

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS
The Honorable Carmen Mullen, Circuit Court Judge

Case No. 2014-001862

THEOPHILUS HAMILTON.....Appellant

v.

BEAUFORT COUNTY SHERIFF.....Respondent

DESIGNATION OF MATTER

Appellant designates matter to be included in the Record on Appeal,
pursuant to Rule 209 of the South Carolina Court of Appeals Rules.

I certify that this designation contains no matter which is irrelevant to this
appeal.

ERICKSON LAW FIRM, LLC

By: 

Eric J. Erickson, Esquire

S.C. Bar No. 8232

One Beaufort Town Center

2015 Boundary Street, #309

Beaufort, SC 29902

843.522.9164

Attorney for Appellant

Beaufort, South Carolina

November 3, 2014

DESIGNATION OF MATTER TO BE INCLUDED IN THE APPEAL

1. **Mary Lohr's /Respondent's Motion Summary Judgment on Negligent Supervision/Retention** of Deputy Novak. Dated-July 14, 2014. pgs 3,4,5 and pgs 39 as Exhibit A and 40 of Expert Chuck Drago depo.
2. **Eric Erickson's /Appellants's Response to Motion Summary Judgment-** dated July 22, 2014. Pgs 1-7 (with the portions relating to Malicious Prosecution edited out).
3. **Affidavit of Theophilus Hamilton** – dated July 22, 2014. Pgs 1-2.
4. **Sheriff P.J. Tanner's depo** – dated June 26, 2014. Pgs 26, 27,34- 36, Exhibits #5, #6.
5. **Transcript of Record of the juvenile criminal trial** –dated August 10, 2010 pgs 1-9 (for the purpose of showing nothing was said during trial about a CDV.)
6. **Freedom of Information Request by Greg Galvin** for Sheriff's records. Dated March 14, 2011. Pg 1.
7. **Court Reporter Transcript of Motion for Summary Judgment** hearing Judge Mullen- dated July 29, 2014. Pgs 1-3, and 17-27.
8. **Judge Carmen Mullen's Order granting Defendant Summary Judgment.** Dated August 4, 2014. Pgs 1-2.

Respectfully submitted,

ERICKSON LAW FIRM, LLC



Eric Erickson, Esquire
SC Bar No. 8232
One Beaufort Town Center
2015 Boundary Street, # 309
Beaufort, SC 29902
Attorney for Appellant

Beaufort, South Carolina
November 3, 2014

MARY LOHR'S/RESPONDENT'S MOTION FOR SUMMARY

JUDGMENT ON THE NEGLIGENT SUPERVISION/RETENTION

The Beaufort County Sheriff's Office is also entitled to summary judgment with respect to Plaintiff's causes of action for negligent supervision and retention because the cause of action is barred by the applicable statute of limitations.

Under the Tort Claims Act, any action is forever barred unless an action is commenced within two years after the date of loss was or should have been discovered. An exception to that rule, found in S.C. Code Ann. § 15-3-40, provides that the applicable statute of limitations is tolled until a minor reaches the age of majority. However, the statute of limitations cannot be extended in any case longer than one year after the disability ceases. The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party. Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014).

Plaintiff was indicted on December 18, 2008 on charges of assault with intent to kill, conspiracy and burglary. At the time of his indictment Plaintiff was aware of Deputy Novak's involvement and was on notice that he may have a claim against the Sheriff's Office for negligent supervision and retention. Furthermore all the information needed for this cause of action was readily available, specifically Deputy Novak's personnel file, which was subject to the Freedom of Information Act.

The statute of limitations began to run on December 18, 2008; however, Plaintiff was a minor when he was indicted, and thus the statute of limitations was tolled. Plaintiff turned eighteen on August 1, 2010 and pursuant to section

15-3-40, Plaintiff had one year from that date to assert this cause of action. Plaintiff's complaint was not filed until October 31, 2011. Accordingly, Plaintiff's cause of action for negligent supervision and retention is barred by the statute of limitations and Defendant Beaufort County Sheriff's Office is entitled to summary judgment in its favor.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits and discovery documents exchanged herein.

HOWELL, GIBSON & HUGHES, P.A.

By: 

J. Andrew Yoho
Post Office Box 40
Beaufort, SC 29901
(843) 522-2408
Attorney for Beaufort County Sheriff's
Office

Beaufort, South Carolina

July 11, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on ____ day of July, 2014

By J. Andrew Yoho
J. Andrew Yoho

2014 JUL 14 PM 3:38
CLERK OF COURT
SOUTH CAROLINA

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- I have consulted with opposing counsel and have been unable to resolve the matter
- Consultation with opposing counsel would serve no useful purpose, or is not required
- Consultation with opposing counsel could not be timely held
- I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants)

1 office best controlled employee Novak?

2 A. They should have terminated him. Once they
3 realized and proved that he was untruthful, they should
4 have terminated him.

5 Q. And was that after the 2006 unauthorized funds
6 incident?

7 A. Yes, sir, it was.

8 Q. Do you think that the retention of employee
9 Novak jeopardized the investigation of the Lenese Wooten
10 case?

11 A. Yes.

12 Q. And how so?

13 A. His history of untruthfulness has to come into
14 play into this investigation. I think one of the things
15 that stand out the most, specifically for this case, is
16 the fact that he added that Deuce or Chris in his police
17 report.

18 And I cannot find anywhere that suggests
19 Mr. Wooten said the offender said Chris. It's very
20 suspect to see that written in there after the arrest,
21 after Chris Battle was arrested.

22 Q. Do you think that those words framed
23 Chris Battle?

24 A. Unless I can see some evidence to where he might
25 have gotten that, yes. I think that's what it does in



1 effect.

2 Q. And then how would that lead to the framing of
3 Theophilus Hamilton?

4 A. Well, Mr. Hamilton was thrown in with Mr. Battle
5 because they were friends and was associated with the
6 offense for the same reason.

7 Q. Did Chris Battle match up to the size that was
8 stated in the police report?

9 A. Chris Battle?

10 Q. Yes.

11 A. I believe so, yes.

12 Q. So that made it somewhat believable and easy to
13 throw that name in there?

14 A. Yes.

15 Q. And Theo Hamilton, what was his size?

16 A. He was smaller, thinner.

17 Q. And did that make Theo Hamilton an easy name to
18 throw in there and frame?

19 A. Yes, because that fit the description, yes.

20 Q. In your expert opinion, was there any probable
21 cause for any of the three charges that Theo Hamilton was
22 arrested on?

