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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2025-000818
Case No. 2021-CP-07-1217

Paul Vernon Coffman, Jr., ... Respondent,

v.

Town of Port Royal and Kimberly Carter,..... Appellants.

RECORD ON APPEAL - VOLUME II
(pp. 512-1019)

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

THOMAS A. BENDLE
ROBERT S. DENNIS
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400

Counsel for Appellants

JOHN S. NICHOLS
BLUESTEIN THOMPSON SULLIVAN, LLC
1614 Taylor Street
Columbia, South Carolina 29201
(803) 779-7599

THAD L. MYERS
JEREMIAH J. SHELLENBERG
THAD L. MYERS, P.A.
1727 Hampton Street
Columbia, South Carolina 29201
(803) 252-0005

JOSHUA P. GOLSON
1727 Hampton Street
Columbia, South Carolina 29201
(803) 509-1657

Counsel for Respondent

GRADY L. PATTERSON
PATTERSON LAW OFFICES, LLC
Post Office Box 325
Columbia, South Carolina 29202
(803) 771-6022

Counsel for Respondent

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Exhibit 5

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
PAUL VERNON COFFMAN, JR., PLAINTIFF,	)	Civil Action No. 2021-CP-07-01217
VS.	)	**AFFIDAVIT OF THAD L. MYERS**
TOWN OF PORT ROYAL AND KIMBERLY CARTER, DEFENDANTS.	)	

Personally, appeared before me, the undersigned, Thad L. Myers, who being duly sworn and states under oath the following:

1. I am the founding attorney of Thad L. Myers, P.A. and along with Jeremiah "JJ" Shellenberg, was retained to represent Paul Coffman. As the case progressed, we associated Grady L. Patterson of Patterson Law Offices, LLC and Joshua P. Golson of Law Offices of Joshua P. Golson, LLC.
2. I am a licensed attorney in the State of South Carolina since 1988. I was admitted to the United States District Court for the District of South Carolina in 1995 and the Court of Appeals for the Armed Forces in 1997.
3. I have been trial counsel in numerous complex matters throughout South Carolina, including many unfair trade practices, complex medical malpractice cases, trucking cases, wrongful death cases, mass tort MDLs, and class actions. *George v. Duke Energy Retirement Cash Plan, et al; IN RE: LandAmerica 1031 Exchange Services,*

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Inc. Internal Revenue Service 1031 Tax Deferred Exchange Litigation; County of Horry v. Hotels.com et al., and a pharmaceutical class action against Purdue Pharma, among many others) In thirty (30) years of practice, I have handled numerous cases involving constitutional violations. I currently practice statewide with an office in Richland County. I have enjoyed a certificate of good standing from the South Carolina Supreme Court since my admission to the bar.

4. I began my legal career as a staff attorney with the South Carolina Supreme Court. I practiced as an Assistant Solicitor for several years prior to joining the practice of former Fifth Circuit Solicitor James Anders. I served as Staff Judge Advocate for the 169th Fighter Wing and the Joint Forces Headquarters, South Carolina Air National Guard. After thirty five years of service, I retired as the South Carolina Assistant Adjutant General for Air with the rank of Brigadier General in 2015.

5. I have served as counsel for Paul Coffman in this matter since August of 2020. I participated in many pre-trial aspects of the matter since 2020. The pre-trial and trial work was voluminous, extensive, and laborious.

6. My hourly rate is $650.00 per hour. Based on my experience and reputation in the legal community for handling complex litigation, including claims involving violations of civil rights, I believe this is a reasonable rate for my services. This rate has been approved in previous matters by both state court and federal court.

7. I have included my hours from the beginning of my work on this case through the submission of Plaintiff's Motion for Attorneys' Fees and Costs pursuant to 42 U.S.C. § 1988. I have exercised billing discretion and do not include in Plaintiff's fee

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petition the amount of time spent on regular email and written correspondence, telephone conferences, routine communications with co-counsel, a substantial volume of legal research, and other increments of time that would ordinarily be billable to a private client. Additionally, I have included substantial discounts for many tasks that were completed on behalf of client(s). I believe the total number of hours sought is abundantly reasonable given the scope of the three-year litigation.

8. In addition to my hours, I have submitted the time entries for Nichol Hare. Mrs. Hare is the lead litigation paralegal for Thad L. Myers, P.A. She has served as the lead litigation paralegal since 2022. The time entries submitted by Mrs. Hare reflect the indispensable work she performed in the prosecution of this case.

9. The request for attorney's fees is based upon the extensive hours expended for this matter, the quality of work performed at trial, and the overall purpose of the attorney fee provision in 42 U.S.C. § 1988.

10. To the best of my knowledge, the time entries and case costs submitted as an attachment to Plaintiff's Memorandum in Support of His Motion for Attorneys' Fees and Costs, are a true and accurate representation of the work performed on this case and the costs paid by Thad L. Myers, P.A., the work performed by co-counsel Joshua P. Golson of Law Office of Joshua P. Golson, and the work performed by Grady L. Patterson of Law Offices of Grady L. Patterson to fund this matter.

_____

Thad L. Myers

Thad L. Myers

Sworn to before me, this the 1ST day of JULY, 2024.

Notary Public for South Carolina

My Commission Expires: 7/16/2030

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Exhibit 6

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
PAUL VERNON COFFMAN, JR.,	)	Civil Action No. 2021-CP-07-01217
PLAINTIFF,	)	
VS.	)	**AFFIDAVIT OF JEREMIAH "JJ" SHELLENBERG**
TOWN OF PORT ROYAL AND KIMBERLY CARTER,	)	
DEFENDANTS.	)	

Personally, appeared before me, the undersigned, Jeremiah "JJ" Shellenberg, who being duly sworn and states under oath the following:

1. I am an associate attorney of Thad L. Myers, P.A. and along with Thad L. Myers, was retained to represent Paul Coffman. As the case progressed, we associated Grady L. Patterson of Patterson Law Offices, LLC and Joshua P. Golson of Law Offices of Joshua P. Golson, LLC.

2. I am a licensed attorney in the State of South Carolina and have been licensed since 2011. I was admitted to the United States District Court for the District of South Carolina in 2017.

3. I spent nine (9) years as an Assistant Solicitor with the Fifth Circuit Solicitor's Office. While at the Solicitor's Office, I spent three (3) years as a Special Assistant United States Attorney with the Columbia Division. I was also the liaison to the

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Town of Irmo for four (4) years. In my time as a prosecutor, I dealt with countless constitutional issues as it relates to law enforcement officers, evidentiary issues and criminal procedures. In my time as a prosecutor, I prosecuted violent crimes and I was trial counsel for approximately forty (40) trials.

4. I have worked with Thad L. Myers, P.A. since 2019. After joining the firm, I have been trial counsel in several complex matters throughout South Carolina. In addition, I have handled a number of claims of municipality § 1983 liability, *Monell* Claims and Fourth/Fourteenth Amendment violations. I currently practice statewide with my office in Richland County. I have enjoyed a certificate of good standing from the South Carolina Supreme Court since my admission to the bar.

5. My prosecution background has proven invaluable in the prosecution of § 1983 claims.

6. I have served as counsel for Paul Coffman in this matter since August of 2020. I participated in all aspects of the matter, including but not limited to, six depositions, multiple hearings, mediation and motions in this matter since 2020. The pre-trial and trial work was voluminous, extensive, and laborious.

7. My hourly rate is $350.00 per hour. Based on my experience and reputation in the legal community for handling complex litigation, including claims involving violations of civil rights, I believe this is a reasonable rate for my services.

8. I have included my hours from the beginning of my work on this case through the submission of Plaintiff's Motion for Attorneys' Fees and Costs pursuant to 42 U.S.C. § 1988. I have exercised billing discretion and do not include in Plaintiff's fee

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petition the amount of time spent on regular email and written correspondence, telephone conferences, routine communications with co-counsel, a substantial volume of legal research, and other increments of time that would ordinarily be billable to a private client. Additionally, I have included substantial discounts for many tasks that were completed on behalf of client(s). I believe the total number of hours sought is abundantly reasonable given the scope of the three-year litigation.

9. The request for attorney's fees is based upon the extensive hours expended for this matter, the quality of work performed at trial, and the overall purpose of the attorney fee provision in 42 U.S.C. § 1988.

10. To the best of my knowledge, the time entries and case costs submitted as an attachment to Plaintiff's Memorandum in Support of His Motion for Attorneys' Fees and Costs, are a true and accurate representation of the work performed on this case and the costs paid by Thad L. Myers, P.A., the work performed by co-counsel Joshua P. Golson of Law Office of Joshua P. Golson and the work performed by Grady L. Patterson of Law Offices of Grady L. Patterson to fund this matter.

Jeremiah "JJ" Shellenberg

Sworn to before me, this the 1st day of July 2024.

Notary Public for South Carolina

My Commission Expires: 4/25/2034

NIKKI E. SEEK
NOTARY
PUBLIC
Exp. April 25, 2034
SOUTH CAROLINA

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT PAUL VERNON COFFMAN, JR., PLAINTIFF, VS. TOWN OF PORT ROYAL AND KIMBERLY CARTER, DEFENDANTS.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No. 2021-CP-07-01217 **AFFIDAVIT OF JOSHUA P. GOLSON**

Personally, appeared before me, the undersigned, Joshua P. Golson, who being duly sworn and states under oath the following:

1. I am the founding member and attorney of the Law Office of Joshua P. Golson. I was associated by the law office of Thad L. Myers, P.A. to represent Paul Coffman.
2. I am a licensed attorney in the State of South Carolina and have been licensed since 2012. I am admitted to the United States District Court for the District of South Carolina and the Fourth Circuit Court of Appeals.
3. I am a member of the South Carolina Bar and currently serve as a council member for the Trial and Appellate Advocacy Section of the South Carolina Bar. I currently practice statewide with my office in Richland County. I have enjoyed a certificate of good standing from the South Carolina Supreme Court since my admission to the South Carolina Bar.

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4. I served for a combined total of approximately eight (8) years as an Assistant Solicitor and Special Prosecutor for the Fifth Circuit Solicitor's Office. During that time, I also served as a Special DUI Prosecutor for the Fifth Circuit Solicitor's Office. Throughout my service as an Assistant Solicitor, I prosecuted a wide range of misdemeanor and felony offenses, including violent crimes, and served as trial counsel on many such cases for approximately seven (7) years.

5. Since 2012, I have often served as a guest instructor and lecturer for the SC Commission on Prosecution Coordination, SC Court Administration, and the SC Criminal Justice Academy, with a focus on DUI prosecution, criminal procedure, and victim advocacy.

6. After I left the Solicitor's Office, I worked for a small insurance defense firm in Columbia, SC for over four (4) years where my practice focused on the defense of state and local governments, including law enforcement officers and law enforcement agencies. In that practice, I also obtained experience in a wide range of other matters, including automobile accidents, slip and falls, construction defects, environmental litigation, land use disputes, and licensing defense.

7. During that time, I litigated a significant number of civil rights cases, including complex matters that involved claims brought under the South Carolina Tort Claims Act as well as federal civil rights claims under 42 U.S.C. § 1983. Many of those cases involved allegations of civil rights violations similar to the issues presented in this case and included complex and contested issues over questions of probable cause, false arrest, excessive force, malicious prosecution, supervisory liability, and

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qualified immunity.

8. In my current practice, I have continued to litigate civil rights cases brought under both the South Carolina Tort Claims Act and 42 U.S.C. § 1983 and notwithstanding my own practice, have been associated by several firms to assist with civil rights litigation and as trial counsel.

9. I have served as counsel for Paul Coffman since October of 2023 and have participated extensively in this litigation, including depositions, hearings, dispositive motions for the Defendants' various motions to dismiss and for summary judgment, and trial. To date, the pre-trial and trial work has been extensive, time-intensive, and laborious.

10. My hourly rate is $400.00 per hour. Based on my experience and reputation in the legal community for handling complex litigation, including a significant number of claims and cases involving civil rights violations, I believe this is a reasonable rate for my services.

11. I have included my costs and hours from the beginning of my work on this case through the submission of Plaintiff's Motion for Attorneys' Fees and Costs pursuant to 42 U.S.C. § 1988. I have exercised billing discretion and did not include in Plaintiff's fee petition the amount of time spent on regular email and written correspondence, a substantial volume of telephone conferences, routine communications with co-counsel, a substantial volume of legal research, frequent and recurring litigation meetings with co-counsel, and other increments of time that would ordinarily be billable to a private client. Additionally, I have included

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substantial discounts for many tasks that were completed on behalf of the client. I believe the total number of hours sought is abundantly reasonable given the scope of the litigation and the time required to successfully litigate this matter to a verdict in Mr. Coffman's favor and to vindicate the violation of his civil rights in the Beaufort County Court of Common Pleas.

12. The request for attorney's fees is based upon the extensive hours expended for this matter, the quality of work performed at trial, and the overall purpose of the attorney fee provision in 42 U.S.C. § 1988.

13. To the best of my knowledge, the time entries and case costs submitted as an attachment to Plaintiff's Memorandum in Support of His Motion for Attorneys' Fees and Costs are a true and accurate representation of the work performed and the costs paid on this case by the Law Office of Joshua P. Golson, the work performed and the costs paid by co-counsel Jeremiah "JJ" Shellenberg and Thad L. Myers of Thad L. Myers, P.A., and the work performed by Grady L. Patterson of Law Offices of Grady L. Patterson to prosecute and fund this matter.

Joshua P. Golson

Sworn to before me, this the 1st day of July 2024.

Notary Public for South Carolina

My Commission Expires: 4/25/2034

NIKKI E. SEEK NOTARY PUBLIC Exp. April 25, 2034 SOUTH CAROLINA

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Exhibit 8

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT PAUL VERNON COFFMAN, JR., PLAINTIFF, VS. TOWN OF PORT ROYAL AND KIMBERLY CARTER, DEFENDANTS.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No. 2021-CP-07-01217 **AFFIDAVIT OF GRADY L. PATTERSON, III**

Personally, appeared before me, the undersigned, Thad L. Myers, who being duly sworn and states under oath the following:

1. I am a licensed attorney in South Carolina. I was admitted to the bar in 1979. I have been admitted to the following courts in the years indicated:

(a) South Carolina, 1979;
(b) US Court of Appeals for the Fourth Circuit, 1980;
(c) US District Court for the District of SC, 1982;
(d) US Court of Appeals for the Armed Forces, 1982;
(e) US Supreme Court, 1983;
(f) US Court of Federal Claims, 1994.

2. Following law school and admission to the Bar, I began practicing law with the South Carolina Attorney General's Office. I was involved in a number of areas of the law including constitutional claims, tort claims, condemnation actions, construction law claims, worker's compensation, enforcement actions for State agencies, drug forfeiture actions, tender offer actions, licensing board hearings, and writing legal opinions. I appeared before the Fourth

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Circuit Court of Appeals and was involved in two cases brought in the original jurisdiction of the United States Supreme Court. The first concerned the South Carolina – Georgia boundary and the second concerned registration of state-issued bonds.

3. I entered private practice in 1985 with the Columbia firm of Quinn, Brown & Arndt, which later became Quinn, Patterson & Willard. The practice concentrated on business litigation. Contracts, business torts, unfair trade practices, and other business issues were the primary subjects of our practice. I also did condemnation actions, bankruptcy cases, and a case in the United States Court of Federal Claims. I handled a number of appeals including appeals to the South Carolina Supreme Court, the South Carolina Court of Appeals, and the United States District Court.

4. In 2000 I was part of the formation of Montgomery, Patterson, Potts and Willard in Columbia which did similar work.

5. In April 2008 I started Patterson Law Offices, LLC. My practice consists primarily of litigation and corporate work. Litigation covered a broad area but included disputes involving contracts, leases, business torts, and construction law. Corporate work includes drafting of various contracts, leases, and other corporate documents.

6. During my practice I have handled cases in all of the State's judicial circuits.

7. In addition to my regular practice I have been a Judge Advocate in the South Carolina Air National Guard. After joining the Air Guard I attended Air Force law school where I finished first in my class. I was designated a Judge Advocate by the United States Air Force and in my military legal work I prosecuted and defended airmen subject to discharge before discharge boards. In 2003 I moved from the JAG position to become a line officer. Following command positions I

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was promoted to Brigadier General and appointed the South Carolina Assistant Adjutant General for Air in which position I served until 2012.mber

8. I have been trial counsel in numerous complex matters throughout South Carolina, including personal injury, medical malpractice, construction projects, condemnation, and contract disputes. I have an AV rating from Martindale Hubbell.

9. I have served as counsel for Paul Coffman in this matter since November 2021. I have extensively researched issues in the case. I assisted trial counsel in discovery and trial preparation. My hourly rate for this case is $300.00 per hour. Based on my experience and reputation in the legal community for handling complex litigation, including claims involving violations of civil rights, I believe this is a reasonable rate for my services.

10. I have included my hours from the beginning of my work on this case through June 26, 2024. The hours spent and services performed were recorded contemporaneously with the work done. To the best of my knowledge, the time entries and costs submitted by me in this matter are reasonable for the work performed in prosecuting this case.

Grady L. Patterson, III

Sworn to before me, this the 1st day of July, 2024.

Notary Public for South Carolina

My Commission Expires: 4/25/2034

NIKKI E. SEEK NOTARY PUBLIC Exp. April 25, 2034 SOUTH CAROLINA

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Exhibit 9

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THAD L MYERS, PA
AND ASSOCIATES

INVOICE

Invoice # 102
Date: 07/01/2024
Due On: 07/31/2024

Thad L. Myers, P.A.

PO Box
Columbia, SC 29202-0641
United States

Paul V Coffman
5 Marquis Way
Beaufort, SC 29907

190094-Coffman

Coffman, Paul 190094

Type	Date	Notes	Quantity	Rate	Total
Expense	09/29/2020	USPS First Class Postage: Stamps.com USPS FC Postage Postage for letter of representation to town manager	1.00	$0.50	$0.50
Expense	10/14/2020	USPS First Class Postage: Stamps.com USPS FC Postage Mailing letter of representation to Town Attorney	1.00	$0.50	$0.50
Expense	10/14/2020	USPS Certified Mail Fees: Stamps.com USPS Cert Mail Fees Preservation letter to Port Royal Police Dept.	1.00	$6.90	$6.90
Expense	11/13/2020	USPS First Class Postage: Stamps.com Ltr to Van Willis Port Royal SC	1.00	$0.80	$0.80
Expense	11/16/2020	USPS Certified Mail Fees: Stamps.com USPS Certified Mail Fees FOIA request to Chief Alan Beach with Port Royal Police Department Cert Mail Ret Rec Req Stamps.com Tracking 7259	1.00	$6.90	$6.90
Expense	11/18/2020	USPS Certified Mail Fees: Stamps.com Cert Mail Ret Rec Req Port Royal PD Attn: Chief Alan Beach	1.00	$6.90	$6.90

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		Tracking 7767			
Expense	12/31/2020	Paper Cut - RICOH Copier - B/W Color Printing Scanning Flash Drive CD DVD Media and Document Production: PaperCut RICOH IMC3000 B/W Color Printing Scanning Copying 32Gbs 64Gbs Flash Drive CD DVD Document and Media Production	1.00	$30.30	$30.30
Expense	01/08/2021	USPS First Class Postage: Stamps.com USPS FC Postage Letter to Mary Lohr	1.00	$0.50	$0.50
Expense	07/02/2021	Beaufort County Court Filing Fees: Beaufort Cty Filing Fees Filing Summons and Complaint with Beaufort County Common Pleas BEAUFORT COUNTY EFILING LHD CC USER 2JUL2021 PAID TLMPA VISA9605 2JUL2021	1.00	$180.32	$180.32
Expense	09/22/2021	Southern Pride Process - Process service fee: Southern Pride Inv130234-0003 Dated: 22SEP2021 PAID TLMPA VISA9605 22SEP2021 Routine Service Paul Vernon Coffman, Jr. vs. Town of Port Royal Subject: Bunting, Peter 1748 Paris Ave., Port Royal, SC 29935 10SEP2021 Routine Service	1.00	$60.00	$60.00
Expense	09/22/2021	Southern Pride Process - Process service fee: Southern Pride Inv130234-0002 Dated: 22SEP2021 PAID TLMPA VISA9605 22SEP2021 Routine Service $60 Additional Affidavit $30 Paul Vernon Coffman, Jr. vs Town of Port Royal Subject: Port Royal Poli/Beach	1.00	$90.00	$90.00

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		1748 Paris Ave., Port Royal, SC 29935 10SEP2021 Routine Service 22SEP2021 Additional Affidavit			
Expense	10/20/2021	Southern Pride Process - Process service fee: Southern Pride Inv130234.0001 PAID TLMPA VISA 9605 20OCT2021	1.00	$60.00	$60.00
Expense	10/20/2021	Southern Pride Process - Process service fee: Southern Pride Inv 130234.0004 PAID TLMPA VISA9605 20OCT2021	1.00	$60.00	$60.00
Expense	10/20/2021	Southern Pride Process - Process service fee: Southern Pride Inv 130234.0005 PAID TLMPA VISA 9605	1.00	$60.00	$60.00
Expense	10/20/2021	Southern Pride Process - Process service fee: Southern Pride Inv 130234.0006 PAID TLMPA VISA 9605 20OCT2021	1.00	$60.00	$60.00
Expense	10/20/2021	Southern Pride Process - Process service fee: Southern Pride Inv 130234.0007 PAID TLMPA VISA 9605 20OCT2021 Paul Vernon Coffman, Jr. v Town of Port Royal Subject: Smith, Joshua Lee 1600 Battery Creek Rd, Beaufort SC 29902 Routine Service 10SEP2021 $60	1.00	$60.00	$60.00
Expense	12/31/2021	Paper Cut - RICOH Copier - B/W Color Printing Scanning Flash Drive CD DVD Media and Document Production: PaperCut RICOH IMC3000 B/W Color Printing Copying Scanning 32Gbs and 64Gbs Flash Drive document production CD and DVD media and document production	1.00	$51.40	$51.40
Expense	03/16/2022	Beaufort County Court Filing Fees: Beaufort Cty Efiling Entry of Default SC Court Filing Fee PAID TLMPA VISA 4900 16MAR2022	1.00	$31.74	$31.74
Expense	04/18/2022	Beaufort County Court Filing Fees: Beaufort County Filing Fees	1.00	$31.74	$31.74

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		Efiling SC Courts for Entry in Default Hearing for Damages & Judgement against ALL parties			
Expense	09/26/2022	Beaufort County Court Filing Fees: Beaufort County Filing Fees Proposed Order - Entry of Default	1.00	$31.74	$31.74
Expense	11/03/2022	USPS First Class Postage: Stamps.com USPS First Class postage cost to mail standard 3.5 oz envelope to Defense Attorney Thomas Bendle enclosing Plaintiffs 1st INTs and RFPs.	1.00	$1.29	$1.29
Expense	12/31/2022	Paper Cut - RICOH Copier - B/W Color Printing Scanning Flash Drive CD DVD Media and Document Production: PaperCut RICOH IMC3000 B/W Color Scanning Printing Copying 32Gbs 64Gbs Flash Drive CD and DVD Media and Document Production	1.00	$29.80	$29.80
Expense	02/09/2023	USPS First Class Postage: Stamps.com USPS First Class Postage for Discovery Requests to Def. Joshua Lee Smith.	1.00	$1.98	$1.98
Expense	02/09/2023	USPS First Class Postage: Stamps.com USPS - First Class Postage for Discovery Responses to Def. Joshua Lee Smith	1.00	$2.46	$2.46
Expense	03/21/2023	USPS First Class Postage: Stamps.com First Class Postage for discovery responses to Defense Counsel - 1. Michael Freeman & 2. Dylan Kidd/Thomas Bendle	1.00	$1.20	$1.20
Expense	07/19/2023	USPS Certified Mail Fees: Stamps.com USPS Certified Mail Fees Subpoena sent to Beaufort County sheriff's office.	1.00	$7.18	$7.18
Expense	07/21/2023	USPS Certified Mail Fees: Stamps.com USPS Certified Mail Fees Subpoena to Beaufort County Sheriff's Office	1.00	$7.18	$7.18
Expense	07/29/2023	Beaufort County Sheriff's Office: Beaufort Cty Sheriff's Office DS # 78924 Reference: Brittany Smith Invoice Date: 25JUL2023 USB Thumb Drive 1 @ $4.00 Research 1 Hour @ $15.00 Total Due = $19.00 PAID TLMPA Op 3828 29JUL2023	1.00	$19.00	$19.00
Expense	07/29/2023	USPS First Class Postage: Stamps.com FC Postage to mail TLMPA Op 3828 Beaufort Cty Sheriff's Ofc PO Box 1758 Beaufort SC 29901 Inv DS # 78924 Ref Brittany Smith 25JUL2023	1.00	$0.63	$0.63

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Expense	07/31/2023	Beaufort County Court Filing Fees: Beaufort County Efiling Motion to Amend with Exhibit A PAID TLMPA VISA4900 31JUL2023	1.00	$31.74	$31.74
Expense	07/31/2023	Beaufort County Court Filing Fees: Beaufort Cty Efiling Motion to Amend Exhibit A Filing PAID TLMPA VISA4900 31JUL2023	1.00	$31.74	$31.74
Expense	08/03/2023	USPS Certified Mail Fees: Stamps.com USPS Certified Mail Fees Subpoena to Jimmy Fennell	1.00	$7.18	$7.18
Expense	08/18/2023	Beaufort County Court Filing Fees: Beaufort County Filing Fee Filing fee for proposed order to Amend Complaint.	1.00	$31.74	$31.74
Expense	08/25/2023	USPS First Class Postage: Stamps.com Notice 30b6 deposition	1.00	$0.87	$0.87
Expense	09/14/2023	USPS Certified Mail Fees: Stamps.com Mailing off subpoena to Beaufort County Solicitor	1.00	$7.18	$7.18
Expense	09/27/2023	USPS Certified Mail Fees: Stamps.com CERTIFIED MAIL SUBPOENA	1.00	$7.18	$7.18
Expense	10/04/2023	Mileage (JJ): JJS Mileage Reimbursement Depositions 20SEP2023 1727 Hampton Street to 25 Rue Du Bois, Beaufort, SC 29907 Stephanie Coffman, Paul Coffman, and Vaughn Kewon Roundtrip 268 x 65.5 = $175.54 PAID TLMPA Op 3847 4OCT2023	1.00	$175.54	$175.54
Expense	10/04/2023	CCR Costal Court Reporting Inc.: CCR Coastal Court Reporting Inc Inv 58258/58259 20SEP2023 58258_Copy of the deposition of Paul Vernon Coffman, Jr. taken on September 20, 2023 1 $519.82 $519.82 58259_Copy of the deposition of Stephanie Coffman taken on September 20, 2023 1 $121.73 $121.73 Subtotal $641.55 PAID TLMPA VISA4900 4OCT2023	1.00	$641.55	$641.55
Expense	10/31/2023	Southern Reporting, Inc. - Depositions: Southern Reporting Inv 45750 31OCT2023 JOB DATE 17OCT2023 Deposition of 30 (b) (6) Town of Port Royal (Captain John Griffith) PAID TLMPA VISA4900 31OCT2023	1.00	$1,147.40	$1,147.40
Expense	11/07/2023	Mileage (JJ): JJS Mileage Reimbursement	1.00	$157.20	$157.20

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		COFFMAN Mediation 7NOV2023 120 MILES @ $65.5 ROUNDTRIP = $78.60 X 2 = $157.20			
Expense	11/07/2023	Patterson Law Offices, LLC: Patterson Law Offices Reimburse Mileage 120 miles @ $65.5 roundtrip = $78.60 x 2 = $157.20 COFFMAN MEDIATION 7NOV2023	1.00	$157.20	$157.20
Expense	11/07/2023	Patterson Law Offices, LLC: Patterson Law Co-Counsel Costs	1.00	$500.00	$500.00
Expense	11/08/2023	Paper Cut - RICOH Copier - B/W Color Printing Scanning Flash Drive CD DVD Media and Document Production: PaperCut RICOH IMC3000 B/W Color Printing Scanning Copying	1.00	$39.75	$39.75
Expense	11/16/2023	Speights & Solomons LLC: SPEIGHTS & SOLOMONS LLC Mediation Invoice 13NOV2023 COFFMAN v Town of Port Royal 7NOV2023 ADR Services Live/Zoom Mediation 4.0 Hours @ $300.00 = $1,200.00 Amount due from each party (1/2): $600.00 PAID TLMPA Op 3864 16NOV2023	1.00	$600.00	$600.00
Expense	11/16/2023	USPS First Class Postage: Stamps.com USPS FC Postage to A.Gibson Solomons, III (Mediator) Speights & Solomons, LLC PO BOX 685 Hampton, SC 29924	1.00	$0.63	$0.63
Expense	01/21/2024	USPS Certified Mail Fees: Stamps.com Certified, Return Receipt - Subpoena for Trial Appearance to: Aaron Abercrombie Officer Joab Dowling Officer Peter Bunting Lt. Brian Baird Officer Douglas Kadas Tabor Vaux Lester M. "Gill" Bell	7.00	$7.36	$51.52
Expense	01/24/2024	Garber Reporting: Garber Reporting Service Inv 32866 24JAN2024 PAID TLMPA AMEX 41006 24JAN2024 EXPEDITED DEPOSITION AND ORIGINAL CERTIFIED - CARTER Original Transcript of Kimberly Carter Hard/Digital Transcript $ 696.19 Appearance Fee $ 100.00 Condensed Transcript $ 30.40 Exhibit(s) $ 30.50 Zoom Room Setup $ 45.00 $ 902.09	1.00	$902.09	$902.09

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Expense	05/01/2024	USPS Certified Mail Fees: Stamps.com Certified Mail - Subpoena for Trial Appearance	1.00	$7.36	$7.36
Expense	05/06/2024	K. Johnson Consulting, LLC: K. Johnson Consulting, LLC Service of Process 4MAY2024 Wekenmann Hand-delivered trial subpoena to Ron Wekenmann at his residence, 410 Broad River Dr., Beaufort SC. (254 miles/5 hours) Service billed at a flat rate. TOTAL DUE = $500.00 PAID TLMPA OP 3968 6MAY2024	1.00	$500.00	$500.00
Expense	05/06/2024	USPS First Class Postage: Stamps.com USPS First Class postage to mail TLMPA Op 3968 for Inv 24-089-1 K. Johnson Consulting LLC 119 Tiger Paw Ln Irmo SC 29063	1.00	$0.64	$0.64
Expense	05/22/2024	Eagle Investigation Group: Eagle Investigation Group Inv 1006 21MAY2024 Service of Process - Brittany Smith $75.00 Affidavit of Service - Brittany Smith $35.00 Service of Process - Jessica Bradley $75.00 Affidavit of Service - Jessica Bradley $35.00 Service of Process - Thomas Hunter Lewis $75.00 Affidavit of Service - Thomas Hunter Lewis $35.00 Service of Process - Joshua Smith $75.00 Affidavit of Service - Joshua Smith $35.00 TOTAL DUE = $440.00 PAID TLMPA OP 3982 22MAY2024	1.00	$440.00	$440.00
Expense	05/22/2024	USPS First Class Postage: Stamps.com USPS First Class postage to mail TLMPA Op 3982 to: Eagle Investigation Group 525 HAMPTON STREET CAMDEN SC 29020-2811	1.00	$0.64	$0.64
Expense	06/04/2024	Take One Productions: Take One Productions Deposition Videographer Kim Carter 19JAN2024 Invoice never received - email re SECOND request forwarded via email from JJS 17MAY2024 Called and emailed Stan Tam - 3JUN2024 for invoice INVOICE 4817 31JAN2024 Received via email from Stan Tam - 4JUN2024 Setup/Appearance Fee $125.00 Operator Time $281.25 Synchronizing $190.00 TOTAL DUE = $596.25 plus 3.5% credit card fee $20.87 [$596.25 + $20.87 = $607.12 PAID TLMPA CITI MC 2987 4JUN2024	1.00	$617.12	$617.12
Expense	06/07/2024	USPS Certified Mail Fees: Stamps.com	1.00	$7.36	$7.36

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		Cert Mail Subpoena Coffman, Paul 6.7.24			
Expense	06/07/2024	USPS Certified Mail Fees: Stamps.com USPS Certified Mail Subpoena Coffman, Paul 6.7.24	1.00	$7.36	$7.36
Expense	06/10/2024	CCR Costal Court Reporting Inc.: CCR Coastal Court Reporting Invoice 59170 10JUN2024 Copy of the Expedited videotaped deposition of Joshua Smith taken on June 4, 2024 534.10 - Waived Signature - video Ordered-VideoSync-Regular Format_MP4 - Electronic only-copy transcript $534.10 + cc fee $37.50 = $571.60 PAID TLMPA CITI MC2987 10JUN2024	1.00	$571.60	$571.60
Expense	06/10/2024	CCR Costal Court Reporting Inc.: CCR Coastal Court Reporting Invoice 59172 10JUN2024 Copy of the Expedited videotaped deposition of Brittnay Smith taken on June 4, 2024 899.20 - Waived Signature - video Ordered-VideoSync-Regular Format_MP4 Electronic only transcript $899.20 + cc Fee $37.50 = $936.70 PAID TLMPA CITI MC2987 10JUN2024	1.00	$936.70	$936.70
Expense	06/10/2024	USPS Certified Mail Fees: Stamps.com USPS Cert Mail Ofc Joab Dowling - Coffman, Paul 6.10.24	1.00	$7.36	$7.36
Expense	06/11/2024	USPS Certified Mail Fees: Stamps.com USPS Cert Mail Subpoena - Coffman, Paul 6.11.24	1.00	$7.36	$7.36
Expense	06/12/2024	NOVA Ofc Strategies - CD DVD Master Addl Sets: NOVA Office Strategies, Inc. INV 4168087 12JUN2024 Coffman Foam Board Trial Exhibit PAID TLMPA CITI MC2987 12JUN2024	1.00	$77.76	$77.76
Expense	06/14/2024	HILTON - Trial Lodging: HILTON - Home2 Suites by Hilton Resort PAID TLMPA CITI MC 2987 14JUN2024 Nichol Hare and Taylor Myers - Conf # 80052924 Room 211 - Receipt on File $1,277.98 JJ Shellenberg - Conf # 80577276 Room 423 - Receipt on File $1,213.57 Joshua Golson - Conf # 81625884 Room 124 - Receipt on File $1,238.32 16JUN2024 through 21JUN2024 TOTAL PAID TLMPA CITI MC2987 22JUN2024 $	1.00	$3,279.87	$3,279.87
Expense	06/16/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks:	1.00	$62.00	$62.00

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		Publix Coffman Trial Supplies for Team Waters, Cokes, and Snacks PAID TLMPA CITI MC2987 16JUN2024			
Expense	06/16/2024	Trial Office Supplies - Paper, Cables, Printing, Toner, etc.: Walmart Printer Cables - Coffman Trial PAID TLMPA CITI MC2987 16JUN2024	1.00	$21.01	$21.01
Expense	06/16/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Longhorn Steakhouse Coffman Trial Team Meals PAID TLMPA CITI MC2987 16JUN2024	1.00	$81.26	$81.26
Expense	06/17/2024	Trial Office Supplies - Paper, Cables, Printing, Toner, etc.: Staples Coffman Trial - HP Printer Power Cord and 62XL Toner Cartridges B/W and Color PAID TOM CITI MC 1211 17JUN2024	1.00	$85.59	$85.59
Expense	06/17/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Chick-Fil-A Coffman Trial - Lunch Coffmans and Coffman Trial Team at Courthouse PAID TLMPA CITI MC 2987 17JUN2024	1.00	$67.44	$67.44
Expense	06/17/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Chipotle Coffman Trial Day 1 - Team Meals PAID TLMPA CITI MC2987 17JUN2024	1.00	$52.00	$52.00
Expense	06/18/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Jimmy John's Coffman Trial Day 2 - Lunch Coffmans and Coffman Trial Team PAID TOM CITI MC 1211 18JUN2024	1.00	$107.42	$107.42
Expense	06/19/2024	Trial Office Supplies - Paper, Cables, Printing, Toner, etc.: Walgreen Company First Aid Supplies PAID TOM CITI MC1211 19JUN2024	1.00	$81.64	$81.64
Expense	06/20/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Wayback Burgers Coffmans and Coffman Trial Team Day 4 Lunch PAID TOM CITI MC 1211 20JUN2024	1.00	$67.47	$67.47
Expense	06/20/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Saltus River Grill Coffman Trial Team - Dinner Day 4 PAID TOM CITI MC 1211 2OJUN2024	1.00	$291.03	$291.03
Expense	06/21/2024	Trial Expenses - Supplies: Meals, Beverages, Snacks: Law Office of Joshua P. Golson LLC	1.00	$74.00	$74.00

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		Reimbursement for Coffmans and Coffman Trial Team - Jimmy John's Lunch - Trial Day 3 PAID TLMPA Op 3897			
Expense	06/23/2024	Paper Cut - RICOH Copier - B/W Color Printing Scanning Flash Drive CD DVD Media and Document Production: Thad L. Myers, PA B/W Printing Costs Pre-Trial Document Production - In House Trial Binders - Exhibits	6,500.00	$0.10	$650.00
Expense	06/24/2024	DPI: DPI INV AR200199 24JUN2024 KYOCERA 520I B/W PRINTING IT SUPPORT AND CONTRACT OVERAGE COFFMAN TRIAL PAID TLMPA OP 3989 24JUN2024	1.00	$157.17	$157.17
Expense	06/24/2024	USPS First Class Postage: Stamps.com USPS First Class postage to mail TLMPA Op 3989 DPI Inv AR200199 PO Box 2239 W COLA SC 29171-2239	1.00	$0.64	$0.64
Expense	06/26/2024	S.C. R. Civ. P. 45: BELL, LESTER "GILL" COFFMAN TRIAL WITNESS Day 3 and Day 4 FEE $25.00 x 2 = $50.00 + MILEAGE (254 RT) $170.18 = $220.18 Lodging - Wednesday 19JUN2024 $250.00 Meal - Wednesday 19JUN2024 $50.00 PAID TLMPA OP 3993 26JUN2024 If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of $25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. PAID TLMPA OP 3993 28JUN2024	1.00	$520.18	$520.18
Expense	06/28/2024	S.C. R. Civ. P. 45: DOWLING, JOAB COFFMAN TRIAL WITNESS PAID TLMPA OP 3991 26JUN2024 FEE $50.00 + MILEAGE 32 RT $21.44 = $71.44 If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of $25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. PAID TLMPA OP 3995 28JUN2024	1.00	$71.44	$71.44
Expense	06/28/2024	S.C. R. Civ. P. 45: STEADY, RYAN COFFMAN, TRIAL WITNESS PAID TLMPA 3992 26JUN2024	1.00	$27.01	$27.01

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		FEE $25.00 + MILEAGE 3 RT $2.01 = $27.01 If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of $25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. PAID TLMPA OP 3994 28JUN2024			
Expense	06/28/2024	Oswald Design: Oswald Design Inv 1042407 28JUN2024 Smith/Carter Video Edits and Enhancements for Coffman Trial PAID TLMPA Op 3992 28JUN2024	1.00	$600.00	$600.00
Expense	06/28/2024	USPS First Class Postage: Stamps.com USPS First Class postage to mail witness fees and mileage reimbursement to: Gill Bell, Joab Dowling, and Ryan Steady	3.00	$0.64	$1.92
Expense	06/28/2024	USPS First Class Postage: Stamps.com USPS First Class postage to mail TLMPA Op to: Oswald Design PO Box 1963 Lexington SC 29072	1.00	$0.64	$0.64
Expense	06/28/2024	Office Depot - Printing, copying services, office and trial supplies: Office Depot Trial Supplies Toner for HP Printers HP 48 A $57.89 + HP 05 X $211.89 = $269.78 PAID TLMPA OFFICE DEPOT 3539 28JUN2024	1.00	$269.78	$269.78
Expense	07/01/2024	Interest on Case Costs: Interest on Case Costs TLMPA Contingency Contract Fully Executed 8AUG2020 Page 1 Paragraph 2	1.00	$758.70	$758.70
Expense	07/01/2024	Beaufort County Court Filing Fees: Beaufort County Filing Fees Post Trial Motion JJS PAID TLMPA VISA4900 1JUL2024	1.00	$31.74	$31.74

Subtotal	**$15,932.68**
Total	**$15,932.68**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
102	07/31/2024	$15,932.68	$0.00	$15,932.68
			Outstanding Balance	**$15,932.68**
			Total Amount Outstanding	**$15,932.68**

Please make all amounts payable to: **Thad L. Myers, P.A.**

Thank you for the opportunity to serve you.

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Thad L. Myers, P.A.

PO Box
Columbia, SC 29202-0641
United States

INVOICE

Invoice # 102
Date: 07/01/2024
Due On: 07/31/2024

Pay your invoice online

To pay your invoice, open the camera on your mobile device and place the QR code in the camera's view.

Or, **click here** if you're viewing on a computer or smartphone.

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Coffman: JPG Costs & Expenses

QuikTrip (January 21, 2024) $20.17
BP (January 21, 2024) $15.11

QuikTrip (January 24, 2024) $29.68

Brody's Bar & Grill (January 24, 2024) $119.89

City of Beaufort Parking Services (May 23, 2024) $8.27
City of Beaufort Parking Services (May 23, 2024) $2.35

Shell (June 4, 2024) $61.53

Circle K (June 11, 2024) $52.78

Carolina Tavern (June 11, 2024) $49.10
Plums (June 11, 2024) $55.67
EnMarket (June 11, 2024) $25.63

Lowe's (June 16, 2024) $33.46

-trial exhibit materials

Food Lion (June 17, 2024) $29.83

Hearth Wood Fired Pizza (June 18, 2024) $36.50
Hearth Wood Fired Pizza (June 18, 2024) $119.19

Old Bull Tavern (June 19, 2024) $215.67

Breakwater Restaurant (June 21, 2024) $99.57
Breakwater Restaurant (June 21, 2024) $267.36

Shell (June 22, 2024) $64.46

Total: .....$ 1,306.22

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2021-CP-07-01217

Paul Vernon Coffman, Jr.,	)	
	)	**DEFENDANTS' MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERIDCT, NEW TRIAL NISI REMTTITUR, NEW TRIAL ABSOULTE, AND/OR NEW TRIAL BASED ON THE 13th JUROR DOCTRINE**
Plaintiff,	)	
	)	
-vs-	)	
	)	
	)	
Town of Port Royal, Kimberly Carter,	)	
	)	
Defendants.	)	
	)	
	)	

The Defendants, Kimberly Carter and Town of Port Royal, above named, respectfully move the Court pursuant to the South Carolina Rules of Civil Procedure, including Rules 50 and 59, for an order granting Defendants judgment notwithstanding the verdict ('JNOV'), or in the alternative, a new trial *nisi remittitur*, or in the alternative, a new trial absolute, or in the alternative, a new trial based on the 13th Juror Doctrine:

This matter was tried before a jury in Beaufort County from June 17th, 2024, to June 21st, 2024, with the Honorable Judge Steven DeBerry presiding. The action stemmed from an altercation at the Sands boat ramp between the Plaintiff and another man. Initially, Port Royal closed the case due to both parties deciding not to press charges. Later, however, the case was re-opened at the Plaintiff's request. Thereafter, upon investigation, it was determined that the Plaintiff, using a bat, did commit 3rd Degree Assault. This resulted in the arrest of the Plaintiff, and his detention for one night. At trial, the jury awarded the Plaintiff $350,000.00 in damages and a payment of

currently unknown attorney's fees on Plaintiff's claims of Negligence and Malicious Prosecution under 42 U.S.C. § 1983.

Defendants submit all the following grounds for a JNOV, New Trial Nisi Remittitur, New Trial Absolute, and/or a new trial under on the 13th Juror Doctrine:

1. Probable Cause for the Arrest of the Plaintiff existed, invalidating the claims for malicious prosecution and violation of 42 U.S.C. § 1983.
    a. The evidence and testimony presented at the trial of this case included: Plaintiff was angry at Joshua Smith for playing loud music, Plaintiff made threats and/or 'fighting-words' to Brittany Smith about beating her husband, Plaintiff retrieved of a fish-bat, the Plaintiff's did not need the bat for any reason other than an altercation with Joshua Smith, the Plaintiff concealed the fish-bat, Plaintiff continued his verbal altercation with Brittany Smith and Jessica Bradley, Plaintiff brandished of the fish-bat, Plaintiff changed his story from the night of the incident to his interview with the detective, and the Plaintiff's suspicious behavior on the Sands Camera.
2. The finding of maliciousness/punitive damages as to Defendants had no basis in the testimony presented.
    a. No testimony was presented showing that Defendant Carter acted maliciously in her investigation nor in the ultimate arrest of the Plaintiff.
    b. No showing was made that the imposition of punitive damages was appropriate.
3. Plaintiff Failed to Overcome Defendant Carter's Qualified Immunity.
    a. Officers are shielded from personal liability in 42 U.S.C. § 1983 actions when they reasonably believe their conduct complied with the law.
4. The inconsistent verdicts of Defendants/former defendants.
    a. Former defendants Wekenmann, Beach, and Griffith, were dismissed from the case at the directed verdict stage, but Defendant Carter remained. The maliciousness alleged by the Plaintiff was that the 'higher-up' former defendants ordered her to target the Plaintiff with a 'trumped-up' charge. Without the direction of the former defendants, even under Plaintiff's theory, Defendant Carter cannot be found to have acted maliciously.
5. The testimony and evidence from Witnesses Steady and Dowling about prior arrests of non-related and unidentified individuals, and their determination of probable cause for the underlying incident.
    a. Allowing former Officers to testify about other alleged situations involving false arrests was irrelevant, based on hearsay, and highly prejudicial to the Defendants.
    b. Both Defendants testified that they had no knowledge of the specific facts and circumstances of the altercation, performed no investigation into the altercation, and did not know all the facts learned in Defendant Carter's investigation.

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6. The testimony of Plaintiff's former Civil and Criminal Attorney, Lester 'Gill' Bell.
    a. Bell, who was named as a witness outside the scheduling order and after dispositive motions were filed, testified to his conversations with Defendant Carter. This testimony was inadmissible as irrelevant hearsay and was highly prejudicial to the Defendants, especially considering Bell formerly represented the Plaintiff in this civil claim.
7. Defendant Carter is protected by the S.C. Tort Claims Act's exception to a waiver of immunity regarding the institution or prosecution of any judicial or administrative proceeding.
    a. S.C. Code 15-78-60(23) includes that a governmental entity is not liable for the institution or prosecution of any judicial or administrative proceeding. Defendant Carter's actions of obtaining a warrant and the subsequent arrest of the Plaintiff are protected under the TCA.[1]

I. DEFENDANTS ARE ENTITLED TO A JNOV

Defendants are entitled to JNOV because the only reasonable inferences that can be drawn from the evidence viewed in the light most favorable to the Plaintiff is that probable cause existed for the Plaintiff's arrest. The trial court may grant a motion for JNOV when the evidence yields only on reasonable inference. RFT Management Co. LLC, v. Tinsley & Adams LLP, 399 S.C. 322, 332, 73 S.E.2d 166, 171 (2012) *citing* Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E2d 439 (1994).

The major issue in this case concerns the existence of probable cause. The testimony plainly showed that Defendants had probable cause to arrest the Plaintiff, as the record includes a litany of facts that would support probable cause, specifically when taken as a totality of the circumstances. When analyzing whether probable cause exists for an arrest, the law requires only that a 'fair probability' existed that a person committed a crime. Carter v. Bryant, 429 S.C. 298, 314, 838 S.E.2d 523, 532 (Ct. App. 2020). With the knowledge that the Plaintiff lied in his initial interaction with police, made threatening comments to the victim's wife, retrieved a bat (for no purpose other

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than to use in an altercation), concealed the bat on his way back to the victim's wife, and other evidence shown during the trial of this case, the only reasonable inference is that their was a 'fair probability' the Plaintiff committed 3rd Degree Assault. Thus, a JNOV is appropriate.

Additionally, Defendant Carter is entitled to a JNOV due to the absence of testimony to support a finding that she acted with malice. No testimony supports a finding that Defendant Carter's investigation and/or execution of a warrant was performed with malice, i.e. deliberately without just cause. Law v. S.C. Dep't. of Corr., 368S.C. 424, 437, 629, S.C.2d 642, 649 (2006). Further, directing a verdict for the three former officers precludes a finding, under Plaintiff's own theory, that Defendant Carter acted with malice. Sufficient evidence existed for Defendant Carter's finding probable cause, and a JNOV is appropriate.

II. DEFENDANTS ARE ENTILTED TO A NEW TRIAL NISI REMITTITUR

Defendants are entitled to a new trial *nisi remittitur* based on the verdict of $350,000.00 plus attorney's fees for the Plaintiff's damage which consisted of spending one night in jail. The Plaintiff was not seeking personal injury damages from the underlying altercation, and the damages awarded for his night in jail, mental anguish, and/or embarrassment were based on speculation and are entirely excessive. Remittitur is "the method by which a trial judge can review a jury award for excessiveness." Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors, Inc., 99 F.3d 587, 593 (4th Cir. 1996). Further, when a jury's verdict is excessive, it is the duty of the court to require a

[1] All the grounds listed herein are specifically enumerated as grounds for a JNOV, New Trial Nisi Remittitur, New Trial Absolute, and Relief under the 13th Juror Doctrine.

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remittitur or order a new trial. Id. 3 *citing* Linn v. United Plant Guard Workers, Local 114, 383 U.S. 53, 65-66, 86 S. Ct. 657, 664-65, 15 L.Ed. 2d 582 (1966). at 593. While mathematical certainty is not required for a damage award "in order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." Baughman v. Am. Tel. & Tel. Co., S.C. 101, 410 S.E.2d 537, 546 (S.C. 1991) *citing* Piggy Park Enter., Inc. v. Schofield, 251 S.C. 385, 162 S.E. 2d 705 (S.C. 1968) (Neither the existence, causation, nor amount of damages can be left to conjecture, guess or speculation.") Id. Plaintiff presented no actual damages that a jury could evaluate without speculation, and for the reasons discussed above, a new trial *nisi remittitur* is appropriate. Further, the jury's verdict was based on the age and/or health of the Plaintiff, and its sympathy for him (discussed below). Based on these and the reasons above, Defendants are entitled to a new trial *nisi remittitur*.

III. DEFENDANTS ARE ENTITLED TO A NEW TRIAL ABSOLUTE

A defendant is also entitled to a new trial *nisi remittitur* and/or a new trial absolute when a verdict is so excessive that it shocks the conscience of the court and clearly indicates that the figured reached "was the result of caprice, passion, prejudice, partiality, corruption, or other improper motives." Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993) *citing* Brabham v. Southern Asphalt Haulers, Inc., Inc. 223 S.C. 421, 76 S.E.2d 301 (1953), see also Int'l Safety Access Corp. v. Integrity Worldwide, Inc. 2011 WL 6826855 at *3 (D.S.C. Dec. 28, 2011). A motion for a new trial is distinguishable from a JNOV, as a motion for a new trial addresses the weight of the evidence and involves a less stringent test than one for a JNOV because both parties

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are still entitled to have their issues resolved by a jury. Am. Jur., 2nd Ed., § 4, *New Trial*, *Judgment Notwithstanding the Verdict and Arrest of Judgment Distinguished from New Trial*.

Similarly, "if an amount is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute." O'Neal v. Bowels, 314 S.C. 525, 527 431 S.E.2d 555, 556, (1993). The decision to grant a new trial is left to the "discretion of the trial court and will ordinarily not be disturbed on appeal." Vernon v. Atlantic Coast Line R. Co., 221 S.C. 376, 70 S.E.2d 862 (1952). Considering the award of 350,000.00 for one night in jail, and that the Plaintiff is advanced in years, the verdict was undoubtedly based on the sympathy, caprice, or passion. Plaintiff's counsel specifically argued in closing that, due to the Plaintiff's age, his time was limited, and thus the hours he spent in jail were worth more than someone who was younger. Based upon this, and all of the reasons above, a new trial absolute/ new trial *nisi remittitur* is appropriate.

IV. DEFENDANTS ARE ENTITLED TO RELIEF UNDER THE 13TH JUROR DOCTRINE

Finally, Defendants are entitled to a new trial based on the 13th Juror Doctrine. South Carolina's thirteenth juror doctrine entitles the trial judge to sit as the thirteenth juror when he finds "the evidence does not justify the verdict" and then allows the trial judge to grant a new trial. Norton v. Norfolk Southern Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (citations omitted). Thus, the trial judge can essentially hang the jury by refusing to agree to the jury's otherwise unanimous verdict. Id. The doctrine exists for situations where the Plaintiff's evidence might make a case one for the jury,

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"but the evidence might be so outweighed by the countervailing evidence that in the exercise of its discretion, a trial court could choose to set aside the verdict under the thirteenth juror doctrine." RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012) *citing* McEntire v. Mooregard Exterminating Servs., Inc. 353 S.C. 629, 632, 578 S.E.2d 746, 748 (Ct. App. 2003). The Court in Folkens explained that:

> "The effect is the same as if the jury failed to reach a verdict… when the jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served requiring the trial judge to make factual findings."
> Id. citing Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990)

The veto power possessed by the trial court is exceedingly high, with the Court in Worrell describing that "the trial judge is the thirteenth juror, possessing the veto power to the Nth degree." Worrell v. South Carolina Power Co., 186 S.C. 306, 186 S.E. 638, 641 (1938).

Here, considering: the low bar needed for probable cause, the requirement that probable cause be viewed in the shoes of and at the time of the arresting officer, the considerable testimony presented showing probable cause existed, the issues concerning Plaintiff's ability to recall the events, the failure of Plaintiff to present testimony on probable cause from a source who performed any investigation into the facts of the underlying altercation, the excessive verdict awarded by the jury, and several other issues, the Court should exercise its discretion under the 13th Juror Doctrine, and grant a new trial.

In sum, the Defendants move that the court grant a JNOV, nre trial nisi remittitur, new trial absolute, or new trial under the 13th juror doctrine. Defendants incorporate all

pleadings, filings, evidence, exhibits, and arguments made during the trial and in any and all pre-trial motions and memoranda. Defendants request a hearing and will submit a memorandum in support of this motion to include the above referenced materials and portions of the trial transcript, once available.

HOWELL, GIBSON & HUGHES, P.A.

By: s/Robert S. Dennis
Robert S. Dennis
Thomas Allan 'Tab' Bendle
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Defendants Town and Carter

Beaufort, South Carolina
July 1st, 2024

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'STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2021-CP-07-01217
	)	
	)	
	)	
Paul Vernon Coffman, Jr.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF ITS POST TRIAL MOTIONS**
	)	
	)	
Town of Port Royal and Detective Kimberly Carter,	)	
	)	
	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court on the motion of the Defendants Town of Port Royal and Kimberly Carter based on Rules 50 and 59 of the SCRCP. The trial of this case took place before Circuit Court Judge H. Steven DeBerry, IV from June 17-21, 2024, in Beaufort County. The Defendants move for a judgment notwithstanding the verdict, or in the alternative, a new trial *nisi remittitur*, a new trial absolute, or a new trial based on the thirteenth juror doctrine.

FACTUAL BACKGROUND

This matter stems from an altercation between the Plaintiff and a former Defendant to this action, Joshua Smith, on July 6, 2019. On that date, the Plaintiff, who was approximately 80 years old, had been boating with his wife and a friend. Plaintiff's Amended Compl., ¶ 11. Mr. Smith had also been boating with his wife, and two of his friends. Id. at ¶ 12. Both Mr. Smith and the Plaintiff were heading back to the landing in Port Royal to pull their boats out of the river. Id. at ¶ 11 and 12. The Plaintiff alleged that Mr. Smith was intoxicated, playing loud music, and performing donuts in his boat. Ex. 1, *Dep. of Plaintiff 23:13-18*. The Plaintiff testified at trial that this behavior by Mr. Smith angered the Plaintiff.

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As the Plaintiff waited to use the boat ramp, the Plaintiff testified that he approached Brittany Smith and Jessica Bradley and asked how their day had been. Mrs. Smith indicated that it was great until her husband started playing his music loudly. Ex. 2, *Dep. of B. Smith 9:12-21*. The Plaintiff replied by asking how Mrs. Smith could tolerate that behavior and told her that he was "9/10ths of the way to whupping her husband's ass." Id. Thereafter, the Plaintiff walked to his truck in the parking lot and retrieved a fish-bat. Ex. 3, *Dep. of Plaintiff 37:10-19*.

On his return to the dock, the Plaintiff passed Mrs. Smith and Ms. Bradley. It appeared to the two women that the Plaintiff was concealing something behind his back. Ex. 4, *Dep. of B. Smith 10:25-11:21*. The ladies asked the Plaintiff if he had a weapon, and he pulled his shirt up and told them that he did not. Ex. 5, *Dep. of Plaintiff 29:2-15*. The women indicated that they were not referring to an object in his waistband, but whatever he was holding in his hand (the fish-bat). Ex. 6, *Dep. of B. Smith 13:23-14:9*. Ms. Bradley informed the Plaintiff that Mrs. Smith was an officer with the Beaufort County Sheriff's Department, and a verbal altercation ensued. Mr. Smith, finished with loading the trailer, noticed that words were being exchanged and profanity being directed at his wife. Ex. 7, *Dep. of J. Smith 12:25-13:4*. After attempting to escort the ladies away, Mr. Smith saw the Plaintiff holding a fish-bat up in the position to strike him. Ex. 8, *Dep. of J. Smith 13:8-17*. Mr. Smith grabbed the Plaintiff by the shoulder, took the bat from him, and threw it in the river. Ex. 9, *Dep. of J Smith 15:23-16:*7.

The Plaintiff's recollection of the altercation was that "unprovoked and through no fault of his own, Mr. Smith attacked him brutally without warning and attempted to drown him." *See Plaintiff's Compl*., ¶ 17. The Plaintiff described that Mr. Smith was "hitting me about the head and the shoulders and the back and the kidneys and he beat me to the ground" and that "he kept trying to drag me off the dock… and that's where I got all the scrapes on my legs and knees and so forth from him dragging me." Ex. 10, *Dep. of Plaintiff 35:3-17*. The Plaintiff's wife testified

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at trial that the beating went "on and on and on" and that, the day after the altercation, the Plaintiff's entire body was covered in cuts and bruises. The photos submitted by the Plaintiff show only a bruise on his shoulder and a small cut on his knee. Ex. 11, *Photos Submitted by Plaintiff*.

By chance, a Town of Port Royal Police Officer, Peter Bunting, had been on patrol in the area and arrived to see the final seconds of the altercation, witnessing Mr. Smith throw an object into the water. Ex. 12, *Incident Report of Bunting*. Officers from Port Royal interviewed the Plaintiff and Mr. Smith. During their respective interviews, both men denied the need for medical attention and informed the officers that they did not want to press any charges. Id. Because of this, the case was closed. Id. After returning home, the Plaintiff walked to a friend's home to discuss what had occurred and have a few cocktails. Ex. 13, *Deposition of Plaintiff 58:13-59:2*; Ex. 14, *Deposition of Plaintiff 66:11-15*. The Plaintiff's wife testified at trial that her husband did not go to the hospital that evening or the next day. Further, she stated that on the evening of the altercation, she did not check the Plaintiff's body for any injuries.

A few days after the incident, the Plaintiff began calling and visiting the Port Royal Police Department. Correspondence through emails, letters, and calls to the Police Station continued during the weeks after the incident with Plaintiff's goal being a re-opening of the case. Ex. 15, *Dep. of Paul Coffman 98:24-99:7*; Ex. 16, *Supplemental Incident Report*. The Plaintiff, Plaintiff's wife, and Plaintiff's friend submitted statements describing their recollection of the altercation. Ex. 17, *Statements of Plaintiff's Boat*. The Plaintiff also contacted Mrs. Smith's employer, the Beaufort County Sheriff's Office, to report her actions. Ex. 18, *Plaintiff's Complaint to BCSO*.[1] Eventually, and after several requests from the Plaintiff, the case was

[1] The Plaintiff's complaint to the BCSO was investigated by Lt. Baird and found to be unsubstantiated. Ex. 18, p. 11.

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reopened and a detective with the Town, Kimberly Carter, was assigned to investigate. The Defendant Carter testified that she was not involved in the initial response to the altercation at the boat landing and had been on vacation at the time.

During the re-opened investigation, Detective Carter interviewed all of those who were present at the scene, reviewed the body cameras of the responding officers, reviewed the footage captured by the Sands boat landing camera, interviewed a DNR officer, interviewed a friend of the Plaintiff, reviewed the written file from the Port Royal Police Department, and reviewed the written statements of the Plaintiffs. Ex. 19, *Investigation of Carter*; Ex. 20, *Dep. of Carter 12:3-21*. Based on the totality of the evidence, Detective Carter determined that the Plaintiff was the primary aggressor in the altercation. Ex. 21, *Dep. of Carter 21:21-22:2*.

Defendant Carter wrote a warrant for the Plaintiffs arrest, and it was signed by Judge Jim Grimsley on August 1, 2019. Ex. 22, *Arrest Warrant*. Detective Carter contacted the Plaintiff and asked that he come down to the Police Station so that she could serve him with the warrant. Ex. 19, P. 13-14. Detective Carter indicated that he would not be taken to jail if he cooperated and came down to the Station before 4:00 on August 1, 2019. Id. Later that day, Plaintiff contacted Defendant Carter and told her that he wanted an attorney to be present. Id. The Defendant Carter thereafter received a phone call from an attorney in Columbia who told her that he could not be in Port Royal by 4:00 that afternoon and asked if he and the Plaintiff could come to the station the following morning. Id. The Defendant Carter indicated that they could come in at 9:00 so that the Plaintiff could turn himself in. Id. The attorney for the Plaintiff agreed. Id.

Later in the afternoon on August 1, 2019, Detective Carter contacted the victim's advocate that was assigned to the case on behalf of Josh Smith. Id. The victim's advocate indicated that Mr. Smith had the right to be notified of the bond hearing date and time so that he could appear. Id. The South Carolina Victim Bill of Rights requires that a victim be notified and

have the opportunity to be present at the bond hearing of the alleged perpetrator of a crime. S.C. Const., Art. I, § 24(A)(4). The following morning, the Plaintiff and his attorney presented to the station at 9:00 a.m. and were informed that the Plaintiff would have to be booked into the Beaufort County Detention Center, and that his bond hearing would be scheduled the next day.

The Plaintiff spent one night at the Beaufort County Detention Center before he was released without bond. Later, the prosecutor agreed to dismiss the charges as the witnesses/victim was not interested in pursuing the charges. Ex. 23, *Dismissal Letter*. Thereafter, this suit was filed.

PROCEDURAL HISTORY

In the Amended Complaint, the Plaintiff alleged violations of 42 U.S.C. § 1983 against Defendants Beach, Carter, Griffith, and Wekenmann resulting from the Plaintiff's arrest which was alleged to have been based on a warrant issued without probable cause. The Plaintiff also sued the Town of Port Royal for negligence, false arrest/false imprisonment, and malicious prosecution.

Judge B. Alex Hyman, upon hearing a motion to dismiss, granted the dismissal of the false arrest/false imprisonment claim against the Town. Judge Hyman also granted summary judgment on the Plaintiff's claim for loss of consortium. Ex. 24, *Form 4 Granting/Denying Summary Judgment*. At trial, and upon a directed verdict motion of the Defendant, the Court granted a dismissal of the § 1983 claims against Defendants Beach, Griffith, and Wekenmann. This left only the Town of Port Royal and Detective Carter as Defendants, and the claims of malicious prosecution and violation of § 1983 were submitted to the jury.

The jury returned a verdict finding Defendant Carter liable under the § 1983 claim in an amount of $60,000.00. Additionally, punitive damages were awarded on that claim in the amount of $40,000.00. Further, the jury returned a verdict for the Plaintiff as to the malicious

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prosecution claim against the Town for $250,000.00.

LEGAL ARGUMENT

I. Defendants are Entitled to a JNOV

A. Probable Cause Existed for the Plaintiff's Arrest.

The Defendants are entitled to judgment notwithstanding the verdict ('JNOV') because the only reasonable inference that can be drawn from the evidence viewed in the light most favorable to the Plaintiff is that probable cause existed for the Plaintiff's arrest. In ruling on a JNOV, the trial court reviews the evidence and inferences in the light most favorable to the party opposing the motion. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006). If the evidence can only produce one reasonable conclusion, the motion must be granted. Carter v. Bryant, 429 S.C. 298, 314, 838 S.E.2d 523, 532 (Ct. App. 2020).

The principal issue in this case concerns the existence of probable cause. All of the Plaintiff's causes of action -- a violation of § 1983 by Defendant Carter[2] and the malicious prosecution and negligence causes of action directed at the Town, require a showing that the Defendants lacked probable cause for the arrest.[3] Thus, the trial revolved around one

[2] The Fourth Circuit has held that there is no § 1983 malicious prosecution cause of action that is separate or independent from an unreasonable seizure claim under the Fourth Amendment. Lambert v. Williams, 223 F.3d 257, 261 (4th Cir. 2000) ("the malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort"). Thus, a § 1983 malicious prosecution cause of action is never actionable where there exists probable cause for the arrest.

[3] Both Plaintiff's state law claims for malicious prosecution and negligence also require that the Plaintiff show probable cause did not exist. See Carter, 429 S.C. 298, 306 (Ct. App. 2020) citing Law, 368 S.C. 424, 435 (2006). The Plaintiff's claim of negligence based on malicious prosecution as to the Town requires that his arrest lacked a basis in probable cause. See Massey v. Ojaniit, 759 F.3d 343, 356 (4th Cir. 2014); Brooks v. City of Winston-Salem, 85 F.3d, 183 (4th Cir. 1996) (describing that a plaintiff cannot succeed on a § 1983 claim of false arrest when there is probable cause).

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fundamental question -- whether the Defendants had probable cause to arrest the Plaintiff for Third Degree Assault.[4]

The United States Supreme Court has explained that "[t]o determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." District of Columbia v. Wesby, 138 S.Ct. 577, 586 (2018). "Because probable cause deals with probabilities and depends on the totality of the circumstances, it is 'a fluid concept' that is not readily, or even usefully, reduced to a neat set of legal rules." Id. Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." Id. Thus, the Supreme Court has described probable cause as not being "a high bar." Id.

Additionally, when analyzing whether probable cause exists for an arrest, the law requires only that a "fair probability" existed that a person committed a crime. Carter, 429 S.C. at 314. Carter is instructive when considering the proper perspective when reviewing probable cause:

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[4] The existence of probable cause would be a bar to a cause of action for "negligent arrest," assuming such a cause of action even exists under South Carolina law. As a general proposition, a cause of action for "negligent arrest" is not recognized under South Carolina law. In *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), the South Carolina Court of Appeals held that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, the Court of Appeals concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id*. The same would be true for a malicious prosecution claim. In fact, in *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Supreme Court explained that "police owe a duty to the public at large and not to any individual." *Id*. Consequently, the *Gist* and *Wyatt* cases demonstrate that South Carolina does not recognize a cause of action for "negligent arrest" or an actionable claim for negligence where there is an arrest based on probable cause.

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> In assessing whether probable caused existed, we must view things as they appeared to the officers arriving at this chaotic scene. It is an inquiry guided by common sense, and one that acknowledges human conflict is messy and tense encounters can produce differing perspectives on what happened. Recognizing that lack of clarity, *at the warrant stage, the law does not demand certainty*, clear and convincing proof, proof beyond a reasonable doubt, or even proof by the great weight of the evidence. Instead, the law insists on something less, but something more than reasonable suspicion: *it demands a "fair probability*."

Carter, 429 S.C. at 315 (Citations omitted). (Emphasis added).

Probable cause is not analyzed in hindsight, rather, it must be analyzed as of the time of arrest based on the facts and circumstances known to the arresting officer. Jackson v. City of Abbeville, 366 S.C. 662, 667, 623 S.E.2d 656, 659 (Ct. App. 2005). Consequently, the analysis of whether probable cause existed must not be viewed as "an academic exercise in hindsight," but rather, a commonsense inquiry. Carter, 429 S.C. at 315 *quoting* Ornelas v. United States, 517 U.S. 690, 695 (1996). Finally, when the evidence yields but one conclusion, this determination may be decided as a matter of law. Law, 368 S.C. at 441; Carter 429 S.C. at 316.

Therefore, when examining whether probable cause existed for the Plaintiff's arrest, it must be determined if, based on the facts and circumstances known to Defendant Carter on August 1, 2019, there was a fair probability that Plaintiff committed a Third Degree Assault. In order to assess what facts were known by Defendant Carter on August 1, 2019, the court must analyze what information the Town had when the case was initially closed, and how the information that Defendant Carter learned during the investigation created a fair probability that the Plaintiff assaulted Joshua Smith.

Initially, the incident report prepared the evening of the incident references the altercation as a "fight." Ex. 12. The responding officers interviewed both subjects who declined medical attention and declined to press charges on each other. Id. After gathering statistical information, the case was closed. Id.

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On July 9, 2019, which was a few days after the altercation, the Plaintiff contacted the Port Royal Police Department and spoke with Captain John Griffith. During that conversation, he denied that he had any sort of confrontation (verbal or otherwise) prior to the attack. Ex. 16, p. 1 and Ex. 17, p. 1. Instead, the Plaintiff told Captain Griffith that he was "brutally attacked by the other party without provocation." Ex. 16, p. 1. Thereafter, the Plaintiff presented a written statement wherein he attested that he had "zero communication with any of them" and that he "remained[ed] as far away from *Bad Company* as possible." Ex. 17, p. 1. In the statement, the Plaintiff also describes the members of the other boat being drunk.[5] The Plaintiff said that his purpose in holding the fish-bat was to return it to his boat. Id., p. 2. According to his statement, he waited (with the fish-bat in hand) for over an hour until the other boat was placed on the trailer. Id., p. 1. The Plaintiff also submitted photos, showing bruising on one shoulder and a cut on his knee. Ex. 11. These injuries were alleged to be the result of an extended and brutal attack by Mr. Smith who was described by Plaintiff as "twice his size [and] half his age." Ex. 17, p. 2.[6] All of these statements became part of the file, and the case remained closed.

Thereafter, the investigation was re-opened, and the Defendant Carter began interviewing witnesses to the altercation. She first spoke with Austin Pritchard, a DNR agent who pulled Joshua Smith over immediately prior to Smith using the boat ramp. Ex. 19, p. 1. Agent Pritchard stated that he did not believe Joshua Smith to be too intoxicated to drive his boat. Id. This contradicted the Plaintiff's statement that Smith was intoxicated during the altercation.

Next, the Defendant Carter interviewed Jessica Bradley who stated that the Plaintiff was hiding the bat when he returned from his truck, and that he had made a comment to Brittany

[5] The Plaintiff's written statement was that he determined the members of the other boat to be "as drunk and stoned as anyone I had seen in many, many years." Ex. 17, p. 2.

[6] Joshua Smith was described by the Plaintiff's wife as "exceptionally strong and scary." Ex. 17 at pp. 2, 4.

Smith about "beating someone's ass." Id. This contradicted the Plaintiff's contention that he had no contact with anyone boat prior to the altercation. Brittany Smith told Defendant Carter that the Plaintiff said he was "9/10ths of the way from kicking her husband's ass." Id. at 12. Brittany Smith also confirmed that the Plaintiff was attempting to hide his fish-bat on the way back from the truck. Id. This statement, as well as the fact that the fish-bat was held by Mr. Smith at the time of the incident, contradicts the Plaintiff's contention that he retrieved the fish-bat for the purpose of returning it to his boat, as he had an hour to do so, but never put the bat down.

At the interview of the Plaintiff, he conceded that he did indeed have an interaction with the two women prior to the altercation. Id. at 9. This was a discrepancy from his written statement. He also said that he did conceal the fish-bat on his way back to the boat, which was omitted from his written statement. Id. at 8. The Plaintiff thereafter said that Brittany Smith "looked him in the eye and said she [was] a police officer." Id. at 9. This is inconsistent with the statements of Mrs. Smith and Ms. Bradley, who both said that Ms. Bradley made the comment. Id. at 2, 12. Thus, evidence emerged during the re-opened investigation that the Plaintiff had lied about his lack of communication to the women, his reason for retrieving the bat, and who identified Mrs. Smith as a police officer.

In the Plaintiff's interview with the Defendant Carter, he described a brutal beating where he was thrown to the ground, hit with "long arms blows to the back of the head and back," and received several punches to the kidneys. Id. at 9. Next, the Plaintiff said that Joshua Smith "dragged him to the edge of the dock" where the surface of the dock acted like a "cheese grater" on his skin. Id. Finally, the Plaintiff described how the altercation ended. The Plaintiff said the Smith had dragged him to a position where the Plaintiff was lying prone on his stomach, with his face looking over the dock and into the water and Mr. Smith sitting on his back. At that point.

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The Plaintiff stated: "I decided I wasn't going in the water. I stood up with him on my back, I lifted his arms up off me, I looked him straight in the eye and I dropped my hands and never said a word to the man." Id.

The Plaintiff's statement to the Defendant Carter was that he, a nearly 80-year-old man, stood up under the full weight of Mr. Smith. This statement by the Plaintiff was not believable considering the Plaintiff's earlier statements about the age and size difference between the two men. The Plaintiff's purported lifting of Mr. Smith was not described by any other witness to the altercation, despite five other people standing on the dock at the time. As the interview continued, despite emphasizing earlier that the Plaintiff had "never known anyone under any circumstances to use [a fish-bat] as a weapon on another human being" when asked why he concealed the bat on his return to the dock, the Plaintiff said that he "did not want to cause any alert" to the members of the other boat. Id. at 8, 10. During the re-investigation, the Plaintiff provided a recollection of the altercation that was not credible and admitted that he put the fish-bat behind his back to hide it from the other people on the dock.

The Defendant Carter also reviewed the camera footage from the Sands landing during the re-investigation. Carter noted that the Plaintiff retrieved the bat from beside the driver's side seat and placed it behind his back as he exited the truck. Id. at 13. When Carter reviewed the photos that the Plaintiff submitted documenting his injuries (bruise to the shoulder and cut to the knee), she noted that the injuries were consistent with the story of Joshua Smith. Smith's story was that he pushed the Plaintiff down by the shoulder, took the bat from the Plaintiff, and threw it in the water. Id. at 13. The Defendant Carter specifically noted that no evidence of bruising was seen on the Plaintiff's back or kidneys, and that his injuries appeared consistent with "someone push[ing] him down from his shoulder." Id. This contradicted the Plaintiff's recollection of the events and his description of the beating. Instead, these injuries appeared

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consistent with Josh Smith's statement that he pushed the Plaintiff by the shoulder to neutralize the bat. Ex. 9. The Plaintiff's account was also undercut when Detective Carter interviewed Vaughn Keown, who told her that the Plaintiff came to his home after the "brutal beating" to drink a few cocktails. Ex. 19, p. 13. Therefore, the Plaintiff's story was further contradicted by the lack of injuries matching his description of the altercation and his actions after the altercation.

In sum, the Defendant Carter reviewed the written report from the night of the incident, the written statements of the Plaintiff, the written statement of the Plaintiff's wife, the written statement of Aaron Abercrombie, the body camera footage of the responding officers, and the photos/videos from the Sands Boat Landing camera. Carter also interviewed DNR Agent Austin Prichard, Jessica Bradley, Hunter Lewis, the Plaintiff, the Plaintiff's wife, Aaron Abercrombie, Joshua Smith, Brittany Smith, and Vaughn Keown. After performing a full investigation, the inconsistencies in Plaintiff's story were:

1. That the Plaintiff had no communication with the members of the other boat.
    a. The interviews of Brittany Smith, Jessica Bradley, and the Plaintiff confirmed that he initially approached the women despite his prior written statements about the incident.
2. That the Plaintiff was attacked without any provocation.
    a. The interviews with Mrs. Smith and Mrs. Bradley indicated that he spoke with the women and described wanting to fight Joshua Smith.
    b. In the interview of Mr. Keown, he indicated that the Plaintiff was known to have a temper.
3. The Plaintiff's story about standing up from a prone position with a much larger man on his back.
    a. This is a highly suspect claim considering the age and size difference between the two men.
    b. Despite five other people being feet away from the altercation, no other witnesses described that this occurred.
4. That the Plaintiff suffered a "brutal beating."
    a. This is inconsistent with:
        i. The photos from the incident
        ii. The statements of the other witnesses,
        iii. Plaintiff's actions after the incident (walking to Vaughn Keown's house to have cocktails).
5. That Joshua Smith was highly intoxicated at the time of the altercation.

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   a. The DNR Agent who pulled him over minutes beforehand did not believe Smith was intoxicated to any unreasonable degree.
6. The Plaintiff's reason for retrieving the fish-bat (to put it in the boat).
   a. The Plaintiff waited for what he believed to be over an hour on the dock with the fish-bat in hand and never placed it in his boat.
7. The Plaintiff's description of receiving severe injuries from the altercation.
   a. The injuries shown in the photos were more consistent with Joshua Smith's description of the altercation (pushing the Plaintiff by the shoulder and neutralizing the fish-bat).
   b. No photos or evidence were provided showing that the Plaintiff suffered punches to his back, kidneys, or any other part of his body.
   c. The Plaintiff did not seek any medical attention immediately after the altercation (which was offered by the police) nor at any other time after the altercation.
8. The Plaintiff's concealment of the fish-bat on his way from the truck to the dock.
   a. This was inconsistent with his statement that the fish-bat could not be used as a weapon.
9. The Plaintiff's recollection that Brittany Smith "looked him in the eyes and told him she was a cop."
   a. Jessica Bradley stated that Smith was a police officer, not Smith.

In short, the Defendant Carter found numerous inconsistencies in the Plaintiff's story. This contrasts with the coherent statements that Detective Carter received from the Smiths, which she testified were "consistent throughout the entire process." Exhibit 25, *Depo. of Carter 15:1-16:25*. Based on a full investigation into the underlying matter, and considering the totality of the circumstances, a "fair probability" existed on August 1, 2019, that the Plaintiff assaulted Joshua Smith. Thus, the Defendants are entitled to a JNOV on each of the Plaintiff's claims.

B. The Plaintiff Failed to Show the Element of Malice Necessary for Malicious Prosecution as to Defendant Carter.

The Defendant Carter is entitled to a JNOV due to the absence of testimony to support a finding that she acted with malice. No testimony supports a finding that Defendant Carter's investigation and/or execution of the warrant was performed with malice, i.e. deliberately without just cause. Law, 368 S.C. at 437. Proof that judicial proceedings were instituted with malice is a required element the Plaintiff must prove to establish a claim for malicious

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prosecution. Carter, 429 S.C. at 306, *citing* Law, 368 S.C. at 435. When considering an action for malicious prosecution "the public interests demand that courts shall not frown upon honest efforts made in attempts to bring the guilty to justice." Elletson v. Dixie Home Stores, 231 S.C. 565, 573, 99 S.E.2d 384, 388 (1957). Thus, because the Plaintiff failed to prove malice, Defendant Carter was immune from liability under the malicious prosecution cause of action.

Plaintiff's theory was that former defendants and high-ranking officers of the Port Royal Police Department (Beach, Wekenmann, and Griffith) disliked the Plaintiff's calls, letters, and emails, requesting that the case be re-opened.[7] Because of this, the Plaintiff alleged, the high-ranking officers told Defendant Carter that she needed to re-open the case and charge the Plaintiff with a crime.[8] The Plaintiff's theory continues that, because of the direction from the "higher-ups," Defendant Carter performed an investigation to gin up a charge against him.[9] Thus, the malice claimed by the Plaintiff was the malice of the high-ranking officers who directed Defendant Carter to charge the Plaintiff.[10] The Plaintiff's theory paints Defendant Carter as a patsy directed by the high-ranking officers of the Port Royal Police Department.

At the directed verdict stage, however, the Defendants Beach, Griffith, and Wekenmann were all dismissed from the action, based on a lack of evidence that they engaged in any

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[7] The Plaintiff theorized that his arrest "was in retaliation for the letters and emails he sent regarding PRPD's handling of the incident at Sands Beach Boat Landing." Plaintiff's Amend. Compl., at ¶ 37.

[8] "Defendant Carter was instructed to arrest Plaintiff for Assault and Battery 3rd Degree by her superior officers at PRPD." Id, ¶ 36.

[9] The evidence showed that the case was not reopened at the behest of the Defendants, rather the Plaintiff requested several times, including in writing, that the case be re-opened.

[10] Even viewing Plaintiff's theory broadly, it would stand for the proposition that Beach, Griffith, Wekenmann, and Carter acted in concert with one another to bring a charge against the Plaintiff without probable cause.

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malicious behavior. Without these officers demanding that Carter charge the Plaintiff, the only way a jury could have found malice on the part of Carter (thus proving malicious prosecution), would be by finding evidence that she charged the Plaintiff based on some personal animus or improper motive without just cause. No testimony was presented that indicated this. The Defendant Carter testified that she did not know the Plaintiff or any other witness and that she was on vacation during the initial altercation. The Plaintiff presented no evidence that the Defendant Carter deliberately charged the Plaintiff with Third Degree Assault without just cause, as the evidence gleaned by the Defendant Carter (including the litany of inconsistencies in the Plaintiff's story) indicated a fair probability that the Plaintiff committed Third Degree Assault.

In fact, evidence was presented at trial that demonstrated that the Defendant Carter's investigation *lacked* any malice.[11] When an investigation is performed thoroughly, courts consider this as evidence that the investigation was performed *without* malice. *See* Law, 368 S.C. at 437 (finding that the plaintiffs failed to establish malice because a thorough investigation was performed). Here, Detective Carter reviewed all of the written materials, all of the video evidence, and interviewed every person that was present at the altercation prior to seeking an arrest warrant. This was a thorough investigation of the underlying altercation. The Plaintiff presented no evidence that a material witness was not spoken to, nor did he show that any evidence was not examined prior to seeking the arrest warrant.[12] The allegations of the Plaintiff that Josh Smith was drunk, that the Plaintiff was brutally beaten, that Brittany Smith personally

[11] It is not the Defendants' burden to show that the investigation lacked malice; however, this evidence emphasizes the Plaintiff's failure to make a showing that there was malice in the investigation.

[12] To the extent the Plaintiff argues the "inconsistency" in the statement of Joshua Smith regarding hearing someone tell him to "turn around" was not considered, this is incorrect. Detective Carter testified specifically that she considered this inconsistency prior to seeking the warrant for the Plaintiff's arrest. *See* Ex. 26 *Dep. of Carter, 18:1-20:20*.

knew Officer Bunting, etc., were all investigated by Detective Carter who found evidence to the contrary.[13] Not only did the Plaintiff fail to produce any evidence that Defendant Carter acted with malice, but the evidence also showed that the investigation, because it was thorough, was performed without malice. In either case, the Plaintiff failed to establish malice and the jury's finding was not based on any evidence presented at trial. Because malice is an essential element of malicious prosecution, the Defendant Carter is entitled to a JNOV.

C. The Defendant Carter is Entitled to a JNOV Based on Qualified Immunity.

The Defendant Carter is also entitled to a JNOV based on qualified immunity. Qualified immunity "protects officers who commit constitutional violations but who, in light of clearly established law, could reasonably believe that their actions were lawful." Henry v. Purnell, 652 F.3d 524, 531 (4th Cir. 2011). Qualified immunity balances two important interests -- the need to hold public officials accountable when they exercise power irresponsibly, and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. When a plaintiff alleges an arrest without probable cause, "an arresting officer may assert the defense of qualified immunity if '(a) *it was objectively reasonable for the officer to believe probable cause existed.*'" Camden v. Hilton, 360 S.C. 164, 177, 600 S.E.2d 88, 95 (Ct. App. 2004) *citing* Rogers v. City of Amsterdam, 303 F.3d 155, 158 (2d Cir. 2002). (Emphasis added).

The United States Supreme Court in Harlow v. Fitzgerald, 457 U.S. 800 (1982), set forth objective standards for the utilization of the qualified immunity defense and gave specific benchmarks to the judiciary in determining when to protect public officials from undue interference with the exercise of their official duties. In setting forth its guidelines, the Supreme Court ruled that "government officials performing discretionary functions are shielded from

[13] *See* Carter's interview of DNR Officer Pritchard, the photos of the Plaintiff's

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liability for civil damages insofar as their conduct does not violate a clearly established statutory or constitutional right of which a reasonable person should have known." 457 U.S. at 818. The Court further held that "[r]eliance on the objective reasonableness of an official's conduct is measured by reference to clearly established law, and should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment." Id.

Subsequently, the Supreme Court held in Anderson v. Creighton, 483 U.S. 635 (1987), that a court must look for the "'objective legal reasonableness' of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken." 483 U.S. at 639. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. ... [This] is to say that in the light of preexisting law the unlawfulness must be apparent." 483 U.S. at 640.

The Fourth Circuit has explained that qualified immunity protects government officials from liability for "bad guesses in gray areas" and "ensures that they will be held liable only for violating bright-line rules." Hill v. Crum, 727 F.3d 312, 321 (4th Cir. 2013). Qualified immunity "operates to ensure that before they are subjected to suit, [officials] are on notice that their conduct is unlawful." Hope v. Pelzer, 536 U.S. 730, 731 (2002). In other words, as the Supreme Court phrased the standard, the unlawfulness of the conduct must be "beyond debate." Ashcroft v. al-Kidd, 131 S.Ct. 2074, 2083 (2011).

In determining whether an individual defendant is entitled to qualified immunity, courts typically engage in a two-step process as set forth in Saucier v. Katz, 533 U.S. 194 (2001). A court must first determine "whether a constitutional right would have been violated on the facts alleged." 533 U.S. at 200. If the facts viewed in a light most favorable to the plaintiff do not establish a constitutional violation, the inquiry ends and the plaintiff cannot prevail. Parrish v.

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injuries, and the testimony of Officer Bunting and Mrs. Smith. Ex. 19, p. 1, and Ex. 11.

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Cleveland, 372 F.3d 294, 301 (4th Cir. 2004). "Next, assuming that the violation of the right is established, courts must consider whether the right was clearly established at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right." Bailey v. Kennedy, 349 F.3d 731, 739 (4th Cir. 2003).

The standard for determining whether an officer is entitled to qualified immunity is one of objective reasonableness: "whether a reasonable officer could have believed [the conduct at issue] to be lawful, in light of clearly established law and the information the ... officers possessed." Anderson v. Creighton, 483 U.S. 635, 641 (1987). In other words, the Court must ascertain whether the Defendant's actions (or inactions) in their dealings with the Plaintiff constitute a "reasonable mistake[] as to the legality of [their] actions." Saucier, 533 U.S. at 206. Put differently, the question is "whether it would be clear to a reasonable [official] that his conduct was unlawful in the situation he confronted." 533 U.S. at 194-95. Applied in this manner, the test "operates ... to ensure that before they are subjected to suit, [officials] are on notice their conduct is unlawful." 533 U.S. at 206.

As a prime example, in Orem v. Gillmore, 813 Fed. Appx. 90 (4th Cir. 2020), the Fourth Circuit wrote: "Even if Gillmore did not have probable cause to arrest John Orem on the circumstances present in this case, the question is not 'beyond debate," thereby entitling the law enforcement officer to qualified immunity. Fourth Circuit explained that "[q]ualified immunity applies if there is arguable probable cause, which exists even where an officer mistakenly arrests a suspect believing it is based in probable cause if the mistake is objectively reasonable." 813 Fed. Appx. at 92. See also, Hunter v. Bryant, 502 U.S. 224, 227 (1991) ("Even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity"); Smith v. Reddy, 101 F.3d 351 (4th Cir. 1996) (in qualified immunity context, "[t]he reasonableness of [defendant's] conduct does not turn on whether probable cause was, in fact,

present"). To receive qualified immunity, an officer need not have actual probable cause, but only arguable probable cause. See, Gomez v. Atkins, 296 F.3d 253, 261-62 (4th Cir. 2002) ("In our assessment of whether Atkins is entitled to qualified immunity, however, the question is not whether there actually was probable cause for the murder warrant against [Gomez], but whether an objective law officer could reasonably have believed probable cause to exist").[14]

Based on the evidence, statements, videos, and inconsistencies in the Plaintiff's story, it was objectively reasonable for Defendant Carter to believe that probable cause existed for the Plaintiff's arrest. The Defendant Carter testified that, after reviewing all the material and conducting all the interviews, based on the totality of the circumstances, she felt probable cause existed for the Plaintiff's arrest. The facts and circumstances leading to the determination of probable cause were discussed above. Based on this information, it was objectively reasonable for the Defendant Carter to find that probable cause existed for the Plaintiff's arrest, entitling the Defendant Carter to qualified immunity. Therefore, a JNOV is warranted.

To the extent that former officers (who did not perform an investigation into the underlying matter) testified that they disagreed with the Defendant Carter's assessment of probable cause, the Plaintiff failed to prove that the Defendant Carter's belief that probable cause existed was unreasonable. Officers are provided with the protections of qualified immunity not only when it is objectively reasonable to believe probable cause existed, but also when "(b) *officers of reasonable competence could disagree on whether the probable cause test was met* (emphasis added)." Camden, 600 S.E.2d at 95. At the most, the Plaintiff was able to show that a

[14] See also, Brown v. City of Huntsville, 608 F.3d 724, 734 (11th Cir. 2010) ("To receive qualified immunity, an officer need not have actual probable cause, but only 'arguable' probable cause"); Kuehl v. Burtis, 173 F.3d 646, 650 (8th Cir. 1999) ("The issue for immunity purposes is not probable cause in fact but arguable probable cause"). This is true because it is "inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and in such cases those officials should not be held personally liable." Brown, 608 F.3d at 734-35.

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reasonable disagreement could exist between officers over whether probable cause existed in this case.[15] However, even if the Plaintiff was successful in proving this, the Defendant Carter is still protected by qualified immunity. Therefore, a JNOV is warranted.

Assuming the court finds that probable cause did not exist for the Plaintiff's arrest, qualified immunity still attaches and protects the Defendant Carter's mistaken finding. Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments." Smith, 781 F.3d 95, 100 (4th Cir. 2015). Here, to the extent the Defendant Carter may have made a mistake in her ultimate determination that Plaintiff committed Third Degree Assault, this mistake was not unreasonable considering the facts learned in her investigation. The Plaintiff produced no evidence indicating that any alleged mistake by Detective Carter was unreasonable. Thus, the Defendant Carter is entitled to qualified immunity even if she made a mistake in her conclusion. Therefore, a JNOV is appropriate.

D. Plaintiff Failed to Show that His Arrest Warrant was Fraudulently Obtained.

In response to the Defendants' directed verdict motion and seeking to show some unreasonableness in the actions of the Defendant Carter, the Plaintiff attempted to show that the warrant was fraudulently obtained. In order to make such a showing,[16] the Plaintiff must prove

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[15] The Defendants contend that the Plaintiff was unable to show the reasonable minds could disagree on probable cause in this case as both witnesses for the Plaintiff testified that they did not perform an investigation into this matter whatsoever. Those officers did not review the entire file, did not review the Sands camera, and did not conduct any interviews.

