

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case Number: 2013-CP-10-3669
Appellate Case No.: 2014-001977

Eugene Magwood Applicant/Appellant,

v.

J Al Cannon, Jr. in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law
Enforcement Division Respondents,

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Inspector
Anderson, Inspector Antonio, Charles Ghent,
and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

ORDER

by

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JULIE J. HENSTRONG
CLERK OF COURT

FILED

On July 30, 2014, the parties came before this Honorable Court on a motion for summary judgment filed by the defendants. The plaintiff, Eugene Magwood, was represented by Stephanie Fajardo, and the defendants were represented by Robin Jackson. During the course of the hearing, plaintiff voluntarily dismissed the negligence/gross negligence cause of action against the individual defendants, Anderson, Antonio and Ghent. The defendants moved for summary judgment on all remaining causes of action.

FACTS

In 2006, Plaintiff, then a detective with the Charleston County Sheriff's Office, was assigned to investigate an allegation of rape by Catherine Boney. During the investigation, Magwood developed a suspect. Based upon a report supplement dated September 21, 2008, Magwood went to the home of Boney and showed her a photo lineup containing the suspect. (See Lineup).

Later, during the time the assistant solicitor assigned to the case, Greg Voigt, was

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preparing the case for trial, he and his investigator, Ryan Kelly, met with Ms. Boney on several occasions. (Voigt Aff.; Kelly Aff.). During one meeting, Ms. Boney mentioned being shown a photo of the suspect. (Voigt Aff.; Kelly Aff.). When asked, she said she was certain she had only been shown a single photo. (Voigt Aff.; Kelly Aff.). In order to refresh her memory, she was shown the six photo lineup. (Voigt Aff.; Kelly Aff.). Ms. Boney advised that the writing on the lineup was not hers and that she had never been shown the lineup by Magwood. (Voigt Aff.; Kelly Aff.). Ms. Boney even provided a handwriting sample.

Mr. Voigt and Mr. Kelly then met with Magwood about trial. Magwood told them Boney had circled, initialed, timed, and dated the photo. When Voigt and Kelly told Magwood that Boney denied doing so, he said she was incorrect. (Voigt Aff.; Kelly Aff.). Magwood insisted that none of it was his handwriting and the victim was wrong. (Kelly Aff.).

Based on their concerns about the lineup, Assistant Solicitor Voigt went to the Sheriff's Office to report his suspicions that Magwood had put the victim's initials and date on the lineup and may not have even shown her the lineup. (Voigt Aff.). The Sheriff's Office, so as to avoid an appearance of impropriety, asked SLED to investigate the allegations against Magwood. SLED received the request and assigned the investigation to Agent Charles Ghent. Inspector Michael Anderson was to be his liaison with the Sheriff's Office. Agent Ghent reviewed all of the documentation, interviewed a number of people, and prepared a report. His report does not make any conclusions or determinations of wrongdoing. (See Ghent Report). Ghent's report was provided to the Solicitor's Office for a determination of criminal wrongdoing. The Solicitor's Office determined that they had a conflict as the underlying complaint had come from their office, so they referred the matter to the Attorney General's Office for a determination about whether Magwood should be prosecuted.

After the SLED report was complete, the Sheriff's Office conducted an internal affairs ("IA") investigation, starting in April 2009. Inspector Anderson was assigned to perform the investigation and Inspector Antonio was assigned to assist. (Anderson Dep. 32:16-25). Magwood was interviewed as were several other employees. During the course of these interviews several inconsistencies were noted about the Magwood's version and his previous version, his reports, and the other documentation contained in the file. The IA investigation also had a handwriting analysis performed. The outcome of the analysis was that Boney did not write the initials, time, or date. Magwood was determined to have written the date and time, and the analysis indicated that Magwood wrote the initials.

Based on the interviews and the handwriting analysis, the Office of Professional Standards concluded that the complaint against Magwood was sustained. It also concluded that Magwood violated the policies and procedures of the Sheriff's Office, specifically Procedure 1-09(III)(A)(34), "Truthfulness" and Procedure 1-09(III)(A)(10), "Unsatisfactory Performance."

The Attorney General's Office made the decision to prosecute Magwood. On May 7, 2009, Magwood was charged with Misconduct in Office. Neither SLED nor the Charleston County Sheriff's Office was consulted or participated in this decision. While preparing for the prosecution, the Attorney General's Office requested a handwriting analysis be performed. Because the Internal Affairs investigation was performed pursuant to *Garrity v. New Jersey*, 385 U.S. 493 (1967), no information gathered directly from Magwood in the Internal Affairs investigation was shared with SLED, the Solicitor's Office, or the Attorney General's Office. (Anderson Dep., 50:20-51:7). Therefore, the Attorney General's Office had to obtain their own handwriting analysis, which was ultimately consistent with the analysis procured by the Sheriff's Office.

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Plaintiff was prosecuted and during his trial, Catherine Boney testified that she was very upset and could not remember whether she had signed the lineup or not. Magwood was not convicted.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Rule 56(c), SCRCF); *accord Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E. 2d 187, 191 (1997).

LAW AND ARGUMENT

Magwood has alleged Malicious Prosecution, False Arrest, Abuse of Process, Defamation, Defamation *per se*, Civil Conspiracy to Commit Fraud, and Negligence/Gross Negligence. These will be addressed separately.

I. GROSS NEGLIGENCE AND THE IMMUNITIES CREATED BY THE SOUTH CAROLINA TORT CLAIMS ACT.

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against Defendants, is a limited waiver of

governmental immunity. *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994); *see also* S.C. Code Ann. § 15-78-20(b) (Supp. 1997) (providing that the State, its political subdivisions and employees are immune from liability and suit for any tort committed while acting within the scope of official duty except as waived by the Tort Claims Act); S.C. Code Ann. § 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

A. § 15-78-60(25) - GROSS NEGLIGENCE.

In order for Magwood to recover, he must show Defendants acted in a grossly negligent manner. S.C. Code Ann. § 15-78-60(25) states that a governmental entity is not liable for a loss resulting from:

responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised **in a grossly negligent manner**.

S.C. Code Ann. § 15-78-60(25) (Supp. 1997) (emphasis added).

South Carolina courts have defined gross negligence in a number of ways. Gross negligence is "the intentional, conscious failure to do something which it is *incumbent* upon one to do or the doing of a thing intentionally that one ought not to do." *Hollins v. Richland Cnty. Sch. Dist. I*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993) (quoting *Richardson v. Hambright*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988)); *see also Ford v. Atl. Coast Line R.R.*, 169 S.C. 41, 51, 168 S.E. 143, 147 (1932), *aff'd*, 287 U.S. 502 (1933); *Brooks v. Northwood Little*

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League, Inc., 327 S.C. 400, 408, 489 S.E.2d 647, 651 (Ct. App. 1997); *Rakestraw v. S.C. Dep't of Highways and Pub. Transp.*, 323 S.C. 227, 231, 473 S.E.2d 890, 892-93 (Ct. App. 1996); *Smart v. Hampton Cnty. Sch. Dist. No. 2*, 315 S.C. 192, 195, 432 S.E.2d 487, 489 (Ct. App. 1993). Gross negligence is a relative term which means the absence of care that is necessary under the circumstances. See, e.g., *Hollins*, 310 S.C. at 490, 427 S.E.2d at 656; *Hicks v. McCandish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). Gross negligence is the failure to exercise slight care. *Hollins*, 310 S.C. at 490, 427 S.E.2d at 656; see also *Richardson*, 296 S.C. at 506, 374 S.E.2d at 298; *Anderson v. Ballenger*, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932); *Rakestraw*, 323 S.C. at 231, 473 S.E.2d at 893; *Smart*, 315 S.C. at 195, 432 S.E.2d at 489. Where a person is so indifferent to the consequences of his conduct as not to give slight care to what he is doing, he is guilty of gross negligence. *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990). Gross negligence involves a conscious failure to exercise due care. *Id.* at 126-27, 390 S.E.2d at 468. There is no evidence of gross negligence in this case, and thus Defendants are immune from suit pursuant to S.C. Code Ann. § 15-78-60(25).

B. § 15-78-60(5) - EXERCISE OF DISCRETION

A governmental entity is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5). Inspectors like Anderson, Antonio, and Ghent are well trained to use their judgment and discretion to determine which, if any, crimes were committed, and whether or not an arrest is warranted. They used their discretion in determining which people to interview and what documents to review. They also made the discretionary call to get the

handwriting analyzed. Because Magwood's alleged loss resulted from Defendants' exercise of discretion in their investigations, Defendants are immune from suit pursuant to S.C. Code Ann. § 15-78-60(5).

C. § 15-78-60(3) - EXECUTION OF A COURT ORDER

S.C. Code Ann. § 15-78-60(3) states that there is no liability for a loss resulting from "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." Here, after a complete investigation was finished by SLED, the matter was turned over to the Attorney General's office. Then, Associate Chief Magistrate James B. Gosnell signed a warrant for Magwood's arrest. (See Arrest Warrant F-969830). Magwood was arrested based on the facially valid warrant. Therefore, there is no liability for the actions taken to execute the warrant.

II. FALSE ARREST

As part of his claim for Abuse of Process, Magwood states in his complaint that he was falsely arrested. To the extent that this may be read to allege false arrest, Defendants are entitled to summary judgment on this cause of action as well. To prevail on a cause of action for false arrest, Magwood must establish: "(1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Yarborough v Montgomery*, 554 F. Supp. 2d 611, 620 (D.S.C. 2008) (quoting *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006)). In this case, Magwood was intentionally restrained by officers at the time of his arrest. The only determination for the court is whether the restraint was unlawful. "The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest." *Law*, 368 S.C. at 440, 629 S.E.2d at 651. In this case, the South Carolina

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Attorney General's Office made the determination to pursue prosecution. The Attorney General's Office requested Agent Ghent apply for a warrant for Magwood's arrest, and Ghent complied. The warrant was signed by Associate Chief Magistrate James B. Gosnell on May 7, 2009, and Magwood was then arrested pursuant to the facially valid warrant.

South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution. *Law*, 368 S.C. at 436, 629 S.E.2d at 649. Although whether probable cause exists is ordinarily a question for the jury, it may be decided as a matter of law when the evidence yields but one conclusion. *McBride v. Sch. Dist. Of Greenville Cnty.*, 389 S.C. 546, 567, 698 S.E.2d 845, 855-56 (Ct. App. 2010) (citing *Law*, 368 S.C. at 436, 629 S.E.2d at 649). Magwood was indicted by the grand jury in this matter. Further, he was taken to trial, and through the trial process to the conclusion with a jury verdict. This series of events is prima facie evidence of probable cause, and thus Magwood cannot show an unlawful restraint by Defendants. Therefore, Defendants are entitled to summary judgment on Magwood's False Arrest claim.

III. MALICIOUS PROSECUTION

In order to recover in an action for malicious prosecution, the Magwood must show (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) termination of such proceeding in the plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

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In this matter, the officers performed investigations as assigned to them by their respective law enforcement agencies. The Charleston County Sheriff's Office investigation was performed pursuant to *Garrity* and was never even provided to the prosecuting agency. The report prepared by Agent Ghent contains no conclusions or recommendations. The purpose of a SLED investigation is to have an outside agency collect evidence and interview witnesses. They do not make recommendations, decisions, or conclusions about wrongdoing. Because of this, there is no evidence that any of the officers or their agencies made any decisions about whether to pursue criminal charges against Magwood. Therefore, the plaintiff fails with regard to the second element. The court also finds that there is no evidence of malice.

IV. ABUSE OF PROCESS

The essential elements of abuse of process are (1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding. *Pallares v. Seinar*, App. Case No. 2011-201026, Sup. Ct. Op. No. 27364 (S.C. March 12, 2014) (citing *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010); *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 492 S.E.2d 103 (1997); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988)).

The first element, an "ulterior purpose," exists if the process is used to secure an objective that is "not legitimate in the use of the process." *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012) (citation omitted). "One who uses a legal process, whether criminal or civil, against another *primarily* to accomplish a purpose for which it is not designed, is subject to liability for harm caused by the abuse of process." *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct. App. 2002) (quoting Restatement (Second) of Torts § 682 (1977)). The collateral

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objective must be the “sole or paramount reason for acting.” *Id.* at 75, 567 S.E.2d at 256. An allegation that a party had a “bad motive” or an “ulterior purpose” in bringing an action, standing alone, is insufficient to sustain an abuse of process claim. *D.R. Horton*, 398 S.C. at 551, 730 S.E.2d at 352 (citing *Food Lion*, 351 S.C. at 74, 567 S.E.2d at 255). Moreover, no action lies where a person has an incidental or concurrent motive of spite or merely seeks to gain a collateral advantage from the process. *Food Lion*, 351 S.C. at 74–75, 567 S.E.2d at 255–56. In the present case, Magwood is suing Ghent, Anderson, and Antonio for Abuse of Process. In his complaint, Magwood alleges that these defendants’ actions “were carried out for ulterior purposes,” Compl. ¶31, and that they “willfully used the legal process espoused above solely for such ulterior purposes.” Compl. ¶32. Magwood does not state what the ulterior purposes were, which is insufficient. *See D.R. Horton*, 398 S.C. at 551, 730 S.E.2d at 352.

Abuse of process focuses on events occurring outside the process; the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. *D.R. Horton*, 398 S.C. at 551, 730 S.E.2d at 352; *see also Hainer*, 328 S.C. at 136, 492 S.E.2d at 107 (stating the improper purpose usually takes the form of coercion to obtain a collateral advantage). The plaintiff has presented no evidence that Anderson, Antonio, or Ghent were trying to coerce him to do or surrender anything. Agent Ghent had never even met Magwood before he was asked to investigate this matter. (Ghent Dep. 64:13-15). Anderson and Antonio were internal affairs officers for the Sheriff’s Office and but for their positions, they would never have been involved in this investigation. (Antonio Dep. 38:21-24). There is no evidence that either Anderson or Antonio ever had any improper purpose with regard to their investigation of Magwood. (Antonio Dep. 36:6-37:9). Additionally, with regard to the “process” itself, these individual defendants only performed investigations and wrote reports.

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The second aspect required is a “willful act.” A willful act has been described as “[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process.” *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107. The “willful act” element consists of three components: (1) “a ‘willful’ or overt act”; (2) “in the use of the process”; (3) “that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Food Lion, Inc.*, 351 S.C. at 71, 567 S.E.2d at 254 (citations omitted). There is no such evidence of that in this case. There is no evidence of any improper willful act or any illegitimate collateral objective by the individual defendants. (Anderson Dep. 80:7-10). These were law enforcement officers who were asked to perform an investigation into a complaint of wrongdoing. They performed their investigations and turned over their findings to other people who then made the decision on what would be done. (Ghent Dep. 61:24-62:5; Anderson Dep. 81:16-25). There is no evidence to support the cause of action for Abuse of Process against Ghent, Anderson, or Antonio, and therefore summary judgment is proper.

V. CIVIL CONSPIRACY BY THE INDIVIDUAL DEFENDANTS

Magwood has alleged that defendants Anderson, Antonio, and Ghent came together in a conspiracy for the purpose of injuring the plaintiff by fraud. (Compl., ¶42). Defendants Anderson and Antonio are both employees of the Charleston County Sheriff’s Office. Therefore, the Intracorporate Conspiracy Doctrine applies in this matter as to the two of them. “[N]o conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.” *McMillan v. Oconee Mem. Hosp., Inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 887 (2006).

Defendants Anderson and Antonio in this case fall squarely within the intracorporate

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conspiracy doctrine. First, Magwood has failed to allege that any officer was acting outside of his normal duties or that he was not acting in the course and scope of his employment. There is no allegation of any independent stake in achieving the objective of the alleged conspiracy and no evidence of any personal animus or ulterior purpose by Anderson or Antonio. *See Liverett v. Island Breeze Intern. Inc.*, No. 2:12-cv-1285-PMD, 2012 WL 3264563 (D.S.C. August 9, 2012) (dismissing civil conspiracy claim based on intracorporate conspiracy doctrine for plaintiff's failing to allege facts that defendants acted outside normal corporate duties or had any independent stake in achieving objective of alleged conspiracy). Further, Magwood has failed to allege any special damages.

The allegation that Anderson and/or Antonio conspired with Ghent is also not supported by any evidence. Ghent testified that he never spoke with or met with Inspector Antonio. (Ghent Dep. 66:23-25, Ex. L). Agent Ghent also never spoke with Inspector Anderson about the content of his investigation. (Ghent Dep. 67:1-4, Ex. L). Although Agent Ghent was aware that the Charleston County Sheriff's Office was performing an investigation, he was not privy to the information they gathered. (Ghent Dep. 67:5-21, Ex. L). For all intents and purposes, the two investigations were parallel in that they had two different purposes, and the information obtained in the Sheriff's Office investigation was never shared with Agent Ghent or SLED. (Ghent Dep. 67:22-68:12, Ex. L). Agent Ghent, Inspector Anderson, and Inspector Antonio never spoke or acted to cause Magwood damage to his reputation. (Ghent Dep. 68:17-69:12, Ex. L; Anderson Dep. 80:17-20, Ex. G; Antonio Dep. 36:15-21, Ex. M).

VI. DEFAMATION AND SLANDER.

"The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or

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dealing with him.” *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998) (Toal, J., concurring); see also *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006); *Fleming*, 350 S.C. at 494, 567 S.E.2d at 860.

Agent Ghent never made any statements about Magwood outside the course and scope of his investigation or any statements that he knew or believed to be false. (Ghent Dep. 66:14-21). Investigators Anderson and Antonio also testified that they never made any statements about Magwood outside the course of their investigation. They also testified that they never made any statements they knew or believed to be false or untrue.

Anderson, Antonio, and Ghent were at all times relevant to this matter acting in the course and scope of their employment as law enforcement officers officially investigating another officer's wrongdoing. Any communications they may have made regarding Magwood are privileged and no cause of action may arise out of such communications. S.C. Code Ann. § 23-23-90. “An oral or written report, document, statement, or other communication that is written, made, or delivered concerning the requirements or administration of [Chapter 23 of Title 23 of the S.C. Code] must not be the subject of or basis for an action at law or in equity in any court of the State if the communication is between: (1) law enforcement agencies, their agents, employees, or representatives[.]” S.C. Code Ann. § 23-23-90. Chapter 23 of Title 23 of the South Carolina Code sets standards for law enforcement and criminal justice service, S.C. Code

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Ann. § 23-23-10(c), and provides for the suspension, revocation, or restriction of a law enforcement officer's credentials, S.C. Code Ann. § 23-23-80. Thus, the communications arising out of the investigation into Magwood's wrongdoing concern Chapter 23 of Title 23 of the South Carolina Code, and therefore such communications are privileged and cannot be the basis for any action at law, including this defamation action, and summary judgment is proper for Anderson, Antonio, and Ghent.

VII. PUNITIVE DAMAGES

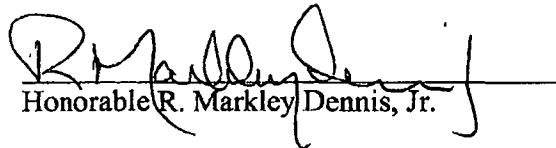
Punitive damages are barred against a governmental entity by S.C. Code Ann. 15-78-120(b), which mandates that "[n]o award for damages under this chapter shall include punitive or exemplary damages or interest prior to the judgment." Therefore, all claims for punitive damages against Defendants are dismissed.

CONCLUSION

IT IS HEREBY ORDERED that the Gross Negligence cause of action against individuals Ghent, Anderson and Antonio is voluntarily dismissed.

IT IS FURTHER ORDERED that summary judgment be granted to all defendants on all of the remaining causes of action as set forth above.

AND IT IS SO ORDERED!!


Honorable R. Markley Dennis, Jr.

August 14, 2014

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Eugene Magwood

Plaintiff(s)

vs.

J. Al Cannon, Jr. in his official capacity as
 Sheriff of Charleston County, Investigator
 Anderson, Investigator Antonio, Charles Ghent,
 and South Carolina Law Enforcement Division

Defendant(s)

CIVIL ACTION COVERSHEET

2013-CP-10-3669

(Please Print)

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb (610) ☐ Medical (620) ☒ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (670)		

Submitting Party Signature: _____

Date: June 18, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
DOCKET NO. 2013-CP-10-

Eugene Magwood,)
)
Plaintiff,)

v.)

J. Al Cannon, Jr. in his official capacity as)
Sheriff of Charleston County, Investigator)
Anderson, Investigator Antonio, Charles)
Ghent, and South Carolina Law)
Enforcement Division,)

Defendants.)

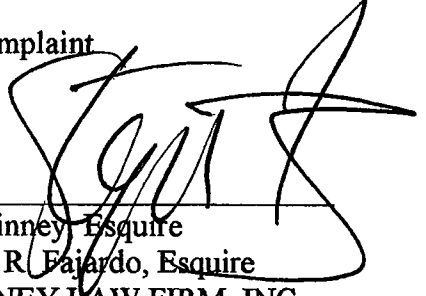
SUMMONS

(Jury Trial Requested)

FILED
2013 JUN 20 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE EACH HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint in the subscribed Finney Law Firm, Inc , 2117 Park Street, Columbia, South Carolina, 29201, within THIRTY (30) DAYS after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint



Jerry L. Finney, Esquire
Stephanie R. Fajardo, Esquire
THE FINNEY LAW FIRM, INC.
2117 Park Street
Columbia, SC 29201
Phone (803) 254-7408
Fax: (803) 254-1941
Attorneys for the Plaintiff

Columbia, South Carolina
June 18, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
DOCKET NO. 2013-CP-10-

Eugene Magwood,)
)
Plaintiff,)

w)

J. Al Cannon, Jr. in his official capacity as)
Sheriff of Charleston County, Investigator)
Anderson, Investigator Antonio, Charles)
Ghent, and South Carolina Law)
Enforcement Division,)
)
Defendants.)

COMPLAINT

(Jury Trial Requested)

2013 JUN 20 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff named herein, complaining of each of the defendants named herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff, Eugene Magwood, is a citizen and resident of Charleston County, South Carolina
2. The defendant, J Al Cannon, Jr , in his official capacity as Sheriff of Charleston County, hereinafter known as "Cannon," is the representative of the Charleston County Sheriff's Office, a governmental entity and/or political subdivision within the meaning of the South Carolina Tort Claims Act and existing under the laws of the State of South Carolina. Charleston County Sheriff's Office has facilities located in Charleston County, South Carolina with its headquarters located at 3505 Pinehaven Drive, Charleston Heights, South Carolina. At all times relevant to this cause of action, this defendant acted and carried on business by and through his agents, servants, and/or employees. Additionally, these agents, servants, and/or employees were operating within the scope of their officially assigned and/or compensated duties.

3. The defendant Investigator Anderson, upon information and belief is a citizen and resident of Charleston County, South Carolina. At all times hereinafter mentioned, Defendant Anderson was an agent, servant and/or employee of Defendant Cannon.

4. The defendant Investigator Antonio, upon information and belief is a citizen and resident of Charleston County, South Carolina. At all times hereinafter mentioned, Defendant Antonio was an agent, servant and/or employee of Defendant Cannon.

5. The Defendant, South Carolina Law Enforcement Division, hereinafter known as "SLED," is a governmental entity and/or political subdivision within the meaning of the South Carolina Tort Claims Act and existing under the laws of the State of South Carolina. SLED has authority over the entire state of South Carolina, to include Charleston County, South Carolina. SLED's headquarters are located at 4400 Broad River Road, Columbia, South Carolina. At all times relevant to this cause of action, this defendant acted and carried on business by and through his agents, servants, and/or employees. Additionally, these agents, servants, and/or employees were operating within the scope of their officially assigned and/or compensated duties. At all times hereinafter mentioned Defendant SLED's acts, omissions, and occurrences giving rise to this lawsuit occurred in Charleston County, South Carolina.

6. The Defendant Charles Ghent, upon information and belief is a citizen and resident of Richland County, South Carolina. At all times hereinafter mentioned, Defendant Ghent was an agent, servant, and/or employee of Defendant SLED. At all times hereinafter mentioned Defendant Ghent's acts, omissions, and occurrences giving rise to this lawsuit and complained occurred in Charleston County, South Carolina.

7 This court has proper jurisdiction and venue over this action because all of the acts, omissions, and occurrences giving rise to this lawsuit occurred in Charleston County, South Carolina.

FACTUAL BACKGROUND

8. Prior to May 7, 2009, the Plaintiff was employed by Defendant Cannon as a member of the Charleston County Sheriff's Office. The Plaintiff was a highly successful member of the police department having attained the rank of detective and having received various awards and decorations for her service.

9. On January 7, 2007, Eugene Magwood was a Detective with the Charleston County Sheriff's Department, and, as such, part of his job was to investigate allegations of crimes.

10. Pursuant to his investigations of reported allegations of crimes, on January 7, 2007 the Plaintiff went to the residence of Catherine Boney who was an alleged victim of a sexual assault to interview her.

11. During the course of this interview, Detective Magwood showed Ms. Boney a photographic lineup for her to identify the alleged suspect.

12. After being shown the photographic lineup, Ms. Boney identified the alleged suspect, initialed and dated next to the picture.

13. Sometime after January 7, 2007, due to a complaint that Detective Magwood forged Ms. Boney's signature on the photographic lineup, an investigation was begun by all Defendants into these allegations.

14. Although during the Defendants' investigations it was discovered that these allegations had no merit, on May 7, 2009, Detective Magwood was arrested, charged with misconduct in office, and accused of being a liar and a criminal

15. The Warrant, numbered F-969830, alleges that the Plaintiff committed the crime of misconduct in office "in that Magwood did knowingly and willfully provide false information in this investigative report in the form of a photo lineup purported to have been signed by a witness in the investigation. That late in pre-trial meetings with the Solicitor's Office, Magwood did knowingly and willfully provide

false information to an Assistant Solicitor and an investigator for the Solicitor's Office regarding the investigation and the accompany investigative report."

16. This arrest warrant was prepared by Defendant Ghent after investigation by Defendant Ghent and Defendant SLED as well as Defendants Cannon, Antonio, and Anderson which detailed the lack of evidence against Detective Magwood.

17. However, despite this actual knowledge, the Defendants continued and facilitated the prosecution of the Plaintiff.

18. The Plaintiff was ultimately brought to trial on the charge of misconduct in office on June 29, 2011 through June 30, 2011

19. During the course of the prosecution of this matter, the allegations made by the Defendants against the Plaintiff changed several times as the Defendants attempted to fabricate a legitimate case against the Plaintiff.

20. The Defendants also attempted to ruin the Plaintiff's reputation by making false and defamatory statements about the Plaintiff

21. At the trial, Defendants assisted in propounding different versions of the events Plaintiff was accused of which differed from previous versions of these events. These versions were attempts to subvert the legal process for ulterior purposes.

22. However, at said trial, the Plaintiff was found NOT GUILTY of all charges by a jury of his peers.

FOR A FIRST CAUSE OF ACTION:
AS TO ALL DEFENDANTS

Malicious Prosecution

23. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through twenty-two (22) as if fully set forth herein The Defendants, acting

individually, jointly and severally as agents, servants and/or employees of each other are liable to the Plaintiff for malicious prosecution.

24. The Plaintiff, Eugene Magwood, was improperly, illegally and falsely arrested, without probable cause on May 7, 2009.

25 The prosecution of the Plaintiff, Eugene Magwood, was maintained and continued by these Defendants despite of these Defendants' actual knowledge of the Plaintiff's innocence.

26 The Defendants knew, should have known, and most likely participated in the presentation of false and inaccurate evidence supporting the prosecution of the Plaintiff.

27. The Defendants' above-referenced actions were made with malice

28. The Plaintiff was completely exonerated of all charges brought against him by the defendants.

29. As a direct and proximate result of each Defendant's actions, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; attorney's fees; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation in his trade and occupation, degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering. Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE (as to the individual Defendants only) damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION:
AS TO DEFENDANTS ANDERSON, ANTONIO AND GHENT

Abuse of Process

30. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through twenty-nine (29) as if fully set forth herein. Defendant Anderson and Defendant Antonio, acting individually, jointly and severally as agents, servants and/or employees of

each other as well as Defendant Ghent, acting individually, jointly and severally with Defendants Anderson and Antonio, are liable to the Plaintiff for abuse of process.

31. Defendant Anderson's, Defendant Antonio's, and Defendant Ghent's actions espoused above were carried out for ulterior purposes

32. Defendant Anderson, Defendant Antonio, and Defendant Ghent willfully used the legal process espoused above solely for such ulterior purposes.

33. As a direct and proximate result of the actions of Defendant Anderson, Defendant Antonio, and Defendant Ghent, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential, attorney's fees; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation in his trade and occupation, degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering as a result of the Defendants' actions. Furthermore, the Plaintiff has been damaged in these specified and other ACTUAL, COMPENSATORY and PUNITIVE damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION:
AS TO DEFENDANTS ANDERSON, ANTONIO, AND GHENT

Defamation and Defamation Per Se

34. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through thirty-three (33) as if fully set forth herein. Defendant Anderson and Defendant Antonio, acting individually, jointly and severally as agents, servants and/or employees of each other as well as Defendant Ghent, acting individually, jointly and severally with Defendants Anderson and Antonio, are liable to the Plaintiff for defamation and defamation *per se*.

35. Defendant Anderson, Defendant Antonio, and Defendant Ghent each made statements against the Plaintiff with defamatory meaning and statements that were defamatory on each statement's face.

36. Each of these defamatory statements contained therein concern and explicitly identify the Plaintiff and were intentionally and deliberately published to third parties by these defendants.

37. Defendant Anderson, Defendant Antonio, and Defendant Ghent each published these defamatory statements with malice, reckless disregard for the truth, and without the Defendant making a reasonable effort to first determine the truth or falsity of the allegations it contained.

38. Each of the defamatory statements made about the Plaintiff is false.

39. These defamatory statements constitute defamation *per se* in that the defamatory statements falsely accuse the Plaintiff of criminal activity and falsely accuse the Plaintiff of impropriety and inadequacy in the performance of his trade and/or profession.

40. As a direct and proximate result of the actions of Defendant Anderson, Defendant Antonio, and Defendant Ghent, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; attorney's fees; degradation of the Plaintiff's good name, degradation of the Plaintiff's reputation in his trade and occupation; degradation of the Plaintiff's personal reputation in the community, and embarrassment, humiliation, indignity, and mental pain and suffering as a result of the defendants' actions. Furthermore, the Plaintiff has been damaged in these specified and other ACTUAL, COMPENSATORY and PUNITIVE damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION:
AS TO DEFENDANTS ANDERSON, ANTONIO AND GHENT

Civil Conspiracy to Commit Fraud

41. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through forty (40) as if fully set forth herein. Defendant Anderson, Defendant Antonio, and Defendant Ghent are liable to the Plaintiff for civil conspiracy to commit fraud.

42 Defendant Anderson's, Defendant Antonio's, and Defendant Ghent's actions espoused above constitute an actionable combination of two or more persons for the purpose of injuring the plaintiff by fraud.

43. As a result of this civil conspiracy to commit fraud entered into by Defendant Anderson, Defendant Antonio, and Defendant Ghent, the Plaintiff has suffered special damages aside and apart from the damages espoused above.

FOR A FOURTH CAUSE OF ACTION:
AS TO ALL DEFENDANTS

Negligence

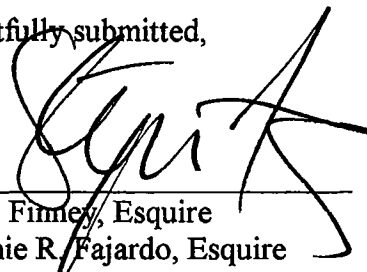
44. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through forty-three (43) as if fully set forth herein. The Defendants, acting individually, jointly and severally as agents, servants and/or employees of each other are liable to the Plaintiff for each Defendant's negligence.

45. The above set forth incidents and Plaintiff's resulting injuries and damages were proximately cause by the negligent, grossly negligent, reckless, willful and wanton acts of each and every Defendant herein named, individually and/or by and through each Defendant's agents, servants, contractors and/or employees.

46. As a direct and proximate result of the actions of each and every Defendant named herein, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; attorney's fees; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation in his trade and occupation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, humiliation, indignity, and mental pain and suffering. Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE (as to the individual Defendants only) damages in an amount to be determined by a jury

WHEREFORE, the Plaintiff Eugene Magwood prays for a judgment against each and every Defendant in a sum sufficient to compensate him for all ACTUAL and CONSEQUENTIAL damages that he has suffered, for such PUNITIVE damages that a jury may reasonably award against Defendant Anderson, Defendant Antonio, and Defendant Ghent individually, for the costs of this action to be taxed against each and every Defendant, and for such other relief as the Court deems just and proper.

Respectfully submitted,



Jerry L. Finney, Esquire
Stephanie R. Fajardo, Esquire
THE FINNEY LAW FIRM, INC.
2117 Park Street
Columbia, South Carolina 29201
Phone: (803) 254-7408
Fax: (803) 254-1941
Attorneys for the Plaintiff

Columbia, South Carolina
June 18, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

ANSWER

(Jury Trial Demanded)

Come now the defendants, above named, and respectfully answer the Plaintiff's
Complaint as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specially not admitted herein should be deemed denied.

1. Upon information and belief, admit.
2. Calls for legal conclusions requiring no response and is therefore denied.
3. Admit.
4. Admit.
5. Calls for legal conclusions requiring no response and is therefore denied.
6. Deny that Agent Ghent is a resident of Richland County. Further deny that all of Ghent's actions related to the subject matter of this lawsuit occurred in Charleston County. Admit remainder of paragraph.

7. This is a statement of law requiring no response.
8. Admit only that prior to May 7, 2009, the plaintiff was employed by the Charleston County Sheriff's Office and was a detective.
9. Admit.
10. Admit that on or about January 7, 2007, plaintiff was investigating the alleged sexual assault of Catherine Boney, and that he went to her home to interview her.
11. Deny.
12. Deny.
13. Admit only that both SLED and the Charleston County Sheriff's Office each investigated separately.
14. Admit that Plaintiff was arrested on or about May 7, 2009. Deny remainder of paragraph.
15. Admit warrant speaks for itself.
16. Admit that Ghent prepared arrest warrant. Deny that there was lack of evidence for the warrant. Deny that Ghent had any information from the Charleston County Sheriff's Office investigation.
17. Deny.
18. Admit that the plaintiff was ultimately brought to trial by the South Carolina Attorney General's Office.
19. Deny.
20. Deny.
21. Deny.
22. Admit.
23. Requires no response.

24. Deny.
25. Deny.
26. Deny.
27. Deny.
28. Deny.
29. Deny.
30. Requires no response.
31. Deny.
32. Deny.
33. Deny.
34. Requires no response.
35. Deny.
36. Deny.
37. Deny.
38. Deny.
39. Deny.
40. Deny.
41. Requires no response.
42. Deny.
43. Deny.
44. Requires no response.
45. Deny.
46. Deny.

FOR A SECOND DEFENSE
(Rules 8 and 12)

47. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
**(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Service of Process,
Statute of Limitations, No Proximate Cause)**

48. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, service of process, statute of limitations, and the acts of the defendants were not the proximate cause of the injuries.

FOR A FOURTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

49. As to any violation of common law or state law, the defendants assert all applicable provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq.

FOR A FIFTH DEFENSE
(Sole Negligence/Comparative Negligence)

50. Defendants assert that the plaintiff is solely negligent for his suffering and injuries or in the alternative is comparatively negligent.

FOR A SIXTH DEFENSE
(Entity Immunity)

51. To the extent that the individually named defendants may be entitled to qualified

immunity, the entity itself, through its elected official and supervisors, should likewise not be held accountable on any failure to train, supervise or policy violations if indeed the state of the law was unclear.

FOR A SEVENTH DEFENSE
(Absence of Bad Faith, Malice or Corrupt Motive)

52 The defendants during the performance/non-performance of the alleged actions did not perform any act/inaction in bad faith, with corrupt motives, or in a malicious manner, and the answering defendants are therefore immune from suit.

FOR AN EIGHTH DEFENSE
(Judicial/Quasi-Judicial Immunity)

53. The defendants were carrying out an order of the court and should be protected by judicial and quasi-judicial immunities both absolute and qualified.

FOR A NINTH DEFENSE
(Intracorporate Immunity)

54 Plaintiff's conspiracy claims are barred as he cannot establish the existence of any conspiracy involving the answering defendants; further the Intracorporate conspiracy doctrine bars the claims as set forth in the Complaint.

FOR A TENTH DEFENSE
(Truth/Qualified Privilege)

55. Any statements regarding the plaintiff were made in good faith and with proper motives. The statements were true and the defendants enjoy qualified privilege since the publication was

made in a proper manner and to proper parties.

FOR AN ELEVENTH DEFENSE
(Intervening and Superseding Negligence)

56 That if the defendants were negligent, which is specifically denied, the injuries and damages sustained by the plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding acts or omissions of others for which these defendants are not liable.

FOR A TWELFTH DEFENSE
(Punitives)

57. Punitive damages are not recoverable against the answering defendants not only due to the unconstitutionality, but also in accordance with S.C. Code Ann. §15-78-120(b).

FOR A THIRTEENTH DEFENSE:
(South Carolina Frivolous Civil Proceedings Sanctions Act)

58. Under the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36-10 et seq of the South Carolina Code of Laws, this defendants are entitled to recover their attorney's fees and court costs incurred in litigating this matter.

Wherefore, having fully answered the Complaint, the Defendants hereby pray that the Complaint be dismissed with prejudice; that plaintiff be responsible for all costs and fees associated with defending this action; for all such further relief as this court deems just and

proper. In addition, the Defendants reserve the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.



SANDRA J. SENN
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
843-556-4045
fax: 843-556-4046

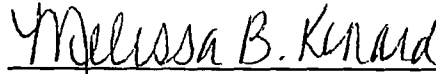
Attorney for Defendants

August ^{1th} 16, 2013

Charleston, South Carolina

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the above and foregoing to counsel of record in said proceeding to his office address with sufficient postage affixed hereto, this 16 day of August, 2013



Melissa B Kinard

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Eugene Magwood,

Plaintiff,

vs.

J. Al Cannon, Jr., et al

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-3669

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Stephanie R. Fajardo, Esquire, Bar No. 80159

Address:

2117 Park Street, Columbia, SC 29201

Phone: (803) 254-7408 Fax (803) 254-1941

E-mail: stephanie.r.fajardo@gmail.com Other: _____

Defendant's Attorney:

Robin L. Jackson, Esquire, Bar No. 16948

Address:

P.O. Box 12279

Charleston, SC 29422

Phone: (843) 556-4045 Fax (843) 556-4046

E-mail: Robin@sennlegal.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to for Summary Judgment

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

04/11/2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Defendants J. Al Cannon, Jr., in his official capacity as Sheriff of Charleston County, Investigator Anderson, Investigator Antonio, Charles Ghent, and South Carolina Law Enforcement Division by and through their undersigned counsel, will move before this honorable court at a time and place scheduled by this court for an Order granting Summary Judgment in favor of the Defendants. The Defendants bring this Motion pursuant to South Carolina Rules of Civil Procedure Rules 12 and 56, and applicable case law. The basis for this motion is:

1. There is no evidence of Negligence or Gross Negligence on the part of the defendants;
2. There is no evidence of False Arrest;
3. There is no evidence of Malicious Prosecution by the defendants;
4. The defendants are entitled to the protections of the S.C. Tort Claims Act;
5. Antonio, Anderson and Ghent are not proper defendants pursuant to the South Carolina Tort Claims Act;
6. Sheriff Cannon is entitled to summary judgment pursuant to the immunities created by the

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-10-3669

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

Certificate of Service

This is to certify that I have served counsel for the plaintiff in the foregoing matter with a
copy of Defendants' Motion for Summary Judgment by:

☒ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate
postage thereon

☐ handing counsel a copy thereof

☐ by fax transmittal

☐ by E-mail

This 11th day of April, 2014

By Amy Marie Hinty
Amy Marie Hinty

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Inspector
Anderson, Inspector Antonio, Charles Ghent,
and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

**DEFENDANTS' MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Come now Defendants, Sheriff J. Al Cannon, Jr., Inspector Anderson, Inspector Antonio, Agent Ghent, and South Carolina Law Enforcement Division ("SLED") (hereinafter collectively referred to as "Defendants"), respectfully moving for summary judgment against Eugene Magwood ("Plaintiff"), as they have become embroiled in this litigation through no fault of their own. Plaintiff has alleged Malicious Prosecution, False Arrest, Abuse of Process, Defamation, Defamation *per se*, Civil Conspiracy to Commit Fraud, and Negligence/Gross Negligence. Defendants deny all of the allegations against them and assert that they are entitled to summary judgment.

FACTS

In 2006, Plaintiff, then a detective with the Charleston County Sheriff's Office, was assigned to investigate an allegation of rape by Catherine Boney. During the investigation, Plaintiff developed a suspect, Maurice Prioleau. Based upon a report supplement dated

September 21, 2008, Plaintiff went to the home of Boney and showed her photos. It is disputed whether he showed her a single photo first, or a 6-pack lineup, but for purposes of summary judgment Defendants will use Plaintiff's version that he showed her the 6-pack lineup. (See Lineup, Ex. A).

Later, during the time the assistant solicitor assigned to the case, Greg Voigt, was preparing the case for trial, he and his investigator, Ryan Kelly, met with Ms. Boney on several occasions. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). During one meeting, Ms. Boney mentioned being shown a photo of the suspect. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). When asked, she said she was certain she had only been shown a single photo. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). In order to refresh her memory, she was shown the six photo lineup. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). Ms. Boney advised that the writing on the lineup was not hers and that she had never been shown the lineup by Plaintiff. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). Ms. Boney even provided a handwriting sample. (Handwriting Sample, Ex. D).

Mr. Voigt and Mr. Kelly then met with Plaintiff about trial. They specifically asked Plaintiff about the photo lineup. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). Plaintiff told them Boney had circled, initialed, timed, and dated the photo. When Voigt and Kelly told Plaintiff that Boney denied doing so, he said she was incorrect. (Voigt Aff., Ex. B; Kelly Aff., Ex. C). Voigt showed Plaintiff the writing on the lineup and the writing he wrote on Maurice Prioleau's statement. When Voigt questioned him about the similarities, Plaintiff again said the victim had signed the lineup and was mistaken. (Voigt Aff., Ex. B). After the meeting, Kelly walked Plaintiff out and asked him for clarification, pointing out that if there is not a logical explanation, he would risk being called a liar on the stand. Plaintiff insisted that none of it was his

handwriting and the victim was wrong. (Kelly Aff., Ex. C).

Based on their concerns about the lineup, Assistant Solicitor Voigt went to the Sheriff's Office to report his suspicions that Plaintiff had put the victim's initials and date on the lineup and may not have even shown her the lineup. (Voigt Aff., Ex. B). The Sheriff's Office, so as to avoid an appearance of impropriety, asked SLED to investigate the allegations against Plaintiff. (See Letter to SLED, Ex. E). SLED received the request and assigned the investigation to Agent Charles Ghent. Inspector Michael Anderson was to be his liaison with the Sheriff's Office. Agent Ghent reviewed all of the documentation, interviewed every person who it was reported to him to have information, and prepared a report. His report is a compilation of the memoranda of interviews and documents collected. It does not make any conclusions or determinations of wrongdoing. (See Ghent Report, Ex. F). Ghent submitted his report to his supervisors for approval and then it was provided to the Solicitor's Office for a determination of criminal wrongdoing. The Solicitor's Office determined that they had a conflict as the underlying complaint had come from their office, so they referred the matter to the Attorney General's Office for a determination about whether Plaintiff should be prosecuted.

After the SLED report was complete, the Sheriff's Office conducted an internal affairs ("IA") investigation, starting in April 2009. Inspector Anderson was assigned to perform the investigation and Inspector Antonio was assigned to assist. (Anderson Dep. 32:16-25, Mar. 11, 2014, Ex. G). Plaintiff was interviewed on May 27, 2009. Though he had previously said that Catherine Boney had initialed, dated, and put the time on the lineup, Plaintiff changed his story and told Anderson and Antonio that he had, in fact, put the date and time on the lineup, but that Boney had initialed it. Plaintiff also told investigators that he had shown Boney a single photo

only after the lineup, which contradicted what Boney had told the IA investigators, the Assistant Solicitor, and Agent Ghent. This also contradicted what Lt. Watson and Sgt. Zimmer said Plaintiff told them (See Watson Aff., Ex. H; Zimmer Aff., Ex. I). Additionally, Plaintiff stated that the date and time on the lineup were accurate based on his watch at the time. This contradicted the computer print-out of the lineup photos, which was done at the detention center. The computer print-out is dated, 11/7/07, 3:45pm, which is five hours and five minutes after the time written on the lineup, 11/7/07, 10:40am. (Lineup, Ex. A). Plaintiff had no explanation for this. Finally, though Plaintiff had told Anderson and Antonio that he put the date and time on the lineup, his report clearly states that the witness did so. (See Supplement, Ex. J).

The IA investigation also had a handwriting analysis performed. The outcome of the analysis was that Boney did not write the initials, time, or date. (SLED Lab Report, Ex. N). Plaintiff was determined to have written the date and time, and the analysis indicated that Plaintiff wrote the initials. (Ex. N).

Based on the interviews and the handwriting analysis, the Office of Professional Standards concluded that the complaint against Plaintiff was sustained. It also concluded that Plaintiff violated the policies and procedures of the Sheriff's Office, specifically Procedure 1-09(III)(A)(34), "Truthfulness" and Procedure 1-09(III)(A)(10), "Unsatisfactory Performance."

The Attorney General's Office made the independent decision to prosecute Plaintiff. On May 7, 2009, Plaintiff was charged with Misconduct in Office. Neither SLED nor the Charleston County Sheriff's Office was consulted or participated in this decision. While preparing for the prosecution, the Attorney General's Office requested a handwriting analysis be performed. Because the Internal Affairs investigation was performed pursuant to *Garrity v. New*

Jersey, 385 U.S. 493 (1967), no information gathered directly from Plaintiff in the Internal Affairs investigation was shared with SLED, the Solicitor's Office, or the Attorney General's Office. (Anderson Dep., 50:20-51:7, Ex. G). Therefore, the Attorney General's Office had to obtain their own handwriting analysis. Both Boney and Plaintiff's handwriting samples were analyzed. The analysis procured by the Attorney General's Office also showed that Catherine Boney did not write any of the writing on the photo lineup. (SLED Lab Report, Ex. O). Plaintiff was determined to have probably written the date and time on the lineup, and there was no conclusion as to whether he was the writer of the initials.

Plaintiff was prosecuted and during his trial, Catherine Boney changed her testimony and claimed that she was very upset and could not remember whether she had signed the lineup or not. Plaintiff was not convicted.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Rule 56(c), SCRPC); accord *Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); see also *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E. 2d 187, 191 (1997). "Summary judgment is appropriate when there

is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law,” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), and “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

LAW AND ARGUMENT

Plaintiff has alleged Malicious Prosecution, False Arrest, Abuse of Process, Defamation, Defamation *per se*, Civil Conspiracy to Commit Fraud, and Negligence/Gross Negligence. Defendants deny all of the allegations against them, and assert that Plaintiff was solely responsible for his actions, which were outside the course and scope of his employment and in violation of the Sheriff’s Office policies and procedures.

I. SUMMARY JUDGMENT SHOULD BE ENTERED FOR ANDERSON, ANTONIO, AND GHENT ON THE STATE LAW NEGLIGENCE/GROSS NEGLIGENCE CLAIMS BECAUSE THEY ARE NOT PROPER DEFENDANTS PURSUANT TO THE TORT CLAIMS ACT.

Anderson, Antonio, and Ghent, named defendants, are entitled to summary judgment on the state law negligence/gross negligence claims pursuant to the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-70(c), states the following:

On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting . . . in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

See also Proveaux v. Med. Univ. of S.C., 326 S.C. 28, 482 S.E.2d 774 (1997) (emphasis added) (granting summary judgment to hospital employee based on his being immune from suit under S.C. Code Ann. § 15-78-70(c)). At all times relating to the allegations in the Complaint, Antonio and Anderson were employees of the Charleston County Sheriff and Ghent was an employee of SLED. They were each acting in the capacity of their employment as law enforcement officers. Therefore, to the extent that there are any state law negligence or gross negligence claims against them, they are entitled to summary judgment on them. Sheriff Cannon is the properly named defendant for such causes of action against Antonio and Anderson and SLED is the properly named defendant for such causes of action against Ghent. Both are already identified as defendants in this matter.

Further, to the extent that Plaintiff alleges the intentional torts of Malicious Prosecution, False Arrest, Abuse of Process, Defamation, Defamation *per se*, and Civil Conspiracy to Commit Fraud against these defendants, there is absolutely no evidence that any of these defendants acted outside the course and scope of their employment to intentionally injure or damage Plaintiff. Malicious Prosecution, False Arrest, Abuse of Process, Defamation, Defamation *per se*, and Civil Conspiracy to Commit Fraud are intentional torts and Plaintiff has presented no evidence to support any such cause of action against these individual defendants

II. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT PURSUANT TO SEVERAL IMMUNITIES CREATED BY THE SOUTH CAROLINA TORT CLAIMS ACT.

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against Defendants, is a limited waiver of

governmental immunity. *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994); *see also* S.C. Code Ann. § 15-78-20(b) (Supp. 1997) (providing that the State, its political subdivisions and employees are immune from liability and suit for any tort committed while acting within the scope of official duty except as waived by the Tort Claims Act); S.C. Code Ann. § 15-78-40 (Supp. 1997) (“The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.”).

A. § 15-78-60(25) - THERE IS NO EVIDENCE OF GROSS NEGLIGENCE.

In order for Plaintiff to recover, he must show Defendants acted in a grossly negligent manner. S.C. Code Ann. § 15-78-60(25) states that a governmental entity is not liable for a loss resulting from:

responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised **in a grossly negligent manner**.

S.C. Code Ann. § 15-78-60(25) (Supp. 1997) (emphasis added).

South Carolina courts have defined gross negligence in a number of ways. Gross negligence is “the intentional, conscious failure to do something which it is *incumbent* upon one to do or the doing of a thing intentionally that one ought not to do.” *Hollins v. Richland Cnty. Sch. Dist. I*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993) (quoting *Richardson v. Hambricht*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988)); *see also Ford v. Atl. Coast Line R.R.*, 169 S.C. 41, 51, 168 S.E. 143, 147 (1932), *aff’d*, 287 U.S. 502 (1933); *Brooks v. Northwood Little*

League, Inc., 327 S.C. 400, 408, 489 S.E.2d 647, 651 (Ct. App. 1997); *Rakestraw v. S.C. Dep't of Highways and Pub. Transp.*, 323 S.C. 227, 231, 473 S.E.2d 890, 892–93 (Ct. App. 1996); *Smart v. Hampton Cnty. Sch. Dist. No. 2*, 315 S.C. 192, 195, 432 S.E.2d 487, 489 (Ct. App. 1993). Gross negligence is a relative term which means the absence of care that is necessary under the circumstances. *See, e.g., Hollins*, 310 S.C. at 490, 427 S.E.2d at 656; *Hicks v. McCandish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). Gross negligence is the failure to exercise slight care. *Hollins*, 310 S.C. at 490, 427 S.E.2d at 656; *see also Richardson*, 296 S.C. at 506, 374 S.E.2d at 298; *Anderson v. Ballenger*, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932); *Rakestraw*, 323 S.C. at 231, 473 S.E.2d at 893; *Smart*, 315 S.C. at 195, 432 S.E.2d at 489. Where a person is so indifferent to the consequences of his conduct as not to give slight care to what he is doing, he is guilty of gross negligence. *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990). Gross negligence involves a conscious failure to exercise due care. *Id.* at 126–27, 390 S.E.2d at 468. There is no evidence of gross negligence in this case, and thus Defendants are immune from suit pursuant to S.C. Code Ann. § 15-78-60(25) and summary judgment should be entered in their favor.

B. § 15-78-60(5) - EXERCISE OF DISCRETION

A governmental entity is not liable for a loss resulting from “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.” S.C. Code Ann. § 15-78-60(5). Inspectors like Anderson, Antonio, and Ghent are well trained to use their judgment and discretion to determine which, if any, crimes were committed, and

whether or not an arrest is warranted. They used their discretion in determining which people to interview and what documents to review. They also made the discretionary call to get the handwriting analyzed. Because Plaintiff's alleged loss resulted from Defendants' exercise of discretion in their investigations, Defendants are immune from suit pursuant to S.C. Code Ann. § 15-78-60(5) and summary judgment should be entered in their favor.

C. §15-78-60(17) - CONDUCT OUTSIDE THE SCOPE and § 15-78-60(20) - ACT OR OMISSION OF OTHER PERSON

This matter is unusual in that Plaintiff was an employee of Defendant Sheriff Cannon at the time that the matters alleged in the complaint occurred. Therefore, Defendants assert that one or both of these subsections, § 15-78-60(17) and/or § 15-78-60(20) is applicable to this matter.

Under the law of this state, a governmental entity is not liable for a loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17). While this subsection is generally applied to a governmental defendant's employees, Plaintiff in this matter was such an employee at the time of the alleged wrongful acts. The Internal Affairs investigation found that Plaintiff was untruthful in the statements he provided and responses he gave to questions about the placement of the victim's initials, the date, and the time on the photo lineup. Plaintiff's admitted actions of placing the date and time on the photo lineup and then filing an official report stating that the victim had done so was clearly outside the course and scope of his employment and was a fraud and a crime of moral turpitude for which he was subsequently prosecuted by the South Carolina Attorney General's Office. Therefore,

Defendants cannot be liable for Plaintiff's actions. Because Plaintiff's alleged loss resulted from his own actions which constituted a fraud and a crime of moral turpitude, Defendants are immune from suit pursuant to S.C. Code Ann. § 15-78-60(17), and thus, summary judgment should be entered in their favor.

A governmental entity is not liable for a loss resulting from "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." S.C. Code Ann. § 15-78-60(20). To the extent the reference to "a person other than an employee" in this portion of Subsection (20) is intended to bar the entity immunity where that "employee" is a *defendant*-employee and not a plaintiff employee acting outside the scope of his employment, as was the case here, Defendants assert that this Subsection is applicable; Plaintiff's actions were criminal and unethical. All acts in this matter were the direct result of Plaintiff's unethical and illegal actions taken in the Prioleau/Boney rape prosecution. Plaintiff at the very least, placed the date and the time on the photo lineup and then was untruthful about it when asked on several occasions. There are serious questions as to whether Plaintiff ever even showed that lineup to the victim. According to the victim's statements to the Sheriff's Office Inspectors, the Solicitor's Office, and the SLED Inspector, she was shown a single photograph, not a lineup. She also denied that she initialed any lineup or says she cannot remember. Despite any issues with the victim's memory, the handwriting analysis clearly shows that Plaintiff put the time and date on the lineup and the victim did not. There were indications that Plaintiff put the initials on the lineup, and it is clear that the victim did not put the initials on the lineup. Then, Plaintiff wrote an official report with the false statement that the victim initialed, dated, and timed the lineup.

In this case, Plaintiff violated the law and committed a serious violation of the ethical standards of the Sheriff's Office. Plaintiff first denied and later admitted that he put the date and time on the photo lineup. He denies that he put the initials on the lineup, but handwriting analysis excludes the victim and does not exclude Plaintiff. Plaintiff gave untruthful information to the Inspectors to try to cover up what he did. Because of the numerous acts, omissions, and criminal actions of the Plaintiff, Defendants are entitled to immunity and there can be no liability. Thus, summary judgment should be entered in favor of Defendants.

D. § 15-78-60(3) - EXECUTION OF A COURT ORDER

S.C. Code Ann § 15-78-60(3) states that there is no liability for a loss resulting from "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." Here, after a complete investigation was finished by SLED, the matter was turned over to the Attorney General's office. Then, Associate Chief Magistrate James B. Gosnell signed a warrant for Plaintiff's arrest. (See Arrest Warrant F-969830, Ex. K) Plaintiff was arrested based on the facially valid warrant. Therefore, there can be no liability for the actions taken to execute the warrant.

III. THERE IS NO EVIDENCE THAT PLAINTIFF WAS FALSELY ARRESTED.

As part of his claim for Abuse of Process, Plaintiff states in his complaint that he was falsely arrested. To the extent that this may be read to allege false arrest, Defendants assert they are entitled to summary judgment on this cause of action as well. To prevail on a cause of action for false arrest, Plaintiff must establish: "(1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Yarborough v. Montgomery*, 554

F. Supp. 2d 611, 620 (D.S.C. 2008) (quoting *Law v. S.C. Dep't of Corr*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006)). In this case, Plaintiff was intentionally restrained by officers at the time of his arrest. The only determination for the court is whether the restraint was unlawful. "The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest." *Law*, 368 S.C. at 440, 629 S.E.2d at 651. In this case, the South Carolina Attorney General's Office made the determination to pursue prosecution. The Attorney General's Office requested Agent Ghent apply for a warrant for Plaintiff's arrest, and Ghent complied. The warrant was signed by Associate Chief Magistrate James B. Gosnell on May 7, 2009, and Plaintiff was then arrested pursuant to the facially valid warrant.

South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution. *Law*, 368 S.C. at 436, 629 S.E.2d at 649. Although whether probable cause exists is ordinarily a question for the jury, it may be decided as a matter of law when the evidence yields but one conclusion. *McBride v. Sch. Dist. Of Greenville Cnty.*, 389 S.C. 546, 567, 698 S.E.2d 845, 855–56 (Ct. App. 2010) (citing *Law*, 368 S.C. at 436, 629 S.E.2d at 649). Plaintiff was indicted by the grand jury in this matter. The grand jury's true bill indictment against Plaintiff is prima facie evidence of probable cause to arrest Plaintiff, and thus Plaintiff cannot show an unlawful restraint by Defendants. Therefore, Defendants are entitled to summary judgment on Plaintiff's False Arrest claim.

IV. THERE IS NO EVIDENCE OF MALICIOUS PROSECUTION BY ANY DEFENDANT.

In order to recover in an action for malicious prosecution, the plaintiff must show (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at

the instance of, the defendant; (3) termination of such proceeding in the plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

In this matter, Plaintiff cannot prove at least four of the elements. In this case, the plaintiff has alleged malicious prosecution against all defendants. In actuality, there are two separate and distinct groups in this matter: (1) the South Carolina Law Enforcement Division (SLED) and its agent, Ghent; and (2) the Charleston County Sheriff and his deputies Anderson and Antonio. They should be considered separately.

A. SOUTH CAROLINA LAW ENFORCEMENT DIVISION AND AGENT GHENT

SLED did not know anything about Plaintiff until October 8, 2008, when Assistant Sheriff Andrene Coury-Smith sent Chief Lloyd a letter (through local Captain Roger Heaton) making an official request for an investigation. Agent Charles Ghent was assigned the matter for investigation in October 2008. Until that point, Charles Ghent had never met and knew nothing about Plaintiff. (Ghent Dep. 64:13-18, Mar. 3, 2014, Ex. M).

Charles Ghent reviewed documents, interviewed witnesses, and gathered evidence as part of his investigation. When he was finished, he compiled all of the information into a report with a number of documentary attachments and he provided that report to his supervisor who then provided it to the Ninth Circuit Solicitor. The report is attached hereto as Exhibit F. The report prepared by Agent Ghent contains no conclusions. It makes no recommendations. It finds no

wrongdoing or lack thereof. The purpose of a SLED investigation is to have an outside agency collect evidence and interview witnesses. They do not make recommendations, decisions, or conclusions about wrongdoing. That is left to the prosecuting agency. Once the report was turned over to the Solicitor's Office, SLED had no further involvement other than to obtain the warrant at their request. (Ghent Dep. 64:2-6, Ex. L).

Because of the very nature of their investigation, SLED does not institute or continue judicial proceedings. (Ghent Dep. 63:16-20, Ex. L). There is no evidence that, in this case, Agent Ghent or any member of SLED insisted that proceedings be instituted or continued. There is no evidence that Agent Ghent or any member of SLED had any malice toward Plaintiff. (Ghent Dep. 64:16-18, Ex. L). Finally, though the SLED report and investigation does not draw the conclusion that there was probable cause, there clearly was, and Ghent believed there was when he applied for the warrant. (Ghent Dep. 64:19-65:2, Ex. L).

Probable cause is a defense to an action for malicious prosecution and has been defined as "the existence of such facts or circumstances as would excite the belief of a reasonable mind, acting on facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." *Eckerds Drugs*, 265 S.C. at 568, 220 S.E.2d at 652. Plaintiff has the burden of demonstrating lack of probable cause. *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). Therefore, for the determination of probable cause, the facts must be considered from the point of view of the prosecuting party; the question is not what the actual facts were, but what the prosecuting party honestly believed them to be. *Law*, 368 S.C. at 436, 629 S.E.2d at 649. South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious

prosecution. *Id.* “Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.” *McBride v. Sch. Dist. Of Greenville Cnty.*, 389 S.C. 546, 566–67, 698 S.E.2d 845, 856 (Ct. App. 2010) (quoting *Law*, 368 S.C. at 436, 629 S.E.2d at 649).

Here, not only is there an affidavit that contains sufficient underlying facts and information to allow a magistrate to make his independent determination of probable cause, Plaintiff was indicted by the Charleston County Grand Jury. Because there is clear evidence of probable cause, there can be no malicious prosecution and Defendants SLED and Agent Ghent are thus entitled to summary judgment in their favor.

B. CHARLESTON COUNTY SHERIFF J. AL CANNON, INSPECTOR ANDERSON, AND INSPECTOR ANTONIO

Plaintiff also cannot show that Sheriff Cannon, Inspector Anderson, or Inspector Antonio had any involvement with his prosecution other than being subpoenaed to testify at the trial. The investigation performed by Anderson and Antonio was separate and distinct from that performed by SLED. It was an internal investigation prepared solely to determine if Plaintiff had violated any of the policies and procedures of the Charleston County Sheriff’s Office. The internal affairs investigation was even performed pursuant to *Garrity v New Jersey*, 385 U.S. 493 (1967), such that Plaintiff’s statements to the internal affairs Inspectors could not be and were not held against him in his prosecution. Inspector Anderson only testified at trial because he was served with a subpoena and was required to do so. No member of the Sheriff’s Office had any involvement in the decision-making process regarding whether Plaintiff would be prosecuted. (Antonio Dep. 35:16-36:2, Mar. 11, 2014, Ex. M; Anderson Dep. 79.20-24, Ex. G). The Attorney General’s

Office made the decision to prosecute Plaintiff. There is no evidence that any member of the Sheriff's Office ever spoke with the Attorney General's Office to 'insist' that judicial proceedings be instituted or continued. (Antonio Dep. 35:25-36:2, Ex. M; Anderson Dep. 79:20-24, Ex. G). The investigation performed by the Sheriff's Office resulted in Plaintiff's termination, something he has not made a part of his complaint.

Without being able to prove four of the necessary elements (1, 2, 4, and 5), Sheriff Cannon, Anderson, and Antonio are entitled to summary judgment on the Malicious Prosecution cause of action.

V. THERE IS NO ABUSE OF PROCESS BY GHENT, ANDERSON, OR ANTONIO

The essential elements of abuse of process are (1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding. *Pallares v. Seinar*, App. Case No. 2011-201026, Sup. Ct. Op. No. 27364 (S.C. March 12, 2014) (citing *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010); *Hainer v. Am Med. Int'l, Inc.*, 328 S.C. 128, 492 S.E.2d 103 (1997); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988)).

The first element, an "ulterior purpose," exists if the process is used to secure an objective that is "not legitimate in the use of the process." *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012) (citation omitted). "One who uses a legal process, whether criminal or civil, against another *primarily* to accomplish a purpose for which it is not designed, is subject to liability for harm caused by the abuse of process." *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 75, 567 S.E.2d 251,

255–56 (Ct. App. 2002) (quoting Restatement (Second) of Torts § 682 (1977)). The collateral objective must be the “sole or paramount reason for acting.” *Id.* at 75, 567 S.E.2d at 256. An allegation that a party had a “bad motive” or an “ulterior purpose” in bringing an action, standing alone, is insufficient to sustain an abuse of process claim. *D.R. Horton*, 398 S.C. at 551, 730 S.E.2d at 352 (citing *Food Lion*, 351 S.C. at 74, 567 S.E.2d at 255). Moreover, no action lies where a person has an incidental or concurrent motive of spite or merely seeks to gain a collateral advantage from the process. *Food Lion*, 351 S.C. at 74–75, 567 S.E.2d at 255–56. In the present case, Plaintiff is suing Ghent, Anderson, and Antonio for Abuse of Process. In his complaint, Plaintiff alleges that these defendants’ actions “were carried out for ulterior purposes,” Compl. ¶31, and that they “willfully used the legal process espoused above solely for such ulterior purposes.” Compl. ¶32. Plaintiff does not state what the ulterior purposes were, which is insufficient. *See D.R. Horton*, 398 S.C. at 551, 730 S.E.2d at 352.

Abuse of process focuses on events occurring outside the process; the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. *D.R. Horton*, 398 S.C. at 551, 730 S.E.2d at 352; *see also Hainer*, 328 S.C. at 136, 492 S.E.2d at 107 (stating the improper purpose usually takes the form of coercion to obtain a collateral advantage); *accord Swicegood v. Lott*, 379 S.C. 346, 65 S.E.2d 211 (Ct. App. 2008); *Guider v. Churpeyes, Inc.*, 370 S.C. 424, 635 S.E.2d 562 (Ct. App. 2006). Here, there is no evidence that Anderson, Antonio, or Ghent were trying to coerce Plaintiff to do or surrender anything. Agent Ghent had never even met Plaintiff before he was asked to investigate this matter. (Ghent Dep. 64:13-15, Ex. L). Anderson and Antonio were internal

affairs officers for the Sheriff's Office and but for their positions, they would never have been involved in this investigation. (Antonio Dep. 38:21-24, Ex. M). There is no evidence that either Anderson or Antonio ever had any improper purpose with regard to their investigation of Plaintiff. (Antonio Dep. 36:6-37:9, Ex. M)

Additionally, with regard to the "process" itself, these individual defendants only performed investigations and wrote reports. Agent Ghent's actions were all taken as part of his official duties for SLED. (Ghent Dep. 65:4-7, Ex. L). Agent Ghent did nothing outside the realm of his normal investigative activities and he followed all of SLED's policies and procedures. (Ghent Dep. 65:8-66:1, Ex. L). Ghent's SLED report was compiled and turned over to the Solicitor's Office for a determination of wrongdoing. (Ghent Dep. 34:11-17, Ex. L). Plaintiff has not made any claims against Anderson or Antonio about his termination and Anderson and Antonio had no involvement in the SLED investigation beyond providing documentation and access to witnesses. (Anderson Dep. 78:23-79:6, Ex. G).

The second aspect required is a "willful act." A willful act has been described as "[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process." *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107. The "willful act" element consists of three components: (1) "a 'willful' or overt act"; (2) "in the use of the process"; (3) "that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective." *Food Lion, Inc.*, 351 S.C. at 71, 567 S.E.2d at 254 (citations omitted). There is no such evidence of that in this case. There is no evidence of any improper willful act or any illegitimate collateral objective by the individual defendants. (Anderson Dep. 80:7-10, Ex. G). These were law enforcement officers who were asked to perform an investigation into a

complaint of wrongdoing. They performed their investigations and turned over their findings to other people who then made the decision on what would be done. (Ghent Dep. 61:24-62:5, Ex. L; Anderson Dep. 81:16-25, Ex. G).

There is no evidence to support the cause of action for Abuse of Process against Ghent, Anderson, or Antonio, and therefore summary judgment is proper.

VI. THERE WAS NO CIVIL CONSPIRACY BY THE INDIVIDUAL DEFENDANTS TO CAUSE HARM TO THE PLAINTIFF.

Plaintiff has alleged that defendants Anderson, Antonio, and Ghent came together in a conspiracy for the purpose of injuring the plaintiff by fraud. (Compl., ¶42). Defendants Anderson and Antonio are both employees of the Charleston County Sheriff's Office. Therefore, the Intracorporate Conspiracy Doctrine applies in this matter as to the two of them. "[N]o conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *McMillan v. Oconee Mem. Hosp., Inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 887 (2006).

Defendants Anderson and Antonio in this case fall squarely within the intracorporate conspiracy doctrine. First, Plaintiff has failed to allege that any officer was acting outside of his normal duties or that he was not acting in the course and scope of his employment. There is no allegation of any independent stake in achieving the objective of the alleged conspiracy and no evidence of any personal animus or ulterior purpose by Anderson or Antonio. See *Liverett v. Island Breeze Intern. Inc.*, No. 2:12-cv-1285-PMD, 2012 WL 3264563 (D.S.C. August 9, 2012) (dismissing civil conspiracy claim based on intracorporate conspiracy doctrine for plaintiff's

failing to allege facts that defendants acted outside normal corporate duties or had any independent stake in achieving objective of alleged conspiracy). Further, Plaintiff has failed to allege any special damages.

The allegation that Anderson and/or Antonio conspired with Ghent is also not supported by any evidence. Ghent testified that he never spoke with or met with Inspector Antonio. (Ghent Dep. 66:23-25, Ex. L). Agent Ghent also never spoke with Inspector Anderson about the content of his investigation. (Ghent Dep. 67:1-4, Ex. L). Although Agent Ghent was aware that the Charleston County Sheriff's Office was performing an investigation, he was not privy to the information they gathered. (Ghent Dep. 67:5-21, Ex. L). For all intents and purposes, the two investigations were parallel in that they had two different purposes, and the information obtained in the Sheriff's Office investigation was never shared with Agent Ghent or SLED. (Ghent Dep. 67:22-68:12, Ex. L). Agent Ghent, Inspector Anderson, and Inspector Antonio never spoke or acted to cause Plaintiff damage to his reputation. (Ghent Dep. 68:17-69:12, Ex. L; Anderson Dep. 80:17-20, Ex. G; Antonio Dep. 36:15-21, Ex. M).

VII. THERE IS NO EVIDENCE OF DEFAMATION OR SLANDER, AND DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THESE CLAIMS.

"The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an

unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998) (Toal, J., *concurring*); *see also Erickson v. Jones St. Publishers, L L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006); *Fleming*, 350 S.C. at 494, 567 S.E.2d at 860.

Agent Ghent never made any statements about Plaintiff outside the course and scope of his investigation. (Ghent Dep. 66:14-17, Ex. L). Ghent never made any statements that he knew or believed to be false. (Ghent Dep. 66:18-21, Ex. L). Investigators Anderson and Antonio also never made any statements about Plaintiff outside the course of their investigation. (Anderson Dep. 80:21-81:7, Ex. G; Antonio Dep. 36:11-21, Ex. M; Ghent Dep. 68:17-69:12, Ex. L). They never made any statements they knew or believed to be false or untrue. (Antonio Dep. 36:6-17, Ex. M; Anderson Dep. 80:11-13, Ex. G).

Because Anderson, Antonio, and Ghent were at all times relevant to this matter acting in the course and scope of their employment as law enforcement officers officially investigating another officer's wrongdoing, any communications they may have made regarding Plaintiff are privileged and no cause of action may arise out of such communications. S.C. Code Ann. § 23-23-90. "An oral or written report, document, statement, or other communication that is written, made, or delivered concerning the requirements or administration of [Chapter 23 of Title 23 of the S.C. Code] must not be the subject of or basis for an action at law or in equity in any court of the State- if the communication is between: (1) law enforcement agencies, their agents, employees, or representatives[.]" S.C. Code Ann. § 23-23-90. Chapter 23 of Title 23 of the

South Carolina Code sets standards for law enforcement and criminal justice service, S.C. Code Ann. § 23-23-10(c), and provides for the suspension, revocation, or restriction of a law enforcement officer's credentials, S.C. Code Ann. § 23-23-80. Thus, the communications arising out of the investigation into Plaintiff's wrongdoing concern Chapter 23 of Title 23 of the South Carolina Code, and therefore such communications are privileged and cannot be the basis for any action at law, including this defamation action, and summary judgment should be entered in favor of Anderson, Antonio, and Ghent.

Additionally, when the arrest warrant was obtained, Agent Ghent did not wait until Plaintiff was out in public somewhere to arrest him and make a spectacle of him that could appear in the newspaper or on the television news. To the contrary, Plaintiff's attorney was contacted and arrangements were made for Plaintiff to turn himself in. Special arrangements were even made at the jail for his security and to get him a bond in timely order so he would not have to spend as much time in the jail.