23 A. No, sir.

24 Q. And I'll go through each one just to be
25 particular. The assault and battery with intent to kill

ERIC ERICKSON'S / APPELLANT'S RESPONSE TO THE MOTION
FOR SUMMARY JUDGMENT ON THE NEGLIGENT
SUPERVISION/RETENTION

ERICKSON LAW FIRM, LLC
Attorney & Counselor at Law

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One Beaufort Town Center
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Website: www.ericj Ericksonlaw.com
Email: Norsck@aol.com

Hilton Head Office
105 Watersedge at
Sheltercove Harbor
Hilton Head Island, SC 29928
O 843.785.5184
F 843 842.3326

July 22, 2014

Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

Re: *Theophilus Hamilton vs. The Beaufort County Sheriff's Office*
Civil Action No.: 2011-CP-07-04548

Dear Ms. Roseneau:

We have enclosed for filing ~~Plaintiff's Response~~ to Defendant's Motions for Partial Summary Judgment and the Amended Motion for Summary Judgment.

Please return a filed clocked-copy to us in the enclosed self-addressed envelope.

Thank you for your attention in this matter.

Sincerely,

ERICKSON LAW FIRM, LLC

By: Temple B. Erickson
Temple B. Erickson, Legal Assistant
To Eric J. Erickson, Esquire

EJE/tbe
Enclosures
cc. Mary Lohr, Esq.

2014 JUL 22 PM 2:14
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: <u>2011-CP-07-04548</u>
)	
THEOPHILUS HAMILTON)	
)	
Plaintiff,)	
)	
vs.	)	PLAINTIFF'S RESPONSE TO
	)	DEFENDANT'S MOTIONS FOR
BEAUFORT COUNTY SHERIFF'S	)	PARTIAL SUMMARY JUDGMENT
OFFICE,	)	AND AMENDED MOTION FOR
	)	SUMMARY JUDGMENT
Defendant.	c)	
_____)	

2011 JUL 22 PM 2:54
 COURT CLERK
 BEAUFORT COUNTY
 SOUTH CAROLINA

TO: MARY LOHR, ESQUIRE, ATTORNEY FOR THE DEFENDANT:

PURSUANT TO YOUR Motions for Partial Summary Judgment and your Amended Motion for Summary Judgment under Rule 56 of the South Carolina Rules of Civil Procedure, we have responded with the following.

Our client Plaintiff Theophilus Hamilton filed a civil action against the Defendant for the causes of action of malicious prosecution and negligent retention and supervision. These causes of action stemmed from three (3) charges that the Defendant filed for Assault and Battery With Intent to Kill (ABWIK), Burglary 2nd degree, and Criminal Conspiracy.

Summary Judgment:

Summary Judgment is proper when there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law. Rule 56 (c), SCRPC. To determine whether any triable issues of fact exist, the court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). "When plain, palpable, and indisputable facts exist on

which reasonable minds cannot differ, summary judgment should be granted.” Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App 2004). However, summary judgment is *not* appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649, (Ct. App. 2006). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Nelson v. Charleston County Parks & Recreation Comm’n, 362 S.C. 1, 605 S.E.2nd 744 (ct. App. 2004).

Negligent Supervision and Retention:

To establish the cause of action of negligent supervision, an employer may be liable when: (1) his employee intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as an employee, or is using the employer's chattel; (2) the employer knows or has reason to know he has the ability to control the employee; and (3) the employer knows or has reason to know of the necessity and opportunity to exercise such control. Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2nd 495, (1992).

South Carolina Tort Claims Act:
(Section 15-78-10 et-al..)

Under the SC tort Claims Act 15-78-10, "except as provided in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two (2) years after the date the loss was or should have been discovered."

An exception to this rule is found in Section 15-3-40 says that "If a person entitled to bring an action ...under Chapter 78, is at the time the cause of action accrued either:

- (1) Within the age of eighteen (18) years...the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the

action must be brought cannot be extended...(b) in any case longer than one (1) year after the disability ceases.”

Defendant argues in it’s Motion for Summary Judgment that since Plaintiff was indicted on December 18, 2008 on the three (3) charges that he was aware of Deputy Novak’s involvement and was on notice that he may have a claim against the Sheriff’s Office for negligent supervision and retention and that Novak’s file was available. The Defendant also argue’s that an exception tolled the statute of limitations because the Plaintiff was a minor at the time of the Indictments, as Plaintiff did not turn eighteen (18) until August 1, 2010. According to the exception, Plaintiff than had another year (until August 1, 2011) to file his Summons and Complaint but it was not filed until October 31, 2011, beyond the one (1) year.

However, it is Plaintiff’s argument that the statute of limitations should be tolled even longer. “The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party.” Kreutner v. David, 320 S.C. 283, 465 S.E. 2d 88, (1995). “Deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations.” Strong v. University of South Carolina School of Medicine, 316 S.C. 189, 447 S E. 2nd 850, (1994).

“Historically, a cause of action accrued at the time of the negligence. South Carolina has altered this rule by adopting the “discovery” rule. Under the discovery rule, an action accrues when the injury is discovered or “reasonably ought to have been discovered. The reasonably ought to have discovered requirement is the ‘reasonable diligence’ requirement...means simply that an injured party must act with some promptness where the facts and circumstances of the

injury would put a person of common knowledge on notice that some right has been invaded or that some claim against another party might exist.” Strong, supra.

Plaintiff’s position is that the statute of limitations should begin to run only after Plaintiff was found Not Guilty by Judge Armstrong on August 10, 2010. Prior to that, Defendant’s concealed their knowledge of the untrustworthiness, unreliability, and dangerousness of their employee Deputy Novak by not being forthright in enclosing the dishonesty records of Novak along with the Brady and Rule 5 documents which provides a “duty” to the Sheriff’s Office to disclose evidence favorable to the accused. Brady v Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). “The suppression by the (State) of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” Brady, supra. Thus, by not disclosing the discipline file of Deputy Novak at the time it handed over the police report was evidence of concealment by the State. In South Carolina, a Brady violation is asserted by the fact that the evidence was (1) favorable to the accused, (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused’s guilt or innocence or was impeaching. Riddle v. Ozmint, 369 S.C. 39. 631 S.E.2d 70, (2006). None of Deputy Novak’s employment discipline records were turned over prior to the trial on August 3-4, 2010.

“The employer’s knowledge of an employee’s dangerousness is an element of the tort of negligent supervision. Doe by Doe v. Greenville Hospital System, 323 S.C. 33, 448 S.E.2nd 564 (Ct. App. 1994). Thus, Plaintiff’s allegations could, if proven, toll the statute of limitations even longer. Nothing contained in the Brady/Rule 5 Discovery documents contained any information about Novak’s discipline problems? Nothing in the Family Court trial transcripts contained any

information about Deputy Novak's discipline problems . [P Exhibit B -Trial Court transcript order August 10th.]

