Honor.

3 And, Your Honor, you touched on this before with regard
4 to who charges, how does it charge, and that scenario.

5 Indeed, Defendant's answer, they place blame as a potential
6 defense on Supervisor Thomas, his supervisor at the time.

7 And part of what I believe Ms. LaFave is saying, that
8 they're entitled to qualified immunity -- but, Your Honor,
9 I'll address that in a moment, too -- is that Investigator
10 Thomas, according to Investigator Simpson, forced him to make
11 the charge of murder and said, "This is what you're going to
12 charge. If we present this to Mr. Fyall and he says he's
13 cleared it, it's going to be a charge of murder."

14 Now, in my brief, both in Lamar Fyall's and his
15 supervisor, Thomas, there is a massive absence of them ever
16 recalling -- ever being told all these particular facts that
17 I've told you: The double drug use, not necessarily drug use
18 but the double drug use; the fact that there was a kidnapping,
19 the beating, all of these things. They don't know about these
20 things. These things are massively important to the totality
21 of circumstances of whether or not a crime has been committed.

22 But here is what Supervisor Thomas said, quote: "The
23 investigator has absolute autonomy." Quote: "Investigators
24 make the decision of whether or not to charge people
25 independent of their sergeants." And he further explained

1 that the -- they were employed -- supervisor employed in an
2 advisory capacity to aid the investigator.

3 So he completely rejects this. He puts it back into
4 Investigator Simpson's court and says, "Now, whether or not he
5 decided to do it was totally on his own." And then you've got
6 it combined with Investigator Fyall and Supervisor Thomas that
7 say, "We didn't know about these things." And in some
8 specific instances, Lamar Fyall going so far as to say, "If I
9 had known that, I would have remembered it," not "I don't -- I
10 cant confirm or deny it. But here's what I just know, I would
11 have remembered if he told me."

12 So, Your Honor, there's some stuff that's just not
13 recalled and some stuff that is just rejected that should be
14 in their memories. This was a long time ago. This is the
15 same problem for Investigator Simpson; it was a long time ago.

16 Quote: "If you had told Investigator Simpson he should
17 make a certain charge, would he have the ability to reject
18 that information from you and make his own charge?"

19 Answer: "Well, I wouldn't tell him I would make a
20 charge. If we had probable cause for a charge, that's what
21 we'll charge. And then if there's any decision to do
22 something again, that would be something that the investigator
23 and solicitor would discuss, but no, he can make any charge he
24 chose."

25 And, Your Honor, that gets to the issue of qualified

1 immunity. But I'm jumping ahead of myself because I am trying
2 to accommodate your question.

3 THE COURT: No, no, no. Go ahead. The questions that I
4 -- believe me, as I'm sure you can see, I'm not shy about
5 asking questions. I've got -- I'm up to speed now. It's
6 just, as things come in as she presents it, I've got questions
7 for you about certain things, and as you present, I've got
8 questions for you and for her.

9 And so I'm fine now. I'm not trying to rush you or get
10 you to present any way you don't want to. It's just, if
11 something comes up, if I don't ask it right then, I'm going to
12 forget it. So, please, go at your own pace and at your own --
13 however you want to do it.

14 MR. TRULUCK: I appreciate that, Your Honor. I'm sorry
15 if I was --

16 THE COURT: No, no. Go ahead.

17 MR. TRULUCK: Your Honor, so there are five federal
18 claims all governed by federal law. I don't necessarily
19 disagree with Mrs. LaFave's reference to the State of
20 Michigan's analysis of what probable cause is. But that's not
21 -- that's not mandatory (indiscernible). And we're dealing --
22 this is the Fourth Circuit, so we're dealing with federal law
23 from the United States Supreme Court and Fourth Circuit, and
24 to the extent that the State of South Carolina raises the bar,
25 we're dealing with the State of South Carolina law, Your

1 Honor.

2 The claims that we brought are failure to investigate,
3 which is the Sevigny-Dixon case that says, "Holding an officer
4 who neglected to avail himself of readily available
5 information, which would have (indiscernible) the plaintiff
6 but did not question, is not entitled to qualified immunity."
7 So an officer is not allowed to ignore exculpatory evidence.
8 That's one of our claims.

9 Another one, Your Honor, is the failure to disclose. We
10 touched on this briefly. This is a constant responsibility
11 throughout the case. It doesn't begin and end with the
12 warrant. Even after the warrant, even if he had probable
13 cause of the warrant, he still had a responsibility to inform
14 the solicitor, Dan Goldberg, the assigned solicitor, "Hey, the
15 autopsy -- the forensic analyst says there's no evidence of
16 blunt force trauma." That never happened according to the
17 record we have. And my client sat in jail for 69 days when he
18 might have been released but for that information.

19 So that's the second one, Your Honor. And, that one, I
20 don't believe, is affected by any qualified immunity because
21 qualified immunity wouldn't shroud him after that period when
22 he's continually not telling Dan Goldberg about this
23 information.

24 The other one is Franks v. Delaware, Your Honor. That is
25 also a separate claim. It's a claim that the investigator

1 either omitted or materially misrepresented information in the
2 warrant. If you look at the warrant, Your Honor -- and we've
3 covered a lot of this -- there's an allegation of no
4 provocation, malice. There's an absence that even alleges
5 that Sherman Green killed the decedent. It's totally omitted.

6 I asked Investigator Thomas if he could point it out, and
7 there was a complete absence of response for that. He
8 couldn't do it because it's not in that warrant.

9 There's also an absence of cause of death.

10 Now, Ms. LaFave might point out that you don't
11 necessarily have to say what the cause of death is in the
12 warrant. I might agree with that. But the problem is, they
13 don't even allege that Mr. Green killed him. They leave that
14 completely out of the warrant.

15 When you read the warrant, Your Honor, it's just missing.
16 If Your Honor would like to do it, I'll let you take a moment
17 and let you read it.

18 THE COURT: No, no, no. (Indiscernible) take out your
19 warrant. I've looked at it already. I was reviewing it.

20 MR. TRULUCK: And so, in reviewing what you had asked me
21 earlier, Your Honor -- and I'm quoting Franks -- well, I'm
22 sorry; I'm citing a case. I believe it's Miller v. Prince
23 George's County that cited Franks, quote, "In order to violate
24 the Constitution, the false statements or omissions must be
25 material, that is, necessary to the (indiscernible) magistrate

1 finding of probable cause."