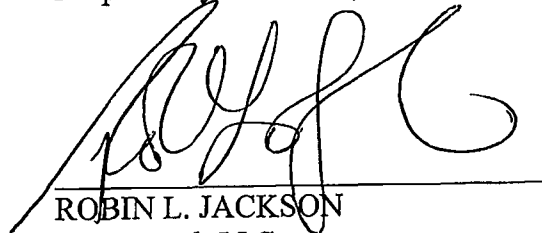
VIII. PUNITIVE DAMAGES ARE NOT PROPER.

Punitive damages are barred against a governmental entity by S.C. Code Ann. 15-78-120(b), which mandates that "[n]o award for damages under this chapter shall include punitive or exemplary damages or interest prior to the judgment." Therefore, Defendants are entitled to summary judgment on this claim and all claims for punitive damages against Defendants should be dismissed.

CONCLUSION

Wherefore, for the foregoing reasons, Defendants respectfully request that summary judgment be entered in their favor on all causes of action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robin L. Jackson', is written over a horizontal line.

ROBIN L. JACKSON
Senn Legal, LLC
3 Wesley Drive
P.O. Box 12279
Charleston, SC 29422
843-556-4045
fax: 843-556-4046
Robin@SennLegal.com

Attorney for Defendants

July 29, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

Certificate of Service

This is to certify that I have served counsel for the plaintiff in the foregoing matter with a copy of Defendants' Memorandum in support of Motion for Summary Judgment by:

☐ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by fax transmittal

☒ by E-mail

This 21st day of July, 2014

By

Amy Marie Hinty
Amy Marie Hinty

Table of Contents of Exhibits

Exhibit A- 6 photo line up

Exhibit B- Affidavit of Greg Voigt

Exhibit C- Affidavit of Agent Ryan Kelly

Exhibit D- handwriting samples

Exhibit E- letter to SLED, October 7, 2008

Exhibit F- Report of Charles Ghent

Exhibit G- Deposition of Inspector Anderson, March 11, 2014

Exhibit H- Affidavit Major Eric Watson

Exhibit I- Affidavit of Clarice (Zimmer) Marana

Exhibit J- Magwood's Supplement

Exhibit K- Arrest Warrant F-969830

Exhibit L- Deposition of Agent Charles Ghent, March 3, 2014

Exhibit M- Deposition of Inspector Antonio, March 11, 2014

Exhibit N - SLED handwriting report, June 18, 2009

Exhibit O- SLED handwriting report, February 2, 2011

EXHIBIT A

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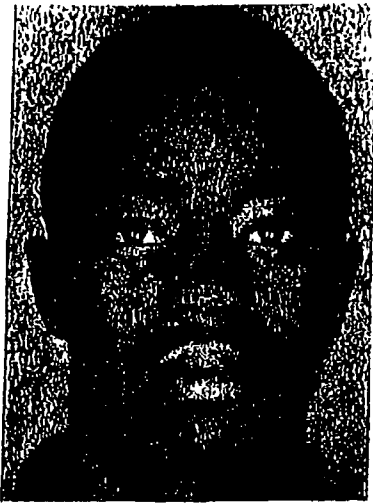
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Officer: QROBERTS

Subject ID: 0000009574

Requested By:

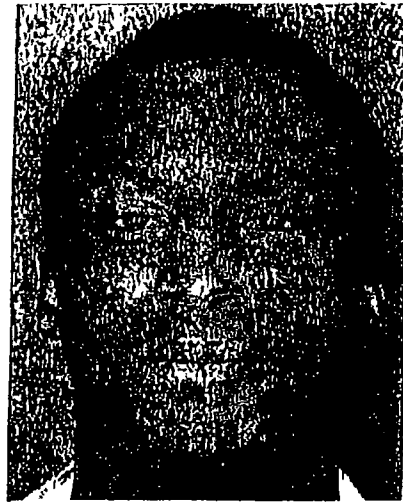
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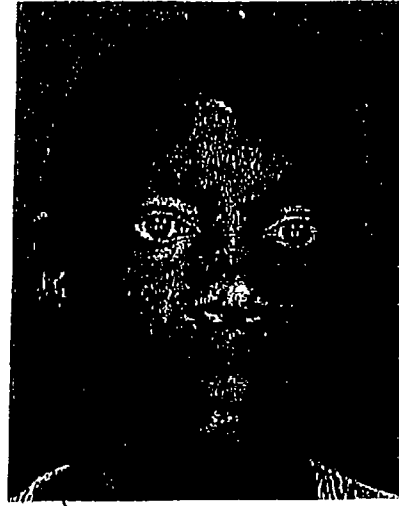
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10:00 AM

COPY

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

**AFFIDAVIT OF
GREGORY VOIGT**

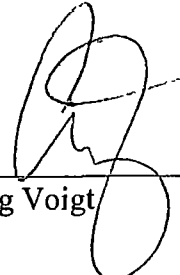
NOW COMES, affiant **GREGORY VOIGT**, and states and affirms as follows:

1. My name is Gregory Voigt. I am over the age of 21 and a resident of the state of South Carolina.
2. I am an assistant solicitor with the Ninth Circuit Solicitor's Office. I have been employed with the Solicitor's Office at all times relevant to this matter.
3. I was the solicitor assigned to prosecute the rape (CSC 1st) of Catherine Boney.
4. Investigator Ryan Kelly and I met with Catherine Boney several times while preparing for trial in this case.
5. During one meeting, we questioned Ms. Boney about being shown a six-person photographic line-up of the suspect by Detective Eugene Magwood and identifying the perpetrator thereon.
6. Ms. Boney denied having seen the six-person line-up. She insisted that Det Magwood had shown her a single photograph of the perpetrator, Maurice Prioleau.
7. Ms. Boney further advised that the writing on the six-person line-up was not hers.
8. Ms. Boney provided a handwriting sample to Inv. Kelly.
9. Inv. Kelly and I then met with Det. Magwood in reference to preparing for trial.
10. We asked Det. Magwood about the photographic line-up. Det. Magwood said that Ms. Boney had circled, initialed, timed and dated the photo. During this meeting I confirmed

with Det. Magwood that he had written the biographic information at the top of Maurice Prioleau's statement.

11. When we told Det. Magwood that Boney denied making an in, he said she was incorrect.
12. Det. Magwood opined that Ms. Boney was upset at the time of the displaying of the photographic array and probably forgot.
13. I showed Magwood the writing on the line-up and the writing he wrote on Maurice Prioleau's statement. When I questioned him about the similarities, specifically the numbering of the date, he repeated that the victim had signed the line-up and was mistaken.

Further Affiant Sayeth Naught!



Greg Voigt

Signed and Sworn to Before me

This 28 day of July, 2014.

Paulette Harrison

Notary Public for South Carolina

Expires: 1-3-2017

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

**AFFIDAVIT OF
AGENT RYAN KELLY**

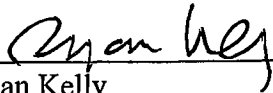
NOW COMES, affiant Agent Ryan Kelly, and states and affirms as follows:

1. My name is Ryan Kelly. I am over the age of 21 and a resident of the state of South Carolina.
2. I am an agent at the South Carolina Law Enforcement Division.
3. At the time of this matter, I was an investigator for the 9th Circuit Solicitor's Office.
4. I assisted assistant solicitor Greg Voigt with interviewing Catherine Boney, a victim who had made an allegation of rape.
5. Greg Voigt and I met with Catherine Boney several times while preparing for this case.
6. During one meeting, Ms. Boney mentioned being shown a photo of the suspect. Upon questioning, she said she was certain she had only been shown a single photo.
7. In order to refresh her memory, we showed her the six photo line up.
8. Ms. Boney advised that the writing on the line up was not hers, and she had never been shown the line up by Detective Magwood.
9. Ms. Boney provided a handwriting sample.
10. Mr. Voigt and I then met with Det. Magwood in reference to preparing for trial.
11. We asked him about the photo line up. He said she had circled, initialed, timed and dated

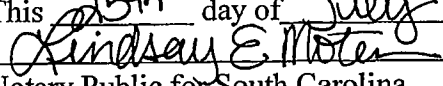
the photo.

12. When we told Det. Magwood that Boney denied doing so, he said she was incorrect.
13. Det. Magwood told me she was upset and probably forgot.
14. After our meeting, I walked him out and asked him for clarification, pointing out that if there is not a logical explanation, he would risk being called a liar on the stand. He insisted that none of it was his handwriting and the victim was wrong.

Further Affiant Sayeth Naught!



Ryan Kelly

Signed and Sworn to Before me
This 25th day of July, 2014.


Notary Public for South Carolina
Expires: 7-24-18

EXHIBIT D

①

M. Anderson

C. E. B.

11/7/07

10:40 A.M.

LOG-7046
3.28

Catherine Borey

6/9/09

②

M. Anderson

COPY

C. E. B.

11/7/07

10:40 AM.

LOG-7046
3.38

Catherine Borey

6/9/09

③

M. Anderson

C. E. B.

11/7/07

10:40 A.M.

LOG-7046
3.48

Catherine Borey

6/9/09

④

B. M. Anderson

C. E. B.

11/7/07

10.40. A.M. L09-7046
3.58

Catherine Boney 6/9/09

⑤

B. M. Anderson

C. E. B.

11/7/07

10.40. A.M. L09-7046
3.68

Catherine Boney 6/9/09

⑥

B. M. Anderson

C. E. B.

11/7/07

10.40. A.M.

L09-7046
3.78

Catherine Boney 6/9/09

⑦

M. Anderson

C. E. B.

11/7/07

10:40 A.M.

LOG-7046
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Catherine Loney 6/9/09

⑧

M. Anderson

C. E. B.

11/7/07

10:40 A.M.

LOG-7046
3.98

Catherine Loney 6/9/09

⑨

M. Anderson

C. E. B.

11/7/07

10:40 A.M.

LOG-7046
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Catherine Loney 6/9/09

(10)

RB M. Andersen

C. E. B.

11/7/07

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Catherine Boney.

6/9/09

(11)

RB M. Andersen

C. E. B.

11/7/07

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LOG-7046
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Catherine Boney.

6/9/09

(12)

RB M. Andersen

C. E. B.

11/7/07

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LOG-7046
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Catherine Boney.

6/9/09

(13)

M. Anderson

C.E.B.

11/7/07

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Catherine Honey

LOG-7046
3.148

6/9/09

(14)

M. Anderson

C.E.B.

11/7/07

10:40 A.M.

Catherine Honey

LOG-7046
3.158

6/9/09

(15)

M. Anderson

C.E.B.

11/7/07

10:40 A.M.

Catherine Honey

LOG-7046
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6/9/09

(16)

M. Anderson

C.E.B.

11/7/07

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Catherine Boney. 6/9/09

(17)

M. Anderson

C.E.B.

11/7/07

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Catherine Boney. 6/9/09

(18)

M. Anderson

C.E.B.

11/7/07

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Catherine Boney. 6/9/09

(19)

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C. E. B.

11/7/07

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LO9-7046
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(20)

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C. E. B.

11/7/07

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LO9-7046
3.21 #

Catherine Boney. 6/9/09

(21)

B M. Anderson

C. E. B.

11/7/07

10:40 A.M.

LO9-7046
3.22 #

Catherine Boney. 6/9/09

22

B. M. Andersen

C. E. B.

11/7/07

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LOG-7046
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Catherine Boney, 6/9/09

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B. M. Andersen

C. E. B.

11/7/07

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Catherine Boney, 6/9/09

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11/7/07

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Catherine Boney, 6/9/09

(25)

~~B~~ M. Anderson

C. E. B.

11/7/07

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Catherine Boney

6/9/09

25

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②

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Supra supra
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③

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Supra supra
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RB M. Anderson

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Supra supra
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⑤

AB M. Anderson

CEB
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~~Evan Ryan~~
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LOG-7046
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⑥

AB M. Anderson

CEB
11-07-07
10:40 AM

~~Evan Ryan~~
6-10-09

LOG-7046
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⑦

AB M. Anderson

CEB
11-07-07
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~~Evan Ryan~~
6-10-09

LOG-7046
2.108

9

CEB

11-07-07

10:40 AM

B M. Anderson

[Signature]
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LOG-7046
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CEB

11-07-07

10:40 AM

B M. Anderson

[Signature]
6-10-09

LOG-7046
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CEB

11-07-07

10:40 AM

B M. Anderson

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6-10-09

~~LOG-28~~
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2.178
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11-07-07
C-3

[Signature] M. Anderson

(14)

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C-3

[Signature] M. Anderson

(15)

2.158
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11-07-07
C-3

[Signature] M. Anderson

(16)

⑮

B. M. Anderson

CEB

11-07-07

10:40 AM

Eugene Morgan
6-10-07

LOG-7046

2.188

⑯

B. M. Anderson

CEB

11-07-07

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Eugene Morgan
6-10-07

LOG-7046

2.198

⑰

B. M. Anderson

CEB

11-07-07

10:40 AM

Eugene Morgan
6-10-07

LOG-7046

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B. M. Anderson

CEB

11-07-07

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CEB

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LOG-7046

2.238

L09-7046
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~~6-10-09~~
~~John Doe~~

10:40 AM
11-09-07
CE 13

W. Anderson

(2)

L09-7046
2.258

~~6-10-09~~
~~John Doe~~

10:40 AM
11-09-07
CE 13

W. Anderson

(2)

L09-7046
2.248

~~6-10-09~~
~~John Doe~~

10:40 AM
11-09-07
CE 13

W. Anderson

(2)

(24)

B. M. Anderson

CEB

11-09-07

10:40 AM

[Signature]
6-10-09

L09-7046

2.278

EXHIBIT E

}

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Helghts, SC 29405-7789

October 7, 2008

OCT 8 '08 PM 1:08

Chief Reginald Lloyd
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, S.C. 29211-1398

Dear Chief Lloyd,

On October 6, 2008, the Charleston County Sheriff's Office was provided information by Assistant Solicitor Gregory Voigt of the Ninth Circuit Solicitors Office regarding Charleston County Sheriff's Detective Eugene Magwood. Assistant Solicitor Voigt conveyed issues of concern regarding the possible misconduct of Detective Magwood in submitting cases for prosecution.

Due to the nature of this allegation, and on behalf of the Sheriff's Office, please accept this correspondence as an official request for the South Carolina Law Enforcement Division (SLED) to conduct an investigation into this matter.

As always we thank you in advance for your prompt assistance in this matter. Inspector Michael Anderson will be the point of contact for the Sheriff's Office and can be reached at (843) 554-2481

Respectfully,


A. Coury-Smith
Assistant Sheriff

EXHIBIT F

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

December 9, 2008

INVESTIGATIVE REPORT

TO: File 31080106

FROM: Special Agent Charles Ghent

RE: Official Misconduct Investigation
Magwood, Eugene (police detective)

COUNTY: Charleston

Introduction

On October 7, 2008, the South Carolina Law Enforcement Division (SLED) received a written request (**Attachment 1**) from Assistant Sheriff A. Coury-Smith of the Charleston County Sheriff's Office (CCSO), to investigate an allegation of possible misconduct involving Detective Eugene Magwood. SLED Captain Roger Heaton assigned Special Agent (S/A) Charles Ghent to conduct an investigation.

Summary

On November 11, 2008, S/A Ghent received a copy of a memorandum from Investigator Ryan Kelly of the 9th Circuit Solicitor's Office (**Attachment 2**), which detailed pretrial meetings



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0834 P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

between Assistant Solicitor Greg Voigt, Kelly, Detective Eugene Magwood, and Catherine Boney; who was the victim in a sexual assault case worked by Det. Magwood. During one such meeting in September of 2008, Boney was asked about a photo lineup in which she had allegedly identified a picture of the suspect, Maurice Jerome Prioleau, and initialed and dated it. This lineup had been included in the case file that was submitted to the Solicitor's Office by Magwood. In the meeting with Voigt and Kelly, Boney denied signing the lineup and stated that she had only been shown a single photograph by Magwood. Kelly conducted a follow-up interview with Boney at her residence on September 24, 2008 during which Boney denied that the handwriting on the lineup was hers and also provided Kelly with a handwriting sample. On September 25, 2008, Voigt and Kelly met with Detective Magwood and advised him of Boney's claim about the lineup. Magwood said that the victim was extremely upset at the time the lineup was shown to her and that she must have forgotten that she signed it. Magwood said that the handwriting on the lineup was not his.

On October 15, 2008, S/A Ghent and S/A Justin Smith conducted an interview with Catherine Boney. The interview was documented by S/A Ghent on a Memorandum of Interview (**Attachment 3**). Boney stated that Detective Magwood came to her house one day and told her that they had probably identified the guy who assaulted her through a DNA match. He then showed Boney a single color photograph, which she identified as her assailant. Magwood then told her he needed to show her another picture, but she got upset and said she didn't want to see anymore pictures. Boney said that she didn't know if she ever signed anything.

On October 24, 2008, S/A Ghent interviewed Lieutenant. (Lt.) Paul Tittle of the Charleston County Sheriff's Office, who had previously been a supervisor of Detective Magwood. The interview was documented by S/A Ghent on a Memorandum of Interview (**Attachment 4**). Lt. Tittle stated that Magwood had problems with documentation and administrative aspects of investigations, but he did not think Magwood would fabricate information. Lt. Tittle did not recall any specific information about the Prioleau investigation.

On October 28, 2008, S/A Ghent called Detective Eugene Magwood at his home number. The conversation was documented by S/A Ghent on a Memorandum of Interview (**Attachment 5**). Magwood said that he had talked to an attorney and that he was "pretty much done talking."

0834 0000377 Magwood stated that he didn't feel that he had done anything wrong.

On October 30, 2008, S/A Ghent interviewed Sergeant (Sgt.) Brian Williams of the Charleston County Sheriff's Office. The interview was documented by S/A Ghent on a Memorandum of Interview (**Attachment 6**). Sgt. Williams had been a supervisor of Detective Magwood at the time of the Prioleau investigation. Sgt. Williams stated that he did not specifically remember that investigation or any issues that may have come up during it. Sgt. Williams said that he did not think that Detective Magwood would ever fabricate or falsify information on a report or case file. He said that Magwood had weaknesses with administrative matters and he could see him making a mistake such as forgetting to get a witness to sign a photo following an identification.

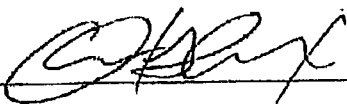
On November 7, 2008, S/A Ghent obtained a voluntary signed statement (**Attachment 7**) from Sgt. Clarice Zimmer of the Charleston County Sheriff's Office. Sgt. Zimmer stated that she spoke to Magwood by phone after he was placed on administrative leave and asked him about the incident with the Prioleau investigation. Magwood told Sgt. Zimmer that he had showed Boney a single photograph of Prioleau which Boney identified as the suspect. Magwood then showed her a "six pack" lineup and Boney again identified Prioleau before becoming very emotional. Magwood left and then realized that he forgot to get her to sign the lineup. Magwood then circled the photo that Boney identified and wrote Boney's initials by the circle. Magwood told Sgt. Zimmer that he believed it was permissible for him to do this on Boney's behalf since she had made the identification.

On November 7, 2008, S/A Ghent obtained a voluntary signed statement (**Attachment 8**) from Lt. Eric Watson of the Charleston County Sheriff's Office. Lt. Watson stated that he spoke to Magwood about the incident with the Prioleau investigation. Magwood told Lt. Watson that he showed Boney a single photo only to confirm the identity of her assailant, whom she apparently knew. Magwood then later returned to show a photographic lineup to Boney per Sgt. Williams' instructions. Magwood did so and Boney became upset and was unable to circle the photograph of the suspect. Lt. Watson commented that the lineup itself would not have had any evidentiary value in the case because identification had already been made through DNA and from the victim knowing the identity of the suspect, in addition to the suspect having given a written statement admitting to having sex with the victim.

The following documents were obtained pertinent to this investigation:

- Case Summary Report from Charleston County Sheriff's Office (Attachment 9)

This report will be submitted to the proper prosecutorial authority for their review.



S/A Charles L. Ghent

Attachments

- 1 Written Request for Investigative Assistance from CCSO
- 2 Memorandum from Investigator Ryan Kelly, including notes and handwriting sample from Catherine Boney
- 3 Memorandum of Interview with Catherine Elizabeth Boney
- 4 Memorandum of Interview with Lt. Paul L Tittle
- 5 Memorandum of Interview for phone conversation with Detective Eugene Magwood
- 6 Memorandum of Interview with Sgt. Brian K. Williams
- 7 Statement of Sgt. Clarice Zimmer
- 8 Statement of Lt. Eric Watson
- 9 Case Summary Report from Charleston County Sheriff's Office

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

October 7, 2008

OCT 8 '08 PM 1:08

Chief Reginald Lloyd
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, S.C. 29211-1398

Dear Chief Lloyd,

On October 6, 2008, the Charleston County Sheriff's Office was provided information by Assistant Solicitor Gregory Voigt of the Ninth Circuit Solicitors Office regarding Charleston County Sheriff's Detective Eugene Magwood. Assistant Solicitor Voigt conveyed issues of concern regarding the possible misconduct of Detective Magwood in submitting cases for prosecution.

Due to the nature of this allegation, and on behalf of the Sheriff's Office, please accept this correspondence as an official request for the South Carolina Law Enforcement Division (SLED) to conduct an investigation into this matter.

As always we thank you in advance for your prompt assistance in this matter. Inspector Michael Anderson will be the point of contact for the Sheriff's Office and can be reached at (843) 554-2481

Respectfully,


A. Coury-Smith
Assistant Sheriff

ATTACHMENT #2

MEMORANDUM

TO: Agent Ghent

FROM: Inv. Ryan Kelly

SUBJECT: Inv. Magwood

DATE: 11/04/08

Agent Ghent,

During the course of preparing for the trial of State V. Prioleau, Assistant Solicitor Greg Voigt and I met with the victim Ms. Catherine Boney several times in September, 2008. During the meeting, Ms. Boney made mention to us of being shown a photograph by Det. Magwood of the suspect identified by SLED in her attack. Mr. Voigt and I previously observed in the case file a signed, six picture photo lineup where the photograph of Maurice Prioleau had been circled, dated, timed, and initialed. When Ms. Boney advised she was shown a photograph of the suspect by Det. Magwood, we assumed Ms. Boney was referring to the lineup present in the case file. After two separate conversations with Ms. Boney, she was certain she was only shown a single photograph of suspect Prioleau, and not a photograph of Prioleau in a six photograph lineup. We initially believed her to be mistaken. Ms. Boney was then shown the lineup in an attempt to refresh her memory, Ms. Boney again advised she was not shown the document. On 09/24/08, I met with Ms. Boney at her residence and again questioned her in reference to the photo lineup. Ms. Boney advised the writing on the lineup is not hers and that she had never been shown the lineup by Det. Magwood. Ms. Boney then provided a hand writing sample.

On 09/25/08 Mr. Voigt and I met with Det. Magwood in reference to preparing for trial. We planned to address the lineup issue during the meeting. Det. Magwood advised us during the course of our conversation that the lineup was shown to Ms. Boney and that she identified Prioleau, and then proceeded to circle, time and date his photo. We then advised Det. Magwood of Ms. Boney's claim of her not signing the lineup. Det. Magwood stated the victim was incorrect. Det. Magwood advised the victim was extremely upset at the time she was shown the lineup and must have forgotten. At this point, Mr. Voigt showed Det. Magwood the writing on the photo lineup with a copy of a written statement where Det. Magwood wrote the statement of Maurice Prioleau. When questioned of the similarities in the handwriting on the written statement and photo lineup, Det. Magwood again advised the victim signed the lineup and is incorrect in her recollection. Mr. Voigt then ended the meeting. As I walked Det. Magwood to our lobby, I attempted to get clarification from him. I advised Det. Magwood the writing on the lineup appeared to be his and that unless we could present a logical explanation, he would run the risk of being called a "liar" on the witness stand by the defense attorney. Det. Magwood again insisted it was not his writing and that the victim is wrong. I escorted Det. Magwood to the lobby and ended our conversation.

STATE V. PRIOLEAU

LINEUP -

BONEY - DOESN'T RECOGNIZE HANDWRITING
- ONLY SHOWN ONE PHOTO

MET W/ VICTIM 9/24/08 AT RESIDENCE

HANDWRITING ON LINEUP APPEARS TO BE
MAGWOODS.

MAGWOOD - VICTIM IS WRONG
DID NOT SIGN PHOTO LINEUP

NO LINEUP ADMONITION
- B/L SHE DID NOT KNOW
SUSPECT

DOES
NOT MAKE
SENSE

C.E.B.

1/17/07

10:40 A.M.

ATTACHMENT #3

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

OCT 24 '08 AM 9:54

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

October 24, 2008

MEMORANDUM OF INTERVIEW

TO: File # 31080106
FROM: Special Agent Charles Ghent *CG*
RE: Interview with Catherine Elizabeth Boney, B/F/DOB: [REDACTED]
COUNTY: Charleston

Catherine Elizabeth Boney was interviewed on Wednesday, October 15, 2008 beginning at approximately 11:42 am by Special Agent (S/A) Charles Ghent and S/A Justin Smith. The interview was conducted at Boney's residence, located at [REDACTED]. Boney provided her telephone number as [REDACTED].

Boney stated that Detective Eugene Magwood of the Charleston County Sheriff's Office had investigated a sexual assault case in which she was the victim. One day he came by her house out of the blue and told Boney that they had probably caught the guy who did it because they had identified him with DNA. Magwood then showed Boney a color photograph which he produced from a folder he had with him that contained other paperwork. Boney looked at this single photograph and identified the person on the photograph as being the person who sexually assaulted her. Boney said that as soon as she saw the man's eyes, she knew it was him.



Boney stated that Detective Magwood then told her that he had to show her another picture. Boney was upset and crying, and she told Magwood that she did not want to see another picture. Boney said that she did not remember signing anything. She said that she only saw the one large picture. Boney said that Magwood then got ready to show her another piece of paper that had a lot of pictures on it and told her that she needed to sign some things. She said that she was upset and doesn't know if she ever did sign anything. She stated that Magwood never came by at any other time to showed her any other pictures.

Boney stated that after the investigator from the Solicitor's Office came and spoke to her, she called Detective Magwood and told him about it. Boney stated that Magwood told her not to worry about it and said that it might have been "bad on his part."

Boney stated that she later heard from people in the neighborhood that the man who assaulted her had been asking other people in the neighborhood about her prior to the attack.

The interview was concluded at approximately 12:00 pm.

ATTACHMENT #4

0834 0000390

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



OCT 28 '08 PM 12:47

MARK SANFORD
Governor

REGINALD I. LLOYD
Director

October 28, 2008

MEMORANDUM OF INTERVIEW

TO: File # 31080106

FROM: Special Agent Charles Ghent *CG*

RE: Interview with Lieutenant Paul L. Tittle, Charleston County Sheriff's Office

COUNTY: Charleston

Lt. Paul L. Tittle was interviewed on Friday, October 24, 2008 beginning at approximately 8:00 am by Special Agent (S/A) Charles Ghent. The interview was conducted at the Charleston County Sheriff's Office's Traffic Office on Labor Camp Road in Mount Pleasant, South Carolina. Tittle provided his telephone number as 843-259-0307. Tittle was interviewed because he was formerly the Lieutenant over Investigations at the Charleston County Sheriff's Office during the time that Detective Eugene Magwood arrested Maurice Jerome Prioleau for C.S.C. 1st Degree and Kidnapping.

Lt. Tittle stated that Detective Magwood had problems with his case reports. Magwood would often not write down information and did not keep good notes. Detective Magwood was, however, very well connected in parts of Charleston County and was very good at getting information in cases such as homicides. Tittle recalled that a complaint came from the solicitor's office about a



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case that Magwood submitted where Magwood had apparently not documented important case information in a case file. The complaint came to Tittle and he advised Magwood that he needed to be more thorough in his documentation. Tittle stated that Magwood's direct supervisor at the time was Sergeant Claire Zimmer, and that she along with Sergeant B.K. Williams would probably have more insight on Magwood and the incidents in question.

Lt. Tittle stated that approximately three to four years ago he had to suspect Magwood over a case involving a false identification. Tittle recalled that the case was an assault that occurred on a club in John's Island on River Road. Tittle believed that the victim in the case knew the name of the suspect and knew about where he lived. Magwood later told Tittle in a statement what happened next: Magwood looked up the name in the RMS system and located two subjects with the same name who lived in the same area in question. Magwood then called his victim on the phone and asked the victim to describe his assailant. Magwood then took this information and made a personal judgement between the pictures and information of the two subjects as to which was the suspect. Magwood did not show the photographs of either subject to the victim. Magwood then obtained a warrant for the subject he believed was the suspect and arrested him. The subject was in custody over the weekend and Magwood later determined that he had arrested the wrong person and admitted this to his supervisors. Tittle found out about this from Sgt. Williams or Sgt. Walker, after which he got a statement from Magwood and afterwards suspended him for one day.

Following that incident, Lt. Tittle had another meeting regarding Magwood with the solicitor's office. In this incident a statement was apparently missing from a case file. Tittle stated that the incident was determined to not be malicious or intentional.

Lt. Tittle stated that while Magwood's administrative work is not good, he did not think that Magwood would fabricate information outright.

Lt. Tittle was not familiar specifically with the Proileau investigation, and referred S/A Ghent to Sgt. Williams and Sgt. Zimmer. The interview was concluded at approximately 8:50 a.m.

File 31080106
Page 3

ATTACHMENT #5

0834 0000394

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

May 26, 2009

INVESTIGATIVE REPORT (Addendum)

TO: File # 31080106
FROM: Special Agent Charles Ghent *CG*
RE: Official Misconduct Investigation
Magwood, Eugene (police detective)
COUNTY: Charleston

Introduction

This is an addendum to the investigative report.

Summary

On February 10, 2009, S/A Ghent interviewed Assistant Solicitor Greg Voight by telephone. The conversation was documented by S/A Ghent on a Memorandum of Interview (Attachment 10). Voight stated that he did not think he would have told Detective Eugene Magwood that it would be acceptable for him to sign a photo lineup on behalf of a victim. Voight said that during the pre-trial preparation for the Prioleau case, Magwood adamantly denied to Voight as well as Investigator Ryan Kelly that the signature on the lineup was his own handwriting.



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File # 31080106

Page 2

On May 7, 2009, Detective Eugene Magwood was arrested and charged with one count of Misconduct in Office. Magwood was booked and released from the Charleston County Detention Center the same day (**Attachment 11**).

This report will be submitted to the proper prosecutorial authority for their review.

A handwritten signature in black ink, appearing to read "S/A C. L. Ghent", written over a horizontal line.

S/A Charles L. Ghent

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NOV 4 2008 1:00

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

November 4, 2008

MEMORANDUM OF INTERVIEW

TO: File # 31080106
FROM: Special Agent Charles Ghent
RE: Phone conversation with Detective Eugene Magwood, Charleston County Sheriff's Office on October 28, 2008.

COUNTY: Charleston

On Tuesday, October 28, 2008 at approximately 2:30 pm, Special Agent (S/A) Charles Ghent called Detective Eugene Magwood at his home number (██████████).

Magwood stated that he was "pretty much done talking" and that he didn't feel that he had done anything wrong. Magwood stated that all of his cases were reviewed and signed off by his supervisors and that if there had been something wrong with them then the supervisors should not have signed off on them.

S/A Ghent asked Magwood if there was anyone that he would like S/A Ghent to talk to in reference to this investigation. Magwood replied that he usually worked his cases alone and that the only people who knew about the case were the victim that he showed the lineup to and himself.



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Magwood thanked S/A Ghent for calling him. S/A Ghent again provided Magwood with his telephone number and told Magwood that if he changed his mind and wanted to give a full statement to contact him. The phone call was concluded at approximately 2:42 pm.

ATTACHMENT #6

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NOV 5 10 58 AM 2008

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

November 4, 2008

MEMORANDUM OF INTERVIEW

TO: File # 31080106

FROM: Special Agent Charles Ghent *CG*

RE: Interview with Sergeant Brian K. Williams, Charleston County Sheriff's Office on October 30, 2008.

COUNTY: Charleston

On Thursday, October 30, 2008 beginning at approximately 10:08 am, Special Agent (S/A) Charles Ghent interviewed Sergeant (Sgt.) Brian "B.K." Williams of the Charleston County Sheriff's Office. The interview was conducted at the SLED Lowcountry regional office in North Charleston, SC. Sgt. Williams provided his phone number as 843-297-6712.

Sgt. Williams was interviewed because he was a former supervisor of Detective Eugene Magwood in the Criminal Investigation Division of the Charleston County Sheriff's Office.

Sgt. Williams stated that Detective Magwood had once applied for the Sergeant's exam as part of the promotional process at the Sheriff's Office and had been turned down. Magwood was upset about this because he had been at the Sheriff's Office for a long time. Sgt. Williams spoke with Magwood and told him that he needed to work on his report writing skills and that if he did, his



chances in the promotional process would improve. To this end, Sgt. Williams offered to help Magwood through case review. Sgt. Williams said that he came down hard on Magwood for grammatical and other writing issues in his subsequent reports.

Sgt. Williams said that Detective Magwood was very good at getting information on cases, particularly ones that occurred in James and John's Island where he had a lot of contacts and informants. Magwood possessed very good instincts as a detective but his writing and organizational skills were not good. Sgt. Williams recalled Lieutenant Paul Tittle informing him that there had been a complaint from the Solicitor's Office about Magwood's cases not being very strong. Sgt. Williams did not recall personally receiving any complaints from the Solicitors Office about Magwoods cases, but he did occasionally hear about Magwood missing a meeting or other scheduled appointment.

Sgt. Williams said that he did not remember ever having any specific conversations with Detective Magwood involving photo line-ups or identification issues, although he added that it was possible that those discussions may have come up during case reviews. He said that it was possible that he may have suggested to Magwood to have a photo line-up done in a case where there was already a CODIS hit because it would help strengthen the case with an additional identification from the victim. Sgt. Williams added that he would not have made such a suggestion if he was aware that a single photo identification had already been done because that would have "tainted" the line-up.

Sgt. Williams said that he did not remember any specifics about the Maurice Prioleau investigation or any administrative action or input he may have had on the case.

Sgt. Williams stated that he did not think that Detective Magwood would ever fabricate or falsify information on a report or case file. He could see Magwood possibly making an administrative mistake such as forgetting to get a witness to sign a photo after an identification was made. Sgt. Williams said that Magwood was a great detective but that case files and administrative matters were his weakness.

The interview was concluded at approximately 11:00 am.

ATTACHMENT #7

0834 0000402

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

NOV 10 02 12:23

DATE Nov. 7, 08

OCA # _____

STATEMENT OF	Clarice Zimmer	PHONE #	843-554-2473
ADDRESS	3505 Pinehaven Drive	PHONE #	[REDACTED]
EMPLOYER	Charleston County	SEX	F
RACE:	Caucasian	DATE OF BIRTH	[REDACTED]

I have supervised Detective Magwood since mid-2007. During that time, the only disciplinary action I have had to take has been minor. During the time I have been Detective Magwood's supervisor, I have never known him to display any malfeasance in regards to his responsibilities, fabricate any statement and/or forge a document. After Detective Magwood's Administrative Leave began, I contacted him by telephone to ask him about the events that led up to the witness identification of the suspect. He stated to me that he showed the victim a single photograph of the suspect which the witness identified as our suspect. He then showed her a six pack line up and when the witness identified our suspect for a second time, she became very emotional. Detective Magwood consoled the witness while she was processing her emotions. During this time, Detective Magwood forget to have the witness circle and initial the suspect photograph she identified twice for him previously. After the witness departed, and Detective Magwood was in route back to the office he realized his oversight. He stated he had a conversation with Solicitor Greg Voight regarding this oversight. As a result of his conversation with Solicitor Voight, Detective Magwood understand that it would be permissible for him to circle and initial the photograph of the suspect on behalf of the witness since she knew the suspect and identified the suspect to Detective Magwood. I believe Detective Magwood when he indicated that he acted without malice of forth thought when he circled and initialed the suspects photograph on behalf of the witness. I believe that Detective Magwood's was doing this simply validate what the witness had stated to him. The only violation I see is that Detective Magwood failed to provide complete details in his case notes. The suspect was matched by DNA, the victim new him by nickname and sight, and identified him by a single photo, prior to this occurring.

(I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS: _____


Signature

HAVE RECEIVED A COPY OF THE ABOVE STATEMENT _____

Signature

ATTACHMENT #8

0834 0000404

Statement of Eric Watson

NOV 28 '08 10:34

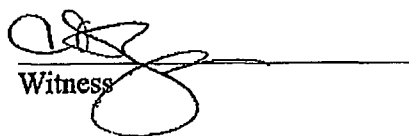
Employment: Charleston County Sheriff's Office

Phone Number: (843) 554-2457

On October 28, 2008, I was interviewed at the Sheriff's Office Criminal Investigations Division by Special Agent Charles Ghent of the South Carolina Law Enforcement Division (SLED) regarding Detective Eugene Magwood's handling of a 2005 sexual assault case and him allegedly forging the victim's initials on a photographic lineup. This information was reported to the Sheriff by the Solicitor's Office. I have just recently been assigned to the Criminal Investigations Division on March 13, 2008, as its Lieutenant. Due to this fact, I do not have any direct knowledge of this particular case. However, I had the opportunity to speak with Detective Magwood before he was placed on Administrative Leave about this case and I also had the opportunity to review this case. I was informed by Detective Magwood that the victim in this case had personally known the suspect and had provided sufficient identifiers for the suspect. Detective Magwood showed the victim a single photograph of the suspect who she had already identified only to confirm his identity. Detective Magwood stated that he was later instructed to by Sgt. Williams to show the victim a photographic lineup which he did. It was relayed to me that the victim was very emotional and she was not able to circle the suspect's photograph. This is the extent of my knowledge regarding this incident. After my review of this case, the purpose of this particular photographic lineup is somewhat confusing to me, in that, it didn't add any significant element to the credibility of the victim because she knew the person who assaulted her and had already confirmed the identity of her assailant. Furthermore, the suspect provided Detective Magwood with a signed written statement wherein he admitted engaging in sexual intercourse with the victim. Moreover, the suspect was identified by DNA evidence linking to the crime. In any case, the victim is your best and most reliable witness. I have never known Detective Magwood to fabricate, manipulate, or intentionally provide false testimony in any criminal investigations. I have had the opportunity to participate in many interviews with Detective Magwood as a detective and have never witnessed any inappropriate conduct displayed by him. Detective Magwood is a very passive interviewer who relies a lot on his faith to guide him. Detective Magwood has been awarded many accolades for his work. Two of his most recent awards were Deputy of the Month for solving an 8 year old murder and an award from People against Rape (PAR) for a sexual assault case that he investigated.


Signature

11/7/08
Date


Witness

11/7/08
Date

ATTACHMENT #9

0834 0000406

2007111331

OCT 14 '08 pr 12:37



Criminal Investigation Division

PROSECUTIVE SUMMARY CASE PREPARATION FORM

Case Number: 06-018918

Detective: Det. E. Magwood

Defendant:

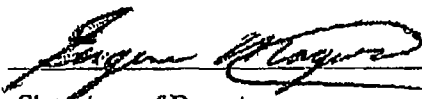
Prioleau, Maurice Jerome

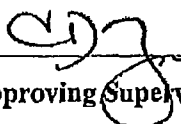
☒ STATEMENT ON FILE
☒ CONFESSION

Charges: C.S.C.1 st. Degree
Kidnapping

This prosecutive package includes the following:

☒ Synopsis	☒ Copy Of Warrant
☒ All Supplemental Report	☒ Advisement Of Rights
☒ Arrest and Booking Report	☒ Copy Of Incident Report
☒ Rap Sheet	☐ Witness list
☒ List of Evidence	☒ Other Reports Pertinent to this case

 11/14/2007
Signature of Deputy (Date)


Approving Supervisor (Date)



Charleston County Sheriffs Office
Criminal Investigation Division

GRAND JURY INDICTMENT FORM

OCA#

06-018918

Incident Date

Detective

Det. E. Magwood

Incident Location

6939 Stall Rd. N, Charleston S.C. 29406

Date Of Birth

Statement

Confession

Prioleau, Maurice Jerome

☐ CCSO Serious Habitual Offender

Reason:

CHARGE 1 C.S.C.1 st. Degree

CHARGE 2 Kidnapping

CHARGE 3

CHARGE 4

Victim Information

Phone 1

Phone 2

Date Of Birth

Statement

Boney

Catherine
Elizabeth

☒

Synopsis

On 09/02/06 the victim gave a written statement to Detective Magwood stating that as she was walking from a friends house she was approached by a black male only known by the street name at "Poochie". This subject came up behind her and grabbed her from behind by the back of the neck and dragged her behind a vacant building, possibly a Barber Shop. He then proceeded to force her clothes off and physically forcing his penis into her vagina. He also while raping her took a beer bottle and broke it then held it to her throat. The beer bottle was tested negative for prints and no other evidence was located at the time. The victim described the suspect As being approximately 5'6", 170 to 175lb, Black/ Brown, wearing a black pant and dark boxer shorts he appeared to be 20 to 25 yoa.

On 09/08/06 this I/D received a phone call from the victim and the complainant, who stated that they saw the suspect walking pass her residence. He is known by the name of "Poochie" on the street, but they do not know his real name. They will attempt to get his real name and call this I/D back with the information.

On October 23, 2007 this I/D received a SLED report on the DNA evidence

recovered from the victim. The report indicated that the listed suspect, Maurice Jerome Prioleau seamen was found in the victim, Catherine Boney.

This I/D located the victim and showed her a photo lineup that contained a photo of the listed suspect and five other individuals. The victim picked out the suspect and positively identified him as being her assailant.

On 11/13/07 this I/D interviewed the suspect, Maurice Jerome Prioleau, he gave a written statement after he was advised of his Miranda rights and signing a written waiver waiving same. He stated that he met the victim while walking home from a club. they got together they went behind an abandoned building where they had consensual sexual intercourse. The victim got \$50.00 in Crack Cocaine for the sex, because that's what she wanted. After she had smoked up all of the Crack Cocaine, she got upset and wanted more Crack Cocaine. This was when she was left at that location.

INCIDENT SUPPLEMENT

CHARLESTON COUNTY SHERIFF'S OFFICE
3605 PINEHAVEN DRIVE, CHARLESTON HEIGHTS, S.C. 29405-7789 • (843) 202-1700J. Al Cannon, Jr.
Sheriff

SC0100000	DISPATCH NUMBER N/A	ORIGINAL CASE NUMBER 2006-018918-B	PAGE ____ OF ____ PAGES	NCIC ENTRY	IND	ENT
☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL WITNESSES	☐ ADDITIONAL STOLEN PROPERTY		
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL SUBJECTS	☐ ADDITIONAL RECOVERED PROPERTY		

INCIDENT TYPE: Criminal Sexual Conduct

Incident Location: [REDACTED]

Incident Date: 09/02/06

On 09/02/06 the victim gave a written statement to Detective Magwood stating that as she was walking from a friends house she was approached by a blk male only known by the street name at "June". This subject came up behind her and grabbed her from behind by the back of the neck and dragged her behind a vacant building, possibly a Barber Shop. He then proceeded to force her clothes off and physically forcing his penis into her vagina. He also while raping her took a beer bottle and broke it then held it to her throat. The beer bottle was tested negative for prints and no other evidence was located at the time. The victim described the suspect As being approximately 5'6", 170 to 175lb, Balk/ Brno, wearing a black pant and dark boxer shorts he appeared to be 20 to 25 yoa.

On 09/08/06 this I/D received a phone call from the victim and the complainant, who stated that they saw the suspect walking pass her residence. He is known by the name of "June" on the street, but they do not know his real name. They will attempt to get his real name and call this I/D back with the information.

On 10/03/06 this I/D telephoned the victim and spoke to her son, he will have the victim contact this I/D when she returns home.

This I/D again spoke to the victim on 10/13/06, she at that time refused to talk about the possible suspect or give any other information on the incident.

The listed suspect was apprehended and transported to the Charleston County Detention where he was lodged pending a hearing.

Case closed with two warrants served and one arrest.

TYPE (GROUP)						TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
STOLEN	0	0	0	0	0	0	n/a
DAMAGED	0	0	0	0	0	0	
BURNED	0	0	0	0	0	0	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
RECOVERED	0	0	0	0	0	0	n/a
SEIZED	0	0	0	0	0	0	
SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		ACTIVE UNFOUNDED	☒ ADM. CLOSED	ARREST UNDER 18 ARREST 18 AND OVER	EX-CLEARED UNDER 18 EX-CLEARED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH		NO PROSECUTION		EXTRADITION DENIED	VICTIM DECLINES COOPERATION
REPORTING OFFICER(S)		DATE		BADGE NUMBER		APPROVING OFFICER	
Det. E. Magwood		11/9/2007		9116			
						FOLLOW-UP INVESTIGATION YES NO OFFICER	

J. Al Cannon, Jr
Sheriff

CCFO - 103 3/1/99

INCIDENT SUPPLEMENT

J. Al Cannon, Jr.
Sheriff

SC0100000		ORIGINAL CASE NUMBER 2006-018918-B	PAGE 1 OF 1 PAGES	FILE ENTRY	NO.	EXT.
☐ ORIGINAL ☐ REPORT ☐ MODIFIES ☐ ORIGINAL	☒ SUPPLEMENTAL ☒ REPORT ☐ CASE STATUS ☐ CHANGE	☐ ADDITIONAL ☐ VICTIMS ☐ ADDITIONAL ☐ OFFENDERS	☐ ADDITIONAL ☐ WITNESSES ☐ ADDITIONAL ☐ SUBJECTS	☐ ADDITIONAL ☐ STOLEN PROPERTY ☐ ADDITIONAL ☐ RECOVERED PROPERTY		

Incident Type : C S C 1st. Degree

Incident Date : 09/02/06

Incident Location : [REDACTED]

Victim : Catherine Elizabeth Boney B/F, 44 yoa, 5'4" 140lb
[REDACTED]

Suspect : Maurice Jerome Prioleau B/M 31 yoa 5'4" 145
[REDACTED]

On January 7, 2007 the victim, Catherine Elizabeth Boney was shine a photo line up that included the listed suspect, Maurice Prioleau. The victim identified the suspect in the line up as #6, she then circled the photo of the suspect then initialed and dated under the photo.

On September 9, 2008 a search warrant was secured and served on the listed suspect. The biological sample was collected from the defendant on September 9, 2008 to be compared with specimens obtained from the victim,s body and forwarded to S L E D for analysis.

TYPE (GROUP)						TOTAL VALUE	JURISDICTION OF FIRST LAW ENFORCEMENT AGENCY
STOLEN							n/a
DAMAGED							JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
BURNED							n/a
RECOVERED							
SEIZED							
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) Detective Magwood		DATE 09/21/08	BADGE NUMBER 9116	APPROVING OFFICER Sgt. Zimmer		DATE 09/21/08	BADGE NUMBER 9338
834 0008412		FOLLOW-UP 131		OFFICER ☐ YES ☒ NO			

Charleston County Sheriff's Office Advisement of Rights

OCA#: 2006-018918-B Date: _____
 Name: MAURICE JEROME PROLEAN Race: BLK Sex: MALE DOB: _____
 Address: _____ Phone: _____
 Employment: _____ Phone: _____
 Social Security #: _____ Driver's Lic. # _____
 State: SC

DET. E. MAGWOOD has advised me that he is a member of the
 Charleston County Sheriff's Office, and has further advised me.

- MP 1. That I have the absolute right to remain silent and do not have to answer any questions or give a statement and this fact cannot be used against me.
- MP 2. That if I do answer questions or give a statement, anything I say can and will be used against me in a Court of Law.
- MP 3. That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
- MP 4. That if I wish to talk to a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
- MP 5. That if I decide to answer questions or give a statement without having a lawyer present representing me, I have the absolute right during this interview to stop answering questions and remain silent.

I FULLY UNDERSTAND EACH OF THESE RIGHTS WHICH HAVE BEEN EXPLAINED TO ME.

Maurice Prolean

Witnesses:

Eugene Magwood

WAIVER OF RIGHTS

I fully understand each of these rights which have been explained to me, and having these in mind, I wish to waive these rights and answer questions. No threats, force or promises of any kind have been made to me by anyone to induce or cause me to waive these rights and answer questions.

Maurice Prolean

Witnesses:

Eugene Magwood

CHARLESTON COUNTY SHERIFF'S OFFICE

OCA # 2006-018918-BDATE 01-13-07STATEMENT OF MAURICE JEROME PRIOLEANADDRESS [REDACTED] PHONE # [REDACTED]EMPLOYMENT: PHONE # [REDACTED]RACE: BLACK SEX: MALE DATE OF BIRTH: [REDACTED]

Q: Did you force the victim behind a building on the night of September 2, 2006?

A: NO

Q: Did you force the victim, Catherine Boney to have sexual intercourse with you?

A: NO

Q: Where did you meet the victim, Catherine Boney?

A: walks down Stalls Rd. 3:30 AM or 400 AM

Q: Did you have sexual intercourse with the victim, Catherine Boney?

A: Yes

Q: Was the sex consensual?

A: Yes

Q: Did she ask to be paid for the sex?

A: YES

Q: Who initiated the conversation?

A: She did

Q: What or how much was the victim, Catherine Boney Paid?

A: \$50 in crack cocaine

Q: Was there an argument at any time during the incident?

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

[Signature]Maurice PrioleanMaurice Priolean

CHARLESTON COUNTY SHERIFF'S OFFICE

OCA # 2006-018918-BDATE 11-13-07STATEMENT OF MAURICE Jerome Prud'hommeADDRESS SEE PAGE #1 PHONE # EMPLOYMENT: PHONE # RACE: SEX: DATE OF BIRTH:

A: after she smoke the ⁴50 of crack cocaine before we had sex, once we had sex she was begging for more, that when we start arguing start it.

END OF STATEMENT

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

Eugene MagwoodMaurice Prud'homme

LineUp ID: ID2621

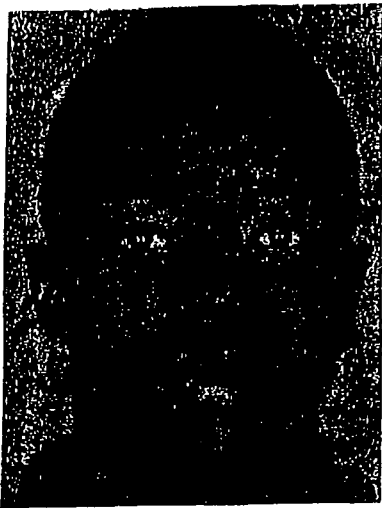
Officer: QROBERTS

Requested By:

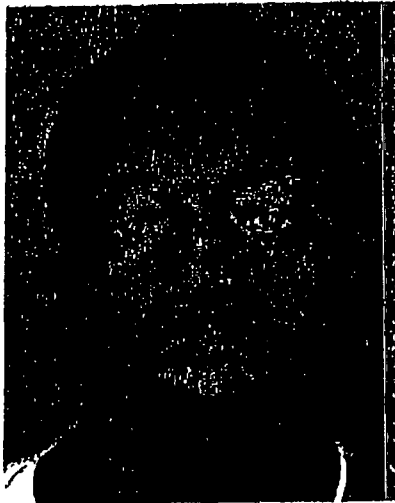
Date: 11/7/2007 3:45:37 PM

Subject ID: 0000009574

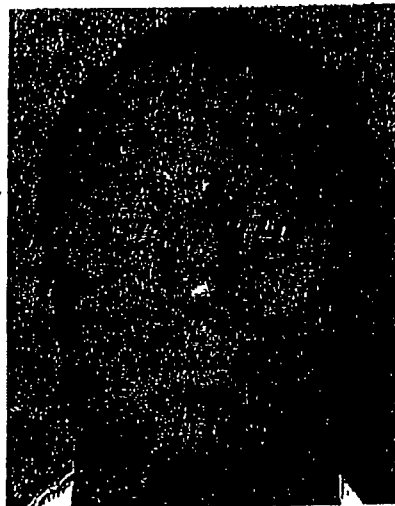
Subject Name: PRIOLEAU,



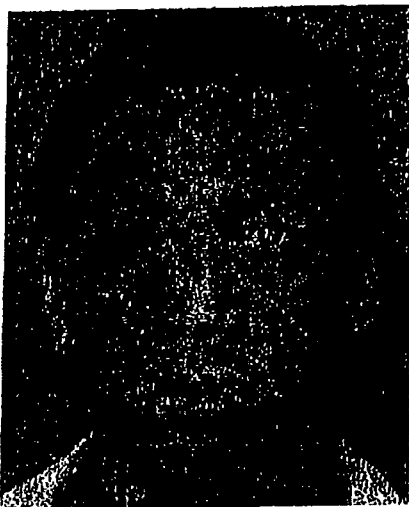
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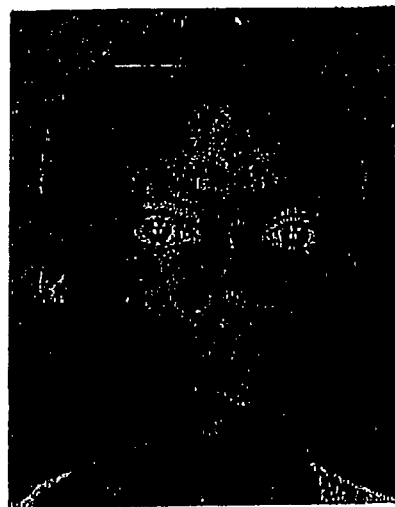
<3>



<4>



<5>



<6>

CEB
91-07707
10/10/07

J. Al Cannon, Jr. Esq.
Sheriff, Charleston County
Office



Office of Professional Standards
Charleston County Sheriff's

FACSIMILE COVER SHEET

TO:	Captain Heaton
FAX NUMBER:	(843) 797-3662
AGENCY:	South Carolina Law Enforcement Division
FROM:	Inspector Michael Anderson Charleston County Sheriff's Office Office of Professional Standards
DATE:	October 8, 2008

MESSAGE:	<i>Re: Request for assistance.</i>

FAX (843) 554-2494 - ORI #SC0100001 - HQ (24 HRS) (843) 202-1700 - OPS DIV (843) 308-7323 (0830/1700)

THIS TRANSMISSION CONSISTS OF (2) PAGE(S) INCLUDING COVER SHEET

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J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

October 7, 2008

Chief Reginald Lloyd
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, S.C. 29211-1398

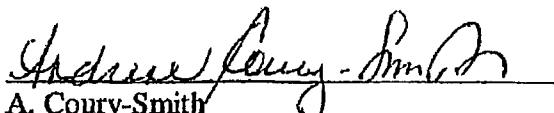
Dear Chief Lloyd,

On October 6, 2008, the Charleston County Sheriff's Office was provided information by Assistant Solicitor Gregory Voigt of the Ninth Circuit Solicitors Office regarding Charleston County Sheriff's Detective Eugene Magwood. Assistant Solicitor Voigt conveyed issues of concern regarding the possible misconduct of Detective Magwood in submitting cases for prosecution.

Due to the nature of this allegation, and on behalf of the Sheriff's Office, please accept this correspondence as an official request for the South Carolina Law Enforcement Division (SLED) to conduct an investigation into this matter.

As always we thank you in advance for your prompt assistance in this matter. Inspector Michael Anderson will be the point of contact for the Sheriff's Office and can be reached at (843) 554-2481

Respectfully,


A. Coury-Smith
Assistant Sheriff

J. Al Cannon, Jr. Esq.
Sheriff, Charleston County
Office



Office of Professional Standards
Charleston County Sheriff's

FACSIMILE COVER SHEET

TO:	Katherine Gunter
FAX NUMBER:	(803)896-7777
AGENCY:	SCCJA
FROM:	Inspector Michael Anderson Charleston County Sheriff's Office Office of Professional Standards
DATE:	June 16, 2009

MESSAGE:	Re: Detective Magwood

FAX (843) 308-7323 - ORI #SC0100001 - HQ (24 HRS) (843) 202-1700 - OPS DIV (843) 308-7323 (0830/1700)

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J. Al Cannon Jr., Esq.
Charleston County Sheriff



Office of Professional Standards

FACSIMILE COVER SHEET

TO:	Katherine Gunter
FAX NUMBER:	(803) 896-7803
AGENCY:	SC Dept. of Public Safety
FROM:	Inspector Roger Antonio Charleston County Sheriff's Office Office of Professional Standards-Internal Affairs
DATE:	August 5, 2009
MESSAGE:	

FAX (843) 308-7347 / HQ (24 HRS) (843) 202-1700 / Office of Professional Standards (843) 554-2454

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South Carolina Department of Public Safety
Criminal Justice Academy Division/Certification-Compliance

PERSONNEL CHANGE IN STATUS REPORT
NOTIFICATION OF UNFAVORABLE/NON-ROUTINE SEPARATION/TERMINATION

Reporting Department	Phone #	Today's Date
Officer's Name	Social Security #	Current Certification Date
Officer's Current Home Address	City/Town	Zip Code

PLEASE



CHECK ONE:



E-911



Reserve Officer

☒ Class 1 LE

☐ Class 2 LCO (Jailer)

☐ Class 1 LECO (LEO/Jailer)

☐ Class 3 SLE (Limited Duty)

(Please check appropriate reason(s) for separation)

(Attachment of Separation Supplement is REQUIRED)

Date of Unfavorable Separation: (specify mo/day/yr)

Voluntary Separation or retirement pending investigation for

Voluntary Separation or retirement pending civil action or indictment for

Termination for violation of AGENCY policy involving misconduct, good character or moral turpitude, as defined in Regs. 38-004)

Other (please specify)

TERMINATION DUE TO DISQUALIFICATION

(Involving misconduct, good character or moral turpitude, etc., defined in Regs. 38-004.)
(Completion of the back of this form and attachment of Separation Supplement is REQUIRED)

APPOINTMENT AS AN OFFICER BY THE EMPLOYING AGENCY HAS BEEN TERMINATED DUE TO THE FOLLOWING DISQUALIFICATION WHICH WOULD RENDER THE OFFICER UNCERTIFIABLE UNDER SOUTH CAROLINA TRAINING LAW, SECTION 23-6-440:

Date of Unfavorable Separation: (specify mo/day/yr)

Driver's License Suspension within past 5 years for DUI or equivalent, Reckless Homicide, Involuntary Manslaughter or Leaving the Scene of an Accident (23-6-440 B)(5)(b))

MISCONDUCT *** (COMPLETE REVERSE SIDE & ATTACH SEPARATION SUPPLEMENT) ***

EMPLOYING AGENCY HEAD (Chief, Sheriff, Director)

DATE 8/5/09

Please print name:

OFFICIAL TITLE

CJA USE:

MRN

Archived:

CODE:

Copy Sent:

ID:

DATE:

MISCONDUCT REPORT FORM

This form is to be completed within 15 days of the discovery of any event of misconduct which is determined to be "FOUNDED" by the agency or department. Report of misconduct is required by Regulation (38-017) and is the responsibility of the chief executive officer of every law enforcement agency regardless of any possible adjudication, and regardless of the action taken by the agency. Misconduct Reports, including summary of internal investigation report(s), should be forwarded with the Separation Supplement to the Criminal Justice Academy's Certification/Compliance Unit, Attention: Katherine Guenter.

Date of Discovery: 10/01/08 Termination Date: 10/01/08

Reporting Department: Charleston County Sheriff's Office Reporting Date (Today): 10/05/09

[REDACTED]
Officer's Name [REDACTED] Current Home Address [REDACTED]
[REDACTED]
Social Security # [REDACTED] Birth Date [REDACTED] Driver's License # [REDACTED]

Please indicate the nature of misconduct by checking the appropriate selection below. Misconduct includes, but may not be limited to:

- ☐ Conviction, plea of guilty, plea of no contest or admission of guilt (regardless of withheld adjudication) to a felony, a crime punishable by a sentence of more than one year (regardless of the sentence actually imposed, if any) or a crime of moral turpitude in this or any other jurisdiction;
- ☐ Unlawful use of a controlled substance;
- ☐ The repeated use of excessive force in dealing with the public and/or prisoners;
- ☐ Dangerous and/or unsafe practices involving firearms, weapons and/or vehicle which indicated either a willful or wanton disregard for the safety of persons or property;
- ☐ Physical or psychological abuses of members of the public and/or prisoners;
- ☐ Misrepresentation of employment-related information;
- ☐ Dishonesty/untruthfulness with respect to his/her employer;
- ☒ Other (please specify): See Narrative

Only events which have been [REDACTED] have been reported above. The facts & information herein are true & accurate to the best of my knowledge.

Andrew Perry Smith 8/5/09
EMPLOYING AGENCY HEAD (Chief, Sheriff, Director) DATE

Andrew Perry Smith [REDACTED]
Please print name Official Title

NOTE: A willful failure to report shall subject the violator to a civil penalty as provided by law.

OFFICE USE ONLY

Copy sent to Officer on _____ by _____

Date

CJA'S Authorized Signature

Revised 12-9-05



South Carolina Department of Public Safety

0834 0000422

Criminal Justice Academy Division/Certification-Compliance

SEPARATION SUPPLEMENT

Officer's Name [REDACTED] SS # [REDACTED]
Address [REDACTED] Ph # [REDACTED]
City [REDACTED] State [REDACTED] Zip Code [REDACTED]
Employing Agency Name [REDACTED] Today's Date [REDACTED]
Employing Agency Address [REDACTED] Ph # [REDACTED]
City [REDACTED] State [REDACTED] Zip Code [REDACTED]
Employing Agency Contact Person (for more information) [REDACTED]
Contact Telephone Number (Area Code and Telephone Number): [REDACTED]
Date of Separation [REDACTED]

The below information is REQUIRED for all unfavorable, non-routine and/or misconduct separations:

Reason for Separation: (Do not use generic terminology such as conduct unbecoming, failed to meet agency standards, violation of agency operating procedures, etc. Please be specific. Detailed information describing unfavorable acts or acts of misconduct is necessary for efficient processing.)

Detective Eugene Magwood, during the course of a criminal investigation that he was conducting, allegedly forged a victim's initials in a photo line-up. The alleged misconduct was discovered during the solicitor's preparation for trial. This agency requested SLED to conduct a criminal investigation against Detective Magwood. The criminal investigation resulted in a charge of Misconduct in Office against Eugene Magwood. A departmental administrative investigation was also conducted, resulting in his termination for violating the agency's "Truthfulness" policy.

Criminal Charges Filed: Yes ☒ No ☐ Date: [REDACTED]

CHARGE(S):

[REDACTED]

Only events which have been [REDACTED] have been reported above. The facts & information herein are true & accurate to the best of my knowledge.

EMPLOYING AGENCY HEAD (Chief, Sheriff, Director)

Andrene Coury-Smith DATE 8/5/09

Please print name: Andrene Coury-Smith

AUTHORIZED TITLE: Assistant Sheriff

Revised 12-9-05



South Carolina Criminal Justice Academy Certification-Compliance



PERSONNEL CHANGE IN STATUS REPORT NOTIFICATION OF ADMINISTRATIVE/ROUTINE SEPARATION/TERMINATION

Charleston County Sheriff's Office

(843)554-2481

June 16, 2009

Reporting Department

Phone #

Today's Date

Eugene Magwood

6/2/2012

Officer's Name

Social Security #

Current Certification Date

Officer's Current Home Address

City/Town

Zip Code

PLEASE



CHECK ONE:

☐ E-911

☐ Reserve Officer

☒ Class 1 LE

☐ Class 2LCO(Jailer)

☐ Class 1LECO(LEO/Jailer)

☐ Class 3SLE (Limited Duty)

(Please check appropriate reason(s) for separation)

ADMINISTRATIVE / ROUTINE SEPARATION

(For all separations NOT involving misconduct, good character or moral turpitude as defined in Regs. 38-004)

PLEASE ATTACH MRN (MANDATORY RETRAINING NOTIFICATION) FORM
INDICATING IN-SERVICE TRAINING RECEIVED WHILE EMPLOYED WITH YOUR AGENCY

Date of Administrative / Routine Separation: N/A (specify mo/day/yr)

Resigned (personal reasons)

Retired

Deceased

New Sheriff

Accepted employment with another Law Enforcement Agency

Medical Leave: Beginning date

Ending date

Military Leave: Beginning date

Ending date

Voluntary separation or retirement not involving misconduct, good character or moral turpitude

Failure to successfully complete basic training

Failure to successfully complete in-service training

Termination for violation of AGENCY policy NOT involving misconduct, good character or moral turpitude, as defined in Regs. 38-004 (i.e., substandard performance, excessive absenteeism, sleeping on duty, etc)

XXX Other (please specify) Employee placed on Administrative Leave without Pay following his arrest for Misconduct in Office. He will remain in this status pending the outcome of the administrative investigation into the events surrounding his arrest. At this time, he is still a member of this agency.

Would you rehire? N/A YES NO (if NO, state reason)

(This reason must not involve misconduct, good character or moral turpitude as defined in Regs. 38-004 and which requires completion and submission of a different set of forms - PCS of Separation for Unfavorable Separation, Misconduct Report Form and Separation Supplement)

I hereby attest that the reason for separation of this officer does NOT involve misconduct, good character or moral turpitude or otherwise disqualify eligibility for certification as defined in Regulations Chapter 38-004

EMPLOYING AGENCY HEAD (or Designee)

DATE 06/16/2009

Please print name: Andrene Coury-Smith

OFFICIAL TITLE Assistant Sheriff

J. Al Cannon, Jr. Esq.
Sheriff, Charleston County
Office



Office of Professional Standards
Charleston County Sheriff's

FACSIMILE COVER SHEET

TO:	Bruce Durant
FAX NUMBER:	(843)958-1905
AGENCY:	Solicitor's Office
FROM:	Inspector Michael Anderson Charleston County Sheriff's Office Office of Professional Standards
DATE:	December 15, 2008

MESSAGE:	<i>Re: Magwood file. Please include the attached letter with the package to the AG's Office.</i> <i>Thanks</i>

FAX (843) 308-7323 - ORI #SC0100001 - HQ (24 HRS) (843) 202-1700 - OPS DIV (843) 308-7323 (0830/1700)

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CLIFFORD SCOTT
ATTORNEY AT LAW

A/s Curry-Smyth
C/S Fields

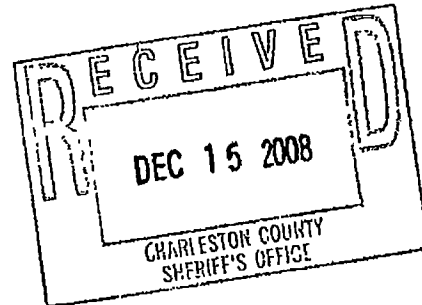
2026 Assembly Street, Suite 203
Mailing Address: P.O. Box 555
Columbia, South Carolina 29202

Telephone: 803-771-0904

Fax: 803-733-5944

December 12, 2008

The Honorable J. Al Cannon, Jr.
Sheriff of Charleston County
3505 Pinehaven Drive
North Charleston, South Carolina 29405



Re: Detective Eugene Magwood

Dear Sheriff Cannon:

I have been retained by Detective Eugene Magwood in connection with his placement on administrative leave with pay, on October 7, 2008. Detective Magwood has informed me that he has not received any information from the Charleston County Sheriff's Office regarding the status of the investigation of the circumstances which resulted in his placement on administrative leave. In view of the amount of time which has passed since he was placed on administrative leave, I would appreciate your indicating the status of any investigation conducted by the Sheriff's Office, and when you anticipate Detective Magwood will be returned to duty.

I look forward to your reply.

Sincerely,

cc: Detective Eugene Magwood

J. Al Cannon, Jr. Esq.
Sheriff, Charleston County
Office



Office of Professional Standards
Charleston County Sheriff's

FACSIMILE COVER SHEET

TO:	Greg Voight
FAX NUMBER:	(843)958-1905
AGENCY:	9 th Circuit Solicitor's Office
FROM:	Inspector Michael Anderson Charleston County Sheriff's Office Office of Professional Standards
DATE:	October 24, 2008

MESSAGE:	Re: Subpoena Duces Tecum

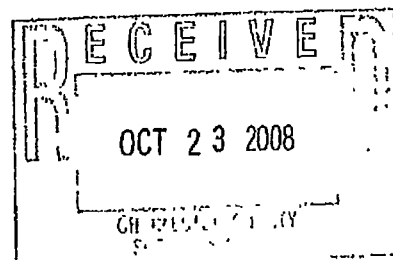
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SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSION COURT		COUNTY:	CHARLESTON
THE STATE OF v. JASON BUNCUM SOUTH CAROLINA		CASE NO. 2006-GS-10 11275,11276,11277,11278,11279	
		SUBPOENA FOR	PERSON X DOCUMENT(S) OR OBJECT(S)
TO: CUSTODIAN OF INTERNAL AFFAIRS RECORDS CCSO		MARK FIELDS 554-2453	
PLACE	COURTROOM		
CHARLESTON COUNTY JUDICIAL CENTER 100 BROAD ST CHARLESTON, SC 29401	GENERAL SESSIONS		
		DATE AND TIME: NOVEMBER 10, 2008	
YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).			
LIST DOCUMENT(S) or OBJECT(S)			
DUCES TECUM: ANY AND ALL RECORDS, DOCUMENTS, EMAILS, MEMMOS, VIDEOS, COMPLAINTS AND ANY OTHER MATERIALS RELATIVE TO THE PENDING CRIMINAL AND INTERNAL AFFAIRS INVESTIGATIONS REGARDING DETECTIVE EUGENE MAGWOOD.			
This subpoena shall remain in effect until you are granted to depart by the court or by an officer acting on behalf of the court.			
CLERK OF COURT		DATE	
Julie J. Armstrong		10/22/08	
(BY) DEPUTY			
Ronald J. Bryan			
This subpoena is issued upon application of the		ATTORNEY'S NAME AND ADDRESS	
☐ SOLICITOR ☒ DEFENDANT		MICHELLE R. SUGGS, ESQ. ASSISTANT NINTH CIRCUIT PUBLIC DEFENDER CHARLESTON COUNTY O T. Wallace County Office Building 101 Meeting Street, 5 th Floor Charleston, South Carolina 29401-2214 (843) 958-1850 (843) 958-1860 (fax)	



PROOF OF SERVICE

SERVED	DATE 10/23/08	PLACE CCSD
SERVED ON (PRINT NAME) SUSAN SINGLETON	MANNER OF SERVICE Home Delivered	
SERVED BY (PRINT NAME) ARTHUR M DELGROSSI	TITLE INVESTIGATOR	
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
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		CHARLESTON SC

06-017984

 *** ACTIVITY REPORT ***

ST. TIME	DESTINATION TEL/ID	NO.	MODE	PGS.	RESULT
*09/22 09:06		0031	TRANSMIT ECM	2	OK 01'01
*09/22 10:29		5012	AUTO RX ECM	10	OK 01'46
*09/22 14:26		5013	AUTO RX ECM	2	OK 00'57
*09/22 14:49		0032	TRANSMIT ECM	2	OK 01'01
*09/23 15:30		5014	AUTO RX ECM	1	OK 00'16
*09/25 08:50		5015	AUTO RX ECM	5	OK 01'39
*09/25 16:14		0033	TRANSMIT ECM	4	OK 01'00
*09/26 16:18		0034	TRANSMIT ECM	1	OK 00'40
*09/29 09:23		5016	AUTO RX ECM	3	OK 00'48
*09/29 13:19		5017	AUTO RX ECM	8	OK 04'35
*09/29 14:04		5018	AUTO RX ECM	4	OK 01'43
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*10/01 15:01		0036	TRANSMIT ECM	3	OK 00'51
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*10/07 16:30		5021	AUTO RX ECM	1	OK 00'16
*10/07 17:19		5022	AUTO RX ECM	1	OK 00'16
*10/08 12:53		0045	TRANSMIT	0	NG 00'00
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*10/08 14:28		0047	TRANSMIT ECM	2	OK 01'02
*10/09 13:37		0048	TRANSMIT ECM	1	OK 00'16
*10/09 16:29		5024	AUTO RX ECM	2	OK 00'49
*10/10 10:18		0049	TRANSMIT ECM	2	OK 00'57
*10/13 16:04		5025	AUTO RX ECM	2	OK 00'27
*10/14 11:46		0050	TRANSMIT ECM	3	OK 01'13
*10/14 14:28		0051	TRANSMIT ECM	2	OK 00'32
10/16 09:36		5026	AUTO RX ECM	1	OK 00'20
10/16 14:50		5027	AUTO RX ECM	1	OK 00'22
10/20 11:47		5028	AUTO RX ECM	3	OK 00'58
10/22 11:29		0052	TRANSMIT ECM	1	OK 00'28
10/24 16:22	99581905	0053	TRANSMIT ECM	4	OK 00'38

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CLERK OF COURT <i>Julie J. Armstrong</i>		DATE	
(BY) DEPUTY <i>Ronald J. Rye</i>		10/22/08	
This subpoena is issued upon application of the ☐ SOLICITOR ☒ DEFENDANT		ATTORNEY'S NAME AND ADDRESS MICHELLE R. SUGGS, ESQ ASSISTANT NINTH CIRCUIT PUBLIC DEFENDER CHARLESTON COUNTY O.T. Wallace County Office Building 101 Meeting Street, 5 th Floor Charleston, South Carolina 29401-2214 (843) 958-1850 (843) 958-1860 (fax)	

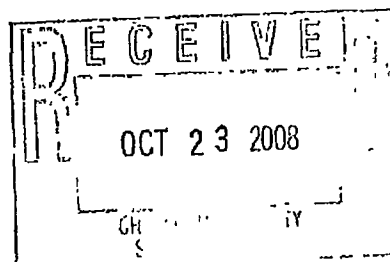


EXHIBIT G

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669
Plaintiff(s),

-vs-

J. AL CANNON, JR., in
His official capacity as
Sheriff of Charleston County,
Investigator Anderson,
Investigator Antonio, Charles
Ghent, and South Carolina
Law Enforcement Division,
Defendant(s).