In fact, It was not until March 14, 2011 when Attorney Greg Galvin mailed a Freedom of Information Act request to the Sheriff's Office and received the information on or about March 27th, 2011 did Plaintiff know or should have known about Deputy Novak's problem with being untruthful, potentially unreliable , dangerous and Criminal Domestic Violence that was apparently never prosecuted and hidden from the public. [P Exhibit C- Sheriff Tanner depo- Novak file documents p16, Exh1,p.17, Exh 2,pgs.18, 21,26,27,34, Exh 5, Exh. 6,pgs. 35,36,] and also [P Exhibit D-attached Affidavit of Theophilus Hamilton.]

Therefore, Defendant's Motions for Partial Summary Judgment and Amended Summary Judgment should be denied based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits , depositions and discovery documents exchanged between the parties.

ERICKSON LAW FIRM, LLC



By: _____

Eric J. Erickson, Esquire
One Beaufort Town Center
2015 Boundary Street, Suite 309
Beaufort, SC 29902
843.522.9164
ATTORNEY FOR THE PLAINTIFF

Beaufort, South Carolina
July 22, 2014

AFFIDAVIT OF THEOPHILUS HAMILTON/APPELLANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NUMBER: <u>2011-CP-07-04548</u>
)	
THEOPHILUS HAMILTON)	
)	
Plaintiff,)	
)	
VS	)	AFFIDAVIT OF
	)	THEOPHILUS HAMILTON
BEAUFORT COUNTY SHERIFF'S)	
OFFICE,)	
Defendant.)	
)	

2014 JUL 22 PM 2:54
 JAMES COLEMAN

Personally, appearing before me the undersigned, Theophilus Hamilton, hereafter being duly sworn, states and deposes as follows:

1. I am a citizen and resident of Jasper County, South Carolina, am over the age of 21 years and am otherwise competent to give this affidavit. DOB: 8.01.1992
2. I am presently employed as a construction worker and live at 2104 Pine Arbor Road, Levy, South Carolina .
3. I was found Not Guilty by Family Court Judge Armstrong by an order dated August 10, 2010 after a trial on August 3-4th.
4. Only on August 10th, 2010 did I think that I might have a claim against the Sheriff' Office.
5. I retained attorney Greg Galvin on October 13, 2011 to file some tort claims for me (**See attached contract**)
6. On or about October 31, 2011 a Summons and Complaint was filed at the Beaufort County Courthouse against the Sheriff's Office for Negligent Supervision and Retention , which is within two (2) years of August 10, 2010.
7. Deputy Novak's discipline problems were never heard at trial and were not contained in any other police reports until we got his employment file after the trial.


FURTHER AFFIANT SAYETH NOT!



Theophilus Hamilton

Sworn to and subscribed before

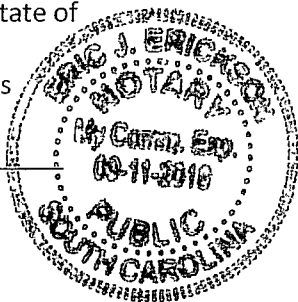
me this 21 day of July, 2014



Notary Public for the State of
South Carolina

My Commission Expires

(Notary Seal affixed)



STATE OF SOUTH CAROLINA) CONTRACT OF REPRESENTATION
)
COUNTY OF BEAUFORT) (Contingency Fee Agreement)

I hereby retain the law firm of GALVIN LAW GROUP, Inc. (hereafter referred to as "GLG") to institute, prosecute, and adjust such claims and actions as it may deem advisable to recover damages against 14th City Sheriff Office (not claims, only) and/or any other responsible parties resulting from Charges of 2008/ ABITK which occurred on or about Nov 2008.

In consideration of the services rendered and to be rendered, I agree that GLG shall retain, as a fee, thirty-three and one-third (33-1/3%) percent of any judgment, verdict, or settlement or, if an appeal is taken, forty (40%) percent of any judgment, verdict or settlement. The attorney's fee shall be computed before expenses are deducted. I further agree that GLG shall deduct from any judgment, verdict, or settlement all expenses (including the cost of filing fees, subpoenas, depositions, court reporters, witness fees, and other investigation and litigation expenses) which it reasonably and necessarily incurs in the performance of its legal services.

I understand and acknowledge that I am not retaining GLG to provide me with tax advice nor does GLG hold itself out as having any expertise in tax matters. While any recovery I may receive in this matter may have tax implications, I am not and will not be relying upon GLG to provide me with advice regarding such potential tax implications.

I understand that, while not obligated to do so, GLG may associate another attorney or law firm to assist in my representation concerning this matter. I consent to GLG doing so under the following conditions: GLG will advise me of any attorney or law firm it associates, that both GLG and the associated attorney or law firm accept joint responsibility for my representation; that the total fee charged to me is not more than that provided in this agreement; and that the fee is divided by agreement of GLG and the associated attorney or law firm.

In recognition of GLG's co-ownership interest in the proceeds of this legal matter and to secure payment by me to GLG of all expenses and attorney's fees I am obligated to pay under this agreement, I hereby grant to GLG a charging lien applicable to any and all recoveries on my claims, whether by settlement, verdict, judgment, or otherwise. I understand that the charging lien may be used to protect GLG's fee for work done in the event I discharge GLG. I further agree that, as of the date of this contract, the value of any of my claims is speculative and is dependent upon the services of GLG for its potential to be realized.

If I assign any portion of my potential recovery in this matter, I will notify GLG of such assignment and understand that GLG may be obligated to pay my assignee directly from the proceeds of any recovery in this matter rather than paying that portion of the recovery to me. I understand and agree that GLG shall have no obligation to honor an assignment of which it has no knowledge and that payment of such an assignment is my sole responsibility.

GLG shall have the right to terminate its representation at no expense to me if, after investigating the claim, it is of the opinion that the claim does not have sufficient merit to proceed to file suit. I agree to inform GLG of any changes in my name, address, or telephone number, to keep all appointments, and to call my attorney as soon as possible to notify him in the event I am unable to keep an appointment. GLG may stop representing me if I fail to comply with this agreement.

I have read and fully understand this contract. I acknowledge that I am entitled to a copy of this contract upon request.

Dated at Bluffton, South Carolina, this 13th day of Oct, 2011.

WITNESS:

CLIENT:

Josephus Hamilton

•
•

DEPOSITION OF P.J. TANNER

1 be between '06 and '09.