[16] In Franks v. Delaware, 438 U.S. 154 (1978), the United States Supreme Court established a two-prong analysis in addressing allegations that an arrest warrant was procured using deliberately false, misleading, or omitted information. "First, plaintiffs must allege that defendants knowingly and intentionally or with a reckless disregard for the truth either made false statements in their affidavit or omitted facts from those affidavits, thus rendering the affidavits misleading." Evans v. Chalmers, 703 F.3d 636, 650 (4th Cir. 2012). The second prong requires the plaintiff to "demonstrate that those false statements or omissions are material, that is, necessary to a neutral and disinterested magistrate's authorization" of the warrant. Id.

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that the officer "deliberately or with a reckless disregard for the truth made material false statements in his affidavit or omitted from that affidavit material facts with the intent to make, or with reckless disregard of whether they thereby made, the affidavit misleading." Miller v. Prince George's County, 475 F.3d 621, 627 (4th Cir. 2007). In order for omissions to violate the Fourth Amendment the Plaintiff must show that "they are both 'material,' that is, necessary to the finding of probable cause," and "made deliberately or with a reckless disregard for the truth." Massey v. Ojaniit, 759 F.3d 343, 357 (4th Cir. 2014). The Plaintiff argued that the Defendant Carter deliberately or recklessly omitted two facts from the warrant: (1) that Joshua Smith was intoxicated at the time of the altercation, and (2) that Mr. Smith's story was not corroborated by Hunter Lewis.

The Plaintiff, however, failed to establish that the allegedly omitted facts were material, i.e. "necessary" to the finding of probable cause. Assuming the Plaintiff was correct, and Mr. Smith was intoxicated, the Plaintiff could have still assaulted him. Just because someone is intoxicated does not mean they cannot be the victim of a crime. Including or omitting that Mr. Smith was intoxicated at the time of the incident is not a necessary element of the crime of Third Degree Assault and Battery. While Plaintiff can argue that contextually this alleged fact was important to the entire story, it does not meet the standard of "materiality" needed to show when an omission violates the Fourth Amendment.

The second alleged omission was the "discrepancy" between the statement of Josh Smith and Hunter Lewis. Again, this alleged omission is not "necessary to the finding of probable cause." Id. Finding a "fair probability" that a crime occurred does not require every witness to corroborate one another perfectly. Mr. Smith's story was corroborated by two other witnesses to the altercation and remained consistent throughout the investigation. Ex. 25. The Plaintiff's story contained numerous inconsistencies and details that were not corroborated by anyone,

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including that he had no communication with anyone prior to the altercation (which he later recanted), that Brittany Smith told him she was a police officer (which she did not), and his description of ending the fight by standing up with Mr. Smith on his back (which was not corroborated by anyone).

Additionally, neither of these allegedly omitted facts were made "deliberately or with a reckless disregard for the truth." Id. Both Mr. Smith's level of intoxication and the lack of corroboration with Mr. Lewis were investigated and considered. The Defendant Carter interviewed a law enforcement officer who said that he did not believe that Mr. Smith was intoxicated to the point that he was unable to drive his boat. Ex. 19, p. 1. Therefore, considering that Defendant Carter did seek verification as to the Plaintiff's allegation that Mr. Smith was drunk and instead found conflicting evidence, it cannot be said that this omission was reckless.

Similarly, the second alleged omission of the corroboration between the Smith/Lewis statements was investigated. The Defendant Carter considered this issue and found Mr. Lewis' statement did not contradict Mr. Smith's statement. Again, the Defendant Carter's testimony is that she did consider this inconsistency prior to issuing the Plaintiff's arrest warrant. Ex. 26. Therefore, the actions of Defendant Carter cannot be said to have been reckless. Mr. Lewis simply said that he did not see anything because he was driving the truck at the time of the altercation. Mr. Lewis was also the person farthest away from the incident, as all the other witnesses were standing on the dock where the altercation occurred. Two other witnesses, standing closer to the altercation (Mrs. Smith and Mrs. Bradley) did in fact corroborate Mr. Smith's statement. The Plaintiff's argument is that because Mr. Lewis' statement was that he did not see the altercation invalidates Mr. Smith's statement wholesale. Taking the Plaintiff's argument to its logical conclusion, if any person at the scene of a crime stated to the police that

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they did not see what occurred, then no charges could be filed as one person's statement "contradicted" the statements of the other witnesses. That is nonsensical.

Regardless, this lack of corroboration, compared to the numerous inconsistencies in the Plaintiff's statements, would lead a reasonable person to believe that the Plaintiff was the primary aggressor in the altercation. The Plaintiff failed to show that the omissions were material and made recklessly, and therefore, the Defendant Carter was entitled to qualified immunity protection at the directed verdict stage of the trial. Thus, a JNOV is appropriate.

In sum, the Defendant Carter is protected by qualified immunity for several reasons. First, if probable cause existed, qualified immunity would attach to Carter's actions in their entirety. Camden, 360 S.C. at 177. If a reasonable disagreement existed between officers about whether probable cause existed, qualified immunity still attaches. Id. If Defendant Carter's investigation was reasonable but the ultimate conclusion was mistaken, qualified immunity attaches. Smith v. Ray, 781 F.3d 95, 100 (4th Cir. 2015). Even if it was found that Defendant Carter omitted facts from the warrant, the Plaintiff failed to show they were material to a finding of probable cause, and qualified immunity would attach. Massey,759 F.3d 343, 357 (4th Cir. 2014). The Plaintiff failed to show that material facts were omitted from the warrant. Even if Defendant Carter did omit material facts from the warrant, the Plaintiff failed to show that this was done recklessly, as a thorough investigation was performed, and corroboration existed for the facts on which probable cause was based. Id. All scenarios result in qualified immunity attaching to the actions of Defendant Carter, and a JNOV is warranted.

II. Defendants are Entitled to a New Trial *Nisi Remittitur*

In the alternative, Defendants are entitled to a new trial *nisi remittitur* based on the verdict of $350,000. In a new trial *nisi*, the court provides a condition (in *remittitu*r cases this is a reduced award) for the plaintiff to accept the or the court will grant a new trial. Waring v.

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Johnson, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000) *citing* Elliott v. Black River Elec. Coop. 233 S.C. 233, 104 S.E.2d 357 (1958).

When a party moves for a new trial nisi remittitur, the trial judge is required to consider the adequacy of the verdict based on the evidence presented at the trial. Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (Citation omitted). Thus, a new trial *nisi* is "the method by which a trial judge can review a jury award for excessiveness." Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors, Inc., 99 F.3d 587, 593 (4th Cir. 1996).[17] When a jury's verdict is excessive, it is the duty of the court to require a *remittitur* or order a new trial. Id. at 3 *citing* Linn v. United Plant Guard Workers, Local 114, 383 U.S. 53, 65-66, 86 S. Ct. 657, 664-65, 15 L.Ed. 2d 582, 593 (1966).[18] "The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive." Rush v. Blanchard, 310 S.C. 375, 381, 426 S.E.2d 802, 896 (1993). The Court should exercise its discretionary power to reduce the award given to the Plaintiff through a new trial *nisi remittitur* based on the excessive verdict.

Compelling reasons exist in this case to justify a *remittitur*, including the excessive award generally, the age and health of the Plaintiff, the deference given to officers in determining

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[17] "A motion for a new trial nisi remittitur requests that the trial court to reduce the verdict because it is merely excessive." Cock-N-Bull Steak House, Inc. v. Generali Ins. Co. 321 S.C. 1, 9, 466 S.E.2d, 727, 731 (1996) citing McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1994).

[18] *See also* Caldwell v. K-Mart Corp, 306 S.C. 27, 33, 410 S.E.2d 21, 25 (1991) ("If a verdict is so excessive in the sense it may be considered unduly liberal, the trial judge alone has *the power and responsibility* to set aside the verdict absolutely or reduce it by granting a new trial nisi"); Proctor, 368 S.C. 279, 320 *citing* Chapman v. Upstate RV & Marine, 364 S.C. 82, 88-89, 610 S.E.2d 852, 856 (Ct. App. 2005) (finding that the trial court alone has the ability to grant a new trial nisi when he finds the amount to be merely inadequate or excessive). (Emphasis added).

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probable cause, the low standard of probable cause, and the Plaintiff's general appeal to his age and health as the reason for an increased award.

A. The Award of the Jury Is Excessive.

The award of $350,000 to the Plaintiff in this case is excessive. In considering whether an award is excessive, courts look to awards from cases with similar causes of action and facts. Noga v. Potenza, 221 F.Supp.2d 345, 358 (N.D.N.Y. 2002). (Citations omitted). Weighing these awards against the award at issue, the court then determines the maximum reasonable award of damages. Id. at 358-359. The Court then presents the Plaintiff with a choice to accept the reduced award or proceed with a new trial. Id.

An example of a court engaging in this analysis is found in *Noga*, where the court considered an award of $235,000 given to a Plaintiff who alleged a § 1983 action and state law claims against the police for false arrest and malicious prosecution. Id. at 349. In *Noga*, the court reviewed cases with similar facts and found that the damages suffered by the Plaintiff were similar to those suffered by the Plaintiff in *Bender*. Id.; Bender v. City of New York, 78 F.3d 787 (2d Cir., 1996) (where the court determined that in a case of police misconduct resulting in Plaintiff's custody for one day, remittitur was appropriate). In *Noga*, the Plaintiff's damages were one day in jail, some emotional distress, and no permanent disability. Noga, 221 F.Supp2d 345, 357. The court determined that "the maximum award of damages for Noga's malicious prosecution claims which would not be deemed excessive is $51,500," and granted a new trial subject to acceptance of the remittitur. Id. at 359.[19]

[19] It should be noted that, while the damages suffered by the plaintiff in *Noga* were similar to those in the present case (one night in jail), the actions of the defendants were more problematic. The court, prior to issuing the new trial *nisi remittitu*r, found that the defendants threatened the plaintiff, filed a criminal complaint of burglary against the plaintiff, and omitted material facts from the arrest warrant of the plaintiff. Noga, 221 F.Supp.2d at 349-350.

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Turning to our case, the injuries sustained by the Plaintiff are nearly identical to those suffered by the plaintiff in *Noga*.[20] Here, the Plaintiff claimed that he was forced to spend one night in jail and that this caused him emotional distress. The Plaintiff showed no evidence of physical injury or permanent disability.[21] The Plaintiff's counsel specifically argued in closing that they did not seek personal injuries arising out of the altercation with Joshua Smith, only damages for the arrest of the Plaintiff. The time period from the Plaintiff's arrest to his dismissal from the charge was also similar to the plaintiff in *Noga* -- approximately six months.

As such, an award of $350,000 for one night in jail is excessive. The Plaintiff presented no evidence that he suffered any significant or permanent damages from his time in jail. Based on excessiveness of the verdict, the Defendants are entitled to a new trial *nisi remittitur*, in amount consistent with other malicious prosecution cases where the Plaintiff spent one night in jail, had some emotional distress, and suffered no permanent injuries.

III. Defendants Are Entitled To A New Trial Absolute

In the alternative, Defendants are entitled to a new trial absolute.[22] While an excessive verdict requires trial court to order a new trial *nisi remittitur*, when a verdict is "shockingly

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[20] Like in *Noga*, the Plaintiff's evidence of mental distress was adduced solely through his own testimony. *Id*. at 357.

[21] To the extent the Plaintiff argues he suffered permanent emotional damages, the testimony from the Plaintiff was that he had suffered with anxiety and depression for decades prior to the altercation. Additionally, while the Plaintiff may claim emotional harm, under South Carolina law "damages for emotional or mental suffering are typically not recoverable, unless there is some physical manifestation of the emotional distress." Babb v. Lee County Landfill, 405 S.C. 129, 747 S.E.2d 468, 481 (2013), citing Dooley v. Richland Memorial Hospital, 283 S.C. 372, 322 S.E.2d 669 (1984). The Plaintiff offered no evidence to establish any physical manifestation of the emotional distress nor any needed medical care as a result.

[22] The difference between a new trial absolute and new trial *nisi remittitur* is that a nisi remittitur should be granted when the verdict is excessive, while a new trial absolute should be granted when the verdict is grossly excessive so as to shock the conscience. Cock-N-Bull, 321 S.C. at 9 (1996). (Citations omitted).

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disproportionate" to the injuries suffered and indicates "passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded" then "the trial court must set aside [the] verdict." Becker, 339 S.C. 629, 635 (Ct. App. 2000).[23] The Court of Appeals places significant weight on the discretion of the trial court who orders a new trial, and the trial court's discretion will "ordinarily not be disturbed on appeal." Vernon v. Atlantic Coast Line R. Co., 221 S.C. 376, 70 S.E.2d 862 (1952).

An award of $350,000 for one night in jail is a grossly excessive verdict. Sufficient evidence exists in this case that the verdict was based on passion and caprice, specifically sympathy for the Plaintiff. Despite the jury instruction to the contrary, it is apparent that the jury based their verdict and award on the age and health of the Plaintiff. The Plaintiff in this case (at the time of trial) was 79 years old. Throughout the trial, references were made to the Plaintiff's age, size, health, strength, and fitness, and juxtaposed with that of the younger Joshua Smith, who was not a defendant in the action. Counsel for the Plaintiff outright argued that the Plaintiff's elevated age would not allow him to commit an assault. Not only was Plaintiff's age used to subvert his ability to commit an assault, but it was also used to increase what the Plaintiff considered a "fair" damage award. The Plaintiff's counsel specifically argued in closing that, due to the Plaintiff's age, his time on earth (and with his wife was limited), thus the hours he spent in jail were worth more than someone who was younger. Based upon the Plaintiff's appeals to the jury to present him with a large award based on his age, and the overall excessiveness of the verdict, the jury was determined the award of damages based on passion and caprice.

[23] *See* Proctor, 368 S.C. 279, 320 ("If the amount of the verdict is grossly inadequate or excessive…the trial judge *must* grant a new trial absolute"). (Emphasis added). *See also* Rush, 310 S.C. at 379-380.

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IV. Defendants are Entitled to Relief Under the Thirteenth Juror Doctrine

Finally, the Defendants are entitled to a new trial based on the thirteenth juror doctrine. South Carolina's thirteenth juror doctrine entitles the trial judge to sit as the thirteenth juror when he finds "the evidence does not justify the verdict." Norton v. Norfolk Southern Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (citations omitted). Thus, the trial judge can essentially hang the jury by refusing to agree to the jury's otherwise unanimous verdict. Id. The doctrine exists for situations where the Plaintiff's evidence might make a case one for the jury, "but the evidence might be so outweighed by the countervailing evidence that in the exercise of its discretion, a trial court could choose to set aside the verdict under the thirteenth juror doctrine." RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012) citing McEntire v. Mooregard Exterminating Servs., Inc. 353 S.C. 629, 632, 578 S.E.2d 746, 748 (Ct. App. 2003).

Simply because a trial judge is bound to submit a case to the jury does not mean he cannot grant a new trial. Worrell v. South Carolina Power Co., 186 S.C. 306, 186 S.E. 638, 641 (1938). The veto power possessed by the trial court is exceedingly high, with the Court in *Worrell* describing that "the trial judge is the thirteenth juror, possessing the veto power to the Nth degree." Id. The doctrine has been reviewed by South Carolina appellate courts several times, and each time it has been upheld with the courts refusing to require the trial judge to explain the reasons for his ruling. Howard v. Robinson, 376 S.C. 143, 152, 654 S.E.2d 877, 882 (Ct. App. 2007). The appellate courts also grant the utmost deference to the trial court's determination.[24]

[24] "The grant or denial of new trial motions rest within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard, 376 S.C. at 143 (Citations omitted).

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Simply put, the amount of evidence showing that the Plaintiff is not entitled to a $350,000 verdict is overwhelming. The testimony in this case was clear that, after the incident, the case was considered closed. At the Plaintiff's request, the case was reopened and given to an investigator, Defendant Carter, who took the case with no presumptions or bias. Detective Carter reviewed all relevant materials in the case and discovered new evidence when interviewing the various witnesses to the altercation.[25]

The Plaintiff lied several times throughout the investigation, including his statement that he had no contact with the members of the other boat whatsoever, that the attack caused grave and serious injuries to him (including cuts and bruises that were never documented), that he did not know the fish-bat could be used as a weapon, and that his only reason for retrieving the fish-bat was to put it in his boat. The testimony offered by the Plaintiff to undermine the probable cause determination came from two former officers who testified that they performed no investigation whatsoever into the facts of this case.

The testimony and evidence from the trial also showed that the Plaintiff was angry at Joshua Smith for playing loud music, retrieved a weapon, and stood on the dock for (in his words) over an hour with the weapon in hand. Thereafter, the Plaintiff engaged in a screaming match with Mr. Smith's wife. When Mr. Smith approached the situation, an altercation ensued. The injuries to the Plaintiff after the altercation indicate clearly that his version of the altercation was entirely untrue, while the injuries corroborate Mr. Smith's version of events. The Plaintiff, after suffering the allegedly brutal beating, walked to a friend's home to drink cocktails rather than seeking any medical attention. With all of this in mind, the Defendant Carter presented a warrant to a judge who agreed that the evidence tended to show that there was a fair probability

[25] This includes the inconsistencies discussed in detail above.

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that the Plaintiff committed Third Degree Assault. The warrant was issued, and the Plaintiff was arrested. Thereafter, the Plaintiff spent one night in jail.

CONCLUSION

Considering the emphasis placed on the Plaintiff's age, the litany of inconsistencies and issues with his account, the low bar needed to satisfy probable cause, the thorough investigation performed by Defendant Carter, and all of the forgoing arguments, it is respectfully requested that the Court grant the Defendants' motion for JNOV, or in the alternative the motion for a new trial *nisi remittitur*, or in the alternative the motion for a new trial absolute or the motion for new trial based on the thirteenth juror doctrine.

Respectfully submitted,

s/ Robert S. Dennis
THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

Counsel for Defendants Kimberly Carter and Town of Port Royal

December 10, 2024

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‘STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2021-CP-07-01217
	)	
	)	
	)	
Paul Vernon Coffman, Jr.,	)	
	)	
Plaintiff,	)	
	)	**EXHIBITS IN SUPPORT OF DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF ITS POST TRIAL MOTIONS**
-vs-	)	
	)	
	)	
Town of Port Royal and Detective Kimberly Carter,	)	
	)	
	)	
	)	
Defendants.	)	
	)	

s/ Robert S. Dennis
THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

Counsel for Defendants Kimberly Carter and Town of Port Royal

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separate from where he was putting his boat back on land, bringing it out of the water.

He came down and approached me and the first words out of his mouth -- excuse me, ma'am -- was 'I'm going to kill you fucking old man.' And he proceeded to hit -- beat the crap out of me and that's when it started.

Q Okay. Well do you know what the reason for that was?

A I have a suspicion what it was but I have no way of guaranteeing what it was.

Q What's your suspicion?

A His wife went to him and I think she said they've been watching us. We could not help but watch them. We were stuck in the position that we were in. We could not get our boat out of the water until he got his boat out of the water and left the area.

Q Okay. Well tell me what happened before you even got to the landing. Did you come into contact with his boat prior to going to the ramp or the dock there?

A When you say 'come in contact with his boat' --

Q Or did you notice him?

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A Yes, definitely.

Q Okay. Tell me about that.

A We were on our way back from going to downtown Beaufort and back in our little 17-foot skiff and we were tying up the -- do we have the picture of the dock? Anyway, we were tying up on what's called the outside dock.

And as we were tying up so that I could go and get our trailer as we were tying up Josh came in his large boat and did what we call donuts, big circles right there and it rocked our boat considerably and we were a small boat.

And we believed, at that time based on his behavior and the fact that their music was at mega volume, we believed that they probably were intoxicated and we decided the best thing we could do was to get out of the way and wait until they cleared the area.

So we move our boat around. We had no verbal contact with them, none whatsoever. We move our boat around to what's called the permanent dock and tied up there and waited.

Q Okay. So when you said that your boat was being rocked by the wake of his boat?

A Yes, sir.

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Q Were you still out in the water or were you tied to the dock?

A We were at the dock. We were in the process of tying up is what we were doing.

Q So you were in the boat at that time?

A Yes, sir, we were.

Q And who was in the boat with you?

A Stephanie and a friend of ours. His name Aaron Abercrombie.

Q Okay. So all three of you were in the boat at that time?

A We were all three in -- and our dog Linus.

Q Okay. And while this was happening you said that there was no communication between you and Mr. Smith at that time?

A None. No verbal, no --

Q Okay.

A -- hand signals or anything like that.

Q Okay. And were you able to get out of the boat and onto the dock while this was going on?

A After we moved our boat around to the permanent dock, the took that we were on that I'm describing to you is a different dock, it's

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90 degrees to the permanent dock. We moved around to the permanent dock and we were able to get out of the boat, which is what we did.

Q So were you angry with Mr. Smith, at that point?

A Not yet.

Q Okay. So --

A I was concerned but I don't -- there was no reason for me to be angry. He didn't -- he hadn't said anything or done anything to me at the time for me to be angry about.

Q Okay. So you weren't angry over the wake that he had caused?

A I'd been boating for a long time. That's not my first wake.

Q Okay. Tell me what you did when you were able to get out of the boat and onto the dock, where did you go from there?

A We stood there for awhile. We just stood there on the dock for awhile.

And then it was obvious to us, me specifically to answer your question, it was obvious to me that they were not -- he and the gentleman that was driving his truck, they were not able to load the boat on the trailer.

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is that fair?
A Yes.
Q I know that we are trying to move quickly because of some technical difficulties, but if you need a break just let me know, that is no problem.
And then finally there may be a couple of objections from Counsel, various people, if that happens just let them state their objection and then continue to answer your question.
All right.
Can you state your full name for me, please.
A Brittany Chaplin Smith.
Q And what is your date of birth?
A [redacted]
Q And are you currently married?
A Yes.
Q Who is your husband?
A Josh Smith.
Q Have you ever been married before that?
A No.
Q Do you and Mr. Smith have any children together?
A Yes, we have a son who will be 10

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tomorrow.
Q Awesome, congratulations to him.
What is your address?
A 1600 Battery Creek Road, Beaufort, South Carolina 29902.
Q And what is your current occupation?
A I am a Deputy Sheriff with the Beaufort County Sheriff's Office.
Q How long have you been doing that?
A 15 years.
Q Oh, wow. All right.
When did you graduate from the Police Academy?
A January of 2010.
Q And where did you go to high school?
A Battery Creek High School.
Q How long have you lived in Beaufort County?
A Born and raised.
Q Okay, nice.
Are you aware of why we are here today?
A Yes.
Q And can you describe for me why we are here?
A The incident involving Mr. Coffman at

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the Sands Boat Landing.
Q Yes.
And are you an aware that Mr. Coffman has filed a lawsuit against the Town of Port Royal and various Police Officers over that incident?
A Yes.
Q And you and your husband were also sued based on that incident, is that correct?
A My husband was, yes.
Q Just your husband, not you.
A (Nods).
Q And do you know what your husband was sued over from that incident? The actual cause of action?
A I believe for the assault and battery part of it.
Q Yeah, okay.
Did your husband file a counter lawsuit against Mr. Coffman?
A Yes.
Q And was that also for assault and battery?
A Yes.
Q Just talking about the incident from

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July 6th that we are here for, where did that take place?
A At the Sands Boat Landing.
Q And do you remember the actual day of the week that was, by any chance?
A I do not.
Q Was it a weekend?
A I believe so, yeah.
Q Yeah.
When did you first come into contact with Mr. Coffman that day?
A After I exited the boat I headed up to the head of the dock, and my friend Jessica and I were standing there. And he walked up to us and approached us, and he asked me did you all have a good day on the river and I answered yes until now when my husband was playing his music pretty loud.
And he said that is your husband, you want to be married to someone like that? And he said I was 9/10's away from whupping his ass.
Q Okay.
A So that was my initial contact with him.
Q This is the first words that you guys

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Q Okay. He was still on the water trying to get his boat on the trailer?
A Yes, sir. That's what I remember.
Q All right. And when you returned to Mr. Abercrombie, to the location Mr. Abercrombie and your wife were, tell me what happened after that.
A It seems to me if my memory serves me correctly that Brittney and the other woman came to where we were standing on the dock and stood next to us.
And then when Josh got his boat out of the water, if I remember correctly, she went over and spoke to him and then he came over to the dock where we were.
Q Okay. This is after Mr. Smith had gotten his boat out of the water?
A That's correct. He couldn't have come over to where we were until he got his boat out of the water.
Q Yes, sir, okay. So he met I guess it was you and the two individuals in your boat and Mr. Smith and the two ladies that were in his boat and y'all are all together on the dock?
A Yes, sir.

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Q Okay. Tell me what happened when all of you were there together, what happened next?
A Well, as I said earlier, he just immediately walked up to me, did not introduce himself, just walked up to me and he said -- and I'm not going to repeat what I said before -- but he threatened to kill me and he started hitting me about the head and the shoulders and the back and the kidneys and he beat me to the ground, to the dock, excuse me, not the ground.
And then he kept trying to drag me off the dock. That's when I got all the scrapes. It's a metal dock. It's called a cheese grate and that's where I got all the scrapes on my legs and knees and so forth from him dragging me and he kept trying to push me into the river and I resisted that.
Q Okay. And before this alleged attack you had not spoken, at all, to Mr. Smith?
A None, whatsoever.
Q And had Mr. Smith said anything to you up until that point?
A No, sir.
Q Okay, all right. At the time that Mr. Smith allegedly attacked you, had you already

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been back to your truck a second time?
A No, sir, not that I remember, no.
Q Okay.
A Had no reason to go.
Q Got ya. And had you spoken to Mrs. Smith or her friend at all about Mr. Smith's erratic behavior or did you say anything to them about kicking his ass?
A No. Number one, I don't believe I could have and I had no intention to and no reason to at the time. I mean he had done nothing to me until he attacked me.
I was concerned for all of us because of his behavior but I -- he didn't speak to me, didn't threaten me in the beginning or anything. I had no reason to be upset with him. I was concerned about his behavior.
Q Okay. And up until the point of the alleged attack had you yelled, screamed, cussed at either one of the two women that had been on his boat?
A Not at all, no, sir.
Q Okay. Tell me at what point you were able to go back to your truck the second time.
A The second time was after they moved

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their boat out of the water and pulled up into the parking lot, that's when I went and got my truck, trailer and backed it into the -- backed it down the ramp and we loaded my boat.
Q Okay. I'm trying to figure out, the second time that you returned to your truck you mentioned that there were at least a couple of times that you went to your truck while you were waiting on Josh Smith to load his trailer.
A Tab, I don't remember saying that it was a couple of times. If I did -- right this very minute I only remember going there once. I only had one reason to go there at the -- well I say one reason, I wanted to back the truck in, the trailer in and I chose not to.
I wanted to put the dog up and I did and I wanted to get my tool and I did. I had no reason to go back until it was time to move the trailer.
Q Okay.
A And I don't remember going back a second time. I don't think I did.
Q Okay. When you took your dog back to the truck did you retrieve a tool out of your truck at that point?

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spoke to each other?
A Correct.
Q Did he make any other comments of the nature of kicking someone's ass? Anything else like that?
A It was just the one comment at that time.
Q Did he indicate that he was not too old to fight?
A Yes, he did.
Q And did he say those comments specifically about your husband, or was that just a general thing that he was saying?
A Well, the comment, I was nine-tenths away from whupping his ass. And then he said, I am not too old to fight for an old man. So I assumed they were related comments.
Q Okay.
There was no one else there that he was planning on fighting to your knowledge?
A Not to my knowledge.
Q After he spoke with you initially, what happened then? What did he do or where did he go?
A He walked past us. I mean I wasn't

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really staring at him to see where he was going. But I believe he went to his vehicle, and then a short time later he came back by us very slowly and suspiciously acting, and I could tell he was trying to conceal something down by his left leg.
Q So he went, to your knowledge at least, went up to his car and came back to the dock where you guys were?
A Correct.
Q And I think you mentioned your friend Miss Bradley?
A Jessica Bradley.
Q And you mentioned that there was something suspicious about him.
Can you tell me a little more about that, why you thought it was suspicious?
A He was walking real slow and I could tell he was holding his left arm down by his side and just trying -- seeming like he was trying to conceal something.
Q Okay?
MR. DENNIS: I am going to mark Defense 1.
BY MR. DENNIS:

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Q Can you look at this picture for me.
(Whereupon, Defendant's Exhibit Number 1 was marked for identification.)
BY MR. DENNIS:
Q Does that appear to be Mr. Coffman in those photographs?
A Yes.
Q And when you were describing how he appeared suspicious, is that consistent with what you remembered?
A Yes.
Q In that photograph does it appear that he has something behind his back?
MR. GOLSON: Objection.
THE WITNESS: The bottom photograph, yes.
BY MR. DENNIS:
Q So he came back and did he speak with you guys again? Did he say anything to you?
A Not when he walked by initially, no.
Q Did you say anything to him?
A No.
Q You mentioned that his behavior was somewhat suspicion.

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Did you ask him anything about what he might have behind his back?
A Jessica and I mentioned just amongst ourselves that he was acting weird.
And then at that point her and I walked past him casually just trying to see if we could see what it was; and then at some point we did approach him and ask him what he was hiding behind his back.
Q Could you tell when you were trying to see what it was, or were you not able to tell?
A I believe initially I didn't want to make it obvious that I he was trying to walk up to him; but at first I couldn't see what it was clearly. I just knew it was a small back object.
Q Okay.
And then did you say you ended up going and addressing that Go with him?
A Yes.
Q And can you describe what that interaction was like?
A I want to say Jessica tried to ask him first, and then I may have come up after her.
And so then I said what is it that you

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They were having an extreme difficult time lining up the trailer to get it in the water and then they kept zigzagging the trailer going over two and three different landings and then once it was lined up to a certain degree he had a hard time getting it on. He kept missing the trailer as he tried to do it and we just stood there and watched that.

Q Okay.

A When -- and then we decided the best thing to do was to wait.

Q Okay. And you were waiting on the dock at that point?

A Yes, sir.

Q Okay. At any point, during his attempts to load the -- for Mr. Smith to load his boat on his trailer did you go to your truck for any reason?

A I did. I did. I decided the best thing to do -- I knew that we were going to be there for awhile.

I went there for several reasons. One is I wanted to put the dog up, put him back in the truck and not leave him on the dock.

The second is that I if could have I

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would have gone ahead and backed my trailer into the water. That was my goal because they were -- when I went up there they were just about ready to leave but the headlights from their truck prevented me from backing up, so I did not back up.

And the other reason I went there was to retrieve my tool that I used for hooking up my trailer.

Q Okay. So the first time that you went to your truck it was to put your dog into the -- in the truck, is that right?

A Yes, sir. It was the only time I went until later when I put the truck --

Q Okay.

A -- the trailer in the water.

Q All right. And so when you went to put the dog into your truck did you have any contact with Mr. Smith or anyone that had been on his boat?

A No, sir, did not.

Q Okay. So no words --

A Well, no, no, no, that's not correct. His wife had been on this boat and she intercepted me, if I remember correctly, she

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stepped in front of me when I was on the way back from the truck.

Q And that was the time that you went to take your dog?

A That is correct.

Q Okay. Tell me about that conversation that you had with Mrs. Smith when you were returning from your truck back to the dock.

A To the best of my memory there were two women, one was Josh's wife who's -- I believe is a deputy sheriff and whoever the other person was, the name is on the records but I don't remember her name and the person that was not Josh's wife said to me, we know that you went to the truck for a gun.

Q So that was the first communications that you had had with anyone with Josh, his wife or the two other individuals on the boat?

A Tab, I don't remember honestly if there was any communication before that or not. I -- there may have been. There may have been but I honestly don't remember the details of any communication. If there was it was minimal.

Q Okay. So the first contact that you had with a female that was not Mrs. Smith?

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A Correct.

Q And she approached you and asked or said that --

A Insinuated that I had a gun that I'd brought back from the truck.

Q Okay. Do you know why she would have thought that you had a gun?

A I believe it was because that -- I think it's a combination of reasons.

Number one, I had on my self a marine two-way radio and it was on the waistband of the shorts that I was wearing and my T-shirt covered that up so it -- it poked out.

Q Okay.

A I think that's one reason.

I think the other reason was that Brittney, Josh's wife had -- based on my understanding -- had contacted the police department and they had us on -- they had moved the video camera from where -- the security video camera that originally had been facing the docks -- had moved that with remote control to follow me over to the truck and watch me while I went in the truck and got out and came back and they saw me with something in my hand. That's

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spoke to each other?
A Correct.
Q Did he make any other comments of the nature of kicking someone's ass? Anything else like that?
A It was just the one comment at that time.
Q Did he indicate that he was not too old to fight?
A Yes, he did.
Q And did he say those comments specifically about your husband, or was that just a general thing that he was saying?
A Well, the comment, I was nine-tenths away from whupping his ass. And then he said, I am not too old to fight for an old man. So I assumed they were related comments.
Q Okay.
There was no one else there that he was planning on fighting to your knowledge?
A Not to my knowledge.
Q After he spoke with you initially, what happened then? What did he do or where did he go?
A He walked past us. I mean I wasn't

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really staring at him to see where he was going. But I believe he went to his vehicle, and then a short time later he came back by us very slowly and suspiciously acting, and I could tell he was trying to conceal something down by his left leg.
Q So he went, to your knowledge at least, went up to his car and came back to the dock where you guys were?
A Correct.
Q And I think you mentioned your friend Miss Bradley?
A Jessica Bradley.
Q And you mentioned that there was something suspicious about him.
Can you tell me a little more about that, why you thought it was suspicious?
A He was walking real slow and I could tell he was holding his left arm down by his side and just trying -- seeming like he was trying to conceal something.
Q Okay?
MR. DENNIS: I am going to mark Defense 1.
BY MR. DENNIS:

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Q Can you look at this picture for me.
(Whereupon, Defendant's Exhibit Number 1 was marked for identification.)
BY MR. DENNIS:
Q Does that appear to be Mr. Coffman in those photographs?
A Yes.
Q And when you were describing how he appeared suspicious, is that consistent with what you remembered?
A Yes.
Q In that photograph does it appear that he has something behind his back?
MR. GOLSON: Objection.
THE WITNESS: The bottom photograph, yes.
BY MR. DENNIS:
Q So he came back and did he speak with you guys again? Did he say anything to you?
A Not when he walked by initially, no.
Q Did you say anything to him?
A No.
Q You mentioned that his behavior was somewhat suspicion.

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Did you ask him anything about what he might have behind his back?
A Jessica and I mentioned just amongst ourselves that he was acting weird.
And then at that point her and I walked past him casually just trying to see if we could see what it was; and then at some point we did approach him and ask him what he was hiding behind his back.
Q Could you tell when you were trying to see what it was, or were you not able to tell?
A I believe initially I didn't want to make it obvious that I he was trying to walk up to him; but at first I couldn't see what it was clearly. I just knew it was a small back object.
Q Okay.
And then did you say you ended up going and addressing that Go with him?
A Yes.
Q And can you describe what that interaction was like?
A I want to say Jessica tried to ask him first, and then I may have come up after her.
And so then I said what is it that you

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are hiding behind your back. He said nothing. And then he lifted up his shirt to show me it was a walkie-talkie type radio.

And then eventually he pulled out the bat from behind his back, and I said why do you have a bat in your hand. And he said I keep it in my boat.

And that is pretty much all he would tell me.

Q He said to you that he kept the bat on his boat?

A Uh-huh.

Q But he had just returned from his car, right?

A Yes.

Q And is this -- I guess this is already marked is Defendant's Exhibit 1, is that the bat that you saw?

MR. GOLSON: Objection.

THE WITNESS: Similar to, yes.

BY MR. DENNIS:

Q And do you know what that tool is used for, are you aware?

A To my knowledge it is a fish bat. It is used to kill fish once they are caught and

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thrown in the boat.

Q Did you ask Mr. Coffman why he got that? Why he was holding the bat.

I mean did you pry any more into that?

A I don't recall if I did or not.

Q Did you find it strange that he was carrying a bat?

A Yes.

Q Did you feel threatened by that?

A I did due to the comment that he made about wanting to whup my husband's ass.

Q And this occurred after Mr. Coffman and you had spoken initially, right?

A Yes.

Q Where he mentioned that he did want to kick your husband's ass?

A Yes.

Q Or thought about doing it?

A (Nods).

Q Did you consider the bat that he showed you to be, that it could be used as a weapon?

A Yes.

Q Did you ask Mr. Coffman if he had any other weapons on him, like a gun or a knife?

A I don't recall.

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Q But he did show you the Marine radio, correct?

A Yes.

Q Okay.

A It was clipped to his waist band underneath his shirt.

Q And why did he show that to you all?

A I guess because I was asking him about what he was concealing behind his back, or if he had a weapon of some sort.

Q And so he is standing there with one hand behind his back and this walkie-talkie in his -- I guess waist band?

A Yes.

Q And you said, do you have a weapon? And that is when he showed you his --

A The walkie-talkie.

Q The walkie-talkie.

But he didn't show you the bat at that point?

A Not initially.

Q Did Mr. Coffman at any point become angry with you and Miss Bradley?

A Yes.

Q Can you tell me a little bit about

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that.

When did he get mad at you all?

A He was very irritated that we were questioning him. He started using profanity. Just basically irritated that we were questioning him.

And at some point my friend Jessica told him that I was a Police Officer, and that he should not speak to me that way.

So I motioned for her to hush. Don't say that. That is not the appropriate time.

And that is when he escalated to a whole other level.

Q Did he ask -- did he ask you to provide him with an identification that you were a Police Officer?

A He did.

Q All right.

So you and him are exchanging words, and I think you mentioned he was exchanging profanities, is that right?

A Yes.

Q Do you recall specifically what kind of profanities he was using?

A I don't.

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tell me what you had been doing that afternoon?
A We were at the sandbar at Paukie Island hanging out with some friends and we came back up to the boat landing.
Q And Mr. Smith, had you been drinking that day?
A Yes.
Q And when you arrived back at the boat landing would you say that you were intoxicated?
A No, sir.
Q And as you approached the landing there in Port Royal had you been doing donuts in the water that day?
A No.
Q Had you been doing donuts or throwing a large wake as you approached the landing?
A No, sir.
Q When you arrived at the landing did you have passengers in your boat?
A Yes.
Q Who were your passengers?
A My wife Brittany, my buddy Hunter, and his girlfriend Jessica.
Q Tell me what you did when you arrived at the landing?

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A I pulled up to the dock, let them off so my buddy could go get my truck. At the dock as I normally do and I sit right there in the sound and just turn my wheel all the way to one side, bump it in gear. As I was cleaning up the inside of my boat, putting beach towels away, putting screens in my GPS, folding my antennas down, DNR approached me and asked what I was doing.
I then told him and he questioned me about why I didn't have my navigation lights on, and I just stated I was getting ready to pull the boat out.
He said okay, well, next time have your navigation lights on and that was it.
I pulled the boat out, and when I pulled the boat out that is when I noticed Coffman was yelling and cussing at my wife and Jessica.
Q You just mentioned that a DNR Officer stopped you for not having navigation lights. When he stopped you, did he ask if you had been drinking?
A No, sir.
Q Did he ask that you submit to a

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breathalyzer or a field sobriety test?
A No, sir.
Q Did he issue a citation for any reason?
A No.
Q Was there any comments on the DNR Officer's part about you having done donuts in the river or throwing up too large of a wake?
A No, sir.
Q Do you remember about how long it took you between unloading your passengers and getting your boat loaded on the trailer?
A 10, 15 minutes at the most.
Q And prior to you being able to load your boat on the trailer did you notice that there was any interaction between Mr. Coffman and your wife?
A No, sir.
Q Any interactions between Mr. Coffman and Jessica Bradley?
A No, sir.
Q And at what point did you become aware that there had been some interactions or perhaps even altercations, verbal or otherwise, between Mr. Coffman and your wife?
A As soon as we pulled the boat out I

Page 13

heard some cussing and yelling, and I looked over and when I seen Brittany and Jessica were over there, so I walked over there to see why he, you know, was cussing my wife.
Q And at the point that you realized he had been cussing your wife what did you do at that point?
A I walked over there and when I asked him what was going on, they then told me that hey, this guy said he was going to kick your ass and teach you a lesson. And I literally laughed and said you all, let's go.
And as I turned around I had the girls in front of me, my hands by the Vette, my buddy Hunter said, hey look out. And I turned around and noticed Coffman had a bat above his head as if he was going to strike me with it.
Q As you approached Mr. Coffman at that point did you notice that he had anything in his hand?
A No, I did not.
Q At what point did you realize that he had something in his hand?
A When my buddy yelled look out, as I turned around I seen the bat above his head.

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Q Mr. Smith, I have what I believe most people refer to as a fish bat. I am going to show you this fish bat, which is obviously not the fish bat that Mr. Coffman had with him on the date of the incident, if you would just hold that up so that the jurors can see what I am asking questions about.
Do you commonly refer to that tool or instrument as a fish bat?
A Yes, sir, or a Cobia bat, a fish bat, the same thing.
Q And what is the purpose of a fish bat?
A We catch certain species of fish that are kind of big and just kind of hit them on the head and stun them or knock them out so you can throw them in a fish box. So it doesn't -- they don't beat your boat up when you throw them in the bottom of it.
Q And as I mentioned that is not the fish bat that Mr. Coffman had on the date of this incident, correct?
A No, sir, not that particular one.
Q Is it substantially the same length as the fish bat Mr. Coffman had?
A Yes, sir.

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Q And is it substantially the same size?
A Yes, sir.
Q You just had it in your hands, do you recall if it is substantially the same weight?
A Yes, sir.
It feels like a Cobia bat. All of the them are pretty much the same size and weight. Maybe a few ounces in difference but --
Q And it is the bat that you just held up for the jury.
Would you say that it is relatively weighty?
A Yes, sir.
MR. SHELLENBERG: Objection.
BY MR. BENDLE:
Q Do you recall what Mr. Coffman's bat looked like?
A Yes, sir, it was a dark-colored bat he had in his hand.
Q When you noticed that Mr. Coffman had a bat in his hand, can you tell the jury what you did at that point?
A I turned around and then I put my hand on his wrist and one on his shoulder, and I started walking back and asked him if he was

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going to hit me with the bat. And we got into a shoving match and when he fell down that is when I snatched the bat from him; and I took it and I walked a few steps and threw it in the river.
And I turned around and I walked past him as I was going back up the hill I noticed a cop standing up there.
Q So you threw the bat that Mr. Coffman had in his hand in the water?
A Yes, sir.
Q You were able to retrieve the bat from his hand?
A Yes, sir.
Q Did you throw Mr. Coffman to the ground, or did he fall during that process of you trying to get his bat from him?
A I think he might have fell.
Q Did you push him?
A Yes, sir, we were shoving back and forth, but that is when he fell.
Q So he was pushing you as well?
A Yes.
Q And you mentioned after that brief physical altercation that you noticed a Police Officer?

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A Yes, sir.
Q And when you noticed the Police Officer did you approach that Officer?
A Yes, sir, I walked right to him.
Q And the Officer that you approached, do you know if he was with the Town of Port Royal or is he with another agency?
A The Town of Port Royal.
Q And when you approached the Officer did you notice as to whether or not there was anyone from the Sheriff's Office there at that point?
A No.
Q How about Highway Patrol?
A No, sir.
Q Any other Officers from any other agencies?
A Not that I remember.
Q Was there a DNR Officer there at the time?
A I didn't see any on land, no, sir.
Q And after this altercation would you say that you were pretty upset?
A Absolutely.
Q Would you say that you were angry?
A Yes, sir.

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Q Okay. He was still on the water trying to get his boat on the trailer?
A Yes, sir. That's what I remember.
Q All right. And when you returned to Mr. Abercrombie, to the location Mr. Abercrombie and your wife were, tell me what happened after that.
A It seems to me if my memory serves me correctly that Brittney and the other woman came to where we were standing on the dock and stood next to us.
And then when Josh got his boat out of the water, if I remember correctly, she went over and spoke to him and then he came over to the dock where we were.
Q Okay. This is after Mr. Smith had gotten his boat out of the water?
A That's correct. He couldn't have come over to where we were until he got his boat out of the water.
Q Yes, sir, okay. So he met I guess it was you and the two individuals in your boat and Mr. Smith and the two ladies that were in his boat and y'all are all together on the dock?
A Yes, sir.

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Q Okay. Tell me what happened when all of you were there together, what happened next?
A Well, as I said earlier, he just immediately walked up to me, did not introduce himself, just walked up to me and he said -- and I'm not going to repeat what I said before -- but he threatened to kill me and he started hitting me about the head and the shoulders and the back and the kidneys and he beat me to the ground, to the dock, excuse me, not the ground.
And then he kept trying to drag me off the dock. That's when I got all the scrapes. It's a metal dock. It's called a cheese grate and that's where I got all the scrapes on my legs and knees and so forth from him dragging me and he kept trying to push me into the river and I resisted that.
Q Okay. And before this alleged attack you had not spoken, at all, to Mr. Smith?
A None, whatsoever.
Q And had Mr. Smith said anything to you up until that point?
A No, sir.
Q Okay, all right. At the time that Mr. Smith allegedly attacked you, had you already

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been back to your truck a second time?
A No, sir, not that I remember, no.
Q Okay.
A Had no reason to go.
Q Got ya. And had you spoken to Mrs. Smith or her friend at all about Mr. Smith's erratic behavior or did you say anything to them about kicking his ass?
A No. Number one, I don't believe I could have and I had no intention to and no reason to at the time. I mean he had done nothing to me until he attacked me.
I was concerned for all of us because of his behavior but I -- he didn't speak to me, didn't threaten me in the beginning or anything. I had no reason to be upset with him. I was concerned about his behavior.
Q Okay. And up until the point of the alleged attack had you yelled, screamed, cussed at either one of the two women that had been on his boat?
A Not at all, no, sir.
Q Okay. Tell me at what point you were able to go back to your truck the second time.
A The second time was after they moved

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their boat out of the water and pulled up into the parking lot, that's when I went and got my truck, trailer and backed it into the -- backed it down the ramp and we loaded my boat.
Q Okay. I'm trying to figure out, the second time that you returned to your truck you mentioned that there were at least a couple of times that you went to your truck while you were waiting on Josh Smith to load his trailer.
A Tab, I don't remember saying that it was a couple of times. If I did -- right this very minute I only remember going there once. I only had one reason to go there at the -- well I say one reason, I wanted to back the truck in, the trailer in and I chose not to.
I wanted to put the dog up and I did and I wanted to get my tool and I did. I had no reason to go back until it was time to move the trailer.
Q Okay.
A And I don't remember going back a second time. I don't think I did.
Q Okay. When you took your dog back to the truck did you retrieve a tool out of your truck at that point?

EXHIBIT G





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* MISSING ONE

EXHIBIT H

PP FOIA000069

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AGENCY I.D.
SC0070300

PORT ROYAL POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER: 19PR15860

NCIC: INQ. | ENTD.

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EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. 13B - ASSAULT - SIMPLE	☒ YES ☐ NO	☐ YES ☐ NO	45	
2.	☐ YES ☐ NO	☐ YES ☐ NO		
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)	ZIP CODE	WEAPON TYPE
50 SANDS BEACH RD (SANDS BEACH BOAT DOCK), PORT ROYAL SC	29935	40

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
07/06/2019	2113		07/06/2019	2155	07/06/2019	2113	2113	2155	

VICTIM #1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT (J S O U)	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
BRADLEY, JESSICA NICHOLE	FR	ST		J (S) O U	W	F	28	N	(803) 942-2549 H / B	H / B

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
101 101 NATS LN	ISLANDTON	SC	29929	

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT (J S O U)	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
COFFMAN, PAUL VERNON JR	ST	VO		(J) S O U	W	M	73	N	(843) 592-1607 H / B	H / B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
5-9	180	GRY	BRO	

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
1003 LONDON AVE	PORT ROYAL	SC	29935	

VISIBLE INJURY (VICT. 1) ☒ YES ☐ NO EXPLAIN -- **Apparent Minor Injur**

VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK.

☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPL.ASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED — J - This Jurisdiction S - State O - Out of State U - Unknown

SUBJECT #1

☒ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

SUBJECT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
SMITH, JOSHUA LEE	W	M	31	N		6-2	235	BRO	BRO

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
1600 BATTERY CREEK RD	BEAUFORT	SC	29902	

SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:

ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO TOTAL # ARRESTED 0

DATE/TIME OF OFFENSE: 07/06/2019 2113

DATE/TIME OF ARREST:

NARRATIVE

Offenses:
ASSAULT - SIMPLE

Synopsis:

On 07/06/2019 at approximately 2113 hours, officers were flagged down at 50 Sands Beach Road (Sands Beach Boat Landing) in reference to a fight in progress. Officers observed a white male throw an object into the water from the dock and then walked off of the dock. Officers identified another white male who was involved in the altercation. Officers interviewed both subjects and witnesses who all stated that there was a verbal dispute over the use of the boat ramp / dock that turned physical. Both subjects declined medical attention and both subjects declined to pursue charges. Officers gathered statistical information and stayed on scene until both parties departed. This case is exceptionally cleared.

Print Date: 08/01/2019 10:54:39 AM

PROPERTY

	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)					TOTAL VALUE
Burned					
Count./Forged					
Dest./Damaged					
Recovered					
Seized					
Stolen					
Unknown					

ADMINIST

SUBJECT IDENTIFIED ☐ YES ☐ NO | SUBJECT LOCATED ☐ YES ☐ NO | ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☒ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☒ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
PTL PETER A. BUNTING	07/06/2019	333	SGT STEVEN F. REYNARD	07/08/2019	310
			FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO		

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Q Okay. But eventually he left your home?
A He left our home, that's right.
Q Okay. And did you remain at your house that evening?
A Yes, we did.
Q Okay. You didn't go anywhere?
A No, sir.
Q Did you --
A Not that I -- oh I did.
Q Where did you go?
A I just remembered that.
Q Where did you go?
A I went to Vaughn Keown's house. He asked me to come over to visit with him about the incident and he lives right around the -- lived right around the corner from where I lived, walking distance.
Q Okay. So did you go to Vaughn's house before you went home?
A No, sir, after.
Q Okay. So you returned to your home and was there for however long?
A Correct.
Q And then you walked down to Vaughn's

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house?
A I did, yes, sir.
Q Okay. Did anyone go to Vaughn's house with you?
A No, sir.
Q Your wife stayed at home?
A Yes, sir.
Q Mr. Abercrombie had left?
A That's correct.
Q And that was the night after the -- I mean I'm sorry, that was the night of the incident?
A That is, correct.
Q Was Mr. -- I'm going to call him Vaughn because I'm going to mess up --
A I understand.
Q -- his name and if we depose him I'll try to be a little more respectful and get the pronunciation right but for our purposes was Mr. -- was Vaughn there at the landing at any point while this event occurred?
A He came after the incident. He came up in his boat after the incident and came up and spoke with us, he did.
Q Okay. But he did not witness the

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incident?
A He did not. If he did I'm not aware of it. I don't -- I'm pretty sure he did not.
Q Okay. And --
A There was no confusion going on at the landing when he arrived, so he could get his boat right out of the water.
Q Okay. And so you said that when Vaughn showed up at the landing that you spoke with him?
A (Witness nods head.)
Q And were the officers there still?
A They were at the -- they were in the parking lot. They were not standing down by the landing itself where Vaughn and I were talking.
Q Okay, all right. And --
(Whereupon, an off-the-record discussion was held.)
BY MR. BENDLE:
Q Mr. Coffman, I believe that we were just talking about your conversation that you had there with Vaughn at the landing. Can you tell me about that, that conversation.
A Well, no, I really can't give you a lot of details because I don't remember. I remember

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that he -- we talked about Josh and the incident had just occurred.
And I remember him saying to me something to the extent that's the Josh I know or Josh had been on the -- they had been on the sandbar that day. You know what I mean by the sandbar in Beaufort River?
Q Yes, sir, I do.
A Okay. I won't ask you how you know. Don't record that.
Q Thank God I get to ask the questions.
A He said that he had been on the sandbar with Josh and his wife that -- and the other couple for most of the day. That they'd been out there for most of the day.
Q Yes, sir.
A And I remember him saying that he needed to be careful getting out of there because he was used the word 'shit faced'.
Q Okay.
A So --
Q And do you recall --
A I remember him saying that to me.
Q I'm sorry, I'll let you finish. Do you recall if Vaughn spoke to Mr. Smith or the

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A I don't know if we had that conversation.
Q So you're not sure if that was your intention, the night of the incident, to contact --
A No, sir.
Q -- her --
A I don't know that that was on my mind at all. It might have been. It seems reasonable.
Q Okay, all right. And while you were at Vaughn's house did y'all do some drinking together?
A We did. We both had a couple of drinks and smoked a cigar.
Q Okay, all right. And I assume at some point in the evening you left Vaughn's house and returned to yours, is that correct?
A Yes, sir, of course I did.
Q Okay. An after you returned home did you retire for the evening or --
A I did.
Q Okay. So you didn't go anywhere else that night?
A No, sir.

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Q All right. Can you tell me after the date of the incident and that evening when the next time you spoke to Vaughn was?
A I don't remember if it was the result of a phone call, which I think it was or a visit to my house but Vaughn notified me that he had spoken to Josh and Josh said to him -- Josh said to him that he was going to replace my fish bat and Josh notified -- I mean Vaughn notified me of that.
Q Okay, all right. And at some point or at any point did Vaughn try to setup a meeting between you and Mr. Smith?
A I don't know if he did. I think he did, Tab. I think he did try. He volunteered to do that.
Q Okay.
A I do remember that now that you've brought that to my attention, yes, sir.
Q Okay. And what was the intent behind that meeting as far as you can recall?
A I can only guess. You want me to guess?
Q Yes, sir.
A I believe that he did not want me to

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press charges, continue -- or press charges against Josh. I believe that.
Q And why would that have mattered to Vaughn?
A I think that they were more than just good buddies.
Q Okay. And did you agree, initially, to meet with the two of them?
A No, sir, I received.
Q Okay. So you never had any intention of using Vaughn as somewhat of a go-between, mediator or anything like that?
A Not at all.
Q Okay.
A I liked him but I didn't trust him.
Q You don't Trust Vaughn?
A No, sir.
Q Why not?
A Too much information that I have that I -- I don't know that it's relative to what we're talking about, about his private life.
Q Well Mr. Coffman, you've listed Vaughn as a witness so I would like to know why you've listed a witness that you do not trust, so I need to you answer the question.

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A All right, sir. This is based on conjecture, it's based on rumor, it's based on hearsay, that Vaughn and Josh were dealing drugs together.
I do not know that. I've never seen that. They've never told me that.
Q And so that's the reason you don't trust Vaughn?
A That's exactly right. One of the young men that worked for Stephanie and I was an addict and he told me that Vaughn was -- he worked for Vaughn, also, and he told me that Vaughn was his supplier. He later committed suicide by hanging himself.
Q I think you called Vaughn a friend earlier. Are you still friends with Vaughn?
A I think friend is probably too much of a warm fuzzy thing. I'm compatible with him. We're friendly, that' -- that would be -- if I were passing -- doing an exam right now, we're friendly. We're on friendly terms.
Q Okay. I'm about two-thirds of the way through.
A Okay.
Q Do you want to take a quick break?

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Do you know if she worked at Dockside?
A I don't think she -- not Dockside. It was where Dockside used to be, Fish Camp. I don't know. I have no way of knowing. I didn't investigate that.
Q Okay. After you confronted this woman did you ever see her again?
A I have no memory of that, no, sir.
Q Okay. After the case was reopened by the department of July 29th of 2019 did you have any subsequent contact with any officers of the police department?
A You mean individually?
Q Yes, sir.
A After the case was reopened, yes, with the detective that had interviewed me.
Q Okay.
A She -- yes, we talked on several occasions.
Q All right. And I'm sorry to ask you the same question but I'll ask it again, did you ever make any requests of the police department to reopen the case?
A I don't remember asking for it to be reopened. I don't. I just -- you know, I was

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insistent. I was persistent on trying to get the information that we asked for and I believe it was my intention for the case to be reopened, I believe it was my intention.
But you're asking me if I asked the police department to do that and I don't know the answer to that, if I asked them to.
Q Okay.
A I believe that I wanted to.
Q Once the case was reopened did you ever visit the police department to file charges against Mr. Smith?
A Not that I remember.
Q All right. After the case was reopened I believe in your letter you mentioned that you had made contact with our representative Shannon Erickson. Did you make contact with Ms. Erickson?
A Is she the -- she's a representative?
Q Yes, sir.
A Yes, we did. We did.
Q Did you speak with Ms. Erickson?
A I believe we did, yes, sir.
Q All right. Tell me about that conversation.

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A I'm people not even sure that it was me that had that conversation, I don't remember. I think that's a question you -- is better for Stephanie when you talk with her.
Q Okay.
A I don't remember.
Q All right.
A We may have. I may have.
Q But you don't have any recollection of that conversation?
A I don't. I just remember Stephanie talking with her and she shared with me what was said, that's what I remember.
Q Okay. What --
A But I don't even remember that. I don't --
Q You don't recall what was said?
A I know that she was concerned, upset for us and supportive. That's -- that's my recall.
Q Okay, all right. After the case was reopened, at what point did you learn that charges had been filed against you?
A Within a day or two.
Q Okay. And I believe the Port Royal

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Police Department, they contacted you to advise you of those charges?
A That's right, yes, sir. The detective did, yes, sir.
Q Okay. And were you served with a warrant at any point?
A No, sir, I was not.
Q Okay. Did anyone ask you to come down to the station so that the warrant could be served?
A Yes, sir.
Q Okay. And who was that officer that contacted you?
A That was the detective that I'll volunteer that she stated that if you will come down and we can give you the warrant in person you will not be arrested.
Q Okay.
A That was very important to me.
Q All right. You've seen a copy of the warrant?
A Probably certainly I have.
Q Okay. And do you recall what judge signed that warrant?
A No, sir, I don't.

INCIDENT REPORT SUPPLEMENTAL

Case Number: 19PR15860

Officer: 901023 GRIFFITH, JOHN Date Entered/Changed: 07/09/2019 Reviewer: Review Date:

DETAILED STATEMENT OF INVESTIGATION: 07/09/19

I phoned Mr. Coffman at his request, Coffman stated that he wished to provide further information regarding this incident. Coffman states that the report, as he read it, was inaccurate. He states that he never had any sort of confrontation (verbal or otherwise) with the other subject and that he was brutally attacked by the other party without provocation. He further states that the bat in question (a fishing bat) was taken from him and thrown into the river by the other subject and he was approached by one of the females with the other subject who identified herself as a police officer. The female asked him if he had a gun and when he explained that it was a radio, she left the area. Coffman further stated that he just felt that he should provide further explanation should the other subject later change his mind and wish to pursue charges, he states that he still does not wish to pursue charges on the other subject.

I advised Coffman that since it was three days after the incident had occurred, there were not any charges that could be filed at this time against either party without reopening the case and reinvestigating and since he has indicated that he does not intend to pursue charges and that the other subject has not indicated this either no further action would be taken. I advised Coffman to prepare a written statement with the additional information so it could be included in this report. I advised him to either drop the statement off at the police department or email me at the email address I provided him.

07/12/19

Coffman presented a written statement which has been attached to this report.

07/15/19

Coffman phoned the police department to speak with me regarding the incident. I advised Coffman that all body camera footage was reviewed as well as the officer's report and it was determined that the officers made the correct decision on how to properly handle the incident. I further advised him that there was not enough probable cause to charge any involved individuals and that the matter was closed. Coffman advised he understood and that he had made a request for security footage from the Sands. Coffman was advised that I was doubtful that the footage would be of any use due to the lack of lighting.

07/17/19

Joshua Smith walked into the police department to obtain a copy of this incident report and while waiting in the lobby, told Police Tech. Mandy Chapman that his wife was currently on administrative leave from the Sheriff's Office and he did not know what was going on. Chapman advised me since I had spoken with Coffman.

I made contact with Smith in the lobby and explained that I had spoken to Coffman regarding actions of Port Royal Officers on scene. I explained that there were no charges being made against any involved party and that the case had been closed. Smith indicated that he understood that, but that a complaint had been made against his wife, to the Sheriff's Office, by Coffman and he had heard that he was also trying to pursue charges against him for the altercation. I advised Smith once again that the criminal matter had been closed and that no charges were being filed on any involved party. When asked how he heard this he indicated that someone he knew had phoned Coffman and spoke with him and he made these claims. I explained to Smith that he needed to cease all attempts to communicate with Coffman for any reason as it could be perceived as a form of harassment or intimidation on his part. Smith indicated that he understood

Cpt. Griffith

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Attack at Sands Boat Landing on 7/6/19
Case # 19PR15860

EXHIBIT B

Personal Statement by
Paul V Coffman Jr. 1003 London Ave, Port Royal SC 29935

On 7/6/19 around 7 pm, I, my wife Stephanie and a friend, Aaron Abercrombie, took a boat ride to and from Port Royal, The Sands Landing, to Downtown Beaufort in our 17' skiff.

Events upon returning:

- We were unable to complete our docking on the outside dock when a high speed larger white boat with twin 250s and 4 people on it making donut turns close to the Sands Landing Dock swung in ahead of us blasting extremely loud music. The boat is named *Bad Company*.
- The people already on the dock had to move quickly for their safety.
- Observing the behavior of the boat driver, we guessed that they had been partying all day on the river and so we choose to get out of their way and move to another section of the dock.
- As we tied up to the dock with the help of someone already on the dock, I saw 1 male and 2 females get off of *Bad Company* at the dock. They all seemed unbalanced as they walked down the dock toward the parking lot.
- I had no communication with any of them. Zero communication with boat driver. I decided to remain as far from *Bad Company* as possible.
- As it was getting dark, I decided to take our dog, Linus, to my truck for A/C and safety 100 yards away and begin backing down one of the boat ramps. I determined quickly that I couldn't see to back down the ramp dues to *Bad Company's* truck headlights. So, I returned to my boat
- I returned to my boat tied to the dock where Stephanie and Aaron were waiting [50 yards from other truck operator and 2 females]
- We stood by and continued to watch the failure of the truck driver to align the trailer on the boat ramp and then the boat driver to align the boat with the trailer. This 'hauling out' required about 1 hour.
- In the interim, we three stood on the dock, watching and waiting for our turn to come out of the water. Again, we had zero communication with anyone from *Bad Company*.
- While we were standing near our boat and trying to keep it from pounding against the dock, the 2 females approached me and asked if I would come with them to the parking lot.
- I thought they were going to request that I assist the driver of the other truck in getting the trailer lined up correctly. Instead, they announced that one of them was a police officer. [Days later, from the police report, I learned that she was Brittany Smith, a deputy with BCSO]
- I asked for her ID, and she refused to present it.
- The other female [Jessica Nicole Bradley], became very assertive in reinforcing that 'Smith' was a police officer and therefore I should do as I was told.
- I was surprised by their behavior, style of communication, and message.
- I asked, "what is this about?"
- Ms. Smith said that she saw that I had a gun., Bradley was pointing to my side.
- I slowly and cautiously pulled my T-Shirt up in front of both of them and showed them that I had a Floating Marin Radio [standard horizon HX150] clipped to the waistband of my swim shorts. There was no other place to hide anything. A comment was made that I probably put in my truck.

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- I offered that if in fact, she was a police officer, to [A] present her identification and [B] call another officer to the scene and inspect my truck. I do not possess a concealed weapons permit. Nor do I carry weapons on me or in my vehicles except when I am hunting.
- Smith then asked, "what was I holding in my hand?" I explained it was called a Fish Bat. Bradley then asked what was my intention with it? I explained that I was returning it to my boat, where it has been stored and used as a tool. A handy tool for years.
- I determined that these two individuals were as drunk and stoned as anyone I had seen in many, many years.
- Note: if I had wanted to select an item for a weapon, to protect myself, family, friends, pets and property, I would have chosen from a list of other items available at the time:
  - A tire iron
  - A 23" 1 7/8" combination wrench used for nut or toe ball
  - A handy boat paddle
  - A loaded flare gun or a handheld flare
  - Two boat poles – 5' & 8' long
  - A fishing filet knife
  - A 48' anchor chain
  - An air horn
  - Tie down strap
  - A 911 call at the onset of an attack
- At this point, the *Bad Company* driver was still loading his boat on the trailer and we had not spoken a word nor had I seen his face.
- ***The police report is not correct in stating that "Coffman said that he [Coffman] was involved in a verbal dispute with Joshua Smith." I never said that to the officer as there was nothing to dispute. *Bad Company* had complete access and freedom to use the boat ramp without any interference or communication from any of us.
- We chose to stay out of the way as much as we could and wait until they had completely left the area before loading our boat. We waited for well over an hour.
- We never approached any of the parties listed in the police report.
- Instead, we were approached by them on the dock, not in the parking lot.
- It was not a mutual fight, as incorrectly stated by the police report. I, Paul Coffman, was attacked aggressively by Joshua Smith. He admits in the report to taking me down. I determined him to be out of control, twice my size, half my age. I did not engage in a mutual fight with him. I prevented him from successfully throwing me in the water against a strong incoming current with nothing under the water and docks but boulders and barnacles.
- I am convinced that Officer Bunting was more interested and intent on keeping the Smith's from being in legal trouble than assisting us. He offered no assistance to us from the moment he arrived until he left.

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Chief Deputy, Beaufort County Sheriff's Office

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Chief Deputy, Beaufort County Sheriff's Office

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COPY TO CAPT. MARK MATTOX
BFT CNT SHER. OFF

EXHIBIT C

Attack at The Sands Boat Landing on 7/6/19
As witnessed by Stephanie Edwards Coffman
1003 London Ave., Port Royal, SC 29935

7/6/19
Details

7-7:15 pm - we launched our 17' boat at The Sands Boat Landing for a short sunset cruise to downtown Beaufort and back.

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Chief Deputy, Beaufort County Sheriff's Office

8:30 pm - when we returned to the Sands Boat Landing, we prepared to come into the outside dock turning the boat facing east because of the position of the tide.

As we approached the dock, another boat, larger than ours with blasting music, swept in front of us and docked their boat where we were preparing to dock ours. We quickly evaluated the situation with this other boat as people who had partied out in the river all day. There were several people on the dock crabbing. Some were sitting on the dock with their legs handing over the edge. Paul had met at least one of the people crabbing before. As the other boat swung into the dock, we were concerned for the safety of the people on the dock.

We changed course, headed to the west side of the dock, and tied up with the help of someone who took our lines.

All three of us got out of our boat, and Paul headed to his truck with our dog to back the boat trailer down the ramp.

At the same time, the other boat unloaded three people before the driver headed back to the deeper water. We had no communication with them but saw the name of the boat was Bad Company.

The driver of Bad Company spun out into deeper water off the landing doing donuts and blasting music while waiting for his trailer to be backed down the ramp. As we watched, DNR stopped Bad Company at that point.

As Paul reported to me while we waited for our turn to back our trailer down, when Paul got to his truck and trailer, the two women from Bad Company were in the parking lot – one of them pacing. Paul greeted them and asked if they had a good day on the river. One of the women said, "Yes, until my husband became an asshole." Paul commiserated with her and went on to his truck. As it was getting dark fast, Paul realized he couldn't see the boat ramp to back down it because of the headlights from Bad Company's truck. Paul then returned to our docked skiff where Aaron and I were standing. Paul said he couldn't see to back down the ramp so we would wait till the Bad Company boat was loaded before attempting to get our boat out of the water. During this time, the Bad Company driver was yelling and cursing at the driver of the boat trailer and ramming his boat up into the trailer.

We watched all this from a quite distance down the dock, happy to have decided to give this group of boaters a wide birth. Then one of the women from Bad Company appeared over my left shoulder, leaning in toward me as if to listen to our conversation. I didn't care since all we were discussing was the struggle to get Bad Company out of the water in the dark.

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Chief Deputy, Beaufort County Sheriff's Office

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After watching this for a while, both of the women from Bad Company approached Paul and asked for him to go to the landing area with them. We all thought they were going to ask Paul for some help getting the trailer in the water. They stopped several yards down the dock [toward the parking lot] from our boat and me. Aaron followed them. What I learned later was that Woman 1 accused Paul of having a gun. She said that she saw him get it out of his truck, which was 100 yards away, in the dark and the driver's door was on the opposite side. She stated she was a police officer, and then Woman 2 said, "Yes, she is, and you'd better listen to her." Paul asked for Woman 1's ID, and she refused to respond. Paul lifted his t-shirt and showed them his marine radio that was attached to the waistband of his bathing suit so that they could see it wasn't a gun.

"What is that thing in your hand?" Woman 2 demanded. Paul had brought down his fish bat from the truck that he uses to hook and unhook his boat trailer and secure the connection of the boat trailer to the truck's jack. He was about to put it in his boat.

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

The alleged police officer suddenly left the conversation with Paul and went over to the man driving Bad Company who had finally gotten his boat out of the water[we did not know the relationship of any of them].

Within seconds of her leaving, and talking to the Bad Company driver, he came stomping and screaming down the dock yelling, "You insulted my wife." No one in our group had ever seen or spoken to him before. It was now quite dark out, but the dock was lit.

The large out of control man towered over Paul's body as he repeatedly screamed ugly names, chest bumped, pushed, and threatened to drown and kill Paul. As we had seen earlier in the water, this man was clearly out of control. Paul stood his ground and never punched back. Eventually, the big much younger man knocked Paul to the dock surface and began to punch him. Everyone on the creek side of the dock had to quickly back up to get out of this man's way and fury. He was exceptionally strong and scary. The two women from Bad Company stood by and watched this. The alleged policewoman, now identified as the wife of the out of control man, did not try to stop her husband from threatening and beating Paul Coffman until after Aaron Abercrombie made the 911 call. The two women remained on the dock until the out of control man left. A policeman was observed standing in the parking lot watching Paul Coffman being beaten by the larger man but did not try to stop it. We later learned this was Officer Peter Bunting of the Port Royal Police Department.

After the Bad Company boaters walked up into the parking lot, we all observed Officer Bunting standing with the intoxicated boaters. The attacker continued to make threats, and laughter was heard from all of them.

The attack was horrendous enough, but then three days later, we received a copy of the complete police report. The report does not reflect what happened or what Paul or Stephanie Coffman told the officer. In the report, Officer Bunting uses the words of the Smiths as if they were coming from Paul Coffman.

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EXHIBIT D

COPY TO CAPT. MARK MATTOX
BFT CNTY SHERF. OFFICE

Subject: Personal statement by Aaron Abercrombie regarding incident of attack at The Sands Boat Landing on Saturday, July 6th.

Saturday, July 6th 2019, I spent the majority of my day helping my friend (Paul Coffman) work on rebuilding a camper. Paul and I started working on this project at around 10:00 am. We continued working on the camper till around 7:00 pm. At approximately 7:00 pm (judging by when I called my wife) Paul started prepping his boat for an evening on the water.

Paul Coffman, his wife Stephanie, his dog, and I set off in the boat from Port Royal Landing. We rode in the boat past Downtown Beaufort and turned around at the Woods Memorial Bridge. As we approached the dock back in Port Royal, a larger boat approached at a high rate of speed in order to make it to the dock before we would be able to occupy the last open spot (location A). At that point, Paul spun back around repositioned to the side of the dock (location B). After getting tied up to the dock, Paul and I debated if he should back the trailer in or if I should in order to get more practice. Paul agreed to back the trailer in due to it being dark out at this point. Paul then took his dog and walked to get the truck and trailer. Stephanie and I spent the next 15 minutes (guess on time) watching one of the male occupants from the boat that had pulled in try to back their trailer into the water (on the dock standing next to boat at location B). While this was going on, the driver of the boat had the radio extremely loud and started doing doughnuts out in the waterway. A DNR boat did pull up to the boat and converse with him for 1-2 minutes prior to driving off (location E). While Stephanie and I were watching the repeated attempts by the driver to back the trailer into the water, the two female occupants of the boat kept walking over and standing in front of, and then, behind us while seeming to be watching the boat loading process. It seemed weird to me at the time, but I wasn't too worried about it. By the time the driver of the truck was able to get the trailer into the water; Paul had walked back down to the dock and stated we would wait until the other truck was moved because he could not see the boat ramp through the other trucks head lights.

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After the individuals pulled their boat from the water and pulled forward into the parking lot (location D), the two females walked up to Paul and asked if he would walk over to them and talk with them (location C). This request seemed out of place. I was concerned that maybe something had happened to them while out on the boat with the two gentlemen, so I walked over to listen to what was going on. The first thing I heard was the young lady asking Paul about his gun. Paul replied that he didn't have any gun. She then insisted that she was a police officer and that he must have put it in his truck. Paul then stated if that was the case she was free to please call the police and they could search his truck. She then asked him what he was planning on doing with the fish bat he had in his hand. He replied he plans on putting it in his boat where it belongs. Up until that point, I hadn't even seen that Paul had a fish bat. The young lady continued yelling at Paul. At this point the young lady's husband (the driver of the boat) started down the dock towards us. As he approached, he was yelling obscenities, calling Paul an old man and explaining how he was going to kick his "ass". At this time (9:12 pm)I called the Port Royal Non-Emergency phone number. The operator told me to hang up and call 911. I then called 911 at that point (9:13 pm). The young lady and her husband started to walk away. As the two turned away, the young

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man then turned around screaming "You were going to hit my wife with a bat?!" It truly seemed that she tried to get her husband to re-engage. He then grabs Paul and starts trying to hit and throw him into the water. I then through the phone onto a seat that was located on the dock. This happened while on the phone with 911. As I ran over to the two grappling men, the young man takes the bat from Paul's hand. He reared the bat back and paused before deciding to throw it into the water. I then stepped up and told the young man that the cops had just rolled up to the dock and he might want to walk away.

The police separated the 4 individuals from the other boat and us. They stayed next to the police SUV at location D, and we stayed at the end of the dock at location F. While the police were talking to the young lady's, the driver of the boat continued yelling from the front of the police SUV to Paul and myself stating, "I wish this was the old days, so I could just walk down there and kick both your asses!" He continued this tirade for several minutes.

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After the police took everyone's statements, he came back and explained to Paul that the gentleman agreed to not press charges against Paul and it was up to Paul if he wanted to press charges on the other young man. He also stressed that if Paul pressed charges, that both men might end up in jail. Paul spent several minutes trying to get clarification on the officer's comments. Paul was confused that he is being told that if he pressed charges on the obviously intoxicated man that attacked him, that Paul himself may be put in jail. This man was intoxicated and was a danger to everyone around him.

I stood there the entire time completely dumbfounded with what the officers were stating. How is it that a 74 year old man is attacked and somehow he is made to feel like he instigated the situation?

If you have any questions about this matter, please feel free to call me at 843-303-2949.

Aaron Abercrombie

aarontabercrombie@gmail.com

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P. J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3182
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL RECORDS	255-3188
JUDGMENTS	255-3189
FAX #	255-9405
WEB SITE	www.bcso.net

July 22, 2019

COPY

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Ref: OPR#1-19010
Chief Deputy, Beaufort County Sheriff's Office

Mr. Paul V. Coffman, Jr.
1003 London Avenue
Port Royal, South Carolina 29935

Dear Mr. Coffman:

This will acknowledge receipt of your July 12, 2019, Citizen Complaint alleging a Code of Conduct violation against a member of the Beaufort County Sheriff's Office. As a result of your complaint, an inquiry into this matter has been completed.

Subsequent to your complaint being received, I directed Lieutenant Brian Baird, Special Investigator to review the complaint, interview all persons involved, interview any witnesses and prepare a written statement regarding the validity of the allegations contained therein.

You can have confidence that Lieutenant Baird's report and review of the allegations was done in a fair and impartial manner and the conclusions he reached were as a result of an unbiased and unprejudiced review of the facts. He found no facts supporting the allegation, nor did his investigation determine there were any policy or procedure violations by any member of the Sheriff's Office. I have reviewed his report; and I concur with his findings. Accordingly, this complaint is being classified as unsubstantiated and we consider the matter closed.

Thank you for bringing this matter to our attention. If we may be of any further assistance to you, please feel free to contact me at anytime.

Sincerely,

Michael M. Hatfield
Chief Deputy

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July 19, 2019

From: Lieutenant Brian M. Baird; Special Investigator

To: Chief Deputy Michael M. Hatfield

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Chief Deputy, Beaufort County Sheriff's Office

Subj: OPR # I-19010: Alleged Violation of General Order # 113 A 2, Code of Conduct) by Cpl. Brittany Smith

Exhibit (1): BCSO Complaint Form submitted by Mr. Paul Coffman, Jr
Exhibit (2): Letter from Paul & Stephanie Coffman
Exhibit (3): Statement prepared by Paul Coffman, Jr
Exhibit (4): Statement prepared by Stephanie Coffman
Exhibit (5): Statement prepared by Aaron Abercrombie
Exhibit (6): Letter from Paul and Stephanie Coffman
Exhibit (7): Photographs submitted by Paul Coffman, Jr
Exhibit (8): Copy of PRPD Incident Report # 19PR15860
Exhibit (9): Administrative Suspension Letter for Cpl. Brittany Smith
Exhibit (10): Copy of E-Mail from Lt. Todd Calhoun
Exhibit (11): DVD and Official Incident Report with all Supplemental Reports for Port Royal Police Department case number # 19PR15860
Exhibit (12): DVD with Body Worn Camera Footage from PRPD Officers
Exhibit (13): DVD with video from a Town of Port Royal camera at the Sands Boat Ramp
Exhibit (14): E-Mail from Mr. Chuck Chaplin to LtCol. William Neill
Exhibit (15): BCSO OPR Warning (Subject) form for Cpl. Brittany Smith
Exhibit (16): Copy of E-911 call placed my Mr. Abercrombie
Exhibit (17): CD with Recorded Interviews

1. On July 17, 2019, I was advised a Complaint Form was submitted alleging Corporal (Cpl.), Brittany Smith, Beaufort County Sheriff's Office (BCSO), was involved in an alcohol related incident at the Sands Boat Ramp, Port Royal, SC on July 6, 2019. The Port Royal Police Department (PRPD), handled the incident and documented their action in an Incident Report. I was provided with the Complaint Form and seven accompanying documents that were submitted by Mr. Paul Coffman, Jr. **(Exhibit #1)**

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2. On July 17, 2019, Chief Deputy Michael M. Hatfield directed the initiation of this Administrative Inquiry after he consulted with Sheriff P. J. Tanner.

3. On July 17, 2019, I was informed Cpl. Smith was placed on paid Administrative Leave by Major Richard Roper, BCSO. I received a copy of the Administrative Suspension Letter issued to Cpl. Smith. **(Exhibit # 9)**

4. On July 17, 2019, I reviewed the Complaint Form and supporting documents submitted by Mr. Coffman. The Complaint Form is dated July 12, 2019, Mr. Coffman alleges Inappropriate behavior by Deputy Brittany Smith in the Nature of Complaint section and he listed the location as Sands Boat Landing with the Date and Time listed as "7/6/19 9 PM". In the Synopsis of Complaint Section Mr. Coffman wrote, "see attached documents,/Exhibits: A. B. C. D. E. F. G." These documents are attached. **(Exhibit # 1)**

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The document Marked Exhibit A is a letter from Paul and Stephanie Coffman to Captain (Capt.), John Griffith, PRPD, and it is dated July 11, 2019. The letter is to contest information contained in the Incident Report # 19PR15860. The Coffman's claim the report contains errors and incorrect information. The Coffman's state they are not trying to instigate any actions that will cause anyone involved in this incident or police departments, either personal or professional harm. The letter goes on to say they are considering filing charges in this matter; however, they claim a PRPD Officer told them if they press charges it would likely result in Mr. Coffman being arrested as well. Mr. Coffman claims he was brutally attacked without any provocation on his part. The letter continues to allege the matter was handled incorrectly by PRPD Officers and he feels it was done so because of the relationship between these officers and Cpl. Smith. **(Exhibit # 2)**

The document marked Exhibit B is a statement prepared by Mr. Coffman and states he, his wife and a friend were in a boat approaching the Sand's Landing Dock when a larger boat with blaring music passed them and dropped off three people at the dock, causing Mr. Coffman to go around to the other side of the dock. He claims that same boat, named "Bad Company", then pulled away from the dock and began doing doughnuts in the river causing large waves. He said he then took their dog to his truck and planned to back down the ramp to recover his boat, when the people from the Bad Company boat backed their truck and trailer down to the ramp so he was unable to recover his boat. He said he returned to his own boat and waited for the Bad Company Boat to be recovered.

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took about one hour to finally get the boat onto the trailer and out of the way. He said during that time the two females from the Bad Company boat approached him and asked to speak with him. He states he asked them what they wanted to talk about and the one he later come to know was Cpl. Brittany Smith, BCSO, said she was a police officer and saw that he had a gun and pointed to his waist area. He said he lifted his shirt to show then he had a handheld VHF Radio on his belt and did not have a gun. He said he also told them to call an on-duty officer to search his truck if they wanted to. He said Cpl. Smith then asked him what he was holding in his hand and he said a fish bat and the other female he came to know was Ms. Bradley asked him what his intentions were with it and he said he told them he was returning it to his boat. Mr. Coffman believes these females were drunk and stoned. He further states he was never involved in any verbal dispute with Mr. Smith and that they stayed out of the way of that boat and those people. He states it was not a mutual fight as stated in the police report. Lastly Mr. Coffman states he is convinced PRPD Officer Bunting was more interested in keeping the Smith's out of trouble than assisting him. **(Exhibit # 3)**

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Chief Deputy Beaufort County Sheriff's Office

The document marked Exhibit C is a statement prepared by Ms. Stephanie Coffman, she states as they were approaching the Sands Boat Landing dock a larger boat sped past them with very loud music playing and took the space they were approaching. That boat was named Bad Company and it let one man and two females off at the landing. She said they were concerned for the people who were on the dock fishing and crabbing from the way the Bad Company boat approached and caused large waves. She states they changed course and went to the other side of the dock. She states Mr. Coffman got out of their boat, took their dog with him and was going to back the trailer down to recover their boat; however, the people from the Bad Company boat backed down first and blocked the ramp from others. She said the Bad Company boat went back into deeper water and began doing donuts in the water causing more waves. She said she saw Mr. Coffman speaking with the two females from the Bad Company boat and he said one of them told him they had a good day of the river until her husband became an asshole. She said Mr. Coffman eventually came back down to the dock with them to wait for the Bad Company boat to be recovered and move out of the way. She said they watched and listened as the man backing the trailer for Bad Company was having problems and then the driver of the Bad Company was yelling and cursing at the truck driver. She then states one of the women from the Bad Company boat approached them and asked to speak with Mr. Coffman. One of those women accused Mr. Coffman of having a gun on him, claiming she saw him get it out of his truck. He showed them it was his VHF radio under shirt. She

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said one of the women told him she was a police officer. She said Mr. Coffman asked for their ID but they refused to show it. The same woman asked what he had in his hand and he replied a fish bat. She said that woman walked over to the driver of the Bad Company and that man immediately came towards Mr. Coffman saying he insulted his wife, yelled other ugly things and even chest bumped Mr. Coffman. The larger man knocked Mr. Coffman down, punched him and took the fish bat away from him. She states both the females only stood and watched all of this happen without taking any actions to stop this man. She also states PRPD Officer Bunting was in the parking lot watching all of this happen. She said Officer Bunting spoke with the people from Bad Company and then she heard them all laughing. **(Exhibit # 4)**

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The document marked Exhibit D is a statement prepared by Mr. Aaron Abercrombie, who was riding in the Coffman's boat. He states after a brief ride in the boat they were returning to the Sand's Boat Ramp and were approaching an open spot on the dock when a larger boat with loud music playing raced past them into the spot they were approaching. He states they rode to the other side of the dock to tie up. He states Mr. Coffman took his dog and went to get the truck and trailer to recover the boat; however, the man who came from the Bad Company named boat was already backing his truck and trailer down the ramp. He said that man was having difficulty and took up the whole ramp. In the meantime he states the Bad Company boat was doing donuts in the river causing large waves. He said the two females from the Bad Company boat were standing nearby and then Mr. Coffman returned to where they were waiting and said he would wait until the Bad Company boat was recovered and out of the way. He said the two females then asked to speak with Mr. Coffman and asked him to come to the parking lot. He said one lady asked Mr. Coffman if he had a gun and he said no, she said she was a police officer and said he must have put it in his truck. He said Mr. Coffman said he did not have a gun and said she could call and on duty police officer to come look in his truck. One of the females asked him what he planned to do with the fish bat in his hand and he said he was putting back in the boat. He said the lady yelled at Mr. Coffman and then the driver of the Bad Company boat, who he now knows is that woman's husband, came down the dock yelling that Mr. Coffman was an old man and the he was about to kick his ass. The woman then got her husband to walk away; however, the man turned back around and said to Mr. Coffman, "You were going to hit my wife with a bat?" He said the man grabbed Mr. Coffman, began hitting him and tried to throw him into the water. He said he was on the telephone with E-911 to report this attack. He said the man knocked Mr. Coffman down onto the dock, took the fish bat from him and threw it

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into the water. He said the PRPD Officers arrived and began to interview everyone. He said the officers said if Mr. Coffman wanted to press charges he would also be arrested and decided this was a mutual affray not an attack on an old man. **(Exhibit # 5)**

The document marked Exhibit E is a letter from Mr. and Mrs. Coffman to PRPD to contest many points in the PRPD Incident Report. **(Exhibit # 6)**

The document marked Exhibit F is a compilation of four photographs of bruising, scrapes and contusions on a white male purported to be Mr. Coffman. **(Exhibit # 7)**

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The document marked Exhibit G is a copy of the PRPD Incident Report for Case Number 19PR15860 that documents PRPD handling of this matter. **(Exhibit # 8)**

5. On July 17, 2019, I was informed Mr. Coffman contacted BCSO and related people were telling him that Mr. Smith was looking for him and wanted to talk with him about this incident.

6. On July 17, 2019, Major Roper informed me that Cpl. Smith's mother just came to the sheriff's office demanding to know why Cpl. Smith's badge was taken away from her. He said he advised her he could not discuss this matter with her and she was extremely upset.

7. On July 17, 2019, I contacted Captain John Griffith, PRPD and asked for copies of all their videos and other items related to this matter. He advised me Mr. Smith had already come to PRPD and advised them his wife was suspended over this matter and he obtained a copy of the incident report. He also said he advised Mr. Smith not to have any contact with Mr. Coffman about this matter.

8. On July 17, 2019, I spoke with Mr. Coffman and he reiterated his concerns about this incident and his new concerns about Mr. Smith looking for him. I advised him I would speak with Cpl. Smith and ensure she tell Mr. Smith not to attempt contact with him.

9. On July 17, 2019, I spoke with Cpl. Smith and directed her not to have any contact with Mr. Coffman or the other parties involved and not to cause any contact between these parties. I told her it appears Mr. Smith is asking questions about Mr. Coffman and trying to locate him. Cpl. Smith said, "I will reign my husband back in."

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10. On July 17, 219, Lt. Todd Calhoun, BCSO, contacted me and provided me with copy of a brief text message between Cpl. Smith and her immediate supervisor Staff Sergeant (SSgt.), Michael Moberly. In these text messages Cpl. Smith states, "Hey staff, just to make you aware I deescalated a situation at the port royal boat landing last night between the people I was with and an older guy on the dock. Port Royal responded just letting you know". SSgt. Moberly responds, "Anyone go to jail?who was drunk". Cpl. Smith responds, "No one went to jail the old guy got a bat out of his truck threatening to hit josh bc his boat music was too loud it was stupid". **(Exhibit # 10)**

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11. On July 17, 2019, I received copies of the official PRPD Incident Report and Supplemental Reports, a DVD with the Body Worn Cameras from the PRPD Officers and a DVD with video from the parking lot of the Sand's Boat Ramp. This incident report is the same as provided by Mr. Coffman. There is supplemental information provided in the additional documents as to Mr. Coffman's concerns about the veracity of the incident report.

I reviewed the DVD with the video from the boat ramp parking lot and the camera coincidentally is pointed towards Mr. Coffman's truck. In this video Mr. Coffman is seen putting his dog into his truck then walking to the driver's side and opening the door. In a reflection off another vehicle you can see headlights of another vehicle backing down the ramp. That vehicle has to make numerous attempts before it is finally successful positioning the trailer for the boat to be recovered. During this time Mr. Coffman is in or near his truck and eventually reached into the truck and pulls out a small bat. He looks around and then puts the bat behind his back as he walks out of view.