THE DEPOSITION OF LIEUTENANT MICHAEL A.
ANDERSON, taken on behalf of the Plaintiff on
Tuesday, March 11, 2014, commencing at 10:00 a.m.
at the Law Offices of Senn Legal, 3 Wesley Drive,
Charleston, South Carolina.

REPORTED BY: Nicole D. White

1 A-P-P-E-A-R-A-N-C-E-S:
 2
 3 Appearances for the Plaintiff
 4 By: Stephanie R Fajardo, Esquire
 5 THE FINNEY LAW FIRM, INC
 6 2117 Park Street
 7 Columbia, South Carolina 29201
 8 (803) 773-1415
 9 Stephanie.r.fajardo@gmail.com
 10
 11 Appearances for the Defendant:
 12 By: Robin L Jackson, Esquire
 13 SENN LEGAL
 14 3 Wesley Drive
 15 Charleston, South Carolina 29422
 16 (843) 556-4045
 17 Robin@sennlegal.com
 18
 19 Also Present:
 20 Investigator Roger Antonio
 21
 22
 23
 24
 25

1 (LIEUTENANT MICHAEL A. ANDERSON, having been
 2 first duly sworn, testified as follows)
 3 E-X-A-M-I-N-A-T-I-O-N
 4 BY MS. FAJARDO
 5 Q Okay, Lieutenant Anderson, I'm Stephanie
 6 Fajardo I represent the Plaintiff in this
 7 case I know we met yesterday Have you
 8 ever given a deposition before?
 9 A. Yes, I have.
 10 Q. Multiple depositions?
 11 A. Twice.
 12 Q Twice? Okay. I'm gonna go over just a few
 13 of the ground rules I know you were here
 14 yesterday for Mr Magwood's deposition, but
 15 just want to make sure we cover everything
 16 We have a court reporter here taking
 17 down everything we say Need to be verbal
 18 Uh-huh or huh-uh, I know what you're saying,
 19 but the court reporter can't write that
 20 down
 21 I don't anticipate that we'll go very
 22 long today, but if you need a break for any
 23 reason, please let me know I'll be happy
 24 to stop I just ask that you answer the
 25 question that has been posed before we take

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1 that break
 2 Obviously, now that your deposition
 3 has begun, if you should ask opposing
 4 counsel any questions, I am able to ask you
 5 about those conversations So if you have
 6 any questions about what I'm asking you or
 7 what I mean by the question, I'd ask you
 8 that you just direct everything to me I'll
 9 be happy to repeat any question, rephrase
 10 it, anything to help you understand
 11 If you don't ask me to rephrase, I'll
 12 assume that you heard my question, you
 13 understood it and that you're answering the
 14 question that I asked Is that fair?
 15 A. Yes, ma'am.
 16 Q Are you under the influence of any
 17 substances, lack of sleep, stress, or
 18 anything else that would affect your ability
 19 to answer my questions truthfully today?
 20 A. No, ma'am.
 21 Q Have you spoken to anyone other than your
 22 attorney regarding this case?
 23 A. No, ma'am.
 24 Q Okay And this is just for clarification,
 25 do you have another attorney aside from Senn

(Pages 2 to 5)

1 Legal?
 2 A. I do. Chris Deaters (ph). Be honest with
 3 you, I can't even tell you what law firm
 4 he's with, but it's through the PBA.
 5 Q. Okay And that's as a result of you being
 6 an officer at the sheriff's department or --
 7 A. No, it's -- I have -- I have with the PBA
 8 there's a legal, I don't know what you call
 9 it, I guess, insurance, whatever. You pay
 10 yearly. If you get sued, arrested, or
 11 whatever, they'll send you an attorney.
 12 Q. Okay
 13 A. That's what that is.
 14 Q. Is he involved in this case at all?
 15 MS. JACKSON: He's just
 16 monitoring He's not even going to
 17 file a notice of appearance I don't
 18 think.
 19 Q. Perfect. I just wanted to clarify. Have
 20 you reviewed anything prior to your
 21 deposition today?
 22 A. Yes, ma'am.
 23 Q. What have you reviewed?
 24 A. I reviewed the final report that I submitted
 25 to my chain of command.

1 Q. How long have y'all been married?
 2 A. Nineteen years.
 3 Q. And answered quickly. Did good job. Have
 4 you ever been married before?
 5 A. No, ma'am.
 6 Q. Do you have any children?
 7 A. I do.
 8 Q. Are they above the age of 18?
 9 A. No, ma'am.
 10 Q. Okay. Do you have family in Charleston
 11 County?
 12 A. I don't have any blood relatives in
 13 Charleston County. Actually, no. The
 14 answer's no. I don't have. I'm sorry.
 15 Q. Your wife isn't from --
 16 A. She's from here, but I don't think we have
 17 any in Charleston County, in-laws. They're
 18 in the woods.
 19 Q. I understand Tell me a little bit about
 20 your educational background, how far did you
 21 go in school?
 22 A. I have a bachelor's degree in Columbia
 23 Southern University. That's in Alabama.
 24 Going backwards, have an associates degree
 25 in Trident Tech.

1 Q. Uh-huh
 2 A. And I've reviewed the interviews, I believe.
 3 I'm pretty sure I've reviewed all the
 4 interviews, all the audio files.
 5 Q. And those are interviews that you performed?
 6 A. Yes, ma'am.
 7 Q. Okay. What is your date of birth?
 8 A. November 18th, 1974.
 9 MS. FAJARDO Can we go off the
 10 Record?
 11 (Off-the-Record conversation)
 12 Q. Did you just give me a Social Security
 13 number with the last four digits of 9260?
 14 A. Yes, ma'am.
 15 Q. Okay What is your current address?
 16 MS. JACKSON: Can you go off
 17 the Record for that, too?
 18 MS. FAJARDO Sure
 19 (Off-the-Record conversation)
 20 Q. And are you married?
 21 A. Yes, ma'am.
 22 Q. What is your wife's name?
 23 A. First name is Terri, T-E-R-R-I, Anderson.
 24 Q. What's her maiden name?
 25 A. Richardson.

1 Q. What is your bachelor's degree in?
 2 A. Criminal justice administration.
 3 Q. What's your associates in?
 4 A. Criminal justice.
 5 Q. When did you get your associates?
 6 A. Oh, I have to think for a minute here. Two
 7 -- it's either '99 or 2000.
 8 Q. Okay When did you get your bachelor's?
 9 A. That would have been maybe '06, '07. I
 10 don't know exactly, but somewhere -- it's
 11 been a few years.
 12 Q. Okay And you're currently employed at the
 13 Charleston County Sheriff's Department?
 14 A. Yes, ma'am.
 15 Q. How long have you been employed there?
 16 A. Since July of 1999, so I am coming up on
 17 15 years.
 18 Q. Congratulations
 19 A. Thank you.
 20 Q. Have you been employed in the same capacity
 21 since '99, doing the same job?
 22 A. With the sheriff's office?
 23 Q. Yes.
 24 A. Yes, ma'am.
 25 Q. Always in Internal Affairs?

(Pages 6 to 9)

10

1 A. Oh, no. I'm sorry. I should have asked you
2 for clarification. No. I've done several
3 different, but I've been at the sheriff's
4 office the entire time. Different jobs,
5 different ranks, whole nine yards.
6 Q. Kind of go through just a general. What
7 jobs have you held?
8 A. When I started I was a deputy sheriff and I
9 did patrol.
10 Q. Okay.
11 A. That was '99. '01 I went to investigations
12 for CID. I stayed up there until 2004 and I
13 was promoted to sergeant. I went back to
14 patrol as a sergeant. That's 2004. And
15 either end of '04 or beginning of '05 I went
16 to our logistics section as a sergeant.
17 Stayed there for a few months. Then I went
18 to narcotics as a sergeant and so from '05
19 to '07 I was in narcotics and I'm just
20 trying to remember the years kind of going
21 by about how long I stayed in there so I
22 could be off just a little bit.
23 Q. That's fine.
24 A. From narcotics as a sergeant I went to
25 Internal Affairs.

11

1 Q. So probably about 2007-ish Internal Affairs?
2 A. Correct. Yes, ma'am. Pretty -- I might be
3 off because I'm kind of going -- let's go
4 all the way through. Then I stayed -- I
5 know I stayed three years in IA, three long
6 years and then I was promoted out of
7 Internal Affairs to lieutenant.
8 I went back to narcotics. I stayed in
9 and that was -- I stayed in narcotics for
10 two years, almost exactly.
11 And then I went to patrol as
12 lieutenant. Stayed there for a few months.
13 I went to traffic as lieutenant this
14 past November right after Thanksgiving and
15 I've just been transferred back to logistics
16 this past week where I'm currently assigned.
17 Q. Let me get a little clarification. What
18 exactly is logistics?
19 A. Supply. All the guns, the cars, the
20 uniforms, paper clips, pens, anything and
21 everything to do with what -- anything, you
22 know, that's needed in the sheriff's office.
23 Q. Okay.
24 A. And then whatever else they decide to have
25 you deal with.

12

1 Q. Okay.
2 A. It's pretty much administrative. In fact,
3 it's exclusive, it's an administrative job.
4 Q. All of the transferring and I know a lot of
5 these you were promoted.
6 A. Right.
7 Q. What is the reason for the transfers. Is it
8 common for people to get transferred from
9 different departments?
10 A. It depends. I mean, you know, I always look
11 for new things to do. So if something came
12 up, you know, when I was a sergeant -- I was
13 promoted out of CID, went to the road.
14 Shortly after that I was asked to go to
15 logistics. It was a challenge and I knew it
16 would be a challenge, so I accepted it and
17 really when your superiors ask you, hey, do
18 you want to take a job, do you want to come
19 work over here, you really kind of, yeah,
20 sure. You know, but I did, I wanted to go.
21 I was fine with it. But after I got over
22 there, I realized, I mean, I wasn't police
23 anymore and I wanted to be, so an
24 opportunity came and that was assistant
25 sheriff asking me if I wanted to go to

13

1 narcotics. Here again, what am I gonna say,
2 no? And it was fine with me, so I went and
3 did that. Promoted -- it's really not a
4 promotion to go to Internal Affairs.
5 Q. Okay.
6 A. You're selected. You change your title from
7 sergeant to inspector. I really don't know
8 why that is, but it comes with a small pay
9 increase. And so that was something that
10 really -- that I was interested in. I
11 wanted to do, but here again, hey, you want
12 to do this, sure. The only time that it
13 wasn't either a promotion or me being asked
14 to come out or to go or to move from one
15 point to the other was when I was lieutenant
16 in narcotics and I did two years back there
17 and I've got three small kids and it was
18 just wearing on the family, so I asked to
19 come out.
20 And so then they obliged me and put me
21 on permanent nights on patrol, which
22 actually worked out just fine, but then I
23 was asked by the traffic captain come work
24 for me, sure.
25 And then most recently with logistics

(Pages 10 to 13)

14	16
1 we -- the lieutenant who was back there now 2 or was back there that I replaced was 3 promoted. The sergeant that they've got 4 back there working for him was brand new 5 didn't know -- it's a fairly complex job and 6 having done it before, you know, I just say, 7 hey, can you go back there so we at least 8 have one of you guys that seems to know what 9 you're doing and so that's why I went back. 10 So I've bounced around, but most of it not 11 -- I mean the only thing, like I said, the 12 only exception is when I asked to come out 13 of narcotics the second go around when I was 14 back there. 15 Q. Thank you for clarifying that. 16 A. Sure. 17 Q. And what -- at the time of all the issues 18 with Mr. Magwood you would have been in 19 Internal Affairs? 20 A. Yes, ma'am. 21 Q. What kind of hours do you work in Internal 22 Affairs? 23 A. 9:00 to 5:00. I mean, 99 percent of the 24 time. Occasionally we would come in early 25 to talk to somebody who was on the night	1 A. Yes, ma'am. 2 Q. And you would have gone through that around 3 '07-ish, '06/'07 right after you got into 4 Internal Affairs? 5 A. Right after. Shortly after I went is when I 6 went to that. That's one of the first 7 things they do is send you to that training. 8 Q. Do you attend church? 9 A. No. 10 Q. Are you a member of any civic organizations 11 or clubs? 12 A. No, ma'am. 13 Q. Okay. Okay. Next few questions are not 14 meant to embarrass you. I ask them in every 15 deposition. 16 A. It's all right. 17 Q. Have you ever been arrested? 18 A. No, ma'am. 19 Q. Ever been treated by a psychiatrist or 20 psychologist for any reason? 21 A. I went and spoke to -- we have a counselor 22 that you can go to with the sheriff's 23 office. 24 Q. Uh-huh. 25 A. I sat down with her. It's free. Sat down
15	17
1 shift or if we wanted to get off early on 2 Friday we would set up an interview for 3 somebody who was on the night shift on a 4 Friday morning, that kind of thing. 5 Q. Uh-huh. What kind of training have you 6 received prior to being a police officer? 7 Just the -- I mean, you went through the 8 academy? 9 A. Yes, ma'am. 10 Q. Any other continuing training that you've 11 done? 12 A. We have all kinds of training throughout the 13 years. 14 Q. Do you get any special training being in 15 Internal Affairs? 16 A. Yes, ma'am. 17 Q. Okay. What kind of training do you get? 18 We'll just talk about the Internal Affairs 19 training. 20 A. It's a 40-hour course that you go through. 21 It's just a basic Internal Affairs 22 training -- 23 Q. How to -- 24 A. -- course. 25 Q. -- do everything?	1 for a couple of sessions or whatever with 2 her. 3 Q. Okay. 4 A. Once. 5 Q. About when was that? 6 A. It was when I was a lieutenant. It was 7 after I left Internal Affairs during the 8 time I was lieutenant in narcotics. 9 Q. Okay. 10 A. As far as the year, I couldn't -- I mean, I 11 could guesstimate for you. 12 Q. Was it personal issues or issues related to 13 the job? 14 A. Personal stuff. I was -- 15 Q. I'm not gonna delve into it. 16 A. I'm fine with it either way, whatever you 17 want to do. 18 Q. Are you currently under a doctor's care? 19 A. No, ma'am. 20 Q. Currently taking any medications? 21 A. No, ma'am. 22 Q. Were you under any doctor's care or on any 23 kind of medications we'll say in 2008, 2009? 24 A. I don't -- I mean, no. You talking about -- 25 Q. And I'm not talking about you had to go to

(Pages 14 to 17)

18

1 the doctor for flu, but continuing doctor's
2 care for any medical issues?
3 A. No. No, ma'am.
4 Q. Okay. Have you ever been involved in any
5 other lawsuits?
6 A. Yes.
7 Q. How many?
8 A. Two.
9 Q. Are they related to on your job or personal?
10 A. Job related.
11 Q. Can you tell me a little bit about those?
12 A. One was from a case that I worked when I was
13 in narcotics when I was a sergeant and I --
14 I mean, that was a -- they were a problem.
15 We had seized some property and that's what
16 that kind of centered around. The second
17 one was, again, when I was in narcotics as a
18 sergeant we had a former employee bring a
19 lawsuit against the agency claiming sexual
20 harassment while she worked back there. I
21 was a supervisor so I was part of it. I was
22 not --
23 Q. Were you named individually in these
24 lawsuits?
25 A. No, I was not.

19

1 Q. Okay. You were just involved as being part
2 of the agency and the team?
3 A. Yes, ma'am.
4 Q. Have you ever been involved in any Workers'
5 Compensation or Social Security matters?
6 A. No, ma'am.
7 Q. I know we talked about two lawsuits that I
8 guess Charleston County Sheriff's Department
9 was involved in. Do you know of any others
10 that -- other lawsuits Charleston County
11 Sheriff's Department has been involved in or
12 that you had any part in?
13 A. There was -- there was one. I never went to
14 a deposition. I know that I answered some
15 questions, I think part of the first when --
16 I guess when the lawsuit's filed and there
17 are interrogatories that are filed and then
18 we have to answer and I know that I helped
19 the county attorney. That was years ago.
20 That was when I was CID. That's as far as
21 that one went.
22 Q. Do you remember what the lawsuit was about?
23 A. I don't remember the exact -- I'm sure it
24 was probably -- well, I don't remember
25 exactly what the allegations were. Gene's

20

1 Pawn Shop over on, well, you're from
2 Columbia, Rivers Avenue. We locked him up
3 for interfering in a case. We went over to
4 recover some stolen property.
5 Q. Okay. Okay. I want to ask some questions
6 just about policy and procedures of Internal
7 Affairs. I want you to just kind of walk me
8 through how you do things in Internal
9 Affairs so I make sure we're on the same
10 page. I know you talked about this 40-hour
11 course that you go through as far as
12 training what to do and how to do. Do you
13 have a handbook or anything that they give
14 you, as far as Internal Affairs how to
15 handle different situations?
16 A. Something that we get from -- I don't
17 understand.
18 Q. Anything that you get from Charleston County
19 Sheriff's Department that would say in
20 Internal Affairs this is how you do
21 something, so if you have a question you can
22 open up the book and flip to, you know, page
23 30 and it says this is how you interview
24 somebody or anything like that?
25 A. No, no handbook.

21

1 Q. Okay. Just is the training that 40-hour
2 course, is that the main sort of training
3 that you get on how to handle situations in
4 Internal Affairs?
5 A. Yes.
6 Q. Okay. Are you trained at all by -- do you
7 have like a superior or someone that would
8 sit with you when you first started to show
9 you how to do things or
10 A. I'm just trying to think back to when I
11 first came in. I don't remember if I had a
12 superior sitting in. I know that our case
13 files are reviewed, monitored throughout.
14 Q. Okay.
15 A. We do have -- we had a supervisor in IA that
16 we answer to.
17 Q. Walk me through the standard procedures of
18 investigating an allegation once y'all are
19 made aware of an allegation that needs to be
20 followed up on. What's the first thing that
21 you would do?
22 A. Well, every case is gonna dictate, you know,
23 depending on what you get, what the
24 allegation is, from whom it's coming, you
25 know, so it's really -- I don't know that

(Pages 18 to 21)

22

1 there would be a set standard, this is
 2 exactly what you do first every single time.
 3 Q. Okay.
 4 A. So that you would just -- you conduct
 5 interviews. You interview the people that
 6 are pertinent to the case, you look at any
 7 evidence that's pertinent to the case.
 8 Sometimes there's evidence, external
 9 evidence other than interviewing people,
 10 sometimes there's not. Just it's a basic
 11 investigative process that you go through.
 12 Q. Where do you get, I guess, the allegations
 13 or the claims that you have to investigate?
 14 Do they come from one specific person or
 15 can, you know, can a lay person ask Internal
 16 Affairs to investigate something? Does it
 17 have to come from within the department?
 18 Explain a little bit of that to me
 19 A. It can be -- it can be either/or. If the
 20 phone rings and you can be the one to pick
 21 it up and it's a citizen calling from
 22 wherever and they want to make a complaint,
 23 you take the complaint.
 24 Q Okay
 25 A. Or it can come from within. We get them

23

1 both.
 2 Q Okay. What is the point of your
 3 investigation when you get these
 4 allegations? What's the end game supposed
 5 to be?
 6 A. To --
 7 Q Sorry, go ahead
 8 MS. JACKSON. Objection to the
 9 form Go ahead.
 10 Q Let me see if I can rephrase so I can make
 11 that a little more clear.
 12 A. Yeah.
 13 Q. What I'm looking for is when you get a
 14 complaint do you just investigate and make a
 15 finding of this is what Internal Affairs
 16 thinks should be done or you just
 17 investigate and then present your findings
 18 to -- or what you found out to someone else?
 19 A. We investigate and present what we found out
 20 to someone else.
 21 Q. Okay Who -- who do you give your
 22 investigation to at the end. Once you've
 23 interviewed everybody, looked at all the
 24 evidence, who would it go to then?
 25 A. It goes to the chief deputy under which that

24

1 employee falls, through the chief inspector
 2 who would be our first line supervisor and
 3 the assistant sheriff who is the next level
 4 of supervision for Internal Affairs.
 5 Q. Okay. And you have -- I guess you fill out
 6 a report or collect all the -- summarize
 7 what you found out in your investigation and
 8 that's what's presented to the, I guess the
 9 chief deputy of that division?
 10 A. Correct.
 11 Q. Do you stay involved at all once -- once
 12 you've presented that report to the chief
 13 deputy or is your part of it over?
 14 A. No, ma'am. We -- we're done at that point.
 15 At that point it's in their hands.
 16 Q If criminal charges are brought as a result
 17 of the investigation, do you get involved
 18 with the criminal case at all?
 19 A. Criminal charges aren't brought as a result
 20 of our investigations.
 21 Q. Okay What is your procedure when you're
 22 interviewing people, is that videotaped?
 23 A. No, ma'am.
 24 Q Is there audio?
 25 A. Yes.

25

1 Q. Is there always -- there's always audio any
 2 time you do an interview?
 3 A. Yes.
 4 Q. Do you work cases alone or do you have a
 5 partner?
 6 A. You have a partner.
 7 Q Is Lieutenant Antonio, do you always -- let
 8 me rephrase that. Do you always have the
 9 same partner or does it vary?
 10 A. It varies.
 11 Q. Okay Going to Mr. Magwood, did you know
 12 him prior to the investigation?
 13 A. Yes, I did.
 14 Q. Okay. Do you -- how did you know him?
 15 A. We worked together in investigations. We
 16 were both detectives together.
 17 Q. How long did y'all work together?
 18 A. I would have to kind of think on that. I'm
 19 pretty sure he came up after I did. I don't
 20 know that it was too much longer after I
 21 went up there that he went up there. I was
 22 gone for a year on a deployment. I was up
 23 there for a total of -- I think I was up
 24 there for about three, three and a half
 25 years and we worked together for maybe a

(Pages 22 to 25)

26

1 couple of years, but that's a ballpark
2 guesstimate.
3 Q. Did y'all ever work on cases together or
4 just in the same division?
5 A. I'm sure we worked together on cases up
6 there. I don't remember a specific case
7 that we were necessarily partnered up
8 together to work. Okay, you guys are gonna
9 work together on this. It's possible, but
10 it's pretty much a team environment up
11 there, so there's many times you'd find
12 yourself working with other detectives, so
13 it wasn't...
14 Q. In Internal Affairs, how many officers work
15 in Internal Affairs?
16 A. You have two sworn investigators, so those
17 would be deputies. Then you've got two
18 detention officers and they're non-sworn, so
19 total of four investigators and then you
20 have a chief inspector.
21 Q. And you said the chief inspector, that would
22 be your direct supervisor?
23 A. Yes, ma'am.
24 Q. Who was the chief inspector when you were in
25 Internal Affairs?

27

1 A. Mark Fields.
2 Q. Is he still in Internal Affairs?
3 A. No, ma'am.
4 Q. Does he still work for Charleston County?
5 A. No, he doesn't.
6 Q. Okay. Do you know where he works?
7 A. I believe he works for Moncks Corner Police
8 Department, but that's just word of mouth.
9 Q. Okay. What was your role and job duties
10 when you were in Internal Affairs. You were
11 one of the sworn investigators?
12 A. Correct.
13 Q. What would be your job duties that you would
14 describe to somebody as a sworn
15 investigator?
16 A. We investigate complaints against employees.
17 Q. And that was your sole job, you didn't have
18 anything other than investigating complaints
19 against the employees?
20 A. No. There was other clerical things that we
21 did. You had use of force packages. You
22 know, if a deputy or detention officer uses
23 force in execution of their, you know, their
24 duties or whatever, there would be a packet
25 that would be put together and run through

28

1 the chain of command. Those would come in
2 and we would review those and file them.
3 Same for pursuits, vehicle accidents and
4 mishaps, same thing, package gets put
5 together, paperwork generated, it would come
6 in and we'd review that.
7 Q. How many cases investigation -- when I say
8 cases, I mean the investigations of
9 complaints did you have in Internal Affairs
10 at one point on average?
11 A.. Like how many would we be working at one
12 time?
13 Q. Yes.
14 A. Is that what you're asking me?
15 Q. Yes.
16 A. It would vary. Sometimes you could get down
17 to, you know, as few as one or two and
18 sometimes you might be working five, six.
19 Just really kind of depending on how many
20 complaints would come in at any given time.
21 Q. When did you first hear about the issue with
22 Mr. Magwood?
23 A. Are you -- can I -- in relation to what? I
24 don't remember. I'm pretty sure it was
25 2008, but I don't remember what time of the

29

1 year it was. I don't remember what the date
2 was.
3 Q. That's fine. Did you -- let me ask this.
4 Did you hear about that there was an issue
5 with Mr. Magwood outside of working in
6 Internal Affairs?
7 A. Oh, no. No, ma'am.
8 Q. But someone -- do you know who approached or
9 who asked Internal Affairs to look into the
10 complaint?
11 A. I -- I'm -- this is one of those things
12 where I'm pretty sure it came from the
13 solicitor's office. I don't know from whom
14 at the solicitor's office, but I believe
15 they're the ones who brought it to the
16 attention of the sheriff's office.
17 Q. Okay. Did they call you, did they write a
18 letter, do you know how Internal Affairs was
19 contacted?
20 A. No. It didn't come to me. I don't know if
21 anybody else -- I believe that the agency
22 was contacted. Pretty sure it was the
23 assistant sheriff and then of course, she
24 would have brought that to us. Well,
25 brought that to -- to the chief inspector.

(Pages 26 to 29)

30

1 He would have assigned the case, but again,
 2 and of course I don't -- I can't visualize
 3 that. I'm not recalling as far as what
 4 exactly happened.
 5 Q. Okay
 6 A. But I didn't receive a phone call from
 7 somebody and said, hey, I got this problem,
 8 I got this issue or whatever and then I
 9 initiated it. I was assigned the case --
 10 Q. Okay
 11 A. -- by someone in my chain of command.
 12 Either the chief inspector or assistant
 13 sheriff, one of those two would be the one
 14 who assigned me the case.
 15 Q. You came in one day, they said here's this
 16 case I need you to work and that would have
 17 been the first time that you'd heard about
 18 any issue with Magwood?
 19 A. Right. Correct
 20 Q. Okay. Who -- I know you said there was two
 21 sworn investigators and two detention
 22 officers and then the chief inspector. Who
 23 was the other sworn investigator?
 24 A. Lieutenant Antonio.
 25 Q. And who were the two detention officers when

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1 you were there?
 2 A. Well, Dana Herron I know was back there.
 3 Q. Dana?
 4 A. Herron, H-E-R-R-O-N, she's an inspector.
 5 Inspector Herron. At that time while I was
 6 back there, I was back there for three
 7 years, during the time I was back there they
 8 added a second detention investigator
 9 position and now that I think about it, I'm
 10 not sure, I think that may have actually
 11 happened after the Magwood investigation was
 12 concluded.
 13 Q. Okay.
 14 A. So at that time I'm pretty sure it was just
 15 Inspector Herron and myself and Inspector
 16 Antonio.
 17 Q. What do the detention officers do?
 18 A. They do the same thing, but you have
 19 complaints or issues that come in from the
 20 detention side, so they would typically
 21 handle those. Sometimes we would work on
 22 detention cases, sometimes they would help
 23 us with sworn cases.
 24 Q. Does it make any difference that the
 25 detention officers aren't sworn and the two

32

1 sworn investigators are, does that affect
 2 what they can do at all?
 3 A. No. I don't think so. We would -- we would
 4 typically work the sworn case. I don't --
 5 it's possible, but I don't remember them
 6 ever being assigned detention cases or I'm
 7 sorry, sworn cases against deputy sheriffs.
 8 It's definitely possible, but pretty much
 9 they would -- they would work the detention,
 10 but depending on the case load we might work
 11 detention cases. I know I worked some
 12 detention cases when I was back there.
 13 Q. When you say sworn cases, you mean sworn
 14 cases against acting deputy sheriffs?
 15 A. Yeah, sorry.
 16 Q. That's fine. Was anyone else working on the
 17 Magwood case with you, was anyone else
 18 assigned?
 19 A. No. It -- it was assigned to me.
 20 Q. Okay. So you were the main person for the
 21 Magwood case?
 22 A. Yes, ma'am.
 23 Q. Did Lieutenant Antonio, did he assist in the
 24 case with you?
 25 A. Yes, he did.

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1 Q. But you were the main contact?
 2 A. Correct.
 3 Q. And you said that typically two people work
 4 on all cases together?
 5 A. Correct.
 6 Q. And I know you said you didn't get the
 7 direct contact regarding the issues that the
 8 department or the solicitor's office felt
 9 that existed with Magwood, but were you
 10 given any sort of goal of what you were
 11 supposed to do in the investigation?
 12 A. Well, I don't believe that it was -- it was
 13 unlike any other investigation. We received
 14 a complaint, it was clear what the problem
 15 was or what the concern was and we conducted
 16 an investigation. I don't know that a goal
 17 per se.
 18 Q. And let me ask this, what was presented to
 19 you as the issue with Mr. Magwood that you
 20 were investigating?
 21 A. That he had done -- that he had investigated
 22 a sexual assault case and there was a photo
 23 lineup that he had done that was submitted
 24 with the case file and there were questions
 25 about whether or not the witness, in this

(Pages 30 to 33)

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1 case it was the victim, had actually
2 initialed, circled, initialed, dated and
3 timed the photo lineup.
4 Q Had you investigated a case similar to this
5 before?
6 A. No. I can't think of any other case that I
7 had, no, ma'am.
8 Q. What did you review for your investigation?
9 A. Well, we looked at Detective Magwood's case
10 file from his sexual assault investigation.
11 And I looked at the SLED file.
12 Q. Was the SLED investigation complete by the
13 time you started your investigation?
14 A. Yes, ma'am.
15 Q Can you kind of walk me through the
16 investigation that you did in regards to the
17 complaint against Mr. Magwood?
18 A. Well, I reviewed, of course, I looked at his
19 case file and just went over it, read his
20 reports, made notes. I looked at the SLED
21 case file and then conducted interviews.
22 Everybody that SLED interviewed, I went back
23 and interviewed, as well.
24 Q Do you remember everyone that you
25 interviewed?

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1 A. I interviewed the sexual assault victim,
2 Catherine Boney, I interviewed Sergeant
3 Zimmer, Lieutenant Watson, Assistant
4 Solicitor Greg Voigt. His investigator at
5 the time was Ryan Kelly. I interviewed him.
6 I interviewed Lieutenant Paul Tittle.
7 Sergeant BK Williams, Brian Williams, I'm
8 pretty sure that's -- just trying -- just
9 going off memory here. I'm pretty sure
10 that's it.
11 Q Why -- why these specific people did you
12 interview?
13 A They all had -- they all had information or
14 possibly could have had information that was
15 pertinent to the investigation.
16 Q. And working in Internal Affairs, do you have
17 leeway as far as who you choose to interview
18 or look for evidence. What I mean by that
19 is did your supervisor ever say here's the
20 complaint and these are the people that you
21 go talk to or is that something you're
22 charged with figuring out who's important to
23 go talk to?
24 A. I mean, there was -- could go either way. I
25 mean, you know, we certainly knew what we

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1 were doing. I'm sure there were times when
2 the chief inspector said, hey, you might
3 want to talk to this person or that person,
4 but I mean, it's -- they don't really --
5 they don't tell you -- he's not gonna tell
6 you, hey, do this or give you a step by
7 step, you know, instructions on how to
8 conduct the investigation.
9 Q. All of the people that you listed that you
10 believe you interviewed, did any of them
11 make written statements or was it just you
12 and that person talking and you taking
13 notes?
14 A. I -- I don't remember. I don't think we
15 asked for a written statement from Catherine
16 Boney, but all -- nor -- I don't remember
17 about Ryan Kelly or Greg Voigt. I know that
18 the people we interviewed who were members
19 of the sheriff's office, they all gave
20 written statements.
21 Q So everyone gave written statements except
22 you don't believe Greg Voigt did or Ryan
23 Kelly?
24 A. I'm not sure about those two.
25 Q Okay. And you -- did Ms. Boney give a

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1 statement or you were unsure about her, as
2 well?
3 A. I don't think we took a written statement
4 from her, but I know we interviewed her.
5 Q Okay. Approximately how long did your
6 investigation take?
7 A. I believe it was maybe two to three months
8 that we spent on that or I spent on that.
9 Q Is there an average time of how long
10 investigations typically take?
11 A No. No, ma'am.
12 Q It would depend on the complaint and how
13 much investigation has to be done?
14 A. That and your case load, you know you might
15 have other things going on, but yeah,
16 that's...
17 Q. Okay. Do you form any kind of opinion on
18 findings at the end of your investigation?
19 A. Yes, we do.
20 Q. In this case what was your opinion on
21 finding?
22 A. That Detective Magwood had violated two
23 policies. One of them was unsatisfactory
24 performance and the other one was the
25 truthfulness policy.

(Pages 34 to 37)

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1 Q Let me talk about the unsatisfactory
2 performance. What was the basis for that
3 finding?
4 A. I'm trying to think and it would -- it would
5 help if I could see a copy of the -- of my
6 final report. I know there were some issues
7 with that case. One, he showed her a single
8 color photo lineup or I'm sorry, a single
9 color photo prior to showing her a lineup.
10 That's the main thing that stands out in my
11 mind as far as unsatisfactory performance.
12 Q. And the truthfulness, what was the basis for
13 that?
14 A. Let me back up, I apologize.
15 Q. Oh, yeah.
16 A. There was -- well, I found that there was
17 strong evidence also to suggest that he had
18 initialed that photo lineup for the victim
19 Q. Okay. And then what was the basis for the
20 truthfulness, the violation?
21 A. Again, found there was strong evidence that
22 he had -- that after initialing the photo
23 lineup for the victim that he had not been
24 truthful in his statements to Assistant
25 Solicitor Voigt nor the Internal Affairs,

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1 myself and Inspector Antonio when we
2 interviewed him and questioned him on that.
3 MS FAJARDO Can we go off the
4 Record for a minute?
5 (Off-the-Record conversation)
6 BY MS FAJARDO
7 Q. Let me kind of go back You said that there
8 was strong evidence that Magwood had
9 initialed the photo lineup and then that he
10 had lied to -- strong evidence that he had
11 lied to Voigt, Assistant Solicitor Voigt and
12 Internal Affairs
13 A. Right.
14 Q. What was the strong evidence that you base
15 that on?
16 A. We had statements from other employees,
17 people in his chain of command that he had
18 given conflicting statements about that. He
19 himself gave conflicting statements to
20 include his written documentation and we had
21 a handwriting analysis that found that
22 the -- well, there were indications that he
23 had written it, it was -- Catherine Boney
24 had not put her initials -- had not been the
25 author of those initials on that photo

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1 lineup.
2 Q. But the handwriting analysis didn't say that
3 Magwood did write the initials; is that --
4 A. Correct. It said -- that's correct.
5 Q. And that's the same basis for, I guess, the
6 truthfulness?
7 A. Everything, yes, ma'am.
8 Q. Okay. The unsatisfactory performance, you
9 said that the main issue was that it was
10 alleged that Magwood showed the single color
11 photo before the lineup?
12 A. Right.
13 Q. Does that violate protocol to show a single
14 photo before the lineup? I guess what I'm
15 getting at, is why is that wrong?
16 MS. JACKSON. Objection to the
17 form
18 A. If you show someone a single photo, let them
19 look at it, that's your suspect and then
20 turn around and show them a photo lineup,
21 they're -- they're, I would say, prejudiced
22 or however I want to put it, it's gonna push
23 them toward that. That's why you don't do
24 that.
25 Q. Are the officers told not to do that or

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1 that's based on what you would believe to be
2 common sense?
3 A. Well, I mean, certainly common sense would
4 play into it. I don't know. I don't know
5 at what point, you know, a detective would
6 be told this is how you do that during their
7 training. I don't know. I don't know
8 what...
9 Q. Ignoring the SLED investigation and the
10 criminal charges that had been brought
11 against Mr. Magwood --
12 A. Uh-huh.
13 Q. -- turning in a report saying that you
14 believed he had violated the two policies,
15 unsatisfactory performance and the
16 truthfulness, what is the expected outcome
17 that would come to Mr. Magwood?
18 MS JACKSON Objection to the
19 form
20 A. I don't understand the question. Could
21 you --
22 Q. Let me back up and ask it this way Had you
23 ever had a finding on another officer of
24 unsatisfactory performance or violating
25 truthfulness?

(Pages 38 to 41)

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1 A. I don't think I'd had one at that point.
 2 I'd had one on the truthfulness. It's
 3 possible that we had one -- that I had done
 4 one on the unsatisfactory performance.
 5 Q With the officer -- possibly with the
 6 truthfulness, does that cause the officer to
 7 be fired if it's alleged that he's violated
 8 the policy of truthfulness?
 9 A. I don't know.
 10 Q Okay
 11 A. When we do those reports and we send them up
 12 and that's it. We don't have anything to do
 13 with any kind of a discipline or anything.
 14 Q. Who would make the decision on what
 15 discipline, if any, the officer was going to
 16 receive
 17 A. Depends on -- it depends on the facts of the
 18 case, the circumstances.
 19 Q. Okay Explain that. Why -- what would
 20 change it so that one person wouldn't have
 21 the authority, it would go to another
 22 person?
 23 A. Well, if you have -- if you've got a minor
 24 issue like say -- I don't know, extreme
 25 circumstances, like a speeding complaint,

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1 then a supervisor at a lower level could
 2 handle that. So it depends on the severity
 3 of the -- of the violation.
 4 Q. Okay So the more severe the violation is
 5 the more likely it would go to someone
 6 higher up in the sheriffs?
 7 A. Correct. Correct.
 8 Q. Do you know where Mr. Magwood's report went
 9 to, who it went to?
 10 A. It went to the chief deputy at that time it
 11 was Chief Deputy Sowers, S-O-W-E-R-S.
 12 Q I'm sorry S-O --
 13 A. S-O-W-E-R-S.
 14 Q. Where was Sowers in the rank of the police
 15 department?
 16 A. He was a chief deputy.
 17 Q. Okay.
 18 A. So the way kind of to explain that, to help
 19 you visualize that, you got the sheriff and
 20 the assistant sheriff and then there are
 21 chief deputies that are kind of as you go
 22 down and then, of course it branches out.
 23 Q. He would have been the chief deputy that was
 24 over, I guess, investigations where Magwood
 25 was?

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1 A. Correct.
 2 Q. After you turned in your report, did you
 3 have any other conversations with anybody
 4 about it?
 5 A. I don't know. I don't remember.
 6 Q Okay. Do the -- whether it's the chief
 7 deputy or the supervisor in the department,
 8 do they ever call Internal Affairs to
 9 discuss your report, ask questions, anything
 10 like that?
 11 A. It's certainly possible. I don't remember
 12 it happening very often, but if they had a
 13 question or...
 14 Q. Were you aware of SLED's investigation of
 15 Mr. Magwood?
 16 A. Yes, ma'am.
 17 Q Okay How were you made aware of that
 18 investigation?
 19 A. After the initial complaint came in I was
 20 assigned the investigation, we sent a letter
 21 to SLED requesting that they conduct an
 22 investigation.
 23 Q. Is that typical protocol?
 24 A. Depends on the allegations.
 25 Q What would cause you to contact SLED to do

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1 an investigation?
 2 A. That decision would actually be made above
 3 me, but it would have to do with if there's
 4 any kind of an allegation or possibility of
 5 a criminal act, then that's the basis on
 6 which that decision is made.
 7 Q Do you know what the criminal act was that
 8 was suspected with the allegation with
 9 Mr. Magwood?
 10 A. No. I mean, I could tell you a specific
 11 statute or whatever, but the allegation was
 12 that he or the concern was that he had
 13 possibly put a witness' initials on a photo
 14 lineup and then filed a report stating that
 15 she had done it
 16 Q Okay Did you ever talk to Agent Ghent with
 17 SLED during your investigation?
 18 A. I don't remember any specific times when I
 19 spoke with him. Again, it's certainly
 20 possible. I was the point of contact.
 21 Q Okay. And you said you got SLED's entire
 22 file prior to beginning your investigation?
 23 A. Correct.
 24 Q. Is it common -- I know you said SLED will be
 25 contacted if it's suspected there could be a

(Pages 42 to 45)

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1 criminal act. Is it common to have two
2 investigations going on, the internal and
3 SLED's investigation?
4 A. No.
5 Q. What do you feel is the difference in a SLED
6 investigation and the Internal Affairs
7 investigation?
8 A. SLED investigation is criminal and the
9 internal investigation is administrative.
10 Q. And criminal charges never result from an
11 Internal Affairs investigation?
12 A. Right.
13 Q. The report -- the report and I know you have
14 a copy in front of you, the internal
15 investigation, is this the full file of your
16 investigation or would there be more? I
17 know you discussed people making written
18 statements. Would that have been a part of
19 kind of the investigation file?
20 A. Yes.
21 Q. All right. Do you take notes throughout the
22 investigation when you're talking to people?
23 A. Sometimes.
24 Q. Is this -- it looks like it's a ten-page
25 document. Is this all that's presented to

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1 put on admin. leave.
2 Q. Was he paid initially?
3 A. He was.
4 Q. And then at some point he went on
5 administrative leave and was not being paid?
6 A. Correct.
7 Q. When was that?
8 A. I believe that was when he was arrested.
9 Q. Okay. Did you have any role in him being
10 put on administrative leave initially?
11 A. No. Those decisions are made above -- above
12 my level. Now, I did -- when you asked
13 me -- okay. You asked me if I had a role in
14 it, I draft the memo and I give it to
15 them -- him. Have him sign it, give him a
16 copy. That's my role as far as that goes,
17 so I guess, yes.
18 Q. But in that case, just so I understand,
19 you're contacted by someone in the sheriff's
20 office and they let you know that
21 Mr. Magwood is going to be put on
22 administrative leave?
23 A. Right.
24 Q. And then you draft the memo?
25 A. Correct.

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1 the supervisor, in this case the chief
2 deputy, or would they have a copy of
3 statements and notes?
4 A. No. This is what -- this is what goes to
5 the chief deputy. This being the final
6 report.
7 Q. What happens to all of the statements and
8 notes and everything?
9 A. Goes in the case file.
10 Q. And y'all keep all of your case files?
11 A. Yes.
12 Q. Is there a specific amount of time that
13 y'all keep them for?
14 A. I don't know. I don't know how long they're
15 kept.
16 Q. And that would include the audio of the
17 interviews?
18 A. Yes, ma'am.
19 Q. Do you know what the basis was for
20 Mr. Magwood being put on administrative
21 leave?
22 A. Initially?
23 Q. Initially, yes.
24 A. There was a criminal investigation being
25 conducted against him would be why he was

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1 Q. Does that happen again, I guess, once he was
2 arrested and he was then put on
3 administrative leave without pay, did you go
4 through that same process again drafting
5 memo and having him sign it?
6 A. I did.
7 Q. Okay.
8 A. I know -- yes.
9 Q. Did you have any role in Mr. Magwood being
10 terminated?
11 A. No, ma'am. Now, I may have sat in -- I
12 don't know if I sat in on his meeting with
13 the assistant sheriff or not. I don't know.
14 That's possible, but I had no part in the
15 decision making process as far as that goes.
16 Q. Do you have any say in whether or not
17 someone is either put on administrative
18 leave or terminated?
19 A. No. No, ma'am.
20 Q. No one asks for your opinion or anything?
21 A. I can't ever remember being asked. That's
22 something that's out of our hands.
23 Q. Did you testify at Mr. Magwood's criminal
24 trial?
25 A. I did.

(Pages 46 to 49)

50

1 Q. What were -- what were you testifying to at
2 the trial? What was your basis? Were you
3 testifying to your investigation or..
4 A. I don't remember what exactly I was
5 testifying to, what I was being asked or
6 what the basis, I guess, that I would be
7 testifying.
8 Q. Was any portion of your investigation shared
9 with anyone, other than I know you turned it
10 into the chief deputy and investigator or
11 Lieutenant Antonio?
12 A. Right. Well, I didn't turn it in.
13 Q. Anyone other than that?
14 A. At what point are you talking about? I
15 don't understand necessarily.
16 Q. At any point did you share either statements
17 you received, notes, your report, was that
18 shared with anyone other than your superior
19 and your --
20 A. I know that the assistant attorney general
21 that was prosecuting the case, they -- I'm
22 fairly certain they subpoenaed -- gave us a
23 subpoena. We gave them parts of it. I know
24 that he got nothing in terms of Detective
25 Magwood's interviews with us, information

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1 that came directly from Detective Magwood.
2 Beyond that, I don't remember exactly what
3 we gave them.
4 Q. Why wasn't the whole file turned over?
5 A. Certain things -- there are certain things
6 that the criminal investigative side can't
7 have legally.
8 Q. Is a person automatically terminated if
9 they're charged with a crime?
10 MS JACKSON Objection to the
11 form
12 A. I don't know. I don't -- you know, I can't
13 tell you as far as what..
14 Q. And I'm just asking your basis in Internal
15 Affairs if you know whether it's a policy of
16 the sheriff's department with the
17 officers --
18 A. No, I don't.
19 Q. And you said you haven't spoken to anyone
20 about either your investigation or this case
21 aside from your attorney and your superior,
22 obviously, Chief Deputy Sowers you may have
23 spoken to him. I know you said you couldn't
24 remember
25 A. Uh-huh.

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1 Q. Anyone else? Have you spoken to anyone else
2 about the case or your findings?
3 A. The chain of command and then, of course,
4 inside Internal Affairs.
5 Q. Yeah. Other than that?
6 A. I know I spoke with an investigator for the
7 insurance, the IRF.
8 Q. Okay. Are you allowed to discuss the case
9 with other people?
10 A. No.
11 Q. That would be a violation of your policy?
12 A. Right.
13 MS. FAJARDO Can we take a
14 brief break?
15 MS. JACKSON. Sure.
16 (Whereupon, there was a short
17 break in the proceedings.)
18 BY MS FAJARDO.
19 Q. You -- oh, let me go back to something you
20 said. I know you talked about the assistant
21 attorney general subpoenaed part of your
22 file and you turned over some part of it.
23 Did you ever give a copy of your file to
24 SLED?
25 A. No.

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1 Q. Okay. Did you ever discuss your interviews
2 that you had with the witnesses with SLED?
3 A. No.
4 Q. Okay. What communication, if any, did you
5 have with SLED?
6 A. I don't remember any specific communications
7 that I had with them.
8 Q. Let me go back. You spoke with Catherine
9 Boney regarding her involvement in this
10 matter with Mr. Magwood?
11 A. Yes.
12 Q. Did you deem her a reliable witness?
13 MS JACKSON Objection to
14 form
15 A. I don't know. I don't remember what I
16 thought after speaking to her.
17 Q. Do you remember -- did you think she was
18 telling the truth to you?
19 A. I don't -- yes, I did.
20 Q. Okay. Do you know anything about Ms. Boney,
21 her criminal record, ever met her before,
22 anything outside of this investigation?
23 A. No.
24 Q. You stated Mr. Magwood gave you all a
25 statement, I think you said earlier he'd

(Pages 50 to 53)

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1 given you a statement?
 2 A. He did.
 3 Q. Okay When did he -- when did he give that
 4 statement?
 5 A. It was during the investigation. Now, are
 6 you talking about his written statement? I
 7 don't understand. Is that what you're
 8 looking for?
 9 Q. Let me kind of back up, because I thought
 10 there was only a written statement? Did he
 11 -- did he talk to you --
 12 A. Yes.
 13 Q. -- at all during the investigation?
 14 A. Yes.
 15 Q. And at some point he gave a written
 16 statement?
 17 A. Correct.
 18 Q. Do you remember about when he spoke with you
 19 about the investigation?
 20 A. No. I can't -- I don't remember exactly
 21 when, like what the date or I don't know.
 22 Q. Okay. Did he speak --
 23 A. Go ahead.
 24 Q. Did he speak with you at first and then he
 25 gave a written statement?

55

1 A. Yeah. I don't know. I don't remember when
 2 he handed us that written statement. I
 3 don't know. I don't remember.
 4 Q. That's fine. Did his story change at all
 5 throughout the investigation?
 6 A. It did. Now, you're talking about -- I
 7 mean, I guess I need clarification on the --
 8 on the question.
 9 Q. Yeah. When he -- the first time that you
 10 spoke with him --
 11 A. Right.
 12 Q. -- and he explained what happened with the
 13 photo lineup --
 14 A. Uh-huh.
 15 Q. -- did that ever change throughout the
 16 entire investigation? Did he change any of
 17 the facts or what he did throughout the
 18 investigation?
 19 A. His verbal statements to us when we
 20 interviewed him remained the same, the
 21 two -- interviewed him twice. His written
 22 statement didn't match up with what he told
 23 us.
 24 Q. Do you remember what didn't match up?
 25 A. The -- he said that he wrote the date and

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1 time and in his written statement he just
 2 said he wrote the date, that all he wrote
 3 was the date.
 4 Q. Do you remember if anything else didn't
 5 match up between his verbal statements and
 6 his written statements?
 7 A. I don't remember.
 8 Q. Did you do any kind of investigation or
 9 follow-up on the relationships that the
 10 witnesses claimed they had with Mr. Magwood
 11 and I'm talking about Sergeant Zimmer,
 12 Watkins, Williams?
 13 A. No.
 14 Q. Did you have any reason to believe that they
 15 weren't being truthful with you, Sergeant
 16 Zimmer, Watkins, Williams?
 17 A. No.
 18 Q. Did you ever receive any notes that Ryan
 19 Kelly or Greg Voigt made during their
 20 meetings, specifically with Ms. Boney or
 21 Mr. Magwood?
 22 A. I don't remember.
 23 Q. If they did, would that be in the case file?
 24 A. Yes.
 25 Q. Had there been any other complaints against

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1 Mr. Magwood prior to this investigation that
 2 you're aware of?
 3 A. Yes.
 4 Q. What were those?
 5 A. The one that I'm aware of, there was an
 6 incident or case in which he was disciplined
 7 and it was -- it was Jose Esparsa (ph).
 8 Q. Was there an internal investigation?
 9 A. There was.
 10 Q. You were not involved in that?
 11 A. No, ma'am.
 12 Q. Did you review that file in regards to your
 13 investigation with Mr. Magwood?
 14 A. I'm sure I did. I don't remember
 15 specifically doing it, but I'm sure I did.
 16 Q. Have you ever investigated a complaint
 17 against a sworn officer that was accused of
 18 misconduct and it turned out to be
 19 unfounded?
 20 MS JACKSON I'm sorry, could
 21 you restate that?
 22 Q. Yeah. Have you ever investigated an officer
 23 on allegations that he -- I mean, I said
 24 misconduct, for allegations of misconduct in
 25 office --

(Pages 54 to 57)

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1 A. Yeah.
 2 Q. -- and it turned out to be unfounded?
 3 A. I mean, that's kind of a -- misconduct? Are
 4 you talking -- are you speaking -- I don't
 5 understand. The criminal charge of
 6 misconduct or did you do anything wrong
 7 misconduct. I don't understand what
 8 you're --
 9 Q. And let me just kind of narrow down as best
 10 as I can. Have you ever gotten a complaint
 11 of an officer lying? I know you'd said you
 12 don't think you'd ever investigated anything
 13 regarding someone forging initials on a
 14 photo lineup
 15 A. Uh-huh.
 16 Q. So we'll just go with an officer is lying
 17 and it turned out that that complaint was
 18 unfounded. There was no evidence that you
 19 could find to support the violation of
 20 truthfulness or unsatisfactory performance
 21 or anything
 22 A. I -- I'm still -- and I'm sorry, I want to
 23 make sure I answer you.
 24 Q. Yeah. I'm not sure I'm asking the best
 25 questions. When you investigate complaints,

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1 do you always have a finding that the
 2 officer did something wrong?
 3 A. No.
 4 Q. Okay.
 5 A. No.
 6 Q. Is it common that the officers are found to
 7 not have done anything wrong?
 8 MS. JACKSON: Objection to the
 9 form.
 10 A. That's -- I mean, I don't --
 11 Q. More often than not are they found to do
 12 something wrong?
 13 A. I can't -- I really don't know. Yeah. Are
 14 -- it's been several years and I don't
 15 know.
 16 Q. Okay. That's fine. When you began your
 17 Internal Affairs investigation, were you
 18 aware that charges were going to be filed
 19 against Mr. Magwood?
 20 A. No. I don't think so.
 21 Q. Were you ever notified that criminal charges
 22 were filed against him?
 23 A. Yes.
 24 Q. Do you remember who notified you?
 25 A. No.

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1 (Exhibit 1 was marked for
 2 identification.)
 3 Q. Lieutenant Anderson, I'm handing you what's
 4 been marked as Plaintiff's Exhibit 1. This
 5 is something that was produced in discovery.
 6 It looks like a fax that you sent to Bruce
 7 Durant (ph).
 8 A. Uh-huh.
 9 Q. Do you know who Bruce Durant is?
 10 A. I do.
 11 Q. Who is he?
 12 A. He is a prosecutor in the solicitor's
 13 office.
 14 Q. Okay. And it looks like you faxed a letter
 15 that had been received from Mr. Magwood's
 16 criminal lawyer Cliff Scott. Do you
 17 remember faxing this letter?
 18 A. No, ma'am.
 19 MS. FAJARDO. Okay. And let
 20 me -- can we go off the Record for
 21 a minute?
 22 (Off-the-Record conversation)
 23 BY MS. FAJARDO.
 24 Q. Lieutenant Anderson, do you know why this
 25 letter -- you faxed this letter to Bruce

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1 Durant?
 2 A. Can I look at the letter?
 3 Q. Absolutely. Absolutely.
 4 A. No, I don't. I'm sorry.
 5 Q. That's fine. Do you know -- I note the date
 6 of this is December 15th, 2008. Do you know
 7 if you'd begun your investigation then?
 8 A. I -- no, we had not.
 9 Q. It looks like in the report that you have --
 10 you began your investigation April 1st,
 11 2009?
 12 A. Yeah.
 13 Q. Okay. Do you recognize this document?
 14 A. Yes. Yes, I do.
 15 Q. What is it exactly?
 16 A. It is a report that's sent to the Criminal
 17 Justice Academy for change in status.
 18 Q. Okay. Do you send those reports or is that
 19 someone else's job?
 20 A. No. We'll -- well, it's something that we
 21 send. More or less we're sort of the
 22 clerical part of that.
 23 Q. Okay. And I know, in looking at it, it
 24 doesn't have your signature. It looks like
 25 the assistant sheriff signed it.

(Pages 58 to 61)

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1 A. Right. Correct.
 2 Q. What was your role with this document, do
 3 you remember? Did you just send it or did
 4 you fill it out?
 5 A. I filled it out. Thinking about that, I did
 6 fill it out and then gave it to the
 7 assistant sheriff.
 8 MS. FAJARDO Okay We can
 9 mark this as 2?
 10 (Exhibit 2 was marked for
 11 identification)
 12 Q. It looks like this was signed on June 16th,
 13 2009, that date up there and again with the
 14 signature, is that fair to say?
 15 A. Yes.
 16 Q. So it probably would have been sent on the
 17 same day or close to it?
 18 A. I don't know. I'm sure.
 19 Q. It -- this filled out, it seems to say that
 20 this is an administrative or a routine
 21 separation and that it's not involving
 22 misconduct, good character or moral
 23 turpitude. Is there a different form that
 24 you would use if the separation was going
 25 to -- or it involved misconduct?

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1 A. I don't know. It's been several years since
 2 I've been back there. I don't know if
 3 there's another form that you use for
 4 misconduct.
 5 Q. Do you know at this point in June of 2009 if
 6 your investigation was complete for Mr.
 7 Magwood?
 8 A. Can I go back to this?
 9 Q. Absolutely.
 10 A. Okay. This is just -- and now I'm kind of
 11 -- I'm looking at it, this is a change in
 12 status. This is not a change in employment.
 13 So if I can elaborate on that?
 14 Q. Please
 15 A. This doesn't mean -- this -- this isn't us
 16 telling the academy that he was terminated,
 17 I don't believe. We simply changed his pay
 18 status. Okay. And so to go back and answer
 19 your initial question, was the investigation
 20 complete, I don't believe so.
 21 Q. Okay. Do you know when this was filled out
 22 if Mr. Magwood was suspected of misconduct,
 23 as far as you were concerned? I understand
 24 he had been charged with misconduct by the
 25 time this was sent.

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1 A. I mean, that's kind of a tough question.
 2 Are you talking about misconduct as it
 3 pertains to misconduct in office or are you
 4 talking about misconduct as in he did
 5 something wrong? It could have been
 6 anything.
 7 Q. And I'm just basing it on the classification
 8 that says, "For all separations not
 9 involving misconduct"
 10 A. Uh-huh.
 11 Q. So would it be fair to say if this was sent,
 12 the separation was not based on misconduct,
 13 good character or moral turpitude?
 14 MS JACKSON: Objection to the
 15 form.
 16 A. Well, it's not separation. Again, it's just
 17 a change in pay status.
 18 Q. Okay
 19 A. So he was -- it was administrative leave
 20 without pay. So he still was a member. He
 21 wasn't separated from the agency. With this
 22 form it's not...
 23 Q. Okay. Thank you. When you spoke with
 24 Ms. Boney regarding what had happened
 25 regarding Mr. Magwood, did she change her

65

1 story in regards to the photo lineup?
 2 A. Again, are you -- change your story when --
 3 just in the time that I spoke with her, I
 4 don't remember.
 5 Q. From -- I mean, you had -- you've reviewed
 6 SLED's investigation --
 7 A. Right.
 8 Q. -- and their interview with Ms. Boney. Did
 9 her story change between what she told SLED
 10 and I think you had said you probably
 11 reviewed Greg Voigt and Ryan Kelly --
 12 A. Uh-huh.
 13 Q. -- their conversation. Did what she was
 14 telling you ever change from what she told
 15 SLED, what she told the solicitor's office?
 16 A. I don't remember that it did. I don't think
 17 so.
 18 (Exhibits 3 and 4 were marked for
 19 identification.)
 20 Q. I am handing you Plaintiff's Exhibit 3. Do
 21 you recognize this?
 22 A. Yes.
 23 Q. Are those -- are those your notes that you
 24 made?
 25 A. Yes.

(Pages 62 to 65)

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1 Q Okay And those -- the title of it, I
2 think, is notes of, I guess, the interview
3 with Ms. Boney.
4 A. Correct.
5 Q Okay. And this was April 1st, 2009, so this
6 would have been the beginning of your
7 investigation?
8 A. Right.
9 Q. Okay. In her interview, doesn't she -- does
10 she state that she did sign something in
11 regards to Mr. Magwood?
12 MS JACKSON: Objection to
13 form.
14 A. I don't remember exactly what she said as
15 far as that goes.
16 Q Okay. If you want to review. I can direct
17 you to what I'm talking about, that will
18 probably help. On this third page and I
19 want you to read the whole thing if you need
20 to, but it says that -- it seems as if she
21 says she was upset and hysterical and may
22 have done it real quick.
23 A. Right.
24 Q Is she talking about the signing something
25 with Mr. Magwood or is she talking about

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1 something different here?
2 A. I don't know.
3 Q. If you know?
4 A. I mean, I would have to go back.
5 Q Okay
6 A. And going back to what you asked, you asked
7 the question about when we began the
8 investigation. We interviewed her in
9 February --
10 Q. Okay.
11 A. -- and recorded the interview. And then my
12 computer was refreshed, it was changed out
13 and everything was supposed to go with it on
14 the documents and that interview was lost --
15 Q Okay.
16 A. -- during that time. So we went back and
17 re-interviewed her on April 1st. I just
18 wanted to clarify that.
19 Q. That's fine. Do you remember if she told
20 you that she may have signed it, she may
21 have signed something?
22 MS JACKSON: Objection to the
23 form.
24 A. I don't remember. I'm trying to think back
25 to that interview, what she said, and I

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1 don't remember what she said --
2 Q. Okay.
3 A. -- in the interview.
4 Q. Was Ms. Boney's statement regarding the
5 signing, the initialing of the photo lineup,
6 was that the main basis of support for
7 y'all's investigation regarding the
8 unsatisfactory performance and the
9 truthfulness? Do you understand that
10 question?
11 A. No, I'm sorry. No, I'm sorry, I don't.
12 Q Okay. What -- what was the biggest piece of
13 evidence that you felt there was
14 demonstrating that Mr. Magwood had been
15 untruthful or had violated the policy of
16 unsatisfactory performance?
17 A. I don't know that I would categorize any
18 part of the final -- what we had as being
19 bigger or biggest, you know, in relation to
20 any other piece of evidence.
21 Q Okay. Did anyone else other than
22 Mr. Magwood and Ms. Boney have knowledge
23 about the photo lineup and whether it was
24 signed by Ms. Boney?
25 A. I'm sorry, can you repeat the question?

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1 Q. Yeah. Did anyone else have any information
2 regarding whether it was signed, the photo
3 lineup was signed by Ms. Boney or was signed
4 by someone else?
5 A. And I'm -- I'm sorry. I'm just having
6 trouble with your question. Have
7 information, anybody else have information.
8 Are you --
9 Q Right. I know. Let me -- I know you talked
10 to several co-workers and supervisors of
11 Mr. Magwood, but it's my understanding they
12 were relying on allegedly what Mr. Magwood
13 had told them; is that fair to say?
14 MS. JACKSON: Objection to the
15 form.
16 A. I'm trying to think back to all those
17 interviews.
18 Q. Okay.
19 A. I know that that had a lot to do with it. I
20 can't remember if there was anything else
21 besides what they recalled him having said
22 to them, verbal statements. I don't -- I'm
23 not 100 percent sure that there's nothing
24 else besides those verbal statements that
25 those witnesses gave us. When you talk --

(Pages 66 to 69)

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1 let me go back. No. It's -- I can't
2 remember exactly what else, if anything,
3 that they gave -- told us.
4 Q. Okay. That's fine. Let me show you. This
5 was Plaintiff's Exhibit 4. Do you recognize
6 this?
7 A. Yes, I do.
8 Q. Is that your handwriting? Are those your
9 notes?
10 A. These are.
11 Q. Okay.
12 A. Yes.
13 Q. And this -- hold on one second, this is the
14 interview with Assistant Solicitor Voigt?
15 A. Yes, ma'am.
16 Q. Okay. Give me one minute to kind of go
17 through everything. We may be done.
18 A. Okay.
19 Q. Was Lieutenant Antonio with you on both of
20 these interviews, both with Ms. Boney and
21 with Voigt?
22 A. Yes.
23 Q. Was he with you during all of the
24 interviews?
25 A. No.

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1 Q. Okay. Do you remember which ones he wasn't
2 there for? And I can ask him later if you
3 don't.
4 A. Certainly. No, that's fine. No, I don't
5 remember exactly which ones he sat with me.
6 Q. Okay. Regarding the handwriting analysis
7 that was received by SLED, was that
8 handwriting analysis initiated by your
9 office or by SLED?
10 A. You talking the actual analysis itself or
11 just the --
12 Q. The request.
13 A. The request, I initiated that. It was by
14 us.
15 Q. Okay. When you got the report, was there --
16 did you get a detailed handwriting analysis
17 of percentage, the different -- I know
18 sometimes they have a detailed report?
19 A. I don't remember.
20 Q. But that would be in the file if it was
21 received?
22 A. Yes.
23 Q. Throughout some of the discovery it names
24 you as being a contact for SLED during the
25 investigation of Magwood. Is that fair to

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1 say that you were the contact for the
2 sheriff's office to SLED?
3 A. Yes, ma'am.
4 Q. What does that entail, being the contact?
5 What is your purpose in being the contact?
6 What do you do?
7 A. I don't remember exactly with this case, but
8 I can tell you in general terms if they
9 needed the contact information for an
10 employee or employees, it would come through
11 us. That's probably the main -- the main
12 part of that. Any kind of records or
13 reports that have been filed. Just basic
14 incident reports, that sort of thing, it
15 would come through us. Sort of facilitate.
16 Q. Do they include you in their investigation,
17 letting you know what's going on, anything
18 of that sort?
19 A. No, I don't think so. No.
20 Q. I think I may have already asked this, but
21 in regards to, let's see, Sergeant Zimmer,
22 Lieutenant Watson, Solicitor Voigt, Ryan
23 Kelly, anybody that you interviewed aside
24 from Mr. Magwood in your investigation, did
25 you have any reason to believe that they

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1 weren't being truthful with you?
2 A. No.
3 Q. Did any of the people that you interviewed
4 supply you with any documentation backing up
5 what they -- their conversations that they
6 had with Mr. Magwood?
7 A. I don't remember if anybody did or not.
8 Q. If they did, it would have been in the
9 file?
10 A. Yes, ma'am.
11 Q. On the last page of your report, when it
12 has, "The basis for these conclusions rest
13 on the fact that there's strong evidence to
14 suggest that," with number three, "During
15 pretrial preparation for this case Detective
16 Magwood was untruthful in his statement to
17 Assistant Solicitor Voigt regarding facts
18 one and two," is that based on that he told
19 Solicitor Voigt that he didn't -- he didn't
20 show the large color photograph before the
21 lineup and that he didn't put the victim's
22 initials and the date and time on the
23 lineup?
24 MS. JACKSON. Objection to the
25 form

(Pages 70 to 73)

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1 A. I mean, it was -- it was the whole entire
2 investigation. I'm kind of having trouble
3 with what you're driving at.
4 Q I just want to know what you feel that he
5 was untruthful to Solicitor Voigt regarding?
6 Was it just the initials and showing the
7 photograph or was there anything else
8 involved in the investigation, his criminal
9 investigation, that you felt he was
10 untruthful of?
11 A. Well, I had nothing to do with his criminal
12 investigation, so I wouldn't have -- are you
13 talking about -- here again, are you talking
14 about Catherine Boney investigation or are
15 you talking about --
16 Q No. I'm sorry. The Catherine Boney
17 investigation. The only issue that you
18 investigated I want to make sure we're on
19 the same page, as far as what you were
20 investigating and you feel he was
21 untruthful of was just limited to what
22 you've put in paragraph one and two, nothing
23 else?
24 A. Right. Well, what I said was, "That there
25 was strong evidence to suggest that he was

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1 untruthful in facts one and two, which were
2 that he had provided the victim with a large
3 color photograph of the suspect before
4 making any attempt to show the victim a
5 lineup containing the same photo and that he
6 had placed the date time and victim's
7 initial on the lineup and then filed an
8 initial report indicating that the victim
9 had written the date time and her own
10 initials."
11 Q. Okay. And then number four you said, "On
12 two separate occasions during the
13 administrative investigation," do you
14 remember what occasions you're
15 referencing?
16 A. We interviewed him twice, so that would
17 have been the two interviews.
18 Q. Okay. Just the verbal interviews?
19 A. Correct.
20 MS FAJARDO. I think that is
21 all that I have. Not sure if your
22 attorney has any questions
23 MS. JACKSON Yeah You're not
24 off the hook yet
25 MS FAJARDO: Let me go ahead

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1 and mark this since I asked him
2 some questions about it
3 (Exhibit 5 was marked for
4 identification.)
5 E-X-A-M-I-N-A-T-I-O-N
6 BY MS JACKSON
7 Q All right. Lieutenant, real quick, you were
8 shown Exhibit 2 to your deposition. And
9 this is just a personal change in status
10 report, is that correct?
11 A. Correct.
12 Q All right. I'm gonna show you this
13 document, which is three pages long, which
14 we can mark in a second, but I need to make
15 a copy. And is this also a personnel change
16 in status form?
17 A. Yes, it is.
18 Q And is this form different than Exhibit 2?
19 A. Yes.
20 Q. Why is it different?
21 A. This is -- the Exhibit 2 is notification of
22 administrative or routine separation,
23 termination. And it's
24 administrative/routine separation so it's
25 three different things. This one is

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1 personnel change in status report for
2 notification of unfavorable non-routine
3 separation or termination.
4 Q Okay. And what is the date on this
5 document?
6 A. Exhibit 3, which is the non -- or the
7 unfavorable, the date is August the 5th,
8 2009.
9 Q Okay. It's actually gonna be Exhibit 6
10 And what box is checked on the list of
11 options?
12 A. "Termination for violation of agency policy
13 involving misconduct, good character, moral
14 turpitude as defined in regs. 38-004."
15 Q Okay. And page two, is that signed and
16 dated by the same person on the same date?
17 A. Yes.
18 Q Page one?
19 A. Yes.
20 Q Okay. And what is the title of that
21 form?
22 A. Misconduct report form.
23 Q All right. And page three of this exhibit,
24 is that signed and dated by the same person
25 on the same date?

(Pages 74 to 77)

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- 1 A. Yes.
 2 Q. Okay. And what is this form called?
 3 A. Separation supplement.
 4 Q. Okay. And is there a narrative on this
 5 page?
 6 A. Yes, there is.
 7 Q. All right. And what offices are these
 8 forms, these three pages regarding? I know
 9 it's hard to see because of the --
 10 A. Eugene Magwood.
 11 Q. All right. We'll mark that in just a
 12 second. When you interviewed Mr. Magwood,
 13 did you have him sign a Garrity warning?
 14 A. Yes, ma'am.
 15 Q. Okay. And what is the purpose of Garrity?
 16 A. Garrity states that -- the purpose of
 17 Garrity is that information that's given to
 18 us that we compel an employee to give us
 19 during the course of an administrative
 20 investigation cannot be used against them in
 21 any criminal charges concerning that
 22 interview they gave.
 23 Q. Okay. Is the investigation that you perform
 24 as part of the Internal Affairs division of
 25 the sheriff's office totally separate from

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- 1 the investigation performed by SLED for the
 2 possibility of criminal charges?
 3 A. Yes.
 4 Q. And are those considered also to be mutually
 5 exclusive?
 6 A. Yes.
 7 Q. All right. You were asked earlier who all
 8 you spoke to about this and at one point you
 9 said you spoke with an IRF, Insurance
 10 Reserve Fund, adjuster. Was that only after
 11 he made his civil claim?
 12 A. Yes.
 13 Q. Did you have any involvement in the arrest
 14 of Mr. Magwood?
 15 A. No, ma'am.
 16 Q. Okay. Did you have any involvement in the
 17 procuring of an arrest warrant for
 18 Mr. Magwood?
 19 A. No.
 20 Q. Okay. Did you have any involvement in the
 21 institution or continuation of any
 22 judicial proceedings with regard to
 23 Mr. Magwood?
 24 A. No.
 25 Q. Have you ever had any malice towards

80

- 1 Mr. Magwood?
 2 A. No.
 3 Q. Did you use your position in Internal
 4 Affairs for the purpose of harming
 5 Mr. Magwood?
 6 A. No.
 7 Q. Did you participate in any willful act that
 8 was not proper in the regular course of your
 9 interviews and investigation?
 10 A. No.
 11 Q. Did you ever say anything that you knew to
 12 be untrue about Mr. Magwood?
 13 A. No.
 14 Q. Did you ever have any intent to damage
 15 Mr. Magwood's reputation?
 16 A. No.
 17 Q. Did you ever meet with any other person for
 18 the purpose of causing injury or damage to
 19 Mr. Magwood?
 20 A. No, ma'am.
 21 Q. Did you ever make any statements about
 22 Mr. Magwood to any person outside of your
 23 investigation?
 24 A. No.
 25 Q. And let me be a little bit more specific,

81

- 1 since you worked with him for a long time.
 2 A. Uh-huh.
 3 Q. Did you ever make any statements about the
 4 allegations involved in the Boney case to
 5 any person outside of your investigation in
 6 this case?
 7 A. No.
 8 Q. Okay. Did you volunteer to testify at the
 9 criminal trial?
 10 A. No.
 11 Q. Did you receive a subpoena?
 12 A. Yes, I did.
 13 Q. Did that subpoena order you to appear at the
 14 trial?
 15 A. Yes, ma'am.
 16 Q. Did you have any involvement in the decision
 17 to prosecute Mr. Magwood?
 18 A. No.
 19 Q. Did you have any involvement in the decision
 20 to put Mr. Magwood on administrative
 21 suspension?
 22 A. No.
 23 Q. Did you have any involvement in the decision
 24 to terminate Mr. Magwood's employment?
 25 A. No.