2 Q. Does it say the type of incidents
3 involved?

4 A. This latest incident he was involved in
5 would be identified as a criminal domestic
6 violence situation.

7 Q. Do you remember any details about that?

8 A. I do, but I'm refreshing my memory as I'm
9 reading this. I do recall the incident, but the
10 details are more clear now.

11 Q. Was that against his wife?

12 A. I don't believe he was married. No, sir,
13 I don't believe so.

14 Q. All right.

15 A. I believe it was a girlfriend.

16 Q. Was Mr. Novack arrested?

17 A. No, sir.

18 Q. Why not?

19 A. I don't recall that anyone's arrested in
20 this particular incident.

21 Q. Was Mr. Novack disciplined through your
22 office?

23 A. If he was disciplined based on this
24 incident, then there would be a disciplinary
25 action form that would be associated with this

1 disciplinary action file that Lieutenant Colonel
2 Baxley refers to.

3 Q. Is there a recommendation on that
4 two-page letter?

5 A. There's a recommendation on the second
6 page made by Lieutenant Colonel Neil Baxley.

7 Q. What's that recommendation by Baxley?

8 A. He recommends that Lou Novack be
9 terminated from the sheriff's office.

10 Q. At that time, Mr. Baxley did not have
11 termination privileges on his own, did he?

12 A. He did not, and still does not.

13 Q. He was not one of the two that you
14 mentioned?

15 A. No, sir.

16 Q. Did you choose to follow Lieutenant
17 Colonel Baxley's recommendation?

18 A. No, sir.

19 Q. Why not?

20 A. Because that's what it is. It's a
21 recommendation. It's a recommendation made by one
22 officer.

23 Q. What did you use to decide otherwise or,
24 in other words, what policy or procedure or
25 factors did you use to keep Mr. Novack on the

1 anything about Louie Novack's judgment?

2 A. If you will just give me a moment. This
3 is not a letter that I've ever seen. "Your
4 judgment and conduct continues to be less than
5 acceptable and therefore I have decided to
6 formally counsel you," would be a comment that I'm
7 reading from this letter.

8 MR. ERICKSON: All right. Make that
9 Plaintiff's Exhibit No. 5 if there are no
10 objections.

11 MS. LOHR: No objections.

12 (Whereupon, Plaintiff Exhibit No. 5 was
13 marked for identification.)

14 BY MR. ERICKSON:

15 Q. As of June 11, 2010, Mr. Novack was not
16 terminated?

17 A. No, sir. He was terminated in 2011.

18 Q. All right. What do you remember about
19 that termination?

20 A. It was for insubordination.

21 Q. All right. How was Mr. Novack
22 insubordinate?

23 A. He failed to follow a direct order.

24 Q. And what was that order?

25 A. To appear at a meeting that the chief



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

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
JUDGMENTS	470-3189
FAX #	470-3187

P.J. Tanner
Sheriff

June 11, 2010

To: Corporal Louis Novak

From: Major M. Morrison

Subj: Formal Counseling

1. It has been brought to my attention that while conducting a criminal investigation, your judgment and conduct was contrary to the good order, morale, and discipline of this office. Your judgment and conduct continues to be less than acceptable and therefore I have decided to formally counsel you.

a. On May 16, 2006 disciplinary action was administered for you're at fault traffic accident, which resulted in you receiving a written reprimand.

b. On February 7, 2006 disciplinary action was administered for your unauthorized use of Beaufort County Funds, which resulted in you being placed on a three-day suspension without pay and placed on one-year probation.

c. On July 16, 2009 disciplinary action was administered for your personal conduct during a domestic related incident, which resulted in you being placed on one-year probation. Accordingly, you are currently serving in this probation period that is due to be lifted on July 16, 2010.

2. After reviewing these counseling's along with your action during this investigation, I find that you have exercised poor judgment. As a result of these actions, I am issuing you this counseling as a warning to solidify both your professional and personal life to a level of acceptance. You need to maintain a high degree of professionalism and use sound judgment in the execution of your duties.

Professionally,

Marvin R. Morrison, Major
Enforcement Division

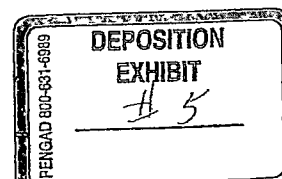
I fully understand and received a copy of this counseling.

Louis Novak

6-11-10

Date

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.
Michael M. Haskins
Chief Deputy, Beaufort County Sheriff's Office





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 255-3192
CRIMINAL RECORDS 255-3232
CRIMINAL WARRANTS 255-3228
CIVIL RECORDS 255-3188
JUDGMENTS 255-3189
FAX # 255-9405
WEB SITE www.bcsco.net

April 11, 2011

Mr. Louis J. Novak, Jr.
2239 Blakers Boulevard
Bluffton, South Carolina 29910

Dear Mr. Novak:

On Monday, April 11, 2011, you were terminated for failing to follow a direct order to report to a specific place, at a specific time. Your actions were in violation of Beaufort County Sheriff's Office General Order 113A1, A. General Rules and Regulations, number 1.d. of the Code of Conduct which states, "Employee shall obey all lawful orders." This conduct constitutes Insubordination which is contrary to the good order and discipline of this Office.

Accordingly, this letter will provide formal notification of your termination from the Beaufort County Sheriff's Office. Your last day of employment was Monday, April 11, 2011. Please return any equipment, clothing and/or identification to this Office immediately upon receipt of this notification.

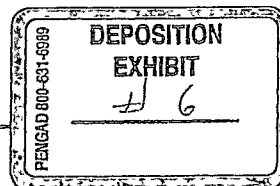
You may want to contact Ms. Emily Stewart, Benefits & Compensation Specialist in Employee Services to assist you in evaluating your options for continued insurance and health/medical benefits. She may be reached at (843) 255-2985.

Your contributions to the Sheriff's Office have been appreciated. It is with regret that we are forced to make this personnel decision.

Sincerely,

Michael M. Hatfield
Michael M. Hatfield
Chief Deputy

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.
Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office



Beaufort County... "Dedicated, Professional Service."

1 deputy, Mike Hatfield, scheduled to have with him
2 is what I can remember.

3 Q. That's all?

4 A. I mean if you can refresh my memory by
5 handing me something. This has been a few years.

6 Q. There was no dishonesty involved in that?

7 A. I don't recall any dishonesty.

8 Q. Just failure to show up at a meeting?

9 A. He was given a direct order. Based on
10 what I can remember, he was given a direct order
11 by his captain, which would have been Bromage, to
12 appear at the chief deputy's office at a
13 particular time. And I believe it was 1 o'clock
14 during a day of the week. And he failed to do so.
15 And he was fired for insubordination.

16 Q. All right. In your judgment when
17 somebody is fired for insubordination, is that
18 worse than somebody being untrustworthy?