2 Some of these facts that are alleged in there are just
3 completely untrue. To have told the magistrate that this was
4 an unprovoked attack is untrue, Your Honor. To have left out
5 all the facts that establish his right to defend himself and
6 the people --

7 THE COURT: Right. Well, I guess -- I mean, I guess,
8 playing devil's advocate, I mean, when you think of
9 provocation, I mean, I guess there's certain -- you know, if
10 you asked a layman would they say that it's provocation to
11 lock somebody out when there's something in there, I mean, I
12 think -- you know, I don't know what he was thinking. But,
13 you know, provocation by somebody pushing, like to suggest
14 that the victim came out and pushed him or threw the first
15 punch or threw something at him or pulled a knife on him or
16 something like that.

17 But you say it doesn't -- that he should have disclosed
18 all of the background information about what was going on
19 inside the room and let the -- I guess, let the magistrate or
20 let somebody know at that -- let them determine whether or not
21 that's provocation.

22 I'm having a difficult time -- I mean, he might say --
23 when I said "no provocation," I meant that there was
24 (indiscernible) pulled a gun on him or pulled a knife on him
25 or anything. You say that that's not -- that's not painting

1 the full picture; you're withholding information or you're
2 materially leaving it out.

3 MR. TRULUCK: Yes, Your Honor.

4 THE COURT: All right. Okay.

5 MR. TRULUCK: Absolutely.

6 THE COURT: All right.

7 MR. TRULUCK: And, Your Honor -- and just to put it in
8 context, if somebody is attacking my family or my co-resident,
9 I am provoked. I think that's a fair statement. Even if
10 there's any other interpretation, I think that's a fair
11 (indiscernible). And to wipe that out is unfair, Your Honor,
12 and that's not true in assertion to a magistrate.

13 Your Honor, the other two claims which are the primary
14 ones that I believe Ms. LaFave was addressing are the false
15 arrest and the malicious prosecution. So please -- if you'll
16 allow me, I'd like to address those, Your Honor.

17 THE COURT: Sure.

18 MR. TRULUCK: I agree with Ms. LaFave that the primary
19 issue here is probable cause. I think that's what it will
20 come back to every single time. And, Your Honor -- and I'm
21 quoting again. I'm staying within the United States or the
22 Fourth Circuit. Quote: "While the existence of probable
23 cause is normally a question for the jury, material fact."

24 So this is normally a jury issue, Your Honor, whether or
25 not there was probable cause for Investigator Simpson to have

1 charged that. Now, I think there's a lot of evidence that
2 says that there was just a total absence, not just an issue,
3 but that there's a total absence of probable cause. Because
4 if you take the facts and just take out the ones that are
5 inculpatory, then you have a lot to work with.

6 But that's not probable cause. We can't ignore the fact
7 that this man was trying to get into a room to rescue somebody
8 who was claiming help, he's calling 911, and then charging him
9 with murder when the evidence suggests that, when he was
10 administered Narcan -- these are all things that the
11 investigator knew at the time.

12 And I'm sorry, my brief, Your Honor, specifically has
13 these, that Simpson knew that -- I'm sorry, that -- yeah, that
14 Simpson knew that Mr. Green had been detained for assaulting
15 the decedent. He also knew, either through Brewer or other
16 officers, that he had -- was just high and just assaulted
17 Mrs. Prophet, his cousin; that EMS administered Narcan; that
18 Prophet was assaulted by the decedent; that Prophet had
19 started yelling for help; that he was in the window, naked,
20 and Ms. Prophet had blood on her face. And then, of course,
21 we have the whole interview.

22 Now, this is all information that's generally being
23 grabbed on the scene but then proceeds to Investigator Simpson
24 interviewing Mr. Green over approximately a six-hour period.
25 So he's in the detention facility in a room -- and this is all

1 on video. Ms. LaFave has talked about why haven't I submitted
2 Mr. Green's testimony. The video is six hours long. So
3 you've got to pick out parts from the actual conversation.

4 For six hours, he has these conversations with Mr. Green.
5 And when it comes to whether or not somebody is lying about
6 having punched him, I don't think that there was any denial
7 that there was a physical altercation between these two.

8 I believe the term was "tussle." So there's a dispute
9 between the term "punch" and "tussle," but I don't think my
10 client ever denied ever having a physical altercation with
11 him.

12 In fact -- let's see here. So Simpson was asked,
13 "Tussling indicates a physical altercation, doesn't it?"

14 "Yes."

15 And Plaintiff additionally referred to the assault as
16 tussling. That's Simpson at 1:56, Your Honor.

17 I've already covered now, "He had no idea what the cause
18 of death was."

19 There's also Mrs. Prophet's interview, which is going on
20 at the same time. So during the six-hour period before
21 Mr. Green was charged, Mrs. Prophet is being fully interviewed
22 too.

23 Mrs. Prophet's interview, she discloses that he had taken
24 two doses of crack and freaked out and, quote, "So there
25 she's" -- I'm sorry, this is my question to Investigator

1 Simpson: "So there she's trying to express to Plaintiff, who
2 is outside the room, that she is in danger and she needs help;
3 is that correct?"

4 "Yes."

5 That's what she mentioned in the interview right there.
6 So Investigator Simpson is fully aware that this is completely
7 in a self-defense realm. Under the Protection of Persons Act,
8 he has the right to do these things. Even if -- even if there
9 was an issue of whether or not you might charge him in
10 isolation with a murder charge, you can't do that by ignoring
11 the fact that everyone in South Carolina has a right to do
12 these things. It's not probable cause of murder if he's
13 acting lawfully.

14 THE COURT: Well, I mean, has anybody ever been charged
15 with murder and then there's the -- and then there's the
16 immunity hearing before a judge, and then the judge dismisses
17 it? Has that ever happened?

18 MR. TRULUCK: Yes, Your Honor. But not in this case.

19 THE COURT: No, not in this case. But I'm saying, you
20 know, even if there is a -- if you show up at your house and
21 somebody is kicking the door in the middle of the night and
22 he's laying dead on the porch and you're holding a shotgun,
23 you could be charged with murder even though they know that
24 there is self-defense potential there. It's up for a later
25 hearing to determine whether or not that you would be immune

1 or that that charge would not stand.

2 MR. TRULUCK: That's correct, Your Honor.

3 THE COURT: Okay.

4 MR. TRULUCK: But the problem is, is it doesn't -- just
5 because there's immunity doesn't mean that it doesn't have an
6 element in the probable cause analysis at the time. Immunity
7 hearing is relevant for getting the charge (indiscernible) --

8 THE COURT: Right.

9 MR. TRULUCK: But for this civil lawsuit, it matters
10 whether or not he had probable cause at the time. He cannot
11 choose to ignore the fact that this guy was trying to get into
12 his own residence. He can't wipe those facts out of his
13 story.