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1 Q Did you ever meet with any of the
2 prosecuting agencies and ask them to pursue
3 the prosecution of Mr. Magwood?
4 A. No.
5 Q Were you careful in your investigation of
6 Mr. Magwood?
7 A. Yes.
8 Q Did you follow all of the sheriff's office
9 policies and procedures with regard to your
10 investigation of Mr. Magwood?
11 A. Yes.
12 Q Did you follow all of your training that you
13 received as a law enforcement officer at the
14 Criminal Justice Academy with regard to your
15 investigation of Mr. Magwood?
16 A. Yes.
17 Q Have you ever been disciplined with regard
18 to your investigation of Mr. Magwood?
19 A. No.
20 Q Have you ever received any information from
21 any of your chain of command that you did
22 anything improper with regard to your
23 investigation of Mr. Magwood?
24 A. No, ma'am.
25 MS. JACKSON. All right I

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1 in the past is tough enough and fortunately
2 for us, we don't have any involvement in any
3 kind of discipline or in what happens after
4 an investigation. It's kind of a tough
5 question. I just, I don't know.
6 Q. Okay. Did you feel that Mr. Magwood should
7 have been prosecuted?
8 A. I understand why he was prosecuted. I
9 don't like it. And for me, that's not just
10 a yes or no question. You know, I don't
11 know.
12 MS. FAJARDO. That's fair
13 That's all I have. Thank you
14 R-E-E-X-A-M-I-N-A-T-I-O-N
15 BY MS. JACKSON
16 Q. All right Just so we've got it clear on
17 the Record, does the bottom of this form say
18 to -- what does that say?
19 A. "Complete first side and attach separation
20 supplement."
21 Q. Okay. And is page three the separation
22 supplement?
23 A. Yes, it is.
24 MS. JACKSON. And just for the
25 Record, I think the original

83

1 don't believe I have any further
2 questions
3 MS. FAJARDO I have just maybe
4 three or four
5 R-E-E-X-A-M-I-N-A-T-I-O-N
6 BY MS. FAJARDO
7 Q I just want to clarify the Exhibit 6 that's
8 three pages, do they -- this is all one
9 document though?
10 A. Well, it's --
11 Q Do they all go together --
12 A. It's three.
13 Q -- or are there three separate things that
14 would be sent --
15 A. I don't know --
16 Q -- if you know? Okay
17 A. -- how they're sent.
18 Q I was just trying to get clarification Did
19 Mr. Magwood tell you that he put the date
20 and time on the lineup?
21 A. Yes.
22 Q Do you think Mr. Magwood should have been
23 fired?
24 A. I don't know. It's a -- it's -- having to
25 investigate somebody with whom you've worked

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1 document is a two-sided document.
2 MS. FAJARDO Gotcha.
3 MS. JACKSON: Now we're all on
4 the same page All right.
5 (Exhibit 6 was marked for
6 identification)
7 (This deposition concluded at 11 53 a.m.)
8
9 (Signature reserved.)
10
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25

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1 CERTIFICATE OF REPORTER
 2
 3 STATE OF SOUTH CAROLINA)
 4 COUNTY OF CHARLESTON)
 5
 6 I, Nicole D. White, the officer before
 7 whom the foregoing deposition was taken, do hereby
 8 certify that the witness whose testimony appears in
 9 the foregoing deposition was duly sworn by me; that
 10 the testimony of said witness was taken by me to the
 11 best of my ability and thereafter reduced to
 12 typewriting under my direction, that I am neither
 13 counsel for, related to, nor employed by any of the
 14 parties to the action in which this deposition was
 15 taken, and further, that I am not a relative or
 16 employee of any attorney or counsel employed by the
 17 parties thereto, nor financially or otherwise
 18 interested in the outcome of the action.
 19
 20 _____ Date _____
 21 Nicole D. White
 22 Notary Public in and for the
 23 State of South Carolina
 24
 25 My Commission expires September 11, 2017

1 Page Line Should read:
 2
 3 Page Line Should read:
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 5 Page Line Should read:
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 7 Page Line Should read:
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 9 Page Line Should read:
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 11 Page Line Should read:
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 17 Page Line Should read:
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 19 Page Line Should read:
 20
 21 Page Line Should read:
 22
 23 Page Line Should read:
 24
 25 NDW

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1 ERRATA SHEET
 2
 3 RE Magwood -vs- J Al Cannon, Jr, et al
 4
 5 DEPOSITION OF MICHAEL ANDERSON
 6
 7 Please read this original deposition with care,
 8 and if you find any corrections or changes you wish
 9 made, list them by page and line number below DO
 10 NOT WRITE IN THE DEPOSITION ITSELF Return the
 11 deposition to this office after it is signed We
 12 would appreciate your prompt attention to this
 13 matter
 14 To assist you in making any such corrections,
 15 please use the form below If supplemental or
 16 additional pages are necessary, please furnish same
 17 and attach them to this errata sheet
 18 Page Line Should read
 19
 20 Page Line Should read
 21
 22 Page Line Should read.
 23
 24 Page Line Should read
 25

1 SIGNATURE PAGE
 2
 3
 4
 5
 6 SIGNATURE OF WITNESS
 7
 8
 9
 10 SUBSCRIBED and SWORN TO before me this _____
 11 day of _____, 2014
 12
 13
 14 NOTARY PUBLIC
 15
 16
 17 My Commission expires _____
 18
 19
 20
 21
 22
 23
 24
 25

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EXHIBIT H

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-10-3669

**AFFIDAVIT OF
ERIC WATSON**

NOW COMES, affiant ERIC WATSON, and states and affirms as follows:

My name is Eric Watson. I am over the age of 21 and a resident of the state of South Carolina.

I am a Major with the Charleston County Sheriff's Office. I was employed with the Sheriff's Office at all times relevant to this matter.

I was just assigned to the Criminal Investigations Division in March, 2008, and was not assigned there when the original investigation was performed in 2005.

I never spoke with Magwood during his original investigation into this matter.

I spoke with Eugene Magwood in 2008 before he was placed on Administrative Leave, and I have reviewed this matter.

Mr. Magwood told me that the victim had personally known the suspect and had provided sufficient identifiers for the suspect.

Mr. Magwood told me he showed her a single photo only to confirm the suspect's identity.

Mr. Magwood told me that later, he showed the victim a line-up of photos and she was too emotional to circle the suspect's photograph.

After reviewing the file, I felt the purpose of showing the victim a line-up was confusing, because the victim knew the person she alleged assaulted her, the suspect admitted sexual contact, and DNA linked the suspect to the victim.

At no time have I condoned or trained officers to sign a victim's initials to a line up.

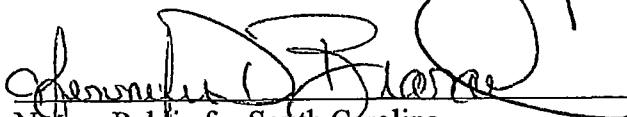
Further Affiant Sayeth Naught!



Eric Watson

Signed and Sworn to Before me

This 25th day of July, 2014.



Notary Public for South Carolina

Expires: 2/12/2023

EXHIBIT I

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Eugene Magwood,

Plaintiff,

v.

J. Al Cannon, Jr., in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-10-3669

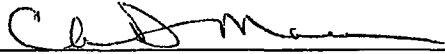
**AFFIDAVIT OF
CLARICE MARANA**

NOW COMES, affiant CLARICE MARANA, and states and affirms as follows:

1. My name is Clarice Marana. At the time of the incident I was married and was known as Clarice Zimmer. I am over the age of 21 and a resident of the state of South Carolina.
2. I am a Leutenant at Family Court with the Charleston County Sheriff's Office. I was employed with the Sheriff's Office at all times relevant to this matter.
3. I started supervising Mr. Magwood in mid-2007.
4. I did not speak with Mr. Magwood during his original investigation into this matter.
5. I spoke with Eugene Magwood in 2008 after he was placed on Administrative Leave. I called him to ask about events that led up to the witness identification.
6. Mr. Magwood told me that he showed the victim a single photo of the suspect which she identified as the suspect.
7. Mr. Magwood told me he then showed her a six pack line up, but the victim was too emotional and he forgot to have her circle and initial the photograph. On his way back to the station he said he realized his oversight and spoke with assistant solicitor Greg Voight.
8. Mr. Magwood told me that as a result of his conversation with Mr. Voight, he thought it would be permissible for him to circle and initial the photograph of the suspect on behalf of the victim, since she knew the suspect and had identified him.

9. I have seen Mr. Magwood's deposition where he calls me a liar. I have no personal feelings against Mr. Magwood and have no reason to make up anything about him.

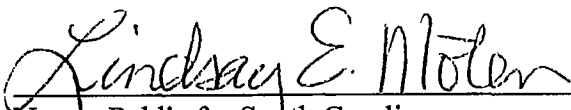
Further Affiant Sayeth Naught!



Clarice Marana

Signed and Sworn to Before me

This 28 day of July, 2014.



Notary Public for South Carolina

Expires: 7-18-18

EXHIBIT J

INCIDENT SUPPLEMENT

CHARLESTON COUNTY SHERIFF'S OFFICE
3105 PINEHAVEN DRIVE, CHARLESTON HEIGHTS, S.C. 29405-7789 • (843) 202-1700

J. Al Cannon, Jr.
Sheriff

SC0100000	DISPATCH NUMBER N/A	ORIGINAL CASE NUMBER 2006-018918-B	PAGE ____ OF ____ PAGES	NCIO ENTRY	INQ	EXT.
☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL WITNESSES	☐ ADDITIONAL STOLEN PROPERTY	☐ ADDITIONAL RECOVERED PROPERTY	
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL SUBJECTS			

INCIDENT TYPE: Criminal Sexual Conduct

Incident Location: [REDACTED]

Incident Date: 09/02/06

On 09/02/06 the victim gave a written statement to Detective Magwood stating that as she was walking from a friends house she was approached by a blk male only known by the street name at "June". This subject came up behind her and grabbed her from behind by the back of the neck and dragged her behind a vacant building, possibly a Barber Shop. He then proceeded to force her clothes off and physically forcing his penis into her vagina. He also while raping her took a beer bottle and broke it then held it to her throat. The beer bottle was tested negative for prints and no other evidence was located at the time. The victim described the suspect As being approximately 5'6", 170 to 175lb, Balk/ Brnp, wearing a black pant and dark boxer shorts he appeared to be 20 to 25 yoa.

On 09/08/06 this I/D received a phone call from the victim and the complainant, who stated that they saw the suspect walking pass her residence. He is known by the name of "June" on the street, but they do not know his real name. They will attempt to get his real name and call this I/D back with the information.

On 10/03/06 this I/D telephoned the victim and spoke to her son, he will have the victim contact this I/D when she returns home.

This I/D again stoke to the victim on 10/13/06, she at that time refused to talk about the possible suspect or give any other information on the incident.

The listed suspect was apprehended and transported to the Charleston County Detention where he was lodged pending a hearing.

Case closed with two warrants served and one arrest.

NARRATIVE

PROPERTY EST.	TYPE (GROUP)						TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
	STOLEN	0	0	0	0	0	0	n/a
	DAMAGED	0	0	0	0	0	0	
	BURNED	0	0	0	0	0	0	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
	RECOVERED	0	0	0	0	0	0	n/a
	SEIZED	0	0	0	0	0	0	
ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		ACTIVE ☐ UNFOUNDED	☒ ADM CLOSED	ARREST UNDER 18 ARREST 18 AND OVER	EX-CLEARED UNDER 18 EX-CLEARED 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH		NO PROSECUTION		EXTRADITION DENIED	
	REPORTING OFFICER(S)		DATE	BADGE NUMBER	APPROVING OFFICER		DATE	BADGE NUMBER
	Det. E. Magwood		11/9/2007	9116				
					FOLLOW UP INVESTIGATION		YES	NO

CCSO - 100 3/1/99

0004 0000452

J. Al Cannon, Jr.
Sheriff

CCSO-103 3/1/88

INCIDENT SUPPLEMENT

J. Al Cannon, Jr.
Sheriff

SC0100000	DISPATCH NUMBER	ORIGINAL CASE NUMBER 2006-018918-B	PAGE 1 OF 1 PAGES	WOB ENTRY	INQ.	EXT.
☐ ORIGINAL ☐ REPORT ☐ MODIFIES ☐ ORIGINAL	☒ SUPPLEMENTAL ☒ REPORT CASE STATUS ☐ CHANGE	☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL WITNESSES ☐ ADDITIONAL SUBJECTS	☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		

Incident Type : C S C 1st. Degree

Incident Date : 09/02/06

Incident Location :

Victim : Catherine Elizabeth Boney B/F, 44 yoa, 5'4" 140lb

Suspect : Maurice Jerome Prioleau B/M 31 yoa 6'4" 145

On January 7, 2007 the victim, Catherine Elizabeth Boney was shine a photo line up that included the listed suspect, Maurice Prioleau. The victim identified the suspect in the line up as #6, she then circled the photo of the suspect then initialed and dated under the photo.

On September 9, 2008 a search warrant was secured and served on the listed suspect. The biological sample was collected from the defendant on September 9, 2008 to be compared with specimens obtained from the victim,s body and forwarded to S L E D for analysis.

NARRATIVE

PROPERTY EST.	TYPE (GROUP)					TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
	STOLEN						n/a
	DAMAGED						
	BURNED						
	RECOVERED						n/a
ADMINISTRATIVE	SEIZED						
	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) Detective Magwood	DATE 09/21/08	BADGE NUMBER 9116	APPROVING OFFICER Sgt. Zimmer	DATE 09/21/08	BADGE NUMBER 9338	
				FOLLOW-UP INVESTIGATION ☐ YES ☒ NO			

0834 0000454

OCSO-101 3/1/09

EXHIBIT K

ARREST WARRANT

F- 969830

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 THE STATE
 against
EUGENE MAGWOOD

Address: [REDACTED]

Phone: [REDACTED]

Sex: **M** Race: **B** Height: _____ Weight: _____

DL State: _____ DL #: _____

Agency ORI #: _____

Prosecuting Agency: **SLED**Prosecuting Officer: **GHEENT**Offense: **MISCONDUCT IN OFFICE**

Offense Code: _____

Code/Ordinance Sec. **COMMON LAW**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.

Signature of Judge _____ (LS.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant **Eugene Magwood**on **4-15-09** **12:51**Signature of Constable/Law Enforcement Officer **J. M. Smith SLED 750**

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 Personally appeared before me the affiant **SPECIAL AGENT CHARLES GHEENT** who
 being duly sworn deposes and says that defendant **EUGENE MAGWOOD**
 did within this county and state on **NOV. 1, 2007 THRU DEC. 31, 2008** violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **CHARLESTON**)
 in the following particulars:
MISCONDUCT IN OFFICE
COMMON LAW

 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:
SEE ATTACHED AFFIDAVIT
 Sworn to and subscribed before me
 on **7 May 2009**

Signature of Issuing Judge _____ (LS.)

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

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

NOV. 1, 07 - DEC 31, 08 above affidavit that there are reasonable grounds to believe that
 on _____ defendant **EUGENE MAGWOOD**
 did violate the criminal laws of the State of South Carolina (or ordinance of **CHARLESTON**)

☐ County/ ☐ Municipality of **MISCONDUCT IN OFFICE** as set forth below:

DESCRIPTION OF OFFENSE:

COMMON LAW
 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

 Signature of Issuing Judge _____ (LS.)
 Judge Code: **9904 (MAG)**
Judge's Address **3870 LEEDS AVE, SUITE 112****N. CHARLESTON, SC 29405**Judge's Telephone **843-745-2390**
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 July 26, 1990
 SCCA 518
SPECIAL AGENT CHARLES GHEENT**EUGENE MAGWOOD****NOV. 1, 2007 THRU DEC. 31, 2008**
☒ County/ ☐ Municipality of
CHARLESTON
MISCONDUCT IN OFFICE**COMMON LAW****SPECIAL AGENT CHARLES GHEENT**Signature of Affiant **6435 PAIN STREET**Affiant's Address **NORTH CHARLESTON, SC 29406**Affiant's Telephone **843-797-3662**

ARREST WARRANT

EUGENE MAGWOOD

0834 0000313

108

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 31080106

Personally appeared before me, a magistrate of this County, one Special Agent Charles Ghent, State Law Enforcement Division, who, first being duly sworn, deposes and says that,

EUGENE MAGWOOD

Black, Male, DOB: [REDACTED], SSN: [REDACTED]
, LKA: [REDACTED]

did within this County and State violate the laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
MISCONDUCT IN OFFICE

Common Law

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That between November 01, 2007 and December 31, 2008 one EUGENE MAGWOOD did commit the offense of **MISCONDUCT IN OFFICE** in violation of the Common Law of South Carolina.

In that Magwood did, while employed as a Sheriff's Deputy with the Charleston County Sheriff's Office, submit an investigative report for Charleston County Sheriff's Office case #06-018918 against defendant Maurice Jerome Prioleau. That Magwood did knowingly and willfully provide false information in this investigative report in the form of a photo lineup purported to have been signed by a witness in the investigation. That in later pre-trial meetings with the Solicitor's Office, Magwood did knowingly and willfully provide false information to an Assistant Solicitor and an investigator for the Solicitor's Office regarding the investigation and the accompanying investigative report. All this was done was done in violation of his duties, of good faith, honesty, and accountability in his capacity as a public official, and was done against the peace and dignity of the State of South Carolina. Special Agent Charles Ghent, SLED, conducted an investigation obtaining evidence and statements from witnesses that attest to the same.

Sworn to and Subscribed before me
this 7 day of May, 2009.

Signature of Judge

SA Charles Ghent
(AFFIANT)

Address: 6435 FAN ST
NORTH CHARLSTON, SC 29406
Phone: 843-797-2662

EXHIBIT L

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669

Plaintiff(s),

-vs-

J. AL CANNON, JR. In his
Official capacity as Sheriff
Of Charleston County, Investigator
Anderson, Investigator Antonio,
Charles Ghent, and South Carolina
Law Enforcement Division,

Defendant(s).

THE DEPOSITION OF CHARLES GHENT, taken on
behalf of the Plaintiff on Monday, March 31,
2014, commencing at 10:57 a.m. at the Law Offices
of Senn Legal, 3 Wesley Drive, Charleston, South
Carolina.

REPORTED BY: Nicole D. White

A-P-P-E-A-R-A-N-C-E-S

Appearances for the Plaintiff:

By: Stephanie R. Fajardo, Esquire
 THE FINNEY LAW FIRM, INC.
 2117 Park Street
 Columbia, South Carolina 29201
 (803) 254-7408
 Stephanie.1 fajardo@gmail.com

Appearances for the Defendant.

By: Robin L. Jackson, Esquire
 SENN LEGAL
 3 Wesley Drive
 Charleston, South Carolina 29422
 (843) 556-4045
 Robin@sennlegal.com

(CHARLES GHENT, having been first duly sworn, testified as follows:)

E-X-A-M-I-N-A-T-I-O-N

BY MS FAJARDO:

Q. Agent Ghent, my name is Stephanie Fajardo. I think we met several weeks ago. I represent the Plaintiff in this case. I know you were present for the Plaintiff's deposition. Have you ever given a deposition before?

A. No.

Q. Okay. I'm just gonna run over the ground rules and I know you heard them at the Plaintiff's deposition, but just so I make sure that we're on the same page, I do need you to answer all of my questions verbally. We have a court reporter that's writing everything down, so if you nod your head, I'll know what you're saying, but she will have a hard time writing that down.

I don't anticipate going very long today, but if you need a break for any reason, please let me know. I'm happy to stop and let you stretch your legs, get a drink of water, whatever you need to do.

A. Okay.

I N D E X

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Q. I just ask that you answer the questions that I've posed before we take that break.

Now that the deposition has begun, if you should ask your attorney any questions, I am able to ask you about that. So if there's any confusion during the deposition, if you can just direct all that to me, I'm happy to rephrase, repeat, or try to change the question in any way so that you can properly understand it.

A. (Indicating.)

Q. If you don't ask me to repeat or rephrase the question, I'll assume that you understood the question and you're answering the question that I asked. Is that fair?

A. Yes.

Q. Okay. Are you under the influence of any substances, lack of sleep, stress or anything else that would affect your ability to answer my questions truthfully today?

A. No.

Q. Okay. Have you spoken to anyone other than your attorney regarding this case?

A. No.

Q. Okay. And have you reviewed anything

6

1 prior to your deposition?
 2 A. I reviewed the case file.
 3 Q. Just the SLED case file?
 4 A. Yes.
 5 Q. Okay. Let me go through -- what is
 6 your date of birth?
 7 A. 10/25/77.
 8 Q. Okay. If we could go off the Record.
 9 (Off-the-Record conversation.)
 10 BY MS. FAJARDO:
 11 Q. Do you have any family in Charleston
 12 County?
 13 A. I have a brother.
 14 Q. What's your brother's name?
 15 A. Mark Ghent, G-H-E-N-T.
 16 Q. And are you married?
 17 A. No.
 18 Q. Okay. Do you have any children?
 19 A. No.
 20 Q. Okay. Tell me a little bit about your
 21 educational background. How far did you go to
 22 school?
 23 A. I have a bachelor's degree from the
 24 University of South Carolina, 1999.
 25 Q. Okay. After that bachelor's, have you

8

1 weeks. I was a criminal investigator at that
 2 time, 2008 until recently, a special agent.
 3 Q. So you just moved into a more
 4 supervisory role now?
 5 A. Yes.
 6 Q. Where did you work prior to going to
 7 SLED?
 8 A. The North Carolina State Bureau of
 9 Investigation.
 10 Q. Is that like SLED in South Carolina?
 11 A. It's an analog of SLED in North
 12 Carolina, yes.
 13 Q. Did you do the same type of things,
 14 you would be asked by an agency to investigate?
 15 A. Yes. We were also an assisting agency
 16 and I was a criminal investigator. I was there
 17 from 2004 until 2008.
 18 Q. What did you do before the North
 19 Carolina State Bureau of Investigation?
 20 A. I worked for the Mt. Pleasant Police
 21 Department in South Carolina.
 22 Q. What did you do in that capacity?
 23 A. I was assigned for two years as a
 24 patrol officer and then a detective in the vice
 25 and narcotics unit.

7

1 gotten any other training?
 2 A. I've received training for the South
 3 Carolina Criminal Justice Academy, training from
 4 the North Carolina Criminal Justice Academy, and
 5 various other individual training classes through
 6 the years.
 7 Q. Okay. And you're currently employed
 8 at SLED?
 9 A. Yes.
 10 Q. How long have you been employed there?
 11 A. Since 2008.
 12 Q. Okay. What -- what do you do now at
 13 SLED?
 14 A. I'm a lieutenant. I'm a supervisor in
 15 the investigative services division of the low
 16 country region.
 17 Q. In that job what do you do, what are
 18 your job duties?
 19 A. I supervise at this time four criminal
 20 investigators investigating various crimes that
 21 are allegations and so forth. Various cases that
 22 we are requested to investigate.
 23 Q. Okay. Have you held that same job
 24 since 2008?
 25 A. I've only been a lieutenant for a few

9

1 Q. And how long did you work at
 2 Mt. Pleasant?
 3 A. From 2000 until 2004. That's where I
 4 began my law enforcement career.
 5 Q. Okay. What did you do after you
 6 graduated U.S.C. in 1999? What did you do prior
 7 to going to Mt. Pleasant?
 8 A. I was working at Lowe's for a college
 9 job until I was hired by Mt. Pleasant.
 10 Q. Do you attend church anywhere?
 11 A. Not regularly, no.
 12 Q. Are you a member of any civic
 13 organizations or clubs?
 14 A. I'm a member of Etewan Free Mason
 15 Lodge 95 in Mt. Pleasant, although I don't attend
 16 very regularly.
 17 Q. Have you ever been in the military?
 18 A. No.
 19 Q. Okay. Next few questions not meant to
 20 embarrass you. Standard questions that I ask in
 21 every deposition. Have you ever been arrested?
 22 A. No.
 23 Q. Have you ever been treated by a
 24 psychiatrist or psychologist for any reason?
 25 A. No.

(Pages 6 to 9)

10

1 Q. Are you currently under a doctor's
2 care?
3 A. No.
4 Q. Currently taking any medications?
5 A. No.
6 Q. Were you under any doctor's care at
7 the time of this incident in 2008/2009?
8 A. No.
9 Q. Were you on any medications around
10 that time period?
11 A. No.
12 Q. Have you ever been involved in any
13 lawsuits of any kind, you personally?
14 A. Me personally, when I was 15, 16 had a
15 traffic accident that was my fault. They sued
16 us. Guy settled out of court.
17 Q. Anything else?
18 A. No. Not that I'm aware of. There may
19 have been lawsuits related to investigations or
20 other police activity, but none where I've had to
21 give a deposition, so I don't --
22 Q. Okay. Do you know of any lawsuits
23 that SLED has been involved in since you've
24 worked there that would have involved any of your
25 cases or any of your investigations?

11

1 A. None that specifically come to mind.
2 Q. Okay. Have you ever been involved in
3 any Workers' Compensation or Social Security
4 matters?
5 A. No.
6 Q. I want to turn to Mr. Magwood. Did
7 you know Mr. Magwood prior to your investigation?
8 A. I did not.
9 Q. As you sit here today, do you believe
10 that he is guilty of misconduct in office?
11 MS JACKSON: Object to the
12 form. Go ahead. You can answer.
13 A. Object to the form?
14 Q. Yeah.
15 A. I have no opinion about that. I
16 supported the prosecution as is my duty.
17 Q. Kind of walk me through, who were you
18 contacted by regarding Mr. Magwood?
19 A. SLED had received -- excuse me, a
20 written request from Assistant Chief Smith of the
21 Charleston County Sheriff's Office. I believe it
22 was October 7th. That case was assigned to me by
23 my captain at the time, Roger Heaton, on October
24 9th.
25 Q. And that's of 2008?

12

1 A. 2008, yes.
2 Q. And you said who SLED received the
3 request from. Officer --
4 A. Assistant Chief A. Chouri (ph) Smith.
5 I don't believe she's with the sheriff's office
6 anymore, but her name was on the letter of
7 request.
8 Q. And you said your captain assigned the
9 case to you?
10 A. Correct.
11 Q. Explain to me how in your division you
12 get cases?
13 A. Cases are assigned to agents and our
14 manpower fluctuates from 4 agents to 12 agents in
15 the office at any given time. The cases are
16 assigned by the captain of the region based on a
17 variety of factors. Typically workload, based in
18 terms of whose turn it is, what kind of cases
19 they're carrying. Some consideration is given to
20 geography and, of course, any specific skills an
21 agent might have, although primarily it is
22 workload based.
23 Q. How long had you been at SLED before
24 you got this case?
25 A. I started at SLED March 2008, so

13

1 October. A few months.
2 Q. At the time you received this case,
3 how many open investigations did you have?
4 A. I don't recall how many.
5 Q. What would be -- is there an average
6 work caseload that you have?
7 A. That fluctuates. It can be -- it's
8 usually around anywhere from five to a dozen,
9 depending on the workload at the time and the
10 number of agents that we have, but I don't recall
11 how many I was carrying at the time.
12 Q. Do you remember how many agents y'all
13 had at SLED?
14 A. I don't. We went through several
15 manpower changes around that time or maybe after
16 that time, so it's hard to recall how many we had
17 then.
18 Q. Were you the only agent assigned to
19 the case?
20 A. Yes. One agent is assigned as primary
21 on any investigation. Assisting agents can be
22 assigned, but I believe in this case I was the
23 primary and only agent assigned.
24 Q. So you didn't have any assisting
25 agents?

(Pages 10 to 13)

14

1 A. Agents did assist in the
2 investigation, but I don't believe that any were
3 assigned specifically as assisting agents on this
4 case.

5 Q How would an agent assist? Would you
6 just go and ask that agent whether he could -- he
7 or she could help you with the case?

8 A. Yes.

9 Q. That's how they would become an
10 assisting agent?

11 A. Yes.

12 Q. Would they complete any reports?

13 A. If they did something requiring them
14 to complete a report. If they had done an
15 interview or some other activity that they were
16 responsible for completing a report. However,
17 any reports do go into my case file, regardless
18 of who prepares them. In other words, any
19 reports, documentation for the case file goes to
20 the case agent. In other words, it would all be
21 included in the case file.

22 Q Would you review those reports?

23 A. Yes.

24 Q. And make sure everything was fine and
25 then would you have to sign off on the reports?

15

1 A. I would not sign off on those reports.
2 They would be included in the file. Their
3 individual supervisors review those reports and
4 then my supervisor reviews my report. In fact,
5 at that time a lieutenant and the captain would
6 review the report.

7 Q. Who was your lieutenant at that time?

8 A. At the time I believe it was Brian
9 Bolchoz, B-O-L-C-H-O-Z.

10 Q Do you remember who your captain was?

11 A. Would have been Roger Heaton.

12 Q. You said that

13 A. Yes.

14 Q. Thank you. Do you remember the names
15 of the agents that may have assisted you with
16 this case?

17 A. Justin Smith was, I believe, the only
18 agent who assisted me with any interviews on this
19 case. He also handled the Grand Jury
20 presentation. I was on vacation that day.
21 Additionally, there was Agent Gayle Heat (ph) did
22 the handwriting analysis on this case.

23 Q Does Gayle do anything but
24 handwriting?

25 A. She works in the questioned documents

16

1 division. They don't just do handwriting, but it
2 is one of their specialties in that forensic
3 division.

4 Q. But in this case all she handled was
5 handwriting?

6 A. Yes.

7 Q. Okay. So you were assigned the case
8 October 9th of 2008?

9 A. I believe so, yes.

10 Q. When you said you, captain assigned,
11 do you -- do you just get a phone call?

12 A. It varies. If I'm in the office that
13 day, they may call me in and say you have a new
14 case. I don't recall what the circumstances were
15 on this one.

16 Q Okay What was the first thing that
17 you did with the case once you got the case
18 assigned to you?

19 A. I contacted Investigator Mike Anderson
20 who was listed as the point of contact for the
21 sheriff's office. I contacted him, I believe, by
22 phone that day.

23 Q. What did y'all discuss?

24 A. I'm gonna refer to my file here.

25 Q. That's fine

17

1 A. He mentioned that Mr. Magwood was
2 placed on administrative leave as of October 7th.
3 And that Assistant Solicitor Greg Voigt of the
4 9th Circuit would have the information on the
5 case.

6 Q. Okay And I know you referred to your
7 case file and looks like there's some handwritten
8 notes?

9 A. Right. These are parts of the file
10 that's on here. This is the case management
11 history.

12 Q. Do you -- any time you have a
13 conversation with someone, do you take notes on
14 that conversation?

15 A. Typically they are documented. This
16 is a chronological documentation for that
17 purpose, which is part of our case file.

18 Q And you said Investigator Anderson
19 told you that you could contact Greg Voigt, the
20 assistant solicitor?

21 A. I believe he actually contacted
22 Solicitor Voigt to arrange a meeting. I think he
23 had to obtain some information from him, as well.
24 I don't recall, but a meeting was set up, I
25 believe it was the following week --

(Pages 14 to 17)

18

1 Q Okay.
 2 A. -- at Greg Voigt's office.
 3 Q. Who was present at that meeting?
 4 A. If I recall, it was myself,
 5 Investigator Anderson, Greg Voigt and I believe
 6 Investigator Ryan Kelly of the Solicitor's office
 7 was present for a portion of that meeting.
 8 Q. And what was the purpose of that
 9 meeting?
 10 A. To obtain the initial information from
 11 Solicitor Voigt whom it was my understanding the
 12 complaint had originated from.
 13 Q. What did you gain from that meeting?
 14 A. Solicitor Voigt provided us with the
 15 case summary that they had been provided by
 16 Mr. Magwood to include the lineup in question and
 17 a briefing essentially on the meeting they had
 18 had with Mr. Magwood and Mrs. Boney that had led
 19 to the complaint.
 20 Q. At this point what was your
 21 understanding of the issues that you were
 22 investigating?
 23 A. Mr. Magwood -- at that time they were
 24 preparing for a trial on a criminal sexual
 25 assault case. After a meeting with the alleged

19

1 victim in the case, Mrs. Boney, they had shown
 2 her a photographic lineup as part of
 3 identification for trial purposes and she had
 4 told them that she did not recognize it and that
 5 the handwriting on the lineup in question was not
 6 hers.
 7 This resulted in a meeting with
 8 Mr. Magwood in which they inquired about the
 9 lineup. Mr. Magwood told them that the writing
 10 on the lineup in question was hers and not his.
 11 They had followed up with Ms. Boney
 12 and she had confirmed that she did not sign the
 13 document.
 14 Q. So you're investigating whether -- I
 15 guess, what was the point of the investigation?
 16 What were you trying to discover in doing this
 17 investigation?
 18 A. It was an allegation of possible
 19 misconduct by an official by an officer, to
 20 determine if he had provided false information in
 21 the case or there was a misunderstanding or
 22 basically just to investigate the allegation and
 23 determine what the facts were.
 24 Q. Okay. After the meeting with Greg
 25 Voigt, Investigator Anderson and possibly

20

1 Investigator Kelly for part of that meeting, what
 2 was the next step you took in your investigation?
 3 A. I met with -- myself and Agent Justin
 4 Smith met with Mrs. Boney at her residence.
 5 Q. This is all one meeting?
 6 A. Myself and Agent Smith went to
 7 Mrs. Boney's house and interviewed her.
 8 Q. During your interview with Ms. Boney,
 9 what was -- what information did you gather from
 10 that meeting?
 11 A. She stated that she had been shown a
 12 single color photograph by Mr. Magwood. She did
 13 not recall signing anything. Said she didn't
 14 know if she signed anything.
 15 Q. Did she say she didn't recall signing
 16 anything or she didn't sign anything?
 17 A. She said I -- she only said she saw
 18 the single color photograph and that Mr. Magwood
 19 had gotten ready to show her some other
 20 photographs and she made the statement, "I don't
 21 know if I signed anything." But she didn't
 22 specifically recall signing that lineup and
 23 didn't identify that handwriting as hers.
 24 Q. Did you show her the photo lineup?
 25 A. We did.

21

1 Q. Okay. And she identified that that
 2 was not her handwriting?
 3 A. I believe I recall that. Let me refer
 4 to my memorandum. I don't have it documented
 5 specifically that I showed her that lineup, so I
 6 can't state for certain that she actually did
 7 view that again. She said she only saw the one
 8 large picture. Magwood got ready to show her
 9 another piece of paper that had a lot of pictures
 10 on it and told her she needed to sign some
 11 things. She said she was upset and doesn't know
 12 if she ever did sign anything. He never came by
 13 any other time to show her any other pictures.
 14 She also told me that she contacted Officer
 15 Magwood after the meeting with Solicitor Voigt.
 16 Q. Uh-huh.
 17 A. And Mr. Magwood told her not to worry
 18 about it and it might have been, "Bad on his
 19 part."
 20 Q. Did she elaborate? Did she ask
 21 Magwood any other questions about what he meant?
 22 A. That's the only information she gave
 23 us.
 24 Q. Did you believe Ms. Boney was being
 25 truthful?

(Pages 18 to 21)

22

1 A. Yeah. I documented what she told me.
 2 Q. Did you -- I mean, did you --
 3 A. I can't say for certain. You know,
 4 she -- she gave me information that appeared to
 5 be consistent with the information she had given
 6 in the earlier meeting with Kelly and Voigt.
 7 Q. How long was that meeting that you had
 8 with her?
 9 A. Approximately 20 minutes.
 10 Q. Okay. After that meeting, what was
 11 the next step?
 12 A. I attempted to contact Mr. Magwood via
 13 cell phone. I also obtained some additional
 14 contact information for his -- for Lieutenant
 15 Paul Tittle who had been lieutenant in
 16 investigations at Charleston County.
 17 Q. Did you talk to Mr. Magwood?
 18 A. I left several messages and finally
 19 contacted him on October 20th.
 20 Q. October 20th?
 21 A. I believe. October 20th is what I had
 22 documented.
 23 Q. The conversation when you finally got
 24 in touch with Mr. Magwood on October 20th, what
 25 was discussed?

23

1 A. It was -- I believe he was aware of
 2 the investigation. He had been in contact with
 3 an attorney and he was waiting to hear back from
 4 that attorney in terms of wanting to speak.
 5 Q. Did he ever give you any kind of
 6 statement, oral or written?
 7 A. In that conversation, he did not. You
 8 mean ever, for the duration of the case?
 9 Q. Yes.
 10 A. I may have documented -- I documented
 11 one actual conversation we had in a memorandum at
 12 a later date, farther down the chronology of
 13 this, if you want to --
 14 Q. Yeah. We'll kind of go through
 15 everything and get to that.
 16 A. -- get to that.
 17 Q. And you said you also contacted
 18 Tittle?
 19 A. I did to set up an interview for him,
 20 as well.
 21 Q. And you had that interview with
 22 Lieutenant Tittle?
 23 A. Lieutenant Tittle was interviewed.
 24 Had some conflicts, October 24th. I had some
 25 other conversations in between that time.

24

1 Magwood -- had a conversation with Magwood on
 2 October 23rd. He told me he was represented by
 3 Attorney Diedreich von Lehe and he had asked
 4 Mr. Lehe to contact me. Mr. Magwood said he was
 5 ready to give a statement after I got in contact
 6 with Mr. Lehe, so I left a message for Mr. Lehe
 7 and waited to hear from him and the next day is
 8 when I had the conversation with Lieutenant
 9 Tittle.
 10 Q. Tell me about the conversation with
 11 Lieutenant Tittle?
 12 A. Lieutenant Tittle didn't recall
 13 specifics of the case. He referred me to
 14 Sergeant BK Williams and Sergeant Clarice Zimmer,
 15 I believe had been his supervisors. He gave me
 16 some background on Mr. Magwood, but he didn't
 17 have any specifics about the case.
 18 Q. Did you follow-up with Sergeant Zimmer
 19 and BK Williams?
 20 A. I did.
 21 Q. Was this right after the conversation
 22 with Lieutenant Tittle?
 23 A. I first set up an interview with
 24 Sergeant Williams and attempted to contact
 25 Sergeant Zimmer. As it turned out, I ended up

25

1 interviewing Sergeant Zimmer and Lieutenant
 2 Watson on October 29th and Williams on October
 3 30th.
 4 Q. Tell me about that. Did you interview
 5 Sergeant Zimmer and Lieutenant Watson at the same
 6 time?
 7 A. Separately.
 8 Q. Separately, okay. Tell me about that
 9 conversation with Sergeant Zimmer.
 10 A. Sergeant Zimmer provided a statement.
 11 I'm going to reference it. Sergeant Zimmer
 12 stated that she had contacted Mr. Magwood after
 13 he had heard that he was placed on administrative
 14 leave and they had a conversation about the
 15 events leading to the witness identification of
 16 the suspect. Mr. Magwood told her that he had
 17 showed the victim a single photograph of the
 18 suspect which the witness identified as the
 19 suspect. He then showed her a six-pack lineup
 20 and the witness identified the suspect for a
 21 second time. She became emotional.
 22 He forgot to have the witness circle
 23 and initial the suspect photograph. He said he
 24 had had a conversation with Solicitor Greg Voigt
 25 regarding the oversight and as a result, he said

(Pages 22 to 25)

26

1 he understood it would be permissible for him,
 2 Mr. Magwood, to circle and initial the photograph
 3 on behalf of the witness.
 4 That's a summary. And she provided a
 5 full statement, which is in the case file.
 6 Q Okay That statement, is that
 7 everything that y'all talked about?
 8 A. That's the substance I recall of our
 9 conversation.
 10 Q. What was Sergeant Zimmer's
 11 relationship with Mr. Magwood?
 12 A. She had been a supervisor of
 13 Mr. Magwood since mid 2007.
 14 Q. I believe you said Lieutenant Tittle
 15 was also Magwood's supervisor?
 16 A. I'm not certain if -- he had
 17 supervised Lieutenant Magwood for some time and
 18 initially I had been told that he was the
 19 supervisor I would need to contact. He didn't
 20 recall any specifics about that investigation.
 21 You know, I believe he would have been the
 22 lieutenant over Sergeant Zimmer and Sergeant
 23 Williams at that time.
 24 When I interviewed Lieutenant Tittle,
 25 I believe he was over the traffic unit. Some

28

1 Q And so Sergeant Zimmer's only
 2 knowledge was based on a conversation she said
 3 she had had with him after Magwood was out on
 4 administrative leave?
 5 A. I don't know that. I know that's the
 6 information she provided me when I asked her
 7 about the investigation. I don't know if she had
 8 reviewed the file on her own, had had other
 9 discussions, I wasn't privy to that information.
 10 Q. But all she mentioned was that phone
 11 call?
 12 A. Yes.
 13 Q. Okay
 14 A. Yeah. And she gave some other
 15 information about Mr. Magwood and, again,
 16 mentioned that she had been his supervisor.
 17 Q Okay And you said you also spoke
 18 with Lieutenant Watson?
 19 A. Yes.
 20 Q. Tell me about that conversation.
 21 A. Lieutenant Watson provided us with a
 22 statement stating that he had also had a
 23 discussion with Mr. Magwood after he was placed
 24 on leave.
 25 He said that he was informed by

27

1 time had passed.
 2 Q. Was Sergeant Zimmer involved in this
 3 investigation?
 4 A. She didn't state having any memory, I
 5 don't believe, of that case specifically.
 6 Q Are supervisors typically involved in
 7 the investigation?
 8 MS. JACKSON: Object to the
 9 form.
 10 Q. Based on your knowledge of
 11 investigating, are supervisors --
 12 A. I can't state for certain if -- what
 13 Charleston County's actual protocol is on that.
 14 As a supervisor, supervisors do review reports
 15 and have varying levels of involvement with
 16 investigation.
 17 Q. Did you review the -- I know you said
 18 in that meeting with Greg Voigt they gave you a
 19 copy of the case file that Magwood had provided.
 20 A. Uh-huh.
 21 Q Did you review that file?
 22 A. I did review it.
 23 Q Did Sergeant Zimmer's name come up in
 24 that file?
 25 A. I'm not certain.

29

1 Detective Magwood that the victim in the case had
 2 personally known the suspect and had provided
 3 sufficient identifiers. He showed the victim a
 4 single photograph of the suspect who she had
 5 already identified only to confirm his identity.
 6 He stated he was later -- Detective
 7 Magwood, according to Lieutenant Watson, said he
 8 was later instructed by Sergeant Williams, that
 9 would be BK Williams, to show the victim a
 10 photographic lineup, which he did. So two
 11 different incidents. It was relayed to him that
 12 the victim was very emotional, not able to circle
 13 the suspect's photograph.
 14 Q And it was relayed to him by, he was
 15 alleging Magwood --
 16 A. That Magwood had told him that. That
 17 BK Williams had told him to go back and show her
 18 the lineup.
 19 Q What was Lieutenant Watson's
 20 relationship with Mr. Magwood, to your knowledge?
 21 A. He said he did not have any direct
 22 knowledge of the particular case. He had only
 23 been assigned to the criminal investigation
 24 division on March 13th, 2008. He knew detective
 25 Magwood from working with him. I don't know

(Pages 26 to 29)

30

1 exactly that relationship, however Lieutenant
2 Watson did provide some details on Detective
3 Magwood's history as a detective. Mentioned some
4 awards he had received, et cetera.

5 Q. Did Lieutenant Watkins (sic) say when
6 he had that conversation with Mr. Magwood?

7 A. "I had the opportunity to speak with
8 Detective Magwood before he was placed on
9 administrative leave by this case and I have had
10 the opportunity to review this case," is all he
11 states. He didn't state exactly when it
12 happened. He just says before he was placed on
13 administrative leave.

14 Q. Do you know if Lieutenant Watson or
15 Sergeant Zimmer, did they speak to anyone else?

16 A. I don't know that.

17 Q. Okay. You said you also met with
18 Sergeant Williams the next day?

19 A. Sergeant Williams was interviewed on
20 October 30th.

21 Q. Okay. Tell me about that
22 conversation

23 A. And again, this is a summary of what's
24 in the case file. He did not have any specific
25 recollection about the investigation in question.

31

1 He did not remember having any specific
2 conversations with Detective Magwood involving
3 photo lineups. He said was possible he may have
4 suggested to Magwood to have a photo lineup done
5 in a case where there was already a CODIS hit,
6 which is a DNA hit, because it would strengthen
7 the case, but would not have made such a
8 suggestion if he was aware that a single photo
9 identification had already been done, because
10 that would have "tainted the lineup." Sergeant
11 Williams also provided some background on
12 Detectives Williams -- I'm sorry, Mr. Magwood, at
13 the time that he had been his supervisor.

14 Q. And just so I'm clear, the information
15 that you got was that Lieutenant Tittle was the
16 supervisor over Mr. Magwood and you believe he
17 may have been over Sergeant Williams and Sergeant
18 Zimmer?

19 A. My understanding is Lieutenant Tittle
20 was the lieutenant in the -- or a lieutenant in
21 the criminal investigation division and the two
22 sergeants were Sergeant Zimmer and Sergeant
23 Williams around the time of that investigation.
24 And I believe -- I believe Lieutenant Watson had
25 taken Lieutenant Tittle's position at the time of

32

1 the interview.

2 Q. Okay. Did it -- did it appear strange
3 to you that no one had information on the
4 investigation, none of the supervisors?

5 A. That they did not recall specifics on
6 that investigation?

7 Q. Yes

8 A. No.

9 Q. Okay. After speaking to Sergeant
10 Zimmer, Lieutenant Watkins (sic), sergeant --
11 yeah, Sergeant Williams, Lieutenant Tittle, what
12 was the next step you took in your investigation?

13 A. I obtained some paperwork over the
14 next few days. I was contacted -- I need to back
15 up -- on October 27th by Mr. Magwood's attorney,
16 Mr. Lehe. Had several contacts, but essentially
17 he told me that Mr. Magwood was done talking.

18 Q. Okay.

19 A. I contacted Mr. Magwood on the 28th to
20 confirm that he did not want to give a statement,
21 because he had earlier been asked about giving a
22 statement and he reiterated that. I asked him if
23 he wanted -- if there were any witnesses he
24 wanted me to interview on his behalf and so
25 forth. He stated no. I prepared a memorandum on

33

1 that conversation, as well.

2 Q. Why did you contact Mr. Magwood after
3 speaking to his attorney?

4 A. Just to confirm, based on his earlier
5 statement, that he did want to give a statement,
6 that he did not want to contact -- anything and
7 also, to give him an opportunity if there were
8 any other witnesses that he wanted me to contact
9 in regards to this investigation, to give him
10 that opportunity to be fair.

11 Q. Did he give you any witnesses?

12 A. He did not. He stated that he had
13 worked his cases alone and the only people who
14 knew about the case were the victim that he had
15 showed the lineup to and himself.

16 Q. Based on your investigation, did that
17 appear to be a true statement?

18 A. I don't know of anyone else. Let me
19 rephrase. When you say -- when you say based on
20 my investigation was that a true statement in
21 regards to no one else knew about it but the
22 victim and himself?

23 Q. Yes.

24 A. His supervisors would have reviewed
25 the case. I don't have any information that

(Pages 30 to 33)

34

1 anyone else was present or involved in the lineup
2 showing itself, other than Mr. Magwood and
3 possibly the victim.

4 Q Do you know what supervisors reviewed
5 the case?

6 A. It would be on the case file. I don't
7 know off the top of my memory.

8 Q. Okay. After confirming with
9 Mr. Magwood that he didn't have anyone that he
10 needed you to speak to, what was the next step?

11 A. I prepared my paperwork, typed my
12 report, submitted it to my supervisors for
13 review. The report was then delivered to
14 Solicitor Wilson's office and Solicitor Wilson's
15 office citing a conflict, I suppose, since the
16 complaint had originated with their office, sent
17 it to the Attorney General's office for review.

18 Q. Scarlett Wilson's office?

19 A. Yes. The 9th Circuit Solicitor's
20 Office.

21 Q. It's confusing now that Wilson is also
22 the Attorney General now

23 A. Right.

24 Q So it was first sent to the 9th
25 Circuit, then they forwarded it. Did they send

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1 office, will review the case to determine if, in
2 their opinion, a criminal violation has occurred
3 and if charges are appropriate. They will also
4 make a determination if further investigation is
5 warranted.

6 Q. What was the result of that review?

7 A. Some time passed. I was notified --
8 ultimately the result was that the Attorney
9 General's office asked us to obtain a warrant for
10 misconduct in office and arrest Mr. Magwood,
11 which occurred -- I was notified of this on May
12 6th, 2009.

13 Q And I'm gonna hand you this Is this
14 the affidavit that you completed for the warrant?

15 A. It appears to be a copy of the
16 affidavit, yes.

17 Q. Okay And that's based on the
18 Attorney General's office asking you to prepare
19 that?

20 A. Yes.

21 MS FAJARDO. Okay. Can we go
22 ahead and mark this?

23 (Plaintiff's Exhibit 1 was
24 marked for identification)

25 Q. What was the basis for writing this

35

1 it to the Attorney General's office?

2 A. They sent it directly from their
3 office to the Attorney General's office.

4 Q. Did you ever do handwriting samples?

5 A. I did not at that time. I did later
6 in the investigation at the direction of the
7 Attorney General's office. I contacted our
8 handwriting office very early on in the
9 investigation to inquire about the possibility.
10 I did not at the time that that report was
11 prepared.

12 Q. So after -- after the report was sent
13 to the Attorney General's office, what happened
14 after that?

15 A. It went through a review process at
16 the time with Rob Bogan who was the Deputy
17 Attorney General assigned to the case.

18 Q What's the purpose of that process?

19 A. Could you explain what you mean?

20 Q You said the report is reviewed by Rob
21 Bogan or whoever, I guess, with the Assistant
22 Attorney General's office would be on it?

23 A. When we submit a case file in many of
24 our cases a prosecutorial authority, be it the
25 Attorney General's office or the Solicitor's

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1 affidavit and getting the warrant?

2 A. Can you explain what you mean in terms
3 of, "basis"? You mean the direction, who
4 directed me to do it or what is the --

5 Q You were -- I mean, obviously, I think
6 we can see it was for misconduct in office

7 A. Right.

8 Q So what is the support for the charge
9 of misconduct in office?

10 A. Would you like me to read the
11 affidavit?

12 Q No. What do you believe is the basis
13 for getting that warrant, writing that affidavit?

14 MS JACKSON: Objection to the
15 form.

16 A. The basis as stated in the affidavit
17 is that Magwood did knowingly and willfully
18 provide false information in his investigative
19 report in the form of a photo lineup reported to
20 have been signed by a witness in the
21 investigation and that in later pretrial meetings
22 with the Solicitor's office, Magwood did
23 knowingly and willfully provide false information
24 to an assistant solicitor and investigator for
25 the Solicitor's office regarding the

(Pages 34 to 37)

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1 investigation in the accompanying investigative
2 report.

3 Q. Let me ask this. Did you get the
4 warrant and write that affidavit because you were
5 told to do it or because you --

6 A. I was instructed by the -- by Rob
7 Bogan of the Attorney General's office that the
8 decision had been reached to obtain a warrant for
9 Mr. Magwood's arrest for misconduct in office.

10 Q. Did he tell you what to write in the
11 affidavit?

12 A. Not specifically. We did discuss some
13 language related to the charge of misconduct in
14 office. So it is based on his -- in other words,
15 he didn't tell me word for word, but he provided
16 me the information that he, after review of the
17 case, found was significant and what applied to
18 the statute, the common law statute, misconduct
19 in office.

20 Q. And I believe you testified that
21 Magwood did knowingly and willfully provide false
22 information in his investigative report in the
23 form of a photo lineup. Can you explain that,
24 what false information?

25 A. That he provided false information in

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1 regards to the investigation. In the interviews
2 that I did revealed that he provided several
3 different stories, but specifically to the
4 Solicitor's office had stated that he had shown a
5 lineup, that it was signed by the victim of the
6 case and this was not believed to be true based
7 on the investigation.

8 Q. What, in your investigation, supported
9 that the victim didn't sign the photo lineup?

10 A. The victim denied signing the photo
11 lineup and the witness statements with -- both
12 from the information I obtained from the
13 Solicitor, Greg Voigt, the investigator, Ryan
14 Kelly, Ms. Boney herself, Sergeant Zimmer, and
15 Lieutenant Watson.

16 Q. Let's go back, because you said the
17 victim denied signing the photo lineup, but you
18 had testified Ms. Boney told you she couldn't
19 recall whether she had signed it

20 A. She said she doesn't know if she
21 signed anything, was her specific words. She did
22 not -- she recalled being shown a single photo.

23 Q. Okay. So did she say I didn't sign
24 the photo lineup or she said I can't remember if
25 I signed anything?

40

1 A. She only -- she only recalled the
2 single photo lineup. She said that he got ready
3 to show her another set of photographs. She
4 didn't want to look at them and that she didn't
5 recall she signed anything, is all she said. She
6 had also provided a statement to Investigator
7 Kelly in which she denied that the handwriting
8 was hers.

9 Q. Would you agree that not recalling is
10 different from not doing something?

11 MS. JACKSON: Objection to form

12 A. She specifically said, "I don't recall
13 if I signed anything." She did not say
14 specifically, I don't recall about the lineup.

15 Q. Okay. So do you agree that the not
16 recalling and saying that you didn't do something
17 is different or in your investigation that's the
18 same thing?

19 MS. JACKSON: Objection to form

20 A. I don't understand the question.

21 Q. Yeah. You said she stated she didn't
22 recall signing anything.

23 A. (Indicating.)

24 Q. Did she say I didn't sign anything or
25 she didn't recall?

41

1 A. She said, "I don't know if I signed
2 anything."

3 Q. Do you believe that's different? Does
4 that have a different meaning than if she had
5 said I didn't sign anything?

6 A. She told Investigator Ryan Kelly in
7 the interview previous to this investigation,
8 which was also before she spoke to Detective
9 Magwood about the situation, that she had not
10 signed the lineup.

11 Q. The conversation that you reference
12 with Investigator Kelly, is that the same
13 conversation -- did Investigator Kelly record
14 that conversation?

15 A. He did.

16 Q. And did you listen to that recording?

17 A. I did.

18 Q. And on that recording is when she said
19 that she didn't sign?

20 A. Right.

21 Q. Do you feel that Investigator Kelly
22 suggested any answers to Ms. Boney?

23 A. I don't have an opinion about that.

24 Q. Did Ms. Boney say in that conversation
25 she didn't recall, she didn't know one way or the

(Pages 38 to 41)

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1 other?

2 **A. I don't have a transcription of that**
3 **in front of me. I don't recall every single**
4 **thing that she said.**

5 Q. But what you gathered from that
6 conversation was that she didn't sign the photo
7 lineup?

8 **A. Yes.**

9 Q. Okay. And kind of going back, when
10 you were giving me all your support for the false
11 information, you said the victim denied signing
12 the photo lineup and then the statements of
13 Sergeant Zimmer?

14 **A. Yes.**

15 Q. And that was -- what from Sergeant
16 Zimmer supported?

17 **A. Sergeant Zimmer stated that**
18 **Mr. Magwood had told her that after a**
19 **conversation with Solicitor Voigt, he had**
20 **believed it was permissible to circle and sign**
21 **the lineup himself.**

22 Q. Did you talk to Ms. Boney any other
23 time, other than the first time that you spoke to
24 her?

25 **A. I did not conduct any other formal**

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1 interviews with her, no.

2 Q. Did anyone else from your office talk
3 to her again?

4 **A. No. Not that I'm aware, no.**

5 Q. So you said Sergeant Zimmer, the
6 victim and what was the other support?

7 **A. Lieutenant Watson had stated the story**
8 **that Mr. Magwood had been instructed to go back**
9 **and show the lineup by his sergeant, BK Williams.**
10 **Mrs. Boney had stated that there was only the one**
11 **visit and that she didn't recall any other times**
12 **he had come by in her earlier interview.**

13 Q. Based on your investigation, is it
14 your opinion that Mr. Magwood never showed
15 Ms. Boney a photo lineup?

16 **A. I don't have any evidence to support**
17 **that he did.**

18 Q. And I want to go back. When you
19 talked to Ms. Boney and I asked you whether you
20 felt that she was being truthful, you stated that
21 her information appeared to be consistent with
22 what had been reported to the Solicitor's office?

23 **A. Relatively consistent.**

24 Q. What position did the Solicitor's
25 office have? What did the Solicitor's office

44

1 tell you was going on? Does that make sense?

2 **A. Not really.**

3 Q. That was a bad question. That was a
4 bad question. I'm trying to find out when you
5 spoke to the Solicitor's office --

6 **A. Right.**

7 Q. -- because that was the first meeting
8 that you had on the case. What information did
9 they give you that they believed had occurred?

10 **A. I have the information that's**
11 **contained in the summary. I'm referring to**
12 **Investigator Ryan Kelley's memorandum. They met**
13 **with the victim, Ms. Catherine Boney, several**
14 **times in September 2008. During the meeting**
15 **Ms. Boney made mention of being shown a**
16 **photograph by Detective Magwood of the suspect.**
17 **I'm summarizing here. "Mr. Voigt and I**
18 **previously observed in the case file a signed**
19 **six-picture photo lineup where the photograph of**
20 **Maurice Pioleau had been circled, dated, timed**
21 **and initialed. When Ms. Boney advised she was**
22 **shown a photograph of suspect by Detective**
23 **Magwood, we assumed Ms. Boney was referring to**
24 **the lineup present in the case file. After two**
25 **separate conversations with Ms. Boney, she was**

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1 certain she was shown only a single photograph
2 and not a photograph of Prioletau in a
3 six-photograph lineup." They followed up on
4 that.

5 When they met with Mr. Magwood on
6 September 25th, they had advised him of her claim
7 of her not signing the lineup. He stated the
8 victim was incorrect. Advised that she was
9 extremely upset and must have forgotten. He
10 advised the victim signed the lineup and is
11 incorrect in her recollection. That's a summary
12 of that.

13 Q. And further on in this affidavit
14 that's Plaintiff's Exhibit 1, it has, "Office
15 Magwood did knowingly and willfully provide false
16 information to an assistant solicitor and
17 investigator for the Solicitor's office regarding
18 the investigation "

19 **A. Right.**

20 Q. Is that -- is the basis for that line
21 in the affidavit the same as what you previously
22 have testified to, the previous mention of false
23 information?

24 **A. Again, that -- the information**
25 **contained therein is based on the Attorney**

(Pages 42 to 45)

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1 General's office review of the case file in terms
2 of what they felt the violation was in here. So
3 I cannot specifically state what Rob Bogan
4 specifically included in that, but that would be
5 included in that information, yes.
6 Q. But you've signed this affidavit?
7 A. Yes. Uh-huh.
8 Q. And you believed everything in this
9 affidavit to be true?
10 A. To the best of my knowledge, yeah.
11 Q. Was there a preliminary hearing in
12 this case or just taken to the Grand Jury?
13 A. There was a preliminary hearing.
14 Q. Did you handle the preliminary
15 hearing?
16 A. I did.
17 Q. At the preliminary hearing what was
18 the basis for the arrest?
19 A. I'm sorry?
20 Q. At the preliminary hearing you
21 testified as to the probable cause to make the
22 arrest, didn't you?
23 A. Yes. I testified by reading the
24 affidavit in court, if I recall. I don't have
25 the transcription of that in front of me, but

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1 that's what I recall.
2 Q. Okay. Was there anything additional,
3 other than the affidavit?
4 A. There may have been. Mr. Bogan was
5 present and acting as -- on behalf of the
6 prosecution in that case, so he had asked some
7 other questions. I don't recall what they were.
8 Q. Any other evidence that was present in
9 the case, other than what you've already
10 testified to?
11 A. Anything that was presented there
12 would have been information contained in the case
13 file.
14 Q. And I know you said at some point you
15 requested a handwriting sample
16 A. I did.
17 Q. Do you -- was this after the
18 preliminary hearing?
19 A. The handwriting samples were obtained
20 after the preliminary hearing, yes.
21 Q. So there's a preliminary hearing and
22 then the Grand Jury -- it was presented to the
23 Grand Jury?
24 A. It was presented to the Grand Jury --
25 I'm looking for the date.

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1 Q. That's fine
2 A. On or about August 4th, 2009 is what I
3 have documented. I was on leave and Agent Smith
4 did the presentation for the Grand Jury.
5 Q. Do you have any information about what
6 he presented to the Grand Jury?
7 A. I do not.
8 Q. After getting the affidavit, arresting
9 Mr. Magwood, was there any further investigation
10 on this case?
11 A. I obtained a handwriting standards for
12 Mr. Magwood per the AG's office request and I
13 believe they had a court order on December 30,
14 2010 and they were submitted to the SLED forensic
15 lab.
16 Q. Why was this obtained so late?
17 A. Per the AG's office request.
18 Q. Did they tell you why they wanted the
19 handwriting sample?
20 A. They wanted them as part of the
21 preparation for court, as part of the
22 investigation.
23 Q. Did you obtain handwriting samples
24 from Ms. Boney?
25 A. They were obtained by Investigator

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1 Anderson as part of their investigation and her
2 standards were submitted.
3 Q. Did you -- I'm sorry. Did you get a
4 copy of her handwriting and submit it with
5 Mr. Magwood's?
6 A. The handwriting standard she had
7 submitted, if I recall, were resubmitted again
8 for comparison to the standards I had obtained on
9 December 30th.
10 Q. What were the results of Mr. Magwood's
11 handwriting samples?
12 A. I can read from the report if you'd
13 like me to.
14 Q. I know what the report says. In your
15 opinion -- let me --
16 A. I don't formulate an opinion on
17 forensic.
18 Q. You don't have an opinion?
19 A. I do not form an opinion, professional
20 opinion, on a laboratory report. That's the job
21 of the technician.
22 Q. Okay. So whatever the report says,
23 that's what you believed?
24 A. That is what I have to go on, is
25 what's on the report.

(Pages 46 to 49)

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1 Q Did you feel the report supported the
2 case against Mr. Magwood?

3 A. I feel that it did.

4 Q. Were you aware of the internal affairs
5 investigation of Mr. Magwood?

6 A. I was aware that an investigation was
7 going on. I was not privy to any information
8 obtained therein.

9 Q. You said you got -- Investigator
10 Anderson had gotten handwriting samples from
11 Boney that he shared with you. Did he share the
12 results of --

13 A. No, he didn't.

14 Q He just gave you the handwriting
15 samples?

16 A. That evidence was transferred to me.
17 I don't even recall specifically details of the
18 transfer, but that evidence was transferred to me
19 and I delivered that evidence to our lab. I did
20 not review their reports or any reports they had
21 obtained based on their investigation.

22 Q Was any other evidence transferred to
23 you for your investigation?

24 A. Not that I recall. Let me see. I'm
25 not certain. I know -- I know that at one point

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1 the lab was submitted the original lineup in
2 question. The standards for Mr. Magwood I had
3 obtained and standards for Mrs. Boney. Going on
4 memory I don't recall specifically what of those
5 items I obtained specifically from Charleston
6 County, but that was the evidence handled in this
7 case.

8 Q Okay How did you go about getting
9 the evidence transferred, Ms. Boney's handwriting
10 samples?

11 A. I would -- we would fill out an
12 evidence transfer form. I don't know if I used
13 Charleston County's form or a SLED form. It was
14 transferred into my custody and then it was
15 delivered to the forensic lab.

16 Q Did you share any of your
17 investigation with the internal affairs
18 investigation?

19 A. They were ultimately provided a copy
20 of my case and the case addendum.

21 Q. Were they provided the handwriting
22 samples of Mr. Magwood that you received in
23 December 2010 or -- yeah, submitted, I guess, in
24 December 2010?

25 A. I don't recall specifically giving

52

1 them those reports. Whether they obtained them
2 on their own, I have no idea.

3 Q Did you have any conversations with
4 Investigator Anderson or Investigator Antonio
5 regarding the investigation?

6 A. Not that I recall, no. Other than
7 the -- I obtained some, you know, phone numbers,
8 contact information, so forth and they contacted
9 me a few times while the case was under review to
10 see if there was a status update.

11 Q But no details of the case were
12 discussed?

13 A. Not that I recall.

14 Q Did you -- who did you talk to
15 throughout your investigation regarding your
16 investigation Would you speak to anyone else in
17 the department, in SLED?

18 A. Not that I recall, except for the
19 agents who might have been assisting me in the
20 case, which would have been Agent Smith and my
21 supervisor at the time, Lieutenant Bolchoz would
22 have been the only one I would have recalled
23 discussing the case with.

24 Q. Did you ever speak to the media?

25 A. No.

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1 Q Did the media ever contact you?

2 A. Not that I recall. Agents aren't
3 allowed to give media statements.

4 Q. Does SLED have anyone in their
5 division that handles discussing cases with the
6 media?

7 A. We have a public information officer.

8 Q Do you know that person's name?

9 A. The one at the time or the current
10 one?

11 Q. The one at the time

12 A. I believe, and I'm not 100 percent
13 certain, but I believe at the time it would have
14 been Jennifer Timmons.

15 Q Do you know if she was contacted
16 regarding this case?

17 A. I do not know.

18 Q Where do the public information
19 officers get the information regarding the case
20 when they're contacted?

21 A. Through our case files. Additionally
22 when we make an arrest we typically will fax or
23 send a copy of the affidavit, as well as any
24 arrest paperwork to -- to their office or to
25 Columbia.

(Pages 50 to 53)

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1 Q. Do you do that on every case or just
2 high profile cases?
3 A. Every case. Every case.
4 Q. Did you follow up on the relationships
5 the witnesses claim that they had with Magwood
6 and I'm speaking about Sergeant Zimmer,
7 Lieutenant Watson, Sergeant Williams, Lieutenant
8 Tuttle?
9 A. I don't understand specifically what
10 you mean in terms of relationships.
11 Q. Did you follow-up if they were his
12 supervisor?
13 A. That was the information I was
14 provided, is that they were -- they were his
15 supervisors.
16 Q. Okay. And just so I'm clear --
17 A. Uh-huh.
18 Q. -- you spoke to Sergeant Zimmer,
19 Lieutenant Watkins?
20 A. It's Watson.
21 Q. Watson. I don't know why I keep
22 saying that wrong?
23 A. It's okay.
24 Q. Lieutenant Tuttle and Ms. Boney?
25 A. (Indicating.)

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1 Q. Anyone else that you spoke to in
2 investigating Mr. Magwood?
3 A. Did you mention Solicitor Voigt and
4 Investigator Ryan Kelly.
5 Q. I didn't. And other than the meeting
6 you had with them, did you speak to them any
7 further?
8 A. I interviewed Solicitor Voigt, yes.
9 Q. When did you interview Solicitor
10 Voigt?
11 A. On February 10, 2009. I had been
12 contacted by Rob Bogan at the Attorney General's
13 office and he had requested that I follow-up with
14 Solicitor Voigt.
15 Q. What did Bogan, what did he want you
16 to talk to Voigt about?
17 A. I was -- I had interviewed Voigt in
18 reference to a statement that had been made by
19 Sergeant Zimmer in which she related information
20 about a conversation between Magwood and Voigt.
21 Q. And what came of that interview with
22 Voigt?
23 A. Voigt stated he did not think he would
24 have told Magwood that it would be acceptable for
25 him to sign a photo lineup on behalf of the

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1 victim. When he was explaining -- preparing the
2 Prioleau case for trial, he questioned Magwood
3 about the handwriting on the lineup signature and
4 Magwood adamantly denied that it was his
5 handwriting. Magwood maintained repeatedly that
6 the victim was the one who had signed the lineup.
7 Magwood also denied to Investigator Ryan Kelly
8 that the handwriting was his.
9 In their meeting on the Prioleau case
10 Magwood never mentioned showing the victim a
11 single photograph of the suspect. In the
12 45-minute meeting that they had that day, Magwood
13 never made any mention of the previous
14 conversation with Voigt about the lineup.
15 There are some other details, other
16 information that is in the memorandum in the case
17 file. That's a summary.
18 Q. Okay. And then with Investigator
19 Kelly, did you speak with him again after that
20 first meeting?
21 A. I don't recall any follow-up after
22 that first information.
23 Q. When you got the arrest warrant for
24 Mr. Magwood, did you have any conversation with
25 the judge that signed the warrant, the

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1 magistrate, or did you just give him the
2 affidavit?
3 A. Not specifics. I would have given him
4 the information on the affidavit. I don't recall
5 anything else.
6 Q. So the judge was not aware that
7 Ms. Boney said she couldn't recall signing
8 anything?
9 MS JACKSON Objection to the
10 form
11 Q. Did you tell the judge that Ms. Boney
12 had said she couldn't recall signing anything?
13 A. I gave the judge the information that
14 was contained on the affidavit.
15 Q. Give me one moment, I may be done
16 Did you receive any information in your
17 investigation that Mr. Magwood's supervisors
18 believed Magwood had forged the signature?
19 A. The supervisors I interviewed and I'll
20 refer to them, they stated they didn't believe he
21 would have intentionally -- well, before I quote
22 it, let me refer to the information.
23 All the information that they provided
24 about Mr. Magwood and their belief was included
25 in my report. The interviews also with Mr. --

(Pages 54 to 57)

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1 with Lieutenant Watson, and Sergeant Zimmer
2 indicate that he had stated he had been the one
3 who had signed them. His supervisors did provide
4 positive information about him and stated they
5 did not know of him to ever intentionally falsify
6 anything in the past.

7 Q. What was the basis in your
8 investigation to believe that Magwood
9 intentionally committed these acts as in the
10 affidavit?

11 A. We had no information to support or we
12 didn't have information to support that as he had
13 stated in his report, that she had been the one
14 to sign it and date the lineup. And he had
15 stated that the only people who would have known
16 about it would have been the victim and himself.

17 MS. FAJARDO I don't believe I
18 have any other questions. Thank you. I
19 think your attorney has some questions.

20 MS. JACKSON: I do. I have a
21 couple questions.

22 E-X-A-M-I-N-A-T-I-O-N

23 BY MS. JACKSON

24 Q. If you would, turn to your memorandum
25 of interview of Catherine Boney

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1 Q. Okay. And did she also tell them that
2 she had never been shown a lineup by Detective
3 Magwood?

4 A. Yes.

5 Q. And did she provide a handwriting
6 sample to them at that time?

7 A. Yes.

8 Q. All right. And when they spoke with
9 Detective Magwood, based on Investigator Kelley's
10 memorandum, did Magwood tell Voigt that the
11 victim was incorrect and that she did sign and
12 date the lineup?

13 A. Yes.

14 Q. And did he tell them that she did both
15 sign and date it?

16 A. I'm just looking for -- Detective
17 Magwood advised us, yes, yes.

18 Q. And is there any record anywhere that
19 when Magwood met with Voigt and Kelly, that he
20 told them that he is the one who put the date and
21 the time on the lineup?

22 A. No.

23 Q. Okay. If Mr. Magwood had given you
24 additional witnesses that he wanted you to speak
25 with, would you have spoken with them?

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1 A. Okay.

2 Q. On the first page towards the bottom
3 it says, "Boney looked at the single photograph
4 and identified the person in the photograph." Is
5 that what she told you?

6 A. Yes.

7 Q. That she looked at a single
8 photograph?

9 A. Yes.

10 Q. Okay. And then on page two, starting
11 in the middle of the third line it says, "She
12 said she only saw the one large picture." Is
13 that what she told you?