19 MS. LOHR: Objection. Go ahead and
20 answer.

21 A. I agree with his termination based on
22 insubordination. I agree he should have been
23 fired for that, yes.

24 BY MR. ERICKSON:

25 Q. Alone?

1 A. Absolutely.

2 Q. So in your hierarchy of discipline, does
3 insubordination rate at the top as being the most
4 serious?

5 A. It's very serious. Most serious, no.
6 Very serious, yes.

7 Q. Do you have a hierarchy or do you have
8 named structure from worst to least worst where
9 somebody can get fired?

10 A. Any violation of policy would have to be
11 based on its merits. It would have to be vetted
12 as to what those violations were and what the
13 intent was for that policy violation.

14 Insubordination, because we are a
15 paramilitary structure, insubordination is very
16 severe and punishable by termination. But so is
17 misconduct in office and other things that are
18 also as severe. I don't know that any one is
19 worse than the other. They're all very important
20 as far as how we enforce our policy.

21 Q. Somebody being untrustworthy like Mr.
22 Novack, how severe is that?

23 A. Depends on the circumstances surrounding
24 your claim of untruthfulness or what have you.

25 I mean based on what you've given me, it

TRANSCRIPT OF RECORD JUVENILE TRIAL FAMILY COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE STATE OF SOUTH CAROLINA)
VS.)
HARRY CHRISTOPHER BATTLE and)
THEOPHILUS HAMILTON,)
DEFENDANTS.)

IN THE FAMILY COURT
CASE NO.: 10-JU-07-49, 50, 51
and 10-JU-07-46, 47, 48

TRANSCRIPT OF RECORD

August 10, 2010
Beaufort, South Carolina

BEFORE:

THE HONORABLE ROBERT S. ARMSTRONG, JUDGE

APPEARANCES:

Jean K. McCormick, Esquire
Assistant Solicitor

Gregory M. Galvin, Esquire
Attorney for Defendant Battle

Scott W. Lee, Esquire
Attorney for Defendant Hamilton

Deborah A. Anderson
Family Court Reporter

PLAINTIFF EXHIBIT # B

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EXHIBITS

None

1 THE COURT: All right, be seated. All right, we're back on the record. You know,
2 the lives of a number of people in this courtroom will never be the same after what occurred
3 back on October the 30th of 2008. A terrible event occurred at the Lanese home. What
4 should have been a very happy occasion turned tragic. They were there to celebrate the
5 birthday of Mr. Lanese's wife, grilling steaks, having fun and what should have been a
6 simple time and a happy time really turned tragic

7 Mr. Lanese and his friend, Jeff Wooten, went outside to check on steaks, to get a
8 coke and they were ambushed. They were horribly and viciously attacked by three men
9 wearing masks. Two men jumped on Brian Lanese. One jumped on Jeffrey Wooten Those
10 two men responded bravely and heroically. It's only because of their actions that night that
11 even more tragedy didn't result.

12 The people there with them responded bravely and heroically. They called 911,
13 called the police, tried to give aid to Mr. Lanese who was suffering from a very serious life
14 threatening injuries.

15 Mr. Wooten was able to give a description to the police about his attackers. That
16 they were wearing masks, dark clothing, ball caps. One was wearing a red jacket. The large
17 one that was hitting Mr. Lanese was wearing that. During the attack Mr. Wooten thought
18 his particular attacker had called out the name for Duce. All of this happened in less than
19 thirty seconds.

20 The Beaufort County Sheriff's Department responded promptly. They had a dog
21 team. They did a thorough investigation, collected evidence at the scene, followed the leads
22 and interviewed suspects. All this led them to, amongst others, Kuwan Fields.

23 Mr. Fields eventually implicated these two defendants, Mr. Battle and Mr. Hamilton.
24 All three were indicted in General Sessions. The State then made a deal, at some point, with
25 Mr. Fields, and during, I believe, the State's closing argument the other day she said, you

1 know, when you prosecute pirates you need to use pirates as witnesses That may be true.

2 Mr. Fields, despite his role, was charged with burglary second, simple assault and
3 battery, even under the theory the hand of one, the hand of all, he could have been charged
4 with assault and battery with intent to kill and the conspiracy. He was eventually allowed to
5 plead to the burglary second.

6 For whatever reason, these two defendants were later remanded to Family Court
7 rather than face a jury of twelve people of their own peers, brought before me, a single
8 Judge, to determine your fate. Well, down here or over here in the Family Court, the same
9 as in General Sessions, the same burden of proof. Whether the State can convince me of
10 their guilt beyond a reasonable doubt and to do that the State has the burden to prove every
11 element beyond a reasonable doubt.

12 For me to decide whether or not the State has done that I have to judge the
13 believability and the credibility of the witnesses called. In here the State's case against these
14 two defendants depends on the testimony Kuwan Fields. You know, the police did a very
15 good job, but there is, what it all boils down to, you have your forensic evidence, but it all
16 boils down to the testimony of Kuwan Fields to convict these two defendants. Was he
17 believable and credible?

18 Well, I have to look at the fact that he did cut a deal with the State. So instead of
19 facing more than thirty years in jail, he was allowed to plead to burglary second for a cap of
20 six years. On cross examination he admitted that his sentence depended on how he testified.
21 He was specifically asked by Mr. Lee, your sentence depends on you naming Chris and
22 Theo being there and he answered, yes.

23 You know I was a prosecutor for ten years, so I know that you need to cut deals,
24 sometimes, with people who are involved in crimes and there's no criticism for that. You
25 just have to do it. But I also learned that you always need something to corroborate their

1 story. So I looked for corroboration to see if I could find it in this case. But all I could find
2 were inconsistencies.

3 First, Fields told different stories. He first testified that Battle and Hamilton planned
4 to burglarized before they arrived at the Lanese residence. They were gonna get some
5 money, steal something, get money, pawn it and go for a football game the next day. And
6 then the story was, it changed that he was getting high with his cousins when the defendants
7 drove up in a white car and they planned to go buy marijuana, left on foot, wearing masks,
8 carrying a pellet gun riffle. They didn't find any marijuana, but on the way back they went
9 to a shed, saw the two guys, which would be Mr. Lanese and Wooten, and he said the
10 defendants started running at them and that Battle swung the riffle and hit Mr. Lanese. And
11 his version was he was running and a big, tall guy grabbed him. Now is that believable or
12 credible? It's just saying that he ran and was grabbed.