14 MR. SHEALEY: And to answer your question -- and I'm
15 sorry to cut in to Truluck, but as someone who does a lot of
16 immunity claims, it says right in the statute that law
17 enforcement may not charge unless their investigation shows
18 that the force used was unlawful.

19 So although the reality is that people charged and let
20 the courts figure it out later, they're really not supposed
21 to.

22 MR. TRULUCK: And, Your Honor, I'm going on with
23 Investigator Simpson's testimony. Quote -- and this is where
24 he's elaborating, when I'm asking him questions about what's
25 going on with Ms. Prophet. Quote: "She started attacking and

1 using her hands to punch him in the face and getting him to
2 open the door, but he still was pushing her off and wouldn't
3 let her out. She was mentioning to Mr. Green, who was outside
4 the room, trying to get him to help her to get out of the
5 room."

6 Your Honor -- I'm sorry, I'm going on. "Plaintiff
7 eventually gained entry into the room and engaged defendant
8 such that," quote, "he's not hitting him to cause him
9 bleeding. He's hitting him like a woman."

10 This is what Investigator Simpson is learning before he
11 charges Mr. Green with murder. And, again, Your Honor, the
12 resultant backdrop, he's consistently testified, he had no
13 idea what the cause of death was. If the cause of death was
14 an overdose, it's not murder. He has to be the cause of
15 death, Your Honor.

16 THE COURT: So you believe that he ought to just wait
17 until -- not charge him with anything until the -- until the
18 autopsy came back?

19 MR. TRULUCK: I do not assert what the best practice was
20 for him, but that is certainly -- why not? What was wrong
21 with that? He was going to meet with Dr. Durso that morning
22 about three hours after he got the arrest warrant.

23 THE COURT: I mean, is it -- would you -- I mean -- and
24 I'm just trying to figure out how far that goes. Do you have
25 to have the autopsy result in every case before you charge

1 anybody with murder -- any kind of homicide, manslaughter or
2 anything?

3 MR. TRULUCK: No, Your Honor, absolutely not. And that's
4 not what I'm arguing, Your Honor. I'm arguing that, under the
5 totality of circumstances here, this is a man who is
6 protecting somebody. And not only that, all the evidence is
7 pointing to the fact that this guy is having an overdose
8 episode. He's not being beaten to death.

9 I beg the Court's indulgence, Your Honor.

10 THE COURT: Sure, sure.

11 (Counsel confer off the record.)

12 MR. TRULUCK: I'm sorry, Your Honor.

13 THE COURT: No, that's okay.

14 And, Your Honor, I'm getting off my point. I actually
15 reduced my brief down to 10 pages; this is my crib sheet, so
16 I'm trying to (indiscernible).

17 THE COURT: I'm not -- I'm not trying to hurry you along
18 or anything. It's just, when something comes up, it's better
19 for me to ask it, even if it's a stupid question, because,
20 otherwise, it will hold me up from paying attention and
21 following along.

22 MR. TRULUCK: I understand, Your Honor.

23 And so, Your Honor, I kind of need to reset on this. I
24 want to get some facts out there so we can kind of level the
25 playing field on what we're dealing with here.

1 With regard to the law, Ms. LaFave has talked about
2 qualified immunity. Technically, qualified immunity does
3 incorporate reasonableness, but this is how it really works at
4 the federal level. Qualified immunity works as a reasonable
5 standard, but if it's clearly established, that eliminates
6 reasonableness.

7 So if a case has come out that says, if you arrest
8 somebody on probable cause, you can't come back later and say,
9 "Well, I didn't know you couldn't arrest somebody without
10 probable cause. That's a reasonable misunderstanding." No,
11 the precedent says you cannot arrest without probable cause.

12 There is no -- there appears to be no argument between
13 the parties, between Ms. LaFave and myself. Her brief even
14 admits that the right against unlawful arrest is clearly
15 established. So it's not a reasonable analysis at that point.
16 It's whether or not he violated it. And so we're still back
17 at probable cause.

18 So, Your Honor, I agree: The question is, under the
19 totality of circumstances, was there a probable cause to
20 charge him with murder? I respectfully, Your Honor -- there
21 was no evidence at the time sufficient for probable cause to
22 charge him with murder based on all the evidence. We're
23 talking about the drug use, we're talking about -- and I'm not
24 even incorporating Dr. Durso at this point because,
25 technically, the warrant was issued before that time. Narcan.

1 And him explaining to him what's going on. He's freaked out.
2 He's had a drug overdose.

3 And then we get into the fact that he has a right under
4 totality of circumstances to exercise in self-defense.
5 Self-defense is not separated out under the totality of the
6 circumstances analysis. It's part of it. It all is.

7 And so, Your Honor, when we're just evaluating murder --
8 and, you know, I understand that you have to make an
9 independent decision, but where Judge (indiscernible),
10 absolutely no evidence whatsoever. Judge Hayes, obviously,
11 supports it. There's at least a dispute on whether or not
12 there's probable cause.

13 The Fourth Circuit, this is normally an issue for a jury
14 unless you can completely resolve it. You have to resolve it
15 to, you know, against the light most favorable to the
16 plaintiff.

17 In regard to the alternate charging doctrine, Chiaverini
18 v. City of Napoleon, that came out within the last year. That
19 changed what I actually had been waiting for quite a long time
20 for them to actually address, Your Honor, is that this weird
21 scenario where you can get charged with one charge and that
22 charge turns out to be, you know, an inappropriate charge,
23 much like I'm submitting in this case, but then you might have
24 probable cause for other charges.

25 Here's what the Supreme Court of the United States, with

1 the current (indiscernible), this is what they cited, Your
2 Honor. Beg the Court's indulgence.

3 THE COURT: In which case is that?

4 MR. TRULUCK: This is Chiaverini v. City of Napoleon.
5 Mrs. LaFave handed up a copy of it. Let me try to get you the
6 exact paragraph.

7 And, Your Honor, I'll just read you the holding from the
8 case. "The presence of probable cause for one charge in a
9 criminal proceeding does not categorically impede a Fourth
10 Amendment malicious prosecution claim related to another
11 baseless charge."

12 So, Your Honor, what it comes down to, the Court hasn't
13 specifically decided this yet, but they gave three different
14 ways to interpret this. One of them is, if one charge is
15 bogus, you can sue for the bogus charge. The other one is, if
16 one charge is bogus but maybe another charge is legitimate,
17 then we do an approximate analysis. We try to determine,
18 well, he was charged with murder but he could have been
19 charged with assault and battery third degree. How bad would
20 the assault and battery third degree ruined his life versus
21 the murder charge? Well, he spent 69 days in jail on a murder
22 charge.

23 THE COURT: Well, if he would have been -- and that's why
24 I was asking, if he was arrested for jaywalking, his bond
25 could have been revoked. I mean, if you commit a crime when

1 you're out on bond, that's a violation of the bond. Does that
2 play any role in that?

3 MR. TRULUCK: Your Honor, there's no testimony on the
4 record that anybody was going to revoke his bond. We need
5 positive evidence of that.

6 Is it possible? Yeah, anything is possible.

7 THE COURT: All right.

8 MR. TRULUCK: But here's what -- here's where I think the
9 Court is going to come down on this. So it comes to three
10 burdens. One, one charge is bad, you can sue. All right?

11 The other one is one charge is bad, maybe another one is
12 good. That's the one I think they're going to go with
13 eventually. And that one says it's proximate analysis. What
14 that means is you get -- like this case, you get charged with
15 murder, that one turns out to be bad but you've got a
16 magistrate charge over here they could have brought. How much
17 would that have disrupted everything? Seriously? If he had
18 been charged with a magistrate charge, he would have gone to
19 jail for a maximum of 30 days.

20 Justice Toal issued an order -- and, Your Honor, again,
21 this is all in my brief. And this is not -- this is not
22 speculation. This is current --

23 THE COURT: And you would say that it's speculation that,
24 no matter what he would have been charged with, they would not
25 have revoked his bond because nobody has testified --

1 MR. TRULUCK: That would have been the result of the
2 bond, right.

3 THE COURT: Understood. Even though it could have been
4 done, obviously, but nobody has testified that was going to
5 happen.

6 MR. TRULUCK: Right. And even still, even if we go to
7 trial and we do bring that up, my position is going to be why
8 is that coming up now?

9 Your Honor, with regard to Justice Toal's Order, which
10 has been out there I think since 2010, quote, "It is ordered
11 that, when a defendant charged with this summary-level offense
12 and is unable to make bond and is detained pretrial for the
13 maximum amount of time the defendant received and convicted of
14 the offenses, the on-call bonding agent -- bonding magistrate
15 or municipal court judge shall immediately convert the
16 defendant's surety bond to a personal recognizance bond."

17 So unless he's getting charged with murder, manslaughter,
18 involuntary, anything else is not going to hold him like this
19 murder charge is. And, again, I submit, this is an argument
20 to be made at trial --

21 THE COURT: No, I get it. That was just a question that
22 I had because, you're right, I mean, 69 days -- if it would
23 have been something that was 30 days, very different. But I
24 just wasn't aware if that had been a point of any deposition,
25 whether it was Mr. Goldberg or anybody else (indiscernible) or

1 if it happened.

2 MR. TRULUCK: No, Your Honor. I think at the point that
3 Mr. Goldberg got involved and had finally a change to really
4 look at it ---

5 THE COURT: Right.

6 MR. TRULUCK: --- he was done. And those questions
7 weren't asked either, Your Honor.

8 THE COURT: Okay.

9 MR. TRULUCK: Your Honor, getting back to the qualified
10 immunity issue, Your Honor, it is possible for Investigator
11 Simpson to have availed himself of the defense of qualified
12 immunity, but in order to do that, Your Honor, he has to make
13 a full -- and I'm quoting -- this is from Shrewsbury v.
14 Williams, a 2021 case; again, in my brief, Your Honor. He has
15 to make a full, correct, and honest disclosure of all material
16 facts known to him for which (indiscernible) would have
17 reasonably or should have known. And this defense usually
18 presents a jury question.

19 Again, quoting Shrewsbury v. Williams, Your Honor, quote,
20 "The defendant must prove that he sought the advice of
21 counsel."

22 So to the extent that Ms. LaFave is saying this is
23 qualified immunity, at least Shrewsbury v. Williams is saying
24 the burden is on the defendant to prove this. And, Your
25 Honor, that's usually a jury question.

1 And so, to the extent that he is arguing that he's
2 entitled to "advice of counsel" defense, well, the problem is,
3 is that Mr. Fyall and Supervisor Thomas just don't know what
4 he's talking about. They can't say that it was never said,
5 but they do not remember. And, in some instances, Solicitor
6 Fyall flat out says, "I don't remember that. I think I would.
7 Why, for example, I have no idea what the cause of death is."

8 This is a critical piece of evidence that he is saying,
9 "Well, I'm going to get a murder charge. I'm going to go to
10 the judge and swear out this murder. But I don't know what
11 the cause of death is." And there doesn't seem to be any
12 contradiction about that statement.

13 So, Your Honor, when it comes to qualified immunity,
14 there's precedent on it, which there is precedent for the
15 advice of counsel, it still has to be proven by the defendant
16 that he made these full -- fair and full disclosures, and the
17 record does not support that. You've got two people who were
18 there that's going "I didn't know about that" or "I don't
19 recall." Some of it is flatly "I just don't recall."

20 But when I asked them this, you think they would.
21 Investigator Simpson seems to have a clear memory. But his
22 testimony also evolved over the deposition. When I started, I
23 said, "Tell me everything because I want an untainted
24 version." He said everything as to the warrant; that's what
25 we talked about. So the warrant.

1 And I pinned him down on that. I said, "So this is what
2 you told?"

3 "Yes."

4 Okay. Which, incidentally, is untrue. No provocation.
5 Malice. These are things that he not even endorsed personally
6 and are contradicted by the facts.

7 But as we went on and I kept asking this question, that
8 became -- that developed a little bit more. I would never say
9 it developed to the degree that it is a full or fair
10 disclosure, but, again, this is a jury issue about testimony.

11 And, Your Honor, the other thing that is a little bit
12 tricky, I would say -- and it may not be tricky for you, but
13 it's an important distinction -- is that the 1983 claims, the
14 failure to disclose, the failure to investigate, in the Franks
15 v. Delaware, those are important claims, but they're not the
16 ones that really simplify the case.

17 The simple ones are the false arrest and the malicious
18 prosecution. The allegations of the plaintiff are, is that,
19 when he took him into custody, he went straight from the scene
20 to Investigator Brewer where he spent six hours, most of it
21 sleeping on the floor, while they interviewed Ms. Aja Prophet
22 and him. He wasn't free to leave during that time. He was in
23 custody without a warrant.

24 Now, if they're investigating a charge, I don't know what
25 charge they're going to make against him at that time, but I

1 submit there was no probable to charge him with anything
2 because he was acting lawfully.