14 A. Yes.

15 Q. All right. And did she tell you that
16 more than once based on --

17 A. Yes, yes.

18 Q. And did she feel certain she had only
19 seen a single photograph?

20 A. She repeated it several times.

21 Q. All right. When talking to Voigt and
22 Kelly, looking at Kelley's memorandum, does it
23 appear that she told him that the writing on the
24 lineup is not hers?

25 A. Yes.

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1 A. Yes.

2 Q. In the course of performing
3 investigations like this one, are you given
4 discretion?

5 A. Yes.

6 Q. Okay. And do you use that discretion
7 in determining what witnesses to interview?

8 A. Yes.

9 Q. Do you use that discretion in
10 determining what documents to examine?

11 A. Yes.

12 Q. And what evidence to gather?

13 A. Yes.

14 Q. All right. I see that you did not
15 interview Maurice Prioleau. Is that something
16 you used your discretion to determine?

17 A. Yes.

18 Q. And you did interview a number of
19 people who turned out not to have any direct
20 knowledge about this particular investigation,
21 but were those interviews done within your
22 discretion?

23 A. Yes.

24 Q. Now, is it your job at the end of your
25 investigation to make a determination about wrong

(Pages 58 to 61)

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1 doing?
 2 A. No.
 3 Q. Are you supposed to have any opinion
 4 about wrong doing?
 5 A. No.
 6 Q. If the solicitor asks you for your
 7 opinion about wrong doing, are you permitted to
 8 give it?
 9 A. I am.
 10 Q. Okay. Were you asked in this case?
 11 A. I don't recall, no.
 12 Q. Okay. When you contacted Mr. Magwood
 13 and he told you he didn't want to talk to you,
 14 did that raise any red flags for you?
 15 A. Yes. I would have liked to have
 16 talked to him, obviously, and get his side of the
 17 story.
 18 Q. Okay. And based on your training and
 19 experience, what does that indicate to you?
 20 A. That he may be concerned that he may
 21 have something to hide or that he may be
 22 concerned that some information that may come out
 23 that may get him in trouble.
 24 Q. And throughout the course of your
 25 investigation did Mr. Magwood go back and forth

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1 A. I don't know.
 2 Q. -- or he's not? Okay. Is it regular
 3 practice for a solicitor or an assistant attorney
 4 general who wishes to pursue charges based on one
 5 of your reports to ask you to obtain the warrant?
 6 A. Yes.
 7 Q. And is that part of your job duties?
 8 A. Yes.
 9 Q. Okay. Did you ever do anything to
 10 continue or insist that Mr. Magwood be
 11 prosecuted?
 12 A. No.
 13 Q. Did you know Mr. Magwood before this
 14 investigation?
 15 A. I did not.
 16 Q. Do you have any feelings -- personal
 17 feelings for or against him?
 18 A. No.
 19 Q. When you signed this warrant, did you
 20 believe that you had probable cause to make this
 21 arrest?
 22 A. I did.
 23 Q. And if you did not believe you had
 24 probable cause, would you have participated in
 25 further discussions with the assistant attorney

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1 on being willing to give a statement and not
 2 being willing to give a statement?
 3 A. Yes.
 4 Q. And when he was willing to give a
 5 statement, were you ever actually able to get a
 6 statement from him?
 7 A. No.
 8 Q. Okay. When you went to interview
 9 Ms. Boney, it looks like Agent Smith went with
 10 you. Is that a normal procedure?
 11 A. Yes. Particularly if interviewing a
 12 female alone in her residence, we'd want an
 13 additional witness there.
 14 Q. Okay. All right. I just want to go
 15 down through the causes of action. You have been
 16 sued personally for malicious prosecution. Did
 17 you institute these judicial proceedings, meaning
 18 did you make the decision to obtain the warrant
 19 in this case?
 20 A. No.
 21 Q. Do you know whether or not the
 22 Assistant Attorney General, Rob Bogan, is
 23 permitted to sign a warrant affidavit?
 24 A. No.
 25 Q. You don't know --

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1 general?
 2 A. Yes.
 3 Q. Okay. You're also being sued for
 4 abuse of process. Were all of your actions with
 5 regard to this case taken as part of your
 6 official duties as a SLED agent?
 7 A. Yes.
 8 Q. Did you do anything outside of the
 9 realm of your normal investigative process?
 10 A. No.
 11 Q. Did you follow all of your policies
 12 and procedures for SLED in preparing this
 13 investigation?
 14 A. Yes.
 15 Q. Did you follow all of your policies
 16 and procedures with regard to obtaining and
 17 issuance of the arrest warrant?
 18 A. Yes.
 19 Q. And did you follow all of your
 20 policies and procedures with regard to the arrest
 21 of Mr. Magwood?
 22 A. Yes.
 23 Q. And did you follow all of your
 24 policies and procedures with regard to your
 25 testimony in the criminal trial?

(Pages 62 to 65)

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1 A. Yes.
 2 Q All right The signing of the warrant
 3 was done by a magistrate?
 4 A. Yes.
 5 Q. Okay. All right. You are also being
 6 sued -- oh, did you have any desire to see
 7 Mr. Magwood terminated from his job?
 8 A. No.
 9 Q Did you have any desire to see
 10 Mr. Magwood lose his law enforcement
 11 certification?
 12 A. No.
 13 Q. You are also being sued for
 14 defamation Did you ever make any statements
 15 about Mr. Magwood outside of the course of your
 16 official investigation?
 17 A. No.
 18 Q Did you ever make any statements to
 19 any person regarding Mr. Magwood that you knew or
 20 believed to be untrue?
 21 A. No.
 22 Q You're also being sued for civil
 23 conspiracy Did you ever meet with Defendant
 24 Antonio with regard to your investigation?
 25 A. No. I don't recall meeting with him.

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1 Q. Okay. Did you ever have any
 2 discussions about the content of your
 3 investigation with Mike Anderson?
 4 A. No.
 5 Q. Okay. And I understand earlier you
 6 testified that you were aware of the Charleston
 7 County Sheriff's Office investigation, but that
 8 you had no information on it?
 9 A. Correct.
 10 Q Is that because of
 11 Garrity?
 12 A. Yes.
 13 Q Are they permitted to provide you with
 14 any information regarding their investigation
 15 that's being done under Garrity?
 16 A. They're not.
 17 Q. And is that because investigations
 18 done under Garrity protect the officer from
 19 criminal charges being brought for that
 20 particular investigation?
 21 A. Yes.
 22 Q. Okay. And so, is it fair to say that
 23 your investigation was being done on a parallel
 24 track with regard to whether or not criminal
 25 charges were being brought, their's were being

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1 done with regard to employment and disciplinary
 2 within the department?
 3 A. Yes, and I'm not aware of the time
 4 table of their investigation, so I can't say
 5 parallel in terms of chronology, but it was done
 6 separately.
 7 Q. Not necessarily parallel in time, but
 8 parallel purposes --
 9 A. Yes.
 10 Q. -- meaning that your purposes did not
 11 cross?
 12 A. Correct.
 13 Q. And is it proper for an agency who has
 14 requested an investigation to obtain a copy of
 15 your investigation once it's complete?
 16 A. Yes.
 17 Q Did Defendant Anderson ever give
 18 you -- make any personal statements about
 19 Mr. Magwood?
 20 A. No.
 21 Q Has investigator Antonio ever made any
 22 personal statements about Mr. Magwood to you?
 23 A. No.
 24 Q. Was there ever any discussion between
 25 you and Mr. Anderson regarding injury to

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1 Mr. Magwood?
 2 A. No.
 3 Q. Not physical injury, but injury to his
 4 reputation?
 5 A. No.
 6 Q. What about any conversation between
 7 you and Mr. Antonio regarding Mr. Magwood's
 8 reputation?
 9 A. No.
 10 Q. Or causing injury to Mr. Magwood's
 11 reputation?
 12 A. No.
 13 Q. In pursuing your investigation do you
 14 feel that you have a duty to the person being
 15 investigated to look into all avenues?
 16 A. Yes.
 17 Q. And did you do that in this case?
 18 A. I believe so, yes.
 19 Q. Was there any aspect of this
 20 investigation that you felt was not reviewed?
 21 A. No.
 22 Q. Okay. And --
 23 A. In terms of what was available for me
 24 to review, no.
 25 Q. And do you believe that your

(Pages 66 to 69)

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1 investigative file contains all information that
 2 was available to you during this investigation?
 3 A. Yes.
 4 Q And you did not leave anything out?
 5 A. No.
 6 Q Did you actually make the arrest of
 7 Mr. Magwood?
 8 A. Yes.
 9 Q And how was that done?
 10 A. I contacted the Charleston County
 11 Sheriff's Office, notified them that the warrant
 12 was being obtained. I believe they contacted --
 13 they facilitated contacting his attorney in order
 14 to make arrangements for him to turn himself in.
 15 I'm not sure exactly who made that contact, but
 16 it was relayed to me he would be turning himself
 17 in the following day and arrangements were made
 18 for him to do so.
 19 Q So he was not arrested out in public
 20 somewhere?
 21 A. No, he was not.
 22 Q He turned himself in at the jail.
 23 Were special arrangements made at the jail for
 24 him?
 25 A. They were. I'm not sure of all the

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1 details of them, but they were.
 2 Q. Okay. And what was the reason for
 3 that?
 4 A. For his security.
 5 Q. As a law enforcement officer?
 6 A. As a law enforcement officer. In
 7 addition we had arranged for him to turn himself
 8 in and to receive a bond in relatively timely
 9 order.
 10 Q And is that so he wouldn't have to
 11 spend additional time in jail?
 12 A. That's a thing that we extend to
 13 anyone who offers to turn themselves in, that
 14 courtesy.
 15 Q. And that's the purpose of it, so they
 16 don't have to spend additional time in jail?
 17 A. Hopefully. Obviously, bond is a
 18 decision of the judge, but yes.
 19 Q. Right. Have you ever investigated the
 20 Charleston County Sheriff's Office before?
 21 A. Yes.
 22 Q And have you investigated members of
 23 the Charleston County Sheriff's Office for
 24 everything from excessive force to officer
 25 involved shootings?

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1 A. Yes.
 2 Q And have you investigated officers
 3 from the detention center?
 4 A. Yes.
 5 Q And do you believe that you've always
 6 been fair to both sides in your investigation?
 7 A. Yes.
 8 Q. Have you ever been disciplined for one
 9 of your investigations of the Charleston County
 10 Sheriff's Office?
 11 A. No.
 12 Q The handwriting sample that was
 13 received or that was obtained closer to trial,
 14 when you turn over your report to the prosecuting
 15 agency, I believe you said earlier that part of
 16 the reason was to determine if any further
 17 investigation would be warranted?
 18 A. Yes.
 19 Q Is that why the handwriting sample was
 20 obtained later?
 21 A. Yes. By request of the Attorney
 22 General's office.
 23 Q. Was the -- if the Charleston County
 24 Sheriff's Office had obtained a handwriting
 25 analysis as part of their Gaulty investigation,

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1 is that something that you were able to use in
 2 the criminal investigation?
 3 A. No, I was not. And that was reviewed
 4 by the Attorney General's office when the
 5 decision was made to obtain separate --
 6 Q So that's why a separate sample was
 7 reviewed or obtained?
 8 A. Correct.
 9 MS. JACKSON I don't believe I
 10 have any further questions
 11 R-E-E-X-A-M-I-N-A-I-T-O-N
 12 BY MS FAJARDO.
 13 Q I have just a few The memorandum of
 14 Investigator Kelly --
 15 A. Uh-huh.
 16 Q. -- that's in your case file, did you
 17 ask him to do that memorandum or did he
 18 voluntarily send you that memorandum?
 19 A. I believe I may have requested a
 20 statement from him or a summary of his meeting.
 21 Q Okay
 22 A. He voluntarily sent it or he sent it
 23 to me, but I had requested that he prepare it.
 24 Q. And the interviews that you performed
 25 in this investigation, is there any audio or

(Pages 70 to 73)

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1 video?
 2 A. No.
 3 Q. Do you typically do any audio or video
 4 of the interviews?
 5 A. No.
 6 Q. Can you refuse to obtain a warrant if
 7 you don't believe that it is merited?
 8 A. I do not know if I've ever been in
 9 that situation before.
 10 Q. And I believe Ms. Boney, and I don't
 11 have the transcript in front of me, Ms. Boney
 12 testified at the trial of Mr. Magwood?
 13 A. She did.
 14 Q. You were at the entire trial of
 15 Mr. Magwood?
 16 A. I was.
 17 Q. And Ms. Boney testified that she may
 18 have signed the lineup, but was very upset at the
 19 time and couldn't remember?
 20 A. I don't recall specifically what she
 21 stated on the stand.
 22 Q. Okay. Let me ask this, do you -- were
 23 you surprised at Ms. Boney's testimony at trial?
 24 A. No.
 25 Q. Did you gain any new information after

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1 her testimony?
 2 MS. JACKSON: Objection to the
 3 form.
 4 A. I don't recall specifics of her
 5 testimony.
 6 MS. FAJARDO. That is all I
 7 have
 8 MS. JACKSON: Thank you
 9 MS. FAJARDO: Thank you.
 10 MS. JACKSON: He'll read and
 11 sign. You can send it to me.
 12 (This deposition concluded at 12:30 p.m.)
 13
 14 (Signature reserved.)
 15
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CERTIFICATE OF REPORTER

1
 2
 3 STATE OF SOUTH CAROLINA)
 4 COUNTY OF CHARLESTON)
 5

6 I, Nicole D. White, the officer before
 7 whom the foregoing deposition was taken, do
 8 hereby certify that the witness whose testimony
 9 appears in the foregoing deposition was duly
 10 sworn by me, that the testimony of said witness
 11 was taken by me to the best of my ability and
 12 thereafter reduced to typewriting under my
 13 direction, that I am neither counsel for, related
 14 to, nor employed by any of the parties to the
 15 action in which this deposition was taken, and
 16 further, that I am not a relative or employee of
 17 any attorney or counsel employed by the parties
 18 thereto, nor financially or otherwise interested
 19 in the outcome of the action.
 20
 21
 22

23 _____ Date _____
 24 Nicole D. White
 25 Notary Public in and for the
 State of South Carolina

My Commission expires September 11, 2017

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ERRATA SHEET

1
 2
 3 RE Magwood -vs- J. Al Cannon, Jr, et al
 4 DEPOSITION OF Charles Ghent
 5

6 Please read this original deposition with
 7 care, and if you find any corrections or changes
 8 you wish made, list them by page and line number
 9 below. DO NOT WRITE IN THE DEPOSITION ITSELF.
 10 Return the deposition to this office after it is
 11 signed. We would appreciate your prompt
 12 attention to this matter.

13 To assist you in making any such
 14 corrections, please use the form below. If
 15 supplemental or additional pages are necessary,
 16 please furnish same and attach them to this
 17 errata sheet.

18 Page Line Should read

19
 20 Page Line Should read

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 22 Page Line Should read

23
 24 Page Line Should read
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1 Page Line Should read:
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3 Page Line Should read:
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23 Page Line Should read:
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25 NDW

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1 SIGNATURE PAGE
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6 SIGNATURE OF WITNESS
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9
10 SUBSCRIBED and SWORN TO before me this
11 ____ day of ____, 2014
12
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17 My Commission expires ____
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EXHIBIT M

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669
Plaintiff(s),

-vs-

J. AL CANNON, JR., in
His official capacity as
Sheriff of Charleston County,
Investigator Anderson,
Investigator Antonio, Charles
Ghent, and South Carolina
Law Enforcement Division,
Defendant(s).

THE DEPOSITION OF LIEUTENANT ROGER ANTONIO
taken on behalf of the Plaintiff on Tuesday,
March 11, 2014, commencing at 1:07 p.m. at the
Law Offices of Senn Legal, 3 Wesley Drive,
Charleston, South Carolina.

REPORTED BY: Nicole D. White

1 A-P-P-E-A-R-A-N-C-E-S.
 2
 3 Appearances for the Plaintiff:
 4 By: Stephanie R. Fajardo, Esquire
 5 THE FINNEY LAW FIRM, INC.
 6 2117 Paik Street
 7 Columbia, South Carolina 29201
 8 (803) 254-7408
 9 Stephanie.r.fajardo@gmail.com
 10
 11 Appearances for the Defendant:
 12 By: Robin L. Jackson, Esquire
 13 SENN LEGAL
 14 3 Wesley Drive
 15 Charleston, South Carolina 29422
 16 (843) 556-4045
 17 Robin@sennlegal.com
 18
 19 Also Present:
 20 Lieutenant Michael Anderson
 21
 22
 23
 24
 25

1 (LIEUTENANT ROGER ANTONIO, having been first
 2 duly sworn, testified as follows)
 3 E-X-A-M-I-N-A-T-I-O-N
 4 BY MS FAJARDO.
 5 Q. Okay, Lieutenant Antonio, my name is
 6 Stephanie Fajardo. I represent the
 7 Plaintiff in this case. I know you were
 8 present yesterday for the Plaintiff's
 9 deposition and then earlier today for
 10 Lieutenant Anderson's deposition. I'm gonna
 11 briefly go over the ground rules, but much
 12 quicker as I know this is probably the
 13 second time that you've heard it.
 14 Have you ever had your deposition
 15 taken before?
 16 A. Yes, ma'am.
 17 Q. Several times, how many times do you
 18 believe?
 19 A. One that I recall.
 20 Q. Okay. So I'm sure that you are familiar
 21 with it, but obviously, if you could answer
 22 all of my questions with a verbal response
 23 You're doing great so far, but nodding your
 24 head, uh-huh, huh-uh, it's hard for the
 25 court reporter to write down and us read it

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12
 13 E X H I B I T S
 14
 15 (No exhibits were proffered)
 16
 17
 18
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 25

1 back and understand if that was a yes or no.
 2 If you need a break for any reason,
 3 please feel free to let me know, be happy to
 4 take a break. Just ask that you answer the
 5 question that I've posed before we take that
 6 break.
 7 While on the break, now that the
 8 deposition has started, if you ask the
 9 attorney any questions, I am able to ask you
 10 about that. So if there's anything that you
 11 don't understand, you need me to rephrase or
 12 repeat or you're not sure what I'm asking
 13 for in my question, if you'll just direct
 14 that to me, I'll be happy to answer and do
 15 the best I can to make sure that we're both
 16 understanding where we're going with the
 17 deposition.
 18 A. Yes, ma'am.
 19 Q. If you don't understand -- if you don't ask
 20 me to rephrase the question, I'll assume you
 21 heard my question, understood it and you're
 22 answering the question I asked. Is that
 23 fair enough?
 24 A. Yes.
 25 Q. Are you under the influence of any

6

1 substances, lack of sleep, stress, or
2 anything else that would affect your ability
3 to answer my questions truthfully today?
4 A. No.
5 Q. Okay Have you spoken to anyone other than
6 your attorney regarding this case?
7 A. No.
8 Q. Okay. And are you in the same situation as
9 far as other attorneys as Investigator
10 Anderson regarding there's an attorney
11 that's monitoring the case?
12 A. No, I do not have.
13 Q. Okay. And have you reviewed anything prior
14 to the deposition?
15 A. Yes.
16 Q. What have you reviewed?
17 A. Mike's report or Inspector Anderson's
18 report.
19 Q. Anything else?
20 A. No.
21 Q. Okay. And what is your date of birth?
22 A. 2/1/71.
23 MS FAJARDO. Okay If we can
24 go off the Record
25 (Off-the-Record conversation)

7

1 BY MS. FAJARDO.
2 Q Did you give me a Social Security number,
3 last four digits 4752?
4 A. Yes.
5 Q Okay And you gave me your address, which
6 we don't need to put on the Record. Are you
7 married?
8 A. Yes.
9 Q Okay What is your wife's name?
10 A. Jenny Antonio.
11 Q What is her maiden name?
12 A. Cecile, C-E-C-I-L-E.
13 Q Okay How long have you been married?
14 A. About nine years. This will be nine years.
15 Q. Do you have any children?
16 A. Yes.
17 Q. Are they above the age of 18?
18 A. No.
19 Q. Okay. Do you have family in Charleston
20 County?
21 A. I do.
22 Q What are their last names?
23 A. Antonio, my parents.
24 Q Is that it?
25 A. That's it.

8

1 Q Okay. What about your wife, does she have
2 any family in Charleston County?
3 A. No.
4 Q. Okay.
5 A. My parents are actually Berkeley County.
6 Q. Okay. Tell me a little bit about your
7 educational background, how far did you go
8 in school?
9 A. Associates degree, criminal justice, Trident
10 Tech.
11 Q. And you are currently employed at the
12 Charleston County Sheriff's Department?
13 A. Yes.
14 Q. What is your job title right now?
15 A. I'm a lieutenant.
16 Q. How long have you been employed at
17 Charleston County Sheriff's Department?
18 A. Since 2004 or excuse me, 1994. I'm missing
19 a decade.
20 Q. Okay What were you doing at the sheriff's
21 office in '94 when you were hired?
22 A. I started off in patrol. I started off as a
23 reserve and a few months later I became a
24 full-time deputy. As a deputy I was in
25 patrol. And all this is kind of rough.

9

1 Q That's fine
2 A. A couple years of patrol.
3 Q Okay.
4 A. Then I went to narcotics for about five
5 years.
6 Q. Okay.
7 A. After that I went to detectives for about
8 three years.
9 Q. Uh-huh.
10 A. Got promoted to sergeant and that was in
11 '04. Went back to narcotics as a sergeant
12 and was about three years there.
13 Q. Okay
14 A. I went to logistics briefly and I think it
15 was about six or seven months.
16 Q. Okay
17 A. And then after logistics I went to Internal
18 Affairs. About three and a half years in
19 IA.
20 Q Okay.
21 A. And then got promoted to lieutenant.
22 Q Okay. As the lieutenant, are you in a
23 specific department right now?
24 A. Right now in detectives office, CID.
25 Q Okay And how long -- excuse me, how long

(Pages 6 to 9)

10

1 have you been in CID?
 2 A. CID, about two years.
 3 Q. About two years, okay. At the time of the
 4 investigation of Mr. Magwood you were in
 5 Internal Affairs?
 6 A. Yes.
 7 Q. And I know a lot of these questions are
 8 previously what I had asked Lieutenant
 9 Anderson, but what -- what kind of hours do
 10 you work in Internal Affairs?
 11 A. 9:00 to 5:00.
 12 Q. 9.00 to 5 00. Do you attend church
 13 anywhere?
 14 A. I do sometimes.
 15 Q. Okay. Is the church in Charleston County?
 16 A. Yes, it is Blessed Sacrament.
 17 Q. Are you a member of any civic organizations
 18 or clubs?
 19 A. No.
 20 Q. Okay. Next few questions not meant to
 21 embarrass you, just standard questions
 22 Have you ever been arrested?
 23 A. No.
 24 Q. You ever been treated by a psychiatrist or
 25 psychologist for any reason?

12

1 Q. Okay. Have you ever been involved in any
 2 other lawsuits?
 3 A. Yes.
 4 Q. Was that personally or professionally?
 5 A. Professionally.
 6 Q. How many?
 7 A. I'm not sure an amount. I don't recall an
 8 amount.
 9 Q. Have you ever been named in a lawsuit?
 10 A. No, not personally. No.
 11 Q. Okay. Just involved in your capacity as
 12 working for the sheriff's office?
 13 A. Correct.
 14 Q. Do you remember anything about the lawsuits?
 15 A. Specifics, I know at one point I was one of
 16 the -- when I was in narcotics there was a
 17 lawsuit. I don't know the details. There
 18 was a traffic accident I investigated as a
 19 deputy, which was a deposition. I don't
 20 recall the outcome of either of those.
 21 Q. The traffic lawsuit that you were involved
 22 in, you reported to the collision?
 23 A. I responded, correct.
 24 Q. Okay.
 25 A. As just a patrol deputy.

11

1 A. No.
 2 Q. Are you currently under a doctor's -- any
 3 doctor's care?
 4 A. No.
 5 Q. Taking any medications?
 6 A. Yes. I take blood pressure medication and
 7 cholesterol medication.
 8 Q. Did you take them today?
 9 A. I normally take them in the evening, took
 10 them last night, not today.
 11 Q. Okay. Do those medicines have any kind of
 12 side effects that affect you?
 13 A. No.
 14 Q. Okay. And let's say 2008, 2009 were you
 15 under any doctor's care?
 16 A. No.
 17 Q. Were you on any medications?
 18 A. I believe I was already on the blood
 19 pressure medication at that time. Maybe
 20 just started.
 21 Q. But you've never had any problems with the
 22 medication?
 23 A. No.
 24 Q. Causing any effects or anything?
 25 A. No.

13

1 Q. Okay. So you were just testifying as to
 2 your knowledge of what happened, who was at
 3 fault, things like that?
 4 A. Yes.
 5 Q. Have you ever been involved in any Workers'
 6 Compensation or Social Security matters?
 7 A. No.
 8 Q. Other than the lawsuits that we just
 9 discussed, the narcotics and the traffic
 10 suit, do you know of any other lawsuits that
 11 Charleston County Sheriff's Department has
 12 been involved in?
 13 MS JACKSON: Objection to the
 14 form
 15 A. No, I don't recall.
 16 Q. Okay. Going to the policies and procedures
 17 of Internal Affairs, when -- let me see, I
 18 know -- about when did you move into
 19 Internal Affairs, do you remember?
 20 A. It was about the beginning of '08.
 21 Q. Okay. Did you receive training when you
 22 started in Internal Affairs?
 23 A. Yes.
 24 Q. What kind of training did you receive?
 25 A. I attended -- I attended an Internal Affairs

(Pages 10 to 13)

14

1 investigations training course, a five-day.
 2 I attended a five-day interviews for
 3 Internal Affairs course, as well.
 4 Q. Two separate courses?
 5 A. Two separate courses, both five-day courses.
 6 Q. Both five-day courses and one you said was
 7 on interview?
 8 A. Interviews for Internal Affairs.
 9 Q. Okay. And the other five-day course was the
 10 training and working in Internal Affairs?
 11 A. Internal Affairs investigations.
 12 Q. What would you say is the standard procedure
 13 of investigating an allegation in Internal
 14 Affairs, who do you interview, what kind of
 15 evidence do you collect?
 16 A. The complaint comes in from either the
 17 citizen or from your uh -- your supervisors.
 18 You identify what the core of the complaint
 19 is, the allegation and determine who needs
 20 to be interviewed. Conduct your interviews
 21 and determine if there is any policy
 22 violations.
 23 Q. After you've made a determination of whether
 24 there was any policy violations, what's the
 25 next step?

15

1 A. You summarize it in a report and you send
 2 the report to -- gets approved through your
 3 chain of command and which in IA is the
 4 assistant sheriff or excuse me, the chief
 5 inspector, then the assistant sheriff.
 6 After their approval it is forwarded to the
 7 chief deputy over that particular employee.
 8 Q. And the chief inspector in IA in 2008, 2009
 9 was?
 10 A. Mark Fields.
 11 Q. Mark Fields, okay. And who else worked in
 12 Internal Affairs with you?
 13 A. Myself, Lieutenant Anderson, Inspector
 14 Herron, Dana Herron and we at some point we
 15 added somebody from the detention house.
 16 They increased it. I don't recall what date
 17 that was.
 18 Q. Okay.
 19 A. And then we had also the chief inspector,
 20 which was our supervisor Mark Fields.
 21 Q. So anywhere from four to five people in IA?
 22 A. Correct.
 23 Q. Let me ask you, does the chief inspector,
 24 did he work on cases, as well or was he
 25 there in a supervisory role only?

16

1 A. Mostly supervising.
 2 Q. Okay. Do you stay involved once the
 3 investigation is done if any criminal
 4 charges are brought?
 5 A. No.
 6 Q. And I understand criminal charges are not
 7 brought as a result of your investigation,
 8 is that fair to say?
 9 A. Correct.
 10 Q. Okay. But are there occasions where you
 11 have an investigation in Internal Affairs
 12 and there's also a separate investigation in
 13 which criminal charges may come out of?
 14 A. Yes.
 15 Q. Okay. Would you participate in that
 16 criminal investigation?
 17 A. No.
 18 Q. Are you allowed to participate?
 19 A. No.
 20 Q. Okay. Is that something that is in the --
 21 how do you know that you're not allowed to
 22 participate in the criminal investigation?
 23 A. It's through the direction of our supervisor
 24 that we're not to be involved and through
 25 the training we received, certification

17

1 courses.
 2 Q. Would you be disciplined if you got involved
 3 in a criminal investigation?
 4 A. You'd be cautioned not to get involved. I
 5 don't know about being disciplined. I was
 6 never involved in a situation where I worked
 7 them at the same time.
 8 Q. I understand. Would you ever testify at
 9 trial regarding a criminal investigation
 10 that was similar to you --
 11 A. I never have.
 12 Q. Okay. You didn't testify at Mr. Magwood's
 13 criminal trial?
 14 A. No, I did not.
 15 Q. What is your procedure regarding
 16 interviewing people, is it videotaped, audio
 17 taped?
 18 A. It is audio taped.
 19 Q. Do you ever videotape the interviews?
 20 A. No.
 21 Q. And you have copies of all the audio tapes
 22 for the interviews, they would be put in the
 23 case file?
 24 A. Correct.
 25 Q. Okay. Okay. In regards to Mr. Magwood, did

(Pages 14 to 17)

18

1 you work on the investigation of Mr. Magwood
2 in Internal Affairs?
3 A. I assisted Lieutenant Anderson in the case.
4 Q. Let me kind of go through what was your role
5 in regards to the investigation with
6 Mr. Magwood?
7 A. As far as the Magwood case, Anderson was the
8 investigator assigned the case and as a
9 co-case or, you know, an assistant, any time
10 an interview would come up, you know, if I
11 was available I would, you know, take part
12 in the interview.
13 Q. Did you ever form any reports as a result of
14 this investigation?
15 A. No, ma'am. No, ma'am. Just handwritten
16 case notes, but no reports.
17 Q. Did you ever interview anybody involved in
18 the case alone?
19 A. No, ma'am.
20 Q. Did you ever discuss the case with anybody
21 outside of Investigator Andrew --
22 Anderson --
23 A. No.
24 Q. -- and obviously your supervisor?
25 A. No.

19

1 Q. No? Outside of the chain of command would
2 be a better way of saying it.
3 A. No.
4 Q. Did you -- were you ever the contact person
5 in regards to the SLED investigation --
6 A. No.
7 Q. -- of Mr. Magwood?
8 A. No.
9 Q. Did they ever contact you to get any
10 information?
11 A. No.
12 Q. All right. So your only role in the Magwood
13 investigation was, as I understand it right
14 now, going along with Lieutenant Anderson on
15 interviews?
16 A. Yes.
17 Q. Okay. And you would take notes occasionally
18 during those interviews?
19 A. Yes.
20 Q. Okay. And that would be in the case file --
21 A. Correct.
22 Q. -- your notes? Would you and Lieutenant
23 Anderson take notes during the interviews?
24 A. I for the most part took notes on
25 interviews. I can't say whether or not he

20

1 would on, you know, all his cases.
2 Q. Okay. Yeah. And just in regards to the
3 Magwood investigation, I wasn't sure, was he
4 performing the interviews and you were
5 sitting there observing and taking notes for
6 the later, I guess, reports or did you ask
7 questions in the interview, as well?
8 A. I may have asked maybe one or two questions.
9 Q. Okay. When were you first made aware about
10 the issues that had arisen in regards to
11 Mr. Magwood?
12 A. When Inspector Anderson asked me to sit on
13 the first interview.
14 Q. Okay. Were you assigned to work on the case
15 with him or did Lieutenant Anderson just
16 contact you and ask for your assistance?
17 A. No. We're not -- no, I wasn't assigned as a
18 co-case.
19 Q. Okay.
20 A. I was available for certain interviews,
21 which he asked me to sit in on.
22 Q. Is that typically how it works or are you
23 occasionally assigned to the case, as well?
24 A. No. There's always one person assigned and
25 they grab whoever is in the office to assist

21

1 on interviews.
2 Q. Okay. Do you know, did anyone else have any
3 involvement in the Magwood case from
4 Internal Affairs?
5 A. I believe Chief Inspector Fields may have
6 sat on a couple of interviews.
7 Q. Okay.
8 A. But I'm not sure about Inspector Herron.
9 Q. Were you ever consulted prior to the report
10 being submitted at the end of the Internal
11 Affairs investigation?
12 A. No, not consulted.
13 Q. Okay. Did you and Lieutenant Anderson
14 discuss what was gonna go into the report
15 prior to it being submitted?
16 A. No.
17 Q. Okay. Did you even get a copy of the
18 report?
19 A. I did in preparation for this, but actually,
20 I never saw the report when it was
21 submitted.
22 Q. Okay. So the first time you saw it was in
23 this litigation?
24 A. Yes. I mean, I had my own cases I was
25 working on.

(Pages 18 to 21)

22

- 1 Q. Were you aware of SLED's investigation into
2 Mr. Magwood?
3 A. Yes.
4 Q. How were you aware of that?
5 A. Inspector Anderson told me.
6 Q. Did you have any involvement or knowledge
7 regarding Mr. Magwood going out on
8 administrative leave?
9 A. I don't -- I don't recall if I was present
10 when he was placed on leave.
11 Q. What about when he was terminated, did you
12 have any role or involvement?
13 A. I was not present for that.
14 Q. Were you present at the interview of
15 Ms. Boney?
16 A. Yes.
17 Q. Okay. Do you know -- did you ask her any
18 questions or were you just taking notes?
19 A. I was -- I know -- I believe I took notes at
20 her interview. I don't recall in particular
21 any questions.
22 Q. I just -- I want to show you this. I
23 haven't marked it. This -- this is all --
24 if you want to look through. Is that all
25 Lieutenant Anderson's notes and handwriting.

23

- 1 Is any part of that yours?
2 A. These are Anderson's.
3 Q. Okay. Just to make sure, if you want to
4 look through that, are any of those your
5 notes?
6 A. These are Anderson's.
7 Q. Is that (indicating) your handwriting?
8 A. Yes, that's mine.
9 Q. Okay. Do you remember which interviews you
10 were present on in regards to Mr. Magwood?
11 A. I was present for -- I was present for two
12 Magwood interviews and I recall Catherine
13 Boney's residence. And also going to the
14 courthouse for Solicitor Voigt and
15 Investigator Kelly. I believe that was it.
16 Also Lieutenant Tittle and Sergeant
17 Williams.
18 Q. Do you know, would you have taken notes
19 during all of those interviews?
20 A. I don't -- Magwood I would have recalled.
21 But I don't recall anybody -- whether I did
22 for the other people.
23 Q. And let me ask it this way, do you take
24 notes during every interview?
25 A. Generally speaking I do, if it's the, you

24

- 1 know, the main subject, the main focus of
2 the investigation, I would. Generally I
3 would.
4 Q. Is this your handwriting?
5 A. No.
6 Q. Okay. What do you recall regarding the
7 interview with Ms. Boney? Do you remember
8 her demeanor during that interview?
9 A. I recall -- I recall her stating to us that
10 she had seen one photograph. And she was
11 questioning whether or not she had actually
12 seen the photo lineup.
13 Q. Do you recall, did she say that she didn't
14 sign the photo lineup or that she couldn't
15 remember?
16 A. She didn't recall seeing it. She didn't
17 recall seeing the photo lineup.
18 Q. Did you find Ms. Boney credible?
19 A. By her response, it seemed her response as
20 far as the photo -- as far as a single photo
21 it seemed credible that she hadn't seen
22 anything other than the single.
23 Q. Did you know Ms. Boney outside of this
24 investigation?
25 A. No, ma'am.

25

- 1 Q. Do you know anything about Ms. Boney, her
2 criminal history, anything?
3 A. No, I don't.
4 Q. Is it customary to do any kind of background
5 research on non-officers prior to getting a
6 statement if they're involved in an
7 investigation?
8 A. Yes.
9 Q. Okay. What kind of background information
10 would you look at?
11 A. On -- on -- well, complainants and witnesses
12 we -- we would look at a rap sheet. That's
13 it.
14 Q. Okay. And I know previously you said the
15 first time that you had heard of the
16 investigation into Magwood was through
17 Lieutenant Anderson.
18 A. Yes.
19 Q. Do you have knowledge of where the request
20 to start this investigation came from?
21 A. No, I don't know how it came in. I don't
22 know.
23 Q. Do you know about when the investigation
24 began?
25 A. I can't -- I don't know the date.

(Pages 22 to 25)

26

1 Q. Okay. Do you know how long the
2 investigation lasted?
3 A. I think several weeks.
4 Q. Okay.
5 A. I believe.
6 Q. Did you know Mr. Magwood outside of this
7 investigation?
8 A. I did.
9 Q. How did you know him?
10 A. I knew him from, obviously, the sheriff's
11 office and at some period we worked in CID
12 together.
13 Q. Did you ever work on cases together?
14 A. Not -- nothing that I recall.
15 Q. You don't recall ever being like his partner
16 on a case, you may have just collaborated on
17 a case?
18 A. Yeah, I mean, it was -- I mean, if somebody
19 had a search warrant they had to do, it was
20 a team effort and we would, of course, all
21 for the most part go, but case, you know
22 co-case, case agent, I don't recall ever
23 having a case with him.
24 Q. Okay. About when did you work with him in
25 CID?

27

1 A. I believe -- I either went up at the end of
2 2001 until about 2004 something, about that
3 timeframe, 2002, 2003.
4 Q. Okay. Did you have any conversations with
5 Mr. Magwood or his attorney outside of the
6 two times he came in and talked to Internal
7 Affairs?
8 A. No.
9 Q. Were you present when he made his written
10 statement?
11 A. For the interview, yes.
12 Q. Okay. Explain to me a little bit how did
13 that come about him --
14 A. Well, correct -- can I correct that?
15 Q. Absolutely.
16 A. I don't know when he prepared his written
17 statement, but I was present for the
18 interviews.
19 Q. Okay.
20 A. I'm not sure when he had provided them to
21 Inspector Anderson.
22 Q. So it was not a situation where he was in
23 the Internal Affairs office and wrote out a
24 written statement?
25 A. I don't recall watching him prepare a

28

1 statement, written statement.
2 Q. But other than the two times that he came in
3 to talk to Internal Affairs, you didn't have
4 any other contact with him or his attorney?
5 A. No.
6 Q. Did you follow-up on the relationships the
7 witnesses that were interviewed in this
8 investigation claimed they had with
9 Mr. Magwood?
10 A. No, I did not.
11 Q. Do you know if anybody followed up on the
12 relationships?
13 A. I don't know.
14 Q. Okay. And you said you believe you were
15 present for some of these interviews,
16 Zimmer, Watson, Williams?
17 A. I don't recall. Oh, go ahead. I'm sorry.
18 Q. No. I was going to say the last one I think
19 is Tuttle?
20 A. Tuttle.
21 Q. Tuttle.
22 A. I don't recall being there for Watson --
23 Q. Okay.
24 A. -- or Zimmer.
25 Q. Okay.

29

1 A. I recall Tuttle and Williams.
2 Q. Did you have any reason to believe they
3 weren't being truthful?
4 A. No.
5 Q. Did Ryan Kelly or Greg Voigt ever share any
6 notes with you regarding meetings they had
7 had with either Mr. Magwood or Ms. Boney or
8 any other witnesses in the case?
9 A. No.
10 Q. I know Lieutenant Anderson said he was
11 subpoenaed to testify at Mr. Magwood's
12 trial. Were you subpoenaed?
13 A. No.
14 Q. Were you aware of any complaints against
15 Mr. Magwood prior to this investigation?
16 A. No.
17 Q. Did you review his personnel file?
18 A. No.
19 Q. Were you responsible for any findings at the
20 end of the investigation?
21 A. No.
22 Q. Are you aware of any officer being accused
23 of wrong doing and it -- after -- at the end
24 of the investigation it was found to be
25 unfounded? That has to be one of the most

(Pages 26 to 29)

30

1 confusing questions
 2 MS. JACKSON: Objection to the
 3 form.
 4 Q Let me back up
 5 A. Yeah.
 6 Q. Have you ever done an investigation in which
 7 the allegation was unfounded?
 8 A. I'm sure I have. I can't recall one off the
 9 top of my head. There's so many cases came
 10 through.
 11 Q What was your typical case load?
 12 A. I mean, at any given time you would hold
 13 maybe four or five cases. And I'm just --
 14 it varies. I mean, it's really -- there's
 15 no set number. It varies greatly.
 16 Q. Did you agree with the findings at the end
 17 of the Internal Affairs investigation?
 18 A. Yes.
 19 Q Did you feel Mr. Magwood should have been
 20 terminated based on the findings?
 21 MS. JACKSON: Objection to
 22 form.
 23 A. That -- no. Without knowing more about his
 24 history, I wouldn't have an opinion about
 25 that. More of his work history.

31

1 Q. Did you agree with Mr. Magwood being
 2 prosecuted?
 3 MS. JACKSON: Objection to the
 4 form.
 5 A. I did not. I didn't expect it, but wasn't
 6 my call.
 7 Q. Was the criminal -- I understand you said
 8 you had no involvement in the criminal
 9 investigation.
 10 A. Uh-huh.
 11 Q. Was the criminal investigation ever
 12 discussed with you? Were you given
 13 information from the criminal investigation?
 14 A. No.
 15 Q. Okay. Do you know if Lieutenant Anderson
 16 was given information regarding the crime?
 17 MS. JACKSON: Objection to
 18 form.
 19 A. I don't know if he was or wasn't.
 20 Q. I understand. Let me -- let me know if I
 21 need to rephrase this, because I'm not sure
 22 it's going to come out as clear as I mean it
 23 to be. Did you have control over the
 24 investigative file or was that primarily
 25 kept by Lieutenant Anderson?

32

1 A. No, I didn't have control. I don't think I
 2 ever held it.
 3 Q Okay In looking at the file, there's like
 4 investigative notes. Did you ever complete
 5 any investigative notes?
 6 A. No.
 7 Q. All of your notes just would have been
 8 handwritten?
 9 A. Just handwritten.
 10 Q. Did you believe that Mr. Magwood was being
 11 untruthful in discussing his situation with
 12 Internal Affairs?
 13 A. I did have concerns about his truthfulness.
 14 Q What was that based on?
 15 A. I think there's a couple of issues of
 16 whether a single photo was shown and whether
 17 he had initialed, dated and time stamped the
 18 lineup.
 19 Q. Did Mr. Magwood tell you that he had dated
 20 and time stamped the photo lineup?
 21 A. Yes, he did.
 22 Q. Did he maintain the same characterization of
 23 the events throughout his entire time
 24 talking to Internal Affairs or did it
 25 change?

33

1 MS. JACKSON: Objection to
 2 form.
 3 A. Are you referring to the two interviews?
 4 Q Yes Any conversation or -- and including
 5 the written statement, as well So, I
 6 guess, the two conversations and the written
 7 statement, was Mr. Magwood's
 8 characterization of the events consistent?
 9 A. Can I refer to notes, any handwritten notes
 10 I would have had on it?
 11 Q. Sure Do you have a copy?
 12 A. I just have Anderson's report.
 13 Q. (Document tendered) I think that's the
 14 other one You want to put that one with
 15 it? I think they're just out of order.
 16 Looks like they're each three pages.
 17 A. Concern as far as dating and time stamping
 18 or excuse me, as far as the dating, I know
 19 he was -- he was consistent. And the
 20 initials he denied.
 21 Q Okay But he did -- did he deny initialing
 22 throughout the whole process?
 23 A. I'm not aware if -- there were concerns from
 24 what I recall, the supplemental report that
 25 indicated -- on his, you know, detective

(Pages 30 to 33)

34

1 supplemental report indicated that she had
2 initialed and dated and time stamped. And
3 in our interview he had stated that he had
4 dated it.
5 Q. Anything else that you can think of that he
6 -- you don't feel he was consistent on?
7 A. I can't recall anything else.
8 Q. Okay Did you find any inconsistencies in
9 any of the other witness interviews?
10 A. No, I don't recall.
11 Q Did you ever talk to the media or anyone in
12 the press regarding this incident with
13 Mr. Magwood?
14 A. No.
15 Q Do you know, is a person automatically
16 terminated if they're charged with a crime
17 while employed as a deputy at the sheriff's
18 department?
19 MS. JACKSON: Objection to
20 form
21 A. That's at the discretion -- I can't say that
22 it's automatic or not. That's solely the
23 discretion of the sheriff.
24 Q. Do you have any control over whether a
25 person is terminated or in any way

35

1 disciplined as a result of an Internal
2 Affairs investigation?
3 A. No.
4 Q Does the Assistant Sheriff, Sheriff, any of
5 the Chief Deputies, do they ever consult you
6 in making the decision regarding how a
7 person will be disciplined?
8 A. No.
9 MS FAJARDO: I believe that is
10 all the questions that I have I
11 know your attorney has questions
12 for you
13 MS JACKSON: Not too many.
14 E-X-A-M-I-N-A-T-I-O-N
15 BY MS. JACKSON
16 Q All right Were you involved in the arrest
17 of Mr. Magwood?
18 A. No, ma'am.
19 Q Did you have any involvement whatsoever in
20 his arrest?
21 A. No.
22 Q Did you have any involvement in the swearing
23 out of the warrant for Mr. Magwood's arrest?
24 A. No.
25 Q Okay Did you institute or continue any

36

1 judicial proceedings against Mr. Magwood?
2 A. No.
3 Q. Do you have any malice towards Mr. Magwood,
4 either personally or professionally?
5 A. No.
6 Q Did you do anything improper in the course
7 of the investigation for the Charleston
8 County Sheriff's Office with regard to
9 Mr. Magwood?
10 A. No.
11 Q. Did you ever make any statements about
12 Mr. Magwood regarding this investigation
13 outside of the investigation?
14 A. No.
15 Q. Did you ever have any intent to damage
16 Mr. Magwood's reputation?
17 A. No.
18 Q. Did you ever work with any other person for
19 the purpose of causing harm or damage to
20 Mr. Magwood?
21 A. No.
22 Q. At all times during the course of this
23 investigation did you act within the
24 policies and procedures of the Charleston
25 County Sheriff's Office?

37

1 A. Yes.
2 Q. At all times during the course of this
3 investigation did you act within the
4 training that you received from the South
5 Carolina Criminal Justice Academy?
6 A. Yes.
7 Q. Do you have any personal feelings either for
8 or against Mr. Magwood?
9 A. No.
10 Q If you had seen something that you felt was
11 improper going on during the course of this
12 investigation, would you have spoken up?
13 A. Yes.
14 Q. And would you have taken action?
15 A. Yes.
16 Q. Did you use care in the course of this
17 investigation?
18 A. Yes.
19 Q. And did you -- based on your review of this
20 investigative file and your involvement in
21 the investigation, do you believe that a
22 complete investigation was performed?
23 A. Yes, I do.
24 Q. At all times were you acting in the course
25 and scope of your employment?

(Pages 34 to 37)

38

- 1 A. Yes.
 2 Q. During the course of an Internal Affairs
 3 investigation in general, as an inspector
 4 with the Internal Affairs division, are you
 5 expected to use your discretion in
 6 determining how to go about performing an
 7 investigation?
 8 A. Yes.
 9 Q. And do you use your discretion in
 10 determining what persons will be
 11 interviewed?
 12 A. Yes.
 13 Q. And do you use your discretion in
 14 determining what documents will be reviewed?
 15 A. Yes.
 16 Q. And would that be true for any member of the
 17 Internal Affairs division at the Charleston
 18 County Sheriff's Office including both you
 19 and Investigator Anderson?
 20 A. Yes, it is.
 21 Q. Do you have any choice in whether or not you
 22 will investigate a matter that has been
 23 reported to the Internal Affairs office?
 24 A. No.
 25 Q. Okay. So if you are asked to prepare an

40

- 1 them that I've worked with a person, no.
 2 Q. Okay. It won't -- you can still be assigned
 3 a case to investigate if you have worked
 4 with the person previously?
 5 A. Yes.
 6 Q. That's not a conflict in your department?
 7 A. No.
 8 MS. FAJARDO: That's all the
 9 questions I have.
 10 MS. JACKSON: All right. You
 11 are done. He will also read and
 12 sign. You can send it to me.
 13 (This deposition concluded at 1:56 p.m.)
 14
 15 (Signature reserved)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

39

- 1 investigation, you prepare that
 2 investigation, but within that investigation
 3 you have discretion?
 4 A. Yes.
 5 MS. JACKSON: All right. Those
 6 are all the questions that I have.
 7 MS. FAJARDO: I just have one
 8 question.
 9 R-E-E-X-A-M-I-N-A-I-T-I-O-N
 10 BY MS. FAJARDO
 11 Q. Do you have to disclose to anybody that you
 12 know the person that's being investigated or
 13 that you've worked with the person
 14 previously?
 15 A. I'm not sure I understand. If I'm
 16 investigating an officer that I work with?
 17 Q. Yes. Do you have to disclose that to your
 18 superior? Does that change the
 19 investigation in any way?
 20 A. No. It wouldn't change -- it wouldn't
 21 change the fact finding and you know, your
 22 final outcome. As far as disclosing, I
 23 think it's pretty much understood we all
 24 know where we've worked, but I'm not -- I
 25 don't -- as far as being required to advise

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- 1 CERTIFICATE OF REPORTER
 2
 3 STATE OF SOUTH CAROLINA)
 4 COUNTY OF CHARLESTON)
 5
 6 I, Nicole D. White, the officer before
 7 whom the foregoing deposition was taken, do
 8 hereby certify that the witness whose testimony
 9 appears in the foregoing deposition was duly
 10 sworn by me; that the testimony of said witness
 11 was taken by me to the best of my ability and
 12 thereafter reduced to typewriting under my
 13 direction, that I am neither counsel for, related
 14 to, nor employed by any of the parties to the
 15 action in which this deposition was taken, and
 16 further, that I am not a relative or employee of
 17 any attorney or counsel employed by the parties
 18 thereto, nor financially or otherwise interested
 19 in the outcome of the action.
 20
 21 _____ Date _____
 22 Nicole D. White
 23 Notary Public in and for the
 24 State of South Carolina
 25 My Commission expires September 11, 2017

(Pages 38 to 41)

1 ERRATA SHEET

2
3 RE Magwood -vs- J Al Cannon, Jr, et al

4
5 DEPOSITION OF ROGER ANTONIO

6
7 Please read this original deposition with care,
8 and if you find any corrections or changes you wish
9 made, list them by page and line number below. DO
10 NOT WRITE IN THE DEPOSITION ITSELF. Return the
11 deposition to this office after it is signed We
12 would appreciate your prompt attention to this
13 matter.

14 To assist you in making any such corrections,
15 please use the form below If supplemental or
16 additional pages are necessary, please furnish same
17 and attach them to this errata sheet

18 Page Line Should read

19
20 Page Line Should read

21
22 Page Line Should read

23
24 Page Line Should read

25

1 SIGNATURE PAGE

2
3
4
5
6 SIGNATURE OF WITNESS

7
8
9
10 SUBSCRIBED and SWORN TO before me this _____
11 day of _____, 2014

12
13
14 NOTARY PUBLIC

15
16
17 My Commission expires _____

18
19
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1 Page Line Should read

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23 Page Line Should read.

24
25 NDW

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EXHIBIT N

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Inspector Michael Anderson
Charleston County Sheriff's Office
3505 Pinehaven Drive
North Charleston, SC 29405

QUESTIONED DOCUMENT

June 18, 2009
SLED LAB: L09-07046
Your Case No: IA2008212
Incident Date: 11/7/2007
[S] Eugene Magwood
[S] Catherine Boney

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Sub # 1 On June 11, 2009, items were received from Inspector Michael Anderson of the Charleston County Sheriff's Office.
- Item: 1 Original photo lineup ID #2621
- Item: 2 Known writing of Eugene Magwood
- Item: 3 Known writing of Catherine Boney

EXAMINATION REQUESTED:

Hand Printing



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RESULTS OF EXAMINATION:

Based on the evidence examined it has been determined that Catherine Boney did not write the entries "CEB, 11-07-07, 10:40 AM" on Item 1. It has further been determined that Eugene Magwood wrote the entries "11-07-07" and "10:40 AM" on Item 1. There are indications that Eugene Magwood also wrote the "CEB" entry on Item 1.

DISPOSITION:

The evidence in this case is ready for you to pick up at the SLED Central Evidence Repository at your earliest convenience.

Gaile Heath

Gaile Heath
Forensic Scientist



EXHIBIT O

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



REGINALD I. LLOYD
Director

S/A Charles Ghent
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

QUESTIONED DOCUMENT

February 02, 2011
SLED LAB: L09-07046
Your Case No: 31080106
Incident Date: 11/7/2007
[S] Eugene Magwood
[S] Catherine Boney

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

ITEMS OF EVIDENCE:

- Item: 1** Original photo lineup ID #2621
- Item: 3** Known writing (26) of Catherine Boney
- Item: 4** Known writing (25) of Eugene Magwood

RESULTS OF EXAMINATION:

Based on the evidence examined, it is probable that Eugene Magwood wrote the entries "11-07-07, 10:40 AM" on Item 1. There is no conclusion as to whether Eugene Magwood did or did not write the "CEB" initials on Item 1. Based on the evidence examined, Catherine Boney has been eliminated as the writer of the "CEB, 11-07-07, 10:40 AM" entries appearing on Item 1.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Gaile Heath

Gaile Heath
Forensic Scientist



DEFINITIONS OF TERMINOLOGY

1. **IDENTIFICATION** – This is the highest degree of confidence expressed. Based on evidence contained in the handwriting, the examiner has no reservations that the known writer actually wrote the writing in question.
2. **STRONG PROBABILITY** - The evidence is very persuasive, yet some critical feature or quality is missing so that an identification is not in order. The examiner is virtually certain that the questioned and known writings were written by the same individual.
3. **PROBABLE** – The evidence contained in the handwriting points rather strongly toward the questioned and known writings having been written by the same individual; however, it falls short of a “virtually certain” degree of confidence.
4. **INDICATIONS** - A body of writing has few features which are of significance for handwriting comparison purposes, but those features are in agreement with another body of writing.
5. **NO CONCLUSION** – This is the zero point of the confidence scale. The examiner does not have even a leaning one way or another.
6. **INDICATIONS DID NOT** – A body of writing has few features which are of significance for handwriting comparison purposes, but those features are in disagreement with another body of writing.
7. **PROBABLY DID NOT** – The evidence points rather strongly against the questioned and known writings having been written by the same individual, but it is not quite up to the “virtually certain” range.
8. **STRONG PROBABILITY DID NOT** – There is a virtual certainty that the questioned and known writings were not written by the same individual.
9. **ELIMINATION** – The examiner has no doubt that the questioned and known writings were not written by the same individual.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



REGINALD I. LLOYD
Director

S/A Charles Ghent
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

QUESTIONED DOCUMENT

June 30, 2011
SLED LAB: L09-07046
Your Case No: 31080106
Incident Date: 11/7/2007
[S] Eugene Magwood
[S] Catherine Boney

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

ITEMS OF EVIDENCE:

- Item: 5** Machine copy of questioned photo lineup ID#2621
- Item: 6** Two (2) page Charleston County Sheriff's Office statement form dated 11-13-07 in the name of Maurice Jerome Prioleau submitted as known writing of Eugene Magwood
- Item: 6.1** Page one of a two (2) page Charleston County Sheriff's Office statement form dated 11-13-07 in the name of Maurice Jerome Prioleau submitted as known writing of Eugene Magwood
- Item: 6.2** Page two of a two (2) page Charleston County Sheriff's Office statement form dated 11-13-07 in the name of Maurice Jerome Prioleau submitted as known writing of Eugene Magwood



RESULTS OF EXAMINATION:

Based on examination of machine copies, there is a strong probability that the writer (Eugene Magwood) of the "11-13-07" date appearing on Item 6 (6.1 and 6.2) also wrote the "11-07-07" date appearing on Item 5.

Gaile Heath

Gaile Heath
Forensic Scientist



DEFINITIONS OF TERMINOLOGY

1. **IDENTIFICATION** – This is the highest degree of confidence expressed. Based on evidence contained in the handwriting, the examiner has no reservations that the known writer actually wrote the writing in question.
2. **STRONG PROBABILITY** - The evidence is very persuasive, yet some critical feature or quality is missing so that an identification is not in order. The examiner is virtually certain that the questioned and known writings were written by the same individual.
3. **PROBABLE** – The evidence contained in the handwriting points rather strongly toward the questioned and known writings having been written by the same individual; however, it falls short of a “virtually certain” degree of confidence.
4. **INDICATIONS** - A body of writing has few features which are of significance for handwriting comparison purposes, but those features are in agreement with another body of writing.
5. **NO CONCLUSION** – This is the zero point of the confidence scale. The examiner does not have even a leaning one way or another.
6. **INDICATIONS DID NOT** – A body of writing has few features which are of significance for handwriting comparison purposes, but those features are in disagreement with another body of writing.
7. **PROBABLY DID NOT** – The evidence points rather strongly against the questioned and known writings having been written by the same individual, but it is not quite up to the “virtually certain” range.
8. **STRONG PROBABILITY DID NOT** – There is a virtual certainty that the questioned and known writings were not written by the same individual.
9. **ELIMINATION** – The examiner has no doubt that the questioned and known writings were not written by the same individual.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	DOCKET NO. 2013-CP-10-3669
Eugene Magwood,	)	
	)	
Plaintiff,	)	
	)	RESPONSE AND MEMORANDUM IN
v.	)	OPPOSITION TO DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
J. Al Cannon, Jr. in his official capacity as	)	
Sheriff of Charleston County, Investigator	)	
Anderson, Investigator Antonio, Charles	)	
Ghent, and South Carolina Law	)	
Enforcement Division,	)	
	)	
Defendants.	)	
	)	

Because the Plaintiff has raised a genuine issue of material fact in the above-referenced case as to the Defendants' lack of probable cause for arrest, detainment, and prosecution, as well as to their involvement in making defamatory statements against Plaintiff and their entitlement to immunity, Plaintiff opposes Defendants' Motion for Summary Judgment.

STATEMENT OF THE FACTS

Prior to May 7, 2009, the Plaintiff was employed by Defendant Cannon as a highly successful member of the Charleston County Sheriff's Office having attained the rank of detective and having received various awards and decorations for his service. On January 7, 2007, Plaintiff, in the scope of his employment as a detective, went to the residence of Catherine Boney, an alleged victim of a sexual assault, to interview her as to the reported crime, and to show her a photographic lineup of potential suspects. After being shown the photographic lineup, Ms. Boney identified the alleged suspect and initialed next to the picture. Immediately upon seeing the photograph of the suspect, Ms. Boney became extremely emotional and hysterical. As such, Plaintiff wrote the date and time of Ms. Boney's identification next to her initials on the lineup. On October 7, 2008, due to a complaint that Detective

Magwood forged Ms. Boney's signature on the photographic lineup, an investigation was begun by Defendant Ghent who was employed by Defendant SLED, and Plaintiff was placed on administrative leave. Prior to the conclusion of the criminal investigation by Agent Ghent, an internal affairs investigation was begun on April 1, 2009 by Defendants and Anderson and Antonio who are employed by Defendant Cannon in the Internal Affairs Division of the Charleston County Sheriff's Department. Although during both of the investigations performed by the Defendants it was discovered that these allegations against Plaintiff had no merit, on May 7, 2009, Plaintiff was arrested, charged with misconduct in office, and accused of being a liar and a criminal. Even after several instances of Catherine Boney stating that she may have signed the photo lineup, thus corroborating Plaintiff's position in this matter, the Defendants continued and facilitated the prosecution of the Plaintiff. During the course of the prosecution of this matter, the Defendants opined several inconsistent theories of wrongdoing against Plaintiff. The Defendants also attempted to ruin the Plaintiff's reputation by making false and defamatory statements about the Plaintiff which were published in local newspapers and online through local news outlets. The Plaintiff was ultimately brought to trial on the charge of misconduct in office on June 29, 2011 through June 30, 2011 where he was found NOT GUILTY of all charges by a jury of his peers. As a result of the actions of the actions of said Defendants, Plaintiff has suffered actual damages in the form of lost earnings and earning potential; attorney's fees; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation in his trade and occupation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baughman v. American Tel. And Tel.

Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Id. at 545. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). If triable issues exist, those issues must go to the jury. Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

ARGUMENTS

I. When viewing the evidence in the light most favorable to the Plaintiff, there are genuine issues of material fact that must be decided by a jury.

The entirety of this case rests on the interpretation of the facts presented, especially in light of the Defendants' behavior during their investigations. As demonstrated by the partial transcript of the Plaintiff's criminal trial as well as the deposition of Defendant Anderson and Defendant Ghent, Ms. Boney made it clear to the Defendants as well as to multiple other people that she may have signed the photo lineup given to her by Plaintiff, but she was so upset and hysterical she could not remember. Criminal Trial Transcript pg. 5, lns. 21-25, Deposition of Defendant Anderson pg. 66, lns. 9-23, Deposition of Defendant Ghent pg. 11, lns. 12-14. Additionally, it is undisputed that the only two people who truly knew whether Ms. Boney

signed the photographic lineup was Plaintiff and Ms. Boney. Deposition of Defendant Ghent pg. 33, lns. 24-25, pg. 34, lns. 1-3. However, even when armed with the knowledge that Ms. Boney felt she may have signed the photo lineup, and thus was not accusing Plaintiff of any wrongdoing, the Defendants continued with the arrest and prosecution of Plaintiff and the submission of a misleading report indicating Plaintiff had violated policy by lying to a public official and forging Ms. Boney's signature. It is important to note that these actions by the Defendants were performed while maintaining to the court that Ms. Boney had **denied** signing the photo lineup while in truth, she was never sure whether she signed the photo lineup or not. Defendant Ghent even admitted in his deposition that he was not surprised by Ms. Boney's testimony at Plaintiff's criminal trial where she reiterates on several occasions that she does not remember signing the photo lineup because she was so emotional, that she could have signed it because she does remember signing something. Criminal Trial Transcript pg. 10, lns. 9-17, Deposition of Defendant Ghent pg. 74, lns. 22-24. In fact throughout Ms. Boney's testimony at Plaintiff's criminal trial, where she was testifying as a witness for the State, she repeats again and again that she does believe she signed the photo lineup. Criminal Trial Transcript pgs. 2-20. Defendant Anderson and Antonio even submitted their findings as to their internal investigation stating that Plaintiff placed Ms. Boney's initials on the lineup as well as that Plaintiff lied to Assistant Solicitor Voight and Internal Affairs regarding the initials although they undisputedly were aware of multiple instances where Ms. Boney admitted she was too hysterical to remember whether she signed or not but felt like she had signed something, thus confirming Plaintiff's position that he had not forged her initials. Internal Investigation Report of Defendants Cannon, Anderson, and Antonio.

Due to not only the complexity of the factual dispute that exists between the Plaintiff and the Defendants, but also the need for judgment of credibility of the Defendants in their testimony in this matter, this case must be submitted to the jury for a determination of liability and damages. As such, the Plaintiff opposes summary judgment on all causes of actions as the facts presented above present genuine issues of material fact on all presented causes actions that cannot be avoided. In taking the facts in a light most favorable to the Plaintiff, Mr. Eugene Magwood was fired from his job, arrested and prosecuted for a crime he did not commit and for which there was no reliable evidence demonstrating differently. Due to the actions of the Defendants, Mr. Magwood lost not only two years of his life while these charges were pending, but also endured emotional distress, lost wages, loss of employment opportunities, degradation of his name and reputation, stress, and embarrassment.

(i) Malicious Prosecution and Abuse of Process

It is clear that the Plaintiff has articulated a case for malicious prosecution and abuse of process based on the facts and trial testimony in this matter. “[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965). Malice is defined as “the deliberate intentional doing of an act without just cause or excuse.” Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. at 479, 289 S.E.2d at 416. Malice may also be inferred from a want of probable cause to institute the prosecution. Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967) details the essential elements of

abuse of process as, “first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding.”

It is undisputed that Defendant SLED and Defendant Ghent, with assistance of Defendant Cannon, Defendant Anderson and Defendant Antonio participated in the institution and continuation of the proceedings against the Plaintiff in their arrest and detainment of the Plaintiff for a charge he was later acquitted of by a jury of his peers. It is also undisputed that due to the internal investigation performed by Defendant Anderson and Defendant Antonio on behalf of Defendant Cannon, as well as their failure to notify Defendant Ghent and Defendant SLED of Ms. Boney’s continued assurance that she had signed the photo lineup, Plaintiff’s arrest and prosecution continued. Finally it is undisputed that the Plaintiff was fully acquitted of the charges and the arrests expunged off of his record. Based on these undisputed facts, this element of the proceeding being adjudicated in Plaintiff’s favor is satisfied. Finally, it is apparent by the evidence presented in this matter that the Plaintiff has endured emotional and monetary damages due to his unlawful arrest and prosecution. Mr. Magwood was fired from his employment, arrested, and due to the ongoing prosecution, continuously blocked from enjoying even the simplest pleasures as well as causing him to be denied job opportunities, employment and wages to assist in providing for his family. Deposition of Plaintiff pg. 74, lns. 16-25, pg. 75, lns. 17-25, pg. 78, lns. 3-15, pg. 114, lns. 16-22, pg. 117, lns. 14-22, pg. 118, lns. 1-16. Additionally Plaintiff was forced to sit idly by while the community discussed the embarrassing nature of his alleged crime. Throughout this time Plaintiff was enduring stress, embarrassment, anxiety, and other emotional distresses which have continued even to the present day. Even if the Defendants were to dispute Plaintiff’s damages, any arguments about the validity of damages would constitute a genuine issue of material fact and should be presented to the jury. As such, Plaintiff

would argue that, even if the Court finds a dispute regarding the elements of malicious prosecution, when taken in a light most favorable to the Plaintiff, there exists a material issue of genuine fact and the issue must be submitted to a jury.

Regarding the issues of malice and lack of probable cause in the institution of the proceedings, review of the facts and circumstances of the charges in question in a light most favorable to the Plaintiff demonstrate that there existed no probable cause whatsoever for the arrest or prosecution of Plaintiff. South Carolina supports the contention that the malice requirement can be satisfied through want of probable cause, allowing for both remaining elements of malicious prosecution to be satisfied through the Defendants' failure to have probable cause for the arrest prosecution. Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Additionally, as discussed above, although the Defendants were aware that Ms. Boney felt she may have signed the photo lineup, they continued on with the arrest and prosecution of Plaintiff for Misconduct in Office. Specifically looking at the arrest warrant sworn out by Defendant Ghent, he states under oath that the Plaintiff knowingly and willingly provided false information in his investigative report and to the Solicitor's Office in the form of a photo lineup purported to have been signed by a witness (Boney), even after he has been aware of that Ms. Boney does not deny signing the lineup. Arrest Warrant of Plaintiff. This misstatement of the facts and evidence in the basis for the arrest warrant demonstrates that the Magistrate did not have the proper information prior to making the determination of probable cause in this matter. This also rings true in discussing the preliminary hearing in this matter where Defendant Ghent admits he simply read the arrest warrant/affidavit. Deposition of Defendant Ghent pg. 46, lns. 20-25, pg. 47, ln. 1. Again, the magistrate hearing the evidence at

the preliminary hearing was not afforded the opportunity to hear the true evidence and facts of this case which is the Ms. Boney did not deny signing the photo lineup.

In addition to the actions of Defendant Ghent and Defendant SLED as espoused above, Defendants Cannon, Anderson and Antonio, armed with the same information as Defendant Ghent and Defendant SLED, not only failed to notify the court or prosecuting authorities of the truth of the matter, but also participated in the Plaintiff losing his job and being arrested and prosecuted. Deposition of Plaintiff pg. 116, lns 4-9. Defendants Anderson and Antonio, as the investigators for the internal investigation of Plaintiff, had full access to the SLED investigation and file, even attending meetings regarding the SLED investigation. Deposition of Defendant Anderson pg. 34, lns. 18-23, pg. 44, lns. 14-22, pg.45, lns. 21-23, Deposition of Defendant Ghent pg. 18, lns. 2-19. In fact, through their own investigation, they interviewed many of the same witnesses as SLED, including Ms. Boney. During that interview of Ms. Boney, where both Defendant Anderson and Antonio were present, Ms. Boney admitted that she remembered signed something with Magwood, and that Magwood told her to sign her initials. Notes of Defendant Anderson. This admission by Ms. Boney, although never documented in any of the Defendants' reports, clearly presents itself in the notes Defendant Anderson took as a matter of course during his interview of her, and even demonstrates that she made this assertion more than once. However, as detailed above, Defendant Anderson and Antonio took no action in regards to alerting the proper authorities as to this discovery of evidence and instead filed a report falsely accusing Plaintiff of wrongdoing and continued to assist the remaining Defendants in the prosecution of Plaintiff. Defendant Anderson and Defendant Antonio's report also falsely accused Plaintiff of being untruthful regarding writing the date and time on the photo lineup, although Defendant Antonio openly admitted in his deposition that Mr. Magwood remained

consistent with the dating and only denied writing the initials. Deposition of Defendant Antonio pg. 33, lns. 17-20.

The Defendants in this matter also took the opportunity to interview many of Plaintiff's superiors all of whom appear to support the contention that Plaintiff had never given them any indication he would forge initials as well as state that they had no direct information as to what happened that day between Ms. Boney and Plaintiff as all of their information came from alleged statements of Mr. Magwood which he vehemently denied making. Of note is that many of these statements gave conflicting theories of how the alleged crime occurred, none matched with what Ms. Boney or Plaintiff stated occurred, and strangely any incriminating information in these statements was allegedly provided to the person after Plaintiff was placed on administrative leave. The affidavit of Agent Ryan Kelly and Assistant Solicitor Voight also fail to mention that Agent Kelly conducted an interview with Ms. Boney which he audio recorded during which time she stated several times that she may have signed the lineup. Again, this constant misstatement of facts from the only eyewitness to the events of that day by the Defendants and their associates continues to be a prevalent theme in this case.

Finally, along with interviewing multiple persons surrounding Plaintiff which provided little to no evidence against Mr. Magwood, all Defendants participated in getting a handwriting analysis from SLED. Even with the technology and expertise that SLED possesses in their document analysis department, the results of this analysis did not give conclusive evidence of Plaintiff signing Ms. Boney's initials. Furthermore, as testified to at trial by Ms. Boney and stated by her previously to the Defendants, when she initialed the photo lineup, she was hysterical and her handwriting was different from when she was calm and had time to properly

write her name on the paper, thus preventing a completely accurate result of the analysis. Criminal Trial Transcript pg. 14, lns 14-25, pg. 15, lns. 1-18.

Based on the evidence present in this matter, especially the sworn testimony of Ms. Boney at Plaintiff's criminal trial where she repeats many of the answers she had already given the Defendants, all of which they ignored, it is widely apparent that there does not exist even the slightest bit of probable cause to charge Plaintiff with misconduct in office for forging signatures and to fire Plaintiff for violation of policy for the same false allegations. The Defendants, fueled by what can only be described as an intense desire to push forward with the prosecution of Plaintiff no matter the costs, ruined Mr. Magwood's life and reputation knowing the truth the whole time. As the main issue in question is the facts within the Defendants' purview pointing to the Plaintiff as a viable suspect, the existence of evidence questioning the honesty of the Defendants' causes their credibility, an issue which courts demand the jury make a decision regarding, to also come into question and forms a genuine issue of material fact. It is also apparent through the evidence, taken in a light most favorable to the Plaintiff, that with the severe lack of evidence against Plaintiff, that the decision to continue on with the arrest, prosecution, and firing of Plaintiff finds its basis in malice, fraud, or intent to harm. Upon a cursory review of the background, previous statements, and circumstances surrounding this charge, it is obvious and clear that this demonstrates not only a lack of probable cause but also a definite decision of malice, fraud or intent to harm.

Therefore, when viewing all of the evidence in a light most favorable to the Plaintiff, the Plaintiff has articulated a complete case for malicious prosecution and Defendants' summary judgment motion should be denied.

In examining the Plaintiff's cause of action for abuse of process, the same arguments articulated above would apply. An examination of the transcript of Plaintiff's criminal trial demonstrates a genuine issue of material fact as to the Defendants' purpose in continuing this action against Plaintiff even without the necessary evidence. As there existed no probable cause to arrest, prosecute, and fire the Plaintiff, the motives of Defendants Ghent, Anderson, and Antonio appears to be based solely in malice, fraud, or other ulterior and improper purposes. Furthermore, as supported by the reports, trial transcript and statements in this matter, Defendants Ghent, Anderson, and Antonio assisted in withholding information from the court in furtherance of their improper purpose. As such, when viewing all of the evidence in a light most favorable to the Plaintiff, the Plaintiff has articulated a complete case for abuse of process and Defendants' summary judgment motion should be denied.

(ii) Negligence

In order to establish liability in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). Statutes, relationships formed in contract, status, property interests, or some other special circumstances have been found to create a legal duty on the part of a defendant towards a plaintiff. Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Jensen v. Anderson County Dep't of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991). In the case at hand, Plaintiff contends that the Defendants acted negligently in the investigation, arrest, prosecution and firing of Plaintiff by failing to procure any probable cause for his arrest, prosecution and firing. Examination of the South Carolina Tort Claims Act, as explained in Arthurs ex rel. Estate of Munn v. Aiken Cnty, demonstrates that, "the State, an

agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages contained herein.” South Carolina Tort Claims Act, Section 15–78–40. The Tort Claims Act goes further and states that, “... [l]iability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.” South Carolina Tort Claims Act, Section 15–78–20(a). This theory of recovery set out in the Tort Claims Act specifically creates a duty for the Defendant, in situations such as this case, to act prudently in their execution of their duties. Plaintiff would thus contend that the above detailed actions of the Defendants demonstrate the breach of the Defendants’ duty of care and resulting damages incurred and endured by the Plaintiff. As detailed above, Plaintiff bases his cause of action for negligence against the Defendants on far more than just a negligent investigation or a negligent arrest, but instead on multiple ignored attempts to properly investigate and prosecute this case properly which includes ignorance of exculpatory evidence which pointed to Plaintiff’s innocence. As such, based on the above listed arguments, the Plaintiff has raised genuine issues of material fact as to the claim of negligence and the Defendants’ motion for summary judgment should be denied.

(iii) Defamation and Defamation Per Se

The Plaintiff has pled both defamation and defamation *per se* in his Complaint. In an action for defamation, “one must allege and prove that a statement was made which, either on its face or by reason of extrinsic facts, tends to impeach the reputation of the plaintiff; that the statement was published to a third person, other than the plaintiff; and that a result of the statement the plaintiff suffered either special or general damages.” Hampton v. Conso Products,

Inc., 1992, 808 F.Supp. 1227., S.C. Code Ann. § 15-3-550. Holtzscheiter v. Thomson Newspapers, Inc. distinguishes defamation and defamation *per se* in that “slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. 332 S.C. 502, 511, 506 S.E.2d 497, 502 (1998). In the case at hand, Defendants Anderson, Antonio, and Ghent disseminated information to the media identifying that the Plaintiff was under arrest for misconduct in office and had been fired from the Charleston County Sheriff's Department. Copies of the news articles which appeared on local news websites and on television, which are attached to this Memorandum, informed the public that Plaintiff, a long-standing member of the community and police officer, forged a witness' lineup and lied to prosecutors about a 2006 rape case. This assault of character of Plaintiff was published to all persons with access to the internet or television, a fact that is especially harmful due to Mr. Magwood's involvement in the community and as a police officer, a position in which a person must hold a particular type of character. Deposition of Plaintiff pg. pg. 74, lns. 16-25, pg. 75, lns. 17-25, pg. 78, lns. 3-15, pg. 114, lns. 16-22, pg. 117, lns. 14-22, pg. 118, lns. 1-16. This type of slander against the Plaintiff, a well-known and respected member of society, not only damaged Mr. Magwood's reputation in the community and prevented him from finding employment, but also caused him emotional injuries that were manifested through physical and mental hindrances following this event. *Id.* Furthermore, as the statements made by the Defendants were that of a crime of moral turpitude, this slander also constitutes defamation *per se*. Based on Holtzscheiter v. Thomson Newspapers, Inc., “if a defamation is actionable *per se*, then under common law principles the law *presumes* the defendant acted with common law malice and that the plaintiff suffered **general** damages.”

332 S.C. 502, 510, 506 S.E.2d 497, 501 (1998). Therefore, under the theory of defamation *per se*, the Plaintiff is only required to present evidence that the statements were made and that they were disseminated; both requirements satisfied through the Plaintiff's testimony and the attached news articles. As such, based on the above listed arguments, the Plaintiff has raised genuine issues of material fact as to the claim of defamation and the Defendants' motion for summary judgment should be denied.

(iv) Civil Conspiracy to Commit Fraud

The South Carolina Supreme Court has defined civil conspiracy as, "a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff." LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988) *citing* Todd v. S. Carolina Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) *see also* Charles v. Texas Co., *supra*, and Yaeger v. Murphy, 291 S.C. 485, 354 S.E.2d 393 (Ct.App.1987). As further espoused above, Defendants Ghent, Anderson, and Antonio worked together with the purpose of not only injuring Mr. Magwood, but in not revealing exculpatory evidence to the court and their superiors, continuing of a theory of lies against Plaintiff. While Plaintiff would concede that Defendant Ghent headed up the criminal investigation whereas Defendants Anderson and Antonio were involved in the internal affairs investigation, it is clear from the evidence that the Defendants had interactions together that would lead a person of common knowledge to believe that they were working together with the same purpose. Deposition of the Plaintiff pg. 116, Ins. 4-9. Furthermore, South Carolina courts have been clear that, "conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators and other circumstances." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987) *citing*

Nottingham v. Wrigley, 221 Ga. 386, 144 S.E.2d 749 (1965). Island Car Wash, Inc. v. Norris continues on to state that, “civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence; concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence.” Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987) *citing* Mixon v. Phoenix Landscaping Co., 136 Ga.App. 344, 221 S.E.2d 225 (1975). In keeping with the logic of these South Carolina cases, it is clear from the testimony of the Defendants and Plaintiff as well as the examination of the Defendants’ investigation that the parties all shared the same goal.

Finally, although Plaintiff believes the evidence supports a contention that the goal of the Defendants’ civil conspiracy was fraud, the Plaintiff is not required to prove an unlawful act or an unlawful means as, “lawful acts may become actionable as a civil conspiracy when the “object is to ruin or damage the business of another.” LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988) *citing* Charles v. Texas, 199 S.C. 156, 170, 18 S.E.2d 719, 724 (1942) (quoting 11 Am.Jur., at 578). As the Defendants knew the consequences of charging, arresting, prosecution, and firing the Plaintiff as well as alerting the entire county of Charleston that the Plaintiff was a liar while knowing that Ms. Boney signed the lineup, the only logical reason for their actions appears to be that the Defendants’ object was to ruin the Plaintiff. As the facts must be construed in a light most favorable to the Plaintiff, based on the above listed arguments, the Plaintiff has raised genuine issues of material fact as to the claim of civil conspiracy and the Defendants’ motion for summary judgment should be denied.

II. The Defendants are not entitled to summary judgment because Plaintiff has established that genuine questions of material fact exist on the issue of Defendant's immunity.

While the South Carolina Tort Claims Act cloaks governmental agencies in immunity from suit in many aspects, the Act is clear in that there are exceptions to this immunity. South Carolina Code Ann. Section 15-78-70 specifically provides that government employees may be liable in tort actions [indicating]:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the *scope of his official duty* is not liable therefore except as expressly provided for in subsection (b).

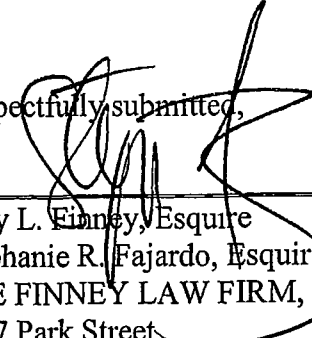
(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the *scope of his official duties* or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

Frazier v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004).(emphasis in original). As the conduct complained of the Defendants detailed above involves malice, fraud, and intent to harm, qualified immunity would not apply. As such, the defendants' reliance on qualified immunity fails and summary judgment should not be granted on this ground.

CONCLUSION

Because the Plaintiff has raised genuine issues of material fact and because the Defendants are not entitled to immunity, the Defendants' motion for summary judgment should be completely and totally denied.

Respectfully submitted,



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Attorneys for the Plaintiff

Columbia, South Carolina
July 30, 2014

DEPOSITION EXCERPTS OF
DEFENDANT CHARLES
GHENT

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669

Plaintiff(s),

-vs-

J. AL CANNON, JR. In his
Official capacity as Sheriff
Of Charleston County, Investigator
Anderson, Investigator Antonio,
Charles Ghent, and South Carolina
Law Enforcement Division,

Defendant(s).

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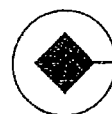
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THE DEPOSITION OF CHARLES GHENT, taken on
behalf of the Plaintiff on Monday, March 31,
2014, commencing at 10:57 a.m. at the Law Offices
of Senn Legal, 3 Wesley Drive, Charleston, South
Carolina.

REPORTED BY: Nicole D. White



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1 **A. None that specifically come to mind.**

2 Q. Okay. Have you ever been involved in
3 any Workers' Compensation or Social Security
4 matters?

5 **A. No.**

6 Q. I want to turn to Mr. Magwood. Did
7 you know Mr. Magwood prior to your investigation?

8 **A. I did not.**

9 Q. As you sit here today, do you believe
10 that he is guilty of misconduct in office?

11 MS. JACKSON: Object to the
12 form. Go ahead. You can answer.

13 **A. Object to the form?**

14 Q. Yeah.

15 **A. I have no opinion about that. I**
16 **supported the prosecution as is my duty.**

17 Q. Kind of walk me through, who were you
18 contacted by regarding Mr. Magwood?

19 **A. SLED had received -- excuse me, a**
20 **written request from Assistant Chief Smith of the**
21 **Charleston County Sheriff's Office. I believe it**
22 **was October 7th. That case was assigned to me by**
23 **my captain at the time, Roger Heaton, on October**
24 **9th.**

25 Q. And that's of 2008?

1 Q. Okay.

2 A. -- at Greg Voigt's office.

3 Q. Who was present at that meeting?

4 A. If I recall, it was myself,
5 Investigator Anderson, Greg Voigt and I believe
6 Investigator Ryan Kelly of the Solicitor's office
7 was present for a portion of that meeting.

8 Q. And what was the purpose of that
9 meeting?

10 A. To obtain the initial information from
11 Solicitor Voigt whom it was my understanding the
12 complaint had originated from.

13 Q. What did you gain from that meeting?

14 A. Solicitor Voigt provided us with the
15 case summary that they had been provided by
16 Mr. Magwood to include the lineup in question and
17 a briefing essentially on the meeting they had
18 had with Mr. Magwood and Mrs. Boney that had led
19 to the complaint.

20 Q. At this point what was your
21 understanding of the issues that you were
22 investigating?

23 A. Mr. Magwood -- at that time they were
24 preparing for a trial on a criminal sexual
25 assault case. After a meeting with the alleged

1 that conversation, as well.

2 Q. Why did you contact Mr. Magwood after
3 speaking to his attorney?

4 A. Just to confirm, based on his earlier
5 statement, that he did want to give a statement,
6 that he did not want to contact -- anything and
7 also, to give him an opportunity if there were
8 any other witnesses that he wanted me to contact
9 in regards to this investigation, to give him
10 that opportunity to be fair.

11 Q. Did he give you any witnesses?

12 A. He did not. He stated that he had
13 worked his cases alone and the only people who
14 knew about the case were the victim that he had
15 showed the lineup to and himself.

16 Q. Based on your investigation, did that
17 appear to be a true statement?

18 A. I don't know of anyone else. Let me
19 rephrase. When you say -- when you say based on
20 my investigation was that a true statement in
21 regards to no one else knew about it but the
22 victim and himself?

23 Q. Yes.

24 A. His supervisors would have reviewed
25 the case. I don't have any information that

1 anyone else was present or involved in the lineup
2 showing itself, other than Mr. Magwood and
3 possibly the victim.

4 Q. Do you know what supervisors reviewed
5 the case?

6 A. It would be on the case file. I don't
7 know off the top of my memory.

8 Q. Okay. After confirming with
9 Mr. Magwood that he didn't have anyone that he
10 needed you to speak to, what was the next step?

11 A. I prepared my paperwork, typed my
12 report, submitted it to my supervisors for
13 review. The report was then delivered to
14 Solicitor Wilson's office and Solicitor Wilson's
15 office citing a conflict, I suppose, since the
16 complaint had originated with their office, sent
17 it to the Attorney General's office for review.

18 Q. Scarlett Wilson's office?

19 A. Yes. The 9th Circuit Solicitor's
20 Office.

21 Q. It's confusing now that Wilson is also
22 the Attorney General now.

23 A. Right.

24 Q. So it was first sent to the 9th
25 Circuit, then they forwarded it. Did they send

1 **General's office review of the case file in terms**
2 **of what they felt the violation was in here. So**
3 **I cannot specifically state what Rob Bogan**
4 **specifically included in that, but that would be**
5 **included in that information, yes.**

6 Q. But you've signed this affidavit?

7 **A. Yes. Uh-huh.**

8 Q. And you believed everything in this
9 affidavit to be true?

10 **A. To the best of my knowledge, yeah.**

11 Q. Was there a preliminary hearing in
12 this case or just taken to the Grand Jury?

13 **A. There was a preliminary hearing.**

14 Q. Did you handle the preliminary
15 hearing?

16 **A. I did.**

17 Q. At the preliminary hearing what was
18 the basis for the arrest?

19 **A. I'm sorry?**

20 Q. At the preliminary hearing you
21 testified as to the probable cause to make the
22 arrest, didn't you?

23 **A. Yes. I testified by reading the**
24 **affidavit in court, if I recall. I don't have**
25 **the transcription of that in front of me, but**

1 **that's what I recall.**

2 Q. Okay. Was there anything additional,
3 other than the affidavit?

4 A. There may have been. Mr. Bogan was
5 present and acting as -- on behalf of the
6 prosecution in that case, so he had asked some
7 other questions. I don't recall what they were.

8 Q. Any other evidence that was present in
9 the case, other than what you've already
10 testified to?

11 A. Anything that was presented there
12 would have been information contained in the case
13 file.

14 Q. And I know you said at some point you
15 requested a handwriting sample.

16 A. I did.

17 Q. Do you -- was this after the
18 preliminary hearing?

19 A. The handwriting samples were obtained
20 after the preliminary hearing, yes.

21 Q. So there's a preliminary hearing and
22 then the Grand Jury -- it was presented to the
23 Grand Jury?

24 A. It was presented to the Grand Jury --
25 I'm looking for the date.

1 video?

2 **A. No.**

3 Q. Do you typically do any audio or video
4 of the interviews?

5 **A. No.**

6 Q. Can you refuse to obtain a warrant if
7 you don't believe that it is merited?

8 **A. I do not know if I've ever been in**
9 **that situation before.**

10 Q. And I believe Ms. Boney, and I don't
11 have the transcript in front of me, Ms. Boney
12 testified at the trial of Mr. Magwood?

13 **A. She did.**

14 Q. You were at the entire trial of
15 Mr. Magwood?

16 **A. I was.**

17 Q. And Ms. Boney testified that she may
18 have signed the lineup, but was very upset at the
19 time and couldn't remember?

20 **A. I don't recall specifically what she**
21 **stated on the stand.**

22 Q. Okay. Let me ask this, do you -- were
23 you surprised at Ms. Boney's testimony at trial?

24 **A. No.**

25 Q. Did you gain any new information after

DEPOSITION EXCERPTS
AND NOTES OF
DEFENDANT MICHAEL
ANDERSON

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669
Plaintiff(s),

-vs-

J. AL CANNON, JR., in
His official capacity as
Sheriff of Charleston County,
Investigator Anderson,
Investigator Antonio, Charles
Ghent, and South Carolina
Law Enforcement Division,
Defendant(s).

THE DEPOSITION OF LIEUTENANT MICHAEL A.
ANDERSON, taken on behalf of the Plaintiff on
Tuesday, March 11, 2014, commencing at 10:00 a.m.
at the Law Offices of Senn Legal, 3 Wesley Drive,
Charleston, South Carolina.

REPORTED BY: Nicole D. White

1 **case it was the victim, had actually**
2 **initialed, circled, initialed, dated and**
3 **timed the photo lineup.**

4 Q. Had you investigated a case similar to this
5 before?

6 A. **No. I can't think of any other case that I**
7 **had, no, ma'am.**

8 Q. What did you review for your investigation?

9 A. **Well, we looked at Detective Magwood's case**
10 **file from his sexual assault investigation.**
11 **And I looked at the SLED file.**

12 Q. Was the SLED investigation complete by the
13 time you started your investigation?

14 A. **Yes, ma'am.**

15 Q. Can you kind of walk me through the
16 investigation that you did in regards to the
17 complaint against Mr. Magwood?

18 A. **Well, I reviewed, of course, I looked at his**
19 **case file and just went over it, read his**
20 **reports, made notes. I looked at the SLED**
21 **case file and then conducted interviews.**
22 **Everybody that SLED interviewed, I went back**
23 **and interviewed, as well.**

24 Q. Do you remember everyone that you
25 interviewed?

- 1 **A. Correct.**
- 2 Q. After you turned in your report, did you
- 3 have any other conversations with anybody
- 4 about it?
- 5 **A. I don't know. I don't remember.**
- 6 Q. Okay. Do the -- whether it's the chief
- 7 deputy or the supervisor in the department,
- 8 do they ever call Internal Affairs to
- 9 discuss your report, ask questions, anything
- 10 like that?
- 11 **A. It's certainly possible. I don't remember**
- 12 **it happening very often, but if they had a**
- 13 **question or...**
- 14 Q. Were you aware of SLED's investigation of
- 15 Mr. Magwood?
- 16 **A. Yes, ma'am.**
- 17 Q. Okay. How were you made aware of that
- 18 investigation?
- 19 **A. After the initial complaint came in I was**
- 20 **assigned the investigation, we sent a letter**
- 21 **to SLED requesting that they conduct an**
- 22 **investigation.**
- 23 Q. Is that typical protocol?
- 24 **A. Depends on the allegations.**
- 25 Q. What would cause you to contact SLED to do

1 an investigation?

2 **A. That decision would actually be made above**
3 **me, but it would have to do with if there's**
4 **any kind of an allegation or possibility of**
5 **a criminal act, then that's the basis on**
6 **which that decision is made.**

7 Q. Do you know what the criminal act was that
8 was suspected with the allegation with
9 Mr. Magwood?

10 **A. No. I mean, I could tell you a specific**
11 **statute or whatever, but the allegation was**
12 **that he or the concern was that he had**
13 **possibly put a witness' initials on a photo**
14 **lineup and then filed a report stating that**
15 **she had done it.**

16 Q. Okay. Did you ever talk to Agent Ghent with
17 SLED during your investigation?

18 **A. I don't remember any specific times when I**
19 **spoke with him. Again, it's certainly**
20 **possible. I was the point of contact.**

21 Q. Okay. And you said you got SLED's entire
22 file prior to beginning your investigation?

23 **A. Correct.**

24 Q. Is it common -- I know you said SLED will be
25 contacted if it's suspected there could be a

1 Q. Okay. And those -- the title of it, I
2 think, is notes of, I guess, the interview
3 with Ms. Boney.

4 A. **Correct.**

5 Q. Okay. And this was April 1st, 2009, so this
6 would have been the beginning of your
7 investigation?

8 A. **Right.**

9 Q. Okay. In her interview, doesn't she -- does
10 she state that she did sign something in
11 regards to Mr. Magwood?

12 MS. JACKSON: Objection to
13 form.

14 A. **I don't remember exactly what she said as
15 far as that goes.**

16 Q. Okay. If you want to review. I can direct
17 you to what I'm talking about, that will
18 probably help. On this third page and I
19 want you to read the whole thing if you need
20 to, but it says that -- it seems as if she
21 says she was upset and hysterical and may
22 have done it real quick.

23 A. **Right.**

24 Q. Is she talking about the signing something
25 with Mr. Magwood or is she talking about

about that meeting

Magwood told her ~~to~~ don't worry about it, that it would be his fault

If something went wrong - on his part
Not her fault

Again stated she never looked at a photo lining up with Magwood.

The three guys that showed up had some initials and asked her ~~whether~~ if they had been written by her.

She said she did sign something with him possible he had covered the pictures up & told her to sign.

The guys that showed up tried to show her a photo lining - She didn't want to see it

Remembered signing something with him - he told her to sign her initials.

The three guys that showed her the photo lining asked her to write her initials on a piece of paper

- looks like her signature

is how she normally writes

Anderson showed her the initials written on the photo lining does not look like hers

DEPOSITION EXCERPTS OF
DEFENDANT ROGER
ANTONIO

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669
Plaintiff(s),

-vs-

J. AL CANNON, JR., in
His official capacity as
Sheriff of Charleston County,
Investigator Anderson,
Investigator Antonio, Charles
Ghent, and South Carolina
Law Enforcement Division,
Defendant(s).

THE DEPOSITION OF LIEUTENANT ROGER ANTONIO
taken on behalf of the Plaintiff on Tuesday,
March 11, 2014, commencing at 1:07 p.m. at the
Law Offices of Senn Legal, 3 Wesley Drive,
Charleston, South Carolina.

REPORTED BY: Nicole D. White

1 MS. JACKSON: Objection to
2 form.

3 **A. Are you referring to the two interviews?**

4 **Q.** Yes. Any conversation or -- and including
5 the written statement, as well. So, I
6 guess, the two conversations and the written
7 statement, was Mr. Magwood's
8 characterization of the events consistent?

9 **A. Can I refer to notes, any handwritten notes**
10 **I would have had on it?**

11 **Q.** Sure. Do you have a copy?

12 **A. I just have Anderson's report.**

13 **Q.** (Document tendered.) I think that's the
14 other one. You want to put that one with
15 it? I think they're just out of order.
16 Looks like they're each three pages.

17 **A. Concern as far as dating and time stamping**
18 **or excuse me, as far as the dating, I know**
19 **he was -- he was consistent. And the**
20 **initials he denied.**

21 **Q.** Okay. But he did -- did he deny initialing
22 throughout the whole process?

23 **A. I'm not aware if -- there were concerns from**
24 **what I recall, the supplemental report that**
25 **indicated -- on his, you know, detective**

DEPOSITION EXCERPTS OF
PLAINTIFF EUGENE
MAGWOOD

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669
Plaintiff(s),

-vs-

J. AL CANNON, JR., in
His official capacity as
Sheriff of Charleston County,
Investigator Anderson,
Investigator Antonio, Charles
Ghent, and South Carolina
Law Enforcement Division,
Defendant(s).

THE DEPOSITION OF EUGENE MAGWOOD taken on
behalf of the Defendants, on Monday, March 10,
2014, commencing at 1:01 p.m. at the Law Offices
of Senn Legal, 3 Wesley Drive, Charleston, South
Carolina.

REPORTED BY: Nicole D. White

1 Q. Do you have to have a law enforcement
2 certification from the Criminal Justice
3 Academy to work at your current employment?

4 A. No.

5 Q. Okay. Do you have a law enforcement
6 certification still valid from the Criminal
7 Justice Academy?

8 A. I don't know. Again, I didn't check.

9 Q. Okay. So do you have any evidence that you
10 were turned down for jobs with these groups
11 because of this investigation?

12 A. No.

13 Q. What about your reputation in your trade and
14 occupation, what kind of damages do you have
15 from that?

16 A. Well, you know, since the news clipping came
17 out and what was said over the TV, my name
18 was just plain, I would say dirt. I mean,
19 there were people that I knew that wouldn't
20 talk to me. There were places that
21 people -- I tried to get jobs places where I
22 had worked like Roper Hospital, you know,
23 nothing went through. I knew people there.
24 I knew people at, again, at Medical U.
25 And...

1 Q. So you applied back at Roper?

2 A. No. I didn't apply back at Roper. I didn't
3 actually put in the application or resume
4 because I spoke to somebody there.

5 Q. Okay. And did they tell you they wouldn't
6 hire you because of this incident?

7 A. Not him, but they said they probably was not
8 going to hire me because of this incident
9 with the sheriff's office.

10 Q. Okay. And so you never applied?

11 A. No.

12 Q. Who wouldn't talk to you anymore after this?

13 A. Well, I left the church. I was deacon at a
14 church downtown, Eastside Missionaries
15 Baptist Church.

16 Q. Why did you leave the church?

17 A. Because of, you know, there was little
18 remarks made that I heard. You know, they
19 were wondering if I actually did it. I
20 taught karate down there and all of the
21 students left. All my students left and,
22 you know, they -- some of the parents, they
23 thought that this thing should be cleared up
24 before, you know, they would let the kids
25 come back to train.

1 Q. Have they told you that they didn't talk to
2 you because of this?

3 A. No, they didn't tell me. Again, these
4 people that I'm talking about that cordially
5 say something to me just in casual passing
6 at the store or if they see me sometime when
7 I go jogging or walking the street. After
8 this incident they didn't say anything at
9 all. Like I've got a relative that has
10 spoken to some of these people that talked
11 about it that came back and told me that
12 these guys, you know, they don't know
13 whether this thing happened or not and they
14 wanted to see the outcome, so they just
15 stayed away.

16 Q. Okay. And then you got the outcome in 2011,
17 correct?

18 A. Right. And I never revisited anybody.

19 Q. Why not clear your name?

20 A. Well, the media should have done that, but
21 again...

22 Q. Isn't that your job?

23 A. No.

24 MS. FAJARDO: Object to the
25 form.

1 time on there on the photo lineup?

2 **A. She wrote her initials on there.**

3 Q. Right. In the complaint -- let me reference
4 the paragraph. Paragraph 12 under factual
5 background of the complaint it says, "After
6 being shown the photograph lineup, Ms. Boney
7 identified the alleged suspect, initialed
8 and dated next to the picture." Would you
9 agree that she "dated next to the picture"
10 that's a scribner's error?

11 **A. Yes.**

12 Q. And you -- is that the position that you
13 have maintained throughout, that you wrote
14 the date?

15 **A. Absolutely.**

16 Q. Regarding the defamation, you spoke about
17 some news articles regarding your charges.
18 Are you aware of people hearing those news
19 articles?

20 **A. Yes.**

21 Q. And were they affected by that?

22 **A. I believe they were.**

23 Q. Okay. Who would have had the information to
24 release to the news people, the different
25 news agencies?

1 **A. Yes.**

2 MS. JACKSON: Objection to
3 form.

4 Q. Did the named Defendants Ghent, Anderson and
5 Antonio, did they continue participating in
6 the case in the investigation regarding the
7 misconduct in office after you were
8 arrested?

9 **A. Yes, to the best of my knowledge.**

10 Q. And you weren't fired -- I have that you
11 were fired from the sheriff's office or
12 terminated in August of 2009. Does that
13 sound correct?

14 **A. It does. I don't recall the specific date.**

15 Q. And was there an internal investigation that
16 was continuing on after the charges were
17 filed against you?

18 **A. Yes.**

19 Q. And that was regarding Anderson and
20 Antonio?

21 **A. Yes.**

22 Q. In regards to the basis of your mental pain
23 and suffering, the fright, I believe, was
24 the one instance that was referred to,
25 were you aware of the potential outcome of

1 your criminal charge, misconduct in
2 office?

3 **A. Oh, yeah, I was aware of what could have**
4 **happened, yeah.**

5 **Q. Is that a basis for the mental pain and**
6 **suffering and fright?**

7 **A. Absolutely.**

8 **Q. The jobs that you spoke of that you applied**
9 **for, do you know of any reason other than**
10 **the charge that would have disqualified you**
11 **from getting the job?**

12 MS. JACKSON: Objection to the
13 form.

14 **Q. Why do you believe you didn't get the job?**
15 **I'll rephrase.**

16 **A. During my tenure at the sheriff's office I**
17 **worked with people from each of these**
18 **agencies and I've been asked by different**
19 **people, North Charleston specifically, come**
20 **and work for them. And when this incident**
21 **came up and I put my resume in, again, I**
22 **didn't hear anything.**

23 Just same with the Medical U., there
24 are security officers down there that I
25 know, some that I trained with and they were

1 aware that I put the -- I sent my resume in
2 and there's a lieutenant, I don't remember
3 her name, that I knew from court, I talked
4 to her all the time and she keep telling me
5 whenever I leave the sheriff's office,
6 retired to come over there to work with her.
7 Again, sent resume in, heard nothing.

8 Q. Why do you believe you didn't get those
9 jobs?

10 A. Because of the incident with the sheriff's
11 office.

12 Q. And the lost wages that you are claiming,
13 does the number, the 153,000 does that take
14 into consideration your inability to get
15 work after your termination?

16 A. Yes.

17 MS. FAJARDO: I believe that's
18 all that I have.

19 MS. JACKSON: I have a couple
20 extra questions now.

21 R-E-E-X-A-M-I-N-A-T-I-O-N

22 BY MS. JACKSON:

23 Q. You were asked if you believed that the
24 investigations were improper. Did you
25 believe that the investigations themselves

PARTIAL TRIAL
TRANSCRIPT OF
PLAINTIFF'S CRIMINAL
TRIAL

ENTIRE TESTIMONY OF
CATHERINE BONEY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2009-GS-10-04097

STATE OF SOUTH CAROLINA
Plaintiff

V.

MR. EUGENE MAGWOOD,

Defendant.

TRANSCRIPT OF RECORD

JUNE 29 - 30, 2011
CHARLESTON, SOUTH CAROLINA

(Excerpt of Witness testimony)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

MR. Joshua R. Underwood, Asst. Attorney General
Mr. C. Wilson Smith, III, Asst. Attorney General
Representing The State

Mr. Clifford Scott, Esquire
Representing The Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

(Testimony of Ms. Catherine Boney.)

THE COURT: State may proceed with it's next witness.

MR. UNDERWOOD: Your Honor, at this time the State calls Catherine Boney.

MS. CATHERINE BONEY,
after having first been duly sworn to state the truth,
the whole truth and nothing but the truth, testified on
her oath as follows:

THE COURT: You may proceed.

MR. UNDERWOOD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q Good afternoon, Ms. Boney, I will try to be as brief as possible with you this afternoon.

Without going into details, were you the victim of a violent crime several years ago?

A Yes.

Q And was the defendant, Mr. Magwood, the investigator who looked into that crime for the sheriff's office?

A Yes.

Q And is he the gentleman sitting at the table over here?

1 A Yes.

2 Q Ms. Boney, did he ever show you any photographs
3 during that investigation?

4 A Yes.

5 Q Did he show you a single photograph or a group
6 of photographs?

7 A Both.

8 Q Both. What did he show you initially when he
9 came to meet with you?

10 A The big one first.

11 Q Showed you a big one?

12 A He had both, though.

13 Q Right. Do you remember signing any photographs?

14 A Well he asked me to sign both. But he asked me
15 to sign it, but I got hysterical, I was all upset. So
16 he told me, while he comfort me. Later on he said
17 we'll sign it later, just calm down. He was trying to
18 calm me down.

19 Then later on he tried to show me again. I got
20 hysterical again. Then all of the sudden he said --
21 well he looked at it and said, well do you see it? And
22 I cried. And to be honest, I looked and I said, it's
23 down below. The last one down below.

24 And but then he said, okay, we will wait and I
25 will be back tomorrow.

1 Q So, Ms. Boney, you said that he showed you a
2 single photograph?

3 A Yes.

4 Q Then he wanted to show you a group of
5 photographs and you got hysterical?

6 A Yes.

7 Q Then he tried again to show you these
8 photographs and you were again hysterical?

9 A Yes.

10 Q Now is this all in the same trip, or did he come
11 to your house more than once?

12 A He did it the first time. He came three times,
13 at least three times.

14 Q Were all three of these times about the
15 photographs?

16 A Yes.

17 Q So the first trip he showed you one photograph?

18 A Both. But he tried to show me both.

19 Q He was successful in showing you one photograph?

20 A Yes.

21 Q And he wanted to show you more, but he didn't
22 get to because you were upset?

23 A Yes.

24 Q Then when he came back again he was going to ask
25 you again to look at these photographs, but you were

1 upset again?

2 A Yes.

3 Q Do you remember ever signing those photographs?

4 A To be honest with you, I don't remember. I was
5 so upset, I don't remember.

6 Q Do you remember meeting with Greg Voigt and Ryan
7 Kelly from the solicitor's office to get ready for the
8 trial?

9 A I met with some people, sir, I don't remember
10 their names but I remember their faces.

11 Q Do you remember if you met with the prosecutor
12 on the case?

13 A Yes.

14 Q And in meeting with him, do you remember him
15 asking you questions about the photographs?

16 A Yes.

17 Q And at that time do you remember telling him
18 that that was the first time you had seen the group of
19 six photographs?

20 A I don't remember.

21 Q Do you remember telling him that the initials on
22 those photographs were not yours?

23 A I told him I don't know, it could be, it could
24 not be because I done sign so many times. You guys had
25 me signing and signing. I don't know, I was so upset.

1 MR. UNDERWOOD: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 Q (By Mr. Underwood) Now, Ms. Boney, I'm going to
5 show you what has been marked for identification as
6 State's Exhibit No. 1. I'm covering up the actual
7 photographs on it. I just want you to focus on the
8 handwritten portion towards the bottom.

9 Can you look at that for me please?

10 Did you get a good look at that?

11 A Yes, sir.

12 Q Are those your initials?

13 A I don't know. I really don't. I can't tell
14 looking at it. Me being upset, I could have signed it.

15 Q Is that the way that you normally sign your
16 initials?

17 A At that time I wasn't normal so I don't know.

18 Q If you could look at the date that's written
19 there. Is that the style in which you write dates on a
20 normal basis?

21 A No. At that time I don't know. To be honest, I
22 don't.

23 Q Okay. Do you remember writing handwriting
24 examples for Agent Ghent from SLED?

25 A Yes.

1 Q I'm sorry, excuse me, disregard that question.
2 With a handwriting sample with Ryan Kelly from the
3 solicitor's office?

4 A Yes.

5 Q I'm now showing you what has been marked as
6 Exhibit No. 54 for identification. Could you review
7 that for just a second. Is that your handwriting?

8 A That's my normal writing, yes.

9 Q Is this particular piece of paper, is that your
10 handwriting on there?

11 A Yes.

12 Q That's the way that you normally would write
13 your initials and date?

14 MR. SCOTT: Objection, leading, Your Honor.

15 THE COURT: Sustained, leading.

16 Q (By Mr. Underwood) Is that the way that you
17 would normally write the date and your initials?

18 A Yes.

19 Q Is that yes?

20 A Yes.

21 MR. UNDERWOOD: Your Honor, at this time State
22 requests Exhibit No. 54 be admitted into evidence.

23 THE COURT: Any objection?

24 MR. SCOTT: Your Honor, can I make sure it is
25 what I think it is?

1 No objection, Your Honor.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit No. 54 is admitted
5 into evidence.)

6 Q (By Mr. Underwood) Now, Ms. Boney, the
7 handwriting that you did for Mr. Kelly from the
8 solicitor's office which you do recognize as yours,
9 does that look anything like the handwriting on the
10 photo lineup?

11 A No. But like I said I was upset, so, I don't
12 know.

13 MR. UNDERWOOD: One Moment, Your Honor.

14 THE COURT: Uh-hum.

15 Q (By Mr. Underwood) After the prosecutor and the
16 investigator from the solicitor's office talked to you
17 about the potential problems with the photo lineup, did
18 you talk to Mr. Magwood?

19 A Yes.

20 Q And what did he tell you?

21 A I don't understand what you mean.

22 Q All right. Did you tell him the questions that
23 they had for you?

24 A I called him when -- they came to me, I didn't
25 know what to do. So he was real good to me and treated

1 me real nice. So I called, he had gave me his number,
2 and I called him. And I told him, I said some guys
3 came here and asked me some questions. And they were
4 saying something about handwriting. I don't know what
5 they're talking about.

6 He told me, don't worry about it, don't get
7 yourself upset. He said, you did what you were
8 supposed to do. If they ask you questions, tell the
9 truth.

10 Q Did he tell you anything else?

11 A No.

12 Q Do you remember him -- do you remember talking
13 with Inspector Anderson from the sheriff's office and
14 telling him that Mr. Magwood told you that if something
15 went wrong it was his fault not yours?

16 A He said if there was any problems, don't worry
17 about it. If something went wrong, don't worry about
18 it. I don't remember saying that. He said, don't
19 worry about it, don't get yourself upset, everything is
20 okay, just tell them the truth. That's what I remember
21 saying.

22 Q Because you said a moment ago he was good to you
23 during the investigation?

24 A Yes.

25 Q And did you want him to get in any trouble?

1 A No.

2 I really didn't think why he would be in trouble
3 for, for what? He did his job.

4 Q But you don't remember signing those
5 photographs, correct?

6 MR. SCOTT: Objection, Your Honor, leading.

7 MR. UNDERWOOD: Clarifying.

8 THE COURT: Sustained, leading.

9 Q (By Mr. Underwood) Do you remember signing
10 those photographs?

11 A I don't remember. But I did sign something. I
12 don't know if it was that or not. But just like you
13 just did a few minutes ago, he did cover up the picture
14 and told me I need to sign it.

15 So I don't know if I did or not. I was so
16 upset. We kept stopping and pausing and he was
17 comforting me. So I don't know if I signed it or not.

18 Q But again comparing the photograph's initials
19 and the example of your initials, how do they compare?

20 A It don't look like mines, but when you are
21 upset, you know. I don't remember.

22 Q I want to show you now exhibit number -- Ms.
23 Boney, do you remember meeting with Inspector Anderson
24 at the sheriff's office?

25 A Yes.

1 Q Do you remember, did you do any handwriting
2 examples with him?

3 A Yes.

4 Q I'm now handing you what has been marked State's
5 Exhibits 4 through 28. If you can take a moment and
6 review those for me, please.

7 Do you recognize those, Ms. Boney?

8 A Yes.

9 Q Are those the handwriting examples that you made
10 for Detective Anderson?

11 A Yes.

12 MR. UNDERWOOD: Your Honor, at this time State
13 moves for Exhibits 4 through 28 to be admitted into
14 evidence.

15 THE COURT: Any objection?

16 MR. SCOTT: No, ma'am.

17 THE COURT: Marked and admitted without
18 objection.

19 (Whereupon, State's Exhibit Nos. 4 through 28
20 are admitted into evidence.)

21 MR. UNDERWOOD: Thank you, Ms. Boney, please
22 answer any questions Mr. Scott may have for you.

23 THE COURT: You may proceed.

24 MR. SCOTT: Thank you, Your Honor, may it please
25 the Court.

CROSS-EXAMINATION

BY MR. SCOTT:

Q Ms. Boney, how are you doing?

A Not too well today.

Q I understand. Now, Ms. Boney, you testified earlier that you talked to a lot of people in the case that we are talking about, right?

A Yes.

Q But you and I have never talked before, right?

A No, sir.

Q You probably saw me walking back and forth but we have never met each other, right?

A No, sir.

Q Okay. And did I understand you to say, when Mr. Underwood was questioning you, that the pictures that he showed you, he covered them up, that Detective Magwood had done something similar to that and had you sign; is that right?

A Yes, sir.

Q And my understanding is, based on your testimony now, you said you were really hysterical, right?

A Yes, sir.

Q Again I'm not trying to make this difficult for you, I understand what you went through. But you were hysterical because that was the first time you had

1 actually seen the face of the man who had done what he
2 did to you, right?

3 A Yes, sir.

4 Q After that night. That was the first time when
5 you saw this picture that you had ever seen that
6 person's face again, right?

7 A Yes, sir.

8 Q And so that's why you were so hysterical?

9 A Yes, sir.

10 Q Now when you sign State's Exhibit 54, that was I
11 think the investigator for the solicitor's office Mr.
12 Kelly, I believe, right?

13 A Yes, sir.

14 Q Now do you remember where you signed this? Did
15 you sign this at home or was it at Mr. Kelly's office;
16 do you remember?

17 A Home.

18 Q Okay. But at this time you were given time to
19 actually write your initials and your name the way you
20 normally write them, correct?

21 A Yes, sir.

22 Q And that is why the initials on this sheet of
23 paper, State's Exhibit No. 54 that you wrote for Mr.
24 Kelly, looks different from what is written on State's
25 Exhibit No. 1?

1 A Yes, sir.

2 MR. UNDERWOOD: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. UNDERWOOD: Counsel is drawing
5 conclusions --

6 THE COURT: No speaking objections. Approach.

7 (Whereupon, a discuss was held at the bench not
8 transcribed.)

9 THE COURT: Proceed.

10 MR. SCOTT: Thank you, Your Honor.

11 Q (By Mr. Scott) Ms. Boney, what I was asking you
12 earlier is that -- let's go back through this again. I
13 don't mean to prolong this for you, okay, I know you
14 don't want to be in here.

15 But when you sign this for Mr. Kelly, this is
16 State's Exhibit No. 54, you were -- you wrote -- you
17 had time to actually write your name the way you
18 normally would, and sign your initials the way you
19 normally would, right?

20 A Yes.

21 Q In other words, everything you wrote on Exhibit
22 No. 54 he gave you time to actually write it the way
23 you would normally write, correct?

24 A Yes.

25 Q But State's Exhibit No. 1, you indicated that

1 Detective Magwood had actually given you something,
2 covered up the pictures, and you just kind of signed
3 something, right?

4 A Uh-hum.

5 Q At that time you were hysterical?

6 A Yes.

7 Q And you didn't take the time to sign the things
8 the way you normally would sign them, did you?

9 A No, sir.

10 Q And in fact it would be difficult for you in a
11 state of hysteria to do anything normal, wouldn't it?

12 A Yes, sir.

13 Q So that would explain why these two signatures
14 are different, wouldn't it?

15 A Yes, sir.

16 Q It would explain why the handwriting is
17 different?

18 A Yes, sir.

19 Q Now when you -- when you signed these cards,
20 forgive me for referring to things as State's exhibit,
21 that's the way we have to do things in the courtroom.

22 A Yes, sir.

23 Q Now States Exhibit No. 4 through State's Exhibit
24 No. 6, these are the ones you signed for I believe it
25 was Mr. Anderson in June of 2009, correct?

1 A Yes, sir.

2 Q Was that done at your house or at his office?

3 A My house.

4 Q Okay. And again when he had you write all this
5 information on here, you had time -- in fact you did it
6 25 or 26 times, didn't you?

7 A Yes, sir.

8 Q So obviously you had time to sit down and write
9 it the way you normally would write it?

10 A Yes, sir.

11 Q Right? So each one is written with you taking
12 your time and doing it the way you normally would?

13 A Yes, sir.

14 Q Again going back to this -- cover these pictures
15 up again?

16 A Thank you.

17 Q Going back to State's Exhibit No. 1. Again the
18 reason this would like different is because this was
19 written in a state hysteria, this was written when you
20 were calm?

21 A Yes, sir.

22 Q Right? Okay. I believe you also told Mr.
23 Anderson that Detective Magwood had you sign something
24 too?

25 A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q Now in questioning by Mr. Underwood he asked you
4 what Detective Magwood told you when you called him.
5 And in fact you called him, he didn't call you, right,
6 after Mr. Kelly and Mr. Voigt visited you?

7 A Yes.

8 Q And he told you to tell the truth, right?

9 A Yes.

10 Q okay. And don't get yourself worked up?

11 A Yes.

12 Q All right. Ms. Boney?

13 A Yes, sir.

14 Q When you were asked by Mr. Kelly to take your
15 time and sign your name and the other information on
16 State's Exhibit No. 54, would you have been able to
17 pretend to be hysterical if you wanted to when you were
18 taking your time to do this?

19 A No, I was upset.

20 Q And when you were taking your time and were calm
21 in writing these 25 or 26 samples for Mr. Anderson,
22 it's kind of hard to pretend to be in a state of
23 hysteria, isn't it?

24 A Yes.

25 Q You're either calm or you're hysterical?

1 A That's right.

2 Q And you were not in a state of hysteria when you
3 wrote these things, these examples for Mr. Anderson?

4 A That's right.

5 Q Eugene Magwood hadn't talked to you about what
6 your testimony was going to be in court today, did he?

7 A No, sir. I haven't talked to him.

8 Q Your testimony is what you actually believe and
9 remember happening, correct?

10 A Yes, sir.

11 Q As you said, I've never met you, correct?

12 A No, sir.

13 Q Thank you, ma'am, that's all I have.

14 A Thank you.

15 THE COURT: Anything further?

16 MR. UNDERWOOD: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. UNDERWOOD:

19 Q Ms. Boney, did you say that Mr. Magwood came
20 back to your house three times with photographs?

21 A Yes.

22 Q Is that what you told Agent Ghent when you
23 talked to him about it?

24 A I don't remember.

25 Q Do you remember telling him that he never came

1 back to show you other pictures?

2 A No. I remember him coming three times. And
3 that third time he got me to sign something, I don't
4 know, but like you did with the picture, covering it.
5 And I had already told him one on the bottom was the
6 guy.

7 Q I'm sorry, can you say that one more time?

8 A Okay. Third time he came to my house he had
9 showed me, you sure that was the same guy you showed me
10 the last time? I said, yes, sir. He says, okay, you
11 are going to have to sign it. I said, yes, sir. I got
12 upset again.

13 I remember signing something, I don't know. I
14 just turned my head and I signed it.

15 Q So if you did sign something you didn't look at
16 what you were signing?

17 A It was that paper because he had it covered. It
18 was pictures and he had it covered. You could see
19 slightly through the paper.

20 Q You didn't tell that to Special Agent Ghent, did
21 you?

22 A No, I did not.

23 MR. SCOTT: Objection, leading, Judge.

24 THE COURT: Sustained, leading.

25 Q (By Mr. Underwood) Is that what you told Agent

1 Ghent happened?

2 A No, I don't think so. But that's what I
3 remember.

4 Q Ms. Boney, one final question. Did you know the
5 individual that attacked you before you looked at those
6 photographs?

7 A No, sir.

8 MR. UNDERWOOD: No further questions, Your
9 Honor.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MR. UNDERWOOD: No, Your Honor.

13 THE COURT: From the defense?

14 MR. SCOTT: No, ma'am.

15 THE COURT: Ma'am, you are excused.

16 (End of excerpt.)

17 * * * * *

18 (Testimony of Ms. Clarice Zimmer)

19 THE COURT: You may proceed.

20 MR. SMITH: Your Honor, State calls Claire
21 Zimmer.

22 MS. CLARICE DENISE ZIMMER,
23 after having first been duly sworn to state the truth,
24 the whole truth and nothing but the truth, testified on
25 her oath as follows:

ARREST WARRANT AND AFFIDAVIT

ARREST WARRANT

F- 969830

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 THE STATE
 against
EUGENE MAGWOOD
 Address: **2820 BOHICKET ROAD**
JOHNS ISLAND, SC 29455

 Phone: **247-06-2891**
 SSN:

 Sex: **M** Race: **B** Height: Weight:

 Date: **10/29/1954** DL #:

 DOB: **10/29/1954** Agency ORI #:

 Prosecuting Agency: **SLED**

 Prosecuting Officer: **GHENT**

 Offense: **MISCONDUCT IN OFFICE**

 Offense Code:
 Code/Ordinance Sec. **COMMON LAW**

 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.

Signature of Judge (L.S.)

RETURN

 A copy of this arrest warrant was delivered to
 defendant **Eugene Magwood**
 on **5-7-09** **12:51**

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 Personally appeared before me the affiant **SPECIAL AGENT CHARLES GHENT** who
 being duly sworn deposes and says that defendant **EUGENE MAGWOOD**
 did within this county and state on **NOV. 1, 2007 THRU DEC. 31, 2008** violate the criminal laws of the
 State of South Carolina (or ordinance of **CHARLESTON**)
 in the following particulars:
 DESCRIPTION OF OFFENSE: **MISCONDUCT IN OFFICE**
COMMON LAW

 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:

SEE ATTACHED AFFIDAVIT

 Sworn to and subscribed before me
 on **7 May 2009**

Signature of Issuing Judge

Signature of Affiant

Affiant's Address

Affiant's Telephone

SPECIAL AGENT CHARLES GHENT
6435 FAIR STREET
NORTH CHARLESTON, SC 29406
843-797-3662

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

ARREST WARRANT

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

 I hereby certify that above affidavit that there are reasonable grounds to believe that
 on **NOV. 1, 07 - DEC 31, 08** defendant **EUGENE MAGWOOD**
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **CHARLESTON**) as set forth below:
 DESCRIPTION OF OFFENSE: **MISCONDUCT IN OFFICE**
COMMON LAW

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

 Judge's Address **3870 DEEDS AVE, SUITE 112**
N. CHARLESTON, SC 29405
 Judge's Telephone **843-745-2390**
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT
OCA# 31080106

Personally appeared before me, a magistrate of this County, one Special Agent Charles Ghent, State Law Enforcement Division, who, first being duly sworn, deposes and says that,

EUGENE MAGWOOD

Black, Male, DOB: 10/29/1954, SSN: 247-06-2891
, LKA: 2820 Bohicket Road, John's Island, South Carolina 29455.

did within this County and State violate the laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
MISCONDUCT IN OFFICE

Common Law

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That between November 01, 2007 and December 31, 2008 one EUGENE MAGWOOD did commit the offense of **MISCONDUCT IN OFFICE** in violation of the Common Law of South Carolina.

In that Magwood did, while employed as a Sheriff's Deputy with the Charleston County Sheriff's Office, submit an investigative report for Charleston County Sheriff's Office case #06-018918 against defendant Maurice Jerome Prioleau. That Magwood did knowingly and willfully provide false information in this investigative report in the form of a photo lineup purported to have been signed by a witness in the investigation. That in later pre-trial meetings with the Solicitor's Office, Magwood did knowingly and willfully provide false information to an Assistant Solicitor and an investigator for the Solicitor's Office regarding the investigation and the accompanying investigative report. All this was done was done in violation of his duties, of good faith, honesty, and accountability in his capacity as a public official, and was done against the peace and dignity of the State of South Carolina. Special Agent Charles Ghent, SLED, conducted an investigation obtaining evidence and statements from witnesses that attest to the same.

Sworn to and Subscribed before me
this 7 day of May, 2009.

Signature of Judge

SA Charles Ghent
(AFFIANT)

Address: 6435 FAN ST
NORTH CHARLSTON, SC 29406
Phone: 843-797-3662

INTERNAL INVESTIGATION
REPORT OF DEFENDANTS
CANNON, ANDERSON, AND
ANTONIO

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

Memorandum

To: Chief Deputy R. Sowers *RS*
From: Inspector M. Anderson *MA*
Through: Chief Inspector M. Fields and
Assistant Sheriff A. Coury-Smith *AC*
Date: July 7, 2009
Subject: Internal Investigation
I/A # 2008-212

On October 7, 2008, Detective Eugene Magwood was placed on Administrative Leave with Pay pending the outcome of a criminal investigation of which he was the subject. On April 1, 2009, shortly before the conclusion of the criminal investigation, the Office of Professional Standards began an administrative investigation into the allegations contained in the criminal complaint. The investigation has now concluded and I will provide you with a synopsis of my findings.

Narrative:

This investigation revolves around Detective Magwood's investigation of the sexual assault of Catherine Boney and the assertion by Assistant Solicitor Greg Voight that Detective Magwood had possibly forged Catherine Boney's initials on a photo lineup during the course of the investigation. The case was initially referred to the South Carolina Law Enforcement Division (SLED) for criminal investigation, at which time Detective Magwood was placed on Administrative Leave with Pay. At the conclusion of the criminal investigation, and at the direction of the Attorney General's Office, Detective Magwood was charged with Misconduct in Office by SLED Special Agent Charles Ghent. Subsequent to the criminal charge, the Charleston County Sheriff's Office, Office of Professional Standards, placed Detective Magwood on Administrative Leave without Pay and proceeded with the administrative investigation. The administrative investigation included the following:

- A review of Detective Magwood's investigation into the sexual assault of Catherine Boney.
- A review of the SLED investigation.
- Interviews of Detective Eugene Magwood, Lt. Eric Watson, Sgt. Clarice Zimmer, Lt. Paul Tittle, and Sgt. Brian Williams, Assistant Solicitor Greg Voight, Solicitor's Office Investigator Ryan Kelly, and Catherine Boney.
- Forensic handwriting analysis of the photo lineup purported to have been used by Detective Magwood during his investigation into the sexual assault of Catherine Boney.

Sexual Assault Investigation (OCA 2006-018918-B)

On September 2, 2006, Charleston County Deputy Sheriff Mark Watson responded to the residence of Catherine Boney on N. Kenwood Drive in N. Charleston in reference to an allegation of sexual assault. The victim, Catherine Elizabeth Boney, stated that while walking home from a friend's house, an unknown black male approached her, forced her behind a barbershop located on Stall Rd., and sexually assaulted her.

Detective Magwood, who was the on-call detective on the incident date, responded to the scene, met with the victim and completed a written statement on her behalf. After the initial investigation, the case went cold until September of 2008 when Detective Magwood received a letter from the SLED Forensic Services Laboratory notifying him of a DNA "hit" indicating that semen recovered from a vaginal swab of Catherine Boney matched the DNA of Maurice Jerome Prioleau.

According to Detective Magwood's report, he then met with Catherine Boney and showed her a photo lineup from which she selected Maurice Prioleau as her assailant. In a supplement report dated September 21, 2008, Detective Magwood stated that after selecting Prioleau from the photo lineup, Catherine Boney then circled the photo and initialed and dated the lineup. Detective Magwood then charged Maurice Prioleau with First Degree Criminal Sexual Conduct and Kidnapping. He then met with and interviewed Maurice Prioleau at the Detention Center at which time Prioleau admitted to having consensual sex with Catherine Boney.

Initial Allegation

On October 14, 2008, Inspector Antonio and I met with SLED Special Agent Charles Ghent, Assistant Solicitor Greg Voight, and Investigator Ryan Kelly at the 9th Circuit Solicitor's Office. The purpose of the meeting was for Assistant Solicitor Voight to provide Special Agent Ghent with an overview of the concerns associated with the case. Inspector Antonio and I were present only as observers and did not take an active role in the meeting.

Assistant Solicitor Voight provided information on the initial investigation into the sexual assault of Catherine Boney. He further related that while preparing for trial on the case, he met with and interviewed Catherine Boney. It was then that Boney denied having ever seen the photo lineup that Detective Magwood submitted to the Solicitor's Office. At the request of the Solicitor's Office, Catherine Boney provided a handwriting sample of her initials and the date and time recorded on the photo lineup. The handwriting sample was noticeably different than that which was on the photo lineup. Voight stated that he then met with Detective Magwood and confronted him at which time Magwood denied having placed the victim's initials on the photo lineup.

SLED Investigative Report

On December 8, 2008, SLED Special Agent Charles Ghent filed his official report into the alleged misconduct of Detective Magwood. The SLED investigation included interviews and written statements from Lt. Eric Watson, Sgt. Clarice Zimmer, Sgt. Brian Williams, and Lt. Paul Tittle of the Charleston County Sheriff's Office. The investigation also included a summary of a phone call between Special Agent Ghent and Assistant Solicitor Voight, a written statement from Solicitor's Office Investigator Ryan Kelly, and a summary of an interview with Catherine Boney. The information gained from the SLED report included the following:

- Detective Magwood declined to speak with Special Agent Ghent, stating that he "didn't feel he had done anything wrong" and that he was "pretty much done talking." He also stated that all of his cases were signed off on by his supervisors and if he had done something wrong, then they should not have signed off on them.
- Solicitor's Office Investigator Ryan Kelly provided a written memorandum to Special Agent Ghent in which he stated that during the pre-trial preparation for *State v. Prioleau*, the victim, Catherine Boney, denied having signed, nor even seen the photo lineup submitted with the case file by Detective Magwood. Investigator Kelly then participated in a meeting with Detective Magwood and Assistant Solicitor Voight during which Detective Magwood maintained that during his investigation he showed the lineup to Catherine Boney after which *she* placed the date, time, and her initials upon it.
- Special Agent Ghent conducted an interview with Catherine Boney during which Boney advised that Detective Magwood had met with her at her residence and told her that her case had probably been solved because the suspect had been identified through DNA. She said that Detective Magwood then showed her a single color photograph of a man she identified as her attacker. She further stated that Detective Magwood attempted to show her another piece of paper that had a lot of pictures on it and told her he "needed her to sign some things." Boney stated that she had only seen one large picture; however, she did state that she was upset and didn't know if she had signed anything.
- Special Agent Ghent conducted an interview with Lt. Paul Tittle during which Lt. Tittle was unable to provide any information regarding the Prioleau case, stating that while he was the Lieutenant over the Criminal Investigations Division during that time, he did not remember that specific case. Lt. Tittle did provide information concerning an incident in which Detective Magwood was found to have sworn out a faulty arrest warrant against a citizen after only a cursory attempt to confirm the person's identity as the actual suspect in the case (*Jose Esparza IA 2005-098*).

- Special Agent Ghent conducted an interview with Sgt. Brian Williams during which Sgt. Williams stated that although he did not specifically recall the *Prioleau* case, he did remember conducting case reviews with Detective Magwood during which he "came down hard" on Detective Magwood for grammatical and other writing issues. Sgt. Williams did not recall having any specific conversations with Detective Magwood regarding photo lineups or other identification issues; however, he added that it may have come up during one of the case reviews.
- Sgt. Clarice Zimmer provided a written statement to Special Agent Ghent in which she stated that after Detective Magwood's Administrative Leave began, she contacted him by telephone and questioned him about Catherine Boney's identification of Jerome Prioleau as her attacker. According to Sgt. Zimmer, Detective Magwood advised her that he had shown Catherine Boney a single photograph of Jerome Prioleau. After Boney identified Prioleau using the single photograph, Magwood stated that he showed her the photo lineup and she again identified Prioleau as the suspect. Magwood stated that he forgot to have the witness circle and initial the photograph; however, according to Sgt. Zimmer, Detective Magwood stated that he had a conversation with Assistant Solicitor Greg Voight regarding the oversight after which he (Magwood) understood that it would be permissible to circle and initial the photograph on behalf of Boney since she had previously made the positive identification.
- Lt. Eric Watson provided a written statement to Special Agent Ghent in which he stated that prior to Detective Magwood being placed on Administrative Leave, he spoke with him regarding the Prioleau case. According to Lt. Watson, Detective Magwood advised him that he initially showed Catherine Boney a single photo of Jerome Prioleau, after which he was advised by Sgt. Williams to show her a photo lineup, which he did. Lt. Watson further stated that it was relayed to him that Catherine Boney was too emotional to circle Prioleau's photo on the lineup.
- During a telephone conversation between Special Agent Ghent and Assistant Solicitor Voight, Voight stated that he did not think he would have told Detective Magwood that it would be acceptable for him to sign a photo lineup on behalf of a victim. Voight also stated that while he was preparing the case for trial, Magwood adamantly denied having signed the lineup for the victim, repeatedly stating that Catherine Boney had signed the lineup. Voight further stated that during the pre-trial meeting he had with Magwood, he never mentioned showing the victim a single photo of Jerome Prioleau, nor did he mention any previous conversations he had had with Voight about the lineup. Finally, Assistant Solicitor Voight stated that prior to meeting with Detective Magwood on the case, he met with Catherine Boney. It was during *that* meeting that Catherine Boney stated she had never seen the photo lineup. Voight stated that he was completely unprepared for that revelation.

Administrative Investigation:

On May 7, 2009, Detective Magwood was charged with the Common Law offense of Misconduct in Office. Shortly before that, the administrative investigation into the events surrounding this allegation was begun. The administrative investigation began with the interview of the Sexual Assault victim, Catherine Boney.

Catherine Boney:

On April 1, 2009, Inspector Antonio and I interviewed Catherine Boney at her residence. Boney recalled that Detective Magwood met with her on the night she was assaulted. The next time she saw him was when he came by her house to show her some pictures. Boney stated that initially, Detective Magwood showed her a single, large photo of a subject she immediately recognized as her attacker. Boney further stated that Detective Magwood then attempted to show her another set of photos; however, she was "hysterical" at that point and refused to look at the photos. She stated that at that point, Magwood advised her, "don't worry about it, we'll take care of it."

The next time Boney spoke with Detective Magwood was by phone after "two other guys" (*presumably Assistant Solicitor Voight and Investigator Kelly*) met with her at her residence and showed her the photo lineup that Detective Magwood had submitted with the case file. Boney stated that after that meeting, she had called Magwood by phone and explained to him what had happened during the meeting with Voight and Kelly. She further told him that she was afraid she had "gotten him in trouble," to which Magwood replied that if something went wrong, it was his fault and not hers.

Later in the interview, Boney repeated her recollection of only seeing the single photo of Jerome Prioleau; however, she did say that she had signed something with him; offering the possibility that Magwood had covered the photos on the lineup and allowed her to initial it without having to look at Prioleau's picture again. When I showed her the initials that had been placed on the photo lineup and asked her about the inconsistencies between the handwriting on the lineup and the writing sample she provided to the Solicitor's Office, she again explained that she had been hysterical and this may have caused her to change her handwriting style.

Lt. Paul Tittle

On June 17, 2009, Inspector Antonio and I interviewed Lt. Paul Tittle in the Office of Professional Standards. Prior to the interview, Lt. Tittle was reminded of Garrity and Truthfulness. During the interview, Lt. Tittle advised that he did not have any additional information to provide, further stating that he did not remember this specific case.

Sgt. Brian Williams

On July 7, 2009, Inspector Antonio and I interviewed Sgt. Brian Williams in the Office of Professional Standards. Prior to the interview, Sgt. Williams was reminded of Garrity and Truthfulness. During the interview, Sgt. Williams advised that he did not have any additional information to provide, further stating that he did not remember this case.

Sgt. Clarice Zimmer

On May 29, 2009, Chief Inspector Fields and I interviewed Sgt. Clarice Zimmer in the Office of Professional Standards. Prior to the interview, Sgt. Zimmer was reminded of Garrity and Truthfulness. During the interview, Sgt. Zimmer advised that the written statement she provided to SLED during the criminal investigation was truthful and accurate. She further stated that around the time Detective Magwood was placed on Administrative Leave with Pay (*she was not certain as to whether she had spoken to him before or after he was placed on leave; however, she thought she remembered him coming to work on the day after the conversation*) she had a phone conversation with Detective Magwood during which he stated during the investigation, Sgt. Williams had told him to show the victim a photo lineup. Magwood stated that he did as he was told and that the victim picked Jerome Prioleau out of the lineup; however, Magwood stated that he had forgotten to have the victim circle and initial the lineup. According to Zimmer, Magwood then stated that he had spoken with Assistant Solicitor Greg Voight and had gotten the impression that Voight was "ok" with this. Sgt. Zimmer stated that the phone call was then ended and she did not speak with Detective Magwood again until November when she called to check on him. She stated that during that phone call, they did not discuss Magwood's pending criminal and administrative investigation. Sgt. Zimmer was unable to provide any further pertinent information.

Lt. Eric Watson

On May 29, 2009, Chief Inspector Fields and I interviewed Lt. Eric Watson in the Office of Professional Standards. Prior to the interview, Lt. Watson was reminded of Garrity and Truthfulness. During the interview, Lt. Watson advised that the written statement he provided to SLED during the criminal investigation was truthful and accurate. He further advised that he had spoken with Detective Magwood regarding the Prioleau case prior to Detective Magwood being placed on Administrative Leave. During that conversation, Lt. Watson recalled that Detective Magwood stated that he had shown Catherine Boney a single photo of the suspect after which Sgt. Williams had advised him to show her a photo lineup. Lt. Watson specifically questioned Detective Magwood as to whether or not he circled Prioleau's photo on the lineup, to which Magwood responded that he did not know. Lt. Watson stated that this conversation took place in person, in the Criminal Investigations Division office. Lt. Watson was unable to provide any further information.

Assistant Solicitor Greg Voight

On June 30, 2009, Inspector Antonio and I interviewed Assistant Solicitor Greg Voight at the 9th Circuit Solicitor's Office. Voight stated that during a pre-trial preparation meeting with Catherine Boney, she advised him that she had never before seen the photo lineup that Detective Magwood had submitted with the case file. Voight stated that after his meeting with Boney, and prior to his pre-trial meeting with Magwood, he reviewed the case file and noticed that the date that was printed on the photo lineup, beneath Catherine Boney's initials, bore a striking resemblance to the date printed on the written statement of the suspect, Maurice Prioleau. Voight stated that he expected Magwood to tell him that he *had* printed the date and time on the lineup, but not the initials, and was completely shocked when Magwood denied having made any handwritten marks on the lineup. At that point, Voight stated, he became angry as he felt Magwood was lying to him. He also denied having told Magwood that it was acceptable for him to print the victim's initials on the photo lineup.

Solicitor's Office Investigator Ryan Kelly

On June 30, 2009, Inspector Antonio and I met with Investigator Ryan Kelly at the 9th Circuit Solicitor's Office. Investigator Kelly recalled some of the details of the case, most notably that Detective Magwood adamantly denied having printed the date, time, and/or Catherine Boney's initials on the photo lineup. He was also present for the meeting with Boney at her residence when she denied having seen the photo lineup, as well as the pre-trial meeting with Detective Magwood and Assistant Solicitor Voight during which Voight confronted Magwood about the lineup.

Detective Eugene Magwood

On May 27, 2009, Inspector Antonio and I interviewed Detective Eugene Magwood in the Office of Professional Standards. Prior to the interview, Detective Magwood was reminded of Garrity and Truthfulness. Detective Magwood also provided a signed written statement prior to the interview in which he stated the following:

- Magwood met with Catherine Boney outside her residence on November 7, 2007.
- Magwood showed her the lineup, at which time Boney, who immediately began to cry and curse, identified the suspect.
- Magwood told Boney that he needed her to initial and date the lineup.
- Boney initialed the lineup and then turned away, still crying.
- Magwood then placed a single photo of the suspect next to the lineup and told Boney that he needed her to date the lineup.
- Boney refused to look at the lineup again.
- Magwood then dated the lineup where Boney had initialed it.

During the interview, Detective Magwood restated the above facts gained from his written statement. The following statements were also made:

- Detective Magwood stated that the only time he showed Catherine Boney a single photograph of Maurice Prioleau was *after* he had shown her the lineup (*this contradicts what Catherine Boney told the Solicitor's Office and the Office of Professional Standards; however, Detective Magwood did question her credibility since she had made some conflicting statements about the lineup. Lt. Watson also stated that Detective Magwood told him that he had shown Catherine Boney a single photo of Maurice Prioleau prior to showing her the photo lineup. Sgt. Zimmer stated that Magwood told her the same thing*).
- Detective Magwood adamantly denied having placed Catherine Boney's initials on the photo lineup, reiterating that Catherine Boney was the one who had placed her initials on the lineup (*this contradicts the findings of the Questioned Documents Section of the SLED Forensics Lab – see page 9*).
- Detective Magwood stated that during the pre-trial meeting with Assistant Solicitor Voight and Investigator Kelly, he denied having written Catherine Boney's initials, but admitted to having written the date on the lineup (*Assistant Solicitor Voight and Investigator Kelly stated that Magwood told them that Catherine Boney had written the date, time, and her initials on the lineup. In addition to this, Detective Magwood's supplemental report that documents the photo lineup indicates that Catherine Boney wrote the date, time, and her initials. When questioned about the supplemental report, Magwood stated that he must have made an error*).
- Detective Magwood stated that he never spoke with Lt. Watson about the Prioleau case. He further stated that he had no reason not to trust Lt. Watson; however, he did state that Sgt. Zimmer was lying in her statement in which she claimed to have had a conversation with him regarding the case (*this contradicts the statements made by Lt. Watson and Sgt. Zimmer*).
- Detective Magwood denied having been told by Assistant Solicitor Voight that it was acceptable for him to place the victim's initials on the photo lineup.
- Detective Magwood stated that Sgt. Williams had suggested to him that he should show Catherine Boney the photo lineup, stating that it would be "icing on the cake."

On June 1, 2009, Inspector Antonio and I again interviewed Detective Magwood in the Office of Professional Standards. Prior to the interview, Detective Magwood was reminded of Garrity and Truthfulness. During the interview, Detective Magwood maintained that he wrote the date and time and that Catherine Boney had placed her own initials on the photo lineup. Magwood also stated that during the pre-trial meeting with Assistant Solicitor Voight, he told Voight and Investigator Kelly that *he* had written the date and time under Catherine Boney's initials.

Detective Magwood also maintained that the date and time that had been written on the photo lineup were accurate. He recalled having picked up the lineup on the same date that he met with Catherine Boney. Detective Magwood also stated that he had obtained the time from a watch he was wearing when he placed the date and time on the lineup (*Detective Magwood further explained that he owns two watches. According to Magwood, each watch carries the correct time; however, they are both behind one day on the date*). We then questioned Magwood as to why the lineup was created at the jail on 11/7/07 at 3:45 pm and he had indicated that Catherine Boney had initialed the lineup on 11/7/07 at 10:40 am. Detective Magwood could not provide an explanation for this.

SLED Forensic Handwriting Analysis

On June 10, 2009, Inspector Antonio and I met with Detective Magwood in the Office of Professional Standards for the purpose of obtaining a handwriting sample from him. Prior to giving the sample, Detective Magwood was reminded of his Garrity rights. Detective Magwood provided twenty-five handwriting samples as per the instructions given by Special Agent Gail Heath of the Questioned Documents Section of the SLED Forensics Laboratory. These handwriting samples, along with similar samples voluntarily submitted by Catherine Boney, were submitted to the SLED Forensics Laboratory for analysis on June 11, 2009.

On June 29, 2009, I received the SLED Forensic Services Laboratory Report from Special Agent Gail Heath. Special Agent Heath compared the known writing samples from Detective Magwood and Catherine Boney to the photo lineup in question. Based on the evidence examined, it was determined that Catherine Boney did not write the date, time, nor the initials "CEB" on the photo lineup. It was also determined that Detective Magwood did write the date and time on the photo lineup. Also, there were indications that Detective Magwood wrote the initials "CEB" on the photo lineup (*in an earlier phone conversation, Special Agent Heath explained that this is a finding with lesser certainty than that of "did" or "did not" write the initials in question.*)

Findings:

After a careful review of the facts and circumstances surrounding this incident, the Office of Professional Standards has concluded that the complaint against Detective Magwood is **SUSTAINED**. The Office of Professional Standards has further concluded that Detective Magwood violated the policies and procedures of the Charleston County Sheriff's Office, specifically, Procedure 1-09, Agency Rules and Regulations, Section III, Paragraph A, Sub-paragraph thirty-four, "Truthfulness," which states:

Upon order of the Sheriff or other superior officer, personnel will truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Sheriff's Office which may be asked of them.

The Office of Professional Standards has also concluded that Detective Magwood violated Procedure 1-09, Agency Rules and Regulations, Section III, Paragraph A, Sub-paragraph ten, "*Unsatisfactory Performance*," which states:

Employees will maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Employees will perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the agency. Unsatisfactory performance may be demonstrated by lack of knowledge of the application of laws required to be enforced (sworn personnel); unwillingness or inability to perform assigned tasks; failure to conform to work standards established for the employee's rank, grade, or position; failure to take appropriate action on the occasion of a crime or disorder; failure to provide assistance to any member of the public whether requested to do so or observed by the deputy sheriff to apparently be in need; other conditions deserving attention; or absence without leave. In addition to other indicators of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of infractions of rules, regulations, directives, or orders of the agency.

The basis for these conclusions rests on the fact that there is strong evidence to suggest that:

- 1) Detective Magwood provided the victim with a large color photograph of the suspect before making any attempt to show the victim the lineup containing the same photo.
- 2) Detective Magwood placed the date, time, and the victim's initials on the lineup and then filed an official report indicating that the victim had written the date, time, and her own initials.
- 3) During pre-trial preparation for this case, Detective Magwood was untruthful in his statements to Assistant Solicitor Voight regarding facts one and two, listed above.
- 4) On two separate occasions during the administrative investigation, Detective Magwood was untruthful in his statements to the Office of Professional Standards regarding facts one and two, listed above.

Cc: Sheriff J. Al Cannon, Jr. Esq.

THREE SEPARATE NEWS
ARTICLES REGARDING
PLAINTIFF EUGENE
MAGWOOD AND THE
CRIMINAL CHARGES

Sheriff's deputy investigated for misconduct in office

Posted May 08, 2009 4:44 PM EDT
 Updated May 15, 2009 4:41 PM EDT

By Nicole Johnson [b10](#) | [email](#)

CHARLESTON COUNTY, SC (WCSC) - A Charleston County Sheriff's deputy who was arrested by state police, is out of jail on his own personal recognizance. Eugene Magwood of Johns Island is accused of giving false information during a rape investigation.

The charges come after an internal investigation that started at the sheriff's office, who then turned the case to state investigators.