13 You know, Mr. Wooten testified that all three acted in concert. Acted together and it
14 was only when Mr. Wooten was getting the better of what turned out to be Mr. Fields, that
15 he yelled for Duce and ran. I mean, it just stretches the imagination that he's just running
16 and Wooten grabs him. He also would want the Court to believe that two people he didn't
17 know very well and didn't hang out with came to his grandmom's house and they planned
18 this in front of other witnesses. He finally told a story that he was there with his cousins. So
19 he would have us believe or me believe that he planned this crime, initially, in front of his
20 cousins. Well, then it turned out that that might not have been it, but they were gonna go
21 buy marijuana. So then he'd have the Court believe that with two people he didn't know
22 very well he's gonna take them to buy drugs.

23 Well, after being a prosecutor for those ten years I just don't believe that's how most
24 drug dealers work. You don't take somebody to a drug dealer unless you know them. He'd
25 also have us believe or me believe that they drove up in a white car, but then they walked.

1 Why not take the car? And not only walked but they were dressed in masks and carrying a
2 pellet gun to buy drugs for thirty minutes. They just walked the neighborhood doing that
3 and he'd also have us believe that Battle just grabbed or took the pellet gun from his
4 grandmom's porch and the pellet gun had been there a while, so is any of that reasonable for
5 me to believe.

6 He said Hamilton was the one wearing the red jacket. Well, there was testimony that
7 the guy doing the hitting, the big guy, Battle, was the one wearing it.

8 You know, after the assault the dogs tracked the assailants through the woods
9 towards Simmonsville Road where the grandmamma lives.

10 Now, looking at the pictures that were introduced into evidence, is it likely that
11 people unfamiliar with this area could run back toward the grandmom's house, through the
12 woods, in the dark? I just can see too many inconsistencies there and, now, is there any
13 corroboration?

14 The police did a very good job trying to find the corroboration. They did. They got
15 DNA. They tried to find finger prints, but the only DNA matched was Fields. They found
16 some unmatched mix on the mask but it didn't match any of these defendants. No other
17 DNA matched these defendants.

18 They did find a red jacket in Hamilton's book bag, but there was no test or no
19 testimony that he was wearing it on October the 30th. No testimony that Battle was wearing
20 it around then. No other people put them at the scene or at the grandmom's house during
21 that time. And Mr. Novak testified that during the investigation, to help develop leads, there
22 had been other people wearing red jackets.

23 There's no testimony, either, about finding a white car or linking the white car to
24 these defendants. Also, these defendants had alibis. Witnesses, granted they being their
25 parents, but they testified these defendants were at home the night of the crime. You know,

1 it all boils down to the believability and credibility of Mr. Fields and I'm really drawn, you
2 know, in weighing that, considering all that, I go back to the call he made from the jail
3 asking where his cousin Jason is. And, you know, there had been testimony that he and
4 Jason had been together that night at the grandmother's house and to quote him, he said, "I
5 done saved them boys this time here. That was supposed to be they ass on the front page of
6 that paper with me." There had been testimony he was on the front page of the paper after
7 the crime. After he and these two defendants had been arrested. And it got to me, even
8 more, that his response, in court, when confronted with what he said in this telephone
9 conversation with - - well, I hear, but I didn't say it.

10 You know, when you - - it has been said, you know, when you prosecute the devil
11 sometimes you do have to go to hell for the witnesses. The problem is you make a deal with
12 the devil, himself, you got to expect that the devil's gonna lie, cheat, steal to save himself.

13 You know, I know that there has been a lot of hue and cry to punish someone for this
14 terrible crime and I understand that. But it wouldn't make what happened any better or
15 serve justice to find somebody guilty unless the State meets their burden of proof.

16 You know, all judges have to take an oath and part of that oath is that I pledge to
17 seek justice and justice alone. This is one of the most difficult cases I've had. I even went
18 back yesterday afternoon and listened to the testimony, again, of Mr. Fields and the
19 testimony, again, of Mr. Novak. But this system only works when we all do our jobs.

20 Here, the police investigated and did a thorough job. The State represented the
21 people of the State of South Carolina and they did a very good. The lawyers representing
22 the defendants did their job.

23 You know, now it's my turn. You know, I believe, frankly, that Mr. Fields has
24 participated in a terrible crime and then he made it worse by implicating these two
25 defendants, because they, for whatever reason, they were easy targets. They weren't family.

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I can only hope, in the future, that somehow he does not benefit from his testimony.

Based on the evidence presented I find the State has not met its burden of proof on the charges of assault and battery with intent to kill, burglary second and conspiracy. I find these defendants are not guilty. The case is adjourned.

MS. MCCORMICK: Thank you, your Honor.

END OF TRANSCRIPT OF RECORD - - -

1 I, the undersigned, Deborah A. Anderson, Official Court Reporter for the Fourteenth
2 Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true,
3 accurate and complete transcript of record of all the proceedings had and evidence
4 introduced in the trial of the captioned case, relative to appeal, in the Family Court for
5 Beaufort County, South Carolina, on the 10th day of August, 2010.

6 I do further certify that I am neither of kin, counsel nor interest to any party hereto.
7
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11 February 11, 2011
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16 Deborah A. Anderson
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FREEDOM OF INFORMATION REQUEST BY GREG GALVIN



FOIA

March 14, 2011

Via U.S. Mail

Beaufort County Sheriff's Department
P O. Box 1758
Beaufort, SC 29901

Dear Beaufort County Sheriff's Office:

I am writing to request that you send me any and all personnel records, employee reviews, disciplinary investigations, employee reviews, or any review on the performance of Investigator Louis Novak

It is my understanding that this information is available to the public under the Freedom of Information Act (S.C. Code Ann. § 30-4-30 and -50). If any public record contains material deemed to be exempt from inspection, we request that you separate the exempt from the non-exempt material and inform us of its availability for inspection and copying.

Please notify me as to when and where I may inspect and photocopy any pertinent materials you have, or please send me the information at the above address. I look forward to hearing from you within fifteen (15) working days

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg M Galvin', written over the typed name.

Gregory Michael Galvin, Esq.

TRANSCRIPT OF SUMMARY JUDGMENT MOTION HEARING
CONDUCTED BY JUDGE CARMEN MULLEN

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2011-CP-07-04548

THEOPHILUS HAMILTON

PLAINTIFF

VERSUS

ORIGINAL

JULY 29, 2014

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

BEAUFORT COUNTY SHERIFF'S OFFICE

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were admitted.

1 wrongdoing, and that's when Novak added the name *Chris*
2 to the statement Deuce or somebody. And that's the crux
3 of this case. That's the key.

4 THE COURT: That's the gross negligence, is that he
5 heard it differently.

6 MR. ERICKSON: Yes. Yes. And when we get two
7 different conclusions on that, that's where I think the
8 summary judgment should shed more light on our side.
9 And I didn't really think that was a big enough issue,
10 other than that, and that's why I didn't spend much time
11 on it in the summary judgment.