3 And, Your Honor, give you the cite. So State v. Long,
4 one is not guilty of taking a life of one who assaults a
5 friend. State v. Burroughs (ph), can be acting lawfully
6 although otherwise committing a crime if during self-defense.

7 So that has to be taken into the totality of
8 circumstances of what he's doing. But when you're looking at
9 this, Your Honor, you know, they're investigating him, he's in
10 the room for six hours. They haven't charged him with
11 anything.

12 Now, whether or not they would have, should have, they
13 didn't. I don't know what -- I can't carry the defendant's
14 argument for that. But when they finally did charge him with
15 murder, the only inconsistency that I'm aware of in the
16 testimony was that Mr. Green was saying we had a tussle and
17 then he eventually admits that he punched him. That's it.

18 There's all this evidence that he had overdosed. There's
19 the investigator saying, "I don't know what the cause of death
20 is," but he went to a magistrate and told him it was murder.
21 There's all this evidence that it was a provoked attack by
22 attacking his family member, which he's -- defense of others
23 is also completely lawful.

24 And so, Your Honor, the two main claims are false arrest
25 and malicious prosecution. The tricky part is, is that the

1 Franks v. Delaware case is about the warrant. That's not
2 necessarily tied into the false imprisonment claim, but if the
3 warrant is found to be questionable, which Judge Hayes also
4 found the warrant in this case to be questionable for the
5 reasons that I just told you, that it doesn't actually even
6 identify what the investigator thinks is the reason this guy
7 died, he's just alleging murder, or does he even allege that
8 Green is actually the one who killed him other than
9 (indiscernible).

10 But that there's questions about that. And then the
11 failure to tell the magistrate anything about this, the
12 failure of these -- the supervisor and the solicitor, who was
13 on-call, to recognize these things.

14 So, Your Honor, the Franks v. Delaware does come into
15 malicious prosecution, but if it turns out that, ultimately,
16 it's decided that the warrant was invalid because of these
17 (indiscernible), then it kind of turns the whole case into a
18 false imprisonment case. But if the warrant is determined to
19 be valid, well, then, it's a malicious prosecution case.

20 And as we've already covered with Chiaverini v. City of
21 Napoleon, probable cause for another crime does not affect
22 that. And I have done case updates in the Fourth Circuit for
23 the Chiaverini cases. There's very few -- there's about four
24 or five of them because it just came out in the last year, and
25 mostly, they're just echoing that sentiment. And mostly what

1 they're saying, from what I recall, is it's prison inmates who
2 are filing these claims, and they're not being conscientious
3 enough to include the malicious prosecution claim. So they're
4 getting dismissed because they're saying, "I was unlawfully
5 arrested pursuant to the warrant," and they're saying that's
6 not false arrest, that's malicious prosecution.

7 So they're getting their cases dismissed, but they're
8 making footnotes saying, "Put it under Chiaverini." Now we
9 have to consider, if it had been a malicious prosecution
10 claim, whether or not alternate probable cause would change
11 the outcome.

12 So, Your Honor, I believe that is absolutely the law of
13 the land now. The Court pointed out the terrible
14 inconsistencies of having someone charged with something
15 incredibly horrible like a serious drug charge versus
16 something incidental like a trespass but being barred from
17 being able to sue the investigator, and they said that's not
18 what we're going to do.

19 THE COURT: Right.

20 MR. TRULUCK: And, Your Honor, let me go back to -- and
21 I'm bouncing around way more than I anticipated. But talking
22 about the qualified immunity, Your Honor, would be -- with the
23 Torchinsky case. I have cited the Merchant v. Bauer case,
24 which talks about Torchinsky, and it reins Torchinsky in. And
25 what it essentially says is that, yeah, what we said in

1 Torchinsky about there being this "advice of counsel" defense,
2 again, Your Honor, which they have to prove and which is
3 normally a jury issue, they distinguish it and they say that
4 this essentially says -- and we still go back to a probable
5 cause analysis -- and, again, it's fully quoted in my brief,
6 but the highlights are that the distinction is saying it was
7 arguable that probable cause actually existed in Torchinsky.
8 So that was part of the reason that Torchinsky -- that the
9 defendant in Torchinsky got qualified immunity because he
10 arguably had probable cause.

11 This is why I keep saying it all comes back to probable
12 cause. If there's a lack of probable cause that's been
13 clearly established, there's no qualified immunity for that.
14 So if we have a lack of probable cause, qualified immunity is
15 not an appropriate remedy for the defendant.

16 Separate from that is the advice of counsel. With the
17 advice of counsel, yeah, I would agree that is also a defense
18 that can stand separate from the lack of probable cause
19 argument. Again, the problem with this is that the record is
20 replete with these lack of information or literally "I would
21 have remembered that," it's not quoted, and Investigator
22 Simpson saying things that are wholly inconsistent which were
23 like, "I don't know what the cause of death is" and "I didn't
24 want to charge murder and I was forced to charge murder" and
25 "I don't believe there's malice."

1 If these things were told to the magistrate at the time,
2 I can't imagine a magistrate signing off on a warrant under
3 those circumstances and being told that this guy is defending
4 his relative and he's trying to get in and she's bloody, that
5 she's so screaming (indiscernible) 911.

6 So, Your Honor, I respectfully submit that there is at
7 least a genuine issue as to whether or not there was probable
8 cause for murder, and I believe that's supported by the
9 rulings that we've had so far in this case. If there is any
10 basis for probable cause under the charge, I submit it's not
11 there because we're still dealing with the self-defense issue.
12 But even if we are -- even if they can prove that there was
13 probable cause for another charge, which would be inconsistent
14 with what he's doing, but if they can do that, then we still
15 get to the analysis of "Are these other charges going to cause
16 him the damages that improperly charging him with murder would
17 have?" And based on (indiscernible), that almost right there
18 categorically stops that.

19 Now, Ms. LaFave does talk about obstruction of justice.
20 I think that's the last thing I need to touch on. I
21 apologize, Your Honor; I really do have an outline from top to
22 bottom, and I know I've jumped around a little more than I
23 wanted.

24 THE COURT: I think I am part of the cause of that, so,
25 again, don't feel -- go back and do whatever it is. I want to

1 hear that. I know I skip around some, but I'm not as
2 experienced in these things as all of you are.

3 MR. TRULUCK: Your Honor, the obstruction of justice
4 claim. Again, so this will go into the Chiaverini v. City of
5 Napoleon case.

6 The other thing is my computer has been playing a game
7 where it likes to shut down my mouse function altogether.

8 THE COURT: Well, that's not my fault.

9 MR. TRULUCK: No, no.

10 THE COURT: (Indiscernible.)

11 MR. TRULUCK: I want to get this quote for Your Honor.
12 Well, I'll do it off memory then. I can get you the case cite
13 if there's any doubt or if Ms. LaFave thinks I'm
14 mischaracterizing, and I'll be happy to correct it.

15 But when I asked the investigator, I said, you know, if
16 he was the cause of death -- and I think the investigator
17 genuinely has a hard time accepting that. In fact, he
18 actually rejects even Dr. Durso's current analysis. "I don't
19 think that's true."

20 But even if the cause of death was -- let's say I've
21 resolved that in your mind, what would you have done?

22 And he indicated, "Well, I might have charged him with a
23 magistrate charge."

24 And of course the cause of death, murder, manslaughter,
25 involuntary, down the line. "I might have charged him with a

1 magistrate charge."

2 There's no indication in his testimony he was going to do
3 anything else. No obstruction of justice or anything like
4 that. But, Your Honor, when it comes to obstruction of
5 justice -- and this is where I was getting at -- is that the
6 obstruction of justice charge does not stand, at least from a
7 misprison of a felony -- misprison of felony being also
8 identical charges -- that, first of all, how do you charge
9 someone with obstruction of justice based on, one, an
10 allegation that "we knew that there was a tussle that the
11 then-suspect, Mr. Green, is not denying there's a physical
12 altercation." The video shows the physical altercation. And
13 he throws him out of the room. He cannot deny it.

14 But he refers to it as a tussle and later admits that it
15 was a punch. Okay? One, that alone is a question of whether
16 or not that's going to amount to obstruction of justice, that
17 one change in fact.

18 Second, an obstruction of justice charge cannot stand
19 when an individual is being falsely imprisoned. So if you're
20 falsely arrested, you can't charge somebody with obstruction
21 of justice for not giving you the information you want. We
22 just don't (indiscernible), Your Honor.

23 But more importantly -- and I'm citing State v. Carson,
24 Your Honor, "When the speaker reasonably believes that the
25 information concealed could be used against him in the

1 criminal prosecution as an accessory or a principal in the
2 underlying felony, then the privilege bars a misprison
3 prosecution."

4 Now, in this case -- I know Ms. LaFave has picked up on
5 this -- that he didn't want to say the word "punched," because
6 -- and I'm paraphrasing, but I think it's a fair paraphrase --
7 "I don't want to get involved in this. Like I don't want to
8 get any more into this than I've already been in it."

9 It's clear that he's trying not to use the word "punch"
10 because he doesn't want to further incriminate himself. And
11 in the State v. Smith case, it goes on to say -- and this was
12 a lady in this case -- "She was, therefore, entitled to a
13 directed verdict on the misprison charge because her
14 concealment of inculpatory information was protected by her
15 privilege against self-incrimination."

16 So I don't believe there's probable cause for anything
17 because what he's doing is trying to break into his own room
18 to help somebody who is a relative or a friend, which is
19 completely covered by self-defense and Protection of Property
20 and Persons Act.

21 Even if there was -- even if they could make that
22 argument, we're dealing with magistrate-level charges or we're
23 dealing with a charge that is based on using the word "punch"
24 versus "tussle."

25 So the ultimate charging doctrine factually just doesn't

1 work; legally, it doesn't work; and according to Chiaverini v.
2 City of Napoleon, it still has to be, at the best, a proximity
3 standard. And that's me choosing Option No. 2. Option No. 1,
4 doesn't (indiscernible).

5 The third option that they provided, which is the old
6 standard, which (indiscernible) charge wipes it out, and they
7 clearly rejected that and said, "We're not doing that anymore.
8 We're not going to say, if you get a trespass charge, you
9 can't sue for a murder charge." That doesn't make any sense.

10 Again, Your Honor, I apologize for jumping around. If
11 you can just bear with me just a second, I want to make sure I
12 have hit on the --

13 THE COURT: No, no, no, no.

14 MR. TRULUCK: I appreciate your patience.

15 Your Honor, I think there was some things Ms. LaFave
16 mentioned, that I had not cited any of Mr. Green's testimony
17 in my brief. Of course I haven't, Your Honor. Mr. Green is
18 not the object.

19 THE COURT: (Indiscernible) she said, yeah, that's fine.
20 I mean, you (indiscernible), you know, 31-page memo
21 (indiscernible) brief. There's plenty of argument in that.
22 The fact that you quote something else, I don't have a problem
23 with it, but if you want to address it.

24 MR. TRULUCK: Well, I just wanted to tell you why. It's
25 because it's not really relevant. Even if Mr. Green has this

1 really, really grandiose story about what was going on, which
2 there is a very legitimate story of what's going on, it's not
3 the point.

4 The point is Investigator Simpson's mind. So there's no
5 point in citing Mr. Green. Mr. Green could have said that he
6 pointed a gun to (indiscernible). If Investigator Simpson
7 doesn't know that, then it's not relevant. So Mr. Green's
8 testimony is not relevant for the most part.

9 And with regard to the (indiscernible) and if we look at
10 this -- and we can look at this citation if there's any
11 question about it. What she's asking about the assault and
12 battery third charge, that's when we're talking about damages.
13 We're talking about, you know, what would have happened if you
14 got assault and battery third charge.

15 My reading of that testimony in the deposition I was at
16 -- Mr. Green wasn't saying, "Oh, I'm okay. There's probable
17 cause for assault and battery," that's not what he was saying.
18 What he was saying was that, if I had been charged with
19 assault and battery third degree, ultimately, we probably
20 wouldn't have been here, because he probably would have bonded
21 out the next day and that was the end (indiscernible).
22 Instead, he got charged with murder and spent, you know,
23 getting close to three months in jail, something that the
24 Chief Justice now there was no probable cause for that. So I
25 wanted to clarify that, too, Your Honor.

1 With regard to the toxicology report, that's irrelevant
2 after he gets released as well, although it essentially
3 exonerates Mr. Green, but it's not relevant. It doesn't
4 matter that she ultimately determined that it was cocaine and
5 excited delirium. What matters is, when he was in detention
6 and Investigator Simpson had the responsibility, according to
7 the Fourth Circuit, to disclose the material facts to the
8 prosecutor, is that he was told that there's no evidence of
9 blunt force trauma, that he wasn't killed by a physical
10 altercation, and that Investigator Simpson knew this from the
11 autopsy all the way through his incarceration and didn't
12 report that to Solicitor Goldberg.

13 The other murder charge, Your Honor, that has nothing to
14 do with this case. Unless they're trying to argue that this
15 is a modus operandi case, there's no relevance that he has
16 been previously charged. In fact, I have no doubt, through
17 their trial list, that that would probably be excluded as
18 inadmissible past behavior evidence. So I don't think that
19 should come into analysis whether or not he could be charged
20 with murder in this case. We don't charge murder for murder
21 because they've ever committed murder in the past. We don't
22 do that.

23 And again, Your Honor, I think Ms. LaFave also touched
24 on, you know, asking, you know, did anyone ever say if I knew
25 this fact, I wouldn't have advised probable cause. Lamar

1 Fyall did testify -- and I beg the Court's indulgence for one
2 moment. And I've already covered this, but I want to address
3 what Ms. LaFave said, that how he was being attacked in the
4 room, the decedent, how he was being hit, that made a
5 difference. That was important. And that there was drug use;
6 that's important.

7 But there's no point in asking Mr. Fyall or Mr. Goldberg
8 their determination on probable cause, because it's not their
9 business. It's the jury's business to make that
10 determination. So there's no point in me asking that
11 question.

12 But asking them if it matters? That's important. And
13 Lamar Fyall did find that it was important to know what was
14 the actual physical altercation that was happening in the
15 room.

16 I don't want to go further than I can, Your Honor.

17 MS. LaFAVE: What page?

18 THE COURT: That's fine. And I'd like to -- I know we're
19 getting late here. I don't mind. I mean, we can sit here for
20 as long, but I know that there are other folks that do need to
21 get away.

22 So do you have anything that you want to hit -- wrap up?
23 I want to give Ms. LaFave an opportunity -- a short
24 opportunity to wrap things up for us.

25 MR. TRULUCK: Well, Your Honor, I'll rely on my brief

1 with that regard. But you can see the quotations in there
2 with regard to Mr. Lamar Fyall and regard to Supervisor Thomas
3 and looking at whether or not the information that was being
4 asked of them would have had any bearing.

5 And on these two or three different occasions, I can
6 remember specifically Solicitor Fyall saying, "I didn't know
7 that and that might have been important to me."

8 THE COURT: All right. Okay. Thank you, Mr. Truluck.
9 All right. Ms. LaFave, you've been very patient.

10 MS. LaFAVE: Thank you.

11 THE COURT: It's your motion, and I'll give you the last
12 word.

13 MS. LaFAVE: Thank you, Judge. I appreciate the Court's
14 patience and indulgence today. I know this is complicated.

15 The Court began the response by Mr. Truluck by asking
16 specifically what was -- they failed to disclose. And I wrote
17 those down.

18 The first was malice. And as Your Honor saw in the
19 video, Mr. Green can be seen making threatening motions and
20 yelling. And he even testified that he said, "I've got
21 something for you right here," that he was threatening, once
22 he got in there, that he was going to do something to him.
23 Aja Prophet even said Dara Washington didn't want to fight.
24 She had to get Mr. Green off of him.

25 So while, yes, maybe at some point there was a colorable

1 argument that Ms. Prophet had to put herself in the bathroom
2 to get away from Mr. Washington, she actually disclosed to
3 Investigator Simpson that she felt comfortable enough in the
4 room to walk past him to unlock the door. He was subdued and
5 on the floor, in the corner, naked.

6 So, yes, Investigator Simpson did put malice aforethought
7 based on what he saw in the video, which the Court has access
8 to. You can see that moment of calm where everything else
9 walks away.

10 It is arguable, Judge, that he was angry about
11 Mr. Washington disrespecting him, rushed in, and beat him up
12 and had to be pulled off of him because he was so angry.

13 So I agree with the Court. The Court's wise in
14 recognizing provocation being shoved first, and Aja Prophet's
15 statements about that were very clear.

16 And so I will reference that 15-minute call that was
17 testified to. Ms. Aja Prophet was -- we tried to depose her,
18 Judge. She never responded to any of our attempts, but she
19 does state in her statement she was not afraid for her life.
20 I have provided the Court with a copy of her recorded
21 interview.

22 Investigator Simpson did not know the cause of death
23 officially because everyone knew that the tox screen was
24 pending. And so to, you know, represent to the Court that
25 there is this concept that Investigator Simpson pretended that

1 he knew the cause of death and actually didn't, it's just not
2 -- it's a -- there's no actual fact in that conclusion that
3 makes any sense for any material issue in this particular
4 case.

5 They didn't know anything about the cause of death until
6 after the tox screen came back. Mr. Truluck kept saying that
7 the investigator didn't tell Solicitor Dan Goldberg about the
8 tox screen or the official cause of death or that blunt force
9 trauma could not have resulted in his death. He was never
10 told that. There was no discussion between he and Dr. Durso
11 after the autopsy until she and Dan Goldberg have a
12 conversation about excited delirium.

13 He was not part of that conversation. So there's nothing
14 for him -- there's no point for him to disclose. There's no
15 duty for him to be calling the coroner's office and checking
16 on that because he has nothing to do with the lab results.

17 So self-defense and provocation of other persons.
18 Mr. Truluck spent a very long time telling this Court that
19 Investigator Simpson did not disclose to Sergeant Thomas or
20 Investigator Fyall about Aja Prophet being trapped inside and
21 what went on inside that room. That is not the testimony in
22 this case.

23 Page 27 of Arthur Thomas's deposition, he specifically
24 said that they reviewed the video evidence and the witness
25 statement. Line 9. That is Aja Prophet, Judge.

1 And Aja Prophet is the one that was interviewed, that was
2 video, that wrote a written statement that laid all of this
3 information out. Arthur Thomas said they went through all of
4 that stuff and decided whether they had probable cause before
5 calling Lamar Fyall.

6 So to say that Investigator Simpson had something that
7 wasn't being provided, it's certainly not the witness
8 statement of the alleged family member that was inside the
9 room.

10 Mr. Truluck kept referencing the idea that Investigator
11 Simpson neglected to avail himself to exculpatory evidence. I
12 have absolutely no idea what exculpatory evidence was
13 available to Investigator Simpson at the time that he charged
14 murder.

15 Exculpatory evidence is to reflect the innocence of
16 Mr. Green. The video clearly shows him throw him into a wall.
17 He stumbles around the corner and dies. We have a witness who
18 says everything in that room was calm before he bum-rushed in
19 to jack him up.

20 He keeps citing to Franks, that it must be a material
21 misrepresentation. There's no testimony about any witness.
22 Yeah, it might be important. It might be something that we
23 want to think about. It might be something that I would ask a
24 question about, but not a single person said it was material
25 to the decision of whether probable cause existed, and that is

1 the ultimate issue here.

2 The defense of others act. I can appreciate counselor's
3 recitation of that, but the video evidence is the clearest
4 witness about what this investigator knew. And Aja Prophet
5 does not in any way indicate that she was scared for her life.
6 She was asked specifically about that and said that she was
7 not.

8 And confusing affirmative defenses with probable cause is
9 running afieled of what's in front of the Court at the moment.

10 MR. SHEALEY: (Indiscernible).

11 MS. LaFAVE: Thank you, Mr. Shealey. I wasn't saying
12 that the statute was an affirmative defense. I was saying
13 self-defense as one of the affirmative defenses, but thank
14 you.

15 Mr. Truluck has grossly misstated qualified immunity. It
16 is arguable probable cause for qualified immunity. While
17 Judge Hayes may have said that the warrant was lacking and the
18 judge for the preliminary hearing said that the warrant was
19 lacking, okay. But even if we accept that, even though I
20 disagree that there's not probable cause here, my client is
21 still entitled to qualified immunity. They can sue the City
22 for all of the reasons that he stated, but the question is
23 whether he is individually liable for a constitutional
24 violation.

25 And Chiaverini did not decide the proximity analysis that

1 Mr. Truluck has tried to extend that ruling to. He said it
2 once but keeps going back to what he thinks they're going to
3 do. The Court simply did not go that far.

4 And, in this case, there was not multiple charges that
5 didn't share accepted facts. These -- all these charges share
6 accepted facts are admitted. There's not a fabricated charge
7 here that's being hidden among legitimate charges, which is
8 the suggestion.

9 THE COURT: Is there any finding that Judge Hayes made in
10 his Order that I'm bound by as a law of the case?

11 MS. LaFAVE: So the -- it's interesting, Judge, is that I
12 did look at that, and other than the warrant not stating the
13 cause of death, the charges -- or the claims, rather, against
14 the City are a completely different body of law than --

15 THE COURT: No, no, I understand that they're different
16 and they're different defenses and all that --

17 MS. LaFAVE: That's right.

18 THE COURT: --- but, I mean, that doesn't mean that Judge
19 Hayes couldn't have found some fact -- made some fact-finding
20 or made some legal, you know, finding of law that still might
21 be the law of the case. I just don't know the answer to that.

22 I know that it's not even the Final Order because he's
23 got it under advisement or there's a Motion to Reconsider, but
24 I just wanted to ask that in a little more detail. I know I
25 asked do we need to hear that -- does that need to be decided

1 before I hear this? No, that's fine. But I also wanted just
2 to make sure that there has not been a finding of fact that
3 I'm bound by.

4 MS. LaFAVE: So, in my brief, Judge, No. 3, the issue is
5 whether a finding of probable cause by a neutral, detached
6 magistrate is prima facie evidence of the existence of
7 probable cause. That argument, based on Judge Hayes's Order,
8 is not being argued today, and I will withdraw that just from
9 the standpoint of simplicity's sake.

10 THE COURT: Okay.

11 MS. LaFAVE: I do think that his determination about the
12 warrant -- assuming that that ruling sticks -- I do think that
13 that undermines my ability to bring the third argument. But I
14 don't necessarily need it for arguable probable cause for
15 purposes of qualified immunity.

16 THE COURT: Understood.

17 MS. LaFAVE: So I will say, Judge, I wanted to -- I want
18 to correct the record about qualified immunity and
19 Mr. Truluck's position that it is a question of fact for the
20 jury. I will point the Court to the Torchinsky case so that I
21 can end, and I'm sure everyone will be very glad for that.

22 THE COURT: I've got that in front of me.

23 MS. LaFAVE: The Monday morning quarterbacking that is
24 existent in this case is exactly what the Supreme Court
25 cautions Courts about. And Torchinsky very clearly says that

1 "a particularly appropriate procedure for determining an
2 official's entitlement to qualified immunity is summary
3 judgment. The entitlement is an immunity from suit rather
4 than a mere defense to liability."

5 And that's why the failure to disclose, failure to
6 investigate all of the claims by the plaintiff are completely
7 barred by qualified immunity in this case. So even if the
8 plaintiff prevails on arguing that there is no questionable
9 probable cause here in the warrant, it still has to be
10 arguable probable cause, and that video provides arguable
11 probable cause to shield my client from individual suit.

12 Thank you, Judge.

13 THE COURT: Thank y'all very much. I really appreciate
14 the excellent briefing and the excellent arguments. And,
15 again, I apologize for interrupting you and asking so many
16 questions.

17 I have got -- I want to look over some of the cases that
18 have been handed up. I know I've seen citations of
19 essentially all of these cases from both sides, but I wanted
20 to read them. I've made some notes on some issues -- on some
21 citations and some testimony and references in the briefs that
22 I want to -- that I want to look at.

23 I've got chambers week next week, and so I'm going to
24 spend time next week on some of the more difficult motions
25 that I've been hearing this week, and so my hope is to have an

1 opportunity to go through this and let y'all know in the next
2 week. That's what I intend to do. If not, then I'll let
3 y'all know, but I know that you --

4 Are y'all on a trial roster or where is it at?

5 MR. TRULUCK: My understanding, Your Honor, is we're on
6 the trial roster for April 21st, but we haven't -- we haven't
7 been formally noticed of it either. I just know about it.

8 THE COURT: Understood. I just want to make sure that
9 y'all aren't up for, you know, three weeks from now or
10 something like that. But I'm not going to take long to figure
11 this out (indiscernible) to it.

12 So, again, I appreciate it. If I have any questions, I
13 may send out an email or something to just say, "Hey, I've got
14 this question. Can y'all get me, in a paragraph, a response
15 or something." Hopefully, I won't have to do that, but I may.

16 But, again, thank y'all very much. I appreciate it, and
17 I hope y'all (indiscernible).

18 All right. Thank y'all very much.

19 (The hearing concluded.)
20
21
22
23
24
25

Certificate of Transcriber

CASE NAME: Sherman Green v. City of Columbia

DATE OF HEARING: 2-19-25

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/s/ Bobbi Fisher

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Incident Video filed January 28, 2025
(Submitted in electronic format)

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/ John S. Nichols
John S. Nichols, Esq.
SC Bar# 4210
Bluestein Thompson Sullivan, LLC
1614 Taylor Street
PO Box 7965 (29202)
Columbia, SC 29201
(803) 779-7599

December 12, 2025

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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.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the *Record on Appeal* complies with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

Respectfully submitted,

December 12, 2025

s/ John S. Nichols
John S. Nichols #4210
BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 771-8097 (facsimile)
John@bluesteinattorneys.com

Attorney for Appellant