Magwood has been with the sheriff's office at least ten years. Sheriff Al Cannon says he was a detective from Johns Island.

"He's generally done a good job. He comes from an area of the county, a rural part where he grew up. He knows a lot of people. He has been able to get and develop information in that community that others probably wouldn't have been able to do," Sheriff Cannon said.

The State Law Enforcement Division says sometime between November 2007 and December 2008 detective Magwood provided prosecuting attorneys with false information in the investigation of a rape case from 2007 involving defendant Maurice Jerome Prioleau.

The sheriff says they've found nothing to indicate that the detective knew the defendant.

SLED investigators say he gave false information in the form of a photo lineup that was supposed to have been signed by a witness. The sheriff says his detective should have gotten the witness to sign a certain document and instead he signed himself.

"To be honest with you I think it's more a reflection of sloppiness," Sheriff Cannon said.

The sheriff says they found out about the discrepancy from the solicitor's office about six months ago.

"We agreed that there was something that needed to be looked at there and so we contacted SLED and asked them to determine whether or not an investigation was warranted, and if so to conduct that investigation," Sheriff Cannon said.

The sheriff says his office and the solicitor's office haven't found discrepancies in any past cases involving detective Magwood.

SLED says Magwood has violated his duties of good faith, honesty and accountability.

Detective Magwood has been on administrative leave without pay. The state Attorney General's office will prosecute the case. Magwood faces a maximum penalty of 10 years in prison.

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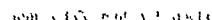
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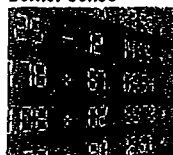
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Detective arrested on misconduct charges

Nadine Parks

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/ Magwood

The State Law Enforcement Division on Thursday arrested a nine-year veteran of the Charleston County sheriff's office and accused him of forging a witness' lineup document and giving false information to the 9th Circuit solicitor's office about a 2006 rape case.

Detective Eugene Magwood, 54, of Johns Island, is charged with common law misconduct in office, a crime with a maximum penalty of 10 years in jail, said Mark Plowden, public information officer for the S.C. attorney general's office.

Magwood, who has been an investigator since 2001, was released on a personal recognizance bond and placed on administrative leave with pay, sheriff's Maj. John Clark said.

An arrest affidavit said Magwood provided false information in the form of a photo lineup. The accusation is that he forged a witness' signature or initials, Plowden said.

The affidavit said that in pre-trial meetings, "Magwood did knowingly and willfully provide false

investigation and the accompanying investigative report."

Citing the ongoing nature of the state's investigation, Plowden and Clark wouldn't reveal more details. Clark said the sheriff's office spotted discrepancies and reported them to solicitors and SLED.

"We did not like what we saw," Clark said.

Ninth Circuit Solicitor Scarlett Wilson, through a spokesman, declined to comment on the case because it involves solicitors who could be called as witnesses. It is not clear how, if at all, the arrest will affect the 2006 rape case or any other cases Magwood investigated.

Magwood could not be reached for comment. He had first been employed by the sheriff's office as a detention officer in 1998 and became a deputy in 2000, Clark said.

(AP) -- CHARLESTON, S.C. (AP) -- A sheriff's detective in South Carolina has been arrested and accused of misconduct in office in a 2006 rape case.

The State Law Enforcement Division arrested 54-year-old Eugene Magwood of the Charleston County Sheriff's Office on Thursday.

The Post and Courier of Charleston reported Magwood had been with the department for nine years and is accused of forging a witness lineup document and giving false information to prosecutors. Attorney general's spokesman Mark Plowden says Magwood is accused of forging a witness' signature on initials.

The Johns Island man faces a maximum penalty of 10 years in prison if he's convicted.

Sheriff's Maj. John Clark says Magwood has been placed on administrative leave with pay. There was no telephone listing for Magwood.

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

2013-CP-10-3669

3
4 EUGENE MAGWOOD)

5 VS.)

TRANSCRIPT OF RECORD

6 J. AL CANNON, JR. IN HIS)

7 OFFICIAL CAPACITY AS)

JULY 30, 2014

8 SHERIFF OF CHARLESTON)

CHARLESTON, SC

9 COUNTY, INVESTIGATOR)

ANDERSON, INVESTIGATOR)

10 ANTONIO, CHARLES GHENT, AND)

SOUTH CAROLINA LAW)

ENFORCEMENT DIVISION)

11
12 B E F O R E:

13 HONORABLE R. MARKLEY DENNIS, JR.

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

15 STEPHANIE R. FAJARDO, ESQUIRE

16 Attorney for the Plaintiff

17 ROBIN L. JACKSON, ESQUIRE

18 Attorney for the Defendants

19 Ruth L. Mott, RPR, CRR
20 Official Court Reporter
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22
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24
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1 I N D E X

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3 CERTIFICATE OF REPORTER 19
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7 E X H I B I T S

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1 THE COURT: Memorandums filed on behalf of each side are
2 incorporated fully for purposes of review and submission,
3 attached thereto. You may rely on all of those for purposes
4 of review. Thank you.

5 All right, Ms. Jackson, your motion.

6 MS. JACKSON: Thank you.

7 THE COURT: Let's go through, identify yourselves and
8 the parties you represent.

9 MS. JACKSON: Yes, I'm Robin Jackson from Senn Legal,
10 and I represent all of the defendants in this case.

11 THE COURT: Okay.

12 MS. FAJARDO: Stephanie Fajardo of the Finney Law Firm.
13 I represent the plaintiff, Eugene Magwood, in this case.

14 THE COURT: Thank you.

15 MS. JACKSON: Your Honor, this case is a little unusual
16 in that we have two agencies involved with two parallel
17 investigations. Mr. Magwood was a detective with the
18 Charleston County Sheriff's Office when he was assigned to
19 investigate a rape case in 2006.

20 THE COURT: Okay.

21 MS. JACKSON: During the course of that investigation
22 there were some photo lineups that were shown to the victim,
23 and as the case was being prepared for prosecution, the
24 victim met with the assistant prosecutor, Greg Voigt, and his
25 investigator, Ryan Kelly. In those meetings they were

1 speaking with the victim about the photo lineup, and she said
2 to them that she had not seen a photo lineup. When they
3 showed her a sixpack photo lineup, she said she had only ever
4 seen a single photo. They discussed this with her several
5 times, and her story remained the same. They then spoke with
6 Mr. Magwood, who said, no, in fact, he had shown her the
7 sixpack and that she had initialed it, dated it and timed it;
8 and that if she said she didn't do that, then she was
9 mistaken. Mr. Voigt had serious concerns about this, and he
10 took those concerns to the sheriff's office. The sheriff's
11 office, because it was one of their own officers, then
12 requested by letter to SLED that SLED perform an
13 investigation into these concerns.

14 SLED assigned agent Charles Ghent, who is a named
15 defendant in this case, and he performed an investigation,
16 using Officer Anderson from the sheriff's office as a liaison
17 to contact at the sheriff's office. During the course of
18 that SLED investigation Mr. -- Agent Ghent attempted to speak
19 with Mr. Magwood, did speak with Ms. Boney, Mr. Voigt, Mr.
20 Kelly and a number of other people from the sheriff's office,
21 and looked at a number of documents, including the photo
22 lineups and other aspects of the investigation. At the end
23 of his investigation he made absolutely no conclusions. What
24 he did was gather all of this information, put it together in
25 a packet. It was then turned over to the 9th Circuit

1 Solicitor. Solicitor Wilson then determined that because it
2 was a Charleston County officer who was being accused, she
3 may have a conflict. It was then turned over to the Attorney
4 General's office.

5 After the SLED report was complete and turned over, then
6 and only then did the Charleston County Sheriff's Office
7 decide that they should perform an internal affairs
8 investigation pursuant to Garrity. That investigation was
9 performed by Investigators Anderson and his -- the assisting
10 officer was Investigator Antonio, who is also a named
11 defendant in this case. During the course of that
12 investigation Mr. Magwood was asked to be interviewed. He
13 was informed that this would be pursuant to Garrity and not
14 used against him in any criminal matters. He was
15 interviewed. A number of the same people from the SLED
16 investigation were also interviewed by the sheriff's
17 investigators, and at the end of that investigation they made
18 a determination of untruthfulness, based on the fact that at
19 one point Mr. Magwood had told people that the victim had
20 initialed, dated and timed the lineup, and at other points he
21 admitted to having dated and timed the lineup himself. There
22 were also other discrepancies in his accounting of events,
23 including the fact that the lineup is initialed, dated and
24 timed approximately five hours before it shows it was printed
25 at the detention center. There was also other issues that

1 came up in the course of his interviews with internal
2 affairs. The sheriff's office used the Garrity
3 investigation, it was sent up the chain of command, and
4 eventually Mr. Magwood was terminated from the sheriff's
5 office. He is not suing over the termination. He is only
6 suing over the prosecution.

7 The Attorney General's office then made the
8 determination to prosecute Mr. Magwood for conduct unbecoming
9 an officer based on the issues with that photo lineup. They
10 asked Agent Ghent, as the investigating officer, to procure
11 an arrest warrant, and he did so. It was signed by
12 Magistrate Gosnell, and the plaintiff was arrested. He was
13 then put on trial, and the victim in the underlying rape case
14 testified that she didn't remember whether or not she had
15 initialed, dated and signed the lineup, and he was found not
16 guilty.

17 THE COURT: Okay.

18 MS. JACKSON: During the course of both the Garrity
19 investigation and the criminal investigation, handwriting
20 samples were obtained from both the rape victim and from Mr.
21 Magwood, and they were both sent to SLED at different times.
22 The outcome of those handwriting analyses were that the
23 victim, Ms. Boney, was eliminated as the source of all three,
24 the initials, the date and the time. Mr. Magwood was
25 determined to have written the date and time and that it was

1 inconclusive as to whether or not he wrote the initials.

2 THE COURT: Okay.

3 MS. JACKSON: Mr. Magwood has now sued the three
4 officers who were involved in the various investigations, the
5 Sheriff and the South Carolina Law Enforcement Division for a
6 number of causes of action, and we're asking for summary
7 judgment on all of the causes of action. The first one is
8 negligence and gross negligence. Your Honor, we ask that the
9 individuals be dismissed or receive summary judgment on
10 those, as they are not proper defendants under the Tort
11 Claims Act or the negligence and gross negligence cause of
12 action.

13 THE COURT: Let me ask, what's your position on the
14 individuals?

15 MS. FAJARDO: And, Your Honor, in my summons and
16 complaint I believe it's to all the defendants, and we would
17 have no issue, obviously the individual defendants would be
18 covered by --

19 THE COURT: You don't name them, I don't think, under
20 the statute. I haven't read it recently, but I believe
21 that's what it says.

22 MS. FAJARDO: And I apologize. We wouldn't oppose that.
23 They're covered by the Sheriff.

24 THE COURT: Okay. That's granted.

25 MS. JACKSON: Your Honor, we would assert that the

1 agencies are entitled to summary judgment on the gross
2 negligence cause of action for a number of the exceptions,
3 including subsection 25, because there was no gross
4 negligence, which we'll get into as we talk about the other
5 causes of action. Subsection 5, which is --

6 THE COURT: Let me ask you a question, before you get
7 into that, and this has been years ago that I tried one, and
8 I granted the directed verdict after the trial, and there was
9 a case that allowed me to weigh it, the negligence, from
10 being negligence, simple carelessness or gross negligence,
11 but how do I do that on summary judgment? I mean, I don't
12 quarrel that the evidence at trial might be -- if there's no
13 negligence, that's one thing, but if it's -- if it's you say
14 it's gross there's --

15 MS. JACKSON: That would be our position, that there is
16 no evidence of any negligence, let alone gross negligence.

17 THE COURT: All right. That's fine.

18 MS. JACKSON: The subsections are, gross negligence
19 subsections, subsection 5, officer discretion, subsection 17,
20 outside the course and scope of employment, subsection 20, an
21 after-admission of another person, and subsection 3,
22 execution of a court order. Execution of a court order is
23 the simplest. There was a warrant issued. It was signed by
24 Magistrate Gosnell, it was requested by the Attorney
25 General's office, and we would assert that that is evidence

1 of probable cause for the arrest; and, therefore, with regard
2 to the arrest itself, that there's no evidence of gross
3 negligence or false arrest.

4 THE COURT: This is not a case that was dismissed. This
5 is a case that was tried and he was quitted.

6 MS. JACKSON: Correct.

7 THE COURT: Okay.

8 MS. JACKSON: Your Honor, with regard to the subsection
9 on discretion, all three of these officers were given -- are
10 given quite a bit of discretion in determining how to go
11 about performing these investigations, whether it be pursuant
12 to Garrity or the SLED investigation. All of the officers'
13 depositions are included. They all testified that they spoke
14 with every person that they determined to have any
15 information. They made a decision using their discretion to
16 obtain the handwriting samples, and they all said that if Mr.
17 Magwood had given them any other persons who may have
18 information, that they certainly would have considered that
19 in doing their investigation. So we would assert that they
20 certainly waived any interest and used their discretion in
21 these investigations.

22 Subsection 17 and subsection 20 are a little more
23 unusual because we have a plaintiff who was an employee, and
24 so on the subsection 17, where it talks about employee
25 conduct outside the course and scope, if the Court makes a

1 decision that that only refers to defendants, then we would
2 concede that that's not relevant; but if it could also apply
3 to the fact that the plaintiff was an employee, we would
4 assert that by the virtue of --

5 THE COURT: I think it's the defendant.

6 MS. JACKSON: All right. Then subsection 20 would apply
7 to --

8 THE COURT: Excuse me for interrupting. You may be
9 right, but I think it applies only -- I think it's used to
10 find when you can bring a suit against a state agency, and I
11 think that's -- it deals with them being defendants to me,
12 so, but anyway --

13 MS. JACKSON: Subsection 20 would apply then only to
14 SLED and Agent Ghent, which would be the act or omission of
15 another person not limited to criminal action; and we would
16 assert that Mr. Magwood's actions in not being truthful about
17 the photo lineup and in the way that this underlying
18 investigation was undertaken would bring that immunity into
19 play, that it was his own actions that brought this about.

20 THE COURT: Okay.

21 MS. JACKSON: And that would apply only to SLED. Your
22 Honor, the remaining causes of action, the first one is false
23 arrest, which we've discussed. He was arrested based on a
24 warrant signed by a magistrate. The next one is malicious
25 prosecution. Malicious prosecution, as to SLED, the SLED

1 agent drew no conclusions and made no decisions about the
2 investigation that he conducted. He testified in his
3 deposition that it was not his job to draw conclusions and
4 that even if asked, he is not to give conclusions about his
5 opinions on guilt or innocence. He turned it over and
6 allowed the prosecuting agency to make that decision.

7 Additionally, with regard to the Charleston County
8 Sheriff's Office investigation, the Garrity investigation in
9 this case was requested by the prosecuting agency and was
10 refused. The sheriff's office refused to turn it over
11 because the investigation was done pursuant to Garrity, and
12 that is why the Attorney General's office obtained its own
13 handwriting sample, because they weren't able to obtain the
14 one from the sheriff's office; and so we would assert that
15 neither SLED, nor the sheriff's office, participated in the
16 prosecution of this case beyond the extent that the officers
17 were subpoenaed to testify at the trial.

18 The same would go for abuse of process. There is no
19 evidence that any of these officers had an ulterior purpose.
20 Agent Ghent testified that he had never met Mr. Magwood
21 before, and there's no evidence that Agent -- excuse me,
22 Investigator Anderson or Investigator Antonio would have
23 gained anything by virtue of their investigation.
24 Additionally, they can make a finding, but they do not make
25 any determinations about the punishment that will be handed

1 down or the outcome of the investigation, so we would assert
2 that we're entitled to summary judgment on abuse of process.

3 Civil conspiracy, they have alleged that the three
4 officers conspired with one another. Agent Ghent testified
5 that his only communication was with Investigator Anderson,
6 and that was merely for the purposes of scheduling meetings
7 with officers of the sheriff's office and obtaining
8 documentation from the sheriff's office. Investigators
9 Antonio and Anderson would fall within the intra-corporate
10 conspiracy doctrine that people within the same company
11 cannot conspire with one another as they are considered to be
12 a single agency. Additionally, Investigator Anderson was the
13 primary on this. Investigator Antonio was present for the
14 interviews so that there would be a second set of ears.
15 There's no evidence that either of them ever conspired to
16 cause harm to Mr. Magwood. They both testified that they
17 actually didn't agree with the prosecution of Mr. Magwood but
18 that they had no involvement in that and that it wasn't up to
19 them.

20 The next cause of action is defamation and slander.
21 It's our position that there were no statements made outside
22 the course of each one of these agencies' official
23 investigations, and there's no evidence that there were any
24 statements made outside the course of the official
25 investigations. Additionally, pursuant to South Carolina

1 Code 23-23-90, communications between law enforcement
2 agencies regarding officers are protected. Finally, Your
3 Honor, we would assert that punitive damages are not proper.

4 THE COURT: Okay.

5 MS. JACKSON: Thank you.

6 THE COURT: Response.

7 MS. FAJARDO: Thank you, may it please the Court. I
8 want to really just cut to the chase to the main issue of
9 this. In regards to the victim, and I agree with the facts
10 leading up to why Mr. Magwood was charged with the allegation
11 he was; however, the victim, alleged victim, in the sexual
12 assault, Ms. Boney, with the initials that were put on the
13 photo lineup, Ms. Boney told all of the defendants multiple
14 times that she may have signed the lineup, she was
15 hysterical, she was emotional, and that she couldn't
16 remember. In fact, in Investigator Anderson's notes, he has
17 his handwritten notes he took during the interview, he put
18 that she told him on several occasions that she did sign
19 something, she remembered signing something.

20 THE COURT: Let me just interrupt you.

21 MS. FAJARDO: Yes.

22 THE COURT: All that being said, so what? They didn't
23 make the decision. The decision was made by the Attorney
24 General.

25 MS. FAJARDO: Well, and we would take some slight issue

1 with that.

2 THE COURT: I appreciate it, but who issued the warrant?
3 I mean, the warrant was apparently issued by Judge Gosnell.

4 MS. FAJARDO: Yes, and Agent Ghent, he's listed on the
5 warrant as being the prosecutor. He wrote the affidavit.

6 THE COURT: The fact that he's a prosecuting officer, if
7 they dismiss it, all of this may have something, but there
8 was a trial, and I'm even hearing testimony they said, I
9 don't think it should go to trial. That's not their job.
10 That's not what a law enforcement officer does.

11 MS. FAJARDO: I certainly understand that, and our
12 contention is that they left out information that wasn't
13 presented to the magistrate that Ms. Boney had denied, they
14 told the magistrate --

15 THE COURT: I appreciate all of that, but there's an
16 investigation and then result of an investigation, which was
17 thoroughly investigated by agencies. I appreciate that but,
18 again, how in the world do you get to sue when an agency does
19 an investigation and you were acquitted. I mean, I don't
20 understand. I mean, this is -- I hear you, but if that's the
21 case, every police officer is subject to being prosecuted --
22 I mean, being sued every time they investigate a case and if
23 they miss something. That's what you're saying, we missed
24 something.

25 MS. FAJARDO: Just to clarify, we're not saying they

1 missed something. We're saying that they willfully left
2 things out of.

3 THE COURT: Where's the evidence that said that they
4 willfully did that?

5 MS. FAJARDO: They placed in their reports, in their
6 affidavits, that Ms. Boney denied signing the lineup, and
7 that was untrue. She didn't deny signing the photo lineup.
8 She said that she could not recall. And we find that is a
9 difference. That's our position, I just want to be clear,
10 that they misstated.

11 THE COURT: All right. What else?

12 MS. FAJARDO: And that's the main issue. Obviously, we
13 understand that probable cause is a large issue that goes
14 throughout and that we have to prove a lack of probable
15 cause.

16 THE COURT: It's there and it went to trial. It went to
17 a jury. Good gracious, if that isn't probable cause, I don't
18 know what is. You got by directed verdict. You got by a lot
19 of things, so clearly that's probable cause.

20 MS. FAJARDO: In regards to our defamation suit, I had
21 attached to my brief several news articles that were
22 published regarding Mr. Magwood, and a lot of this does go
23 back to our contention that they knew that Ms. Boney was not
24 denying it; and, therefore, their reports, that we find to be
25 false, that they were incriminating, they published that in

1 the newspaper for all of Charleston County to see.

2 THE COURT: They published it, or the paper decided to
3 write about it?

4 MS. FAJARDO: The paper wrote about it. There were
5 statements that came from both agencies.

6 THE COURT: Precisely, and wouldn't it be lovely if we
7 lived in a country where we didn't have to do that, but we
8 have something called freedom of information, and we have a
9 duty to do that; and your client knows that as well as
10 anybody, being in public service.

11 MS. FAJARDO: I understand. In regards to our
12 negligence cause of action, we find that they had a duty to
13 act prudently within their job, the execution of their
14 duties, and we feel that they hadn't. In regards to the
15 civil conspiracy, obviously I have cited several cases in my
16 brief demonstrating, we believe, they did work together.
17 Their investigations overlapped. They were able to share
18 information. We do concede in regards to the parts of the
19 investigation that was done under Garrity, that was not
20 shared, it was subpoenaed, and some of that did come out at
21 trial; but Investigator Anderson was present at meetings, he
22 had a copy of the SLED file, and we feel that they had duties
23 to point out that there were inconsistencies and untruthful
24 things being stated in this and they allowed the prosecution
25 of the plaintiff to continue forward.

1 THE COURT: Let me ask you a question.

2 MS. FAJARDO: Yes, Your Honor.

3 THE COURT: Was there any action filed against the
4 Attorney General or the agent prosecuting this case for the
5 Attorney General?

6 MS. FAJARDO: There was not, Your Honor.

7 THE COURT: Nothing was filed in the Office of
8 Disciplinary Counsel concerning that.

9 MS. FAJARDO: I'm not aware of that.

10 THE COURT: What you're arguing is that that was known
11 to the prosecuting officer, to an attorney who handled this
12 case, and they didn't disclose that. Don't you think -- was
13 anything suggested to the judge or anybody that they had
14 failed to disclose that and were obviously hiding something?

15 MS. FAJARDO: I am not aware of anything. I was not the
16 criminal defense attorney.

17 THE COURT: I understand that, but the bottom line is
18 that's an obligation of the prosecuting officer. These
19 people, the defendants, didn't have a thing to do with that.
20 That's a decision made by somebody other than them, and
21 you're not suing them because you can't. We know that.

22 MS. FAJARDO: Yes, Your Honor.

23 THE COURT: So I appreciate it. This is a case, if they
24 want to extend it to that, then so be it. I'm going to grant
25 your motion for summary judgment. Prepare the order on all

1 the reasons that you set forth in your brief, please.

2 MS. JACKSON: Thank you.

3 MS. FAJARDO: Thank you, Your Honor.

4 THE COURT: Thank you so much. I appreciate you coming,
5 and I appreciate your argument too and your memorandum too.

6 MS. FAJARDO: Thank you, Your Honor.

7 THE COURT: Good luck to you, Mr. Magwood.

8 MR. MAGWOOD: Thank you, sir.

9 MS. JACKSON: Thank you, Judge.

10 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

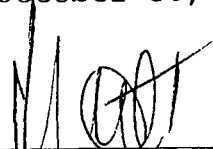
2 STATE OF SOUTH CAROLINA

3 COUNTY OF CHARLESTON

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 30th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 30, 2014

16
17 
18 _____
Ruth L. Mott
Official Court Reporter

STATE OF SOUTH CAROLINA

Plaintiff

V.

MR. EUGENE MAGWOOD,

Defendant.

TRANSCRIPT OF RECORD

JUNE 29 - 30, 2011
CHARLESTON, SOUTH CAROLINA

(Excerpt of witness testimony)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

MR. Joshua R. Underwood, Asst. Attorney General
Mr. C. Wilson Smith, III, Asst. Attorney General
Representing The State

Mr. Clifford Scott, Esquire
Representing The Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

(Testimony of Ms. Catherine Boney.)

THE COURT: State may proceed with it's next witness.

MR. UNDERWOOD: Your Honor, at this time the State calls Catherine Boney.

MS. CATHERINE BONEY,
after having first been duly sworn to state the truth,
the whole truth and nothing but the truth, testified on
her oath as follows:

THE COURT: You may proceed.

MR. UNDERWOOD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q Good afternoon, Ms. Boney, I will try to be as brief as possible with you this afternoon.

Without going into details, were you the victim of a violent crime several years ago?

A Yes.

Q And was the defendant, Mr. Magwood, the investigator who looked into that crime for the sheriff's office?

A Yes.

Q And is he the gentleman sitting at the table over here?

1 A Yes.

2 Q Ms. Boney, did he ever show you any photographs
3 during that investigation?

4 A Yes.

5 Q Did he show you a single photograph or a group
6 of photographs?

7 A Both.

8 Q Both. What did he show you initially when he
9 came to meet with you?

10 A The big one first.

11 Q Showed you a big one?

12 A He had both, though.

13 Q Right. Do you remember signing any photographs?

14 A Well he asked me to sign both. But he asked me
15 to sign it, but I got hysterical, I was all upset. So
16 he told me, while he comfort me. Later on he said
17 we'll sign it later, just calm down. He was trying to
18 calm me down.

19 Then later on he tried to show me again. I got
20 hysterical again. Then all of the sudden he said --
21 well he looked at it and said, well do you see it? And
22 I cried. And to be honest, I looked and I said, it's
23 down below. The last one down below.

24 And but then he said, okay, we will wait and I
25 will be back tomorrow.

1 Q So, Ms. Boney, you said that he showed you a
2 single photograph?

3 A Yes.

4 Q Then he wanted to show you a group of
5 photographs and you got hysterical?

6 A Yes.

7 Q Then he tried again to show you these
8 photographs and you were again hysterical?

9 A Yes.

10 Q Now is this all in the same trip, or did he come
11 to your house more than once?

12 A He did it the first time. He came three times,
13 at least three times.

14 Q Were all three of these times about the
15 photographs?

16 A Yes.

17 Q So the first trip he showed you one photograph?

18 A Both. But he tried to show me both.

19 Q He was successful in showing you one photograph?

20 A Yes.

21 Q And he wanted to show you more, but he didn't
22 get to because you were upset?

23 A Yes.

24 Q Then when he came back again he was going to ask
25 you again to look at these photographs, but you were

1 upset again?

2 A Yes.

3 Q Do you remember ever signing those photographs?

4 A To be honest with you, I don't remember. I was
5 so upset, I don't remember.

6 Q Do you remember meeting with Greg Voigt and Ryan
7 Kelly from the solicitor's office to get ready for the
8 trial?

9 A I met with some people, sir, I don't remember
10 their names but I remember their faces.

11 Q Do you remember if you met with the prosecutor
12 on the case?

13 A Yes.

14 Q And in meeting with him, do you remember him
15 asking you questions about the photographs?

16 A Yes.

17 Q And at that time do you remember telling him
18 that that was the first time you had seen the group of
19 six photographs?

20 A I don't remember.

21 Q Do you remember telling him that the initials on
22 those photographs were not yours?

23 A I told him I don't know, it could be, it could
24 not be because I done sign so many times. You guys had
25 me signing and signing. I don't know, I was so upset.

1 MR. UNDERWOOD: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 Q (By Mr. Underwood) Now, Ms. Boney, I'm going to
5 show you what has been marked for identification as
6 State's Exhibit No. 1. I'm covering up the actual
7 photographs on it. I just want you to focus on the
8 handwritten portion towards the bottom.

9 Can you look at that for me please?

10 Did you get a good look at that?

11 A Yes, sir.

12 Q Are those your initials?

13 A I don't know. I really don't. I can't tell
14 looking at it. Me being upset, I could have signed it.

15 Q Is that the way that you normally sign your
16 initials?

17 A At that time I wasn't normal so I don't know.

18 Q If you could look at the date that's written
19 there. Is that the style in which you write dates on a
20 normal basis?

21 A No. At that time I don't know. To be honest, I
22 don't.

23 Q Okay. Do you remember writing handwriting
24 examples for Agent Ghent from SLED?

25 A Yes.

1 Q I'm sorry, excuse me, disregard that question.
2 With a handwriting sample with Ryan Kelly from the
3 solicitor's office?

4 A Yes.

5 Q I'm now showing you what has been marked as
6 Exhibit No. 54 for identification. Could you review
7 that for just a second. Is that your handwriting?

8 A That's my normal writing, yes.

9 Q Is this particular piece of paper, is that your
10 handwriting on there?

11 A Yes.

12 Q That's the way that you normally would write
13 your initials and date?

14 MR. SCOTT: Objection, leading, Your Honor.

15 THE COURT: Sustained, leading.

16 Q (By Mr. Underwood) Is that the way that you
17 would normally write the date and your initials?

18 A Yes.

19 Q Is that yes?

20 A Yes.

21 MR. UNDERWOOD: Your Honor, at this time State
22 requests Exhibit No. 54 be admitted into evidence.

23 THE COURT: Any objection?

24 MR. SCOTT: Your Honor, can I make sure it is
25 what I think it is?

1 No objection, Your Honor.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit No. 54 is admitted
5 into evidence.)

6 Q (By Mr. Underwood) Now, Ms. Boney, the
7 handwriting that you did for Mr. Kelly from the
8 solicitor's office which you do recognize as yours,
9 does that look anything like the handwriting on the
10 photo lineup?

11 A No. But like I said I was upset, so, I don't
12 know.

13 MR. UNDERWOOD: One Moment, Your Honor.

14 THE COURT: Uh-hum.

15 Q (By Mr. Underwood) After the prosecutor and the
16 investigator from the solicitor's office talked to you
17 about the potential problems with the photo lineup, did
18 you talk to Mr. Magwood?

19 A Yes.

20 Q And what did he tell you?

21 A I don't understand what you mean.

22 Q All right. Did you tell him the questions that
23 they had for you?

24 A I called him when -- they came to me, I didn't
25 know what to do. So he was real good to me and treated

1 me real nice. So I called, he had gave me his number,
2 and I called him. And I told him, I said some guys
3 came here and asked me some questions. And they were
4 saying something about handwriting. I don't know what
5 they're talking about.

6 He told me, don't worry about it, don't get
7 yourself upset. He said, you did what you were
8 supposed to do. If they ask you questions, tell the
9 truth.

10 Q Did he tell you anything else?

11 A No.

12 Q Do you remember him -- do you remember talking
13 with Inspector Anderson from the sheriff's office and
14 telling him that Mr. Magwood told you that if something
15 went wrong it was his fault not yours?

16 A He said if there was any problems, don't worry
17 about it. If something went wrong, don't worry about
18 it. I don't remember saying that. He said, don't
19 worry about it, don't get yourself upset, everything is
20 okay, just tell them the truth. That's what I remember
21 saying.

22 Q Because you said a moment ago he was good to you
23 during the investigation?

24 A Yes.

25 Q And did you want him to get in any trouble?

1 A No.

2 I really didn't think why he would be in trouble
3 for, for what? He did his job.

4 Q But you don't remember signing those
5 photographs, correct?

6 MR. SCOTT: Objection, Your Honor, leading.

7 MR. UNDERWOOD: Clarifying.

8 THE COURT: Sustained, leading.

9 Q (By Mr. Underwood) Do you remember signing
10 those photographs?

11 A I don't remember. But I did sign something. I
12 don't know if it was that or not. But just like you
13 just did a few minutes ago, he did cover up the picture
14 and told me I need to sign it.

15 So I don't know if I did or not. I was so
16 upset. We kept stopping and pausing and he was
17 comforting me. So I don't know if I signed it or not.

18 Q But again comparing the photograph's initials
19 and the example of your initials, how do they compare?

20 A It don't look like mines, but when you are
21 upset, you know. I don't remember.

22 Q I want to show you now exhibit number -- Ms.
23 Boney, do you remember meeting with Inspector Anderson
24 at the sheriff's office?

25 A Yes.

1 Q Do you remember, did you do any handwriting
2 examples with him?

3 A Yes.

4 Q I'm now handing you what has been marked State's
5 Exhibits 4 through 28. If you can take a moment and
6 review those for me, please.

7 Do you recognize those, Ms. Boney?

8 A Yes.

9 Q Are those the handwriting examples that you made
10 for Detective Anderson?

11 A Yes.

12 MR. UNDERWOOD: Your Honor, at this time State
13 moves for Exhibits 4 through 28 to be admitted into
14 evidence.

15 THE COURT: Any objection?

16 MR. SCOTT: No, 'ma'am.

17 THE COURT: Marked and admitted without
18 objection.

19 (Whereupon, State's Exhibit Nos. 4 through 28
20 are admitted into evidence.)

21 MR. UNDERWOOD: Thank you, Ms. Boney, please
22 answer any questions Mr. Scott may have for you.

23 THE COURT: You may proceed.

24 MR. SCOTT: Thank you, Your Honor, may it please
25 the Court.

CROSS-EXAMINATION

BY MR. SCOTT:

Q Ms. Boney, how are you doing?

A Not too well today.

Q I understand. Now, Ms. Boney, you testified earlier that you talked to a lot of people in the case that we are talking about, right?

A Yes.

Q But you and I have never talked before, right?

A No, sir.

Q You probably saw me walking back and forth but we have never met each other, right?

A No, sir.

Q Okay. And did I understand you to say, when Mr. Underwood was questioning you, that the pictures that he showed you, he covered them up, that Detective Magwood had done something similar to that and had you sign; is that right?

A Yes, sir.

Q And my understanding is, based on your testimony now, you said you were really hysterical, right?

A Yes, sir.

Q Again I'm not trying to make this difficult for you, I understand what you went through. But you were hysterical because that was the first time you had

1 actually seen the face of the man who had done what he
2 did to you, right?

3 A Yes, sir.

4 Q After that night. That was the first time when
5 you saw this picture that you had ever seen that
6 person's face again, right?

7 A Yes, sir.

8 Q And so that's why you were so hysterical?

9 A Yes, sir.

10 Q Now when you sign State's Exhibit 54, that was I
11 think the investigator for the solicitor's office Mr.
12 Kelly, I believe, right?

13 A Yes, sir.

14 Q Now do you remember where you signed this? Did
15 you sign this at home or was it at Mr. Kelly's office;
16 do you remember?

17 A Home.

18 Q Okay. But at this time you were given time to
19 actually write your initials and your name the way you
20 normally write them, correct?

21 A Yes, sir.

22 Q And that is why the initials on this sheet of
23 paper, State's Exhibit No. 54 that you wrote for Mr.
24 Kelly, looks different from what is written on State's
25 Exhibit No. 1?

1 A Yes, sir.

2 MR. UNDERWOOD: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. UNDERWOOD: Counsel is drawing
5 conclusions --

6 THE COURT: No speaking objections. Approach.

7 (Whereupon, a discuss was held at the bench not
8 transcribed.)

9 THE COURT: Proceed.

10 MR. SCOTT: Thank you, Your Honor.

11 Q (By Mr. Scott) Ms. Boney, what I was asking you
12 earlier is that -- let's go back through this again. I
13 don't mean to prolong this for you, okay, I know you
14 don't want to be in here.

15 But when you sign this for Mr. Kelly, this is
16 State's Exhibit No. 54, you were -- you wrote -- you
17 had time to actually write your name the way you
18 normally would, and sign your initials the way you
19 normally would, right?

20 A Yes.

21 Q In other words, everything you wrote on Exhibit
22 No. 54 he gave you time to actually write it the way
23 you would normally write, correct?

24 A Yes.

25 Q But State's Exhibit No. 1, you indicated that

1 Detective Magwood had actually given you something,
2 covered up the pictures, and you just kind of signed
3 something, right?

4 A Uh-hum.

5 Q At that time you were hysterical?

6 A Yes.

7 Q And you didn't take the time to sign the things
8 the way you normally would sign them, did you?

9 A No, sir.

10 Q And in fact it would be difficult for you in a
11 state of hysteria to do anything normal, wouldn't it?

12 A Yes, sir.

13 Q So that would explain why these two signatures
14 are different, wouldn't it?

15 A Yes, sir

16 Q It would explain why the handwriting is
17 different?

18 A Yes, sir.

19 Q Now when you -- when you signed these cards,
20 forgive me for referring to things as State's exhibit,
21 that's the way we have to do things in the courtroom.

22 A Yes, sir.

23 Q Now States Exhibit No. 4 through State's Exhibit
24 No. 6, these are the ones you signed for I believe it
25 was Mr. Anderson in June of 2009, correct?

1 A Yes, sir.

2 Q Was that done at your house or at his office?

3 A My house.

4 Q Okay. And again when he had you write all this
5 information on here, you had time -- in fact you did it
6 25 or 26 times, didn't you?

7 A Yes, sir.

8 Q So obviously you had time to sit down and write
9 it the way you normally would write it?

10 A Yes, sir.

11 Q Right? So each one is written with you taking
12 your time and doing it the way you normally would?

13 A Yes, sir.

14 Q Again going back to this -- cover these pictures
15 up again?

16 A Thank you.

17 Q Going back to State's Exhibit No. 1. Again the
18 reason this would like different is because this was
19 written in a state hysteria, this was written when you
20 were calm?

21 A Yes, sir.

22 Q Right? Okay. I believe you also told Mr.
23 Anderson that Detective Magwood had you sign something
24 too?

25 A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q Now in questioning by Mr. Underwood he asked you
4 what Detective Magwood told you when you called him.
5 And in fact you called him, he didn't call you, right,
6 after Mr. Kelly and Mr. Voigt visited you?

7 A Yes.

8 Q And he told you to tell the truth, right?

9 A Yes.

10 Q Okay. And don't get yourself worked up?

11 A Yes.

12 Q All right. Ms. Boney?

13 A Yes, sir.

14 Q When you were asked by Mr. Kelly to take your
15 time and sign your name and the other information on
16 State's Exhibit No. 54, would you have been able to
17 pretend to be hysterical if you wanted to when you were
18 taking your time to do this?

19 A No, I was upset.

20 Q And when you were taking your time and were calm
21 in writing these 25 or 26 samples for Mr. Anderson,
22 it's kind of hard to pretend to be in a state of
23 hysteria, isn't it?

24 A Yes.

25 Q You're either calm or you're hysterical?

1 A That's right.

2 Q And you were not in a state of hysteria when you
3 wrote these things, these examples for Mr. Anderson?

4 A That's right.

5 Q Eugene Magwood hadn't talked to you about what
6 your testimony was going to be in court today, did he?

7 A No, sir. I haven't talked to him.

8 Q Your testimony is what you actually believe and
9 remember happening, correct?

10 A Yes, sir.

11 Q As you said, I've never met you, correct?

12 A No, sir.

13 Q Thank you, ma'am, that's all I have.

14 A Thank you.

15 THE COURT: Anything further?

16 MR. UNDERWOOD: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. UNDERWOOD:

19 Q Ms. Boney, did you say that Mr. Magwood came
20 back to your house three times with photographs?

21 A Yes.

22 Q Is that what you told Agent Ghent when you
23 talked to him about it?

24 A I don't remember.

25 Q Do you remember telling him that he never came

1 back to show you other pictures?

2 A No. I remember him coming three times. And
3 that third time he got me to sign something, I don't
4 know, but like you did with the picture, covering it.
5 And I had already told him one on the bottom was the
6 guy.

7 Q I'm sorry, can you say that one more time?

8 A Okay. Third time he came to my house he had
9 showed me, you sure that was the same guy you showed me
10 the last time? I said, yes, sir. He says, okay, you
11 are going to have to sign it. I said, yes, sir. I got
12 upset again.

13 I remember signing something, I don't know. I
14 just turned my head and I signed it.

15 Q So if you did sign something you didn't look at
16 what you were signing?

17 A It was that paper because he had it covered. It
18 was pictures and he had it covered. You could see
19 slightly through the paper.

20 Q You didn't tell that to Special Agent Ghent, did
21 you?

22 A No, I did not.

23 MR. SCOTT: Objection, leading, Judge.

24 THE COURT: Sustained, leading.

25 Q (By Mr. Underwood) Is that what you told Agent

1 Ghent happened?

2 A No, I don't think so. But that's what I
3 remember.

4 Q Ms. Boney, one final question. Did you know the
5 individual that attacked you before you looked at those
6 photographs?

7 A No, sir.

8 MR. UNDERWOOD: No further questions, Your
9 Honor.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MR. UNDERWOOD: No, Your Honor.

13 THE COURT: From the defense?

14 MR. SCOTT: No, ma'am.

15 THE COURT: Ma'am, you are excused.

16 (End of excerpt.)

17 * * * * *

18 (Testimony of Ms. Clarice Zimmer)

19 THE COURT: You may proceed.

20 MR. SMITH: Your Honor, State calls Claire
21 Zimmer.

22 MS. CLARICE DENISE ZIMMER,
23 after having first been duly sworn to state the truth,
24 the whole truth and nothing but the truth, testified on
25 her oath as follows:

1 THE COURT: You may proceed.

2 DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q Ms. Zimmer, could you tell us what you do for a
5 living?

6 A I'm employed by Charleston County Sheriff's
7 office.

8 Q How long have you been in law enforcement?

9 A 19 years.

10 Q Who have you worked for in the 19 years?

11 A South Carolina State Ports Authority, The
12 Aviation Authority, and Charleston County Sheriff's
13 office.

14 Q Can you tell us what capacity you are working in
15 now?

16 A Right now I'm the supervisor, one of the
17 sergeants in persons crimes in the investigation
18 division.

19 Q What responsibilities do you have in that
20 capacity?

21 A I oversee nine detectives ensuring that they
22 investigate the crimes properly, make sure they
23 complete all the paperwork prior to it going to trial,
24 and assist them with any kind of questions or stuff
25 they have on how to go forward with a case.

1 Q In the past, have you ever had the occasion to
2 supervise Eugene Magwood?

3 A Yes, sir.

4 Q Do you have any memory of the Prioleau
5 investigation?

6 A Not much, sir.

7 Q Did you ever talk to Eugene Magwood about the
8 Prioleau investigation?

9 A Briefly, sir, yes, I have.

10 Q What did he say during that conversation?

11 A Basically I called him up, I was on my way home.
12 And when I was traveling down there I was actually
13 concerned for him. Me and Detective Magwood got along
14 very well.

15 And our job is stressful enough. And then when
16 something happens, you know, you work with somebody all
17 day long you have a tendency to get personal and care
18 for them. And that's where me and Detective Magwood's
19 relationship was.

20 So I called and said, hey, I said, what is going
21 on? He stated that he was put on leave. I said, what
22 happened? And at that time he went on to proceed to
23 tell me about a misunderstanding that happened.

24 He was interviewing a girl, brought in a photo
25 lineup, and she got really upset when she saw the

1 picture and he consoled her. And after that happened
2 he said he took her home, forgetting to complete the
3 photo lineup.

4 So he called Greg Voigt, our solicitor, and they
5 had a conversation about she identified him but she
6 didn't circle the picture or anything like that. He
7 said, go ahead and do it basically. That's what I
8 remember out of the conversation.

9 And he didn't seem too concerned about it
10 because he, I think, was acting in good faith at that
11 time. It was just what he thought he heard.

12 Q Was there any discussion about the signature on
13 the six-pack?

14 A No, sir, not at all.

15 Q Okay, so from what you just said you are telling
16 me that he stated to you that Greg Voigt said it was
17 okay to sign for it?

18 A Exactly, go ahead and complete the photo lineup.
19 And to me complete a photo lineup is circling and
20 signing off on it and everything is okay since she's
21 already identified him.

22 MR. SMITH: Your Honor, may we approach at this
23 time?

24 THE COURT: Uh-hum.

25 (Whereupon, there was a discussion held at the

1 bench, not transcribed.)

2 THE COURT: You may continue.

3 Q (By Mr. Smith) Can you explain the
4 circumstances of you talking to Magwood about this
5 case?

6 A Well as I indicated before, as a supervisor I'm
7 concerned for his well-being because our job, as I
8 stated, is stressful enough. And I also did it as a
9 colleague and friend because I also, when he was on
10 leave, I advised him if he needed anything, if he
11 needed to talk or if he needed something that I would
12 be there for him.

13 So it was more a supervisor/colleague. But
14 anytime an employee speaks to a supervisor, your know,
15 they're going to feel compelled to talk.

16 Q Did you order him to talk to you?

17 A No, sir.

18 Q Did anybody else order him to talk to you at
19 that time?

20 A Did anybody else order me to talk to him?

21 Q Did anybody order him to talk to you?

22 A No, sir.

23 Q Was Magwood on leave at the time that you called
24 him?

25 A I believe he was just placed on leave. I don't

1 know if he told me he got put on leave when I talked to
2 him, or I'm uncertain if he was put on leave that day,
3 I believe he was, that's why I called him to make sure
4 he was okay himself.

5 MR. SMITH: Your Honor, permission to approach
6 the witness?

7 THE COURT: You may.

8 Q (By Mr. Smith) I'm showing you here what has
9 been marked Exhibit 3. If you could just take a moment
10 to look over that.

11 Can you tell me who's initials are on the bottom
12 of that piece of paper?

13 A On the righthand side they're mine.

14 Q Are there other initials on there?

15 A Those initials are beside Detective Magwood's
16 name.

17 Q What is that piece of paper?

18 A That is a supplement, incident supplemental
19 report. Something was added to the cases so we are --
20 we have to complete a supplement of everything that we
21 do. So that's what this is, it was added information.

22 Q Can you read the first two sentences in the
23 first paragraph there?

24 A Yes, sir. On January 7, 2007, the victim,
25 Katherine Elizabeth Boney, was shown a photo lineup

1 that included the listed suspect, Maurice Prioleau.
2 The victim identified the suspect in the lineup as
3 number six. She then circled the photo of the suspect,
4 then initialed and dated under the photo.

5 Q Is that the same story that was told to you on
6 the phone?

7 A No, sir.

8 Q Did you sign off on the Prioleau case file?

9 A Yes, I did.

10 Q Was that given to you by the defendant?

11 A Yes.

12 Q Did you take anything from or add anything to
13 that file?

14 A No, sir.

15 Q Did you take it to records yourself?

16 A No, sir.

17 Q Can you tell me how it got to records?

18 A The procedure for our file to go to records, it
19 comes through a supervisor and investigation. Once we
20 sign off on it and make sure everything is in it, which
21 would supplemental report, search warrants, arrest
22 warrants, photo lineups, sometimes numerous photo
23 lineups, anything pertaining to that case and anything
24 the detective feels pertinent to put in that case file
25 is placed in that case file.

1 We'll overlook it, make sure everything is
2 included. Then once we sign off on it we give it to
3 the secretaries. The secretaries then make copies of
4 the information in the folder, sends it to the
5 solicitor's office. The case file then is put in a
6 manila folder, sealed up and given to records.

7 Q Now when the case file was given to you, was the
8 photo lineup contained in there?

9 A Sir, if I signed off on it, all the information
10 is in that case file. Today I couldn't tell you, but
11 the case files I sign off on are complete.

12 Q By complete you mean that the six-pack --

13 A Everything that was required for that case file
14 to be sent forward to the solicitor office, that meant
15 that it was in there, yes, sir.

16 Q Thank you.

17 MR. SMITH: Please answer any questions Mr.
18 Scott may have for you.

19 THE WITNESS: Yes, sir.

20 THE COURT: Any questions of the witness?

21 MR. SCOTT: Your Honor, thank you.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. SCOTT:

25 Q Ms. Zimmer, Sgt. Zimmer?

1 A Yes, sir.

2 Q I don't want to get your rank wrong. I was in
3 the Army and rank is important, I know.

4 That supplemental report that you have?

5 A Yes, sir.

6 Q That is dated September 21st, 2008; is that
7 right?

8 A Yes, sir.

9 Q Okay. When did you have the discussion with
10 Detective Magwood? Do you remember when that was?

11 A It would have to be I'm thinking in November
12 sometime. I don't even remember, sir. All I know is I
13 was driving home, I could tell you where I was at, and
14 I was concerned for his well-being.

15 Q That would be November of what year are we
16 talking about?

17 A It would be -- I don't even remember the year.

18 Q The criminal sexual conduct activity took place
19 in September of 2006.

20 A I was not up there at that time, sir.

21 Q All right. When did you start working with him?

22 A With the Investigation Division is August 3rd of
23 2007.

24 Q Okay. And did you attend the trial of the
25 Prioleau case?

1 A No, sir, not at all.

2 Q Okay. Did your review of the file reveal that
3 DNA evidence had essentially confirmed the identity of
4 the suspect of that case?

5 A I don't -- like as I was stating before, it has
6 been so long. If it was supposed to be in there and I
7 signed off on it, it was in there.

8 Q But you don't remember now as you sit here
9 today?

10 A Exactly, I couldn't do that.

11 Q All right. And you said you called Detective
12 Magwood because you were concerned about him, right?

13 A Of course, yes.

14 Q And you had been working with him for how long
15 at that point?

16 A A couple years.

17 Q And you found him to be a pretty good detective
18 to work with?

19 A Yes, great detective.

20 Q How many cases would you say you had reviewed of
21 his at that time that you called him in what you think
22 is November of 2008?

23 A Numerous.

24 Q Numerous?

25 A Numerous.

1 Q He did a pretty good job, as I understand it, in
2 working homicide cases especially, correct?

3 A Yes, sir. Yes, sir.

4 Q And you felt him to be an honest and truthful
5 person, didn't you?

6 A Yes. He's never fabricated anything to me to my
7 knowledge at all.

8 Q And did you ever speak to Ms. Boney yourself?

9 A No, sir. The first time I have seen her was
10 today.

11 Q Okay. So you don't have any independent
12 knowledge of this issue that we all have be talking
13 about here, this photographic lineup?

14 A No, sir.

15 MR. SCOTT: Judge, that's all I have. Thank
16 you.

17 THE COURT: Any redirect?

18 MR. SMITH: One Last question.

19 REDIRECT EXAMINATION

20 BY MR. SMITH:

21 Q So you wouldn't consider a file complete unless
22 you knew there was a lineup included in the file?

23 A If a photo lineup was shown, it was supposed to
24 be in the file. I would not expect it -- it's not
25 complete unless that photo lineup is in that file prior

1 to me signing off on it.

2 MR. SMITH: Thank you.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. SMITH: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: Ma'am, you are excused.

9 You may call your next witness.

10 (End of Excerpt.)

11 * * * * *

12 (Testimony of Mr. Eric Watson)

13
14 MR. ERIC WATSON,
15 after having first been duly sworn to state the truth,
16 the whole truth and nothing but the truth, testified on
17 his oath as follows:

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. UNDERWOOD:

21 Q Good evening, Lt. Watson. Due to the late hour,
22 I'll cut a little bit more to the chase.

23 How do you know the defendant in this case?

24 A He was a former employee of the sheriff's
25 office.

1 Q And in what capacity did you work with him?

2 A As a detective and as a supervisor.

3 Q All right. In the time that you worked with him
4 as a detective -- let me rephrase that. When you were
5 his supervisor, when was that?

6 A 2008 to 2009.

7 Q Did you ever have any discussions with Mr.
8 Magwood in light of the incident surrounding this case?

9 A A very brief discussion.

10 Q And what was the nature of that discussion?

11 A Pretty much I informed him that he was being
12 placed on admin leave, administrative leave, regarding
13 the allegations against him.

14 Q Did he say anything to you in that conversation?

15 A No, not the detail other than he was instructed
16 to do so by Sgt. BK Williams.

17 Q When you say he was instructed to do so, what
18 are you referring to?

19 A Show a lineup.

20 Q Did he say anything further than that?

21 A No.

22 Q He said that Sgt. BK Williams --

23 MR. SCOTT: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. SCOTT: This is hearsay information, Judge.

1 MR. UNDERWOOD: 801(D)(2), Your Honor.

2 THE COURT: Approach Please.

3 (Whereupon, a discussion was held at the bench,
4 not transcribed.)

5 THE COURT: The objection, is withdrawn.

6 You may proceed. Please restate the question.

7 Q (By Mr. Underwood) Lieutenant, could you please
8 tell the jury what Mr. Magwood told you about the
9 lineup?

10 A Pretty much that Sgt. Williams instructed him to
11 show the lineup to the victim in the case.

12 Q And was that the extent of his statement?

13 A Yes, that was the extend.

14 Q How long have you been a detective?

15 A Four years.

16 Q All right. And how long -- is that all with the
17 sheriff's office?

18 A It's been 17 years at the sheriff's office.
19 Only four years as a detective.

20 Q Can you explain to the jury briefly what the
21 proper identification procedures are for detectives at
22 the sheriff's office?

23 A Identification procedures as far as the suspect?

24 Q As far as photographs and lineups and things of
25 that sort?

1 A Well once a suspect has been developed in an
2 investigation, normally what we do is back then is have
3 the jail generate a lineup that consists of six
4 individuals similar physical characteristics, racial
5 background.

6 And that will be sent to the case agent. Then
7 our case agent would take that lineup to the victim or
8 witness in the case. And then that witness would
9 identify -- identify that suspect as being a part of
10 that lineup or not.

11 Q Is it a policy of the sheriff's office to ever
12 show a single photograph of a suspect to a witness
13 before a lineup?

14 A We don't have a policy regarding that. It's
15 known protocol that when you show a one-on-one, that
16 you normally would not show a six-pack lineup.

17 Q Why would you not normally do that?

18 A Because it's really tainted by then. Once you
19 showed the witness a one-on-one, that same suspect
20 would be -- most likely would be in that six-pack. So
21 the case is considered tainted then.

22 Q To your knowledge would Mr. Magwood have been
23 aware that that was not the -- showing a single
24 photograph before a lineup, to your knowledge, would he
25 have been aware not to do that?

1 A He should have been aware not to do that.

2 Q Do you have any memory of the investigation of
3 the Prioleau case?

4 A None whatsoever.

5 Q Were you involved in that case?

6 A Not at all.

7 Q What other sections have you worked in at the
8 sheriff's office?

9 A Worked patrol supervisor for a year and a half.
10 Worked court security supervisor for a year and a half.
11 Worked internal affairs for three years. And I'm
12 currently a lieutenant in the CID investigations.

13 MR. UNDERWOOD: One moment, Your Honor.

14 THE COURT: Uh-hum.

15 MR. UNDERWOOD: No further questions at this
16 time

17 THE COURT: Any questions of the witness?

18 MR. SCOTT: Yes, Your Honor.

19 THE COURT: You may proceed.

20 MR. SCOTT: May it please the Court.

21 Judge, I will try to be brief

22 CROSS-EXAMINATION

23 BY MR. SCOTT:

24 Q Lt. Watson, you have a promotion ceremony
25 tomorrow; is that right?

1 A Yes, sir.

2 Q Did I understand you to say, in response to Mr.
3 Underwood's question about policies about showing one
4 photograph, that the sheriff's department doesn't have
5 a policy regarding that?

6 A We don't have a policy instructing the deputy
7 sheriff that they're required to show a one-on-one.

8 Q Okay.

9 A It's just normal.

10 Q Okay. I want to make sure I understand what the
11 question was that Mr. Underwood asked you. So I guess
12 my question is, is there a policy that says a detective
13 in the sheriff's department is never permitted to show
14 one photograph to a victim of a crime?

15 A No, not a policy.

16 Q Because if the victim knows the identity of the
17 suspect, there would be no harm in showing one
18 photograph to the victim to confirm this is in fact who
19 everybody is talking about, correct?

20 A As long as you can establish a certain
21 relationship between the victim and the suspect. Which
22 means that you can establish a pattern that they have
23 personal knowledge of that suspect as far as length or
24 time they've known him or her, they live in the same
25 neighborhood, community for a certain period of years,

1 a one-on-one would suffice.

2 A That was my question. If the victim knows, and
3 you've elaborated on what knows means, but if the
4 victim knows the suspect, there is no policy violation
5 by showing --

6 A No, sir.

7 Q Right, one photograph. As I said, to confirm
8 that this is in fact the person we are talking about,
9 right?

10 A Correct.

11 Q And there is no written policy about photo
12 lineups at the sheriff's department, is there?

13 A We have a policy on lineups as far as -- that's
14 required of us to show a lineup because of the
15 circumstances.

16 Q My question was, is there a written policy on
17 photo lineups?

18 A Not that I can recall off the top of my head.

19 Q Right. And how long did you say you worked with
20 Detective Magwood?

21 A I worked with Detective Magwood as a detective,
22 I forgot, about '99, 2000, 2001.

23 Q But you've worked with him long enough to get to
24 know him, though, haven't you?

25 A Yes, sir.

1 Q I think you've worked with him on a number of
2 cases, you've actually seen him conduct interviews with
3 witnesses, correct?

4 A Yes.

5 Q And based on your knowledge of him, he did a
6 pretty good job as a detective, didn't he?

7 A Yes.

8 Q In fact he actually received awards for his
9 work, correct?

10 A Yes.

11 Q And you knew him to be a person who was pretty
12 honest and truthful?

13 A Correct.

14 Q Correct?

15 A Yes, sir.

16 MR. SCOTT: Judge, that's all I have.

17 THE COURT: Any redirect for the witness?

18 MR. UNDERWOOD: Briefly, Your Honor.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MR. UNDERWOOD:

22 Q Lieutenant, you told Mr. Scott that there was no
23 policy prohibiting showing a witness a single
24 photograph; is that what you said?

25 A Yes.

1 Q Is there a policy, whether written or unwritten,
2 dictating that after a single photograph has been shown
3 then not to show a photographic lineup because it's
4 tainted?

5 A It's just an unwritten protocol. It's protocol
6 that states that once you show a one-on-one, a six-pack
7 is not required, not necessary.

8 Q And would Mr. Magwood have been aware of that?

9 A Should have.

10 Q Also as far as there being no prohibition about
11 showing a single photograph, as Mr. Scott talked about,
12 if the victim knows their assailant, what if the victim
13 or witness doesn't know the assailant? What's the
14 policy on that?

15 A Well a lineup will be required, a six-pack
16 lineup.

17 Q What about a single photograph?

18 A No, that's not normal protocol.

19 Q And would Mr. Magwood have been aware of that?

20 A Should have.

21 MR. UNDERWOOD: Your Honor, subject to the
22 matter of law that's all the State has.

23 THE COURT: Madam Forelady, ladies and
24 gentlemen, I have another very brief matter of law.
25 I'm going to ask that you stand out in the hall for me

1 for just a second.

2 Please do not discuss the case and please leave
3 your notepads in your seats.

4 (Whereupon, the jurors exit the courtroom.).

5 THE COURT: Ask the questions.

6 IN-CAMERA EXAMINATION

7 BY MR. UNDERWOOD:

8 Q Lieutenant, while you were working in internal
9 affairs, did you ever have an opportunity to conduct an
10 investigation against Mr. Magwood?

11 A Yes.

12 Q What was the nature of that investigation?

13 A It was an administrative investigation conducted
14 on him regarding allegations of he improperly
15 misidentified a suspect during a criminal
16 investigation.

17 Q What was the issue in that case?

18 A There were two suspects, Jose G. Espaza and Jose
19 L. Espaza. And based on what I gathered from my
20 investigation is that Magwood pretty much relied on
21 memory, relied on the jail's database to generate the
22 suspect, and that witness was never shown a lineup or a
23 one-on-one in that case.

24 Based on that, he issued an arrest warrant for
25 Jose G. Esparza, and the actual suspect was Jose L.

1 Esparza.

2 Q Is it your testimony then that -- did Mr.
3 Magwood follow the proper procedure for identification
4 in that case?

5 A No, sir.

6 Q Is it then your testimony that because he didn't
7 follow the proper identification procedures the wrong
8 person was arrested?

9 A Correct.

10 Q Was Mr. Magwood disciplined for failing to
11 follow the proper procedures?

12 A I sustained a complaint against him. I didn't
13 handle the discipline.

14 Q Who did handle the discipline?

15 A His immediate supervisor.

16 Q Are you aware of what that discipline was?

17 A I believe it was a one-day or a two-day
18 suspension.

19 Q He was suspended?

20 A Suspended, yes, sir.

21 Q And again that was due to not following the
22 proper identification protocols?

23 A Correct.

24 MR. UNDERWOOD: That's it for the State's
25 questions.

1 THE COURT: Any objections to that line of
2 questioning?

3 MR. SCOTT: Yes, ma'am I, do.

4 And, Your Honor, I was going to ask if I could
5 maybe ask a follow-up.

6 THE COURT: Absolutely.

7 IN-CAMERA EXAMINATION

8 BY MR. SCOTT:

9 Q Lt. Watson, this situation you are talking about
10 involved two gentlemen with Hispanic surnames, correct?

11 A Correct.

12 Q One was -- had the name L Esparza, and the other
13 with the initial C or G Esparza, correct?

14 A G.

15 Q All right. And based upon -- what information,
16 to your knowledge, was made available to Detective
17 Magwood besides the last names?

18 A I don't understand the question.

19 Q Okay. You said both of the individuals who were
20 identified had the last name Esparza. And you said an
21 arrest warrant was issued for the wrong Esparza?

22 A Correct.

23 Q What other information was made, to your
24 knowledge based on your investigation, what other
25 additional information was made available to Detective

1 Magwood?

2 A Well the actual victim in the case was
3 interviewed by a fellow detective that worked alongside
4 Magwood.

5 Q Who was it?

6 A Another detective interviewed the victim in the
7 case. So that the victim's statement was made
8 available to Detective Magwood prior to him issuing an
9 arrest warrant.

10 Q So was Detective Magwood the lead detective, or
11 was someone else the lead detective?

12 A He was the case agent.

13 Q Another detective was working with him though?

14 A Another detective interviewed the victim, but
15 Detective Magwood was the lead case agent on the case.

16 Q When these individuals were arrested, was
17 Detective Magwood actually --

18 A He was not present when the arrest was made.

19 Q Okay. All right. And there was no allegation
20 of any dishonesty or anything of that sort involved in
21 this case, was there?

22 A No, sir.

23 Q No allegation he tried to fabricate or forge
24 somebody's signature or anything of that sort, correct?

25 A No, sir.

1 Q There was no photo lineup involved in the case,
2 was there?

3 A No, sir.

4 Q So misidentification of a suspect based on the
5 commonality of the surnames, correct?

6 A Yes, and that a lineup was never shown to the
7 victim.

8 Q My question though was there was no lineup at
9 all in this case, correct?

10 A One was never produced.

11 Q Right.

12 In that case we had two people with the last
13 name Esparza?

14 A Correct.

15 MR. SCOTT: Judge, I guess --

16 THE COURT: Any redirect?

17 MR. UNDERWOOD: Very briefly, Your Honor.

18 THE COURT: Uh-hum.

19 IN-CAMERA EXAMINATION

20 BY MR. UNDERWOOD:

21 Q Lieutenant, you just said there was no lineup in
22 the Esparza case. If there had been a lineup, would
23 there have been an infraction?

24 Let me rephrase that. If there had been a photo
25 lineup, would there likely have been a proper

1 identification?

2 A Correct, yes.

3 Q And therefore the wrong person would not have
4 been arrested?

5 A Correct.

6 Q And more importantly Mr. Magwood would not have
7 been suspended?

8 A Correct.

9 MR. UNDERWOOD: No further questions, Your
10 Honor.

11 THE COURT: Is there any objection to the line
12 of questioning?

13 MR. SCOTT: Yes, Your Honor.

14 THE COURT: Basis of the objection?

15 MR. SCOTT: Your Honor, the last questions asked
16 by Mr. Underwood, I think, engages or borders -- not
17 borders, engaged in a lot of conjecture of what would
18 have happened if there would have been a lineup. There
19 is no way for anybody to determine what would have
20 happened if there was a lineup.

21 Secondly, this case doesn't even come close to being
22 related to what Detective Magwood is accused of in this
23 case. He is accused of being dishonest and fabricating
24 something about a signature.

25 As I understand what Lt. Watson is describing to

1 us, this involved two individuals with the same last
2 name. And because of that and because of a
3 misidentification, not intentional or, quote, based on
4 dishonesty, unquote, the wrong person was issued an
5 arrest warrant.

6 My understanding is that Mr. Magwood wasn't even
7 present when the arrest warrant was issued. So I'm
8 trying to really -- I tell my kids, I'm not as smart as
9 I used to be. But I'm trying to wrap my mind around
10 how this is remotely related under 404 to this case. I
11 have a very difficult time seeing that. I just don't
12 see it.

13 I know I'm not as smart as I used to be, Judge,
14 but I don't see the connection. I don't see how it
15 could possibly be relevant. And if it is, is Mr.
16 Underwood trying to say that because Mr. Magwood was
17 involved in a case involving someone who was arrested
18 by mistake, that he is somehow guilty of what he is
19 accused of doing in this case. If that's the case then
20 obviously that's impermissible.

21 THE COURT: Would you like to respond to the
22 objection?

23 MR. UNDERWOOD: Yes, Your Honor. Regardless of
24 whether or not the Esparza incident met with
25 accusations of dishonesty, the point, Your Honor, is

1 that in the Esparza case the defendant did not follow
2 the procedure and produce a lineup and was suspended.

3 There has been testimony that if he had produced
4 a lineup, he would not have been suspended. That goes
5 to show, as far as relevance, shows a motive as to why
6 in the present case he needed to fabricate a lineup to
7 protect himself from again being suspended by not doing
8 a photo lineup.

9 It goes to show his state of mind and his
10 motive. And I believe that case, Your Honor, is
11 admissible to show why he would have done what he is
12 accused of doing.

13 THE COURT: At this point it doesn't come within
14 any criteria that would allow testimony regarding bad
15 acts that are not the subject of a conviction. It
16 doesn't come within motive, intent or absence of
17 mistake at this point.

18 However, I reserve the right to revisit it if
19 the door is opened.

20 Do you have any questions for the witness other
21 than those that you just proffered?

22 MR. UNDERWOOD: No, Your Honor.

23 THE COURT: Okay. Did you have any
24 cross-examination, any --

25 MR. SCOTT: I have nothing further.

1 THE COURT: Bring in the jury please.

2 (End of excerpt.)

3 * * * * *

4 (Testimony of Mr. Brian Williams)

5 Mr. SMITH: Your Honor, the State calls Sgt.
6 Brian Williams.

7 THE COURT: The witness can come to the stand to
8 be sworn.

9 BRIAN KEITH WILLIAMS,
10 after having first been duly sworn to state the truth,
11 the whole truth and nothing but the truth, testified on
12 his oath as follows.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MR. SMITH:

16 Q Sgt. Williams, can you tell the jury what you do
17 for a living?

18 A I'm employed with the Charleston County
19 Sheriff's Office.

20 Q How long have you been in law enforcement?

21 A Since 1993, January of '93.

22 Q Who have you worked for in that time?

23 A My tenure since that time has been with the
24 sheriff's office. I have been assigned to several
25 divisions, but most of my tenure has been with criminal

1 investigations.

2 Q What do you do right now at the sheriff's
3 office?

4 A Currently I'm attached to the traffic unit as
5 the traffic -- one of the traffic sergeants. Prior to
6 that I was -- several years prior to that I was also a
7 supervisor in the criminal investigations division.

8 Q What responsibilities do you have in the
9 capacity that you are in right now?

10 A As a sergeant I supervise -- in the traffic unit
11 I supervise deputies in their responsibilities with
12 that unit, with the traffic-related functions of the
13 unit.

14 Q How do you know Eugene Magwood?

15 A I knew Eugene Magwood both prior -- well when I
16 was a detective within criminal investigations, but
17 also I was his supervisor for approximately two years
18 when I was the sergeant within the criminal
19 investigations.

20 Q Do you remember what years you were his
21 supervisor?

22 A That was, I was reassigned from CID probably
23 about three years ago.

24 Q So 2008, were you his supervisor?

25 A Yes, I was. I think I came up there in 2007.

1 Q As a supervisor, did you ever have the occasion
2 to review cases with him?

3 A I did. Case review could be handled in a
4 variety of ways. It doesn't always go into the details
5 of the case, sometimes it's just finding out where they
6 were with the case to be able to bring it to closure.
7 And sometimes it would be offering some suggestions how
8 to further their investigation.

9 Q What else would a case review entail?

10 A The case review can be a number of multitude of
11 things. But primarily it's just to try to further the
12 investigation, to keep the case moving in a timely
13 manner.

14 But the final case review would be to make sure
15 that the case is complete, that there weren't things
16 overlooked, that the burden of probable cause was met,
17 a multitude of things.

18 Q In a case review, do you review protocol?

19 A Certainly can be. The typical monthly case
20 reviews would -- well it would depend on the case.
21 Sometimes if it's a case we might get into the intimate
22 details of it. There would be other cases where it
23 might just be the case number and where you are at with
24 that investigation.

25 And if it's at the part you can bring it to

1 closure, then we would bring it to closure. I'm not
2 sure in I'm answering your question.

3 Q You are.

4 A Yes. It could be a variety of things. It could
5 be a very cursory review if the case can be brought
6 quickly to closure. Or if there are no other avenues
7 to pursue an investigation, it might have to be
8 inactivated.

9 And there are some cases that you get very
10 involved with due to the nature of the case.

11 Q Are you familiar with the Prioleau case?

12 A Very little. Very little.

13 Q Do you know that that investigation took place
14 in Charleston County?

15 A It did. All of our investigations, for the most
16 part, would be Charleston County.

17 Q Would a report have been submitted to the
18 Charleston County Solicitor's Office?

19 A Yes. Yes, a copy of the complete case package
20 would be, yes.

21 Q And that is in Charleston County?

22 A Yes, sir.

23 Q At the time of Prioleau 2008, what was the
24 proper way to present a lineup?

25 A Lineups can be a variety of ways. There could

1 be a physical lineup where you actually have some
2 physical bodies.

3 Our typical protocol when presenting a lineup is
4 what we commonly refer to as a six-pack. Where we
5 generate it from mug shots, if you will, from the jail.
6 You get some similar photographs, and it's presented on
7 one sheet of paper where there are six images
8 displayed. One of those may or may not be the suspect
9 in question.

10 There was actually a form where some advisements
11 were provided to the person witnessing the lineup, you
12 would read that form; complete whatever information as
13 far as who you are showing the lineup to; read the
14 document; their comments, if there are any comments
15 that they make about the lineup or the person; and it's
16 pretty much was in a written form.

17 But that was the typical way. But there are
18 other circumstances if maybe the person, for instance,
19 is known by name and sight to the victim you might show
20 a single photograph. And if you confirm, yes, that's
21 who I know as. But typically it is what we call a
22 six-pack.

23 Q Is that the only situation where you would show
24 a single to a victim?

25 A I won't say the only, but it's typically that

1 would typically be the reason that you would show a
2 single photograph. If they knew that person, but just
3 may not know them by their proper name. They would
4 know them by name and sight, or by their nickname and
5 sight.

6 Q Now is there ever an occasion to show a single
7 photo to a victim prior to showing them a six-pack?

8 A That would not be proper protocol. Because
9 actually if you showed that single photograph first,
10 then that single photograph is in a six-pack lineup, it
11 would essentially taint that six-pack lineup because
12 they have already seen that one picture.

13 It could basically taint the lineup. It could
14 be misleading.

15 Q Would you ever order anybody to show a six-pack
16 after a single photo?

17 A If I knew that a single photo was shown, I would
18 not.

19 Q Did you ever order Magwood to show a single
20 photo before a six-pack?

21 A Not that I recall. If there was a suggestion
22 made to do a photographic lineup, a six-pack, I would
23 not have made that suggestion if I knew that there was
24 a single photo already presented to the witness or the
25 victim.

1 Q Have you ever ordered a detective to sign
2 somebody else's name in a six-pack?

3 MR. SCOTT: Your Honor, objection.

4 THE COURT: Basis?

5 MR. SCOTT: There is no indication --

6 THE COURT: No speaking objections. Approach.

7 (Whereupon, a discussion was held at the bench,
8 not transcribed.)

9 THE COURT: The objection is sustained, leading.

10 Any further questions for the witness?

11 MR. SMITH: No, Your Honor.

12 If you would answer any questions Mr. Scott may
13 have.

14 THE WITNESS: Yes.

15 THE COURT: Any cross-examination of the
16 witness?

17 MR. SCOTT: Yes, Your Honor. May it please the
18 Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SCOTT:

22 Q Sgt. Williams, you weren't involved in the trial
23 of the Prioleau case, correct?

24 A No, sir, I was not.

25 Q So you don't know if the identity of the suspect

1 was even an issue in that case, right?

2 A I'm sorry, sir?

3 Q You don't have any way of knowing if the
4 identity of the suspect was even an issue in the case,
5 you weren't involved in the case, right, the trial of
6 the case?

7 A I was not involved in the trial of the case.

8 Q You did not attend the trial?

9 A No, sir.

10 Q You keep talking about protocol. Is there a
11 written SOP in the sheriff's department regarding photo
12 lineups?

13 A At the time I don't believe there was, there is
14 currently.

15 Q When did that take place?

16 A I'm not sure, it was -- I can't speak for
17 certain, but I think it was a few years ago.

18 Q But at the time that this case was investigated,
19 there was no written standard operating procedures?

20 A There was a standard in how we were instructed
21 to do photographic lineups based on case law and other
22 circumstances.

23 Q My question was, was there a written SOP on
24 photo lineups at the time this case was being
25 investigated?

1 A I do not believe at that time there was.

2 Q Now you indicated to the prosecuting attorney
3 that you would not have told Detective Magwood to do a
4 photo lineup if you had known there was a single
5 photograph already shown to the witness, correct?

6 A No, I would not have if I knew that there was a
7 single photograph already.

8 Q So is it your testimony that you didn't have a
9 discussion with Detective Magwood at all about showing
10 a photo lineup in this case?

11 A I don't recall any discussion specific about
12 this case, no.

13 Q My question is -- all right, let me rephrase the
14 question. You said you didn't recall having a
15 discussion specifically about this case. Are you
16 saying you did not have a discussion about it?

17 A I do not recall any specific conversation about
18 this case. I believe at the time the caseload may have
19 been about 60 cases on average in the office that each
20 was handling. I have no recollection of this specific
21 case.

22 Q You may have been talking to him about any one
23 of the 60 cases during that time period?

24 A We frequently did.

25 Q All right. So the fact that you don't remember

1 specifically talking about this one of the 60 cases
2 doesn't mean you didn't talk to him about it, does it?

3 A I would imagine as part of the case review there
4 was some discussion. Whether it was, as I have
5 explained earlier, whether it was a light discussion on
6 bringing a case to closure, or whether we looked at it
7 in detail, but I don't recall any detailed conversation
8 about this case.

9 Q Do you remember talking with Investigator
10 Charles Ghent of SLED back on October 30, 2008 about
11 this case?

12 A I do.

13 Q And I believe he spoke to you in the Charleston
14 County Sheriff's Office as I understand it; is that
15 correct?

16 A Actually I believe I met him at his office.

17 Q Okay. But you did interview with him?

18 A I did.

19 Q Okay. And do you recall talking to him about
20 this issue we are discussing here today?

21 A I do.

22 Q Okay. Do you suppose if you took a look at his
23 memo that that would refresh your memory about what you
24 may have told him about whether you had any discussion
25 with Detective Magwood about this Prioleau case?

1 A I would be happy to look at it. But as I said,
2 I don't recall any specific.

3 Q Okay.

4 MR. SCOTT: Your Honor, let me show the
5 prosecution what I'm showing.

6 Q (By Mr. Scott) why don't you take a look at this
7 and see if this refreshes your memory.

8 I have highlighted the section on the second
9 page where Agent Ghent talks about his discussion with
10 you about any possible discussions you may have had
11 with Detective Magwood about this case.

12 A Yeah, that's what I have explained, what I've
13 stated.

14 Q Does that refresh your memory about what you
15 told him?

16 A Uh-hum.

17 Q Okay. Let me take that back, please, sir, if
18 you're finished with it.

19 A I haven't read it completely.

20 Q Okay, you can continue if you need to.

21 A Is there a question or do you want me to read?

22 Q Well you said you hadn't finished, so I wanted
23 to let you finish reading.

24 Have you finished?

25 A I think so.

1 Q All right. Now so does that refresh your memory
2 about what you told Ghent about any discussions you may
3 have had with Detective Magwood?

4 A Yes. I have read his notes, yes.

5 Q All right. And according to this, you indicated
6 it was possible that you may have suggested to Magwood
7 to have a photo lineup, done, correct?

8 A In that context, and as I've explained, I could
9 have suggested that on many cases where a suspect had
10 not been identified.

11 Q Now is that a yes or no to my question?

12 A I could have suggested it on any case. I did
13 not suggest it on this case specifically that I recall.

14 Q But according to what you told Agent Ghent, it
15 was possible that you may have suggested to Detective
16 Magwood to have a photo lineup done in a case where
17 there was already a CODIS, C-O-D-I-S. What is a CODIS,
18 C-O-D-I-S, hit? What is that?

19 A It's a hit on the DNA.

20 Q Okay. Because it would help strengthen the case
21 with additional identification of the victim.

22 You don't deny telling Agent Ghent that, do you?

23 A It's possible that I could have made that
24 recommendation on his case progression. But I would
25 not have made that recommendation if a single photo had

1 already --

2 Q Right, that's in here too. You say that you
3 wouldn't have made that recommendation.

4 A Okay.

5 Q My question to you, are you denying that you had
6 the discussion with him?

7 A I could have, but I don't recall having a
8 discussion with him about this case specific. That's
9 why I said it's possible that I could have made that
10 recommendation. But would not have made that
11 recommendation if I was aware a single photo had been
12 shown.

13 Q Now you also mentioned during your direct
14 testimony that -- you said that if the victim knew the
15 suspect, you would -- there would be occasions where
16 you wouldn't do a six-pack, you would do a single
17 photograph?

18 A If they were known by name and sight to the
19 victim or a witness, a single photograph could be shown
20 if they were known by name and sight.

21 Q You also mentioned there might be other
22 circumstances where a single photograph could be shown.
23 What other circumstances?

24 A If you have the -- really there is no other time
25 that comes to mind. If you have the time in preparing

1 a case, it's better to do a six-pack photo lineup.

2 There may be an occasion where the crime has
3 just been committed where you are actively working it
4 at that moment where you may not have the time to
5 develop that lineup. In that case sometimes the
6 suspect is identified at or near the scene. And it
7 might just be something where they view the suspect in
8 the live circumstances with that person, or a single
9 photograph.

10 Q Is that part of the protocol that you mentioned
11 earlier?

12 A It can be. It can be. But as I said, if you
13 have time to develop a photo lineup, a six-pack as we
14 refer to it, then you take the time to do the photo
15 lineup.

16 Q You say it can be. Is there a protocol or isn't
17 there? You say it can be a part of the protocol?

18 A The circumstances depend on the nature of the
19 investigation. The investigation can dictate what type
20 of protocol you have to pursue.

21 Q What is your definition of protocol, Sgt.
22 Williams?

23 A Procedure.

24 Q Okay. So when you say protocol, you are
25 referring to procedure?

1 A Procedure if you like, a process.

2 Q All right. Because you've already said that
3 there was no written SOP, standard operating procedure,
4 at the time regarding photo lineups, correct?

5 A There was a training procedure that --

6 Q My question is was --

7 A There was no written, I've already answered
8 that, there was no written policy.

9 Q Right, I was asking about your written
10 procedure.

11 MR. SCOTT: Judge, I have no further questions
12 for this witness.

13 THE COURT: Any redirect?

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION

17 BY MR. SMITH:

18 Q What years were you supervisor in the Charleston
19 County Sheriff's Office?

20 A I believe I was promoted to sergeant in 2001 and
21 performed as a supervisor in two different positions
22 before I was transferred to CID.

23 Q As a supervisor, were you in charge of reviewing
24 protocol with your people that you supervised?

25 A Reviewing their procedures, and that could be

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

EUGENE MAGWOOD, CASE NO. 2013-CP-10-3669

Plaintiff(s),

-vs-

J. AL CANNON, JR. In his
Official capacity as Sheriff
Of Charleston County, Investigator
Anderson, Investigator Antonio,
Charles Ghent, and South Carolina
Law Enforcement Division,

Defendant(s).

C

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THE DEPOSITION OF CHARLES GHENT, taken on
behalf of the Plaintiff on Monday, March 31,
2014, commencing at 10:57 a.m. at the Law Offices
of Senn Legal, 3 Wesley Drive, Charleston, South
Carolina.

REPORTED BY: Nicole D. White



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1 A-P-P-E-A-R-A-N-C-E-S:

2

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25

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1 (CHARLES GHENT, having been first duly
2 sworn, testified as follows:)

3 E-X-A-M-I-N-A-T-I-O-N

4 BY MS. FAJARDO:

5 Q. Agent Ghent, my name is Stephanie
6 Fajardo. I think we met several weeks ago. I
7 represent the Plaintiff in this case. I know you
8 were present for the Plaintiff's deposition.
9 Have you ever given a deposition before?

10 **A. No.**

11 Q. Okay. I'm just gonna run over the
12 ground rules and I know you heard them at the
13 Plaintiff's deposition, but just so I make sure
14 that we're on the same page, I do need you to
15 answer all of my questions verbally. We have a
16 court reporter that's writing everything down, so
17 if you nod your head, I'll know what you're
18 saying, but she will have a hard time writing
19 that down.

20 I don't anticipate going very long
21 today, but if you need a break for any reason,
22 please let me know. I'm happy to stop and let
23 you stretch your legs, get a drink of water,
24 whatever you need to do.

25 **A. Okay.**

1 Q. I just ask that you answer the
2 questions that I've posed before we take that
3 break.

4 Now that the deposition has begun, if
5 you should ask your attorney any questions, I am
6 able to ask you about that. So if there's any
7 confusion during the deposition, if you can just
8 direct all that to me, I'm happy to rephrase,
9 repeat, or try to change the question in any way
10 so that you can properly understand it.

11 A. (Indicating.)

12 Q. If you don't ask me to repeat or
13 rephrase the question, I'll assume that you
14 understood the question and you're answering the
15 question that I asked. Is that fair?

16 A. Yes.

17 Q. Okay. Are you under the influence of
18 any substances, lack of sleep, stress or anything
19 else that would affect your ability to answer my
20 questions truthfully today?

21 A. No.

22 Q. Okay. Have you spoken to anyone other
23 than your attorney regarding this case?

24 A. No.

25 Q. Okay. And have you reviewed anything

1 prior to your deposition?

2 **A. I reviewed the case file.**

3 Q. Just the SLED case file?

4 **A. Yes.**

5 Q. Okay. Let me go through -- what is
6 your date of birth?

7 **A. 10/25/77.**

8 Q. Okay. If we could go off the Record.

9 (Off-the-Record conversation.)

10 BY MS. FAJARDO:

11 Q. Do you have any family in Charleston
12 County?

13 **A. I have a brother.**

14 Q. What's your brother's name?

15 **A. Mark Ghent, G-H-E-N-T.**

16 Q. And are you married?

17 **A. No.**

18 Q. Okay. Do you have any children?

19 **A. No.**

20 Q. Okay. Tell me a little bit about your
21 educational background. How far did you go to
22 school?

23 **A. I have a bachelor's degree from the**
24 **University of South Carolina, 1999.**

25 Q. Okay. After that bachelor's, have you

1 gotten any other training?

2 **A. I've received training for the South**
3 **Carolina Criminal Justice Academy, training from**
4 **the North Carolina Criminal Justice Academy, and**
5 **various other individual training classes through**
6 **the years.**

7 Q. Okay. And you're currently employed
8 at SLED?

9 **A. Yes.**

10 Q. How long have you been employed there?

11 **A. Since 2008.**

12 Q. Okay. What -- what do you do now at
13 SLED?

14 **A. I'm a lieutenant. I'm a supervisor in**
15 **the investigative services division of the low**
16 **country region.**

17 Q. In that job what do you do, what are
18 your job duties?

19 **A. I supervise at this time four criminal**
20 **investigators investigating various crimes that**
21 **are allegations and so forth. Various cases that**
22 **we are requested to investigate.**

23 Q. Okay. Have you held that same job
24 since 2008?

25 **A. I've only been a lieutenant for a few**

1 **weeks. I was a criminal investigator at that**
2 **time, 2008 until recently, a special agent.**

3 Q. So you just moved into a more
4 supervisory role now?

5 **A. Yes.**

6 Q. Where did you work prior to going to
7 SLED?

8 **A. The North Carolina State Bureau of**
9 **Investigation.**

10 Q. Is that like SLED in South Carolina?

11 **A. It's an analog of SLED in North**
12 **Carolina, yes.**

13 Q. Did you do the same type of things,
14 you would be asked by an agency to investigate?

15 **A. Yes. We were also an assisting agency**
16 **and I was a criminal investigator. I was there**
17 **from 2004 until 2008.**

18 Q. What did you do before the North
19 Carolina State Bureau of Investigation?

20 **A. I worked for the Mt. Pleasant Police**
21 **Department in South Carolina.**

22 Q. What did you do in that capacity?

23 **A. I was assigned for two years as a**
24 **patrol officer and then a detective in the vice**
25 **and narcotics unit.**

1 Q. And how long did you work at
2 Mt. Pleasant?

3 A. From 2000 until 2004. That's where I
4 began my law enforcement career.

5 Q. Okay. What did you do after you
6 graduated U.S.C. in 1999? What did you do prior
7 to going to Mt. Pleasant?

8 A. I was working at Lowe's for a college
9 job until I was hired by Mt. Pleasant.

10 Q. Do you attend church anywhere?

11 A. Not regularly, no.

12 Q. Are you a member of any civic
13 organizations or clubs?

14 A. I'm a member of Etiwan Free Mason
15 Lodge 95 in Mt. Pleasant, although I don't attend
16 very regularly.

17 Q. Have you ever been in the military?

18 A. No.

19 Q. Okay. Next few questions not meant to
20 embarrass you. Standard questions that I ask in
21 every deposition. Have you ever been arrested?

22 A. No.

23 Q. Have you ever been treated by a
24 psychiatrist or psychologist for any reason?

25 A. No.

1 Q. Are you currently under a doctor's
2 care?

3 A. No.

4 Q. Currently taking any medications?

5 A. No.

6 Q. Were you under any doctor's care at
7 the time of this incident in 2008/2009?

8 A. No.

9 Q. Were you on any medications around
10 that time period?

11 A. No.

12 Q. Have you ever been involved in any
13 lawsuits of any kind, you personally?

14 A. Me personally, when I was 15, 16 had a
15 traffic accident that was my fault. They sued
16 us. Guy settled out of court.

17 Q. Anything else?

18 A. No. Not that I'm aware of. There may
19 have been lawsuits related to investigations or
20 other police activity, but none where I've had to
21 give a deposition, so I don't --

22 Q. Okay. Do you know of any lawsuits
23 that SLED has been involved in since you've
24 worked there that would have involved any of your
25 cases or any of your investigations?

1 **A. None that specifically come to mind.**

2 Q. Okay. Have you ever been involved in
3 any Workers' Compensation or Social Security
4 matters?

5 **A. No.**

6 Q. I want to turn to Mr. Magwood. Did
7 you know Mr. Magwood prior to your investigation?

8 **A. I did not.**

9 Q. As you sit here today, do you believe
10 that he is guilty of misconduct in office?

11 MS. JACKSON: Object to the
12 form. Go ahead. You can answer.

13 **A. Object to the form?**

14 Q. Yeah.

15 **A. I have no opinion about that. I**
16 **supported the prosecution as is my duty.**

17 Q. Kind of walk me through, who were you
18 contacted by regarding Mr. Magwood?

19 **A. SLED had received -- excuse me, a**
20 **written request from Assistant Chief Smith of the**
21 **Charleston County Sheriff's Office. I believe it**
22 **was October 7th. That case was assigned to me by**
23 **my captain at the time, Roger Heaton, on October**
24 **9th.**

25 Q. And that's of 2008?

1 **A. 2008, yes.**

2 Q. And you said who SLED received the
3 request from. Officer --

4 **A. Assistant Chief A. Chouri (ph) Smith.**
5 **I don't believe she's with the sheriff's office**
6 **anymore, but her name was on the letter of**
7 **request.**

8 Q. And you said your captain assigned the
9 case to you?

10 **A. Correct.**

11 Q. Explain to me how in your division you
12 get cases?

13 **A. Cases are assigned to agents and our**
14 **manpower fluctuates from 4 agents to 12 agents in**
15 **the office at any given time. The cases are**
16 **assigned by the captain of the region based on a**
17 **variety of factors. Typically workload, based in**
18 **terms of whose turn it is, what kind of cases**
19 **they're carrying. Some consideration is given to**
20 **geography and, of course, any specific skills an**
21 **agent might have, although primarily it is**
22 **workload based.**

23 Q. How long had you been at SLED before
24 you got this case?

25 **A. I started at SLED March 2008, so**

1 **October. A few months.**

2 Q. At the time you received this case,
3 how many open investigations did you have?

4 **A. I don't recall how many.**

5 Q. What would be -- is there an average
6 work caseload that you have?

7 **A. That fluctuates. It can be -- it's**
8 **usually around anywhere from five to a dozen,**
9 **depending on the workload at the time and the**
10 **number of agents that we have, but I don't recall**
11 **how many I was carrying at the time.**

12 Q. Do you remember how many agents y'all
13 had at SLED?

14 **A. I don't. We went through several**
15 **manpower changes around that time or maybe after**
16 **that time, so it's hard to recall how many we had**
17 **then.**

18 Q. Were you the only agent assigned to
19 the case?

20 **A. Yes. One agent is assigned as primary**
21 **on any investigation. Assisting agents can be**
22 **assigned, but I believe in this case I was the**
23 **primary and only agent assigned.**

24 Q. So you didn't have any assisting
25 agents?

1 **A. Agents did assist in the**
2 **investigation, but I don't believe that any were**
3 **assigned specifically as assisting agents on this**
4 **case.**

5 Q. How would an agent assist? Would you
6 just go and ask that agent whether he could -- he
7 or she could help you with the case?

8 **A. Yes.**

9 Q. That's how they would become an
10 assisting agent?

11 **A. Yes.**

12 Q. Would they complete any reports?

13 **A. If they did something requiring them**
14 **to complete a report. If they had done an**
15 **interview or some other activity that they were**
16 **responsible for completing a report. However,**
17 **any reports do go into my case file, regardless**
18 **of who prepares them. In other words, any**
19 **reports, documentation for the case file goes to**
20 **the case agent. In other words, it would all be**
21 **included in the case file.**

22 Q. Would you review those reports?

23 **A. Yes.**

24 Q. And make sure everything was fine and
25 then would you have to sign off on the reports?

1 **A. I would not sign off on those reports.**
2 **They would be included in the file. Their**
3 **individual supervisors review those reports and**
4 **then my supervisor reviews my report. In fact,**
5 **at that time a lieutenant and the captain would**
6 **review the report.**

7 Q. Who was your lieutenant at that time?

8 **A. At the time I believe it was Brian**
9 **Bolchoz, B-O-L-C-H-O-Z.**

10 Q. Do you remember who your captain was?

11 **A. Would have been Roger Heaton.**

12 Q. You said that.

13 **A. Yes.**

14 Q. Thank you. Do you remember the names
15 of the agents that may have assisted you with
16 this case?

17 **A. Justin Smith was, I believe, the only**
18 **agent who assisted me with any interviews on this**
19 **case. He also handled the Grand Jury**
20 **presentation. I was on vacation that day.**
21 **Additionally, there was Agent Gayle Heat (ph) did**
22 **the handwriting analysis on this case.**

23 Q. Does Gayle do anything but
24 handwriting?

25 **A. She works in the questioned documents**

1 **division. They don't just do handwriting, but it**
2 **is one of their specialties in that forensic**
3 **division.**

4 Q. But in this case all she handled was
5 handwriting?

6 **A. Yes.**

7 Q. Okay. So you were assigned the case
8 October 9th of 2008?

9 **A. I believe so, yes.**

10 Q. When you said your captain assigned,
11 do you -- do you just get a phone call?

12 **A. It varies. If I'm in the office that**
13 **day, they may call me in and say you have a new**
14 **case. I don't recall what the circumstances were**
15 **on this one.**

16 Q. Okay. What was the first thing that
17 you did with the case once you got the case
18 assigned to you?

19 **A. I contacted Investigator Mike Anderson**
20 **who was listed as the point of contact for the**
21 **sheriff's office. I contacted him, I believe, by**
22 **phone that day.**

23 Q. What did y'all discuss?

24 **A. I'm gonna refer to my file here.**

25 Q. That's fine.

1 **A. He mentioned that Mr. Magwood was**
2 **placed on administrative leave as of October 7th.**
3 **And that Assistant Solicitor Greg Voigt of the**
4 **9th Circuit would have the information on the**
5 **case.**

6 Q. Okay. And I know you referred to your
7 case file and looks like there's some handwritten
8 notes?

9 **A. Right. These are parts of the file**
10 **that's on here. This is the case management**
11 **history.**

12 Q. Do you -- any time you have a
13 conversation with someone, do you take notes on
14 that conversation?

15 **A. Typically they are documented. This**
16 **is a chronological documentation for that**
17 **purpose, which is part of our case file.**

18 Q. And you said Investigator Anderson
19 told you that you could contact Greg Voigt, the
20 assistant solicitor?

21 **A. I believe he actually contacted**
22 **Solicitor Voigt to arrange a meeting. I think he**
23 **had to obtain some information from him, as well.**
24 **I don't recall, but a meeting was set up, I**
25 **believe it was the following week --**

1 Q. Okay.

2 A. -- at Greg Voigt's office.

3 Q. Who was present at that meeting?

4 A. If I recall, it was myself,
5 Investigator Anderson, Greg Voigt and I believe
6 Investigator Ryan Kelly of the Solicitor's office
7 was present for a portion of that meeting.

8 Q. And what was the purpose of that
9 meeting?

10 A. To obtain the initial information from
11 Solicitor Voigt whom it was my understanding the
12 complaint had originated from.

13 Q. What did you gain from that meeting?

14 A. Solicitor Voigt provided us with the
15 case summary that they had been provided by
16 Mr. Magwood to include the lineup in question and
17 a briefing essentially on the meeting they had
18 had with Mr. Magwood and Mrs. Boney that had led
19 to the complaint.

20 Q. At this point what was your
21 understanding of the issues that you were
22 investigating?

23 A. Mr. Magwood -- at that time they were
24 preparing for a trial on a criminal sexual
25 assault case. After a meeting with the alleged

1 victim in the case, Mrs. Boney, they had shown
2 her a photographic lineup as part of
3 identification for trial purposes and she had
4 told them that she did not recognize it and that
5 the handwriting on the lineup in question was not
6 hers.

7 This resulted in a meeting with
8 Mr. Magwood in which they inquired about the
9 lineup. Mr. Magwood told them that the writing
10 on the lineup in question was hers and not his.

11 They had followed up with Ms. Boney
12 and she had confirmed that she did not sign the
13 document.

14 Q. So you're investigating whether -- I
15 guess, what was the point of the investigation?
16 What were you trying to discover in doing this
17 investigation?

18 A. It was an allegation of possible
19 misconduct by an official by an officer, to
20 determine if he had provided false information in
21 the case or there was a misunderstanding or
22 basically just to investigate the allegation and
23 determine what the facts were.

24 Q. Okay. After the meeting with Greg
25 Voigt, Investigator Anderson and possibly

1 Investigator Kelly for part of that meeting, what
2 was the next step you took in your investigation?

3 **A. I met with -- myself and Agent Justin**
4 **Smith met with Mrs. Boney at her residence.**

5 Q. This is all one meeting?

6 **A. Myself and Agent Smith went to**
7 **Mrs. Boney's house and interviewed her.**

8 Q. During your interview with Ms. Boney,
9 what was -- what information did you gather from
10 that meeting?

11 **A. She stated that she had been shown a**
12 **single color photograph by Mr. Magwood. She did**
13 **not recall signing anything. Said she didn't**
14 **know if she signed anything.**

15 Q. Did she say she didn't recall signing
16 anything or she didn't sign anything?

17 **A. She said I -- she only said she saw**
18 **the single color photograph and that Mr. Magwood**
19 **had gotten ready to show her some other**
20 **photographs and she made the statement, "I don't**
21 **know if I signed anything." But she didn't**
22 **specifically recall signing that lineup and**
23 **didn't identify that handwriting as hers.**

24 Q. Did you show her the photo lineup?

25 **A. We did.**

1 Q. Okay. And she identified that that
2 was not her handwriting?

3 A. I believe I recall that. Let me refer
4 to my memorandum. I don't have it documented
5 specifically that I showed her that lineup, so I
6 can't state for certain that she actually did
7 view that again. She said she only saw the one
8 large picture. Magwood got ready to show her
9 another piece of paper that had a lot of pictures
10 on it and told her she needed to sign some
11 things. She said she was upset and doesn't know
12 if she ever did sign anything. He never came by
13 any other time to show her any other pictures.
14 She also told me that she contacted Officer
15 Magwood after the meeting with Solicitor Voigt.

16 Q. Uh-huh.

17 A. And Mr. Magwood told her not to worry
18 about it and it might have been, "Bad on his
19 part."

20 Q. Did she elaborate? Did she ask
21 Magwood any other questions about what he meant?

22 A. That's the only information she gave
23 us.

24 Q. Did you believe Ms. Boney was being
25 truthful?

1 **A. Yeah. I documented what she told me.**

2 Q. Did you -- I mean, did you --

3 **A. I can't say for certain. You know,**
4 **she -- she gave me information that appeared to**
5 **be consistent with the information she had given**
6 **in the earlier meeting with Kelly and Voigt.**

7 Q. How long was that meeting that you had
8 with her?

9 **A. Approximately 20 minutes.**

10 Q. Okay. After that meeting, what was
11 the next step?

12 **A. I attempted to contact Mr. Magwood via**
13 **cell phone. I also obtained some additional**
14 **contact information for his -- for Lieutenant**
15 **Paul Tittle who had been lieutenant in**
16 **investigations at Charleston County.**

17 Q. Did you talk to Mr. Magwood?

18 **A. I left several messages and finally**
19 **contacted him on October 20th.**

20 Q. October 20th?

21 **A. I believe. October 20th is what I had**
22 **documented.**

23 Q. The conversation when you finally got
24 in touch with Mr. Magwood on October 20th, what
25 was discussed?

1 **A. It was -- I believe he was aware of**
2 **the investigation. He had been in contact with**
3 **an attorney and he was waiting to hear back from**
4 **that attorney in terms of wanting to speak.**

5 **Q. Did he ever give you any kind of**
6 **statement, oral or written?**

7 **A. In that conversation, he did not. You**
8 **mean ever, for the duration of the case?**

9 **Q. Yes.**

10 **A. I may have documented -- I documented**
11 **one actual conversation we had in a memorandum at**
12 **a later date, farther down the chronology of**
13 **this, if you want to --**

14 **Q. Yeah. We'll kind of go through**
15 **everything and get to that.**

16 **A. -- get to that.**

17 **Q. And you said you also contacted**
18 **Tittle?**

19 **A. I did to set up an interview for him,**
20 **as well.**

21 **Q. And you had that interview with**
22 **Lieutenant Tittle?**

23 **A. Lieutenant Tittle was interviewed.**
24 **Had some conflicts, October 24th. I had some**
25 **other conversations in between that time.**

1 **Magwood -- had a conversation with Magwood on**
2 **October 23rd. He told me he was represented by**
3 **Attorney Diedreich von Lehe and he had asked**
4 **Mr. Lehe to contact me. Mr. Magwood said he was**
5 **ready to give a statement after I got in contact**
6 **with Mr. Lehe, so I left a message for Mr. Lehe**
7 **and waited to hear from him and the next day is**
8 **when I had the conversation with Lieutenant**
9 **Tittle.**

10 Q. Tell me about the conversation with
11 Lieutenant Tittle?

12 A. Lieutenant Tittle didn't recall
13 **specifics of the case. He referred me to**
14 **Sergeant BK Williams and Sergeant Clarice Zimmer,**
15 **I believe had been his supervisors. He gave me**
16 **some background on Mr. Magwood, but he didn't**
17 **have any specifics about the case.**

18 Q. Did you follow-up with Sergeant Zimmer
19 and BK Williams?

20 A. I did.

21 Q. Was this right after the conversation
22 with Lieutenant Tittle?

23 A. I first set up an interview with
24 **Sergeant Williams and attempted to contact**
25 **Sergeant Zimmer. As it turned out, I ended up**

1 interviewing Sergeant Zimmer and Lieutenant
2 Watson on October 29th and Williams on October
3 30th.

4 Q. Tell me about that. Did you interview
5 Sergeant Zimmer and Lieutenant Watson at the same
6 time?

7 A. Separately.

8 Q. Separately, okay. Tell me about that
9 conversation with Sergeant Zimmer.

10 A. Sergeant Zimmer provided a statement.
11 I'm going to reference it. Sergeant Zimmer
12 stated that she had contacted Mr. Magwood after
13 he had heard that he was placed on administrative
14 leave and they had a conversation about the
15 events leading to the witness identification of
16 the suspect. Mr. Magwood told her that he had
17 showed the victim a single photograph of the
18 suspect which the witness identified as the
19 suspect. He then showed her a six-pack lineup
20 and the witness identified the suspect for a
21 second time. She became emotional.

22 He forgot to have the witness circle
23 and initial the suspect photograph. He said he
24 had had a conversation with Solicitor Greg Voigt
25 regarding the oversight and as a result, he said

1 he understood it would be permissible for him,
2 Mr. Magwood, to circle and initial the photograph
3 on behalf of the witness.

4 That's a summary. And she provided a
5 full statement, which is in the case file.

6 Q. Okay. That statement, is that
7 everything that y'all talked about?

8 A. That's the substance I recall of our
9 conversation.

10 Q. What was Sergeant Zimmer's
11 relationship with Mr. Magwood?

12 A. She had been a supervisor of
13 Mr. Magwood since mid 2007.

14 Q. I believe you said Lieutenant Tittle
15 was also Magwood's supervisor?

16 A. I'm not certain if -- he had
17 supervised Lieutenant Magwood for some time and
18 initially I had been told that he was the
19 supervisor I would need to contact. He didn't
20 recall any specifics about that investigation.
21 You know, I believe he would have been the
22 lieutenant over Sergeant Zimmer and Sergeant
23 Williams at that time.

24 When I interviewed Lieutenant Tittle,
25 I believe he was over the traffic unit. Some

1 **time had passed.**

2 Q. Was Sergeant Zimmer involved in this
3 investigation?

4 **A. She didn't state having any memory, I**
5 **don't believe, of that case specifically.**

6 Q. Are supervisors typically involved in
7 the investigation?

8 MS. JACKSON: Object to the
9 form.

10 Q. Based on your knowledge of
11 investigating, are supervisors --

12 **A. I can't state for certain if -- what**
13 **Charleston County's actual protocol is on that.**
14 **As a supervisor, supervisors do review reports**
15 **and have varying levels of involvement with**
16 **investigation.**

17 Q. Did you review the -- I know you said
18 in that meeting with Greg Voigt they gave you a
19 copy of the case file that Magwood had provided.

20 **A. Uh-huh.**

21 Q. Did you review that file?

22 **A. I did review it.**

23 Q. Did Sergeant Zimmer's name come up in
24 that file?

25 **A. I'm not certain.**

1 Q. And so Sergeant Zimmer's only
2 knowledge was based on a conversation she said
3 she had had with him after Magwood was out on
4 administrative leave?

5 A. I don't know that. I know that's the
6 information she provided me when I asked her
7 about the investigation. I don't know if she had
8 reviewed the file on her own, had had other
9 discussions, I wasn't privy to that information.

10 Q. But all she mentioned was that phone
11 call?

12 A. Yes.

13 Q. Okay.

14 A. Yeah. And she gave some other
15 information about Mr. Magwood and, again,
16 mentioned that she had been his supervisor.

17 Q. Okay. And you said you also spoke
18 with Lieutenant Watson?

19 A. Yes.

20 Q. Tell me about that conversation.

21 A. Lieutenant Watson provided us with a
22 statement stating that he had also had a
23 discussion with Mr. Magwood after he was placed
24 on leave.

25 He said that he was informed by

1 Detective Magwood that the victim in the case had
2 personally known the suspect and had provided
3 sufficient identifiers. He showed the victim a
4 single photograph of the suspect who she had
5 already identified only to confirm his identity.

6 He stated he was later -- Detective
7 Magwood, according to Lieutenant Watson, said he
8 was later instructed by Sergeant Williams, that
9 would be BK Williams, to show the victim a
10 photographic lineup, which he did. So two
11 different incidents. It was relayed to him that
12 the victim was very emotional, not able to circle
13 the suspect's photograph.

14 Q. And it was relayed to him by, he was
15 alleging Magwood --

16 A. That Magwood had told him that. That
17 BK Williams had told him to go back and show her
18 the lineup.

19 Q. What was Lieutenant Watson's
20 relationship with Mr. Magwood, to your knowledge?

21 A. He said he did not have any direct
22 knowledge of the particular case. He had only
23 been assigned to the criminal investigation
24 division on March 13th, 2008. He knew detective
25 Magwood from working with him. I don't know

1 **exactly that relationship, however Lieutenant**
2 **Watson did provide some details on Detective**
3 **Magwood's history as a detective. Mentioned some**
4 **awards he had received, et cetera.**

5 Q. Did Lieutenant Watkins (sic) say when
6 he had that conversation with Mr. Magwood?

7 A. "I had the opportunity to speak with
8 Detective Magwood before he was placed on
9 administrative leave by this case and I have had
10 the opportunity to review this case," is all he
11 states. He didn't state exactly when it
12 happened. He just says before he was placed on
13 administrative leave..

14 Q. Do you know if Lieutenant Watson or
15 Sergeant Zimmer, did they speak to anyone else?

16 A. I don't know that.

17 Q. Okay. You said you also met with
18 Sergeant Williams the next day?

19 A. Sergeant Williams was interviewed on
20 October 30th.

21 Q. Okay. Tell me about that
22 conversation.

23 A. And again, this is a summary of what's
24 in the case file. He did not have any specific
25 recollection about the investigation in question.

1 He did not remember having any specific
2 conversations with Detective Magwood involving
3 photo lineups. He said was possible he may have
4 suggested to Magwood to have a photo lineup done
5 in a case where there was already a CODIS hit,
6 which is a DNA hit, because it would strengthen
7 the case, but would not have made such a
8 suggestion if he was aware that a single photo
9 identification had already been done, because
10 that would have "tainted the lineup." Sergeant
11 Williams also provided some background on
12 Detectives Williams -- I'm sorry, Mr. Magwood, at
13 the time that he had been his supervisor.

14 Q. And just so I'm clear, the information
15 that you got was that Lieutenant Tittle was the
16 supervisor over Mr. Magwood and you believe he
17 may have been over Sergeant Williams and Sergeant
18 Zimmer?

19 A. My understanding is Lieutenant Tittle
20 was the lieutenant in the -- or a lieutenant in
21 the criminal investigation division and the two
22 sergeants were Sergeant Zimmer and Sergeant
23 Williams around the time of that investigation.
24 And I believe -- I believe Lieutenant Watson had
25 taken Lieutenant Tittle's position at the time of

1 **the interview.**

2 Q. Okay. Did it -- did it appear strange
3 to you that no one had information on the
4 investigation, none of the supervisors?

5 **A. That they did not recall specifics on**
6 **that investigation?**

7 Q. Yes.

8 **A. No.**

9 Q. Okay. After speaking to Sergeant
10 Zimmer, Lieutenant Watkins (sic), sergeant --
11 yeah, Sergeant Williams, Lieutenant Tittle, what
12 was the next step you took in your investigation?

13 **A. I obtained some paperwork over the**
14 **next few days. I was contacted -- I need to back**
15 **up -- on October 27th by Mr. Magwood's attorney,**
16 **Mr. Lehe. Had several contacts, but essentially**
17 **he told me that Mr. Magwood was done talking.**

18 Q. Okay.

19 **A. I contacted Mr. Magwood on the 28th to**
20 **confirm that he did not want to give a statement,**
21 **because he had earlier been asked about giving a**
22 **statement and he reiterated that. I asked him if**
23 **he wanted -- if there were any witnesses he**
24 **wanted me to interview on his behalf and so**
25 **forth. He stated no. I prepared a memorandum on**

1 **that conversation, as well.**

2 Q. Why did you contact Mr. Magwood after
3 speaking to his attorney?

4 A. **Just to confirm, based on his earlier**
5 **statement, that he did want to give a statement,**
6 **that he did not want to contact -- anything and**
7 **also, to give him an opportunity if there were**
8 **any other witnesses that he wanted me to contact**
9 **in regards to this investigation, to give him**
10 **that opportunity to be fair.**

11 Q. Did he give you any witnesses?

12 A. **He did not. He stated that he had**
13 **worked his cases alone and the only people who**
14 **knew about the case were the victim that he had**
15 **showed the lineup to and himself.**

16 Q. Based on your investigation, did that
17 appear to be a true statement?

18 A. **I don't know of anyone else. Let me**
19 **rephrase. When you say -- when you say based on**
20 **my investigation was that a true statement in**
21 **regards to no one else knew about it but the**
22 **victim and himself?**

23 Q. Yes.

24 A. **His supervisors would have reviewed**
25 **the case. I don't have any information that**

1 **anyone else was present or involved in the lineup**
2 **showing itself, other than Mr. Magwood and**
3 **possibly the victim.**

4 Q. Do you know what supervisors reviewed
5 the case?

6 A. It would be on the case file. I don't
7 know off the top of my memory.

8 Q. Okay. After confirming with
9 Mr. Magwood that he didn't have anyone that he
10 needed you to speak to, what was the next step?

11 A. I prepared my paperwork, typed my
12 report, submitted it to my supervisors for
13 review. The report was then delivered to
14 Solicitor Wilson's office and Solicitor Wilson's
15 office citing a conflict, I suppose, since the
16 complaint had originated with their office, sent
17 it to the Attorney General's office for review.

18 Q. Scarlett Wilson's office?

19 A. Yes. The 9th Circuit Solicitor's
20 Office.

21 Q. It's confusing now that Wilson is also
22 the Attorney General now.

23 A. Right.

24 Q. So it was first sent to the 9th
25 Circuit, then they forwarded it. Did they send

1 it to the Attorney General's office?

2 **A. They sent it directly from their**
3 **office to the Attorney General's office.**

4 Q. Did you ever do handwriting samples?

5 **A. I did not at that time. I did later**
6 **in the investigation at the direction of the**
7 **Attorney General's office. I contacted our**
8 **handwriting office very early on in the**
9 **investigation to inquire about the possibility.**
10 **I did not at the time that that report was**
11 **prepared.**

12 Q. So after -- after the report was sent
13 to the Attorney General's office, what happened
14 after that?

15 **A. It went through a review process at**
16 **the time with Rob Bogan who was the Deputy**
17 **Attorney General assigned to the case.**

18 Q. What's the purpose of that process?

19 **A. Could you explain what you mean?**

20 Q. You said the report is reviewed by Rob
21 Bogan or whoever, I guess, with the Assistant
22 Attorney General's office would be on it?

23 **A. When we submit a case file in many of**
24 **our cases a prosecutorial authority, be it the**
25 **Attorney General's office or the Solicitor's**

1 office, will review the case to determine if, in
2 their opinion, a criminal violation has occurred
3 and if charges are appropriate. They will also
4 make a determination if further investigation is
5 warranted.

6 Q. What was the result of that review?

7 A. Some time passed. I was notified --
8 ultimately the result was that the Attorney
9 General's office asked us to obtain a warrant for
10 misconduct in office and arrest Mr. Magwood,
11 which occurred -- I was notified of this on May
12 6th, 2009.

13 Q. And I'm gonna hand you this. Is this
14 the affidavit that you completed for the warrant?

15 A. It appears to be a copy of the
16 affidavit, yes.

17 Q. Okay. And that's based on the
18 Attorney General's office asking you to prepare
19 that?

20 A. Yes.

21 MS. FAJARDO: Okay. Can we go
22 ahead and mark this?

23 (Plaintiff's Exhibit 1 was
24 marked for identification.)

25 Q. What was the basis for writing this

1 affidavit and getting the warrant?

2 **A. Can you explain what you mean in terms**
3 **of, "basis"? You mean the direction, who**
4 **directed me to do it or what is the --**

5 Q. You were -- I mean, obviously, I think
6 we can see it was for misconduct in office.

7 **A. Right.**

8 Q. So what is the support for the charge
9 of misconduct in office?

10 **A. Would you like me to read the**
11 **affidavit?**

12 Q. No. What do you believe is the basis
13 for getting that warrant, writing that affidavit?

14 MS. JACKSON: Objection to the
15 form.

16 **A. The basis as stated in the affidavit**
17 **is that Magwood did knowingly and willfully**
18 **provide false information in his investigative**
19 **report in the form of a photo lineup reported to**
20 **have been signed by a witness in the**
21 **investigation and that in later pretrial meetings**
22 **with the Solicitor's office, Magwood did**
23 **knowingly and willfully provide false information**
24 **to an assistant solicitor and investigator for**
25 **the Solicitor's office regarding the**

1 **investigation in the accompanying investigative**
2 **report.**

3 Q. Let me ask this. Did you get the
4 warrant and write that affidavit because you were
5 told to do it or because you --

6 A. I was instructed by the -- by Rob
7 Bogan of the Attorney General's office that the
8 decision had been reached to obtain a warrant for
9 Mr. Magwood's arrest for misconduct in office.

10 Q. Did he tell you what to write in the
11 affidavit?

12 A. Not specifically. We did discuss some
13 language related to the charge of misconduct in
14 office. So it is based on his -- in other words,
15 he didn't tell me word for word, but he provided
16 me the information that he, after review of the
17 case, found was significant and what applied to
18 the statute, the common law statute, misconduct
19 in office.

20 Q. And I believe you testified that
21 Magwood did knowingly and willfully provide false
22 information in his investigative report in the
23 form of a photo lineup. Can you explain that,
24 what false information?

25 A. That he provided false information in

1 **regards to the investigation. In the interviews**
2 **that I did revealed that he provided several**
3 **different stories, but specifically to the**
4 **Solicitor's office had stated that he had shown a**
5 **lineup, that it was signed by the victim of the**
6 **case and this was not believed to be true based**
7 **on the investigation.**

8 Q. What, in your investigation, supported
9 that the victim didn't sign the photo lineup?

10 A. The victim denied signing the photo
11 lineup and the witness statements with -- both
12 from the information I obtained from the
13 Solicitor, Greg Voigt, the investigator, Ryan
14 Kelly, Ms. Boney herself, Sergeant Zimmer, and
15 Lieutenant Watson.

16 Q. Let's go back, because you said the
17 victim denied signing the photo lineup, but you
18 had testified Ms. Boney told you she couldn't
19 recall whether she had signed it.

20 A. She said she doesn't know if she
21 signed anything, was her specific words. She did
22 not -- she recalled being shown a single photo.

23 Q. Okay. So did she say I didn't sign
24 the photo lineup or she said I can't remember if
25 I signed anything?

1 **A. She only -- she only recalled the**
2 **single photo lineup. She said that he got ready**
3 **to show her another set of photographs. She**
4 **didn't want to look at them and that she didn't**
5 **recall she signed anything, is all she said. She**
6 **had also provided a statement to Investigator**
7 **Kelly in which she denied that the handwriting**
8 **was hers.**

9 Q. Would you agree that not recalling is
10 different from not doing something?

11 MS. JACKSON: Objection to form.

12 **A. She specifically said, "I don't recall**
13 **if I signed anything." She did not say**
14 **specifically, I don't recall about the lineup.**

15 Q. Okay. So do you agree that the not
16 recalling and saying that you didn't do something
17 is different or in your investigation that's the
18 same thing?

19 MS. JACKSON: Objection to form.

20 **A. I don't understand the question.**

21 Q. Yeah. You said she stated she didn't
22 recall signing anything.

23 **A. (Indicating.)**

24 Q. Did she say I didn't sign anything or
25 she didn't recall?

1 **A. She said, "I don't know if I signed**
2 **anything."**

3 Q. Do you believe that's different? Does
4 that have a different meaning than if she had
5 said I didn't sign anything?

6 **A. She told Investigator Ryan Kelly in**
7 **the interview previous to this investigation,**
8 **which was also before she spoke to Detective**
9 **Magwood about the situation, that she had not**
10 **signed the lineup.**

11 Q. The conversation that you reference
12 with Investigator Kelly, is that the same
13 conversation -- did Investigator Kelly record
14 that conversation?

15 **A. He did.**

16 Q. And did you listen to that recording?

17 **A. I did.**

18 Q. And on that recording is when she said
19 that she didn't sign?

20 **A. Right.**

21 Q. Do you feel that Investigator Kelly
22 suggested any answers to Ms. Boney?

23 **A. I don't have an opinion about that.**

24 Q. Did Ms. Boney say in that conversation
25 she didn't recall, she didn't know one way or the

1 other?

2 **A. I don't have a transcription of that**
3 **in front of me. I don't recall every single**
4 **thing that she said.**

5 Q. But what you gathered from that
6 conversation was that she didn't sign the photo
7 lineup?

8 **A. Yes.**

9 Q. Okay. And kind of going back, when
10 you were giving me all your support for the false
11 information, you said the victim denied signing
12 the photo lineup and then the statements of
13 Sergeant Zimmer?

14 **A. Yes.**

15 Q. And that was -- what from Sergeant
16 Zimmer supported?

17 **A. Sergeant Zimmer stated that**
18 **Mr. Magwood had told her that after a**
19 **conversation with Solicitor Voigt, he had**
20 **believed it was permissible to circle and sign**
21 **the lineup himself.**

22 Q. Did you talk to Ms. Boney any other
23 time, other than the first time that you spoke to
24 her?

25 **A. I did not conduct any other formal**

1 **interviews with her, no.**

2 Q. Did anyone else from your office talk
3 to her again?

4 **A. No. Not that I'm aware, no.**

5 Q. So you said Sergeant Zimmer, the
6 victim and what was the other support?

7 **A. Lieutenant Watson had stated the story**
8 **that Mr. Magwood had been instructed to go back**
9 **and show the lineup by his sergeant, BK Williams.**
10 **Mrs. Boney had stated that there was only the one**
11 **visit and that she didn't recall any other times**
12 **he had come by in her earlier interview.**

13 Q. Based on your investigation, is it
14 your opinion that Mr. Magwood never showed
15 Ms. Boney a photo lineup?

16 **A. I don't have any evidence to support**
17 **that he did.**

18 Q. And I want to go back. When you
19 talked to Ms. Boney and I asked you whether you
20 felt that she was being truthful, you stated that
21 her information appeared to be consistent with
22 what had been reported to the Solicitor's office?

23 **A. Relatively consistent.**

24 Q. What position did the Solicitor's
25 office have? What did the Solicitor's office

1 tell you was going on? Does that make sense?

2 **A. Not really.**

3 Q. That was a bad question. That was a
4 bad question. I'm trying to find out when you
5 spoke to the Solicitor's office --

6 **A. Right.**

7 Q. -- because that was the first meeting
8 that you had on the case. What information did
9 they give you that they believed had occurred?

10 **A. I have the information that's**
11 **contained in the summary. I'm referring to**
12 **Investigator Ryan Kelley's memorandum. They met**
13 **with the victim, Ms. Catherine Boney, several**
14 **times in September 2008. During the meeting**
15 **Ms. Boney made mention of being shown a**
16 **photograph by Detective Magwood of the suspect.**
17 **I'm summarizing here. "Mr. Voigt and I**
18 **previously observed in the case file a signed**
19 **six-picture photo lineup where the photograph of**
20 **Maurice Prioleau had been circled, dated, timed**
21 **and initialed. When Ms. Boney advised she was**
22 **shown a photograph of suspect by Detective**
23 **Magwood, we assumed Ms. Boney was referring to**
24 **the lineup present in the case file. After two**
25 **separate conversations with Ms. Boney, she was**

1 **certain she was shown only a single photograph**
2 **and not a photograph of Prioleau in a**
3 **six-photograph lineup." They followed up on**
4 **that.**

5 **When they met with Mr. Magwood on**
6 **September 25th, they had advised him of her claim**
7 **of her not signing the lineup. He stated the**
8 **victim was incorrect. Advised that she was**
9 **extremely upset and must have forgotten. He**
10 **advised the victim signed the lineup and is**
11 **incorrect in her recollection. That's a summary**
12 **of that.**

13 Q. And further on in this affidavit
14 that's Plaintiff's Exhibit 1, it has, "Officer
15 Magwood did knowingly and willfully provide false
16 information to an assistant solicitor and
17 investigator for the Solicitor's office regarding
18 the investigation."

19 **A. Right.**

20 Q. Is that -- is the basis for that line
21 in the affidavit the same as what you previously
22 have testified to, the previous mention of false
23 information?

24 **A. Again, that -- the information**
25 **contained therein is based on the Attorney**

1 **General's office review of the case file in terms**
2 **of what they felt the violation was in here. So**
3 **I cannot specifically state what Rob Bogan**
4 **specifically included in that, but that would be**
5 **included in that information, yes.**

6 Q. But you've signed this affidavit?

7 A. Yes. Uh-huh.

8 Q. And you believed everything in this
9 affidavit to be true?

10 A. To the best of my knowledge, yeah.

11 Q. Was there a preliminary hearing in
12 this case or just taken to the Grand Jury?

13 A. There was a preliminary hearing.

14 Q. Did you handle the preliminary
15 hearing?

16 A. I did.

17 Q. At the preliminary hearing what was
18 the basis for the arrest?

19 A. I'm sorry?

20 Q. At the preliminary hearing you
21 testified as to the probable cause to make the
22 arrest, didn't you?

23 A. Yes. I testified by reading the
24 affidavit in court, if I recall. I don't have
25 the transcription of that in front of me, but

1 **that's what I recall.**

2 Q. Okay. Was there anything additional,
3 other than the affidavit?

4 A. There may have been. Mr. Bogan was
5 present and acting as -- on behalf of the
6 prosecution in that case, so he had asked some
7 other questions. I don't recall what they were.

8 Q. Any other evidence that was present in
9 the case, other than what you've already
10 testified to?

11 A. Anything that was presented there
12 would have been information contained in the case
13 file.

14 Q. And I know you said at some point you
15 requested a handwriting sample.

16 A. I did.

17 Q. Do you -- was this after the
18 preliminary hearing?

19 A. The handwriting samples were obtained
20 after the preliminary hearing, yes.

21 Q. So there's a preliminary hearing and
22 then the Grand Jury -- it was presented to the
23 Grand Jury?

24 A. It was presented to the Grand Jury --
25 I'm looking for the date.

1 Q. That's fine.

2 A. On or about August 4th, 2009 is what I
3 have documented. I was on leave and Agent Smith
4 did the presentation for the Grand Jury.

5 Q. Do you have any information about what
6 he presented to the Grand Jury?

7 A. I do not.

8 Q. After getting the affidavit, arresting
9 Mr. Magwood, was there any further investigation
10 on this case?

11 A. I obtained a handwriting standards for
12 Mr. Magwood per the AG's office request and I
13 believe they had a court order on December 30,
14 2010 and they were submitted to the SLED forensic
15 lab.

16 Q. Why was this obtained so late?

17 A. Per the AG's office request.

18 Q. Did they tell you why they wanted the
19 handwriting sample?

20 A. They wanted them as part of the
21 preparation for court, as part of the
22 investigation.

23 Q. Did you obtain handwriting samples
24 from Ms. Boney?

25 A. They were obtained by Investigator

1 **Anderson as part of their investigation and her**
2 **standards were submitted.**

3 Q. Did you -- I'm sorry. Did you get a
4 copy of her handwriting and submit it with
5 Mr. Magwood's?

6 A. The handwriting standard she had
7 submitted, if I recall, were resubmitted again
8 for comparison to the standards I had obtained on
9 December 30th.

10 Q. What were the results of Mr. Magwood's
11 handwriting samples?

12 A. I can read from the report if you'd
13 like me to.

14 Q. I know what the report says. In your
15 opinion -- let me --

16 A. I don't formulate an opinion on
17 forensic.

18 Q. You don't have an opinion?

19 A. I do not form an opinion, professional
20 opinion, on a laboratory report. That's the job
21 of the technician.

22 Q. Okay. So whatever the report says,
23 that's what you believed?

24 A. That is what I have to go on, is
25 what's on the report.

1 Q. Did you feel the report supported the
2 case against Mr. Magwood?

3 **A. I feel that it did.**

4 Q. Were you aware of the internal affairs
5 investigation of Mr. Magwood?

6 **A. I was aware that an investigation was**
7 **going on. I was not privy to any information**
8 **obtained therein.**

9 Q. You said you got -- Investigator
10 Anderson had gotten handwriting samples from
11 Boney that he shared with you. Did he share the
12 results of --

13 **A. No, he didn't.**

14 Q. He just gave you the handwriting
15 samples?

16 **A. That evidence was transferred to me.**
17 **I don't even recall specifically details of the**
18 **transfer, but that evidence was transferred to me**
19 **and I delivered that evidence to our lab. I did**
20 **not review their reports or any reports they had**
21 **obtained based on their investigation.**

22 Q. Was any other evidence transferred to
23 you for your investigation?

24 **A. Not that I recall. Let me see. I'm**
25 **not certain. I know -- I know that at one point**

1 the lab was submitted the original lineup in
2 question. The standards for Mr. Magwood I had
3 obtained and standards for Mrs. Boney. Going on
4 memory I don't recall specifically what of those
5 items I obtained specifically from Charleston
6 County, but that was the evidence handled in this
7 case.

8 Q. Okay. How did you go about getting
9 the evidence transferred, Ms. Boney's handwriting
10 samples?

11 A. I would -- we would fill out an
12 evidence transfer form. I don't know if I used
13 Charleston County's form or a SLED form. It was
14 transferred into my custody and then it was
15 delivered to the forensic lab.

16 Q. Did you share any of your
17 investigation with the internal affairs
18 investigation?

19 A. They were ultimately provided a copy
20 of my case and the case addendum.

21 Q. Were they provided the handwriting
22 samples of Mr. Magwood that you received in
23 December 2010 or -- yeah, submitted, I guess, in
24 December 2010?

25 A. I don't recall specifically giving

1 **them those reports. Whether they obtained them**
2 **on their own, I have no idea.**

3 Q. Did you have any conversations with
4 Investigator Anderson or Investigator Antonio
5 regarding the investigation?

6 A. Not that I recall, no. Other than
7 the -- I obtained some, you know, phone numbers,
8 contact information, so forth and they contacted
9 me a few times while the case was under review to
10 see if there was a status update.

11 Q. But no details of the case were
12 discussed?

13 A. Not that I recall.

14 Q. Did you -- who did you talk to
15 throughout your investigation regarding your
16 investigation. Would you speak to anyone else in
17 the department, in SLED?

18 A. Not that I recall, except for the
19 agents who might have been assisting me in the
20 case, which would have been Agent Smith and my
21 supervisor at the time, Lieutenant Bolchoz would
22 have been the only one I would have recalled
23 discussing the case with.

24 Q. Did you ever speak to the media?

25 A. No.

1 Q. Did the media ever contact you?

2 A. Not that I recall. Agents aren't
3 allowed to give media statements.

4 Q. Does SLED have anyone in their
5 division that handles discussing cases with the
6 media?

7 A. We have a public information officer.

8 Q. Do you know that person's name?

9 A. The one at the time or the current
10 one?

11 Q. The one at the time.

12 A. I believe, and I'm not 100 percent
13 certain, but I believe at the time it would have
14 been Jennifer Timmons.

15 Q. Do you know if she was contacted
16 regarding this case?

17 A. I do not know.

18 Q. Where do the public information
19 officers get the information regarding the case
20 when they're contacted?

21 A. Through our case files. Additionally
22 when we make an arrest we typically will fax or
23 send a copy of the affidavit, as well as any
24 arrest paperwork to -- to their office or to
25 Columbia.

1 Q. Do you do that on every case or just
2 high profile cases?

3 **A. Every case. Every case.**

4 Q. Did you follow up on the relationships
5 the witnesses claim that they had with Magwood
6 and I'm speaking about Sergeant Zimmer,
7 Lieutenant Watson, Sergeant Williams, Lieutenant
8 Tuttle?

9 **A. I don't understand specifically what**
10 **you mean in terms of relationships.**

11 Q. Did you follow-up if they were his
12 supervisor?

13 **A. That was the information I was**
14 **provided, is that they were -- they were his**
15 **supervisors.**

16 Q. Okay. And just so I'm clear --

17 **A. Uh-huh.**

18 Q. -- you spoke to Sergeant Zimmer,
19 Lieutenant Watkins?

20 **A. It's Watson.**

21 Q. Watson. I don't know why I keep
22 saying that wrong?

23 **A. It's okay.**

24 Q. Lieutenant Tuttle and Ms. Boney?

25 **A. (Indicating.)**

1 Q. Anyone else that you spoke to in
2 investigating Mr. Magwood?

3 A. Did you mention Solicitor Voigt and
4 Investigator Ryan Kelly.

5 Q. I didn't. And other than the meeting
6 you had with them, did you speak to them any
7 further?

8 A. I interviewed Solicitor Voigt, yes.

9 Q. When did you interview Solicitor
10 Voigt?

11 A. On February 10, 2009. I had been
12 contacted by Rob Bogan at the Attorney General's
13 office and he had requested that I follow-up with
14 Solicitor Voigt.

15 Q. What did Bogan, what did he want you
16 to talk to Voigt about?

17 A. I was -- I had interviewed Voigt in
18 reference to a statement that had been made by
19 Sergeant Zimmer in which she related information
20 about a conversation between Magwood and Voigt.

21 Q. And what came of that interview with
22 Voigt?

23 A. Voigt stated he did not think he would
24 have told Magwood that it would be acceptable for
25 him to sign a photo lineup on behalf of the

1 **victim. When he was explaining -- preparing the**
2 **Prioleau case for trial, he questioned Magwood**
3 **about the handwriting on the lineup signature and**
4 **Magwood adamantly denied that it was his**
5 **handwriting. Magwood maintained repeatedly that**
6 **the victim was the one who had signed the lineup.**
7 **Magwood also denied to Investigator Ryan Kelly**
8 **that the handwriting was his.**

9 **In their meeting on the Prioleau case**
10 **Magwood never mentioned showing the victim a**
11 **single photograph of the suspect. In the**
12 **45-minute meeting that they had that day, Magwood**
13 **never made any mention of the previous**
14 **conversation with Voigt about the lineup.**

15 **There are some other details, other**
16 **information that is in the memorandum in the case**
17 **file. That's a summary.**

18 **Q. Okay. And then with Investigator**
19 **Kelly, did you speak with him again after that**
20 **first meeting?**

21 **A. I don't recall any follow-up after**
22 **that first information.**

23 **Q. When you got the arrest warrant for**
24 **Mr. Magwood, did you have any conversation with**
25 **the judge that signed the warrant, the**

1 magistrate, or did you just give him the
2 affidavit?

3 **A. Not specifics. I would have given him**
4 **the information on the affidavit. I don't recall**
5 **anything else.**

6 Q. So the judge was not aware that
7 Ms. Boney said she couldn't recall signing
8 anything?

9 MS. JACKSON: Objection to the
10 form.

11 Q. Did you tell the judge that Ms. Boney
12 had said she couldn't recall signing anything?

13 **A. I gave the judge the information that**
14 **was contained on the affidavit.**

15 Q. Give me one moment, I may be done.
16 Did you receive any information in your
17 investigation that Mr. Magwood's supervisors
18 believed Magwood had forged the signature?

19 **A. The supervisors I interviewed and I'll**
20 **refer to them, they stated they didn't believe he**
21 **would have intentionally -- well, before I quote**
22 **it, let me refer to the information.**

23 **All the information that they provided**
24 **about Mr. Magwood and their belief was included**
25 **in my report. The interviews also with Mr. --**

1 with Lieutenant Watson, and Sergeant Zimmer
2 indicate that he had stated he had been the one
3 who had signed them. His supervisors did provide
4 positive information about him and stated they
5 did not know of him to ever intentionally falsify
6 anything in the past.

7 Q. What was the basis in your
8 investigation to believe that Magwood
9 intentionally committed these acts as in the
10 affidavit?

11 A. We had no information to support or we
12 didn't have information to support that as he had
13 stated in his report, that she had been the one
14 to sign it and date the lineup. And he had
15 stated that the only people who would have known
16 about it would have been the victim and himself.

17 MS. FAJARDO: I don't believe I
18 have any other questions. Thank you. I
19 think your attorney has some questions.

20 MS. JACKSON: I do. I have a
21 couple questions.

22 E-X-A-M-I-N-A-T-I-O-N

23 BY MS. JACKSON:

24 Q. If you would, turn to your memorandum
25 of interview of Catherine Boney.

1 **A. Okay.**

2 Q. On the first page towards the bottom
3 it says, "Boney looked at the single photograph
4 and identified the person in the photograph." Is
5 that what she told you?

6 **A. Yes.**

7 Q. That she looked at a single
8 photograph?

9 **A. Yes.**

10 Q. Okay. And then on page two, starting
11 in the middle of the third line it says, "She
12 said she only saw the one large picture." Is
13 that what she told you?

14 **A. Yes.**

15 Q. All right. And did she tell you that
16 more than once based on --

17 **A. Yes, yes.**

18 Q. And did she feel certain she had only
19 seen a single photograph?

20 **A. She repeated it several times.**

21 Q. All right. When talking to Voigt and
22 Kelly, looking at Kelley's memorandum, does it
23 appear that she told him that the writing on the
24 lineup is not hers?

25 **A. Yes.**

1 Q. Okay. And did she also tell them that
2 she had never been shown a lineup by Detective
3 Magwood?

4 **A. Yes.**

5 Q. And did she provide a handwriting
6 sample to them at that time?

7 **A. Yes.**

8 Q. All right. And when they spoke with
9 Detective Magwood, based on Investigator Kelley's
10 memorandum, did Magwood tell Voigt that the
11 victim was incorrect and that she did sign and
12 date the lineup?

13 **A. Yes.**

14 Q. And did he tell them that she did both
15 sign and date it?

16 **A. I'm just looking for -- Detective**
17 **Magwood advised us, yes, yes.**

18 Q. And is there any record anywhere that
19 when Magwood met with Voigt and Kelly, that he
20 told them that he is the one who put the date and
21 the time on the lineup?

22 **A. No.**

23 Q. Okay. If Mr. Magwood had given you
24 additional witnesses that he wanted you to speak
25 with, would you have spoken with them?

1 **A. Yes.**

2 Q. In the course of performing
3 investigations like this one, are you given
4 discretion?

5 **A. Yes.**

6 Q. Okay. And do you use that discretion
7 in determining what witnesses to interview?

8 **A. Yes.**

9 Q. Do you use that discretion in
10 determining what documents to examine?

11 **A. Yes.**

12 Q. And what evidence to gather?

13 **A. Yes.**

14 Q. All right. I see that you did not
15 interview Maurice Prioleau. Is that something
16 you used your discretion to determine?

17 **A. Yes.**

18 Q. And you did interview a number of
19 people who turned out not to have any direct
20 knowledge about this particular investigation,
21 but were those interviews done within your
22 discretion?

23 **A. Yes.**

24 Q. Now, is it your job at the end of your
25 investigation to make a determination about wrong

1 doing?

2 **A. No.**

3 Q. Are you supposed to have any opinion
4 about wrong doing?

5 **A. No.**

6 Q. If the solicitor asks you for your
7 opinion about wrong doing, are you permitted to
8 give it?

9 **A. I am.**

10 Q. Okay. Were you asked in this case?

11 **A. I don't recall, no.**

12 Q. Okay. When you contacted Mr. Magwood
13 and he told you he didn't want to talk to you,
14 did that raise any red flags for you?

15 **A. Yes. I would have liked to have**
16 **talked to him, obviously, and get his side of the**
17 **story.**

18 Q. Okay. And based on your training and
19 experience, what does that indicate to you?

20 **A. That he may be concerned that he may**
21 **have something to hide or that he may be**
22 **concerned that some information that may come out**
23 **that may get him in trouble.**

24 Q. And throughout the course of your
25 investigation did Mr. Magwood go back and forth

1 on being willing to give a statement and not
2 being willing to give a statement?

3 **A. Yes.**

4 Q. And when he was willing to give a
5 statement, were you ever actually able to get a
6 statement from him?

7 **A. No.**

8 Q. Okay. When you went to interview
9 Ms. Boney, it looks like Agent Smith went with
10 you. Is that a normal procedure?

11 **A. Yes. Particularly if interviewing a**
12 **female alone in her residence, we'd want an**
13 **additional witness there.**

14 Q. Okay. All right. I just want to go
15 down through the causes of action. You have been
16 sued personally for malicious prosecution. Did
17 you institute these judicial proceedings, meaning
18 did you make the decision to obtain the warrant
19 in this case?

20 **A. No.**

21 Q. Do you know whether or not the
22 Assistant Attorney General, Rob Bogan, is
23 permitted to sign a warrant affidavit?

24 **A. No.**

25 Q. You don't know --

1 **A. I don't know.**

2 Q. -- or he's not? Okay. Is it regular
3 practice for a solicitor or an assistant attorney
4 general who wishes to pursue charges based on one
5 of your reports to ask you to obtain the warrant?

6 **A. Yes.**

7 Q. And is that part of your job duties?

8 **A. Yes.**

9 Q. Okay. Did you ever do anything to
10 continue or insist that Mr. Magwood be
11 prosecuted?

12 **A. No.**

13 Q. Did you know Mr. Magwood before this
14 investigation?

15 **A. I did not.**

16 Q. Do you have any feelings -- personal
17 feelings for or against him?

18 **A. No.**

19 Q. When you signed this warrant, did you
20 believe that you had probable cause to make this
21 arrest?

22 **A. I did.**

23 Q. And if you did not believe you had
24 probable cause, would you have participated in
25 further discussions with the assistant attorney

1 general?

2 **A. Yes.**

3 Q. Okay. You're also being sued for
4 abuse of process. Were all of your actions with
5 regard to this case taken as part of your
6 official duties as a SLED agent?

7 **A. Yes.**

8 Q. Did you do anything outside of the
9 realm of your normal investigative process?

10 **A. No.**

11 Q. Did you follow all of your policies
12 and procedures for SLED in preparing this
13 investigation?

14 **A. Yes.**

15 Q. Did you follow all of your policies
16 and procedures with regard to obtaining and
17 issuance of the arrest warrant?

18 **A. Yes.**

19 Q. And did you follow all of your
20 policies and procedures with regard to the arrest
21 of Mr. Magwood?

22 **A. Yes.**

23 Q. And did you follow all of your
24 policies and procedures with regard to your
25 testimony in the criminal trial?

1 **A. Yes.**

2 Q. All right. The signing of the warrant
3 was done by a magistrate?

4 **A. Yes.**

5 Q. Okay. All right. You are also being
6 sued -- oh, did you have any desire to see
7 Mr. Magwood terminated from his job?

8 **A. No.**

9 Q. Did you have any desire to see
10 Mr. Magwood lose his law enforcement
11 certification?

12 **A. No.**

13 Q. You are also being sued for
14 defamation. Did you ever make any statements
15 about Mr. Magwood outside of the course of your
16 official investigation?

17 **A. No.**

18 Q. Did you ever make any statements to
19 any person regarding Mr. Magwood that you knew or
20 believed to be untrue?

21 **A. No.**

22 Q. You're also being sued for civil
23 conspiracy. Did you ever meet with Defendant
24 Antonio with regard to your investigation?

25 **A. No. I don't recall meeting with him.**

1 Q. Okay. Did you ever have any
2 discussions about the content of your
3 investigation with Mike Anderson?

4 A. No.

5 Q. Okay. And I understand earlier you
6 testified that you were aware of the Charleston
7 County Sheriff's Office investigation, but that
8 you had no information on it?

9 A. Correct.

10 Q. Is that because of
11 Garrity?

12 A. Yes.

13 Q. Are they permitted to provide you with
14 any information regarding their investigation
15 that's being done under Garrity?

16 A. They're not.

17 Q. And is that because investigations
18 done under Garrity protect the officer from
19 criminal charges being brought for that
20 particular investigation?

21 A. Yes.

22 Q. Okay. And so, is it fair to say that
23 your investigation was being done on a parallel
24 track with regard to whether or not criminal
25 charges were being brought, their's were being

1 done with regard to employment and disciplinaries
2 within the department?

3 **A. Yes, and I'm not aware of the time**
4 **table of their investigation, so I can't say**
5 **parallel in terms of chronology, but it was done**
6 **separately.**

7 Q. Not necessarily parallel in time, but
8 parallel purposes --

9 **A. Yes.**

10 Q. -- meaning that your purposes did not
11 cross?

12 **A. Correct.**

13 Q. And is it proper for an agency who has
14 requested an investigation to obtain a copy of
15 your investigation once it's complete?

16 **A. Yes.**

17 Q. Did Defendant Anderson ever give
18 you -- make any personal statements about
19 Mr. Magwood?

20 **A. No.**

21 Q. Has investigator Antonio ever made any
22 personal statements about Mr. Magwood to you?

23 **A. No.**

24 Q. Was there ever any discussion between
25 you and Mr. Anderson regarding injury to

1 Mr. Magwood?

2 **A. No.**

3 Q. Not physical injury, but injury to his
4 reputation?

5 **A. No.**

6 Q. What about any conversation between
7 you and Mr. Antonio regarding Mr. Magwood's
8 reputation?

9 **A. No.**

10 Q. Or causing injury to Mr. Magwood's
11 reputation?

12 **A. No.**

13 Q. In pursuing your investigation do you
14 feel that you have a duty to the person being
15 investigated to look into all avenues?

16 **A. Yes.**

17 Q. And did you do that in this case?

18 **A. I believe so, yes.**

19 Q. Was there any aspect of this
20 investigation that you felt was not reviewed?

21 **A. No.**

22 Q. Okay. And --

23 **A. In terms of what was available for me
24 to review, no.**

25 Q. And do you believe that your

1 investigative file contains all information that
2 was available to you during this investigation?

3 **A. Yes.**

4 Q. And you did not leave anything out?

5 **A. No.**

6 Q. Did you actually make the arrest of
7 Mr. Magwood?

8 **A. Yes.**

9 Q. And how was that done?

10 **A. I contacted the Charleston County**
11 **Sheriff's Office, notified them that the warrant**
12 **was being obtained. I believe they contacted --**
13 **they facilitated contacting his attorney in order**
14 **to make arrangements for him to turn himself in.**
15 **I'm not sure exactly who made that contact, but**
16 **it was relayed to me he would be turning himself**
17 **in the following day and arrangements were made**
18 **for him to do so.**

19 Q. So he was not arrested out in public
20 somewhere?

21 **A. No, he was not.**

22 Q. He turned himself in at the jail.
23 Were special arrangements made at the jail for
24 him?

25 **A. They were. I'm not sure of all the**

1 **details of them, but they were.**

2 Q. Okay. And what was the reason for
3 that?

4 **A. For his security.**

5 Q. As a law enforcement officer?

6 **A. As a law enforcement officer. In**
7 **addition we had arranged for him to turn himself**
8 **in and to receive a bond in relatively timely**
9 **order.**

10 Q. And is that so he wouldn't have to
11 spend additional time in jail?

12 **A. That's a thing that we extend to**
13 **anyone who offers to turn themselves in, that**
14 **courtesy.**

15 Q. And that's the purpose of it, so they
16 don't have to spend additional time in jail?

17 **A. Hopefully. Obviously, bond is a**
18 **decision of the judge, but yes.**

19 Q. Right. Have you ever investigated the
20 Charleston County Sheriff's Office before?

21 **A. Yes.**

22 Q. And have you investigated members of
23 the Charleston County Sheriff's Office for
24 everything from excessive force to officer
25 involved shootings?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case Number: 2013-CP-10-3669
Appellate Case No.: 2014-001977

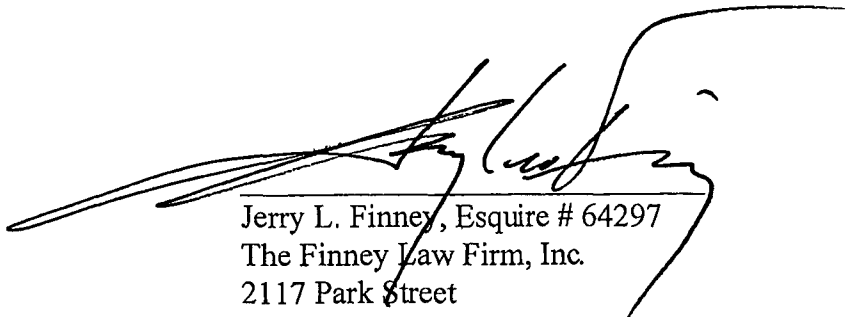
Eugene Magwood Applicant/Appellant,

v.

J. Al Cannon, Jr. in his official capacity as
Sheriff of Charleston County, Investigator
Anderson, Investigator Antonio, Charles
Ghent, and South Carolina Law
Enforcement Division Respondents,

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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