12 THE COURT: Okay.

13 MS. LOHR: Your Honor, and with regard to that, the
14 allegations are specifically that they -- he inserted
15 that, fabricated that, intentionally added it to frame,
16 not that he accidentally added it or grossly negligently
17 added it. It's that he didn't ever hear it; he made it
18 up; and he added it in after the fact. That's the
19 allegations.

20 MR. ERICKSON: There's two different conclusions on
21 that. It could go either way, and the jury can even
22 decide in the middle.

23 THE COURT: All right. Let's move on to the second
24 one. Let's move on to negligent intention and
25 supervision. That one, you are basing it on statute of

1 limitations.

2 MS. LOHR: Yes, ma'am.

3 THE COURT: Thank you. Okay.

4 MS. LOHR: With regard to the negligent supervision
5 cause of action, only the malicious prosecution action
6 in this case relies on an element of success on the
7 merits. Therefore, any of these other causes of action
8 start to run when the injury occurred, which would have
9 been upon the time of his arrest.

10 Now, with regard to -- with regard to that, Theo
11 Hamilton was only 16 at the time of the arrest. So, if
12 you -- the date of the indictment was the date that --
13 actually, I didn't even say it was the date of the
14 arrest, I said it was the date of the indictment. But
15 there's evidence in the file that shows that Scott Lee,
16 who was Mr. Hamilton's lawyer, made *Rule 5* requests and
17 received all the information. So, he had the entirety
18 of the file by the end of December of 2008. So, even
19 probably more appropriately, that would be the date,
20 because that's when they had all the information that
21 their expert bases his opinions on at this point.

22 Okay. The cause of action, then, if we're using
23 the last day of December 2008, would run 2009, 2010.
24 However, Theo doesn't turn -- didn't turn 18 until
25 August of 2010. So, you'd add that year on after his

1 date of birth turning 18, which would be August 2011.
2 And the complaint in this case wasn't filed until
3 October 2011. The negligent supervision claim in this
4 case is based on the -- and I've cited on pages -- I'm
5 sorry, is -- that's what 16, 17, and 21 are. That's the
6 negligent supervision of the Sheriff's Office and
7 negligent retention of the Sheriff's Office having to do
8 with what the supervising officer saw during the course
9 of the investigation, and specifically, the incident
10 with regarding the adding of Chris and Deuce to the
11 incident report.

12 THE COURT: Okay.

13 MS. LOHR: Okay. So, that's, again, what the
14 Plaintiff is saying the crux of the case is, is the
15 coercion of Kuwan Fields, the adding of the name Chris
16 into it. They had all this information as of December
17 31, 2008, when Scott Lee got his *Rule 5's*.

18 Now, they're asserting in their brief that they
19 didn't get the personnel file of Mr. Novak until, I
20 think it was March 31st, maybe, of 2011. But there was
21 nothing that changed.

22 First off, part of the negligent supervision cause
23 of action, they had everything that their expert is
24 relying on. The videos, the statements, the incident
25 reports they had all of that, and nothing different

1 happened, so as to make them aware suddenly that they
2 had a cause of action and send off the FOIA request.
3 They could have gotten his personnel file any time they
4 wanted to, just by making a FOIA request.

5 So, they've got two bases for a negligent
6 supervision claim. One is contained on Pages 16, 17,
7 and 21, that I handed up to you, and that's their
8 expert's testimony with regard to his interview of Kuwan
9 Fields, and the general conduct with the criminal
10 investigation.

11 And then, it has to do with the fact that, in 2006,
12 when they got the personnel file, they realized that Mr.
13 Novak had had an issue using the BCSO credit card, and
14 he had purchased alcohol. And they asked him about it,
15 and he denied it, and then later on that day, told them,
16 in fact, we did -- we did buy alcohol with it. Their
17 expert says, at that time, he should have been
18 terminated. So, that's the two bases of their negligent
19 retention -- negligent supervision cause of action.

20 They were on notice of everything except the
21 personnel file, as far as the negligent supervision
22 cause of action goes, when they received the
23 interrogation and when they received the incident
24 reports. So, he had all of that information.

25 And there's the case of *Burgess versus The American*

1 *Cancer Society*, which I'm going to hand up. And in the
2 *Burgess* case, the Court says:

3 *In applying the discovery rule, inquiry*
4 *is focused whether the complaining party*
5 *acquired knowledge of existing facts*
6 *sufficient to put the party on inquiry,*
7 *which, if developed, will disclose alleged*
8 *fraud.*

9 The issue was fraud in that case.

10 *A party cannot escape the application*
11 *of this rule by claiming ignorance of*
12 *existing facts and circumstances, because*
13 *the law also provides that, if such facts*
14 *and circumstances could have been known to*
15 *the party through the exercise of ordinary*
16 *care and reasonable diligence, the same*
17 *result follows.*

18 *Thus, either actual or constructive*
19 *knowledge of facts and circumstances*
20 *indicative of, in this case, fraud, trigger*
21 *a duty of the party -- of the aggrieved party*
22 *to exercise reasonable diligence in*
23 *investigating and ultimately pursuing a claim*
24 *arising therefrom.*

25 They knew that they had a negligent supervision

1 claim. That's why, in March 2011, Greg Galvin FOIA'd
2 the personnel file. Nothing happened between January of
3 2009 and March 2011 that would have made him on notice,
4 other than they already had the idea in mind. And the
5 fact that their expert witness bases part of the
6 negligent supervision cause of action on facts that were
7 clear to the plaintiff by no later than December 31st or
8 January 1, 2009, they were on notice of the cause of
9 action. That one year tolled, and they exceeded their
10 statute of limitations by about two months.

11 THE COURT: Okay. Mr. Erickson.

12 MR. ERICKSON: Thank you, your Honor. I understand
13 what Ms. Lohr is arguing, as far as the general statute
14 of limitations and the general one-year tolling if
15 you're a minor. We're arguing the other end of that,
16 you know, which is this should have known. And the
17 thing that sticks out in this case is the crime of
18 criminal domestic violence that Novak committed some
19 time in 2009 or '10, and the police never arrested him
20 or made that public in any way. That would have put a
21 reasonable person on notice that there's a problem with
22 Novak. But we had to actually get his file to discover
23 that. And even during a deposition with Sheriff Tanner,
24 he wasn't sure -- Sheriff Tanner wasn't sure of all the
25 facts. He knew it was a CDV, and they handled it in-

1 house.