I reviewed the two Body Worn Camera videos from the PRPD Officers. Mr. Smith is loud and boisterous using profanity as he explains his side of the story to the officers. He claims the older man had a bat in his hand and he was worried the man was going to attack him so he took it from him and threw it in the water. He states he doesn't want to pursue charges. Mr. Coffman claims he had no contact with anyone from Mr. Smith's boat until the female claiming to be a police officer asked him about a gun and he showed her it was a radio on his waist. He said he never had any contact with Mr. Smith until Mr. Smith attacked him for no reason. After the PRPD Officer explains to him he would be arrested as well as Mr. Smith being arrested if he wanted to pursue charges, Mr. Coffman says he will think about it. Cpl. Smith answers the officers' questions and tells them about seeing Mr. Coffman get the bat out of the car and asking him what he planned to do with hit. The PRPD Officers knew she was a deputy and they spoke about this amongst

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themselves. One of the PRPD Officers encouraged Cpl. Smith to contact her supervisor about this incident. Cpl. Smith's speech is normal and she doesn't appear to be unsteady as she is seen walking around waiting for PRPD to resolve this matter. **(Exhibits # 11, # 12, and # 13)**

12. On July 18, 2019, I received the attached E-Mail from Lieutenant Colonel (LtCol.) William Neill, BCSO, who received it from Mr. Chuck Chaplin who is Cpl. Smith's father. He states in the E-Mail it was someone else who identified his daughter as law enforcement and not her. **(Exhibit # 14)**

13. On July 18, 2019, I interviewed Cpl. Smith at the BCSO Offices. Prior to asking her any questions I provided her with a BCSO Office of Professional Responsibility Warning (Subject) form. She read the form, stated she understood it and did not have any questions about it. She signed the form indicating the same. I asked her to tell me what happened at the boat ramp on July 6, 2019. She said her husband, her friend Jessica, her friend Hunter and herself all went to the Paulkey Island Sandbar around 1:00 pm. She said they stayed there and drank some beer until they decided to return to the Sand's Boat Ramp where they launched from earlier in the day. She said she had approximately 5 beers during that timeframe. She said her husband Josh was driving the boat and had the music playing her loud as they approached the boat ramp. She said there was another boat that was going toward the only open spot on the ramp and her husband cut right in front of that other boat to let her, Jessica Bradley and Hunter Lewis off the boat. She said they all walked up towards the parking lot and Hunter began trying to back the truck and trailer down to recover the boat. Cpl. Smith said the loud music made for an uncomfortable situation for people on the dock. Cpl. Smith said an older white male came up to them and asked them if they had a good time in the river and she said yes, up until now with my husband playing the music so loud. She said the man then said he was about 9/10th the way from whipping his ass. She said the man also said he was not afraid to fight for such and old man. She said the man went to his truck and seemed to get something and then walked back past us. She said it appeared he had something in his hand as he walked back down onto the dock to meet with the people from his boat. She said her and Jessica walked down past him to see if they saw anything as she was worried he had a weapon. She said when Jessica walked past them; Jessica said she heard the man say something about wanting to hit her husband when he got off the boat. Cpl. Smith said she was worried what might happen, so she went and asked the man what he had in his hand. She said the man said he did not have anything and then showed them he did have a fish bat. She said the man said he was [illegible]

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putting it back into the boat, which she said seemed odd that you would get a bat out of your truck at 9:00 pm at night. She said her husband could see her talking with the man and after he loaded the boat on the trailer he walked over to ask what was going on. Cpl. Smith said her husband saw the man was holding a bat and began to walk down the ramp towards the man as she was walking into the parking lot. Cpl. Smith then added that while they were initially asking the man what he had in his hand, Jessica told the man Cpl. Smith was a police officer and you better tell her what you have. She said there was also some talk about a radio, but she wasn't sure what that was about. Cpl. Smith said she was not abusing her authority and she never said she was law enforcement. She said Jessica said that and was talking to the man when he said something about a radio and offered to let them search his truck if they wanted. She said she was only concerned with what he had in his hand and what he planned to do. She said all of this was because he made the comment earlier about being 9/10th the way to whipping his ass and then gets a bat. She said as she walked away, her husband Josh was having some words with the man. She said she did not see what was happening because she saw a PRPD car in the parking lot and was going to speak with the officer about what was happening to get help, but she did learn that Josh struggled with the man, took his bat away and threw it into the water. She explained her husband has a problem with alcohol and that he is a totally different person when he drinks. She said he has gone through counselling for alcohol in the past, but went right back to drinking when that was over. She said she doesn't understand why this man is attacking her and trying to get her into trouble for what her husband did. I told her there is a cycle of events here between her and her husband that are effecting her position as a law enforcement officer and if the pattern continued to impact BCSO she may have to make some tough decisions related to her career and her marriage. She then said they are considering a separation at this time due to these issues. The interview was recorded and saved to a CD. The CD and OPR Warning form are attached. **(Exhibit # 15 and # 17)**

14. On July 18, 2019, I received the recording of the E-911 call for assistance placed by Mr. Abercrombie. In the call Mr. Abercrombie states there is a fight of the dock at the Sands and there are four people fighting. He did not mention anything about an assault and described it as a fight between four people. **(Exhibit # 16)**

15. On July 18, 2019, I interviewed Ms. Jessica Bradley and I asked her about the incident that happened on July 6, 2019. She said they came back to the Port Royal Boat landing. She an older man asked them if they knew the man [illegible]

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Brittany said that's my husband. She said the older man said something she felt was threatening towards Brittany's husband Josh and Brittany tried to brush it off. She said that same man walked past them and was holding something on his left side and she thought it was a 22 weapon. She told Brittany that man had a weapon. At first Brittany said let's not do anything. She said she walked down to the dock to see what he had and she heard that man telling the other people, "If there is any trouble when that guy gets out of the boat I have something for him." She said she could see it was a bat in the guy's hand. She said she then told Brittany that it was a bat and that the man was telling his friends what he was going to do. She said they approached the man and asked him what he had in his hand and he said it's for his fish. She said Brittany reminded him of what he said to them in the parking lot about her husband Josh and now you have a weapon in your hand. When Josh got out of his boat he came up and asked what was going on and she said she told Josh what the man said in a disrespectful way and Josh confronted the man. Josh asked the man if he confronted his wife with a bat and the man said it was just for his fish. She said she was the one who told the man that she was talking to a law enforcement officer and Brittany put her hand in my face, so I realized I should not have said that. She also said at first all three of us were right there by the dock, but then Brittany and I walked towards the parking lot and Josh began to walk away, but the man said something else to Josh after we walked away that caused Josh to go back and that was when he took the bat from the man. The call was recorded and saved to a CD. **(Exhibit # 17)**

16. On July 18, 2019, I interviewed Mr. Hunter Lewis and asked him what happened on July 6, 2019. He said after getting out of the boat he went to back the trailer down to recover the boat. He said the truck is really raised up so it was very difficult for him to back the trailer. He said he eventually got the trailer into the water and Josh Smith got the boat onto the trailer. He said he did not know about all the other stuff happening until after the police arrived and he heard the others telling the police what happened. The call was recorded and saved to a CD. **(Exhibit # 17)**

17. On July 19, 2019, I contacted Mr. Coffman regarding his complaint and informed him that after interviewing the parties I determined it was Ms. Bradley that said Cpl. Smith was a law enforcement officer and that Cpl. Smith left the dock area to get the assistance of PRPD Officers in the parking lot during this incident. Based on this I advised him that Cpl. Smith did not violate any BCSO Policy or General Orders and this Administrative Investigation would be closed.

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Michael M. Hartfield

Chief Deputy, Beaufort County Sheriff's Office

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Synopsis:

On July 17, 2019, I received a BCSO Complaint Form completed by Mr. Coffman. He alleges inappropriate behavior by Cpl. Brittany Smith. There were numerous documents attached to the complaint including statements and photographs as well as a PRPD Incident Report. Mr. Coffman claims he was the victim of an unprovoked attacked by Mr. Joshua Smith at the Sand's Boat Dock, Port Royal SC, on the evening of July 6, 2019. Mr. Coffman claimed Cpl. Smith told him she was a police officer and then failed to render assistance when her husband, attacked him. The PRPD Incident Report documents a mutual affray and they did not find cause to arrest either party, with both parties declining to pursue charges. PRPD provided copies of their final report and copies of videos pertaining to this incident. In one video Mr. Coffman is seen retrieving a small bat from his truck and concealing it behind his back as he walks back out of view. In the PRPD Officer's video all parties are interviewed and provide conflicting details as to what happened and why. I have spoken with Mr. Coffman several times and he states he feels Cpl. Smith's relationship with the PRPD Officers was the reason Mr. Smith was not arrested. He also believes Cpl. Smith should have done something to stop Mr. Smith from attacking him. Cpl. Smith denies she ever said she was law enforcement; however, she did state that her friend Jessica did tell Mr. Coffman to answer her questions because she was law enforcement referring to Cpl. Smith. She said Mr. Coffman made comments to her and Jessica about wanting to whip Josh's ass and that he was not too old to fight. She said he then retrieved a bat from his truck and was making comments about having something for Josh when he got out of the boat. She said she only went to ask the man what he had in hand and what his intentions were and never said anything about being a law enforcement officer. She also said she did not see what happened between Josh and Mr. Coffman because she went to get the PRPD Officer for help. Ms. Jessica Bradley was interviewed and admitted she said Cpl. Smith was an officer and that Cpl. Smith never said anything about being law enforcement. She also confirmed Cpl. Smith went to speak with the PRPD Officer when Mr. Smith and Mr. Coffman were fighting. After this incident Cpl. Smith did notify her supervisor of this matter.

Conclusion(s):

This Administrative Inquiry determined Cpl. Brittany Smith did not violate any BCSO General Orders, Policies or Procedures. She was not the person who said she was a law enforcement officer and she did in fact go to the PRPD Officers and seek assistance during this incident. Additionally after this incident Cpl. Smith did notify her immediate supervisor of this incident.

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The allegations against Cpl. Smith are unsubstantiated.

Brian M. Baird, Lt.
Special Investigator OPR

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INCIDENT REPORT SUPPLEMENTAL

Case Number: 19PR15860

Officer:147608 CARTER, KIMBERLY Date Entered/Changed: 08/13/2019 Reviewer: Review Date:

DETAILED STATEMENT OF INVESTIGATION:

07/29/2019:

I contacted Jessica Nichole Bradley and asked that she respond to the Port Royal PD in reference to this incident. She stated she does not get off work until 4pm and works in the Seabrook area. Bradley stated she could be here around 1700 on 07/30/2019. I asked about the male subject that was with her and she stated that they are a couple and his name is Thomas Hunter Lewis. She stated that he was backing the truck and trailer into the water and did not hear anything that was going on but she would have him come with her for the interview.

I contacted Joshua Smith and asked that he respond to the Port Royal PD in reference to this incident. He stated he does not get off work until after 1600 hours but could come in then. I requested that he come in on Wednesday at 1700 hours. He agreed and stated he would have his wife, Brittany, respond as well.

I contacted Aaron Abercrombie and asked that he respond to the Port Royal PD in reference to this incident. He stated he works in Savannah and does not get off until 1600. I asked that he respond at 1700 on 07/30/2019 and he agreed.

At 1921 hours I spoke to Austin Pritcher with DNR in regards to this incident. He stated he noticed a boat in the middle of the river, near the Sands Beach dock, with no lights shining. Pritcher stated they pulled up to the boat and spoke to the driver and informed him that he needed lights on his boat due to it being dark out. The driver, Smith, stated he was waiting on the trailer and they were taking the boat out of the water. Pritcher told Smith to put lights on his boat again and Smith retrieved lights from a compartment and attached them to the boat. Pritcher stated he did smell the aroma of stale beer but did not believe the driver was intoxicated to a state where he was concerned. Pritcher stated he then left and went back towards the McTeer Bridge.

Pritcher stated about 30-45 minutes later he returned to the area and noticed Law Enforcement at the beach and once docked, an older gentleman, identified as Coffman, came up to him. Pritcher stated Coffman spoke to him about the driver of the other boat, Smith, and told him that he had assaulted him.

07/30/2019:

I met with Jessica Bradley and Hunter Lewis at the Police Department. I left Lewis in the waiting area and took Bradley to the interview room.

Interview with Jessica Bradley: This interview was video and audio recorded.

I told Bradley that I wanted to speak to her in reference to the incident that occurred at 50 Sands Beach on July 5th. I asked her if she knew which incident I was talking about and she stated yes. I asked her to tell me what happened that evening.

Bradley stated she, her boyfriend, Hunter Lewis, Brittany Smith and her husband Joshua Smith were out on the river and that day. She stated they were making their way back to the dock at the Sands Beach and they docked the boat at the end of the dock. She stated she, Mrs. Smith, and Lewis got off of the boat, Bad Company, and walked to the parking lot area. Bradley stated she noticed several people on the dock as they walked up the dock. Bradley stated she and Smith stopped just past the top of the dock and was waiting on Lewis to get the truck and trailer. Bradley stated while she and Smith were standing near the top of the ramp, she noticed an older man walking up the dock who was also headed for the parking lot. She stated he asked them if they knew the driver of that boat. She stated if he was referring to the boat they had just gotten off of and Smith answered yes, that's my husband. Bradley stated this older man made some type of comment referencing Smith tolerating her husband. She stated the older man then walked to his truck, got something out of it and walked back toward them. Bradley stated as he walked back by, she could see he was holding something in his right hand, a small bat, and he was holding it against his right leg, as if hiding it. Bradley stated at this point, Lewis was now attempting to back the trailer into the water and she could see the older man and his friends watching Josh Smith as he was attempting to load the boat into the trailer.

Bradley stated after hearing the older man talking about beating someone's ass and then him getting the bat out of his truck, she was concerned about what he may do so she walked down the dock in attempts to hear their conversation. She stated she walked behind them, acting like she was watching Lewis back the trailer into the water and she stood there listening. She heard the older man stated "I got something for him if he comes up here making some nonsense." She didn't say anything because she didn't want to get herself in a pickle". She noticed the item that the older man had in his hand looked like a small bat or something the police would carry.

Josh was now loading the boat on the trailer and he had turned the music down so she went back to where Smith was, at the top of the dock, and told her the weapon that the older man has looks like a police bat. Smith stated "Well that's kinda odd because he came with a dog and then what he said to her about her husband and now he walked back with a bat in his hand". Bradley stated that along with all of that information and what she had heard him say they decided to go and approach the older gentleman and ask what his intentions are.

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Bradley stated they walked up to the older man and Smith asked "Sir, why do you have a weapon in your hand and he responded that he was here to bat some fish. Smith stated "so you were just talking about my husband and then came on the dock with a bat. Bradley then stated "You were just saying what you were gonna do with the bat, whether you saw me behind you or not". Bradley, Smith and the older man were all three standing there talking about why he had the bat and what he was going to use it for. He then got loud with them and Bradley stated your not going to talk to her like that, she's a police officer. Bradley stated she never stated where Smith worked or who she worked for. She stated neither of them raised their voices to him nor did they curse at him.

Bradley stated that the entire time, the man never went to his boat to put his bat in there. By this time Josh had loaded the boat and she guessed that he noticed what was going on so he went come onto the dock. Bradley stated they told Josh why they were over there talking to the older man. She stated they were trying to protect Josh and then Josh asked the old man the same questions and one thing led to another. She stated they were discussing issues about the bat and she and Brittany walked off the dock. She stated Josh and the older man were near the middle of the dock. Bradley stated she knew that Josh had taken the bat from the older man and threw it in the water and then he walked off. Bradley stated before walking off the dock, she noticed the other man that was with the older man was on the phone and guessed he was talking to the law. She stated the woman was there but wasn't involved in anything, she was just there somewhere.

Bradley stated they were not attempting to cause any problems, just getting off the boat and wanted to go home.

Bradley stated she did not even see a boat just a bunch of people in folding chairs on the dock. She stated the people were already on the dock and again did not see a boat. I asked if she saw Josh do any donuts in the water while he was waiting for the trailer to load the boat and she stated no but she did hear the loud music.

I asked Bradley how long it took to load the boat and she stated Hunter did have a few problems because Josh's truck is jacked up and hard to see down the ramp.

I asked if they were drinking that day and Bradley stated she knew she would be driving home so she had only drank 3 beers and stopped drinking around 1500. She stated that everyone else had been drinking as well but they were not stumbling drunk. She stated that she and Hunter started off with an 18 pack and there were maybe 7 beers left. She stated she wasn't sure how much Brittany and Josh had to drink because they had a different cooler. Bradley stated that she did in fact drive the truck pulling the boat away from the Sands when they left.

I asked if she and Brittany asked the older man to walk with them anywhere and she stated no, he wasn't really around anyone, they were a good distance away from him. She stated when they approached him, his back was to them and he turned around and stated yes, she stated he wasn't mean to them at all.

I asked if the older man pulled up his t-shirt to show them anything and all she remembered was him showing them the bat. I asked if she remembered seeing a radio on the side on his shorts and she couldn't remember.

I asked if she remembered what the older man said he was going to do with the bat. She stated he was going to hit fish with it. She stated that he never put the bat in his boat or laid it down in his chair or anywhere else, just kept it in his hands the entire time. I asked if they had chairs out there and she stated she was pretty sure he did, and that by the time they turned around there were several empty chairs but they never went to a boat at anytime. She stated she never saw a boat only people and chairs. She stated they were so worried about being involved with them for some reason and they were not being too loud except for Josh playing loud music.

I asked if Josh was yelling at Hunter for the way he was backing the trailer in and she stated she didn't think so because the windows on the truck were up. She stated once the boat was on the trailer and they were pulling up the line, she believes that Josh told Hunter "that's good Bo".

I gave Bradley several statement forms and asked that she provide a written statement. She stated she would take them with her and once filled out she would bring them back.

Officer Note ** On 08/05/2019 I contacted Bradley and asked if she had finished with the statement forms yet and she stated yes and that she just hasn't had the time to bring them yet.

At 1600 hours Bradley called and stated she was on her way with the statements.

Interview with Hunter Lewis: This interview was video and audio recorded.

I told Lewis that I wanted to speak to him in reference to the inoident that occurred at 50 Sands Beach on July 6th. I asked him if he knew which inoident I was talking about and he stated yes. I asked him to tell me what happened that evening.

Hunter stated he was out on the river with his friends and when they got back to the Sands boat launch Joshua Smith dropped him, his girlfriend, and Smith's wife on the dock to go and get the truck and trailer. Hunter stated he got the truck and trailer and backed it down to the launch so Josh could load the boat. After he had gotten the boat out of the water, he asked what was going on and the girls told him how the guy was making rude comments and how he was going to teach someone a lesson. Hunter stated he didn't really get involved with it and thought it was already handled. Hunter stated he did not see or hear anything involving Coffman and Josh but did see the Police vehicle

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pull in.

I asked Hunter what he had to drink and how many he had. He stated he had been drinking but could not remember how many.

I asked if when they came up to the dock if they were going fast or slow and he said slow because Josh was particular about his boat and didn't want to mess his boat up. He stated he did not see any other boats in the area as they approached and did not see anyone on the dock. He stated he did not see Josh do any donuts while he was waiting for him to back up the trailer.

Hunter stated after pulling the boat out of the water, he and Josh were cleaning the trash out of the boat. He stated he was taking trash to the trash can and that's when the girls were talking about this guy who had a bat and the other guy playing music too loud. He stated all he knew was Josh walked down on the dock, said whatever they said and Josh took the bat out of the other guys hand and then Josh threw the bat into the marsh and walked back to the boat.

Interview with Aaron Abercrombie: This interview was video and audio recorded.

Aaron stated he has known Paul for two years and met him while building his home. He stated he was kinda like a father figure. He stated he was helping Paul that day working on his camper and Paul stated he wanted to take him out on the boat to repay him.

Aaron stated they were coming in to the dock and he noticed a larger beautiful boat coming in and it cut in front of them. He stated they had not even made the turn to start coming in yet but the other boat hit the throttle pretty hard to make sure he got there first. The other boat pulled up to the end of the dock and off loaded three people before leaving the dock. Aaron stated they pulled up on the longer portion of the dock. He stated the other boat then left the dock and had the music pretty loud and had cool lights (bright blue lights) and then the driver of the boat starting doing donuts in the water. They then saw that DNR had pulled up to this boat so he and Paul's wife were watching as DNR was out there with them.

After they docked, Paul took Linus, (the dog) up to the truck to back the trailer in. Aaron stated he and Pauls wife sat there for at least 20 minutes and watched as the driver of the other truck attempted to back up the trailer. He stated it was a pretty big truck, as Paul's truck is big too, and he was having problems backing in the trailer. He stated he noticed one of the females came down the dock a few times as if attempting to listen to his and Pauls wife's conversation. Aaron stated it takes Paul a while to come back to the dock but he finally come back and told them that he was going to have to wait to back the trailer in because he could not see past the other trucks headlights. He stated he was in no hurry and they were all hanging out. They finally get the boat out of the water and the ladies then walked over and asked Paul to come over and speak to them. He stated they asked Paul to step about 10' away and Aaron hears one of the girls ask Paul about a gun, Paul stated he doesn't have a gun and he pulls his shirt up and shows them a walkie talkie. Then he heard one of the girls ask "What are you planning on doing with the bat". Aaron stated he then saw Paul had his fish bat and heard him say he was putting it in his boat. He stated they keep going back and forth. He then sees the husband coming down the dock and the husband gets in Pauls face. He stated it looked as if they were going to walk away and then the man turns around and says "You were gonna hit my wife with a bat?" Aaron stated he was talking to 911 and as soon as he came at Paul, they start scuffling and thats when he threw the phone on a chair. Aaron was looking for something to break up everything, he headed towards Paul and the girls husband stood up and looked as if they were going to re-engage and as he looked up, he sees a cop already there. Aaron stands up, the guy looked at him and tells the guy the cops are right behind you, you might want to walk away. Aaron stated he had his back to him when they were scuffling but when he turned around he saw the girls husband with the bat in his hand and pulled it back. He stated the guy paused and then chucked the bat in the water.

He stated after everything happened and everyone was separated, they were at the end of the dock and the other group was in the parking lot near the patrol vehicle. He stated the other guy was still yelling and heard him say that if this were the old days I would kick your ass. He stated he could tell that alcohol was involved.

He stated that there were other people on the dock fishing that they didn't know. He stated another boat came in and Paul knew this person. He stated that Paul talked to this person and asked him about the owner of the boat (Bad Company). This unknown guy told him the owner was an intense guy but a great guy if he wasn't drinking.

Aaron stated he now wished he had gone to get the truck once they docked and maybe that would have been no... you know. He didn't finish the sentence and I added, "A little different". When I asked Aaron why Paul got the bat out of the truck, he stated he didn't know if Paul felt uncomfortable or what and he didn't even know Paul had a bat.

08/31/2019:

Interview with Stephanie Coffman: This interview was video and audio recorded.

Before I asked Coffman any questions, She stated " Can I ask you one questions first, were you investigating

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this before you got back?" I replied no, that I had been on vacation all of last week and knew nothing about this case before Monday. She then asked " So nobody asked you to open it or do anything? I replied to her, No, not until Monday when the Major asked for the case to be reopened.

She stated they went on a sunset cruise after Paul and Aaron had been working on the camper all day. We had a nice time as we went to Beaufort. As we were coming back, this boat comes flying in from the Beaufort River. This boat was making big circles, blasting music and has two big motors on it. Paul was maneuvering into the dock and this boat came and slipped on in around in front of us and takes the spot we were going to.

She stated once the other boat came in to the dock, the people that were sitting on the dock, had to get off the dock really quick. Coffman stated they were not close enough to the dock to tie off yet. She stated she said right away that there's something wrong with these people in the boat, lets get around to the other side, it's not our favorable side but let's just get around there. Someone on the dock grabbed their line to help them tie off. Three people off loaded from the other boat and walked towards the landing and the driver of the other boat, as we now know as Josh Smith, goes back out in the water, doing donuts, just peels off, blasting his music so loud you couldn't even talk to each other. The man who got off goes to get his truck and begins to try to back the trailer down. In the meantime, these three actually staggered their way this away, (Points to a place on the map).

I asked Coffman when they tied off their boat, are these three still walking or have they past your boat? She replied, well, I'm thinking they were walking up, let me see, I wasn't even paying attention to them. She thinks they just pasted them as they are ready to step off the boat. She doesn't remember getting close enough body wise to know what they are wearing. But she isn't sure because she isn't tuned in to them other than they are glad they are over there and were are over here. Paul asked if she wanted to walk to the truck, she replied no, she wanted to stay with the boat, so she and Aaron stayed at the boat and Paul took the dog to the truck and try to figure out how to put the trailer in the water.

She believes there was some discussion between the three of them on the dock before Paul took the dog to the truck. She stated she and Aaron never left the dock, they stayed at the boat. So Paul took Linus (dog) to the truck and the other guy was doing donuts in the water, the other guy was trying to back the trailer in, which he couldn't do, he was running over the curb, back and forth, couldn't line it up. It was taking forever. It wasn't 100% dark and he was all over the place, he would roll it over this curb, roll it over that curb, he couldn't get it straight, it was a mess. So we were sitting there watching and the other guy was doing donuts and then she noticed DNR had stopped this boat. She thought DNR had gotten on the boat but Paul had found out who the officer was later and talked to him and they did not get on the other boat.

She stated she and Aaron were still on the dock by their boat and Paul had gone to the truck to take the dog and he determined he couldn't get the trailer in because the other trucks headlights are going every which way. She stated it was erratic and it doesn't make sense to try. So Paul comes back to tell them this. So they decided to chill, they have no place to go, just gonna wait this out. By this time, the trailer is not enough in the water and Josh Smith begins to ram the boat on the trailer, the trailer's not lined up, he's not getting the boat lined up to get on the trailer. She stated she and Aaron were looking at this, shaking their heads, said it's none of our business, they didn't care, they were just talking to each other facing the water. All of a sudden, one of the women from the other boat was standing right there next to her, leaning into her. She stated in her mind's eye, she sees the other women just off of the first women's shoulder, so they have both come down on the dock. She stated once again, I'm not paying attention, the wind is blowing, it's a nice evening, and it's a show out there. We were gonna chill and stay out of these people's way. She noticed the woman was behind them at one point and literally leaning and she remembers turning to look at her. But she didn't say anything to her. Next thing we know, we are standing there, he (Josh) is screaming at the guy (Hunter) that backed the trailer in. Josh is cursing, screaming and ramming the boat onto the trailer. Once the boat is on the trailer, the boat is crooked.

Next thing I know, both women have gone behind us, Aaron and I and of course Paul, is back down there and they were just gonna chill and wait. The women stated to Paul "would you come this way with us". They were all thinking the girls were gonna ask Paul to help them get out of the water. Because Paul helps people and getting them out of the water would be a good thing. Paul replies, I am not gonna drive the truck. Coffman stated she didn't know why the two girls weren't on either side of the truck trying to help the guy guide the trailer into the water. I stated maybe it's because he was a guy and he didn't want to ask for help and Coffman stated OR maybe they were so out of it they didn't think of it.

Coffman stated the girls asked Paul to come this way with them and Aaron says hmmm, I dont know whats going on and he moves down and stands right outside the three of them, (Paul, and the two girls). Coffman stated she stood at the boat and she starts to see the tension between the three of them and the next thing she sees is Paul pulling up his shirt and showing them his radio. As we learn later, she said she was a police officer and the other one said yes she is and you better listen to her and we know you have a gun, that you've gone to your truck to get a gun. Coffman stated even if he went to the truck, the drivers door is on the other side and they couldn't have seen 100 yards away and could not have seen him take anything out of truck. She didn't know where this came from and if he had a concealed weapons permit he could have a gun on him. They more than likely had guns in their boat. Coffman stated she has a CWP but she does not carry. So where this came out of the blue to accuse him of having a gun and then to turn around to find something else that was a weapon. Only thing I can say, is that when she was leaning into me and I looked back, this is a paranoid person, she is trying to listen for something. And this is the big mystery we don't know what it is, what is she listening for, what is she trying to stir up? And then does stir up.

After Paul pulls up his shirt and showed her the gun, (I stated "you mean radio?") and she stated I mean the

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:adio. Coffman stated the girl jumps back and then she flees up to the landing because now Josh has gotten the boat ›ut of the water. We don't know what she said, it was very short and from that moment, this guy, that had never met ?aul, didn't know who he was, never met the three of us, comes storming down, 6'2"on alcohol for sure and we don't :now what else, I mean huge. He said " You insulted my wife, you threatened my wife" She stated just the power of ıis yelling. He then started chest bumping Paul back down the dock and now we were trapped, can't go left, can't go :ight and we can't go back. He started screaming at Paul, you old man, I'm gonna kill you, I'm gonna drown you, you ‡od Damn Yankee. And it went on and on and on. So I have moved now from where the boat is to stand shoulder to ›houlder sideways with my husband. She stated she didn't even have her phone with her, it was on the boat but we .earned that Aaron did. But we woulda shoulda coulda taken pictures or videos, who knew this guy was gonna do what it lid. So right now, this police woman is standing right next to Josh and the Jesica person is standing there too. He .s towering over Paul, chest bumping him, pushing him and Paul was standing with his arms by his side. I think more :han anything, I wanted my energy to stay with him to not react. She was mumbling please don't do it, please don't it. ›o we stood there while guy was doing all that until he took Paul down. He kept telling Paul he was going to throw him ›ff the dock, he was gonna drown him and we know what the current does under the dock and the oyster beds. It could ıave been just as easy that he bumped the other way and I went in the water. That's how close and tight we all were. ‡e took Paul down and he dragged him on the grate on the dock. We are all just stunned and Aaron has to oall 911. ?ell he called the local number first and then he has to put his phone down in the middle of it because he's now taken ?aul down and the police officer is standing right there, but I understand that she was in the parking lot before she :ame down. I didn't see the other police officer in the parking lot, the others saw the police officer in the parking .ot watching, that would be officer Bunting and there was another police officer with him. We are all getting into ?urther shock, the size of this man, whats he's trying to do and what he's accomplishing and there seems to be no way ›ut of this situation. Aaron sees the police officer standing there and says the police are coming you better back ›ff or maybe you better think about that, or something like that, she could not remember the words exactly. At that ›oint Brittany Smith was grabbing his shoulder and he was shrugging her off but this was well after the fact that if ‡he is a police officer, for trying to de-escalate something she escalated. She stated she did not know what ›rittany's words were but he had no reason to feel like he is threatened if we were down on the dock away from them. ›r if they felt threatened, get in the damn truck and go. Whatever it was that flips his brain out she said it to him ›ecause he turned into what I call an attack dog, a pit bull. I was told the officer, Bunting, who is at the top of :he dock, but now he's telling us that Josh is the victim and if Paul presses charges, Paul is going to jail. I made ıim repeat it a couple of times I said, you gotta be kidding me. She said that man's body is a weapon and it was a ?eapon for all of us.

So here we are being attacked, standing down here, and I know, its speculation but if I had my phone, the man ?ould've taken it out of my hand and thrown it in the water. He was so out of control. Brittany, Josh and Jessica go :unning up to Bunting and apparently start telling him their side of the story which was a dispute over a dock space ?hich was never talked about, no conversation about.

She stated they never spoke to them, not until the girls came down and asked to speak to Paul. I asked Coffman :hat the entire time, once they docked their boat and when Paul went to the truck and took their dog, that no one ›poke to the other party at all. She stated no, he didn't tell her if he did. I thought he said at one point he ›verheard her in the parking lot complaining about her husband being out of control. She stated she didn't remember :he sequence of events but it had to be when he went to the truck because that was the only time he went up there. ?hat she was complaining that her husband was out of control and it was obvious that he was.

I asked Coffman to tell me about the fish bat. She stated he uses it to hook or unhook the trailer to the truck. : asked why he would have gotten the bat out of the truck and took it back to the dock where they were standing. She ›tated he would have used to to pound the trailer hitch down to the ball but he uses it for a variety of things. Again : asked why he would have taken it out of the truck and brought it back down the dock to where they were at if they ?ere waiting to take the boat out of the water. She stated you would want to help pound down the hitch to the ball ›ocket. I stated that the trailer was already on the truck so why you need that when you put the boat on the trailer. ‡he stated she hooks all that stuff up, he has to pound hooks and chains and whatever There are so many things on the ›oat that could be used as a weapon its not even funny.

Now the police has been talking to them (Smiths, Bradley and Hunter), Josh was up there talking to them and he was ›till screaming and threatening us that he was gonna take us all out or down and in the old days I could've done, :aken you all out. She stated officer Bunting was there and another and on the report, Joab Dowling was there as well. ‡he stated they were all stunned still by what had happened then the fact that Paul was gonna go to jail if he pressed ›harges on this guy. Paul told officers he wanted him arrested and taken out of here. Paul stated he wanted him to :ake a breathalyzer test. He refused, the officer refused to do any of that. I explained to Coffman that we do not ıave jurisdiction on the water. He was not driving while he was on land. When officers encountered him he was not ›riving. Officers had no reason to test him. I also told her that we do not carry portable breathalyzers.

She stated that Paul asked the officer, Do you think he is capable of driving home and he would not answer him ınd then his only answer was "I've already taken care of that" and then they got in the truck and left. She stated as ?ar as she knew Josh was driving the truck. We saw them pull away, he saw them pull away and he authorized them to ›ull away.

She stated that one of the officers saw how distressed she was over the situation and he came over and told her :hat she is going to be written up because she has to report it to the Sheriff's Office. She stated they were still ›tunned by this and being told Paul would go to jail if he pressed charges and then of course three days later we get

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the report that says Paul is the aggressor and the other guy is the victim. And the words that Officer Bunting put in this report are not at all what we said. We all stood there and told our side of the story, so it had to have been recorded. Officer Bunting puts words in the report that said Paul agreed there was a dispute over dock space. Josh Smith would have never known if there was a dispute over a dock space because he never got out of the boat. And while Paul was at the truck,(If you look at that silly footage) you can see in the reflection of the truck next to our truck, the lights of the other truck attempting to back down the ramp so Josh was still in the water. Paul had never met Josh and Paul have never seen Josh. It's just incomprehensible that somebody now taking a fish tool to use on your boat and trailer to hook up and they were looking for some reason, and this is my theory.

The two of them are known to have big arguments. They had been on the sandbar all day, we know people that have been on the sandbar with them. We know people who said he (Josh) harassed somebody on the sandbar. When they get in arguments, they drink and drug more and they go off in these directions. The only thing we can think of is she was looking to get her husband in a fight. She had already said she was upset with him, she's trying to lean into us, listening for something derogatory to tell her husband I guess and then decides, he (Paul) must have a gun, that's what I'll use. She then, once he gets out of the water, says whatever words she says to him and he comes charging down the dock.

-I asked Coffman where the other girl was when Mrs. Smith went up to the boat.

-She stated her recollection, she stayed down there on the dock, yet the report says she's calling officer Bunting. She stated once again, she doesn't think this is going anywhere so she isn't paying much attention and I felt like I saw her standing there (on the dock next to her) the whole time. Officer Smith, or whatever her name is, coming back down but I don't know for sure, I'm not sure. They ended up standing there with Josh Smith beating my husband and not doing anything.

She stated Paul even asked her for ID and she never produced any.

-I asked if she, Brittany, stated she was a police officer or if the other girl did.

-Coffman stated she, Brittany, stated she was a police officer and the other woman said, yes she is, you better listen to her.

I know at the 11th hour after two weeks, they changed their story. Well, they got to see the report and dispute whatever our reports were. I told her that I did not know if anyone else had a copy of the report.

-Let me offer you two other things, because we have been part of the community forever since the 60's and we know a lot of people. Someone who works for a judge that we've known for a long time, overheard a phone call with Paul, and without naming names, takes the phone away from her husband and says "is this Brittany Smith your talking about?" And Paul says yes, she says "oh I know alot about her." Apparently a couple of months ago, don't know the exact dates, he barricaded her in the house on Mossy Oaks, where they live and a SWAT team had to come and get them out and it has never gone on a police record.

-He has also, it has been told to us by others, we weren't there. That when he was asked to move his boat from the lane, at the landing, he got furious, went to his boat, got a chain and started swinging it.

-Was that at the Sands

-Yes, but there again, it is hearsay, I wasn't there.

The tension of this thing has been so great that, I don't know if you know but 911 was called to our house on this past Friday night. Paul decided there was something wrong with me but there wasn't, I didn't want to talk about this anymore, I wanted to watch tv and he didn't want to come in with me. He decided something was wrong with me and he called 911. I swear 6-8 vehicles were there and 20 people were in the house. I don't take drugs, I took an all natural sleeping tablet, your suppose to take four and I take one. They took her blood pressure and then separated them, Paul in the living room and me in the family room. She stated she wasn't gonna talk about it but it spilled out.

She stated they are being blocked in three directions and we are the aggressors over somebody we think is dangerous and now we're all concerned he's gonna go out drinking and drugging one night, doesn't like what's going on and wherever we are, we don't know. This guy seems, beyond this incident, seems extremely volatile. We are not looking for money, this guy has no money. We have a police report that says Paul is the aggressor, It can't stay like that. And they won't give us the footage. We have put in the request, multiple calls, he's even talked to Capt. Beach, (I stated Chief Beach) she stated Chief Beach and everytime we are assured it's going to happen then Capt. Griffith says last week this case is closed and click.(Hand gesture to hanging up a phone).

I explained I was given this case on Monday and started looking into it Monday. And yes I have watched the video from the sands. I explained to her that the camera is new and I am not sure who has access to it and the guys play around with it and they don't reset it. That is why the video was zoomed in on the spot where Paul just happened to park his truck.

-Coffman stated "I'll just say it right now, I understand that if any of the footage has been tampered with experts can figure that out." She stated she hopes that is not the case. I asked her if she thinks the video has been tampered with at the Sands? She stated she doesn't know but it's very odd that the only thing they have is a close up of Paul at the truck.

-We haven't met before have we?

-No

-I don't expect you to come in here and lie to me about anything, I have no reason to lie to you about anything, about

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video, about statements, about what's happened, when I found out about this case, nothing. So when I say that the video that I watched, and the camera system, we have down at the beach is new, its only been there since July 3rd or 2nd, that many people have access to it and they don't hit the reset button to make it go back out so we can see the whole area, I am not lying to you.
-Oh no I believe you
-Nothing has been edited in any of the camera. So that's not an issue
-Shouldn't there be two hours of that spot?
-I explained to her that I am not sure if the video is motion activated or if it records constantly. But if there isn't anything on the video and it shows a close up of Paul's truck all day and nothing else, why watch it?

I explained to her what I had seen from the video at the Sands and she stated she believed me. She believes that it is very odd that that's all they have on there.

Coffman stated also there is a 911 call, which we have a copy of, she stated that was one of the first things they did was go to the Sheriff's department to put in a request for the 911 call and that's when officer Mattox came out to speak to us. He stated that when someone puts in for that, there must be a reason and he pulled them in to his office to speak. She stated they talked with him multiple times and eventually put in a complaint. We were even deciding, do we even want to put in a complaint against her or not. That's not the point, we just want to get this corrected. Even on that day, we didn't know about the third page with the all of the narrative on it that had what Paul didn't say and what didn't happen. We didn't even know it existed. We were only given the first two pages.

Coffman stated on the 911 call you can hear Josh screaming at Paul. I told her that I have put in the request but I haven't gotten it back yet.

She stated they are solid citizens of Port Royal and believe in everything going on here and this just throws us for so much of a loop and has interfered with so much of our lives. At first I just wanted Paul to just let it go, but I understand now that if this is out there, with Paul being the subject, these two unstable people could do anything they want with that report. And they are unstable. And somebody seems to be protecting somebody here. Coffman stated that after Officer Bunting was in the parking lot with Josh, the threats continued and Bunting did nothing about it. We do not understand where Officer Bunting is coming from with any of this because he knows we did not say those things and we did not agree to those things.

Coffman stated she was a writer too and she was bitten by a dog last year at the dog park. She stated Animal Control called her and they told her there was nothing they can do about it and you take your own risk at a dog park. So after all these years on the river, you are on your own. You can't take their drivers license and now I see all these issues that are totally unprotected. It a different way at looking at our beautiful rivers.

Interview with Paul Coffman: This interview was video and audio recorded.

Mr. Coffman stated he has two questions:
Part A: Are we were here today because of the so called pressure that he has put on the Chief and the Major to please supply us with the information from the security tapes. Are we being investigated? I responded no, that I was not here last week and when I came in Monday they said here you go, investigate. I informed him that I have not talked to everyone and I haven't finished watching the video footage yet either.

Part B of my question. What happens when you complete your investigation? I explained to him that I would call him and let him know. I told him I don't know how it's going to end yet. He stated that he is glad and he hopes I can tell that. He stated he is confused and dumbfounded about this. We are scared some days but we are thankful that you are looking into this. We feel like that's the right thing to do. So thank you.

In the beginning after a very effective work day with Aaron, he is helping me work on the camper in my driveway. We met because I helped design and build his home. I told Aaron I would ask Stephanie if she would like to go out on the boat. I am teaching Aaron how to boat.

He stated they were coming back, the tide was coming in and they did a U-turn to tie up at the dock using the tide as our resistance. The game plan was to walk up the dock, back the trailer in, and show Aaron how to do that. As we were coming in to the dock, some people we had met as we were going out and had introduced himself, were there as we were coming back in, helped us. As we are coming in to the dock, here comes the big "Bad Company" boat. Stephanie and I have excellent boating experience, Aaron does not.

Coffman then explains to me everything he has done and accomplished in his boating career.

We are coming back up to the dock, and around from this (points to area on map) direction, at a very high rate of speed, turned on its side, the music is as loud as I think you could possibly have it and it probably had magnum speakers and that's all we could hear. He then made this giant U-turn and came in between us and the dock. We then went back out and came back around and docked on the other side of the dock. It was more challenging because of the tide. Someone on the dock was kind enough to help us. While we were tying up, this boat, "Bad Company" had let three people, two females and a male, get off the boat, and based on our observations could not walk a straight line.

When asked about how close "Bad Company" came to his boat, he stated he never felt that they were going to have a

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collision. He stated that the boat was never close enough to touch. He stated they had already made the turn and was headed in diagonally to the dock. They dock the boat, step out and their game plan at that time was he was going to take Aaron and ooma and get our truck and trailer. Aaron was going to attempt to put the trailer in the water.

While we were tying up the boat, three people got off the boat "Bad Company" and our observation was that they were unable to walk a straight line, it seemed to me, from my experience, that they were seriously inebriated and they were yelling and screaming. I don't know who was yelling, screaming and cursing but it was going on from one of the three who got off the boat, who were now on the dock, to the person who was on the boat. It is my theory that it was Mr. and Mrs. Smith yelling at each other. But I don't know who it was and we did not communicate with them. So we stayed there and decided that we were going to remain in this position believing that the reason they were coming up here was to get their trailer in the water. And I said to Stephanie and Aaron, I am very concerned that they will not be able to accomplish it because I was concerned about them going in the water.

Mr. Coffman then explained to me the purpose of a boat pole.

My thoughts were and I can not remember if I mentioned this to Stephanie or Aaron but I better be prepared to grab the boat pole, it looks like to me that somebody's going to end up in the water.

Mr. Coffman then explained to me about falling into the water and what's under the dock and you wouldn't be able to come out the other side.

The other people made it off the dock and we forgot all about them except for Mr. Smith and he's out there doing these big donut turns and he has his boat up on its side and he throwing all this wash or wake up against the other boats and docks. We are hanging on to our boat and to our dog and our boat got scratched up, no big deal but that's not why were are here.

The thought went through my mind to yell to this guy to "Hey tone it done,calm down, no wake zone here". This has already created a disturbance and a risk for us for personal injury and boat damage. There is at least 8 human beings on this dock not counting the people from "Bad Company". Thats alot of people with that going on. So we made the decision that the best thing for us to do is to get the boogie out of here. Based on everything I was observing, if I said anything at all, I felt like it would instigate a problem. That was my instinct and at this age in life you develop some. I decided no contact at all. We came up the dock, I told Aaron and Stephanie at this time I would rather them stand by the boat and hold it secure and I would take Linus, put him in the truck, I would back down and we would get out of there as soon as possible. No practice for Aaron. So I get up there, I think that's in the film for some reason I still don't understand. I told him that I would explain that to him later. I put Linus in the truck, I get in the truck, and I turn around, the headlights are so strong, the other fella, has beat me to the punch so to speak. The other fella has gotten ahead of me to back his trailer in and I can't see because he has a big truck and headlights. So I said ok no go and I left Linus in the truck, with the air conditioner on and the windows down as I got out of the truck I felt behind me that I had left what is a tool that I use, some people call it a fishing bat, some people call it a fish bonker, some people call it a stick. It came from West Marina and what its designed to do is a multitude of things including bonking a shark or something on the head if you put it in the boat.

To the best of my knowledge Detective, under oath if I were under oath, I've never known anyone under any circumstances to use that as a weapon on another human being. And I've been around. I asked how big the bat was and I asked maybe a foot long? Big enough to put your hand around, he replied about a foot. And it has a loop on the end so it won't slip off. He tells me that 90% of fish bats don't have that.

He goes on to tell me about a Marina that has different fishing poles and fish bats and explain to me the different kinds. He stated his bat is a hard plastic bat and weighs between 10 and 16 ounces. He stated he doesn't know if it floats or not and Mr. Smith was the first person to put it in the water and he wasn't paying attention to where the bat was going at the time. It makes sense that it would float to me. He then explained to me that he uses the bat to latch and unlatch the trailer from his truck. Today I had to move, I have a four wheeler Jeep Cherokee and it has a tow bar and I had to move it up to Sutcliff audio because they are putting a spare tire rack on it for me. I didn't have my little tool that we are talking about. I had a tire iron and I had the darndest time and was thinking if I only had my bat. If you take the bat and you bonk the latch for the hitch it goes "click, right into place". The third thing that I use it for, when the boat comes in, and it's one person, once you pull the boat on the trailer, I can grab the hook on the winch with the loop on the bat and bring the strap closer and then I can grab it and attach it to the loop on the boat, otherwise the strap is hanging down low.

I did not, so help me everything, did not anticipate that I would need a bat to defend myself or to attack someone. I wanted us to get out of there. That's what I wanted to do as quickly as possible. On the way back down I did think, and I don't mind sharing this with you, I did think that these people were so stoned that anything was possible. And so I don't know if it was, I don't know which experience it was, but when I got out of the truck and I walked back to our boat, I put that thing right by my leg. I didn't walk with it like this. (motioned as normal walking). I held it by my leg. Other than thinking that was the smart thing to do, I don't know if I had any other reason. What I didn't do Detective is I didn't hold it up in the air, at any given moment for the rest of the evening, I never held that bat up and showed it to anybody, pointed it at anybody, threatened anybody with it. I stated, yeah Aaron didn't even know you had it. He stated exactly.

I haven't listened to the other people's story but from what I've interpreted from those who have and there story is and I am not asking for you to confirm or deny but their story is that they were threatened by that bat and that's why they attacked me. I think that's impossible to believe. I don't think that even with them standing up there in the parking lot once they got out of the water and we are down on the dock. I do not believe any of those people, unless they had military grade binoculars could've seen that bat or what we were doing on that dock.

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I asked Coffman that when he walked Linus to the truck, did you talk to anybody along the way. Yes I did, there were two females that were standing in the parking lot near the dock. As I stepped off the dock, I said, and I can say clearly right now, I honestly didn't know if it were the same two females that got off that boat or not. It was just two females standing there. I said I hope you had a good day on the water. And one of them said, if it weren't for my asshole husband we would have. I said Uh Oh. I did have that dialog with her.

-I asked if thats was the whole conversation and he stated that's all he remembered.

I go back down to where Aaron and Steffanie are, and Linus is not with us now. And according to Aaron, the females had come down on the dock and stood very close beside them and he found that to be unusual or somewhat strange. I can't remember the wording.

-I asked if that was when there were all three on the dock. He replied that he didn't remember the girls being down there.

Paul stated as he was coming back down the dock, the two females approached me and said Sir, would you mind coming up her with us or just a minute or something to that effect. I sincerely believed that they wanted me to help because this guy was zig zagging and 30 to 40 minutes had gone by by now and he still hadn't lined the sucker up yet. The other guy was out there doing circles and he had run up to the launch, bumped against his trailer screamed and cursed out the guy who was driver the boat (I believe he meant truck). And as of yet, I have intentionally not made eye contact with this human being. So I say sure, I'll come up and as we get to the end of the dock, they turned around and I felt confronted and Deputy Brittany Smith looked me straight in the eye and she said I am a police officer and I saw you go to the truck and get a gun. And I said, and I am trying to remember my expression and my feelings, and I said you did not. I do not have a gun, I did not go to my truck and get a gun, who in the hell are you? The other woman said, she is a police officer and you better pay attention. Then Deputy Smith said I know a gun when I see one. I said, well not in this case.

I think I still had the bat in my hand, I don't remember. I put my hand down by my side and put my left arm out and said stand your ground. I said I am going to show you (he starts lifting up his shirt), Oh, she had pointed to my waist. She said sir, you can see it right there. (pointing to his right side). I said stand your ground. I took my fingers from the top of my shirt and pulled up my shirt and what I had, and there is a picture of it, a little radio. We are boaters, we carry a floating radio with us when we go out on our little boat. And I said that's a radio not a gun. And I don't remember if I said anything else, Oh I did. I took my left hand and took it by the antenna, lifted it up and I said here, hold it if you want to and they did like that (make a motion of jumping back with their hands raised).

I made a decision, these people are more screwed up than I thought that they were, the best thing for us to do is separate now. I said conversations over, I went back down the dock and that's when I went all the way to the boat where Aaron and Stephanie were standing. I'm getting ready to explain that to them and thats when, I believe, when we hear this stomping on the dock. And I turned around, and keep in mind we were standing here (points to an area on the map) and I turned around and Joshua Smith, now that I know who he is, had traveled all the way down to where we were and when I turned around and (he looks at me and I explained that I have not met him yet) the police report confirms he is 6'1", he is 31 or 32 years old and weighs 235 pounds. Thats a big man standing over me. I'm 5'8" and I'll repeat myself, I'll be 74 in a few months. He is leaning over me, he has his hands up in the air like this (fist are balled up, arms over shoulders), he said you insulted my wife, and if you want me to use every word that he did, I will (I replied I do).

He said you insulted my wife you fucking old man, you god damn yankee, I'm gonna drown your ass, I'm gonna clear this place, I will get rid of you, and the next thing I know, he's got me and he takes me to the ground. And as old as I am, you've got to be pretty aggressive and pretty fast to get away with that, ok, but he did. And I felt his strength and I felt his insanity, I felt all that, Stephanie I know felt it, we've talked about it. And I realized instantly I'm in trouble, what do I do about it. My arms were pinned, he was hitting me with long arm blows to the back of the head, to the back. At first, at some point, I was trying to block some of the blows, hit me down my back in my kidneys and at the same time he was dragging me.

If you go down to the dock and walk on it, we call it a cheese grater dock , I told him yes, I've been on it. Well, you saw the scratches on my legs I think. I replied, yes I saw the pictures. So he starts dragging me to the edge and he gets me to the edge of the dock on the incoming side. (I clarified which side and if you are standing on the dock facing the river, it would be your left side and he confirmed).My face, If this were the dock (Interview table) my face was over the edge of the dock. I think that's when my knees got whatever they got. I decided I wasn't going in the water. I stood up with him on my back, I lifted his arms up off me, I looked him straight in the eye and I dropped my hands and I never said a word to the man. And he kept saying "Hit me you son of a bitch, hit me, hit me, I dare ya, go ahead, hit me, I'll clean this fucking place up with you, hit me, hit me. I never said a word to him. And I knew better than to say a word to him.

Then I realized, I didn't realize, excuse me, I did not know that Aaron had called 911. I did not know that. And the next thing that I see in my line of sight is his wife pulling him by his arm and t-shirt, and saying to him get out of here, get off this dock. I think she called him a fool but I don't know. She said the police are coming, the police are here. Get off the dock, now. He was still… and he changed his mind and left the dock with her. We were all standing there. I do not remember, I could not tell you how many seconds or minutes from the time he left the dock until the time that Officer Bunting appeared where we were standing. And he had another officer with him I believe.

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Questions

When you came back down to the dock, do you remember if Aaron was near you when the girls pulled you off to the side? -- I don't remember, I am guessing he must have been, that he and Stephanie must have been closer to the boat and I was not 100% all the way to them yet. I don't remember. Everything happened so fast. I wasn't trying to memorize everything.

How long was it from the time you got back to the dock from going to the truck to the time girls approached you and ask if they could speak to you for a minute? -- It was a minimal amount of time Detective because my game plan was to get the boat ready so that as soon as this guy got his boat out of the water. As I was approaching the boat, this guy was finally getting his boat on the trailer or thereabouts, I don't remember exactly. He repeated my question to him and replied "a nanosecond. That's what I remember."

From the time you dock, all three of you got off the boat, you took Linus to the truck, you came back and within a nano second or so, the girls said could you come talk to us for second, (He corrected me and they said, would you come up here). So maybe about 10 minutes or so from the time you got off the boat, put the dog up there and came back maybe 10 minutes or so? But earlier you said it took them about 30 or 45 minutes. -- The man that was trying to get the trailer in the water I believe it took him between 30-45 minutes before he had it lined up and he tried several times and failed. Both of them were failing at their assignments.

So the 30-40 minutes or what have you, when he was lining up the trailer, what were you guys doing? -- Standing there watching.

So you guys stood down here for 30 minutes before you walked to the truck? -- I guess, I am doing my best to be specific. I remember standing down there and watching what was going on. What I may be leaving out is that after I came back from the truck we may have been standing there longer than my reference to a nanosecond. I went up and I came back and we were down here and we were watching this going on, I'm giving sequences of events, and then I was requested to come up here and I did. So we must have been standing down here longer. So a nanosecond is probably not valid. There was no place for us to be, we were not up there, we weren't down there. And I remember just watching and I have a lot of experience with putting trailers in the water and everything. And I'm watching and I'm thinking, dear God, twice I saw the man almost go over the bow, so I must have been watching a lot longer than I'm thinking I was. So 15-30 minutes. We had to be somewhere when this was going on. We weren't leaving this area until they were gone. I don't know long how it was but that was the plan.

You get to the truck, put Linus in the truck, you walk around to this side of the truck, you get in and start the truck, where did you say the bat was?-- It was in the crevice of my seat, where you sit. -- And that was the first time you got in the truck? The reason I ask is because when I watched the video, the bat is in the space between the door and seat. You picked it up, put the loop around your wrist and put it on the right side of the truck. --If it was on the floorboard I probably sat it on the seat so I wouldn't fall to the ground. ---This conversation goes on for a while longer about the placement of the bat.

We then discussed his actions when he got out of the truck and what he was doing when he was standing on his running board and where he went afterwards. He then started talking about Lt. Baird at the Sheriff's Office about his investigation and the video from the Sands beach in regards to the reflection of the other trucks lights.

You were standing on the running board, you reached in the truck, grabbed your bat in your right hand put it behind your back and walked away. Why would you put it behind your back and then walk away like that ? -- Every instinct in my body was speaking to me and saying that these people are unpredictable, they are probably to the point of being dangerous based on the way they had been communicating with each other, based on the way that they had been driving, based on the way that they were behaving, and I wanted to get back to my boat and I did not want to cause any alert. If I had it to do all over again, I wanted my bat down there. If I had it to do all over again, had I known in the real world that this thing that I have been treating as a boat tool, never beat a fish with it yet. If I would have known that would've been questioned I would have left it in the truck.

Part B of that and this is the most important things that I want to say now and that if I ever have to witness again, I want to make it clear everytime, If I had wanted a weapon to go down there and show these people that I have a weapon, or to plan to use a weapon to intimidate them (I stopped him and stated that I had seen in his typed report that he had several other tools available). Hopefully by now, you know this guy is old and experienced, if I get into combat with someone I don't want this shoe string thing on my wrist, that doesn't start with common sense. I don't want that and its not very intimidating anyway. -- I told him it could be to someone who didn't know what it was. -- He stated she thought I had a gun. I told him that I saw that in the report.

I asked where exactly was he parked. (Shown on map). He stated about 3-4 trucks in from the dock, It's a dark gray truck. In the security camera I dont know if we can tell. The only thing my brain says, wherever the security camera was. We could identify where.

Did you talk to anybody else?-- I don't remember anyone else being there. -- I asked where he went when he left the truck due to him walking towards the gravel lot and not the launch.-- He stated he does not remember seeing that in the film, I don't remember doing that and as of right this minute, I can't think of a reason why I would do that. He does not remember anyone else being there. He does not remember seeing that in the film. -- I asked him to review it again and maybe it would jog his memory.

We then talked about the DNR boat for a few minutes. He stated that he had to go through a couple of different people but talked to one of the officers that were on the DNR boat. We then talked about the security camera and who has access to it and that it was not reset. He stated he has an extremely difficult time believing that's what happened to the camera.

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He then stated when he talked to Lt. Baird, in that his final phone call to him, which was a voicemail, and a letter that he received from his superior. and that Lt. Baird references in his report he stated he talked to every witness' but stated Baird has not. (Mr. Coffman starts coughing and I asked if he was ok and stated he is feeling tension because he is reliving the experience). He stated there was never a single second of time that evening or any other time in the history of the world where he approached any of those people, with any vocabulary or to the best of my knowledge body language or intention of them being intimidated. It is absolutely unreasonable to the point of being ridiculous that they would be intimidated by anything under the circumstances.

We were blocked in, we were threatened, we could not get out of there safely, the people that were blocking us in were as stoned on whatever they were stoned on. If you were there and you were an on duty police officer and if you did not validate that, I would be as surprised with you as I was with Officer Bunting for not validating that. Nor did he deny it, that's his discretion. I understand. He agreed with me and said that he had made arrangements for someone else to drive, that's as far as he would go. I asked him if he knew who drove the truck out of there and he stated he believes Mr. Smith but does not know because he was near the dock. He stated it could have been Officer Dowling but I don't know.

Coffman stated this man, until he came to where I was, had to travel 117 yards, if you step it off from where he was when he got out of his boat and his wife said whatever she said to him, that obviously motivated him to come down here (Showing a point on the map) and challenge me and tell me that I'm.. whatever he said, hurt his wife's feelings or whatever it was. He had to come from here to here (Shown on map). We are for all practical purposes, were hiding out down here trying to be inconspicuous. How in the name of anybody's thinking can they be intimidated by these old farts down here.

Then, and I want to go on record with this, I've tried to put it in writing. Then Officer Bunting witnessed me being beat. He witnessed me on the ground. Officer Smith, Mrs. Smith, a Deputy witnessed her husband go down there and jump on me and attacked me and beat me brutally and said he was going to drown me. Said he was gonna kill me. In any other book, not including comic books, in any other book, that's serious business. Two, three maybe four police officers where in that parking lot. We haven't come up there to them. How in the name of anything can anybody transfer that picture that these came up here and harrassed these folks and attacked them? Where are the pictures of the bruises on them that we.. if I'm gonna attack somebody I'm gonna leave evidence. I'm not gonna do it for the sport and I was trained. We did not do that, we were attacked. We were threatened with our lives and then the guy comes back up here, stood in the company of the three to four officers and yelled if it were the old days, I'd come down there and kill you, I'd kill all three of your fucking asses and then the laughter occurrs.

Mr. Coffman stated we are sitting here in the police department today trying to explain ourselves. I told Mr. Coffman not to feel like that and what I am doing is getting everyone's side. He stated he is re-living the experience and I told him that I didn't want him to but he said that's impossible.

Mr. Coffman stated we were beaten badly, I was beaten severely and it was in the space that I was using to stay away from these people. He stated I'm being polite now, I'm getting calm. I told him to calm down and take his time that I wasn't here to get him upset. He stated he knows that but "they" did. And here's the frustration, officers witnessed me being beaten, they never offered under any circumstances to intercept that or to find out why I was being beaten. That's unacceptable.

Mr. Coffman stated #2. I have no clue in the world, this guy I saw, how he behaved, I have no clue in the world, who pushed what button in him to come seek me out deliberately. He didn't know who I was, he decided I was an old fart Yankee. I am an old fart and I don't mind being a Yankee but I don't know why that button got pushed. I never insulted his wife, she confronted me.

I asked Mr. Coffman- And you never said anything back to her that could have been perceived as an insult? He shook his head no and stated I absolutely made a decision and I am good at decision making, not to get engaged with these people. That's why we are hanging out down here. Like people who would be afraid of what could happen if you got involved with somebody with all of this erratic behavior. Like I saw you get a gun. That's scary stuff when your cornered. How do I know she doesn't have a gun, if I was a betting man, I'll bet you she has a gun. If I'm a betting man, I'll bet he's got a gun on his boat and in his truck.. We had none. We were the people that were hiding from these people. They sought us out and attacked us. And then what I don't know that you know.. and police officers witnessed that.. Along comes another couple, because the ramp is getting crowded. DNR has the sailboat people there. Another couple with their boat, and they have been on the sand bar that day, most of the day, with the Smiths and their friends and they had a confrontation with them. These people don't want to be identified. I told Mr. Coffman I would like to talk to the gentleman that was on the dock with his family. He stated how in the world would you find him.

Mr. Coffman then stated, Lt. Baird,who based on our own baby research that they have done with the people they know in town, lots of people. Think the world of him (Lt. Baird) think the world of our Capt., and our LT. and our Major, and hopefully now our detective.

Nobody has ever said to me under any circumstances to watch our backs with these people but there was a police officer that's a Deputy Sheriff who has lied to Lt. Baird. Lt. Baird has not asked Stephanie or Aaron if she did in fact claim that she was a police officer, she told Lt. Baird that she did not do that. So she's scott free and she carries a gun.

I did ask Mr. Coffman if officers on scene had asked if he needed EMS and he stated he thinks he believed that Officer Bunting asked if he wanted to go to the hospital because he was bleeding.

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The conversation goes on for a while longer, going over different times in the incident. See video footage from the rest of the interview.

Interview with Brittany Smith: This interview was video and audio recorded.

Smith stated she, her husband Josh, and their friends Jessica Bradley and Lewis Hunter spent the day on the water and once they arrived back at the Sands boat launch, Josh dropped her, Jessica and Hunter off at the dock to get the truck and trailer. Smith stated she, Jessica and Hunter walked up the dock and she and Jessica waited at the top of the dock for Hunter to bring the truck. She stated while waiting, an older gentleman approached her and Jessica and asked "did y'all have a good day on the river?" Smith replied "yes, until now when my husband was playing his music so loud". Smith stated the gentleman replied with "that's your husband? You want to be with someone like that? I was about 9/10ths away from whipping his ass because of that music and I'm not too old to fight for an old man!" Smith stated she just looked at him and didn't respond. Smith stated the older gentleman then walked to his truck. She stated a few minutes later the older gentleman then walked back past them and as he was walking back to the dock toward his boat, he was walking slowly and suspicious acting. Smith stated she observed him holding an object in left hand that he was holding down by his leg, attempting to conceal it. Smith stated she mentioned the weird behavior to Jessica. Smith stated at this time Hunter had arrived with the truck and trailer and they started to assist him in backing it into the water. Smith stated she and Jessica then decided to try and figure out what he had been attempting to hid when he walked past them earlier so they walked down on the dock near the older gentleman and his friends. Smith stated Jessica informed her that it was some type of weapon and she then felt as if she needed to approach the gentleman due to him making the hostile comments a few minutes earlier and to prevent anything from happening. Smith stated she and Jessica then approached the older gentleman and asked what he was holding in his hands. Smith stated he immediately hid an object behind his back and stated he had nothing, only a radio on his side which was on his right side. He then lifted his shirt and she observed a walkie talkie style radio that was clipped to his shorts. She asked him what he was hiding behind his back and he finally showed her that it was a bat/baton. She asked Coffman what his intentions were with the bat and why did he go to his truck and get it at 9 pm at night? He stated that he keeps it on his boat and he had had it with him the whole time. Smith stated at this time he became belligerent and Jessica advised him that Smith was a Police Officer and he should not speak to her that way. At this point, her husband, Josh, had loaded the boat on the trailer and he heard the discussion going on between her, Jessica, and the older gentleman and he came over and asked the older gentleman was his problem was. The older gentleman stated that Jessica and she approached him thinking he had a weapon then he and Josh exchanged words. Smith stated she then walked away and as she was walking up the dock she heard her husband and the older gentleman scuffling and saw Josh throw the bat in the water. She then saw the Port Royal patrol vehicle and she and Jessica flagged him down to inform him what was going on.

Interview with Joshua Smith: This interview was video and audio recorded.

Smith stated when they arrived at the Sands Beach boat landing, he let his wife, Brittany, and the other couple, Jessica and Hunter off of the boat at the dock and he then went back out into the water to wait on Josh to put the trailer in the water so he could load the boat. While Hunter was backing the trailer in, a DNR officer pulled up and asked if he had navigation lights and he replied yes. He was informed by DNR to turn them on and to have a good night. He stated he then loaded the boat and Hunter pulled the boat out of the water. Smith stated he then noticed a man yelling and cursing at his wife and Jessica. Smith stated he walked over to where they were on the dock and asked what was going on. He stated that the other man then got very quiet and Jessica told him that the older man had a bat and wanted to whip his ass. Smith stated he did not see a bat at the time and the older man then began yelling and cursing at his wife. Smith stated he told the older man that he needed to watch the way he was talking to his wife and Jessica. Smith stated as the three of them started to walk away, Hunter said "Look out". Smith stated he turned around and the older man had a bat raised shoulder height. Smith then walked back towards him, put his hand on his shoulder, pushed his shoulder down, grabbed the bat and then threw it in the river. Smith stated he then turned around to walk away and noticed a Port Royal Officer.

Josh stated he believed they were more toward the top of the dock and not further down on the dock when this incident took place.

Both Brittany and Josh provided a typed statement. They have been attached to this report.

08/01/2019:

Interview with Vaughn Keown:

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Keown stated he was coming back to the Sands to get his boat out of the water and saw two guys near the top of the dock. He then saw the Cops pull up but because he couldn't get to the launch due to the vehicles being in the way, he decided to go further down the river where he saw a DNR boat. He stopped and talked with them because he knows a couple of the guys from DNR. He finally decided to head back to the Sands to get his boat out of the water and saw the DNR guys there as well. He asked them if they could ask the Police to move their vehicles so he could pull his boat out.

Once he got off the boat, he saw Paul Coffman standing at the top of the dock. He asked Paul "What have you gotten yourself into now? Keown stated Paul replied "quote, who is that son of a bitch driving that truck?" "He drives a boat named Bad Company". Keown replied Josh? Paul told him he had cut him off and had his music blasting but said we just let them go on. Keown stated that Paul and Josh both have tempers.

Keown stated Josh had called him later (day or so) and asked if he could have Paul's number so he could call him and offer a new bat to make amends. Keown stated he would call Paul for him but would not give him the number. Keown stated he called Paul and Paul agreed after Keown stated he would be there too as a mediator.

Keown stated Paul called back later in the day and told him he didn't think it was a good idea. Keown then heard that Paul had reported that Josh was calling harassing him. Keown stated Josh never called Paul, he did and he wasn't harassing him.

Keown stated the night of the incident after Josh had left, Keown went back over to speak to Paul and invited him over to the house for a cocktail and Paul agreed. Paul told Keown that he and Josh had tussled on the dock and he had gotten bruised. Keown stated an old guy on all kinds of medications, he could thump him and he would get a bruise. Keown stated Josh never hit Paul in the face or punched him. Josh had told him that he turned around and saw that Paul had the bat raised so he disarmed him.

Keown stated again that Paul has a big temper and he knows how Paul lets things get to him and that's why he invited him over for cocktails. He stated after Paul had had about four Bourbons, he started telling him the story, as he has relayed it to me. Keown stated Paul told him he did have a bat and that Josh told him several times that he was going to throw him off the dock and drown him. Paul told Keown, he got my bat and he got me but he didn't throw me in. Keown stated as Paul was telling him this Paul was slapping his bicep with his hand.

I asked Keown if Paul told anyone that he was going to kick someone's ass? Keown stated that he told him that someone may need an ass whooping. Something along those lines. I asked why he thought Paul was mad that night and he replied because of the way Josh pulled in and the loud music.

Video surveillance from the Sands:

Paul Coffman went to his truck, put his dog in the passenger seat and went around to the drivers side where he got into the drivers seat. After a moment he opened his door, retrieved his bat from beside his drivers seat with his left hand, put the tether around his wrist and then put the bat in the passenger side of the truck. He got back out of the truck, grabbed his bat and held it up behind his back as he walked away from his truck.

The pictures of Paul Coffman that have been attached to this report are photos of Mr. Coffman's shoulder area, front and back, where a hand would have been as if someone pushed him down from his shoulder. There are no photographs of Mr. Coffman's back, lower or near his kidneys, showing any bruising.

Arrest Warrant 2019A0720400183 has been drafted for Paul Coffman for Assault and Battery 3rd Degree. The warrant has been signed by the Honorable Judge Grimsley on 08/01/2019.

I contacted Joshua Smith and informed him that I would be seeking an Arrest Warrant for Paul Coffman for Assault and Battery and that I would need him to attend court. I informed him that once the warrant was signed and a court date assigned I would call him back.

I spoke to Coffman and informed him of the Arrest Warrant. He asked multiple questions in regards to how I determined he was the aggressor in the situation when he who, was the victim, was brutally attacked, thrown down, and almost thrown off the dock and drowned. He stated he is 73 years old, has stents in his chest and on medication and he didn't threaten anyone. He stated he did bring a small bat back from his truck but he did not intend for it to be considered a weapon. He stated he was threatened by Smith many times by stating he was going to throw his old ass off the dock and drown him. I asked Coffman that if he didn't say anything aggressive to the girls when he walked to his truck, why would he attempt to hide the bat from them as he walked back down to the dock. I informed him that due to that video and all of the combined statements of everyone and the totality of circumstances, he has been found to be the primary aggressor. He asked me again how he was found to be the primary aggressor when he was brutally beaten and almost thrown off the dock all while two officers stood at the top of the dock and watched it happen. I assured him that no officer would stand by and watch anyone be beaten or even thrown off of a dock, and I told him again, that with the video from the sands, all of the combined statements of everyone and the totality of circumstances, I had found him as being the primary aggressor.

I informed him that if he would like to speak to my supervisor, Sgt. Steady, he would be more than happy to

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answer any of his questions. He asked that if he spoke with my supervisor and could change his mind about my charges, could the warrant could be dismissed. I informed him that since the warrant was already signed I would need to serve it. I told him that if he would come to the Police Department this afternoon at 1600 hours, I would read him the warrant, give him a copy of the warrant and a court date and then he could speak to my supervisor and then go home. He stated he would talk to his wife and call me back to confirm he would be at the Police Department at 1600 hours.

I received a call from Gill Bell, Attorney, (803-983-0652) who stated he has been retained by Coffman to represent him in this matter. I informed him that I had spoken to Coffman and informed him that if he came in at 1600 hours today, I would read the warrant to him, give him a court date and he would be free to go. Bell informed me that Coffman was not comfortable coming into the Police Department without an attorney present due to how the Police Department has handled this case and prior cases which he has been involved. He stated he is driving from out of town for a conference and asked when I would be on duty again and I told him I would be back in the office at 0800 tomorrow morning. He asked what time he could come to the office with Coffman and I requested 0900 hours on 08/02/2019. He asked for the address and stated he would see me in the morning.

1500 hours:

After speaking with the Victims Advocate and the victim, it was then decided that a Bond Hearing would need to take place.

08/02/2019:

Coffman and his attorney, Gill Bell, arrived at the Police Department a little before 0900 hours. Sgt. Steady and I informed Mr. Bell and Mr. Coffman that due to this being a victim's crime and the victim has a right to be present for a Bond hearing, Coffman would be detained and transported to the Beaufort County Detention Center where he will attend a Bond hearing. Bell stated, we will arrange to have him turn himself in another time. I am not going to have my client sit in jail. Bell wanted to know what changed from yesterday to today. Bell stated per our conversation yesterday, I was going to read the warrant to Coffman and let him go home. We explained to him that that was what we had decided to do yesterday if he came in at 1600 hours. Bell stated "So he is being punished for having an attorney?" We informed him that was not the case but after talking with the Victims Advocate and the victim, it was decided that a Bond Hearing did need to take place. Bell stated, "So you didn't do your jobs and my client is paying for it? I see what you mean, they are shady here". He was informed that we did do our jobs and the agreement yesterday was that if Coffman came to Police Department at 1600 hours, he would have been read the warrant, given a court date and then he would have been free to go. Bell stated he wanted us to go and get the Chief so he could speak to him.

Coffman was read the Arrest Warrant and detained. SSgt. Dowling transported Coffman to the Beaufort County Detention Center where custody was exchanged without incident. Coffman was given a Municipal Court date of 08/20/2019 at 1600 hours. A Victim's Form was completed and the victim was notified. He requested Conditions of Bond be set and he did not wish to attend the Bond Hearing or be notified when the inmate is released.

Ssgt. Dowling came back to the Police Department from taking Coffman to the Detention Center, he stated that Coffman had stated some things to him once inside the Detention Center. Ssgt. Dowling stated he had his Body camera on during the entire time and has tagged the video.

The chief was in a meeting and therefore not able to meet with Mr. Bell, however Major Wekenmann did speak with Mr. Bell in the conference room.

08/13/2019:

As I was looking over the case to make sure everything was attached, I noticed that Paul and Stephanie Coffman's typed statements were not all attached. I had received a copy from Lt. Baird from BCSO and they have been attached. Also attached is the Citizens Complaint results that Coffman filed with BCSO on July 12th.

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Q: Is that right?
A: That's correct.
Q: Are their statements consistent? Do they -- you know, are they corroborated by any other witnesses? Those are important things in an investigation?
A: Right.
Q: And if they change, that could be a problem for you. Is that correct?
A: Right.
Q: But the truth shouldn't change, right?
A: That's correct.
Q: Okay. So, you were assigned the case involving Paul and Josh Smith on July 29th, 2019?
A: I'd have to look at the report and see what the date was, but I was assigned the case.
Q: I can show you -- I'll show you what's marked as Plaintiff's Exhibit 1.
(PLAINTIFF'S EXHIBIT 1 WAS PRE-MARKED FOR IDENTIFICATION PURPOSES (23 pages) - Port Royal Police Department Incident Report.)
Q: Okay. Do you recognize this?
(Whereupon, Mr. Shellenberg shared the document on the screen.)
A: I don't see anything yet. Hold on. I don't know

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where it went.
Q: Okay. Can you see it?
A: It's very fuzzy, but it looks like the front cover of the report.
Q: Is that better?
A: Yes. Got it.
Q: Okay. I'm going to -- do you recognize this report?
A: Yes.
Q: And is this the Incident Report from the incident involving Josh Smith and Paul Coffman?
A: It looks to be, yes.
Q: And I'm going to go down and show you -- is this your Supplemental Report?
A: Yes.
Q: And are these kept in the ordinary course of business?
A: Yes.
MR. SHELLENBERG: All right. At this time, I'm going to move Exhibit 1 into evidence.
(Whereupon, Plaintiff's Exhibit 1 was introduced into evidence.)
Q: Now, Ms. Carter, if you look -- the Detailed Statement of Investigation begins on July 29th, 2019. Is that fair to say, that the 29th is when

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you became involved in the investigation?
A: Yes.
Q: And you reviewed the reports from Peter Bunting?
A: Yes.
Q: And you reviewed the Supplemental Report from Captain Griffin?
A: Yes.
Q: And you reviewed the body cameras from Officer Bunting, Officer Kadas and Officer Dowling?
A: If -- I don't recall if I did, but if it's in the report that I did, then I did.
Q: And in the course of an investigation, a normal investigation, would you look at all of the evidence?
A: Yes.
Q: And did you review the video from the boat landing?
A: Yes.
Q: And did you look at the Internal Affairs Report from Investigator Baird with the County?
A: Yes, with the Sheriff's Office.
Q: Yes.
A: Well, now, I only had a letter from Mr. Hatfield saying there was an investigation done.
Q: Well, did you ever get a copy of the report?

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A: I don't believe so. I don't recall it.
Q: I'm going to show you again what's marked as Exhibit 1. I'm going to take you -- this is the Incident Report and Supplemental Reports.
A: I don't see anything.
Q: Okay. So, you see Exhibit 1, and if you'll look at Page 14 at the bottom, you'll see -- can you read that bottom -- and it has 08/13/2019.
A: Okay.
Q: And it says that you received a copy from Lieutenant Baird of the BCSO report, and they've been attached?
A: It says on here, "I noticed that Paul and Stephanie Coffman's typed statements were not attached".
Q: Is that in the typed statement?
A: And let's see -- "I had received a copy from Lieutenant Baird from BCSO, and they have been attached. Also attached is the Citizens Complaint results that Coffman filed with BCSO on July 12th".
Q: So, you would have had that information in the course of your investigation?
A: I would have had the typed statements from Paul and Stephanie, it looks like.

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Q: But you've reviewed the body camera footage from the boat handing?
A: From the camera that was at the boat landing, but you can't see anybody except Paul Coffman on that video.
Q: On that -- the body camera footage from the officers?
A: I don't recall watching the body cam footage. I'm sure I did, but I can't recall anything that was there.
Q: And in addition to Mr. Smith's statement, you took the statements of Mrs. Smith and of Hunter Lewis, correct?
A: Yes.
Q: And Hunter Lewis says that he did not see anything. Is that correct?
A: If that's what I have in the report, then that's correct.
Q: All right. I show you what's marked as Exhibit 1. If you'll look at the bottom of the page, do you see where Hunter stated he did not see or hear anything involving Coffman or Josh but did see a police vehicle pull in?
A: Hold on. I'm reading. Oh, yes, I see that.
Q: So, that's inconsistent with the statement that

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Josh Smith gave, correct?
A: That is correct.
Q: And then if you also took the statement of Brittany Smith, and we'll go up -- you also took a statement from Jessica Bradley, correct?
A: Yes.
Q: And Ms. Bradley makes no mention in her statement of Hunter seeing anything or yelling "Look out". Is that correct?
A: I believe that's correct.
Q: So, that would be inconsistent with Josh Smith's statement?
A: Right.
Q: And you took the statement of Brittany Smith, as well. Is that correct?
A: That's correct.
Q: And in her statement, she makes no mention of Hunter's yelling "Look out" or the bat being raised. Is that correct?
A: I believe that's correct.
Q: So, that also is inconsistent with what Josh Smith said?
A: Yes. I think -- I believe that's the only -- he was the only person that said that.
Q: So, there was significant inconsistencies on the

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side of Josh Smith, as well, correct?
A: Just one.
Q: And that's a pretty big inconsistency, correct?
A: It is an inconsistency, yes.
Q: It's a pretty big inconsistency to say that someone yelled something to you, and you turned around and saw a bat raised, but no one else can corroborate that story, right?
A: Yes, that's correct.
Q: So, other than the Coffmans saying they did not have an original interaction with Jessica Bradley and with Brittany Smith, there is no new information you learned in the course of your investigation?
A: Not that I can recall, no.
Q: Okay. And did you do anything else besides take those statements in the course of your investigation?
A: I also spoke with another person, Keown, Vaughn Keown.
Q: Yes. And did he see any of the incident?
A: I don't believe so, no.
Q: So, he -- he didn't have any new information that helped -- helped you with your investigation?
A: No. He did say that Mr. Coffman -- he invited Mr.

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Coffman to his residence to have a couple of drinks, and they were talking about the incident.
Q: But he didn't provide you any new information that is used in the course of your investigation?
A: No.
Q: And at the end of your investigation prior to swearing out the warrant, you had a meeting with Deputy Chief Wekenmann and with Ryan Steady, correct?
A: I don't recall, but I'm sure I did if it's -- you know, I don't recall.
Q: And in that meeting, you were talking to Deputy Chief Wekenmann about whether or not there was enough for probable cause. Do you recall that?
A: No, I don't recall that, but okay.
Q: Okay. And you don't recall telling Deputy Chief Wekenmann that you did not have enough for probable cause?
A: No, I don't recall.
Q: Do you recall Ryan Steady telling Deputy Chief Wekenmann there was not enough for probable cause?
A: No.
Q: Now, you wrote in your report that "Due to the video, all of the combined statements of everyone and totality of the circumstances, Paul was the

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aggressor", correct?
A: That's correct.
Q: Now, what information from the video did you use to establish probable cause?
A: Where Mr. Coffman went to his truck, put his dog in the truck and then he retrieved a bat, a fishing bat out of his truck and held it down -- I believe he held it down beside his leg, and at some point, he had it behind his back.
Q: So, what information did you get from that?
A: That he went to his truck and got a weapon, whether it be to defend himself or -- or for whatever reason. That was -- Josh Smith had nothing.
Q: So, by going to his truck and retrieving a bat, that rises to the level of probable cause?
A: With the totality of all the statements and the video from the Sands Beach where he went and retrieved a bat from his truck and took it back down there with him, yes.
Q: And you -- he retrieved that bat, but he took -- walked back to the dock. Is that correct?
A: He did walk back to the dock, yes.
Q: And he had no interaction after he retrieved that bat with either of the girls, correct?

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A: I don't recall without looking through my report, but I do believe he spoke to the girls before he went back -- between the time he got his bat and the time he went back down to the dock.
Q: In your statement you took from Brittany Smith, she states that he walked past them without saying anything. After he went to his truck, he walked back down to the dock, correct?
A: I'd have to look at what I wrote in the report.
Q: All right. Do you have the report in front of you?
A: I do.
Q: Okay. Will you pull it up to Page 12 and review Ms. Smith's statement?
A: Okay. Yes. In my typed statement from her, she said that they -- they spoke as he was going to the truck.
Q: But there was no interaction after he went to the truck, correct?
A: Not from Brittany Smith's statement, no.
Q: Okay. If you'll turn over and look at Ms. Bradley's statement on Page 1 --
A: Page 1.
Q: -- in your supplemental.
A: (Witness complied.) No. From her typed -- from

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what I typed of the interview, it does not look like she mentioned anything from the time that he left the truck going back down to the dock that there was any interaction.
Q: And if fact, in the statement that you took from Jessica Bradley, it says that you asked her if she and Brittany asked the older man to walk with them anywhere, and she stated, "no". She said, "He wasn't around anyone, they were a good distance from him", correct?
A: I believe that's correct.
Q: Because he was back on the dock, correct?
A: Yes.
Q: And the dock is -- how long is that dock?
A: Oh, gosh, I -- I have no idea.
Q: But it's far enough -- he would have been far enough down that he was not within range of being able to attack any of those people, correct?
A: That's correct.
Q: In fact, he never approached any of the witnesses, correct?
A: No. I believe that there's somewhere in the report that he had a conversation with them, with the girls, when he went to his boat -- or when he went to his truck.

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Q: After he returns to the dock, he never approaches them again, correct?
A: I don't recall. I'd have to look through their statements to make sure.
Q: All right. Well, if you'll turn over to Page 1 and go down to Paragraph 2 of Ms. Bradley's statement, she state's she walked back down to the dock in attempts to hear their conversation, being the Coffmans, and she started walking behind them acting like she was watching Lewis back the trailer into the water?
A: Yes. It starts off, "Bradley stated after hearing the older man talking about beating someone's ass that -- and then him getting the bat out of the truck, she was concerned about what he may do, so she walked down to the dock in attempts to hear their conversation".
Q: So, she had to walk down to where he was, correct?
A: That appears correct.
Q: And so, he did not make any advances towards Ms. Bradley, correct?
A: That's correct.
Q: And we know that Hunter Lewis didn't see anything, from his statement?
A: Right. He was backing up the trailer.

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ARREST WARRANT

2019A0720400183

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
PORT ROYAL



THE STATE
against

PAUL VERNON COFFMAN JR
Address: 1003 LONDON AVE
PORT ROYAL SC 29935
Phone: (843) 592-1607 SSN: [redacted]
Sex: M Race: W Height: 5-9 Weight: 180
DL State: SC DL#: [redacted]
DOB: [redacted] Agency ORI#: SC0070300
Prosecuting Agency: PORT ROYAL POLICE
Prosecuting Officer: KIMBERLY CARTER
Offense: ASSAULT AND BATTERY THIRD
Offense Code: 3414
Code/Ordinance Sec. 16-03-0600(E)(1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
_____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: 08/01/2019
Date Time

RETURN

A copy of this arrest warrant was delivered to defendant PAUL VERNON COFFMAN JR on 8-2-2019

K Carter
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JAMES GRIMSLEY
P.O. DRAWER 9
PORT ROYAL, SC
29935

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
PORT ROYAL)

AFFIDAVIT 8.20-19 @ 4pm

Form Approved by S.C. Attorney General April 21, 2003 SCCA 619

Personally appeared before me the affiant KIMBERLY CARTER who being duly sworn deposes and says that defendant PAUL VERNON COFFMAN JR did within this county and state on 07/06/2019 to 07/06/2019 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of PORT ROYAL) in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0600(E)(1) / ASSAULT AND BATTERY THIRD

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON 07/06/2019 BETWEEN THE HOURS OF 2030 AND 2130 WHILE LOCATED AT 50 SANDS BEACH ROAD, SANDS BEACH BOAT DOCK, LOCATED IN THE TOWN LIMITS OF PORT ROYAL, BEAUFORT COUNTY SOUTH CAROLINA, THE DEFENDANT PAUL VERNON COFFMAN DID WILLFULLY AND INTENTIONALLY VIOLATE THE CRIMINAL LAWS OF THE STATE OF SOUTH CAROLINA § 16-03-0600 ASSAULT AND BATTERY 3RD DEGREE. THAT WHILE AT THE SANDS BEACH BOAT DOCK, THE DEFENDANT, WHILE ARMED WITH A FISHING BAT, THREATENED TO CAUSE HARM TO THE VICTIM, JOSHUA LEE SMITH. THE VICTIM THEN DISARMED THE DEFENDANT AND THREW THE WEAPON INTO THE WATER. THE AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.

Signature of Affiant K Carter

Affiant's Address 1748 PARIS AVE.
PORT ROYAL SC 29935

Affiant's Telephone 8439862220

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
PORT ROYAL)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/06/2019 defendant PAUL VERNON COFFMAN JR did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of PORT ROYAL) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT / ASSAULT & BATTERY 3RD DEGREE

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

Sworn to and subscribed before me)
on 08/01/2019 1100)
Date Time
_____ (L.S.))
Signature of Issuing Judge

Judge Code: _____

Judge's Address _____

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 19PR15860

ORIGINAL

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VAUX MARSCHER BERGLIND

A SOUTH CAROLINA PROFESSIONAL ASSOCIATION

WILLIAM F. MARSCHER, III
MARK S. BERGLIND
ROBERTS "TABOR" VAUX, JR.

ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 769 (MAILING)
1251 MAY RIVER ROAD (PHYSICAL)
BLUFFTON, SOUTH CAROLINA 29910
843.757.2888 (OFFICE)
843.757.2889 (FAX)

ROBERTS VAUX
ANTONIA LUCIA, SC & NY
JAMES P. SCHEIDER, JR.
JUSTIN JOHN PRICE
STEPHEN MEYER

tabor.vaux@vmblawfirm.com

January 14, 2020

Via Facsimile: 843 986-2210 and Email
thaddock@portroyal.org
Traci Haddock, Court Administrator
Port Royal Municipal Court
Town of Port Royal, SC
700 Paris Avenue
Post Office Drawer 9
Port Royal, SC 29935

Re: State of South Carolina vs. Paul Vernan Coffman, Jr.
Warrant Number: 2019A720400183

Dear Ms. Haddock:

Please allow this to serve as notice that I am dismissing this case.

Sincerely,

VAUX MARSCHER BERGLIND, P.A.

Roberts "Tabor" Vaux, Jr.

cc: Lester Bell, Esquire – Via Email – gill@mttlaw.com

OTHER OFFICES:

16 WILLIAM POPE DRIVE, SUITE 202
BLUFFTON, SOUTH CAROLINA 29909
(843) 705-2888 (OFFICE)
(843) 705-2889 (FAX)

478 KING STREET, SUITE 4
CHARLESTON, SOUTH CAROLINA 29403
(843) 368-9173 (OFFICE)
(843) 757-2889 (FAX)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0701217

Paul Vernon Coffman, Jr et al
PLAINTIFF(S)

Port Royal Town 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Defendants' motion for summary judgement came before the court on February 27, 2024. Defendants' motion is granted in part and denied in part. Defendant's motion is granted with respect to Plaintiff's claims for loss of consortium and false arrest/imprisonment, and denied with respect to all others.

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 04/15/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024-04-15 21:59:38 PM - BEAUFORT - COMMON PLEAS - CASE # 2021CP0701217

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.

E-FILED ELECTRONICALLY - 2022-Dec-15 21:58:37 - COMMON PLEAS - CASE#2022CP0701227

FILED ELECTRONICALLY IN COMMON PLEAS - 2021CP0701217 - Order/Electronic Form 4 - 04/15/2024 12:09:13 PM - FILED ELECTRONICALLY IN COMMON PLEAS - CCOMMON - 2021CP0701217

Beaufort Common Pleas

Case Caption: Paul Vernon Coffman Jr , plaintiff, et al VS Port Royal Town , defendant, et al

Case Number: 2021CP0701217

Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

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Q: So, you did not have the report from Lieutenant Baird?
A: I don't believe so. I don't recall seeing the report. I remember seeing a letter from Hatfield.
Q: But you were aware the report -- that an investigation was underway?
A: At some point, I did. I don't remember when.
Q: And do you think that getting those statements would have helped in your investigation?
A: Yes, but we had already had statements from Paul and Stephanie Coffman for our case.
Q: And are you aware that Lieutenant Baird spoke with then Corporal Smith?
A: I don't recall.
Q: If he would have spoken with Corporal Smith, do you think that getting that statement could have aided in your investigation?
A: Well, I have a typed statement from her. I met with her and had an interview with her, as well, on my case.
Q: You took statements Jessica Bradley, Hunter Lewis and Aaron Abercrombie on July 30th.
A: Okay.
Q: Is that right?
A: Um, I -- it sounds right.

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Q: Okay. And you took statements from the Coffmans and the Smiths on the 31st?
A: Okay. That sounds about correct.
Q: And what new information did you learn in the course of your investigation?
A: After speaking with everyone?
Q: Yes, ma'am.
A: Well, there were some inconsistencies with the initial report and the time that I spoke to everyone, but after watching -- after watching the video from the Sands Beach -- because I don't -- I don't believe that was reviewed at the beginning of the report before I had it.
Q: Now, you said there were some inconsistencies. What were the inconsistencies?
A: Mrs. Coffman had stated -- Mr. and Mrs. Coffman had stated that they didn't have any interactions with the females from Bad Company Boat, and then later on, it was -- they said they did -- or that Mr. Coffman had had interactions with the girls from that company which were Jessica Smith and -- or Ms. Smith and -- is it Bradley -- Jessica Bradley and then Ms. Smith.
Q: And you say they originally said they didn't have any ...

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A: The Coffmans originally said they didn't speak to the girls at all, and then later on in the course of the statements that were made, it was they did have conversations with them.
Q: And that was during the same interview. Is that correct?
A: I don't recall if it was the same interview or not or if it was from the typed statements that Paul and Stephanie had sent. I don't recall without reading over the report right here in front of you.
Q: And in the review of the video from the Sands Beach -- or in the review of the body cams, did you see that Paul and Stephanie had said that they had had an interaction with both Jessica and with Brittany?
A: I don't recall watching the body cam -- the body cameras. I don't remember watching the -- the body cam footage. I do recall watch the Sands Beach video.
Q: And were there any inconsistencies that you found with Mrs. Smith or with Josh Smith?
A: Well, they weren't seen on video from the Sands Beach, but their statements were consistent throughout the entire process.

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Q: Okay. I'm going to show you what's marked as Plaintiff's 1 again.
(Whereupon, Mr. Shellenberg shared Plaintiff's Exhibit 1 on the screen.)
Q: Can you see that on the screen?
A: Yes.
Q: I show you what's marked as Plaintiff's Exhibit 1. You had -- you took the statement of Joshua Smith. Do you see Mr. Smith's statement?
A: Yes, there it is right there.
Q: And when he gave his statement, if you'll look down to about the fifth line from the bottom, when he talks about as he was walking away with both Jessica and his wife, Brittany, he says they started to walk away, and Hunter said, Look out".
A: Yes, I see that.
Q: Okay. Now, that's the first time that Mr. Smith said anything about Hunter saying, "Look out" and the bat being raised. Is that correct?
A: I don't recall, but it looks like it -- it probably was.
Q: So, that would be inconsistent with his original statement. Is that correct?
A: That's, I think, the only statement that I had with him.

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Q: But you've reviewed the body camera footage from the boat handing?
A: From the camera that was at the boat landing, but you can't see anybody except Paul Coffman on that video.
Q: On that -- the body camera footage from the officers?
A: I don't recall watching the body cam footage. I'm sure I did, but I can't recall anything that was there.
Q: And in addition to Mr. Smith's statement, you took the statements of Mrs. Smith and of Hunter Lewis, correct?
A: Yes.
Q: And Hunter Lewis says that he did not see anything. Is that correct?
A: If that's what I have in the report, then that's correct.
Q: All right. I show you what's marked as Exhibit 1. If you'll look at the bottom of the page, do you see where Hunter stated he did not see or hear anything involving Coffman or Josh but did see a police vehicle pull in?
A: Hold on. I'm reading. Oh, yes, I see that.
Q: So, that's inconsistent with the statement that

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Josh Smith gave, correct?
A: That is correct.
Q: And then if you also took the statement of Brittany Smith, and we'll go up -- you also took a statement from Jessica Bradley, correct?
A: Yes.
Q: And Ms. Bradley makes no mention in her statement of Hunter seeing anything or yelling "Look out". Is that correct?
A: I believe that's correct.
Q: So, that would be inconsistent with Josh Smith's statement?
A: Right.
Q: And you took the statement of Brittany Smith, as well. Is that correct?
A: That's correct.
Q: And in her statement, she makes no mention of Hunter's yelling "Look out" or the bat being raised. Is that correct?
A: I believe that's correct.
Q: So, that also is inconsistent with what Josh Smith said?
A: Yes. I think -- I believe that's the only -- he was the only person that said that.
Q: So, there was significant inconsistencies on the

20

side of Josh Smith, as well, correct?
A: Just one.
Q: And that's a pretty big inconsistency, correct?
A: It is an inconsistency, yes.
Q: It's a pretty big inconsistency to say that someone yelled something to you, and you turned around and saw a bat raised, but no one else can corroborate that story, right?
A: Yes, that's correct.
Q: So, other than the Coffmans saying they did not have an original interaction with Jessica Bradley and with Brittany Smith, there is no new information you learned in the course of your investigation?
A: Not that I can recall, no.
Q: Okay. And did you do anything else besides take those statements in the course of your investigation?
A: I also spoke with another person, Keown, Vaughn Keown.
Q: Yes. And did he see any of the incident?
A: I don't believe so, no.
Q: So, he -- he didn't have any new information that helped -- helped you with your investigation?
A: No. He did say that Mr. Coffman -- he invited Mr.

21

Coffman to his residence to have a couple of drinks, and they were talking about the incident.
Q: But he didn't provide you any new information that is used in the course of your investigation?
A: No.
Q: And at the end of your investigation prior to swearing out the warrant, you had a meeting with Deputy Chief Wekenmann and with Ryan Steady, correct?
A: I don't recall, but I'm sure I did if it's -- you know, I don't recall.
Q: And in that meeting, you were talking to Deputy Chief Wekenmann about whether or not there was enough for probable cause. Do you recall that?
A: No, I don't recall that, but okay.
Q: Okay. And you don't recall telling Deputy Chief Wekenmann that you did not have enough for probable cause?
A: No, I don't recall.
Q: Do you recall Ryan Steady telling Deputy Chief Wekenmann there was not enough for probable cause?
A: No.
Q: Now, you wrote in your report that "Due to the video, all of the combined statements of everyone and totality of the circumstances, Paul was the

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	
Paul Vernon Coffman, Jr.,	)	
	)	Civil Action No. 2021-CP-07-1217
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**
	)	
Town of Port Royal and	)	
Detective Kimberly Carter,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff Paul Coffman, Jr. has filed a motion for attorney's fees and costs pursuant to 42 U.S.C. § 1988. The Plaintiff seeks attorney's fees of $410,792.50 and costs of $17,238.90. The Defendants oppose the Plaintiff's claim of attorney's fees and costs and request that the Court award a substantially reduced amount as discussed herein.

BACKGROUND

This matter arises out of an action filed by the Plaintiff Paul Coffman, Jr. against the Town of Port Royal, Chief Alan Beach, Kimberly Carter, John Griffin, and Ron Wekenmann arising from the Plaintiff's arrest for Third Degree Assault and Battery following an altercation with Joshua Smith on July 6, 2019. The Plaintiff alleged a federal claim pursuant to 42 U.S.C. § 1983 for a violation of his Fourth Amendment rights as well as state law tort claims for false arrest/false imprisonment, malicious prosecution, negligence, and loss of consortium. The claims for false arrest/false imprisonment and loss of consortium were dismissed at the summary judgment stage by Judge B. Alex Hyman. In addition, the Court granted a directed verdict for three of the individually named Defendants, namely Chief Alan Beach, John Griffin, and Ron

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Wekenmann. The Plaintiff prevailed on his Fourth Amendment claims against the Defendant Carter and on his malicious prosecution and negligence claims against the Town of Port Royal. Like the malicious prosecution claim, the negligence claim as submitted to the jury was premised on the alleged lack of probable cause for the arrest. (Tr. 526-527). The jury awarded actual damages of $60,000 and punitive damages of $40,000 against the Defendant Carter on the § 1983 claim, and $250,000 in actual damages on the state law tort claims against the Defendant Town.

LEGAL ANALYSIS

I. Prevailing Party Status and Party Against Whom an Award of Fees May be Made

As a threshold issue, it important to clarify the parties against whom the § 1988 attorney's fees claim can be made and recovered as well as the claims on which the recovery of attorney's fees may be based. In this case, the Plaintiff recovered a verdict of $250,000 against the Defendant Town, but that recovery was made solely on the state law tort claims brought pursuant to the South Carolina Tort Claims Act. The Defendant Town as a matter of law cannot be held liable for attorney's fees under the Tort Claims Act. *See*, *Knoke v. South Carolina Department of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996). Thus, the Plaintiff's success on the state law claims have no bearing on his claim for attorney's fees, and most importantly, the fees attributable to work on that state law claim cannot be awarded by this Court.

Moreover, the Defendant Town may not be held liable under § 1988 for an award of attorney's fees because no federal claim was even alleged or tried against Town. Instead, the federal claims were asserted against the Defendants Beach, Carter, Griffin, and Wekenmann, but the Court granted a directed verdict for the Defendants Beach, Griffin, and Wekenmann. Thus, the Plaintiff is not a "prevailing party" against Defendants Beach, Griffin, and Wekenmann. In fact, the

Court should apply a deduction to the claimed fees for the work that was performed for the unsuccessful federal claims against Defendants Beach, Griffin, and Wekenmann.

In short, the Plaintiff is only a "prevailing party" against the Defendant Carter and may recover attorney's fees and costs pursuant to § 1988 only against her. Importantly, the Defendant Carter still has a pending JNOV motion, which includes a strong qualified immunity defense for the Court to decide. If the Court finds that the Defendant Carter is entitled to qualified immunity, that will also fully resolve the attorney's fees petition because the Plaintiff would no longer qualify as a "prevailing party" against any § 1983 Defendant, and he is precluded from recovering fees on the state law claims.

Moreover, the Plaintiff's success on the state law claims may not be used to augment his recovery against the Defendant Carter. That very issue was addressed by the Fourth Circuit in *Johnson v. City of Aiken,* 278 F.3d 333 (4th Cir. 2002), in which the plaintiffs recovered $50,000 on a state law assault claim against the municipality but only a nominal award against the individual police officer on the federal claim. After recognizing that only the officer had § 1988 liability, the Fourth Circuit concluded that the district court erred in basing the officer's liability on the plaintiffs' success on the state law claim. The Fourth Circuit ruled that "the district court erred in basing [the officer's] fee liability on [plaintiffs'] success against the City on the state law assault claim." 278 F.3d at 337. The Fourth Circuit explained that "[s]uch an award conflicts with the principles articulated by the Supreme Court in *Kentucky v. Graham*, 473 U.S. 159 (1985)." *Id*. In *Graham*, the Supreme Court had held that § 1988 authorized the payment of fees only by "the party legally responsible for relief on the merits." 473 U.S. at 164. The Fourth Circuit further explained: "*Graham* teaches us that Clark's status as a nonparty on the state law assault claim protects him from § 1988 liability arising from that claim. Accordingly, the district court erred in basing Clark's

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§ 1988 liability on Johnson and Vickers' success against the City on the state law assault claim." 278 F.3d at 338. (Citation omitted).

In sum, as the Fourth Circuit ruled in *Johnson*, the Court cannot consider the success on the state law claims against the Defendant Town in assessing the Plaintiff's entitlement to fees against the Defendant Carter under § 1988.

III. Reasonableness of Hourly Rates

A reasonable award of attorney's fees is achieved by use of the "lodestar" analysis, where a reasonable hourly rate is multiplied by the number of hours reasonably expended. *Grissom v. Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008). The party seeking an award of attorney's fees has the burden to establish the prevailing market rates for billable hours. *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 245 (4th Cir. 2009). The hourly rate should be the "prevailing market rates in the relevant community." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). "This determination is fact-intensive and is best guided by what attorneys earn from paying clients for similar services in similar circumstances." *Id.* "While evidence of fees paid to attorneys of comparable skill in similar circumstances is relevant, so too is the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client." *Id*.

As the Fourth Circuit has explained, "[t]he relevant market for determining the prevailing rate is ordinarily the community in which the court where the action is prosecuted sits." *Rum Creek*, 31 F.3d at 175. Thus, the relevant market is Beaufort County in which this action was brought. In addition, the court in attorneys' fee cases may rely on its own knowledge of the market in determining the reasonableness of requested rates. *See, Jessco, Inc. v. Builders Mut. Ins. Co.,* 2012 WL 1825340, *1 (D.S.C. 2012).

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In his motion, the Plaintiff seeks attorney's fees at the following rates: $650 per hour for Thad L. Myers; $400 per hour for Joshua Golson; $350 per hour for Jeremiah "JJ" Shellenberg; and $300 per hour for Grady Patterson, plus $125 and $175 per hour for two paralegals. The Defendant Carter submits that an appropriate rate for this case is within a range from $150 per hour to $300 per hour, dependent on the attorney's experience level including trial experience.

The Fourth Circuit has explained that "[w]hen applying for a fee, an attorney has the burden to make out the reasonableness of his hourly rate with *specific evidence*." *Newport News Shipbuilding and Dry Dock Co. v. Holiday*, 591 F.3d 219, 230 (4th Cir. 2009). (Emphasis added). The Fourth Circuit has also explained that evidence should include "affidavits of other ***local lawyers*** who are familiar both with the skills of the fee applicants and more generally with the type of work *in the relevant community*." *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 245 (4th Cir. 2009). (Emphasis added). Here, the Plaintiff supports his fee petition with affidavits from Keith Babcock, Joel Hughes, and Neil Lourie. All of those attorneys have their practices located in Richland County, and none of them have attested in their affidavit to having practiced in Beaufort County or even in the Fourteenth Judicial Circuit or to having personal knowledge of the current market rates within the Fourteenth Judicial Circuit (as opposed to other markets). None of these counsel affidavits, in fact, attest that they have charged or been paid similar rates in cases they have personally handled in Beaufort County.

In addition, the hourly rates as claimed by the Plaintiff for his counsel are without context. The Plaintiff presents no fee agreement showing that he agreed to any of the hourly rates claimed. Likewise, the Plaintiff presents no court orders where his attorneys have been previously awarded the rates they seek, nor have the Plaintiff's counsel presented any other evidence that this client or any other client has paid what they attest to be "my hourly rate" in their affidavits.

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As noted above, the Fourth Circuit has explained that particularly relevant evidence is "the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client." *Rum Creek*, 31 F.3d at 175 (4th Cir. 1994). In the case at bar, the Plaintiff's counsel has not provided a copy of the fee agreements signed by counsel and the Plaintiff.[1] Thus, the Plaintiff's counsel has failed to provide the Court with a 'starting point' in order to assess the reasonableness of their requested rates. *Id*. *citing Gusman v. Unisys Corp.*, 986 F.2d 1146 (7th Cir. 1993) (recognizing that an attorney's actual billing rate provides the "starting point" for purposes of establishing a prevailing market rate).

As noted above, courts may rely on their own knowledge of the market in determining a reasonable hourly rate. Furthermore, courts may rely on prior awards made in comparable cases within the relevant market. Notably, in his motion, the Plaintiff cites no comparable cases or awards of attorney's fees under 42 U.S.C. § 1988 or any comparable federal statutes from the prevailing market, that being Beaufort County or the Beaufort Division of the U.S. District Court.

Based on the totality of the evidence presented, the Court is urged to find that an appropriate rate would be $200 to $250 per hour for a lead attorney and $75 to $100 per hour for paralegals for work on a § 1983 case of comparable complexity.

[1] As discussed in the Motion to Quash hearing, the contract between an attorney and client is not privileged under South Carolina law. *Strickland v. Capital City Mills*, 74 S.C. 16, 54 S.E. 220, 221 (1906). Hence, there is no reasons for the Plaintiff to not provide that important information to the Court and opposing counsel.

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III. Specific Objections to Claimed Attorney's Fees and Costs

A. Inadequate Documentation

The leading case on the reasonableness of attorney's fees awards under § 1988 is *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In *Hensley*, the Supreme Court explained that "the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." 461 U.S. at 437. " In addition, the Supreme Court instructs courts to exclude "hours that were not reasonably expended." 461 U.S. at 434.

The *Hensley* Court further held that "[t]he applicant should exercise 'billing judgment' with respect to hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." 461 U.S. at 437. Elaborating on the concept of "billing judgment," the Supreme Court explained:

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

461 U.S. at 434. (Citation omitted).

It is well settled that "fee claimants must submit documentation that reflects 'reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity,' sufficient to permit the court to weigh the hours claimed and exclude hours that were not 'reasonably expended.'" *Guidry v. Clare*, 442 F.Supp.2d 282, 294 (E.D. Va. 2006), *citing Hensley*, 461 U.S. at 433. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433.

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In its recent decision pertaining to an award of attorney's fees under the Freedom of Information Act, the South Carolina Court of Appeals adopted the *Hensley* analysis and recognized that "[a] review of the results obtained is a particularly important consideration, especially where a plaintiff is deemed "prevailing' even though he succeeded on only some of his claims for relief." *Brawley v. Richland County*, ___ S.C. ___, 907 S.E.2d 792, 800 (Ct. App. 2024). In *Brawley*, the plaintiff prevailed on only one of four FOIA requests that were litigated; yet, the trial court awarded virtually all of the claimed fees, which thereupon resulted in a reversal of the fee award. The Court of Appeals observed that "there is no adequate explanation of the amount originally granted or the deductions made in the amended order, and the amount awarded is difficult to justify." 907 S.E.2d at 801. The *Brawley* decision demonstrates that the degree of success should mirror the fees awarded and that deductions should be made to account for claims on which the fee applicant did not prevail. In this case, that would also include deductions for claims on which the Plaintiff was not a "prevailing party" under § 1988 including all state law claims (even the ones on which he did receive a verdict).

In the case at bar, the Court is urged to reject all or most of the claimed fees. The Plaintiff has failed to provide the Court or opposing counsel with contemporaneous billing records for three of the four attorneys or their law firms – in particular the attorneys most involved, who tried the case and incidentally are claiming the highest hourly rates. As the Court is aware, the Defendants served subpoenas for Plaintiff's counsel's contemporaneous billing records. The Court denied a subsequent motion to quash those subpoenas. Despite that order, of the four lawyers, only Grady Patterson produced what would be appear to be *contemporaneous* billing records.[2] The others simply produced a typed out list of purported time entries, but there is no indication that such

[2] Ironically, Grady Patterson, who provided contemporaneous billing records, never actually made an appearance as counsel of record until June 24, 2024, which was after the trial, although his records suggest his involvement since November 2021.

information was recorded or maintained contemporaneously in that fashion over multiple years of litigation.

The necessity of furnishing detailed *and contemporaneous* billing records is particularly important in this litigation because, as mentioned, there are multiple components to the litigation, for several of which attorney's fees are not recoverable. To recap, the Plaintiff did not prevail on the § 1983 claims against the Defendants Beach, Griffin, and Wekenmann. He did not prevail on his state law claims for false arrest/false imprisonment. In addition, these same lawyers represented the Plaintiff in claims brought in this same action against Joshua Smith as well as the loss of consortium claim brought by his spouse, Stephanie Coffman, which was also dismissed at the summary judgment stage. Moreover, the Plaintiff cannot recover attorney's fees for his prosecution of any of his state law claims because attorney's fees are not recoverable under the Tort Claims Act.

In his supporting memorandum, the Plaintiff writes: "Plaintiff produced detailed records of the hours each attorney devoted to this action and applied substantial discounts for every task that could reasonably have been attributed to multiple cases, including waiving/reducing any hours related specifically to Josh Smith as Defendant, during the time periods in which Plaintiff's attorneys were simultaneously handling cases on behalf of other claimants, i.e. Stephanie Coffman, against Defendants." The Plaintiff never states that any deductions were made for claims on which the Defendants prevailed at summary judgment or the federal claims on which the Plaintiff did not prevail against Defendants Beach, Griffin, and Wekenmann or for any of the state law claims. Moreover, the Plaintiff never explains how any deductions were determined or made. In short, the assertion in the supporting memorandum is purely conclusory. Quite simply, with the exception of Grady Patterson's records, the Plaintiff has presented no proof as to any contemporaneous billing entries which were actually deducted and/or not included in the table of time entries submitted with the attorney's fees motion.

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In short, without the submission of *contemporaneous* billing records from all of the law firms (not just Patterson's firm), the Court, like the Defendant Carter, is left to merely guess or speculate at the work performed as well as the time entries that have allegedly been deducted. The time entries provided quite simply do not allow for any reasonable evaluation as to whether any work is attributable to the federal claims against the Defendant, as opposed to work on the state law claims or the claims brought by Stephanie Coffman or the claims brought against Joshua Smith. Most critically, without such records, the Court cannot determine reasonable deductions for the federal and state law claims on which the Plaintiff did not prevail. Because the Plaintiff has failed to properly support his attorney's fees request with contemporaneous billing records, the Court is asked to deny the claim.

B. Duplication of Services -- Multiple Counsel

The Fourth Circuit has made clear that "[t]he number of hours must obviously be adjusted to delete duplicative or unrelated hours." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). The Fourth Circuit has been "sensitive to the need to avoid use of multiple counsel for tasks where such use is not justified by the contributions of each attorney" and that "[g]eneralized billing by multiple attorneys on a large case often produces unacceptable duplication." 31 F.3d at 180. In *Brawley*, the South Carolina Court of Appeals is in accord. The Court of Appeals, citing *Hensley*, explained that "hours not reasonably expended should be excluded from this initial fee calculation" and "[t]his includes hours that are excessive, redundant, or otherwise unnecessary." *Brawley*, 907 S.E.2d at 800.

In the case at bar, the Plaintiff is claiming the fees for three and sometimes four lawyers for the same or related tasks. There has been no justification provided for such duplication of efforts and the number of attorneys that made various appearances or billed for the same or related tasks.

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Likewise, there is no justification provided for having even three lawyers at depositions, court appearances, mediation, and the trial. Clearly, the attendance of two lawyers in many instances is not reasonable such at depositions or roster meetings or even some motion hearings, but anything above that is certainly duplicative without a specific showing of the justification, which has not been provided to the Court.

By way of some examples, on June 4, 2024, both Mr. Golson and Mr. Shellenberg billed 12 hours (24 in total) for "Depositions of the Smiths - Def. Counsel Office in Beaufort."[3] Mr. Shellenberg took the deposition of Joshua Smith, while Mr. Golson took the deposition of Brittany Smith. Mrs. Smith's deposition lasted around 2.5 hours. beginning at 4:46 p.m. and ending at 7:22 p.m. The deposition of Joshua Smith lasted slightly more than 3 hours, beginning at 1:19 p.m. and ending at 4:31 p.m. Therefore, for around 5.5 hours of work, the Plaintiff has submitted bills for 24 hours of work.[4] This appears to be "overbilling," and the Court should deduct these hours as they qualify as "hours that were not reasonably expended." *Hensley*, 461 U.S. at 434.

Putting aside the issue of overbilling, the fundamental issue in this instance is why two attorneys were necessary at all. The Plaintiff has not explained why Mr. Golson is billing the client for attending a deposition taken by Mr. Shellenberg, and visa-versa. Essentially, Plaintiff is asking for the Defendant Carter to pay the bills for the attorney taking the deposition, and the attorney sitting in the deposition with no explanation as to why both attorneys were present in the first place and shows, at a minimum, a lack of "billing judgment." *See*, *Child Evangelism*

[3] It should be noted that this description does not include any attempt to determine the hours spent preparing for the depositions, travel to the depositions, and/or attending the depositions.

[4] To the extent the Court considers travel time as a portion of this 24 hour figure, Columbia to Beaufort is an approximately 2 hour and 15 minute drive. The sum of 5.5 hours of depositions and 4.5 hours round trip travel is 10 hours, less than half of the hours billed for these tasks.

Fellowship of S.C. v. Anderson School District 5, 2007 WL 1302692, *4 (D.S.C. 2007) ("the law is clear that in seeking attorney's fees under section 1988, attorneys are under a duty to minimize expenses.") The redundant hours are unreasonable and should be excluded.

These depositions are not the only instance of redundant billing. As another example, on January 25, 2024, three attorneys billed a total of 9.6 hours (2.0 by Myers, 4.6 by Shellenberg, 3.0 by Golson) to review the 75-page deposition transcript of Defendant Carter. To put this in perspective, the Plaintiff's counsel is asking this Court to require the Defendant Carter to pay Plaintiff's counsel $4,110.00 for reviewing a deposition transcript, which incidentally was taken just six days earlier with Shellenberg in attendance. The deposition itself lasted only two hours. This seems unreasonable. Additional examples of redundant billing include, but are not limited to, the following:

- Four attorneys spent 11.3 hours reviewing deposition transcripts.
    - Mr. Meyers billed 2 hours, Mr. Shellenberg billed 3 hours, Mr. Golson billed 4 hours, and Mr. Patterson billed 2.3 to review Plaintiffs' deposition transcripts that, together, total 187 pages.
        - See entries on 9/28/23, 10/10/23, 3/28-29/24.
- 12 hours were spent preliminarily reviewing the file by three attorneys.
    - 8 hours (4 by Meyers, 4 by Shellenberg) were billed on August 20, 2020, as a preliminary case file review. Over a year later, 4 more hours were billed by Mr. Golson for a preliminary file review.
        - See entries on 8/20/20 and 10/9/23.
- Three attorneys collectively spent 17.1 hours drafting an amended complaint.
    - 3 Hours were spent by Mr. Shellenberg drafting an Amended Complaint on July 2, 2023. Thereafter, 8.1 hours were spent by Mr. Patterson reviewing and revising the complaint. Finally, another 6 hours were spent by Mr. Shellenberg and Mr. Meyers continuing to review and revise this complaint.
        - See entries on 7/2/23, 7/26/23, 7/28/23, 7/31/23, and 8/20/23.
- 10 hours were spent by two attorneys preparing for a deposition.
    - Mr. Shellenberg and Mr. Golson combined for 10 hours of deposition preparation for John Griffith on October 15, 2023, despite only Mr. Shellenberg attending the deposition.
        - See entries on 10/15/23.
- Four attorneys spent 13.4 hours reviewing a deposition transcript.
    - The 150-page deposition transcript of Griffith by Mr. Meyers, Mr. Shellenberg, Mr. Golson, and Mr. Patterson at 2, 4, 3, and 4.4 hours respectively.
        - See entries on 11/1/23 and 1/14/23.

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If four attorneys can do the exact same task and bill the client for it, this begs the question of why firms do not assign a dozen attorneys on each case file. Again, this seems to violate the basic principle of "billing judgment" discussed in *Hensley*, and the Court should exclude all redundant hours claimed. As the Supreme Court states:

> Counsel for the prevailing party should make a good faith effort to **exclude from a fee request hours that are** excessive, **redundant**, or otherwise unnecessary. … Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

Hensley, 461 U.S. at 434. (Citation omitted). (Emphasis added). In sum, because Plaintiff's counsel has failed to exercise appropriate billing judgment in their submission, the Court should strike the redundant hours and reduce the fee accordingly.

C. Travel Time

The Plaintiff is claiming travel time for his lawyers at the full claimed hourly rate, despite the fact that the lawyers are located in Columbia rather than Beaufort. In *Interfaith Community Organization v. Honeywell Intern., Inc*., 426 F.3d 694, 710 (3d 2005), the Third Circuit explained that "under normal circumstances, a party that hires counsel from outside the forum of the litigation may not be compensated for travel time, travel costs, or the costs of local counsel. However, where forum counsel are unwilling to represent the plaintiff, such costs are compensable." 426 F.3d at 710. Similarly, in *Martinez v. Hernando County Sheriff's Office*, 2014 WL4099254 (11th Cir. 2014), the Eleventh Circuit explained that "although there are no precise rules with respect to travel time, a fee applicant seeking to recover expenses incurred for retaining non-local counsel generally must show a lack of attorneys practicing in that place who are willing and able to handle his claims." 2014 WL4099254, *3. Here, the Plaintiff has not

shown that he was unable to retain competent counsel within Beaufort County willing to handle this case.

In short, to the extent the Plaintiff chose to retain counsel outside the Fourteenth Judicial Circuit, that is certainly his prerogative, but consideration should be given to discounting the travel time that resulted. Thus, the Court is urged to discount the hourly rate for travel time to, at most, one-half of the normal rate. This is consistent with what other courts have done. *See e.g.*, *Lochren v. County of Suffolk*, 2010 WL 1207418, *4 (E.D.N.Y. 2010) (reimbursing attorneys for travel time at fifty percent of their hourly rate); *Duke v. County of Nassau*, 2003 WL 23315463, *5 (E.D.N.Y. 2003) (reducing the amount billed for travel time by fifty percent of the attorney's general billing rate).

D. Costs

In addition to attorney's fees, the Plaintiff is also seeking costs in the amount of $17,238.90. As the Fourth Circuit explained in *Johnson v. City of Aiken,* 278 F.3d 333 (4th Cir. 2002), the Plaintiff is only entitled to "costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)." 278 F.3d at 339. The only taxable costs that the Plaintiff may recover are as follows: "(1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 of this title; [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title." 28 U.S.C. § 1920.

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The "other costs" claimed by the Plaintiff would be more properly characterized as "expenses" but not "taxable costs" that are recoverable under 28 U.S.C. § 1920 and Rule 54(d), FRCP or the comparable Rule 54(e), SCRCP. The United States Supreme Court has explained: "Although 'costs' has an everyday meaning synonymous with 'expenses,' the concept of taxable costs under Rule 54(d) is more limited and represents those expenses, including, for example, court fees, that a court will assess against a litigant." *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 537 (2012). "Taxable costs are limited to relatively minor, incidental expenses as is evident from § 1920, which lists such items as clerk fees, court reporter fees, expenses for printing and witnesses, expenses for exemplification and copies, docket fees, and compensation of court-appointed experts." *Id*.

Importantly, the United States Supreme Court has explained that the Court's case law on Rule 54(d) has now established a "clear rule" as follows: "A statute awarding 'costs' will not be construed as authorizing an award of litigation expenses beyond the six categories listed in §§ 1821 and 1920, absent an explicit statutory instruction to that effect." *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873, 878 (2019). In *Rimini*, the Supreme Court ruled that "Section 1821 and 1920 create a default rule and establish a clear baseline against which Congress may legislate. Consistent with that default rule, some federal statutes simply refer to 'costs.' In those cases, federal courts are limited to awarding the costs specified in §§ 1821 and 1920." 139 S.Ct. at 877. Further explaining, the Supreme Court states: "If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so. … But absent such express authority, courts may not award litigation expenses that are not specified in §§ 1821 and 1920." *Id*. Quite simply, the *Rimini* decision overrules any previous decisions where courts have allowed prevailing parties to recover "reasonable litigation expenses" under § 1988, including the Fourth Circuit's decisions

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in *Spell v. McDaniel*, 852 F.2d 762 (4th Cir. 1986), and *Daly v. Hill*, 790 F.2d 1071 (4th Cir. 1986), as cited by the Plaintiff.

More recently, the Tenth Circuit recognized that *Rimini* "hold[s] that the authorization in 42 U.S.C. § 1988 to award 'full costs' does not provide the 'explicit statutory authority' required to award costs, including expert witness fees, beyond those provided by §§ 1920 and 1821." *Alfwear, Inc. v. Mast-Jaegermeister US, Inc.*, 2023 WL 8232072, *5 (10th Cir. 2023). That is the crux of the Defendant Carter's position. Under the "clear rule" announced in *Rimini*, costs may not be awarded under § 1988 to the prevailing party except for the taxable costs allowed for the six categories listed in §§ 1821 and 1920. The one exception created by Congress is for § 1981 cases where the statute says, "the court, in its discretion, may include expert fees as part of the attorney's fee." 42 U.S.C. § 1988(c). There are no other exceptions for the award of costs or expenses – as part of the attorney's fees or otherwise – that have been explicitly authorized by Congress under § 1988.

To recap, there is no "explicit statutory authority" in § 1988 that allows for the award of non-taxable costs as claimed by the Plaintiff, including travel expenses, hotels, meals, mileage reimbursement, and postage, among others.[5] The Plaintiff, in fact, makes no attempt to point out any such explicit language in § 1988 to support an award of the non-taxable costs" claimed in Exhibit 9 to his motion. Quite clearly, none of those items are taxable as costs under 28 U.S.C. § 1920 and Rule 54(d), FRCP (or Rule 54(e), SCRCP), and as a result, those non-taxable costs should not be awarded.

[5] Notably, one of the claimed "costs" is an entry totaling $758.70 to TLMPA Contingency Contract for "Interest on Case Costs." Interest payments made on a "contingency contract" should not be recoverable as costs.

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CONCLUSION

Based on the foregoing analysis, the Defendant Kimberly Carter respectfully requests that the Court deny the Plaintiff's Motion for Attorney's Fees and Costs or alternatively award a significantly reduced fee and no costs that are not otherwise recoverable under 28 U.S.C. § 1920 and Rule 54.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

Counsel for Defendants Kimberly Carter and Town of Port Royal

December 10, 2024

Joshua P. Golson, Esq.
josh@joshgolsonlaw.com

Jessica Mangum, Esq.
jess@joshgolsonlaw.com

LAW OFFICE OF
JOSHUA P. GOLSON
LLC

PO Box 50406, Columbia, SC 29205
1727 Hampton St, Columbia, SC 29201

Telephone: 803.284.8573
Facsimile: 803.769.8199

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Coffman v. Town of Port Royal et al
Civil Action No. 2021-CP-07-01217

RE: Billing Summary for Joshua P. Golson, Esq.

October 2023

October 9, 2023
-preliminary file review of docs and video, 4.0 (reduced from 8)

-review and analysis of updated subpoena responses from SCCJA, supplemental file review, 5.0 (reduced)

October 10, 2023
-review and analysis of deposition transcript of Paul Coffman, 3.0 (reduced from 3.5)

-review and analysis of deposition transcript of Stephanie Coffman, 1.0 (reduced from 2.0)

October 15, 2023
-Depo prep for 30(b)(6) deposition of PRPD with Cpt. Griffith, 4.0 (reduced from 6)

[redacted]

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November 2023

November 1, 2023
-review/analysis of PRPD 30(b)(6) depo with Griffith, 3.0 (reduced from 4)

November 3, 2023
-continue file and discovery review, 4.0 (reduced from 6)

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December 2023

December 7, 2023
-consult with private investigator re trial and potential witnesses, 4.0

December 11, 2023
-follow-up consult with private investigator re trial and potential witnesses, 2.0

December 12, 2023
-review Def's Motion to Dismiss, 0.5

December 15, 2023
-review and analysis re Defs Motion for Summary Judgment, 1.0

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January 2024

January 9, 2024
-lengthy telephone calls with potential witness Ryan Steady re Port Royal Police Department, 1.5

January 15, 2024
-trial prep, 6.0

January 16, 2024
-emails with counsel re scheduling of deposition of Kimberly Carter, 0.5 (waived)

-prep for deposition of former investigator Kimberly Carter, 2.0 (reduced from 4)

January 18, 2024
-litigation conference with JJS re trial strategy, 2.0 (waived)

January 20, 2024
-prepare notes re affidavit of former Port Royal Investigator Ryan Steady, 1.5

[redacted]

-trial prep, 2.5

January 21, 2024
-drove to Port Royal to view and document incident scene and meet with Coffmans, 9.0 (reduced from 12)

January 22, 2024
-telephone call with former PRPD Investigator Ryan Steady, 0.5

-lengthy telephone calls with former PRPD Sergeant Joab Dowling, 1.5

-lengthy litigation conference with JJS, 2.0 (waived)

-trial prep, 3.5 (reduced from 5)

January 23, 2024
-revise notes re affidavits of Joab Dowling and Ryan Steady, 5.0 (reduced from 6.5)

[redacted]

-continue trial prep, 2.0

January 24, 2024
-drove JJS to Port Royal, meetings with potential witnesses, 10.5 (reduced from 13)

[redacted]

January 25, 2024
-review and analysis of depo of Inv. Kim Carter, 3.0

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February 2024

February 19, 2024
-analysis of docs/records and drafting outline for memo in opposition to Defendants' motion to dismiss, 4.0

February 20, 2024
-analysis of docs/records and drafting outline for response in opposition to Defendants' motion for summary judgment, 5.0

February 21, 2024
-research and analysis for response in opposition to Defendants' motion to dismiss, 5.0 (reduced from 7)

-drafting memo in opposition to Defendants' motion to dismiss, 5.0 (reduced from 6)

February 22, 2024
-additional research/analysis (w/ supplemental analysis of file materials) for response in opposition to Defendants' motion for summary judgment, 5.0 (reduced from 8)

-cont'd drafting/revising memo in opposition to Defs' motion for summary judgment, 5.0

February 23, 2024
-file affidavits of Ryan Steady and Joab Dowling and notice to court re memoranda in opposition, 1.0

[redacted]

February 24, 2024
-continued supplemental research, analysis, file materials, and drafting/revising Plf memo in opposition to Def motion for SJ, 5.0 (reduced)

February 25, 2024
-additional Research/Analysis, doc review, revisions to memoranda in opposition, and exhibit prep for memoranda in opposition, 8.0

February 26, 2024
-review and analysis of Def's memoranda in support of Motions to Dismiss and Summary Judgment, 6.0

-revise final drafts of Plf's memoranda in opposition to MTD and MSJ, 3.5

-preparation for hearing on Defendant's motions to dismiss and for summary judgment, 2.0

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February 27, 2024
-supplemental review and analysis of Def exhibits and affidavits, 1.0 (reduced from 1.5)

-court appearance via WebEx to argue Plaintiff's Response in Opposition to Defs' Motion to Dismiss and Motion for Summary Judgment, 2.0 (+ waiting for court proceeding)

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April 2024

April 24, 2024
-review and analysis of Def's motion to reconsider, 2.0

-research and analysis for memo in opposition to Def's motion to reconsider, 2.0

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May 2024

May 1, 2024
[redacted]

May 8, 2024
-review and revise Plf's memo in opposition to Def's motion to reconsider for filing, 1.5

May 22, 2024
-pre-trial litigation conference, 1.0 (waived)

May 23, 2024
-drove to Beaufort for trial prep and witness meetings, 9.0 (reduced from 11)

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June 2024

June 3, 2024
-review 30(b)(6) deposition of Griffith for deposition prep of Josh Smith and Brittany Smith, 1.0

-prep for deposition of Brittany Smith, 6.0

June 4, 2024
-drove to defense counsel offices in Beaufort for trial depositions of Josh Smith and Brittany Smith, 12.0

June 5, 2024
-trial prep, 12.0

June 6, 2024
-trial prep, 10.0

June 7, 2024
-trial prep, 11.5

June 8, 2024
-trial prep, 8.0

June 9, 2024
-trial prep, 6.0

June 10, 2024
-trial prep, 13.0

June 11, 2024
-trial prep and drove to Port Royal for witness prep, 12.0

June 12, 2024
-trial prep and review Brittany Smith deposition, 12.0 (reduced from 15.0)

June 13, 2024
-trial prep, 14.0

June 14, 2024
-trial prep, 14.0

June 15, 2024
-trial prep, 14.0

June 16, 2024
-trial prep, 13.5

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June 17, 2024
-trial and prep for following day, 15.0

June 18, 2024
-trial and prep for following day, 16.0

June 19, 2024
-trial and prep for following day, 16.5

June 20, 2024
-trial and prep for following day, 14.5

June 21, 2024
-trial, 10.0

Post-Trial

June 25, 2024
-conference with JJS and discussion re post-trial litigation strategy, 2.0

-supplemental research and review for post-trial motions for attorneys' fees, 3.0

June 26, 2024
-drafting affidavit re attorney's fees, 1.0

Total (including waived hours): 389.0

THAD L MYERS, PA
AND ASSOCIATES

THAD L MYERS
THAD@THADMYERSPA.COM

JEREMIAH "JJ" SHELLENBERG
JJ@THADMYERSPA.COM

ATTORNEYS AND COUNSELORS AT LAW

THE LAW OFFICES OF THE PRESTON C. LORICK HOUSE™
1727 Hampton Street • Columbia, South Carolina 29201
The National Register of Historic Places

Telephone (803) 252-0005 | Facsimile (803) 252-0110
WWW.THADMYERSLAW.COM

OF COUNSEL
DYLAN WARD GOFF
DYLAN@THADMYERSPA.COM

DRELTON "DJ" CARSON
DJ@DCARSONLAW.COM

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Timesheet for Coffman v. Town of Port Royal et al,
C/A No. 2021-CP-07-01217

8.20.2020 – Preliminary Case File Review – Review Docs from Clients and LMG – 8.0

12.11.2020 – Preliminary Review of FOIA Response from PRPD – 1.5

12.12.2020 – Review and Analyze Documents provided by PRPD – 1.5

12.14.2020 – Review and Analyze FOIA Responses – 3.0

6.29.2021 – Draft Complaint – 6.0

6.30.2021 – Finish Draft Complaint w/ TLM edits/notes – 4.0

10.13.2021 – Review and Analyze Removal Docs – 4.0

11.10.2021 – Research/Draft Motion to Remand – 3.0

11.12.2021 – Meet with GLP, TLM re: Remand and jurisdiction/venue issues – 5.9

11.18.2021 – Review and Analyze Def Memo in Opp of Remand – 1.0

11.22.2021 – Conference re: State Filings and Potential Default by Def/Failure to respond to Counter Claim Issues – 1.0

11.23.2021 – Research Time Issues with Removal – 4.0

11/24/2021 – Draft/Revise/etc. With GLP Reply to Def Memo in Opp Remand – 2.0

11.30.2021 – Review Report and Recommendation – 0.5

12.14.2021 – Review Def Objection to R&R – 0.5

12.27.2021 – Draft Reply to Def Objection to R&R – 1.0

1.15.2022 – Review Motion to Remand Docs to State Court – 0.3

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3.19.22 – Review and Analyze PR Discovery Responses – 4.0

4.29.22 – Zoom Meeting re: Achurch/Defense Firm illegal access to PC phone – 1.0

6.27.22 – Draft Default Docs – 1.0

9.14.22 – Phone Conference with Coffman's re: [redacted], default hearing, etc. – 2.0

9.19.22 – Review and Analyze Memo in Opp of Default – 1

9.21.22 – Conference w/GP re: Default Hearing – 0.1

9.22.22 – Review of Proposed Order re: Withdraw of Default and CC answer – 0.1

10/5/22 – Default Hearing with Carmen Mullen, [redacted], meet with Coffman's, [redacted] – 9.0

11.1.22 – Prepare Discovery Requests to PR – 2.0

12.7.22 – Review and Analyze PR Responses re: missing video and law related to spoliation – 4.0

12.8.22 – Review and Analyze PR P&P re: arrest, etc. – 2.0

12.9.22 – Review and Analyze PR Responses re: phone records, emails, etc. and lacking responses – 2.0

12.15.22 – Review and Analyze PR Responses [redacted] – 4.0

5.11.23 – Conference re: Scheduling Order

7.2.23 – Draft Amended Complaint – 3.0

7.18.23 – Draft Subpoena to SCCJA – 0.5

7.28.23 – Draft Demand Letter – 6.0

7.28.23 – Review Supp. Disc Responses from PR – 1.5

8.3.23 – Review IA Records – 2.0

8.20.23 – Review and Revise Amended Complaint (TLM Edits) – 4.0

8.28.23 – Review and Analyze Updated Subpoena Responses from SCCJA, compared to IA file responses from PR – 3.0

9.12.23 – Review and Analyze Amended Answer – 2.0

9.19.23 – Depo Prep for Coffmans – 3.0

9.20.23 – Depo of Paul and Stephanie Coffman – 9.5

9.28.23 – Review Coffman Depo Transcripts – 3.0

10.15.23 – Depo Prep for Griffith (30b6) – 7.0

10.17.23 – Depo of Griffith – 3.0

11.1.23 – Review Griffith Transcript – 6.0

11.5.23 – Mediation Prep – 7.0

11.6.23 – Mediation Prep and prep of Paul and Stephanie – 3.0

11.7.23 – Mediation – 9.0

11.28.23 – Call with Coffmans – 1.5

12.12.23 – Review and Analyze Motion to Dismiss, [redacted] - 0.5

12.13.24 – Trial Conference – 1.0

12.15.23 – Review and Analyze SJ Motion – 0.5

1.12.24 – Trial Prep Conference – 1.5

1.15.24 – Trial Prep – Talk with Coffmans, Call Witnesses, Themes, [redacted] – 6.0

1.17.24 – Trial Prep – [redacted] – 6.0

1.18.24 – Depo Prep Carter – 6.0

1.19.24 – Trial Prep Meeting – 2.0

1.19.24 – K Carter Depo – 2.0

1.20.24 – Trial Prep – 5.0

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1.21.24 – Trip to Beaufort w/ JG [redacted] Meet Coffmans and Go to Scene – 11.0

1.22.24 – Trial Prep – 5.0

1.23.24 – Trial Prep – 6.0

1.24.24 – Review of Draft Affidavits for Witnesses and Revise – 1.0

1.24.24 – Witness Meetings in Beaufort and review Draft Affidavits with Witnesses (JD and RS) – 12.0

1.25.24 – Review and Analyze K Carter Depo Transcript – 4.6

2.19.24 – Analyze and Outline Argument on Motion to Dismiss – 1.0

2.21.24 – Research and Analysis for Response to Motion for SJ – 4.0

2.24.24 – Research FA issue with State Claim and potential need for expert – 2.0

2.25.24 – Continue Research 1983 case law and Revise JG Draft – 3.0

2.26.24 – Review and Analysis and Prep for Hearing on MTD and MSJ – 2.0

2.26.24 – Review and Analysis of Memo in Support – 5.0

2.26.24 – Review Final Draft and Edit, final prep with JG – 2.0

2.27.24 – Review of Additional Exhibits/Affidavits – 1.0

2.27.24 – Hearing on MTD and MSJ – 2.0

4.24.24 – Review and Analyze Motion to Reconsider, Research Memo in Opp – 1.0

5.6.24 – Revise Response for Motion for Reconsideration and File – 2.0

5.17.24 – Status Conference re: Smith Depos – 0.5

5.23.24 – Witness Meetings (RS, JG, [redacted], Coffmans, etc.) – 11.0

6.2.24 – Depo Prep Smiths, summarize statements – 4.0

6.3.24 – Depo Prep Smiths, review videos – 2.0

6.4.24 – Depositions of Josh and Brittany Smith – 12.0

6.5.24 – Trial Prep – 10.5

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6.6.24 – Trial Prep – 12.5

6.7.24 – Trial Prep and review of Smiths Depos – 12.5

6.10.24 – Trial Prep– 10.0

6.11.24 – Trial Prep and review of Def Proposed Order re Motion to Reconsider – 12.0

6.12.24 – Trial Prep – 12.0

6.13.24 – Trial prep – 12.5

6.14.24 – Trial Prep – 13.0

6.15.24 – Trial Prep and review of KC video – 9.0

6.16.24 – Trial Prep – 11.0

6.17.24 – Trial – 14.5 hours

6.18.24 – Trial – 14.5 hours

6.19.24 – Trial – 14.5 hours

6.20.24 – Trial – 14 hours

6.21.24 – Trial – 10 hours

6.24.24 – Research and Prep for Post Trial Motions (Attny. Fees) – 4.0

6.24.24 – Call from Achurch re: offer to settle – 0.2

6.24.24 – Email to Rob – 0.1

6.24.24 – Review of Achurch Email – 0.1

6.25.24 – Research and Draft Post Trial Motions – 2.0

6.26.24 – Review and Revise Motions; Compile Records – 5.0

6.27.24 – Email to Achurch – 0.2

7.1.24 – Finish compiling records, affidavits, costs; final edit of motions – 5.0

7.1.24 – Emails with Cathy Young – 0.2

7.3.24 – Review Verdict Form – 0.1

7.3.24 – Correspondence with Town Residents re verdict – 1.0

7.9.24 – Review of Def Post-Trial Motion – 1.0

7.10.24 – Review and Research Post Trial Motion Orders and Case Law – 4.0

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7.11.24 – Continue Research & Review – 3.5

7.13.24 – Review Subpoena from Def – 0.5

7.14.24 – Draft Memo in Response to Def Post Trial Motion – 4.0

7.15.24 – Review Edits to Memo in Response/Edit and Exhibits – 2.0

7.16.24 – Research and Review law related to Def Subpoena and Motion to Quash – 1.0

7.21.24 – Review Draft of Motion to Quash – 1.5

7.29.24 – Email to Cathy Young – 0.1

8.5.24 – Review Judge DeBerry ruling re: Punitive Damages – 1.0

8.7.24 – Email to Andrew Lindermann – 0.1

8.12.24 – Email to Andrew Lindermann – 0.1

8.26.24 – Email to Court re: Scheduling – 0.1

9.25.24 – Review D Motion in Opp of Motion to Quash and Research – 4.0

9.26.24 – Review and Edit Reply Memo – 2.0

9.26.24 – Prep for hearing on motion to quash – 2.0

9.27.24 – Final Review in anticipation of motion – 0.5

9.27.24 – Email to Court re: Continuance – 0.1

9.30.24 – Email correspondence with C. Young re: transcript – 0.2

10.20.24 – Litigation Conference with JG – 0.5

10.21.24 – Email re: Continuance/scheduling – 0.1

10.30.24 – Review and Analyze Trial Transcript – 4.0

10.31.24 – Status Conference with Judge DeBerry – 1.0

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THAD L MYERS, PA
AND ASSOCIATES

THAD L MYERS
THAD@THADMYERSPA.COM

JEREMIAH "JJ" SHELLENBERG
JJ@THADMYERSPA.COM

ATTORNEYS AND COUNSELORS AT LAW

THE LAW OFFICES OF THE PRESTON C. LORICK HOUSE™
1727 Hampton Street • Columbia, South Carolina 29201
The National Register of Historic Places

Telephone (803) 252-0005 | Facsimile (803) 252-0110
WWW.THADMYERSLAW.COM

OF COUNSEL
DYLAN WARD GOFF
DYLAN@THADMYERSPA.COM

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TLM - COFFMAN

8/20/2020	Case Review	4
12/12/2020	Review and Analysis of FOIA responses	4
6/30/2021	Review and Revise Complaint from JJS	4
11/12/2021	Conference re: Remand	5
11/22/2021	Conference re: State Court Filing Records	0.5
12/27/2021	Review Draft Reply to Def Objection to R&R	0.5
1/18/2022	Review DC Rec to Remand	0.5
3/23/2022	Conference re: rejection of Order	0.1
9/19/2022	Review and Analyze Memo in Opp of Default	1
12/14/2022	Review and Analyze PR Disc Responses	4
8/20/2023	Review and Revise Amended Complaint from JJS	2
8/28/2023	Review and Analysis of Updated Subpoena Responses SCCJA	1
9/28/2023	Review of PC and SC Depos	2
11/1/2023	Review 30b6 Depo	2
11/6/2023	Mediation Prep	2
11/7/2023	Mediation - Hampton, SC (via phone)	3
1/12/2024	Trial Prep Conference	1
1/15/2024	Trial Prep	3
1/17/2024	Trial Prep	3

1/19/2024	Trial Prep Meeting/Trial Prep	5
1/22/2024	Trial Prep	2
1/23/2024	Trial Prep	2
1/24/2024	Review of Witness Affidavits	1
1/25/2024	Review and Analysis of KC Depo and Video	2
2/26/2024	Revise final Draft of Memo in Opp of MTD and MSJ	1
5/22/2024	Trial Prep Conference	1
6/5/2024	Trial Prep	3
6/6/2024	Trial Prep	2.5
6/7/2024	Trial Prep	3
6/12/2024	Trial Prep	3
6/13/2024	Trial Prep	2.5
6/14/2024	Trial Prep	3
6/15/2024	Trial Prep	3
6/18/2024	Trial (via phone with JJS)	1
6/19/2024	Trial (via phone with JJS)	1
6/20/2024	Trial (via phone with JJS	1.5
6/24/2024	Research Attny Fee Case Law	2
6/26/2024	Review and Revise Post Trial Motions	4

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Patterson Law Offices, LLC
Post Office Box 325
Columbia, South Carolina 29202

Ph:(803) 771-6022 Fax:(803) 771-6052

Paul Coffman
1003 London Ave.
Port Royal, SC
29935

November 13, 2024

File #: 21166
Inv #: Sample

Attention:

RE: Coffman v. Port Royal, et al.

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-10-21	Review filings in case; Research removal requirements; Research Remand to state court; Drafting Motion to Remand;	5.50	1,650.00	GLP
Nov-12-21	Conference with Mr. Myers and Mr. Shellenberg re remand of case; Conference with Mr. Shellenberg re remand; Drafting Motion to Remand	5.90	1,770.00	GLP
Nov-15-21	Review removal impact on time to answer and counterclaim in federal and state court;	1.90	570.00	GLP
Nov-21-21	Research removal and remand law;	2.20	660.00	GLP
Nov-22-21	Conference with Mr. Shellenberg re state court filing records;	0.70	210.00	GLP
Nov-23-21	Research time constraints applicable to removal to federal court	3.80	1,140.00	GLP
Nov-24-21	Review Defendants' responses to Motiion to Remand; Drafting Reply to Defendants' responses to Motion to Remand;	3.90	1,170.00	GLP
Nov-30-21	Receipt and review of Magistrate Judge Recommendation on Motion to Remand;	0.10	30.00	GLP
Dec-14-21	Receipt and review of Defendants' Objection to Magistrate's recommendation;	0.40	120.00	GLP

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Dec-28-21	Review Magistrate's Recommendation; Review Court rule; Drafting response to Objections	2.30	690.00	GLP
Jan-18-22	Receipt and review of email re District Court's action on rrecommendation to remand	0.30	90.00	GLP
Mar-15-22	Conference with Mr. Shellenburg re default filing	0.10	30.00	GLP
Mar-16-22	Email from Ms. Arnett re filed default and Federal Court answer filed by defense attorney; Receipt and review of clerk's action rejecting default;	1.20	360.00	GLP
Mar-17-22	Email from Ms. Arnett re defense filings	0.10	30.00	GLP
Mar-22-22	Review clerk rejection of proposed default order;	0.20	60.00	GLP
Mar-23-22	Conference with Mr. Myers and Mr. Shellenburg re clerk's rejection of proposed default order;	0.10	30.00	GLP
Mar-25-22	Receipt and review of draft motion for default from Mr. Shellenburg; Revise motion;	0.40	120.00	GLP
Apr-15-22	Revise motion for default judgment; Conference with Mr. Shellenburg re modifications to motion;	0.60	180.00	GLP
Apr-29-22	Zoom meeting with clients and investigator re defense access to client telephone; Receipt and review of individual defendant's motion for default;	0.80	240.00	GLP
May-27-22	Receipt and review of email re filing federal court documents in state case	0.20	60.00	GLP
Jun-07-22	Email from Mr. Shellenburg re hearing set; Email from Mr. Shellenburg re submittals to judge deadline	0.10	30.00	GLP
Jun-27-22	Revise memorandum in support of default	2.20	660.00	GLP
Jun-28-22	Revise memorandum for court	0.20	60.00	GLP
Sep-07-22	Receipt and review of Motions Roster for hearing on default;	0.10	30.00	GLP

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Sep-13-22	Research damages	0.40	120.00	GLP
Sep-14-22	Telephone conference with Mr. Coffman and Mr. Shellenburg re damages hearing	0.90	270.00	GLP
Sep-20-22	Email from Mr. Shellenburg re false arrest cases; Research memorandum by public defendants for hearing	1.60	480.00	GLP
Sep-21-22	Conference with Mr. Shellenberg re default hearings; Research	0.50	150.00	GLP
Sep-22-22	Receipt and review of proposed order withdrawing motions for default and providing for answer to counterclaim;	0.10	30.00	GLP
Oct-26-22	Email from Mr. Shellenburg re proposed reply to counter claim;	1.00	300.00	GLP
May-11-23	Conference with Mr. Shellenberg re scheduling order and hearing	0.10	30.00	GLP
Jul-26-23	Review draft amended complaint	0.90	270.00	GLP
Jul-28-23	Review draft amended complaint and revise	1.10	330.00	GLP
Jul-31-23	Drafting Motion to Amend Complaint; Revise Amended Complaint; File Motion and Amended Complaint	6.10	1,830.00	GLP
Aug-02-23	Email from Mr. Shellenberg re Mr. Coffman's response to demand letter draft;	0.50	150.00	GLP
Sep-19-23	Research jury verdicts	1.30	390.00	GLP
Nov-06-23	Preparation for mediation	0.50	150.00	GLP
Nov-07-23	Attend mediation in Hampton, S.C.	9.00	2,700.00	GLP
Nov-28-23	Review IRF settlements; Telephone conference with Mr. and Mrs. Coffman re settlement;	1.40	420.00	GLP
Dec-13-23	Conference with Mr. Shellenberg re trial	0.60	180.00	GLP
Jan-11-24	Review file and discovery for trial	2.70	810.00	GLP
Jan-12-24	Conference with Mr. Shellenberg, Mr. Myers. Ms. Myers, and Ms. Hare re trial preparation	1.50	450.00	GLP

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Jan-13-24	Review police reports and investigations	1.50	450.00	GLP
Jan-14-24	Review depostion of Capt. Griffith;	4.40	1,320.00	GLP
Jan-15-24	Conference with Mr. Shellenberg and Mr. Golson re trial preparation; Review deposition; Conference with Mr. Shellenberg and Mr. Goloson re trial issues	4.40	1,320.00	GLP
Jan-16-24	Drafting jury charges;	3.10	930.00	GLP
Jan-17-24	Research charges and claims	3.90	1,170.00	GLP
Jan-18-24	Conference with Mr Shellenberg; Research 1983 law	3.50	1,050.00	GLP
Jan-19-24	Research; Trial preparation meeting	5.80	1,740.00	GLP
Jan-22-24	Conference with Mr. Shellenberg and Mr. Golson re trial; Status conference with Judge Bonds; review law	2.10	630.00	GLP
Jan-23-24	Trial preparation; Conference with Mr. Shellenburg and Mr. Golson re trial preparation and testimony; Email from Judge Bonds' law clerk re matter set for day certain on June 17, 2024;	1.60	480.00	GLP
Jan-24-24	Email from Mr. Golson research Dowling affidavit; Email from Mr. Golson re Steady affidavit; Revise affidavits; Conference with Mr. Shellenberg and Mr. Golson re affidavits;	1.30	390.00	GLP
Mar-28-24	Review deposition of Mr. Coffman	0.60	180.00	GLP
Mar-29-24	Review Mr. Coffman's deposition	2.30	690.00	GLP
Apr-25-24	Conference with Mr. Shellenberg re defense motion for reconsideration of summary judgment motion	0.50	150.00	GLP
May-03-24	Research Motion for Reconsideration	1.00	300.00	GLP
May-05-24	Review court file; Revise memorandum	1.20	360.00	GLP
May-06-24	Revisions to Response to Motion for Reconsideration	2.00	600.00	GLP

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May-22-24	Conference with lawyers and staff re trial preparation;	1.00	300.00	GLP
Jun-06-24	Conference with Mr. Shellenberg and Mr. Golson re trial preparation	1.00	300.00	GLP
Jun-12-24	Research effect of 30(b)(6) deposition;	2.20	660.00	GLP
Jun-23-24	Research award of attorney's fees in 1983 case and consideration of contingency contract	2.10	630.00	GLP
Jun-24-24	Research award of attorneys fees and contingency contract;	4.20	1,260.00	GLP
Jun-25-24	Research contingency, prevailing party in part, reasonableness factors	4.00	1,200.00	GLP
Jun-26-24	Compile records; Research attorneys fees; Review motion and memorandum;	4.40	1,100.00	GLP
Jun-28-24	Telephone conference with Mr. Babcock re attorney's fees affidavit; Revise costs sheet; Revise Memorandum in Support of Motion for Fees;	4.60	1,150.00	GLP
Jul-10-24	Receipt and review of Form 4 showing jury verdict and jury verdict form	0.20	50.00	GLP
Jul-12-24	Receipt and review of subpoena from defendants	0.20	50.00	GLP
Jul-16-24	Research subpoena of records	2.30	575.00	GLP
Jul-18-24	Receipt and review of Mr. Lindemann motions;	0.10	25.00	GLP
Jul-26-24	Email from Ms. Hare re filed motion to quash subpoena; Email from Ms. Johnson, Clerk's Office, re forwarding motion to Judge DeBerry;	0.10	25.00	GLP
Aug-04-24	Receipt and review of transcript of verdict and punitive damages;	0.10	25.00	GLP
Oct-31-24	Attend status conference with Judge DeBerry; Receipt and review of Form 4 order re Motion to Quash	1.00	250.00	GLP
	Totals	130.20	$38,410.00	

Total Fee & Disbursements	**$38,410.00**
Previous Balance	147.96
Balance Now Due	**$38,557.96**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
PAUL VERNON COFFMAN, JR.,	)	Civil Action No. 2021-CP-07-01217
PLAINTIFF,	)	
VS.	)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION OF DEFENDANTS' MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT, NEW TRIAL NISI REMITTUR, NEW TRIAL ABSOLUTE, AND/OR NEW TRIAL BASED ON 13th JUROR DOCTRINE**
TOWN OF PORT ROYAL AND KIMBERLY CARTER,	)	
DEFENDANTS.	)	

Plaintiff, by and through his undersigned counsel, hereby submits this Memorandum in Opposition of Defendants' Town of Port Royal and Kimberly Carter ("Defendants") Motion for a Judgment Notwithstanding the Verdict ("JNOV") or, in the alternative, for a New Trial Absolute or New Trial based on 13th Juror Doctrine or, in the alternative, for Remittitur of Verdict ("Post-Trial Motions"). Plaintiff submits this memo in part to supplement the arguments presented at the motion hearing before the court on December 11, 2024, based upon the Defendants' delayed filing of their collective memoranda in support of the post-trial motion for JNOV. Plaintiff further objects to the Defendants' lengthy characterization of the facts and attempts to relitigate, by way of such a recitation, the facts and evidence already established at trial; and based upon the court's proscription against lengthy filings in the post-trial motions, the Plaintiff respectfully asks that the Court defer instead to the record properly before the court and otherwise disregard Defendants' imbalanced factual recitation. In keeping with the court's directive(s), Plaintiff would further and

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respectfully request the opportunity, as needed and at the court's discretion, to submit an appropriate recitation of the facts should the court deem such material necessary under the circumstances. To the extent Defendants' factual recitation conflicts with the record before the court, the Plaintiff further craves reference to the trial transcript and the extensive body of evidence and collective exhibits entered into the record and presented to the court and the jury upon the mutual consent of the parties at trial. For the reasons set forth herein and otherwise argued to the court at the motions hearing, Defendants' Motion should be denied.

INTRODUCTION AND PROCEDURAL HISTORY

The above-captioned case arises from an unlawful arrest following an incident that took place at the Sands Beach Boat Landing on July 6, 2020, and the subsequent investigation conducted by the Port Royal Police Department. The Plaintiff was eventually arrested by the Port Royal Police Department. The case proceeded to trial before a jury in Beaufort County beginning on June 17, 2024. The trial presided over by the Honorable H. Seven DeBerry. At trial, the parties disputed the existence of probable cause for Plaintiff's arrest and Plaintiff introduced substantial evidence into the record, with the consent of the Defendants, which clearly disputed the existence of probable cause (including, e.g., testimony for Joab Dowling, Ryan Steady, testimony from the Town of Port Royal via the 30(b)(6) deposition of Captain John Griffith, and the recorded deposition testimony of Defendant Kimberly Carter entered by consent of the parties). At the conclusion of the trial, the jury rendered a verdict awarding the Plaintiff One hundred thousand ($100,000.00) dollars against Kimberly Carter (which included a punitive damages award of $40,000) and Two Hundred and Fifty Thousand ($250,000.00) dollars against the Town of Port Royal.

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Plaintiff respectfully asserts that the overwhelming majority of Defendants' arguments in their post-trial motion(s) are unsupported by the record, were not properly raised and/or preserved pre-trial, were not properly raised and/or preserved during trial, and have not been properly raised and presented to the court in their post-trial motion(s). More specifically, Defendants also appear to raise for the first time in their memoranda in support (and as apparently also omitted in their post-trial motion), arguments related to probable cause (e.g., "arguable" probable cause), qualified immunity, and immunity provisions under the SC Tort Claims Act that were not properly raised and/or preserved pre-trial, during trial, prior to the jury being excused, or otherwise raised in their post-trial motion. As to Defendants' arguments relative to malice, the record before the court, including the matters raised and the evidence and arguments presented to the court and the jury, is replete with examples and references, including witness testimony and other evidence, which established malice – including but not limited to the absence of probable cause to arrest Plaintiff. In addition, Defendants appears to raise for the first time in their memorandum, as opposed to at trial or in their post-trial motion, that Plaintiff failed to show his arrest warrant was fraudulently obtained. Such a baseless assertion notwithstanding, the record before the court, including witness testimony (e.g., from Joab Dowling and Ryan Steady, Defendant Kimberly Carter, and Captain John Griffith) and other evidence in the record admitted by mutual consent of the parties, plainly shows a substantial body of material/evidence which directly attacks the validity of the arrest warrant.[1]

[1] Plaintiff further objects to the Defendants' characterization of the evidence and respectfully submits that Defendants' recitation of the facts repeatedly omits substantial testimony and evidence admitted at trial by mutual consent of the parties, including, e.g., substantial impeachment evidence relative to Kimberly Carter (and other defense witnesses such as Joshua Smith, Brittany Smith, and Jessica Bradley) and the testimony of multiple police officers from the Town of Port Royal, employed at the time of the underlying incident and subsequent "investigation," by Kimberly Carter, which established that Kimberly Carter omitted, amongst

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STANDARDS OF REVIEW

I. Rule 50(b) – Judgment as a Matter of Law

Under a Rule 50(b) motion for judgment as a matter of law, the moving party "bears a hefty burden in establishing that the evidence is not sufficient" to support the jury's verdict. *Price v. City of Charlotte*, N.C., 93 F.3d 1241, 1249 (4th Cir. 1996). A court must construe the evidence from trial in the light most favorable to the prevailing party. *First Union Com. Corp. v. GATX Cap. Corp.*, 411 F.3d 551, 556 (4th Cir. 2005). A court is "compelled to accord the utmost respect to jury verdicts and tread gingerly in reviewing them." *Price*, 93 F.3d at 1250. An "[e]ntry of judgment as a matter of law is appropriate only if the evidence is legally insufficient to support the jury's verdict." *Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 196 (4th Cir. 2017).

II. Rule 59(a) – Motion for a New Trial

A court may grant a new trial following a jury's verdict if "(1) the verdict is against the clear weight of the evidence, or (2) is based upon evidence which is false, or (3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict." *Knussman v. Maryland*, 272 F.3d 625, 639 (4th Cir. 2001). The decision to grant or deny a motion for a new trial lies within the district court's discretion. *King v. McMillan*, 594 F.3d 301, 314 (4th Cir. 2010). An appellate court will not reverse a trial court's determination absent exceptional circumstances. *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 650 (4th Cir. 2002).

ARGUMENT

I. The Defendants are Not Entitled to a Judgement as a Matter of Law

other things, material information from the arrest warrant application, that the arrest warrant was defective, etc.

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"Rule 50(b) permits a party to bring a renewed motion for judgment as a matter of law after the jury has rendered its verdict." *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 279 (4th Cir. 2021). The standard of review for the Court's consideration of a Rule 50(b) motion is generally the same as the standard of review for a Rule 56 summary judgment motion. *Brown v. CSX Transp., Inc.*, 18 F.3d 245, 248 (4th Cir.1994). "To grant the motion[,] the district court must examine the evidence in the light most favorable to the non-moving party and determine whether a reasonable trier of fact could draw only one conclusion from the evidence." *Id*. (citation omitted) (internal quotation marks omitted). In other words, the Court should grant a Rule 50(b) motion only if the Court "determines, without weighing the evidence or considering the credibility of the witnesses, that substantial evidence does not support the jury's findings." *S. Atl. Ltd. P'ship of Tenn., L.P. v. Riese,* 284 F.3d 518, 532 (4th Cir.2002) (quoting *Konkel v. Bob Evans Farms, Inc*., 165 F.3d 275, 279 (4th Cir.1999)).

II. The Defendants Lack Grounds for a New Trial

Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure, the Court "may weigh the evidence and consider the credibility of the witnesses and, if [she] finds the verdict is against the clear weight of the evidence, is based on false evidence or will result in a miscarriage of justice, [she] must set aside the verdict, even if supported by substantial evidence, and grant a new trial." *Poynter by Poynter v. Ratcliff,* 874 F.2d 219, 223 (4th Cir.1989). To order a new trial the jury verdict must be against the great weight, not just a preponderance, of the evidence. *Shows v. Jamison Bedding, Inc*., 671 F.2d 927, 930 (5th Cir.1982).

The Supreme Court clarified that—like the "substantial deference" requirement—the requirement that a trial court give compelling reasons to justify invading the province of the jury derives from the constitutional right to a civil jury trial. In fact, these two requirements are

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essentially parts of the same principle—that trial courts must honor the sanctity of a jury's verdict. Substantively, the trial court must give substantial deference to the jury in deciding whether the verdict is inadequate or excessive. Procedurally, if the trial court determines the jury's verdict is inadequate or excessive, it must explain the reasons it made that determination, and those reasons must be compelling. The two requirements apply in all situations in which the trial court is considering a new trial *nisi* or absolute. In combination, the two requirements reflect the solemn importance of the jury trial in civil cases and demonstrate the respect this Court has always shown for a jury's determination of damages. The two requirements ensure the circuit courts will also show that respect in ruling on motions for a new trial based on the inadequacy or excessiveness of a verdict. *See Bodie v. Charleston & W. Carolina Ry. Co.*, 66 S.C. 302, 314, 44 S.E. 943, 947 (1903) (stating trial "courts should cautiously exercise the right to grant new trials for inadequacy in the amount of the verdict"). The trial court's explanation must be on the record and—if the ruling is appealed—the appellate court will review the explanation to determine whether the ruling was within the trial court's discretion. *Jolly v. Fishers Control Int'l, LLC,* 443 S.C. 551, 523-524, 905 S.E.2d 380 (2024)

III. The Defendant Lacks Grounds of a New Trial Absolute Pursuant to The Thirteenth Juror Doctrine

The Defendants filed their motion under the "Thirteenth Juror Doctrine." "Under the 'thirteenth juror doctrine,' a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (S.C. App. 2000), aff'd, 353 S.C. 481, 506, 579 S.E.2d 293, 306 (S.C. 2003), quoting, *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 722 (S.C. App. 1996).

In *Waring v. Johnson,* 341 S.C. 248, 533 S.E. 2d 906 (Ct. App. 2000), the Court reiterated the standard for granting a new trial absolute:

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> If the amount of the verdict is so grossly inadequate or excessive that is shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trail absolute (*citing Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E. 2d 727 (1996) and *Krepps by Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996)).

Waring v. Johnson, 341 S.C. 248, 257, 533 S.E. 2d 906 (Ct. App. 2000). However, to determine whether any verdict is inadequate or excessive, the court must give "substantial deference" to the jury's determination of damages. *Jolly v. Fishers Control Int'l, LLC,* 443 S.C. 551, 523-524, 905 S.E.2d 380 (2024) (citing *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993)); *Brabham v. S. Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 306 [*524] (1953)); *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). The necessity of giving this deference arises from article I, section 14 of the South Carolina Constitution, which provides, "The right of trial by jury shall be preserved inviolate." S.C. CONST. art. I, § 14. Thus, every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." *Brabham*, 223 S.C. at 430, 76 S.E.2d at 306.

There has been no evidence in this case *sub judice* that the verdict is "so grossly inadequate or excessive that it shocks the conscience of the court" and indicates that it was the result of passion or some other improper motive. This case was tried as a complete liability dispute, it was always a question of which version of events surrounding the incident, and subsequent arrest, the jury would find more credible. Based on the facts as both parties presented them, as well as a substantial body of evidence entered into the record at trial by the mutual consent of the parties, the jury would determine whether the actions of Kimberly Carter, and the Port Royal Police Department, were lawful or not. The jury heard the evidence, weighed the credibility of the

witnesses, and came to its conclusion after a careful review. Accordingly, it is clear the evidence supports the verdict and should not be disturbed.

IV. The Defendant is Not Entitled to a Reduction of the Verdict

"A Rule 59(e) motion may . . . be granted [only] in three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Mayfield v. National Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 378 (4th Cir. 2012). Defendants argue a number of grounds as the basis for their motion, which the Plaintiff will address in order:

1. The Defendants first argue the existence of probable cause for the arrest of the Plaintiff. This characterization of the evidence is incorrect. The Defendants conveniently ignore the grave inconsistencies in the trial testimony of Josh Smith and Brittany Smith and appear to seek to distract the court by way of omission of the inconsistent statements of Josh Smith and Brittany Smith, Hunter Lewis, and Jessica Bradley. Plaintiff further asserts that Kimberly Carter's testimony at trial itself established she failed to present or otherwise omitted material evidence and information to the judicial officer which she knew would negate probable cause.

Additionally, Defendants ignore other contradictory testimony. For example, Joab Dowling, an officer with Port Royal who responded to the scene and subsequently testified that there was no reasonable basis to charge Mr. Coffman with a crime. Trial Tr. 186:9-15, 190:9-14. He further testified that the elements of Assault and Battery 3rd Degree were not met, specifically, e.g., because Mr. Coffman was not an imminent threat to Mr. Smith, nor did he have the present ability to cause harm. Trial Tr. 189:17-190:1. Without the critical, necessary element of present ability to cause harm, Officer Dowling would never have sought a warrant. Trial Tr. 192:5-18.

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Ryan Steady, one of Kimberly Carter's superiors at the Port Royal Police Department at the time of the incident, testified that the information Inv. Carter put in her warrant was inaccurate and, had a judge known the contradictory evidence Inv. Carter omitted, they would be obligated or required to not sign the warrant. Trial Tr. 351:13-325:10. He testified that there was no reasonable basis to charge Paul Coffman with a crime. Trial Tr. 352:11-15.

Other witnesses, including Joshua Smith and Brittany Smith, also testified and conceded, amongst other things, that Paul Coffman never threatened Joshua Smith. Likewise, the official testimony of the Town of Port Royal established that there was no probable cause to charge Paul Coffman with assault and battery and that Joshua Smith attacked Paul Coffman (see, e.g., 30(b)(6) testimony of Captain John Griffith).

The question of whether probable cause exists is ordinarily a jury question unless the evidence yields but one conclusion as a matter of law." *Horton v. City of Columbia,* 408 S.C. 27, 757 S.E.2d 537 (S.C. App. 2014). The testimony of the former Port Royal officers alone creates a question as to the existence of probable cause and an appropriate question for the jury. Moreover, as raised above, the Defendants never properly raised, presented, or preserved any arguments relative to "arguable" probable cause either pre-trial, during trial, or in their post-trial motion. Accordingly, Defendants arguments relative to probable cause (as well as qualified immunity) must be denied and the jury verdict should not be disturbed.

2. Next, the Defendants contend there was no basis as to maliciousness/punitive damages. Furthermore, the Defendants assert no showing was made that the imposition of punitive damages was appropriate. This is a blatant mischaracterization. More specifically, the court has already made a post-verdict finding of fact for each of the *Gamble* Factors, on the record, which

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articulated the necessary elements and supporting factors established in the record to support and uphold the punitive damages award.

> "All right, pursuant to Gamble v. Stevenson, 305 S.C. 104, 1991 case, after an award of punitive
>
> damages the trial judge must conduct a post-trial review to ensure the award is not grossly disproportionate to the severity of the defense. There's eight factors, the Defendants degree to culpability, the duration of conduct, the Defendants awareness or concealment, the existence of similar past conduct, the likelihood that the award will deter the Defendant or others from like conduct, whether the award is reasonably related to the harm, the Defendants' ability to pay and other factors that might be deemed appropriate. Taking into consideration the actual damages and the amount of $60,000 under the 1983 claims, and the fact that the punitives are in the amount of $40,000, I find that certainly the punitives are -- are not out of line with the amount of the actual damages found by the jury. That there is evidence in the record that supports the findings of the damages, both actuals and the punitives. If that's the way the jury decided it, certainly there's evidence present that would support that. Certainly testimony in the record about the arrest and the detention would satisfy awareness and the concealment. Testimony in the record of similar past conduct, I find certainly the award could act as a deterrence for future similar situations. And, again, that it's reasonable under the facts and circumstances as we found them today. And I don't find that there's any unreasonable award of punitive damages in this case at this time."

Trial Tr., 643;24 – 645:5.

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Following the Court's findings, the Defendants failed to object. Therefore, the issue was not preserved. *See Hassell v. City of Columbia*, 430 S.C. 620, 846 S.E. 2d 373 (S.C. App. 2020)(citing *Patterson v. Reid,* 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial."); *Scott v. Porter*, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000)("Ordinarily, if an appellant fails to object the first time a statement is made, he or she waives the right to raise the issue on appeal."). There is significant evidence in the record to support the award of punitive damages and Defendants motion should be denied.

The jury was charged with multiple definitions of malice by consent of the parties at trial, including that malice may be inferred by the lack of probable cause. Furthermore, the record before the court, including the arguments, testimony, and other evidence presented at trial, supported the instruction that malice may be inferred by the lack of probable cause. Indeed, the Court of Appeals has held "one need not show actual malice in order to successfully maintain an action for malicious prosecution," it also held that a showing of malice under that cause of action "**does not necessarily** mean a defendant acted out of spite, revenge, or with a malignant disposition." *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 855 (Ct. App. 2010) (emphasis added). The jury was also charged on the elements of Assault and Battery 3rd Degree. In addition to the abovementioned failure by Kimberly Carter to present evidence which would negate probable cause; she also testified Paul Coffman never directly threatened Josh Smith and there was on testimony by anyone at trial that Paul Coffman had the present ability to harm Josh Smith.

3. The Defendants argue Plaintiff failed to overcome Kimberly Carter's qualified immunity. Defendants failed to raise this issue at any point during the trial of this case and thus

cannot raise the issue for the first time in its motion for new trial or on appeal. *Hassell v. City of Columbia*, 430 S.C. 620, 846 S.E. 2d 373 (S.C. App. 2020). The Supreme Court has "repeatedly…stressed the importance of resolving the immunity questions at the earliest possible stage in litigation. *Hunter v.* Bryant, 502 U.S. 224, 227 (1991)(per curiam). The issue of qualified immunity was heard by the Honorable Alex. B. Hyman on February 27, 2024, and denied on April 15, 2024. Defendants filed a Motion to Reconsider on April 24, 2024, which was denied by Judge Hyman on June 11, 2024. Even if the court were to find otherwise, the Defendants' arguments further hinge on the argument that Kimberly Carter's qualified immunity is premised upon the idea of "arguable" probable cause, which is yet another argument that was never properly presented or preserved prior to, during, or after trial in post-trial motions.

Kimberly Carter was sued in her individual capacity. The United States Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), set forth objective standards for the utilization of the qualified immunity defense and gave specific benchmarks to the judiciary in determining when to protect public officials from undue interference with the exercise of their official duties. In setting forth its guidelines, the Supreme Court ruled that "government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate a clearly established statutory or constitutional right of which a reasonable person should have known." *Id.*, at 818. Based on the evidence in the record, there was a sufficient question of fact for the jury as to whether a "reasonable and prudent" person would have concluded that there was probable cause for Coffman's arrest. Moreover, there was a question of fact for the jury as to whether Kimberly Carter, when applying to the judge for the arrest warrant, knowingly omitted material facts that she "knew would negate probable cause". *Miller v. Prince George's County, Md.*, 475 F.3d 621, 627 (4th Cir. 2007); *Evans v. Chalmers*, 703 F.3d 636, 649-650 (4th Cir. 2012).

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Additionally, Qualified Immunity is a doctrine which shields government actors from liability if they establish either that (1) the plaintiff's allegations fail to make out a violation of a constitutional right, or (2) the right at issue was not clearly established at the time of the alleged misconduct." *Henry v. Purnell*, 619 F.3d 323, 332 (4th Cir. 2010) (citing *Pearson v. Callahan*, 555 U.S. 223 (2009)), rev'd on other grounds by reh'g en banc, 652 F.3d 524 (4th Cir. 2011). In short, the doctrine "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson*, 555 U.S. at 231 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). To resolve a qualified immunity defense, a court must "decide whether the facts that a plaintiff has alleged . . . or shown . . . make out a violation of a constitutional right." *Pearson*, 555 U.S. at 232. The court must then determine "whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." *Id.*

Here, the evidence established that two other Port Royal officers, Joab Dowling and Ryan Steady, did not believe there was any reasonable basis to arrest Paul Coffman. Additional evidence, including testimony of Defendant Carter, established that Inv. Kimberly Carter failed to present evidence that she knew would negate probable cause. More specifically, Defendant Kimberly Carter failed to appear at trial and her deposition testimony was instead admitted at the mutual consent of the parties. In that testimony, Plaintiff further asserts that Defendant Carter never testified that she believed she acted reasonably in arresting Paul Coffman for assault and battery in the third degree. There is no question that the right to not be arrested except upon probable cause was clearly established at the time of this incident. See *Harlow*, 457 U.S. at 818–19 ("if the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent police officer should know the law governing his conduct").

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4. Defendants argue the verdicts between the Defendants and former Defendants were inconsistent. Again, the Defendants mischaracterize the evidence. Defendants also failed to address this argument in their supporting memorandum or the subsequent hearing. Plaintiff asks that this be denied accordingly and for the accompanying reasons set forth herein.

5. Defendants argue the testimony and evidence from witnesses Steady and Dowling about prior arrests were irrelevant, based on hearsay, and highly prejudicial. The Defendants failed to contemporaneously object to the testimony offered by Joab Dowling and Ryan Steady to the testimony related to other arrests the Port Royal Police Department made without probable cause. Trial Tr. 175-200. A contemporaneous objection is necessary in all trials beginning after the date of this opinion to properly preserve errors for our direct appellate review. *State v. Evans*, 371 S.C. 27, 31, 637 S.E.2d 313, 315 (2006) (quoting *State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991)). A party's failure to object at the time evidence is offered constitutes a waiver of the right to object. *Doe v. S.B.M.*, 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997). "Our courts have held a failure to contemporaneously object to the introduction of evidence claimed to be prejudicial cannot be later bootstrapped by a motion for a mistrial." *State v. Stanley*, 365 S.C. 24, 33, 615 S.E.2d 455, 459 (Ct. App. 2005). Logically flowing from this precedent is the notion that a motion for a new trial cannot cure the failure to contemporaneously object.

Ordinarily, if an appellant fails to object the first time a statement is made, he waives his right to raise the issue on appeal. See *State v. Black*, 319 S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995) ("The proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and to ask the court for a distinct ruling thereon."); *Id.* at 521-22, 462 S.E.2d at 315 ("Failure to object when the evidence is offered constitutes a waiver of right to object.").

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Defendants also failed to address this argument in their supporting memorandum or the subsequent hearing. Plaintiff asks that this be denied accordingly and for the accompanying reasons set forth herein.

6. Defendants claim Lester "Gill" Bell was a late-named witness, after dispositive motions had been filed.

Additionally, Defendants claim Mr. Bell testified to his conversations with Defendant Carter and this testimony was inadmissible as irrelevant hearsay and highly prejudicial. Under South Carolina Rules of Evidence 801(d)(2), "a statement is not hearsay if the statement is offered against a party and is the party's own statement in…an individual…capacity." Any testimony Mr. Bell gave regarding his conversations with Kimberly Carter is admissible. Additionally, the Defense failed to contemporaneously object to Mr. Bell's testimony. *Stanley* at 33 *see also Doe v. S.B.M.*, 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997).

Defendants also failed to address this argument in their supporting memorandum or the subsequent hearing. Plaintiff asks that this be denied accordingly and for the accompanying reasons set forth herein.

7. Finally, Defendants claim Kimberly Carter is protected under the S.C. Tort Claims Act pursuant to S.C. Code § 15-78-60(23). Kimberly Carter was sued in her individual capacity under 42 U.S.C. § 1983. State officials sued in their individual capacities are "persons" for the purposes of § 1983. *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) (Supreme Court reversed the trial judge's grant of a directed verdict for the § 1983 cause of action against Deputy Fowler, in his individual capacity). Section 1983 "is designed to provide a comprehensive remedy for the deprivation of constitutional rights." *Smith v. Hampton Training Sch. for Nurses*, 360 F.2d 577, 581 (4th Cir. 1966).

Plaintiff asserts that Defendants also failed to properly raise, argue, or preserve this affirmative defense at trial and notwithstanding a reference in their motion, similarly failed to raise this argument in their supporting memorandum or the subsequent hearing. Plaintiff asks that this be denied accordingly and for the accompanying reasons set forth herein.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendants' Motion for JNOV or for a New Trial Absolute or New Trial based on 13th Juror Doctrine or Remittitur of Verdict, be denied. Plaintiff also renews his objection to Defendants' characterization of the facts in the memorandum in support of their motion for JNOV. Furthermore, Plaintiff asserts that many of Defendants arguments, as outlined hereinabove, were never properly raised, objected to, and/or otherwise preserved pre-trial, during trial, and in post-trial matters/motions. Based upon the record before the court, the Defendants' post-trial motions should be denied. This request is made pursuant to the SC Rules of Civil Procedure (including those articulated hereinabove), and is further based on the pleadings, motions, exhibits, and related filings in this case, state and federal case law and statutes, the rules of Court, and such other matters as may be properly presented to the Court.

[Signature block on following page]

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Respectfully Submitted

s/ Jeremiah J. Shellenberg
Jeremiah J. Shellenberg S.C. Bar No. 100235
Thad L. Myers S.C. Bar No. 12576
Thad L. Myers, P.A. & Associates
1727 Hampton Street
Columbia, South Carolina 29201
(803) 252-0005 (telephone)
jj@thadmyerspa.com
thad@thadmyerspa.com

Joshua P. Golson
S.C. Bar No. 100618
Law Office of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29201
Telephone: (803) 284-8573
josh@joshgolsonlaw.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

December 23, 2024

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
PAUL VERNON COFFMAN, JR., PLAINTIFF,	)	Civil Action No. 2021-CP-07-01217
VS.	)	**PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO § 42 U.S.C. 1988**
TOWN OF PORT ROYAL AND KIMBERLY CARTER, DEFENDANTS.	)	

Paul Coffman ("Plaintiff"), and by and through the undersigned counsel, hereby submits this reply (to further supplement arguments presented at the hearing on December 11, 2024) in opposition to Town of Port Royal and Kimberly Carter's ("Defendants") memorandum in opposition ("Memo") to Plaintiff's Motion for Attorneys' fees and costs, filed December 10, 2024.

I. ARGUMENT IN OPPOSITION TO DEFENDANTS' ARGUMENT RELATED TO PLAINTIFF'S AS THE PREVAILING PARTY AND THE STATE CLAIMS

In this case, there is a legitimate consideration relative to an intertwined series and/or substantial nexus of facts between the state law claims and the federal claims as presented at trial. More specifically, the state and federal claims are inherently related to a sufficient degree such that Plaintiff's attorneys' fees are justifiably based upon the litigation of the totality of the facts and evidence presented at trial; and the Fourth Circuit Court of Appeals has previously recognized that such relief is available to Plaintiffs where "the facts supporting the §1983 action were so 'inextricably intertwined with the facts surrounding' the state law claims … [such] … that counsel could not have presented the constitutional aspects of this case without developing and presenting

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the facts surrounding the entire sequence of events that transpired.'" *Gregg v. Ham*, No. 3:08-4040-CMC, 2010 U.S. Dist. LEXIS 128723, at *14 (D.S.C. Dec. 6, 2010) (citing *Abshire v. Walls*, 830 F.2d 1277, 1283 (4th Cir. 1987) (the Fourth Circuit held that the district court had erred in reducing billable hours for unsuccessful claims for false arrest, false imprisonment, and malicious prosecution where those claims and a successful § 1983 claim for an unconstitutional strip search "arose from a common core of facts"). Here, Defendants mistakenly ask the court to sever the litigation of the federal claims from the state law claims and assert that success on one is completely independent from that of the other. However, the evidence presented to the jury at trial shows the opposite. The facts and evidence used in the successful litigation of the federal claims against an individual defendant, Kimberly Carter, were inherently tied to the successful litigation of the state law claims against the Town of Port Royal. The Defendant's request for a "deduction" simply because some individuals were dismissed from the litigation is baseless and unsupported, and again further contravenes the very purpose and intent of 42 U.S.C. § 1988.

In further support of such a conclusion, the court in *Gregg v. Ham* relied on its earlier precedent in *Goodwin v. Metts*, 973 F.2d 378 (4th Cir. 1992), and further explained, "In *Goodwin*, the court held that when juries award damages for conduct which not only informs an award under § 1983 but also results in finding for a Plaintiff on a state law cause of action, the "language of section 1988 nowhere indicates that a determination that conduct causing the constitutional deprivation under 42 U.S.C. § 1983 [and] also amounts to tortious misbehavior under state law should affect the court's award of attorneys' fees." 973 F.2d at 378, 386 (4th Cir. 1992). *Gregg v. Ham*, No. 3:08-4040-CMC, 2010 U.S. Dist. LEXIS 128723, at *15 (D.S.C. Dec. 6, 2010).

The Supreme Court has indulged a "strong presumption" that the lodestar number

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represents a reasonable attorney's fee. The Court recently explained that this presumption can only be overcome "in those rare circumstances where the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Perdue v. Kenny A.*, 559 U.S. 542, 554, 130 S. Ct. 1662, 1673 (2010). "After determining the lodestar figure, the court should then subtract fees for hours spent on unsuccessful claims unrelated to successful ones." *Robinson v. Equifax Info. Servs., LLC*, 560 F. 3d 235, 243 (4th Cir. 2009) (internal quotation marks omitted). "The Fourth Circuit has explained that claims are 'related' if the claims arose from a 'common core of facts' and are 'impossible to isolate' from the successful ones." *Larsen v. Ar Res., Inc.*, 453 F. Supp. 3d 849, 855 (E.D. Va. 2020) (citing *Abshire v. Walls*, 830 F. 2d 1277, 1283 (4th Cir. 1987)); *Cho*, 2020 U.S. Dist. LEXIS 38055, 2020 WL 1056294 at 19 (quoting *Hensley*, 461 U.S. at 434) ("A claim is unrelated if it is based on different facts and legal theories"). "In performing this analysis, the Court will refrain from viewing such a case as a series of discrete claims and will instead focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended in the litigation." *Hye Young Son v. Agape Health Mgmt.*, Civil Action No. 1:20-cv-1047 (WEF), 2024 U.S. Dist. LEXIS 221532, at *48 (E.D. Va. Dec. 5, 2024) (internal citation omitted).

In the case at bar, Plaintiff asserts that a significant part of the totality of the facts and circumstances underlying the federal causes of action (e.g., Fourth Amendment claims for unreasonable seizure and malicious prosecution against Kimberly Carter are inextricably tied to the state law causes of action. For example, the state law negligence and/or gross negligence claims which assert, e.g., a failure to properly train, discipline, or supervise, as well as malicious prosecution. Furthermore, the development of those facts and any ultimate award of attorneys'

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fees to Plaintiff were inherently predicated on the research, development, and subsequent presentation of the facts and evidence at trial and, significant success at trial, exemplified by the $350,000.00 total jury award (including $40,000.00 in punitive damages) in Plaintiff's favor on such claims. Ultimately, the claims cannot be dissected in such a grotesque fashion as claimed by Defendants because they are interrelated and the dismissal of any co-defendants at trial has no bearing on the valuation of the attorney's fees. As demonstrated by the record in this case, the vindication of the Plaintiff's constitutional rights is inextricably tied to the negligence of the Defendants and the Defendants' claims to the contrary merely serves to undermine and contradict the strong public policy which overwhelmingly favors the award of attorneys' fees under 42 U.S.C § 1988.

Defendants also seeks to assert that they have a "strong" qualified immunity defense, but they erroneously seek to assert an affirmative defense that was not properly presented, raised, or otherwise preserved at trial. Defendants, for the first time, seek to distinguish "arguable" probable cause from "actual" probable cause in an effort to pursue a belated collateral attack on a substantial amount of evidence that was properly submitted to the jury. Here, Defendants conveniently ignore, amongst other things, a substantial amount of evidence which shows that the Town of Port Royal's own officers/employees independently determined that they were was reasonable basis to charge Paul Coffman with a crime and that there was no probable cause to arrest him. Furthermore, Defendants have since omitted the majority, if not the entirety of the evidence presented at trial which showed, amongst other things, that Defendant Kimberly Carter was also in possession of a substantial amount of impeachment evidence, including witness statements and testimony, which directly controverts the arguments they now seek to advance in their post-trial motion(s).

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Ultimately, the evidence established at trial and presented to the jury plainly shows that Defendant Carter is not entitled to qualified immunity and any of Defendant's arguments to the contrary were also not properly raised and preserved. Accordingly, the Court should find in favor of granting the Plaintiff's motion for attorney's fees.

II. REPLY IN OPPOSITION TO DEFENDANTS' ARGUMENT RELATED TO THE REASONABLENESS OF RATES

Defendants' argument that Plaintiff's attorney fee award should be determined by the Beaufort County market is misleading. Defendants appear to assert that the rates of Beaufort County attorneys are controlling, yet also fails to provide any supporting documentation of actual rates used by attorneys who have litigated civil rights claims in the Court of Common Pleas. Furthermore, in citing *Rum Creek Coal Sales, Inc. v. Caperton,* Defendants appears to have omitted additional relevant language: "In circumstances where it is reasonable to retain attorneys from other communities, however, the rates in those communities may also be considered." 31 F.3d 169 (1994) (citing *National Wildlife Federation v. Hanson*, 859 F.2d 313, 317 (4th Cir. 1988)). Further, "the court may rely on its own knowledge of the market *in the absence of sufficient documentation*" *Jessco, Inc. v. Builders Mut. Ins. Co.* 2012 U.S. Dist. LEXIS 69450 (emphasis added). In this case, Paul Coffman testified at trial that he sought counsel outside of Beaufort County from the moment he was first charged with assault and battery: "[A]fter talking to as many attorneys as we had at Beaufort, we had very, very little confidence that someone was going to jump in there at the last minute and help us." Tr. Transcript p. 105: 4-7. Moreover, the cases relied on by the Defendants also appear, in part, to largely address matters litigated in the district courts. Accordingly, the venue and/or geographical area to be considered should not be strictly limited to Beaufort County and it is inherently reasonable for the court to consider affidavits from

attorneys who have practiced and litigated such matters statewide (and Plaintiff's counsel has supplied the same).

In determining the reasonableness of the requested rate, "[i]n addition to the attorneys' own affidavits, the fee applicant must produce satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award" *Robinson v. Equifax Info. Servs., LLC,* 560 F.3d 235, 244 (4th Cir. 2000). "Examples of the type of specific evidence that we have held is sufficient to verify the prevailing market rates are affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community. *See id*. at 245 ("[A]ffidavits testifying to [the fee applicants'] own rates, experience, and skills as well as affidavits of South Carolina lawyers who were familiar both with the skills of some of the applicants and more generally with civil rights litigation in South Carolina . . . was sufficient evidence of the prevailing market rates to support the hourly rates fixed by the district court . . .")1. *Id.*

The Plaintiff has provided ample evidence, to include affidavits from the attorneys, affidavits from other local lawyers familiar with both counsel as well as civil rights litigation in South Carolina, and contemporaneous billing records. Therefore, Plaintiff has provided ample evidence in support of the request for fees and the Court should be able to adequately determine the reasonableness of the rates accordingly.

1 Defense Counsel specifically challenged the hourly rate of $650.00 for Mr. Myers. As counsel argued, Mr. Myers has been awarded that hourly rate in multiple cases previously. **(Exhibit 1, Myers Attorney's Fee Orders)**

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III. ARGUMENT IN OPPOSITION TO DEFENDANTS' ARGUMENT RELATED TO CLAIM FOR ATTORNEY'S FEES AND COSTS

Defendants urged the court to reject all or most of the claimed fees. While the language of § 1988 specifies the award of attorney's fees falls within the court's discretion, that discretion has been significantly narrowed such that a prevailing plaintiff *should ordinarily* recover an attorney's fee *unless special circumstances* would render such an award unjust. *Hensley v. Eckhardt,* 461 U.S. 424, 429, 103 S.Ct. 1933, 76 L. Ed. 2d 40 (1983); *see also N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 68, 100 S. Ct. 2024, 64 L. Ed. 2d 723 (1980) (noting that the district court's discretion in such circumstances "is narrow"); *Brandon v. Guilford Cnty. Bd. of Elections*, 921 F.3d at 194, 198 (4th Cir. 2019) (noting that "we have not hesitated to reverse district courts that have found 'special circumstances' where none existed"). This narrowing of discretion was ordered as a matter of public policy, "the policy of facilitating access to judicial process for the redress of civil rights grievances." *Brandon*, 921 F.3d at 198; *see also Hensley*, 461 U.S. at 429.

Defendants' argument against attorney's fees relies heavily on *Brawley v. Richland Cnty.,* a FOIA case where the Court of Appeals was unable to discern how the circuit court came to the amounts awarded and there was minimal discovery and responsive documents were provided early in the litigation without any significant adversarial proceedings. *Brawley v. Richland Cnty.*, 907 S.E. 2d 792 (Ct. App. 2024) (rehearing denied). The Brawley case and this case are diametrically opposed. The case at bar involves a combination of state law claims and federal claims under 42 U.S.C. § 1983, which was tried by a jury who ruled in favor of the Plaintiff. In addition, the essential nature of the instant litigation inherently involved a more significant and substantial amount of work and resources than the matter Defendant relies on in *Brawley*, and the nature of the litigation in the case at bar, amongst other things, is far more intensive.

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Additionally, the Defendant's argue that the Plaintiff's billing was not contemporaneous is baseless and ill-conceived. They argued, without a scintilla of evidence, that Plaintiff's counsel failed to keep contemporaneous billing records because they were not kept using a computer program but rather a word document. This is nothing more than a thinly veiled attempt to cast baseless aspersions against Plaintiff's Counsel.

Defendants also argue that the Plaintiff's attorneys billed for duplicative services. "There is no per se rule the Court is aware of that sets forth the maximum number of attorneys one should have participating in trials, depositions, or other case related matters…After all, it seems improper to question Gifford's use of multiple attorneys, which likely contributed to her proving her case against Rhodes". **(Exhibit 2, Mary Lewis Order Pg. 13).** The order goes on to address a number of the arguments raised by Defendants and Plaintiff urges the Court to consider the merits of that opinion, amongst others, in the case at bar.

With respect to Defendants' arguments relative to costs, the Fourth Circuit has previously recognized that "[t]he great weight of authority in this circuit and others clearly establishes that a prevailing plaintiff is entitled to compensation for reasonable litigation expenses under § 1988." *Daly v. Hill*, 790 F.2d 1071, 1084 (4th Cir. 1986). Reasonable litigation expenses have been found to include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988).

In further consideration of his request for fees, the Plaintiff agrees to waive certain fees which he initially sought, including two amounts for mileage ($175.54 and 157.20), mediation costs ($600.00), various trial expenses beginning with lodging ($4,183.46), and interest on case

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costs ($758.70), which totals $5,874.90. Similarly, Plaintiff agrees to waive the fee request from the Law Office of Joshua P. Golson, LLC. Accordingly, the remaining costs being claimed by Thad L. Myers, PA is $10,057.78.

IV. PLAINTIFF IS ENTITLED TO AN AWARD OF POST JUDGMENT INTEREST

The post-judgment interest statute states that, "[a] money decree or judgment of a court enrolled or entered must draw interest according to law." South Carolina Code Ann. § 34-31-20. Pursuant to the South Carolina Supreme Court's Order from January 4, 2024, "South Carolina Code Ann. § 34-31-20(B)(2020) provides the legal interest rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually … The Wall Street Journal for January 2, 2024, the first edition after January 1, 2024, listed the prime rate as 8.50%. Therefore, for the period January 15, 2024, through January 15, 2025, the legal rate of interest for the money decrees and judgments is 12.50% compounded annually." **(Exhibit 3, Supreme Court Order).**

The Judgement was entered in the present case on July 10, 2024, in the amount of $350,000.00. Based on the legal interest rate set forth by the Supreme Court, as of the date of this filing, December 23, 2024, the total interest accrued is $19,417.80.

Accordingly, Plaintiff requests an award of post-judgment interest at the statutory rate on the full amount of the award.

CONCLUSION

For the foregoing reasons, Plaintiff Paul Coffman respectfully requests that the Court enter an order awarding Plaintiff the reasonable attorneys' fees and costs requested in Plaintiff's Motion

for Attorney's Fees and Costs pursuant to 42 U.S.C. § 1988, and further based upon the memoranda in support, the arguments Plaintiff raised and presented to the court in post-trial proceedings, the record before the court, and such other matters as may be properly presented to the court.

Respectfully submitted,

s/ *Jeremiah J. Shellenberg*
Jeremiah J. Shellenberg S.C. Bar No. 100235
Thad L. Myers S.C. Bar No. 12576
Thad L. Myers, P.A.
1727 Hampton Street
Columbia, South Carolina 29201
(803) 252-0005 (telephone)
jj@thadmyerspa.com
thad@thadmyerspa.com

s/*Joshua P. Golson*
Joshua P. Golson, S.C. Bar No. 100618
Law Office of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29201
(803) 509-1657 (telephone)
josh@joshgolsonlaw.com

s/*Grady L. Patterson*
Grady L. Patterson, S.C. Bar No. 4369
Patterson Law Offices, LLC
Post Office Box 325
Columbia, South Carolina 29202
(803) 771-6022 (telephone)
glp@pattersonlawoffices.net

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EXHIBIT

1

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EXHIBIT B

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

IN RE: LANDAMERICA 1031 EXCHANGE SERVICES, INC. INTERNAL REVENUE SERVICE § 1031 TAX DEFERRED EXCHANGE LITIGATION	**MDL No. 2054**
Angela M. Arthur, as Trustee of the Arthur Declaration of Trust, dated December 29, 1988; Vivian R. Hays, an individual; Leapin Eagle, LLC, a limited liability company; Denise J. Wilson, an individual; Gerald R. Terry, an individual, Ann T. Robbins, an individual; and Jane T. Evans, an individual; on their own behalf and on behalf of a class of others similarly situated,	**Southern District of California C.A. No. 3:09-cv-00054**
Plaintiffs,	**District of South Carolina C.A. No.: 8:09-cv-00415**
v.	
Theodore L. Chandler, Jr.; G. William Evans; Stephen Connor; Ronald B. Ramos; Devon M. Jones; and Brenton J. Allen,	
Defendants.	

DECLARATION OF CHERYL F. PERKINS

I, Cheryl F. Perkins, do declare:

1. I am a partner in the law firm of Whetstone Myers Perkins & Fulda, LLC ("WMPF") and Co-Lead Counsel for the Class Plaintiffs in the Consolidated *Arthur/Terry* class action, which is before this Court in *In Re: Landamerica 1031 Exchange Services, Inc. Internal Revenue Service § 1031 Tax Deferred Exchange Litigation,* MDL No. 2054. I have personal knowledge of the facts set forth herein and, if called upon to do so, could and would testify to

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these facts. This Declaration is submitted in support of Plaintiffs' Motion for Award of Attorney Fees and Reimbursement of Costs.

2. I am a founding member of the law firm, Whetstone Myers Perkins & Fulda, LLC. This firm is recognized as a leading litigation firm in the southeast and is regularly referred cases from other counsel seeking assistance in complex trial litigation.

3. I was born in Greenville, South Carolina and attended Clemson University. I graduated *magna cum laude* with a B.A. degree in political science in 1977 and in 1980, I earned a J.D. degree from the University of South Carolina School of Law.

4. For my entire thirty-two (32) years of practice, I have focused on complex civil litigation. I have been on the panel or lectured at continuing legal education programs for attorneys. I am admitted to practice in all state and federal courts in South Carolina, as well as the Fourth Circuit Court of Appeals. I have appeared *pro hac vice* and litigated cases in North Carolina, Georgia, New York, Ohio, Maryland, Virginia, Texas, and Arkansas.

5. From 1989 through 1993, I served as a litigation consultant for the Catawba Indian Tribe in land claim litigation involving a 15 square-mile area of disputed land in York, Lancaster and Chester Counties of South Carolina. I was part of a negotiating team that resolved the litigation and obtained partial federal recognition for the tribe in August 1993. My experience with class actions and/or representative litigation as Class Counsel or Co-Lead Counsel, includes;

- representation of the State of South Carolina through its Attorney General in the "Tobacco Litigation;"
- representation of the State of South Carolina through its Attorney General in litigation brought for the benefit of employers in the state seeking

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restitution for excess workers compensation premiums based on allegations of price-fixing in *The State of South Carolina ex rel. T. Travis Medlock, Attorney General v. National Council on Compensation Insurance, Inc, et al*., C.A. No. 94-CP-23-2428, Court of Common Pleas, Greenville County, South Carolina;

- representation of more than 7000 displaced workers in WARN Act class litigation in the Southern District of New York in *Vogt v. Greenmarine Holdings, LLC*, C.A. No. 02 Civ. 2059 (GEL), arising from plant closings in thirteen states;

- representation of multiple direct action and opt-out dealerships in Multi-District Litigation against American Honda Motor Company, based on alleged racketeering and other business torts in *American Honda Motor Co., Inc. Dealership Relations Litigation*, MDL # 2493, which was pending in the District of Maryland;

- representation of shareholders in a stockholder derivative action against Scansource, Inc., in *In Re Scansource, Inc. Derivative Litigation*, Lead Case, C.A. No. 6:06-3312-HFF, which was pending in the District of South Carolina, Greenville Division;

- representation of shareholders in a stockholder derivative action against The South Financial Group, Inc. in *Mercier v. Whittle, et al.*, C.A. No. 2008-CP-23-8395, which was pending in Greenville County, South Carolina;

- representation of certain counties in South Carolina and North Carolina against online travel companies such as Expedia.com, alleging failure to remit local accommodations taxes, e.g. *County of Horry v. Hotels.com et al.*, 2007-CP-25-737, pending in the Horry County, South Carolina;

- representation of more than 20,000 current and former employees of Duke Energy Corporation in class litigation under ERISA relating to miscalculations of retirement benefits in *George v. Duke Energy Retirement Cash Balance Plan, et al.*, C.A. No. 8:06-CV-373-JMC.

6. Over the years of my practice, I have represented Plaintiffs in dozens of cases involving unfair trade practices, consumer fraud, mass torts, toxic torts, and insurance coverage disputes, among other areas of complex litigation.

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7. In 1985, I received the South Carolina Society of Professional Journalists' First Amendment Award for work involving the state's Freedom of Information Act. In 2004, I co-authored a chapter in the South Carolina Bar treatise *South Carolina Damages*, which chapter I updated for the Second Edition published in 2009. I am AV-rated by Martindale-Hubbell.

8. In 2008, I was selected to be a Fellow of the American Bar Foundation. I have attained the level of Advocate in the National College of Advocacy. I was named to the Lawdragon list of 500 Leading Plaintiffs' Lawyers in America in 2007 and was a finalist for the Lawdragon list of 500 Leading Lawyers in America in 2007 and 2008. I have been named to various Lawdragon leading lawyer lists each year since. I have also been named to the South Carolins SuperLawyers list of top attorneys in South Carolina since 2007. I have been listed in the National Trial Lawyers Top 100 trial lawyers in 2011 and 2012.

9. In November 2008, I was asked by James R. Gilreath to be co-counsel for Gerald R. Terry, Anne T. Robbins and Jane T. Evans in litigation arising from the bankruptcy of LandAmerica Section 1031 Exchange Services Co., Inc. (LES) and the failure of LES to complete several hundred IRS Section 1031 exchange transactions. Immediately upon notice of the bankruptcy, Mr. Gilreath and I began intensive investigation of the matter, including locating and interviewing potential witnesses; reviewing transactional documents; conducting research regarding LES and its parent company, LandAmerica Financial Group, Inc. (LFG); conducting extensive research concerning circumstances leading up to the LES/LFG bankruptcy during the preceding year; researching the legal issues impacting our clients; reviewing voluminous bankruptcy filings; and researching the various issues raised by those filings.

10. Mr. Gilreath and I began preparing pleadings, while simultaneously locating and

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employing local bankruptcy counsel to assist in protecting the interests of the plaintiffs in the bankruptcy proceeding.

11. We filed the initial pleadings as a putative class action and ultimately the case was removed to federal court. We joined forces with counsel for plaintiffs in a California putative class action and began working cooperatively pursuant to a joint prosecution agreement to further the best interests of the putative class of commingled exchange customers of LES.

12. Early on, Plaintiffs' counsel devised a strategy to seek MDL treatment for the class cases. Mr. Gilreath and I drafted and argued filings before the MDL Panel which established an MDL before this Court.

13. During the next three and one-half years, MDL counsel worked diligently on two fronts – in the bankruptcy court and before the MDL court – to further the interests of the MDL plaintiffs and putative class of commingled exchangers. In the Bankruptcy Court, MDL counsel filed an adversary action which allowed them to seek discovery pertinent to MDL issues, including issuing more than twenty third-party subpoenas. Document production derived from those subpoenas included a number of the insurance policies and coverage documents from some of the very insurance companies involved in the global settlements. MDL counsel filed motions and made a number of appearances in the bankruptcy proceedings in Richmond, VA. Their opposition to the channeling injunction provisions of the proposed joint plan of reorganization set the stage for a negotiated resolution that included voluntary production to MDL counsel of almost 100,000 documents, providing invaluable information concerning the actions of LES, LFG and their directors and officers in the months leading up to the bankruptcy.

14. MDL counsel were diligent in following developments in the bankruptcy

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proceedings and reviewed all pertinent filings, secured copies of all discovery taken in the bankruptcy court that could be made available to them, and reviewed and analyzed voluminous materials for evidence supporting the theories of recovery they were pursuing on behalf of the MDL plaintiffs and the putative class. These materials included numerous deposition taken in the various bankruptcy court adversary proceedings and included depositions given by the individual defendants herein.

15. Meanwhile, heavy motions practice in the MDL included researching and opposing the seven separate motions to dismiss of the individual directors and officers ("D&O Defendants"), and appearing at numerous status conferences and hearings in the MDL case.

16. In the wake of a dismissal order by the MDL court on SunTrust Bank's Motion to Dismiss, MDL counsel mined the voluminous document production and depositions they had obtained from various sources for any and all factual matter supporting the commingled exchangers' claims and produced a lengthy and detailed Second Amended Consolidated Complaint. Even after the action against the D&O defendants was stayed pursuant to the confirmed bankruptcy plan's channeling injunction provisions, MDL counsel continued to expend time and resources investigating additional facts that would support theories of recovery against the D&O defendants, researching alternative theories of recovery, keeping apprised of developments in the bankruptcy proceedings and in the litigation trustees' actions and claims, and following developments in similar 1031 class cases.

17. In April 2012, MDL counsel were approached concerning the possibility of global settlement. MDL counsel participated in weeks of complex negotiations which included almost daily conference calls; conducting research to support various positions (e.g. pre-judgment

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interest as an element of damage); performing calculations regarding remaining recoverable exchange funds/compensatory damages; negotiating the myriad terms necessary to accomplish a proposed global settlement; negotiating, editing and revising lengthy and comprehensive term sheets and settlement agreements; as well as drafting and editing numerous exhibits to proposed settlement documents. Because MDL counsel was required to sign off on the LFG Settlement Agreement in addition to a Global Term Sheet and the MDL Settlement Agreement, the drafting and revision process was extraordinarily time-consuming and had to be performed on an expedited basis to meet the tight deadlines that were an integral part of the proposed global settlement terms. Extensive time and effort was required to reach a consensus on innumerable issues (such as pre-payment and escrowing of settlement funds) from the dozens of attorneys and parties who were required to consent to the global settlement agreements.

18. After the Settlement Agreements were executed, MDL counsel has engaged in drafting and filing the detailed motions and exhibits necessary to obtain preliminary approval of the settlement and conditional certification of a class action, which filings also had to be prepared and finalized on an expedited basis to meet the time constraints for filing that constituted an essential condition precedent to the global settlement.

19. Class counsel has continued to expend many hours administering the class settlement – negotiating terms and cost quotes for claims administration and escrow of the settlement funds; drafting and revising the class notice and securing amendment orders; researching and finalizing the class list to ensure names, addresses and claims amounts are as accurate as is reasonably feasible. Future tasks will include providing information to class members on details of the class settlement; calculating pro-rata distributions; overseeing

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distribution of checks; reviewing government and/or tax filings; and the myriad other tasks involved in administering, implementing, and finalizing a class settlement.

20. I have been the primary attorney with my firm working on this case. As shown by Appendix A hereto, my law firm has accrued attorney hours through August 8, 2012 totaling 2120.29, based on contemporaneously maintained time records. These hours do not include time spent solely pursuing SunTrust Bank as a defendant. For example, no time or costs attributable to the Fourth Circuit appeal of the dismissal of SunTrust Bank is included in the time and costs total submitted by my firm or any of the Class Counsel firms in support of the within Motion for Award of Fees and Reimbursement of Costs, even though a favorable resolution of that appeal would have greatly enhanced the claims against the D&O Defendants.

21. Mr. Whetstone was born in Columbia, South Carolina and attended Clemson University, where he was a member of the Tiger Brotherhood and Phi Kappa Phi. He graduated with a B.A. Degree in 1972 and earned his J.D. degree from the University of South Carolina School of Law in 1975. Mr. Whetstone left a busy civil practice in 1991 to become a Circuit Court Judge on the state court bench. He left the bench in 1998 to join former Fifth Circuit Solicitor James Anders in private practice. Mr. Whetstone is a founding partner of Whetstone Myers Perkins & Fulda, LLC. He is a member of the American Board of Trial Advocates (ABOTA) and is AV-rated by Martindale-Hubbell. Mr. Whetstone has achieved leading lawyer status on various SuperLawyers and Lawdragon top lawyer lists since 2007. He has extensive experience in complex and class litigation, having participated in many of the cases listed in paragraphs 5 above and others, including a consumer class, *Williams v. Ford Motor Company, Inc.*, C.A. No. 02-CP-25-252, that was pending in Hampton County, South Carolina.

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22. Thad L. Myers was born in Florence, South Carolina and attended the University of South Carolina, where he earned a B.A. degree in 1977, a masters degree in 1986, and a J.D. degree in 1988. He also received a B.S. degree in biology from Francis Marion University in 1983. He began his legal career as a staff attorney with the South Carolina Supreme Court. He then practiced as an Assistant Solicitor for the Eleventh Judicial Circuit for several years prior to joining the practice of former Fifth Circuit Solicitor James Anders. Col. Myers has served as Staff Judge Advocate for Air, Joint Forces Headquarters, South Carolina Air National Guard since 2008. As a legal officer for the SCANG, Col. Myers is responsible for providing legal guidance and opinions to senior commanders on matters related to SCANG strategic and operational initiatives. Col. Myers is a founding partner of Whetstone Myers Perkins & Fulda, LLC and is AV-rated by Martindale-Hubbell. He has extensive experience in complex cases and class litigation, having participated in many of the cases listed in paragraph 5 above and others, including a pharmaceutical class action against Purdue Pharma.

23. My firm's current hourly rate for the senior partners for complex business litigation is $650 per hour, although most of our work is done on a contingency basis. Our firm has pursued several legal matters in the past two years, including complex estate work, based on the billing rate of $650 per hour for partners. Paralegals/senior litigation staff hours are billed at $ 200.00 per hour.

24. I have personally reviewed all of the time entries made by the persons listed in my firm on Appendix A for their work in this case and I have removed any duplicative or unnecessary entries as well as entries solely related to pursuit of claims against defendant SunTrust Bank. In my opinion, the attorney hours and staff hours listed are reasonable and

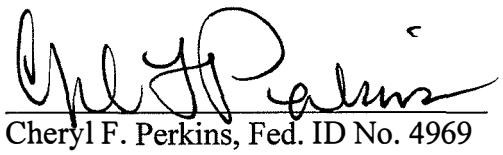
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appropriate for lodestar calculation. The time entries are voluminous and contain work product details. The time detail is available to be submitted to the Court *in camera* for a retailed review upon request.

25. I have reviewed all of the unreimbursed expenses of my firm outlined on the attached Appendix B. The expenses incurred pertaining to the case are reflected in the books and records of the firm. These books and records are prepared from expense vouchers and check records prepared in the normal course of business and are an accurate record of the expenses incurred. All of the expenses incurred by my firm were necessary expenses of conducting this litigation and are reasonable in amount. Expenses for pursuit of the claims solely related to SunTrust Bank are not included in the totals listed on Appendix B. The expense detail is available to be submitted to the Court for review upon request.

26. I have also reviewed the time and expense detail of all of my Class Co-Counsel, as well as the Declarations submitted by each, which include their statements relative to this litigation and the details of their time and expense. Based on my experience with this case, the time and expenses of each of these firms is reasonable in light of the complexity and length of the litigation.

I declare under penalty of perjury under the laws of the United States of America and the State of South Carolina that the foregoing in true and correct.



Cheryl F. Perkins, Fed. ID No. 4969

Columbia, South Carolina
August 10, 2012

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APPENDIX A – SUMMARY TIME RECORD
WHETSTONE MYERS PERKINS & FULDA, LLC

Timekeeper	Position	Hours
Cheryl F. Perkins, Charles W. Whetstone, Thad L. Myers, John Eric Fulda	Senior Partners	2120.29
Susan Keefe	Litigation Paralegal	242.50

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APPENDIX B
COST SUMMARY – WHETSTONE MYERS PERKINS & FULDA

Filing Fees	$ 50.00
Travel	3,641.41
Expert fees	6,500.00
Service of Process	618.28
Federal Express/Postage	447.74
Photocopies/Duplication/ Binding	1,508.44
Research/Lexis/Pacer	6,219.87
Transcripts	22.50
E-Discovery/OCR/Electronic Processing	3,940.92
Telephone/Conference Calls	360.55
Total WMPF Costs	**$23,309.71**

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

IN RE: LANDAMERICA 1031 EXCHANGE SERVICES, INC. INTERNAL REVENUE SERVICE § 1031 TAX DEFERRED EXCHANGE LITIGATION	**Case No. MDL No. 2054**
Angela M. Arthur, as Trustee of the Arthur Declaration of Trust, dated December 29, 1988; Vivian R. Hays, an individual; Leapin Eagle, LLC, a limited liability company; Denise J. Wilson, an individual; Gerald R. Terry, an individual, Ann T. Robbins, an individual; and Jane T. Evans, an individual; on their own behalf and on behalf of a class of others similarly situated,	**Southern District of California C.A. No. 3:09-cv-00054**
	District of South Carolina C.A. No.: 8:09-cv-00415 C.A. No.: 8:09-cv-01739
Plaintiffs,	
v.	
Theodore L. Chandler, Jr.; G. William Evans; Stephen Connor; Ronald B. Ramos; Devon M. Jones; and Brenton J. Allen,	
Defendants.	

ORDER AWARDING ATTORNEY FEES AND APPROVING LITIGATION COSTS

This matter comes before the Court on the Plaintiffs' Unopposed Motion for Award of Class Counsel Attorneys' Fees and Reimbursement of Costs filed on August 10, 2012. This Motion is made in conjunction with the Motion for Final Approval of the Class Action Settlement of this action against Theodore L. Chandler, Jr., G. William Evans, Stephen Connor, Ronald B. Ramos, Devon M. Jones, and Brenton J. Allen, former officers and directors of

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LandAmerica §1031 Exchange Services, Inc. ("LES") and/or LandAmerica Financial Group, Inc. (LFG) (collectively referred to hereafter as the "D&O Defendants").

Pursuant to the Court's Preliminary Approval Order and the Notice provided to the Class, the Court conducted a hearing on these issues, under Fed. R. Civ. P. 23(e), on November 7, 2012. The Court has reviewed the materials submitted by the parties and has heard the arguments presented at the hearing. For the reasons cited herein, the Court finds and concludes as follows:

As a preliminary matter, the Court has jurisdiction over the subject matter of this action, the parties, and the Class. Notice of the requested award of attorneys' fees and reimbursement of costs was directed to Class Members in a reasonable manner by First Class Mail to their most recent known addresses and complies with Fed. R. Civ. P. 23(h)(1).

Class Members have been given the opportunity to object to the requested award of attorneys' fees and costs in compliance with Fed. R. Civ. P. 23(h)(2). None of the Class Members objected to the requested award.

I. Attorney Fees.

An award of reasonable attorneys' fees is within the discretion of the Court. *Alexander S. v. Boyd*, 113 F.3d 1373, 1390 (4th Cir. 1997); *Colonial Williamsburg Found. v. Kittinger Co.*, 38 F.3d 133, 138 (4th Cir. 1994); *see also Mercer v. Duke Univ.*, 401 F.3d 199, 212 (4th Cir. 2005); *Plyler v. Evatt*, 902 F.2d 273, 277-78 (4th Cir. 1990) (noting "review of the district court's award is sharply circumscribed; we have recognized that because a district court has close and intimate knowledge of the efforts expended and the value of the services rendered, [the fee award] must not be overturned unless it is clearly wrong.") (internal quote marks omitted).

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A. Percentage Of The Fund.

For well over a century, the United States Supreme Court has recognized the "common fund" exception to the general rule that a litigant bears his or her own attorney's fees. *Trs. v. Greenough*, 105 U.S. 527 (1882). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), "that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." In *Blum v. Stevenson*, the Supreme Court expressed its preference for determining reasonable fees as a percentage of the fund under the common fund doctrine. 465 U.S. 886, 900, n. 16 (1984).

Within this Circuit, the percentage of the fund approach is not only permitted, but is the preferred approach to determining attorneys' fees. *See Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D.Md. 1998) (noting endorsement of percentage-of-recovery method by several courts in the Fourth Circuit); *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 786-87 (E.D.Va. 2001); *Strang v. JHM Mortgage Sec. Ltd. Partnership*, 890 F. Supp. 499, 503 (E.D.Va. 1995) ("the percentage method is more efficient and less burdensome that the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases"); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 760 (S.D.W.Va. 2009).

The common fund method is particularly appropriate where, as here, the settlement confers a substantial benefit on members of a class. *Boeing Co.*, 444 U.S. at 479. *See also Teague v. Bakker*, 213 F. Supp. 2d 571, 584 (W.D.N.C. 2002) ("an award of attorneys' fees from a common fund depends on whether the attorneys' specific services benefitted the fund – whether they tended to create, increase, protect or preserve the fund"). It is also viewed as the

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preferable method in cases such as this one, where the Plaintiffs agreed to pay counsel on a contingency fee basis. Class Counsel were not hired on an hourly basis, nor have any of their fees or expenses been paid as would have been required in representation on an hourly basis. Accordingly, this Court will determine the reasonableness of the requested fee using a percentage of the fund approach.

B. *Barber* Factors.

Plaintiffs and Class Counsel have requested attorneys' fees of $989,973.07, which is 25% of the settlement funds recovered for the class.[1] Plaintiffs' request is in compliance with Local Rule 54.02(A) which requires that petitions for attorney's fees comply with the requirements of *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978).[2] To determine the reasonableness of the fee award sought by Class Counsel in this action, this Court has considered each of the *Barber* factors:

(1) time and labor expended;
(2) novelty and difficulty of the questions raised;
(3) skill required to properly perform the legal services rendered;
(4) attorney's opportunity costs in pressing the litigation;
(5) customary fee for like work;
(6) attorney's expectations at the outset of litigation;
(7) time limitations imposed by the client or circumstances;
(8) amount in controversy and results obtained;
(9) experience, reputation and ability of the attorney;
(10) undesirability of the case within the legal community in which the suit arose;

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[1] The parties agreed that should the settlement go forward with opt outs, the Settlement Fund would be reduced *pro rata* by the share of the fund attributable to the opt outs per ¶7.21.5 of the Class Action Settlement Agreement. There are three class members who did not retract their Requests for Exclusion and whose gross *pro rata* shares of the Settlement Fund total $40,107.73. Accordingly, the original $4 million settlement was reduced to $3,959,892.27.

[2] The factors are derived from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), which was adopted by the Fourth Circuit in *Barber,* 577 F.2d at 226.

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(11) nature and length of the professional relationship between the attorney and client; and

(12) attorneys' fee awards in similar cases.

Id. at 226, fn. 28.

1. Time and Labor Expended.

In the more than three and one-half years this litigation has been pursued, Class Counsel have invested significant amounts of time and effort in litigating the claims against the D&O Defendants. Class Counsel have accrued approximately 4400 attorney hours and have also expended $60,882.57 in out-of-pocket expenses in pursuit of these claims. Furthermore, significant additional hours of professional time will be required to see this case through to a full and final conclusion. The hours and expenses incurred in the pursuit of these claims over several years demonstrate the scope of Class Counsel's contributions to the favorable resolution of this risky and vigorously defended litigation.

The class actions now consolidated in this MDL were filed in early 2009 after Class Counsel conducted intensive investigation of the matter. Class Counsel prepared and filed pleadings on behalf of Plaintiffs and the putative class, while simultaneously appearing in and monitoring the LES/LFG bankruptcy proceeding. Plaintiffs' counsel in the South Carolina and California class actions worked cooperatively to seek MDL treatment for the class cases, arguing their motion before the Panel on Multi-District Litigation to establish the MDL before this Court.

Over the course of the litigation, counsel for the class worked diligently on two fronts – in the Bankruptcy Court of the Eastern District of Virginia and this Court – to further the interests of the MDL Plaintiffs and class members. They filed adversary proceedings in the Bankruptcy

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Court, allowing them to obtain voluminous discovery pertinent to MDL issues. Meanwhile, heavy motions practice in this Court required extensive research and briefing, as well as numerous appearances for status conferences and hearings. Ultimately, Class Counsel participated in weeks of negotiations culminating in the proposed class action settlement now before the Court for final approval.

The Court finds that the journey that brought the Plaintiffs and the D&O Defendants to the point of compromise was arduous and that extensive labor and effort was expended by Class Counsel. The settlement reflects a favorable result attributable to their diligence, determination, hard work, and skill.

2. Novelty and difficulty of the questions involved.

This litigation involved complex issues in an undeveloped area of the law requiring Class Counsel to dissect IRC §1031 and the regulations thereunder. Because many of the critical issues in the litigation were not specifically addressed by precedent, extensive legal research was required to unearth cases with arguably analogous facts to bolster Plaintiffs' arguments. The complexity and unique nature of the issues herein required Class Counsel keep abreast of other exchange facilitator/Ponzi scheme cases being litigated around the country in order to evaluate rulings for authority supporting the class claims.

3. The skill required to perform the legal services properly.

A class action involving complicated and technical property and transactional issues in a developing area of the law requires skilled counsel to represent the class. Class Counsel pursued this litigation with diligence and tenacity, drawing upon decades of prior experience in complex cases. Mr. Gilreath and Ms. Perkins called upon extensive and diverse experience in business,

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securities, and tax class cases, as well as other representative actions. Mr. Foley and Mr. Brace brought to the table a wealth of experience from other exchange facilitator class litigation.

The skill required of Class Counsel may also be reflected in the quality of opposing counsel. *See, e.g., Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D.Fla. 1991); *In re King Resources Co. Sec. Litigation*, 420 F.Supp. 610 (D.Colo. 1976) (considering the reputations of defense counsel in determining fee as their stature reflects the challenges faced by the plaintiffs' attorneys). Here the D&O Defendants and their carriers were represented by a team of experienced, capable, and relentless counsel from highly reputable law firms, who zealously defended the matter.

Class Counsel's achievement in obtaining a substantial settlement in this action defended by renowned counsel is a testament to the quality of Class Counsel's representation.

4. The attorneys' opportunity costs in pressing the litigation.

Before this case is finally concluded, the prosecuting law firms will have incurred more than 4500 hours of attorney time over a period of four (4) years and will have spent substantial monies to finance the case, funds that could not be invested in other cases. The firms primarily accruing the hours – Whetstone Myers Perkins & Fulda, LLC and The Gilreath Law Firm, P.A. are not large firms with dozens of partners. The attorney time committed by these firms to representing the class is significant, given the total attorney time available for these firms to pursue cases that they had or could have had over this time period.

In complex, multi-year class actions, the risks inherent in the litigation are immense and the risk of receiving little or no recovery is a major factor in awarding attorney fees. *Phillips v. Crown Cent. Petroleum Corp.*, 426 F.Supp. 1156, 1170 (D.Md. 1977). The risk of no recovery

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in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and costs advanced, but lost the case despite their advocacy. *See, e.g., Glover v. Std. Fed. Bank*, 283 F.3d 953 (8th Cir. 2002) (reversing class certification).

5. Customary fees.

When attorneys accept a case on a contingency basis, it is customary to charge one-third or more of any amount recovered for the client and this market rate is highly relevant. A 25% award from the common fund is this case is consistent with, if not below, what is routinely privately negotiated in contingency fee litigation. In non-class contingency fee litigation, a 20% to 40% contingency fee is typical. "[A] one-third fee is a common benchmark in private contingency fee cases." *See Allapattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1212 (S.D.Fla. 2006) (citations to studies and reports omitted).

Courts often award fees in class actions that are in the range of 30% or more. Percentage awards are typically set at between 25-30% of the common fund. *Manual For Complex Litigation* (Fourth) §14.121 (2004). Recently, the Honorable Liam O'Grady surveyed common fund fee awards in the Fourth Circuit and elsewhere and found percentage awards that ranged from 18% to 30%, inclusive of mega-fund recoveries that reached into the nine figure range. *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D.Va. 2009).

Class Counsel's request for a 25% fee falls at the low end of the average range of fees awarded in common fund class actions, excepting mega-fund cases. *See, e.g., MRRM, P.A. v. W.R. Grace & Co.*, 404 F.3d 863 (4th Cir. 2005) (fee request of 28.75% of $70 million settlement awarded as class counsel fees); *Koenig . United States Bank N.A. (In re U.S. Bancorp Litig.)*, 291

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F.3d 1035 (8th Cir. 2002) (attorney fee of 36% affirmed); *Waters v. International Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (award of $13.3 million in attorneys' fees from $40 million settlement fund – 33-1/3% of total recovery); *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295 (1st Cir. 1995) (attorney fee award of approximately 31% of settlement affirmed); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D.La. 1997) (attorney fee of 36% of $127 million settlement); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 285-86 (D. Minn. 1997) (awarding one-third attorney fee from $86 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 146 F.Supp.2d 706, 735 (E.D.Pa. 2001) (citing affidavit of Professor John C. Coffee, Jr. of Columbia University Law School, in which 289 class action settlements are compiled ranging from under $1 million to $50 million; average attorneys' fees percentage is 31.71% and median is one-third); *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers (In re Harnischfeger Indus. Inc.)*, 212 F.R.D. 400 (E.D.Wis. 2002) (awarding fee of 30% of $10.15 million settlement).

6. The contingent nature of the matter/expectations at the outset of the litigation.

Class Counsel took this case on a contingency basis and understood from the outset that there would be no attorneys' fee without a recovery for the Plaintiffs or the Class. They have worked for years with no payment on this litigation, accruing more than 4400 attorney hours, and undertaking the risk of walking away with no payment at all. Moreover, Class Counsel could have lost their entire investment in out-of-pocket expenses, in the amount of $60,882.57. Such "burdens are relevant circumstances" that support the requested award. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993).

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Class Counsel expected that Defendants would present a vigorous defense and fully expected to litigate this case to final judgment on the merits, and possibly on appeal. Counsel were prepared to see this case through, even if it took many years, the expenditure of large outlays of cash, the consumption of great amounts of time, and potential additional litigation to collect on any award obtained. Class Counsel also expected to be compensated for their efforts (if successful) in the form of a reasonable percentage of the common fund obtained for the benefit of the Class.

7. The time limitations imposed by the client or circumstances.

This class action necessitated extensive efforts in research, briefing, document review, motions practice, and the recent protracted settlement negotiations. Often Class Counsel were called upon to address issues on short notice. Class Counsel's Declarations document that at various stages, the time demands of this case required Class Counsel to delay or forgo work on other cases. In this regard, "priority work that delays the lawyer's other work is entitled to some premium." *Johnson,* 488 F.2d at 718.

8. The amount in controversy and the results obtained.

The results achieved here are excellent. When this action began, exchange fund losses by LES Commingled Exchanger customers who comprise the class totaled more than $191 million. This damage number has continuously dropped with distributions made pursuant to the LFG/LES Chapter 11 Plan's waterfall provisions from cash on hand, funds generated by sales of auction rate securities, and settlements achieved by the bankruptcy Litigation Trustees. The Class Settlement allows for distributions to the class that will result in an overall recovery at or close to 100% of the remaining lost exchange funds.

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Despite many roadblocks, Class Counsel were able to negotiate $4 million dollars in gross recovery for the Class.[3] This result is a good result for the Class in light of the strengths and weaknesses of the remaining claims and the recoveries they have already received..

9. The experience, reputation and ability of counsel.

Class Counsel consist of firms with extensive expertise in complex litigation and with a history of success in difficult, high-stakes litigation. As reflected in the record, Class Counsel have extensive backgrounds in class actions and other complex litigation. Their reputations are impeccable.

10. The undesirability of the case.

The risks undertaken in mounting this litigation were considerable. This case was one of unusual complexity and the risk of non-recovery escalated tremendously when first the Bankruptcy Court and then this Court concluded that LES owed no fiduciary duties to its Exchanger customers. In addition, the likelihood of a large verdict diminished as the LES Commingled Exchangers recouped greater and greater percentages of their lost exchange funds through the Bankruptcy Court.

11. Nature and length of the professional relationship between attorney and the client.

Plaintiffs quickly retained Class Counsel law firms in the wake of the LES bankruptcy as their exchange transactions failed and their exchange funds remained inaccessible. The named Plaintiffs and many of the individual class members have worked cooperatively with Class

[3] This amount is reduced by approximately $40,000, which is the *pro rata* share attributable to the three class members who timely requested exclusion from the class and did not retract their requests.

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Counsel assisting in the pursuit of the litigation.

12. Attorneys' fees awarded in similar cases.

Class Counsel have requested a fee of 25% of the total recovery which amounts to $989,973.07. Based on fee awards in other cases cited in this order, the fee request is comparable, given the complexity of the litigation, the duration, and the risks undertaken.

The Court concludes that the *Barber* factors support the reasonableness of the requested attorneys' fee award, with a number of the factors strongly supporting the requested award.

C. Lodestar Cross-check.

A Court may choose to "cross-check" the results of a percentage-fee award against the attorneys' "lodestar." *See, e.g., Kay Co. v. Equitable Prod. Co.*, 2010 U.S. Dist. LEXIS 118256, at *14 (S.D.W.Va. Nov. 5, 2010) ("I will also apply the lodestar cross-check as an element of objectivity in my analysis."). The "lodestar" is derived by multiplying the attorney and professional hours devoted to a case by the timekeepers' individual billing rates. A risk multiplier is then applied. The lower the multiplier, the more reasonable the fees sought, i.e., a multiplier of 2 is preferable to a multiplier of 4, and so forth.

Applying the lodestar method as a cross-check, the record shows that Class Counsel have devoted more than 4400 hours of attorney time and more than 386 hours of paralegal time in pursuit of this litigation. Class Counsel firms have submitted Declarations documenting billing rates actually charged and paid in similar complex transactional matters. On a straight time basis, Class Counsel assert that their time expended has a market value of $2,699,164.50 based on these hourly rates. Such hourly rates are appropriate for the type and caliber of representation provided in this case, and are supported as being in the range of rates actually charged by and

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paid to the law firms. The "actual rate that counsel can command on the market is itself highly relevant proof of the prevailing community rate." *Bebchick v. Washington Metropolitan Area Transit Com.*, 805 F.2d 396, 404 (D.D.C. 1986).

Based on this lodestar amount, the 25% fee award requested here – $989,973.07 – not only requires no risk multiplier, but is less than 37% of the actual base lodestar amount. What this clearly illustrates is that the fees requested by Class Counsel for their work on this case are substantially less than the market value of the work performed, despite the tremendous risks undertaken.

In summary, the Court finds that Class Counsel's request for fees is unopposed by Defendants, not subject to any objection by any Class Member, is strongly supported by the *Barber* factors, is overwhelmingly supported by the lodestar cross-check, and is comparable to fee awards in other class cases given the complexity of the litigation, the duration, and the risks undertaken. Accordingly, this Court finds and concludes that Class Counsel's request for fees of $989,973.07 (25% of the settlement fund) is fair and reasonable. This Court awards the fee in the aggregate based on the representation of Class Counsel that the Class Counsel firms have entered into an agreement apportioning the fee award among themselves. *See, e.g., In re "Agent Orange" Liability Litigation*, 818 F.2d 216 (2d Cir. 1987) ("There is authority for a court, under certain circumstances, to award a lump sum fee to class counsel. . . and then to permit counsel to divide this lodestar based fee among themselves under the terms of a private fee sharing agreement.")

II. Litigation Costs and Expenses.

Reimbursement of reasonable costs and expenses to counsel who create a common fund

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is both necessary and routine. *In re Synth\roid Mktg. Litig., ("Synthroid I")*, 264 F.3d 712, 722 (7th Cir. 2001); *Strang,* 890 F. Supp at 503. Class Counsel have advanced or incurred to date $60,882.57 in expenses. Because these expenses were advanced with no guarantee of recovery, Class Counsel had a strong incentive to keep them to a reasonable level. Class Counsel have provided the Court with a summary of the expenses advanced.

The Court finds that the $60,882.57 in litigation costs and expenses incurred by Class Counsel have been adequately documented and appear reasonable and necessary and incurred for the benefit of the class. No class member has filed an objection to the amount or categories of costs documented. The Court finds that reimbursement of this amount is reasonable and justified.

Based on the foregoing findings of facts and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Class Counsel are hereby awarded attorneys' fees in the amount of $989,973.07, to be allocated between and among them in accordance with their agreement, as set forth in above, and are awarded reimbursement of costs and expenses of litigation in the amount of $60,882.57. By agreement of counsel, the Class Counsel firms will divide the fee and cost award as follows: Whetstone Myers Perkins & Fulda, LLC: $499,357.44; The Gilreath Law Firm, P.A.: $433,462.65; Foley, Bezek, Behle & Curtis, LLP: $118,035.55.

IT IS SO ORDERED.

Joseph F. Anderson, Jr.

November 7, 2012
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

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EXHIBIT E

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

KENNETH WALTON GEORGE, *et al.*,	**Case No.: 8:06-CV-00373-JMC**
Plaintiffs,	
vs.	
DUKE ENERGY RETIREMENT CASH BALANCE PLAN, *et al.*,	
Defendants.	

ORDER AWARDING ATTORNEY FEES AND APPROVING LITIGATION COSTS AND NAMED PLAINTIFF INCENTIVE AWARDS

This matter comes before the Court on the Plaintiffs' Unopposed Motion for Approval of Class Counsel Attorney Fees, Costs and Incentive Awards for Named Plaintiffs filed on February 19, 2011 (Dkt. #374). Pursuant to the Court's Preliminary Approval Order and the Notice provided to the Class, the Court conducted a hearing on these issues, under Fed. R. Civ. P. 23(e), on May 16, 2011. The Court has reviewed the materials submitted by the parties and has heard arguments presented at the hearing. For the reasons cited herein, the Court does find and conclude, as follows:

1. As a preliminary matter, this Court has jurisdiction over the subject matter of this action, the Parties, and the Class.

2. Notice of the requested award of attorneys' fees, costs and expense reimbursement, and proposed Named Plaintiff incentive awards was directed to Class members in a reasonable manner through first-class mailing to their most recent known addresses and/or by other means, including newspaper publication and the promulgation of a class notice website, and complies with

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Fed. R. Civ. P. 23(h)(1).

3. Class members have been given the opportunity to object in compliance with Fed. R. Civ. P. 23(h)(2). Of a class numbering more than 20,000 class members, only two objections were filed with the Court. Neither opposed the attorney fees, litigation costs and expenses, nor the proposed Named Plaintiff incentive awards in the amounts requested.

I. Attorney Fees.

4. An award of reasonable attorney fees is within the discretion of this Court. *Alexander S. v. Boyd*, 113 F.3d 1373, 1390 (4th Cir. 1997); *Colonial Williamsburg Found. v. Kittinger Co.*, 38 F.3d 133, 138 (4th Cir. 1994)); *see also Mercer v. Duke Univ.*, 401 F.3d 199, 212 (4th Cir. 2005); *Plyler v. Evatt*, 902 F.2d 273, 277-78 (4th Cir. 1990) (noting "review of the district court's award is sharply circumscribed; we have recognized that because a district court has close and intimate knowledge of the efforts expended and the value of the services rendered, [the fee award] must not be overturned unless it is clearly wrong.") (internal quote marks omitted).

A. Percentage Of The Fund.

5. For well over a century, the United States Supreme Court has recognized the "common fund" exception to the general rule that a litigant bears his or her own attorney's fees. *Trustees v. Greenough*, 105 U.S. 527 (1882). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), "that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." In *Blum v. Stevenson*, the Supreme Court expressed its preference for determining reasonable fees as a percentage of the fund under the common fund doctrine. 465 U.S. 886, 900, n. 16 (1984). *See, also*, Manual for Complex Litigation

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§ 14.121 (4th ed. 2004) ("the vast majority of courts of appeals … permit or direct district courts to use the percentage-fee method in common-fund case.").

6. Within this Circuit, the percentage-of-recovery approach is not only permitted, but is the preferred approach to determining attorneys' fees. *See Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D. Md. 1998) (noting endorsement of percentage-of-recovery method by several courts in the Fourth Circuit); *Muhammad v. N'tl City Mortg., Inc.*, 2008 WL 5377783, at *6 (S.D.W.Va. Dec. 19, 2008) ("Awarding attorneys' fees as a percentage of the benefit to the class is the preferable and prevailing method of determining fee awards in class actions that establish common-funds for the benefit of the class."); *Smith v. Krispy Kreme Doughnut Corp.,* 2007 WL 119157, *1 (W.D.N.C. Jan. 10, 2007) ("[T]he Court finds that in a common fund case such as this, a reasonable fee is normally a percentage of the Class recovery); *DeLoach v. Philip Morris Cos.*, 2003 WL 23094907 (M.D.N.C. Dec. 19, 2003); *In re Microstrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 786-87 (E.D. Va. 2001); *Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("the percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases"); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 760 (S.D.W.Va. 2009).

7. Courts routinely grant attorneys' fees as a percentage-of-recovery where the common fund arose from claims pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1101, *et seq.* ("ERISA"). *See, e.g., Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1047 (9th Cir. 2002); *Staton v. Boeing Corp.*, 327 F.3d 938 (9th Cir. 2003); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 469 (S.D.N.Y. 2004) (noting that "[c]ommon fund awards are appropriate in 401(k) and other ERISA class litigation to the same extent as in any other type of

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litigation"); *In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 886 F. Supp. 445, 456 (E.D. Pa. 1995) (noting "[a]n award of fees from [a common] fund would also further 'the policy, underlying [ERISA], of providing both prospective plaintiffs and their attorneys an economic incentive to bring meritorious ERISA cases'") (*quoting Bowen v. Southtrust Bank of Alabama*, 760 F. Supp. 889, 894 (M.D. Ala. 1991)); *Kolar v. Rite Aid Corp.*, 2003 WL 1257272 (E.D. Pa. Mar. 11, 2003); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455 (E.D. Pa. 2008).[1]

8. This ERISA case was settled by creation of a $30 million Settlement Fund that the Settlement Agreement requires be an "all-in" fund. As described in the Settlement Agreement and verified on the record by defense counsel at the preliminary approval hearing, Defendants insisted on the economic certainty of a settlement that rolled all their future potential liabilities to the classes into one lump sum.

9. The percentage-of-recovery method is particularly appropriate where, as here, the settlement confers a substantial benefit on members of a class. *Boeing Co.*, 444 U.S. at 479. *See also Teague v. Bakker*, 213 F. Supp. 2d 571, 584 (W.D.N.C. 2002) ("an award of attorneys' fees from a common fund depends on whether the attorneys' specific services benefitted the fund – whether they tended to create, increase, protect or preserve the fund"). Accordingly, this Court will review Class Counsel's request for attorneys' fees using a percentage of the recovery approach.

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[1] The parties to a claim under fee-shifting statutes may negotiate a settlement according to which the defendant makes a lump-sum payment embracing both monetary relief and attorneys' fee liability. *See Evans v. Jeff D.*, 475 U.S. 717, 733 (1986), *quoting Marek v. Chesny*, 473 U.S. 1, 6-7 (1985) (enabling defendants to pre-determine total liability encourages settlement). Then the settlement has the effect of converting the case into one in which plaintiffs' attorneys must seek compensation from the common fund created by the agreement. *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295 (2nd Cir. 1990); *Skelton v. General Motors Corp.*, 860 F.2d 250 (7th Cir. 1988).

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B. *Barber* Factors.

10. Plaintiffs and Class Counsel have requested attorneys' fees of $9,000,000 (equal to 30% of the cash recovered for the class). Plaintiffs' request is in compliance with Local Rule 54.02(A) which requires that petitions for attorney's fees comply with the requirements of *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978).[2] To determine the reasonableness of the fee award sought by Class Counsel in this action, this Court has considered each of the *Barber* factors, which include:

(1) time and labor expended;

(2) novelty and difficulty of the questions raised;

(3) skill required to properly perform the legal services;

(4) attorney's opportunity costs in pressing the litigation;

(5) customary fee for like work;

(6) attorney's expectation at the outset of litigation;

(7) time limitations imposed by the client or circumstances;

(8) amount in controversy and results obtained;

(9) experience, reputation and ability of the attorney;

(10) undesirability of the case within the legal community in which the suit arose;

(11) nature and length of the professional relationship between the attorney and client; and

(12) fee awards in similar cases.

In re Microstrategy, Inc. Sec. Litig., 172 F. Supp. 2d 778, 786 (E.D. Va. 2001) (citing *Barber*,

[2] The factors are derived from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), which was adopted by the Fourth Circuit in *Barber,* 577 F.2d at 226.

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577 F.2d at 226, with only minor variations). The Court makes the following findings of fact pursuant to the *Barber* factors and Fed. R. Civ. P. 54(h)(3).

1. Time and Labor Expended.

11. This class action involves complex ERISA claims related to the Duke Energy Retirement Cash Balance Plan ("the Plan"). After years of what was clearly hard-fought litigation, an agreement was reached that creates a substantial settlement of $30 million in favor of the two certified classes.

12. In the more than five (5) years this litigation has been actively pursued, Class Counsel have documented a very significant investment of time and effort in litigating this case. Class Counsel have accrued more than 14,000 attorney hours and more than 2500 hours of paralegal/skilled staff time and incurred a total of $447,033.28 in out-of-pocket expenses.

13. The settlement occurred at a third mediation, aided by an able mediator, after the classes had been certified, discovery completed, and cross-motions for summary judgment fully briefed.

14. Class Counsel's combined efforts have been significant. The hours and expenses incurred in the pursuit of the claims over these many years demonstrate the scope of Class Counsel's contributions to this resolution.

15. This action was filed in 2006 after the law firm of Wallace & Graham, P.A. had spent years working with hundreds of current and former Duke Energy employees, reviewing documents, conducting research, pursuing EEOC proceedings, securing a right-to-sue letter, and exhausting administrative remedies. The administrative records relevant to the named plaintiffs total close to 1000 pages.

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16. After the case was filed Defendants immediately moved to transfer venue to Charlotte, North Carolina, Duke's principal place of business. Briefing and argument resulted in denial of the motion and the action remained in the District of South Carolina.

17. Class counsel then engaged in intensive discovery. The record establishes that the litigation ultimately involved exhaustive document production of more than 750,000 pages, which were received, processed electronically, reviewed, and analyzed by Class Counsel. The documents involved not only production from Defendants, but from third party sources pursuant to subpoenas initiated by Class Counsel. In responding to discovery, Class Counsel gathered more than 20,000 pages of documents from Plaintiffs, processed them all, conducted privilege reviews, compiled a privilege log, and produced them. Class Counsel also prepared for, took and defended twenty-two lengthy depositions and defended two depositions for each Class Representative.

18. The record reflects extensive motions practice regarding discovery. A motion to compel regarding Duke's initial 7500-entry privilege log consisted of four thick volumes, with lengthy cross-referenced appendixes of contested privilege log entries. Plaintiffs briefed and prevailed on a privilege motion based on the fiduciary exception to privilege and had briefed the appeal from the Magistrate Judge's order at the time of settlement. Other motions included a motion to abrogate privilege and for *in camera* review of documents that had been withheld as privileged.

19. In 2009, discovery in the case was reopened by agreement, with regard to an Internal Revenue Proceeding involving Defendants and thousands of additional pages of documents were produced. Defendants' prior 30(b)(6) witness was re-deposed and a new 30(b)(6) witness deposed.

20. The litigation also involved heavy motions practice on the substantive issues. Early

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on, Defendants filed a Motion for Judgment on the Pleadings attacking each of Plaintiffs' six (6) claims. This motion encompassed voluminous briefing, as did early cross-motions for summary judgment on the age discrimination claims. After an amended complaint was filed, Defendants not only answered but moved to dismiss requiring additional substantial briefing. Final merits briefing was particularly extensive. Cross-motions for summary judgment were filed and the text of the briefs, responses and replies alone totaled more than 300 pages, not including voluminous exhibits. Class Counsel prepared detailed charts, spreadsheets and exhibits to help demonstrate the complex concepts at issue. These final motions and cross-motions for summary judgment were outstanding at the time of settlement.

21. Following two rounds of briefing on Class certification, two (2) classes were certified. Class Counsel Wallace & Graham P.A. was appointed Notice Administrator and the class notices were disseminated to more than 20,000 class members. While the Class Notices were out and during the opt-out period, Duke engaged in communications with employed class members seeking releases of the class action litigation in the context of a severance package. These communications resulted in briefings and a hearing pursuant to an emergency motion filed by Plaintiffs.

22. Class Counsel have documented substantial work with expert actuaries over the years of the litigation. More than half the litigation costs in the case that are submitted for the Court's approval are attributable to expert fees. Effectively litigating this complex ERISA case would have required that Class Counsel become thoroughly schooled in the pertinent actuarial concepts.

23. During the course of the case, there were a number of hearings – on the motion to transfer, motion for judgment on the pleadings, motion to dismiss, motions for class certification, motion regarding class communications, and the privilege motions. The record indicates that Class

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Counsel were thoroughly prepared for these hearings, using PowerPoint demonstrations, exhibit blowups, and time-lines to more effectively educate the Court.

24. Also, the record demonstrates that Class Counsel reviewed and responded to hundreds of pieces of correspondence and thousands of emails, and stayed in contact by telephone, discussing developments and strategy on almost a daily basis and frequently a number of times each day.

25. The case settled in September 2010, following a third, lengthy mediation in Charleston, South Carolina. Class Counsel had prepared for and attended two prior full-blown mediations in 2008, one in Wilmington, North Carolina, and the second in Charlotte, North Carolina.

26. This Court finds, based on the foregoing, that the journey that brought Plaintiffs and Defendants to the point of a compromise was arduous and that extraordinary labor and effort was expended by Class Counsel. The settlement reflected a favorable result attributable to their diligence, determination, hard work, and skill.

2. Novelty and difficulty of the questions involved.

27. Various Courts have recognized that "ERISA law is a highly complex and quickly-evolving area of the law." *Smith v. Krispy Kreme Doughnut Corp.*, *supra*, at *2; *see also, Curry v. Contract Fabricators Profit Sharing Plan*, 744 F. Supp. 1061, 1069 (M.D. Ala. 1988), *aff'd*, 891 F.2d 842 (11th Cir. 1990) (noting that "ERISA law is extremely complex and substantially still unsettled. It is almost essential that claimants have the assistance of attorneys willing to spend many hours researching their way through this legal forest."). Clearly, this litigation involved complex issues and, in some instances, issues of first impression. The Court's prior orders in this case reflect the complexity of the matter, as demonstrated in, for example, the Court's 66-page Order on

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Defendants' Motion for Judgment on the Pleadings (Dkt. #195).

28. The foundational issues regarding both whipsaw theories involved interpretations of a number of Revenue Rulings, analysis of the role of proposed, but not passed, Treasury Regulations, the finer points of 29 U.S.C. §417(e) and the relevance of numerous IRS documents. The whipsaw claim spread across two completely separate iterations of the Plan, further complicating the issues. The interest crediting rate claim was equally complex and implicated arcane rules of contract construction such as the "last antecedent" rule.

29. Issues regarding IRS proceedings involving Defendants arose late in the litigation, after all discovery had been completed and a class had been certified. The issues involved complex and novel questions as reflected in the parties' briefing on summary judgment.

30. The mid-case passage of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, 29 U.S.C. §1053(f) (2006), 26 U.S.C. §411(a)(13) (2006), having an effective date of August 17, 2006, further complicated the whipsaw issues by altering whipsaw requirements prospectively. In addition, a series of company mergers and plan mergers made the task of identifying class members impacted during the relevant period by the relevant plan extremely complicated.

3. The skill required to perform the legal services properly.

31. The Court recognizes that it takes skilled counsel to manage a 20,000 member class action, to analyze the complicated legal claims and defenses under ERISA, and to synthesize the technical actuarial and pension plan-related issues that were presented in this case. Few law firms have the experience and resources to pursue such litigation.

32. Class Counsel handled this litigation with diligence and tenacity. This Court can only conclude from their work product evidenced in the record that Class Counsel have demonstrated an

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exceptional level of skill. Without doubt Plaintiffs' theories of recovery were not at all obvious and would not have been apparent to less experienced counsel.

33. The skill required by Class Counsel was also reflected in the quality of opposing counsel. It has been observed that "[a]dditional skill is required when the opponent is a large, sophisticated corporation with sophisticated counsel." *Smith*, 2007 WL 119157 at *2. Obviously Duke Energy Corporation fits the bill as a large sophisticated company, and it was represented by knowledgeable, ERISA-specialized counsel with the nationally known firm of Sidley Austin, LLP. Also, the highly respected Ogletree Deakins firm assisted in representing Defendants. The zealous defense of this matter absolutely mandated diligent and competent representation of the Plaintiffs and the Class in order for any recovery to be realized. Class Counsel's achievement in obtaining a very substantial settlement in this action, defended by such renowned counsel, is a testimony to the quality of Class Counsel's representation.

4. The attorneys' opportunity costs in pressing the litigation.

34. The prosecuting law firms in this litigation have incurred more than 14,000 hours of attorney time over a period of more than five years and have spent substantial monies to finance the case, just short of $450,000, that could not be invested in other cases. The firms primarily accruing the hours in the case – Whetstone Myers Perkins & Fulda, LLP, The Gilreath Law Firm, P.A., and Wallace & Graham, P.A. – are not large firms with dozens of partners. The attorney time committed by these firms to representing these classes is not insignificant given the total attorney time available for these firms to pursue all cases that they had or could have had over this time period.

35. When plaintiffs' counsel accept a case on contingency basis, it is customary to charge

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one-third (33.3%) or more of any amount recovered for the client. In complex and multi-year class action litigation, the risks of the litigation are immense and the risk of receiving little or no recovery is a major factor in awarding attorney fees. *Phillips v. Crown Central Petroleum Corp.*, 426 F. Supp. 1156, 1170 (D. Md. 1977). The risk of no recovery in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs, yet have lost the case despite their advocacy. *See, e.g. Glover v. Standard Fed. Bank*, 283 F.3d 953 (8th Cir. 2002) (reversing class certification); *In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437-38 (8th Cir. 1999) (affirming dismissal of complaint without leave to replead).

5. Customary fees.

36. Courts frequently award fees to class counsel that are in the range of 30% or more.[3] Percentage awards of between 25-30% of the fund are typical. Manual For Complex Litigation (4th) §14.121. Recently, the Honorable Liam O'Grady surveyed common-fund fee awards in the Fourth Circuit and elsewhere and found percentage awards that ranged from 18% to 30%, inclusive of mega-fund recoveries that reached into the nine figure range. *In re: The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D. Va. 2009).

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[3] Many decisions from jurisdictions around the country award recoveries of one-third in class actions. Recent cases include *Friedman v. Quest Partners LP*, 2010 WL 4925133, *5-6 (W.D. Okla. Nov. 29, 2010) (one-third fee on a settlement of $9 million); *Will v. General Dynamics Corp.*, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010) (one-third fee of $5.05 million on a settlement of $15.15 million); *Hall v. AT&T Mobility LLC*, 2010 WL 4053547, *15-23 (D.N.J. Oct. 13, 2010) (one-third fee of $6 million on a settlement of $18 million); *Clark v. Ecolab, Inc.*, 2010 WL 1948198, *8-9 (S.D.N.Y. May 11, 2010) (one-third fee of $2 million on a settlement of $6 million); *In re Marsh ERISA Litigation*, 265 F.R.D. 128, 146-50 (S.D.N.Y. 2010) (one-third fee of $11.665 million on settlement of $35 million); and *In re Bridgeport Fire Litigation*, ___ A.3d ___, 2010 WL 4650980, *17-18 (Pa. Super. Nov. 18, 2010) (fee of $11.65 million on class settlement of $35 million).

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37. Class Counsel's request falls well within the range of previous awards in common benefit class actions.

6. The contingent nature of the matter/expectations at the outset of the litigation.

38. Class Counsel took this case on a contingency basis. They have worked for years with no payment, accruing more than 14,000 attorney hours, and undertaking the risk of walking away with no payment at all. Moreover, Class Counsel could have lost their entire investment in out-of-pocket expenses, an amount that is close to $450,000. Such "burdens are relevant circumstances" that support substantial attorneys fees. *Torrisi v. Tucson Elec. Power Co.*, 83 F.3d 1370, 1377 (9th Cir. 1993).

39. Class Counsel clearly were prepared to see this case through, even if it took years, the expenditure of large outlays of cash, and the consumption of great amounts of time, which ultimately was the case.

7. The time limitations imposed by the client or circumstances.

40. This complex class action necessitated extensive efforts in briefing, discovery, depositions, document review, motions practice and protracted settlement negotiations. Often Class Counsel were called upon to address issues on short notice. For example, the Court, following the December 19, 2007 hearing on Defendants' Motion for Judgment on the Pleadings and Plaintiffs' Motion to Amend, requested additional briefing to be filed by January 4, 2008. Class Counsel readily and fully complied, completing extensive additional research and briefing over this holiday period. In early January, 2010, when the issue of Defendants' communications with the class arose during the class opt-out period, it was at times necessary for Class Counsel to engage in time-

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intensive work on short notice. This is reflected in the compressed schedule of the relevant briefing, commencing with Plaintiffs' motion regarding the class communications filed January 29, 2010 (Dkt. #267), and ending with Plaintiffs' Reply brief filed February 8, 2010, only ten days later (Dkt. #278). Following a hearing on this motion on April 19, 2010, the Court again requested additional briefing. This Supplemental briefing was required on two days notice, to be filed by April 21, 2010. Again, Class Counsel stepped up to the plate to prepare a thorough and well-researched response to the Court's questions.

41. Class Counsel's Declarations document that at various stages, the time demands of this case required Class Counsel to delay or forgo work on other cases. In this regard, "priority work that delays the lawyer's other work is entitled to some premium." *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974).

8. The amount in controversy and the results obtained.

42. The Settlement Fund created allows for payment of 100% of the damages estimated for the interest rate class and under the reset whipsaw theory for the whipsaw class. This 100% allocation is achieved even after payment of all anticipated costs, litigation expenses, costs of settlement administration and the attorneys' fees sought herein. In addition, the size of the fund allows a "minimum pay" provision of $100 to ensure that costs of administration of the fund are not incurred frivolously to process *de minimis* payments. For those members of the whipsaw class who only had a "5.04(c)" claim, the highest risk claim, the settlement provides for meaningful payments as well. Class Counsel view this as an exceptional for the Class in light of the strengths and weaknesses of the claims. *See In re Enron Corp. Sec. Deriv. & "ERISA" Litig.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008) ("[t]he typical recovery in most class actions generally is three to six cents

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on the dollar.").

43. The Court recognizes that there were numerous obstacles in this case to a recovery for the classes. These hurdles included novel legal issues, this Court's eventual dismissal of the centerpiece age discrimination claim, and a change in the law in 2006 which legitimized, at least prospectively, certain of the complained-of cash balance plan practices herein. In addition, the U.S. Supreme Court struck a blow to Plaintiffs' arguments against application of a deferential standard of review to the Plan Administrator's interpretations in *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008). The *Glenn* opinion negated the Fourth Circuit's previously more favorable "modified abuse-of-discretion" standard enunciated in *Ellis v. Metropolitan Life Ins. Co.*, 126 F.3d 228, 233 (4th Cir. 1997). Despite these obstacles, Class Counsel were able to negotiate $30 million dollars in gross recovery for the class prior to a ruling from this Court with regard to the parties' cross-motions for summary judgment.

44. It is clear to this Court that Class Counsel undertook enormous obligations and responsibilities in this litigation and produced a significant result that easily supports the requested fee award.

9. The experience, reputation and ability of counsel.

45. Attorneys who intend to successfully prosecute class-wide statutorily-based claims for pension benefits – cash balance or otherwise – must not only have the litigation skills required for any complex class action, but must also have a good command of actuarial science and significant portions of ERISA, the Internal Revenue Code, regulations and regulatory guidance issued by the Department of the Treasury and the IRS, and their interrelationships. These skills and knowledge base are possessed by a very small number of plaintiffs' counsel. Even for such counsel,

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cash balance litigation is uniquely complicated. Judge Kravitz of the District of Connecticut recently summed up as part of his 122-page cash balance decision in *Amara v. Cigna Corp.*, 534 F. Supp. 2d 288 (D. Conn. 2008): "ERISA and the regulations under it, are often lamentably obscure – to describe them as a tangled web does not do them justice." *Id.* at 296.

46. Class Counsel in this case consist of firms with extensive expertise in complex litigation and with a history of success on difficult litigation. They are among a small group of law firms in the southeast with the resources, experience and willingness to handle this type of high-risk, grueling, long-term litigation. Their reputation in the community is impeccable.

10. The undesirability of the case.

47. The risks undertaken in mounting this litigation were considerable. While most ERISA class actions are difficult to prosecute, this case was one of unusual complexity and risk. The risk of non-recovery clearly escalated when the age discrimination claim was dismissed. Any law firm undertaking this litigation would have anticipated from the outset that Defendants would be well-financed, would obtain counsel well-versed in these matters and that a tremendous expenditure of time and costs would be required with recovery uncertain.

11. Nature and length of the professional relationship between attorney and the client.

48. The record indicates that Class Counsel, Wallace & Graham, P.A., serves a large number of individual clients who were or are Duke Energy employees with regard to asbestos and other occupational disease claims. Wallace & Graham reports a long relationship with this client base, which is inclusive of most of the named Plaintiffs in this action. There is no reason to suggest that the class representatives are dissatisfied with the representation they received here.

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12. Attorneys' fees awarded in similar cases.

49. Based upon fee awards in other class cases cited in this Order, the fee request of 30% of the total settlement fund is comparable, given the complexity of the litigation, the duration, and the risks undertaken. *See, e.g., In re ADC Telecomms., Inc. ERISA Litig.*, No. 03-2989 (D. Minn. Oct. 16, 2006) (awarding fee of 30% of $3.25 million settlement); *In re Westar Energy, Inc., ERISA Litig.*, No. 03-4032 (D. Kan. July 27, 2006) (awarding fee of 30% of $9.25 million settlement); *Furstenau v. AT&T Corp.*, No. 02-5409 (D.N.J. Oct. 14, 2005) (awarding fee of 29% of $29 million settlement); *In re Household Int'l, Inc. ERISA Litig.*, No. 02-7921 (N.D. Ill. Nov. 22, 2004) (awarding fee of 30% of $46.5 million settlement); *Blyler v. Agee*, No. 97-00332 (D. Idaho Aug. 25, 2004) (awarding fee of 30% of $21 million settlement); *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCooper, LLP*, 212 F.R.D. 400 (E.D. Wis. 2002) (awarding fee of 30% of $10.15 million settlement); *Clevenger v. Dillards, Inc.*, No. C-1-02-558, 2007 WL 764291 (S.D. Ohio Mar. 9, 2007) (ERISA case awarding 29% of $35 million common fund); *In re CMS Energy ERISA Litig.*, No. 02-72834, 2006 WL 2109499, *3 (E.D. Mich. June 27, 2006) (28.5% of $28 million fund, plus interest); *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-HCM), 2003 WL 21277124, *15 (N.D. Okla. May 28, 2003) (25% of $36 million common fund); *In re Aetna Sec. Litig.*, MDL 1219, 2001 WL 20928, at *14 (E.D. Pa. Jan. 4, 2001) (awarding $81 million in fees, 30% of settlement, in a three year old case); *Williams v. MGM-Pathe Comm. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (33.3% awarded); *In re AMERCO Sec. Litig.*, No. 04-2182-PHX-RJB (D. Ariz. Nov. 3, 2006) (30%); *See In re MRRM, P.A.*, 404 F.3d 863 (4th Cir. 2005) (28.75% of $70 million settlement awarded as class counsel fees); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 383 (D.D.C. 2002) (fee awards typically range from twenty to thirty percent); *In re U.S.*

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Bancorp. Litig., 291 F.3d 1035 (8th Cir. 2002) (attorney fee of 36% affirmed); *Waters International Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (award of $13.3 million in attorneys' fees from $40 million settlement fund – 33⅓ % of total recovery); *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295 (1st Cir. 1995) (fee award of approximately 31% of settlement affirmed); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (fee of 36% of $127 million settlement); *Vizcaino v. Microsoft*, 290 F.3d 1043, 1047 (9th Cir. 2002) (award of fees of 25% to 30% is generally appropriate); *In re Airline Ticket Commission Antitrust Litig.*, 953 F. Supp. 280, 285-86 (D. Minn. 1997) (awarding one-third attorney fee from $86 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (citing affidavit of Professor John C. Coffee, Jr. of Columbia University Law School, in which 289 class action settlements are compiled ranging from under $1 million to $50 million and concluding average attorneys' fees percentage is 31.71% and median is one-third); *Shaw v. Toshiba America, Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("based on the opinions of other courts and the available studies of class action attorneys' fees awards (such as the NERA Study), this Court concludes that attorneys' fees in the range of twenty-five percent (25%) to thirty-three and thirty-four one hundredths percent (33.34%) have been routinely awarded in class actions."); *In re Harnischfeger Indus., Inc., Sec. Litig.*, 212 F.R.D. 400 (E.D. Wis. 2002) (awarding fee of 30% of $10.150 million settlement); *Great Neck Capital Appreciation Inv. Pship, L.P. v. PricewaterhouseCooper, LLP*, 212 F.R.D. 400 (E.D. Wis. 2002) (awarding fee of 30% of $10.15 million settlement); *In re Nord Res. Corp. Sec. Litig.*, 1992 WL 1258516 (S.D. Ohio Dec. 9, 1994) (30% plus expenses); *In re Rio Hair Naturalizer Prods. Liab. Litig.*, 1996 WL 780512, *16 (E.D. Mich. Dec. 20, 1996) (noting that fee awards typically range from 20% to 50% of the fund); *Kogan*

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v. AIMCO Fox Chase, LP, 193 F.R.D. 496, 503-04 (E.D. Mich. 2000) (attorneys' fees of approximately 30% of the common fund); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913 (S.D. Ohio 2001) (noting "range of reasonableness" of between twenty to fifty percent of common fund).

50. Based on the foregoing, the Court concludes that each of the *Barber* factors support the reasonableness of the requested fee award, with a number of the factors strongly supporting the requested award.

C. Lodestar Cross-check.

51. A Court may choose to "cross-check" the results of a percentage-fee award against the attorneys' "lodestar." *See, e.g., The Kay Co., et al. v. Equitable Production Co.*, 2010 U.S.Dist. LEXIS 118256, at *14 (S.D.W. Va. Nov. 5, 2010) ("I will also apply the lodestar cross-check as an element of objectivity in my analysis."). The "lodestar" is derived by multiplying the attorney and professional hours devoted to a case by the timekeepers' individual billing rates. A risk multiplier is then applied. The lower the multiplier, the more reasonable the fees sought, i.e., a multiplier of 2 is preferable to a multiplier of 4, and so forth.

52. The record shows that Class Counsel have devoted more than 14,000 hours of attorney time and more than 2,500 hours of paralegal and IT staff time. Class Counsel have submitted detailed declarations summarizing their efforts and documenting their time expended, as well as a Declaration by Gary Mauney, whose expert testimony has been accepted by District Courts in the region on the matter of reasonableness of attorney fee awards. These declarations document prevailing rates charged for complex litigation and current rates actually charged by and paid to the firms in such matters. The "actual rate that counsel can command on the market is itself highly relevant proof of the prevailing community rate." *Bebchick v. Washington Metropolitan Area*

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Transit Com., 805 F.2d 396, 404 (D.D.C. 1986).

53. The Court finds the range of rates testified to by Mr. Mauney ($500/hr. – $650/hr.) to be reasonable based on the high level of specialization required in this case, the reputation and stature of Class Counsel, and the rates these firms are actually able to command on the market. The time accrued by Class Counsel has a market value approaching $8.5 million based on hourly rates at the top end of the range, indicating a lodestar multiplier of less than 1.1, which clearly supports the requested fee award. Applying the low end of the hourly rates, the lodestar applied to attorney hours of this magnitude still results in a multiplier of significantly less than 2. Such a low multiplier is lower than multipliers commonly approved and, thus, clearly well within the range commonly approved in class actions. *See, In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 262 (E.D. Va. 2009) (citing study reflecting that the average lodestar risk multiplier was 4.35); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (lodestar multiplier of six); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (finding fee award equivalent to 4.5 to 8.5 lodestar multiplier "unquestionably reasonable"); *In re Rite Aid Corp. Secs. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (lodestar multiplier on the fee ultimately awarded was 6.96); *In re RJR Nabisco*, 1992 WL 210138, *5-6 (S.D.N.Y. Aug. 24, 1992) (6 multiplier); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n.l (S.D.N.Y. 1991) (fee represented a multiplier of 8.74); *Boston & Maine Corn. v. Sheehan. Phinney, Bass & Green, P.A.*, 778 F.2d 890, 894 (1st Cir. 1985) (6 multiplier); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997) (multiplier of 5.5); *In re Charter Communications, Inc., Sec. Litig.*, 2005 WL 4045741, *18 (E.D. Mo. June 30, 2005) ("The requested fee of 20% of the $146,250,000 recovery equates to a multiplier of 5.61 based on the lodestar to date. This falls within the range of multipliers found reasonable for cross-check

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purposes by courts in other similar actions, and is fully justified here given the effort required, the hurdles faced and overcome, and the results achieved."); *In re Aremissoft Corp. Sec. Litig.*, 210 F.R.D. 109, 134-35 (D.N.J.2002) (awarding 28% of a $194 million settlement that resulted in a lodestar multiplier of 4.3); *In re Cendant Corp. Prides Litig.*, 51 F. Supp. 2d 537 (D.N.J. 1999), *vacated and remanded*, 243 F.3d 722 (3d Cir. 2001), on remand, No. 98-2819 (D.N.J. June 11, 2002) (approving percentage fee that resulted in a multiplier of 5.28); *Di Giacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, at *10-11 (S.D. Fla. Dec.19, 2001) (approving percentage fee that resulted in multiplier of 5.3).[4]

54. In summary, the Court finds that Class Counsel's request for fees is unopposed by Defendants, not subject to any objection by any class member, is strongly supported by the *Barber* factors, is well-supported by a lodestar cross-check, and is comparable to fee awards in other class cases given the complexity of the litigation, the duration, and the risks undertaken. Accordingly, this Court finds and concludes that Class Counsel's request for an award of attorneys' fees of $9 million (30% of the settlement fund), is fair and reasonable given the results achieved in light of the risks, difficulty, complexity and magnitude of the litigation, and the highly specialized expertise, time and substantial resources required to prosecute it successfully. The Court awards this fee in the aggregate based on the representation of Class Counsel that the Class Counsel firms have entered into an agreement apportioning the fee award among themselves as follows: Wallace & Graham, P.A. – 33%; Whetstone, Myers, Perkins & Fulda LLC – 27.5%; Gilreath Law Firm, P.A – 27.5%;

[4] The facts reflect that even if this Court imposed lodestar rates less than those supported by Class Counsel and Mr. Mauney's Declarations, any necessary multiplier would still fall well within the range which courts generally consider to be reasonable. *See Jones*, 601 F. Supp. 2d at 766 ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee.") (collecting cases).

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Richardson, Patrick, Westbrook & Brickman – 6%; and Wyche Burgess Freeman & Parham – 6%.[5] The Court finds that this apportionment is fair and equitable and reasonably related to the contribution of the respective firms to the litigation. *See e.g., In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir.1987) ("There is authority for a court, under certain circumstances, to award a lump sum fee to class counsel under the equitable fund action under the lodestar approach and then to permit counsel to divide this lodestar-based fee among themselves under the terms of a private fee sharing agreement.").

II. Litigation Costs and Expenses.

55. Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine. *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001); *Strang v. JHM Mortgage Secs. Ltd. Partnership*, 890 F. Supp 499, 503 (E.D. Va. 1995); *Smith v. Krispy Kreme Doughnut Corp.*, *supra* at * 3 (quoting 1 Alba Conte, Attorney Fee Awards § 2:08, at 50-51 (3d ed. 2004): "The prevailing view is that expenses are awarded in addition to the fee percentage"). Here, Class Counsel have incurred at least $447,033.28 in expenses. Because these expenses were advanced with no guarantee of recovery, Class Counsel had a strong incentive to keep them to a reasonable level. Class Counsel has provided the Court with a summary of the costs and expenses advanced which costs and expenses appear reasonable. The majority of the costs were expended on expert witnesses/consultants whose assistance was required to develop and pursue the claims in the litigation against strong opposition. No class member has filed an objection to the amount or categories of costs documented.

[5] The parties indicate that the fees reflected by these percentages are subject to minor pro-rata adjustments for certain costs not included in the litigation costs portion of the Fee Petition, such as certain transportation costs and meals.

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56. The Court finds that the $447,033.28 in litigation costs and expenses incurred by Class Counsel through February 18, 2011, have been adequately documented and were reasonably incurred for the benefit of the Class. The Court finds that reimbursement of costs and expenses in this amount is reasonable and justified.

III. Named Plaintiff Incentive Awards.

57. The intent of "incentive awards" (also known as "case contribution payments") is to reimburse and compensate the Named Plaintiffs and/or Class Representatives for their time and efforts expended on behalf of the Class. Plaintiffs have requested that the Court approve incentive awards of $20,000 for each Plaintiff who became a Class Representative (Matthews, George, Bowen, Miller, Moyers through his Estate), as well as an award of $15,000 to Plaintiff Freeman who actively participated in the case but was precluded because of illness from becoming a Class Representative.

58. The amounts requested are in line with amounts that have been approved by courts in other cases. *See, e.g., In re Auto. Refinishing Paint Antitrust Litig.*, 2008 U.S. Dist. LEXIS 569, at *23 (E.D. Pa. Jan. 3, 2008) (approving a $30,000 award for each class representative); *McBean v. City of New York*, 233 F.R.D. 377, 391-92 (S.D.N.Y. 2006) (stating incentive awards of $25,000-$30,000 are "solidly in the middle of the range"); *Meijer, Inc. v. 3M*, 2006 WL 2382718, at *25 (E.D. Pa. Aug. 14, 2006) ($25,000); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *18 (D.N.J. Nov. 9, 2005) ($60,000); *In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314, at *33 (D.N.J. Sept. 13, 2005) ($30,000); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *6 (E.D. Pa. Dec. 1, 2004) ($20,000); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18-19 (E.D. Pa. 2004) (approving $25,000 incentive awards, finding "ample authority in this district and in other circuits" to support the amount); *In re Buspirone Antitrust Litig.*, 2003

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U.S. Dist. LEXIS 26538, at *12 (S.D.N.Y. Apr. 17, 2003) ($25,000 to lead plaintiff); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) ($50,000); *Hughes v. Microsoft Corp.*, 2001 U.S. Dist. LEXIS 5976 (W.D. Wash. 2001) ($7,500 to $40,000); *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998) ($25,000 incentive award to the named plaintiff; court found the relevant factors were "readily satisfied"). No class member has filed an objection to the incentive awards sought.

59. The record demonstrates significant time and effort expended by the named Plaintiffs. Class Counsel's Declarations document that the Named Plaintiffs participated in the litigation fully by providing valuable information concerning the claims, reviewing documents, participating in meetings, attending hearings and/or providing testimony by affidavit or depositions, reflecting years of involvement.

60. The Court finds that the incentive awards sought for the Named Plaintiffs are reasonable and should be approved.

Based upon the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Class Counsel are hereby awarded attorneys' fees in the amount of $9,000,000, to be allocated between and among Class Counsel in accordance with the percentages set forth in ¶ 54 above, and are awarded reimbursement of costs and expenses of litigation in the amount of $447,033.28; the Class Representatives are hereby awarded incentive awards in the amount of $20,000 each; and the Named Plaintiff, Clyde Freeman, is hereby awarded an incentive award in the amount of $15,000, all payable from the settlement fund as defined in the Settlement Agreement;

AND IT IS SO ORDERED this 16th day of May 2011.

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s/ J. Michelle Childs
J. Michelle Childs
United States District Judge

Greenville, South Carolina

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JESSICA GIFFORD, Plaintiff,	§	
vs.	§	CIVIL ACTION NO. 4:16-cv-03136-MGL
HORRY COUNTY POLICE DEPARTMENT, and SAUNDRA RHODES, Defendants.	§	

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS, AS PROVIDED HEREIN

I. INTRODUCTION

Plaintiff Jessica Gifford (Gifford) filed this lawsuit in the Horry County Court of Common Pleas against Defendants the Horry County Police Department (HCPD) and Saundra Rhodes (Rhodes) (collectively, Defendants), along with several other defendants, who have since been dismissed.

Rhodes was the Chief of HCPD during the relevant time period. Gifford alleged violations of her constitutional rights against Rhodes, 42 U.S.C. § 1983, and a state law claim of negligence/gross negligence against HCPD.

Defendants removed the case to this Court. The Court has federal-question jurisdiction over Gifford's federal claim pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over her state claim in accordance with 28 U.S.C. § 1367.

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Pending before the Court is Gifford's motion for attorneys' fees and costs. Having considered the motion, the response, the replies, the record, and the relevant law, the Court will grant Gifford's motion for attorney fees and costs, as modified herein.

II. FACTUAL AND PROCEDURAL HISTORY

Gifford's negligence/gross negligence claim against HCPD, as well as her constitutional claim against Rhodes, relate to the illegal and inappropriate actions of HCPD's former detective, Troy Allen Large (Large).

The jury in this matter rendered a verdict in favor of Gifford on both her negligence claim against HCPD, in the amount of $500,000, and her constitutional claim against Rhodes, in the amount of one dollar.

Gifford subsequently filed a motion for attorneys' fees and costs, Defendants filed a response in opposition to the motion, and Gifford filed a reply in support of the motion. The motion seeks attorneys' fees and costs only as to Gifford's constitutional claim against Rhodes.

Thereafter, Gifford filed documentation of her costs, Defendants filed their objections, and Gifford filed a reply. The parties also briefed the Court on the untimeliness of Gifford's motion.

The Court, now having been fully briefed on all the relevant issues, is prepared to adjudicate Gifford's motion.

III. DISCUSSION AND ANALYSIS

A. Whether Gifford is entitled to her request for an award of attorneys fees

1. Whether the Court will excuse the untimeliness of Gifford's motion

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Before the Court considers the merits of Gifford's request for attorneys' fees, it must first deal with the untimeliness of it.

Federal Rule of Civil Procedure 54 governs motions for attorneys' fees as well as the time within which such motions for fees must be filed. Rule 54(d)(2)(B) provides that, "[u]nless a statute or a court order provides otherwise, the motion [for attorney fees] must[ ] be filed no later than [fourteen] days after the entry of judgment." Fed. R. Civ. P. 54(d)(2)(B).

Nevertheless, "[t]he . . .[C]ourt may, for good cause, extend the . . . deadline 'on motion made after the time has expired if the party failed to act because of excusable neglect.'" *SlepTone Entm't Corp. v. Karaoke Kandy Store, Inc*., 782 F.3d 313, 316 (6th Cir. 2015) (quoting Fed. R. Civ. P. 6(b)(1)(B)); *see also Allen v. Murph*, 194 F.3d 722, 723-24 (6th Cir. 1999) (noting that, when a party failed to timely file its motion for attorney fees and failed to request an enlargement of the time period before such time expired, "the district court could permit a late filing only if the delay was the result of 'excusable neglect.'" (quoting Fed. R. Civ. P. 6(b)(1)(B)).

Judgment was entered in ths case on May 11, 2022. Thus, Gifford's motion for attorneys' fees were due on May 25, 2022. But, she failed to file them until June 3, 2022, nine days late.

Gifford contends she has established good cause to excuse her late filing on her motion. Defendants disagree.

Ironically, as an aside, the Court notes Defendants' response to the motion was due on June 17, 2022. Having been granted two extensions of time with the consent of Gifford, however, Defendants waited until July 15, 2022 to file their response, twenty-eight days after it was originally due and forty-two days after Gifford filed the motion.

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"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' [the Supreme Court has] conclude[d] that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993). "These include . . . the danger of prejudice to the [non-movant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id*.

Considering the factors set forth in *Pioneer Inv. Services Co.,* there is no danger of prejudice to Defendants in the Court's excusing Gifford's counsel's nine-day delay in filing her motion for attorneys' fees. The length of the delay and its potential impact on judicial proceedings are negligible.

The reason for the delay Gifford's counsel gives is that they had another six-day trial that immediately followed this one. Then, they state, when they returned to their offices, in preparing their motion, they were required to assemble the billing records of multiple attorneys.

Gifford's counsel do not dispute that the delay was within their control, but there is no evidence of any bad faith. For these reasons, the Court concludes the untimeliness of Gifford's motion for attorney fees was the result of excusable neglect, and will thus be excused.

2. Whether Gifford is entitled to any award of attorneys' fees

According to Gifford, she is entitled to attorneys' fees under 42 U.S.C. § 1988(b). Section 1988(b) provides, in relevant part, that, "[i]n any action or proceeding to enforce a provision of section[ ] . . . 1983, . . . the [C]ourt, in its discretion, may allow the prevailing party . . .a reasonable attorney[s'] fee as part of the costs[,]" *Id*.

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Defendants oppose Gifford's claim of attorneys' fees. Alternatively, they request the Court award a substantially reduced amount.

"The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. Accordingly, a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (citations omitted) (internal quotation marks omitted). The "special circumstances" exception is inapplicable here.

"Congress enacted [Section] 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986). "These victims ordinarily cannot afford to purchase legal services at the rates set by the private market." *Id*. Thus, "they are unable to present their cases to the courts." *Id*. (citation omitted) (internal quotation marks omitted).

As per 1988(b), Gifford must be a "prevailing party" to recover any attorneys' fees. Both parties agree she is the prevailing party in this matter. And, they both rely on *Farrar v. Hobby*, 506 U.S. 103 (1992), in support of their position as to whether Gifford is entitled to an award of attorneys' fees.

Each of the parties, however, highlights only the portion of *Farrar* that seemingly supports their positions. Nevertheless, the Court must find and cite to the law that supports the correct outcome.

Defendants center their argument around the portion of the *Farrar* opinion stating that, "[w]hen a plaintiff recovers only nominal damages . . . ,the only reasonable fee is usually no fee at

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all." *Farrar*, 506 U.S. at 115. Based on this, they contend Gifford is entitled to no award of attorneys' fees.

But, "[b]ecause the Court in *Farrar* held that plaintiffs recovering only nominal damages *usually or often* will not be entitled to an award of attorney's fees, it is clear that such plaintiffs will at least sometimes be entitled to a fee award." *Mercer v. Duke University*, 401 F.3d 199, 203 (4th Cir. 2005). Thus, the Fourth Circuit has rejected any argument that *Farrar* automatically precludes attorneys' fee awards in all nominal-damage cases. *See, e.g., Clark v. Sims*, 28 F.3d 420, 425 (4th Cir.1994) (remanding fee award in nominal-damage case for reconsideration in light of plaintiff's limited success).

As the Fourth Circuit has observed, "[a]lthough the majority opinion in *Farrar* provides little guidance for courts considering whether an award of attorney's fees is warranted [in cases in which only nominal damages are awarded], Justice O'Connor in a separate concurring opinion addressed the question in more detail." *Mercer*, 401 F.3d at 203 "Justice O'Connor recognized . . . that not all nominal damages awards are de minimis. Nominal relief does not necessarily a nominal victory make." *Id*. at 204 (citation omitted) (internal quotation marks omitted).

As such, Section 1988 serves as "a tool that ensures the vindication of important rights, even when large sums of money are not at stake, by making attorney's fees available under a private attorney general theory." *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring).

Justice O'Connor "suggested that when determining whether attorney's fees are warranted in a nominal-damages case, courts should consider '[1] the extent of relief, [2] the significance of the legal issue on which the plaintiff prevailed, and [3] the public purpose served by the litigation'" *Id*. (quoting *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring).

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The Fourth Circuit employed these three factors in *Mercer* to consider whether the plaintiff, who received only nominal damages, was nonetheless entitled to an award of attorney's fees under section 1988. In doing so, it stated that "[w]e believe that the factors set forth by Justice O'Connor help separate the usual nominal-damage case, which warrants no fee award, from the unusual case that does warrant an award of attorney's fees." *Id*.

Gifford, not surprisingly, highlights Justice O'Connor's concurrence, and discusses these three factors, in support of her argument she is entitled to attorneys' fees. Defendants fail to provide any argument as to Justice O'Connor's framework.

The first consideration, "the extent of relief" factor, examines "the difference between the amount recovered and the damages sought[.]" *Jones v. Lockhart*, 29 F.3d 422, 424 (8th Cir. 1994). In *Jones*, the Eight Circuit, finding that this factor weighed in favor of granting of attorneys' fees, stated that, "although there is a discrepancy between the amount of damages sought and the amount recovered ($860,000 sought, $2 recovered), it pales in comparison to the discrepancy presented in *Farrar* ($17,000,000 sought, $1 recovered)." *Id*.

Turning to this case, as Gifford notes, absent from the trial strategy here was a high demand for monetary damages. In fact, Gifford's counsel declined to ask for any specific amount of actual monetary losses at trial. And, she neglected to offer any evidence of any actual monetary damages incurred for medical and/or mental health treatment.

Instead, according to Gifford, "counsel recognized throughout the trial that, due to the unique nature of this case, the focus of the civil rights claim was squarely on the vindication of the constitutional right of a young woman who was coerced into engaging in a sexual act with a deviant law enforcement officer who was almost three times her age." Gifford's Reply at 5.

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In addition, counsel for Gifford requested and presented to the Court a nominal damages jury charge. Thus, evidently, recovery of a large sum of money was neither the theme, the trial strategy, nor the goal of Gifford's case against Rhodes.

Consequently, it seems to the Court that the jury's favorable nominal damage verdict, which underscores that Rhodes is liable to Gifford for Large's unconstitutional, unlawful, and unwanted, sexual touching and/or sexual assault of her, is exactly the relief Gifford was seeking. *See Farrar*, 506 U.S. at 121 (O'Connor, J. concurring) ("[A]n award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved.")

Besides, because Gifford failed to provide any evidence of actual damages, the jury's award of just nominal damages is perfectly understandable.

All things considered, the Court is unable to say the nominal damages award in this case is fatal to Gifford's request for attorneys' fees. In fact, she got what she wanted: judgment against Rhodes saying Rhodes had violated her constitutional rights. Therefore, this factor weighs in favor of Gifford's request for attorneys' fees.

The second factor to consider is "the significance of the legal issue on which the plaintiff prevailed." *Id*. at 122. "This factor is concerned with the general legal importance of the issue on which the plaintiff prevailed." *Mercer*, 401 F.3d at 206. The constitutional right that is the subject of Gifford's constitutional claim is the right to bodily integrity.

Over 130 years ago, the Supreme Court opined that "[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

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As Gifford aptly states, she "established at trial that [Rhodes] was legally responsible for the unconstitutional and unlawful acts of her subordinate officer who violated [her] Fourteenth Amendment right to bodily integrity." Gifford's Reply at 7.

Inasmuch as "[n]o right is held more sacred[ ]" than Gifford's right to bodily integrity, *Union Pac. R. Co.*, 141 U.S. at, 251, and the jury found that Rhodes is liable for Large's violation of that right, Gifford succeeded on a significant legal issue. Accordingly the second factor is Justice O'Connor's concurrence in *Farrar* also weighs in favor of granting Gifford's request for attorneys' fees.

"The final factor [the Court] must consider is whether the litigation served a public purpose, as opposed to simply vindicating [Gifford's] individual rights." *Mercer*, 401 F.3d at 207. Gifford's "success might be considered material if it also accomplished some public goal other than occupying the time and energy of counsel, court, and client." *Farrar*, 506 U.S. at 121–22 (O'Connor, J., concurring).

Gifford contends that "[t]he jury's finding in this case sends a message to the current executive staff of the Horry County Police Department and to every county-wide law enforcement agency in the state that they cannot turn a blind eye to evidence of predatory and unconstitutional behavior by one of their own officers." Gifford's Reply at 8-9. According to Gifford, "[t]his is particularly true when the predatory behavior by officers threatens the 'most sacred' of our Constitutional rights, as it did in this case." *Id* at 9.

The evidence in the record overwhelmingly shows that Rhodes knew, or should have known, about Large's misbehavior and misconduct. But she failed to adequately address it.

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Although the monetary award for Rhodes's constitutional violation is nominal, the verdict against her for her constitutional violation is huge. And, it will likely reverberate across the law enforcement agencies of this state for years to come with the resounding message that the top brass must be diligent in monitoring and appropriately responding to their officers' unconstitutional misbehavior and misconduct.

Thus, because the Court is of the strong opinion that Gifford's civil rights claim against Rhodes serves an important public purpose, this factor also weighs in favor of Gifford's request for attorneys' fees..

So, all three of Justice O'Connor's considerations favor a conclusion that Gifford is entitled to an award of attorney fees. But, for how much?

3. Whether Gifford's is entitled to an award for attorneys' fees in the amount of $878,467.80

Gifford seeks attorneys' fees in the amount of $878,467.80. Here is a breakdown:

Attorney/Paralegal	Hours	Rate	Total
James B. Moore III, Esq.	690.40	$450	$310,680.00
Scott C. Evans, Esq.	605.11	$450	$272,299.50
Amy Lawrence, Esq.	465.752	$400	$186,300.80
Justin Lovely, Esq.	108.125	$400	$43,250.00
Sarah Austin, Esq.	144.5	$250	$36,125.00
Julie Long, Paralegal	238.5	$125	$29,812.50
Total hours for Attorneys	2,013.887		
Total fees for Attorneys and Paralegal			$878,467.80

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"In calculating an award of attorney's fees, a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate." *Robinson v. Equifax Information Services*, LLC, 560 F.3d 235, 243-44 (4th Cir. 2009). When deciding what constitutes a "reasonable" number of hours and rate, the Fourth Circuit has instructed that the Court's discretion should be guided by the following twelve factors:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber v. Kimbrell's Inc, 577 F.2d 216, 226 n. 28 (4th Cir.1978).

Although the Court considers all of the factors, they need not be strictly applied in every case inasmuch as all of the factors are not always applicable. *See E.E.O.C. v. Service News Co*., 898 F.2d 958, 965 (4th Cir. 1990) (stating that seven of the twelve factors were inapplicable in the matter).

Gifford has supplied the Court with time records and affidavits substantiating her request for attorneys' fees, along with an in depth discussion of the relevant above-listed factors. Defendants addressed just a few of those considerations.

a. "the time and labor expended"

This consideration weighs in favor of granting Gifford's petition for attorneys' fees.

"[T]he fee applicant bears the burden of . . . documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Id*. at 433.

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Gifford contends, during the six years her lawsuit was pending, her "counsel submitted significant briefing on several complex and important constitutional legal issues that go to the heart of the protections guaranteed by the Fourteenth Amendment, developed an extensive factual record, identified, prepared, and presented highly qualified expert witnesses, identified and interviewed a series of fact witnesses, and zealously represented [Gifford] over [six] days of jury trial." Gifford's Motion at 7.

According to the affidavits of two of Gifford's counsel, they "participated in twelve depositions, multiple hearings, and motions in this matter since 2016. To date, there are [240] ECF filings in this case. . . . The pretrial and trial work was voluminous, extensive, and laborious." Scott E. Evan's Affidavit ¶ 4; James B. Moore III's Affidavit ¶ 4. Counsel also participated in three mediations.

Gifford, "has not sought compensation for considerable time that would otherwise ordinarily be billable in the course of representation to a private client, such as time for communications including regular telephone conferences with opposing counsel, regular correspondence and emails with opposing counsel, and regular correspondence and emails with co-counsel." Gifford's Motion at 6.

"Additionally, for a majority of the hours expended in discovery and depositions, [Gifford's] Counsel reduced the number of hours . . .to evenly distribute the time between the [other] cases handled by her attorneys during parts of this litigation." *Id*.

"Plaintiff's counsel, of course, is not required to record in great detail how each minute of [her or] his time was expended. But at least counsel should identify the general subject matter of [her or] his time expenditures." *Hensley*, 461 U.S. at 437. Gifford's counsel has done so here.

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Defendants lodge several objections to the amount of time Gifford claim for attorneys' fees. The Court will address them in the order Defendants raised them.

First, in a footnote, Defendants argue that "the Court has been given insufficient information by [Gifford] to identify fees attributable to work on the state law claim." Defendants' Response at 6 n.2. But, they neglect to develop the argument. Consequently, this "perfunctory and undeveloped claim [by Defendants is deemed] waived." *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396 n. * (4th Cir. 2014).

Besides, inasmuch as both Gifford's state claim and constitution claim concern the supervisory liability for Large's misbehavior and misconduct, and both arise from the same related and interconnected nucleus of operative facts such that they are somewhat inextricably connected, it appears to the Court that it would be impossible to separate the fees for the two separate claims.

Second, Defendants complain of Gifford's counsel "claiming the fees for three and sometimes four and five lawyers for the same task[ ]" without justification. Defendants' Response at 10.

There is no per se rule the Court is aware of that sets forth the maximum number of attorneys one should have participating in trials, depositions, or other case-related matter. On some tasks, such as legal research and trial preparation, billing by multiple attorneys is both common and expected.

As to Gifford's having three attorneys at trial, inasmuch as the Court observed the three of them to have fully participated and have been fulled engaged in all aspects of the trial, it is not up to the Court to say it was unnecessary to have them all there. After all, it seems improper to question Gifford's use of multiple attorneys, which likely contributed to her proving her case against Rhodes.

The Court has carefully reviewed Gifford's counsel's billing records as to this issue and finds the hours listed for multiple attorneys to be reasonable. There is just one caveat, however.

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In several instances, Gifford bills for more than two attorneys at a deposition. Absent is any explanation as to why more than two attorneys were necessary. The Court, therefore, will not approve any fees for more than two attorneys at a deposition.

Third, Defendants question the awarding of attorneys' fees for attorneys not listed on the Court's docket. According to Defendants, Gifford "attempts to claim attorney's fees for two attorneys who are not even identified by this Court as counsel of record. Justin Lovely and Sarah Austin have never filed a notice of appearance, appeared at any matter in this litigation, nor signed any pleadings or motions on behalf of [Gifford]." Defendants' Response at 10.

But why does Defendant fail to cite to any legal support for the proposition that the Court should refrain from awarding attorneys' fees for these two attorneys? And, why has the Court been unable to locate any? The answer seems obvious: there is none. Thus, this argument appears to be unmoored to any legal authority.

Fourth, Defendants protest Justin Lovely's presence at Large's bond hearing although "Large is not a party to this lawsuit, and his bond hearing addressed no allegations against. . . Rhodes." *Id.* at 10-11. This argument does not merit discussion. Of course, Large's criminal liability for his misbehavior and misconduct when he was employed by Rhodes is related to her civil liability here. Thus, it was proper for Gifford's counsel to bill for this.

Fifth, Defendants also dispute the hours charged for Justin Lovely's meeting with an identified potential witness for Gifford, who was not called at trial. But, surely Rhodes's counsel would, and likely has, billed for meeting with a potential witness they failed to call to trial. The Court is unable to fathom anything improper about that.

Sixth, Defendants contend it is inappropriate to award attorneys' fees to Justin Lovely's and Sarah Austin's participation in an intensive weekend client preparation session on June 24-26, 2019.

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According to Defendants, "[t]his case . . . was not tried in 2019, and neither of these attorneys tried it." *Id*. at 11.

But, Defendants well know the trial was originally scheduled for the summer of 2019; and it was proper for these two attorneys to help prepare the case for trial, even if they did not actually try the case. Preparing exhibits and witnesses are just two examples of this.

b. the novelty and difficulty of the questions raised

This consideration also weighs in favor of granting Gifford's request for attorneys' fees.

Proving that Rhodes was liable for a constitutional violation against Gifford was particularly demanding.

> To establish supervisory liability against . . . Rhodes for a constitutional violation, . . . Gifford must prove by a preponderance of the evidence:
>
> (1) that . . . Rhodes had (a) actual or (b) constructive knowledge, which is defined as knowledge that one using reasonable care or diligence should have, that . . . Large was engaged in conduct that posed an unreasonable risk of constitutional injury to citizens such as . . . Gifford;
>
> (2) that . . . Rhodes's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive conduct; and
>
> (3) that there was an affirmative causal link between . . . Rhodes' inaction and the constitutional injury suffered by . . . Gifford. .

Jury Charge at 13-14. Nevertheless, although notoriously difficult, Gifford's counsel overcame Rhodes's qualified immunity and other motion for summary judgment claims and convinced the jury to find Rhodes had violated Gifford's constitutional rights.

c. the skill required to properly perform the legal services rendered

This factor, too, weighs in favor of the Court's granting Gifford's motion for attorneys' fees.

Again, this was a notoriously difficult and complex case. And, hats off to counsel for each party for performing so well.

As Gifford points out in her motion,

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> The issues in the trial presented sophisticated legal questions that had to be proven to both the Court and communicated to the jury. Did . . . Large violate Jessica's 14th Amendment right to bodily integrity? Was the sexual assault consensual as . . . Rhodes's alleged? Did . . . Rhodes have actual or constructive knowledge that . . . Large was engaged in conduct that posed a risk of constitutional injury to the Plaintiff? Was her response to this knowledge adequate? At each turn, Plaintiff was successful.

Gifford's Motion at 9. And, she was successful, in large part, thanks to her highly skilled attorneys.

d. the attorney's opportunity costs in pressing the instant litigation

This factor weighs in favor of Gifford's fee request, too.

Given the amount of time counsel expended on this case, a total of 2,013.887 hours, it is obvious counsel worked on this case at the exclusion of others. And, because Gifford's counsel took this case on a contingent basis, there was no guarantee of the amount of payment, if any, they would receive in payment. Consequently, Gifford's counsel's opportunity costs were quite high.

e. the customary fee for like work

This factor also favors Gifford's request.

"[D]etermination of the hourly rate will generally be the critical inquiry in setting the reasonable fee, and the burden rests with the fee applicant to establish the reasonableness of a requested rate." *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990) (citation omitted) (internal quotation marks omitted). "In addition to the attorney's own affidavits, the fee applicant must produce satisfactory specific evidence of the 'prevailing market rates in the relevant community for the type of work for which he seeks an award." *Id*. (citation omitted) (internal quotation marks omitted).

"Examples of the type of specific evidence that [the Fourth Circuit has] held is sufficient to verify the prevailing market rates are affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community." *Robinson*, 560 F.3d at 245.

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"Although the determination of a market rate in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable, the [Supreme] Court has nonetheless emphasized that market rate should guide the fee inquiry." *Id*. (citation omitted) (internal quotation marks omitted) (footnote omitted).

The Court has provided the per-hour-rates Gifford's counsel seeks in this action above. They range from $250 to $450. Gifford has provided evidence in the form of affidavits from two other highly respected members of the South Carolina bar, who litigate civil rights cases and attest to the outstanding abilities of Gifford's counsel. They support these rates.

Given this, along with the Court's own experience and knowledge of the market, the Court concludes these fees are reasonable. As such, it rejects Defendants' arguments to the contrary.

Although Defendants maintain that Gifford "presents no fee agreement showing that she agreed to any of the claimed rates," Response in Opposition at 7, Gifford's counsel took this case on a contingency basis. So, of course, there is no such fee agreement.

f. the attorney's expectations at the outset of the litigation

This factor favors the granting of Gifford's attorneys' fees request, as well.

Gifford states that "Counsel took this case with complete uncertainty as to the outcome and aware that few cases survive summary judgment and are successfully tried to verdict under 42 U.S.C. § 1983." Gifford's Motion at 10. And, she is correct.

In the Court's experience, most all Section 1983 cases are dismissed at either the motion to dismiss or the motion for summary judgment stage. Few survive past that. But, this one did. That is a huge credit to Gifford's counsel.

According to Gifford, "Counsel was dedicated to the notion that if Plaintiff was successful at trial, a finding of a 42 U.S.C. § 1983 violation against . . . Rhodes was well worth the uncertainty of the outcome." *Id*.

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g. the time limitations imposed by the client or circumstances

This factor is inapplicable to the facts of this case.

h. the amount in controversy and the results obtained

This factor favors Gifford.

As discussed above, Gifford never asked for a particular amount of money for her constitutional claim against Rhodes. Instead, it appears she sought to have her claim for the harm done to her be acknowledged. And it was, with both a unanimous jury verdict finding a constitutional violation by Rhodes, and a Court that wholly agrees with the jury's determination..

i. the experience, reputation and ability of the attorney

This factor heavily favors the granting of Gifford's motion as to both the number of hours billed, with the exception noted above, and the rate requested.

Counsel for both Gifford and Defendants did an outstanding job representing their clients at trial. They also all enjoy a great reputation and are a credit to the South Carolina Bar.

Gifford's attorneys are experienced in the field of civil rights litigation, which was evidenced at each step of this litigation. And, their reputations are sterling.

The Court has reviewed the many papers that Gifford's counsel submitted to the Court, heard their arguments, and closely observed their conduct at trial and their mastery of the subject matter. The Court finds their abilities in this area of the law to be unsurpassed.

j. the undesirability of the case within the legal community in which the suit arose

This consideration weighs in Gifford's favor, too.

This case has all of the marks of an undesirable case. The facts that had to be proven were, to put it mildly, disgusting.

Although Gifford argued she had been harmed, as noted above, she had no medical bills to support her claims. Only a few very skilled group of attorneys would take on a case such as this, and

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even fewer would not only survive a motion for summary judgment, but also win a verdict on the constitutional claim.

k. the nature and length of the professional relationship between attorney and client

This factor has no bearing on the Court's consideration of Gifford's motion.

Gifford filed this lawsuit on September 16, 2016. Her relationship began shortly before that, in August 2016. Scott E. Evan's Affidavit ¶ 4; James B. Moore III's Affidavit ¶ 4. The trial concluded a little over five and a half years later, on May 9, 2022.

The relationship between Gifford and her counsel commenced because of her need for representation in this matter. There is no indication that, with the end of this case, their relationship will continue.

l. attorneys' fees awards in similar cases

This factor weighs in favor of Gifford's requested rate and the number of hours charged.

The Court has reviewed the cases Gifford set forth and considered its own experience in complex and difficult matters such as this. As such the Court is of the opinion that the attorneys' fees, both the rates and the number of hours that Gifford seeks, with the exception noted above, are comparable to those fees awarded in similar actions.

As an example of the total fee award, in *Mercer v. Duke University*, 301 F. Supp. 2d 454 (M.D.N.C. 2004), the district court awarded the plaintiff $349,243.96 in attorney fees, *id*. at 470, although she received "only one dollar in compensatory damages[,]" *id.* at 457. The decision was later affirmed by the Fourth Circuit: *Mercer v. Duke University*, 401 F.3d at 212.

Adjusted for inflation, that $349,243.96 would equal $567,314.00 in today's dollars**.** *See* https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=349%2C243.96&year1=200103&year2=202302, Jan. 2004 to February 2023 (last visited March 29, 2023).

* * * * *

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The total of attorneys' fees the Court is awarding in this case are quite substantial. But, the Court is of the firm opinion they are appropriate.

Given the malfeasance proven in this case, it is extremely important that cases such as this be filed. And, "although [Rhodes] had the right to play hardball in contesting [Gifford's]claims, it is also appropriate that [Rhodes] bear the cost of [her unsuccessful] strategy." *Burgess v. Premier Corp*., 727 F.2d 826, 841 (9th Cir. 1984).

The attorneys in this case billed for a total of 2,013.887 hours in this case. Thus, if just one attorney had billed that time, assuming forty hours of billing each week, it would have taken her/him a little over fifty weeks, or almost a year, to prepare for and try this case to verdict. Alone. Given the complexity and difficulty of this case, this seems like a reasonable amount of time to prepare for and try a case such as this.

"When plaintiff prevails on only some of the claims made, the number of hours may be adjusted downward; but where full relief is obtained, the plaintiff's attorney should receive a fully compensatory fee, and in cases of exceptional success, even an enhancement." *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 174–75 (4th Cir. 1994) (citations omitted) (internal quotation marks omitted).

Given the Court's discussion above regarding Gifford's requested rate and number of hours billed, the Court concludes her request to be reasonable. Her counsel prevailed on all of her claims here. Therefore, they are fully entitled to "a fully compensatory fee." *Id*.

B. Whether Gifford is entitled to recover reasonable expenses

As an initial matter, the Court must address the untimeliness of Gifford's request for costs. Defendants note in their objections to Gifford's bill of cost that Local Civil Rule 54.03 provides that "A bill of costs shall be filed within the time limits set for Fed. R. Civ. P. 54(d)(2)(B) for

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applications for attorney's fees. Noncompliance with this time limit shall be deemed a waiver of any claim for costs."

But then, Local Civil Rule 1.02 states that, "[f]or good cause shown in a particular case, the [C]ourt may suspend or modify any Local Civil Rule." The Court is of the opinion that, just as Gifford has shown excusable neglect/good cause for her late filing of her motion for attorneys' fees, she has, based on the same reasons, shown excusable neglect/good cause for the filing of her untimely request for costs.

Gifford states she "is entitled to recover reasonable expenses in the amount of $23,848.37 as a part of the attorneys' fees award pursuant to 42 U.S.C. § 1988." Gifford's Motion at 13. Gifford maintains "[a]ll [her claimed] expenses were incurred in the course of litigation[,] . . . were necessary for the successful resolution of the case. . . . [and] are normally charged by Evans Moore, LLC and Lovely Law Firm to clients for payment and were accrued in the course of providing legal services for [her]." *Id*. at 14.

Defendants, on the other hand, maintain she is entitled only to "costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)." Defendants' Response at 11 (citation omitted) (internal quotation marks omitted). According to Defendants, "[t]he only taxable costs that the Plaintiff may recover are . . . "

> (1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 . . . ; [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828[.]

Id. at 11-12 (quoting 28 U.S.C. § 1920).

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But, "[t]he great weight of authority in this circuit and others clearly establishes that a prevailing plaintiff is entitled to compensation for reasonable litigation expenses under § 1988." *Daly v. Hill*, 790 F.2d 1071, 1084 (4th Cir. 1986). This includes "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988). "Consequently," according to the Fourth Circuit, "the district court err[s] as a matter of law in evaluating the expense request . . . under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)." *Daly*, 790 F.2d at1084.

Although Gifford originally sought reimbursement on expert fees, in her Reply, she stated that "it appears there is conflicting authority as to whether expert fees are taxable in cases brought pursuant to 42 U.S.C. § 1983." Gifford's Reply at 16. *Compare Warfield v. City of Chicago*, 733 F. Supp. 2d 950, 955 (N.D. Ill. 2010) ("[B]ecause [the expert] was an expert reasonably used in this case, his fees are recoverable."), *with Corral v. Montgomery Cnty.*, 91 F. Supp. 3d 702, 721 (D. Md. 2015) ("[T]he terms of Section 1988 do not permit compensation for expert witness fees[ ]" in a Section 1983 action). "As such, . . . [Gifford] has elected to remove expert case expenses from the Itemized Expense Sheet and Bill of Costs." Gifford's Reply at 16.

Gifford initially failed to provide any documentation for her claimed costs. But, she has now filed it. She also submitted affidavits from her counsel attesting to the accuracy of the cost request. *See, e.g.,* Affidavit of James B. Moore III ¶ 9 ("(To the best of my knowledge, the time entries and case costs submitted . . . are a true and accurate representation of the work performed in this case and the costs paid by Evans Moore, LLC and Lovely Law Firm to fund this matter.").

Gifford notes that she "voluntarily limited her request to only those costs incurred after May 2019 although the case was litigated from 2016 through 2022 at significant expense." Giffords's Reply re Documentation ¶ 6.

Defendants have set forth several objections to Gifford's expense request.

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First, they object to the request for payment of the expenses of Gifford's experts. And, although Gifford insists she is entitled to reimbursement for these expenses, she fails to provide any cases in which a court has granted such a request. The Court has been unable to find any such cases either.

Further, inasmuch as Section 1988 appears not to provide for the reimbursement of expert fees, it seems to be incongruous to say it would allow for the payment of expert expenses. *See* 42 U.S.C. § 1988 ("In awarding an attorney's fee . . . to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee."). Thus, the Court will not award payment of those costs.

Defendants object to the payment of a $47 filing fee, too. It appears that fee was charged in error. Thus, the Court will direct the Clerk of Court to reimburse that fee to Gifford.

Defendants also object to the expense of $1,798.50 for a trial transcript and $1,272.65 for photocopies, stationery, envelopes, and postage. But, the Court deems those costs as proper.

Defendants' other objections do not merit discussion.

Defendants fail to object to Giffords's other claims for costs for which she provides "No Record." Thus, the Court will rely on Gifford's counsel's affidavits as a sufficient basis on which to award those costs. It has no reason to disbelieve counsel's sworn statements on the matter.

Except for the expert fees and expenses and the $47 filing fee, the Court is persuaded that all the other costs Gifford seeks are "reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell*, 852 F.2d at 771. Thus, in light of Gifford's requests for costs, the documentation, and Gifford's counsel's affidavits, the Court will grant Gifford's request for costs, less the expert fees and expenses and the $47 filing fee.

C. Whether Gifford is entitled to an award of post judgment interest

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Gifford moves the Court to award post-judgment interest on all amounts awarded in this action. Defendants fail to address this request. Therefore, they have waived any argument they might have against this award. *See Russell*, 763 F.3d at 396 n. * (noting that failure to present legal arguments waives the argument).

"In contrast to the district court's discretion in the awarding of pre-judgment interest, federal law mandates the awarding of post-judgment interest." *Quesinberry v. Life Ins. Co. of North America*, 987 F.2d 1017, 1031 (4th Cir. 1993).

Under federal law, post-judgment interest "shall be allowed" and "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a).

Accordingly, Gifford is entitled to an award of post-judgment interest.

IV. CONCLUSION

In light of the foregoing discussion and analysis, Gifford's motion for attorneys' fees in the amount of $878,467.80, less the billing for more than two attorneys at a deposition, is **GRANTED**, her motion for costs, less her expert fees and expenses and the $47 filing fee, is **GRANTED**, and her request for post-judgment interest is **GRANTED**.

The Clerk of Court shall refund the $47 filing fee to Gifford.

IT IS SO ORDERED.

Signed this 29th day of March 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

EXHIBIT

3

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The Supreme Court of South Carolina

RE: Interest Rate on Money Decrees and Judgments

ORDER

South Carolina Code Ann. § 34-31-20 (B) (2020) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points."

The Wall Street Journal for January 2, 2024, the first edition after January 1, 2024, listed the prime rate as 8.50%. Therefore, for the period January 15, 2024, through January 14, 2025, the legal rate of interest for money decrees and judgments is 12.50% compounded annually.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
January 4, 2024

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FOURTEENTH JUDICIAL
)	CIRCUIT
COUNTY OF BEAUFORT)	
)	
PAUL VERNON COFFMAN, JR.,)	
)	Civil Action No. 2021-CP-07-01217
PLAINTIFF,)	
)	**MOTION TO RECONSIDER ORDER**
VS.)	**AWARDING ATTORNEYS' FEES**
)	
TOWN OF PORT ROYAL AND)	
KIMBERLY CARTER,)	
)	
DEFENDANTS.)	
)	

Plaintiff, by and through his undersigned counsel, respectfully submits this Motion for Reconsideration pursuant to Rule 59, SCRCP. In support of this Memorandum, Plaintiff shows the Court as follows:

LAW

Rule 59(e) of the civil rules allows a party to move the court to alter or amend a judgment within 10 days after it receives written notice the order was entered. Rule 59(e), SCRCP; see also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004) ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule"). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S. Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988)). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not

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ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id*. (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992).

Thus, a motion for reconsideration is "one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Id*. (emphasis added). The purpose of Rule 59(e) is to "permit a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 407 (4th Cir. 2010).

FACTS AND PROCEDURAL HISTORY

The above-captioned case arises from an unlawful arrest following an incident that took place at the Sands Beach Boat Landing on July 6, 2020, and the subsequent investigation conducted by the Port Royal Police Department. The Plaintiff was eventually arrested by the Port Royal Police Department. The case proceeded to trial before a jury in Beaufort County beginning on June 17, 2024. The trial presided over by the Honorable H. Seven DeBerry. At trial, the parties disputed the existence of probable cause for Plaintiff's arrest and Plaintiff introduced substantial evidence into the record, with the consent of the Defendants, which clearly disputed the existence of probable cause (including, e.g., testimony from former Town of Port Royal Police Officers Joab Dowling and Ryan Steady, testimony from the Town of Port Royal via the 30(b)(6) deposition of Captain John Griffith, and the recorded deposition testimony of Defendant Kimberly Carter entered by consent of the parties).

The matter was litigated for several years and the testimony from former officers for the Town of Port Royal, as well as the latter deposition testimony for the Town was secured by

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Plaintiff's counsel over a substantial period of time and with significant time and effort. Moreover, the deposition of other material witnesses, including Joshua Smith and Brittany Smith, whose respective deposition testimony was also admitted and presented at trial by mutual consent of the parties, was also obtained by Plaintiff's counsel. Cumulatively, Plaintiff's counsel also worked to develop and present a substantial body of evidence for the court and the jury at trial, and the inherent value of such work, specifically including the witnesses, testimony, and related evidence, was underscored by the verdict in Plaintiff's favor.

The trial itself lasted five days and Jeremiah Shellenberg and Joshua Golson appeared as trial counsel for the Plaintiff. Plaintiff's counsel relied on their respective skill and experience and expended a significant amount of time and effort to streamline the issues and presentation of evidence and to offer the jury a more easily digestible case and set of facts and evidence. Moreover, Plaintiff's counsel presented a case based in part on certain claims which remain inherently based on a complex body of legal theory and precedents that were first established under British law and have evolved under American jurisprudence for over two centuries. Compare, e.g., *Thompson v. Clark*, 142 S.Ct. 1332 (2022). At the conclusion of the trial, the jury rendered a verdict for the Plaintiff and awarded the Plaintiff One hundred thousand ($100,000.00) dollars against Kimberly Carter for unlawful seizure and malicious prosecution (which included a punitive damages award of $40,000); and Two Hundred and Fifty Thousand ($250,000.00) dollars against the Town of Port Royal for state law claims of negligence and malicious prosecution**.**

Plaintiff filed a Motion for Attorneys' Fees on July 1, 2024, accompanied by a combined timesheet of the descriptions/hours claimed by each attorney and paralegals, although Nikki Seek's hours were waived by Plaintiff. In addition, Plaintiff's counsel also submitted, affidavits from each attorney which attested to their hours and hourly rate as well as affidavits from members of the

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South Carolina Bar who have similar prior litigation experience, including Joel S. Hughes, Keith Babcock, and Neal M. Lourie; and those respective affidavits attested, amongst other things, to the experience of Plaintiffs' counsel as well as to the reasonable hourly rate and complexity of civil rights cases. In addition, Plaintiff's counsel is compelled to note that the manner and presentation of the Plaintiff's motion for attorneys' fees, in addition to the respective affidavits of counsel and other supporting documentation, was offered in similar fashion as to other motions for attorneys' fees made under 42 U.S.C. § 1988 and recently upheld by the Fourth Circuit Court of Appeals. Compare, e.g., *Gifford v. Horry County* C/A No.4:16-cv-03136-MGL and *Gifford v. Horry Cty. Police Dep't*, No. 23-1471, 2024 U.S. App. LEXIS 32225, at *3 (4th Cir. Dec. 19, 2024) (unpublished). As reflected by their respective exhibits and over the course of years and in the time leading up to and during trial, Attorney Myers accrued $55,965.00 in attorneys' fees. Grady Patterson accrued $35,550.00 in attorneys' fees. Jeremiah Shellenberg and Joshua Golson, who were also heavily involved in the underlying litigation and appeared as trial counsel, accrued $144,427.50 and $155,600.00 in attorneys' fees, respectively. Amongst the four attorneys, the total amount of fees was $410,792.50, which ultimately reflected the amount of time, skill, and effort required to litigate a difficult series of facts and evidence on civil rights claims under 42 U.S.C. § 1983 and state law claims under the South Carolina Tort Claims Act.

The Motion for Attorneys' Fees came before the court on December 11, 2024. Following the hearing, the court allowed the parties to file supplemental briefs. On December 23, 2024, Plaintiff's filed a reply to Defendants' Memorandum in Opposition of Plaintiff's Motion for Attorney's Fees. The court filed its Order on January 15, 2025, and granted the Plaintiff $33,333.33 in attorneys' fees (hereinafter "Order"). That award was approximately eight (8) percent of the attorneys' fees accrued for the Plaintiff to litigate and ultimately prevail on a combination of civil

rights claims under 42 U.S.C. § 1983 and state law claims under the South Carolina Tort Claims Act.

During the pendency of that order, the Fourth Circuit issued its unpublished opinion to uphold a substantial award of attorneys' fees where the Plaintiff was awarded a significant amount in monetary damages on state law claims and one dollar ($1) on federal claims under 42 U.S.C. § 1983. That case is particularly instructive for this matter, for in *Gifford* the Plaintiff was likewise awarded an appropriate amount in monetary damages on state law claims but further secured – by way of the cumulative knowledge, experience, and skill of his respective counsel and counsel at trial – actual and punitive damages against an individual officer under § 1983. However, unlike the case at bar, the court in Gifford awarded attorneys' fees in an amount of $878,467.80.

Similar in part to *Gifford*, Plaintiff's counsel in this case respectfully asserts that multiple factors strongly militate in favor of awarding the total amount of $410,792.50 in attorneys' fees. For example, the case focused heavily on the pursuit of the vindication of important constitutional rights, the Plaintiff prevailed on significant legal issues, and the litigation served a significant public purpose. Compare *Mercer v. Duke University*, 401 F.3d 199 (4th Cir. 2005). Moreover, the litigation, and the ultimate success of the litigation achieved by a jury verdict for the Plaintiff, was inherently based upon the input of a significant amount of time and labor, including time and labor that was required at the expense of the attorneys' time and attention to other matters. Furthermore, the case required the resolution and presentation of difficult legal questions that are widely recognized to be inherently complex and difficult to litigate; and the skills required to do so properly are far from basic or trivial.

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Accordingly, Plaintiff's counsel asserts that they are necessarily and properly entitled to the full $410,792.50 in attorneys' fees and Plaintiff respectfully moves for reconsideration of this court's January 15, 2025 Order which granted Plaintiff only $33,333.33 in attorneys' fees.

ARGUMENT

The Plaintiff incorporates by reference the citations to the record and arguments made in his prior memoranda. ECF 7.1.2024 and ECF 12.23.2024. The Civil Rights Attorney's Fees Awards Act of 1976 authorizes the award of "a reasonable attorney's fee" to "the prevailing party" in certain civil rights actions, including suits brought under 42 U.S.C.S. § 1983. 42 U.S.C.S. § 1988(b). The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. *Lefemine v. Wideman* 758 F.3d. 551 (4th Cir. 2014). The United States Supreme Court has concluded that the statutory policy of furthering the successful prosecution of meritorious claims is better served by a rule that creates an incentive to retain counsel. *Id.* § 1988 is not meant as a "punishment" for "bad" defendants" but is instead meant to compensate civil rights attorneys who bring civil rights cases and win them. *Id.*

Congress also attributed the need for Section 1988 to public official immunities that severely limit money damages even in the face of success: "[W]hile damages are theoretically available under the statutes covered by [Section 1988], . . . in some cases, immunity doctrines and special defenses, available only to public officials, preclude or severely limit the damage remedy." *Id.* at 577 (quotation marks, citation, and emphasis omitted). Accordingly, "awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary if [f]ederal civil and constitutional rights are to be adequately protected.' House Report, at 9." *Id.* See also *Pulliam v. Allen*, 466 U.S. 522, 527, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984) (noting that "the legislative history of [Section] 1988 clearly indicates that Congress intended to provide for

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attorney's fees in cases where relief properly is granted against officials who are immune from damages awards" and noting that "awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary if [f]ederal civil and constitutional rights are to be adequately protected").

Again, awarding counsel fees to prevailing plaintiffs in civil rights litigation against government entities and officials is particularly important and necessary if [f]ederal civil and constitutional rights are to be adequately protected. *Riverside v. Rivera*, 477 U.S. 561, 106 S. Ct. 2686 (1986). Because damages awards do not reflect fully the public benefit advanced by civil rights litigation, Congress did not intend for fees in civil rights cases, unlike most private law cases, to depend on obtaining substantial monetary relief. Rather, Congress made clear that it "intended that the amount of fees awarded under 42 U.S.C. § 1988 be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases and not be reduced because the rights involved may be nonpecuniary in nature". *Id.* In the absence of any indication that Congress intended to adopt a strict rule that attorney's fees under 42 U.S.C.S. § 1988 be proportionate to damages recovered, the U.S. Supreme Court declines to adopt such a rule. *Id*. Likewise, the Supreme Court in *Riverside v. Rivera* also explained that "Congress enacted [Section] 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *Riverside v. Rivera*, 477 U.S. 561, 576, 106 S. Ct. 2686 (1986).

1. The Court Erred in Awarding Attorneys' Fees Based on One-Third Contingency

The court mistakenly awarded $33,333.33 based on a portion of the verdict as related to 42 U.S.C. § 1983 (Order pg. 2). The Court appears to have relied solely on the factors as set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Circuit). Specifically, the finding

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that, "[i]n no event, however, should the litigant be awarded a fee greater than he is contractually bound to pay, if indeed the attorneys have contracted as to amount. *Id.* This was an error which – as outlined in the record and the arguments herein – is expressly contrary to the public policy underlying 42 U.S.C. §§ 1983 and 1988.

The Supreme Court addressed the *Johnson* holding in *Blanchard v. Bergeron*, 489 U.S. 87, 103 L. Ed. 2d 67, 109 S. Ct. 939 (1989). "[W]e have turned our attention to *Johnson* v. *Georgia Highway Express, Inc., supra*, a case decided before the enactment of the Civil Rights Attorney's Fee Award Act of 1976. As we stated in *Hensley* v. *Eckerhart*, 461 U.S. 424, 429-431 (1983), *Johnson* provides guidance to Congress' intent because both the House and Senate Reports refer to the 12 factors set forth in *Johnson* for assessing the reasonableness of an attorney's fee award. The Senate Report, in particular, refers to three District Court decisions that "correctly applied" the 12 factors laid out in *Johnson." Blanchard v. Bergeron* 489 U.S. 87, 103 L. Ed. 2d 67, 109 S. Ct. 939 (1989). In the course of its discussion of the factors to be considered by courts in awarding attorneys' fees…the *Johnson* court says, '"In no event, however, should the litigant be awarded a fee greater than he is contractually bound to pay, if indeed the attorneys have contracted as to amount." *Id* at 718. "This latter statement, never disowned in the Circuit, was the basis for the decision. But we doubt that Congress embraced this aspect of *Johnson*, for it pointed to the three District Court cases in which the factors are 'correctly applied.'" Those cases clarify that the fee arrangement is but a single factor and not determinative. *Blanchard v. Bergeron,* 489 U.S. 87, 103 L. Ed. 2d 67, 109 S. Ct. 939 (1989).[1] As we understand § 1988's provision for

[1] In *Stanford Daily* v. *Zurcher*, 64 F. R. D. 680 (ND Cal. 1974), aff'd, 550 F. 2d 464 (CA9 1977), rev'd on other grounds, 436 U.S. 547 (1978), for example, the District Court considered a contingent-fee arrangement to be a factor, but not dispositive, in the calculation of a fee award. In *Davis* v. *County of Los Angeles, supra*, the court permitted a fee award to counsel in a public interest firm which otherwise would have been entitled to no fee. Finally,

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allowing a "reasonable attorney's fee," it contemplates reasonable compensation, **in light of all of the circumstances, for the time and effort expended by the attorney for the prevailing plaintiff, no more and no less**. *Id* (emphasis added).

"A contingent-fee contract does not impose an automatic ceiling on an award of attorney's fees, **and to hold otherwise would be inconsistent with the statute**, the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, and its policy and purpose."[2] *Id* (emphasis added). Fee awards in 42 U.S.C. § 1983 damages cases should not be modeled upon the contingent-fee arrangements used in personal injury litigation; and courts have rejected the notion that a civil rights action for damages constitutes nothing more than a private tort suit benefiting only the individual plaintiffs whose rights were violated. Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms. *Id.* Likewise, a "trial judge should not be limited by the contractual fee agreement between plaintiff and counsel. The contingent fee-model, premised on the award to an attorney of an amount representing a percentage of the damages, is . . . inappropriate for the determination of fees under § 1988." *Goodwin v. Metts*, 973 F.2d 378 (4th Cir. 1992).

2. The Court Failed to Conduct the Proper Analysis in Awarding Attorneys' Fees

Here, the Court only addressed the *Johnson* factors in its Order for Attorneys' Fees. However, the Supreme Court has expressed concern over these factors, stating they "[give]

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in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 66 F. R. D. 483 (WDNC 1975), the court stated that **reasonable fees should be granted regardless of the individual plaintiff's fee obligations**.(emphasis added). *Johnson*'s "list of 12" thus provides a useful catalog of the many factors to be considered in assessing the reasonableness of an award of attorney's fees; but the one factor at issue here, the attorney's private fee arrangement, standing alone, is not dispositive. *Blanchard v. Bergeron*, 489 U.S. 87, 103 L.Ed. 2d 67, 109 S.Ct. 939 (1989).

[2] The *Blanchard* opinion provides a thorough analysis of *Johnson*, the Civil Rights Attorney's Fee's Award Act, and subsequent District Court cases in concluding the trial judge should not be limited by the contractual fee agreement between plaintiff and counsel. *Blanchard* at 91-96.

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very little actual guidance to district courts." *Perdue v. Kenny A.*, 559 U.S. 542, 551, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010) (quoting *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986) (explaining the Supreme Court traced the history through which the lodestar method had replaced *ad hoc* consideration of the *Johnson* factors). The Court reprised its opinion in *Blume v. Stenson*, 465 U.S. 886 (1984).[3]

To date, it appears that the courts have uniformly followed the mandates of the *Blume* opinion. See, e.g. *Missouri v. Jenkins*, 491 U.S. 274, 283 (1989) (in determining "reasonable hourly rates," attorney's fees under § 1988 are to be based on "The starting point for determining the amount of a 'reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.'" *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983)). "The product of these two figures is the lodestar and there is a 'strong presumption' that the lodestar is the reasonable sum the attorneys deserve." *Id.* (quoting *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565-66, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986)); *see also Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010) (After the lodestar is determined, the court must next consider the necessity of an adjustment for results obtained). However, as reiterated by the U.S. Supreme Court in *Perdue v. Kenny* A. ex rel. Winn, 559 U.S. 542, 130 S. Ct. 1662, 1673, 176 L. Ed. 2d 494 (2010), there is a 'strong presumption' that the lodestar reflects a reasonable statutory fee."

[3] We emphasized, however, that the figure resulting from this [lodestar] calculation is more than a mere "rough guess" or initial approximation of the final award to be made. Instead, we found that "[w]hen…the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product *is presumed* to be the "reasonable fee" to which counsel is entitled. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986)

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Further, the "lodestar" figure has, as its name suggests, become the guiding light of our fee-shifting jurisprudence. *City of Burlington v. Dague*, 505 U.S. 557, 112 S. Ct. 2638 (1992). [The Supreme Court] has established a "strong presumption that the lodestar represents the "reasonable" fee. *Id.* (citing *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 97 L. Ed. 2d. 585, 107 S. Ct. 3078 (1987)).

In this case, the court did not properly address the reasonableness of the hours claimed by the Plaintiff's attorneys or the reasonableness of the rates claimed by the Plaintiff's attorneys and instead made an "in gross" or *ad hoc* reduction. Respectfully, this oversight was an error, and one which severely discounted the paramount interests of the vindication of important constitutional rights, the Plaintiff's success on significant legal issues, and significant public purpose served by the litigation. Moreover, at only eight (8%) percent of the total attorneys' fees requested, the court's award drastically discounted the significant amount of time, effort, skill, and other critical factors that were necessary and material to the presentation of the Plaintiff's case and his ultimate victory at trial.

3. The Court Improperly Made an "In Gross" Reduction of Plaintiff's Attorneys' Fees

The court made an "in gross" or *ad hoc* reduction of the Plaintiff's Attorneys' Fees request by reducing the amount from the $410,792.50 to $33,333.33 without providing any basis for the reduction beyond awarding the "one-third contingency on $100,000.00.[4] See *Brawley v. Richland County* 2024 S.C. App. LEXIS 79 (S.C. Ct. App., Nov. 14, 2024) (citing *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) (explaining that the law

[4] The total amount of time expended by Thad L. Myers was 86.1 hours or approx. 3.5 days, by Jeremiah "JJ" Shellenberg was 412.65 hours or approx. 17 days, by Joshua P. Golson was 389 hours or approx. 16 days, by Nichol Hare was 118.5 hours or approx. 5 days and by Grady L. Patterson was 34 hours or approx. 1.5 days. For a total of 1,040.25 hours. The award of the court equates to $32.04 per hour.

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requires a trial court to base fee awards "on a sound evidentiary basis" and to "adequately explain [the award] with specific findings," or else the fee award will constitute an abuse of discretion warranting reversal)[5] (emphasis added).

When the district court reduces fees "'in gross,' it must consider the *Johnson* factors … and 'clearly articulate [the] reasons for selecting specific percentage reductions,'" *Bowen v. Adidas Am., Inc.,* No. 3:18-3118-JFA, 2021 U.S. Dist. LEXIS 166997 (D.S.C. Sep. 2, 2021) (citing *Loranger v. Stierheim*, 10 F.3d 776, at 783 (11th Cir. 1994); *see also Johnston v. Borders*, 36 F.4th 1254, 1287 (11th Cir. 2022) ("A district court [making an across-the-board cut] must do more than eyeball the request and if it seems excessive cut it down by an arbitrary percentage. It is obligated to articulate the decisions it made, give principled reasons for those decisions, and show its calculations." (cleaned up)). In fact, this sort of *ad hoc* adjustment occurred so frequently that these factors became known as the "*Johnson* factors." See *Trimper v. City of Norfolk, Va.,* 58 F.3d 68, 73 (4th Cir. 1995).

4. The Court Improperly Applied the *Johnson* Factors

The court improperly applied the *Johnson* factors to the detriment of the Plaintiff. These factors, taken from the American Bar Association Code of Professional Responsibility, Disciplinary Rule 2-106 (1980) include the following: (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the

[5] In *Brawley,* which Mr. Lindermann argued, "[d]uring oral argument in this court, the parties agreed that *Hensley v. Eckhart* 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983) a prominent federal case provides useful guidance. *Hensley* explains, 'The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Brawley v. Richland County* 2024 S.C. App. LEXIS 79, 15-16 (S.C. Ct. App., Nov. 14, 2024).

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customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney(s); (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; (12) awards in similar cases. *Id* at 562, n. 7.

However, the *Johnson* factors "usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate [, i.e., the lodestar]." *Hensley v. Eckerhart*, 461 U.S. 424, 434 n.9, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983) (these factors including such considerations as the time and labor required, the difficulty of the issues litigated, customary fees in similar situations, and the results obtained). As previously addressed, the plaintiff provided a reasonable basis for the hours claimed and the rates claimed (lodestar) which is presumed to be the reasonable fee. See *Blum v. Stenson*, 465 U.S. 886, 897, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984) (When . . . the applicant for a fee has carried his burden of showing that the claimed rate and number of hours [expended] are reasonable, the [lodestar] is presumed to be the reasonable fee contemplated" by the statute).[6]

[6] All courts have uniformly followed the clear mandate of the *Blum* opinion. See, e.g., *Missouri v. Jenkins*, 491 U.S. 274, 283 (1989) (in determining "reasonable hourly rates," attorney's fees awarded under § 1988 "are to be based on market rates for the services rendered"); *Rum Creek Coal Sales*, 31 F.3d at 175 (citing *Blum* and holding reasonableness met by compensating with "prevailing market rates in the relevant community"); *Glover v. Johnson*, 934 F.2d 703, 716 (6th Cir. 1991) (hourly rate can be established by proving that the rates sought are rates charged for similar services by lawyers of comparable skill, experience and reputation); *Malloy v. Monaghan*, 73 F.3d 1012, 1018-19 (10th Cir. 1996) (imposition of insurance defense attorney's hourly rate on prevailing plaintiff's attorney is inappropriate); *Pressley v. Haeger*, 977 F.2d 295, 299 (7th Cir. 1992) (reasonable attorney's fees to be based on "market rates" for legal services); *Rivera*, 477 U.S., at 591, (Rehnquist, J., dissenting) (reasonableness of fee must be determined "in light of both the traditional billing practices in the profession, and the fundamental principle that the award of a 'reasonable' attorney's fee under § 1988 means a fee that would have been deemed reasonable if billed to affluent plaintiffs by their own attorneys").

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In this case, multiple factors were severely discounted and/or overlooked to the Plaintiff's detriment, including, amongst other things, the time and labor required, the novelty and difficulty of the question, the skill required to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the experience, reputation, and ability of the attorney(s), the nature and length of the professional relationship with the client, as well as awards in similar cases.

For example, as to factors such as the time and labor required and the preclusion of other employment by the attorney due to acceptance of the case, Plaintiff is compelled to note that in similar fashion to *Gifford v. Horry County* C/A No.4:16-cv-03136-MGL and *Gifford v. Horry Cty. Police Dep't,* No. 23-1471, 2024 U.S. App. LEXIS 32225 (4th Cir. Dec. 19, 2024) (unpublished), Plaintiff's Counsel submitted affidavits which itemized the time spent on this case, including, e.g., time required to develop the facts and evidence throughout litigation, time reasonably necessary for successful trial preparations, and time expended to prosecute a weeklong trial with a substantial body of evidence, and witnesses (and thus the time ultimately necessary for Plaintiff to prevail). The total amount of time expended was 1,040.25 hours or approx. 43 days of work on this matter. See Footnote 4. Moreover, this total was already sharply discounted and included the waier of a significant number of hours, including 110 hours contributed by Paralegal Nikki Seek. In total, approximately forty-three (43) days of time were devoted to prosecute this case and prevail at trial. This time quite obviously may have been otherwise productively spent on other cases and the present Order severely discounts the losses incurred by Plaintiff's counsel where a significant amount of time and effort was expended to litigate a combination of state law claims and federal claims under 42 U.S.C. § 1983.

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Likewise, the initial Order appears to have neglected proper consideration to additional factors, including the novelty and difficulty of the question, the skill requisite to perform the legal service properly, and the nature and length of the professional relationship with the client. Constitutional cases are particularly difficult, highly technical and fact specific. As the Supreme Court has underscored in many cases brought under 42 U.S.C. §§ 1983 and 1988, immunity doctrines and special defenses, available only to public officials, often preclude or severely limit a damages remedy. Accordingly, awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary to encourage attorneys to prosecute such cases, provide similarly situated plaintiffs proper access to the courts, and thereby ensure that important civil and constitutional rights are adequately protected. *Lefemine v. Wideman* 758 F.3d. 551 (4th Cir. 2014); *City of Riverside v. Rivera*, 477 U.S. 561, 577 (1986) (Explaining that because immunity doctrines often preclude civil rights plaintiffs from receiving monetary damages, "awarding counsel fees . . . is particularly important and necessary if Federal civil and constitutional rights are to be adequately protected"). Similarly, the Court has also addressed the complexity of civil rights cases where it has explained that "the amount of fees awarded under 42 U.S.C. § 1988 be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases…" *Id.*

In addition, members of the SC Bar with specific knowledge and experience relative to civil rights litigation submitted affidavits which attested to the complexity of civil rights cases. ECF 7.1.24, Exhibits 1-3. Similarly, those same supporting affidavits attested to the relative knowledge, experience, and skill of Plaintiff's counsel, gleaned from personal knowledge, and further underscored the importance and difficulty of the litigation at hand. Curiously, however, the court did specifically note that Plaintiff's did not retain a police expert. In such cases,

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particularly where the issue of probable cause for arrest may turn on a combination of law and fact, police experts may be necessarily important. However, such experts are quite often former police officers who testify based upon their collective experience and seek to render an opinion as law enforcement officers accordingly. However, in this case, Plaintiff's counsel is respectfully compelled to emphasize that they were able to locate and secure - with extreme difficulty and input of time - two of the former officers from the Town of Port Royal Police Department to testify against their former agency. The officers testified at length about matters related to both the state law claims and federal claims and ultimately testified that there was no reasonable basis for Mr. Coffman to be arrested. Such testimony was material and compelling and it required a significant amount of time to find two former officers to cross the thin blue line and testify against their former employer. Moreover, it required a substantial amount of knowledge and skill to offer that testimony to the court and the jury at trial.

In addition, it appears that the court did not give sufficient weight to additional factors, such as the customary fee as well as the experience, reputation, and ability of the attorney(s). The Plaintiff submitted multiple affidavits from attorneys who attested to the reasonable hourly rates and experience, reputation, and ability of the attorneys. ECF 7.1.24, Exhibits 1-3. The statute and its legislative history establish that "reasonable fees" are to be calculated according to the prevailing market rates in the relevant community, not according to the cost of providing legal services, regardless of whether the prevailing party is represented by private profitmaking attorneys or nonprofit legal aid organizations. *Blume v. Stenson*, 405 U.S. 886, 104 S. Ct. 1541 (1984).[7] In this case, Plaintiff's Counsel has submitted a fee rate well within the range of

[7] Courts have uniformly followed the clear command of the *Blum* opinion. See, e.g., *Missouri v. Jenkins,* 491 U.S. 274, 283 (1989) (in determining "reasonable hourly rates," attorney's fees awarded under § 1988 "are to be based on market rates for the services rendered"); *Rum Creek*

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reasonable rates as attested to by multiple members of the South Carolina Bar with similar as well as lengthy experience in civil rights litigation, including Joel S. Hughes, Keith Babcock, and Neal M. Lourie; and all attested to the reasonableness of counsels' respective hourly rates.

Lastly, Plaintiff's counsel respectfully asserts that the court did not give sufficient consideration to factors such as the the "undesirability" of the case and the amount involved and the results obtained:

> Civil rights cases are, almost by definition, challenges to established authority. They have traditionally been unpopular cases among some members of the bar and the general public. While the stigma associated with handling civil rights cases has dissipated somewhat, it is not gone altogether. The amendment to 42 U.S.C. § 1988 was designed in part to mitigate the adverse economic consequences of taking unpopular cases. *Philips v. Moore*, 441 F. Supp. 833, 835 (W.D.N.C. 1977).

Furthermore, the court should have given greater consideration to perhaps the most critical factor, i.e., the degree of success obtained. See *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). The most important result achieved in this case was the vindication of Paul Coffman's claim of constitutional violations. Kimberly Carter was found liable for multiple constitutional violations for unreasonable seizure and malicious prosecution. The Port Royal Police Department was found liable for state law claims of malicious prosecution and negligence. The jury award of damages was substantial. The Plaintiff has achieved all the relief

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Coal Sales, 31 F.3d at 175 (citing *Blum* and holding reasonableness met by compensating with "prevailing market rates in the relevant community"); *Glover v. Johnson,* 934 F.2d 703, 716 (6th Cir. 1991) (hourly rate can be established by proving that the rates sought are rates charged for similar services by lawyers of comparable skill, experience and reputation); *Malloy v. Monaghan,* 73 F.3d 1012, 1018-19 (10th Cir. 1996) (imposition of insurance defense attorney's hourly rate on prevailing plaintiff's attorney is inappropriate); *Pressley v. Haeger*, 977 F.2d 295, 299 (7th Cir. 1992) (reasonable attorney's fees to be based on "market rates" for legal services); *Rivera,* 477 U.S., at 591, (Rehnquist, J., dissenting) (reasonableness of fee must be determined "in light of both the traditional billing practices in the profession, and the fundamental principle that the award of a 'reasonable' attorney's fee under § 1988 means a fee that would have been deemed reasonable if billed to affluent plaintiffs by their own attorneys").

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the law allows to one injured as he was so injured, to include an award of punitive damages on the federal claims under 42 U.S.C. § 1983. This result should merit a fully compensatory reward, including an award of attorneys' fees that properly recognizes and honors the exceptional amount of time to successfully litigate such cases and vindicate the client's constitutional rights.

In this case, Plaintiff's counsel did not spend unnecessary time on this case "in the hopes of inflating our fees. The payoff is too uncertain, as to both the result and the amount of the fee." See *Moreno v. City of Sacramento,* 534 F. 3d 1106 (9th Cir. 2008). As Judge Goodstein wrote in *Back v. Hollywood Wholesale*, "I agree with the *Moreno* Court wherein it stated, 'By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.'" 2018 S.C.C.P. LEXIS 49. Here, Plaintiff's counsel applied their respective experience, knowledge, and skill in conjunction with the amount of time necessary to litigate the case, prevail on dispositive motions (motions to dismiss and motions for summary judgment), prepare the case for trial, and successfully present the case to a jury at trial. Consequently, Plaintiff and Plaintiff's counsel should not suffer such a drastic reduction in an award of attorneys' fees when they are simply a reflection of the amount of time, knowledge, and skill required to protect the client's constitutional rights, prevail at trial, and serve significant public interests.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court reconsider its January 15, 2025 Order and grant the Plaintiff's full attorneys' fees in the amount of $410,792.50. As reflected by the record before the court, the case focused heavily on the pursuit of the vindication of important constitutional rights, the Plaintiff prevailed on significant legal issues, and the litigation served a significant public purpose. Moreover, to ultimately prevail at trial, Plaintiff's

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counsel had to invest a significant amount of time to litigate the case and develop the facts and evidence, which precluded attention to other matters and cases, and rely on their collective experience and ability to achieve a positive result and damages award for the Plaintiff at trial. In addition, Plaintiff's counsel respectfully submits that the requested attorneys' fees are well within the parameters of awards in recent and similar cases. Thus, Plaintiff's counsel respectfully requests the court reconsider its Order dated January 15, 2025 and grant attorneys' fees in the amount of $410,792.50.

Respectfully Submitted

s/ Jeremiah J. Shellenberg
Jeremiah J. Shellenberg S.C. Bar No. 100235
Thad L. Myers S.C. Bar No. 12576
Thad L. Myers, P.A. & Associates
1727 Hampton Street
Columbia, South Carolina 29201
(803) 252-0005 (telephone)
jj@thadmyerspa.com
thad@thadmyerspa.com

Joshua P. Golson
S.C. Bar No. 100618
Law Offices of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29201
Telephone: (803) 252-0005
josh@joshgolsonlaw.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
January 27, 2025

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS**
Paul Vernon Coffman, Jr., Plaintiff, v. Town of Port Royal and Detective Kimberly Carter, Defendants.	)	Civil Action No. 2021-CP-07-1217 **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDERS AND/OR MOTION TO RECONSIDER**

TO: THE HONORABLE H. STEVEN DEBERRY, IV

THAD L. MYERS, JEREMIAH J. SHELLENBERG, JOSHUA P. GOLSON, AND GRADY L. PATTERSON, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Town of Port Royal and Kimberly Carter will move before Circuit Court Judge H. Steven DeBerry, IV, at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCP, altering, amending, and reconsidering the Order Relating to Post-Trial Motions filed January 15, 2025, as well as the Order Awarding Fees and Costs, filed January 15, 2025. The Defendants' counsel received written notice of entry of these Orders on that same date.

The Defendants' motion is based upon the following grounds:

The Order Relating to Post-Trial Motions filed January 15, 2025 does not specifically address or provide the Court's reasoning or legal analysis for the denial of each of grounds for relief as set forth in the Defendants' Post-Trial Motions. Specifically, the section of the Order titled "Defendants' Motion for JNOV" does not even reference let alone address a number of the

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grounds asserted by the Defendants for a JNOV. Accordingly, the Defendants have filed this motion to affirmatively and officially on the record request that the Court issue a ruling on each ground raised in its Post-Trial Motions. The only ground for JNOV that is actually addressed in the Order is the qualified immunity defense. The Defendants make this request in order to ensure that all of the issues and arguments raised in its Post-Trial Motions are preserved for appellate review.

I. Qualified Immunity Defense

As to the defense of qualified immunity, the Court ruled as follows: "The Court finds upon review of the facts and evidence that the Defense has failed to meet their burden with regard to Qualified Immunity. The facts and circumstances as a whole, in totality, support a finding of this court that the Officer's actions were not objectively reasonable." *See*, Order, p. 3. Respectfully, the Court framed the issue for qualified immunity incorrectly. The issue is not whether the Defendant Carter's actions were objectively reasonable. Rather, as framed by the South Carolina Court of Appeals in *Camden v. Hilton*, 360 S.C. 164, 600 S.E.2d 88, 95 (Ct. App. 2004), the question is whether "(a) it was objectively reasonable for the officer to believe probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met." 600 S.E.2d at 95.

In effect, this Court failed to consider or address whether there was "arguable probable cause" for the Plaintiff's arrest. As the Fourth Circuit has explained, "[q]ualified immunity applies if there is arguable probable cause, which exists even where an officer mistakenly arrests a suspect believing it is based on probable cause if the mistake is objectively reasonable." 813 Fed. Appx. at 92. *See also*, *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) ("Even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity"); *Smith v. Reddy*, 101 F.3d 351 (4th Cir. 1996) (in qualified immunity context, "[t]he reasonableness

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of [defendant's] conduct does not turn on whether probable cause was, in fact, present"). To receive qualified immunity, an officer need not have actual probable cause, but only arguable probable cause. *See, Gomez v. Atkins*, 296 F.3d 253, 261-62 (4th Cir. 2002) ("In our assessment of whether Atkins is entitled to qualified immunity, however, the question is not whether there actually was probable cause for the murder warrant against [Gomez], but whether an objective law officer could reasonably have believed probable cause to exist"). *See also*, *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010) ("To receive qualified immunity, an officer need not have actual probable cause, but only 'arguable' probable cause"); *Kuehl v. Burtis*, 173 F.3d 646, 650 (8th Cir. 1999) ("The issue for immunity purposes is not probable cause in fact but arguable probable cause"). This is true because it is "inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and in such cases those officials should not be held personally liable." *Brown*, 608 F.3d at 734-35.

In this case, the Defendant Carter had, at a minimum, arguable probable cause based on the evidence collected in her investigation. In essence, based on the evidence, statements, video, and inconsistencies in the Plaintiff's story, it was objectively reasonable for Defendant Carter to believe that probable cause existed for the Plaintiff's arrest. The Defendant Carter testified that, after reviewing all the material and conducting all the interviews, based on the totality of the circumstances, she believed probable cause existed for the Plaintiff's arrest. The fact that other officers may not have felt that probable cause does not exist does the defeat "arguable probable cause" because, as the Court of Appeals in *Camden* recognized, "officers of reasonable competence could disagree on whether the probable cause test was met." *Camden*, 600 S.E.2d at 95. The probable cause determination was also supported by the issuance of the warrant by a neutral and detached municipal court judge.

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The Court need not look any farther that its own rulings at the directed verdict stage. As discussed at length during the post-trial hearing, at page 526 of the transcript, the Court ruled:

> Again, the case law certainly there's evidence that – that support the finding of probable cause in this record, but there's also evidence in this record that negates that – that finding of probable cause, and I think that the case law, the *Plowden* case, you know, certainly suggests that where there's only one outcome possible, then it is a matter of law for the Court, but where we have conflicting testimony in evidence, then it's a jury question.

(Tr. 526). Certainly, this Court recognized – and correctly so – that there is evidence to support a finding of probable cause. That demonstrates that the Defendant Carter had at a minimum "arguable probable cause" meaning that there was evidence upon which Carter could reasonably believe, albeit mistakenly perhaps, that probable cause was present. The evidence outlined in the Defendants' supporting memorandum as well as during post-trial arguments at the hearing fully demonstrate that arguable probable cause, at a minimum, existed.

In sum, even assuming the Court finds that probable cause did not exist for the Plaintiff's arrest, qualified immunity still attaches and protects the Defendant Carter's mistaken finding. To reiterate, qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments." *Smith*, 781 F.3d 95, 100 (4th Cir. 2015). Here, to the extent the Defendant Carter may have made a mistake in her ultimate determination that Plaintiff committed Third Degree Assault and Battery, this mistake was not unreasonable considering the facts learned in her investigation. Again, the Court already found there is evidence "that supports the finding of probable cause in this record." (Tr. 526). The Court should apply the law of the case, based on that ruling, and conclude that the Defendant Carter is entitled to qualified immunity even if she ultimately made an error.

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II. Evidence of Probable Cause

In its Order Relating to Post-Trial Motions filed January 15, 2025, the Court did not address both Defendants' JNOV argument that there was probable cause for the Plaintiff's arrest for Third Degree Assault and Battery. According to S.C. Code Ann. § 16-3-600(E)(1), "[a] person commits the offense of assault and battery in the third degree if the person unlawfully injures another person or offers or attempts to injure another person with the present ability to do so." S.C. Code Ann. § 16-3-600(E)(1). The evidence supports the elements of that offense as a matter of law.

The United States Supreme Court has explained that "[t]o determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *District of Columbia v. Wesby*, 138 S.Ct. 577, 586 (2018). "Because probable cause deals with probabilities and depends on the totality of the circumstances, it is 'a fluid concept' that is not readily, or even usefully, reduced to a neat set of legal rules." *Id*. Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id*. Thus, the Supreme Court has described probable cause as not being "a high bar." *Id*.

In *Baker v. McCollan*, 443 U.S. 137 (1979), the United States Supreme Court held that "[t]he Constitution does not guarantee that only the guilty will be arrested." 443 U.S. at 145. The Supreme Court explained that law enforcement is not required "to investigate every claim of innocence" and is not required to perform "an error-free investigation" to avoid liability under Section 1983. 443 U.S. at 146.

In the case at bar, the Defendant Carter and the Town of Port Royal developed evidence during the investigation to support a finding of probable cause, and in fact, a neutral and detached judge found probable cause. The existence of conflicting statements or evidence does not defeat

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probable cause. "Probable cause foes not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands." *Brown v. Lott*, 2022 WL 2093849, *2 (4th Cir. 2022), *citing Gerstein v. Pugh*, 420 U.S. 103, 121 (1975). The Fourth Circuit has ruled that "probable cause does not require an officer to be certain that subsequent prosecution of the arrestee will be successful." *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir. 1991), *citing Krause v. Bennett*, 887 F.2d 362, 371 (2d Cir. 1989). *See also*, *Brice v. Nkaru*, 220 F.3d 233, 239, n.5 (4th Cir. 2000) ("the police are not required to conduct a trial before making an arrest").

The Defendant Carter obtained statements from witnesses, including Jessica Bradley and Brittany Smith, that the Plaintiff made negative comments about Joshua Smith and about wanting to "beat his ass." The Plaintiff then made his way to his vehicle, returned with a fish-bat in his hand which he was hiding against his leg. This was also consistent with the video footage reviewed by Detective Carter. There were also substantial inconsistencies in the statements provided by the Plaintiff. In short, for the reasons addressed at the directed verdict stage and again at JNOV, there was evidence to establish probable cause as a matter of law which results in a JNOV for the Defendant Carter on the § 1983 claim and for the Defendant Town on the state law claims. The Court is respectfully asked to address this issue to allow for proper appellate review.

III. State Law Claims

In addition to arguing that the Plaintiff did not establish the lack of probable cause, the Defendant Town of Port Royal made additional arguments that the Court did not consider or address in its Order Relating to Post-Trial Motions filed January 15, 2025. In the Court's ruling on the directed verdict motion, the Court stated:

> As to the Town of Port Royal, you know, I can see a theory of law for an agency ground where the Town of Port Royal having -- being -- having under their employment Detective Carter, by and through that agency can be -- could be found liable for negligence, based on whether or not the jury believes there wasn't probable cause. And as such, if a jury were to make that conclusion, then they could

> consider the elements of malicious prosecution. And I don't think they can reach the malicious prosecution if they don't find in the Plaintiff's favor for that negligence claim as it relates to -- as it relates to the existence or not probable cause. Because as -- as the trial court, I don't -- I think that's the only place that breach of duty could possibly exist as it relates to the facts and testimony and evidence in this case.

(Tr. 526-527). In short, the Court tied the negligence cause of action to the existence of probable cause. Therefore, given the existence of probable cause as a matter of law, the negligence claim fails. In other words, the existence of probable cause is a bar to a cause of action for "negligent arrest," assuming such a cause of action even exists under South Carolina law. The Court did not discuss this issue in its Order.

Likewise, the Court did not consider or address the Defendant Town's arguments that a cause of action for "negligent arrest" is not recognized under South Carolina law. In *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), the South Carolina Court of Appeals held that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, the Court of Appeals concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id*. The same would be true for a malicious prosecution claim. In fact, in *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Supreme Court explained that "police owe a duty to the public at large and not to any individual." *Id*. Consequently, the *Gist* and *Wyatt* cases demonstrate that South Carolina does not recognize a cause of action for "negligent arrest" or an actionable claim for negligence where there is an arrest based on probable cause.

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Further, the Court did not consider or address the Defendant Town's argument that the Court never charged the jury as the duty of care on which the negligence cause of action was based. During the jury charge, the Court charged the jury that "[i]t is incumbent upon the Plaintiff to prove the Defendant was negligent in one or more of the particulars as alleged in the complaint." (Tr. 622). However, the Court never charged the jury as to any of those particulars from the Complaint nor as the applicable duty of care, which is a legal questions for the Court. Moreover, the negligence verdict may not be upheld on a negligent hiring, supervision, or training theory because the law on those forms of negligence was never charged to the jury. Thus, it appears that the negligence cause of action, as the Court alluded to in its directed verdict ruling, was premised, like malicious prosecution, on the existence of probable cause. Thus, if there was probable cause for the Plaintiff's arrest, the negligence claim fails, just as the malicious prosecution claim fails. The Court is respectfully requested to address these issues to allow for proper appellate review.

IV. Franks Analysis

In its Order Relating to Post-Trial Motions filed January 15, 2025, the Court did not address the JNOV arguments related to the analysis in *Franks v. Delaware*, 438 U.S. 154 (1978). In that case, the United States Supreme Court established a two-prong analysis in addressing allegations that an arrest warrant was procured using deliberately false, misleading, or omitted information. "First, plaintiffs must allege that defendants knowingly and intentionally or with a reckless disregard for the truth either made false statements in their affidavit or omitted facts from those affidavits, thus rendering the affidavits misleading." *Evans v. Chalmers*, 703 F.3d 636, 650 (4th Cir. 2012). The second prong requires the plaintiff to "demonstrate that those false statements or omissions are material, that is, necessary to a neutral and disinterested magistrate's authorization" of the warrant. *Id*. As the Defendants argued, the Plaintiff did not prove that the arrest warrant was procured using deliberately false, misleading, or omitted information in violation of *Franks*.

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In addition to the lack of evidence to make that showing, the Court never engaged in the two-prong analysis, the second part of which is a legal question for the Court. Moreover, the issue was never presented to the jury. The jury charge does not include any instructions related to the *Franks* analysis, and certainly the verdict cannot be based or upheld on a legal theory that was never charged to the jury. The Court is respectfully requested to address this issue to allow for proper appellate review.

V. Attorney's Fees Order

With respect to the Order Awarding Fees and Costs, filed January 15, 2025, the Court is asked to reconsider or otherwise clarify its ruling in three particulars.

First, as a corollary to the Defendant Carter's qualified immunity defense, the Court is asked to find that Carter is entitled to qualified immunity based on the arguments cited above and at the hearing. If Carter is entitled to qualified immunity, the Court is asked to deny the claim for attorney's fees and costs under 42 U.S.C. § 1988, as the Plaintiff would not be a prevailing party.

Second, if the Court allows for an award of attorney's fees and costs under 42 U.S.C. § 1988, the Court is asked to clarify that no award of attorney's fees has been made against the Defendant Town of Port Royal. The verdict and judgment against the Defendant Town is limited to state law claims brought pursuant to the South Carolina Tort Claim Act, and it is well-settled that the Town as a matter of law cannot be held liable for attorney's fees under the Tort Claims Act. *See*, *Knoke v. South Carolina Department of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996).

Third, the Court is asked to reconsider the award of $14,351.72 in costs. The Court has not considered or addressed the "clear rule" announced by the United State Supreme Court in *Rimini Street, Inc. v. Oracle USA, Inc*., 139 S.Ct. 873 (2019). Importantly, in *Rimini*, the Supreme Court established a "clear rule" as follows: "A statute awarding 'costs' will not be construed as

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authorizing an award of litigation expenses beyond the six categories listed in §§ 1821 and 1920, absent an explicit statutory instruction to that effect." 139 S.Ct. at 878. The Supreme Court further ruled that "Section 1821 and 1920 create a default rule and establish a clear baseline against which Congress may legislate. Consistent with that default rule, some federal statutes simply refer to 'costs.' In those cases, federal courts are limited to awarding the costs specified in §§ 1821 and 1920." 139 S.Ct. at 877. Further explaining, the Supreme Court states: "If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so. … But absent such express authority, courts may not award litigation expenses that are not specified in §§ 1821 and 1920." *Id*. The *Rimini* decision overrules any previous decisions where courts have allowed prevailing parties to recover "reasonable litigation expenses" under § 1988.

Recently, in fact, the Tenth Circuit also recognized that *Rimini* "hold[s] that the authorization in 42 U.S.C. § 1988 to award 'full costs' does not provide the 'explicit statutory authority' required to award costs, including expert witness fees, beyond those provided by §§ 1920 and 1821." *Alfwear, Inc. v. Mast-Jaegermeister US, Inc.*, 2023 WL 8232072, *5 (10th Cir. 2023). That is the crux of the Appellant Rhodes' position. Under the "clear rule" announced in *Rimini*, costs may not be awarded under § 1988 to the prevailing party except for the taxable costs allowed for the six categories listed in §§ 1821 and 1920. The one exception created by Congress is for § 1981 cases where the statute says, "the court, in its discretion, may include expert fees as part of the attorney's fee." 42 U.S.C. § 1988(c). There are no other exceptions for the award of costs or expenses – as part of the attorney's fees or otherwise – that have been explicitly authorized by Congress under § 1988.

To recap, there is no "explicit statutory authority" in § 1988 that allows for the award of non-taxable costs as claimed by the Plaintiff, including travel expenses, hotels, meals, mileage

reimbursement, and postage, among others. The Plaintiff, in fact, makes no attempt to point out any such explicit language in § 1988 to support an award of the non-taxable costs" claimed in Exhibit 9 to his motion. Quite clearly, none of those items are taxable as costs under 28 U.S.C. § 1920 and Rule 54(d), FRCP (or Rule 54(e), SCRCP), and as a result, those non-taxable costs should not be awarded. The Court is respectfully asked to address this issue to allow for proper appellate review.

The Defendants' motion is based upon the pleadings filed in this case; Order Relating to Post-Trial Motions filed January 15, 2025; Order Awarding Fees and Costs, filed January 15, 2025; the Defendants' Post-Trial Motions and memoranda as previously filed; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

Counsel for Defendants Kimberly Carter and Town of Port Royal

January 27, 2025

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ELECTRONICALLY FILED - 2025 Feb 06 11:56 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701217

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT PAUL VERNON COFFMAN, JR., PLAINTIFF, VS. TOWN OF PORT ROYAL AND KIMBERLY CARTER, DEFENDANTS.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No. 2021-CP-07-01217 **MEMORANDUM IN OPPOSITION OF DEFENDANTS' MOTION TO ALTER OR AMEND OR FOR RECONSIDERATION ON COURT'S ORDERS DENYING DFENDANTS' POST TRIAL MOTIONS AND GRANTING PLAINTIFF'S COSTS**

Plaintiff, by and through his undersigned counsel, respectfully submits this Memorandum in Opposition to Defendants' Motion to Alter or Amend or for Reconsideration of the Court's Orders on Defendants' Motion for a Judgement Not Withstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, and/or New Trial Based on the 13th Juror Doctrine and Plaintiff's Motion for Attorneys' Fees and Costs.[1] Defendant has not, and cannot, show that the Court erred in denying Defendants' Motion and granting Plaintiff's costs.

LAW

Rule 59(e) of the Federal Rules of Civil Procedure governs motions to alter or amend a judgment; however, the rule does not provide a legal standard for such motions. The Fourth Circuit has articulated "three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pac. Ins. Co. v. Am. Nat'l Fire Ins.*

[1] Plaintiff incorporates the arguments made in his Memorandum in Opposition of Defendants' Motion for a Judgement Not Withstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, and/or New Trial Based on the 13th Juror Doctrine.

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Co., 148 F.3d 396, 403 (4th Cir. 1998) *citing EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." *Id.* at 403 (internal citations omitted). Rule 59(e) provides an "extraordinary remedy that should be used sparingly." *Id.* (internal citation omitted). The decision to alter or amend a judgment is reviewed for an abuse of discretion. *Id.* at 402.

ARGUMENT

Plaintiff respectfully asserts that Defendants, again, attempt to assert arguments in their motion to reconsider which are unsupported by the record, were not properly raised and/or preserved pre-trial, were not properly raised and/or preserved during trial, and have not been properly raised and presented to the court in their post-trial motion(s). More specifically, Defendants also appear to raise for the first time in their memoranda in support (and as apparently also omitted in their post-trial motion), arguments related to probable cause (e.g., "arguable" probable cause), qualified immunity, and immunity provisions under the SC Tort Claims Act that were not properly raised and/or preserved pre-trial, during trial, prior to the jury being excused, or otherwise raised in their post-trial motion. Defendants improperly argue the need for the Court to conduct a *Franks* analysis, including arguing the failure to include any *Franks* analysis instruction in the jury charges, for the first time in Defendants' Motion to Reconsider. For the reasons set forth herein, the Defendants' Motion should be denied.

I. Defendants Erroneously Assert that the Court made an Error of Law

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In this case, Defendants failed to present any arguments whatsoever relative to "arguable probable cause" and failed to raise, establish, or preserve any issues with respect to the prevailing analysis for an officer's affirmative defense of qualified immunity. See *Hassell v. City of Columbia,* 430 S.C. 620, 846 S.E. 2d 373 (S.C. App. 2020) citing *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial.")

Here, Defendant has now asserted for the first time post-trial, when it was not raised prior to the jury being excused (or in its post-trial motion for JNOV), the trial court "framed the issue for qualified immunity incorrectly" where the court ruled that, "The facts and circumstances as a whole, in totality, support a finding of this court that the Officer's actions were not objectively reasonable." This assertion is erroneous, unsupported by the sum of the facts and evidence in the record (testimony of Kimberly Carter, Joab Dowling, Ryan Steady, Joshua Smith, Brittany Smith, Jessica Bradley, Captain John Griffith's 30(b)(6) deposition testimony admitted by consent against the Town of Port Royal, and the various and substantial documentary and related evidence presented to the court and jury at trial), and mischaracterizes or otherwise misapplies the qualified immunity analysis as a whole.

More specifically, the Defendant desires that the Court both rewrite and disregard the sum of the testimony and evidence admitted at trial to show that Defendant Carter's actions were objectively reasonable. Moreover, the Defendants seek to skew the analysis of probable cause and suggest that a theory of "arguable probable cause" applies to an analysis of the underlying state law claims for negligence and malicious prosecution. This too is incorrect, as the resolution of the state law claims in part turns on the existence of actual probable cause – not arguable probable

cause – and the entity is not shielded from liability on those claims by an affirmative defense of qualified immunity.

Here, even if not specifically articulated the way Defendants' may have otherwise desired, the court effectively did not fail to address whether there was "arguable probable cause" for the arrest because Defendant Carter's post-trial quest for immunity fails on both prongs of the qualified immunity analysis. The two prongs, which may be reviewed in any order, are whether 1) the facts alleged show that the officer's conduct violated a constitutional right, and 2) whether the constitutional right was clearly established. *Merchant v. Bauer*, 677 F.3d 656 (4th Cir. 2012). In this case, it was well settled that the Plaintiff had a constitutional right to be free from unreasonable searches and seizures. *See, e.g., Miller v. Prince George's Cnty.,* 475 F.3d 621, 627 (4th Cir. 2007) ("Unquestionably, [t]he Fourth Amendment prohibits law enforcement officers from making unreasonable seizures, and seizure of an individual effected without probable cause is unreasonable." (internal quotation marks omitted)). Thus, Defendants now apparently seek to argue that Defendant Carter's actions satisfy both prongs: 1) either she did not cause Plaintiff to suffer a constitutional violation because she had an objectively reasonable belief there was probable cause to arrest the Plaintiff, or 2) even if a constitutional violation did occur, the right was not clearly established and Defendant Carter is nonetheless entitled to qualified immunity because similarly situated and objectively reasonable officers would disagree about whether or not there was probable cause to arrest based upon the same set of facts and circumstances.

However, Defendant(s) conflates the argument and analysis, particularly with respect to the second prong. Moreover, to do so, Defendants rely on an unpublished opinion in *Orem v. Gillmore*, 813 F. App'x 90, 92 (4th Cir. 2020) (unpublished) and wholly disregard controlling precedent from the Fourth Circuit Court of Appeals in *Merchant v. Bauer*, 677 F.3d 656 (4th Cir.

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2012) to support their implied argument that Defendant Carter made a good faith mistake in her assessment of the totality of the facts and circumstances. *Compare Merchant v. Bauer*, 677 F.3d 656, 659 (4th Cir. 2012) (highlighting the differences between an officer's mistake of fact versus a mistake of law), *Orem v. Gillmore*, 813 F. App'x 90, 92 (4th Cir. 2020) (unpublished) (explaining that an officer in entitled to qualified immunity where a finding that the officer's actions were objectively reasonable is based on good faith mistakes), *and Camden v. Hilton*, 360 S.C. 164, 600 S.E.2d 88 (Ct. App. 2004) (iterating two different permutations of objective reasonableness based upon either one or more objectively reasonable officers' good faith mistakes relative to the same set of operative facts).

In this case, Defendant ignores controlling precedent from *Merchant v. Bauer*, 677 F.3d 656 (4th Cir. 2012). In *Merchant v. Bauer*, the Fourth Circuit Court of Appeals further explained that an analysis of the second prong requires consideration as to "whether the constitutional right violated 'was clearly established in the specific context of the case — that is, [whether] it was clear to a reasonable officer that the conduct in which he allegedly engaged was unlawful in the situation he confronted.'" *Merchant v. Bauer,* 677 F.3d 656, 662 (4th Cir. 2012) (citing *Figg v. Schroeder*, 312 F.3d 625, 635 (4th Cir. 2002). In addition, Defendants ask the Court to accept their untenable and wholly unsupported assertion that Defendant Carter, in the course of an allegedly subsequent and independent investigation, miraculously uncovered new facts and evidence – previously unknown to the initial investigating and/or responding officers – which would cause an objectively reasonable officer, acting in good faith, to believe there was probable cause to arrest the Plaintiff for assault and battery third degree. This is not supported by the totality of the facts and evidence in the record.

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Alternatively, Defendants ask the Court to accept their equally untenable and wholly unsupported assertion that Defendant Carter is entitled to qualified immunity because other similarly situated and objectively reasonable officers, upon assessing the same facts and evidence uncovered in her allegedly independent and subsequent investigation could disagree about whether there was probable cause to arrest the Plaintiff for assault and battery third degree. This is also not supported by the totality of the facts and evidence in the record. With either analysis, an earnest review of the record before the court shows that Defendant Carter did not actually discover any new evidence whatsoever to support probable cause to charge the Plaintiff with assault and battery third degree. To the contrary, the record before the court showed that her actions were not objectively reasonable and she is therefore not entitled to qualified immunity because her "independent" and subsequent investigation merely uncovered additional evidence which further eroded any reasonable basis to arrest the Plaintiff with a crime.

More specifically, the substantial amount of evidence in the record before the court showed that Defendant Carter disregarded readily available exculpatory evidence of which she was clearly aware. Furthermore, Defendant Carter merely discovered, at best, additional evidence which eviscerated the underlying elements of assault and battery third degree as defined under S.C. Code § 16-3-600(E)(1). For example, the record before the court plainly shows clear evidence that Defendant Carter discovered in her subsequent interviews of Joshua Smith, Brittany Smith, Jessica Bradley, and Hunter Lewis that the Plaintiff, amongst other things: 1) did not unlawfully injure Joshua Smith; 2) did not offer or attempt to injure Joshua Smith; 3) did not actually have the present ability to do so; 4) she was unsure whether Plaintiff was acting in self-defense; 5) Joshua Smith was a volatile and dangerous person when he consumed alcohol; 6) Joshua Smith had consumed at least twelve (12) beers at the time of the events; 7) Plaintiff never approached Joshua Smith; 8)

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Brittany Smith and Jessica Bradley repeatedly accosted the Plaintiff; and 9) Joshua Smith never suffered actual harm or perceived any attempted or potential threat of harm; and 10) Defendant Carter failed to advise or otherwise omitted this information in her application for the arrest warrant.

Lieutenant Joab Dowling (hereinafter "Lt. Dowling"), an officer with Port Royal who responded to the scene testified to his interactions with Josh Smith and the determinations he made on the scene. Josh Smith told Lt. Dowling that he could have whipped Mr. Coffman and never made any indication that he perceived any threat of harm from Mr. Coffman. Trial Tr. 184:11-25. Lt. Dowling went on to testify that, at the time of the incident, there was no way to tell who the primary aggressor was at the scene. Trial Tr. 184:19 – 185:10. However, after reviewing the evidence, Lt. Dowling testified Josh Smith was the primary aggressor. 185:11-13. He testified that, when he learned the case had been reopened, he met with Sargeant Ryan Steady (hereinafter "Sgt. Steady") and Inv. Carter to discuss the incident. Trial Tr. 185:14-25. During the discussion, the three officers determined they did not any reasonable basis to charge anyone with a crime. 186:1-15.

In addition, Defendants conveniently overlook the clear and substantial evidence in the record which established that objectively reasonable and similarly situated officers, when assessing such facts, would not have had an reasonable belief whatsoever that such evidence established probable cause to arrest Plaintiff for assault and battery third degree.

Sgt. Steady, one of Kimberly Carter's superiors at the Port Royal Police Department at the time of the incident, testified that the information Inv. Carter put in her warrant was inaccurate and, had a judge known the contradictory evidence Inv. Carter omitted, they would be obligated

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or required to not sign the warrant. Trial Tr. 351:13-352:7. He testified that there was no reasonable basis to charge Paul Coffman with a crime. Trial Tr. 352:11-15.

Lt. Dowling further highlighted the inconsistencies in the arrest warrant and the actual evidence. When asked about the elements of Assault and Battery 3rd Degree, Lt. Dowling testified, "well, the biggest one is you need to have an eminent threat and the present ability to do so, which we do not have, or did not have that night it was reported to me." Trial Tr. 189:23 – 190:1. Lt. Dowling testified that if he went to seek the arrest warrant in this case, it would have been incumbent on him to relay that there wasn't a present ability to cause harm. Trial Tr. 191:24 – 192:4. Without the critical, necessary element of present ability to cause harm, Lt. Dowling would never have sought a warrant. Trial Tr. 192:5-18. Lt. Dowling couldn't recall any case of an assault and battery closed on the side of the road that was later reopened. 193:9-11.[2]

Furthermore, Captain John Griffith, testifying on behalf of the Port Royal Police Department admitted Mr. Coffman never threatened Josh Smith. His 30(b)(6) deposition testimony was read into the record directly contradicting the information Inv. Carter put into the arrest warrant. Specifically, admitting that the official position of the Port Royal Police Department was that Josh Smith didn't simply disarm Mr. Coffman as Inv. Carter put in her arrest warrant, but Josh Smith attacked Mr. Coffman. Trial Tr. 249:18-24, see also Trial Tr. 250:16-19; Tr. Exhibit 19. He testified that, after reviewing the reports and body camera footage, the official position of the Port Royal Police Department was that there was not enough probable cause to arrest anyone. Trial Tr.

[2] However, he did recall multiple instances where Command Staff, specifically Deputy Chief Ron Wekenmann at Port Royal ordered an officer to make an arrest. He was told to go arrest someone who was a different gender than the actual suspect. Another time, an officer was instructed to arrest a preacher. Lt. Dowling instructed the officer not to get a warrant AND the Solicitor's Office told Port Royal they didn't have enough to charge, but while Lt. Dowling was on vacation, Chief Deputy Ron Wekenmann had the officer go get a warrant. That case was dropped for lack of probable cause. Trial Tr. 194:19 – 198:9; 202:10 – 203:19.

253:2-12. There were no statements that provide probable cause that the incident was instigated by Mr. Coffman. Trial Tr. 280:19-21. Finally, the official position of the Port Royal Police Department is that Mr. Coffman never made a direct threat to Mr. Smith. Trial Tr. 287:13-18.

In addition to ignoring the testimony of Sgt. Steady and Lt. Dowling, Defendants conveniently omit the testimony of Investigator Kimberly Carter (hereinafter "Inv. Carter") addressing the big inconsistences with the statement Josh Smith gave to her.

Q: And in addition to Mr. Smith's statement, you took the statements of Mrs. Smith and of Hunter Lewis, correct?
A: Yes.
Q: And Hunter Lewis says that he did not see anything. Is that correct?
A: If that's what I have in the report, then that's correct.
Q: All right. I show you what's marked as Exhibit 1. If you'll look at the bottom of the page, do you see where Hunter stated he did not see or hear anything involving Coffman or Josh but did see a police vehicle pull in?
A: Hold on. I'm reading. Oh, yes, I see that.
Q: So, that's inconsistent with the statement that Josh Smith gave, correct?
A: That is correct.
Q: And then if you also took the statement of Brittany Smith, and we'll go up -- you also took a statement from Jessica Bradley, correct?
A: Yes.
Q: And Ms. Bradley makes no mention in her statement of Hunter seeing anything or yelling "Look out". Is that correct?
A: I believe that's correct.
Q: So, that would be inconsistent with Josh Smith's statement?
A: Right.
Q: And you took the statement of Brittany Smith, as well. Is that correct?
A: That's correct.
Q: And in her statement, she makes no mention of Hunter's yelling "Look out" or the bat being raised. Is that correct?

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A: I believe that's correct.
Q: So, that also is inconsistent with what Josh Smith said?
A: Yes. I think -- I believe that's the only -- he was the only person that said that.
Q: So, there was significant inconsistencies on the side of Josh Smith, as well, correct?
A: Just one.
Q: And that's a pretty big inconsistency, correct?
A: It is an inconsistency, yes.
Q: It's a pretty big inconsistency to say that someone yelled something to you, and you turned around and saw a bat raised, but no one else can corroborate that story, right?
A: Yes, that's correct.

Inv. Carter Depo, 18:11 – 20:9.[3]

Josh Smith testified that he never told anyone at the scene that Hunter Lewis told him to "look out" nor did he tell anyone at the scene Mr. Coffman had the bat raised. Josh Smith Depo 36:5 – 37:14; Josh Smith Depo 39:23 – 40:9; Josh Smith Depo 40:25 – 42:15. He testified that five different times, when recalling the events to the officers on scene, he never said Hunter Lewis yelled look out and never said anything about Mr. Coffman's bat being raised. Josh Smith Depo 43:11 – 21. He admitted that no one told the officers on the scene that they saw Mr. Coffman's bat raised. Josh Smith Depo 44:3-5. He admitted when he met with Inv. Carter, he believed that he was going to be charged with a crime. Josh Smith 44:6-17. The first time he ever told anyone that Hunter Lewis yelled "lookout" was in his interview with Inv. Carter. Josh Smith Depo 46:6-15. Inv. Carter told Mr. Smith at the end of the video that she did not need to get a statement from Mr. Lewis because he actually didn't see anything. 46:10-21. Finally, Mr. Smith testified not only did

[3] Madam Court Reporter failed to include the testimony of the Smith's and Kim Carter in the trial transcript, however Plaintiff designated the aforementioned lines of deposition testimony, amongst the other deposition testimony included herein, which was entered via corresponding video testimony of the witnesses by consent of the parties.

Mr. Coffman never make a direct threat to him, but he never said anything to Mr. Smith. Josh Smith Depo 50:8-10.

Inv. Carter knew the significance of the inconsistencies between Josh Smith's statement to her and everyone else's statements, to include Smith's own pervious statement at the scene. Further, Inv. Carter's own testimony further illuminated the discrepancy between the evidence and the information she put into the warrant. Inv. Carter omitted from that affidavit, "material facts with the intent to make, or with reckless disregard of whether they thereby made, the affidavit misleading." *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990). Omissions are made with reckless disregard when the evidence demonstrates that a police officer "failed to inform the judicial officer of facts [he] knew would negate probable cause." *Miller v. Prince George's Cnty., Md.,* 475 F.3d 621, 627 (4th Cir. 2007); *Kelley v. Black* (D. S.C. 2023). (quoting *Beauchamp v. City of Noblesville, Inc.* , 320 F.3d 733, 743 (7th Cir. 2003)).; *Humbert v. Mayor & City Council of Balt. City*, 866 F.3d 546 (4th Cir. 2017).

Inv. Carter testified that Mr. Coffman never made a direct threat to Josh Smith. Inv. Carter Depo, 35:13-16; 39:21-25. Inv. Carter was aware from the statements of the witnesses and discussions with Cpt. Steady and Lt. Dowling that Mr. Coffman never threatened Josh Smith. Trial Tr. 184:11-25. Still, she testified that included the language, "Paul Coffman threatened to cause harm to Joshua Smith while armed with a bat" because if she didn't include that, it would affect the judge's determination of probable cause. Inv. Carter Depo, 46:6-17. Inv. Carter failed to inform the Magistrate Judge of any additional information beyond what was on the face of the arrest warrant because she knew it would negate probable cause. Inv. Carter Depo, 47:13-17; Inv. Carter Depo, 48:7-13.

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Finally, Defendants failed to present any evidence that Defendant Carter believed she acted reasonably in arresting Paul Coffman. There is no question that the right to not be arrested except upon probable cause was clearly established at the time of this incident. The testimony of the former Port Royal officers, Kimberly Carter, Josh Smith, Cpt. Griffith and others creates a question of fact as to the existence of probable cause and an appropriate question for the jury. Moreover, as raised above, the Defendants never properly raised, presented, or preserved any arguments relative to "arguable" probable cause either pre-trial, during trial, or in their post-trial motion. Accordingly, Defendants arguments relative to probable cause (as well as qualified immunity) must be denied and the Defendants' Motion should be denied.

II. Defendants Erroneously Assert that State Law Claims Fail

Defendants erroneously assert that the state law claims for negligence and malicious prosecution must fail based upon their unsupported theory that there was actual probable cause to arrest the Plaintiff for assault and battery third degree as defined under S.C. Code § 16-3-600(E)(1). Moreover, Defendants attempt to argue that the Plaintiff's case rests on a theory of "negligent arrest," and this argument has been repeatedly rejected. As previously set forth, the record before the court reveals a substantial body of evidence which shows there was not actual probable cause to arrest the Plaintiff. Moreover, at worst, there was a question of fact for the jury to resolve as to whether there was actual probable cause to arrest the Plaintiff. More specifically, the record before the court is replete with witness testimony and other evidence that shows Defendant Carter had no reasonable basis to charge the Plaintiff with a crime. See, e.g., testimony of Joab Dowling, Ryan Steady, Kimberly Carter, Brittany Smith, Joshua Smith, 30(b)(6) testimony of the Town of Port Royal admitted by the consent of the parties, etc. (Compare attached exhibits).

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In addition, Defendants reliance on *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) and *Gist v. Berkeley County Sheriff's Department,* 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999) is entirely misplaced. While it appears that these arguments were never properly raised and/or preserved at trial or post-trial, the courts have also denied similar arguments in similar cases. Compare, e.g., Newkirk v. Enzor, 240 F. Supp. 3d 426, 437 (D.S.C. 2017) (rejecting Defendants' arguments that Plaintiff could not bring negligence-based claims arising from the violation of common law duties); *Webb v. Lott*, No. 3:19-2031-JMC-SVH, 2020 U.S. Dist. LEXIS 258157 (D.S.C. Dec. 16, 2020). Similarly, the record before the court established substantial evidence that there was no probable cause to arrest, particularly when reviewing Defendant Carter's unreasonable actions. As previously raised, there was no reasonable basis to arrest and the evidence and record before the court shows that Defendant Carter's arrest warrant was defective and omitted material information. Accordingly, the issue of probable cause remained a fact for the jury to consider.

Furthermore, the same reasoning from prior litigation against the Town of Port Royal is instructive as to the utter absence of probable cause to arrest the Plaintiff. See generally, *Iacopelli v. Town of Port Royal*, No. 9:16-CV-287-PMD-BM, 2018 WL 3867803 (D.S.C. Aug. 15, 2018). In Iacopelli, the arresting officer omitted potentially exculpatory evidence from the warrant application. Id. Similarly, the arresting officer in the instant case, Investigator Kim Carter, neglected to consider or relay information relative to a substantial amount of evidence that had previously been considering by both responding officers on scene as well as an Internal Affairs review after the incident, including bodycam video and multiple witness statements. Moreover, Inv. Carter further ignored the conclusions of the responding officers, her immediate supervisor, Ryan Steady, and the original conclusions of the Internal Affairs officer, Captain John Griffith, all

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of whom had previously determined there was no reasonable basis and thus no probable cause to arrest Paul Coffman. Furthermore, Inv. Carter consciously declined to review the readily available evidence from prior investigations and did not review the statements of multiple witnesses. More importantly, Inv. Carter failed to relay that information to the municipal judge when she applied for the arrest warrant; and the body of the warrant affidavit clearly omits any reference to those prior findings whatsoever. Compare, e.g., *United States v. Beckham*, 325 F.Supp. 2d 678, 688 (E.D.Va. 2004) (Finding that where information from or about a case would lead a reasonable officer to be suspicious as to whether the crime alleged had been committed, the officer should conduct further investigation before making an arrest); and *Wesley v. Rigney*, 2016 WL 853505, at * 6 (E.D.Ky. Mar. 3, 2016) (Finding that there was a sufficient genuine issue of material fact as to the recklessness of the defendant's actions in obtaining a warrant in the face of contradictory evidence to submit the claim to the jury).

Based on the foregoing, there was a material question of fact for the jury as to whether there was probable cause to arrest. Like in Iacopelli, the evaluation of probable cause necessarily required an objective evaluation of the facts and circumstances known "at the time of arrest." *Id* (citing *Robinson v. City of S. Charleston*, 662 F. App'x 216, 220 (4th Cir. 2016) (explains the standard to be whether a "reasonable and prudent person would infer there was a fair probability that the suspect committed a crime")). Moreover, in Iacopelli, there were facts known to the officer that could suggest the possibility of "fabrication or misstatement," and that although the allegations would suggest that somebody would have observed the assault, the witness statements on scene are inherently conflicting and unreliable. More importantly, the findings from officers on scene as well as members of command staff established that there was no reasonable basis to charge Coffman and no probable cause for his arrest.

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As to Defendants' claims that the Court did not consider or address the failure to charge the jury on the duty of care for a negligence action, it is evidence from the record before the court that the Defendant's consented to the charges as presented and never once objected to the charges prior to the dismissal of the jury. In addition, the Defendants ask the court to rule on matters that were never properly raised or preserved at trial, and the Defendants did not seek to challenge the jury charges prior to their dismissal.

As to the Defendants assertion that the Court should pursue an analysis under *Franks v. Delaware*, 438 U.S. 154 (1978), this argument should also be rejected. Cf, *Smith v. Reddy*, 101 F.3d 351, 353 (4th Cir. 1996) (explaining that "Rather than engaging the Franks test, we apply the qualified immunity analysis, which examines the objective reasonableness of an officer's conduct. The objective standard pertaining to qualified immunity accommodates the allegation of falsity because a reasonable officer cannot believe a warrant is supported by probable cause if the magistrate is misled by statements that the officer knows or should know are false. *See United States v. Leon*, 468 U.S. 897, 922-23, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984)."). Defendants' argument relative to a Franks analysis must fail because the record is replete with evidence that Defendant Carter's actions were not objectively reasonable, that the arrest warrant was defective, and that material information was omitted from the arrest warrant application. See, e.g., testimony of Joab Dowling, Ryan Steady, Defendant Carter, Joshua Smith, Brittany Smith, and 30(b)(6) testimony for the Town of Port Royal (exhibits attached for reference).

III. Defendants' *Franks* Arguments Should be Denied

Once more, Defense Counsel attempts to reraise an argument first raised in their Memoranda in Support of Post-Trial Motions that was not properly raised, argued, or preserved. ECF 12.10.2024. Defendants attempt to argue the Court failed to address the analysis in *Franks v.*

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Delaware. 438 U.S. 154 (1978). This argument was never presented at summary judgment. ECF 12.15.23; *see also* ECF 2.23.24. This argument was never raised at trial and, therefore, not preserved as an issue for appeal. Further, this argument was never even raised in Defendants' Post Trial Motion. ECF 7.1.24. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (internal citation omitted) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. . . . A party may not argue one ground at trial and an alternate ground on appeal.").

Nevertheless, Defendants attempt to argue the court failed to do a *Franks* analysis. Rather than engaging the *Franks* test, courts have applied the qualified immunity analysis, which examines the objective reasonableness of an officer's conduct. *Anderson v. Creighton*, 483 U.S. 635, 639, 97 L. Ed. 2d 523, 107 S. Ct. 3034 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 815-19, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982). The objective standard pertaining to qualified immunity accommodates the allegation of falsity because a reasonable officer cannot believe a warrant is supported by probable cause if the magistrate is misled by statements that the officer knows or should know are false. *See United States v. Leon*, 468 U.S. 897, 922-23, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984); see also *Smith v. Reddy*, 101 F.3d. 351. 355 (4th Cir. 1996).

As addressed within, the Plaintiff presented significant evidence proving Inv. Carter acted knowingly or with a reckless disregard for the truth, at the very least, omitted facts from the affidavit, rendering it misleading and multiple reasonable officers testified that they did not believe there was probable cause to support the warrant.[4] "Reckless disregard" of the truth by a warrant

[4] Inv. Carter Depo, 46:6-17. Lt. Dowling testified he would never have sought a warrant. Trial Tr. 192:5-18. Sgt. Steady testified that the information Inv. Carter put in her warrant was inaccurate and, had a judge known the contradictory evidence Inv. Carter omitted, they would be obligated or required to not sign the warrant. Trial Tr. 351:13-353:10.

affiant can be established by evidence that an officer acted with a high degree of awareness of a statement's probable falsity, that is, when viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported. *Miller v. Prince George's Cnty., Md.,* 475 F.3d 621, 627 (4th Cir. 2007). With respect to omissions, "reckless disregard" can be established by evidence that a police officer failed to inform the judicial officer of facts he knew would negate probable cause. Inv. Carter failed to inform the Magistrate Judge of any additional information beyond what was on the face of the arrest warrant because she knew it would negate probable cause. Inv. Carter Depo, 47:13-17; Inv. Carter Depo, 48:7-13.

The Defendants additional argument related to the jury charges is another thinly veiled attempt to shoehorn in a new argument. The parties agreed to the jury charges. Trial Tr. 569:17-25. Following charging the jury, the court gave both sides the opportunity to object, and neither side raised any objections to the jury charges. Trial Tr. 632:6-17. The law is firmly established in South Carolina that the failure to object to a charge constitutes a waiver of any right to complain on appeal of an alleged error in the charge. *State v. Williams*, 266 S.C. 325, 223 S.E.2d 38 (1976). "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection." Rule 51, SCRCP. Such a failure to object also bars collateral relief. *Ashley v. State,* 260 S.C. 436, 196 S.E.2d 501 (1973). *McCreight v. MacDougall*, 248 S.C. 222, 149 S.E.2d 621 (1966). Defendants failed to object to the jury charges, thereby waiving any right to later complain of error. *Vaughn v. City of Anderson,* 300 S.C. 55, 386 S.E.2d 297 (Ct. App. 1989) (failure to object to the jury charge at trial waives any alleged error in regard to the charge). A party should not be permitted to sit idly by while a verdict erroneous in form is

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being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence. *Camden v. Hilton,* 360 S.C. 164, 600 S.E.2d 88, (Ct. App. 2004).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendants' Motion to Alter or Amend or for Reconsideration of the Court's Orders on Defendants' Motion for a Judgement Not Withstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, and/or New Trial Based on the 13th Juror Doctrine be denied. Furthermore, Plaintiff asserts that may of Defendants arguments, as outlined hereinabove, were never properly raised, objected to, and/or otherwise preserved pre-trial, during trial, and in post-trial motions. Based upon the record before the court, the Defendants' Motion to Alter or Amend or for Reconsideration should be denied.

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Respectfully Submitted

s/ Jeremiah J. Shellenberg
Jeremiah J. Shellenberg, S.C. Bar No. 100235
Thad L. Myers, S.C. Bar No. 12576
Thad L. Myers, P.A. & Associates
1727 Hampton Street
Columbia, South Carolina 29201
(803) 252-0005 (telephone)
jj@thadmyerspa.com
thad@thadmyerspa.com

Joshua P. Golson, S.C. Bar No. 100618
Law Offices of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29201
Telephone: (803) 252-0005
josh@joshgolsonlaw.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
February 6, 2025

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2021-CP-07-01217

Paul Vernon Coffman, Jr.,

Plaintiff,

vs.

Port Royal Town, et al.,

Defendants.

TRANSCRIPT OF TRIAL

June 17-21, 2024
Beaufort, South Carolina

B E F O R E:

The Honorable H. Steven DeBerry IV, Judge Presiding

A P E A R A N C E S:

For the Plaintiff -
Jeremiah "J.J." Shellenberg, Esquire
Thad L. Myers, P.A.
1727 Hampton Street
Columbia, South Carolina 29202

Joshua P. Golson, Esquire
Law Office of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29202

For the Defendants -
Thomas Allan Bendle, Jr., Esquire
Robert Scott Dennis, Esquire
25 Rue Du Bois, Lady's Island
Beaufort, South Carolina 29901

Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

and left the situation, we had both parties going back to their vehicles, grabbing a bat, or the other parties walking up to him continuing to talk or -- or make him feel uncomfortable, and it just -- both parties could have de-escalated this without getting physical.

Q. And on -- on that body-cam video we saw two witnesses ago that was -- that was your body-cam video; is that right?

A. Yes, sir.

Q. And so that would have been Josh Smith telling you that he could have whipped Mr. Coffman?

A. Yes, sir.

Q. He certainly never indicated to you that he perceived any threat of harm to Mr. Coffman did he?

A. I -- I did not get that -- not even an inkling of that, no, sir.

Q. So let me ask you this, if you were making a determination about a primary aggressor under the circumstances with that information, who, from an objective and reasonable perspective might you determine the primary aggressor to be?

A. Yes, sir, and I believe that was shown through our actions that night.

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Q. And -- and who -- who was -- with that information who would you have -- who would you have found that person to be?

A. Based off of what happened that night, or what I've observed since?

Q. Yes.

A. Which one?

Q. Well, that evening, would you -- was there anyway to tell?

A. That evening, no.

Q. And what about now?

A. Now, I -- now after -- after watching all of this it appears that it was Mr. Smith.

Q. Did you ever have any conversations with anybody else at the Port Royal Police Department about these events?

A. That I've spoken with -- or I had spoken to, obviously, my guys, 'cause we do a debriefing. I had spoken with my immediate supervisor, Captain Griffith. Once I learned that the case had been given to Investigations to reopen, I had spoken to -- I think it was Sergeant at the time, Steady, and I believe Sergeant at the time Kim Carter, who was the Investigator that y'all saw on video.

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Q. And you guys discussed what exactly in terms of this case?

A. I believe that during our discussions it was determined that we did not have enough to determine who the primary aggressor was, and we did not have any working victim that wanted to pursue the matter and go to court, so we were not going to pursue the issue further.

Q. Would it be fair to say that you had to determine that there was no reasonable basis to charge anybody with a crime?

A. I -- I -- I would say that, yes, sir.

Q. Was there any disagreement amongst the three of you about that?

A. No, sir.

Q. Did you ever have an opportunity to review -- well, let me ask you this, have you ever seen the arrest warrant for this case from Mr. Coffman?

A. No, sir.

Q. I'm going to direct your attention to the arrest warrant. We'll look at Exhibit Number 19. If you'd look at that folder in front of you, the white folder, yes, sir. Flip to tab number 19, if you would. If you'd just take a brief moment to

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read the body of the warrant and let me know when you've had enough time.

A. (Reviews document.) Okay.

Q. Starting at the -- three lines up from the bottom, could you read that last section for us, please?

A. Starting at, "That while?"

Q. Yes, sir.

A. "That while at Sands Beach boat dock, the Defendant while armed with a fishing bat threatened to cause harm to the victim Josh Lee Smith. The victim then disarmed the Defendant and threw the weapon into the water. They have an eyewitness to prove the same."

Q. Now, you were personally at the scene for this police response to the incident, right?

A. Yes, sir.

Q. Did you talk to all the witnesses -- or you heard from a lot of the witnesses on the scene, right?

A. I heard from the Smith -- Smith party.

Q. Josh Smith, do you remember talking to him?

A. Yes, sir.

Q. And Brittany Smith?

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A. Yes, sir.

Q. Jessica Bradley?

A. Vaguely, maybe, and I don't remember talking to the other young man that was on the scene.

Q. Okay. Knowing all the things that you learned from an objective and reasonable basis as a law enforcement officer, do the -- does the statements that you just read off the arrest warrant fit into the -- into what you learned at the scene that night?

A. No, sir. I believe I asked specifically if they'd been threatened or were threatened by Mr. Coffman, and the answer was, "No."

Q. So, specifically, let's -- can you just break that down for me a little bit further, and tell me what -- what all parts of this language are incorrect?

A. Well, in the warrant it says, "That the Defendant while armed with a fishing bat threatened to cause harm to the victim, Joshua Smith." That's not -- that kinda contradicts what I -- I had on-scene that Mr. Smith told me or informed me about.

Q. And based on your conversations with Ryan Steady and Kim Carter, this is all information

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there that all three of you knew?

A. I don't know when Kim Carter would have got this information, but at my time that I had a conversation with them, just the threatening with a bat not been brought -- that was not brought up to me.

Q. And, of course, all of these are the actions that you learned from the Smiths recorded on your body-cam video?

A. Yes, sir, that's correct.

Q. Did Investigator Carter have access to your body-camera video?

A. Yes, sir.

Q. So she could have watched it at any time if she had wanted to do so?

A. Yes, sir.

Q. In terms of the underlying elements for assault and battery, third degree, are you familiar with those?

A. I am.

Q. Can you just give me a little rundown on those, please?

A. Well, the biggest one is you need to have an eminent threat and the present ability to do so, which we do not have, or did not have that night

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it was reported to me.

Q. And based on all the information you -- you learned in your response -- well, let me back up. You -- you saw Mr. Coffman when he was served with the arrest warrant, didn't you?

A. Yes, sir.

Q. In what capacity did you see him?

A. In law enforcement. I had transported him from the Police Department to the Beaufort County Detention Center, where we released him.

Q. So between -- and if I understand correctly, that was about August 2nd or so?

A. If you say so.

Q. Okay.

A. Yes, sir.

Q. Well, let -- let me ask you this, what time ---

A. But I can tell you definitively on the warrant, August 2nd, yes, sir, that's correct.

Q. So from the time that you first encountered all these individuals on July 6th until the time that you transported him to the Detention Center on August 2nd, did you ever learn of any new, novel, different information that would change your analysis and ultimate conclusions about any of this?

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A. I don't think so. I -- I -- I know that we determined that Mr. Coffman had gone back to his truck after having the opportunity to get away and grab that bat, but we knew it that night, but I don't think anything would have changed. And the biggest key that I can harp on is we would not have made the arrest was because nobody wanted to pursue charges.

Q. In terms of that phrase "totality of the circumstances," did you ever learn between July 6th and August 2nd that there was any reasonable basis, whatsoever, to charge Mr. Coffman with a crime?

A. No, sir, I did not.

Q. Okay. Knowing -- you spoke of Judge Grimsley earlier, was he the one that -- did you ever go to him, or is -- and only to him, or were there other judges you would go to for arrest warrants?

A. I -- I - I've been to a lot of judges, but predominantly we try to use our municipal court judge for warrants, or, you know, if we had questions.

Q. Based on your training and experience as a law enforcement officer, if you had gone and

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presented a warrant like this with all this missing information, what might happen in that situation?

A. I think he would have asked me, "Did the victim want to pursue it?"

Q. And would you -- would it have been incumbent upon you to relay that there was -- from the personal observations on the scene that there wasn't a present ability to cause harm?

A. That's correct.

Q. That would be, of course, the critical, underlying, necessary element of assault and battery, third degree, right?

A. Yes, sir.

Q. So based on all those things, in your experience, would that warrant have been issued with that information?

A. I -- I would never have sought a warrant.

Q. In the course of your conversations with Ryan Steady and Kimberly Carter, did you ever have a reason to come to understand why this warrant was issued if it was missing so much important information?

A. I believe at the time of -- they had been called into the Deputy Chief's Office, had had

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a conversation with him, and upon leaving their office and having that conversation with them, they sought the warrant -- or at least reopened the case and obtained the information to get a warrant.

Q. And how often in your -- your experience at the Port Royal Police Department would cases like this be reopened under such circumstances?

A. I can't -- I don't recall any case of an assault and battery closed on the side of the road that night and reopened. I can't think of it.

Q. So was there anything that came from any of the officers on scene that you were with that night, that said, hey, Joab, you're my supervisor, I've learned all this new stuff, what should we do?

A. Never had that conversation.

Q. Have you -- well, let me ask you this, did you ever come to learn what ultimately happened with this arrest warrant that was brought against Mr. Coffman?

A. I don't understand that question.

Q. What happened -- what -- how were the charges disposed of?

A. How were the charges built?

Q. How were they disposed of ultimately?

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A. I honestly don't know the answer to that. I believe they were -- I think the case was just disposed of. I don't think it went to trial.

Q. And, of course, you had the opportunity earlier to see the video testimony of Ms. Smith and Josh Smith, correct?

A. Correct.

Q. And Josh Smith had repeatedly advised that he did not want to be involved and did not want to press charges, right?

A. Yes, sir.

Q. So in your experience, was the dismissal a surprising outcome, or is that ---

A. It would surprise me a little bit, if that's how it was disposed of, but it would not -- it would not surprise me if the judge learned that there was no cooperating victim and just disposed of immediately.

Q. How often might someone in the upper echelon of the Port Royal Police Department get involved in a case like this?

A. I don't think it's too often. I can think of a -- a handful of those cases, but not -- not many.

Q. Well, when you say a handful of cases,

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what does that mean? Can you think of anything specifically?

A. I -- I can think of probably two or three cases in my mind right now.

Q. Well, give us an example of that. Have you ever -- yourself ever been ordered by someone in the upper -- upper ranks to charge somebody with a crime?

A. I was. I worked an armed robbery case at one of our Pantry's, and we had a suspect wearing a specific set of clothes. And through our investigation we found a male suspect that was similar in physical descriptors to our offendant that did the robbery wearing very similar clothes, and I was told I should go arrest them. I did not, which was fortunate for me, because we found out that it wasn't a man that robbed the store, it was a female, so I was very glad that I didn't make that arrest after being told I needed to.

Q. So you -- you were ordered to arrest someone that was a different gender from the actual suspect?

A. Yes, sir.

Q. And how much -- to your knowledge, how much investigation went into that decision before

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you were ordered to do that?

A. It wasn't -- it wasn't much. And that's one thing with our investigations is that we had no statute of limitations, so time is on our side. So if there's nothing pressing, we've got time where we can investigate and be as thorough as we can.

Q. All right, and do you recall who it was that specifically ordered you to make that arrest for that armed robbery?

A. At that time it was the Deputy Chief of Police, Major Wekenmann.

Q. Are you familiar with any other prior occasions where -- at Port Royal Police Department, where there was an order from on high to arrest a suspect?

A. I -- I was not ordered to arrest anybody else but him, but there were a couple other instances. I know he had had one of my subordinates make an arrest on a preacher, and I believe that case also got disposed of.

Q. And when you say he, you mean Deputy Chief Wekenmann?

A. Yes, sir.

Q. And who was the subordinate he ordered

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understanding, and there is one more issue just really quick we'd like to take up. We -- one of the exhibits we introduced for Mr. Bell, I think the only one was his letter of representation.

THE COURT: Okay.

MR. DENNIS: It was introduced, but I don't think entered as evidence, so we would move to have that entered as evidence.

THE COURT: Is there any objection to that?

MR. SHELLENBERG: No, Your Honor, that's fine.

THE COURT: Okay, and I think that's Exhibit Number 33?

MR. DENNIS: 33, yes.

(Exhibit Number 33, Letter, is entered without objection.)

THE COURT: All right. So everybody's on the same page, and there's no objections to the proposed -- or what the actual jury charges are and the verdict form. And we're all under the understanding that the Plaintiffs will open in full, the defense will reply, and -- then will close in full, and then the Plaintiffs will reply, right?

MR. SHELLENBERG: Yes, Your Honor.

MR. DENNIS: Yes, Your Honor.

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time, your attention, your service this week, and please wait until you get the evidence and the verdict form to begin deliberations. Thank you so much.

(Jury exits the courtroom.)

BAILIFF: The jury's cleared, the door is closed, Your Honor.

THE COURT: Thank you, sir. All right, are there any objections to the charge to the jury from either side?

MR. SHELLENBERG: No, Your Honor.

MR. DENNIS: No, Your Honor.

THE COURT: All right. Are there any matters of law we need to take up before we gather the evidence and deliver to the jury?

MR. DENNIS: No, Your Honor.

MR. SHELLENBERG: No, Your Honor.

THE COURT: All right. And is there any objection to having the alternate juror brought out and dismissed at this time?

MR. DENNIS: No, Your Honor.

MR. SHELLENBERG: No, sir.

THE COURT: All right, sir, can we have the alternate?

BAILIFF: Yes, sir.

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true, accurate and complete Transcript of Record of introduced in the hearing of the captioned case, relative to appear, in the Circuit Court for Beaufort County, South Carolina, from the 17th through the 21st days of June, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party herein.

Cathy L. Young

Cathy L. Young, CVR-M
Court Reporter and Notary
Public in and for South Carolina
My Commission expires: 3-28-2029

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

PAUL VERNON COFFMAN, JR. and
STEPHANIE COFFMAN,

Plaintiffs,

vs.

CIVIL ACTION NUMBER
2021-CP-07-01217

COPY

TOWN OF PORT ROYAL, CHIEF ALAN BEACH,
KIMBERLY CARTER, JOHN GRIFFITH,
RON WEKENMAAN,

Defendants.

----------/

The Videotaped Deposition De Bene Esse of JOSHUA SMITH, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Ceil Weser, Certified Court Reporter and Notary Public, before Charles "Chuck" T. Nussbaum Jr., videographer, at the Offices of Howell, Gibson & Hughes P.A., 25 Rue Du Bois, Lady's Island, South Carolina 29907, on the 4th day of June, 2024, commencing at or about the hour of 1:19 p.m.

A Weight loss.
Q And is there any reason you can't testify truthfully and accurately today?
A No, sir.
Q And now it is important that you be truthful when you gave your statement to Law Enforcement, right?
A Yes, sir.
Q And it is important to be as accurate as possible in that statement, right?
A Yes, sir.
Q As thorough as possible?
A Yes, sir.
Q To include any and all significant and relevant details?
A Yes, sir.
Q And to provide an accurate and truthful recollection of the events as they happened?
A Yes, sir.
Q And would you agree that the statement given closer to the events can be more accurate than the statement given weeks, months, years later?
A Yes, sir.
Q Because a person is going to remember

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those events better the closer to the time that they happened?

A Yes, sir.

Q And you were sworn in today, correct?

A Yes.

Q And so you told the truth to the Officers at the scene, right?

A Yes, sir.

Q And you told the truth when you talked to Investigator Carter, right?

A Yes, sir.

Q And you are telling the truth here today?

A Yes, sir.

Q And have you had a chance to look at the body cam footage?

A I did look at maybe five, ten minutes of it when I had my lawyer when I went to his office, and that was about it.

Q And did that accurately portray your statements?

A Yes, sir.

Q And that is the truth? What you said in the body cam is the truth of what happened that night?

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A Yes, sir.
Q And you didn't leave out any details?
A Not that I can remember.
Q Now, are you aware you never said to anyone at the boat landing that Mr. Coffman raised his bat, correct?
A He did.
Q You never told anyone, any Officer while you were at the boat landing on July 6th that Mr. Coffman raised his bat, correct?
MR. BENDLE: Objection; asked and answered.
THE WITNESS: I don't recall.
BY MR. SHELLENBERG:
Q If I showed you the body cam footage, would that jog your memory?
A Yes, sir.
Q All right. I will pull it up.
MR. GOLSON: We will take a short break.
(Whereupon, a break was taken from 1:54 p.m. to 3:08 p.m.
(Whereupon, Plaintiff's Exhibit Number 1 was marked for

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identification.)

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q Mr. Smith, I am showing you what we have marked as Exhibit 1.

Do you recognize this video?

A Yes, sir.

Q Have you seen this video before?

A Yes, sir.

Q And what is that a video of?

A Me talking to an Officer about what happened at the boat ramp that evening.

Q And who else is in this video?

If you need me to I can play it again.

A It looks like my wife and Jessica.

Q And do you remember what your wife was wearing that day?

A Yes, she had her bathing suit on and a cover up.

Q And what color was her cover up, do you remember?

A No, sir.

Q I am going to turn your attention to the 12 second mark.

(Whereupon, video playing.)

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BY MR. SHELLENBERG:

Q Now, is that you in that video?

A Yes, sir.

Q And did you make any mention of Hunter telling you to look out in that video?

A No, sir.

Q Did you ever say anything about the bat being raised at that point in the video?

A No, sir.

Q Now if you will turn your attention to the 29 second mark.

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q I could back it up and play it again.

I believe the Officer asked you if he raised the bat to hit you?

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q Were you able to hear it?

A He said, did he hit you?

I said, no, sir.

Q He said, did he raise his bat to hit you?

A I heard did he hit you.

Q Now, I am going to turn your attention

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to the 3 minute mark.

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q So you said, honest to God you didn't see it?

A When I first walked up, yes.

Q And then you said you turned around, correct?

A Yes, sir.

Q And you saw it behind his back, correct?

A Yes, sir.

Q And you didn't make any mention of seeing the bat being raised, right?

A That is right.

Q You never said anything about Hunter yelling for you to look out, right?

A No, sir.

Q I will turn your attention to the 6 minute and 34 second mark.

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q You said he had his hand behind his back, right?

A It is hard to hear; but yes, sir.

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Q And then you didn't think anything of it because you couldn't see it, right?
A Yes, sir.
Q And then he dropped his arm behind his back, right?
A Yeah.
Q And then you saw him. That is what you said, right?
A Yes, sir.
Q So you made no mention of him raising the bat at that point, correct?
A Correct.
Q And you made no mention of Hunter yelling look out, right?
A Right.
Q I am going to turn your attention to the 8:23 mark of Exhibit 1.
(Whereupon, video playing.)
BY MR. SHELLENBERG:
Q So you say they get louder.
He is getting louder, right?
A Yes, sir.
Q So is the "they" you are referring to is Jessica and Brittany?
A Yes, sir.

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Q And then you are saying after they were getting louder, the "he" you are referring to is Paul Coffman, is that right?
A Yes, sir.
Q And then you said that they were getting louder, correct?
A Yes, sir.
Q According to you on the scene both parties were yelling, right?
A Yes, sir.
Q So in five different times when you are recalling the events to the Officers on the scene you made no mention of Hunter yelling look out, right?
A Yes, sir.
Q And never say anything about a bat being raised, right?
A Yes, sir.
Q And in fact on the scene you refer to it as a piddly bat, is that right?
A Yes, sir.
Q And nobody else at the scene said that they saw the bat raised, right?
A Hunter seen it.
Q Nobody at the scene said that they saw

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a bat raised, correct?
A I am not sure what you mean.
Q Nobody told the Officers that they saw a bat raised, correct?
A Correct.
Q And you went and gave a statement to Investigator Carter on the 31st of July, correct?
A Yes, sir.
Q And she actually called you on the 29th to get you to come in, is that right?
A Yes, sir.
Q And so I believe you testified on direct, though, at that time you thought that you were going -- that you were possibly going to be charged, is that right?
A Yes, sir.
Q So I am going to show you what is marked as Plaintiff's Exhibit 2.
(Whereupon, Plaintiff's Exhibit Number 2 was marked for identification.)
(Whereupon, an off-the-record discussion was held.)
(Whereupon, a break was

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taken from 3:15 p.m.
to 3:46 p.m.
(Whereupon, video playing.)
BY MR. SHELLENBERG:
Q I am going to show you Plaintiff's Exhibit 2.
Do you recognize that?
A Yes.
Q What is that?
A When I talked to Miss Kimberly Carter.
MR. SHELLENBERG: I will put Plaintiff's Exhibit 2 into evidence.
BY MR. SHELLENBERG:
Q When you went to go give this statement I believe you testified in direct that you were going to -- may have charges pressed against you?
A That is what I understood. She said that she was doing an investigation. She was going to find out who was at fault, whether it be me or Coffman.
MR. SHELLENBERG: So if you will turn to 16:43:34.
(Whereupon, a short break was taken from 3:53 p.m.

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to 4:18 p.m.)

MR. SHELLENBERG: We are going to turn your attention to 16:43:34.

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q Mr. Smith, is this the first time that you told anyone that Hunter said hey, look out. Is that right?

A Yes, sir.

Q And later on in that interview Investigator Carter told you that Hunter actually didn't see anything. Is that right?

A No.

Q I will turn your attention to Exhibit B, 16:58:40 mark.

(Whereupon, video playing.)

BY MR. SHELLENBERG:

Q Was that Investigator Carter telling you that Hunter didn't see anything?

A That is what she said, yes.

Q And as we have gone over you were worried that you would possibly be charged, and then Investigator Carter told you if it came down to finding you at fault she wouldn't

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approached you, did he?
A No, sir.
Q And he never approached Brittany, right?
A I don't know.
I just seen all three of them standing there.
Q And he never made a direct threat to you, right?
A He never said anything to me, no.
Q And you went down to where Mr. Coffman was standing, right?
A Yes.
Q And that was -- approximately how far was that from where you pulled the boat out to where he was standing?
A I don't know.
30 yards maybe. Something about 30.
Q And Mr. Coffman never struck you, did he?
A No, he did not.
Q And there was nothing stopping you from just walking away, correct?
A Other than the fact that I thought he was going to hit me.

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
BEAUFORT COUNTY:

I, Ceil Weser, CSR and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Ceil Weser

Ceil Weser, CCR
Notary Public
Beaufort, South Carolina

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)

Paul Vernon Coffman, Jr. and Stephanie Coffman,

Plaintiffs,

vs.

Town of Port Royal, Chief Alan Beach, Kimberly Carter, John Griffith, Ron Wekenmann, and Joshua Smith,

Defendants.

C/A No. 2021-CP-07-01217

VIDEO DEPOSITION OF KIMBERLY CARTER

- - - - - -

Friday, January 19th, 2024
10:04 a.m. - 12:12 p.m.

- - - - - -

The video deposition of KIMBERLY CARTER, was taken on behalf of the Plaintiffs; via Zoom Videoconference; on the 19th day of January, 2024 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.

Q: But you've reviewed the body camera footage from the boat handing?

A: From the camera that was at the boat landing, but you can't see anybody except Paul Coffman on that video.

Q: On that -- the body camera footage from the officers?

A: I don't recall watching the body cam footage. I'm sure I did, but I can't recall anything that was there.

Q: And in addition to Mr. Smith's statement, you took the statements of Mrs. Smith and of Hunter Lewis, correct?

A: Yes.

Q: And Hunter Lewis says that he did not see anything. Is that correct?

A: If that's what I have in the report, then that's correct.

Q: All right. I show you what's marked as Exhibit 1. If you'll look at the bottom of the page, do you see where Hunter stated he did not see or hear anything involving Coffman or Josh but did see a police vehicle pull in?

A: Hold on. I'm reading. Oh, yes, I see that.

Q: So, that's inconsistent with the statement that

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Josh Smith gave, correct?

A: That is correct.

Q: And then if you also took the statement of Brittany Smith, and we'll go up -- you also took a statement from Jessica Bradley, correct?

A: Yes.

Q: And Ms. Bradley makes no mention in her statement of Hunter seeing anything or yelling "Look out". Is that correct?

A: I believe that's correct.

Q: So, that would be inconsistent with Josh Smith's statement?

A: Right.

Q: And you took the statement of Brittany Smith, as well. Is that correct?

A: That's correct.

Q: And in her statement, she makes no mention of Hunter's yelling "Look out" or the bat being raised. Is that correct?

A: I believe that's correct.

Q: So, that also is inconsistent with what Josh Smith said?

A: Yes. I think -- I believe that's the only -- he was the only person that said that.

Q: So, there was significant inconsistencies on the

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side of Josh Smith, as well, correct?

A: Just one.

Q: And that's a pretty big inconsistency, correct?

A: It is an inconsistency, yes.

Q: It's a pretty big inconsistency to say that someone yelled something to you, and you turned around and saw a bat raised, but no one else can corroborate that story, right?

A: Yes, that's correct.

Q: So, other than the Coffmans saying they did not have an original interaction with Jessica Bradley and with Brittany Smith, there is no new information you learned in the course of your investigation?

A: Not that I can recall, no.

Q: Okay. And did you do anything else besides take those statements in the course of your investigation?

A: I also spoke with another person, Keown, Vaughn Keown.

Q: Yes. And did he see any of the incident?

A: I don't believe so, no.

Q: So, he -- he didn't have any new information that helped -- helped you with your investigation?

A: No. He did say that Mr. Coffman -- he invited Mr.

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Coffman to his residence to have a couple of drinks, and they were talking about the incident.

Q: But he didn't provide you any new information that is used in the course of your investigation?

A: No.

Q: And at the end of your investigation prior to swearing out the warrant, you had a meeting with Deputy Chief Wekenmann and with Ryan Steady, correct?

A: I don't recall, but I'm sure I did if it's -- you know, I don't recall.

Q: And in that meeting, you were talking to Deputy Chief Wekenmann about whether or not there was enough for probable cause. Do you recall that?

A: No, I don't recall that, but okay.

Q: Okay. And you don't recall telling Deputy Chief Wekenmann that you did not have enough for probable cause?

A: No, I don't recall.

Q: Do you recall Ryan Steady telling Deputy Chief Wekenmann there was not enough for probable cause?

A: No.

Q: Now, you wrote in your report that "Due to the video, all of the combined statements of everyone and totality of the circumstances, Paul was the

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aggressor", correct?

A: That's correct.

Q: Now, what information from the video did you use to establish probable cause?

A: Where Mr. Coffman went to his truck, put his dog in the truck and then he retrieved a bat, a fishing bat out of his truck and held it down -- I believe he held it down beside his leg, and at some point, he had it behind his back.

Q: So, what information did you get from that?

A: That he went to his truck and got a weapon, whether it be to defend himself or -- or for whatever reason. That was -- Josh Smith had nothing.

Q: So, by going to his truck and retrieving a bat, that rises to the level of probable cause?

A: With the totality of all the statements and the video from the Sands Beach where he went and retrieved a bat from his truck and took it back down there with him, yes.

Q: And you -- he retrieved that bat, but he took -- walked back to the dock. Is that correct?

A: He did walk back to the dock, yes.

Q: And he had no interaction after he retrieved that bat with either of the girls, correct?

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A: No. I think I just put in there with the totality of everything, of all the statements and the video from the Sands Beach. Due to -- the statements that were made that Mr. Coffman had threatened to whip someone's ass and then him retrieving the bat -- "Josh Smith had gone down to the -- to the dock to figure out what was going on between his wife and this older gentleman, and Mr. Coffman had a bat threatening to cause harm to the victim", which was Josh Smith, and then Mr. Smith disarming him throwing the bat into the water, and then they walked away after that.

Q: Mr. Smith never made a threat -- or Mr. Coffman never makes a direct threat to Josh Smith, does he?

A: Not to him, no.

Q: And he never makes a direct threat when he's armed with the bat, does he?

A: Let me look back through my report here. Hang on one second. Now, I believe that that -- it was -- he stated he was going to whip somebody's ass before he retrieved the bat.

Q: So, he made a comment in passing, correct?

A: They had a conversation as he was on his way to his truck.

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to ask if he had a weapon or have him lift up his shirt to see that he had a radio clipped on his shorts.

Q: You can use that fish bat for a number of different things?

A: You could.

Q: It's not uncommon for somebody to have a fish bat, right?

A: Correct.

Q: And as you state in there in Aaron Abercrombie's statement, 20 minutes had gone by when they were standing on the dock, right?

A: Him and Mr. Coffman's wife, correct, not Paul.

Q: And then Paul comes back, right?

A: Yes, after 20 minutes.

Q: And the girls go and approach him, right?

A: After they hear him talking, yes. He had already made the statement that he was going to whip somebody's ass, then he has a bat in his hand.

Q: At no point does Paul make that direct threat to Josh Smith, right?

A: That's correct.

Q: And at no point does Josh -- does Paul Coffman seek out Josh Smith, right?

A: Correct.

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ago.

Q: Did you tell the judge about Josh Smith initiating physical contact with Paul Coffman?

A: I don't recall what I told the judge when I had him sign the warrant.

Q: And in that warrant, you say that Paul Coffman made -- threatened to cause harm to Joshua Smith Smith while armed with the bat, right?

A: Yes.

Q: But at no point did he threaten to cause harm to Josh Smith while he had the bat, correct?

A: I wouldn't have put it in there if I didn't have it in my report somewhere.

Q: And if you didn't have it in there, that would affect the judge's determination on making probable cause. Is that right?

A: Yes.

Q: So, you picked the facts that were most advantageous for getting probable cause put in your warrant, correct?

A: I put in there things from my report that led me to believe that he was primary aggressor.

Q: And you put that in the warrant which you read to the judge and had the judge sign, correct?

A: Yes.

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Q: So, you did not tell the judge that Josh approached Paul first, right?

A: I don't recall what I told the judge.

Q: Because Josh being the one to approach Paul would affect a determination of probable cause, right?

A: Well, the -- Mr. Coffman was the one that started the conversations with the girls before Josh Smith came down there to talk to Mr. Coffman.

Q: Correct, but Josh Smith is the one that approached Paul Coffman on the dock, right?

A: Yes, but Mr. Coffman approached the girls near his truck, going towards his truck.

Q: And you didn't tell the judge that Paul Coffman actually made no threats directly to Ms. Bradley, Ms. Smith, Josh Smith or Hunter Lewis?

A: I don't recall what I told the judge.

Q: If you told the judge anything beyond what is in this warrant, would you have put it in your report?

A: Yes.

Q: Isn't that important to put in your report?

A: Yes.

Q: So, if you look at your report, there's no further information recorded in there. If you look at Page 13, you have a sentence that says, "Arrest

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Warrant ..." -- and then the arrest warrant number -- "... was drafted for Paul Coffman for Assault and Battery 3rd", and "The Warrant has been signed by the Honorable Judge Grimsley on August 1st, 2019", right?

A: Correct.

Q: So, that -- the warrant -- the information in the warrant is the information that was presented to the judge, right?

A: Yes.

Q: Because as we've established, if it ain't in the report, it didn't happen, right?

A: Right.

Q: Okay. And if you would have presented the facts differently, there's a chance that the judge could have not found probable cause, right?

A: If the evidence would have led me a different way, yes.

Q: Okay. And then after you swear out the warrant on August 1st, you called Paul Coffman and told him, "Come to the police station". You read him the warrant and give him a court date, and he'd be free to leave, right?

A: Correct.

Q: And he wasn't comfortable coming on his own,

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right?

A: Correct. That's what -- yes.

Q: So, he hired an attorney, and then the next day they told you they would come in, and you requested they come in by 9:00 a.m., right?

A: Yes. In fact, I think they called that same -- his attorney called that same day. Yes. So, he -- after I told Mr. Coffman about the warrant, that if he came in, I would read him the warrant, give him a court date, and he would be free to go. He had -- he had asked if he could talk to my supervisor, and I told him that he could, and he stated he would talk to his wife and call me back to confirm, and he would be at the police department at 1600 hours. I think received a call -- well, I received a call from Gill Bell, the attorney, stating he had been retained by Coffman to represent him in this matter. And I also told him the same thing, that if Mr. Coffman came to the police department, I would read him his warrant.

MR. SHELLENBERG: Ms. Carter, your screen froze.

VIDEOGRAPHER: Do you want to go off the record?

MR. SHELLENBERG: Yes, please.

VIDEOGRAPHER: Okay. We're off the record at 11:21

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STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF RICHLAND)

I, Jill H. Vickers, Certified Court Reporter and Notary Public, certify that I had KIMBERLY CARTER, appear before me on Friday, January 19th, 2024, at 10:04 a.m.; via Zoom Videoconferencing; that the witness was sworn to tell the truth, the whole truth, and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of her testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of January, 2024.

Jill H. Vickers

Jill H. Vickers, Court Reporter
Notary Public for South Carolina.

My commission expires: 10-18-2026

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ELECTRONICALLY FILED - 2025 May 27 11:57 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701217

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS**
Paul Vernon Coffman, Jr., Plaintiff, v. Town of Port Royal and Detective Kimberly Carter, Defendants.	)	Civil Action No. 2021-CP-07-1217 **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER AND/OR MOTION TO RECONSIDER**

TO: THE HONORABLE H. STEVEN DEBERRY, IV

THAD L. MYERS, JEREMIAH J. SHELLENBERG, JOSHUA P. GOLSON, AND GRADY L. PATTERSON, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Town of Port Royal and Kimberly Carter will move before Circuit Court Judge H. Steven DeBerry, IV, at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCP, altering, amending, and reconsidering the Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025. The Defendants' counsel received written notice of entry of the Order on that same date.

The Defendants' motion is based upon the following grounds:

1. The Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025, makes an award of attorney's fees in the amount of $369,713.30 and costs in the amount of $10,057.78. The Order does not specify what amounts are awarded against which Defendant. This is in error and requires reconsideration.

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It is necessary and critical to clarify the parties against whom the § 1988 attorney's fees claim can be made and recovered as well as the claims on which the recovery of attorney's fees may be based. In this case, the Plaintiff recovered a verdict of $250,000 against the Defendant Town, but that recovery was made solely on the state law tort claims brought pursuant to the South Carolina Tort Claims Act. The Defendant Town as a matter of law cannot be held liable for attorney's fees under the Tort Claims Act. *See*, *Knoke v. South Carolina Department of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996). Thus, the Plaintiff's success on the state law claims has no bearing on his claim for attorney's fees, and most importantly, the fees attributable to work on that state law claim cannot be awarded by this Court.

Moreover, the Defendant Town may not be held liable under § 1988 for an award of attorney's fees because no federal claim was even alleged or tried against Town. Instead, the federal claims were asserted against the Defendants Beach, Carter, Griffin, and Wekenmann, but the Court granted a directed verdict for the Defendants Beach, Griffin, and Wekenmann. Thus, the Plaintiff is not a "prevailing party" against Defendants Beach, Griffin, and Wekenmann. In fact, the Court should have but did not apply any deduction to the claimed fees for the work that was performed for the unsuccessful federal claims against Defendants Beach, Griffin, and Wekenmann.

In short, the Plaintiff is only a "prevailing party" against the Defendant Carter and may recover attorney's fees and costs pursuant to § 1988 only against her. Importantly, contrary to this Court's current analysis, the Plaintiff's success on the state law claims may not be used to augment his recovery against the Defendant Carter. That very issue was addressed by the Fourth Circuit in *Johnson v. City of Aiken,* 278 F.3d 333 (4th Cir. 2002), in which the plaintiffs recovered $50,000 on a state law assault claim against the municipality but only a nominal award against the individual police officer on the federal claim. After recognizing that only the officer had § 1988 liability, the

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Fourth Circuit concluded that the district court erred in basing the officer's liability on the plaintiffs' success on the state law claim. The Fourth Circuit ruled that "the district court erred in basing [the officer's] fee liability on [plaintiffs'] success against the City on the state law assault claim." 278 F.3d at 337. The Fourth Circuit explained that "[s]uch an award conflicts with the principles articulated by the Supreme Court in *Kentucky v. Graham*, 473 U.S. 159 (1985)." *Id*. In *Graham*, the Supreme Court had held that § 1988 authorized the payment of fees only by "the party legally responsible for relief on the merits." 473 U.S. at 164. The Fourth Circuit further explained: "*Graham* teaches us that Clark's status as a nonparty on the state law assault claim protects him from § 1988 liability arising from that claim. Accordingly, the district court erred in basing Clark's § 1988 liability on Johnson and Vickers' success against the City on the state law assault claim." 278 F.3d at 338. (Citation omitted). The Court, however, failed to consider the *Johnson* decision in its latest Order.

In sum, as the Fourth Circuit ruled in *Johnson*, the Court cannot consider the success on the state law claims against the Defendant Town in assessing the Plaintiff's entitlement to fees against the Defendant Carter under § 1988. Moreover, the Court must distinguish between the Defendants as to the award of both the attorney's fees and the costs. The Defendant Town cannot be held liable for any attorney's fees or costs awarded under 42 U.S.C. § 1988. Instead, the Town can only be held liable for an award of costs under Rule 54, SCRCP, which is substantially less than the full $10,057.78 in costs awarded.

2. In her Memorandum in Opposition In Plaintiff's Motion for Attorney's Fees and Costs, filed December 10, 2024, the Defendant Carter raised specific objections to the claimed attorney's fees under the categories of inadequate documentation, duplication of services by multiple counsel, and travel time. However, the Court's Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025, fails to address any of those specific objections to the claimed fees.

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There is no discussion at all of those specific objections, including no discussion based on the recent decision of the South Carolina Court of Appeals in *Brawley v. Richland County*, ___ S.C. ___, 907 S.E.2d 792, 800 (Ct. App. 2024), which was a topic of considerable discussion at the motion hearing held on December 11, 2024. Notably, the Court of Appeals withdrew and re-issued its opinion in *Brawley* on January 28, 2025, and the opinion is now cited at 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025).

The following objections to the claimed attorney's fees as raised by the Defendant Carter have not been considered or addressed in this Court's latest Order on reconsideration of its original attorney's fees award. The Defendant Carter respectfully requests that her objections be considered and addressed.

A. Inadequate Documentation

The leading case on the reasonableness of attorney's fees awards under § 1988 is *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In *Hensley*, the Supreme Court explained that "the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." 461 U.S. at 437. " In addition, the Supreme Court instructs courts to exclude "hours that were not reasonably expended." 461 U.S. at 434.

The *Hensley* Court further held that "[t]he applicant should exercise 'billing judgment' with respect to hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." 461 U.S. at 437. Elaborating on the concept of "billing judgment," the Supreme Court explained:

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. In the private

> sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

461 U.S. at 434. (Citation omitted).

It is well settled that "fee claimants must submit documentation that reflects 'reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity,' sufficient to permit the court to weigh the hours claimed and exclude hours that were not 'reasonably expended.'" *Guidry v. Clare*, 442 F.Supp.2d 282, 294 (E.D. Va. 2006), *citing Hensley*, 461 U.S. at 433. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433.

In its recent decision pertaining to an award of attorney's fees under the Freedom of Information Act, the South Carolina Court of Appeals adopted the *Hensley* analysis and recognized that "[a] review of the results obtained is a particularly important consideration, especially where a plaintiff is deemed "prevailing' even though he succeeded on only some of his claims for relief." *Brawley v. Richland County*, 445 S.C. 80, 911 S.E.2d 156, 164 (Ct. App. 2025). In *Brawley*, the plaintiff prevailed on only one of four FOIA requests that were litigated; yet, the trial court awarded virtually all of the claimed fees, which thereupon resulted in a reversal of the fee award. The Court of Appeals observed that "there is no adequate explanation of the amount originally granted or the deductions made in the amended order, and the amount awarded is difficult to justify." 911 S.E.2d at 165. The *Brawley* decision demonstrates that the degree of success should mirror the fees awarded and that deductions should be made to account for claims on which the fee applicant did not prevail. In this case, that would also include deductions for claims on which the Plaintiff was not a "prevailing party" under § 1988 including all state law claims (even the ones on which he did receive a verdict).

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In the case at bar, the Court was urged to reject all or most of the claimed fees. The Plaintiff failed to provide the Court or opposing counsel with contemporaneous billing records for three of the four attorneys or their law firms – in particular the attorneys most involved, who tried the case and incidentally are claiming the highest hourly rates. As the Court is aware, the Defendants served subpoenas for Plaintiff's counsel's contemporaneous billing records. The Court denied a subsequent motion to quash those subpoenas. Despite that order, of the four lawyers, only Grady Patterson produced what would be appear to be *contemporaneous* billing records.[1] The others simply produced a typed out list of purported time entries, but there is no indication that such information was recorded or maintained contemporaneously in that fashion over multiple years of litigation.

The necessity of furnishing detailed *and contemporaneous* billing records is particularly important in this litigation because, as mentioned, there are multiple components to the litigation, for several of which attorney's fees are not recoverable. To recap, the Plaintiff did not prevail on the § 1983 claims against the Defendants Beach, Griffin, and Wekenmann. He did not prevail on his state law claims for false arrest/false imprisonment. In addition, these same lawyers represented the Plaintiff in claims brought in this same action against Joshua Smith as well as the loss of consortium claim brought by his spouse, Stephanie Coffman, which was also dismissed at the summary judgment stage. Moreover, the Plaintiff cannot recover attorney's fees for his prosecution of any of his state law claims because attorney's fees are not recoverable under the Tort Claims Act.

In his supporting memorandum, the Plaintiff writes: "Plaintiff produced detailed records of the hours each attorney devoted to this action and applied substantial discounts for every task that could reasonably have been attributed to multiple cases, including waiving/reducing any hours related

[1] Ironically, Grady Patterson, who provided contemporaneous billing records, never actually made an appearance as counsel of record until June 24, 2024, which was after the trial, although his records suggest his involvement since November 2021.

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specifically to Josh Smith as Defendant, during the time periods in which Plaintiff's attorneys were simultaneously handling cases on behalf of other claimants, i.e. Stephanie Coffman, against Defendants." The Plaintiff never states that any deductions were made for claims on which the Defendants prevailed at summary judgment or the federal claims on which the Plaintiff did not prevail against Defendants Beach, Griffin, and Wekenmann or for any of the state law claims. Moreover, the Plaintiff never explains how any deductions were determined or made. In short, the assertion in the supporting memorandum is purely conclusory. Quite simply, with the exception of Grady Patterson's records, the Plaintiff has presented no proof as to any contemporaneous billing entries which were actually deducted and/or not included in the table of time entries submitted with the attorney's fees motion.

In short, without the submission of *contemporaneous* billing records from all of the law firms (not just Patterson's firm), the Court, like the Defendant Carter, is left to merely guess or speculate at the work performed as well as the time entries that have allegedly been deducted. The time entries provided quite simply do not allow for any reasonable evaluation as to whether any work is attributable to the federal claims against the Defendant, as opposed to work on the state law claims or the claims brought by Stephanie Coffman or the claims brought against Joshua Smith. Most critically, without such records, the Court cannot determine reasonable deductions for the federal and state law claims on which the Plaintiff did not prevail.

Because the Plaintiff has failed to properly support his attorney's fees request with contemporaneous billing records, the Defendant Carter asked the Court to deny the attorney's fees claim. Yet, the Court did not do so nor address this issue. On reconsideration, the Court is respectfully requested to address this specific objection raised by the Defendant Carter.

B. Duplication of Services -- Multiple Counsel

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The Fourth Circuit has made clear that "[t]he number of hours must obviously be adjusted to delete duplicative or unrelated hours." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). The Fourth Circuit has been "sensitive to the need to avoid use of multiple counsel for tasks where such use is not justified by the contributions of each attorney" and that "[g]eneralized billing by multiple attorneys on a large case often produces unacceptable duplication." 31 F.3d at 180. In *Brawley*, the South Carolina Court of Appeals is in accord. The Court of Appeals, citing *Hensley*, explained that "hours not reasonably expended should be excluded from this initial fee calculation" and "[t]his includes hours that are excessive, redundant, or otherwise unnecessary." *Brawley*, 911 S.E.2d at 164.

In the case at bar, the Plaintiff is claiming the fees for three and sometimes four lawyers for the same or related tasks. There has been no justification provided for such duplication of efforts and the number of attorneys that made various appearances or billed for the same or related tasks. Likewise, there is no justification provided for having even three lawyers at depositions, court appearances, mediation, and the trial. Clearly, the attendance of two lawyers in many instances is not reasonable such at depositions or roster meetings or even some motion hearings, but anything above that is certainly duplicative without a specific showing of the justification, which has not been provided to the Court.

By way of some examples, on June 4, 2024, both Mr. Golson and Mr. Shellenberg billed 12 hours (24 in total) for "Depositions of the Smiths - Def. Counsel Office in Beaufort."[2] Mr. Shellenberg took the deposition of Joshua Smith, while Mr. Golson took the deposition of Brittany

[2] It should be noted that this description does not include any attempt to determine the hours spent preparing for the depositions, travel to the depositions, and/or attending the depositions.

Smith. Mrs. Smith's deposition lasted around 2.5 hours. beginning at 4:46 p.m. and ending at 7:22 p.m. The deposition of Joshua Smith lasted slightly more than 3 hours, beginning at 1:19 p.m. and ending at 4:31 p.m. Therefore, for around 5.5 hours of work, the Plaintiff has submitted bills for 24 hours of work.[3] This appears to be "overbilling," and the Court should deduct these hours as they qualify as "hours that were not reasonably expended." *Hensley*, 461 U.S. at 434.

Putting aside the issue of overbilling, the fundamental issue in this instance is why two attorneys were necessary at all. The Plaintiff has not explained why Mr. Golson is billing the client for attending a deposition taken by Mr. Shellenberg, and visa-versa. Essentially, Plaintiff is asking for the Defendant Carter to pay the bills for the attorney taking the deposition, and the attorney sitting in the deposition with no explanation as to why both attorneys were present in the first place and shows, at a minimum, a lack of "billing judgment." *See*, *Child Evangelism Fellowship of S.C. v. Anderson School District 5*, 2007 WL 1302692, *4 (D.S.C. 2007) ("the law is clear that in seeking attorney's fees under section 1988, attorneys are under a duty to minimize expenses.") The redundant hours are unreasonable and should be excluded.

These depositions are not the only instance of redundant billing. As another example, on January 25, 2024, three attorneys billed a total of 9.6 hours (2.0 by Myers, 4.6 by Shellenberg, 3.0 by Golson) to review the 75-page deposition transcript of Defendant Carter. To put this in perspective, the Plaintiff's counsel is asking this Court to require the Defendant Carter to pay Plaintiff's counsel $4,110.00 for reviewing a deposition transcript, which incidentally was taken just six days earlier with Shellenberg in attendance. The deposition itself lasted only two hours.

[3] To the extent the Court considers travel time as a portion of this 24 hour figure, Columbia to Beaufort is an approximately 2 hour and 15 minute drive. The sum of 5.5 hours of depositions and 4.5 hours round trip travel is 10 hours, less than half of the hours billed for these tasks.

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This seems unreasonable. Additional examples of redundant billing include, but are not limited to, the following:

- Four attorneys spent 11.3 hours reviewing deposition transcripts.
    - Mr. Meyers billed 2 hours, Mr. Shellenberg billed 3 hours, Mr. Golson billed 4 hours, and Mr. Patterson billed 2.3 to review Plaintiffs' deposition transcripts that, together, total 187 pages.
        - See entries on 9/28/23, 10/10/23, 3/28-29/24.
- 12 hours were spent preliminarily reviewing the file by three attorneys.
    - 8 hours (4 by Meyers, 4 by Shellenberg) were billed on August 20, 2020, as a preliminary case file review. Over a year later, 4 more hours were billed by Mr. Golson for a preliminary file review.
        - See entries on 8/20/20 and 10/9/23.
- Three attorneys collectively spent 17.1 hours drafting an amended complaint.
    - 3 Hours were spent by Mr. Shellenberg drafting an Amended Complaint on July 2, 2023. Thereafter, 8.1 hours were spent by Mr. Patterson reviewing and revising the complaint. Finally, another 6 hours were spent by Mr. Shellenberg and Mr. Meyers continuing to review and revise this complaint.
        - See entries on 7/2/23, 7/26/23, 7/28/23, 7/31/23, and 8/20/23.
- 10 hours were spent by two attorneys preparing for a deposition.
    - Mr. Shellenberg and Mr. Golson combined for 10 hours of deposition preparation for John Griffith on October 15, 2023, despite only Mr. Shellenberg attending the deposition.
        - See entries on 10/15/23.
- Four attorneys spent 13.4 hours reviewing a deposition transcript.
    - The 150-page deposition transcript of Griffith by Mr. Meyers, Mr. Shellenberg, Mr. Golson, and Mr. Patterson at 2, 4, 3, and 4.4 hours respectively.
        - See entries on 11/1/23 and 1/14/23.

If four attorneys can do the exact same task and bill the client for it, this begs the question of why firms do not assign a dozen attorneys on each case file. Again, this seems to violate the basic principle of "billing judgment" discussed in *Hensley*, and the Court should exclude all redundant hours claimed. As the Supreme Court states:

> Counsel for the prevailing party should make a good faith effort to **exclude from a fee request hours that are** excessive, **redundant**, or otherwise unnecessary. … Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

Hensley, 461 U.S. at 434. (Citation omitted). (Emphasis added).

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In sum, because Plaintiff's counsel has failed to exercise appropriate billing judgment in their submission, the Court was asked to strike the redundant hours and reduce the fee accordingly. The Court did not do so nor address this issue. On reconsideration, the Court is respectfully requested to address this specific objection raised by the Defendant Carter.

C. Travel Time

The Plaintiff claimed travel time for his lawyers at the full claimed hourly rate, despite the fact that the lawyers are located in Columbia rather than Beaufort. In *Interfaith Community Organization v. Honeywell Intern., Inc*., 426 F.3d 694, 710 (3d 2005), the Third Circuit explained that "under normal circumstances, a party that hires counsel from outside the forum of the litigation may not be compensated for travel time, travel costs, or the costs of local counsel. However, where forum counsel are unwilling to represent the plaintiff, such costs are compensable." 426 F.3d at 710. Similarly, in *Martinez v. Hernando County Sheriff's Office*, 2014 WL4099254 (11th Cir. 2014), the Eleventh Circuit explained that "although there are no precise rules with respect to travel time, a fee applicant seeking to recover expenses incurred for retaining non-local counsel generally must show a lack of attorneys practicing in that place who are willing and able to handle his claims." 2014 WL4099254, *3. Here, the Plaintiff has not shown that he was unable to retain competent counsel within Beaufort County willing to handle this case.

In short, to the extent the Plaintiff chose to retain counsel outside the Fourteenth Judicial Circuit, that is certainly his prerogative, but consideration should be given to discounting the travel time that resulted. Thus, the Court is asked to discount the hourly rate for travel time to, at most, one-half of the normal rate. This is consistent with what other courts have done. *See e.g.*, *Lochren v. County of Suffolk*, 2010 WL 1207418, *4 (E.D.N.Y. 2010) (reimbursing attorneys for travel time

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at fifty percent of their hourly rate); *Duke v. County of Nassau*, 2003 WL 23315463, *5 (E.D.N.Y. 2003) (reducing the amount billed for travel time by fifty percent of the attorney's general billing rate). On reconsideration, the Court is respectfully requested to address this specific objection raised by the Defendant Carter.

3. In its Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025, the Court fails to address the objection made by the Defendant Carter to the Plaintiff's claimed costs in the amount of $17,238.90. Although the Court ultimately awarded $10,057.78 in costs, the Court does not address the Defendant Carter's argument that the Plaintiff is only entitled to costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d), which is substantially less that than the $10,057.78 awarded.

To recap, as the Fourth Circuit explained in *Johnson v. City of Aiken,* 278 F.3d 333 (4th Cir. 2002), the Plaintiff is only entitled to "costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)." 278 F.3d at 339. The only taxable costs that the Plaintiff may recover are as follows: "(1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 of this title; [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title." 28 U.S.C. § 1920.

The "other costs" claimed by the Plaintiff would be more properly characterized as "expenses" but not "taxable costs" that are recoverable under 28 U.S.C. § 1920 and Rule 54(d), FRCP or the comparable Rule 54(e), SCRCP. The United States Supreme Court has explained:

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"Although 'costs' has an everyday meaning synonymous with 'expenses,' the concept of taxable costs under Rule 54(d) is more limited and represents those expenses, including, for example, court fees, that a court will assess against a litigant." *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 537 (2012). "Taxable costs are limited to relatively minor, incidental expenses as is evident from § 1920, which lists such items as clerk fees, court reporter fees, expenses for printing and witnesses, expenses for exemplification and copies, docket fees, and compensation of court-appointed experts." *Id*.

Importantly, the United States Supreme Court has explained that the Court's case law on Rule 54(d) has now established a "clear rule" as follows: "A statute awarding 'costs' will not be construed as authorizing an award of litigation expenses beyond the six categories listed in §§ 1821 and 1920, absent an explicit statutory instruction to that effect." *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873, 878 (2019). In *Rimini*, the Supreme Court ruled that "Section 1821 and 1920 create a default rule and establish a clear baseline against which Congress may legislate. Consistent with that default rule, some federal statutes simply refer to 'costs.' In those cases, federal courts are limited to awarding the costs specified in §§ 1821 and 1920." 139 S.Ct. at 877. Further explaining, the Supreme Court states: "If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so. … But absent such express authority, courts may not award litigation expenses that are not specified in §§ 1821 and 1920." *Id*. Quite simply, the *Rimini* decision overrules any previous decisions where courts have allowed prevailing parties to recover "reasonable litigation expenses" under § 1988, including the Fourth Circuit's decisions in *Spell v. McDaniel*, 852 F.2d 762 (4th Cir. 1986), and *Daly v. Hill*, 790 F.2d 1071 (4th Cir. 1986), as cited by the Plaintiff.

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More recently, the Tenth Circuit recognized that *Rimini* "hold[s] that the authorization in 42 U.S.C. § 1988 to award 'full costs' does not provide the 'explicit statutory authority' required to award costs, including expert witness fees, beyond those provided by §§ 1920 and 1821." *Alfwear, Inc. v. Mast-Jaegermeister US, Inc.*, 2023 WL 8232072, *5 (10th Cir. 2023). That is the crux of the Defendant Carter's position. Under the "clear rule" announced in *Rimini*, costs may not be awarded under § 1988 to the prevailing party except for the taxable costs allowed for the six categories listed in §§ 1821 and 1920. The one exception created by Congress is for § 1981 cases where the statute says, "the court, in its discretion, may include expert fees as part of the attorney's fee." 42 U.S.C. § 1988(c). There are no other exceptions for the award of costs or expenses – as part of the attorney's fees or otherwise – that have been explicitly authorized by Congress under § 1988.

In sum, there is no "explicit statutory authority" in § 1988 that allows for the award of non-taxable costs as claimed by the Plaintiff, including travel expenses, hotels, meals, mileage reimbursement, and postage, among others. The Plaintiff, in fact, made no attempt to point out any such explicit language in § 1988 to support an award of the non-taxable costs" claimed in Exhibit 9 to his motion. Quite clearly, none of those items are taxable as costs under 28 U.S.C. § 1920 and Rule 54(d), FRCP (or Rule 54(e), SCRCP), and as a result, those non-taxable costs should not have been awarded.

Respectfully, the Court erred in disregarding the precedent established by the United States Supreme Court in *Rimini*, and the Defendant Carter respectfully requests that the Court address on reconsideration the "clear rule" announced in *Rimini* and its application to this case.

The Defendants' motion is based upon the pleadings filed in this case; the Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025; the Memorandum in Opposition In

Plaintiff's Motion for Attorney's Fees and Costs, filed December 10, 2024; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

Counsel for Defendants Kimberly Carter and Town of Port Royal

May 27, 2025

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT PAUL VERNON COFFMAN, JR., PLAINTIFF, VS. TOWN OF PORT ROYAL AND KIMBERLY CARTER, DEFENDANTS.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No. 2021-CP-07-01217 **MEMORANDUM IN OPPOSITION OF MOTION TO ALTER OR AMEND OR RECONSIDER THE ORDER RECONSIDERING ATTORNEYS' FEES AND COSTS**

Plaintiff, by and through his undersigned counsel, respectfully submits this Memorandum in Opposition to Town of Port Royal and Kimberly Carter ("Defendants") Motion to Alter or Amend or for Reconsideration of the Order Reconsidering Attorneys' Fees and Costs.[1] In support of this Memorandum, Plaintiff shows the Court as follows:

LAW

Rule 59 of the Federal Rules of Civil Procedure allows a party to petition the court to alter or amend a previous judgment. Fed. R. Civ. P. 59(e). "In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted). The Fourth Circuit recognizes three limited circumstances in which a district court may grant a Rule 59(e) motion: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pac. Ins. Co.,* 148 F.3d at 403 (citations omitted).

[1] The Plaintiff incorporates by reference the citations to the record and arguments made in his prior memoranda and hearings. ECF 7.1.2024, ECF 12.23.2024, 01.27.2025.

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However, "[a] Rule 59(e) motion to reconsider is not simply an opportunity to reargue facts and theories upon which a court has already ruled, or a vehicle for presenting theories or arguments that could have been advanced earlier." *McMillian v. District of Columbia*, 233 F.R.D. 179, 181 (D.D.C. 2005) (citations omitted). Pointing to the same evidence and repeating the same arguments she raised previously is insufficient under Rule 59(e) or 60(b), and the court denies this portion of her motion accordingly. *See Hutchinson v. Staton,* 994 F.2d 1076, 1082 ("[M]ere disagreement does not support a Rule 59(e) motion."); *Brooks v. Zorn*, No. 2:22-cv-00739-DCN-MHC, 2025 U.S. Dist. LEXIS 55146 (D.S.C. Mar. 25, 2025) (denying Rule 60(b) motion because the movant "merely rehashe[d] arguments already raised to and ruled upon by the trial court."); *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983) (It is improper to use such a motion to ask the court to "rethink what the [c]ourt had already thought through—rightly or wrongly.")

PROCEDURAL HISTORY

On July 1, 2024, Plaintiff's filed their Motion for Attorneys' Fees and Costs; and on December 10, 2024, Defendants filed their Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees.

Plaintiff's Motion for Attorneys' Fees came before the court on December 11, 2024. Following the hearing, the court allowed the parties to file supplemental briefs. On December 23, 2024, Plaintiff filed a reply to Defendants' Memorandum in Opposition of Plaintiff's Motion for Attorney's Fees. The court filed its Order on January 15, 2025, and granted the Plaintiff $33,333.33 in attorneys' fees.

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On January 27, 2025, the Plaintiff filed a Motion to Reconsider Attorneys' Fees and Costs and Defendants filed a Motion to Alter or Amend or Reconsider the Order relating to Post-trial Motions as well as the Order Awarding Attorneys' Fees and Costs.

On May 14, 2025, the court filed its Order Reconsidering Attorneys' Fees and Costs (hereinafter "Order") and granted the Plaintiff $369,713.30 in attorneys' fees and $10,057.78 in costs. Thereafter, Defendants filed a second Motion to Alter or Amend and/or Reconsider Attorneys' Fees and Costs on May 27, 2025 ("Defendants Second Motion to Reconsider").

ARGUMENT

1. Defendants Second Motion to Reconsider Recites the Same Arguments Previously Raised and Should be Denied.

To allow litigants a second bite at the apple via a motion for reconsideration is highly disfavored, *Nanendla v. WakeMed,* 24 F.4th 299, 304 (4th Cir. 2022), and it is inappropriate where it merely seeks to argue the merits of a particular motion or is used as a vehicle "to give an unhappy litigant one additional chance to sway the judge." *Brooks v. Zorn*, No. 2:22-cv-00739-DCN-MHC, 2025 U.S. Dist. LEXIS 55146 (D.S.C. Mar. 25, 2025).

Defendants Second Motion to Reconsider raises, virtually verbatim, the arguments Defendants raised in their Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees. ECF 12.10.2024.

Following the first Order from the court awarding attorneys' fees and costs, the Defendants filed a Motion to Reconsider that, in addition to rehashing the issues raised in their motion for New Trial, JNOV, etc. (notwithstanding issues not properly raised or preserved at trial), only raised the issues of whether attorneys' fees and costs, pursuant to § 1988, could be awarded against

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Defendant Carter (§ 1983) and/or the Town of Port Royal (State Tort Claims Act).[2] Moreover, Defendants first motion to reconsider failed to raise the issues related to the calculation of attorneys' fees and costs, the *Brawley*[3] case, *Johnson v. City of Aiken*[4], or any argument related to Plaintiff's Counsels' billing records.

In fact, it was not until the court reconsidered their attorneys' fee award that Defendants attempted to relitigate the exact same arguments raised and considered previously by this court. Therefore, Defendants Motion to Reconsider should be denied.

2. Attorneys' fees Should be Properly Apportioned to Defendant Kimberly Carter.

It appears that the clerk, perhaps inadvertently, entered the attorneys' fee award against both the Town of Port Royal and Kimberly Carter, notwithstanding necessary consideration for what the town and/or its liability carrier is obligated to pay pursuant to its coverage contract(s) or other agreements.[5] Plaintiff Counsels' success on the inexplicably intertwined state law claims was a factor in the attorneys' fees award in the Order from the court. However, the South Carolina Tort Claims Act prohibits recovery of attorneys' fees. *W.S. v. Daniels,* C/A No. 8:16-cv-01280-DCC, 2022 U.S. Dist. LEXIS 235702 (D.S.C. Dec. 13, 2022) *citing Doe v. Spartanburg Cnty. Sch. Dist. Three, No.* CV 7:15-02764-HMH, 2015 U.S. Dist. LEXIS 196027 (D.S.C. Aug. 19, 2015).

3. The Court Conducted a Proper Analysis of the Necessary Factors to Reconsider and Grant an Award of Attorneys' Fees and Costs.

The blatant repetition of the previously filed motion in opposition is clearly evident from the arguments Defendants attempt to reraise, which were clearly addressed by the Order. Although

[2] Plaintiff's Counsel finds Defendants failure to assign separate counsel for the individual defendant(s) and the Town of Port Royal as a potential issue.
[3] *Brawley v. Richland Cnty.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2024)
[4] *Johnson v. City of Aiken*, 278 F.3d 333 (4th Cir. 2002)
[5] Defendants have omitted any reference to their obligations to Defendant Carter and/or the Town under the applicable coverage contracts.

a successive post-trial motion for relief is permissible, the subsequent motion must seek relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment. The successive motion cannot be a motion to alter or amend that merely recites arguments in a previous Rule 50 or Rule 52 motion as a Rule 59(e) motion. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E. 2d 524 (Ct. App. 2002).

The Defendants regurgitate the same arguments they previously raised, including claims that the Plaintiff's success on the state law claims may not be used to augment his recovery against the Defendant Carter. ECF 5.27.2025 at 2. The court properly considered the intertwined series and/or substantial nexus of facts between the state law claims and the federal claims as presented at trial and concluded that the state and federal claims are inherently related to a sufficient degree that the Plaintiff's attorneys' fees are justifiably based upon the litigation of the totality of the facts and evidence presented at trial. ECF 5.14.2025 at 15-17. The Defendants attempt to make a conclusory assumption that the "the Court, however, failed to consider the *Johnson* decision in its latest Order," an argument they failed to raise after the court's first Order Granting Attorneys' Fees and Costs. More importantly, they continue to erroneously rely on *Johnson v. City of Aiken*, 278 F.3d 333 (4th Cir. 2002). A plain reading of *Johnson v. City of Aiken* clearly shows that the plaintiff in that case prevailed on state law claims that were wholly unrelated to the federal claims. It is obvious that the facts and holding in *Johnson v. City of Aiken* is not analogous to the issue in the case at bar, despite Defendants' tortured interpretation and application thereof. *Id.* However, now that the court properly awarded a substantially larger amount in Attorneys' Fees, the Defendants wish to revive that baseless argument and the Defendants' Second Motion to Reconsider should be denied.

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4. The Brawley Case Does Not Apply.

Defendants claim *Brawley* was a topic of "considerable discussion" at the motion hearing because Defense Counsel incorrectly argued its applicability, ad nauseum. *Brawley* is yet another unrelated case that the Defendants attempt to force onto the court for consideration. *Brawley v. Richland Cnty.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2024). It was properly not considered in the first Order as it does not apply to the facts of this case and was ultimately immaterial, particularly where Defendants urged the court to ignore controlling precedent from the United States Supreme Court and the Fourth Circuit Court of Appeals, amongst other properly persuasive authority.[6]

Defendants' argument against attorney's fees relies heavily on *Brawley v. Richland Cnty.,* a Freedom of Information Act (FOIA) case where the Court of Appeals was unable to discern how the circuit court calculated the amounts awarded and there was minimal discovery. In addition, responsive documents were provided early in the litigation without any significant adversarial proceedings. *Brawley v. Richland Cnty.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2024) (rehearing denied). The *Brawley* case and the case at bar are fundamentally different. In the case at bar, the court made a detailed explanation in support of its attorneys' fee award. Furthermore, the controlling law of *Brawley* is the South Carolina Freedom of Information Act (FOIA) and relevant South Carolina Law interpreting FOIA and governing attorney's fee award. The *Brawley* case involved a FOIA dispute made well before any litigation commenced, whereas the case at bar involved a combination of state law claims and federal claims under 42 U.S.C. § 1983, which was tried by a jury who found in favor of the Plaintiff. In addition, the essential nature of the instant

[6] For the sake of brevity, please see Plaintiff's citations to the record and arguments made in his prior memoranda and hearings. ECF 7.1.2024, ECF 12.23.2024, 01.27.2025.

litigation inherently involved a more significant and substantial amount of work and resources than the matter Defendant relies on in *Brawley*, and the nature of the litigation in the case at bar, amongst other things, is far more intensive.

Additionally, the Order provides significant basis and explanation for the amount granted and the deductions made, consistent with the explanations provided to the District Courts and subsequently upheld by the Fourth Circuit Court of Appeals. *See* ECF 05.14.2025. Thus, it appears Defendants continue to simply ask the court to ignore a substantial and well-established body of precedent which conclusively supports the courts award of fees and costs.

5. Defendants Arguments Related to Documentation and Contemporaneous Billing Have Already Been Considered.

The Defendants argument that the Plaintiff's billing was not contemporaneous is baseless and ill-conceived. They still fail to provide any authority to support their position that Plaintiff's counsel failed to keep contemporaneous billing records because they were not kept using a computer program or other means dictated, in a vacuum, by Defendants' Counsel. This is nothing more than a thinly veiled attempt to cast baseless aspersions against Plaintiff's Counsel under circumstances where Plaintiff prevailed at trial; and neither Plaintiff nor Plaintiff's Counsel should be prejudiced simply because Plaintiff's Counsel expended the time and effort necessary to prevail and vindicate the various violations of the Plaintiff's Constitutional Rights and Privileges under state and federal law. Moreover, as previously and exhaustively established, Plaintiff's Counsel submitted detailed billing records with similar detail and in similar form and fashion as has been routinely adopted and accepted by the Federal Courts in similar cases.

The Order properly addresses the Defendants arguments related to documentation and billing. Again, the Defense cannot point to any caselaw to support his "claim" that billing was not

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done contemporaneously. The court properly made a finding that the records were sufficiently detailed to provide for the award.

As to the balance of any other issues and arguments the Defendants attempt to relitigate or otherwise raise for the first time, Plaintiff would respectfully defer to his prior arguments and memoranda in support, as well as the courts prior rulings, and ask that the Defendants' Second Motion to Reconsider be denied accordingly.

Respectfully Submitted,

s/ Jeremiah J. Shellenberg
Jeremiah J. Shellenberg S.C. Bar No. 100235
Thad L. Myers S.C. Bar No. 12576
Thad L. Myers, P.A. & Associates
1727 Hampton Street
Columbia, South Carolina 29201
(803) 252-0005 (telephone)
jj@thadmyerspa.com
thad@thadmyerspa.com

Joshua P. Golson S.C. Bar No. 100618
Law Offices of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29201
Telephone: (803) 252-0005
josh@joshgolsonlaw.com

Grady L. Patterson, S.C. Bar No. 4369
Patterson Law Offices, LLC
Post Office Box 325
Columbia, South Carolina 29202
(803) 771-6022 (telephone)
glp@pattersonlawoffices.net

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
June 10, 2025

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS**
Paul Vernon Coffman, Jr., Plaintiff, v. Town of Port Royal and Detective Kimberly Carter, Defendants.	)	Civil Action No. 2021-CP-07-1217 **REPLY MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND ORDER AND/OR MOTION TO RECONSIDER**

The Defendants Town of Port Royal and Kimberly Carter filed a timely Motion to Alter or Amend Order and/or Motion to Reconsider on May 27, 2025, asking that the Court alter, amend, and/or reconsider the Order Reconsidering Attorneys' Fees and Costs as filed May 14, 2025. In that motion, the Defendants set forth numerous issues and arguments raised in opposition to the Plaintiff's Motion for Attorneys' Fees and Costs that the Court did not consider or at least address or rule on in its Order Reconsidering Attorneys' Fees and Costs.

On June 10, 2025, the Plaintiff filed an opposition memorandum in which the Plaintiff argues that the federal standard for Rule 59(e) motions applies to this case, and under that federal standard, the Defendants' motion to reconsider should be denied. The Plaintiff suggests in conclusory fashion that none of the three factors under the federal standard for Rule 59(e) motion have been met.

As is clear, the Plaintiff demonstrates no understanding of Rule 59(e) as its exists *under South Carolina law* and as it has been applied in hundreds of cases by the South Carolina appellate courts for dozens of years. Indeed, of the numerous cases cited by the Plaintiff with respect to the

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controlling Rule 59(e) standard of review, all of those cases are federal cases. Notably, the Plaintiff has not cited a single South Carolina case applying the Rule 59(e) standard under South Carolina law – despite there being hundreds of such cases available to be cited.

To be clear, the federal standard under Rule 59(e), FRCP, limits reconsideration to the following circumstances: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). However, the South Carolina appellate courts have ***never adopted*** that limited federal standard of review for Rule 59(e). To the contrary, our appellate courts have crafted a broad view of the purpose and necessity for filing a Rule 59(e) motion. The state standard for a Rule 59(e) motion has been enunciated best in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), in which the Supreme Court wrote:

> [O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review."

602 S.E.2d at 780. Thus, under the state standard, a motion to reconsider is permitted where a litigant believes the court "misunderstood" or "failed to fully consider" or "failed to rule on an argument or issue." In addition, it is *mandatory* for a party to file a Rule 59(e) motion when an issue or argument has been raised but not ruled on. That standard under state law is different from its federal counterpart. As the Supreme Court also acknowledges in *Elam*, "a great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of

ensuring that all issues and arguments are presented to the lower court for its consideration." 602 S.E.2d at 779.

In short, the Plaintiff's reliance on the federal Rule 59(e) standard is misplaced. This action is brought and pending in state court, and accordingly, it is the state Rule 59(e) standard that applies. The Defendants are not just within their right to seek reconsideration from this Court because they believe that the Court misunderstood or failed to fully consider or rule on issues and arguments made at the December 11, 2024 motion hearing and in their opposition memorandum filed December 10, 2024, but when there are issues and arguments that have been raised to but not ruled on by the Court, as occurred here, the Defendants are actually *mandated* to re-assert those issues and arguments by way of a Rule 59(e) motion. Clearly, under South Carolina law as opposed to federal law, if the Defendants do not re-assert those issues and arguments by way of a Rule 59(e) motion, those issues and arguments are not preserved for appellate review.

Additionally, the Plaintiff is critical that the Defendants did not previously file a Rule 59(e) motion directed at the Court original award of $33,333.33 in attorney's fees in the Court's Order Awarding Fees and Costs filed January 15, 2025. However, the Rule 59(e) motion filed January 27, 2025, did raise three points for reconsideration as to the Order Awarding Fees and Costs, including the request that the Court "clarify that no award of attorney's fees has been made against the Defendant Town of Port Royal" and the Court "reconsider the award of $14,351.72 in costs" because "[t]he Court has not considered or addressed the 'clear rule' announced by the United State Supreme Court in *Rimini Street, Inc. v. Oracle USA, Inc*., 139 S.Ct. 873 (2019)."

As to the other issues raised in the Defendants' opposition memorandum and at the December 11, 2024 hearing, the Plaintiff claims that this is an improper "successive" Rule 59(e) motion. However, it was not necessary to obtain specific rulings on other issues/objections

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because the Court awarded only $33,333.33 of the $410,792.50 in fees that were claimed. That rendered moot the other objections asserted by the Defendants as to the amount of the fees and the claimed hourly rates. However, when the Court reconsidered the Order Awarding Fees and Costs filed January 15, 2025, and essentially reversed itself by awarding attorney's fees in the amount of $369,713.30 (as opposed to $33,333.33), those other issues/objections were no longer moot and it again became necessary to request and obtain a ruling on each of the issues/objections asserted by the Defendants in their opposition memorandum and at the December 11, 2024 hearing. Thus, the Defendants' current Rule 59(e) motion is procedurally proper due to the Court's reconsideration and vacatur of its prior award of attorney's fees. As the foregoing case law instructs, in order to preserve all issues for appellate review, the Defendants are required to request that the Court actually rule on all of the issues/objections asserted, and that is what the Defendants seek with the current Rule 59(e) motion.

Finally, it appears that the Plaintiff concedes that the award of attorney's fees under 42 U.S.C. § 1988 may only be made against the Defendant Carter as the only § 1983 Defendant. To recap, the Defendants pointed out in their Rule 59(e) motion that the Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025, makes an award of attorney's fees in the amount of $369,713.30 and costs in the amount of $10,057.78, but that Order does not specify what amounts are awarded against which Defendant. As the Defendants argued, that is critical because the award under Section 1988 of fees and costs cannot as a matter of law be made against the Town. The Town can only be liable for costs awardable under Rule 54(e), but the Court's order does not differentiate between costs awarded under § 1988 and those awarded under Rule 54(e). That is particularly problematic, however, because the Clerk of Court clearly did not understand how to interpret that Order and has actually enrolled the judgment for the fees and costs

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against both Defendants, thereby enrolling a judgment of $629,771.08 against the Defendant Town and a judgment of $479,771.08 against the Defendant Carter. *See*, Attached Copy of Judgment Tab from Public Index. Obviously, that is in error. The Court clearly did not intend for the Plaintiff to receive **a double recovery of the fees and costs**.

The Plaintiff appears to acknowledge this error that needs to be corrected by the Court. The Plaintiff writes: "It appears that the clerk, perhaps inadvertently, entered the attorney's fees award against both the Town of Port Royal and Kimberly Carter, notwithstanding necessary consideration for what the town and/or its liability carrier is obligated to pay pursuant to its coverage contract(s) or other agreements." *See* Plaintiff's Mem., p. 4. From this language, it appears that the Plaintiff agrees that he is not entitled to the double recovery of the fees and costs. The Plaintiff, however, tries to now interject an issue regarding insurance coverage and/or indemnity, which of course, was never previously raised to the Court nor is a proper consideration in this liability action.

For these reasons, the Court is respectfully requested to consider the merits of and grant the Defendants' motion to reconsider for the reasons stated in that motion.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

Counsel for Defendants Kimberly Carter and Town of Port Royal

June 11, 2025

ORAL ARGUMENT REQUESTED

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Fourteenth Judicial Circuit
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Paul Vernon Coffman Jr , plaintiff, et al VS Port Royal Town , defendant, et al

Case Number:	2021CP0701217	**Court Agency:**	Beaufort County Common Pleas	**Filed Date:**	07/02/2021
Case Type:	Common Pleas	**Case Sub Type:**	Person Inj/Other 399	**File Type:**	Jury
Status:	Disposed	**Assigned Judge:**			
Disposition:	Ended by Jury Trial	**Disposition Date:**	07/10/2024	**Disposition Judge:**	DeBerry, H. Steven IV
Original Source Doc:		**Original Case #:**		**Restore Reason:**	Reopened Case
Judgment Number:	2021CP0701217	**Court Roster:**			

Case Parties **Judgments** Tax Map Information Associated Cases **Actions** **Financials**

For:	Coffman, Paul Vernon Jr	**Against:**	Port Royal Town	**Judg. Amount:**	$629,771.08	**Judgment Date:**	06/24/2024
Description:	Judgment/ Judgment	**Disposition:**		**Disp. Date:**		**Date Entered/ Last Changed**	07/10/2024 -- 05/14/2025
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
JGM	Jury Verdict	$250,000.00	06/24/2024
ATY	Attorney Fees	$369,713.30	05/14/2025
CST	Costs	$10,057.78	05/14/2025

For:	Coffman, Paul Vernon Jr	**Against:**	Carter, Kimberly	**Judg. Amount:**	$479,771.08	**Judgment Date:**	06/24/2024
Description:	Judgment/ Judgment	**Disposition:**		**Disp. Date:**		**Date Entered/ Last Changed**	07/10/2024 -- 05/14/2025
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
JDM	Jury Verdict	$100,000.00	06/24/2024
ATY	Attorney Fees	$369,713.30	05/14/2025
CST	Costs	$10,057.78	05/14/2025

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2021-CP-07-01217

Paul Vernon Coffman, Jr.,

Plaintiff,

vs.

Port Royal Town, et al.,

Defendants.

TRANSCRIPT OF TRIAL

June 17-21, 2024
Beaufort, South Carolina

B E F O R E:

The Honorable H. Steven DeBerry IV, Judge Presiding

A P E A R A N C E S:

For the Plaintiff -
Jeremiah "J.J." Shellenberg, Esquire
Thad L. Myers, P.A.
1727 Hampton Street
Columbia, South Carolina 29202

Joshua P. Golson, Esquire
Law Office of Joshua P. Golson, LLC
1727 Hampton Street
Columbia, South Carolina 29202

For the Defendants -
Thomas Allan Bendle, Jr., Esquire
Robert Scott Dennis, Esquire
25 Rue Du Bois, Lady's Island
Beaufort, South Carolina 29901

Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

P R O C E E D I N G S

* * * * *

(Clerk places Jurors under oath.)

(Exhibit Numbers 1-31, Notebook of Exhibits, is marked and entered without objection.)

THE COURT: All right, thank you again, ladies and gentlemen, for your service this week. As you know, we're about to begin the trial of Paul Martin Coffman, Jr. vs. The Town of Port Royal, Chief Alan Beach, Kimberly Carter, John Griffith and Ron Wekenmann. Before we begin this trial, I want to tell you that it might be different from what you expect. Many people don't have a chance to attend an actual court session as you're doing now, and you might think that from watching TV, movies, reading books, that trials are always full of high drama, intense circumstances, and riveting action, and while sometimes that might be the truth, other times that might not be exactly what you get here; but please understand that this is a fundamental part of our democracy. It's an effort to make sure that justice is done between the parties that are before this Court and making sure that justice is done is often slow, it can be repetitive, deliberate, and it might be the opposite of what you expect, but please

these witnesses, to observe them, to listen to them. And that said, at the conclusion of all the evidence and the testimony in this trial, you'll be in the best possible position that you can be in to determine what the facts of this case are. So at this time, I'm going to ask if there's any objection to the opening charge from either side?

MR. SHELLENBERG: None from the Plaintiff, Your Honor.

MR. BENDLE: No, Your Honor.

THE COURT: All right, we'll recognize the Plaintiff's attorney for an opening statement.

MR. GOLSON: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

OPENING STATEMENT BY MR. GOLSON

BY MR. GOLSON: So, finally, here we are. I can see all of you, and what I see are jurors that we chose, the jurors that we selected to be a part of this, jurors that are a member or members of this community. I see jurors that we trust, jurors that we trust to make some very important decisions. Now, in this case, you're going to have something that nobody else in Beaufort County has, and it's something that nobody else in Beaufort County is

ever going to have but you. You might be wondering what am I talking about? What you have right now that nobody else is ever going to have is the power. You have the power to make decisions. You have the power, and we've entrusted you with that power to make decisions about Paul Coffman. It's the kind of power when you make these kind of decisions that you have to place, ultimately, a value on the experiences of another human being. It's the experiences of a man, and it's a judgment on the things that happened to him. You make the decisions about the things in terms of why they happened. You're going to have to possibly make decisions about whether they're going to happen again. You're going to have to make a decision about the experiences of Paul Coffman, and make a decision about what that is all worth. Is it something big? Is it something small? Is it something that truly matters? Now, you're going to see, because Mr. Shellenberg and I are going to connect it with all the evidence and the facts in this case, that Paul Coffman is a man whose experiences have not been anything remotely like what you imagine. He has been hurt, his body has been hurt, his physical safety has been hurt. His personal liberties have

been taken away. His constitutional rights have been violated. This is real, it's not made up, it's a real thing. This is something that if anyone in this world could make it go away and could want to make it go away, to be able to go back in time, and make it go away, the first person in this room that would do that is Mr. Coffman. If he had a magic wand, he'd wave it in the air, and he'd go back to that day, and do whatever would be in his power to make sure that nothing ever happened to him. But he doesn't have that power. In fact, I would venture to say that Mr. Coffman doesn't actually want to be here. He doesn't want to have to go through this process, to make his life and his life experiences public in a place like this. He doesn't want to have to be here sitting in front of you asking for help. As it stands today, he's a 77-year-old man, and he's sitting here asking you for help. That's really not who he is, it's not how he was born, it's not how he was raised to be, but we're here anyway, and he needs your help. So what brings us here is that unlike many other places in the world where you have an eye for an eye, a hand for a hand, a pain for pain, that's the way it is in so many other places in the world, but not here in the United

States. And that's why we go to all those places in the world. That's why we go to Afghanistan, that's why we go to Ukraine, we go to South America, to try and stop all that. We're trying to make a difference. That's why Mr. Coffman joined the U.S. Navy over 40 years ago, he was trying to make a difference. Here in the United States what we do is try to preserve that. Because several hundred years ago our forefathers decided that in the soon to be United States of America, like everywhere else in the world, we are going to do something different. When someone's hurt, when there's negligence, when someone's civil rights have been violated, we're going to have members of our community come together, and we're going to have them decide what it's worth. We're going to have to decide through a system of civil justice, and a system of compensation. We're going to have to figure out what's right, and we're going to have to balance it out with a dollar figure, with money. Now, I didn't come up with that, my co-counsel, Mr. Shellenberg, didn't come up with that, our esteemed Judge did not come up with that, this has been the way long before we were here today, and hopefully it'll remain that way long after we're gone. It's the fundamental

foundation of our Constitution and our civil rights. Through our civil rights, as you are likely aware, we have the right to life. We have the right to privacy. We have the right to liberty. All those things changed for Mr. Coffman. His privacy was affected, his privacy was changed, his liberty was threatened, his liberty was violated, his liberty was taken away. And, yes, as we will understand throughout the trial of this case, in fact, countless others before him who have suffered much worse, but that doesn't make this case any different. That doesn't make this case any less deserving. And there shouldn't be anyone else who has to face something similar in the future. In this case you're going to learn about the facts and about pieces of evidence that will show you that the Defendants in this case, the Town of Port Royal, Chief Alan Beach, Major Deputy Chief Wekenmann, Captain Griffith and former Investigator Kimberly Carter, they've all had their chances. They've had their chances to make many mistakes. And here's the thing, here's the thing about mistakes, okay? The difference with an actual mistake is that it's supposed to be something that only happens once, and you fix it, and you make sure that it never happens

again, not to anyone. When it keeps happening, you can't call it a mistake anymore. You can call it reckless, you can call it indifferent, you can call it callous. My five-year-old son used to say, "Dad, you don't care." It shouldn't happen once, twice, three times, maybe more, that's not reasonable. You can't say that's justified. You have to say it's wrong and something has to be done to make it stop. Again, as I stand here before you today, you are the ones with the only power to do something about it. Mr. Coffman needs you to exercise that power and stop it, because they won't. So now I'm going to tell you a story, and I'm going to tell you a story of Paul Coffman. You know what? Maybe at first this story is going to sound a little bit crazy. I say it might sound a little bit crazy because when I first heard it I thought it was a little bit crazy. But as I learned more of the facts, as I had an opportunity to review more of the evidence, it became wrong, and it became disturbing.

COURT REPORTER: Can you speak up a little bit?

MR. GOLSON: So let me tell you about Mr. Coffman. Mr. Coffman was born in Charleston, West Virginia, where he lived with his family for a few

years before he moved to Beaufort County. He grew up here in Beaufort County, and he went to high school here in Beaufort County. He met his wife while he was in high school in Beaufort County over 50 years ago. Now, he didn't know then that Stephanie was going to be his wife, although I still believe when he saw her, he probably was hoping. He saw Stephanie and said, "I like that girl, I'm going to marry that girl." And so what did he do? Well, he tried to ask her out on a date, but that sort of backfired. Her mom said, "No way, he is just a little bit too old for you." They went to the same high school, but I guess one or two years' difference was not quite right with Mom, so what did Stephanie do? She said, "All right, well, you know what? Why don't you come back in 50 years and we'll see what's up." Not even kidding, "Why don't you come back in 50 years and ask me again." The craziest part about this story is that it's actually true, 50 years later Paul Coffman is back here in Beaufort County and he meets and reconnects with Stephanie, 50 years, and then he marries her.

THE COURT: Mr. Golson?

MR. GOLSON: Yes, sir.

THE COURT: The court reporter can't hear

what you're saying, so you're going to have to have it a little louder.

MR. GOLSON: All right.

THE COURT: Thank you, sir.

MR. GOLSON: It's better than being a robot. When I was a prosecutor, my colleagues told me that I was the most lifelike android they ever met, so I guess if I'm suffering from not speaking loud enough, I can certainly correct that.

So as I was saying, Paul came back to Beaufort County. He finds the love of his life over 50 years later. They get to laugh about those times. It seems like probably in some ways their life in those years were sort of like the beginnings of a romantic comedy. They met in French class in high school, and she dissed him and said, "No, thanks, come back," so here we are.

After college Paul actually joined the Navy, it was somewhere around November of 1965. He served his country for five years, and eventually made his way back to Beaufort. He always comes back home to Beaufort. That's the best part about this story, because bringing him back to Beaufort is what brought him back to Stephanie. Stephaie made it back to Beaufort somewhere around 1996. Paul came

back in 2012. And they have never wanted to leave ever since. And the thing about Port Royal is that Port Royal, up until July 6th of 2019, was their favorite place in Beaufort County. They love the water, they love the people, they love sitting outside on the porch in their favorite restaurants watching the sunsets, watching other families spending time together, living their lives and enjoying their lives the same way they were. Because, again, they waited 50 years to be together, so they have to live it up as best they can for as much time as they have left. Unfortunately, that changed on July 6th of 2019.

So what happened on July 6th of 2019? July 6th, 2019, Paul and Stephanie have their friend, Aaron Abercrombie, over, and they spend the day and the evening together. And as the sunset was approaching, they decide that they are going to take a late afternoon boat ride. Paul's a fairly modest man. He doesn't have a 40-foot center console to go tearing around Port Royal. He does have a 17-foot Skiff that suits his needs. He can take his wife out. He can go out on the water, take little rides back and forth, and go back to the house. At the time, they lived just a few short blocks from the

Sands Beach Boat Landing, close enough to walk whenever they wanted. So that's where they went. Paul got his Skiff, puts it up to his boat. Of course, that's a little bit difficult most of the time for Paul. You might see later on when you get a chance to look at him that his hands from all his years of life experiences are very damaged. They don't work very well. He doesn't have a good grip. They are gnarled. He can't fully extend his fingers. So if he wants to take the love of his life that he waited 50 years to be with out for a boat ride, he has to take a little tiny fish bat and hammer that hitch down, so he can pull the boat to the water. So that's what he does. And they go out to the Sands Beach Boat Landing, they put the boat in the water, they go out with Aaron Abercrombie, and they're going to take a little short boat ride as the sun sets. You would think it would be one of those perfect moments that so many people in Port Royal get to have every day. That's what Paul and Stephanie thought too. The problem is, they're coming back from this quiet, calm, enjoyable boat ride, and they encounter a very large vessel called the Bad Company. And then people aboard the Bad Company lived up to its name. That boat was owned

and operated by a man named Josh Smith. He's from Beaufort County, works for Dominion Energy as a journeyman lineman. He's about at least 6'1", 230. At the time he was 31 years old, about half the age but twice the size of Mr. Coffman. With him was his lovely wife, Deputy Brittany Smith. Deputy Brittany Smith is employed and remains employed by the Beaufort County Sheriff's Office. Her friend Jessica Bradley was with them, Jessica brought her then boyfriend, now husband, Hunter Lewis, and guess where they were coming back from when Paul Coffman unfortunately crossed their path. They spent the day drinking at the Pole Key Island Sandbar, started about, I don't know, 12 o'clock, drank for about, I don't know, maybe eight hours. Josh Smith crushed about 12 beers according to his wife, as you will hear. Depending on which version of her story that you choose to believe. Later on, she maybe had 5 or 6 or maybe it's 4 to 5, and it gets lower the longer the story goes on. Hunter Lewis drank so much that day, no one was going to dare let him drive anything home, and you get to hear that from Brittany herself. Magically somehow, Jessica Bradley, when all of this was over and all said and done, she's the one that drives the -- the truck and trailer

home for Josh Smith, with the Bad Company and friends in tow. So what happened? Well, coming back from their boat ride, Paul was driving his little 17-foot skid back to the Sands Island Sands Beach dock. And of course, he's been drinking all day, and Josh Smith comes tearing down the river, music's blearing. Music's blearing so loud that Brittany Smith herself says, "I was mad, I couldn't take it anymore, it was too loud. My husband, when he drinks this much, he's too much, he's too unpredictable, he's too volatile, he's too unreasonable. I can understand why everybody was so mad at him. He cuts Paul off in the boat, he has to be first. He's married to a Beaufort County Deputy, he can do what he wants. So they cut him off, he goes first. Never mind that Paul Coffman has led his whole life in the service of others, he's 73-years-old at the time, and all he wants to do is take the love of his life for a boat ride. So guess what, it's not a secret. I'm not going to hold anything back. Mr. Shellenburg's not going to hold anything back from you. We're going to show you all the evidence. You're not going to be surprised to know that Paul Coffman was a little bit irritated by this crazy drunken behavior. So as he has to now go

back and get his truck and trailer, and wait and watch as Hunter Lewis in his drunken state tries to back the trailer down over and over and over and over and over and over and over and over and over again, guess what? It's irritating. Brittany Smith and her friend Jessica are wandering down the boat ramp and cross paths with Mr. Coffman. She -- depending on who you want to believe, or which version you want to believe from the ladies, says something about her husband being loud and annoying. I'm not quoting that verbatim, I'm just trying to give you a summary right now. According to them, Paul says, "I can't believe you can be married to a man like that. I was about nine-tenths of the way from whipping his ass." It's pretty scary, right? I'm not trying to speak ill of my client, obviously. But he was a 73-year-old man at the time, he's not going to whip anybody's ass. He's irritated, and he for damn sure has the right to voice that irritation. So that's that, and, of course, no one's going to talk to a Beaufort County Sheriff's deputy like that. No one talks to her that way. How dare you? So they get all up into their feelings, as my son says, and you can make your own decision for yourself when you watch the videos and

watch the body-cams, look at photographs, they decide they're going to -- they're going to take some action on their own, Brittany and Jessica. Jessica gets all hyped up, maybe not so strange when you've been drinking alcohol at the sand bar for eight hours. And she says, "Oh, I think -- I think he's got a weapon, he's dangerous. I think he went back to his truck and he got -- he got a weapon, he might have a gun." What he got was a fish bat, which, guess what? He has to put his boat back at some point. He can't do it yet, because Hunter Lewis is taking freaking forever to back his trailer up, which, you know, surprise, he's wasted, but Josh Smith is making such a commotion the whole entire time, the last thing anyone else on that dock, or anyone in the remote vicinity wants to do is draw attention to themselves, because he's volatile, he's unpredictable, and he's unreasonable when he drinks. It's not a secret, you can hear it from his own wife, she's going to tell you this. So he takes the bat, and he has to walk back to where his family is, back to the love of his life, so they can get the hell out of there. He's not brandishing anything, he's holding it by his side. And you can see this for yourself, by the way, don't take my word for it.

We're going to prove all this to you. I'm not worried about it, you can see it for yourself. Now, the funny part about this is when he has to go back to his wife and Aaron Abercrombie, they have to walk from part -- point D on this map. Can you guys see that okay? All right. And forgive me, but if you don't mind, I'm going to use my finger to point. Point D of this boat landing, for anyone that's familiar with this area, you can tell from Point D, and, again, this is not my words, they've already testified to it, and you can hear it yourself, they go 50 yards -- Paul goes 50 yards past the ladies to Point C, up towards the middle/end area of that dock, 50 yards. It takes a long time to go that 50 yards of the dock, and that's where he is. Jessic Bradley, she's not going to have that, no one's going to insult her friend. So what does she do? She goes marching up the dock, 50 yards, and then she wants to eavesdrop and try to figure out what they're talking about. Oh, that -- that 73-year-old man, he must be figuring out what he's going to do because he doesn't like my friend. That might be one of the most conceited things you would hear from a young woman talking about an old man who's just trying to spend time with his family. And then when

she gets that 50 yards up the dock, what the defense is going to probably try to ask you to believe is that she felt threatened after she marched herself all the way up there. It's scary, but she did it anyway, oh, man, was she terrified. Then she went back right past the group, the Coffmans and Mr. Abercrombie, exposing her bat to this very dangerous person, walked 50 yards back to Brittany, and says, "Oh, I think he has a gun." Guess what? She didn't call the police. If you think someone has such a dangerous weapon and is such a dangerous imminent threat, what is a reasonable response in that situation? I can offer one, it's pretty logical, sensible, you call 911. They didn't do that. She goes back to Brittany, and Brittany says, "Oh, let's -- we've got to investigate this." Of course she's a Beaufort County Sheriff's deputy, that's what she does. That's what she was apparently trained to do. So they march right back up there, Jessica, she says, "What are you going to do with that bat?" It's none of her business. You'll get to hear her tell you herself, he never brandished the bat at her, he never waved it at her, he never waved it at Jessica, he never threatened them, they never felt threatened. This is not my words, it's theirs,

you'll get to hear it yourself. So then they go and accost Mr. Coffman, and his lovely wife, Stephanie, try to interrogate him, he feels so threatened, because at some point, you know, Brittany swears that she didn't do it, but at some point she's identified as a law enforcement officer. "What do you have -- what do you have behind your back, show it to me, oh, she's a cop," "I'm a cop, do what I say." So what does he do? He lifts his shirt. I mean God forbid, you disobey a law enforcement officer, right? And what does he have on his waist? He has a little tiny radio, because guess what? He's a responsible boater. When you go out on the water like that, if you need to get help, guess what you need? A radio. Unfortunately, he didn't have a chance to use that radio to get help for him and his family, for him and his wife. Because after they're done with him, yelling at him and berating him, they stomp off back down the dock, because, you know, it's what they do, I guess. And guess who comes into the picture next, Josh Smith, 12 beers deep. "Oh, you're threatening my wife." What does he do? Well, unfortunately, you'll get to hear various versions from Josh Smith himself, depending on whatever combination of versions you believe, he

stomps 50 yards from where he was getting off his boat, around the landing up on the dock, and makes it all the way up to where Paul's standing with his wife and his friend, and he grabs him by the neck, and he throws him to the ground, takes the fish bat out of his hand, and he throws it away. Depending on the version you believe, he also threatened to throw him in the water and drown him to death in front of his wife. He's 73 years old, he's waited 50 years to be with the love of his life, and he has to go out for a boat ride, come back and get beat up by a 31-year-old Viking with 12 beers, and all the effects that go with it flowing through his bloodstream. Now, guess who did call 911 while their friend was getting beaten up by a 31-year-old, half his age and twice his size? Aaron Abercrombie. Aaron Abercrombie can see what's happening, he's right here, he calls for help. He gets routed through the Beaufort County Sheriff's Office Dispatch, and Peter Bunting from the Port Royal Police Department, of course, he was just on patrol, he responds to the scene along with several other officers. And when he get there, he gets there early enough to catch the tail-end of this altercation, and sees Josh Smith looming over Paul,

with his withered hands and a 73-year-old body, and he sees him snatch the bat and toss it in the water, but keep in mind, Josh Smith was terrified for his life when he did all that. So what happens? Well, this may or may not come as a surprise to some of you, but sometimes in those situations police officers actually make reasonable decisions, and they sometimes make reasonable mistakes. In this situation, for better or for worse, they got bombarded with 40,000 different stories about what happened, and you have Brittany Smith, a deputy Smith with the Beaufort County Sheriff's Office involved, so, of course, Josh Smith got handcuffed and taken away, but that's not what happened. No one got taken away, not that night. Do you know what? Sometimes that happens, but as you're going to find out, and provided you keep an open mind as you hear the rest of the story and learn the facts and view the evidence, the more sinister things started to develop. Because in the Town of Port Royal, for all of its beauty on the outside, there's something very ugly on the inside. You do not criticize Port Royal Police Department, no, sir, don't do that. Paul Coffman was upset about the treatment he suffered at the hands of Josh Smith.

He was a victim, he still is a victim. To this day Josh Smith, as you will learn, has never been charged with assault and battery. All right, that's fine, that's not even really why we're here. Three days later, July 9th, what does Paul Coffman do? He goes, he calls Captain Griffith, who's sitting right there, calls him, he goes -- calls him for help. He's the victim that took a beating from the husband of a Beaufort County Sheriff's deputy, and he went to him for help, he needed help, kind of like he needs your help now. He said, "This report from Peter Bunting, it's not right. This is so bare bones. None of the details about what happened to me are in here, help me." It's a 73-year-old man who took a beating in front of his wife. "Help me, please." Well, at that time Captain Griffith tells him, "Well, as it stands right now, we're looking at maybe a couple things," you'll get to hear all about the details later, but he says, "You know, if you're not going to want to charge anybody right now, because, you know, it's been three days, there's not really anything we can do, three days is a really long time. Three days is far too long for us to do anything about it, and potentially go and arrest Josh Smith for beating you in front of your wife.

Why don't you give me a statement to supplement this," for more of a polite term, "bare bones police report?" So he does. He comes back a few days later and calls Captain Griffith, and said, "Captain Griffith, what's -- what's going on? What's happening? I need your help, please." And he -- and Captain Griffith said, "Well, you know, Mr. Coffman, I'm so sorry, I, as an officer who's worked for the Town of Port Royal Police Department since 1990 for 29 some-odd years, I've watched those body-cam videos, and from the officers on-scene, I've heard the -- all the things that various witnesses said, I reviewed the evidence, I've -- I looked at the reports." And do you know what he said next? It's documented and you're going to -- I'm not telling you anything that's top secret here, you're going to see all this with your own eyes, he says, "There is not enough probable cause to charge anybody with a crime." And then because he's a diligent officer, and I'm not ragging on him, but then he did follow-up and do the report the way it was supposed to, he'd put that in the report, and now we have it for all eternity. So you'd get to read it, everybody can read it. "There is not enough probable cause to charge anybody with a

crime, I've looked at the evidence." Now, separate from all of that, because he wasn't getting help from the people that he thought were actually there to do that specific public service, he has to take it upon himself to do things on his own. So what does he do during this whole period? Somewhere around July 12th I believe it was, plus or minus, he goes and he wants to get a copy of the 911 -- the 911 call, there's an audio, you can get that, there's a report, you can get that, to show that Aaron Abercrombie called for 911. Dispatch sent Peter Bunting and his fellow officers to the scene, he wants those records, because he now has to help himself for trying to -- while he's there at the County Sheriff's Office, someone up the higher up in the chain of command who may or may not be one of Brittany Smith's supervising officers comes across Mr. Coffman's path, and says, "Oh, what's going on with this?" And he hears about it through Mr. Coffman. He says, "Oh, you -- do you want us to investigate that?" "Well, yeah, thank you." So what happens after that? Well, they launch an Internal Affairs investigation, they draw it up as a complaint. That's fairly a standard operating procedure for a police department, so you have to

investigate the complaint. And their Internal Affairs Investigator Brian Baird, he starts investigating, calls in Brittany Smith, interviews her. She boohoos, "Oh, I mean why is he doing this to me? Poor me." She got suspended for two days, she had to turn in her badge and her gun, but she still got paid that whole time, by the way. Poor her. Brian Baird interviews Jessica Bradley and some other people, makes a whole report of these findings. Plenty of people get a chance to see it, Port Royal Police Department gets to see that report. All the while the sinister years in the Town of Port Royal Police Department are churning, because lo and behold, as I mentioned before, Mr. Coffman is being too loud. He's making too much noise. He asked for help too many times. Don't do that, don't do that. So this report comes out around the same timeframe, Major Deputy Chief Ron Wekenmann comes into the picture. As you're going to find out, that's not necessarily an unusual circumstance, and you can make your own conclusions later when Mr. Shellenberg's talking to you about it, and view this case as you watch the -- watch the material, view the evidence and learn all the facts in this case. You know what, old man? You want us

to investigate some complaints, you got it, done. So he orders former Investigator Kimberly Carter to investigate it again, even though almost 30 years with experience, Captain Griffith had already done it, and, of course, said there's no probable cause to charge anybody, we're going to give the underling with a fraction of the experience to do it because Ron Wekenmann said so. He's the big bad dad, the big bad wolf in this picture, and along with every other officer that stands idly by and does nothing, when a 73-year-old man gets beat up in front of his wife. Chief of Police, he knew about it, he didn't do anything, the big boss didn't do anything, the little bosses didn't do anything, so they set -- set Kimberly Carter loose and she investigates. She looks at all the same evidence that everybody else already looked at. Of course, if you want to believe the things that the defense is probably going to have to say to you I anticipate, there's going to be some sort of magical difference in all of these things that caused them to believe that somehow Paul Coffman presented an imminent threat of harm, and actually assaulted Josh Smith. And Kimberly Carter, when she investigates, she goes and she questions Josh, and that's recorded, you can see

that. She talks to Brittany and it's recorded, you can see that. She doesn't talk to Hunter Lewis, because as she says, "Hunter Lewis didn't actually see anything," even though Josh Smith said, "Hunter's the one that saved me, he told me to look out before I got smacked with that bat." So then she calls up Mr. Coffman, and what does she uncover at this point? She made a very magical discovery, Ms. Kimberly Carter, somehow she's determined that Mr. Coffman saying to Brittany Smith, "I was about nine-tenths of the way from whooping your husband's ass." Somehow that means he assaulted Josh Smith, because he had a bat in his hand, and he was 50 yards away? I'll offer you this, and we'll talk about this later, I had my cast in a leg -- no, my leg in a cast, that's awesome, my leg in a cast, you're behind the jury box, I've got this pointer, and I said, "But for my leg being in this cast, I'm going to whip your ass. Hold on, just don't move, I'll be there in a minute." To Kimberly Carter that's an assault, that's an assault and battery, third degree. Do you know what? She fills out this arrest warrant, and she says to the Judge for the Town of Port Royal, Municipal Court, "That on July 6th, while at the Sands Beach Boat Dock, the

Defendant, while armed with a fishing bat threated to cause harm to the victim, Joshua Lee Smith. The victim then disarmed the Defendant and threw the weapon into the water." That being to Kimberly Carter, and others are witnessed to prove the same. The only problem is though she sort of left out a bunch of pieces in that puzzle. He didn't threaten Josh Smith while he was armed with a bat. Brittany Smith herself is going to testify and tell you that saying someone is nine-tenths of the way from something is nothing, because it's not. But, you know, you can't complain over and over again to the Port Royal Police Department that you've been beaten up by a man half your age and twice your -- twice your size in front of your wife. You certainly can't complain about that and get away with it. So what do they say? Something about the squeaky wheel gets the grease? Well, the complaining 73-year-old man gets the arrest. So on August 1st she draws up this warrant, and then, of course, you know, keep in mind this whole time even Josh Smith himself is saying, "I don't want to be involved, I don't want to press charges." I mean, yeah, he violently drinks, but he's also not always an idiot, because he knows or probably suspects, I'm not in his mind,

I can't know, you can watch the evidence and infer this for yourselves, I wager he's thinking, well, crap, when they look into this, I'm going to get the charge, because he probably should have been charged. He doesn't want to be involved, he tells her this, "No, I don't want to -- I don't want to be involved." He's already said it to multiple people from the Port Royal Police Department, "I don't want to do that. I don't want to do it. I don't want to be involved, I don't want to charge anybody." He said it the night of the incident on the boat landing, he said it multiple times since. When he learns of this arrest warrant for Paul Coffman, he says it again in person, "Oh, no, I need you there. I need you to be involved." I wonder why that is? Maybe -- maybe it's because in the Town of Port Royal your municipal court judge isn't going to allow you to prosecute a case when you don't have a cooperating victim, and I'm using that term victim very loosely. So, of course, then, you know, she got this amazing warrant swore it out to the Judge, told him very basic facts, didn't supplement, you're going to hear that for yourself, when she testifies, you can see it on the recordings, and when Mr. Shellenberg questions her, and she testifies about

that. Then she told the Judge, she put in her report, but you know what she kind of left out? All the stuff I just spent all this time telling you about. She didn't mention that it wasn't actually Josh Smith and that it was Brittany, the deputy, she didn't even mention the fact that his wife is a Beaufort County deputy. She didn't mention to the Judge that Josh Smith had 12 beers that day while they're all partying at the Pole Key Island Sandbar. She didn't tell him that Brittany Smith had maybe a minimum of six beers, or maybe it was five, maybe it was four. Josh and they were drinking. You know, don't worry about that part. So she calls Paul Coffman, and said, "Mr. Coffman, I've got a warrant for your arrest. I need you to come to the Police Department so I can serve you with your arrest warrant." Paul does what I think most reasonable people in that situation do, he calls a criminal defense attorney and -- by the name of Gill Bell. Gill promptly calls up, and talks to Carter, "I can't be there, you know, right away, I'm somewhere else. I can be there tomorrow morning." Now, this is the really strange part, the really disturbing part perhaps, but up until Gill Bell got involved, they had told Mr. Coffman, "Oh, we're just going to

serve you a copy of this warrant, and it's fine, man, it's fine, it's all good. We're just going to give you a copy and you can go home, don't worry about it." The next day when he shows up with his defense attorney things have changed. They said, "Oh, man, you know what? I sort of have to book you in, and fingerprint you, and you're going to spend the day and night in jail, but, you know, that cool, don't worry about that, because the victim that doesn't want to cooperate and is not coming to court, he's coming to court (indicating a wink)." For the court reporter, that was really a big wink. He's not coming to court, obviously he's said it for so long, "I'm not going to be involved. I don't want to charge him." No kidding, so Mr. Coffman goes to jail, he goes to jail. They put cuffs on him, takes his fingerprints, they create an arrest record. They close those iron gates behind him in a jail cell and they leave him there until he can have a bond hearing. And now they want to say, "Oh, we had to comply with the Victims' Bill of Rights." I'll wager you might hear about that at some point. The only problem with trying to rely on the South Carolina Victims' Bill of Rights is that doesn't mean you have to just give an unlimited amount of

time for a victim to show up, especially when you already know they're not freaking coming, because they told you that. They want to say, "Oh, we have to have time, we only do -- we only do bond hearings for victim cases at two o'clock in the afternoon. You're too late, so you have to spend the day and night and day in jail," or however, I just presented my leg in the cast story, so maybe I'm getting that flip flopped. But you understand what I'm saying, I'm sure. We have to wait for the victim that's not coming. So anyways, of course, you know, since he didn't show up, he didn't show up that day to go to jail that day with all the medications that keeps his blood pressure in the right zone, and his heart rate at the right level, and his blood pressure -- blood pressure skyrockets, and his heart rate jumps up to 180 something beats per minute, it's not stopping. I mean that's -- that's good for you when you're 73 years old. Nothing bad can happen when you're 73 and your heart rate won't come down. And then finally he gets the -- he gets a PR bond, yippee. Personal recognizant bond, they did him a solid, and they didn't make him pay anything to get out, really nice of them. So he gets out, and at some point in the next five months the case get

assigned to be prosecuted by outside counsel, the prosecuting attorney, Taber, he gets the case and says, "I'm dismissing this case. I've seen the evidence, that's got to go." He sends a letter to the Port Royal Municipal Court somewhere around January 14th, I believe, of 2020, five months later. Five months he has this charge, this magical assault and battery charge hanging over his head. So he sends this letter and they're going to, you know, since they follow the rules, they -- the Town of Port Royal Municipal Court processes that dismissal, right? Well, no, because you don't tell the Port Royal Police Department what to do, you don't tell anybody what to do. Paul Coffman can't tell anybody what to do, even though everybody else in the whole wide world says there's no basis to charge him with a crime, so it has to sit for another, I don't know, three something odd months before they finally dismiss it. Eight months it takes, when you go to the Police Department and you ask for help because you got beat up in front of your wife you waited 50 years to be with, and he said, "Help me," and that's what happens. But, you know, it got dismissed, it's all good. Now, as you're going to see in this case, you're going to have an opportunity to watch various

witnesses testify. Some of them are going to be on a video recording, video recording of depositions. We have mechanisms in our court system, our judicial system to take testimony on a video recording and generated through the transcripts, but the best part is the video. The helpful parts are the video. As the Judge said, you'll get to see the witnesses and their facial expressions and their body as they sit on the witness stand. You can see it as they sit in their chair, or they testified in deposition. You'll get a chance to judge their credibility, and see how they answer questions, what they say, if their stories changed once or twice or three times or four times, and then go back the first time, and then will cycle through it again, and bounce back and forth, oh, man, it was this, you'll get to see all of that. Some of these witnesses for reasons you have the power to decide have their own stories to tell. And so Mr. Shellenberg and I and the defense attorneys across from me, we have some questions to ask them. It's our jobs, we have to ask them the tough questions. So you're going to see us ask some very tough questions, and we try to be kind and polite about it, but we still have to do it, and you'll get to see all that. Now, there's

claims in this case that are state claims, and there's claims that are federal claims. And what we have to do, and what we're going to do is, as you will see the facts and the evidence, and you make that decision for yourself, we're going to prove these claims, and we're going to do so by proving everything in a manner that's called a preponderance of the evidence, okay? That's the standard. It's going to show -- because we're required to show that it's more likely than not, more likely than not. If you want to think about it in terms of our proverbial scales of justice, it means that the scales are tipping ever so slightly in our favor. Okay, so one of the claims that we've alleged on behalf of Mr. Coffman, a 73-year-old man, who got beat up in front of his wife? Well, we have negligence claims against the Police Department for Town of Port Royal of a duty to him that they violated not once, not twice, not even three times perhaps, but you know what? That's going to be for you to decide, that's your power. How many times and how many different occurrences were there in which the Town of Port Royal Police Department failed to act in a reasonable way with respect to Mr. Coffman in which the prosecution claims, okay?

The basic underlying principles for a malicious prosecution claim is that he was arrested without probable cause. And then the Defendants, the Town of Port Royal, and also the individual Defendants, Chief Beach, Major Wekenmann, Captain Griffith, Investigator Carter, maliciously continued the proceedings and the prosecution, knowing there was no reasonable basis to do so. Never should have done it, they shouldn't do it, no probable cause to do it, they did it anyway. With the federal claims it's -- it's very similar. The same thing for the malicious prosecution claim. They are separate and distinct claims for which you have the power to make separate and distinct decisions, and that's what we're trusting you to do, to help Mr. Coffman's false arrest, because he was arrested without probable cause. Kimberly Carter withheld material, important and relevant information from the Judge. You'll be able to read the warrant yourself, and she tells that, and she was trained enough to know better, she should have known better, but they're not going to help Paul. They haven't done it yet, they're not going to do it now, you have the power to help him and to say that was wrong, and we need you to say that that was wrong. The last, what we

call, supervisory reliability. Supervisory reliability in essence, and you'll hear this from the Judge later, so I'm just going to boil it down for you very quickly, when a supervisor, like Chief Beach and Major Wekenmann, Captain Griffith, Kimberly Carter, they order someone to do something they know is unlawful and it's unconstitutional, alternatively there's other ways when they know that one of their officers in their chain of command is doing something unlawful and unconstitutional, in violating someone's federal constitutional rights, and they do nothing. I'm just going to -- I'm just going to keep my head down, someone -- someone else can deal with that. Yeah, yeah, he got -- yeah, he got his tail whipped by a man half his age and twice his size, but that's someone else's problem, they'll figure it out in just a little bit of jail time. That's supervisory leveraging. Now, based on all the things we've gone through so far, I'm held to tell you now that at the end of this case a verdict for Mr. Coffman is reasonable and justified because of what has been done to him. He went for help and he got the opposite. We are asking you to render a verdict for Mr. Coffman at the end of this case, because he has been denied the answers and the

validation and the justice he rightfully deserves. We're asking you to keep an open mind. You're going to hear a lot of different versions contrary to the ones I offered you so far, but you have to keep an open mind about it, because you're also going to hear about times that this has happened in the past, because it's not just a -- a mistake, this happened before, and you're going to hear about it. It's happened again and again, and it hasn't stopped. You have the power to make it stop. It happened to him. He's not the first and he won't be the last. So you have the power to make a decision here in this case at the close of this case when you are deliberating, you have a power to make a decision and to choose that you will not deny Paul Coffman the justice that so many other have worked so hard to take away. With that power you, as a community, can decide if you want this kind of corruption to be tolerated. You have the opportunity to decide if you want to punish that type of behavior. And with the evidence in this case, and the benefits of your common sense, we know that you will say that what happened to Mr. Coffman was wrong, and you will use your power for good, and you will make sure it doesn't happen to anybody else ever again.

THE COURT: All right, ladies and gentlemen, does anybody need a short break or -- all right, we'll take a short break. Thank you so much. Please don't discuss this case, and we'll have you right back out.

(Jury exits the courtroom.)

BAILIFF: The jury's cleared, Your Honor.

(BRIEF RECESS)

BAILIFF: All right, come to order, this court is in session.

THE COURT: Thank you, take your seat.

BAILIFF: Come to order, please.

THE COURT: All right, ladies and gentlemen, if I could please have everybody's attention? Certainly this courtroom is a public place, and transparency means everything to me and to this court system, but I will tell you that there can be absolutely no reaction to any testimony, or any witness, or any arguments of counsel in front of this jury or otherwise. The reason for that is because it could influence this jury, and this jury's only going to decide this case based on the facts and the evidence that's introduced during this trial, okay? Now, if you don't think you can control any of that, then certainly you're free to

come or to go, but that's up to you. Thank you so much for being here. I will also remind the courtroom that when this jury is in this courtroom, and when they come in this courtroom and when they leave this courtroom, this Court is still in session, and that there won't be standing up or walking around, we respect the jury. You can either stand, or you can sit while the jury enters the courtroom, but that's the way that's going to go, okay? All right, are we ready to continue? Thank you so much. Can we have the jury?

(Jury enters the courtroom.)

THE COURT: All right, thank you. Is the defense ready to proceed?

MR. BENDLE: Yes, Your Honor.

OPENING STATEMENTS BY MR. BENDLE

BY MR. BENDLE: Good afternoon. As a reminder, my name is Tad Bendle, I'm an attorney here in Beaufort, and I practice at Howell, Gibson and Hughes on Lady's Island. I have at the table with me Rob Dennis, who's also with Howell, Gibson and Hughes, as well as Captain Griffith, John Griffith, with the Town of Port Royal Police Department. As you know, I do also represent several others. The Town of Port Royal Police

Department is a relatively small department, so we couldn't have all four of the admin guys here today, so we will have during the course of the week someone with me. So if you see someone different other than Captain Griffith, it may be the Chief, it may be the Deputy Chief, it may be another officer. And I also wanted to let you know, because I've been on a jury -- jury before, and I'm often curious to know who's coming and going, I like to know who the players are. I do have a paralegal who might be joining us this week, her name is Bernadine, just so you know who might also be sitting at the table at some point, that's who that is. I want to thank you guys for being here, you've been thanked by the Judge, by the Court. It is a very serious process. Obviously, you guys are here because we could not make a decision ourselves as far as any resolution in this case, so we are handing that job over to you. It's a very important job, it's one that we take very seriously, the Town of Port Royal Police Department and the individuals who have been sued. As you have heard, and I just want to reiterate, there are certain claims in this case that are against the individual Defendants, and against the Town. The ones that have been filed individually

against the Captain and the Chief and the Major and then the Deputy Chief, are basically claims for malicious actions. Basically, what they've alleged is intent to harm based on what they consider to be a false arrest or malicious prosecution. And there's two sides to the story, otherwise we wouldn't be here. And the one that was painted for you by Plaintiff's counsel a few moments ago sounds pretty horrific, I would agree with that. But that's not how things went down as far as we're concerned, so we're going to give you the opportunity to consider what we believe to be the truth. Again, the Judge has already instructed you guys so what I'm going to say to you over the course of the next few minutes is not testimony, it's nothing that you really consider. So my objective today is to kind of give you sort of a picture of where we're coming from in all of this in the same manner that Plaintiff has had the opportunity to do so. The other two claims other than those malicious claims that we're here to defend is on behalf of the Town of Port Royal. And essentially what those claims are are for negligence or gross negligence. And what that means is, that they're saying that the Town, through -- by and through their Police

Department, did not correctly supervise or retain the employees that have been individually sued, and that because of that negligence supervision, it led to the damages that Mr. Coffman is claiming in this lawsuit. As important as who I represent, it's who I do not represent. You're going to hear from the individuals on the boat, the Bad Company was the name of the boat, you're going to hear from all four of those individuals. Those individuals include Josh Smith, who was engaged in the physical altercation with Mr. Coffman, and you're going to hear from Jessica Bradley, who was a friend on -- on their boat, and you're going to hear from Josh's wife, Brittany Smith. You've heard her referred to as a deputy as well, and she is, in fact, a deputy with the Beaufort County Sheriff's Office. She is not an employee of anyone that I represent for the Town of Port Royal's Police Department. Unfortunately, we do have a few witnesses this week that could not be here. We've got about 15, 16 witnesses in total, so it's not highly unusual for one or two witnesses not to be able to be here. Kimberly Carter, who is also a client, and involved in this case as a Defendant, she was unable to be here, she's out-of-state, she moved to Virginia for

her husband's job a couple years back, but you'll get to see her on video, and her video was taken for the purposes of trial. Also, Josh and Brittany Smith, who unfortunately could not be here because they really are key witnesses, but we were trying to collectively accommodate them for longstanding vacation plans. So towards that end, we have them on video as well. And I believe that you've been instructed, or you probably will be instructed that although it's not ideal, their testimony could be as valuable as anyone who appears -- who appears live, so I would just ask you give them and their testimony the same consideration and attention that it deserves. The case you've heard a little bit about, and at the risk of repetition, I'm going to go ahead and apologize that there's going to be a little bit of it, because there are actually some things that we agree on. We agree that this accident, or incident rather, I do personal injury too, so if I say accident, I mean incident. So this incident did occur the day -- the Saturday after the 4th of July, this was five years ago, so it's a long time coming. And so it happened on the evening of July 6th, 2019, and essentially what you're going to hear are different variations of Mr. Coffman and Mr.

Smith coming back to the landing around dusk at the same time. Both of them were pulling back into the landing, trying to find spots, and the purpose, of course, was to get their trailer, you know, pull it back and get the boat out of the water. And so in doing so, Mr. Coffman, you will hear testify, or you'll see statements to the fact that Mr. Coffman became very agitated over the fact that Mr. Smith was throwing up wake as he approached the landing, and that he was also playing really loud music. And I think you're going to hear and see it more than once, and he admits, that that was an issue for him. So as he sat and watched, Mr. Smith dropped his passengers off at the landing. The ladies went up to the top of the landing to help unload trash as Hunter Lewis went to get the trailer to back Josh Smith's boat back. At some point while they were waiting for that to happen, Mr. Coffman came and approached them, and he told -- or he asked Ms. Smith and Ms. Bradley, "How was your day on the water?" And Ms. Smith said, "It was fine until my husband started playing his music so loudly." And I think she even has testified that it was bothersome to her, as well as perhaps the other her folks that were using the landing. Again, this was the

Saturday after the 4th of July, there was more than a few people there on that Saturday night. And so when he said that -- or when she told him that, he took the opportunity to throw an insult out to her husband insofar as her saying, "Why would you want to be with somebody like that?" And not only did he just not say that and just leave it alone, but then he told her that he was nine-tenths away from kicking his ass, and he proceeded to go up to the truck, his truck. So the girls were a little dumbfounded, I'm sure Ms. Smith was insulted. I think you'll hear from her that she was, but nonetheless, they sat there, and they waited on Hunter to try to get the boat back down the landing so that Josh could -- so he could retrieve Josh's boat. Mr. Coffman left, came back, and, their words, not mine, suspiciously walked past the two ladies with an object. You'll see still photos of what that object was, and you will see a video of him going to his truck. He initially went to his truck to put his dog in the truck, because it was hot, the dog needed air conditioning, but as he was at his truck, he sat there and witnessed Hunter Lewis make a few attempts to try to get the trailer down. And I don't know if any of you are familiar

with the Sands Boat Landing, but the Sands Boat Landing the lanes, so when it's dark outside, at this point it was like around nine o'clock, it can be difficult, because there's not -- the -- the lighting is pretty terrible down there, so he was having a little bit of difficulty. And as Mr. Coffman waited his turn, he grew more and more frustrated. And then all of a sudden, he grabs a fish bat. For those of you who don't -- that don't know, this is a fish bat, it was not the fish bat that Mr. Coffman had that night, this is absolutely nothing more than a replica, and you'll hear testimony about how this is both similar and different to the actual fish bat. But at any rate, he returns back down to the landing with the fish bat held to his side as he passes Ms. Smith and Ms. Bradley. And so they thought that that was just really odd, especially after the insults that he threw, you know, the cursing. So they sat there for a few minutes while Mr. Smith loaded the boat, and then I guess curiosity got the best of them. I think that perhaps both of those ladies will tell you that they regret even going back down there to Mr. Coffman, but they did, and they asked what Mr. Coffman had in his hand. Mr. Coffman did not like

that. He was already agitated over the wake being thrown. He was agitated about the loud music. He was agitated because Mr. Smith and Mr. Lewis were having a difficult time getting the boat out, so he just became more and more agitated over the course of the time that was spent there. And that's a whole other issue because you'll hear some people say it took about ten minutes, you'll hear him say it took about an hour. So at any rate he -- he got upset, and it was at that point that he began using explicatives personally at the ladies. And then Jessica Bradley said, "Sir, you might want to watch what you say, she's a Sheriff's deputy." Well, that was the end of that, that was the last straw for Mr. Coffman. He was very, very angry, and so the girls perceived the anger, perceived that he was, you know, upset enough to do something, so they left and they went back up to the parking lot. As they went up to the parking lot, they see an officer on patrol. That officer you will hear from, his name is Officer Peter Bunting. Mr. Bunting showed up at the scene, not because of the 911 call, because the Sands and that boat landing are routinely patrolled by -- by the cops. And, again, if you guys are familiar with the Sands, if you've been to the

beach, if you've used the landing, there's hardly ever a time where there's not a cop that's down there. So his presence was not a product of the 911 call. At any rate, the girls went up there and they said, "Hey, listen, this guy's upset, he's got this fish bat, he's threatened my husband." And so Officer Bunting got out of his patrol car, and you'll see in his report he witnessed Mr. Smith throwing an object into the water. Now what you're going to hear from Mr. Coffman is part of many conspiracy theories that you'll hear over the next few days, they said Bunting and Ms. Smith, the officer and Ms. Smith knew each other, and had some sort of working relationship, which is absolutely not true, but that's what he's theorized. And that they sat there together and watched this malicious act take place, and did absolutely nothing while it was happening. That's the story. Mr. Abercrombie shortly thereafter, or right before the physical altercation had, in fact, called 911, and two other officers from the Port Royal Police Department responded. So there were assisting officers, however, Peter Bunting was the primary, responding police officer, and, again, you'll be hearing from him. That night, again, there's a he said, she

said, that that night Officer Bunting wanted one thing to happen, he wanted to do everything in his power to diffuse the situation that clearly had gotten out of hand. And so it was his objective to clear the scene, it was a crowded evening, so he spoke with both Mr. Coffman, as well as Ms. Coffman, and Mr. Abercrombie, as well as the four individuals on Josh Smith's boat. So when it was all said and done and he'd heard all the stories that he had not witnessed, he decides to go to both of them to ask if they wanted to press charges. Now, he explained to both of them that if they chose to press charges, that there may be a possibility that one or both of them would have to go to jail, but that was not what he was aiming for that night. So the parties elected -- Mr. Coffman and Mr. Smith elected just to let bygones be bygones and they left the scene. So what happened thereafter? That evening Mr. Coffman went over to a neighbor's house. I'm only telling you this, so you'll know who he is, his name is Vaughn Cowan, he will be called this week as a witness. And you'll hear from his as far as what he knows about this case; but otherwise, Mr. Coffman did not contact anyone, or we're not aware that he contacted anyone over this incident until the

following Tuesday. And so when he did that, he only was calling because he wanted a copy and was certainly entitled to a copy of the incident report. So Captain Griffith called him back, they had a conversation, and said, "Sure, I'll make a copy of the incident report for you." Later on he called Captain Griffith back wanting a meeting because he wanted to supplement the report with statements from not only himself, but his wife and also Aaron Abercrombie, his friend on the boat that evening. And, of course, the officer -- or, I'm sorry, Captain Griffith said, "That is not a problem, you're completely welcome to come and submit and supplement the report if that's what you want." So then -- and we're going to try to assist -- assist your understanding of the timing, at some point, with the timeline. Hopefully we'll be able to get back together, both the Plaintiff and the Defendants' counsel, to kind of help things along, but at any rate, they're version of what happened was, it was at some point that week that Mr. Coffman decided that he wanted charges filed against Mr. Smith. And that was perfectly within his purview, it was perfectly fine for him to request that. However, Captain Griffith explained, "Well, this

case is, you know, it's getting to be a little -- little late, since this happened last week. You guys decided not to press charges, you know, kind of what's changed?" And so nonetheless he comes in, he had written another letter. Thereafter, he wrote a letter to the Town Manager of Port Royal, who was more an admin than really a member of the Police Department, so he was reaching out to various people. He had requested a copy of the camera -- the body cams from the officers. He had requested a copy of the camera that was down at the Sands, you're going to hear a bit about that, too, the camera. And he did it through a verbal request and Freedom of Information Act request, which the Town complied with. So, ultimately he wasn't satisfied because they were still saying, "Why are we opening -- why are we reopening an investigation, you guys both had agreed not to press charges. You know, let's just let this go, if you will." Well, he didn't want to, and, again, that was perfectly well within his right to insist an investigation be opened. The last thing that he did was he contacted Shannon Erickson, who is our State Representative. I don't know if any of you know her, but she is currently our State Representative and she was at

the time, so she reached out to the Town as well to inquire as to what was going on. It was at that point that Major Wekenmann, with the Police Department, said, "Okay, let's open an investigation." Kimberly Carter was one of three detectives, and in that role as the detective, and in that position with the Town of Port Royal, that is what a detective does, she investigates. She investigates beyond what's in the reports. She investigates more than the people that were witnesses on the night of the accident. She goes above and beyond what you will see in that incident report, including the statements that had been provided by Mr. Coffman, his wife and his friend. She was chosen amongst the three investigators, because she had not been at her work, she had been off on vacation the week or so prior to that investigation being opened. So Ron Wekenmann -- Major Wekenmann chose her because he felt that she would be the most objective person to investigate. As part of that investigation that lasted a couple, you know, a few days, she was able to not only look at all the body camera footage, she was able to interview Mr. Coffman, his wife, Aaron Abercrombie, Hunter Lewis, Jessica Bradley, Josh Smith, Brittany

Smith, Vaughn Cowan. She was able to look at the video. She took still shots of the video, and ultimately what she determined was that Paul Coffman played a very large role in what happened that night. And there were a lot of inconsistencies in Mr. Coffman's story, and those inconsistencies are rampant because he was afforded the opportunity to not once, not twice, not three times, but multiple times to tell his story over and over. He was interviewed, he gave his own statements, he wrote letters. You guys will have all of that with you at the end of this trial, but until we get there, I want you to pay real close attention to the testimony and the inconsistencies that come from Mr. Coffman, they're pretty impressive. The investigation ended in such a manner that Mr. Coffman didn't like. He was found to be the primary aggressor. The investigation wasn't done to determine whether or not Josh Smith should be arrested, or Paul Coffman, it was just to determine whether an arrest should be made. The goal was not to make an arrest. The goal was to see if there was enough evidence, cumulatively speaking, to make an arrest, whether it was Paul Coffman, whether it was Josh Smith, or whether it was both. And ultimately

that independent investigator who has the autonomy in the position of an investigator and a detective made the call that Paul Coffman was in fact the primary aggressor in this incidence, and let me tell you, this played a pretty good part in it. The prosecution of the case -- after the charge was brought, because probable cause, that determination was, in fact, made by the investigator, however, an arrest warrant cannot be -- has to be issued, and that determination is made by a Judge. So Kimberly and her Chief went to James Grimsley, who was the judge in Port Royal, and presented a warrant for Mr. Coffman's arrest. And typically judges don't take warrants -- signing warrants lightly, they need to have proof from the investigator, or whoever is requesting that the warrant be executed by them, to show them the evidence so that they are aware of what they're signing, and so that they're aware that the probable cause finding is coming from them, and it deserves a consequence. It deserves an arrest. So once that arrest was -- warrant was signed, they have an obligation, once a judge says, "Detective, we have this warrant, you need to serve it," they don't like to sit on them. So it was their objective that day to get Mr. Coffman into the

station. So as a courtesy, they called Mr. Coffman and said, "Sir, we have a warrant for your arrest. We need you to come down to the station. We're going to read you the warrant, and we're going to assign you a court date, if you can be here by 4:00." Well, he didn't want that, he wanted his attorney, and, again, I don't fault him for that, I think most of us in a situation like that would like our attorney to be there; however, when you are charged with a crime, you as the subject, you as the one who is considered to be the assailant don't get to make those decisions. So a courtesy was extended to Mr. Coffman that afternoon by allowing him to come the following day with his attorney. And so when he came in the next day, he was advised, because the victim had not been contacted until 20 minutes prior to his arrival at the station the following day, he was advised that because this was a crime involving a victim, that the law requires that a bond hearing be set, and that the victim receive notice of that bond hearing. That bond hearing was held at 8:30 that morning, so there wasn't a way to have another bond hearing. There was a bond hearing that afternoon involved crimes that did not involve victims. That's why he spent

the night in jail. Please don't be confused with what you're going to hear about Josh Smith. This case isn't about Josh Smith. This case isn't why wasn't he arrested while I was? This case is about why he was arrested. Do y'all need to make a determination as to whether or not Josh Smith should have been arrested? Sure, feel free, but you're not going to be asked by this Court, you're not going to be asked by us to make that determination. Whether it was made or not is completely irrelevant as to why we're here today. The issues that you've heard me talk a little bit about, as well as counsel for Mr. Coffman, are all important, they all deserve your attention. I will say this with meaning. I don't think that this case is much more about anything other than a bruised ego. It's a case about someone who initially wanted to let it go, but ultimately decided not to. This case is not about retaliation from the Town of Port Royal because he wouldn't let it go. This case is more about a combination when it comes to that. The case is about revenge, but I still have a question after handling this case for over five years, who he was seeking revenge on? Is it the Town? Is it the five -- or four individually named cops, or is it Mr.

Smith? Because I know one person that's not here today, and that's Mr. Smith. So if he ultimately wants revenge on Mr. Smith, why are we here? I think that's a part of the reason we're here.

Again, this case is also about pride. This case is about not taking responsibility for your own actions and your own involvement in a situation that got out of hand, whether it was because of his actions alone, or whether it was because his actions combined with the actions of Mr. Smith. As a reminder, I will tell you, and you will be instructed that it is not my job, it is not Mr. Dennis' job to prove anything. The Plaintiff has the burden of proof. They're going to have to prove that we acted maliciously, that we, as a department, band together with an intent to cause harm to Mr. Coffman. They're going to have to prove that we were so negligent as a Town and a department so as to allow Ms. Carter to bring this charge of assault and battery against Mr. Coffman. I'm certain that at the end of this trial and the evidence that you will be presented with in-person, and the evidence that will be -- you'll be allowed to take back with you, that the conclusion was that the Town was not negligent. These individuals did not act with

intent to harm, these individuals did not act maliciously, and I'm confident that at the end of this you will return a verdict in our favor. Thank you guys so much for your time.

THE COURT: All right, ladies and gentlemen, thank you again for your patience and your time and your service here today and this week. Given the time of the day, we're going to go ahead and retire for the rest of the afternoon. We ask that you be back here at 9:15 in the morning, and we'll begin testimony in this trial promptly at 9:30, all right? Please remember not to discuss this case or do any kind of independent research, and we'll see you back in the morning. Thank you so much.

(Jury exits the courtroom.)

BAILIFF: The jury is cleared, Your Honor.

THE COURT: Thank you, sir. All right, is there anything before we break for the evening?

MR. BENDLE: No, sir.

MR. SHELLENBERG: No, Your Honor.

THE COURT: All right. Well, thank you everybody, and we'll see you in the morning. I hope you have a good evening.

MR. BENDLE: Thank you, Judge.

DAY TWO (COURT RECONVENES AT 9:30 A.M. ON 6/18/24.)

THE COURT: Anything before we start back?

MR. SHELLENBERG: None from the Plaintiff, Your Honor.

MR. BENDLE: Your Honor, I just had a quick question. You know, yesterday I believe that you reserved a ruling in the motion as to whether or not Mr. Bell would be able to testify.

THE COURT: Yes.

MR. BENDLE: I believe that the Plaintiffs are going to want to call Mr. Coffman first.

THE COURT: Correct.

MR. BENDLE: And, in part, depending on your ruling with respect to his testimony, I'd like to be able, if the Judge or the Court wants to allow the testimony, to be able to examine Mr. Coffman with regards to the conversations he's had. There's an attorney-client privilege otherwise, but if he's going to be allowed to testify as his civil and criminal attorney, I'd like to be able to go over those communications of both of those witnesses.

THE COURT: I understand. Mr. Shellenberg, what's your position on that?

MR. SHELLENBERG: Judge, I don't -- I don't think that the -- we intend to get into the

conversations they had. We are simply talking about that he hired an attorney, and the attorney came with him when he went to the courthouse. As far as what Mr. Bell may testify to, I mean, you know, the attorney-client privilege is -- is -- still exists. I mean if -- if we don't get into it, and he doesn't waive it, then I don't see how Mr. Bendle can get into anything -- any conversations that they had.

THE COURT: It seems to me there would be hearsay as well. I mean I -- I'm not sure exactly what you intend to ask him.

MR. BENDLE: Well, Your Honor, he -- again, he represented him in a -- on a civil claim and a criminal claim, and the only communications really were the day that he presented himself to the station to be arrested, but a lot of what I have to ask Mr. Bell is what communications he had with Mr. Coffman with regards to the process and what may happen. He's a criminal defense lawyer, so he was probably -- or I would imagine explained the process to him. In other words, when they presented themselves as a criminal attorney, he should have explained that there was a potential for him to be arrested that day and explain the bond process. He should have known when the bond hearing was going to

be held. He should have made arrangements accordingly. So it's communications like that I just want to know what was communicated with Mr. Coffman by his attorney at the time, in terms of what may happen, as far as the bond process and the -- and the victim's rights, and things of that nature.

THE COURT: Was Mr. Bell present when Mr. Coffman presented to post bond?

MR. SHELLENBERG: Yes, Your Honor.

THE COURT: He was?

MR. SHELLENBERG: But, again, I still think that's better suited to ask Mr. Bell -- I mean it's still hearsay if he's going to tell him what -- if he wants to get into communications of what Mr. Bell told him -- told Mr. Coffman. I mean it's better suited that he ask Mr. Bell that, and we, you know, I talked to Mr. Bell last night, they're finishing trial tomorrow, so he'll be available, and if we need him to come down and proffer, we can do that.

THE COURT: All right. I mean I think you could ask Mr. Coffman what his understanding was or what the procedure should be based on, you know, the circumstances. I mean does that -- does that get you where you need to be.

MR. BENDLE: Perhaps, Judge, but I would imagine that Mr. Coffman having never been arrested is what I believe he's going to testify to with the exception taken to A divorce proceeding. I don't think he would have known the process as a layperson without having that attorney there, and without getting that advice from the attorney. I -- I could be wrong, but I suspect that that's why he hired Mr. Bell to walk him through that process, and I want to know what his understanding of that process was prior to him coming down to the station to turn himself in.

THE COURT: I certainly think that is admissible. Without, you know, getting directly into what anybody told him, I mean we can -- I think you can ask him what his understanding was, and you can ask him if he had counsel.

MR. BENDLE: And then, Judge, just for the record, and I don't mean to repeat myself, but just for the record, I -- I do still object to the testimony of Mr. Bell.

THE COURT: Well, I haven't made a ruling on that yet.

MR. SHELLENBERG: Yes, sir.

THE COURT: You know, as it's been stated,

I mean this case is -- is very problematic, in -- insofar as probable cause is a legal conclusion, that lay witnesses, you know, getting really close to expert testimony, and you don't have any experts. How you try your case is up to you, I certainly, you know, it's not up to the Court, but, you know, we have rules that we have to follow. So I mean I'm not going to allow any of these police officers to expand on probable cause or any of that. I mean it seems to me like there's almost an agreement that you want to have these police officers say was there probable cause or not. Well, is that -- is that accurate, or where am I on that?

MR. SHELLENBERG: Well, Your Honor, they're going to testify to -- essentially, we -- one of the witnesses, Ryan Steady, is going to testify that he had a conversation with Kim Carter where they were in agreement that they didn't have enough to charge, and then they went into a meeting with Deputy Chief Wekenmann who then instructed them that they were going to go get a warrant.

THE COURT: Okay. I mean what's your position on that?

MR. BENDLE: My position, Your Honor, is that it's -- it's not my burden of proof. I agree

that it's a matter of law. The Plaintiffs don't have an expert witness to testify with respect to probable cause. My intent was just to have my officers walk us through the process of how they made a determination that there was cause by the reasonable person standard to bring those charges, and, ultimately, that decision was made by a Judge, and it was a matter of law, and that was done through the warrant. So, obviously, we have an opportunity after the Plaintiffs rest to bring a directed verdict motion, and absolutely that will be part of what you're going to hear from us.

THE COURT: All right, well, I'll put my concerns on the record. I mean we're going to go by the rules of court, and how ever you can get it in is -- is up to you. You know, we're going to hear a lot of hearsay, and we're not going to have expert testimony put in the record by way of witnesses, so ---

MR. SHELLENBERG: Yes, Your Honor.

THE COURT: All right. All right, anything further before we bring in the jury?

MR. SHELLENBERG: No, Your Honor.

MR. BENDLE: Nothing, Your Honor.

BAILIFF: The jury's entering the

courtroom, Your Honor.

(Jury enters the courtroom.)

THE COURT: All right, good morning, ladies and gentlemen, thank you for being here. At this time we're ready to proceed, and we'll ask the Plaintiffs to call your first witness.

MR. SHELLENBERG: The Plaintiffs call Paul Coffman to the stand.

* * * * *

Paul Coffman,

having been duly sworn,

testifies as follows:

* * * * *

DIRECT EXAMINATION

BY MR. SHELLENBERG:

Q. Good morning, Mr. Coffman, how are you?

A. I'm fine, sir.

Q. Can you please tell the jury a little bit about your background with Beaufort County?

A. Yes. Since I'm almost 100, I'll condense it. Basically I grew up in Beaufort, South Carolina. I graduated from Beaufort High School in 1963 and worked at various places in Beaufort, and then went part-time to USCB, and while I was there, which was during the Vietnam era, I received a draft

notice to go into the Army. And I had the option of going into the Navy and went into the Navy instead. In the Navy I served on nuclear submarines and spent five years in the Navy. Got out of the Navy and went to work with the Sea Pines Company on Hilton Head Island. And over the next 20, 30 years I was involved in real estate and construction, whether it was in management or sales.

Q. And did you live in Port Royal back in 2019?

A. No, sir. Did you say prior to?

Q. In 2019.

A. In 2019?

Q. At the time of the incident that we're discussing here today.

A. No, I don't think we did.

Q. Did you live in Beaufort at that time?

A. Yes.

Q. And I want to turn your attention back to July the 6th, 2019, the date of the incident. What were you doing that day?

A. I was working in the driveway and garage with a friend of mine who just retired from the Air Force. He and I were restoring an old -- beat up old camper/trailer trying to make something

fun out of it, and that's what we were doing on that day.

Q. And did you all end up going for a boat ride that day?

A. We did. We decided it was a perfect day for a boat ride.

Q. And who all went on the boat ride with you?

A. My wife, Stephanie, who's in the courtroom, Aaron Abercrombie, the gentleman you just mentioned and myself, and my dog, Linus.

Q. What kind of dog is Linus?

A. He's just a bird dog.

Q. And did you pack anything, any snacks, any drinks as you went on the boat ride?

A. Did we pack anything for refreshments?

Q. Yes, sir.

A. Is that what you're asking? We had some snacks, we had some cold water, it was pretty light. We were just going downtown and back.

Q. And can you tell the jury what kind of boat did you have?

A. I had a 17-foot Skiff. It was a fiberglass Skiff, small boat, basically most comfortable as a 2-seater, but you can certainly put

four people in it, and had a 65-horse outboard on the back of it.

Q. And where did you go on the boat ride that day?

A. We chose to ride downtown. It was the perfect time of day to watch the sunset. So if you were over by the bridge and looking back westward, the -- so that's what we did. We took a ride, we put the boat in at the -- at the Port Royal Boat Landing, which was just walking distance from our house. And stayed on the hospital side of the river as we went downtown, because the weekend is a pretty busy place for the big sandbar which is right there in Beaufort River. A lot of boat activity and people activity. And then we went -- we went through the bridge and did a U-turn and came back very slowly.

Q. What goes on at the sandbar?

A. What goes on at the sandbar? To keep it simple, party is the word.

Q. And so did y'all stay away from the sandbar that day?

A. Completely. We did not step foot on the sandbar.

Q. That evening when you returned to the

dock, did you encounter the boat Bad Company?

A. Yes, but indirectly initially. We -- we came back to the point where we were going to get out of the boat, and -- and move it, so we can take it out, and we were the only boat in the water moving around at that time, and suddenly we were overtaken by a much larger boat, and the boat was loud. And it was doing donuts, circles in the water, and throwing up large waves that was rocking our boat to the point where we had to secure ourselves.

Q. Now, if you'll open the notebook you have in front of yourself, I'm going to have you turn to Exhibit 5.

A. Five?

Q. Five, please.

A. Okay. I'm looking at 5.

Q. Mr. Coffman, is this an overhead photograph of the Sands Beach Boat Landing?

A. To the best of my knowledge it is, yes, sir.

Q. And you talked about the large boat coming in. In what area on this map was that boat -- was that boat when you encountered it?

A. Can you see location A?

Q. Yes, sir.

A. Okay. That's a dock right there, and we pulled -- there was no -- there was actually no boat where he's got A, it's just designated areas. When we pulled up to that dock and began to -- get ready to unload and untie, when he came into the area just, I would say, 30, 40, 50 yards, something like that, from that area at a very fast speed.

Q. And now Exhibit A -- or, I'm sorry, point A at the bottom of the dock up there, is that where you originally tied off?

A. Yes, that's where we originally tied off.

Q. And did you move the boat at any point?

A. Yes, we decided that after spending about 15 minutes there, that it wasn't safe or smart to hang around there at that time, and we took a -- went to the right back towards the landing, and we tied up where -- and I can't make out the name, but it looks like it ---

Q. Would that be B?

A. It looks like it might be B.

Q. It's just inside the L of the dock?

A. And we tied up the boat parallel to the dock.

Q. And what did y'all do after you tied up?

A. Well, we started securing here, because the waves from the -- the other person's boat were rocking our boat so badly it was actually going under the gunnels of the -- the gunnels were going under the edge of the dock, and we had a dog with this, and it just -- it really wasn't safe to be standing on the -- on that boat with as small as it was under the circumstances. So we got on the dock and stood by and waited to see what they were going to do.

Q. Was that boat that was throwing up the wake, was that the one being driven by Mr. Smith?

A. Please say it again?

Q. I'm sorry, was that the boat -- the boat that was throwing up the wake, was that the boat being driven by Josh Smith?

A. Yes, sir. I think, if I remember correctly, the name of that boat was Bad Company.

Q. Yes, sir. And while you were waiting for them to dock -- to put their boat on the trailer, did you go back to your car at any point?

A. While I was waiting, yes. After a while we decided that it was going to be a while

before they were able to get their boat out of the water safely, and so I took my dog, Linus, and -- and we went back up to where my truck was parked in the generic parking area.

Q. Now, if you look at Exhibit 5, if you can tell, in what area was your truck parked?

A. It would have been parked to the -- that's hard for me to see. One, two, three, four, about the fifth space from the A, if I'm counting right.

Q. So that would be, roughly, where the white truck was parked on that photograph?

A. Yes, roughly where.

Q. When you got back to your truck, what did you do?

A. Well, one thing I did was unload Linus, get him in the truck and get him settled down. He was very tense. And the second thing that I did was double-check to make sure that my boat -- my truck keys were where I like to keep them when I'm taking the boat out of the water. And then as I got ready to leave, I picked up a little device that I nicknamed a long time ago a fish bat. It doesn't even come close to resembling a fish bat. What it actually is is a four-inch wide bladed putty knife

and took it with me, and I think that was it.

Q. And when you walked back up to your truck, did you have a conversation with anybody?

A. Say it again?

Q. When you left the dock and walked back to your truck to put the -- your -- put Linus up, did you have a conversation with anybody in the parking lot?

A. There were two people, and as I understand it, one was married to the owner of the boat, and the other was married to the other person, and we did speak, we did. It was not a long conversation, but we did speak.

Q. Do you remember what you said to them?

A. I don't remember if I said anything much more than hope y'all are having a good time or did you have a good time on the water today or something in that category.

Q. And the fish bat that you got out of the truck, what do you use that for?

A. The what?

Q. The fish bat you got out of the truck ---

A. The fish bat?

Q. -- what do you use that for?

A. It's a combination of things. If you can visualize in your mind a putty knife, which has a wide blade across the end of it, and a handle, sometimes we use them in the kitchen for just scraping the grill or the gridle, sometimes we use it, but I used it -- we -- our fishing was very, very limited to small fishing. We -- the fish we caught were small whiting and croaker, and fish like that. And if we caught -- if we got in a school and caught a few, and they were bouncing all over the place, I would take that little fish bat, and I'd bunk them on the head with it. And then sometimes what I'd do, if the fish was larger, I would take the bladed part and cut the head off of it. And then sometimes I used it to help get my -- my boat -- my boat to go back up to where when I take the boat in, I had access to it.

Q. And did you have to use it to hook up your trailer, put the boat on your trailer?

A. Did I have to do what?

Q. Did you have to use the fish bat to get your boat trailer hooked up to your car?

A. In this case I wasn't able to, my fish bat had been disposed of.

Q. Well, typically, would you use it to --

A. Typically, I would have.
Q. Yes.
A. Definitely.
Q. And why did you have to use that to hook up -- hook your trailer to your car?
A. Two things, the way that -- the way that my small trailer and my large truck was built, it was an extreme -- extremely tight fit, where the ball -- the ball itself on the trailer goes into the hitch on the truck, and the latch that comes over the -- the part on the truck just almost does not fit. And so what I use that for is to slide it up, and give the ball a head start, and -- and get it going, and then the -- and then the weight takes it down.
Q. Now, after you retrieved your fish bat, did you go back down to where Stephanie and Aaron Abercombie were standing?
A. Yes, I did.
Q. In looking at Exhibit 5, where were they standing on this map at that time?
A. I believe, if I'm reading that correctly, it's B.
Q. Okay, so they were down the dock about 150 feet from the parking lot?

A. Yes, sir.

Q. And when you got back down to where Stephanie and Mr. Abercrombie were, did -- were you approached by anybody?

A. When I got back down to where they were standing ---

Q. Yes, sir.

A. -- was I approached by anybody? Yes, we were approached by the two ladies.

Q. And would that be Brittany Smith and Jessica Bradley?

A. Yes.

Q. And what -- what unfolded once they came down to where you were standing?

A. I apologize, but I don't remember the conversation that took place at that particular point, at that particular time. I don't think it was much to it, 'cause all of us were doing the same thing, we were all standing and watching and waiting. It had been 45 minutes or more, and they still hadn't gotten the boat out of the water.

Q. And did they, at some point, identify themselves as police officers?

A. At some point what?

Q. Did they identify Ms. Smith as a police

officer?

A. No, that was later. That was up in the parking lot, and I don't know which came first, that conversation, or the one I just mentioned to you, but, yes, we did have that conversation.

Q. And what did they -- what did that conversation consist of?

A. They stepped in front of me as I walked -- the way that I remember anyway is, I walked from the truck back to -- heading back to the landing, and they stepped in front of me, and they said something to the effect we know that you're carrying a gun. And I said do what? I don't have a gun. What do I need a gun for? And they said, "Well, we can see it hanging off your hip right there, and we saw you get it out of the truck." I said y'all are crazy. I said back up, hold your hands out away from your waist, I'm going to lift up my shirt, and I lifted up my tee-shirt, and I had a two-way battery powered boat radio on my hip that they had been pointing to, and that's what they referred to as -- as thinking that I had a gun. I asked Ms. Smith who she was -- no, the other lady said to me, she said you'd better be careful how you talk to her, she's a police officer. And I asked her what

police -- police officer she was, and she told me she worked for the School District, I believe, or the Deputy Sheriff's Department, and worked for the School District. And I said are you satisfied that I don't have a gun on me? And if you want to, you can take -- you can go up to the truck and search it, there's no gun in the truck. I don't carry guns, and that was the conversation.

Q. And was there any mention of the fish bat at that point?

A. Any mention of?

Q. Of the fish bat at that point?

A. I don't remember any mention of it at all. I think it was insignificant, I think.

Q. And did the ladies eventually walk away?

A. They -- Mr. J.J., I don't remember if they walked back towards where Stephanie and -- and Aaron were, or waited up here, I don't remember. It's been over five years ago.

Q. Yes, sir.

A. I don't remember.

Q. That's okay. And at some point were you approached by Josh Smith?

A. Yes, I was, and it was a surprise.

Q. And were you on the dock at that point?

A. I was standing on the dock. I knew that he was almost out of the water, I knew that he was. And suddenly he appeared beside me, and he said, literally, and I'll be careful with my words, but y'all can spell enough, I'm going to kill you, you MF, you old MF. I'm going to throw you in the river and drown you? I'm going to kick your ass. And he kept up, and I'm backing up the whole time, and I put my hands up like that. He grabbed my hands, he pulled the fish -- the fish bat out of one hand, and he proceeded to beat the boogers out of me, excuse me for boogers, but he proceeded to do that. And we've got in your notebook that proves -- the pictures of the bruises from my neck down to my -- back of my thighs. He put a pounding on me that lasted for a long time.

Q. Mr. Coffman, you got ahead of me on that one.

MR. SHELLENBERG: If you'll pull up the injury photos, I believe that's Exhibit -- it's a four-page, 11 through ---

BY WITNESS:

A. Where are you?

Q. Exhibit 4, page 11 through 13. You can

see them up here too, if you need to ---

A. Oh, there you go. Well, that's -- that's some. That's the back of -- that's the back of my left arm, and that's the shoulder, the shoulder part between the shoulder and the elbow, the part lower than the elbow. And what I was doing at the time is I was holding my hand up like that blocking the punches.

MR. SHELLENBERG: If you'll scroll down one for me.

BY WITNESS:

A. That's the front, and so that's where he hit me in the chest, in the abdomen area, and on my left arm, and I don't know what else should be in that picture, but that's the one we have.

Q. Is that the back of your left arm?

A. That's on the -- that's on the left side of my back, below my arm and on the back, but if you look at that real dark spot on the back of my arm, you'll see the bruise there.

Q. Now, were the police called at some point?

A. Yes, they were. It's confusing to me as to who called the police first, but I do know that there were police people in the parking lot.

We -- and then the friend that was with us, Aaron, decided that once he started beating me to the extent that he did, he told him if he didn't stop, he would call 9-1-1. He didn't stop, so he did call 9-1-1, and they showed up.

Q. And what happened when the police showed up?

A. Not much. The police showed up, and by that time Josh had stopped beating on me and walked away from me. And he says, "I'll be back to finish the job," and walked up to where his wife and the other lady and I believe some police people were talking.

Q. Did you have a conversation with an officer on the scene?

A. Did I have a conversation with an officer?

Q. Yes, sir.

A. Yes, sir, I did.

Q. And what did you tell the officer on the scene?

A. Basically, what I've just said here in the courtroom. That I said that we had been for a boat ride, blah, blah, blah, we had come back. We couldn't get our boat tied up, so that we could --

so we could put it on the trailer, so we tied it up at the dock. And I just went through the series. And I went and put my dog up, and -- and the next thing I know I'm getting whooped up.

Q. And based on that conversation with the officer, what was your understanding of what was going to happen?

A. I had no clue. I'm in my -- I'm almost 80 years old. It's probably been 60 or more years since I was in any type of a fight like that. I've been in -- in fights where people raise their voices, but I had no clue of what was going to happen from the man -- from the time that that man punched me the first time, I didn't know whether to go into survival mode, push him in the river mode, or stand still mode. I decided that with Stephanie less than an arm's length from my back, the best thing for me to do was just take the punches and live with them, and that's what I did, and that's what I explained to the police officer.

Q. And was anyone arrested on the scene?

A. Not at that moment there wasn't. In fact, no one was arrested that evening at all.

Q. And did you all leave the boat landing?

A. We didn't leave the boat landing

immediately. I still had to -- if my memory serves me, I still had to get my boat out of the water, I think. I think, I may have already taken it out.

Q. Were you able to drive your truck home that night?

A. Yes.

Q. Did you go and meet with a Vaughn Cowan later than evening?

A. Vaughn Cowan? Yes, we did. He's a neighbor of mine, lives two or three houses -- when we lived there he lived two or three houses from where we did, and he had been on -- at the boat landing at the very end of all this set of events, and he invited us to -- he said he was a friend of -- of Josh's, and he would like to talk to me, and asked me if I'd come over to his house, and I did. He was walking distance.

Q. And after you met with him, in the following days, did you go to Port Royal Police Department?

A. I believe so. If the following day was -- if the Police Department was open, we went there. I don't remember the days.

Q. That's okay, but you went to the Port Royal Police Department?

A. But we went to the Police Department to get -- to get a copy of the police report, and they -- they only had half a copy.

Q. What ---

A. They didn't have a whole copy filled out.

Q. What do you mean by half of a copy?

A. It was only halfway filled out.

Q. And ---

A. I believe it was the front page.

Q. And did you have any issues with that police report?

A. Did I have any what, sir?

Q. Any issues with that police report?

A. Yes, I did. I could see that it was incorrect from the very beginning. And then the next day, I believe, it was the next day or two, I went and got the other half of it, and it, too, was inconsistent with information that was already on there and incomplete.

Q. What was inconsistent about the report?

A. That would have been what?

Q. What would -- oh, I'm sorry, and what was inconsistent about the report?

A. It -- on one page it named me as a

victim, and Josh as the -- I believe the term was perpetrator, assailant, attacker, something like that.

Q. I believe it's subject and victim in those reports.

A. Oh, okay. And then on the other side, on the back page, it reversed them, made him as the victim and me as the attacker. Now, that was one error. When it -- I -- my memory is not perfect, believe it or not, the -- it said that -- that's it, that's all I remember right now.

Q. And did you reach out to the Port Royal Police Department to clarify some of those errors in the incident report?

A. I did. I definitely did. I called, and I asked for an appointment, and I think I was told to put my -- my statement in writing, and I believe that's what we did. We put it in writing and hand-delivered it.

Q. And when you made that phone call, did you talk to Captain Griffith?

A. I believe -- I believe that's correct.

Q. And what did he tell you about any charges that could be brought?

A. I don't remember that, J.J.

Q. But no charges were brought at that time against either one of you, ---

A. No.

Q. -- right? And did you go and meet with Captain Griffith again a few days later?

A. I think so. I don't know those people there. I would not know them if they were wearing a name badge in this court, so I don't know who I saw and who I didn't see.

Q. And after you met with a representative from Port Royal Police Department, were you told that there was no probable cause to arrest anyone?

A. Yes.

Q. Okay.

A. And I was told by someone and -- that what we should do is go to the Town Manager's office, and get what I think is called a FOIA. Am I saying that right, FOIA?

Q. Yes, sir.

A. FOIA, FOIA report that requests all information pertinent to it. An incident like that all the information gathered together in a report, so it could be turned into officials, whoever they were.

Q. And did you fill out a FOIA request?

A. I did.

Q. And where did you take the FOIA request?

A. I took it to the Police Department, and I took it to the Port Royal Town Manager's Office, and I took it to the Sheriff's Office.

Q. And did you speak with anybody when you went to the Sheriff's Office?

A. I did. I spoke with -- I don't know if it's Deputy Sheriff Madd, or Sheriff Madd, or whatever, but ---

Q. Captain Mattox?

A. Captain Mattox, that's who I spoke with. Thank you.

Q. And based on your conversation, what did the Beaufort County Sheriff's Department do?

A. Based on my conversation what?

Q. Based on your conversation with Captain Mattox, what did the Beaufort County Sheriff's Office do? What was the next step?

A. Well, he -- he did a good job of not challenging this, and that was different than we had experienced in Port Royal.

Q. And what do you mean by challenging you?

A. Like, "Well, are you sure y'all weren't drinking," or that -- that kind of challenging. And he asked us several questions about what took place. In other words he did investigate the incident based on the time that we spent with him. He talked about what the consequences could be for one of his officers, that was put on restriction or whatever. I don't remember all the things that he said, but we asked him what he recommended, and he said, "Leave the report with me, and I'll look into it and get back with you," and that's what we did, and that's what he did.

Q. And so was that the investigation into Brittany Smith?

A. Yes.

Q. Okay. When y'all went to the Beaufort County Sheriff's Office, was it your intention to open an investigation against Brittany Smith?

A. I don't know that I could say that it was or it wasn't. What we wanted to do was get something moving in the right direction that verified we had not attacked anybody, number one. Number two, that we had been attacked. And number three, when we asked for help we didn't get it, and then when we asked for clear information in a

report, we didn't get it. Incidentally, there's a film -- there's a camera that belongs to the Town of Port Royal, used to be at that very location to take pictures of -- of the spot where this happened. No film was available.

Q. Were you able to eventually get that video?

A. We got about 90 seconds or three minutes of -- of what was probably 45 minutes of film.

MR. SHELLENBERG: Nicole, if you'll pull up Exhibit 14, please, that's the video.

BY MR. SHELLENBERG:

Q. Is this the video you were talking about, Mr. Coffman?

A. I can't see that. Is that a truck?

Q. Yes, sir. If you want to step down, get a little closer to be able to see?

MR. SHELLENBERG: I apologize, Your Honor, is it okay if he steps down?

THE COURT: No problem.

BY WITNESS:

A. That looks like a truck to me.

Q. Okay, is this the camera footage that you ---

A. It looks like it, yes, sir.
Q. Okay.
MR. SHELLENBERG: Now, if you'll play it, please.
(Video being played for the jury.)
BY WITNESS:
A. That ---
Q. Now, is that your dog, Linus?
A. That looks like me and my dog, Linus, going to the passenger side of the truck. You can see how dark it had become based on how bright those lights are, and we had been down there since, gosh, 5:30 or 6 o'clock, or something like that.
MR. SHELLENBERG: Now, if you'll pause it for just a second?
BY MR. SHELLENBERG:
Q. So just to orient ourselves, if we're looking, where's the boat land -- where's the raft and the dock compared to ---
A. To the right. It would be where the jury's sitting.
Q. Okay. And if we look straight out ahead, that points out towards the beach; is that right?
A. That's the marsh that eventually goes

down to Battery Creek, and there's a sand beach there.

Q. And so you -- you would back your trailer down to the landing?

A. Right. Now, the trailer's actually parked on gravel and oyster shells, such as it's not parked in the mud. It looks like it in this area, but it's not.

MR. SHELLENBERG: Continue, please. Thank you.

(Video being played for the jury.)

BY MR. SHELLENBERG:

Q. What are you doing as you get in your truck there?

A. Well, I'm positioning myself to determine if I can back up the trailer. You can see that my backup lights come on, my utility lights go off, my front lights come on, and I'm sitting in the driver's seat looking behind me to see if I can back up the trailer safely. I could not because Josh Smith's truck was shining his lights directly in my direction.

Q. And were they trying to trailer the boat at that point?

A. They were trying to load their boat at

that point, yes, they were.

Q. All right.

MR. SHELLENBERG: Nicole, if you'll play?

(Video being played for the jury.)

BY MR. SHELLENBERG:

Q. Okay.

A. And there I'm getting out of the truck. I've decided I can't back up.

Q. And what is that?

A. Excuse me?

Q. And -- I'm sorry. And what did you grab at that point?

A. I can't see from here. I don't know what it was. It might have been the little thing that we called the fish bat.

Q. And you -- did you put it on your wrist at that point?

A. I don't remember if I put it -- slipped the -- it was just a little bungie cord, whether I slipped it on my wrist then, or after I got out of the truck.

Q. And then you were attempting to back your truck up at this point?

A. That's correct.

Q. Okay.

MR. SHELLENBERG: Please play.

(Video being played for the jury.)

BY WITNESS:

A. No go. You can see my hands there, they are not carrying any club, as I heard it mentioned yesterday in the court.

Q. And what are you looking at at this point?

A. I'm looking at all the activity in the parking lot. There's more and more people coming to the parking lot. I've got to back a truck and a trailer all the way down through those people, through other people's boats and trailers to get it to the ramp. And see, there's nothing in that hand.

Q. Is that the -- you can somewhat see the fish bat that was discussed?

A. It looks like it to me, I can't tell from here. It's not much bigger than if you spread your hand wide open.

Q. And what are you doing at this point?

A. Walking back to the -- to the ramp, I think.

Q. Do you -- do you have a -- you don't have a conversation with anyone else, just walk back to the ramp?

A. No, sir, I don't.
Q. You can sit back down.
A. I've got it.
Q. And so that's the video that you ---
A. That's all the video that we've seen, from what we think is probably 45 minutes to an hour's worth of filming that we believe was taking place with the camera that -- that we the Town's people put -- put it in the parking lot.
Q. Now, I'm going to back up just a second. You refer -- you -- you said that Port Royal had asked you to submit a statement that you -- if you wanted to supplement the incident report. Did you submit a statement?
A. Yes, we did.
Q. And what did you put in that statement?
A. Almost everything I said today.
Q. And then in the course of the Beaufort County Sheriff's Office Internal Affairs investigation, did you talk with the investigator from Beaufort County?
A. Yes, I did.
Q. And did you give him a statement as well?
A. I gave him almost verbatim.

Q. And then at some point were you contacted again by the Port Royal Police Department following that?

A. Ask the question again, please?

Q. And then were you contacted by the Port Royal Police Department by Investigator Carter?

A. Yes, I was.

Q. And what did she tell you when she called?

A. If I'm -- if I'm correct, and I believe that I am, she said that I needed to come down and meet with her, that she had some additional information that she needed to go over with me.

Q. And did you go down and meet with her?

A. I did, I wanted to know what it was about. And she said after -- and I'm speaking from her perspective, after I interviewed Vaughn Cowan, I began to develop some more thoughts that could involve you more. And I asked her what they were, and I never understood clearly from her, because Vaughn Cowan -- Vaughn Cowan was never at the -- at the landing or dock when the pushing and shoving or whatever was going on with Josh, he wasn't there yet.

Q. And did you know ---

A. To the best of my knowledge.
Q. And did you come and give a statement to her?
A. Did he?
Q. Did you?
A. I did come in and give a statement.
Q. And then a few days later were you contacted again by Investigator Carter?
A. I was. I was told that it had been decided that the charges were being changed, that I was now being charged with assault and battery, and that I was going to jail, and that I had two choices, one was to wait at my house for them to come get me, or the other was to come down to the Sheriff's -- not the Sheriff, excuse me, but the Town Police Department Office where she was and get handcuffed here.
Q. And did she tell you that before that you could come in and get the warrant served on you and ---
A. She said ---
Q. -- a court date?
A. -- I could come in there into the office and get the warrant served.
Q. And what did you -- did you call an

attorney at that point?

A. I did, I called Mr. Gill Bell. And we didn't have you folks as our attorney yet, and I didn't -- after talking to as many attorneys as we had at Beaufort, we had very, very little confidence that someone was going to jump in there at the last minute and help us.

Q. Let me stop you right there. And then the following day did you and Gill Bell go down to the ---

A. The following day ---

Q. -- Police Department?

A. The following day I was in jail. When -- when -- from the day that they put me in jail was 15 or 20 minutes after going -- going to see her.

Q. And did you know when you showed up that morning you were going to jail?

A. No, I did not.

Q. What did you think was going to happen that morning?

A. I thought she was going to issue me a warrant and explain to me that at some point I would be having a hearing. That's the way I understood it.

Q. But instead you were taken into

custody?

A. I was taken into custody. I was handcuffed at the Port Royal office. I was leg-ironed, and I was put in Officer J.J. Dowling's vehicle, and taken straight to -- to the jailhouse.

Q. And will you tell the jury what happened when you got to jail?

A. The -- they checked me in, if that's the right word, up at the counter. And then I'm not sure of the sequence of events, but the -- on or about the next item was they -- I had to strip, and put on jail clothes, and then I was photographed I believe next, what they call the mugshot, and then there was something else special that happened.

Q. Were you fingerprinted?

A. Excuse me?

Q. Were you fingerprinted?

A. Oh, yes, and I was fingerprinted. I was fingerprinted. And then I was told to get in this line, and I was -- and I was put in a jail cell with several other people, and I'm just going to say it -- I'm going to say it no matter what here in the Court, that was the filthiest place I'd ever been in my life. There was human feces on the floor. That was the condition of the cell. And when I asked the

officer -- the policeman that seemed to be in charge of that cell, I'm the one that had to clean it up.

Q. And did you know how long you were going to be in jail at that point?

A. Two hours.

Q. Did you know when you were going to be released from jail?

A. When I was released from jail what?

Q. Did you know when you were going to be released from the jail?

A. I did not know up until the last minute when I was going to be released.

Q. And the following day did you have a bond hearing?

A. Yes.

Q. Did you receive a bond?

A. Excuse me?

Q. Did you receive a bond?

A. Yes.

Q. And so did you get out of jail that following day?

A. Yes.

Q. And then in the months following, will you tell the jury how you felt going out in the community?

A. One more time?

Q. Sorry. Will you tell the jury how you felt going out in the community with this pending charge?

A. Oh, gosh, we were just -- you know, for people who grew up in this area, and were at our age and all, we were -- we were uptight, embarrassed, shy about going anywhere, going to the grocery store. Everywhere we went somebody asked us, "You know, what happened? I saw your mugshot." Even in church, the same thing, and it was -- that was -- it surrounded us. And we had to -- how do you explain all that I've talked about the last few minutes, how do you explain all that in a 90-second conversation with somebody on the front steps of the church or wherever? So it was everywhere, even when -- even going to Grayco, you know, it was ---

Q. And ---

A. -- it was terrible.

Q. And was that charge ultimately dismissed?

A. Was that charge ever dismissed?

Q. Was it ultimately dismissed?

A. I believe that it was, yes.

Q. I'll show you what's marked as Exhibit

23. If you'd flip over to page -- tab 23 in that book?

A. What do you want me to look at?

MR. SHELLENBERG: Your Honor, may I approach?

THE COURT: Sure.

BY MR. SHELLENBERG:

Q. If you'll flip to page 23, or the tab 23.

A. Okay.

Q. Is that -- did you receive that letter?

A. (Reviews document.) Yes.

Q. Is that from your prosecutor in the case?

A. Yes.

Q. And was he letting you know that the case was being dismissed?

A. Say it again, please?

Q. I'm sorry, I shouldn't have turned around. And was he letting you know that the case was being dismissed?

A. Yes.

Q. And then was -- I'm going to show you what's marked as Exhibit 24, and that was as of January 14th?

A. (Reviews document.) Yes, that was dated January 14th.

Q. I'm going to show you the disposition form, Exhibit 24, and it was ultimately dismissed as of March 13th, 2020?

A. Yes.

Q. And was that charge expunged?

A. Was that charge what?

Q. Expunged from your record?

A. I was -- I was given information that it was expunged. I -- I received a letter that it was, but when -- I thought expunged meant that it was removed from my records. If I look myself up in the -- on the whatever you call it ---

Q. On the Internet?

A. On the Internet, you -- my name still shows up, and under my name two to three paragraphs down it talks about this.

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

THE COURT: Sure.

BY MR. SHELLENBERG:

Q. Thank you, Mr. Coffman, please answer any questions the defense has.

A. Go down?