2 And if you look at my case cites, it talks about --
3 I think it's the *Strong versus University of South*
4 *Carolina School of Medicine*. It talks about evidence
5 that was concealed. I think that CDV case was
6 concealed. And the part 2 of my argument is, that
7 should have been submitted in the *Brady*. Under the
8 *Brady Rule*, all evidence favorable to the Defense must
9 be given, and there's a continuing duty of that.

10 And I also have some case law which talks about
11 impeachment evidence; that *Brady* requires any evidence
12 that I could use for impeachment to be turned over; and
13 that would have been that CDV case. And in fact, that
14 should have been turned over prior to trial, because
15 when Novak got on the stand, the Defense should have
16 been able to cross-examine him on that, and they did
17 not.

18 THE COURT: Ms. Lohr, am I incorrect? My
19 understanding was, is that Greg Galvin did the FOIA
20 request in 2011. Is that correct?

21 MS. LOHR: Yes, ma'am, that's correct.

22 THE COURT: And so, even by the time he got the
23 FOIA, it was roughly 14 months or so, two months after
24 the birthday of Hamilton, or not?

25 MS. LOHR: No, ma'am. His birthday was in August

1 of 2000 -- well, let's see. Hold on. His birthday was
2 August 2010. The statute wouldn't have expired until
3 August 2011. But our argument is --

4 THE COURT: But he filed, though, but this cause of
5 action was filed, correct me if I'm wrong, and I thought
6 it was not filed until October of 2011.

7 MS. LOHR: October 31, 2011.

8 THE COURT: So, how, even under -- from the point
9 he gets the information, it sounds to me that the one-
10 year statute is already blown.

11 MS. LOHR: Well, it wouldn't have been blown until
12 August of 2011.

13 THE COURT: And when did they file this cause of
14 action?

15 MS. LOHR: October 31, 2011.

16 THE COURT: So, again, that would be later. Am I
17 missing something? I think I'm right.

18 MADAM CLERK: The FOIA request was in March.

19 MS. LOHR: March of 2011. But I'm not arguing that
20 the FOIA request is when the discovery rule kicks in.

21 THE COURT: I understand. Okay. So, it wasn't --
22 the FOIA request was in March, is what you're saying.

23 MS. LOHR: Right.

24 THE COURT: Okay. Of 2011.

25 MS. LOHR: Right. So, they were on notice already

1 they had a negligent supervision claim.

2 THE COURT: Right.

3 MS. LOHR: Because they had everything to base part
4 of their negligent supervision claim that their expert
5 relies on, they already had that. That's why he FOIA'd
6 it, because he was planning on pursuing the negligent
7 supervision claim.

8 THE COURT: Okay.

9 MS. LOHR: So, they had all that information way
10 back in December 2000 -- very, like, I think they got it
11 December 26th and December 31, 2008.

12 THE COURT: Okay.

13 MS. LOHR: So, they had the basis of the claim --

14 MR. ERICKSON: Objection.

15 THE COURT: No, no.

16 MS. LOHR: You don't get to --

17 THE COURT: Let her finish.

18 MS. LOHR: The basis of the basis of their claim,
19 according to their expert, in part, is the negligent
20 supervision; that the supervisor sat there and watched.
21 That's why they would have -- that's why they were
22 FOIA'ing it in the first place, --

23 THE COURT: Okay.

24 MS. LOHR: -- because they were planning this
25 claim.

1 THE COURT: Okay.

2 MS. LOHR: So, they had -- they already knew. And
3 based on *Burgess* case, they had enough information to
4 know they then had a duty to go out and investigate,
5 which is what they failed to do.

6 THE COURT: Okay.

7 MS. LOHR: And information would have been readily
8 available. Now, as far as the CDV goes, that occurred
9 in 2009. My argument would be, that's not even relevant
10 to what happened in the arrest -- the arrest that
11 happened in 2008. And I don't know that you get to
12 argue *Brady* in a civil context, especially when you
13 would have been on notice and been able to FOIA the
14 personnel file anyway.

15 THE COURT: Okay. All right. Mr. Erickson, you
16 can go ahead and respond now.

17 MR. ERICKSON: Well, the CDV, Ms. Lohr said she
18 wonders if it's even relevant. It's relevant for
19 impeachment purposes on cross-examination in any case.

20 THE COURT: In a criminal case, which he was found
21 not guilty of.

22 MR. ERICKSON: Well, even in a civil case in a
23 juvenile court could have asked Novak.

24 THE COURT: That was a criminal case.

25 MR. ERICKSON: Right. Juvenile court.

7-29-14 HAMILTON V. BEAUFORT COUNTY SHERIFF'S OFFICE

1 THE COURT: Criminal case, again.

2 MR. ERICKSON: Right.

3 THE COURT: Okay.

4 MR. ERICKSON: All I'm saying, it would have been
5 nice to have a cross-examination for Novak during that
6 juvenile case. And that's when we think --

7 THE COURT: He's acquitted. But he was acquitted,
8 so it didn't matter. Okay.

9 MR. ERICKSON: Well, and it -- we're saying it
10 matters for this case, though, this negligent
11 supervision, as to when we had notice that we had a good
12 cause of action.

13 THE COURT: All right. Anything else? Okay.

14 MS. LOHR: Okay.

15 THE COURT: This is what I'm going to do. I am
16 granting your motion for summary judgment on the
17 negligent retention and supervision. I think the
18 statute of limitations was blown. I think it's when
19 they knew or should have known, and I think they were on
20 notice way back that there was a negligent supervision
21 claim, and it should have been brought within the one
22 year after he turned 18.

23 I will say, on the malicious prosecution cause of
24 action, I understand, Ms. Lohr, completely what you're
25 arguing. And again, I'm having a hard time finding an

JUDGE CARMEN MULLEN'S ORDER -SUMMARY JUDGMENT
MOTION

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-4548

THEOPHILIUS HAMILTON

BEAUFORT COUNTY SHERIFF'S OFFICE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CARMEN MULLEN

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIBUNAL 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. Defendant's Motion and Amended Motions for Summary Judgment came before me July 29, 2014. Summary judgment is granted as to the negligent retention and supervision claim, as the statute of limitations expired approximately two months prior to the filing of the action S C Code Ann 15-3-40. Summary judgment is denied as to the malicious prosecution claim, as there exists a scintilla of evidence regarding the existence or nonexistence of probable cause at the time of the Plaintiff's arrest from which a question of fact regarding gross negligence is present.

ORDER INFORMATION

This order ends does not end the case

Additional Information for the Clerk

This case remains second up for trial the week of August 4, 2014

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

* The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

~~Circuit Court Judge~~

2142
Judge Code

Date

8-19-14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney s box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: