

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. DeAndrea Gist Benjamin, Circuit Court Judge

Circuit Court Case No. 2010-CP-40-1343
S.C. Court of Appeals Case No. 2014-002032

James W. Trexler,

Appellant,

v.

Richland County and the
Sheriff of Richland County in
his Official Capacity, a/k/a
Richland County Sheriff's
Department

Respondents.

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010-CP-40-1343

James W. Trexler

vs.

McClaskey Newspapers, et al

Plaintiff

Defendant

CHECK ONE:

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

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

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:

Per status conference, case consolidated with Civil Action No: 2010-CP-40-1249. *Trial shall not be scheduled before May 23, 2011*
Dated at Columbia, South Carolina, this 28th day of February, 2011.



PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 1st day of March, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

William H. Johnson

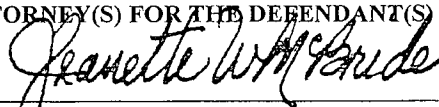
ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRPC APP-24/FORM 4

Jay Bender

William Davidson

ATTORNEY(S) FOR THE DEFENDANT(S)


Clerk of Court

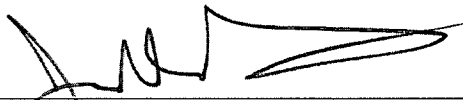
SCANNED

Administrative Order of the Chief Administrative Judge of the Fifth Judicial Circuit. On December 15, 2011, the parties presented before this Court for a hearing on Plaintiff's motion. At the time of the hearing it became apparent to Plaintiff and the Court Plaintiff's motion was more properly a Rule 15(d) motion to supplement the pleadings. At the hearing, Plaintiff demonstrated to the satisfaction of the Court that his new cause of action for malicious prosecution arises substantially out of out of the same facts and circumstances as his existing causes of action, and involve the same parties. The Court finds because Plaintiff particularly described the nature of the amendment in his motion which he filed on September 9, 2011, prior to the taking of any depositions in the case, the Defendants will not be prejudiced in responding to the cause of action Plaintiff seeks to add. The Court further finds that allowing Plaintiff to add a cause of action for malicious prosecution in the present suit as opposed to instigating a new lawsuit against the same Defendants would serve to promote judicial economy and prevent waste to all parties involved.

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to Amend his Amended Complaint, more properly construed as his motion to supplement pleadings is GRANTED. The form of the complaint attached hereto shall be accepted for filing. The filing of this order, with the signed summons and complaint attached shall constitute filing of the Summons and Second Amended Complaint, and the service hereof upon counsel shall constitute service of those pleadings .Defendants have 15 (fifteen) days from the date such supplemental pleadings are served upon them to plead in response.

County in his official capacity.

IT IS SO ORDERED this 19th day of January 2012.



Judge Joseph M. Strickland
Master in Equity

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

James W. Trexler

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010-CP-40-1343

Richland County and the Sherriff of Richland County, in his
official Capacity, a/k/a Richland County Sheriff's
Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Plaintiff

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Defendant Richland County and the Sherriff of Richland County, in his official capacity, a/k/a Richland County Sheriff's Department's Motion for summary judgment is granted.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge _____

Judge Code 2161

Date 5-15-14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of May 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Matthew David Hamrick, William H. Johnson, and
Warren W. Wills III

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Davidson II & Robert Garfield

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court

Jeannette W. McBride

SCANNED

Hart explained that she was an investigator with the HSPCA and that she was on the neighboring property with the owner's consent. Due to these individuals' attempts to hinder her efforts, Hart believed that she would be unable to keep taking pictures and decided to leave. As Hart was walking through the pasture toward her truck, Terry Trexler advised that he would not permit her to leave and pulled his truck behind Hart's vehicle to block her from moving.

Richland County Sheriff's Department ("RCSD") Deputy Charley Simpson was called out to the scene by Hazelene Trexler. Simpson proceeded to speak with Terry and Hazelene Trexler. Upon inquiry, Terry Trexler falsely identified himself as "James Trexler" (Plaintiff). Terry Trexler claimed that he did not have any form of identification, but provided the false name and a date of birth to Simpson. At some point after leaving the scene, Simpson conducted an investigation and found that the given name was not on file for the birth date provided. Instead, Simpson positively identified the male as Terry Trexler, with this birth date, and further uncovered that Terry Trexler was wanted from the Sumter County Sheriff's Department for fraudulent checks and cruelty to animals.

Plaintiff Developed as Suspect

Between the dates of February 19 through February 22, 2008, HSPCA officials including Hart and RCSD Investigator Holly Wagner held a meeting to discuss obtaining a search warrant to evaluate the subject horses on Zeigler Road. At that time, Hart provided a written statement that the man who (falsely) identified himself as "James Trexler" (Plaintiff) blocked her in and physically would not let her leave.

On February 26, 2008, the HSPCA seized 23 horses and 7 dogs from the Zeigler Road property pursuant to a search warrant. After discovering additional information, the HSPCA learned that Hazelene and Terry Trexler were wanted for sixty-one (61) counts on animal cruelty in Jefferson County, Georgia. The HSPCA further believed that there were additional horses on the listed property belonging to the Trexler family. These horses were in poor condition and held in a barn. This led the HSPCA to develop Plaintiff as a suspect, as he and his property emerged as subjects in a search warrant obtained by HSPCA Inv. Hart. In an executed affidavit, Hart swore to the issuing magistrate that Plaintiff "is the brother of Terry Trexler and the son of Hazelene Trexler and the person said to be living at 412 Derby Lane (Hopkins)."

Arrest of Plaintiff and Press Release

On this same date, HSPCA executed a search warrant at Plaintiff's property. Located were one horse in a pasture and four additional horses situated in stalls in the barn. These horses were standing in mud soaked with urine and feces. Nowhere on the property was there any hay, food, or any clean water. Moreover, one of the horses was in an emaciated state with protruding ribs and hipbones, and the others showed signs of undernourishment. At that time, all horses were taken into custody by the HSPCA. Wagner obtained an arrest warrant against Terry Trexler for Kidnapping.

On February 27, 2008, the HSPCA obtained arrest warrants against all three individuals (Plaintiff as well as Hazelene and Terry Trexler) for ill treatment of these horses, now seized and under the custody of the HSPCA. Sometime during the early evening hours, these warrants were served and all three were arrested, transported to ASGDC for booking. Plaintiff was charged with five (5) counts of Ill treatment of animals; Hazelene for multiple counts of Ill treatment of animals; and Terry for multiple counts of Ill treatment of animals and Kidnapping.

RCSD Captain Chris Cowan, who was Senior Public Information Coordinator, disseminated a press release regarding the Trexler arrests. This release was sent to various statewide news and media outlets indicating that Plaintiff had been charged with kidnapping. At the time of these events, Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as an Assistant Commissioner for Administration.² See *id.* at ¶ 13.

Based upon these allegations, Plaintiff brought an action for malicious prosecution against the Sheriff in his official capacity and also a defamation against both Defendants pursuant to the South Carolina Tort Claims Act. See generally Second Am. Comp.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). It is well established that the Court, in considering a motion for summary

² By way of particulars, *The State* Newspaper, published in large headlines on the front page of the newspaper a headline stating, "Assistant Ag Chief faces kidnap charge." Following the headline, *The State* published an article in which it was reported as a fact that Plaintiff had been charged with kidnapping as a result of an incident involving the horses. This was retracted by Cowan and disseminated accordingly.

judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

III. MALICIOUS PROSECUTION CLAIM

Under South Carolina law, a plaintiff must plead and prove each of the following elements to state a cause of action for malicious prosecution: (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 damages. See *McBride v. School District of Greenville County*, 698 S.E.2d 845, 855 (2010).

In their motion, Defendants assert that Plaintiff has failed to present evidence to sustain an action for malicious prosecution. The following discussion centers on whether these critical elements have been established when the evidence is taken in a light most favorable to Plaintiff.

Original judicial proceedings against Plaintiff

Defendants argue that the RCSD neither initiated the arrest nor instituted the prosecution of Plaintiff. To this extent, they assert that RCSD employees played no role in pursuing an arrest warrant against Plaintiff, never appeared before a magistrate as an affiant, and played no direct role in the prosecution of Plaintiff in General Sessions Court.³

Instructive in this Court's assessment is the January 17, 2012 deposition testimony of Elisabeth Perry, a HSPCA investigator. At such time, Perry testified that she was the sole affiant on all five (5) arrest warrants against Plaintiff; that she sought these warrants on her own volition based upon her personal observation of Plaintiff's horses on his own property; that her professional opinion was that probable cause existed that Plaintiff committed the crime(s) of Ill Treatment of Animals; that she personally went alone to the magistrate's office to swear out a

³ There is no dispute that the agencies of the HSPCA, the Fifth Circuit Solicitor's Office, and the Office of the South Carolina Attorney General are all separate agencies which operate mutually exclusive of each other and are not controlled by either Richland County or the Richland County Sheriff.



warrant; and finally that she attested under oath to a magistrate judge that Plaintiff committed these criminal offenses. Except for one RCSD deputy carrying out a ministerial function (*i.e.*, effectuating service of a duly authorized and facially valid arrest warrant on February 27, 2008), RCSD employees were not involved in swearing out the warrant or prosecuting the matter.

As a result, Plaintiff has failed to demonstrate that RCSD officials initiated the arrest or instituted the prosecution against him.

Probable Cause: Arrest Warrant stage

On February 27, 2008, the Honorable Harold A. Cuff, Richland County Magistrate heard testimony from Perry with respect to several horses situated on Plaintiff's property. At that time, Perry attested under oath that she observed several horses visibly suffering from malnutrition with poor feeding conditions, including the lack of food and water buckets filled with feces. She also advised the magistrate as to the substandard living conditions, and specifically overcrowding, horses standing in several inches of feces, urine, and mud as well as wandering around on wet, muddy property. Accordingly, the magistrate found that probable cause existed for Plaintiff's arrest and issued five (5) arrest warrants for the ill treatment of horses.⁴

In *Baker v. McCollan*, 443 U.S. 137, 143 (1979), the United States Supreme Court explained that "since the probable-cause standard for pretrial detention is the same as that for arrest, a person arrested pursuant to a warrant issued by a magistrate on a showing of probable cause is not constitutionally entitled to a separate judicial determination that there is probable cause to detain him pending trial." Accordingly, the *Baker* Court affirmed the constitutionality of a plaintiff's arrest as he was arrested pursuant to a facially valid warrant.

In *Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991), the Fourth Circuit Court of Appeals explained that a probable cause determination by a magistrate provides additional support that probable cause for an arrest was present. The Court stated:

We encourage law enforcement officers to seek warrants because magistrates from their detached perspective serve as the essential "checkpoint between the Government and the citizen." When a police officer protects a suspect's rights by obtaining a warrant from a neutral magistrate, the officer should, in turn, receive some protection from suit under 42 U.S.C. § 1983. Otherwise, the threat of liability would force officers to continuously second-guess the

⁴ These constituted the following warrant numbers with respect to Plaintiff: No. I-895847 (2 year old bay female); No. I-895848 (6 year old bay stallion); No.: I-895849 (15-20 year old bay stallion); No.: I-895850 (2 year old black stallion); No.: I-895851 (20 year old bay stallion).

5 nm

considered decisions of magistrates. This in turn would promote delay in the execution of warrants, and alter the proper allocation of law enforcement functions.

942 F.2d at 262. (Citations omitted).

There is no dispute that the county magistrate who issued the arrest warrants against Plaintiff was a neutral and detached from the underlying criminal investigations. Moreover, Plaintiff has not alleged in his Complaint nor has he presented any evidence to show that the arrest warrant issued by Richland County Magistrate Judge Harold Cuff was void, facially deficient, or not facially valid. Therefore, this Court holds that this determination by the Richland County magistrate is a marked demonstration of the existence of probable cause.

Probable Cause: Indictment stage

The charges against Plaintiff were presented to the Richland County Grand Jury on March 13, 2008 and four (4) indictments were returned as a 'true bill' for multiple counts of Ill Treatment of Animals. Defendants submitted that these grand jury indictments pertaining to Plaintiff on the charges of Ill Treatment of Animals demonstrates that probable cause existed for his arrest. This Court agrees.

In *Kinton v. Mobile Home Industries, Inc.*, 262 S.E.2d 727 (1980), the Supreme Court of South Carolina held, "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." 262 S.E.2d 727, 728 224 S.C. at 182.⁵ Similarly, in *Whitner v. Duke Power Co.*, 277 S.C. 397, 288 S.E.2d 389 (1982), the Supreme Court affirmed the dismissal of a malicious prosecution claim because "[t]here is no question that probable cause existed when the grand jury indicted him." 288 S.E.2d at 390. See also *McBride v. School District of Greenville County*, 698 S.E.2d 845, 856 (2010).

Plaintiff having been indicted on these criminal charges is prima facie evidence that probable cause existed for his arrest. Therefore, the existence of grand jury indictments serves to foreclose Plaintiff's malicious prosecution cause of action.

⁵ See also, *White v. Coleman*, 277 F. Supp. 292, 297 (D.S.C. 1967), wherein the United States District Court held, "Where the Grand Jury has returned a true bill upon the charge made, such finding amounts to a judicial recognition that probable cause does exist and infers prima facie probable cause for the prosecution."

Probable Cause: Prosecution stage

Defendants offered additional factors that probable cause existed for the arrest and prosecution of Plaintiff. First was the initial decision of the prosecuting attorney to prosecute Plaintiff for his animal abuse-related charges. Second and subsequently, was the decision to continue with the prosecution for an extended period.

The record demonstrates that prosecution of Plaintiff began in February 2008 by way of the Fifth Circuit Solicitor's Office and he was subsequently prosecuted by the South Carolina Attorney General's Office. These charges against Plaintiff were formally dismissed by the Attorney General's Office in July 2010, after having been prosecuted in General Sessions Court for roughly twenty-nine (29) months.

A police officer or criminal investigator may typically rely on the expertise of a prosecuting attorney for a determination of whether probable cause exists. "Good faith reliance upon advice of fully informed counsel may establish probable cause." *Melton v. Williams*, 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984). *See also White, supra*. In the instant matter, to the extent HSPCA investigators were relying on the advice of the prosecuting attorney for deciding whether to procure the arrest warrant is not of legal significance as there was no requirement for which to do so. However, this Court construes that the Attorney General's Office believed that probable cause existed for Plaintiff's arrest by virtue of not only its initial assessment of the case, but continuing with prosecution for the prolonged time period.

Therefore, this Court finds that Defendants' employees played no direct role in the institution or continuing of prosecution against Plaintiff. This Court also agrees with Defendants that adequate probable cause existed at all relevant times with respect to his arrest. Accordingly, the evidence does not support a cause of action for malicious prosecution and this claim is dismissed with prejudice.

IV. DEFAMATION CLAIM

South Carolina Tort Claims Act

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political

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subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. See *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. See S.C. Code Ann. §15-78-40. Additionally, the Act continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit. When interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. The South Carolina Supreme Court has held that words used in the statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992). More recently, in *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct.App. 2005), the Court of Appeals held that:

The cardinal rule of statutory interpretation is to determine the intent of the legislature. The legislature's intent should be ascertained primarily from the plain language of the statute. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.

(Internal citations omitted)

Assessment pursuant to S.C. Code Ann. §15-78-60(17)

Plaintiff's defamation claim exclusively centers on the actions of Captain Cowan who was the Senior Public Information Coordinator for the RCSD at the relevant times in the Complaint.

S.C. Code Ann. §15-78-60(17) provides that governmental entities are 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." Defendants argue that, the determination by this Court as to any potential liability on the part of the Defendant Sheriff turns solely on this subsection of the South Carolina Tort Claims Act. Specifically, whether Cowan's conduct at the relevant times constituted actual malice or an intent to harm Plaintiff. After a close evaluation of the facts, the Court agrees that, based upon Plaintiff's allegations, Cowan's actions falls under this relevant exception prescribed by the Act.

The record in this case is undisputed that on February 27, 2008, Cowan disseminated a press release regarding the arrest of Hazelene, Terry, and Plaintiff. This release was sent by Cowan to *The State* newspaper, the Associated Press, WLTX, WACH and WOLO, among other media outlets. This press release was a public record and stated that the charges made against Plaintiff were, "5 counts of ill treatment of animals" and "1 count of kidnapping (stems from an incident where J. Trexler held a HSPCA investigator against her will/refused to allow the investigator to leave the farm on 2/13 during an evaluation of the horses)."⁶

In this action, Plaintiff alleges that, "In the type-written press release, attributing to the Plaintiff, the ill treatment of horses of which the Plaintiff had no ownership interest, and which were not under the Plaintiffs care, custody or control, and further characterizing that treatment as "severe and barbaric." See Second Am. Comp., ¶ 23. At the time of the publication, the statements were false. See *id.* at ¶ 24. Despite "actual knowledge that the only kidnapping charges associated with the entire series of events were charged against Plaintiff's brother," Cowan disseminated and reported that Plaintiff had been charged with kidnapping. See *id.* at ¶ 9. Plaintiff further alleges that, "at the time of the publication, the statement was false and Defendants either knew or should have known that the statement was false." See *id.* at ¶ 16. Further, publication of the statement concerning the kidnapping charge and also associating Plaintiff with the operation of

⁶ Defendants stipulated at the hearing that the content of the press release was not accurate to the extent that Plaintiff was never charged with Kidnapping.

the horse business owned and operated by his mother “created the false impression in the minds of millions of South Carolinians and others worldwide concerning the character of the Plaintiff.” *See, Id.*, ¶ 17. Accordingly, “as a result of the publication the Plaintiff has suffered serious damages, including the loss of his employment and a severe diminution of his ability to provide for his family, and extreme damage to his reputation.” *See id.* at ¶ 26.

Most critically, the record demonstrates that in his Responses to Defendants’ Request to Admit dated August 12, 2013, Plaintiff substantively admitted that at the relevant times in the Complaint, Cowan’s actions with respect to Plaintiff constituted actual malice as well as an intent to harm.⁷ Accordingly, Plaintiff clearly takes the position that Cowan’s conduct was egregious to the degree so as to constitute not only actual malice but additionally acted with intent to cause harm to him.

The evidence reflects that the sole RCSD employee whose acts or omissions with respect to the dissemination of the press release was Cowan. Yet, Cowan was never named as a party-defendant. Therefore, the Defendant Sheriff -- the only law enforcement party-defendant in this action -- is entitled to absolute sovereign immunity for any such alleged loss resulting from his employee’s conduct constituting actual fraud and/or intent to harm pursuant to §15-78-60(17).⁸

In a case involving the defamation of a public official, a plaintiff must prove the defendant acted with actual malice. *See Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991); *see also Elder v. Gaffney Ledger*, 341 S.C. 108, 113, 533 S.E.2d 899, 901 (2000); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (2001). To meet this standard, the plaintiff must show either that the defendant knew the statement was false or that the defendant made the statement with reckless disregard of its falsity. *See id.* citing *New York Times Co. v. Sullivan*, 376 U.S. 254, (1964). As stated previously, the Tort Claims Act bars a governmental entity’s liability for an individual’s loss stemming from an employee’s conduct that constitutes actual malice. *See S.C. Code Ann. §15-78-60(17)*. It is further undisputed that the Defendant Sheriff is a constitutional

⁷ The requests to admit served upon Plaintiff are respectively worded as follows: “At the relevant times in the Complaint, Chris Cowan’s actions with respect to Plaintiff **did not constitute** actual malice (and) ... **did not constitute** intent to harm” (bolded in original). Plaintiff denied both requests.

⁸ Pursuant to S.C. Code Ann §15-78-70(a) and (b), an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina and is subject to the terms and conditions of the Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*

In *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994), the Court of Appeals held that in a case involving the police agency official's defamation of a public official, a plaintiff would be required to prove that such conduct by the employee constituted actual malice in order to recover on his claim. To this extent, the *Gause* Court recognized the clear language of the Tort Claims Act providing that the agency was not liable for loss resulting from employee conduct constituting actual malice.

Relying upon the authority in *Gause*, Defendants argue that Plaintiff would be obliged to show that the Sheriff's employees acted with actual malice when they allegedly defamed him. Consequently, Defendants assert that since Plaintiff must specifically prove the Sheriff's employee's conduct constituted actual malice in order to recover on this claim, the Tort Claims Act bars Plaintiff's defamation claim against the Sheriff. This Court agrees that a proper application of the Tort Claims Act precludes liability with respect to the governmental entity. Therefore, the Sheriff cannot be held liable for such alleged conduct.

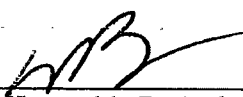
V. CONCLUSION

Viewing the facts and reasonable inferences therefrom in the light most favorable to Plaintiff, this Court finds that there is an absence of evidence to support Plaintiff's case and that Defendants are entitled to summary judgment.

IT IS THEREFORE ORDERED that the Motion for Summary Judgment with respect to Defendants is **GRANTED** and that the pending causes of action against Defendants are hereby dismissed with prejudice.

IT IS SO ORDERED.

8-20, 2014
Columbia, South Carolina



The Honorable DeAndrea Gist Benjamin
Circuit Court Judge

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
James W. Trexler,)
Plaintiff,)
Vs.)
McClasky Newspapers Inc., Richland)
County, and the Richland County)
Sheriff's Department,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case Number; 2010-CP-40-

COMPLAINT

FILED
2010 FEB 26 PM 2:56
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, complaining of the Defendants above name, respectfully allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.
2. The Defendant, McClasky Newspapers, Inc., upon information and belief, is a corporation and existing pursuant to the laws of a state other than South Carolina, that owns property and transacts business within the state of South Carolina.
3. At all times relevant to the allegations of this Complaint, the Defendant, McClasky Newspapers, Inc. was transacting business as the State Newspaper.
4. The Defendant, Richland County, is a political subdivision of the state of South Carolina.
5. The Defendant, Richland County Sheriff's Department, is an agency of the County of Richland.

6. The matters alleged herein occurred within Richland County, South Carolina, and therefore has jurisdiction over the parties and subject matter herein.

FACTUAL BACKGROUND

7. Prior to the month of March 2008, the Plaintiff's mother and brother operated a business in Richland County, South Carolina, in which the Plaintiff's mother and brother bred for profit, Arabian horses.

8. During February of 2008, the horses owned by the Plaintiff's mother and brother were seized, due to alleged charges of mistreatment of animals. In addition, the Plaintiff's mother and brother were charged with various crimes.

9. Although the Plaintiff had no ownership interest whatsoever in the ownership of the horses or the operation of his mother and brother's business, the Defendant, Richland County Sheriff's Department, charged the Plaintiff as if he were an owner.

10. As the result of an associated incident that occurred between the Plaintiff's brother and an individual trespassing upon the property where the horses were maintained, which trespassing was done for the furtherance of supporting the allegations of mistreatment of animals, the Plaintiff's brother was charged with the crime of kidnapping.

11. Despite actual knowledge that the only kidnapping charges associated with the entire series of events were charged against the Plaintiff's brother, the Defendants, Richland County, and the Richland County Sheriff's Department, published to various media outlets a statement that the Plaintiff had been charged with kidnapping.

12. At the time of these events, the Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as the Assistant Commissioner for

Administration.

13. On February 28, 2008, the Defendant, McClasky Newspapers, Inc., d/b/a The State Newspaper, published in large headlines on the front page of the newspaper a headline stating "Assistant ag chief faces kidnap charge."

14. Following the headline, The State published an article in which it was reported as fact that the Plaintiff had been charged with kidnaping as a result of an incident involving the horses.

15. At the time of the publication, the statement was false and the Defendants either knew or should have known that the statement was false.

16. Publication of the statement concerning the kidnaping charge, and also the statement associating the Plaintiff with the operation of the horse business owned and operated by his mother and brother created the false impression in the minds of millions of South Carolinians concerning the character of the Plaintiff.

17. As a result of the publication, the Plaintiff was forced to resign from his job, which caused him to lose substantial benefits for which he worked diligently during a successful career with the State of South Carolina.

18. As a further result of the publication, the Plaintiff is unable to obtain employment in which he can utilize his talents and experience.

19. As a further result of the publication, the Plaintiff has suffered extreme humiliation and damage to his reputation in the community.

FOR A FIRST CAUSE OF ACTION AGAINST RICHLAND COUNTY

(Defamation)

20. Each and every factual allegation above is incorporated herein by reference.

21. The Defendant, Richland County, by and through its agents, the Richland County Sheriff's Department, and specifically Chris Cowan, published to third parties the statement that the Plaintiff had been charged with kidnaping.

22. At the time of the publication, the statement was false.

23. At the time of the publication, the Defendants either knew that the statement was false, or acted with reckless disregard toward the truth or falsity of the statement.

24. As a result of the publication the Plaintiff has suffered serious damages, including the loss of his employment and a severe diminution of his ability to provide for his family, and extreme damage to his reputation.

25. As a result of the defamation against the Plaintiff, the Plaintiff is entitled to actual damages against the Defendant, Richland County, and the Richland County Sheriff's Department. in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

AGAINST MCCLASKY NEWSPAPERS, INC.

(Defamation)

26. Each and every factual allegation above is incorporated herein by referenced.

27. On February 28, 2008, the Defendant, McClasky Newspapers, Inc., doing business as The State Newspaper, published on the front page in a large headline, "Assistant Ag Chief Faces Kidnap Charge."

28. At the time of the publication, the statement was false.

29. At the time of the publication, the Defendant either knew that the statement was false, or through the exercise of professional journalism should have known that this statement was

false, and therefore acted with reckless disregard for the truth or falsity of the statement.

30. In addition to being actionable, irrespective of the harm caused by the publication of the statement, the publication of the statement did in fact cause special harm, in the form of the devastation of the Plaintiff's 27 year career with the state government, extreme humiliation in the community, and irreparable damage to his reputation.

31. As a result of the defamation of the Plaintiff by the Defendant, McCalsky Newspapers, Inc. the Plaintiff is entitled to actual and punitive damages as determined by a jury.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Civil Conspiracy)

32. Each and every factual allegation above is incorporated herein by reference.

33. The Defendants, through their agents, combined one with another to publish false statements about the Plaintiff.

34. The combination was for the purpose of injuring the Plaintiff.

35. The actions of the Defendants caused the Plaintiff special damages in the form of the loss of his career and unrecoverable damage to his reputation.

36. As a result of the civil conspiracy of the Defendants, the Plaintiff is entitled to actual and punitive damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION

(Outrage)

37. Each and every factual allegation above is incorporated herein by reference.

38. By recklessly publishing to third parties that the Plaintiff had been charged with kidnaping, the Defendants' intentionally and recklessly inflicted severe emotional distress upon the

Plaintiff.

39. By publishing that the Defendant was charged with kidnaping when the Defendants knew or should have know that the same was totally untrue, the Defendant's conduct was so extreme and atrocious as to exceed all possible bounds of decency and must be regarded as outrageous and utterly intolerable in a civilized society.

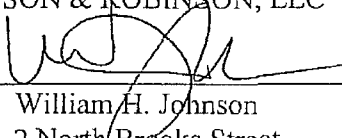
40. The actions of the Defendant have caused the Plaintiff severe emotional distress.

41. The emotional distress suffered by the Plaintiff was so severe that no reasonable personal could be expected to endure it.

42. As a result of the tort of outrage on the part of the Defendants, the Plaintiff is entitled to actual and punitive damages.

WHEREFORE, having fully stated his claim for relief, the Plaintiff prays for judgment against the Defendants, jointly and severally, for actual and punitive damages in an amount to be determined by a jury, and for such other and further relief as the Court may deem just and proper.

JOHNSON & ROBINSON, LLC

By: 

William H. Johnson
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Manning, SC 29102
Phone: 803-435-0909
Fax: 803-435-2858
william@jmrlawfirm.com

February 26, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

James W. Trexler,)

Plaintiff,)

Vs.)

McClatchy Newspapers Inc., Richland)
County, and the Richland County)
Sheriff's Department,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case Number: 2010-CP-40-1343

AMENDED COMPLAINT

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 JUN 23 AM 11:37

FILED

The Plaintiff, complaining of the Defendants above name, respectfully allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.
2. The Defendant, McClatchy Newspapers, Inc., upon information and belief, is a corporation and existing pursuant to the laws of a state other than South Carolina, that owns property and transacts business within the state of South Carolina.
3. At all times relevant to the allegations of this Complaint, the Defendant, McClatchy Newspapers, Inc. was transacting business as the State Newspaper.
4. The Defendant, Richland County, is a political subdivision of the state of South Carolina.
5. The Defendant, Richland County Sheriff's Department, is an agency of the County

of Richland.

6. The matters alleged herein occurred within Richland County, South Carolina, and therefore has jurisdiction over the parties and subject matter herein.

FACTUAL BACKGROUND

7. Prior to the month of March 2008, the Plaintiff's mother operated a business in Richland County, South Carolina, in which the Plaintiff's mother bred for profit, Arabian horses.

8. During February of 2008, the horses owned by the Plaintiff's mother were seized, due to alleged charges of mistreatment of animals. In addition, the Plaintiff's mother and brother were charged with various crimes.

9. Although the Plaintiff had no ownership interest whatsoever in the ownership of the horses or the operation of his mother's business, the Defendant, Richland County Sheriff's Department, charged the Plaintiff as if he were an owner.

10. As the result of an associated incident that occurred between the Plaintiff's brother and an individual trespassing upon the property where the horses were maintained, which trespassing was done for the furtherance of supporting the allegations of mistreatment of animals, the Plaintiff's brother was charged with the crime of kidnapping.

11. Despite actual knowledge that the only kidnapping charges associated with the entire series of events were charged against the Plaintiff's brother, the Defendants published to various media outlets statements that the Plaintiff had been charged with kidnapping.

12. At the time of these events, the Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as an Assistant Commissioner for Administration. His position was not an elected or appointed position, but rather earned as the result

of twenty-seven years of service to state government.

13. On February 28, 2008, the Defendant, McClatchy Newspapers, Inc., d/b/a The State Newspaper, published in large headlines on the front page of the newspaper a headline stating "Assistant ag chief faces kidnap charge."

14. Following the headline, The State published an article in which it was reported as fact that the Plaintiff had been charged with kidnapping as a result of an incident involving the horses.

15. At the time of the publication, the statement was false and the Defendants either knew or should have known that the statement was false.

16. Publication of the statement concerning the kidnapping charge, and also the statement associating the Plaintiff with the operation of the horse business owned and operated by his mother created the false impression in the minds of millions of South Carolinians and others worldwide concerning the character of the Plaintiff.

17. As a result of the publication, the Plaintiff suffered an enormous adverse financial impact, which impact included being forced to resign from his job, which caused him to lose substantial benefits for which he worked diligently during a successful career with the State of South Carolina.

18. As a further result of the publication, the Plaintiff is unable to obtain employment in which he can utilize his talents and experience.

19. As a further result of the publication, the Plaintiff has suffered extreme humiliation and damage to his reputation in the community and state government.

FOR A FIRST CAUSE OF ACTION AGAINST RICHLAND COUNTY

AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

(Defamation)

20. Each and every factual allegation above is incorporated herein by reference.
21. The Defendant, Richland County, by and through its agents, the Richland County Sheriff's Department, published to third parties the statement that the Plaintiff had been charged with kidnapping.
22. At the time of the publication, the statement was false.
23. At the time of the publication, the Defendants either knew that the statement was false, or acted with reckless disregard toward the truth or falsity of the statement.
24. As a result of the publication the Plaintiff has suffered serious damages, including the loss of his employment and a severe diminution of his ability to provide for his family, and extreme damage to his reputation.
25. As a result of the defamation against the Plaintiff, the Plaintiff is entitled to actual damages against the Defendant, Richland County, and the Richland County Sheriff's Department. in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

AGAINST MCCLATCHY NEWSPAPERS, INC.

(Defamation)

26. Each and every factual allegation above is incorporated herein by reference.
27. On February 28, 2008, the Defendant, McClatchy Newspapers, Inc., doing business as The State Newspaper, published on the front page in a large headline, "Assistant Ag Chief Faces Kidnap Charge."

28. At the time of the publication, the statement was false.

29. At the time of the publication, the Defendant either knew that the statement was false, or through the exercise of professional journalism should have known that this statement was false, and therefore acted with malice, intentional and reckless disregard for the truth or falsity of the statement.

30. In addition to being actionable, irrespective of the harm caused by the publication of the statement, the publication of the statement did in fact cause special harm, in the form of the loss of the Plaintiff's 27 year career with the state government, extreme humiliation in the community, and irreparable damage to his reputation.

31. As a result of the defamation of the Plaintiff by the Defendant, McClatchy Newspapers, Inc. the Plaintiff is entitled to actual and punitive damages as determined by a jury.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Civil Conspiracy)

32. Each and every factual allegation above is incorporated herein by reference.

33. The Defendants, through their agents, combined one with another to publish false statements about the Plaintiff.

34. The combination was for the purpose of injuring the Plaintiff.

35. The actions of the Defendants caused the Plaintiff special damages in the form of the loss of his career and unrecoverable damage to his reputation.

36. As a result of the civil conspiracy of the Defendants, the Plaintiff is entitled to actual and punitive damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION

(Outrage)

37. Each and every factual allegation above is incorporated herein by reference.

38. By recklessly publishing to third parties that the Plaintiff had been charged with kidnapping, the Defendants' intentionally and recklessly inflicted severe emotional distress upon the Plaintiff.

39. By publishing that the Plaintiff was charged with kidnapping when the Defendants knew or should have known that the same was totally untrue, the Defendant's conduct was so extreme and atrocious as to exceed all possible bounds of decency and must be regarded as outrageous and utterly intolerable in a civilized society.

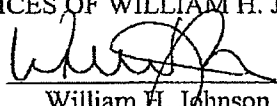
40. The actions of the Defendants have caused the Plaintiff severe emotional distress.

41. The emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.

42. As a result of the tort of outrage on the part of the Defendants, the Plaintiff is entitled to actual and punitive damages.

WHEREFORE, having fully stated his claim for relief, the Plaintiff prays for judgment against the Defendants, jointly and severally, for actual and punitive damages in an amount to be determined by a jury, and for such other and further relief as the Court may deem just and proper.

LAW OFFICES OF WILLIAM H. JOHNSON, LLC

By: 

William H. Johnson

P.O. Box 137

Manning, SC 29102

Phone: 803-435-0909

Fax: 803-435-2858

william@whjohnsonlaw.com

June 23, 2010

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4. That as to Paragraph One (1), these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny this paragraph and demand strict proof thereof.

5. Paragraphs Two (2) and Three (3) contain allegations against another Defendant, and therefore, requires no response by these Defendants. To the extent that these paragraphs contain factual allegations against these Defendants, these Defendants deny same and demand strict proof thereof.

6. That as to Paragraph Four (4), these Defendants admit that Richland County is a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act.

7. That as to Paragraph Five (5), these Defendants deny that the RCSD is a legal entity of the State, but assert that the proper entity is the Sheriff of Richland County in his official capacity and that it is subject to jurisdiction under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

8. Paragraph Six (6) is jurisdictional in nature and can neither be admitted nor denied and these Defendants would crave reference thereto.

9. That as to Paragraph Seven (7) and upon information and belief, these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny this paragraph and demand strict proof thereof.

10. Paragraph Eight (8) is qualifiedly admitted upon information and belief. Further answering, these Defendants crave reference to the applicable arrest warrants against the Plaintiff's mother and brother as well as the seizure documentation for the best evidence of what is craved therein.

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11. That as to Paragraph Nine (9), these Defendants only admit upon information and belief that the Plaintiff was arrested by the RCSD on or about February 27, 2008 and charged with five (5) counts of Ill treatment of Animals. Except as stated herein, these Defendants deny this paragraph and demand strict proof thereof.

12. That as to Paragraph Ten (10), these Defendants only admit that Terry Trexler was arrested by the RCSD on or about February 27, 2008 and charged with Kidnapping, as well as additional counts of Ill treatment of Animals. Except as stated herein, these Defendants deny this paragraph as stated and demand strict proof thereof.

13. That as to Paragraph Eleven (11), these Defendants deny same and demand strict proof thereof.

14. That as to Paragraph Twelve (12), these Defendants only admit upon information and belief that the Plaintiff was employed with the South Carolina Department of Agriculture during the relevant events. Except as stated herein, these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny this paragraph and demand strict proof thereof.

15. Paragraphs Thirteen (13), Fourteen (14), and Fifteen (15) contain allegations against another Defendant, and therefore, requires no response by these Defendants. To the extent that these paragraphs contain factual allegations against these Defendants, these Defendants deny same and demand strict proof thereof.

16. That as to Paragraph Sixteen (16), Seventeen (17), Eighteen (18), and Nineteen (19), these Defendants categorically deny same. Further answering, these Defendants crave reference to any and all documentation related to alleged financial losses and failure to obtain employment as the best evidence of what is contained therein.

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17. That as to Paragraphs Twenty (20), Twenty-six (26), Thirty-two (32), and Thirty-seven (37), these Defendants reassert and reallege all previous allegations and defenses.

18. That as to Paragraphs Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41), and Forty-two (42), these Defendants deny same in its entirety and demand strict proof thereof.

19. Paragraphs Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Thirty (30), and Thirty-one (31) contain allegations against another Defendant, and therefore, requires no response by these Defendants. To the extent that these paragraphs contain factual allegations against these Defendants, these Defendants deny same and demand strict proof thereof.

20. Any and all allegations inconsistent with the foregoing are denied. Further, these Defendants assert that the Plaintiff is not entitled to the relief requested in the Amended Complaint, or any other relief against these Defendants.

FOR A FOURTH DEFENSE

21. The Defendant Richland County alleges upon information and belief that it is not the proper party defendant in this case since it is not liable for the actions of the Sheriff of Richland County or his deputies, pursuant to the pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et. seq.* (1976) as amended as well as the laws of South Carolina..

FOR A FIFTH DEFENSE

22. These Defendants allege that they are immune from suit and liability under the doctrine of sovereign immunity.

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FOR A SIXTH DEFENSE

23. The Defendant Richland County Sheriff's Department (RCSD) is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

FOR A SEVENTH DEFENSE

24. These Defendants allege, upon information and belief, that any damages alleged to have been caused by these Defendants, which are specifically denied, must be apportioned between these Defendants and other tortfeasors pursuant to § 15-78-100(c) of South Carolina Code of Laws as amended.

FOR AN EIGHTH DEFENSE

25. These Defendants are entitled to sovereign immunity and, therefore, this suit should be barred or limited by the terms of and conditions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976) as amended.

FOR A NINTH DEFENSE

26. These Defendants allege upon information and belief that at all times herein that RCSD deputies were acting within the course and scope of their employment in a discretionary manner, in good faith, without bad faith or malicious motives in the performance of their official duties, and therefore, these Defendants are immune from suit.

FOR A TENTH DEFENSE

27. As to the state cause of action against these Defendants for the outrage or intentional infliction of emotional distress, these Defendants allege that such claim is barred by the South Carolina Tort Claims Act, §15-78-30(f) of the South Carolina Code of Laws as amended.

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FOR AN ELEVENTH DEFENSE

28. There is no joint and several liability against these Defendants, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976) as amended and, therefore, all references to joint and several liability should be stricken from the Plaintiff's Amended Complaint.

FOR A TWELFTH DEFENSE

29. These Defendants allege that punitive damages are not properly recoverable against these Defendants as governmental entities pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-120(b) and therefore such claim for damages should be dismissed.

FOR A THIRTEENTH DEFENSE

30. These Defendants allege, upon information and belief, that any alleged defamatory statements were made in accordance with an absolute privilege and, therefore, such claims of the Plaintiff are barred by such privilege.

FOR A FOURTEENTH DEFENSE

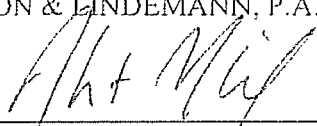
31. These Defendants allege, upon information and belief, that any alleged defamatory statements were made in accordance with qualified privilege and, therefore, such claims of the Plaintiff are barred by such privilege.

WHEREFORE, having fully answered the Amended Complaint of the Plaintiff, the Defendants Richland County and Richland County Sheriff's Department (RCSD) pray that same be dismissed with prejudice and for such other and further relief as the Court deems just and presented to the Court at the time of the hearing.

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DAVIDSON & LINDEMANN, P.A.

BY:



WILLIAM H. DAVIDSON, II
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendants
Richland County and
Richland County Sheriff's Department*

Columbia, South Carolina

July 23, 2010

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

James W. Trexler,)

Plaintiff,)

Vs.)

Richland County and the Sheriff of
Richland County, in his official
Capacity, a/k/a Richland County
Sheriff's Department,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case Number: 2010-CP-40-1343

SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2012 FEB 14 AM 9:48
JEANETTE W. MCBRIDE
CLERK, P. & G.S.

COMES NOW, Plaintiff James W. Trexler, pursuant to Rule 15 (a) and (c), SCRCF, and amends and supplements his Amended Complaint by correcting a party name from the Richland County Sheriff's Department to the Sheriff of Richland County. All references heretofore to the Richland County Sheriff's Office in Plaintiff's Amended Complaint are amended to the Sheriff of Richland County ("SRC"). Plaintiff further amends his Amended Complaint with respect to the allegations in its First and Second Causes of Action, by dismissing its Causes of Action for Civil Conspiracy and Outrage, and by adding a Third Cause of Action for Malicious Prosecution. The Plaintiff, complaining of the above-named Defendants, respectfully alleges as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.

2. The Defendant, Sheriff of Richland County, in his official capacity, ("SRC"), is an agent of the County of Richland, and a governmental entity having charge of agents which comprise the Richland County Sheriff's Department.

3. The matters alleged herein occurred within Richland County, South Carolina, and therefore has jurisdiction over the parties and subject matter herein.

FACTUAL BACKGROUND

4. Prior to the month of March 2008, the Plaintiff's mother and brother operated a for profit Arabian horse breeding business in Richland County, South Carolina.

5. During February of 2008, the horses owned by the Plaintiff's mother and brother were seized due to alleged charges of mistreatment of animals. In addition the Plaintiff's mother and brother were charged with various crimes.

6. Although the Plaintiff had no ownership interest whatsoever in the ownership of the horses or the operation of his mother's business, the Defendant, SRC, by and through its agents, charged the Plaintiff as if he were an owner.

7. As the result of an associated incident that occurred on February 13, 2008 between the Plaintiff's brother and an individual trespassing upon the property where the horses were maintained, which trespassing was done for the furtherance of supporting the allegations of mistreatment of animals, on February 26, 2008, Plaintiff's brother was charged with kidnapping.

8. On February 27, 2008, the SRC published an email press release ("Press Release") to various media outlets to announce the arrest of Plaintiff and his mother and brother.

9. Despite actual knowledge that the only kidnapping charge associated with the entire series of events was charged against the Plaintiff's brother, Defendant SRC, by and through its agents, published to various media outlets Plaintiff had been charged with kidnapping.

10. The Press Release published further untrue statements that Plaintiff engaged in severe and barbaric treatment of 28 horses, and gave the false impression that Plaintiff also engaged in like activity in Georgia, that Plaintiff had proven time and again that he had no business owning any animals, and that Plaintiff deserved punishment.

11. Despite actual knowledge that the Plaintiff had no ownership interest in the horses, and that the horses were not under the Plaintiff's care, custody or control, the Defendant, SRC, by and through its agents published to various media outlets statements, included in the press release, which attributed "severe and barbaric treatment of horses" to the Plaintiff.

12. The Defendant, McClatchy Newspapers, Inc., was a recipient of that press release published by the Defendant SRC.

13. At the time of these events, the Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as an Assistant Commissioner for Administration. His position was not an elected or appointed

position, but rather earned as the result of twenty-seven years of service to state government.

14. On February 28, 2008, the Defendant, McClatchy Newspapers, Inc., published in large headlines on the front page of the newspaper a headline stating "Assistant ag chief faces kidnap charge."

15. Following the headline, the Defendant, McClatchy Newspapers, Inc., published an article in which it was reported as fact that the Plaintiff had been charged with kidnapping as a result of an incident involving the horses and attributing "severe and barbaric" treatment of those horses to the Plaintiff.

16. At the time of the publication, the statement was false and the Defendants either knew or should have known that the statement was false.

17. Publication of the statement concerning the kidnapping charge, and also the statement associating the Plaintiff with the operation of the horse business owned and operated by his mother and brother, and ill treatment of those horses, created the false impression in the minds of millions of South Carolinians and others worldwide concerning the character of the Plaintiff.

18. As a result of the publications, the Plaintiff suffered an enormous adverse financial impact, which impact included being forced to resign from his job, which caused him to lose substantial benefits for which he worked diligently during a successful career with the State of South Carolina.

19. As a further result of the publications, the Plaintiff is unable to obtain employment in which he can utilize his talents and experience.

20. As a further result of the publications, the Plaintiff has suffered extreme humiliation and damage to his reputation in the community and state government.

FOR A FIRST CAUSE OF ACTION AGAINST RICHLAND COUNTY
AND THE SHERIFF OF RICHLAND COUNTY
(Defamation)

21. Each and every factual allegation above is incorporated herein by reference.

22. The Defendant, Richland County, by and through its agents, the Defendant SRC, and its agents, published to third parties the statement, included in the type-written press release, that the Plaintiff had been charged with kidnapping.

23. The Defendant, Richland County, by and through its agents, the Defendant SRC, and its agents, published to third parties the statements, included in the type-written press release, attributing to the Plaintiff, the ill treatment of horses of which the Plaintiff had no ownership interest, and which were not under the Plaintiff's care, custody or control, and further characterizing that treatment as "severe and barbaric."

24. At the time of the publication, the statements were false.

25. At the time of the publication, the Defendants either knew that the statements were false, or acted with reckless disregard toward the truth or falsity of the statements.

26. As a result of the publication the Plaintiff has suffered serious damages, including the loss of his employment and a severe diminution of his ability to provide for his family, and extreme damage to his reputation.

27. As a result of the defamation against the Plaintiff, the Plaintiff is entitled to actual damages against the Defendant, Richland County, and the SRC in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION AGAINST THE SHERIFF OF
RICHLAND COUNTY
(Malicious Prosecution)

28. Each and every factual allegation contained in paragraphs 1-36 of Plaintiff's Amended Complaint are incorporated herein by reference.

29. The SRC, in conjunction with the Humane Society for the Prevention of Cruelty to Animals ("HSPCA"), intentionally instigated, caused to be instigated, or participated in the instigation of legal action against Plaintiff without sufficient evidence to create probable cause to arrest and prosecute Plaintiff on multiple counts of ill-treatment of animals.

30. In order to obtain arrest warrants for Plaintiff, the HSPCA, with the full knowledge, condonation, and participation of the SRC, swore as true to the Olympia Magistrate Judge facts it did not know to be true, and in fact were not true, including that Plaintiff owned the horses the HSPCA confiscated from 412 Derby in Hopkins, South Carolina, and that Plaintiff lived at that residence.

31. At the time the SRC executed the arrest warrants against Plaintiff, it knew, or through the exercise of reasonably prudent investigation should have known, Plaintiff neither owned or was otherwise responsible for the horses they accused him of mistreating, nor did he own or live on the land from which the subject horses were confiscated.

32. At the time the SRC executed the arrest warrants against Plaintiff, it knew or should have known, an agent of the HSPCA obtained the warrants by providing false information to the Magistrate who issued them.

33. The SRC deprived Plaintiff of his clearly established rights by executing an arrest warrant against Plaintiff the SRC knew, or should have known, was obtained through improper and dishonest means, and was therefore invalid.

34. The SRC had a duty to ascertain whether reasonable and probable cause existed for Plaintiff's arrest and subsequent prosecution, to wit, to learn whether Plaintiff owned or was responsible for any horses, owned any land on which the horses were found, or was involved in any way with the horses Defendants criminally charged him for allegedly mistreating.

35. The SRC, in conjunction with the Office of the Solicitor for the Fifth Circuit, participated in the continuation and intensification of prosecution efforts against Plaintiff recklessly, maliciously, and with full knowledge they possessed no evidence to implicate Plaintiff in either misdemeanor ill-treatment of animals or felony cruelty to animals.

36. Upon information and belief, the SRC participated in the prosecution of Plaintiff by pressing the Office of the Solicitor for the Fifth Circuit to seek Plaintiff's indictment based on allegations they knew, or through the exercise of reasonable prudence, should have known were false.

37. Upon information and belief, the SRC's participation in the continuation of Plaintiff's prosecution was done, inter alia, for purposes of

covering up the SRC's involvement in the execution against Plaintiff of invalid arrest warrants improperly obtained by an agent of the HSPCA.

38. The SRC played an active role in the instigation and continuation of criminal proceedings against Plaintiff for a period of nearly two years and four months.

39. All charges brought and obstinately prosecuted by or with the full participation of the SRC were dismissed on July 15, 2010.

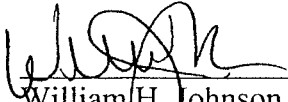
40. As a result of the malicious prosecution by Richland County agents, Plaintiff was obliged to defend himself and to expend money and time in his defense, all in an amount to be proven at trial.

41. As a result of the malicious prosecution of which the SRC was a full participant, Plaintiff suffered enormous adverse financial loss, including, without limitation, loss of his employment and associated salary, and loss of actual and potential employment and retirement benefits totaling at least \$899, 978.

42. As a further result of the malicious prosecution of which the SRC was a full participant, Plaintiff has suffered extreme humiliation, damage to his professional and personal reputation, wrath, and fear of physical harm, which have cause him severe mental anguish.

WHEREFORE, having fully stated his claim for relief, the Plaintiff prays for judgment against the Defendants, jointly and severally, for actual and punitive damages in an amount to be determined by a jury, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



William H. Johnson

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W. Westbrook Wills III

38 Broad Street, Suite 200

Charleston, SC 29401

Phone: 843-805-6300

Fax: 843-278-9333

Attorneys for Plaintiff

Dated: February 2, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

v.

Richland County and the Sheriff of
Richland County, in his official capacity,
a/k/a Richland County Sheriff's Department,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 10-CP-40-1343

ANSWER TO SECOND
AMENDED COMPLAINT

(Jury Trial Demanded)

The Defendants, Richland County and the Sheriff of Richland County, in his official capacity, a/k/a Richland County Sheriff's Department hereby answer the Plaintiff's Second Amended Complaint and dated February 2, 2012 herein as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to constitute a cause of action. The Defendants reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. The Defendants are immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*, and specifically, § 15-78-60 (4), (5), and (17).

FOR A THIRD DEFENSE

3. The Defendants deny each and every allegation of the Second Amended Complaint not hereinafter specifically admitted, qualified, or explained.

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4. The prefatory language as alleged in the Second Amended Complaint is denied, except to the extent that the Plaintiff alleges that he has brought various causes of action in this civil action. The Defendants deny that any of the Plaintiff's causes of action are meritorious.

5. That as to Paragraph One (1), the Defendants admit same upon information and belief.

6. That as to Paragraph Two (2), the Defendants only admit that the Defendant Sheriff is a constitutional officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina and is subject to the terms and conditions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.* Further responding, the Defendant Sheriff admits that he is the duly elected Sheriff of Richland County and that at all times herein his officers were acting within the course and scope of their employment and official duties as deputies.

7. Paragraph Three (3) is jurisdictional in nature, can neither be admitted nor denied, and the Defendants crave reference thereto.

8. That as to Paragraph Four (4) and upon information and belief, the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny this paragraph and demand strict proof thereof.

9. That as to Paragraph Five (5) and upon information and belief, the Defendants deny same as stated. Further answering, the Defendants crave reference to the applicable arrest warrants against the Plaintiff's mother and brother as well as the seizure documentation for the best evidence of what is referenced therein.

10. That as to Paragraph Six (6), the Defendants only admit upon information and belief that the Plaintiff was arrested on or about February 27, 2008 and charged with five (5)

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counts of Ill treatment of Animals. Except as stated herein, the Defendants deny this paragraph and demand strict proof thereof.

11. That as to Paragraph Seven (7), the Defendants only admit that Terry Trexler was arrested on or about February 27, 2008 and charged with Kidnapping, as well as additional counts of Ill treatment of Animals. Except as stated herein, the Defendants deny this paragraph as stated and demand strict proof thereof.

12. That as to Paragraphs Eight (8), Nine (9), Ten (10), Eleven (11), and Twenty-two (22), the Defendants only admit upon information and belief that on or about February 27, 2008, Captain Chris Cowan of the Richland County Sheriff's Department drafted a singular press release via e-mail transmission regarding the arrests of Terry Trexler, Hazelene Trexler, and the Plaintiff. This release was prepared on behalf of the Richland County Sheriff's Department and disseminated to various media outlets. Further responding, the Defendants crave reference to the actual contents of the press release for the best evidence of what is contained therein. Except as stated herein, the Defendants deny these paragraphs and demand strict proof thereof.

13. That as to Paragraph Twelve (12), the Defendants deny same as stated and demand strict proof thereof.

14. That as to Paragraph Thirteen (13), the Defendants only admit upon information and belief that the Plaintiff was employed with the South Carolina Department of Agriculture during the relevant events. Further responding, the Defendants crave reference to the Plaintiff's personnel or employment records characterizing the nature and duties of his employment for the best evidence of what is contained therein. Except as stated herein, the Defendants deny this paragraph and demand strict proof thereof.

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15. That as to Paragraphs Fourteen (14) and Fifteen (15), the Defendants deny same as stated and demand strict proof thereof.

16. That as to Paragraphs Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), and Twenty (20), the Defendants categorically deny same. Further answering, the Defendants crave reference to any and all documentation related to alleged financial losses and failure to obtain employment as the best evidence of what is contained therein.

17. That as to Paragraphs Twenty-one (21) and Twenty-eight (28), the Defendants reassert and reallege all previous allegations and defenses.

18. That as to Paragraphs Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41), and Forty-two (42), the Defendants categorically deny same and demand strict proof thereof.

19. Any and all allegations inconsistent with the foregoing are denied. Further, and that as to the prayer of the Second Amended Complaint, the Defendants assert that the Plaintiff is not entitled to the relief requested in the Second Amended Complaint, or any other relief against the Defendants.

FOR A FOURTH DEFENSE

20. The Defendants allege that they are immune from suit and liability under the doctrine of sovereign immunity.

FOR A FIFTH DEFENSE

21. The Defendant Richland County alleges that it is not the proper party defendant in this case since it is not liable for the actions of the Sheriff of Richland County pursuant to

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pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976) as amended.

FOR A SIXTH DEFENSE

22. The Defendants allege, upon information and belief, that any alleged defamatory statements -- and expressly not admitting the existence of any statements -- were made in accordance with an absolute privilege and, therefore, such claims of the Plaintiff are barred by such privilege.

FOR A SEVENTH DEFENSE

23. The Defendants allege, upon information and belief, that any alleged defamatory statements -- and expressly not admitting the existence of any statements -- were made in accordance with a qualified privilege and, therefore, such claims of the Plaintiff are barred by such privilege.

FOR AN EIGHTH DEFENSE

24. There is no joint and several liability against the Defendants, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976) as amended and, therefore, all references to joint and several liability should be stricken from the Plaintiff's Second Amended Complaint.

FOR A NINTH DEFENSE

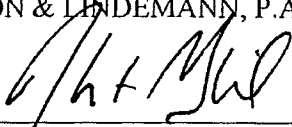
25. The Defendants allege that punitive damages are not properly recoverable against the Defendants as governmental entities pursuant to the South Carolina Tort Claims Act, S.C. Code Annotated § 15-78-120(b) and therefore such claim for damages should be dismissed.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiff, the Defendants Richland County and the Sheriff of Richland County, in his official capacity,

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a/k/a Richland County Sheriff's Department pray that same be dismissed with prejudice and for such other and further relief as the Court deems just and presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: 

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*Counsel for Defendant
Richland County Sheriff's Department*

Columbia, South Carolina

February 17, 2012

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

v.

Richland County and the Sheriff of Richland
County, in his official Capacity, a/k/a
Richland County Sheriff's Department,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 10-CP-40-1343

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Answer to Second Amended Complaint** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 17th day of February, 2012, addressed as follows:

William H. Johnson, Esquire
Law Offices of William H. Johnson, LLC
Post Office Box 137
Manning, South Carolina 29102

W. Westbrook Wills, III, Esquire
Austin, Fowler & Wills, LLP
38 Broad Street, Suite 200
Charleston, South Carolina 29401

Shelley E. Stafford

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
<u>COUNTY OF RICHLAND</u>	)	2010-CP-40-01343
	)	2014-CP-40-02032
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
McClasky Newspapers, et al.,	)	
	)	
<u>Defendant.</u>	)	

January 27, 2014
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

W. WESTBROOK WILLS, III, ESQ.
WILLIAM H. JOHNSON, ESQ.
Attorney for the Plaintiff

ROBERT D. GARFIELD, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JANUARY 27, 2014

2 THE COURT: Are y'all ready?

3 MR. GARFIELD: Yes, ma'am, if you are.

4 THE COURT: Okay. Let's see if we can get
5 everybody for the record. There is a motion to
6 consolidate. All right, this is James Trexler v.
7 McClasky Newspapers, et al. I think they are out,
8 from what I can tell, the newspaper.

9 And so, Mr. Garfield, you represent the
10 Sheriff's Department and the Sheriff?

11 MR. GARFIELD: Yes, ma'am.

12 THE COURT: In his official capacity?

13 MR. GARFIELD: The Defendants in that
14 particular action, yes, Your Honor.

15 And it is our summary judgment. And although
16 there are two motions -- this may be helpful to the
17 Court -- there is a motion to consolidate, as Your
18 Honor pointed out, and also a motion for summary
19 judgment. Two other judges have recused themselves
20 in this matter, Judge Cooper and Judge Hood.

21 When we were going to argue last time, I think
22 we agreed that the summary judgment motion being
23 heard first may be more economical because,
24 depending on that ruling, Your Honor, it may
25 obviate the need for certain grounds of the motion

1 to consolidate.

2 THE COURT: Yes, sir. And let me get your
3 name for the record?

4 MR. WILLS: My name, Your Honor, is Brook
5 Wills. I represent the Plaintiff, James Trexler.
6 I am here with Co-Counsel, William Johnson.

7 And, Your Honor, also as a preliminary, we
8 submitted a brief. Both parties filed a brief
9 previously. As Mr. Garfield indicated, this was up
10 for hearing before. We filed a brief. Both
11 parties have also submitted briefs. And I -- since
12 there are numerous exhibits, I have got a brief
13 that is tabbed to help the Court follow along with
14 our presentation that I could provide to you.

15 THE COURT: All right. And I looked over it,
16 but if someone can give me -- I guess summarize for
17 me -- is this your motion?

18 MR. GARFIELD: Yes, Your Honor.

19 THE COURT: For summary judgment? All right.
20 I will be glad to hear from you.

21 MR. GARFIELD: Thank you, Your Honor. May it
22 please the Court?

23 I do have -- this is our summary judgment
24 memorandum in support. This is one for both of you
25 with the tabbed exhibits. That is identical to

1 what we have provided the Plaintiffs in this
2 matter.

3 The facts giving rise to this action and
4 taking the facts in the light most favorably to the
5 Plaintiff -- and, honestly, I am going to try to
6 shortcut this as much as possible based on the
7 hour, but this is somewhat involved.

8 The most pertinent, relevant facts started on
9 February 13th of 2008 involving an investigator
10 with the Humane Society. Her name is Michelle
11 Hart. She is with the South Carolina -- excuse
12 me -- the Humane Society for the Prevention of
13 Cruelty to Animals, HSPCA. I'll refer to her as
14 the Humane Society investigator. She was
15 investigating a complaint about several neglected
16 horses in poor condition. And this was on the
17 property on Zeigler Road in Richland County. And
18 she developed two individuals as suspects, one
19 being an individual, Your Honor, named Terry
20 Trexler and Terry Trexler's mother, Hazelene
21 Trexler.

22 Some 13 days later, February 26th, a search
23 warrant was obtained and executed in which the
24 Humane Society seized 23 horses and 7 dogs from
25 this Zeigler Road location from, again, Terry

1 Trexler and Hazelene Trexler.

2 At that time the Humane Society learned that
3 both of these individuals were wanted for 61 counts
4 of animal cruelty in Jefferson County, Georgia.

5 Now, about this time the Plaintiff in this
6 instant action, James Trexler, he was developed as
7 a suspect.

8 And what happened here was Investigator Hart
9 with the Humane Society went to the -- swore out to
10 the issuing Richland County magistrate that the
11 Plaintiff is the brother of Terry Trexler and the
12 Plaintiff being the son of Hazelene Trexler and the
13 person said to be living at this one address, 412
14 Derby Lane in Hopkins.

15 The Humane Society thereafter executed a
16 search warrant for this 412 Derby Lane residence.
17 This was the Plaintiff's property. He owned it,
18 and he actually listed this on his driver's
19 license.

20 And Your Honor can see as one of the exhibits
21 to our summary judgment, I believe it is Exhibit E,
22 in which a copy of the DMV record for the Plaintiff
23 in March of 2008 shows that his primary residence
24 was indeed 412 Derby Lane.

25 A day later, February 27th, another

1 investigator with the Humane Society, named Liz
2 Perry, she prepared five arrest warrant affidavits,
3 and five -- dealing with five horses. One was a
4 bay female, there were three bay stallions, I
5 believe, and there was one black stallion.

6 In these affidavits, Investigator Perry swore
7 to the magistrate -- again, she has nothing to do
8 with Richland County Sheriff's Department, she is
9 with the Humane Society -- that in these affidavits
10 she attested that these horses were located on the
11 Plaintiff's property, that they were visibly
12 suffering from malnutrition, poor feeding
13 conditions, such as lacking food, water buckets
14 that were filled with feces, and she further
15 indicated and swore out to the magistrate that the
16 living conditions were deficient, such as
17 overcrowding, horses standing in urine-soaked mud
18 and feces, and wandering around in wet muddy
19 property.

20 Judge Cuff, Magistrate Judge, Richland County
21 Magistrate Judge, pardon me, Harold Cuff found that
22 probable cause existed for the Plaintiff's arrest,
23 and he issued these five arrest warrants for the
24 ill treatment of these horses and the Plaintiff was
25 subsequently arrested on that day.

1 And that is really the basic facts for those
2 set of circumstances. And the Plaintiff in this
3 case is suing on a cause of action for malicious
4 prosecution. And for the Plaintiff to prevail or
5 create an issue of fact -- or, excuse me -- or
6 demonstrate the underlying claim, he has got to
7 prove several elements. Those are addressed in
8 Page 13 of our memorandum in support.

9 And without going through all of that, it
10 really is just prevailing law in South Carolina as
11 to what they must plead and prove, but I'd like to
12 direct Your Honor's attention to the first two
13 factors.

14 They have to prove: Number 1, the institution
15 or continuation of original judicial proceedings;
16 Number 2, by, or at the instance of the Defendant.

17 Taking the facts in the light most favorably
18 to the Plaintiff, Richland County Sheriff's
19 Department employees did not participate or cause
20 the arrest of the Plaintiff in this matter.

21 Exhibit K to our summary judgment -- and this
22 should be in the binders, and I also provided to
23 the Plaintiff, I'm making a reference to the
24 excerpts from the deposition of Elizabeth Perry.
25 If Your Honor will recall, she was one of the two

1 Humane Society investigators.

2 And I start on Page 106. And the dialogue --
3 her sworn testimony that the Plaintiff's lawyer was
4 asking her is extremely instructive in this regard.
5 And I'll start on Line 4 on Page 106.

6 Question: Are those arrest warrants to
7 which you swore an affidavit?

8 Answer: Yes.

9 Question: Do you recall going to the
10 magistrate to give that affidavit?

11 Answer: I do.

12 Question: Did you give that affidavit
13 to the magistrate?

14 Answer: Yes.

15 Question: Personally?

16 Answer: Yes.

17 Question: Did you go alone to the
18 magistrate?

19 Answer: I believe so, yes.

20 Question: If you look at the affidavit
21 section -- he goes on to say -- that is
22 your signature on that?

23 The answer is: Yes.

24 Question: If we look at the affidavit
25 section -- I'll read the first line.

1 it says, I further state that there is
2 probable cause to believe that the
3 Defendant named above did commit the
4 crime set forth and that probable cause
5 is based on the following facts.

6 Correct?

7 Answer: Correct.

8 Question: Now, the next section where
9 you gave the facts; correct?

10 Answer: Correct.

11 Question: That on February 26th, 2008,
12 while at 412 Derby Lane in the Olympia
13 Magisterial District of Richland County,
14 one James Trexler did commit the crime
15 of ill treatment of animals in that he
16 is the owner of a 2-year-old bay female
17 with a body score of 1.5. Did I read
18 that correctly?

19 Answer: Correct.

20 Question: So my question to you, is
21 that information that you had when you
22 made this affidavit, that James Trexler
23 was the owner of the horse that is
24 indicated in this affidavit?

25 Answer: From what I remember, it was on

1 his property.

2 Your Honor, I'll go to Page 108, Line 11 -- it
3 should be the very next page -- in which the
4 question is posed:

5 What made you think at this point even
6 that James Trexler or the horses were on
7 James Trexler's property?

8 Answer: I witnessed the horses on his
9 property. I touched them.

10 And the last portion is in the final page of
11 this exhibit. It is Page 109. I'll begin reading
12 this last part beginning Line 16.

13 Question: I mean, do you know that he
14 owned the horses at this time? I don't
15 understand what you are saying.

16 Answer: That was my understanding, yes,
17 that he owned the horses at this time.

18 Your Honor, based on her testimony, it was the
19 Humane Society investigators that pursued the
20 search warrant for his property, that obtained it,
21 drafted language for the arrest warrant affidavits
22 stating that the Plaintiff owned the property and
23 abused his horses, swearing out facts to the
24 magistrate, according to this one investigator who
25 personally observed it, based on the fact that the

1 Sheriff's Department employees who now participate
2 in this particular arrest but was at the
3 institution in the origination of the Humane
4 Society, that one facet is not completed in this
5 case. In fact, the original judicial proceedings
6 not only was instituted by the Humane Society, but
7 was instituted and continued by the Fifth Circuit
8 Solicitor's Office because this was a General
9 Sessions level charge.

10 As Your Honor is aware, the agencies of the
11 Humane Society, Fifth Circuit Solicitor's Office,
12 and the Office of the South Carolina Attorney
13 General, which also prosecuted Mr. Trexler, were
14 all separate agencies which operate mutually
15 exclusive of each other and are not controlled by
16 either Richland County or by the Richland County
17 Sheriff.

18 Because those two factors are not present in
19 this case, the malicious prosecution claim should
20 be dismissed as a matter of law. But there is
21 another facet or factor under the malicious
22 prosecution, is that in order for them to sustain a
23 claim for malicious prosecution they have to plead
24 and prove the absence of probable cause.

25 Now, in this case, Your Honor, they cannot

1 prove that. First of all, there is no dispute that
2 Judge Cuff was neutral and detached from the
3 criminal investigation. And, further, there is no
4 showing that the arrest warrants issue were either
5 void or facially deficient or not facially valid in
6 this case.

7 All these arrest warrants are Exhibit L to our
8 summary judgment. You have that before you at your
9 desk, Your Honor. And also there are cases in the
10 memorandum, I believe it is Page 15, which I am not
11 going to go into now, but all of these cases
12 provide that these facially valid arrest warrants
13 markedly demonstrate the existence of probable
14 cause.

15 As to probable cause, there is one aspect to
16 this case that we believe is very much dispositive.

17 In March of 2008 -- and I direct Your Honor's
18 attention to Exhibit M, which are the indictments
19 in this matter -- charges against the Plaintiff
20 were presented to the Richland County Grand Jury.
21 Four indictments were returned as a true bill, all
22 of which were returned and indicted for ill
23 treatment of animals, these particular horses.

24 I would like to address some law on this point
25 that we believe is authoritative.

1 One is a Supreme Court case entitled Law
2 versus The South Carolina Department of
3 Corrections. And if I may approach on these. I
4 have one for each of you.

5 THE COURT: Yes, sir.

6 (Complies.)

7 MR. GARFIELD: This is cited 629 S.E.2d 642.
8 This was decided by the South Carolina Supreme
9 Court in 2006.

10 Your Honor, on Page 12 of the copy version,
11 the Supreme Court stated:

12 South Carolina has long embraced the
13 rule that a true bill of indictment is
14 prima fascia evidence of probable cause
15 in an action for malicious prosecution.

16 The second case, Your Honor, is a South
17 Carolina Court of Appeals case. And I'll go ahead
18 and give the cite now. It is 698 S.E.2d 845. This
19 was decided more recently in 2010 entitled McBride
20 versus the School District of Greenville County.
21 And again the copy version of this is Page 17, the
22 second column, midway down in which the Court of
23 Appeals held that.

24 South Carolina has long embraced the
25 rule that a true bill of indictment is

1 prima fascia evidence of probable cause
2 in an action for malicious prosecution.
3 Although the question of whether
4 probable cause exists is ordinarily a
5 jury question, it may be decided in the
6 matter of law when the evidence yields
7 but one conclusion.

8 I omit the internal citations. The Court goes
9 on to state that:

10 In McBride's case, the Grand Jury's true
11 bill of indictment against her for
12 contributing to the delinquency of a
13 minor is prima fascia evidence or
14 probable cause to that charge.

15 Now, just as an aside, but I think it is no
16 less significant, I guess it could be when I went
17 through these cases -- I guess it is the history
18 nerd in me -- when they were talking about what is
19 the -- it is long embraced. So it made me somewhat
20 curious to see how long South Carolina embraced
21 this.

22 In fact, there is the case of Brown versus
23 Griffin from the Court of Appeals from South
24 Carolina from the fall term of 1839. So we're
25 celebrating the 175th anniversary of black letter

1 law in South Carolina which holds that, in the
2 second column:

3 Where the Grand Jury has returned a true
4 bill upon the charge made, such finding
5 amounts to a judicial recognition that
6 probable cause does exist.

7 So based on clearly established law, we
8 believe that the Grand Jury is dispositive on this.

9 I think that there is one other point I would
10 like to say that is aside from the authoritative
11 aspect of this. I would just like to address a
12 case that I was recently involved with, more for
13 persuasive reasons.

14 This was a case out of Chester, South
15 Carolina. It is a unique set of facts in which the
16 Plaintiff asserted a claim against the State Law
17 Enforcement Division under a malicious prosecution
18 theory. Maybe I just had to bring Chester County
19 up in front of my argument because I have relatives
20 there. But this arose out of an arrest for the
21 Plaintiff's involvement in a hog versus dog fight.
22 And the facts went as this.

23 The Plaintiff was charged under the animal
24 fighting and baiting statute, but the Chester
25 County Animal Control officer -- she actually was

1 the Chester County Animal Control officer -- she
2 was charged with misconduct in office.

3 The SLED agent who was investigating the
4 incident obtained arrest warrants. Well, the
5 Plaintiff says she was arrested without adequate
6 probable cause. So she sues SLED under the
7 malicious prosecution theory.

8 This went before Judge Brooks Goldsmith, who
9 found that the Plaintiff had failed to present
10 evidence to sustain such an action. And Judge
11 Goldsmith held -- again, for persuasive means, Your
12 Honor -- I'm reading verbatim:

13 The facts, which are undisputed in the
14 record, the Defendant had probable cause
15 to charge the Plaintiff with animal
16 fighting and baiting and misconduct in
17 office. From the viewpoint of the
18 arresting officer, the Plaintiff was
19 plainly and visibly present at the dog
20 versus hog fight event in violation of
21 the animal fighting and baiting statute.
22 Further, the Plaintiff was an animal
23 control officer and never made any
24 attempt to intervene or put a stop to
25 the event.

1 The reason why I go in this direction is
2 really to analogize in the present matter, because
3 here the Humane Society investigator, Liz Perry,
4 she went to the Olympia magistrate. She swore
5 under oath that the Plaintiff owned a house, that
6 the Plaintiff owned the horses, that she personally
7 observed horses, that she touched horses that were
8 malnourished and mistreated, and from her own
9 viewpoint she believed probable cause existed.

10 And Judge Goldsmith continued on in his order
11 stating that:

12 Additional evidence of probable cause
13 for the Plaintiff's arrest is the
14 fact -- is the fact -- that the warrant
15 was issued by a neutral and detached
16 magistrate and that a Grand Jury
17 indicted the Plaintiff on the charges.

18 He says:

19 While it is true that the charges
20 against the Plaintiff were dismissed as
21 nol-prossed by the Attorney General, the
22 Plaintiff was prosecuted in General
23 Sessions Court for over three years, it
24 is evident that the Attorney General's
25 Office believed that probable cause

1 existed for the Plaintiff's arrest by
2 virtue of not only its initial
3 assessment of the case, but also their
4 prolonged prosecution of the case.

5 Well, back to the case at bar, the Plaintiff
6 was prosecuted not only by the Fifth Circuit
7 Solicitor, but by the South Carolina Attorney
8 General for a period of about 29 months, nearly two
9 and a half years. These two prosecution agencies.
10 And they ultimately nol-prossed the charges after
11 the brother, Terry Trexler, pled to the charges.

12 So assuming for purposes of the argument that
13 the Sheriff's Department participated in the arrest
14 in some form or fashion, which we deny, we believe
15 the facts do not bear out, there still is probable
16 cause existing as a matter of law and this claim
17 should be dismissed.

18 The final aspect of our summary judgment, Your
19 Honor -- and I am going kind of quickly, just being
20 mindful of the time -- is the defamation claim.

21 One of the charges that Terry Trexler, the
22 brother, was charged with was kidnapping, which
23 makes this a very unusual set of facts and have a
24 little more of a dramatic turn.

25 In February 13th of 2008 when all this event

1 began, the Humane Society Investigator Hart, what
2 she was doing was she was taking pictures of the
3 abused horses. And what happened at that time was
4 Terry, not the Plaintiff, but the brother Terry,
5 drove his truck around and blocked in Investigator
6 Hart and he would not let her leave. So what she
7 did was, she called the police, and the Sheriff's
8 Department had a deputy respond. And the deputy
9 spoke with Terry Trexler. And he deliberately lied
10 to the deputy and he gave her a false name. In
11 fact, he said he was James Trexler, his brother,
12 the Plaintiff in this case.

13 Now, this ultimately got straightened out.
14 Unfortunately, during this time a press release was
15 disseminated by the Richland County Sheriff's
16 Department Captain Chris Cowan, who is and was the
17 Senior Public Information Coordinator for the
18 Richland County Sheriff's Department.

19 Now, in his press release, Captain Cowan quite
20 frankly got the names tangled up. He spelled out
21 in the release that the Plaintiff was charged
22 with -- James Trexler -- five counts of ill
23 treatment of animals, which is accurate. But he
24 also said that the Plaintiff instead of Terry
25 Trexler was charged with kidnapping.

1 This media was reported -- the media reported
2 the news. And the Plaintiff, who was the assistant
3 commissioner of agricultural at the time, had some
4 public name recognition. It generated a fair
5 amount of publicity. And a retraction was
6 instituted by Captain Cowan at that time.

7 Now, the law, as Your Honor is well aware, the
8 South Carolina Tort Claims Act governs all actions
9 brought against governmental entities in South
10 Carolina. And the Tort Claims Act sets forth a
11 statutory waiver of sovereign immunity and allows
12 suits for money damages against the entity itself.

13 And just very briefly -- and all of this is in
14 our brief -- but our legislature enacting the
15 section really carved out numerous exceptions to
16 the waiver of sovereign immunity.

17 In other words, if an action or inaction fell
18 within one of these 37 exceptions to the waiver,
19 then the entity should enjoy absolute sovereign
20 immunity from suit.

21 The one that we claim, the one exception that
22 we believe is pertinent in this case is 15 -- South
23 Carolina Code annotated 15-78-60, Subsection 17.
24 This is in our brief, and I'm just handing up my
25 book. Subsection 17, Your Honor. Which a Tort

1 Claims Act clearly bars a governmental entity's
2 liability for an individual's loss stemming from an
3 employee's conduct that constitutes actual malice
4 or an intent to harm.

5 Now, I want to be real clear about this based
6 on Captain Chris Cowan. We allege and believe we
7 can show that Investigator -- or, excuse me,
8 Captain Cowan's release contained a scrivener's
9 error, not to mention that it was the Plaintiff's
10 brother parading around as the Plaintiff to add to
11 the confusion, but once this was disseminated,
12 Captain Cowan immediately retracted what he had.
13 In fact, Captain Cowan is here today for purposes
14 of the argument. He has had a very much interest
15 in the outcome of this.

16 But for purposes of summary judgment, the
17 Plaintiff not only alleges in this lawsuit, but in
18 fact expressly stipulates that Captain Cowan's
19 actions with respect to the Plaintiff constituted
20 actual malice and constituted intent to harm.

21 I think it is Exhibit I, in which we served
22 them with Request to Admit in this matter -- it
23 could be H or I, I believe I have it, it is I -- in
24 which we asked them at the relevant times in the
25 complaint Chris Cowan's actions with respect to the

1 Plaintiff did not constitute actual malice. He
2 answered: Denied. And in the same question was
3 asked at relevant times in the complaint Chris
4 Cowan's actions with respect to the Plaintiff did
5 not constitute an intent to harm. And that too was
6 denied.

7 The evidence in this case, Your Honor, here we
8 have the sole Sheriff's Department employee whose
9 acts or omissions with respect to dissemination of
10 this press release was Captain Cowan; yet, Captain
11 Cowan, Chris Cowan, was never named as a party
12 Defendant in this case. Therefore, the Defendant,
13 the Defendant Sheriff, the Office of the Sheriff,
14 the entity which is the Office of the Sheriff of
15 Richland County is the proper party Defendant. He
16 would be entitled for absolute sovereign immunity
17 for any such alleged loss resulting from his
18 employee's conduct, which it is undisputed Chris
19 Cowan and undisputed that they are taking the
20 position that he intended to harm their client in
21 this case and act with actual malice. And because
22 of that, he should enjoy and be afforded the
23 benefit of the Tort Claims Act.

24 And there is one case on this that is
25 pertinent. It is a Court of Appeals case from

1 1994. And I understand the Plaintiff is going to
2 address this particular case. This is Gause versus
3 Doe. It is cited as 451 S.E.2d 408, Court of
4 Appeals of South Carolina.

5 The pertinent portion here, Your Honor, is
6 Page 3 of the printed version, it is the first
7 column, in which the Court of Appeals clearly
8 indicated -- and I'm reading verbatim:

9 The South Carolina Tort Claims Act
10 clearly excludes a governmental entity's
11 liability for an individual's loss
12 stemming from a state employee's conduct
13 that constitutes actual malice. We
14 therefore agree with trial court that
15 the South Carolina Tort Claims Act bars
16 Gause's slander claim against the Myrtle
17 Beach Police Department -- which is the
18 entity, Your Honor -- because Gause must
19 prove the Myrtle Beach Police Department
20 as the entity that it is their
21 employee's conduct constituted actual
22 malice in order to recover on this
23 claim.

24 And we believe based on that issue that the
25 Court recognized the clear language of the Tort

1 Claims Act that would provide that the agency is
2 not liable for a loss.

3 In other words, Your Honor, quite frankly,
4 they can't have it both ways. We believe that they
5 are going to take this in front of a jury and they
6 are going to assert that Chris Cowan purposely and
7 intentionally and recklessly intended to harm their
8 client and act with actual malice.

9 The Tort Claims Act cannot be any clearer to
10 say that the proper party Defendant should be Chris
11 Cowan and should not be the Sheriff's Department.

12 And we would just -- I know there will be some
13 response to what I had to say. We just believe as
14 a matter of law -- I appreciate the Court's
15 attention to my argument -- and we believe that all
16 pending claims should be dismissed with prejudice.

17 Thank you.

18 THE COURT: All right. Thank you.

19 Yes, sir?

20 MR. WILLS: May it please the Court?

21 THE COURT: Yes, sir.

22 MR. WILLS: Thank you, Your Honor.

23 Just to add some preliminarily issues and to
24 shorten this and streamline the process, two of the
25 grounds on which the Defendant has moved for

1 summary judgment Mr. Garfield didn't address.

2 We'll really just do need to get it on the record.

3 One of them was that Richland County is not
4 the proper party to the case, even though it is
5 still in the caption, and the Richland County
6 Sheriff's Department -- or the Sheriff of Richland
7 County, also known as the Richland County Sheriff's
8 Department -- of course for ease I'll just refer to
9 it as Richland County Sheriff's Department -- that
10 Richland County is not a proper party. We concede
11 that. We had done that before. I don't know why
12 it is still on the pleadings, but we concede that
13 as Richland County not being a proper party.

14 Secondly, we also concede the issue of
15 punitive damages which are not properly brought
16 against the Richland County Sheriff's Department.
17 That was also addressed in the Defendant's
18 memorandum. And we would just like to clear those
19 off the deck so we can get to the real issues at
20 hand.

21 Your Honor, initially, and certainly important
22 to the Court's determination on this motion, is the
23 question of the material facts that are involved in
24 this case.

25 Those material facts are both disputed with

1 regard to how they play out as to each of the
2 Plaintiff's causes of action and these materials
3 facts are going to be very important throughout the
4 determination of whether summary judgment is
5 appropriate for both malicious prosecution and for
6 the defamation. And we'll continue to show the
7 Court exactly how these material facts do make
8 summary judgment as to both of those causes of
9 action inappropriate.

10 We have set these arguments and all of the
11 supporting evidence that we use to base our
12 arguments on out in our memorandum that we
13 submitted.

14 If the Court would like, I have a copy that is
15 tabbed to make looking at the exhibits easier. And
16 I can present that to the Court if you like.

17 THE COURT: It is up to you. That is fine. I
18 can flip through them.

19 MR. WILLS: Well, if you wouldn't mind, Your
20 Honor, I wouldn't like you to have to flip through
21 everything. And that is tabbed just like ours.

22 THE COURT: My law clerk wants it.

23 All right. Yes, sir?

24 MR. WILLS: Thank you, Your Honor. And the
25 facts as presented by Defense counsel are accurate,

1 although they are incomplete. And the facts that
2 fill in the holes are very important to the
3 determination of both malicious prosecution and the
4 defamation.

5 It is true on February 13th, 2008, the Humane
6 Society commenced an investigation against my
7 client James Trexler's brother and his mother, who
8 operated a horse breeding operation at that time.

9 James Trexler was an employee of the State
10 working for the South Carolina Department of
11 Agriculture, and had nothing to do at all with this
12 horse breeding operation of his brother and his
13 mother.

14 At the investigation out at Zeigler Road in
15 Richland County, the Humane Society investigator
16 presented -- didn't present any credentials at all,
17 was on the property that was leased by the brother
18 and the mother of my client.

19 When the brother of my client, Terry Trexler,
20 and his mother approached the woman and tried to
21 find out what she was doing wandering around on the
22 property taking pictures of the horses, she ran
23 back across a field to try to escape to get into
24 her truck. Terry Trexler blocked her in. And the
25 investigator called the police.

1 Also, Terry Trexler called the police and
2 said, We've got some kind of trespasser over here.
3 The police presented and got to the bottom of it
4 and nothing subsequently happened.

5 The piece of information that is going to
6 become important is that the Defense represents
7 that Terry Trexler represented to the police
8 officer that he was in fact James Trexler. And
9 this is a question of material fact. This is a
10 fact that is in dispute.

11 And we will show in just a minute and we will
12 point out in the evidence that we have submitted
13 how that question of fact is important. That is a
14 material question of fact and also goes to
15 demonstrate that there was some possible
16 manipulation of the records on the part of the
17 Richland County Sheriff's Department. I'll get
18 into that a little bit later. But that is going to
19 be a fact that is important and that is going to be
20 a fact that is going to strike against finding as a
21 matter of law that there is no defamation and no
22 malicious prosecution.

23 Addressing the claim of malicious prosecution
24 first, summary judgment is not appropriate because
25 of these material questions of fact. The standard

1 for malicious prosecution, as the Court knows, is:
2 Institution or continuation of judicial proceedings
3 by, or at the instance of, the Defendant. That is
4 important. By, or at the instance. So here we
5 don't have to have exactly by the Defendant, it is
6 by, or at the instance of. Termination of such
7 proceedings in favor of the Plaintiff, malice in
8 instituting such proceedings, and want of probable
9 cause and damages.

10 It is undisputed that the proceedings
11 terminated against my client in his favor. They
12 were dismissed. They were dismissed on the merits,
13 they were not dismissed as any result of a plea
14 bargain.

15 Also not in dispute, or at least that it is
16 not in dispute that we have alleged damages. We
17 have alleged that the Plaintiff has suffered
18 damages, including loss of his job, loss of his
19 pension, loss of his retirement, loss of his
20 salary, and any number of other damages. Those are
21 alleged and not -- well, the malice is disputed,
22 but the fact that he has suffered damages is not.

23 Where the substantial questions exist is
24 whether and to what extent the Richland County
25 Sheriff's Department participated in the

1 instigation of and the continuation of the original
2 proceedings against my client.

3 And these proceedings went on for two and a
4 half years. And the charges were initially brought
5 as misdemeanors, ill treatment of animals, and they
6 were increased to felonies, with the Richland
7 County Sheriff's Department participating in that
8 increase in charges brought against and giving
9 testimony before the Grand Jury.

10 The law in South Carolina says that malice in
11 instigating process against an individual may be
12 inferred from a want of probable cause. So the
13 malice element, we're going to show, is inferred.

14 And at the summary judgment level, as the
15 Court knows, all inferences and facts must be
16 viewed in the light most favorable to the moving
17 party -- I mean, to the non-moving party, excuse
18 me -- which is the Plaintiff here.

19 So if there is an inference of malice with the
20 want of probable cause, the only question we're
21 looking at here is whether the Court -- whether we
22 can demonstrate that there is a material issue of
23 fact as to whether there is probable cause or not,
24 there was probable cause to arrest my client, James
25 Trexler, for ill treatment of animals.

1 Now, as to that, the Defense would suggest to
2 the Court that they had no part whatsoever in the
3 instigation or continuation of the process against
4 my client. This is where the facts that they left
5 out are important.

6 February 13th, 2008, the Humane Society begins
7 an investigation. On February 19th, the Humane
8 Society teams up with the Richland County Sheriff's
9 Department. This is before anything happens
10 whatsoever with regard to any search of anyone's
11 property or the implication of my client, James
12 Trexler, with any horse.

13 The Richland County Sheriff's Department teams
14 up with the Humane Society. They have a meeting,
15 at which meeting Holly Wagner, who is an
16 investigator with the Richland County Sheriff's
17 Department, and Elizabeth Perry, who is an
18 investigator with the Humane Society, get together
19 with another individual, who is Mary Ellen Tobias,
20 that when I asked in the deposition who Mary Ellen
21 Tobias was and why she was in the meeting, nobody
22 seemed to be able to give me an answer. That is
23 set out in our memo and pointed to specifically in
24 our exhibits.

25 Also present was the investigator who claimed

1 to have been kidnapped, which was Michelle Hart,
2 who is an investigator with the Humane Society.

3 At that meeting, both the Richland County
4 Sheriff's Department and the Humane Society decided
5 to jointly investigate and jointly obtain search
6 warrants and go to the properties and investigate
7 for cruelty against animals.

8 It was at that time that Michelle Hart gave a
9 statement about what happened when she had
10 previously been out to the Zeigler Road property to
11 investigate these horses and claimed to have been
12 kidnapped.

13 Here is where we've got evidence that
14 precludes summary judgment. Curiously, Michelle
15 Hart gave a statement on February 19th to the
16 Richland County Sheriff's Department about happened
17 regarding the kidnapping. Nowhere in her statement
18 is there any mention of anyone claiming to be James
19 Trexler to either the Richland County Sheriff's
20 Department or to her. That is non-existent in her
21 statement. That statement is provided also in the
22 memo.

23 THE COURT: Which tab is it? If you don't
24 know offhand, I'll find it. You said the
25 deposition of who?

1 MR. WILLS: Your Honor, this is a statement
2 given by Michelle Hart. And that is at Tab J,
3 excuse me, I, Your Honor. A statement by Michelle
4 Hart on February 19th, 2008. It was taken by Holly
5 Wagner, given by Michelle Hart. Nowhere in this
6 statement is it mentioned that anybody claimed that
7 they were James Trexler.

8 Similarly, at Tab E, Exhibit E, is a cruelty
9 report that was done by the Humane Society and that
10 we obtained through discovery. This is a cruelty
11 report that Michelle Hart, who was married and
12 became Michelle Hines, for clarity -- no, I believe
13 it is that way, Michelle Hart to Michelle Hines,
14 but for the Court's knowledge, Michelle Hart and
15 Michelle Hines are the same people. In her report
16 here that she made contemporaneously during the
17 investigation, nowhere in her report does she
18 mention that anybody claimed to her or to the
19 Richland County Sheriff's Department that anyone
20 named James Trexler was in any way involved or
21 anyone claimed to be James Trexler.

22 So this is an instance that creates a material
23 question of fact as to whether or not anybody
24 claimed to be James Trexler at that initial
25 meeting.

1 And I am going to come back to this and show
2 how this ties into the malicious prosecution as
3 well, but as far as it concerns defamation, this is
4 a very important fact that happened prior to any
5 arrest of my client, James Trexler.

6 And also worth noting, that any mix-up that
7 claims to have been had because of Terry Trexler
8 claiming to be James Trexler was immediately --
9 even under the Defendant's assertion -- was
10 immediately cleared up at the spot and was known to
11 the Richland County Sheriff's Department the true
12 alleged kidnapper on the day of the kidnapping, the
13 alleged kidnapping. So it had no part -- played no
14 part in any mix-up with a press release that
15 happened, you know, several weeks later on
16 February 28th, ten days later.

17 So we are faced with the task of showing there
18 is a want of probable cause and we've got the
19 Defense saying that, first of all, that they were
20 not involved with the instigation of those
21 proceedings. That is patently untrue. They were
22 involved in every step. The Richland County
23 Sheriff's Department was there at the initial
24 meeting where the search warrant was decided that
25 it would be taken out. The Richland County

1 Sheriff's Department and the Humane Society
2 together jointly performed the search of the
3 Zeigler property to investigate the horses. They
4 jointly removed the horses from the property. They
5 jointly decided that there was another property
6 involved. They jointly decided to take a search
7 warrant out for that property. And they jointly
8 searched a property that was in -- it was the 412
9 Derby Road property in another part of the state.

10 Every step of the way the Humane Society was
11 involved with the Richland County Sheriff's
12 Department in this entire investigation. So to say
13 that the Humane Society acted independently is a
14 fact that is in dispute.

15 Importantly -- and so the Defense now claims
16 that because the Humane Society took the facts and
17 circumstances and went to the magistrate and
18 obtained a search warrant, that this precludes any
19 cause of action against them for malicious
20 prosecution because that is a determination of
21 probable cause.

22 Well, first of all, what we'd like to cite is
23 our Supreme -- we've got Supreme Court cases, a
24 Supreme Court case here that says that any -- this
25 case is called *Franks v. The State of Delaware*, and

1 it is at 98 Supreme Court 2674. This is in our
2 memorandum as well, cited in our memorandum and
3 addressed in our memorandum.

4 THE COURT: Do you have the cite?

5 MR. WILLIS: Yes, ma'am. The cite is Franks v.
6 Delaware, 438 U.S. 154 (1978). And we cite this at
7 Page 16 of our brief and give the pertinent piece
8 of law in it in our brief, in our memo. This goes
9 to whether issuance of an arrest warrant is
10 determinative of probable cause.

11 And this case, this Supreme Court case,
12 indicates that it is not where an arrest warrant is
13 based on an affidavit that contains false
14 information. And it reads:

15 The requirements that a warrant not
16 issued upon probable cause supported by
17 other affirmation would be reduced to a
18 nullity if the affiant were able to use
19 deliberate falsehoods or allegations to
20 demonstrate probable cause. And having
21 misled the magistrate was then able to
22 remain confident the ploy was
23 worthwhile.

24 The arrest warrant that the Humane Society,
25 after consulting with the Richland County Sheriff's

1 Department, on a joint strategy to obtain the
2 arrest warrant for my client, followed the joint
3 investigation of a property at 412 Derby Lane, that
4 the Richland County Sheriff's Department and the
5 Humane Society both claim that was owned by my
6 client, James Trexler, and both claimed that the
7 horses on the property were his.

8 But we will show -- our evidence shows and the
9 deposition testimony we included in our memorandum
10 show that nobody from the Humane Society or the
11 Richland County Sheriff's Department did any
12 investigation whatsoever as to who owned the
13 property and who owned the horses before they
14 decided to search the 412 Derby property and
15 confiscate the horses and then arrest my client for
16 it.

17 But as to the arrest warrant, February 26th,
18 the Humane Society and the Richland County
19 Sheriff's Department presented at 412 Derby Lane to
20 investigate an anonymous tip that there were more
21 horses that belonged to somebody with the Trexlers
22 out at this 412 Derby Lane property.

23 At the conclusion of the search of the
24 property, the Humane Society and the Richland
25 County Sheriff's Department confiscated five horses

1 from that property and deemed them to be slightly
2 undernourished or greater.

3 At that time the Richland County Sheriff's
4 Department, together with the Humane Society,
5 decide that they were going to take out, without
6 talking to my client, without looking at any
7 records, as is evident from the deposition
8 testimony, took out a warrant against James
9 Trexler.

10 And as Defense counsel has just stated in his
11 presentation, he read the warrant, Elizabeth Perry,
12 of the Humane Society, who was -- happened to be
13 the agent from the Humane Society of the joint
14 investigation that went and took out the arrest
15 warrant, swore to the magistrate -- and, Your
16 Honor, this is at Tabs L-1 through L-5. These are
17 the arrest warrants. And Elizabeth Perry swears
18 that on 2006 -- 2008 -- while at 412 Derby Lane --
19 and I'll skip over that.

20 THE COURT: Ms. Perry is the lady with the
21 Humane Society?

22 MR. WILLS: She is with the Humane Society.
23 And she is the investigator working in conjunction
24 with Holly Wagoner, from the Richland County
25 Sheriff's Department.

1 She swears that -- and this is based on facts,
2 not on presumption of facts, this says that this
3 affidavit is based on the following facts, not on
4 the following suspicions. But what it says is:

5 One James Trexler did commit the crime
6 of ill treatment of animals and that he
7 is the owner of a 2-year-old bay female
8 with a body score of 1.5, et cetera,
9 knowingly and intentionally depriving
10 the animal of necessary quantities of
11 wholesome food stuff at suitable
12 intervals.

13 And then she swears that while she was out
14 there and the reason that she is giving this is
15 because while she was on the property, there was no
16 feed or hay found on the property. And that is the
17 basis of her giving the affidavit that they were
18 undernourished.

19 Now, she has gone to a magistrate and sworn
20 that she -- first of all, that James Trexler is the
21 owner of the property when she does not have any
22 knowledge that he is the owner of the property.

23 In her deposition we asked her whether or not
24 she did any investigation into whether or not
25 Mr. Trexler owned the property. She said no, that

1 she didn't have that capability.

2 We said: Did you do any investigation or look
3 at any records as to who owned the horses?

4 She said: No.

5 Did the Richland County Sheriff's Department
6 do any?

7 Not to her knowledge.

8 Okay.

9 The Defense counsel makes the assertion that
10 they had a driver's license that had James Trexler
11 that had 412 Derby Lane on it.

12 James Trexler at one point did live at 412
13 Derby Lane. This was a property that belonged to
14 his family. James Trexler lived there previously
15 but had not lived there in some time. And, as a
16 matter of fact, had transferred any of his interest
17 in that property to other people.

18 We have also submitted with our memorandum the
19 deed to the property at 412 Derby Lane. And that
20 deed is at Exhibit C, Your Honor, the deed to the
21 property showing that James Trexler was not an
22 owner of that property at the time that he was
23 allegedly involved with these horses or the
24 property.

25 So, without doing any investigation in the

1 property records or who owns the horses, the
2 Richland County Sheriff's Department, through the
3 HSPCA, sent -- goes down and swears out an
4 affidavit that James Trexler owns the property,
5 owns horses, and that he intentionally deprived
6 them of enough food to maintain their proper
7 weight. And the reason that they came to that
8 determination, she swears in her affidavit, is
9 because they searched the property and found no
10 food.

11 Well, when I took Investigator Perry's
12 deposition in this matter, I asked her about that
13 paragraph, and why she said she found no food.

14 And she says that -- and her deposition
15 testimony is listed as Exhibit G -- and when I put
16 the question to her about whether she found any
17 food on the property, I said -- the question was by
18 counsel to Elizabeth Perry:

19 When y'all went out there to 412 Derby
20 Lane, when y'all went out there for the
21 search warrant, did y'all look in the
22 garage or the house for any food?

23 And the answer was: Go inside the
24 garage or look inside the garage?

25 I said: Either?

1 She answered: I looked in the glass, yes.

2 And I asked: Okay. Did you see
3 anything in the garage?

4 The answer: Yes.

5 What did you see?

6 The answer: Horse food.

7 So this -- and I said: You saw horse
8 food in the garage?

9 She said: Yes, a bag of horse food.

10 So with the knowledge that she -- they went
11 onto the property and investigated and found horse
12 food -- and presumably Richland County Sheriff's
13 Department noticed there was horse food in the
14 garage too because they were at that
15 investigation -- on the search warrant -- then the
16 next day turn around and go down to the
17 Magistrate's Office and swear to a magistrate that
18 there was no food to be found on the property
19 anywhere, and that that is the basis of their
20 causing -- that is her basis that she gives the
21 magistrate for issuing the arrest warrant for ill
22 treatment of animals against my client, who she
23 also claims owns the property and owns the horses.

24 So now you have got a detached magistrate that
25 we have already heard. This is a detached

1 magistrate that has never heard of this before.

2 And in comes an official who says:

3 Your Honor, we have got the person that
4 owns the property, we have got the
5 person that owns the horses. And we
6 know that they have been mistreated and
7 that they are mistreated because we're
8 swearing to you that there was no food
9 on the property when we went to
10 investigate it.

11 Well, that is a lie because there was food on
12 the property. So there --

13 THE COURT: Let me ask you, is it your
14 position that the Defendant was there when
15 Ms. Perry went to the magistrate? Is it Perry?

16 MR. MILLS: Yes, ma'am. Your Honor, the
17 Richland County Sheriff's Department did not
18 accompany Elizabeth Perry to the Magistrate's
19 Office. The Richland County Sheriff's Department
20 instructed Elizabeth Perry -- or the evidence can
21 show that she instructed Elizabeth Perry to go get
22 an arrest warrant.

23 The evidence shows that the Richland County
24 Sheriff's Department, Holly Wagner, had full
25 knowledge of there being food out there at that

1 property.

2 THE COURT: Okay.

3 MR. MILLS: But, nevertheless, Investigator
4 Perry, after talking to the Richland County
5 Sheriff's Department, goes and gets an arrest
6 warrant, brings it back, and the Richland County
7 Sheriff's Department said -- executes it and
8 arrests my client. And then now they want to turn
9 around and say, well, we didn't have anything to do
10 with, we just executed the arrest warrant.

11 No. The facts are going to show that the
12 Richland County Sheriff's Department was entrenched
13 hand in hand with the HSPCA in the entire
14 investigation.

15 THE COURT: All right. Let's go to the
16 defamation cause real quick, just because y'all
17 were allotted 30 minutes and we're going into an
18 hour now. So if you can address the defamation
19 claim, that would be great.

20 MR. MILLS: Yes, Your Honor. And just to wrap
21 that portion up, probable cause is a question for
22 the jury generally and specifically with those
23 facts. The true bill indictments are not probable
24 cause. There is a rebuttable presumption that a
25 true bill is probable cause, but presumption is

1 rebuttable, and it is our claim that we rebut that
2 by saying that the arrest warrant was facially
3 invalid because it was obtained by providing false
4 facts to the magistrate.

5 And I just needed to address that issue as
6 well before I moved on, Your Honor. We have also
7 got law in our memorandum that addresses that
8 thoroughly.

9 THE COURT: Yes, sir.

10 MR. MILLS: So we'll move on now. As to the
11 defamation claim, this also ties into the set of
12 facts that we also given about the Humane Society
13 being involved in every step of the way with the
14 Richland County Sheriff's Department.

15 THE COURT: Let me ask you this. On the
16 defamation claim, his argument is under 15 -- the
17 exception to the waiver of immunity, 15-78-60,
18 Number 17, that the exception to the waiver of
19 immunity, Number 17, employee conduct outside the
20 scope of his official duties or which constitutes
21 actual fraud, actual malice, intent to harm, or a
22 crime involving moral turpitude.

23 So is it your position that the officer was
24 engaged in actual malice or intent to harm your
25 client?

1 MR. MILLS: Your Honor, there is a distinction
2 between the types of actual malice that are
3 involved with defamation and with common law actual
4 malice.

5 The Request to Admit that the Defense brought
6 up- and to answer your question is, no, we haven't
7 pressed our claim based on intent to harm. We have
8 pressed our claim on the constitutional standard
9 for actual malice that is set out in New York Times
10 v. Sullivan.

11 Essential to that and the essential difference
12 is that constitutional actual malice is acting with
13 reckless disregard for the truth. There is no
14 element of intent to harm that is encompassed in
15 the constitutional actual malice that we use to
16 determine defamation against public officials.

17 On the other hand, common law actual malice
18 requires that there be an intent to harm.

19 In the South Carolina Tort Claims Act, state
20 agencies are absolved from activities by employees
21 that constitutes actual malice, that is, actual
22 malice with an intent to harm. That is a different
23 actual malice that we're talking about under the
24 defamation standard, which is the New York Times
25 standard for constitutional actual malice.

1 There is authority out of South Carolina that
2 recognizes this very important distinction. And
3 I'll cite it to the Court and we have also cited in
4 our brief, and we have briefed that very well, as
5 Your Honor can imagine. We recognize that there is
6 precedent against our position here. We suggest
7 that the case of Gause, or however that is
8 pronounced, was decided incorrectly. That the
9 Gause Court applied the common law actual malice
10 standard, which is an intent to harm, and defeated
11 it by saying that that is an exclusion given under
12 the Tort Claims Act.

13 However, the common law actual malice is very
14 different from the constitutional actual malice
15 that is required to show that a public official was
16 defamed.

17 I'll read to the Court, reading from Boone v.
18 Sunbelt Newspapers, 347 S.C. 571, and this is at
19 Page 22 of our memo:

20 Common law actual malice or actual
21 malice is for purposes other than
22 defamation include an element of intent
23 to harm. Constitutional actual malice
24 requires defamation action regarding
25 public officials is distinguishable from

1 common law actual malice which refers to
2 a feeling of ill will, spite, or desire
3 to injure.

4 And then that Court was citing Sanders v.
5 Price, which is at 304 S.C. 236, from 1991, where
6 that Court recognized that:

7 In cases involving defamation of a
8 public official, the Plaintiff must
9 prove that the Defendant acted with
10 constitutional actual malice, that is,
11 with knowledge the statements were false
12 or with reckless disregard of its
13 falsity.

14 Instructions on common law malice which
15 permit the jury to impose liability on
16 the basis of the Defendant's hatred,
17 spite, ill will, or desire to injure are
18 clearly impermissible.

19 Ill will towards the Plaintiff or bad
20 motives are not an element of the New
21 York Times standard.

22 And then he goes on to say that:

23 We note that the trial judge must
24 instruct the jury on constitutional
25 actual malice as enunciated in New York

1 Times and must not instruct the jury on
2 common law actual malice.

3 The crux of this is that we are not involved
4 with an actual malice common law standard. We are
5 involved with a constitutional actual malice
6 standard.

7 It is our position that that is not covered
8 under the Tort Claims Act and that the Richland
9 County Sheriff's Department would be liable for
10 that.

11 Secondly, and importantly, if my client is not
12 a public official, then he is not held to the
13 standard of actual malice at all, but regular
14 negligence or recklessness.

15 THE COURT: Did y'all claim that?

16 MR. WILLS: We have claimed that, Your Honor.
17 In a companion case the Court found that my client
18 was a public official for purposes of defamation
19 because he was an employee of the South Carolina
20 Department of Agriculture. That case is now on
21 appeal. So that is not the law of the case here
22 since we have appealed that issue. That is still
23 up for determination as to whether he is a public
24 official or not.

25 For that reason, summary judgment on that

1 basis is not appropriate because we don't know if
2 he is a public official yet or not. And even if he
3 is, we still have the basis -- it is still our
4 position under the constitutional standard for
5 actual malice that the Tort Claims Act does not
6 preclude that because it does not include elements
7 of ill will or spite, which is what the intention
8 of the Tort Claims Act is.

9 It makes sense because any other reading of
10 the statute would lead to an absurd result. If we
11 were to understand the statute to preclude any
12 actual malice, then the result will be that nobody
13 could ever bring a cause of action for defamation
14 against the sheriff, who was a public official.

15 Similarly and appropriately, our cause of
16 action for malicious prosecution also requires an
17 element of malice and we could never -- nobody
18 could ever bring a cause of action for malice
19 against the Sheriff's Department if the reading of
20 the statute, as they suggest, is accurate. We all
21 know that the sheriff that is regularly subjected
22 to causes of action for malicious prosecution, that
23 can't be the law.

24 So we posit that under the constitutional
25 standard for actual malice, summary judgment should

1 not be granted on the basis of the Tort Claims Act
2 as to that.

3 Secondly --

4 THE COURT: All right. I am going to get you
5 to wrap it up. And then I'll give Mr. Garfield
6 like two minutes to wrap it up. All right, because
7 you've been going about almost 45 minutes.

8 MR. MILLS: Okay. Sorry, Your Honor. The
9 press release -- and this is covered in our
10 memorandum -- we show that the press release was a
11 result of the negligence, the recklessness of the
12 Richland County Sheriff's Department.

13 THE COURT: What is the status of the
14 negligence, the gross negligence case against the
15 Sheriff's Department?

16 MR. GARFIELD: No, Your Honor. Malicious
17 prosecution.

18 MR. MILLS: Correct. Under the defamation
19 claim we have claimed that the Richland County
20 Sheriff's Department acted with reckless disregard
21 to the rights of the Plaintiff in publishing
22 material that it should have known or that it was
23 reckless in not knowing the truth of the matter.

24 I want to get on record that it is important
25 to understand that the defamation does not occur

1 only because Richland County Sheriff's Department
2 published my client, James Trexler, was involved in
3 kidnapping. They also took liberties in suggesting
4 that my client was involved in felony level horse
5 abuse in two states and that he acted severely and
6 barbarically and that he should not be allowed to
7 be around animals because of the severity of his
8 actions.

9 There are two elements of that defamation, the
10 kidnapping and the level of involvement that they
11 claim my client was in.

12 My client had no involvement. He was arrested
13 for five counts of misdemeanor ill treatment of
14 animals and he was publicized as having committed
15 several, several, multiple felony counts in
16 different states, which is not even close to true.

17 The press release that was disseminated as
18 part of our exhibit, the handwritten notes from
19 which the Richland County Sheriff's Department drew
20 up the press release is also included in our
21 exhibits to our memorandum and would show that on
22 the very same page, Captain Cowan, who drew up the
23 press release, had -- in his own handwriting had
24 marked that James Trexler was a kidnapper on the
25 top of the page, and in the middle of the page

1 marked down that Terry Trexler was the kidnapper,
2 and on the very same page has two contradictory
3 pieces of information.

4 And it is our position that it was reckless,
5 especially considering the consequences to just
6 take a stab in the dark as to which one was
7 correct, without even consulting their own records
8 or the people who are giving the information as a
9 basis of the press release.

10 Captain Cowan's deposition is also included in
11 our memorandum which describes in detail in
12 pertinent part his involvement in drafting the
13 press release. And I will leave it for the Court
14 to examine those as part of our memorandum
15 submission.

16 Because of the enormous amount of facts that
17 are at play in both the malicious prosecution
18 action and the defamation action as to either
19 recklessness of the Richland County Sheriff's
20 Department and as to their involvement with the
21 investigation, we also -- I also need to put on the
22 record, Your Honor, that -- and this is covered in
23 our memorandum -- that we have evidence that after
24 the fact in the Richland County Sheriff's
25 Department Investigator Holly Wagner's reports --

1 and this is covered in our memorandum at Exhibit B.
2 and B(2) -- in her reports there is also an
3 indication that the records have been manipulated
4 in order to create probable cause against my
5 client.

6 There are two identical reports that were both
7 made after the arrest of my client. Each of them
8 are identical in their chronology. I explained how
9 all this works. It is rather complicated in the
10 brief. But it is evident in the records and
11 described in our memorandum how after the fact
12 there was an insertion in the records all the way
13 back to before my client was arrested that inserts
14 a portion that says that somebody came and told the
15 Richland County Sheriff's Department or the Humane
16 Society that James Trexler called them up and
17 claimed to be the owner of some horses. That would
18 tend to try to create probable cause.

19 The Court will see how that is inserted
20 conveniently into the records that are provided
21 after the fact giving the appearance at least of
22 some impropriety, but at best raising a question of
23 fact as to whether those records were manipulated
24 in order to manufacture probable cause.

25 With all of these facts stacked up for both

1 causes of action, summary judgment at this stage is
2 inappropriate and we would ask the Court to deny
3 summary judgment requested by the Defendant as to
4 both causes of action.

5 Thank you, ma'am.

6 THE COURT: Yes, sir?

7 MR. GARFIELD: Your Honor, briefly, with all
8 due respect to Mr. Wills' argument, I think he is
9 being somewhat coy with the Court on this. He
10 admits, the Plaintiff in this case is not taking
11 the position that Captain Cowan was somehow
12 reckless in this. The Request to Admit went to the
13 Plaintiff and they specifically admitted,
14 specifically, that at the relevant times in the
15 complaint Chris Cowan's action with respect to the
16 Plaintiff constituted an intent to harm and actual
17 malice. That is the standard for which we would go
18 to trial in this particular case. That bell cannot
19 be unrung because that is what we're dealing with
20 in this.

21 For them to now take the position that it is
22 just negligence or reckless, it is somehow
23 disingenuous for the Court. And I do mean that
24 with all due respect.

25 I noticed when Your Honor asked Mr. Wills,

1 Well, what about the actual malice intent to harm,
2 he conspicuously omitted responding to Your Honor
3 about intent to harm. He has not made any argument
4 that now to say for some reason that should not be
5 exempted under the absolute sovereign immunity
6 under Subsection 17. He did go into actual malice
7 at great length. However, in his brief in Page 21
8 he just makes one sentence.

9 I think he said, paraphrased: However, the
10 Plaintiff asserts that the Gause case was wrongly
11 decided in this regard.

12 Your Honor, I know that sometimes the law is
13 an inconvenient thing, but it still doesn't change
14 the law. The law is very clear as to what
15 Subsection 17 should be applied to when it goes to
16 the entity.

17 The last point I would make would talk about
18 the participation, if you want to call it that,
19 with the Sheriff's Department in this case.

20 It is counsel's argument to say they teamed
21 up. A law enforcement prosecuting agency such as
22 the Humane Society, which is underfunded, it is
23 staffed, they do not have the resources as the
24 largest law enforcement, the largest local law
25 enforcement agency in the state, SLED is the

1 larger, which has the resources, the manpower, the
2 equipment for them to be consulted with. Merely
3 consulting with another law enforcement agency. If
4 Your Honor or the Court system saddled that law
5 enforcement agency and confer upon it potential
6 liability by merely participating in a dialogue to
7 assist another law enforcement agency, it would
8 necessarily include every false arrest for
9 malicious prosecution case. It would require party
10 Defendants to be of all sorts of law enforcement
11 agencies. Further legal assistance to the Fifth
12 Circuit Solicitor's Office would have to be named.
13 It would chill the ability of law enforcement to
14 actually conduct a quality assurance kind of
15 dialogue to assist other law enforcement agencies.

16 The record in this case and the facts most
17 favorably to the Plaintiff is that there was
18 discussions beforehand, but it stopped there. And
19 as Your Honor keenly questioned and inquired the
20 Plaintiff about, Well, did Holly Wagoner -- you
21 know, did certain things happen?

22 No, this was on the part of the Humane
23 Society, which was judicially determined later on.

24 So we would just state that it really is an
25 absurd notion to take a very incorrect kind of

1 involvement, because otherwise it would flood the
2 court system full of lawsuits, and I couldn't even
3 imagine trying to attach liability.

4 That based on that, that is my brief response.
5 And I really do appreciate it.

6 THE COURT: Do you have a position
7 regarding -- I think he called it the
8 constitutional --

9 MR. GARFIELD: Constitutional actual malice?

10 THE COURT: Versus common law actual malice?

11 MR. GARFIELD: Well, I do say that the law
12 when they came back with interpretation does make
13 it somewhat squirrly. And I think what he has done
14 is, he has taken, I guess the Prince -- the
15 Standards v. Prince case in which they have that
16 interpretation. That may or may not be the case,
17 but that does not touch on the issue of 15-78-60,
18 Subsection 17, which says actual malice.

19 The only law that we have right now is the
20 Gause case that interprets the actual malice
21 exclusion to the limited waiver of liability. To
22 stay it is a constitutional actual malice standard
23 may be appropriate argument in other circumstances,
24 but the Court of Appeals clearly sought and
25 established that under Subsection 17 that the

1 entity should enjoy the absolute sovereign
2 immunity. So he may have an argument based on a
3 defamation case in another context, but we're
4 talking about a governmental entity that is
5 afforded all the rights and protections of the
6 South Carolina Tort Claims Act that the Gause case
7 and the Court of Appeals addressed. And I think
8 there is a distinction between the two.

9 THE COURT: All right. Well, we are going to
10 take a look at everything. I will take it under
11 advisement. And I'll get something back to you all
12 shortly.

13 MR. MILLS: Your Honor, may I have one second
14 to address the Request to Admit because it is
15 important that I get that on the record? And it
16 would only take a half a second to address.

17 THE COURT: All right. You have got half a
18 second.

19 MR. WILLS: Request to Admit was couched in a
20 double negative. And we deny that Request to Admit
21 that said:

22 Do you not admit that Captain Cowan did
23 not have ill will against your client?

24 We denied that. That does not mean that we
25 admitted that he acted with ill will. We deny

1 that. That doesn't mean anything. So in that
2 regard the Request to Admit is non-conclusive as to
3 any of the -- of what counsel here asserts.

4 THE COURT: All right. Thank you all.

5 MR. WILLS: Thank you, Your Honor.

6 MR. GARFIELD: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. TYLER: John Tyler. Just briefly. We
9 discussed it beforehand, but I thought it better to
10 address it, that once our motion for summary
11 judgment is ruled upon and Mr. Garfield's motion
12 is, see what we have left. Is that a fair
13 assessment?

14 MR. MILLS: Yes. We talked about that on the
15 phone. We agree that it is better decided. We
16 just got --

17 THE COURT: I'll rule on the motion for
18 summary judgment. We'll just ask -- I'll ask him
19 to continue the motion to consolidate.

20 MR. TYLER: Okay.

21 (WHEREUPON, the proceedings were concluded.)

22

23

24

25

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and 1 Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 27th day of January, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 11, 2014

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action Number: 10-CP-40-1343
	)	
James W. Trexler,	)	
	)	
Plaintiff,	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGMENT
	)	ON BEHALF OF DEFENDANTS
v.	)	
	)	
Richland County and the Sheriff of Richland	)	[PRIORITY MATTER PURSUANT
County, in his official Capacity, a/k/a	)	TO RULE 40(a)(2), SCRCP]
Richland County Sheriff's Department,	)	
	)	
Defendants.	)	
	)	

TO: WILLIAM H. JOHNSON, ESQ., W. WESTBROOK WILLS, III, ESQ., AND
MATTHEW D. HAMRICK, ESQ., COUNSEL FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants Richland County and the Sheriff of Richland County, in his official capacity, a/k/a Richland County Sheriff's Department will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set as a priority matter, for an Order pursuant to Rules 40(a)(2) and 56, SCRCP, granting summary judgment to the Defendants and dismissing with prejudice the causes of actions set forth in Plaintiff's Second Amended Complaint.

The Defendants' motion is based upon the following grounds:

1. The Defendants are entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(17).

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2. Pursuant to the doctrine of issue preclusion (*i.e.*, *res judicata* / collateral estoppel) this action is barred by the decision entered in the companion case brought in this Court. [See, Order dated October 25, 2012 in matter of 2010-CP-40-1249]

3. Dismissing the cause of action for defamation given that any statements made by the Defendant Sheriff and/or his employees were subject to an absolute and/or qualified privilege insofar as the Plaintiff was a public figure and the subject of fair comment and criticism at the time the statements were published.

4. The Plaintiff has failed to state a claim against the Defendant for malicious prosecution due to his inability to demonstrate the absence of probable cause for his arrest.

5. Dismissing the Defendant Richland County on the grounds that the County is not the proper party defendant in this case since it is not liable for the actions of the Sheriff of Richland County, pursuant to the pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976) as amended.

6. Striking any and all references to joint and several liability since there is no joint and several liability against the Defendants pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976) as amended.

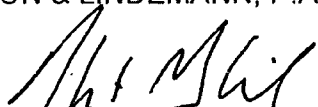
7. Striking any and all references to punitive damages on the grounds that such damages are not properly recovered against a governmental entity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et. seq.* (1976) as amended, nor are they recoverable pursuant to the Common Law of the State of South Carolina.

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The Defendants' motion is based upon the pleadings filed in this case, the Order issued by the Honorable Joseph Strickland in the matter of 2010-CP-40-1249 and dated October 25, 2012, the Plaintiff's Answers to Defendants' Requests for Admissions dated August 12, 2013, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

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Counsel for Defendants

Columbia, South Carolina

September 3, 2013

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

v.

Richland County and the Sheriff of Richland
County, in his official Capacity, a/k/a
Richland County Sheriff's Department,

Defendants.

)
) IN THE COURT OF COMMON PLEAS

)
) Civil Action Number: 10-CP-40-1343
)

)
) CERTIFICATE OF SERVICE
)
)

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Cover Sheet, Notice of Motion and Motion for Summary Judgment on Behalf of the Defendants** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 3rd day of September, 2013, addressed as follows:

William H. Johnson, Esquire
Law Offices of William H. Johnson, LLC
Post Office Box 137
Manning, South Carolina 29102

W. Westbrook Wills, III, Esquire
Austin, Fowler & Wills, LLP
38 Broad Street, Suite 200
Charleston, South Carolina 29401

Matthew D. Hamrick Esquire
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, South Carolina 29464

Shelley E. Stafford

See, Id. These individuals accused Hart of trespassing and insisted on confiscating her camera. *See, Id.*

Hart tried to explain that she was an investigator with the HSPCA and that she was on the neighboring property with the owner's consent. *See, Id.* Due to these individuals' attempts to hinder her efforts, Hart believed that she would be unable to keep taking pictures and decided to leave. *See, Id.* As Hart was walking through the pasture toward her truck, the male subject pulled his truck behind Hart's vehicle and proceeded to block her from moving. *See, Id.* Moreover, the male advised her that: "You ain't goin' nowhere!" *See, Id.* The man further indicated that he had called the police and the police had told him to keep her there. *See, Id.*

Richland County Sheriff's Department ("RCSD") Deputy Charley Simpson was called out to the scene by the older woman, who by now was identified to her as Hazelene Trexler (Plaintiff's mother). *See, Exh. C.* Ms. Trexler was extremely loud and uncooperative and continually insisted that she wanted a warrant immediately obtained for trespassing. *See, Id.* Meanwhile, Hart communicated to Deputy Simpson the aforementioned events and further indicated that Ms. Trexler had earlier used profanities with respect to her and was essentially out of control. *See, Id.*

Deputy Simpson also met with the male subject. Upon inquiry, the man falsely identified himself as "James Trexler" (Plaintiff). *See, Id.* This man claimed that he did not have any form of identification, but provided the false name and a date of birth to the deputy. *See, Id.* At some point after leaving the scene, Deputy Simpson cross-referenced same with state motorist and national criminal databases; whereupon it was revealed that the given name was not on file for such birth date. *See, Id.* Instead, the deputy positively

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identified the male as Terry Trexler (who in actuality was Plaintiff's brother), with this birth date, and further uncovered that Terry Trexler was wanted from the Sumter County Sheriff's Department for fraudulent checks and cruelty to animals. *See, Id.*

HSPCA DEVELOPING PLAINTIFF AS SUBJECT

Between the dates of February 19 through February 22, 2008, HSPCA officials including Hart and RCSD Investigator Holly Wagner held a meeting to discuss obtaining a search warrant to evaluate the subject horses on Zeigler Road. *See, Exh. B.* At that time, Hart provided a written statement that the man who (falsely) identified himself as "James Trexler" (Plaintiff) blocked her in and physically would not let her leave. *See, Id.*

On February 26, 2008, the HSPCA seized 23 horses and 7 dogs from Hazelene and Terry's property on Zeigler Road pursuant to a search warrant. *See, Exh. D.* After discovering additional information, the HSPCA learned that Hazelene and Terry were wanted for sixty-one (61) counts on animal cruelty in Jefferson County, Georgia. *See, Id.* The HSPCA further believed that there were additional horses on the listed property belonging to the Trexler family. These horses were in poor condition and held in a barn. *See, Id.* This led the HSPCA to develop Plaintiff as a suspect, as he and his property emerged as subjects in a search warrant obtained by HSPCA Inv. Hart. *See, Id.* In an executed affidavit, Hart swore to the issuing magistrate that Plaintiff "is the brother of Terry Trexler and the son of Hazelene Trexler and the person said to be living at 412 Derby Lane (Hopkins)." *See Id; see also, Exh. E.*

HSPCA EFFECTUATING PLAINTIFF'S ARREST

On this same date, HSPCA executed a search warrant at Plaintiff's property. *See, Exh. D.* Located were one horse in a pasture and four additional horses situated in stalls

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in the barn. See, Exh. B. These horses were standing in mud soaked with urine and feces. See, *Id.* Nowhere on the property was there any hay, food, or any clean water. See, *Id.* Moreover, one of the horses was in an emaciated state with protruding ribs and hipbones, and the others showed signs of undernourishment. See, *Id.* At that time, all horses were taken into custody by the HSPCA. See, *Id.* Wagner obtained an arrest warrant against Terry Trexler for Kidnapping. See, *Id.*

On February 27, 2008, the HSPCA obtained arrest warrants against all three individuals (Hazelene, Terry, and Plaintiff) for ill treatment of these horses, now seized and under the custody of the HSPCA. See, *Id.* Sometime during the early evening hours, these warrants were served and all three were arrested, transported to ASGDC, and then respectively booked and incarcerated. See, Exh. F. Plaintiff was charged with five (5) counts of Ill treatment of animals; Hazelene for multiple counts of Ill treatment of animals; and Terry for multiple counts of Ill treatment of animals and Kidnapping. See, *Id.*

RCSD Captain Chris Cowan, who was Senior Public Information Coordinator, disseminated a press release regarding the Trexler arrests. See, Exh. G. This release was sent by him to various statewide media outlets. See, *Id.*

PLAINTIFF'S ALLEGATIONS

In the instant action, Plaintiff alleges that during the time in which he and his family members were being booked, Captain Cowan disseminated to various news outlets that Plaintiff had been charged with kidnapping. Cowan did so despite "actual knowledge that the only kidnapping charges associated with the entire series of events were charged against Plaintiff's brother." See, Second Am. Comp., ¶ 9.

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At the time of these events, Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as an Assistant Commissioner for Administration. *See, Id.*, ¶ 13.

By way of particulars, *The State Newspaper*, published in large headlines on the front page of the newspaper a headline stating, "*Assistant Ag Chief faces kidnap charge.*" *See*, Exh. H. Following the headline, *The State* published an article in which it was reported as a fact that Plaintiff had been charged with kidnapping as a result of an incident involving the horses. This was retracted by Cowan and disseminated accordingly. *See, Id.*

Plaintiff brought this action against the Sheriff and Richland County alleging that, "at the time of the publication, the statement was false and the Defendants either knew or should have known that the statement was false." *See*, Second Am. Comp., ¶ 16. Further, publication of the statement concerning the kidnapping charge and also associating Plaintiff with the operation of the horse business owned and operated by his mother "created the false impression in the minds of millions of South Carolinians and others worldwide concerning the character of the Plaintiff." *See, Id.*, ¶ 17.

Based upon the foregoing allegations, Plaintiff brought an action in this Court alleging defamation against both Defendants and malicious prosecution against the Sheriff in his official capacity pursuant to the South Carolina Tort Claims Act. *See, generally*, Second Am. Comp.

The Defendants now move for summary judgment pursuant to Rule 56, SCRPC, based upon the following grounds:

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- I. THE DEFENDANT SHERIFF IS ENTITLED TO ABSOLUTE SOVERIGN IMMUNITY FROM PLAINTIFF'S TORT CLAIMS
 - (a) Generally
 - (b) Cowan's conduct falls under the exception within §15-78-60(17)
 - (c) Defamation claim excluded by the Tort Claims Act
 - (d) Proper application of the Act justifies immunity for Defendant Sheriff
- II. PLAINTIFF HAS FAILED TO STATE A CLAIM AGAINST THE DEFENDANTS FOR MALICIOUS PROSECUTION
 - (a) Defendants did not implement judicial proceedings against Plaintiff
 - (b) Probable Cause: Arrest Warrant stage
 - (c) Probable Cause: Indictment stage
 - (d) Probable Cause: Prosecution stage
- III. THE DEFENDANT RICHLAND COUNTY MAY NOT BE HELD LIABLE FOR THE ACTS AND/OR OMISSIONS OF SHERIFF OR HIS DEPUTIES

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v.*

Metropolitan Life Ins. Co., 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), (citations omitted), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

I. THE DEFENDANT SHERIFF IS ENTITLED TO ABSOLUTE SOVERIGN IMMUNITY FROM THE PLAINTIFF'S TORT CLAIMS

(a) Generally

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. See, *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and

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the State's governmental entities. See, S.C. Code Ann. §15-78-40. Additionally, the Act continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit.

(b) Cowan's conduct falls under the exception within §15-78-60(17)

The defamation claim centers on the alleged sole actions of Captain Cowan who was the Senior Public Information Coordinator for the RCSD.

S.C. Code Ann. §15-78-60(17) provides that governmental entities are 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." (bolded for emphasis) Therefore, the determination by this Court as to any potential liability on the part of the Defendant Sheriff turns solely on the clear language of the South Carolina Tort Claims Act. Specifically, whether Cowan's conduct at the relevant times constituted actual malice, or an intent to harm Plaintiff. In the ensuing discussion, the Defendant Sheriff shows this Court that based upon Plaintiff's allegations, Cowan's actions falls under this relevant exception prescribed by the Act.

The record in this case is undisputed as to the following facts: On February 27, 2008, Capt. Cowan disseminated a press release regarding the arrest of Hazelene, Terry, and Plaintiff. See, Exh. G. This release was sent by Cowan to *The State* newspaper, the Associated Press, WLTX, WACH and WOLO, among other media outlets. See, *Id.* This press release was a public record and stated that the charges made against Plaintiff were, "5 counts of ill treatment of animals" and "1 count of kidnapping (stems from an incident

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where J. Trexler held a HSPCA investigator against her will/refused to allow the investigator to leave the farm on 2/13 during an evaluation of the horses)." See, *Id.*

In this action, Plaintiff alleges that, "In the type-written press release, attributing to the Plaintiff, the ill treatment of horses of which the Plaintiff had no ownership interest, and which were not under the Plaintiffs care, custody or control, and further characterizing that treatment as "severe and barbaric.'" See, Second Am. Comp., ¶ 23. At the time of the publication, the statements were false. See, *Id.*, ¶ 24. Despite "**actual knowledge** that the only kidnapping charges associated with the entire series of events were charged against Plaintiff's brother," Cowan disseminated and reported that Plaintiff had been charged with kidnapping. See, *Id.*, ¶ 9 (bolded for emphasis). Accordingly, "as a result of the publication the Plaintiff has suffered serious damages, including the loss of his employment and a severe diminution of his ability to provide for his family, and extreme damage to his reputation." See, *Id.*, ¶ 26.

Most critically to this analysis, Plaintiff alleges and expressly stipulates that Capt. Cowan's actions (with respect to Plaintiff) constituted actual malice and intent to harm. See, Exh. I.

Accordingly, Plaintiff clearly takes the position that Cowan's conduct was egregious to the degree so as to constitute not only actual malice but additionally acted with intent to cause harm to him. However, Plaintiff did not name as a party-defendant the specific person that he claims committed the various torts upon him.¹ Instead, he has elected to sue Richland County and the Richland County Sheriff, the law enforcement agency which employed Cowan at the relevant times. The evidence clearly reflects that the principal or

¹ Pursuant to S.C. Code Ann §15-78-70(a) and (b), an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

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sole RCSD employee whose acts or omissions with respect to the dissemination of the press release was Capt. Cowan. *See, Supra*. Yet, Cowan was never named as a party-defendant. Therefore, the Defendant Sheriff -- the only law enforcement party-defendant in this action -- is entitled to absolute sovereign immunity for any such alleged loss resulting from his employee's conduct constituting actual fraud and/or intent to harm pursuant to §15-78-60(17).

(c) **Plaintiff's defamation claim excluded by Tort Claims Act**

In a companion case based upon the exact litigants and facts as the instant matter, on October 25, 2012, the Honorable Joseph M. Strickland presiding as Special Circuit Court Judge granted summary judgment to several media defendants with respect to the defamation claim. In his Order, Judge Strickland ruled that, "***It seems clear beyond doubt that Plaintiff (James Trexler) is a public official in the context of this litigation.***" *See*, Exh. J, p. 13 (bolded for emphasis)

In a case involving the defamation of a public official, a plaintiff must prove the defendant acted with actual malice. *See, Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991); *see also, Elder v. Gaffney Ledger*, 341 S.C. 108, 113, 533 S.E.2d 899, 901 (2000); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (2001). To meet this standard, the plaintiff must show either that the defendant knew the statement was false or that the defendant made the statement with reckless disregard of its falsity. *See, Id.* citing *New York Times Co. v. Sullivan*, 376 U.S. 254, (1964).

The South Carolina Tort Claims Act clearly bars a governmental entity's liability for an individual's loss stemming from an employee's conduct that constitutes actual malice. *See, Supra*, S.C. Code Ann. §15-78-60(17).

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In the action at bar, it is the current law of the case that Plaintiff was a public official "clear beyond doubt." See, *Supra*. It is evident that Judge Strickland reached this conclusion based upon overwhelming evidence in the record that Plaintiff was a public figure in the present context. In providing his reasoning, His Honor correctly observed that:

[Plaintiff] acknowledged in his letter of resignation ... that he was an Assistant Commissioner of Agriculture, and that he helped to lead the agency. Plaintiff testified in his deposition -- and the Commissioner of Agriculture testified in his deposition -- that Plaintiff was the department's liaison with the General Assembly, the State Budget and Control Board, and the Board of Trustees of the University of South Carolina as project manager for the relocation of the State Farmer's Market ... Plaintiff himself acknowledged in his deposition that he had an important position in the agency, saying, "I went there as legislative liaison and I ran the agency."

See, Exh. J, pp. 13-14.

It is further undisputed that the Defendant Sheriff is a constitutional officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina and is subject to the terms and conditions of the Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*

In, *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (S.C.App. 1994), the Court of Appeals held that in a case involving the police agency official's defamation of a public official, a plaintiff would be required to prove that such conduct by the employee constituted actual malice in order to recover on his claim. To this extent, the *Gause* Court recognized the clear language of the Tort Claims Act providing that the agency was not liable for loss resulting from employee conduct constituting actual malice.

Indeed, in this matter, Plaintiff would be obliged to show that the Sheriff's

employees acted with actual malice when they allegedly defamed him. Consequently, since Plaintiff must specifically prove the Sheriff's employee's conduct constituted actual malice in order to recover on this claim, the Tort Claims Act clearly excludes Plaintiff's defamation claim against the Sheriff. The Sheriff simply cannot be held liable for such alleged conduct.

(d) Proper application of the Act justifies immunity for Defendant Sheriff

A plain reading of the Tort Claims Act clearly demonstrates that the Defendant Sheriff should be shielded from liability based on the facts in the present case.

When interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. The South Carolina Supreme Court has held that words used in the statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992). More recently, in *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct.App. 2005), the Court of Appeals held that:

The cardinal rule of statutory interpretation is to determine the intent of the legislature. The legislature's intent should be ascertained primarily from the plain language of the statute. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.

(Internal citations omitted)

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Therefore, given the plain and ordinary meaning of the aforementioned provisions of the Tort Claims Act, Plaintiff's causes of action against the Defendant Sheriff must fail as a matter of law.

II. PLAINTIFF HAS FAILED TO STATE A CLAIM AGAINST THE DEFENDANTS FOR MALICIOUS PROSECUTION

Under South Carolina law, a plaintiff must plead and prove each of the following elements to state a cause of action for malicious prosecution: (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 damages. See, *McBride v. School District of Greenville County*, 698 S.E.2d 845, 855 (2010). Plaintiff in the present case, however, has failed to present evidence to sustain an action for malicious prosecution. The following discussion centers on this failure to establish critical elements, even when the evidence is taken in a light most favorable to Plaintiff.

(a) Plaintiff cannot demonstrate Defendants either instituted or continued original judicial proceedings against Plaintiff

There is no competent evidence in this matter that the RCSD initiated the arrest or instituted prosecution of Plaintiff. RCSD employees played no role in pursuing an arrest warrant against Plaintiff, never appeared before a magistrate as an affiant, and played no direct role in the prosecution of Plaintiff in General Sessions Court. This is evidenced in part by the January 17, 2012 deposition testimony of Elisabeth Perry, a HSPCA investigator at all relevant times. See, Exhs. K, L. At that time Investigator Perry testified as follows:

- Inv. Perry was the sole affiant on all five (5) arrest warrants against Plaintiff; See, *Id.*

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- Inv. Perry sought these warrants on her own volition based upon her personal observation of Plaintiff's horses on his own property; *See, Id.*
- Inv. Perry professional opinion was that probable cause existed that Plaintiff committed the crime(s) of Ill Treatment of Animals; *See, Id.*
- Inv. Perry personally went alone to the magistrate's office to swear out a warrant. *See, Id.* At that time she attested under oath to a magistrate judge that Plaintiff committed these criminal offenses. *See, Id.*

Except for a single deputy identified as Deputy Monica Johnson merely carrying out a ministerial function (*i.e.*, effectuating service of a duly authorized and facially valid arrest warrant on February 27, 2008) RCSD employees were not involved in swearing out the warrant or prosecuting the matter. *See*, Exh. F. To be clear, the agencies of the HSPCA, the Fifth Circuit Solicitor's Office, and the Office of the South Carolina Attorney General are all separate agencies which operate mutually exclusive of each other and are not controlled by either Richland County or the Richland County Sheriff.

(b) Probable Cause: Arrest Warrant stage

On February 27, 2008, the Honorable Harold A. Cuff, Richland County Magistrate heard testimony from Inv. Perry with respect to several horses situated on Plaintiff's property. This testimony included, but was not necessarily limited to: (a) several horses visibly suffering from malnutrition; (b) poor feeding conditions, including the lack of food, water buckets filled with feces; (c) substandard living conditions, and specifically overcrowding, horses standing in several inches of feces, urine, and mud as well as wandering around in wet, muddy property.

The magistrate found that probable cause existed for Plaintiff's arrest and issued five (5) arrest warrants for the Ill treatment of the following horses:

1. Warrant No.: I-895847: [2 year old bay female]
2. Warrant No.: I-895848: [6 year old bay stallion]

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3. Warrant No.: I-895849: [15-20 year old bay stallion]
4. Warrant No.: I-895850: [2 year old black stallion]
5. Warrant No.: I-895851: [20 year old bay stallion]

See, Exh. L.

In *Baker v. McCollan*, 443 U.S. 137 (1979), the United States Supreme Court explained that "since the probable-cause standard for pretrial detention is the same as that for arrest, a person arrested pursuant to a warrant issued by a magistrate on a showing of probable cause is not constitutionally entitled to a separate judicial determination that there is probable cause to detain him pending trial." at 143. Accordingly, the *Baker* Court affirmed the constitutionality of a plaintiff's arrest as he was arrested pursuant to a facially valid warrant.

In *Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991), the Fourth Circuit Court of Appeals explained that a probable cause determination by a magistrate provides additional support that probable cause for an arrest was present. The Court stated:

We encourage law enforcement officers to seek warrants because magistrates from their detached perspective serve as the essential "checkpoint between the Government and the citizen." When a police officer protects a suspect's rights by obtaining a warrant from a neutral magistrate, the officer should, in turn, receive some protection from suit under 42 U.S.C. § 1983. Otherwise, the threat of liability would force officers to continuously second-guess the considered decisions of magistrates. This in turn would promote delay in the execution of warrants, and alter the proper allocation of law enforcement functions.

942 F.2d at 262. (Citations omitted).

The Defendants assert that there is no dispute that the county magistrate who issued the arrest warrants against Plaintiff was a neutral and detached from the underlying criminal investigations. Here, Plaintiff has not alleged in his Complaint nor

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has he presented any evidence to show that the arrest warrant issued by Richland County Magistrate Judge Harold Cuff was void, facially deficient, or not facially valid. Therefore, the Defendants would show that this determination by the Richland County magistrate is a marked demonstration of the existence of probable cause.

(c) Probable Cause: Indictment stage

In the present case, the charges against Plaintiff were presented to the Richland County Grand Jury on March 13, 2008 and four (4) indictments were returned as a 'true bill' for multiple counts of III Treatment of Animals. See, Exh. M. Quite simply, the fact that the grand jury indicted Plaintiff on the charges of III Treatment of Animals demonstrates that probable cause existed for his arrest.

In *Kinton v. Mobile Home Industries, Inc.*, 262 S.E.2d 727 (1980), the Supreme Court of South Carolina held, "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." 262 S.E.2d 727, 728 224 S.C. at 182.² Similarly, in *Whitner v. Duke Power Co.*, 277 S.C. 397, 288 S.E.2d 389 (1982), the Supreme Court affirmed the dismissal of a malicious prosecution claim because "[t]here is no question that probable cause existed when the grand jury indicted him." 288 S.E.2d at 390. See also, *McBride, Supra*, at 856.

Therefore, the undisputed fact that Plaintiff was indicted on these criminal charges is prima facie evidence that probable cause existed for his arrest. Therefore,

² See also, *White v. Coleman*, 277 F. Supp. 292 (D.S.C. 1967), wherein the United States District Court held, "Where the Grand Jury has returned a true bill upon the charge made, such finding amounts to a judicial recognition that probable cause does exist and infers prima facie probable cause for the prosecution." 277 at 297.

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the existence of grand jury indictments forecloses Plaintiff's malicious prosecution cause of action.

(d) Probable Cause: Prosecution stage

Additional evidence that probable cause existed for the arrest and prosecution of Plaintiff was: (1) the initial decision of the prosecuting attorney to prosecute Plaintiff for his animal abuse-related charges and, subsequently, (2) the decision to continue with the prosecution for a lengthy interim.

In Plaintiff's deposition, he was examined as follows:

Q: Initially, you were prosecuted by the Fifth Circuit Solicitor's Office.

A: That's correct.

Q: Subsequently, you were prosecuted by the South Carolina Attorney General's Office.

...

Q: But before then -- for a limited time -- you were prosecuted by the Fifth Circuit Solicitor's Office.

A: ... [I]f you want to call a year and a half a limited time, yes, sir.

...

Q: And you were prosecuted on these charges by one or two prosecutorial agencies, Fifth Circuit Solicitor, the Attorney General, from February 2008 to ...

A: ... July of 2010.

See, Exhs. N, O.

Thus, the charges against Plaintiff were formally dismissed by the Attorney General's Office in July 2010, after having prosecuted Plaintiff in General Sessions Court for roughly twenty-nine (29) months. See, *Id.*

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A police officer or criminal investigator may typically rely on the expertise of a prosecuting attorney for a determination of whether probable cause exists. "Good faith reliance upon advice of fully informed counsel may establish probable cause." *Melton v. Williams*, 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984). See also, *White, Supra*. In the present case, whether or not the HSPCA investigators were relying on the advice of the prosecuting attorney for deciding whether to procure the arrest warrant is not being asserted in this motion as there was no requirement for him to do so. However, it is evident that the Attorney General's Office believed that probable cause existed for Plaintiff's arrest by virtue of not only its initial assessment of the case, but continuing with prosecution for the prolonged time period.³ Notwithstanding the methodology the Attorney General's Office chose to pursue in their prosecution, the Defendants again would show that its' employees played no direct role in the institution or continuing of prosecution against Plaintiff.

For these reasons, the evidence does not support a cause of action for malicious prosecution and this claim should be dismissed with prejudice.

III. THE DEFENDANT RICHLAND COUNTY MAY NOT BE HELD LIABLE FOR THE ACTS AND/OR OMISSIONS OF SHERIFF OR HIS DEPUTIES

It is undisputed that Plaintiff's allegations of defamation and malicious prosecution are alleged pursuant to the acts and/or omissions of one or more Richland County Sheriff's deputies. The Defendant County asserts that it is not responsible and does not

³ In his evaluation of the matter from a prosecutorial perspective, the Attorney General ultimately *nolle prossed* Plaintiff's charges prior to trial. Accordingly, should Plaintiff submit that the prosecuting attorney's subsequent actions be taken into account when determining the existence of probable cause, this argument would fail. The United States District Court in *White v. Coleman, Supra*, at 297., held that "[p]robable cause does not turn on the plaintiff's guilt or innocence of the criminal charges." Further, the Fourth Circuit has opined that "[p]robable cause must be supported by more than a suspicion, but evidence sufficient to convict is not required." See, *Taylor v. Waters, Supra*, at 434.

control the actions of Richland County Sheriff's deputies. The Sheriff's deputies are not employees of Richland County, but instead, serve at the pleasure of the Sheriff of Richland County.

It is well settled in South Carolina that Sheriffs and Sheriffs' deputies are state officials, not county officials. There have been a number of cases, both state and federal, that have addressed this issue. The most cited of the cases is *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), wherein the South Carolina Supreme Court held that a deputy sheriff in South Carolina is a state employee rather than a county employee. Likewise, in *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988), the Supreme Court held that deputy sheriffs are not employees of the county.⁴ Other relevant cases include *Allen v. Fidelity & Deposit Co.*, 515 F. Supp. 1185 (D.S.C. 1981), and *Gulledge v. Smart*, 691 F. Supp. 947 (D.S.C. 1988).

Therefore, the Defendant Richland County may not be held liable for the acts and/or omissions of the Richland County Sheriff or his deputies.⁵

CONCLUSION

Based on the forgoing reasons and the law of South Carolina, there is clearly an absence of evidence to support Plaintiff's case and therefore, his causes of action against the Defendants must be dismissed with prejudice as a matter of law.

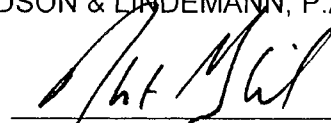
⁴ The *Heath* Court held that deputy sheriffs are not county employees bound by county personnel and grievance policies. Specifically, "a deputy serves at his sheriff's 'pleasure.'" 368 S.E.2d at 905.

⁵ See, South Carolina Tort Claims Act, S.C. Code Ann. §15-78-70 which sets forth that "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 ...**" (bolded for emphasis)

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:



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T: (803) 806-8222

Counsel for Defendants

Columbia, South Carolina

October 16, 2013

LDG
#20

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James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit A – Statement of Michele Hart

Statement

State of South Carolina)

Date: 02/19/2008

) S. S.

County of Richland)

Time: 1015

Personally appeared before me this 19 day of February, 2008, at 1015 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Michele Hart Day time telephone number 803-783-1267 Who makes the following statement under oath to wit:

Q: Inv. H. S. Wagner

A: Michele Hart

Q: Where are you currently employed?

A: The Humane Society for the Prevention of Cruelty of Animals. I work for the office in Columbia SC.

Q: Tell me what happened on February 13, 2008 at 1134 Zeigler Rd South in Eastover SC.

A: I was responding to a complaint about some horses in bad condition on Zeigler Rd. I was on the adjoining property with the permission of the owner Lori Stokes. While I was attempting to take pictures a man and woman started moving the horses out of range. The woman came over to the fence and started yelling at me. She was cursing and calling me all kinds of names. She demanded I give her my camera and insisted I was on her property. I realized I could not get any more pictures so I went back over to my truck to leave. It took me a few minutes to walk back over there. When I got over to my truck they had parked their truck behind mine so I could not leave. The man is against the gate writing something down. The woman is with him. He comes over and gets up less than a foot from my face yelling at me. Telling me I was trespassing on his property. When he would stop yelling she would start. I attempted to explain to them that I was on the Stokes property not theirs. I told them I was with the Humane Society and gave the woman my card. They continued to yell at me. The man got so close and was so upset that I got nervous and went to get into my truck. I asked him to move his truck. He yelled at me, "You ain't going anywhere." He told me the police had told him to keep me there and that I needed to call my family because I was going to jail. It seemed like 20 minutes before the sheriff's department showed up. The deputy talked to them for a while. The deputy then came up and talked to me. I showed her my call log and my badge from the Humane Society. I also gave her my card. Then she talked with them again and they left.

Q: Was there anyway you could have driven your truck around theirs to get away?

A: No, I was in a driveway and there were two ditches to each side. I could not have driven away.

Q: Is there anything else you want to add to this statement?

A: No

*****end of statement*****

This statement was made in the presence of Inv. H. S. Wagner of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2008

Signed: Michele Hart

Witness: Inv. H. S. Wagner

Witness: _____

Notary Public for South Carolina
My commission expires _____

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit B – RCSD Report Documentation; Excerpt From Deposition of Holly Wagner

Richland County Sheriff's Department

ACISS Initiating Case Report Report

Report Number: 0802114413

Report Date: 02/22/2008

Primary Information	
Report Number:	0802114413
Report Date:	02/22/2008
Type Of Report:	Initiating Case Report
Description:	Reg 1 / 1820 Zeigler / M. Hart
Occurrence From:	02/13/2008 11:30
Occurrence To:	02/13/2008 11:48
Reporting LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status:	Approved
Approved Date:	03/04/2008
Approved By:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)

Synopsis
Michele Hart of the HSPCA was on Lori Stockes property investigating a complaint about neglected horses on Zeigler. Terry Trexler blocker her vehicle with his vehicle and refused to let her leave until the police arrived.

Related Addresses	
<u>Address</u>	<u>Relationship</u>
1820 Zeigler Rd, Columbia, SOUTH CAROLINA 29044, UNITED STATES	INCIDENT LOCATION

Related Subjects					
<u>Name</u>	<u>Type</u>	<u>Sex</u>	<u>Race</u>	<u>DOB</u>	<u>Relationship</u>
Hart, Michele	PERSON	FEMALE	WHITE		VICTIM
Trexler, Terry Alfred	PERSON	MALE	WHITE		SUBJECT
Hazelene, Trexler	PERSON	FEMALE	WHITE		RELATED

Related Vehicles					
<u>Make</u>	<u>Model</u>	<u>Color</u>	<u>Tag #</u>	<u>Tag Year</u>	<u>Relationship</u>
FORD	---	DARK BLUE		2002	RELATED

Record Status Information	
Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	02/22/2008 16:52
Last Update Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date:	03/04/2008 11:23

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)	3/6/2008

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0802114413/1

Report Date: 02/22/2008

Primary Information

Report Number: 0802114413/1
Report Date: 02/22/2008
Type Of Report: Investigative Followup
Reporting LEO: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status: Pending

Narrative

2/13/2008

I received a call from Deputy Simpson. She told me she had been out on a call on Zeigler Rd and the complainant gave her the wrong name. She said he told her his name was James Alfred Trexler DOB 7/16/1963. He would not provide her with any ID. After she left the I/L. She ran the information in NCIC and it came back as Terry Alfred Trexler who is wanted out of Sumpter County. She told me she called me because the Humane Society was involved in the incident and after she left she found out the complainant was wanted. I told her I would follow up on the incident. She gave me the incident number. 0802114413

A short time later Inv. Michele Hart of the HSPCA called and told me she was investigating a complaint about some neglected horses on Zeigler Rd South. Michele told me she was on DVM Lori Stokes' property trying to take pictures of the horses on the adjoining property when a man and an older woman showed up and started to yelling and cussing at her. The woman stood between her and the horses and waived her hands in the air and shouted profanity at her. They told her she was trespassing and tried to get her to give them her camera. Michele tried to explain to them that she was with the Humane Society and that she was on Lori Stokes' property with Stokes' permission to be there. Michele said when she realized she was not going to get any more pictures or any cooperation from the two people she decided to leave. While she was walking thru the pasture back to her truck the man drove his truck over behind her truck and blocked her in. He actually told her there was no way she was going to leave. He told her he had called the police and the police had told him to keep her there. I told Michele I had received a call from the deputy who had responded and I would follow up on the incident. We decide to meet on Monday at the Humane Society.

2/19/2008 1000

I met with Inv. Michele Hart, Inv. Liz Perry and Mary Ellen Tobias at the HSPCA to discuss getting a SW to evaluate the horses on Zeigler Rd. Michele also gave me a written statement about how the man calling himself James Trexler blocked her in and would not let her leave. I showed her DMV pictures of James Trexler and Terry Trexler. She immediately pointed to Terry Trexler and said that is the man who told me he was James Trexler and would not let me leave.

I requested the 911 recording to find out if dispatch had told Trexler to block in Michele and keep her there until the police arrive. I called Deputy Simpson and she confirmed that the Trexler truck was parked blocking Michele and there was no way she could have driven her truck away.

2/22/2008

I received the 911 recording. Dispatch did not tell Trexler to block the truck.

I called the ELA number and spoke to Andrew Rogers. We discussed the incident and possible charges. He told me this incident met the statutory requirements of probable cause for Kidnapping.

2/26/2008 I signed the warrant for Kidnapping against Terry Trexler.

2/27/2008 The Fugitive arrested Terry Alfred Trexler for Kidnapping and Animal Cruelty in another case. Case # 0802241526

Case Closed by Arrest CJ.

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0802114413/1

Report Date: 02/22/2008

Narrative - Continued

Record Status Information

Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	02/22/2008 17:06
Last Update Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date:	03/06/2008 10:10

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Robinson, Donald (555 / Assault / Richland County Sheriff's Department)	3/6/2008

Richland County Sheriff's Department

ACISS Initiating Case Report Report

Report Number: 0802241526

Report Date: 02/28/2008

Primary Information

Report Number:	0802241526
Report Date:	02/28/2008
Type Of Report:	Initiating Case Report
Description:	Reg 1 / Animal Cruelty / Trexler
Reporting LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status:	Approved
Approved Date:	02/28/2008
Approved By:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)

Synopsis

RCSD assited the HSPCA serve warrants at 1248 Zeigler Rd and 412 Derby Ln. Twenty-eight horses were seized.

Related Addresses

Address	Relationship
1248 Zeigler Rd S, Columbia, SOUTH CAROLINA 29044 , UNITED STATES	INCIDENT LOCATION
412 Derby Ln, Hopkins, SOUTH CAROLINA 29061 , UNITED STATES	INCIDENT LOCATION

Related Subjects

Name	Type	Sex	Race	DOB	Relationship
Hart, Michele	PERSON	FEMALE	WHITE		COMPLAINANT
Hazelene, Trexler	PERSON	FEMALE	WHITE		SUSPECT
Trexler, James William	PERSON	MALE	WHITE		SUSPECT
Trexler, Terry Alfred	PERSON	MALE	WHITE		SUSPECT

Record Status Information

Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	02/28/2008 19:11
Last Update Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date:	02/28/2008 19:24

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)	4/7/2008

Richland County Sheriff's Department

ACISS Case Master Report

Case Number 0802241526

Date Initiated 02/28/2008

Primary Information	
Agency:	Richland County Sheriff's Department
Division:	Criminal Investigations
Section:	Major Crimes
Unit:	Assault
Lead LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Type Of Case:	Assisting Other Agencies
Case Description:	Reg 1 / Animal Cruelty / Trexler

Case Status	
Case Status:	CLOSED
Case Status Date:	03/10/2008
Disposition Code:	Closed by Arrest
Disposition Date:	03/10/2008

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0802241526/1

Report Date: 02/28/2008

Primary Information

Report Number: 0802241526/1
Report Date: 02/28/2008
Type Of Report: Investigative Followup
Description: Follow up
Reporting LEO: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status: Pending

Record Status Information

Record Origination Operator: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date: 02/28/2008 19:25
Last Update Operator: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date: 04/07/2008 12:15

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Robinson, Donald (555 / Assault / Richland County Sheriff's Department)	4/7/2008

Narrative begins on the following page

2/13/2008

I received a call from Deputy Simpson. She told me she had been out on a call on Zeigler Rd and the complainant gave her the wrong name. She said he told her his name was James Alfred Trexler DOB 7/16/1963. He would not provide her with any ID. After she left the I/L. She ran the information in NCIC and it came back as Terry Alfred Trexler who is wanted out of Sumpter County. She told me she called me because the Humane Society was involved in the call and after she left she found out the complainant was wanted. I told her I would follow up on the incident. She gave me the incident number.

A short time later Inv. Michele Hart of the HSPCA called and told me she was investigating a complaint about some neglected horses on Zeigler Rd South. Michele told me she was on DVM Lori Stokes' property trying to take pictures of the horses on the adjoining property when a man and an older woman showed up and started to yelling and cussing at her. The woman stood between her and the horses and waived her hands in the air and shouted profanity at her. They told her she was trespassing and tried to get her to give them her camera. Michele tried to explain to them that she was with the Humane Society and that she was on Lori Stokes property with Stokes' permission to be there. Michele said when she realized she was not going to get any more pictures or any cooperation from the two people she decided to leave. While she was walking thru the pasture back to her truck the man drove his truck over behind her truck and blocked her in. He actually told her there was no way she was going to leave. He told her he had called the police and the police had told him to keep her there. I told Michele I had received a call from the deputy who had responded and I would follow up on the incident. We decide to meet on Monday at the Humane Society.

2/19/2008 1000

I met with Inv. Michele Hart, Inv. Liz Perry and Mary Ellen Tobias at the HSPCA to discuss getting a SW to evaluate the horses on Zeigler Rd. Michele told me the first time she went to investigate the property on Zeigler Rd no one was around and the gate was locked so she posted the property. Then she received a call from a man who said he was James Trexler with the SC Department of Agriculture. He was very belligerent and told her he owned the horses and she could not go on his property to look at the horses. That is why she had gone on Lori Stokes' property to try to take pictures of the horses. Michele also gave me a written statement about how the man calling himself James Trexler blocked her in and would not let her leave. I showed her DMV pictures of James Trexler and Terry Trexler. She immediately pointed to Terry Trexler and said that is the man who told me he was James Trexler and would not let me leave.

On 2/25/2008 at 0930 RCSD assisted the HSPCA serve a search warrant at 1248 Zeigler Rd South. RCSD secured the property. A DVM Mike Privett and HSPCA checked on the condition of the 23 horses found on the property. There was a 15-gallon water tub that only had a few inches of water in the bottom. All other tubs and buckets on the property were empty. There was no feed, hay or any evidence that there had been any hay on the property. Most of the horses were extremely

8441-A-031

underweight with ribs and hipbones showing. Some of the younger horses had on halters that had been on so long that they were growing into the skin. There were two female dogs and 5 puppies on the property. They did not have any food or water. After a preliminary evaluation of the animals and property it was decided to seize all the animals. The 23 horses, two female dogs and 5 puppies were all taken into custody by the HSPCA.

The HSPCA had information that Terry and Hazel Trexler owned the horses. Hazelene Trexler arrived on the property during the search warrant. She was very upset. At one point she yelled at Michele Hart of the HSPCA "I am going to get you" while pointing her finger at her. Hazel Trexler claimed ownership of all the horses while being interviewed by the media.

The horses were taken to Mike Privett's to be evaluated and cared for.
All the horses were numbered and photographed.
DVM Mike Privett evaluated and documented the body condition of all the horses seized.

The HSPCA had also received information that there were horses in a barn at the home of James Trexler 412 Derby Ln. Hopkins SC. The HSPCA obtained a warrant for that property.
On 2/26/08. RCSD assisted the HSCPA in serving that warrant. One horse was in a pasture. Four horses were found in stalls in the barn. The horses were standing in mud soaked with urine and feces. There was no food, hay or clean water seen on the property. One of the horses was in an emaciated state with ribs and hipbones protruding. The other horses were slightly under nourished. The horses were taken into custody by the HSPCA

The horses were taken to Mike Privett's to be evaluated and cared for.
All the horses were numbered and photographed.
DVM Mike Privett evaluated and documented the body condition of all the horses seized.

On 2/27/2008 I received the warrants from the Humane Society. I received a tip that Hazelene and Terry were in the house at 412 Derby Ln. I called Capt Lanier of the Fugitive Team and told him about the tip. The Fugitive Team responded to the location and observed a man matching the description of Terry Trexler in the house. He would not answer the door. I faxed a SW to bond court. Once I received the SW I called Capt. Lanier. I responded to 412 Derby Ln and served the SW. Hazelene and Terry Trexler were arrested. James Trexler was arrested a short time later when he returned to the house.

Case Closed By Arrest
CN

On 2/29/2008 at 1000 DVM Nicole Swineheart evaluated the 28 horses at Mike Privett's.

On 2/29/2008 Mike Privett called and told me he had received a tip that there may be more horses on Misty Meadows Rd in Hopkins. He had driven by the location and found 17 horses in a pasture.

Some of the animals were malnourished. There were rib and hipbones showing. Three of the horses had halters on so tight they were rubbing sores on their heads. The pasture was eaten down had there was no hay or grass. I made contact with Ray Adams who lives at 207 Misty Meadows Rd. He told me he had let Terry and Hazelene Trexler put some horses on his land. He said he did not have a contract with them because he had known Terry's father and they only wanted to put the horses there for a few months. Ray did not know the exact date the horses showed up but it was about two months ago. Ray gave Mike Privett and the HSPCA permission to go on his property to care for the animals until a SW could be obtained.

Ray was very nervous and wanted to make sure he was not in trouble for the animals. He said he had ask his neighbor to call the HSPCA about the horses. Ray is somewhat evasive during questioning. I believe he is a friend of the Trexler's and did not want to turn them in but wanted to make sure he was no in trouble for the condition of the horses on his property.

On 3/3/08 at 1410 a SW was served on 207 Misty Meadows Rd along with an on site seizure of the 17 horses. I gave a copy of the SW and On-site seizure to Ray's wife because he was not home. Ray came home before we had left and I spoke to him about the search warrant and seizure. He said he understood that the horses could not be taken off the property. He agreed to call the sheriff's department if he saw anyone around the horses.

Michele Hart and I went by 412 Derby Lane, in an attempt to notify James Trexler of the SW and seizure. No one would come to the door. I believe he was in the house but would not come to the door. I saw the dark truck in the garage and the bull dogs were in the back yard.

I called James Trexler's cell phone and spoke to him. I advised him of the warrant and seizure. He told me the horses on Misty Meadows Rd were his mother's and he had told his attorney Todd Rutherford about the horses and ask what he should do. He said he had fed the horses on Saturday and Sunday but they were not his and he was waiting on his attorney to tell him what to do about the horses. I ask him about the dogs at 412 Derby Ln. He told me he was taking care of them. He said the bulldogs are in the back yard right now.

I also took copies of the search warrant and on-site seizure to the office of Attorney Todd Rutherford.

3/9/2008

The 17 horses on Misty Meadows were transported to DVM Mike Privett's farm.

All the horses were numbered and photographed.

DVM Mike Privett evaluated and documented the body condition of all the horses seized.

3/10/2008

Seventeen warrants each for Terry and Hazelene Trexler were signed for the 17 horses on Misty Meadows.

8441-A-033

Richland County Sheriff's Department

ACISS Supporting Documents Report

Report Number: 0802241526/2

Report Date: 03/04/2008

Primary Information

Report Number:	0802241526/2
Report Date:	03/04/2008
Type Of Report:	Supporting Documents
Description:	Nicole Swineheart Evaluation
Reporting LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status:	Approved
Approved Date:	03/24/2008
Approved By:	Robinson, Donald (555 / Assault / Richland County Sheriff's Department)

Record Status Information

Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	03/04/2008 15:10
Last Update Operator:	Robinson, Donald (555 / Assault / Richland County Sheriff's Department)
Last Update Date:	03/24/2008 15:38

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Robinson, Donald (555 / Assault / Richland County Sheriff's Department)	4/7/2008

Narrative begins on the following page.

Richland County Sheriff's Department

ACISS Arrest Report Report

Report Number: 0802114413/2

Report Date: 03/06/2008

Primary Information

Report Number: 0802114413/2
 Report Date: 03/06/2008
 Type Of Report: Arrest Report
 Description: Trexler, Terry Arrest
 Reporting LEO: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
 Approval Status: Pending

Synopsis

Case Closed By Arrest CJ.

Arrest

Primary Information - Arrest #1

Arrest Type	Location	Arresting LEO
FELONY	412 Derby Ln	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)

Charges - Arrest #1

Charge	Statute	UCR Class	Charge Count
Kidnapping/Kidnapping	16-03-0910A	990	1

Arrestee Information - Arrest #1

Name	Sex	Race	DOB
Trexler, Terry Alfred	MALE	WHITE	

Record Status Information

Record Origination Operator: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
 Record Origination Date: 03/06/2008 10:10
 Last Update Operator: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
 Last Update Date: 03/06/2008 10:14

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Robinson, Donald (555 / Assault / Richland County Sheriff's Department)	3/6/2008

Richland County Sheriff's Department

ACISS Arrest Report Report

Report Number: 0802241526/3

Report Date: 03/10/2008

Primary Information	
Report Number:	0802241526/3
Report Date:	03/10/2008
Type Of Report:	Arrest Report
Reporting LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status:	Un-Approved

Synopsis:
Case Closed by Arrest. CN
Ill treatment of animals Hazel Trexler 28 Counts Terry Trexler 23 Counts James Trexler 5 Counts

Arrest			
Primary Information - Arrest #1			
Arrest Type	Location	Arresting LEO	
MISDEMEANOR	412 Derby Ln	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)	
Charges - Arrest #1			
Charge	Statute	UCR Class	Charge Count
Animals/ill treatment, overworking-1st off	47-01-0040(A)	990	28
Arrestee Information - Arrest #1			
Name	Sex	Race	DOB
Hazelene, Trexler	FEMALE	WHITE	

Arrest			
Primary Information - Arrest #2			
Arrest Type	Location	Arresting LEO	
MISDEMEANOR	412 Derby Ln	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)	
Charges - Arrest #2			
Charge	Statute	UCR Class	Charge Count
Animals/ill treatment, overworking-1st off	47-01-0040(A)B	990	23
Arrestee Information - Arrest #2			
Name	Sex	Race	DOB
Trexler, Terry Alfred	MALE	WHITE	

Arrest		
Primary Information - Arrest #3		
Arrest Type	Location	Arresting LEO

Richland County Sheriff's Department

ACISS Arrest Report Report

Report Number: 0802241526/3

Report Date: 03/10/2008

Primary Information - Arrest #3 - Continued			
<u>Arrest Type</u>	<u>Location</u>	<u>Arresting LEO</u>	
MISDEMEANOR	412 Derby Ln	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)	
Charges - Arrest #3			
<u>Charge</u>	<u>Statute</u>	<u>UCR Class</u>	<u>Charge Count</u>
Animals/ill treatment, overworking-1st off	47-01-0040(A)B	990	5
Arrestee Information - Arrest #3			
<u>Name</u>	<u>Sex</u>	<u>Race</u>	<u>DOB</u>
Trexler, James William	MALE	WHITE	

Record Status Information	
Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	03/10/2008 15:05
Last Update Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date:	03/10/2008 15:16

<u>Reporting LEO</u>	<u>Date</u>	<u>Supervisor</u>	<u>Date</u>
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)			4/7/2008

Richland County Sheriff's Department

ACISS Supporting Documents Report

Report Number: 0802241526/4

Report Date: 03/14/2008

Primary Information

Report Number:	0802241526/4
Report Date:	03/14/2008
Type Of Report:	Supporting Documents
Description:	Bone Marrow report/ Dr. Merck
Reporting LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status:	Approved
Approved Date:	03/14/2008
Approved By:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)

Record Status Information

Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	03/14/2008 08:09
Last Update Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date:	03/14/2008 08:11

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)	4/7/2008

1 Q. Did you talk to Terry Trexler before swearing out a
2 Warrant for his Arrest regarding the kidnapping?

3 A. I didn't talk to him.

4 Q. Okay. Excuse me a second.

5 RICHLAND COUNTY SHERIFF'S DEPARTMENT ACISS
6 INVESTIGATIVE FOLLOW UP REPORT MARKED PLAINTIFF'S
7 EXHIBIT NUMBER SEVENTEEN.

8 Q. Okay. I'm going to hand you what is marked as
9 Plaintiff's Exhibit Number Seventeen.

10 A. Okay.

11 Q. And for Counsel, it's Bates label 030, starting at
12 030.

13 MR. GARFIELD: Okay.

14 Q. This is a -- this is a document that has been provided
15 to us in Discovery, and this is what appears to be the
16 same ACISS report. Do you recognize that document?

17 A. I do.

18 Q. Okay. Is this a document that you created?

19 A. It is.

20 Q. Is this a -- is it the same report as the -- as
21 Plaintiff's Exhibit Number Sixteen?

22 A. No.

23 Q. Okay. What is Plaintiff's Exhibit Number Seventeen?

24 A. This is an investigative follow-up for the -- for the
25 Search Warrant for the horse case.

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit C – Incident Report and Excerpts From Deposition of Charley Simpson

RICHLAND COUNTY SHERIFFS
DEPT
SC0400000

INFORMATION
ONLY

CASE NUMBER
0802114413

IND. INTL.

INCIDENT REPORT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
ALL OTHER OFFENSES - 902	YES NO	YES NO	RESIDENCE HOME		Individual Business Financial Inst Government Relig Organ Social Public Other Unknown Police Off
	YES NO	YES NO			
	YES NO	YES NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER, 1820 ZEIGLER ROAD SOUTH, SC)	ZIP CODE 29044	SECTION NAME

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
02/13/2008	11:30		02/13/2008	11:46	02/13/2008	11:48	11:52	12:31	2

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) TREXLER, HAZELENE	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
	#1 ST #2 #3	S	W	F	70	N		

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
	SUMTER	SC	29153	

VICTIM'S NAME (LAST, FIRST, MIDDLE) TREXLER, JAMES, ALFORD	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
	#1 ST #2 #3	S	W	M	47	N		

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
504	125	RED	BLU	Gave DOB

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
	SUMTER	SC	29153	

VISIBILITY (YES/NO) EXPLAIN:	COMPLAINT OF ANY NON-VISIBLE INJURIES YES/NO

VICTIM(1) USING ALCOHOL YES/NO/UNK	DRUGS YES/NO/UNK	TYPE

INC-MV/VEH	ONE-MV/VEH	DETECTIVE/PLASMT	OTHER	ALONE	ASSISTED	J-This Jurisdiction	S-State	O-Out of State	U-Unknown

SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	LEVEL
		W	F	48	N		511	180	BRO	HRD

PUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	DAYTIME PHONE	EVENING PHONE

WARRANT	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
		COLUMBIA	SC	29209	

ARREST	DATE/TIME OF OFFENSE	DATE/TIME OF ARREST
	02/13/2008 11:30.00	

JAIL	SUBJECT(1) USING ALCOHOL YES/NO/UNK	ARRESTED NEAR OFFENSE SCENE YES/NO	TOTAL # ARRESTED

SUMMONS	DRUGS YES/NO/UNK TYPE	DATE/TIME OF OFFENSE	DATE/TIME OF ARREST

DAY OF THE WEEK	HOW REPORTED	A= OFFICER DISPATCHED ON CALL	D= COMPLAINT WRITTEN IN	DIFF FACTOR	A= RESISTANCE/HOSTILITY	E= COMPLAINT FREE
S M T W T F S UNK		B= REPORT TAKEN BY PHONE	E= OFFICER INITIATED		B= WEAPONS	G= QUENTLY INTOXICATED
		C= COMPLAINANT WALKED IN	F= OTHER		C= UNFOUNDED CALLS	F= DOMESTIC
					D= MENTAL SUBJECT	H= NORMAL

REPORTING OFFICER RESPONDED TO INCIDENT LOCATION IN REFERENCE TO AN ACTIVE CIVIL DISTURBANCE. UPON ARRIVAL REPORTING OFFICER WAS MET BY HAZELENE AND JAMES TREXLER WHO STATE THAT HART WAS TRESPASSING ON THEIR LAND AND TAKING PICTURES OF THEIR HORSES. REPORTING OFFICER THEN MADE CONTACT WITH HART, A CRUELTY INVESTIGATOR WITH THE HUMANE SOCIETY, WHO STATES THAT SHE WAS ON THE PROPERTY OF DR. LORI STOKES, A VETERINARIAN (803-730-2149), WHO GAVE HER PERMISSION TO ENTER ONTO HER PROPERTY IN ORDER TO CONDUCT HER INVESTIGATION. HART ADDED THAT SHE WAS INVESTIGATING A COMPLAINT OF CRUELTY TO HORSES WHICH BELONG TO THE TREXLER'S. JAMES TREXLER STATED THAT THE PROPERTY HART WAS ACTUALLY ON WAS THAT WHICH HE RENTED FROM JAMES QUINN. BOTH HAZELENE AND JAMES TREXLER REQUESTED REPORT.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

TYPE/GROUP	TOTAL VALUE
STOLEN	0
DAMAGED	0
REPAIRED	0
RECOVERED	0
RECEIVED	0

SUBJECT IDENTIFIED YES/NO	SUBJECT LOCATED YES/NO	S F	ACTIVE UNFOUNDED	ADM CLOSED	ARRESTED UNDER 12	ARRESTED 12 AND OVER	EX-CLEAR UNDER 12	EX-CLEAR 12 AND OVER

APPROVING OFFICER'S	DATE	PRINT NUMBER	APPROVING OFFICER	DATE	PRINT NUMBER
Simpson, Charley	02/13/2008	1250	Ylcoyne, Shawn	02/13/2008	

FOLLOWUP INVESTIGATION YES/NO	OFFICER

8441-A-01

ADDITIONAL NARRATIVE

Agency Name RICHLAND COUNTY SHERIFFS DEPT	ORI # SC0400000	Report Date/Time 02/13/2008 11:30:00	OCA # 0802114413

I/T ALL OTHER RESPONSES
I/L 1820 ZEIGLER ROAD SOUTH

WHEN REPORTING OFFICER FIRST ARRIVED, HAZELENE TREXLER WAS YELLING THAT SHE WANTED A WARRANT RIGHT THEN FOR HART TRESPASSING- BECAUSE HER SON EATS WITH SHERIFF LOTT ALL THE TIME AND IF I DIDN'T GIVE IT TO HER, SHE WAS GOING TO CALL SHERIFF LOTT. HAZELENE TREXLER WAS VERY UNCOOPERATIVE AT FIRST, EVEN TELLING REPORTING OFFICER THAT SHE WAS NOT GIVING ANY IDENTIFICATION CARDS OR HER INFORMATION BECAUSE I DID NOT NEED IT. SHE WOULD THEN SAY THAT AN INVESTIGATOR BETTER CONTACT HER AND THAT SHE WANTED A REPORT. HAZELENE TREXLER FINALLY LISTENED TO REPORTING OFFICER AND UNDERSTOOD WHY THAT INFORMATION WAS NEEDED AND PROVIDED IT.

HART ALSO STATED THAT HAZELENE TREXLER HAD CALLED HER A "B***H" NUMEROUS TIMES. HAZELENE TREXLER ADMITTED THAT SHE DID CALL HER THAT BECAUSE SHE SHOULD NOT HAVE BEEN ON THEIR PROPERTY.

JAMES TREXLER STATED HE DID NOT HAVE ANY FORM OF IDENTIFICATION, BUT DID PROVIDE A NAME AND DATE OF BIRTH. REPORTING OFFICER CHECKED THE SC DMV FILES AFTER LEAVING THE SCENE FOR HIS ADDITIONAL INFORMATION WHICH REVEALED THE NAME WAS NOT ON FILE, BUT THE NAME TERRY ALFRED TREXLER WITH THE SAME DATE OF BIRTH APPEARED WITH A STATUS OF WANTED. THE PROFILE MATCHED THAT OF JAMES TREXLER. THE STATUS OF WANTED WAS FROM THE SUMTER COUNTY SHERIFF'S DEPARTMENT FOR FRAUDULENT CHECKS AND CRUELTY TO ANIMALS. REPORTING OFFICER THEN CONTACTED INVESTIGATOR WAGNER TO MAKE HER AWARE OF THE SITUATION. HART STATED THAT SHE HAD ALREADY BEEN IN CONTACT WITH INVESTIGATOR WAGNER IN REFERENCE TO THE TREXLER'S ANIMALS.

THE TREXLER'S WERE RIDING IN A NAVY BLUE FORD TRUCK, SC TAG: 323TMP.

8441-A-02

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) CASE NO.: 2010-CP-40-1343

James W. Trexler,)
)
Plaintiff,)
)
vs.)
)
McClatchy Newspapers, Inc., Richland)
County, and the Richland County)
Sheriff's Department,)
)
Defendants.)
)
)

Deposition of CHARLEY DIANE SIMPSON, taken by Doris
Tompkins Brown, Certified Verbatim Reporter and Notary
Public in and for the State of South Carolina, commencing
at 2:17 P.M. on September 8, 2011, and taken at the
Davidson and Lindemann Law Firm, 1611 Devonshire, Columbia,
South Carolina.

APPEARANCES

FOR THE PLAINTIFF: W. Westbrook Wills, III
Austin, Fowler & Wills,
LLP
38 Broad Street
Suite 200
Charleston, South Carolina
and
William H. Johnson
2 North Brooks Street
Manning, South Carolina

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151
(803) 499-7434

COPY

1 remember what number's next in the sequence.

2 MR. BENDER: Sixteen, I think.

3 MR. WILLS: Sixteen.

4 INCIDENT REPORT MARKED AS PLAINTIFF'S
5 EXHIBIT NUMBER SIXTEEN

6 Q. Okay. So, I'm going to hand you what's Exhibit ---

7 A. That's fine.

8 Q. -- Sixteen, and it's -- and it's the same document
9 you've been looking at. Is that indeed a -- is it --
10 can you identify this document?

11 A. Yes, sir.

12 Q. And what is this document that I've handed you that's
13 Plaintiff's Exhibit Sixteen?

14 A. This is an Incident Report regarding that incident
15 that we've been speaking of.

16 Q. Okay. And did you -- did you create this report?

17 A. I did.

18 Q. And is this a true and accurate copy of the report as
19 you remember it?

20 A. Yes, sir.

21 Q. Okay. On this Incident Report, it states right up
22 here in the very -- in the very top section -- I'll
23 point, but it's -- it's just in the very initial
24 section and -- and it shows a time for the -- the
25 incident date and time. Can you tell us what -- what

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 time that was that the incident was -- occurred?

2 A. The time frame I was given -- given where they had
3 seen Ms. Hart on the property, which is the time frame
4 that we use on reports, that's the twenty-four hour
5 clock that you're seeing there where it says 11:30 to
6 11:48.

7 Q. Okay.

8 A. That was when they're claiming Ms. Hart was
9 trespassing at 11:30. 11:48 is when they called us.

10 Q. Okay. And do you -- would you be able to tell from
11 this document when you arrived on the scene?

12 A. Yes, sir. I arrived at 11:52 and departed at 12:31.

13 Q. Okay. And when would you have -- have written this
14 report after that -- after that incident?

15 A. It would have been after the incident -- after I left
16 the scene.

17 Q. Okay. Would you have done this report on the same
18 day?

19 A. That's correct.

20 Q. If we look -- if we look at Plaintiff's Exhibit here,
21 Number Sixteen --

22 MR. GARFIELD: Do you want some more water?

23 MS. SIMPSON: I'm fine. Thank you.

24 Q. -- on the second page, and you've got -- you've got a
25 narrative here.

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit D – Search Warrant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SEARCH WARRANT

Date: 02/26/2008

412 Derby Lane
Hopkins, SC 29061

CLERK OF COURT
2008 FEB 26 PM 2:12

CLERK OF COURT
2008 FEB 27 PM 4:00

8441-A-0134

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF RICHLAND COUNTY, SOUTH CAROLINA.

It is appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises.

DESCRIPTION OF PREMISES
(PERSON, PLACE OR THING TO BE SEARCHED)

The residence and surround curtilage to be searched is located at 412 Derby Lane in the County of Richland, South Carolina. The residence is further described as a single family home, dark in color, and is in close proximity to the intersection of Saddlebrook Lane and Derby Lane. The search also includes any and all buildings, offices, outbuilding, vehicles, shelters, barns, shanties or stables where animal life and/or records and/or items used in the care and keeping of such animals may be housed or kept.

NOW, THEREFORE, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found.

DESCRIPTION OF PROPERTY

Any and all living vertebrate creatures (except homo sapiens), including but not limited to, equines, and any other domestic animals, any animal carcasses, unborn young, or remains of any type or species, located on said premises; and, any and all foodstuff, medications, any and all documentation, including but not limited to bills of sale, registration documents, veterinary medical records, and any other documents or items related to the care, treatment, and keeping of said animals.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to _____ within ten (10) from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known, or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Colin Lewis, SC
26 February 2008

[Signature]
Signature of Judge

2008 FEB 26 PM 2:12
REC'D
CLERK OF COURT

8441-A-0135

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

Personally appeared before me, _____, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976, Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all living vertebrate creatures (except homo sapiens), including but not limited to, equines, and any other domesticated animals, any animal carcasses, unborn young, or remains of any type or species, located on said premises; and, any and all foodstuff, medications, any and all documentation, including but not limited to bills of sale, registration documents, veterinary medical records, and any other documents or items related to the care, treatment, and keeping of said animals.

DESCRIPTION OF PREMISES
(PERSON, PLACE OR THING TO BE SEARCHED)

The residence and surround curtilage to be searched is located at 412 Derby Lane, in the County of Richland, South Carolina. The residence is further described as a single family home, dark in color, and is in close proximity to the intersection of Saddlebrook Lane and Derby Lane. The search also includes any and all buildings, offices, outbuildings, vehicles, shelters, barns, shanties or stables where animal life and/or records and/or items used in the care and keeping of such animals may be housed or kept.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See attachment labeled "Exhibit A" attached hereto and made a part hereof by reference.

Sworn to and Subscribed before me)
this 24 day of February, 2008)

Signature of Judge

Michelle Hart
Affiant
Address:

2008 FEB 26 PM 2:12
MAY 10 11 AM 2008
CLERK OF COURT

8441-A-0136

EXHIBIT "A"

Your affiant states that she is an agent for the Humane Society for the Prevention of Cruelty to Animals, (hereinafter HSPCA), and in that capacity is acting on complaints, as well as additional documentation of neglect and ill-treatment in reference to the animals, owned, leased, managed, boarded, or otherwise maintained at a residence located at 412 Derby Lane in the County of Richland, and State of South Carolina.

On or about February 8 2008, a complaint of horses in bad condition was received by the HSPCA. On or about February 12 2008, affiant went to 1248 Zeigler Road, but the gate was locked. A notice to call was posted. On or about February 12 2008, the affiant spoke with the owner of the horses by phone and was refused access to the property to view the horses. On or about February 13 2008, the affiant traveled to 1134 Zeigler Rd and entered the property with prior permission from Dr. Stokes. A confrontation with the horse owners, Terry and Hazelene Trexler, occurred and only 3 pictures were taken at that time. There was no food or water seen. On February 18 2008, Dr Stokes was able to take pictures of the horses and e-mailed them to the affiant. The pictures show that many of the horses are in substandard condition. Dr Stokes reports approximately 26 horses were seen and that approximately ¾ of the herd are in substandard condition.

On February 26, 2008, the HSPCA seized 23 horses and 7 dogs from 1248 Zeigler Rd. Eastover, SC. After finding some additional information, the HSPCA has learned that Hazelene and Terry Trexler are wanted for 61 counts of animal cruelty in Jefferson County, Georgia. We believe that there are additional horses, possibly in poor condition, on the property listed that belong to the Trexler family. James Trexler, is the brother of Terry Trexler and the son of Hazelene Trexler and the person said to be living at 412 Derby Lane.

Based on this information and photographic evidence, it is believed that the horse owners are in violation of South Carolina State Code Title 47.

Dated: 2/26/08

Michele Hart
Michele Hart

DEPT/PA REGISTRAR
2008 FEB 26 PM 2:12

8441-A-0137

RETURN

I have received the attached Search Warrant on Feb 26, 2008, and have executed it as follows:

On Feb 26, 2008, at 1600 o'clock P.M. I searched (the person) described in the warrant and (the premises).

I left a copy of the Warrant with In Barn, name of person searched or "at the place of search" with, together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the Warrant:

1 Black Stallion
1 Grey Stallion
2 Bay Stallions
1 Bay Filly
1 white + Black Arney Not Taken
2 white English Bulldogs Not Taken

This inventory was made in the presence of Inv Wagon, Inv Belding and Liz Perry, Mahela Hart. I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 27 day of February, 2008.

Signature of Judge

Phone: _____

Inv. Wagon
Signature of Officer Executing Warrant

2008 FEB 27 PM 4:00

OLYMPIA, WASHINGTON

8441-A-0138

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

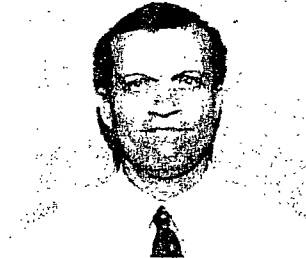
Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit E – 3 Year Driver Record for James Trexler



3 YEAR DRIVER RECORD



Customer No: 25929509		Driver License No	
Name: TREXLER, JAMES WILLIAM			
Address: N			
City: HOPKINS	State: SC	Zip: 290619480	
County: RICHLAND	Sex: M	Driver Training: N	
DOB:			
Status - DL: NO SUSPENSION		CDL: NO DISQUALIFICATION	

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
DL	D	Duplicate	02/25/2008	01/14/2016	01/29/1996	N	N
Prior							
DL	D	Renewal	03/14/2006	01/14/2016	01/29/1996	N	N
DL	D	Renewal	01/12/2001	01/14/2006	01/29/1996	N	N
DL	D	Modify	03/22/2005	01/14/2006	01/29/1996	N	N

Address Change - Date Changed: 05/19/2005

Address:
City: SUMTER **State:** SC **Zip:** 291538197

Address Change - Date Changed: 03/22/2005

Address:
City: HOPKINS **State:** SC **Zip:** 290619480

Point Summary

Total Current Points: 1
Driver Credit: -0
Adjusted Current Points: 1

VIOL: 421 - Speeding 10-mph or less
Violation: 10/25/2006 **Conviction:** 11/21/2006
ACD: S51 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: 55494DV
Recd: 12/14/2006 **Post:** 12/20/2006
Conviction Reference:
Court Type: MUN
Violation Points: 2 **Current Points:** 1

3 YEAR DRIVER RECORD

Customer No: 25929509

Driver License No: 8028522

Name: TREXLER, JAMES WILLIAM

End of Report

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit F – Arrest Report

8441-A-050

AGENCY I.D. SCO 400000	ARREST DATE 2/27/08	ARREST TIME 19:30	RICHLAND COUNTY SHERIFF'S DEPARTMENT	INVESTIGATOR 080222 JAC

ARREST REPORT

NAME (LAST, FIRST, MIDDLE) Trexler, Hazel		SEX W.F.	
AGE 71	ETH 53	HEIGHT 160	WEIGHT 160
HAIR BRN	EYES BLU	SOCIAL SECURITY NUMBER [REDACTED]	
ADDRESS (NUMBER & STREET) [REDACTED]		DATE OF BIRTH [REDACTED]	PHONE (NUMBER) [REDACTED]
EMPLOYER (NAME & ADDRESS) [REDACTED]		PARENT / GUARDIAN [REDACTED]	ADDRESS (CITY AND STATE) [REDACTED]
ISSUING OFFICER'S NAME RICHLAND COUNTY DETENTION CTR.		ARRESTING OFFICER Cpt Lancia	AGENCY RCSO
ARRESTED (Y/N) YES		WEAPON TYPE [REDACTED]	ON NEW ARREST (Y/N) YES
JUVENILE DISPOSITION [REDACTED]		JUVENILE DISPOSITION (Y/N) YES	
ARREST LOCATION [REDACTED]		ARREST DATE 2/27/08	ARREST TIME 19:30
CHARGE [REDACTED]	CHARGE [REDACTED]	CHARGE [REDACTED]	CHARGE [REDACTED]
STATUTE [REDACTED]	STATUTE [REDACTED]	STATUTE [REDACTED]	STATUTE [REDACTED]
WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]
ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]
ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]
BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]
COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]
DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]
ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]
CHARGE [REDACTED]	CHARGE [REDACTED]	CHARGE [REDACTED]	CHARGE [REDACTED]
STATUTE [REDACTED]	STATUTE [REDACTED]	STATUTE [REDACTED]	STATUTE [REDACTED]
WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]
ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]
ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]
BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]
COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]
DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]
ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]
CHARGE [REDACTED]	CHARGE [REDACTED]	CHARGE [REDACTED]	CHARGE [REDACTED]
STATUTE [REDACTED]	STATUTE [REDACTED]	STATUTE [REDACTED]	STATUTE [REDACTED]
WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]	WARRANT NUMBER [REDACTED]
ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]	ENTERED DATE [REDACTED]
ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]	ISSUING MAGISTRATE [REDACTED]
BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]	BOND AMOUNT [REDACTED]
COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]	COMPLAINANT [REDACTED]
DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]	DATE OF INCIDENT [REDACTED]
ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]	ADDITIONAL CASE NUMBER [REDACTED]

AGENCY I.D. SCO 400000	DATE TIME OF ARREST 11/17/11 11:00	RICHLAND COUNTY SHERIFF'S DEPARTMENT	CASE NUMBER 11-0511-1

ARREST REPORT

DEFENDANT NAME (LAST, FIRST, MIDDLE) JAMES, JAMES, JAMES		DATE OF BIRTH 11/17/11	SEX M	HAIR BRN	EYES BLU	WEIGHT 170	HEIGHT 5'10"	SCARS AND TATTOOS NONE	ACIC NONE	DOB NUMBER NONE
ADDRESS (NUMBER & STREET) 1111 11TH ST		CITY RICHLAND	STATE SC	ZIP 29928	PHONE NUMBER 716-1111					
EMPLOYER (OCCUPATION OR SCHOOL) NONE		PRESENT GUARDIAN NONE	ADDRESS (CITY AND STATE) RICHLAND, SC							

PICKING OFF CEA'S NAME RICHLAND COUNTY DETENTION CTR	ARRESTING OFFICER D. JAMES	AGENCY RCSO	DEPT NUMBER 1111
ARRESTEE ARMED: ☒ YES ☐ NO WEAPON TYPE GUN		CONVEYANCE: ☐ CONVEYANCE ☐ CONVEYANCE	
JUVENILE DISPOSITION: ☐ HANDLED ☒ RELEASED ☐ REFERRED TO OTHER AUTHORITY		JURY JURISDICTION: ☐ State ☐ Civil ☐ Law ☐ Other	

ARREST LOCATION 1111 11TH ST	ADDRESS (NUMBER AND STREET) 1111 11TH ST	CITY RICHLAND	STATE SC	ZIP CODE 29928

CHARGE AGGRAVATED BATTERY	CHARGE AGGRAVATED BATTERY	CHARGE AGGRAVATED BATTERY
STATUTE 16-9-2	STATUTE 16-9-2	STATUTE 16-9-2
WARRANT NUMBER 11-0511-1	WARRANT NUMBER 11-0511-1	WARRANT NUMBER 11-0511-1
ENTERED DATE 11/17/11	ENTERED DATE 11/17/11	ENTERED DATE 11/17/11
ISSUING MAGISTRATE JAMES, JAMES, JAMES	ISSUING MAGISTRATE JAMES, JAMES, JAMES	ISSUING MAGISTRATE JAMES, JAMES, JAMES
BOND AMOUNT \$1000	BOND AMOUNT \$1000	BOND AMOUNT \$1000
BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES	BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES	BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES
COMPLAINANT JAMES, JAMES, JAMES	COMPLAINANT JAMES, JAMES, JAMES	COMPLAINANT JAMES, JAMES, JAMES
DATE OF INCIDENT 11/17/11	DATE OF INCIDENT 11/17/11	DATE OF INCIDENT 11/17/11
ADDITIONAL CASE NUMBER 11-0511-1	ADDITIONAL CASE NUMBER 11-0511-1	ADDITIONAL CASE NUMBER 11-0511-1

CHARGE AGGRAVATED BATTERY	CHARGE AGGRAVATED BATTERY	CHARGE AGGRAVATED BATTERY
STATUTE 16-9-2	STATUTE 16-9-2	STATUTE 16-9-2
WARRANT NUMBER 11-0511-1	WARRANT NUMBER 11-0511-1	WARRANT NUMBER 11-0511-1
ENTERED DATE 11/17/11	ENTERED DATE 11/17/11	ENTERED DATE 11/17/11
ISSUING MAGISTRATE JAMES, JAMES, JAMES	ISSUING MAGISTRATE JAMES, JAMES, JAMES	ISSUING MAGISTRATE JAMES, JAMES, JAMES
BOND AMOUNT \$1000	BOND AMOUNT \$1000	BOND AMOUNT \$1000
BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES	BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES	BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES
COMPLAINANT JAMES, JAMES, JAMES	COMPLAINANT JAMES, JAMES, JAMES	COMPLAINANT JAMES, JAMES, JAMES
DATE OF INCIDENT 11/17/11	DATE OF INCIDENT 11/17/11	DATE OF INCIDENT 11/17/11
ADDITIONAL CASE NUMBER 11-0511-1	ADDITIONAL CASE NUMBER 11-0511-1	ADDITIONAL CASE NUMBER 11-0511-1

CHARGE AGGRAVATED BATTERY	CHARGE AGGRAVATED BATTERY	CHARGE AGGRAVATED BATTERY
STATUTE 16-9-2	STATUTE 16-9-2	STATUTE 16-9-2
WARRANT NUMBER 11-0511-1	WARRANT NUMBER 11-0511-1	WARRANT NUMBER 11-0511-1
ENTERED DATE 11/17/11	ENTERED DATE 11/17/11	ENTERED DATE 11/17/11
ISSUING MAGISTRATE JAMES, JAMES, JAMES	ISSUING MAGISTRATE JAMES, JAMES, JAMES	ISSUING MAGISTRATE JAMES, JAMES, JAMES
BOND AMOUNT \$1000	BOND AMOUNT \$1000	BOND AMOUNT \$1000
BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES	BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES	BOND TYPE / MAGISTRATE JAMES, JAMES, JAMES
COMPLAINANT JAMES, JAMES, JAMES	COMPLAINANT JAMES, JAMES, JAMES	COMPLAINANT JAMES, JAMES, JAMES
DATE OF INCIDENT 11/17/11	DATE OF INCIDENT 11/17/11	DATE OF INCIDENT 11/17/11
ADDITIONAL CASE NUMBER 11-0511-1	ADDITIONAL CASE NUMBER 11-0511-1	ADDITIONAL CASE NUMBER 11-0511-1

NAME OF NEXT OF KIN (LAST, FIRST, MIDDLE) JAMES, JAMES, JAMES	ADDRESS (NUMBER AND STREET) 1111 11TH ST	CITY RICHLAND	STATE SC	ZIP CODE 29928	HOME PHONE NUMBER 716-1111	WORK PHONE NUMBER 716-1111

DATE 11/17/11	TIME 11:00	ARRESTING OFFICER D. JAMES	AGENCY RCSO	DEPT NUMBER 1111	ADDITIONAL CASE NUMBER 11-0511-1

CASE NUMBER
080284152 10

IN INCIDENT DATE CLASS ARREST NUMBER		Trexler, Terry Alfred		W M		RACE SEX		DATE OF BIRTH		PHOTO NUMBER		
44	N	504	135	B	Bro	G	Grav	SOCIAL SECURITY NUMBER		WHILE SCARS AND MARKS		
ADDRESS NUMBER & STREET				Hopkins				STATE		ZIP CODE		
CITY				South Carolina				DRIVERS LICENSE NUMBER		STATE		
EMPLOYER OCCUPATION OR SCHOOL				PARENT / GUARDIAN				ADDRESS CITY AND STATE				
BOOKING OFFICER'S NAME				ARRESTING OFFICER				AGENCY		DEPT. NUMBER		
RICHLAND COUNTY DETENTION CTR.				B. Cohens				RCSO		1299		
ARRESTEE ARMED ☐ YES ☐ NO				WEAPON TYPE:				☐ SEM-AUTO ☐ FULL AUTO		☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY		
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFERRED TO OTHER AUTHORITY				This Jurisdiction: S - State C - Out of State U - Unknown								
ARREST LOCATION:				ADDRESS NUMBER AND STREET				Hopkins		STATE		
								ZIP CODE		29001		
CHARGE	Animal Harassment				Animal Harassment							
STATUS												
WARRANT NUMBER	I958888 ✓				I958893 ✓							
ENTERED DATE												
ISSUING MAGISTRATE	Hopkins, MCG.				II							
BOND AMOUNT												
BOND TYPE / MAGISTRATE												
COMPLAINANT	ASPCA Humane Soc.				II							
DATE OF INCIDENT	2/25/08				2/25/08							
ADDITIONAL CASE NUMBER												
CHARGE	Animal Harassment				Animal Harassment							
STATUS												
WARRANT NUMBER	I958889 ✓				I958889 ✓							
ENTERED DATE												
ISSUING MAGISTRATE	Hopkins MCG.				II							
BOND AMOUNT												
BOND TYPE / MAGISTRATE												
COMPLAINANT	ASPCA Humane Soc.				II							
DATE OF INCIDENT	2/25/08				2/25/08							
ADDITIONAL CASE NUMBER												
CHARGE	Animal Harassment				Animal Harassment				Kidnapping			
STATUS												
WARRANT NUMBER	I958891 ✓				I958891 ✓							
ENTERED DATE												
ISSUING MAGISTRATE	Hopkins MCG.				II							
BOND AMOUNT												
BOND TYPE / MAGISTRATE												
COMPLAINANT	ASPCA Humane Soc.				II							
DATE OF INCIDENT	2/25/08				2/13/2008							
ADDITIONAL CASE NUMBER					0302114413							
ARREST LOCATION				ADDRESS NUMBER AND STREET NAME				181 Humane Ln				
Columbia				C.C. 39099				(203) 783-1767				
DATE				DATE				DATE				
TIME				TIME				TIME				
OFFICER				OFFICER				OFFICER				
DATE				DATE				DATE				
TIME				TIME				TIME				

AGENCY I.D. SC0400000	DATE 02272008	TIME OF ARREST 2042	KICHLAND COUNTY SHERIFF'S DEPARTMENT	CASE NUMBER 6918518888

SINGLE ARREST REPORT

DEFENDANT NAME (LAST, FIRST, MIDDLE) TRENTER, JAMES WILLIAM		RACE M	SEX M	DATE OF BIRTH	PHOTO NUMBER
AGE 49	HEIGHT 509	WEIGHT 165	HAIR 3	EYES 1	SOCIAL SECURITY NUMBER
ADDRESS (NUMBER AND STREET) HOPKINS		CITY HOPKINS	STATE SC	ZIP CODE 29061	PHONE NUMBER
PLACE OF BIRTH HOPKINS		DRIVERS LICENSE NUMBER OR ID		STATE SC	
EMPLOYER OR OCCUPATION OR SCHOOL SC DEPT 35 AGRICULTURE		PARENT / GUARDIAN		ADDRESS (CITY AND STATE) COLUMBIA, SC	
BOOKING OFFICER'S NAME RICHARD COUNTY DETENTION CTR		ARRESTING OFFICER Johnson, Monica		S. NUMBER NICHANSON	AGENCY PCSE
ARRESTEE ARMED: ☐ YES ☒ NO		WEAPON TYPE ☐ SEMI AUTO ☐ FULL AUTO		☒ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY	
JUVENILE DISPOSITION: ☐ HANDLED / RELEASED ☐ REFERRED TO OTHER					
ARREST LOCATION HOPKINS		CITY HOPKINS	STATE SC	ZIP CODE 29061	

CHARGE	ILL TREATMENT / ANIMALS	ILL TREATMENT / ANIMALS	ILL TREATMENT / ANIMALS
STATUTE	47-01-0040 (A)	47-01-0040 (A)	47-01-0040 (A)
WARRANT NUMBER	1891851	1891850	1891849
ENTERED DATE	02272008	02272008	02272008
ISSUING MAGISTRATE	OLYMPIA	OLYMPIA	OLYMPIA
BOND AMOUNT			
BOND TYPE / MAGISTRATE			
VICTIM	HSPCA	HSPCA	HSPCA
DATE OF INCIDENT	02262008	02262008	02262008
ADDITIONAL CASE NUMBER			

CHARGE	ILL TREATMENT / ANIMALS	ILL TREATMENT / ANIMALS	
STATUTE	47-01-0040 (A)	47-01-0040 (A)	
WARRANT NUMBER	1891848	1891847	
ENTERED DATE	02272008	02272008	
ISSUING MAGISTRATE	OLYMPIA	OLYMPIA	
BOND AMOUNT			
BOND TYPE / MAGISTRATE			
VICTIM	HSPCA	HSPCA	
DATE OF INCIDENT	02262008	02262008	
ADDITIONAL CASE NUMBER			

CHARGE			
STATUTE			
WARRANT NUMBER			
ENTERED DATE			
ISSUING MAGISTRATE			
BOND AMOUNT			
BOND TYPE / MAGISTRATE			
VICTIM			
DATE OF INCIDENT			
ADDITIONAL CASE NUMBER			

VIC. NAME OR NEXT OF KIN (LAST, FIRST, MIDDLE) HSPCA		ADDRESS (NUMBER AND STREET NAME) 221 HUMANE LAND	
CITY COLUMBIA	STATE SC	ZIP CODE 29209	HOME PHONE NUMBER 7951267
WAS VICTIM NOTIFIED OF ARREST: YES ☒ NO ☐		VICTIM OR NEXT OF KIN WISHES TO BE PRESENT AT BOND HEARING: YES ☐ NO ☐	

S. NO. 1133	ARRESTING OFFICER Johnson, Monica	DATE 02272008	S. NO.	APPROVING OFFICER	DATE
		FOLLOW UP ☐ YES ☐ NO		OFFICER	DATE

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit G – Affidavit of Chris Cowan

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
James W. Trexler,	)	Civil Action No.: 2010-CP-40-1343
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AFFIDAVIT OF CHRIS COWAN
	)	
	)	
McClasky Newspapers, Inc., Richland	)	
County, and the Richland County	)	
Sheriff's Department,	)	
	)	
Defendants.	)	

I, Chris Cowan, being duly sworn, state:

1. The matters stated herein are known by me herein are known by me to be true of my personal knowledge unless stated upon information and belief, and, as to those matters, I believe them to be true.

2. I am a Captain in the Richland County Sheriff's Department.

3. I supervise the office of public information for the Richland County Sheriff's Department.

4. On Wednesday, February 27, 2008, while I was the Senior Public Information Coordinator for the Richland County Sheriff's Department, I disseminated a press release regarding the arrest of Hazelene E. Trexler, Terry A. Trexler and James Trexler. A true and authentic copy of the release is attached hereto as Exhibit A and incorporated herein by reference.

5. The release was sent by me to, among others, The State newspaper, The Associated Press, WLTX, WACH and WOLO.

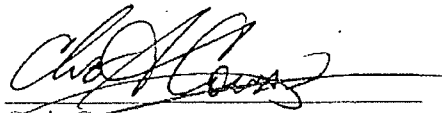
DLSCN 02/11/11

6. The press release was prepared by and on behalf of the Richland County Sheriff's Department.

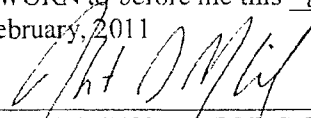
7. The press release that is attached hereto as Exhibit A is a public record.

8. The press release that is attached hereto as Exhibit A stated that the charges made against James Trexler were, "5 counts of ill treatment of animals" and "1 count of kidnapping (stems from an incident where J. Trexler held a HSPCA investigator against her will/refused to allow the investigator to leave the farm on 2/13 during an evaluation of the horses)."

Further affiant sayeth not.


Chris Cowan

SWORN to before me this 9th day of
February, 2011


NOTARY PUBLIC FOR S.C.

My commission expires: 11/2/16

[illegible]

Richland County Sheriff Leon Lott announced that at approximately 8:00 PM tonight the Richland County Sheriff's Departments Fugitive Task Force apprehended Hazleene E. Trexler (DOB 7-12-37), Terry A. Trexler (DOB 7-16-63) and James Trexler (DOB 1-14-60) at 412 Derby Lane In Hopkins.

Sheriff Leon Lott added that this case is disturbing because these horses are helpless to the hands of their owners and the Trexlers have proven time and again that they have no business owning any animals. Sheriff Leon Lott stated that investigators from the Sheriff's Department and the HSPCA will continue to work with the Solicitors Office here and authorities in Georgia to make sure the Trexlers receive the punishment they deserve and are prosecuted to the fullest extent of the law. Sheriff Leon Lott stated that the Trexlers have been transported to Alvin S. Glen Detention Center where they await a bond hearing.

1 count of kidnapping (stem from an incident where J. Traister held a MSPCA investigator against her will/refused to allow the investigator to leave a farm on 2/13 during an evaluation of the horse)

KESU PRC, for the date rec
 Lt. Chien Gorman
 Black and County 33-411, 11/20/1962
 Section Public Information - Confidential
 WJZ Time 12:00 P. M.
 California, South Carolina 2012
 103 576 306 10/20/62 576 306 10/20/62
 PRC P. p. 103. 10/20/62
 103 576 306 10/20/62 576 306 10/20/62

113 P.O. Box 100, New York, NY 10001
 Kelly G. G. G. G.
 113 P.O. Box 100

Exhibit A

DISC# 02/11/11

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit H – Article from The State Newspaper dated February 28, 2008; Excerpt from
Deposition of Chris Cowan

URGEON'S SUIT

pital ised 'aud

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ough 'scheme'
rrals, suit says

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urgeon has prompted a
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and Medicaid irregular-
omey regional hospital.
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Perry dealt the Sumner
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health care claims for re-
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TUOMEY PAGE A5

TAX RETURNS

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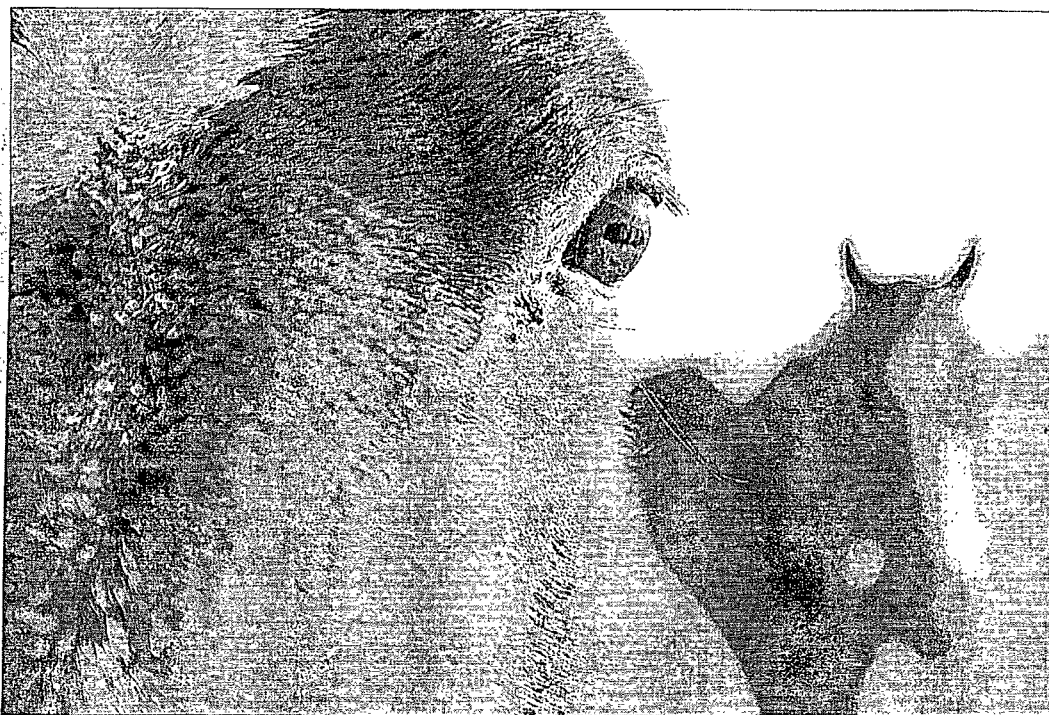
IS IT STILL FREE?

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Page A8

HORSE MISTREATMENT INVESTIGATION

Assistant ag chief faces kidnap charge



These two mares were with horses seized from a pasture in Eastover by the Humane Society for the Prevention of Cruelty to Animals.

Trexler jailed, suspended from state post

BY ISHMAEL TATE
tate@thestate.com

An assistant state agriculture commissioner is in jail — charged with kidnapping after police say he threatened and detained a Humane Society investigator looking into allegations of abused horses at the farm where he lives.

James W. Trexler, 48, also is charged with five counts of ill treat-

ment of animals. His mother and brother also face charges of ill treatment of animals.

Trexler and his mother and brother — Hazelene E. Trexler, 70, and Terry A. Trexler, 44 — were arrested at 8 p.m. Wednesday by the Richland County Sheriff's Fugitive Task Force at James Trexler's home, 604 Derby Lane in Hopkins, Sheriff Leon Loft said.

Hazelene Trexler is charged with

28 counts of ill treatment of animals. Terry Trexler is charged with 23 counts of ill treatment of animals.

Loft called the treatment of the horses "severe and barbaric," adding, "the Trexlers have proven time and again that they have no business owning any animals."

The fugitive task force was called in to apprehend the Trexlers

JAMES TREXLER

Assistant commissioner
of the S.C. Department
of Agriculture

Current job: Director of
administration, overseeing
budgeting, procurement and
information technology for
Department of Agriculture

Residence: Hopkins

Salary: \$64,000

SEE HORSES PAGE A5

WILLIAM F. BUCKLEY : 1925-2008

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FROM PAGE ONE

THE ALLEGATIONS

Administrators at Tuomey Regional Medical Center, when asking doctors to affiliate with the hospital, also asked them to refer their patients to Tuomey for services. Such self-referrals stifle competition and drive up costs, the Justice Department says. And they violate Medicare and Medicaid regulations hospitals must follow to receive federal and state money for treating low-income patients, children, seniors and the disabled.

Sumter surgeon Michael Drakeford did not sign an agreement with Tuomey and later sued. The U.S. Justice Department has taken over as lead plaintiff in the case.

ABOUT TUOMEY

Tuomey (pronounced "too-me") Hospital, now Tuomey Regional Medical Center, was founded in Sumter in 1924 with an endowment from the late Timothy Tuomey. It is a private, nonprofit facility serving patients from Sumter and surrounding counties. The Tuomey Healthcare System includes Tuomey Medical Park in Sumter, which offers non-emergency outpatient care. Tuomey has:

- 266 beds
- 150 affiliated doctors
- 10 operating suites
- 47-bed outpatient surgery department; on-campus outpatient testing facilities

ral, the hospital got money and the doctor got money," Acker said.

Drakeford's suit was filed under seal in federal court in Columbia in October 2005. Since then, the federal government has investigated Drakeford's claims.

Late last year, the government announced the claims had merit and said it would take over the case.

This type of federal intervention is allowed where private individuals, mostly whistle-blowers, bring suits alleging companies are defrauding the government.

In addition to paying fines should it lose, Tuomey might also have to pay Drakeford up to 25 percent of the fine.

The lawsuit is brought under an ancient legal doctrine, called *qui tam*, a reference to a Latin phrase for "acting on behalf of the king as well as for yourself." It lets an individual initiate a suit on behalf of the government against a company or individual that does business with the government.

The government intervenes only if a case has merit, said Charles Miller, a Department of Justice spokesman. The department gets involved in less than 25 percent of *qui tam* actions filed each year, he said.

In *qui tam* cases, the government nearly always gets a settlement or wins in a jury trial, Miller said. If the government doesn't join a *qui tam* action, "very few of those are successful," he said.

Bart Daniel, a former U.S. attorney for South Carolina and one of Tuomey's lawyers, said businesses often settle this kind of case to avoid monstrous legal fees. "A hospital must always consider what is best for patients,"

Carl Muller, one of the few S.C. lawyers to win a *qui tam* law suit in recent years, said the government's involvement means it believes a lot of money is involved.

In 2006, Muller and the Justice Department won a \$5.2 million settlement involving questionable billing against University Medical Associates, a group of doctors affiliated with MUSC. The settlement was reached

HORSES

FROM PAGE A1

because investigators "received information that they were getting ready to flee," Lott said, but he wouldn't elaborate.

James Trexler's kidnapping charge stems from a Feb. 13 incident during which a Humane Society investigator was parked on property adjacent to the Hopkins farm where he lives to investigate allegations of mistreatment of horses there, Lott said.

When Trexler saw she had a camera, Lott said, he drove his truck onto the other property and blocked the drive so she couldn't leave. He then threatened and tried to intimidate her into giving him the camera, Lott said.

Trexler refused to let her leave until a sheriff's deputy arrived, Lott said.

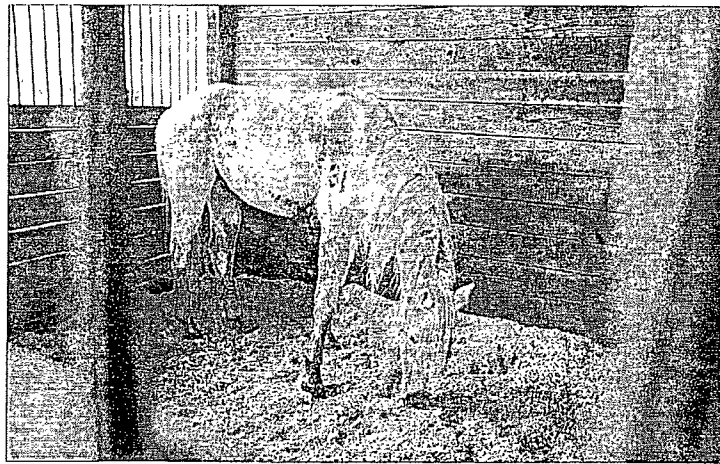
The kidnapping charge, a felony, is punishable by up to 30 years in prison. Ill-treatment of animals is a misdemeanor punishable by up to two years in prison and a fine up to \$2,000.

All three are in the Richland County jail, awaiting bail hearings.

Earlier Wednesday James Trexler had been suspended by S.C. Agriculture Commissioner Hugh Weathers from his \$81,000 job as assistant commissioner of administration pending the outcome of the Humane Society's investigation.

The suspension came a day after Humane Society investigators say they removed five malnourished horses from the Hopkins farm in southeast Richland County where Trexler lives with his wife, Julie Trexler.

When reached earlier in the day, James Trexler's attorney,



This Arabian horse is one of a group seized by Humane Society officials from the family of suspended Department of Agriculture assistant commissioner of administration James IV. Trexler from a pasture in Eastover and a farm near Hopkins.

Richard Blackmon, declined comment. He could not be reached after the Trexlers were arrested.

Efforts to reach Hazelen Trexler and Terry Trexler earlier in the day were unsuccessful.

Hazelen Trexler told Humane Society investigators she owned the five horses found at the Hopkins farm and 23 more malnourished horses seized on Monday from property on Zeigler Road in Eastover, Humane Society for the Prevention of Cruelty to Animals executive director Josh Gowans said.

The 23 horses taken Monday had no food or shelter and only a 15-gallon trough of water, Gowans said. The five seized Tuesday from a stable at the Hopkins farm were "knee-deep" in manure, had no

food and were in worse condition than the horses seized Monday, he said.

"There was very little evidence they were let out" of the stable, Gowans said.

The horses seized in Hopkins Tuesday were evaluated by a veterinarian and given an initial score — "5" is ideal, "1" is considered very poor — based on the condition of their bodies.

None was scored a "5," but two were scored "4"; one was scored "3½," one was scored "3"; and one was scored "1½."

Based on the makeup of both groups seized — including four stallions, a pregnant mare, and three foals — Gowans suspects the horses were being bred and sold.

After further evaluation by veterinarians, the horses will be sent to foster homes across the state.

Hazelen and Terry Trexler also are wanted in Georgia on a total of 61 misdemeanor counts of abuse and neglect involving nearly 70 horses, Jefferson County, Ga., code enforcement officer Jimmy Kitchens said. The majority of those horses are in the state's custody.

The horses officials discovered there in October were in worse condition than those found in Hopkins and Eastover.

Most were scored as "1," Kitchens said. "It was the same thing — not feeding them, not taking care of them."

Reach Tate at (803) 771-8549.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) OF THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-1343

James W. Trexler,)
Plaintiff,)
vs.)
McClatchy Newspapers, Inc., Richland)
County, and the Richland County)
Sheriff's Department,)
Defendants.)

Deposition of CHRIS COWAN, taken by Doris Tompkins
Brown, Certified Verbatim Reporter and Notary Public
in and for the State of South Carolina, commencing at
10:13 A.M. on September 8, 2011, and taken at the
Davidson and Lindemann Law Firm, 1611 Devonshire, Columbia,
South Carolina.

APPEARANCES

FOR THE PLAINTIFF: W. Westbrook Wills, III
Austin, Fowler & Wills,
LLP
38 Broad Street
Suite 200
Charleston, South Carolina
and
William H. Johnson
2 North Brooks Street
Manning, South Carolina

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 653
Sumter, South Carolina 29151
(803) 499-2434

COPY

1 Q. Okay. Thank you.

2 E-MAILS SENT TO PAPER MARKED AS

3 PLAINTIFF'S EXHIBIT NUMBER FIFTEEN

4 Q. I'm going to show you what's Plaintiff's Exhibit
5 Fourteen.

6 A. Fifteen.

7 Q. Fifteen. Thank you. Okay. All right. Plaintiff's
8 Exhibit Fifteen, can you identify that document?

9 A. This is an e-mail that I sent to the paper.

10 Q. Okay. Which paper?

11 A. "The State" newspaper.

12 Q. Okay. And this is another question I have about the
13 placement of that document in the materials produced.
14 Is that e-mail a response because it was in with all
15 of the e-mails that you had sent regarding this
16 matter? It doesn't have any -- it doesn't have any
17 transmission data at the top. It doesn't have the
18 address bar up there to whom it was sent or the
19 context at all, and I'm hoping you can help me
20 understand where that fits in. To whom -- and so,
21 I'll ask, to whom did you send that e-mail?

22 A. This went to "The State" paper and I can't tell you
23 who it went to, but I remember sending it and that it
24 was because the retraction -- we clearly indicated in
25 the -- in the retraction or the correction that the

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 Humane Society was giving us that information; that it
2 was -- the information was inaccurately reported. And
3 we -- and I'm in the business of making sure that the
4 correction goes out correctly, and that was that the
5 Humane Society gave that information and they did not
6 do that. They did not indicate where that erroneous
7 information came from.

8 Q. Okay. Would you mind reading that e-mail?

9 A. "Since we have a great relationship, I feel it okay to
10 say thanks for putting the hit in the eye squarely on
11 me in this morning's paper. I realize I'm responsible
12 for the news releases that go out from RCSD, and you
13 guys are worried about backlash from a possible
14 attorney. The Humane Society told you guys yesterday
15 that it was there bad information that caused the
16 error. I even got an e-mail from Kelly Davis stating
17 the same. That was what a boxer would call a low
18 blow. Easily could have been written to reflect our
19 making the corrections and the HSPCA being involved in
20 the error."

21 Q. Okay. Did -- to whom do you say you sent this?

22 A. To the paper?

23 Q. Was it "The State" paper?

24 A. "The State" paper.

25 Q. Okay. Did "The State" paper have the corrected

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit I – Plaintiff's Answers to Defendant's Requests for Admissions

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
James W. Trexler,)
)
Plaintiff,)
)
vs.)
)
Richland County and the Sheriff of)
Richland County, in his official)
Capacity, a/k/a Richland County)
Sheriff's Department,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case Number: 2010-CP-40-1343

PLAINTIFF'S ANSWERS TO
DEFENDANT'S REQUESTS
FOR ADMISSIONS

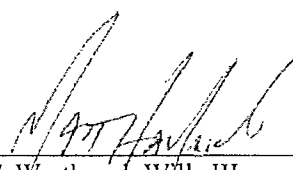
Plaintiff, James Trexler, by and through his undersigned attorney, hereby answers
Defendant's Requests for Admissions, dated July 12, 2013 as follows:

1. At the relevant times in the Complaint, Chris Cowan's actions with respect to Plaintiff *did not constitute* actual malice.

ANSWER: Denied.

2. At the relevant times in the Complaint, Chris Cowan's actions with respect to Plaintiff *did not constitute* an intent to harm.

ANSWER: Denied.



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Austin, Fowler & Wills, LLP
38 Broad Street
Suite 200
Charleston, SC 29401
wwills@austinfowlerwills.com
(843) 805-6300 - tel.
(843) 278-9333 - fax
-and-

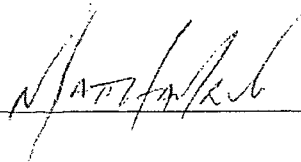
William H. Johnson
Law Offices of William H. Johnson, LLC
411 North Brooks Street
PO Box 137
Manning, South Carolina 29102
(803) 435-0909 - tel.
(803) 435-2858 - fax
william@whjohnsonlaw.com
-and-

Matthew D. Hamrick
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Fax: (877) 524-5023
matt@matthamricklaw.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of August, 2013 served this pleading or paper by placing a copy in the US Mail, First Class and postage pre-paid, addressed as follows:

Robert D. Garfield, Esquire
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202-8568



James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit J – Order Granting Summary Judgment in Companion Case,
Civil Action Number 2010-CP-40-1249

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
James W. Trexler,	)	Civil Action No.: 2010-CP-40-1249
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING
	)	SUMMARY JUDGMENT
The Associated Press, Barrington	)	
Broadcasting South Carolina Corp.,	)	
Raycom TV Broadcasting, Inc. The	)	
Spartanburg Herald Journal, Inc. and the	)	
Pacific & Southern Co., Inc.,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
 FILED
 2012 OCT 30 PM 3:34
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This matter came before the court on defendants' motion for summary judgment. A hearing on the motion was held in open court on January 19, 2012 with all parties appearing through counsel.

Plaintiff's Amended Complaint, filed June 23, 2010, initially included an additional defendant, the *Herald-Journal* newspaper of Spartanburg and, in addition to the defamation claim before the court, claims for civil conspiracy, outrage and negligence. Plaintiff voluntarily dismissed the suit against the newspaper and dismissed with prejudice all claims but the defamation claim prior to the hearing on defendants' motion for summary judgment.

Defendants advanced as grounds for summary judgment the bar of the statute of limitations, absence of falsity, and lack of proof of the requisite level of fault, either "actual malice" or common law malice. Defendants supported their motion with the pleadings, responses to interrogatories and requests for admission together with affidavits, certified copies of records and excerpts of

SCANNED

plaintiff's deposition. Plaintiff's counter-affidavits addressed only his status as a public official.

Rule 56(e), SCRCP requires a party responding to a properly supported motion for summary judgment to set forth by affidavit or otherwise "specific facts showing that there is a genuine issue for trial." A nonmoving party who bears the burden of proof on an issue, responding to a motion that points out that there is an absence of evidence to support the nonmoving party's action, "may not rest upon the mere allegations...of his pleadings." Rule 56(e), SRCP. As the Supreme Court of South Carolina held in *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991), the nonmoving party is charged with the responsibility of coming forward with specific facts demonstrating a genuine issue of fact for trial, saying:



Once moving party carries its initial burden, opposing party must, under Rule 5(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but must come forward with "specific facts showing that there is a *genuine issue for trial*." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original).

Baughman, supra, 410 S.E.2d at 545.

A nonmoving party who fails to make a showing of facts sufficient to establish an essential element of that party's claim on which that nonmoving party bears the burden of proof cannot establish that a genuine issue of material fact exists, and the moving party is entitled to summary judgment as a matter of law. *Id.*

Plaintiff filed nothing with the court which identified specific facts in dispute relative to his libel claim, relying entirely on counsel's description of material not before the court to argue that questions of material fact existed.

STATUTE OF LIMITATIONS

Turning first to the statute of limitations issue, it is undisputed that the allegations challenged in this motion are contained in an Amended Complaint which together with an Amended Summons was filed on June 23, 2010. Defendants take the position that the applicable two-year statute of limitations bars plaintiff's claim with respect to all publications prior to June 22, 2008 because prior to the filing of the Amended Complaint no defendant identified in the Amended Complaint had been named in any action initiated by plaintiff. S.C. Code Ann. §15-3-550(1) (Rev. 2005). Two legal issues are presented by the statute of limitations defense: (1) when did plaintiff's libel claim accrue, and (2) did the allegations in the Amended Complaint "relate back" to an earlier filed Complaint?

First, a cause of action for libel accrues so as to commence the running of the statute with publication of the material upon which the claim is based. As the South Carolina Court of Appeals has held, a plaintiff's claim for defamation "accrues at the moment when the plaintiff has a legal right to sue on it. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962)." *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770, 774 (Ct. App. 1997). As the Court of Appeals explained in its holding in *Jones, supra*, a defamation claim accrues upon publication whether or not a plaintiff is aware of the publication "because South Carolina has not adopted the discovery rule in libel and slander cases." *Id.*, 775. In response

to defendants' interrogatory number 6, filed by defendants in support of their motion, plaintiff identified by date, publisher and headline publications contended to be defamatory occurring between February 26, 2008 and February 1, 2011. For all but three publications, plaintiff's claim for defamation accrued between February 26, 2008 and March 21, 2008. The Amended Summons and Amended Complaint were filed June 23, 2010. Application of the statute bars plaintiff's action for all publications prior to June 22, 2010 unless the allegations in the Amended Complaint "relate back" to an earlier filed complaint.

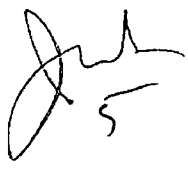
The second issue then is, did the Amended Complaint which for the first time identified these defendants as parties "relate back" to an earlier filed complaint which did not name these defendants, but listed thirteen (13) defendants identified individually by name and "ALL MEDIA COMPANIES THAT PRODUCED OR REPORTED ON ANY EVENT RELATING TO THE PLAINTIFFS IN 2008, 2009 AND 2010?" The Complaint, which was purported to be amended by the Amended Complaint that is the subject of this motion, named as plaintiffs Hazelene E., Terry A. and James W. Trexler. This Complaint was filed on February 23, 2010 and was never served on any of the defendants now appearing before the court. If the allegations of the Amended Complaint "relate back" to this Complaint, there is no statute of limitations bar as the statute would have been tolled by the filing of the February 23, 2010 Complaint. At the motion hearing counsel for plaintiff argued that the Amended Complaint should relate back as the naming in the February 23 Complaint of "ALL MEDIA COMPANIES" as defendants was the equivalent of naming unknown "John Doe" parties and providing names when the identities of these unknowns became

available. There are two problems with counsel's assertion. Plaintiff testified in his deposition that he had no knowledge of the earlier-filed Complaint, and that Complaint did not comply with the applicable procedural rule for designating unknown parties.

The South Carolina Rules of Civil Procedure provide a mechanism for designating unknown parties, stating in the applicable part:

Unknown Parties. When a party does not know the name of an adverse party he may state that fact in the pleadings and designate such adverse party by any name and the words "whose true name is unknown," and when his true name is discovered the pleadings must be amended accordingly.

Rule 10(a)(1), SCRCP.



The plaintiffs in the February 23, 2010 filing failed to comply with the requirements of this rule and did not state that any party's true name was unknown. There is nothing in the record to indicate that the designation "ALL MEDIA COMPANIES" was a designation of adverse parties "whose true name[s] were unknown" or perhaps more significantly, that the defendants now before the court were being identified in the Amended Complaint in place of previously unknown parties. The record does reflect in contrast to counsel's argument that the Amended Complaint bears all the attributes of a new, separate litigation with a single plaintiff, rather than three plaintiffs, bringing an action against parties which had not been identified previously, while each of the previously named defendants was dropped. The addition of new parties, such as defendants herein, is not an amendment that relates back to a period prior to the running of a statute of limitations. *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009). Similarly destructive to plaintiff's argument that the Amended Complaint was

filed to correct his misidentification of defendants against which he had intended to bring an action, is his deposition testimony that he was not aware of the February 23, 2010 Complaint in which he was named as a plaintiff along with his mother and brother, and that he had no knowledge of such a suit. If plaintiff did not know about the Complaint naming "ALL MEDIA COMPANIES" as defendants he could not have by that document misidentified these defendants later named in the Amended Complaint. It seems obvious plaintiff did not misidentify any defendant in a suit he did not know existed.

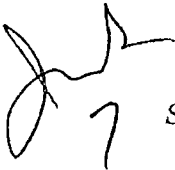
 The action against these defendants was commenced with the filing of the Summons and Complaint on June 23, 2010. Applying the limitation of section 15-3-550(1), plaintiff is barred from asserting a libel claim for any publication prior to June 22, 2008. Asked in defendants' interrogatories to "Identify by date, publisher and headline any publication plaintiff contends to be defamatory" plaintiff identified only three publications subsequent to June 22, 2008. These publications were made on December 15, 2008 and two on February 1, 2011 on WLTX-TV (operated by defendant Pacific & Southern Company, Inc.). Since two of these publications occurred subsequent to the filing of the Amended Summons and Amended Complaint, they are not before the court. Allegations in a complaint must relate to the facts existing at the time of the filing of the complaint, and the issues raised by the allegations are to be determined as of the date of the complaint; therefore, the publications identified in response to defendants' interrogatories, which were made subsequent to the date of the Amended Complaint, can provide no support for plaintiff's libel claim. See 71 C.J.S. Pleading §327. All other publications identified by plaintiff in his response

to interrogatories, with the exception of a publication on WLTX on December 15, 2008, are barred by the operation of section 15-3-550(1).

FALSITY

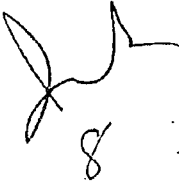
The clearest official statement of South Carolina libel law is contained in then Justice Jean H. Toal's concurring opinion in *Holtzscheiter v. Thomson Newspapers, Inc.* [*Holtzscheiter II*], 332 S.C. 502, 506 S.E.2d 497 (1998). Justice Toal started her analysis with an articulation of the elements of defamation:

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. See Restatement [2d Torts] §558.

 *Supra*, 506 S.E.2d at 506.

Plaintiff complains in his Amended Complaint that defendants published falsely that he was a kidnapper, and that authorities had removed from his property horses that had been starved and abused. Defendants acknowledge that the news report that plaintiff had been charged with kidnapping was false, but, as will be discussed more fully below, rely on the common law fair report privilege to defeat plaintiff's claim in this regard. With respect to the other publications claimed to be false, defendants point to plaintiff's deposition testimony wherein he admitted that it was true that he had been arrested for mistreatment of horses and that the warrants by which plaintiff had been arrested stated that plaintiff owned the horses that were mistreated. When a publication concerns a matter of public interest, such as an accusation of the commission of criminal acts, or when

the publisher is a media defendant, a plaintiff must prove the falsity of the publications upon which the libel claim rests. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006). Plaintiff made no submission in response to defendants' motion to demonstrate the existence of genuine issues of fact with respect to the falsity of the publications, and his allegations alone are insufficient to overcome defendants' showing.



Beyond plaintiff's failure to offer evidence to indicate that a genuine issue of material fact existed with regard to the falsity of the publications, defendants demonstrated that the publications were true or substantially true. In the context of a libel claim, truth or substantial truth of the publication is an absolute defense. *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994), cert. denied 516 U.S. 1172 (1976). In analyzing a claim of falsity, a court is to examine the "gist" or "sting" of the publication, and if either is substantially true, other inaccuracies in the publication will not constitute the requisite falsity to support a libel claim. *Hearst-Argyle Television, Inc.*, 561 F.Supp. 2d 546 (D.S.C. 2008) (applying South Carolina law); *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976); *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (1967). The "gist" and the "sting" of the publications regarding plaintiff were that plaintiff had been arrested for mistreatment of horses he owned, and the mistreatment consisted of depriving the horses "of necessary quantities of wholesome foodstuff suitable for the species and age." These publications were true or substantially true as borne out by the arrest warrants submitted to the court by defendants in support of their motion as these

warrants authorized the arrest of plaintiff for the abuse of horses which the warrants said he owned.



Plaintiff's counsel without submitting any supporting affidavits, or even filing with the court the news reports upon which this action rests, argued that the publications were false because they reported that the horses were "starved" and plaintiff was associated with the mistreatment of more horses than were identified in the arrest warrants. The difference between "starved" and deprived "of necessary quantities of wholesome foodstuff" is insufficient to make the reports false. A common definition of "starve" includes, "To suffer from deprivation," *Webster's II New College Dictionary* (1995), and plaintiff was charged in five arrest warrants with intentionally and knowingly depriving horses of food. Plaintiff's counsel also argued that the publications were false because they connected plaintiff with far more horses than were identified in the arrest warrants. Even without the publications before the court it may be assumed that the publications did connect plaintiff with more horses than were identified in the five arrest warrants before the court. The arrest warrants identified but five horses which were said to have been owned and mistreated by plaintiff whereas the eight True Bills, submitted to the court by defendants in support of their motion, returned by the Richland County Grand Jury indicting plaintiff for felony "Ill-treatment of animals" identified forty-eight (48) horses upon which the Grand Jury found plaintiff had inflicted "excessive or repeated unnecessary pain or suffering." Plaintiff must meet his burden of proof on falsity by demonstrating by evidence rather than conjecture or allegation that there is a genuine issue of material fact for trial. Plaintiff's arguments that there is a difference between

starved and deprived of food and he was tied in the publications to more horses than were mentioned in the arrest warrants do not create a genuine issue of material fact for trial. Based on the record before the court, defendants have shown the news reports as characterized by plaintiff were true or substantially true. There can be no libel claim for the publication of reports that are true or substantially true, and plaintiff in responding to the motion failed to provide any support by affidavit or otherwise for his contention that false publications had been made.

FAIR REPORT PRIVILEGE



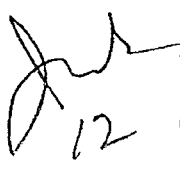
As discussed above, defendants reported that plaintiff had been arrested for kidnapping, and this report was not true. That having been said, the report of the kidnapping charge by these defendants cannot be the basis for a libel claim as the reports were based on the contents of a press release prepared and disseminated by the Richland County Sheriff's Department. Defendants filed the affidavit of Sheriff's Department Captain Chris Cowan to establish that he prepared the press release that identified plaintiff as having been arrested for kidnapping, and that he disseminated the press release to defendants herein and others. It has long been the law of South Carolina that fair and accurate reports of official acts, records and reports are privileged. *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982); *Reinhardt v. State-Record Co.*, 235 S.C. 480, 112 S.E.2d 500 (1960); *Lybrand v. The State Co.*, 179 S.C. 208, 184 S.E. 580 (1936). Plaintiff argued that a press release was not a "public" record, thereby making inapplicable defendants' fair report privilege claim. Plaintiff cited no authority for this

proposition and plaintiff's argument was not persuasive. The privilege urged by defendants attaches to official acts and records, and the dissemination by the Sheriff's Department of a press release describing criminal charges leveled against plaintiff and his family members is beyond doubt an official record. Plaintiff argues that since the press release was disseminated by e-mail rather than facsimile or paper copy it cannot be a record, but cited no authority for this proposition. The scope of the fair report privilege does not turn on the method of delivery or presentation of the official record or act. The official, privileged communication in *White, supra*, was a statement by the mayor at a press conference and on a radio talk show. The fair report privilege attaches to the communication and not the method of its delivery. But, plaintiff's narrow view of what constitutes a record notwithstanding, under the South Carolina Freedom of Information Act a press release prepared and used by the Sheriff's Department is a public record regardless of its physical form or characteristics. S.C. Code Ann. §30-4-20(c) (Rev. 2007). The Sheriff's Department got the facts wrong on the kidnapping charge in the press release, but the Department's error does not defeat defendants' privilege which attached to defendants' accurate publications of the charges contained in the press release.

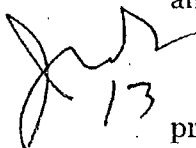
FAULT ON THE PART OF THE PUBLISHER

At common law libel was a strict liability tort with an accompanying presumption of fault in the form of common law malice, but the law of libel has undergone significant changes since 1964, and the common law presumption of malice no longer applies placing on plaintiffs the burden of proving the requisite level of fault on the part of a defendant. The fault burden, as Justice Toal has

explained is influenced by a plaintiff's status as a private or public person, "The degree of fault a plaintiff must establish depends upon his status as a public or private figure." *Holtzscheiter II*, *supra*, 506 S.E.2d at 507. A public official or public figure must prove "actual" or "constitutional" malice. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000). A private figure plaintiff bringing a libel action based on a publication related to a matter of public interest and published by a media defendant cannot rely on the common law presumption of common law malice, but must prove that a publisher acted with common law malice. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006).

 Each of the defendants before the court is a "media" defendant, and undoubtedly the arrest and felony indictment of the state's Assistant Commissioner of Agriculture on charges of abusing horses is a matter of public interest. *Philadelphia Newspapers, Inc.*, *supra*; see, *Doe v. Berkeley Publishers*, 329 S.C. 412, 496 S.E.2d 636 (1998). At a minimum, since plaintiff is not entitled to rely on the common law presumption of malice, he is obligated to come forward with evidence in the form of specific facts to support the proposition that a genuine issue of material fact exists with respect to fault, malice, on the part of the publishers. Plaintiff has pointed to nothing in the record that would satisfy this burden with respect to either common law malice or constitutional malice. Nothing filed by plaintiff in response to defendants' motion addresses either version of malice, and no witness listed by plaintiff in response to defendants' interrogatories is identified as one who will provide evidence on

malice. Since the burden of proof on the malice issue rests with plaintiff, his failure to demonstrate the existence of specific facts showing that there is a genuine issue for trial relative to either variety of malice is fatal to his claim for libel. *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986); *Baughman v. American Tel. & Tel. Co.*, *supra*. Plaintiff's attempt to cite comments posted by third parties on defendants' websites as evidence of malice is unavailing. Congress has by statute insulated those who provide interactive websites from liability as publishers of the comments posted by third parties. *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997); 47 U.S.C. §230. Plaintiff has failed to demonstrate by reference to the material before the court specific facts in dispute on either type of malice, and, as discussed above, he may not rely on mere allegations in his pleadings to meet his burden. *Baughman, supra*.

 Plaintiff contends that he is a private figure. Even if plaintiff were a private figure for purposes of this litigation, he has failed to carry his burden on the fault issue in opposition to defendants' motion. Plaintiff has pointed to nothing in the record that demonstrates he has evidence to establish at trial that defendants acted with common law malice, *e.g.*, hatred, ill will, spite or conscious disregard of plaintiff's rights, in publishing the news reports of which he complains. Asked in his deposition if he could identify any journalist or any person in defendants' organizations who might bear ill will toward plaintiff, he testified no.

Even assuming plaintiff's private figure status is at variance with the material before the court. It seems clear beyond doubt that plaintiff is a public official in the context of this litigation. He acknowledged in his letter of

resignation, filed by defendants in support of their motion, that he was an Assistant Commissioner of Agriculture, and that he helped to lead the agency. Plaintiff testified in his deposition, and the Commissioner of Agriculture testified in his deposition, that plaintiff was the department's liaison with the General Assembly, the State Budget and Control Board and the Board of Trustees of the University of South Carolina as project manager for the relocation of the State Farmer's Market.

Plaintiff sought to minimize the significance of his title as Assistant Commissioner, but the title, acknowledge by plaintiff in his resignation letter signified to those with whom plaintiff came in contact that he had responsibility for the operation of a state agency. Plaintiff himself acknowledged in his deposition that he had an important position in the agency, saying, "I went there as legislative liaison and I ran the agency." Had plaintiff's title been "head bookkeeper" or something similarly limited, he might be considered a private figure for some cases, but in the context of publications concerning his arrest and indictment for mistreatment of horses, public interest in his activity in this particular context, apart from his title, makes him a public official. *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980). As a public official, plaintiff was obligated in response to the motion for summary judgment to demonstrate that he had clear and convincing evidence of actual malice. *Anderson v. Liberty Lobby, supra*; *New York Times Co. v. Sullivan, supra*; *Elder v. Gaffney Ledger, supra*. Plaintiff was obligated to demonstrate with specific facts that the persons making the decisions to publish the reports of which he complains in fact entertained serious doubts as to the truth of the publications or had a high degree

14

of awareness of probable falsity of the publications. *Elder, supra*. Plaintiff made no such demonstration, nor did he identify in his responses to defendants' interrogatories any witness who could address the issue of constitutional or actual malice on the part of any defendant. Plaintiff's counsel noted at argument that many depositions had been taken in the case, including the depositions of numerous reporters from defendant organizations, but none of these depositions was either filed or identified as containing testimony that would establish actual malice. Plaintiff has failed to make the requisite showing on actual malice.

CONCLUSION

Based on the foregoing, it is clear that plaintiff has failed to meet his burden in responding to a properly supported motion for summary judgment. Each publication cited by plaintiff as the basis of his libel claim, save one, is either barred by the statute of limitations or outside the scope of his Amended Complaint. But, beyond the statute of limitations issue, defendants have demonstrated with the material filed in support of their motion that the publications complained of by plaintiff relative to his arrest and his indictment for mistreatment of horses are true or substantially true. Plaintiff had the burden of presenting evidence to demonstrate specific, material facts in dispute, but failed to do so. The publications concerning plaintiff's arrest for kidnapping while untrue are privileged as a matter of law. Finally, plaintiff has not come forward with any evidence to demonstrate the existence of a genuine issue of material fact on the malice component of his claim. Plaintiff was a public official for purposes of this action, but his response to the motion would not have been


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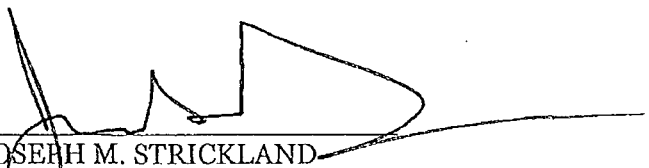
adequate to establish the existence of a genuine issue of material fact on the malice of the defendants even if he were a private figure.

For the reasons stated herein, IT IS HEREBY ORDERED that defendants' motion for summary judgment be, and the same hereby is, granted, and the within-captioned action is dismissed.

AND IT IS SO ORDERED.

Columbia, South Carolina

Oct. 25, 2012



JOSEPH M. STRICKLAND
SPECIAL CIRCUIT COURT JUDGE
SITTING BY DESIGNATION OF THE
CHIEF JUSTICE

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit K – Excerpts From Deposition of Elisabeth Perry

State of South Carolina) Court of Common Pleas
County of Richland) Fifth Judicial Circuit
No.: 2010-CP-40-1343

James W. Trexler,)
Plaintiff,)
vs.) Deposition of
McClatchy Newspapers,) ELISABETH E. PERRY
Inc., Richland County,)
and the Richland County)
Sheriff's Department,)
Defendants.) January 17, 2012

Deposition on oral examination of Elisabeth E. Perry, reported by Jeffrey M. Thomas, Registered Professional Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure, at the Offices of Sweeny, Wingate & Barrow, P.A., 1515 Lady Street, Columbia, South Carolina, on January 17, 2012, at the hour of 4:06 p.m.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211
(803) 256-4500

1 take the job?

2 A. The pay increased. A better offer.

3 Q. Okay. They increased their offer?

4 A. Yes.

5 Q. Okay. When you started at the H.S.P.C.A.
6 what was your title?

7 A. Director of Cruelty Prevention.

8 Q. All right. Now, in some of these
9 documents that I've looked through you are referred
10 to as a cruelty investigator. Is that also correct?

11 A. Yes.

12 Q. Okay. Is cruelty investigator a
13 description or is that a title as well?

14 A. Title.

15 Q. So you could be the Director of Cruelty
16 Prevention and a cruelty investigator, too?

17 A. Yes.

18 Q. Okay. Was Josh Gowans, is that --

19 A. Gowans.

20 Q. Gowans? Was Josh Gowans also a cruelty
21 investigator?

22 A. No.

23 Q. Okay. You seem to have had education and
24 training, but do you recall if cruelty investigators
25 were required to have any specific training to work

1 qualifications do you recall there being?

2 A. I don't remember.

3 Q. Okay. You mentioned that you had the
4 telephone interview with Josh Gowans?

5 A. Yes.

6 Q. Is he the one who hired you as well?

7 A. Yes.

8 Q. Did you ever meet with Josh Gowans
9 personally before he hired you?

10 A. Yes.

11 Q. Okay. When was that meeting?

12 A. I don't remember the date.

13 Q. Okay. Do you remember the year?

14 A. 2007.

15 Q. Okay. Was it late in the year in 2007?

16 A. Yes.

17 Q. Okay. Now, before assuming the position
18 as cruelty investigator, were you -- with the
19 H.S.P.C.A., were you required to swear any kind of
20 oath to uphold the Constitution or -- the
21 Constitution of South Carolina?

22 A. No.

23 Q. Okay. Who was your direct supervisor at
24 that time at the time of your hire at the
25 H.S.P.C.A.?

1 Q. Okay. And did you have a responsibility
2 for any other cruelty investigators?

3 A. Yes.

4 Q. Okay. How many cruelty investigators
5 would you say you oversaw?

6 A. One.

7 Q. Just one?

8 A. Uh-huh. Yes.

9 Q. And who was that?

10 A. Michele Hart.

11 Q. All right. Okay. Did that number
12 increase over the course of your employment with the
13 H.S.P.C.A., the number of cruelty investigators that
14 you oversaw?

15 A. Unofficially, yes.

16 Q. Okay. How do you mean that; unofficially?

17 A. We had another man who worked at the
18 H.S.P.C.A. who would assist.

19 Q. Okay. Was he a paid employee or a
20 volunteer?

21 A. Yes, paid.

22 Q. Who was that person?

23 A. John McGee.

24 Q. Okay. And was he a cruelty investigator?

25 A. Not officially, no.

1 to the Trexlers.

2 Q. And do you have any knowledge about how it
3 is that anybody at the H.S.P.C.A. discovered that
4 there was any relation with the two properties?

5 A. I don't remember.

6 Q. Okay. Let me show you this. I'm going to
7 hand you what is Exhibit -- Plaintiff's Exhibit
8 Number 5.

9 MR. TYLER: Is this the last one,
10 Brook?

11 MR. WILLS: Yes. I mean, this is all
12 I can -- this is the last I'm going to do today if
13 this is all I can get in today. You know, we may
14 have some more later.

15 BY MR. WILLS:

16 Q. Do you recognize those documents?

17 A. Yes, I do.

18 Q. Okay. What are -- I'll represent to you
19 that Plaintiff's Exhibit Number 5 is comprised of
20 five different arrest warrants, but they are all
21 arrest warrants. Do you recognize all five of those
22 arrest warrants?

23 A. This is an affidavit. Is that the same
24 thing as an arrest warrant? Yes, I do. I recognize
25 them.

1 Q. Okay. Those -- are those arrest warrants
2 that you took out?

3 A. I don't have the power to arrest anybody.

4 Q. Okay. Are those arrest warrants to which
5 you swore an affidavit?

6 A. Yes.

7 Q. Okay. Do you recall going to the
8 Magistrate to give that affidavit?

9 A. I do.

10 Q. Okay. Did you give that affidavit to the
11 Magistrate?

12 A. Yes.

13 Q. Personally?

14 A. Yes.

15 Q. Okay. Did you go alone to the Magistrate?

16 A. I believe so, yes.

17 Q. Okay. If you look at the affidavit
18 section, okay, and that is your name -- excuse me.
19 Before I get to that, that is your signature on
20 that?

21 A. Yes.

22 Q. Okay. If we look at the affidavit
23 section, I'll read the first line. It says, I
24 further state that there is probable cause to
25 believe that the Defendant named above did commit

1 the crimes set forth and that probable cause is
2 based on following facts, correct?

3 A. Correct.

4 Q. Okay. Now, the next section where you
5 gave the facts, correct?

6 A. Correct.

7 Q. Okay. That on 2/26/2008 while at Derby --
8 412 Derby Lane in the Olympia Magisterial District
9 of Richland County one James Trexler did commit the
10 crime of ill treatment of animals in that he is the
11 owner of a two-year-old bay female with a body score
12 of 1.5. Did I read that correctly?

13 A. Correct.

14 Q. Okay. So my question to you is what
15 information did you have when you made this
16 affidavit that James Trexler was the owner of the
17 horse that is indicated in this affidavit?

18 A. From what I remember it was on his
19 property.

20 Q. Okay. Did you have any specific knowledge
21 that he was the owner of that horse --

22 A. I don't remember.

23 Q. -- when you made this affidavit?

24 A. I don't remember.

25 Q. Okay. Did you do any investigation before

1 making this affidavit into whether Mr. Trexler owned
2 the horse?

3 A. They were on his property so -- I mean --

4 Q. Did you base that fact that -- did you
5 base saying that fact representing him as the owner
6 only on the fact that it was on property that
7 allegedly belonged to him?

8 A. No. Not only on that fact, no.

9 Q. What else then?

10 A. I couldn't tell you. I don't remember.

11 Q. Okay. What makes you think -- what made
12 you think at this point even that James Trexler or
13 that the horses were on James Trexler's property?

14 A. I witnessed the horses on his property.

15 Q. Okay.

16 A. I touched them.

17 Q. What information did you have?

18 MR. GARFIELD: Hold on. I'm sorry,
19 Brook. Were you through with your answer?

20 THE WITNESS: Yes.

21 MR. GARFIELD: Okay. I'm sorry.

22 BY MR. WILLS:

23 Q. Okay. What information did you have that
24 that property belonged to James Trexler?

25 A. I can't tell you the information I had

1 back in 2008. I don't remember.

2 Q. I mean, you've sworn --

3 A. Yes.

4 Q. -- to a Judge --

5 A. Yes.

6 Q. -- that he owned the horses as fact?

7 A. That is what it says.

8 Q. Okay. So what -- did you have any

9 information -- did you know that James Trexler owned
10 these horses?

11 MR. GARFIELD: Object to the form.

12 MR. TYLER: Object to the form.

13 THE WITNESS: That is what I swore
14 to. That is what happened.

15 BY MR. WILLS:

16 Q. I mean, do you know that he owned the
17 horses at this time? I don't understand what you
18 are saying.

19 A. That was my understanding, yes, that he
20 owned the horses at the time.

21 Q. And this is where I want to get the
22 distinction. Did you understand that or did you
23 know it?

24 MR. TYLER: Object to the form.

25 MR. GARFIELD: As Woody Allen would

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit L – Arrest Warrants

1-891847

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address

Hopkins, SC 29061-

Phone _____ SSN _____

Sex: M Race: W Height: 5 11 Weight: 130DL State: SC DL #: _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: Hspca/ The Humane SocietyProsecuting Officer: Elisabeth Perry - 122Offense: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)Offense Code: 0610Code/Ordinance Sec: 47-01-0040(A)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 the law

(L.S.)

Date _____

RETURN

A copy of this arrest warrant was delivered to defendant James W Trexler on 2-27-08

RETURN WARRANT TO

Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL

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AFFIDAVIT

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perrybeing duly sworn deposes and says that defendant James W Trexlerdid within this county and state on or about 02/26/2008State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill /Treatment of Animals in that he is the owner of a 2 year old Bay Female with a body score of 1.5 (35). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

Elisabeth Perry

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth belowDESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me

on 02/27/2008

Signature of _____

Harold A. Cuff

Judge Code: 5906

(L.S.)

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847Judge's Telephone: (803)576-2550Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ORIGINAL

8441-A-0200

232

14
I-891848
STATE OF SOUTH CAROLINA
County/ Municipality of
Richland / Olympia Magistrate
THE STATE
against
James W Trexler
Address
Hopkins, SC 29061-
Phone: SSN:
Sex: M Race: W Height: 5 11 Weight: 130
DL State: SC DL #:
DOB: Agency ORI #:
Prosecuting Agency: Hspca/ The Humane Society
Prosecuting Officer: Elisabeth Perry - 122
Offense: Animals / ill treatment of animals, in general,
overworking - 1st offense (Tried
Offense Code: 0610
Code/Ordinance Sec: 47-01-0040(A)
This warrant is CERTIFIED FOR SERVICE at the
County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)
Date:
RETURN
A copy of this arrest warrant was delivered to
defendant James Trexler
on 2-22-08

RETURN WARRANT TO:
Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL

ORIGINAL

County/ Municipality of
Richland / Olympia Magistrate
AFFIDAVIT
Personally appeared before me the affiant Elisabeth Perry
being duly sworn deposes and says that defendant James W Trexler
did within this county and state on or about 02/26/2008 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Richland / Olympia Magistrate
in the following particulars:

DESCRIPTION OF OFFENSE Animals / ill treatment of animals, in general, overworking - 1st offense (Tried
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of ill /Treatment of Animals in that he is the owner of a 6 year old Bay Stallion with a body score of 4 (#34) He
knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at
suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed
or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of
feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the
muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant
STATE OF SOUTH CAROLINA
County/ Municipality of
Richland / Olympia Magistrate
Affiant's Address 121 Humane Ln
Columbia, SC 29209
Affiant's Telephone (783)126-7 x

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe the

on or about 2/26/2008 defendant James W Trexler
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of Richland / Olympia Magistrate) as set forth below

DESCRIPTION OF OFFENSE: Animals / ill treatment of animals, in general, overworking - 1st offense (Tried
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 02/27/2008
Signature of Issuing Judge
Harold A. Cuff
Judge Code: 5906
Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847
Judge's Telephone (803)576-2550
Issuing Court: County/ Municipality of

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233

8441-A-0201

1-891849
STATE OF SOUTH CAROLINA
County/ Municipality of
Richland / Olympia Magistrate
THE STATE
against

James W Trexler
Address
Hopkins, SC 29061
Phone: SSN:
Sex: M Race: W Height: 5 11 Weight: 130
DL State: SC DL #:
DOB: Agency OPI #:
Prosecuting Agency: Hspca/ The Humane Society
Prosecuting Officer: Elisabeth Perry 122
Offense: Animals / Ill treatment of animals, in general,
overworking - 1st offense (Tried)
Offense Code: 0610
Code/Ordinance Sec: 47-01-0040(A)

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 the law.

(L.S.)

Date.

RETURN

A copy of this arrest warrant was delivered to
defendant James Trexler
on 2-27-08

RETURN WARRANT TO:

Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL

ORIGINAL

County/ Municipality of
Richland / Olympia Magistrate

AFFIDAVIT

Personally appeared before me the affiant Elisabeth Perry
being duly sworn deposes and says that defendant James W Trexler
did within this county and state on or about 02/26/2008
State of South Carolina (or ordinance of County/ Municipality of Richland / Olympia Magistrate
in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of Ill /Treatment of Animals in that he is the owner of a 15-20 year old Bay Stallion with a body score of 3 (433).
He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and
age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was
no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more
inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found
wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209
Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Richland / Olympia Magistrate) as set forth below

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

on 02/27/2008

Signature of Issuing Judge
Harold A. Cuff
Judge Code: 5906

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847
Judge's Telephone (803)576-2550

Issuing Court: County/ Municipality of

ORIGINAL

ORIGINAL

ORIGINAL

8441-A-0202

1-891850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address

Hopkins, SC 29061

Phone:

SSN.

Sex: M Race: W Height: 5 11 Weight: 130DL State: SC DL #: 110DOB: Agency ORI #: Prosecuting Agency: Hspca/ The Humane SocietyProsecuting Officer: Elisabeth Perry - 122Offense: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)Offense Code: 0610Code/Ordinance Sec.: 47-01-0040(A)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 the law.

(L.S)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James W Trexleron 2-27-08

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

Signature of Judge

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ORIGINAL

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

S.C. Judiciary Form 1
Rev. 12/21/07
S.C.A.R. 10

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry withbeing duly sworn deposes and says that defendant James W Trexlerdid within this county and state on or about 02/26/2008 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 7 year old Black Stallion with a body score of 4 (32). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was found wandering around on the muddy, wet property. Four other horses were confined separately inside a barn standing in 4 or more inches of feces, urine and mud. Their water buckets were filled with feces and other organic debris. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane LnColumbia, SC 29209Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate as set forth below:DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me on 02/27/2008Signature of Issuing Judge Harold A. Cuff (L.S.)Judge's Address 1601 - B Shop RoadColumbia, SC 29201-4847Judge's Telephone (803)576-2550Issuing Court: ☒ Magistrate ☐ Municipal ☐ Court

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ORIGINAL

8441-A-0203

235

J

I-891851

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address: Hopkins, SC 29061-

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general,
overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

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 the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant JAMES W Trexler

on 02/27/08

[Signature]
Judge

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

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SC Form 1-100
April 2004
9001515

AFFIDAVIT

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry w/

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 20 year old Gray Stallion with a body score of 3.5 (#31). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209

Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me

on 02/27/2008

[Signature] (L.S.)

Signature of Court Clerk: Harold A. Cuff

Judge Code: 5906

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Court

ORIGINAL

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James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit M – Warrants and Indictments; Grand Jury True Bill

1-891851

STATE OF SOUTH CAROLINA

☒ County☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address:

Hopkins, SC 29061

Phone:

SSN:

Sex: M Race: W Height: 5'11" Weight: 130

DL State: SC DL #:

DOB:

Agency Code:

Prosecuting Agency: Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / III treatment of animals, in general,

overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

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 the law

(L.S.)

Signature of Judge

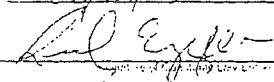
Date:

RETURN

A copy of this arrest warrant was delivered to

defendant: JAMES W Trexler

on 02/27/08



RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

☒ County☐ Municipality of

AFFIDAVIT

ORIGINAL

FILED
2008

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

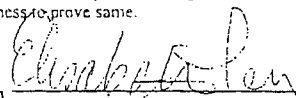
in the following particulars:

DESCRIPTION OF OFFENSE Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of III /Treatment of Animals in that he is the owner of a 20 year old Gray Stallion with a body score of 3.5 (3.5). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant



STATE OF SOUTH CAROLINA

☒ County/☐ Municipality ofAffiant's Address 121 Humane Ln
Columbia, SC 29209

Richland / Olympia Magistrate

Affiant's Telephone (783)126-7 X

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds

on or about 2/26/2008

defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Richland / Olympia Magistrate

) as set forth below.

DESCRIPTION OF OFFENSE: Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or if not possible, then to the nearest family member or friend.

Sworn to and subscribed before me

on 02/27/2008

(L.S.)

Signature of Judge

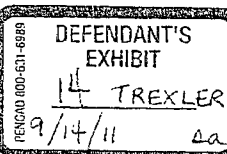
Harold A. Cull

Judge Code: 5906

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate☐ Municipality

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

8411-A-0204

238

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08060

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-02283

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE
vs.

James W. Trexler

Indictment for

ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)
CDR Code: 2804
Class F/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness.

C.C.C. PLS. AND G.S.

8441-A-0260

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict excessive or repeated unnecessary pain or suffering upon a 20 year old Gray Stallion, or by omission or commission caused this to be done, all in violation of SC Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

8441-A-0261

1-891850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address

Hopkins, SC 29061

Phone SSN.

Sex: M Race: W Height: 5' 11" Weight: 130

DL State: SC DL #

DOB Agency ORI #

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance No.: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

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

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to defendant

James W Trexler

on 2-27-08

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

AFFIDAVIT

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 7 year old Black Stallion with a body score of 4 (32). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was found wandering around on the muddy, wet property. Four other horses were confined separately inside a barn standing in 4 or more inches of feces, urine and mud. Their water buckets were filled with feces and other organic debris. Affiant and others are witness to prove same.

Signature of Affiant Elisabeth Perry

STATE OF SOUTH CAROLINA

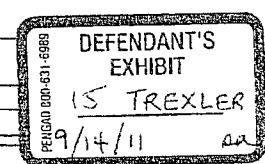
☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783)126-7 X



ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me

on 02/27/2008

Signature of Judge/Judge (L.S.)

Harold A. Goff

Judge Code: 5906

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Court

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

241

8441-A-0203

8441-A-0202

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08062

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02285

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE
vs.

James W. Trexler

Indictment for

ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class F/F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0264

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors
of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict
excessive or repeated unnecessary pain or suffering upon a 15-20 year old Bay
Stallion, or by omission or commission caused this to be done, all in violation of SC
Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.



WARREN B. GIESE, SOLICITOR

8441-A-0265

1-891848

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against:

James W Trexler

Address:

Hopkins, SC 29061-

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #:

DOB: Agency ORI #

Prosecuting Agency: Hspera/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / ill treatment of animals, in general,
overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

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 the law

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to

defendant James W Trexler

on 2-27-08

122

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

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☒ County/ ☐ Municipality of

AFFIDAVIT

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008 violate the criminal laws of

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of ill treatment of animals in that he is the owner of a 6 year old Bay Stallion with a body score of 4 (934). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

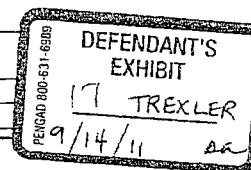
☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783) 126-7 x



ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below.

DESCRIPTION OF OFFENSE: Animals / ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me

on 02/27/2008

Signature of Issuing Judge

Harold A. Huff

Judge Code: 5906

(L.S.)

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803) 576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

WITNESSES

✓ (S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08061

ACTION OF GRAND JURY

TRUE BILL

Russell Budge
Foreperson of Grand Jury
Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury
Date.

DOCKET NO. 2008-GS-40-02284

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE
vs.

James W. Trexler

Indictment for
ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)
CDR Code: 2804
Class F/F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0262

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

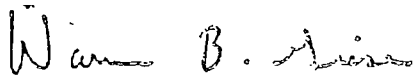
INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict excessive or repeated unnecessary pain or suffering upon a 6 year old Bay Stallion, or by omission or commission caused this to be done, all in violation of SC Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

8441-A-0263

I-891847

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address:

110pkins, SC 29061

Phone:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC

DL #

DOB:

Agency Order #

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Stat: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

This warrant

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

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant: James W Trexler on 2-27-08

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

AFFIDAVIT

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 2 year old Bay Female with a body score of 1.5 (#331). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant: Elisabeth Perry

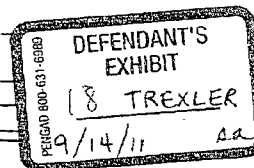
STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209

Affiant's Telephone (783)126-7 x



ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Richland / Olympia Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me

on 02/27/2008

(L.S.)

Harold A. Cull

Judge Code: 5906

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

8441-A-0200

248

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08059

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 3 3 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02282

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE
vs.

James W. Trexler

Indictment for
ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class F/F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0258

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors
of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict
excessive or repeated unnecessary pain or suffering upon a 2 year old Bay filly, or by
omission or commission caused this to be done, all in violation of SC Code of Laws §
47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.



WARREN B. GIESE, SOLICITOR

8441-A-0259

02/14/08 09:47:45

Grand Jury True Bill

PAGE 2

Ind#-----	Defendant Name	Arresting Agency	Arrest Date	Warrant Number	Charge Description	Prosecutor
2008 GS40 02282	TREXLER, JAMES	RCSD	2008-03-11	DP08059	Ill treatment of animals in general	101
2008 GS40 02283	TREXLER, JAMES W	RCSD	2008-03-11	DP08060	Ill treatment of animals in general	
2008 GS40 02284	TREXLER, JAMES W	RCSD	2008-03-11	DP08061	Ill treatment of animals in general	
2008 GS40 02285	TREXLER, JAMES W	RCSD	2008-03-11	DP08062	Ill treatment of animals in general	
2008 GS40 02288	TREXLER, HAZELENE	RCSD	2008-03-11	DP08063	Ill treatment of animals in general	
2008 GS40 02289	TREXLER, HAZELENE	RCSD	2008-03-11	DP08064	Ill treatment of animals in general	
2008 GS40 02290	TREXLER, HAZELENE	RCSD	2008-03-11	DP08065	Ill treatment of animals in general	
2008 GS40 02291	TREXLER, HAZELENE	RCSD	2008-03-11	DP08066	Ill treatment of animals in general	
2008 GS40 02323	TREXLER, TERRY ALFRED	RCSD	2008-03-12	DP08069	Ill treatment of animals in general	
2008 GS40 02324	TREXLER, TERRY ALFRED	RCSD	2008-03-12	DP08070	Ill treatment of animals in general	
2008 GS40 02325	TREXLER, TERRY ALFRED	RCSD	2008-03-12	DP08071	Ill treatment of animals in general	
2008 GS40 02326	TREXLER, HAZELENE	RCSD	2008-03-12	DP08072	Ill treatment of animals in general	
2008 GS40 02327	TREXLER, HAZELENE	RCSD	2008-03-12	DP08073	Ill treatment of animals in general	
2008 GS40 02328	TREXLER, HAZELENE	RCSD	2008-03-12	DP08074	Ill treatment of animals in general	

COUNT 14

8441-A-0237

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit N – Excerpts From James Trexler Deposition

State of South Carolina	)	
	)	
County of Richland	)	
James W. Trexler,	)	10-CP-40-1343
	)	
Plaintiff,	)	
vs.	)	
	)	Deposition
McClatchy Newspapers, Inc.,	)	
Richland County and the	)	of
Richland County Sheriff's	)	
Department,	)	James W. Trexler
Defendants.	)	
	)	
James W. Trexler,	)	
	)	2010-CP-40-1249
Plaintiff,	)	
vs.	)	
	)	
The Associated Press,	)	
Barrington Broadcasting, a	)	
South Carolina Corp.,	)	
Pacific & Southern Company,	)	
Inc., and Raycom TV	)	
Broadcasting, Inc.,	)	
	)	
Defendants.	)	

Deposition of James W. Trexler, taken before Sandra J. Ayers, a notary public in and for the State of South Carolina, commencing at the hour of 4:41 p.m., Wednesday, September 14, 2011, at the office of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina.

Reported by
Sandra J. Ayers

1 arrest, true?

2 MR. WILLIS: Object to form.

3 Q Do you have any reason to -- to doubt that Judge
4 Cuff, on the basis of this testimony from the
5 affiant, found probable cause for your arrest?

6 MR. WILLIS: Object to form. He had no
7 probable causes.

8 Q Okay. Do you have any reason to doubt that Judge
9 Cuff signed this part right here under where it
10 says, "Having found probable cause" -- I'm not
11 asking you what probable cause is -- Judge Cuff is
12 directing and empowering the authorities to arrest
13 you; do you see where it says that?

14 A I see where he's empowering them to arrest me,
15 because he's a judge. Yes.

16 Q Okay. And so you see where Judge Cuff issued these
17 arrest warrants, correct?

18 A Yes.

19 Q And -- now, you were prosecuted at some point by
20 the attorney general's office, right?

21 A That's correct.

22 Q But before then, for a limited time, you were
23 prosecuted by the Fifth Circuit Solicitor's Office.

24 A If you call -- if you want to call a year and a
25 half a limited time, yes, sir.

1 Q Okay. And I apologize. I wasn't trying to say it
2 was -- so let me rephrase that.

3 Initially, you were prosecuted by the Fifth
4 Circuit Solicitor's Office.

5 A That's correct.

6 Q Subsequently, you were prosecuted by the South
7 Carolina Attorney General's Office.

8 A That's correct.

9 Q Okay. Sometime during this time, a Richland County
10 Grand Jury looked at these charges, did they not?

11 A That would be correct.

12 Q And the Richland County Grand Jury is supposed to
13 be a neutral and detached group of individuals who
14 are considered to be your peers; are they not?

15 A I couldn't tell you. I don't know how that -- I
16 don't know how that stuff works.

17 Q Do you know whether -- have any information whether
18 you knew anyone on the grand jury?

19 A I couldn't tell you. I don't know who the grand
20 jury -- I don't know anything about it.

21 Q Okay. Well, let's -- let's look at this a little
22 bit. Are you aware that the grand jury of Richland
23 true-billed -- in other words, returned a true-
24 billed indictment against you on five counts of ill
25 treatment of animals; is that your understanding?

1 A That's my understanding.

2 Q And they did that on or about March 13th of 2008?

3 A Evidently.

4 Q Okay. Now, and do you understand what a "true-
5 billed indictment" means?

6 A No, sir.

7 Q Okay. Do you understand that they can't -- they,
8 the prosecution, can't try your case until the
9 grand jury looks at this?

10 A No, sir. I did not know that.

11 Q Okay. And you were prosecuted on these charges by
12 one or two prosecutorial agencies, fifth circuit
13 solicitor, the attorney general, from February 2008
14 to December 2009, correct?

15 A The dates on that would probably be February '08
16 through July of '010 -- '10. Yeah. July '10.
17 Yeah. July '10. This is '11. It'd be July 10th -
18 - July of '10 -- July of 2010.

19 Q Okay. Then I -- then I appreciate the correction.
20 March, April, May, June. So you've got two years
21 and three months you were being prosecuted for
22 this?

23 A Yes, sir.

24 Q Or thereabouts..

25 A Yes, sir.

James W. Trexler v. Richland County and the Sheriff of Richland County,
in his official Capacity, a/k/a Richland County Sheriff's Department

Civil Action Number: 10-CP-40-1343

Memorandum in Support of Motion and Motion for Summary Judgment
on Behalf of Defendants

Exhibit O – May 9, 2009 Letter From Fifth Judicial Circuit Solicitor to SC Attorney
General's Office

The State of South Carolina

W. Barney Giese
Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29202

Phone
(803) 576-1800

John P. Meadors
Deputy Solicitor
May 5, 2009

Fax (803) 576-1718

Mr. John W. McIntosh
Chief Deputy Attorney General
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

RE: **State v. Terry Trexler**
State v. Hazelene Trexler
State v. James Trexler

Dear John,

Please accept these cases for the prosecution of captioned animal cruelty cases. This is the matter that we spoke about on the telephone on Monday afternoon.

Terry Trexler has been indicted by the Richland County Grand Jury for three (3) counts of ill-treatment of animals. He also has an associated kidnapping charge. Russell Brown of the Richland County bar has been appointed to represent him. He was previously represented by Aaron Jophlin who is now employed in our office. Mr. Brown has filed a motion to disqualify the Fifth Circuit Solicitor's Office from the prosecution of this case.

Hazelene Trexler is the mother of Terry and James Trexler. She is currently represented by Arthur Aiken, but was previously represented by Hans Pauling who now works as a part-time assistant solicitor in our CDV Court. Mr. Aiken has also filed a motion to disqualify our office from this prosecution. Ms. Trexler has been indicted by the Grand Jury on seven (7) counts of ill-treatment of animals.

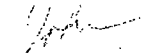
James Trexler has retained Neal Lourie. He has also filed a motion to disqualify our office. James Trexler has four (4) pending indictments for ill-treatment of animals.

All of these defendants have also been charged with a number of magistrate level offenses. Section A violations of the ill-treatment of animals law. Jill Andrews has handled this case since its inception for our office. She is available to discuss any procedural issues with the assistant who you assign to handle the matter.

8441-A-0235

I have enclosed our original file and we will forward additional documents to you as they are received. Thank you, as always for your help. Please call me if you have any questions.

Sincerely,



John P. Meadors
Deputy Solicitor

JPM/ha

8441-A-0236

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Case No.: <u>2010-CP-40-1343</u>
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
	)	
Richland County and the Sheriff of	)	
Richland County, in his official	)	
Capacity, a/k/a Richland County	)	
Sheriff's Department,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff James W. Trexler ("Plaintiff") pursuant to Rule 56 (e), SCRCP, and responds to Richland County and the Sheriff of Richland County, in his official capacity, a/k/a/ Richland County Sheriff's Department's (collectively "Defendants") Motion for Summary Judgment as follows:

INTRODUCTION

This is a malicious prosecution and defamation case that arises out of the Richland County Sheriff Department's ("RCSD") participation in the instigation and continuation of Plaintiff's 2008 arrest and subsequent prosecution over the course of two and a half years on misdemeanor and felony charges of ill treatment to animals. Plaintiff's defamation claim arises out of a press release the RCSD published to a multitude of media outlets in connection with that arrest and prosecution, which contained false,

defamatory information about Plaintiff.

Plaintiff alleges the RCSD partnered with the Humane Society for the Prevention of Cruelty To Animals (“HSCPA”) in the instigation and unjustified continuation of legal process against him, without probable cause, and with actual or constructive knowledge Plaintiff was not involved with any activity or ownership upon which the charges against him were based. Plaintiff further alleges that as a direct result of the malicious prosecution and defamation he lost his job, salary, pension, retirement benefits, his ability to obtain like employment, and has suffered irreparable harm to his personal and professional reputation.

Defendants have moved for summary judgment on both of Plaintiff’s causes of action alleging the following seven grounds: (1) they are entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(17); (2) the action is barred by the law-of-the-case doctrine of based on the decision in a companion case; (3) they are entitled to absolute or qualified privilege with regard to defamatory statements they published concerning Plaintiff; (4) Plaintiff has failed to state a claim against them for malicious prosecution; (5) Richland County is not a proper party defendant pursuant to the South Carolina Tort Claims Act; (6) they are not subject to joint and several liability under the South Carolina Tort Claims Act; and 7) they are not subject to punitive damages under the South Carolina Tort Claims Act.

Defendants’ motion is without merit as ample evidence exists in the record to create a genuine issue of material fact with regard to each of Plaintiff’s causes of action. For the reasons discussed below, this Court should deny Defendants’ motion.

FACTS

Prior to March of 2008, Plaintiff's mother and brother operated a for profit Arabian horse breeding business in Richland County, South Carolina under the name Carolina Arabian Show Horses, LLC ("Carolina Arabian"). At that time, Plaintiff was a veteran employee of the South Carolina Department of Agriculture. (See Second Amended Complaint §12; see also Trexler Aff., November 14, 2011 attached hereto as Exhibit "A"). Plaintiff has never had any interest in the ownership or operation of Carolina Arabian, or the horses owned by that company. (See Trexler Dep., p. 106, September 14, 2011 attached hereto a part of Exhibit "B").

In early 2008, Carolina Arabian maintained its horses on two leased properties, one located at 1820 Zeigler Road South in Eastover, Richland County, South Carolina ("Zeigler Rd."), and the other located on Misty Meadow Road, in Hopkins, Richland County, South Carolina. Plaintiff's mother and brother also maintained five Carolina Arabian horses needing special attention in a barn at their home located at 412 Derby Lane in Hopkins, Richland County, South Carolina ("412 Derby Ln."). Plaintiff previously lived at the 412 Derby Ln. residence but moved to New Zion, South Carolina in 2007. (See Exhibit B, pages 43-44). In early 2008, and at all times relevant to this action, Plaintiff had no ownership interest in the 412 Derby Ln. property, and did not live there. (See 412 Derby Ln. Deed attached hereto as Exhibit "C").

In February of 2008, the HSPCA began investigating an alleged report of malnourished horses at the Zeigler Rd. property. On February 13, 2008, Michelle Hart (now Michelle Hines) ("Hart"), an agent of the HSPCA, attempted to enter the Zeigler

Road property to investigate the horses by climbing a fence surrounding the horse pasture. (See RCSD ACISS Investigative Follow Up Report number 080224156/1 attached hereto as Exhibits “D.1 and D.2;” see also HSPCA Cruelty Report number 282008-1000 attached hereto as Exhibit “E”)¹. When Plaintiff’s brother noticed Hart trespassing on the property and confronted her, she fled back across a neighboring property to her truck, which she had parked in a neighbor’s driveway. (See id.). Plaintiff’s brother reacted by positioning his truck across the neighbor’s driveway to prevent Hart from leaving before the police arrived. (See id.) As a result of the incident, Plaintiff’s brother was arrested and charged with felony kidnapping. (See Arrest Warrant for Terry Trexler attached hereto as Exhibit “F”).

Following the alleged kidnapping incident, the RCSD partnered with the HSPCA to investigate the reported malnourished horses at the Zeigler Rd. Property. On February 19, 2008, Hart and HSPCA Cruelty Investigator Elisabeth Perry (“Perry”) met with Investigator Holly Wagner of the RCSD (“Wagner”) to formulate a strategy for investigating the horses owned by Plaintiff’s mother and brother. (See Exhibit “D” at date entry 2/19/2008). Also present at the February 19th meeting was Mary Ellen Tobias, a colleague of Plaintiff’s at the South Carolina Department of Agriculture, although neither Perry nor Wagner knew who she was or why she was at the meeting. (See Perry Dep. 80:6-25, 81:1-25, January 19, 2012 attached hereto as part of Exhibit “G;” see also Wagner Dep. 37:15-25, 38:1-25, November 3, 2011 attached hereto as part of Exhibit

¹ Exhibits “D.1” and “D.2” represent the same continuous report by Holly Wagner of the RCSD chronologically at two different points in time and reflecting the additions to the report she made

“H”). Nevertheless, during the meeting the group collectively decided to obtain a search warrant to enter the Zeigler Rd. property and evaluate the horses. Also during that meeting, Investigator Wagner also took a formal statement from Hart regarding the kidnapping incident. (See Statement of Michelle Hart, February 19, 2008 attached hereto as Exhibit “I”). Hart also positively identified Plaintiff’s brother as the alleged kidnapper from photographs Wagner showed her during the meeting. (See Exhibit “G,” 48:1-6; see also Exhibit “H,” 47:21-25).

On February 25, 2008, after obtaining the search warrant anticipated in the February 19th meeting, the RCSD and the HSPCA executed a joint search of the Zeigler Rd. property which resulted in the RCSD and HSPCA confiscating every one of the twenty-three horses Plaintiff’s mother and brother maintained at that property. (See Search Warrant with for 1248 Zeigler Road with Return is attached hereto as Exhibit “J”). At the time of the search and confiscation of the horses at the Zeigler Rd. property, the RCSD and the HSPCA had information that Plaintiff’s mother and brother owned the horses they were confiscating. (See Exhibit “D” under date entry 2/25/2008). Furthermore, Plaintiff’s mother arrived on the scene during the search and confiscation and made clear to the RCSD, the HSPCA, and the media, in no uncertain terms, that she owned all of the horses being confiscated from the Zeigler Rd. property. (See Exhibit “H,” 80:16-25, 81:1-24).

On February 25, 2008, at some point during the search of the Zeigler Road property, the HSPCA allegedly received a “tip” that more undernourished horses were over as her investigation progressed..

seen at 412 Derby Ln., where Plaintiff's mother and brother resided. (See Exhibits "D.1" and "D.2" under date entry 2/25/2008). The RCSD and the HSPCA jointly decided to obtain a search warrant for 412 Derby Ln. On February 26, 2008, Hart of the HSPCA obtained a search warrant for 412 Derby Ln., authorizing the search of the residence and surrounding curtilage. (See Search Warrant for 412 Derby Ln. with Return attached hereto as Exhibit "K"). To obtain the search warrant, Hart falsely certified to the magistrate that Plaintiff resided at 412 Derby Lane. (See id.). That same day, pursuant to the search warrant, Hart and Perry of the HSPCA together with Wagner of the RCSD executed the search of 412 Derby Ln. (See Exhibit "D" under date entry 2/26/2008). During the search the RCSD and the HSPCA confiscated all five horses they found at that property claiming the horses were neglected, without food and water, and that they found no evidence whatsoever the horses were being fed. (See id.). Following the search of 412 Derby Ln. and seizure of the horses at that location, Perry, with the full knowledge, condonation, and participation of the RCSD, sought and obtained warrants for Plaintiff's arrest by providing false information to the magistrate who issued the arrest warrants. (See 5 Arrest Warrants for James Trexler, February 27, 2008 attached hereto as Exhibit "L.1 – L.5").

On February 27, 2008, the RCSD allegedly received a "tip" Plaintiff's brother and mothers, were in the 412 Derby residence. (See Exhibit "D" under date entry 2/25/2008; see also Exhibit "H." 82:21-25, 83:1-7). At approximately 7:30 p.m., the RCSD fugitive task forcibly entered the 412 Derby Ln. residence by smashing the front door down with a battering ram, and arrested Plaintiff's brother and his 70 year-old mother. The shock of

the RCSC breaking down the front door of the house and arresting Plaintiff's mother triggered in her a cardiac event, which necessitated her immediate transport to the hospital by the RCSD. (See Exhibit "B," 171:6-8). Plaintiff was not present at 412 Derby Ln. when the RCSD Fugitive Task Force arrested his brother and mother, as he was living in New Zion. (Id.) However, after taking Plaintiff's mother and brother into custody, an agent of the RCSD called Plaintiff on his mobile phone and inquired as to his whereabouts. Plaintiff responded that he was in New Zion where he was living at the time, some 45 minutes away. (Id.). The RCSD agent told him that his mother and brother were being arrested on animal cruelty charges and told him there were dogs out in the yard and that if Plaintiff did not come take care of them the RCSD would confiscate them. (Id.). Plaintiff indicated he would come take care of them and that he would be there in about 45 minutes. (Id.). When Plaintiff arrived at the Derby Ln. residence, RCSD agents informed him he was under arrest and charged with five counts of misdemeanor mistreatment of animals. (Id.).

Prior to obtaining search warrants for the 412 Derby Ln. property and Plaintiff's arrest warrants, no one from the RCSD or the HSPCA checked any property, tax, or other records to determine if Plaintiff owned 412 Derby Ln. or was the owner of the horses they confiscated there. (See Perry Dep., Exhibit "G," 111:2-25, 112:1-5; see also Wagner Dep., Exhibit "H," 103:7-18).

The same night, at 9:42 p.m. Chris Cowan ("Cowan"), Public information Officer for the RCSD, drafted and sent an e-mail press release (the "Press Release") to a

multitude of media outlets to inform them of the arrest of the Plaintiff and his mother and brother. (See Press Release attached hereto as Exhibit "M").

The Press Release stated as follows:

Richland County Sheriff Leon Lott announced that at approximately 8:00 p.m. tonight the Richland County Sheriff Department's Fugitive Task Force apprehended Hazelene E. Trexler (DOB 7-12-37), Terry A. Trexler (DOB 7-16-63), and James Trexler (DOB 1-14-60) at 412 Derby Lane in Hopkins. Richland County Sheriff Leon Lott stated the Sheriff's Department and the HSPCA continued to investigate severe and barbaric treatment of 28 horses that were in the custody of and supposed to have been cared for by the Trexlers; even as the trio were being arrested in Hopkins tonight, investigators and veterinarians care for the horses that sustained injuries ranging from malnutrition to inflictions that being left untreated cause lameness to halters growing into the faces of the horses.

Sheriff Leon Lott added that this case is disturbing because these horses are helpless to the hands of their owners and the Trexlers have proven time and again that they have no business owning any animals. Sheriff Leon Lott stated that investigators from the Sheriff's Department and the HSPCA will continue to work with the Solicitor's Office here and authorities in Georgia to make sure the Trexlers receive the punishment they deserve and are prosecuted to the fullest extent of the law. Sheriff Leon Lott stated that the Trexlers have been transported to Alvin S. Glen Detention Center where they await a bond hearing.

Charges:

-Hazelene E. Trexler

28 counts of ill treatment of animals

-Terry A. Trexler

23 counts of ill treatment of animals

-James Trexler

5 counts of ill treatment of animals

1 count of kidnapping (stems from an incident where J. Trexler held a HSPCA investigator against her will and refused to allow the investigator to leave a farm on 2/13 during an evaluation of the horses)

On March 5, 2008, as a result of his arrest and continued prosecution for mistreatment of animals, Plaintiff's employment with the South Carolina Department of Agriculture was terminated. (See Trexler Aff., Exhibit "A"). Thereafter, the RCSD

continued to work with the HSPCA and assistant solicitor Jill Andrews in the prosecution of the case against Plaintiff. (See Exhibit "M;" see also Exhibit "E" under date entries 4/12/2008 and 4/16/2008; see also Indictments of James Trexler, March Term 2008 attached hereto collectively as Exhibit "N"). Interestingly, Assistant Solicitor Jill Andrews was also on the Board of the HSPCA. (See Wagner Dep., Exhibit "H," 141:25, 142:1). Allegedly based on reports from the RCSD and the HSPCA continued investigation of horse abuse at properties other than 412 Derby Ln., on or about March 12, 2008, the office of the solicitor increased all charges against Plaintiff from misdemeanors to felony cruelty to animals. (See March 2008 Indictments, Exhibit "N"). RCSD Investigator Wagner gave testimony before the Grand Jury on the March 2008 Indictments of James Trexler. (Id.). Then, despite no further investigation by the RCSD as to Plaintiff's ownership of the horses he was charged with mistreating, in September 2009, Plaintiff was indicted on 43 counts of felony cruelty to animals and faced up to 30 years in prison. (See Indictments of James Trexler, October Term 2009 attached hereto collectively as Exhibit "O;" see also Wagner Dep., Exhibit "H," 148:23-25, 149:3-6).

On July 15, 2010, the Richland County Court of General Sessions dismissed all charges then pending against Plaintiff on the merits. (See Order for Destruction of Arrest Records, August 23, 2010 attached hereto as Exhibit "P"). From the inception of the RCSD and the HSPCA's prosecution of Plaintiff until the court dismissed all charges on July 15, 2008, Plaintiff maintained his innocence, and pleaded accordingly.

ARGUMENT AND CITATION OF AUTHORITY

I. Summary Judgment

Summary Judgment is appropriate where the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In evaluating a motion for summary judgment, the Court “is to liberally construe the record in favor of the nonmoving party and give the non moving party the benefit of all favorable inferences that might reasonably be drawn therefrom.” Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). Because summary judgment is a drastic remedy, the Court should invoke it cautiously “so that no person will be improperly deprived of a trial of the disputed factual issues.” Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)(quoting Watson v. Southern Ry. Co. 470 F. Supp. 483, 486 (D.S.C. 1975)). In determining whether any triable issue of fact exists, the Court must view the **evidence and all reasonable inferences** that may be drawn from the evidence in the light most favorable to the non-moving party. Rule 56(c), SCRPC (emphasis added).

II. Plaintiff’s Cause of Action for Malicious Prosecution Must Survive Summary Judgment Because a Genuine Issue of Material Fact Exists as to Whether the RCSD Lacked Probable Cause to Arrest and Continue to Participate in the Prosecution of Plaintiff.

To maintain an action for malicious prosecution, a plaintiff must demonstrate 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 plaintiff's favor; 4) malice in instituting such proceeding; 5) want of probable cause, and 6) resulting injury or damage. Parrott v. Plowden Motor Company, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965)(referencing 34 Am.Jur., Malicious Prosecution, Sec. 6, p. 706; Prosser v. Parsons, 141 S.E.2d 342; Gibson v. Brown, et al., 141 S.E.2d 653.).

"Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious [person], under the circumstances, to believe likewise." Jones v. City of Columbia, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990). Furthermore, "[p]robable cause is determined as of the time of the arrest, based on facts and circumstances-objectively measured-known to the arresting officer" Jackson v. City of Abbeville, 366 S.C. 662, 667, 623 S.E.2d 656, 659 (2005) and "[o]nly those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered." Parrott, 246 S.C. 318 at 322, 609; see also Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 796 (1945). In an action for malicious prosecution, a plaintiff must demonstrate the prosecution was instituted maliciously and without probable cause. Id.; see also Margolis v. Telech, 239 S.C. 232, 122 S.E.2d 417 (1961). However malice may be inferred from a want of probable cause. See Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949).). As pointed out in Baker v. Hornick, 57 S. C. 213, 35 S. E. 524, 529 (1900), "where a person instituted a prosecution against another without probable cause, it is difficult to conceive of any other motive but a malicious one for bringing the prosecution."

One who instigates prosecution based solely on information received from another acts without probable cause. 34 Am.Jur. 735, Malicious Prosecution, Section 51 instructs:

The failure of a person who has received information tending to show the commission of a crime to make such further inquiry or investigation as an ordinarily prudent man would have made in the same circumstances, before instituting a proceeding, renders him liable for proceeding without probable cause. One may not rely without further investigation on representations of another where the information received is such as to put an ordinarily prudent and cautious person on inquiry, or, it has been held, where he has no personal knowledge of the truth of the representation.

“The prosecutor must not only actually believe in the guilt of the accused, but the belief must also . . . be supported by circumstances sufficiently strong in themselves to warrant a reasonably cautious or prudent [person] in that belief.” 34 Am.Jur. 733, Malicious Prosecution, § 49. In determining the existence of probable cause, the facts must be “regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be. Eaves v. Broad v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 415 (1982). Ordinarily the existence of probable cause is a question to be decided by the jury. Parrott supra at 323, 609 (in dicta); Caldwell v. Bennett, 22 S.C. 1 (1884); Wheeler v. Nesbitt, 65 U. S. 544, 551, 16 L. Ed. 765 (1860) (want of probable cause is evidence of malice for the consideration of the jury).

Here, the RCSD worked hand in hand with the HSPCA and participated with that agency to instigate original judicial proceedings against Plaintiff. From the very

beginning and through each of the joint investigation of alleged mistreated horses and the arrest of Plaintiff and his mother and brother, the RCSD had an active part in determining a course of action in the investigation, advising the HSPCA on obtaining arrest and search warrants, participating in the searches and seizure of the horses, evaluating the horses, bringing the charges against Plaintiff, and ultimately arresting him. It is also undisputed that the RCSD participated in the continued prosecution of Plaintiff by giving testimony before the Grand Jury and continuing to work with Assistant Solicitor Andrews to bring additional and heightened charges against Plaintiff with no additional evidence to implicate him. Two and a half years later, such proceedings terminated in Plaintiff's favor. See Exhibit "P"). Plaintiff has also alleged monetary and reputation damage directly resulting from prosecution instigated and continued by the RCSD. (See Second Amended Complaint at paragraphs 71 and 72.)

Essentially Defendants claim Plaintiff cannot prove they acted without probable cause in instigating and continuing legal process against him. Notwithstanding ample authority, supra, establishing that the existence of probable cause is a question to be decided by the jury, Defendants argue probable cause exists, here, as a matter of law merely because a magistrate signed a warrant to arrest Plaintiff and the Grand Jury "true billed" the indictments against him. While a true bill is "prima facie" evidence of probable cause, the presumption is rebuttable. See Law v. S. Carolina Dept. of Corrections, 365 S.C. 424, 629 S.E.2d 642 (2006). In Law, the Court found probable cause existed as a matter of law where the indictments against plaintiff were true billed by the Grand Jury **and** where the underlying facts supported probable cause to instigate

or pursue criminal charges. See id. at 437, 649 (emphasis added). In Law, the court found the facts and circumstances underlying the instigation of proceedings against the Appellant did support the presumption of probable cause created by true-billed indictments by the Grand Jury only because they were the result of a thorough investigation, included the interviews of over forty witnesses, and were based on actual knowledge of historical conspiracy. Law at 437, 647.

Here, unlike in Law, evidence exists to show the RCSD and the HSPCA not only instigated proceedings against Plaintiff based on unreliable information from other individuals, but they did so without any performing independent investigation whatsoever as to whether Plaintiff actually owned any horses or owned the land on which allegedly mistreated horses were found. Unbelievably, the HSPCA, with the knowledge of the RCSD, also obtained Plaintiff's arrest warrant by swearing as true in an affidavit to a Magistrate facts it did not know to be true, and in fact were false. Perry, swore to the Magistrate that probable cause existed for Plaintiff's arrest based on the fact that Plaintiff was the owner of the five subject horses. However, evidence exists to show Perry, in fact, did not know, as she swore she did, that Plaintiff owned any of the horses he was accused of mistreating, nor did she have any reason to believe, when she swore out the warrant, that he was the owner. (addressed below).

In her deposition taken on January 17, 2012, counsel for Plaintiff asked Ms. Perry if she did any investigation before making the affidavit to obtain a warrant for Plaintiff's arrest to determine whether Plaintiff owned the horses. Ms. Perry responded "they [horses] were on his property so -- I mean --" (Perry Dep., Exhibit "G," 108:3). When

counsel for Plaintiff asked Ms. Perry if she represented Plaintiff as the owner of the horses based solely on the fact he allegedly owned the property, Ms. Perry indicated she thought that was not the only reason why, but she could not recall any other reasons. (Id. at 108:4-13). Ms. Perry admitted in her deposition she did no search of the ownership records of the subject horses to determine who owned them. (Id. at 111:22-23).

Counsel for Plaintiff also asked RCSD Investigator Wagner whether, to her knowledge, the HSPCA did any investigation into whether Plaintiff owned any horses before swearing an affidavit to obtain his arrest warrant. Despite being involved with every step of the joint RCSD/HSPCA investigation, Investigator Wagner indicated she did not know of any investigation that was done by the HSPCA into whether Plaintiff actually owned the horses he was accused of abusing. (See Wagner Dep., Exhibit "G," 105:5-16). Investigator Wagner also indicated that Elizabeth Perry never communicated to her she had evidence Plaintiff owned the subject horses prior to attesting that probable cause existed to arrest Plaintiff. (Id. 112:11-15). Furthermore, when Counsel for Plaintiff asked Ms. Perry if she did any investigation of property records to determine whether Plaintiff owned the property on which the subject horses were found and seized, Ms. Perry indicated that the HSPCA did not have the ability to do that kind of search. (Perry Dep., Exhibit "G," 111:17-20).

More troubling still is the evidence that Elizabeth Perry actually lied in her affidavit to the Magistrate to obtain an arrest warrant for Plaintiff. Ms. Perry's affidavit states that upon the RCSD and HSPCA's search of the property purportedly belonging to Plaintiff, no food or hay was found on the property. (See Arrest Warrants for James

Trexler, Exhibits “L.1 – L.5”). However, she stated just the opposite in her January 17, 2012 deposition. When counsel for Plaintiff inquired as to whether during the search of the property purportedly belonging to Plaintiff she looked inside the garage, Ms. Perry state she did. When counsel for Plaintiff asked what she saw there, Ms. Perry admitted she saw horse food. (Perry Dep., Exhibit “G,” 113: 7-14). Of course, Investigator Wagner was also present for, and participated in the search of 412 Derby Ln. and was presumably aware of the horse food found in the garage. (See Search Warrant for 412 Derby Ln., Exhibit “K”).

RCSD Investigator Wagner, herself, admitted in her deposition that it would be improper for an affiant, in order to obtain an arrest warrant, to swear to a magistrate as true facts he or she knew were false. (Wagner Dep., Exhibit “H,” 111:11-14). The U.S Supreme Court was of the same opinion in Franks v. State of Delaware, 438 U.S 154, 98 S.Ct 2674 (1978). “The requirement that a warrant not issue but upon probable cause, supported by Oath or affirmation, would be reduced to a nullity if [an affiant] was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile.” Id. at 168, 2682. Nevertheless, despite first hand knowledge the arrest warrant for Plaintiff’s arrest was based on false information, the RCSD made no objection to the warrant, and executed it, ironically, by tricking Plaintiff into driving 45 minutes from Mt. Zion to the 412 Derby Ln. property to care for animals there, and then arresting for ill treatment of animals him once he arrived.

Unlike in Law, 365 S.C. 424 (2006) supra, the RCSD and HSPCA did little to no

investigation as to whether Plaintiff owned the horses or the land the horses were on prior to arresting him, and the facts supporting the indictment are insufficient to create probable cause as a matter of law. Indeed, genuine issues of material fact exist as to the validity and execution of the Plaintiff's arrest warrant, knowingly obtained through by improper means.

Moreover, evidence also exists to support Plaintiff's assertion the RCSD manipulated its own records in an attempt to "manufacture" probable cause for his arrest, after the fact. Examination of the evolution of RCSD Investigator Wagner's Investigative Follow Up Report from two different time periods, as reflected in Exhibits "D.1" and "D.2," shows the reports were modified after Plaintiff's arrest to specifically implicate him, by name, as being involved with the mistreatment of the horses initially identified at the Zeigler Rd. property. Exhibit "D.1" is a copy of Wagner's Investigative Follow Up Report created on 2/22/2008 and containing date entries starting on 2/13/2008 and ending on 2/27/2008. Exhibit "D.2" is a copy of a continuation of the same report, created on 2/22/2008, but with date entries starting on 2/13/2008 and ending on 3/10/2008. Information in the header of the Exhibit "D.2" shows the report created on 2/28/2008, and was last modified by the creator on 4/07/2008, after Plaintiff was arrested and released on bond. Interestingly, the language of the reports in Exhibits "D.1" and "D.2" between 2/13/2008 and 2/27/2008 is identical with the exception of an inserted paragraph under the date entry of 2/19/2008 in Exhibit "D.2" that does not exist under that date entry in Exhibit "D.1." Specifically, the inserted paragraph reads:

Michelle [Hart] told me the first time she went to investigate the property

on Zeigler Rd. no one was around and the gate was locked so she posted the property. Then she received a call from a man who said he was James Trexler with the SC Department of Agriculture. He was very belligerent and told her he owned the horses and she could not go on his property to look at the horses. That is why she had to go on Lori Stokes' property to try to take pictures of the horses.

(See Exhibits "D.1" and "D.2" under date entry 2/19/2008). Of note is the fact that the date entry 2/19/2008 precedes the creation of either of the report versions and was subsequent to Investigator Wagner's taking of Hart's formal written statement (Exhibit "I"). Importantly, neither Michelle Hart's HSPCA cruelty report from the same date entry, nor her official written statement made to Investigator Wagner on 2/19/2008 mention anything at all about Hart receiving a call from someone claiming to be James Trexler of the S.C. Department of Agriculture. (See Exhibit "E" under date entry 2/13/2008; see also Statement of Michelle Hart, Exhibit "I").

Considering the foregoing, genuine issues of material facts exist with regard to the RCSD and the HSPCA acting in concert to prosecute Plaintiff, without probable cause. As such, this Court should deny Defendants' motion for summary judgment as to Plaintiff's cause of action for malicious prosecution, and allow a jury to weight the facts and circumstances underlying the issue of probable cause.

III. Plaintiff's Cause of Action for Defamation Must Survive Summary Judgment Because a Genuine Issue of Material Fact Exists as to Whether the RCSD Acted With Reckless Disregard for the Truth in drafting and publishing the Press Release.

To establish a claim for defamation Plaintiff must prove "1) a false and defamatory claim was made; 2) the unprivileged statement was published to a third party; 3) the publisher was at fault; and 4) either the statement was actionable regardless of

harm or the publication of the statement caused special harm.” Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). “A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him.” Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 510, 506 S.E.2d 497, 502 (1998) (Holtzscheiter II) (quoting Lesesne v. Willingham, 83 F. Supp. 918, 921 (E.D.S.C. 1949)).

If the defamatory meaning of a statement is obvious on the face of the statement, the statement is defamatory per se. Id. Defamation is actionable per se if it involves “written or printed words which tend to degrade a person, that is, to reduce his character or reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous . . .” Id. “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.” Fleming v. Rose, 338 S.C. 524, 533 526 S.E.2d 732, 737 (Ct. App. 2000). “[T]o prevail in a defamation action, a plaintiff must establish that the defendant's statement referred to some ascertainable person, and that the plaintiff was the person to whom the statement referred.” Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (S.C. Ct.App.1997). Surrounding circumstances, however, may reasonably imply the identity of an individual not otherwise immediately ascertainable from the face of the allegedly defamatory statement. Neeley v. Winn-Dixie Greenville, Inc., 255 S.C. 301, 178 S.E.2d 662, 665 (1971)(In a defamation action, the challenged statement must “be such that

persons reading or hearing it will, in the light of surrounding circumstances, be able to understand that it refers to the person complaining, and it must have been so understood by at least one other person.”) (quotation omitted). Furthermore, “a motion for summary judgment should be granted only if the court determines the publication is **incapable of any reasonable construction which will render the words defamatory.**” Adams v. Daily Telegraph Printing Co. 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986) (emphasis added).

Defendants assert Plaintiff was a public official, and therefore must demonstrate the RCSD made defamatory statements about him with “actual malice,” the standard announced in New York Times v. Sullivan, 376 U.S. 254, 279 (1964). Plaintiff alleges that he was not a public official. (See Trexler Aff., Exhibit “A”). Therefore, Plaintiff alleges that he is only required to prove the RCSD acted with negligence or gross negligence in publishing defamatory statements about him.

Defendants argue that pursuant to the doctrines of “law-of-the-case” and issue preclusion, Plaintiff is estopped from arguing against his status as a public official based on a ruling in a separate case (James A. Trexler v. The Associated Press, et al., 2010-CP-40-1249) by Judge Strickland that Plaintiff was a public official by virtue of his employment with the South Carolina Department of Agriculture. However, Plaintiff has appealed Judge Strickland’s ruling on that very issue. (See Plaintiff’s Notice of Appeal, July 18, 2013, attached hereto as Exhibit “Q”). Therefore, the doctrines of “law-of-the-case” and issue preclusion do not apply here, and the issue of whether Plaintiff was a “public official” for the purposes of defamation is still in dispute. See Williamsburg

Rural Water and Sewer Co., Inc. v. Williamsburg County Water and Sewer Authority, 593 S.E.2d 154, 357 S.C. 251 (S.C.App. 2003) (noting that a party in the case "did not appeal either of these findings; therefore, it is the law of this case"); Charleston Lumber Co. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (2000) (stating an unappealed ruling is the law of the case); ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997) (unappealed ruling is law of the case); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance.").

The Defendants also argue that pursuant to the South Carolina Tort Claims act a government agency is immune from liability arising from its employee's conduct "which constitutes..."actual malice"...[.]" SC Code § 15-78-60 (17). Defendants cite Gause v. Doe, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994) in support of this argument. Plaintiff recognizes the precedent set by the Gause case would seemingly preclude a defamed public official from bringing a defamation suit against a government entity under the Tort Claims Act because the public official must prove the government entity acted with "actual malice" in defaming him, which is a listed exception to the entity's waiver of immunity under S.C Code § 15-78-60(17). However, Plaintiff asserts that the Gause case was wrongly decided in this regard. Specifically, in deciding the case, the Gause court failed to recognize the important distinction between the term "actual malice" as used in Section 15-78-60 (17) and "actual malice," otherwise referred to as "constitutional malice," which is the standard set forth in New York Times v. Sullivan, 376 U.S. 254, 279 (1964) as a constitutional threshold for the degree of negligence required to prove

defamation of a public official in function of the important constitutional right to free speech. In the defamation context, “actual malice” has the following meaning: a defamatory statement is made with actual malice if it is made “with knowledge that it was false or with reckless disregard for whether it was false or not. New York Times v. Sullivan, 376 U.S. 254, 279 (1964). “Reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” St. Amant v. Thompson, 390 U.S. 727, 731, 20 L. Ed. 2d 262, 88 S. Ct. 1323 (1968).

In contrast, common law “actual malice,” or “actual malice” for purposes other than defamation, includes an element of intent to harm. “Constitutional actual malice required in defamation actions involving public officials is distinguishable from common law malice, which refers to feelings of ill-will, spite, or desire to injure.” Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 581, 556 S.E.2d 732, 737-8 (2001)(citing Sanders v. Prince, 304 S.C. 236, 403 S.E.2d 640 (1991)).

The Sanders court recognized that important distinction, which it felt compelled to clarify in its opinion as follows:

First, the trial judge's instructions on the definition of actual malice were erroneous because they included the definition of common law malice. In cases involving the defamation of a public official, the plaintiff must prove that the defendant acted with constitutional actual malice, that is, with knowledge that the statement was false or with reckless disregard of its falsity. New York Times v. Sullivan, 376 U.S. 254, 279–80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686, 706 (1964). Instructions [on common law malice], which permit the jury to impose liability on the basis of the defendant's hatred, spite, ill will, or desire to injure are clearly

impermissible. Old Dominion Branch No. 496 v. Austin, 418 U.S. 264, 281, 94 S.Ct. 2770, 2780, 41 L.Ed.2d 745, 760 (1974). “Ill will toward the plaintiff, or bad motives, are not elements of the New York Times standard.” Id. Since the parties agreed to the charges given at the trial, we do not reverse on this basis. However, in order to facilitate the retrial of this case, we note that the trial judge must instruct the jury on constitutional actual malice as enunciated in New York Times, and must not instruct the jury on common law malice.

Furthermore, to interpret SC Code § 15-78-60 (17)’s “actual malice” to be the same as “constitutional malice” in the defamation context would lead to absurd results, as a governmental agency or state entity could never be held liable for its employee’s defamation of a public official. “Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.” TNS Mills, Inc. v. S.C. Dep’t of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998). An appellate court will reject the interpretation of a statute that would lead to an absurd result the legislature could not have intended. Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

In any event, a genuine issue of material fact exists as to whether the Plaintiff was a public official, and therefore whether the even the constitutional “actual malice” standard applies. If the Plaintiff was not a public official, the simple negligence standard applies, and there are, likewise, genuine issues of material fact as to whether RCSD was negligent, or grossly negligent, in publishing defamatory statements about the Plaintiff.

Following Plaintiffs arrest on February 27, 2008, Chris Cowan, RCSD Public Information Officer published the Press Release as described above. The Press Release falsely states that Plaintiff had been charged with kidnapping a HSPCA investigator, and

also implicates him in the severe and barbaric treatment of over 28 horses, insinuates this abuse occurred both here and in Georgia, that he acted in concert with his mother and brother to commit these crimes against the horses, and that he along with his family have proven time and again they have no business owning animals. (See Press Release, Exhibit “M”).

Cowan admitted in his deposition that he drafted the Press Release from his handwritten notes he took while collecting the information from the investigators with the RCSD and the HSPCA for inclusion in the publication. (See Cowan Dep. 22:1-23:12, 88:11-17, September 8, 2011 attached hereto as Exhibit “R”). Despite Cowan’s testimony that he regularly takes copious notes when gathering information for press releases (see Cowan Dep. 78:23-24), Defendants produced in discovery two handwritten pages of notes Chris Cowan used to draft the Press Release, which handwritten notes are attached hereto as Exhibit “S.” While the notes are chaotic and jumbled, their examination reveals they contain directly contradictory information regarding who allegedly kidnapped the HSPCA investigator Hart. At the top of the first page of Chris Cowan’s handwritten, he has written “James Trexler Blocked in HSPCA Investigator.” (See Exhibit “S”). Then, half way down the very same page, under Terry Trexler, Cowan has indicated that individual has been charged with “1 count kidnapping, Blocking in Humane Society Inv, 2/13, evaluation, was Blocked in By Terry. [sic]” (Id.). Despite having direct access to view the RCSD own records and reports for cases, including the investigative reports on the subject case (See Wagner Dep. 130:9-21), Chris Cowan indicates he did not verify or attempt to verify any information given to him by agents of

the RCSD and the HSPCA on which he based the Press Release. (See Cowan Dep. 49:14-51:10). Considering Cowan based the Press Release on the notes he had and conversations with agents of different agencies, an important question of fact exists as to whether Cowan acted with reckless disregard in not taking the time to verify two directly contradictory pieces of information in his own notes as to who was charged with kidnapping before publishing the Press Release to the media. In function of the potential catastrophic effect of getting it wrong, Plaintiff submits Cowan and the RCSD acted recklessly by taking a guess at which individual the RCSD actually charged with kidnapping, and publishing the incorrect information to the media. This is particularly true in light of the fact that Cowan had full opportunity look at the RCSD records, which were immediately available to him, to resolve the obvious discrepancy. Thereafter, Cowan tried to sidestep responsibility for publishing the defamatory material regarding Plaintiff and shift the blame to the HSPCA. In an e-mail Cowan believes he sent to the State Newspaper (the e-mail transmission data was not included when the communication was produced by Defendants) Cowan states,

Since we have a great relationship I feel it is ok to say thanks for putting the hit in the eye squarely on me this morning's paper [sic.] – I realize I'm responsible for the news releases that go out from RCSD and you guys are worried about backlash from a possible attorney but the Humane Society told you guys yesterday that it was their bad information that caused the error . . . That's what a boxer would call a low blow – easily could have been written to reflect our making the correction and HSPCA being involved in the error.

Chris Cowan's e-mail he believes he sent to the State Newspaper is attached hereto as Exhibit "T." (See also Cowan Dep. 106:8-107:22).

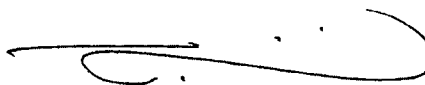
Moreover, a question of fact exists as to whether the press release conveys the message that Plaintiff acted in concert with his mother and brother, and was involved in the “severe and barbaric” treatment of 28 horses, both in South Carolina and in Georgia, has no business owning animals, and deserves to be punished to the fullest extent of the law. Even if Plaintiff were to be considered a public official, the inquiry into whether the RCSD acted with actual malice in defaming him is a question of fact for the jury to weigh the circumstances and make a determination thereon.

Furthermore, as discussed above, Defendants claim S.C Code § 15-78-60 (17) shields the RCSD from liability for defamation where its employee has acted with “actual malice.” However, the defamatory statements against Plaintiff were not published to the media as the statements of an employee, but as the statements of the RCSD itself. Press Release states throughout that it is Sheriff Lott who is making the statement. In his deposition, when counsel for Plaintiff asked Sheriff Lott why the press releases are written to reflect that it is he who is reporting the information personally, Sheriff Lott explained it is written that way because “I am the Sheriff of the County and that this is a press release coming from the Sheriff’s Department which I am the Sheriff of.” (See Lott Dep. 36:2-15, September 11, 2011, attached hereto as Exhibit “U”). Sheriff Lott explained his name is meant to personify the Sheriff’s Department as a whole. (See *id.*). Chris Cowan reiterated that fact in his deposition. When counsel for Plaintiff asked why the Press Release was written as if Sheriff Lott himself were reporting, Cowan explained, “[y]our talking about a Release that’s speaking on behalf of the Agency as a whole or on

behalf of the Department as a whole. So a press release is a representation of the Agency, and the Sheriff is the head of the Agency.” (See Cowan Dep. 94:3-18).

Because genuine issues of material fact exist with regard to Plaintiff’s defamation claim and the Plaintiff’s status as a public official, this Court should deny Defendants’ motion for summary judgment with regard to defamation.

Respectfully submitted,



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This 20th day of September 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Case No.: <u>2010-CP-40-1343</u>
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Richland County and the Sheriff of	)	
Richland County, in his official	)	
Capacity, a/k/a Richland County	)	
Sheriff's Department,	)	
	)	
Defendants.	)	
_____	)	

I hereby certify that I have served a copy of the forgoing on counsel of record by e-mail, and by U.S. Mail as required under the South Carolina Rules of Civil Procedure addressed as follows:

Robert D. Garfield, Esq.
1611 Devonshire Drive
Second Floor
Columbia, SC 29202

Dated: October 20, 2013

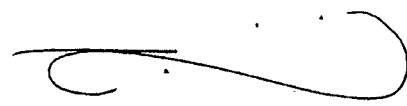

W. Westbrook Wills III

Exhibit “A”

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTH JUDICIAL CIRCUIT

James W. Trexler,

Case No.: 2010-CP-40-1249

Plaintiff,

-VS-

AFFIDAVIT OF JAMES W. TREXLER

**The Associated Press, Barrington
Broadcasting, a South Carolina Corp.,
Pacific & Southern Company, Inc., and
Raycom TV Broadcasting, Inc.**

Defendants.

James W. Trexler,

Plaintiff,

-VS-

Case No.: 2010-CP-40-1343

McClatchy Newspapers, Inc., Richland County, and the Richland County Sheriff's Department,

Defendants.

Personally appeared before me, James W. Trexler, who being duly sworn, deposes and states as follows:

1. My name is James W. Trexler, and I am over 18 years of age and competent to make this affidavit.
2. Prior to February 27, 2008, I worked for 27 years as a state employee.
3. In 2002, I was hired as an employee of the South Carolina Department of



Agriculture (the "Department" or "Agency").

4. In September of 2004, Hugh Weathers became Commissioner of Agriculture. Shortly thereafter, Commissioner Weathers decided to evaluate the existing structure and responsibilities of Agency employees. See Exhibit "B."

5. On January 4, 2005 Commissioner Weathers assigned me the responsibility for the management of the budget and the finance section of the Department. See Exhibit "C."

6. Commissioner Weathers often referred to my duties as "back room" or "back office" functions of the agency.

7. 75% of my job was generic accounting, 10% of my job was to provide budget information to legislators or their staff concerning the Agency's budget, as they needed it. Another 10% of my job consisted of providing support to senior staff in their overall direction of the Agency. See Exhibit "D."

8. As part of my job functions I also provided financial and budget data to Commissioner Weathers, lobbyists he hired to represent the Agency in public and to the legislature. I was not known to the public in any capacity.

9. During my entire tenure with the Department I was regularly evaluated on criteria used exclusively for rank in file state employees through the Employee Performance Management System (EPMS) provided by the Office of Human Resources of the Budget and Control Board. See Exhibit "E."

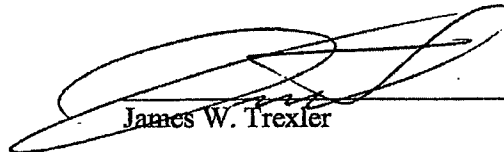
10. Neither Commissioner Weathers nor members of the Agriculture Commission, who are appointed by the Governor, are evaluated under the EPMS system.

11. I was never elected or appointed to any position at the Department of Agriculture or to any job I've ever held over my 27 years in state government.

12. I was hired into my first job in state government after filling out an employee application, and was promoted in the same manner as any other regular state employee thereafter.

13. No official position known as Assistant Commissioner of Agriculture or Assistant Commissioner of Administration exists at the Agency or in the State of South Carolina.

FURTHER AFFIANT SAYETH NOT.


James W. Trexler

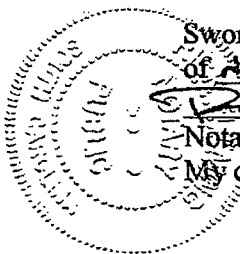
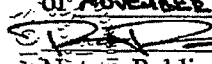
 Sworn to before me this 15TH day
of NOVEMBER 2011

Notary Public of South Carolina
My commission expired: 12/9/15

Exhibit B



Hugh E. Weathers
Interim Commissioner

State of South Carolina
Department of Agriculture

Wade Hampton Office Building
P.O. Box 11280
Columbia, S.C. 29211

Telephone: (803) 734-2210
Fax: (803) 734-2192
E-Mail: hweathe@scca.sc.gov

January 4, 2005

Mr. James W. Trexler
P.O. Box 11280
Columbia, SC 29211

Dear Jim,

Based upon my evaluation of the management structure of the S.C. Department of Agriculture, I have concluded that the Department will function more efficiently with some adjustment of responsibilities. My evaluation has been both internal to our operation as well as a comparison to other agencies.

The restructure will include, but is not limited to, separation of some of the duties in the Administration Division. As of today, I am assigning to you the responsibility for the management of our budget function as well as the finance section. This change is, in part, designed to allow you to focus your efforts in the areas where your experience in state government will benefit our Agency. I have not thought through a job title adjustment.

Larry Boyleston will head up our governmental relations team. Your role in that effort will be to manage issues related to budget and other fiscal matters. You, along with Beth Crocker, will also assist Larry assist in policy development and management.

Your change of responsibilities to the Department will be an offset. To that end your salary will remain at its present level

You are an integral part of this Agency. I am confident that this change will allow you to better utilize your experience, and the Department will be well served with your skills.

Sincerely,

A handwritten signature in dark ink, reading "Hugh E. Weathers". The signature is fluid and cursive, with the first name "Hugh" being particularly prominent.

Hugh E. Weathers

Exhibit C



Hugh E. Weathers
Interim Commissioner

State of South Carolina
Department of Agriculture

January 5, 2005

Wade Hampton Office Building
P.O. Box 11280
Columbia, S.C. 29211

Telephone: (803) 734-2210
Fax: (803) 734-2192
E-Mail: hweathe@soda.sc.gov

TO: Senior Staff
Finance Staff

FROM: Hugh Weathers 

SUBJ: Management Changes

Based upon my evaluation of the management structure of our agency, I have concluded that the Department will function more efficiently with some adjustments of responsibilities. My evaluation has been both internal to our operation as well as a comparison to other agencies.

The restructure will include, but is not limited to, separation of some duties in the Administration Division. Clarissa Adams will manage human resources and information technology. Jim Trexler will be responsible for the management of our budget function as well as the finance section.

Larry Boyleston will head up our governmental relations team.

This restructuring gives our agency a better framework with which to serve our mission. Thank you for your cooperation and I look forward to a great new year ahead for the Department!

Exhibit D

South Carolina Department of Agriculture Position Description & Employee Performance Management System (EPMS) Form

Employee Name: Jim W. Trexler **Social Security #:** _____

State Class Title: Executive Assistant III

Position Supervision

Describe the guidelines and supervision an employee receives in order to do this job, including the employee's independence and discretion.

Reports directly to the Commissioner of Agriculture.

List the classification titles and number of the three highest level subordinate position(s) reporting directly to you.

Titles	Number
1. _____	_____
2. _____	_____
3. _____	_____
Total Number of Employees Under Your Supervision: _____	

Qualifications

List what you consider to be the qualifications required for entry into this position.

Education, Training, and Experience (cite major areas of study, type & years of experience)

✓ Masters Degree and 5 years of experience in Public Administration; or an equivalent combination of education and experience.

Special Licenses, Registrations or Certifications

Skills and Abilities

Knowledge of the laws, rules, and regulations pertinent to the agency. Ability to communicate effectively.
Knowledge of state government budget, finance, procurement and Information Technology policy and procedures.

Additional Requirements

This position could require working extended hours when the Legislature is in session. Some over night travel may be necessary.

Job Purpose

Coordinates legislative matters and special projects for the Commissioner. Assists in the overall direction and management of the agency.

Job Duties, Objectives, Success Criteria and Performance Evaluation

Indicate the importance of the job duty/objective in terms of overall criticality to job success by assigning to it a percentage. Indicate essential and marginal duties/objectives by checking the appropriate block. Essential duties/objectives are the most critical, important duties/objectives for which the job was created. Marginal duties/objectives are non-critical and could be performed by another position. The percentage of importance for job duties/objectives with success criteria should total 100%.

At the end of each review period check the rating which reflects the employee's actual performance for each job duty/objective. Include a descriptive explanation for "Substantially Exceeds" and "Below" ratings

Definitions:

Substantially

Exceeds Expectations: (Work that is characterized by exemplary accomplishment throughout the rating period; performance that is consistently above the success criteria of the job.)

Exceeds Expectations: (Work that is substantially and consistently above the success criteria of the job throughout the rating period.)

Meets Expectations: (Work that routinely meets the success criteria of the job. Majority of employees should be in this category.)

Below Expectations: (Work that routinely fails to meet the success criteria of the job.)

Job Duties/Objectives and Success Criteria (Essential and Marginal)

Each job duty should be assigned a weight reflective of job duty importance. Weights for all objectives should not exceed 15%. The weights will be listed on page 5. Although not specified in the job duties/objectives section below, employees may perform other related duties as required.

1. 50 %

☒ Essential
☐ Marginal

Job Duty/Objective

Directs and supervises the Administration, Finance, Budget and Information Technology Sections of the S.C. Department of Agriculture

Success Criteria

An audit report that has very few exception items reported. Timely preparation of all pertinent reports internal and external to the agency. Satisfactory support service provided to the divisions in the agency with regards to all matters related to supervised functions. Provide professional leadership for subordinates and works well with fellow managers within the Agency.

Actual Performance/Comments

A few negatives on audit, but not too significant. Good work output by departments under your direction.

Performance Rating 3

4 = Substantially Exceeds
3 = Exceeds Expectations
2 = Meets Expectations
1 = Below Expectations

2. 25 %

☒ Essential
☐ Marginal

Job Duty/Objective

Coordinates special projects for the Commissioner and Administration to fulfill goals and objectives. Completes special projects that enhance the image of the SC Department of Agriculture. Oversees special projects that will have a long-term effect relative to the Farmers Market, and Lab/Consumer Services evaluations.

Success Criteria

Provide effective information to support the goals of the Agency. Provide information in a precise and succinct manner to enable the user to make informed decisions. Carry out projects in a manner that enhances the image of professionalism of the Agency to its stakeholders.

Actual Performance/Comments

The Farmers Market issue has been a challenge in numerous aspects. Everyone involved must share the responsibility.

Performance Rating 2

4 = Substantially Exceeds
3 = Exceeds Expectations
2 = Meets Expectations
1 = Below Expectations

3. <u>10</u> % ☒ Essential ☐ Marginal	Job Duty/Objective Works with other Senior Staff in the overall direction and management of the S.C. Department of Agriculture. Success Criteria Enagage with other Agency staff to provide insights on the impact of Agency plans and actions on the areas of the Agency under direct supervision. Provide timely and precise information to other senior staff to allow them to make informed decisions to better execute the mission of the Agency.	Actual Performance/Comments Engagement with other staff has created management issues from time to time that the Commissioner's office has been made aware of. Some of these issues have reflected poorly on the Agency. All staff involved could have performed better.	Performance Rating <u>2</u> 4 = Substantially Exceeds 3 = Exceeds Expectations 2 = Meets Expectations 1 = Below Expectations
4. <u>10</u> % ☒ Essential ☐ Marginal	Job Duty/Objective Provides information to legislators and legislative staff concerning the agency and its budget. Represents the agency head in meetings with other agency officials for the purpose of coordinating various programs. Success Criteria A thorough understanding by the user of the information provided. Provide information and/or represent the Agency with professionalism.	Actual Performance/Comments Several comments have come to the Commissioner's Office regarding less than professional representation from time to time. Some instances have reflected poorly on the Agency.	Performance Rating <u>1</u> 4 = Substantially Exceeds 3 = Exceeds Expectations 2 = Meets Expectations 1 = Below Expectations
5. <u>5</u> % ☒ Essential ☐ Marginal	Job Duty/Objective Researches issues and prepares reports, position papers and policy statement for the agency. Success Criteria Preparation and presentation of precise and usable information that adequately prepares the user to make completely informed decision	Actual Performance/Comments Presentaion of date is sometimes easy to understand. At other times it is not clearly presented.	Performance Rating <u>2</u> 4 = Substantially Exceeds 3 = Exceeds Expectation 2 = Meets Expectations 1 = Below Expectations
6. _____ % ☐ Essential ☐ Marginal	Job Duty/Objective Success Criteria	Actual Performance/Comments	Performance Rating 4 = Substantially Exceeds 3 = Exceeds Expectation 2 = Meets Expectations 1 = Below Expectations
7. _____ % ☐ Essential ☐ Marginal	Job Duty/Objective Success Criteria	Actual Performance/Comments	Performance Rating _____ 4 = Substantially Exceed 3 = Exceeds Expectation 2 = Meets Expectations 1 = Below Expectations

8. _____ %	Job Duty/Objective
☐ Essential ☐ Marginal	Success Criteria
Actual Performance/Comments	
Performance Rating _____ 4 = Substantially Exceeds 3 = Exceeds Expectation 2 = Meets Expectations 1 = Below Expectations	

Performance Characteristics

For each performance characteristic, check the rating which reflects the employee's actual performance	
1. ALL EMPLOYEES: Teamwork: Degree to which one works effectively and cooperatively with others and other departments in achieving organizational goals. Degree of responsiveness to organizational needs.	☐ Acceptable ☒ Unacceptable
2. Self Management: Works with minimal supervision, manages own time effectively, maintains control over all current projects/responsibilities. Follows up on all relevant issues.	☒ Acceptable ☐ Unacceptable
3. Problem Analysis: Able to identify problems and relevant issues and break problems into components. Sees relationships and alternative solutions and arrives at sound conclusions through a logical process.	☒ Acceptable ☐ Unacceptable
4. Judgement: Able to reason, compare, understand, and think rationally on the job. Makes quality of work-related decisions based on sound conclusions/data. Able to separate facts from opinions.	☒ Acceptable ☐ Unacceptable
5. Leadership: Employee can be relied upon to guide others to the accomplishment of objectives/responsibilities, to promote teamwork, and to resolve problems.	☒ Acceptable ☒ Unacceptable
6. Promoting Equal Opportunity: Ensuring that employees and potential employees are provided with equal opportunities.	☒ Acceptable ☐ Unacceptable
7. Customer Service: To effectively and efficiently meet the needs of those served by continually assessing performance based on customer feedback.	☒ Acceptable ☐ Unacceptable
8.	☐ Acceptable ☐ Unacceptable

Supervisory Summary and Comments

Please include information regarding areas in which employee has excelled, as well as the steps that need to be taken by the employee and the supervisor to further enhance performance and career development.

OFFICE OF HUMAN RESOURCES PROFILE

DEPARTMENT OF AGRICULTURE

NAME: LAST		FIRST			M		SSN	
TRELXER			JAMES		W			
BIRTHDATE		RACE	SEX	MAR STAT	ED	AGENCY HIRE	STATE HIRE	CLASS DATE
		W	M	M	18	01/15/03	03/02/84	01/15/03
P/P	HRS/WK	BASE HRS		FLSA	POS STAT	LEAVE ACCT DATE	MERIT DATE	MERIT STAT
F52	37.50	1950		E	F	03/02/84		
DRIVER ST VEHICLE					ST CLASSES			
Y								

[illegible]

HISTORY

	EFF DATE	REAS	REV DATE	AGY	CLASS	SLOT	BAND/GRADE	EPMS	TRAN CODE	F/P	PAYRATE	ANNUAL EQU	% CHNG
UR	07/15/07		07/15/08	P16	A130	0001	08	MD	13	F52	84,000	84,000	0.00
)	06/17/07	22	07/15/07	P16	A130	0001	08		04	F52	84,000	84,000	+ 5.60
)	06/02/07	03	07/15/07	P16	A130	0001	08		04	F52	79,549	79,549	+ 3.00
)	07/15/06		07/15/07	P16	A130	0001	08	MD	13	F52	77,233	77,233	0.00
)	06/02/06	03	07/15/06	P16	A130	0001	08		04	F52	77,233	77,233	+ 3.00
)	07/15/05		07/15/06	P16	A130	0001	08	MD	13	F52	74,984	74,984	0.00
)	06/02/05	03	07/15/05	P16	A130	0001	08		04	F52	74,984	74,984	+ 4.00
)	07/15/04		07/15/05	P16	A130	0001	08	MD	13	F52	72,100	72,100	0.00
)	06/02/04	03	07/15/04	P16	A130	0001	08		04	F52	72,100	72,100	+ 3.00
0)	07/15/03		07/15/04	P16	A130	0001	08	MD	13	F52	70,000	70,000	0.00
1)	01/15/03	39	07/15/03	P16	A130	0001	08		02	F52	70,000	70,000	0.00
2)	12/16/02	06		F03	UA03	0001	00		02	F52	70,000	70,000	+ 32.38
3)	08/17/98		08/17/99	F09	AH45	0018	07	ER	13	F52	52,877	52,877	0.00
4)	06/02/98	03	08/17/98	F09	AH45	0018	07		04	F52	52,877	52,877	+ 2.50
5)	02/02/98	37	08/17/98	F09	AH45	0018	07		04	F52	51,588	51,588	+ 5.00
6)	02/02/98	24	08/17/98	F09	AH45	0018	07		03	F52	49,132	49,132	0.00
7)	09/02/97	03	03/02/98	F09	AD28	0003	07		04	F52	49,132	49,132	+ 2.50
8)	03/02/97		03/02/98	F09	AD28	0003	07	ER	13	F52	47,934	47,934	0.00
9)	07/01/97			F09	AD28	0003	07		98	F52	47,934	47,934	0.00
0)	05/02/97	22		F09	AD28	0003	07		04	F52	47,934	47,934	NA

TEMP/TG/TL DATA ADDITIONAL BENEFITS

HRS/DAY		INVOICE NO.			
DAYS/WK		DATE			
WK/YEAR		DATE			
BEG DATE	END DATE	INVOICE NO.	CD	AMOUNT	DATE

TOTAL FTE	1.0000	STATE	AMT	84,000
TOTAL ADDL BEN		FTE	1.0000	100.00
TOTAL LONGEVITY		FEDERAL	AMT	
HOURLY PAYRATE	43.07	FTE	0.0000	0.00
PAYRATE	84,000	OTHER	AMT	
ANNUAL EQUIV	84,000	FTE	0.0000	0.00
PAY PERIOD CODE	CGR			
PAY PERIOD AMT	3,500.00			
TOTAL COMP	84,000			

TRANSACTION BLOCK

☒ PERMANENT ☐ TEMPORARY GRANT ☐ TIME LIMITED ☐ TEMPORARY

☐ FILL VACANCY	MERIT SYS STAT	EPMS	EFF DATE
☐ INC/DEC PAY	REASON CODE		PAYRATE
☐ REPLACEMENT			
☐ TERMINATE	TERM CODE		TERM DATE
☐ HSS CHANGE			
☐ EPMS			
☐ ADD			

CURRENT TRANSACTION
POSITION DATA CORRECTION
CURRENT TRANSACTION DATE
01/31/08

LONGEVITY HISTORY

EFF DATE	AGY	CLS	GR/BD	F/P	PAY RATE INCREASE	ANN SAL INCREASE	STA A/Y

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTH JUDICIAL CIRCUIT

) Case No.: 2010-CP-40-1249

)

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b

Robert D. Garfield, Esq.
Davidson & Lindemann, P.A.
1611 Devonshire Drive, Second Floor
PO Box 8568
Columbia, SC 29202-8568


W. Westbrook Wills III

Exhibit “B”

State of South Carolina)

)

County of Richland)

James W. Trexler,)

10-CP-40-1343

)

Plaintiff,)

vs.)

)

Deposition

McClatchy Newspapers, Inc.,)

Richland County and the)

of

Richland County Sheriff's)

Department,)

James W. Trexler

Defendants.)

)

James W. Trexler,)

)

2010-CP-40-1249

Plaintiff,)

vs.)

)

The Associated Press,)

Barrington Broadcasting, a)

South Carolina Corp.,)

Pacific & Southern Company,)

Inc., and Raycom TV)

Broadcasting, Inc.,)

)

Defendants.)

Deposition of James W. Trexler, taken before Sandra J. Ayers, a notary public in and for the State of South Carolina, commencing at the hour of 4:41 p.m., Wednesday, September 14, 2011, at the office of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina.

Reported by
Sandra J. Ayers



1 example, would you know if five would be better
2 than one or vice versa?

3 A Just in, again, back to the criminal aspects of the
4 case that I was involved in where the charges were
5 dismissed on me, going back it was my understanding
6 that a five was supposed to be good.

7 Q Okay. So you do know something about --

8 A Something. I don't know what -- how they put the
9 criteria that's established to grade a horse. I
10 don't know that. I don't know what the scale is,
11 what's -- how you get these scores, I don't know.

12 Q I understand.

13 A All I know is that a five is supposed to be good.

14 Q And if five is supposed to be good, what is your
15 impression of what a one is supposed to be?

16 A It wouldn't be so good.

17 Q All right. "On February 27th, 2008" -- I continue
18 reading, "I received the warrants from the Humane
19 Society. I received a tip that Hazelene and Terry
20 were in the house at 412 Derby Lane." It says, "I
21 called Captain Lanier of the Fugitive Team and told
22 him about the tip. The Fugitive Team responded to
23 the location and observed a man matching the
24 description of Terry Trexler in the house. He
25 would not answer the door. I faxed a SW" -- the

1 search warrant -- "to bond court. Once I received
2 the search warrant, I called Captain Lanier. I
3 responded to 412 Derby Lane and served the search
4 warrant. Hazelene and Terry Trexler were arrested.
5 James Trexler was arrested a short time later when
6 he returned to the house at 412 Derby Lane." Now,
7 I'm adding that or I'm assuming that it's 412 Derby
8 Lane. Were you arrested on the property of 412
9 Derby Lane?

10 A Yes, sir.

11 Q And what was your purpose for being at this
12 residence that you no -- no longer live at --

13 A When --

14 Q -- on February 27th, 2008?

15 A I got a call. I was in Sumter County, heading to
16 New Zion, and I got a call from Richland County
17 Sheriff's Department, and they said my mother and
18 brother had been arrested --

19 Q Uh-huh.

20 A -- and I needed to turn around and come back.

21 Q Okay.

22 A And I needed to be back in 45 minutes. There were
23 dogs in the yard and the house that needed to be
24 cared for. If I didn't get back in 45 minutes,
25 they were going to take and confiscate the animals.

1 Q Uh-huh.

2 A I told the officer I was coming back. I came back.
3 He was in an Excursion or Expedition or something
4 across the street. I got out, walked over, talked
5 to him. He said, "Go on and take care of the
6 animals. Your mother is going to the hospital.
7 She's complaining of heart failure, and they've
8 been arrested. But go on to the house and take
9 care of the dogs. I'll be back with you in 30
10 minutes." I went in the house, and it was about 15
11 to 20 minutes somebody knocked on the backdoor of
12 the garage. And I opened the door. And it's
13 Richland County police and they -- deputy sheriff
14 and they -- two of them -- and they asked me if I
15 was James Trexler. I told them I was.

16 Q Uh-huh.

17 A And they arrested me. And asked me -- well, first
18 they asked me if I own a grey stallion. I said,
19 "No." And then they asked me if I owned another
20 type horse, and I said, "No."

21 And then they said, "Well, you're under arrest
22 for these warrants." And they arrested me and took
23 me to the detention center.

24 Q Okay. They served you with five warrants, correct?

25 A That's correct.

Exhibit “C”

Instrument: 2006048692

Book/Page: R1189 : 3066

Date/Time: 6/2/2006 12:58:00 PM

Book 1189-3066

2006048692 06/02/2006 12:58:00:720

Warranty Deed

Fee: \$10.00 County Tax: \$0.00

State Tax: \$0.00

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND



2006048692 John G. Norris

Richland County ROD

KNOW ALL MEN BY THESE PRESENTS, THAT I, JAMES W. TREXLER, (hereinafter called Grantor, for and in consideration of the sum of five and no/100 (\$5.00) Dollars and other valuable consideration to the grantor in hand at and before the sealing of these presents, by CAROLINA ARABIAN SHOW HORSES, LLC., (hereinafter called grantee) in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released his interest, and by these Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on the Western side of Hunting Creek Road, South of U.S. Highway No. 76, in the County of Columbia, State of South Carolina, being shown and designated as Lots 1 and 2, Block G on plat of Hunting Creek Farms by Belter & Smith, Inc., S.W.S. dated August 15, 1971, and recorded in the RMC Office for Richland County in Plat Book X at pages 1629-1629A. Said lots being more particularly shown on a plat for James William Trexler and Julie C. Trexler prepared by Thomas W. Reynolds, R.L.S., dated May 6, 1996, and recorded in Office of the RMC for Richland County in Plat Book at page. Said plat is incorporated herein by reference for a more complete and accurate description. Tax Map Nos. 24600-01-45 and 46.

This being the identical property conveyed unto James W. Trexler and Julie C. Trexler by deed of Fred O. Martin and Elizabeth J. Martin dated May 16, 1996 and recorded in the the Office of the RMC for Richland County in Deed Book 1317 Page 578 on May 22, 1996.

This document is not to scale

Trexler 0194



With all singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining. TOHAVE AND TO HOLD, all the interest of James W. Trexler, the premises before mentioned unto the grantee, his heirs, successors and assigns forever.

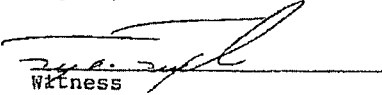
James W. Trexler does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the grantee, heirs and assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

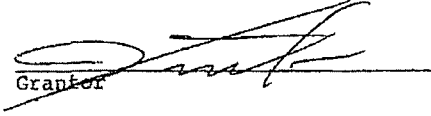
This deed transfers the interest of James W. Trexler but does not effect or transfers the interest of Julie C. Trexler in this real property.

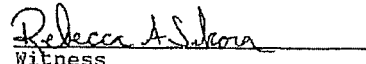
IN WITNESS WHEREOF, the Grantors have hereunto set their hand and seal.

Date: June 2, 2006

Signed, Sealed and Delivered in the Presence of:


Witness


Grantor


Witness

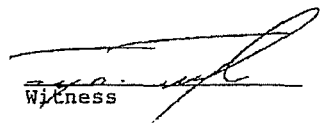
This document is not to scale

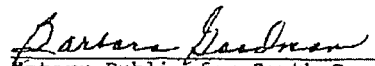
Trexler 0195

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me June 2, 2006
Witness


Notary Public for South Carolina
My Commission expires: DEC 9, 2013

Grantee's address:

P.O. Box 249
Sumter, SC 29151

Richland County ROD

Richland County Auditor Paul Browley 2007

This document is not to scale

Trexler 0196

Instrument: 2006048692

Book/Page: R1189: 30581

Date/Time: 6/2/2006 12:58:00 PM

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF RICHLAND

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY James W. Trexler
TO Carolina Arabian Show Horses LLC, ON June 2, 2006

3. Check one of the following: The Deed is

(a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.

(c) X EXEMPT from the deed recording fee because
Exemption # 4
(explanation, if required)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$

(b) The fee is computed on the fair market value of the realty which is \$

(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$

5. Check YES X or NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ 285,000.00

6. The DEED recording fee is computed as follows:

(a) the amount listed in item 4 above.

(b) the amount listed in item 5 above (no amount place zero)

(c) Subtract Line 6(b) from Line 6(a) and

Richland County ROD

Richland County Auditor Paul Brewer 2007

This document is not to scale

Trexler 0197

place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

GRANTORS: _____

SWORN to before me this

2 day of JUNE, 2006

Darlene Goodman
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: Dec 9, 2013

Richard County ROD

Richard County Auditor Paul Bowley 2007

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Trexler 0198

Exhibit
“D.” and “D.2”

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0802114413/1

Report Date: 02/22/2008

Primary Information

Report Number: 0802114413/1
Report Date: 02/22/2008
Type Of Report: Investigative Followup
Reporting LEO: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status: Pending

Narrative

2/13/2008

I received a call from Deputy Simpson. She told me she had been out on a call on Zeigler Rd and the complainant gave her the wrong name. She said he told her his name was James Alfred Trexler DOB 7/16/1963. He would not provide her with any ID. After she left the ML. She ran the information in NCIC and it came back as Terry Alfred Trexler who is wanted out of Sumpter County. She told me she called me because the Humane Society was involved in the incident and after she left she found out the complainant was wanted. I told her I would follow up on the incident. She gave me the incident number, 0802114413

A short time later Inv. Michele Hart of the HSPCA called and told me she was investigating a complaint about some neglected horses on Zeigler Rd South. Michele told me she was on OVM Lori Stokes' property trying to take pictures of the horses on the adjoining property when a man and an older woman showed up and started to yelling and cussing at her. The woman stood between her and the horses and waved her hands in the air and shouted profanely at her. They told her she was trespassing and tried to get her to give them her camera. Michele tried to explain to them that she was with the Humane Society and that she was on Lori Stokes' property with Stokes' permission to be there. Michele said when she realized she was not going to get any more pictures or any cooperation from the two people she decided to leave. While she was walking thru the pasture back to her truck the man drove his truck over behind her truck and blocked her in. He actually told her there was no way she was going to leave. He told her he had called the police and the police had told him to keep her there. I told Michele I had received a call from the deputy who had responded and I would follow up on the incident. We decide to meet on Monday at the Humane Society.

2/19/2008 1000

I met with Inv. Michele Hart, Inv. Liz Perry and Mary Ellen Tobias at the HSPCA to discuss getting a SW to evaluate the horses on Zeigler Rd.

Michele also gave me a written statement about how the man calling himself James Trexler blocked her in and would not let her leave. I showed her DMV pictures of James Trexler and Terry Trexler. She immediately pointed to Terry Trexler and said that is the man who told me he was James Trexler and would not let me leave.

I requested the 911 recording to find out if dispatch had told Trexler to block in Michele and keep her there until the police arrive. I called Deputy Simpson and she confirmed that the Trexler truck was parked blocking Michele and there was no way she could have driven her truck away.

2/22/2008

I received the 911 recording. Dispatch did not tell Trexler to block the truck.

I called the ELA number and spoke to Andrew Rogers. We discussed the incident and possible charges. He told me this incident met the statutory requirements of probable cause for Kidnapping.

2/26/2008 I signed the warrant for Kidnapping against Terry Trexler.

2/27/2008 The Fugitive arrested Terry Alfred Trexler for Kidnapping and Animal Cruelty in another case. Case # 0802241526

Case Closed by Arrest CJ.

8441-A-026



Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0802114413/1

Report Date: 02/22/2008

Narrative - Continued

Record Status Information

Record Origination Operator: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date: 02/22/2008 17:06
Last Update Operator: Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date: 03/06/2008 10:10

Reporting LEO	Date	Supervisor	Date
Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Robinson, Donald (565 / Assault / Richland County Sheriff's Department)	3/6/2008

hwagner 03/06/2008 10:13

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Page 2 of 2

8441-A-027

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0802241526/1

Report Date: 02/28/2008

Report Number:	0802241526/1
Report Date:	02/28/2008
Type Of Report:	Investigative Followup
Description:	Follow up
Reporting LEO:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Approval Status:	Pending

Record Origination Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Record Origination Date:	02/28/2008 19:26
Last Update Operator:	Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)
Last Update Date:	04/07/2008 12:15

Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)		Robinson, Donald (556 / Assault / Richland County Sheriff's Department)	4/7/2008

Wagner, Holly (1209 / Assault / Richland County Sheriff's Department)

wagner 04/07/2008 13:15

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Page 1 of 4

8441-A-030



2/13/2008

I received a call from Deputy Simpson. She told me she had been out on a call on Zeigler Rd and the complainant gave her the wrong name. She said he told her his name was James Alfred Trexler DOB 7/16/1963. He would not provide her with any ID. After she left the U/L. She ran the information in NCIC and it came back as Terry Alfred Trexler who is wanted out of Sumpter County. She told me she called me because the Humane Society was involved in the call and after she left she found out the complainant was wanted. I told her I would follow up on the incident. She gave me the incident number.

A short time later Inv. Michele Hart of the HSPCA called and told me she was investigating a complaint about some neglected horses on Zeigler Rd South. Michele told me she was on DVM Lori Stokes' property trying to take pictures of the horses on the adjoining property when a man and an older woman showed up and started to yelling and cussing at her. The woman stood between her and the horses and waived her hands in the air and shouted profanity at her. They told her she was trespassing and tried to get her to give them her camera. Michele tried to explain to them that she was with the Humane Society and that she was on Lori Stokes property with Stokes' permission to be there. Michele said when she realized she was not going to get any more pictures or any cooperation from the two people she decided to leave. While she was walking thru the pasture back to her truck the man drove his truck over behind her truck and blocked her in. He actually told her there was no way she was going to leave. He told her he had called the police and the police had told him to keep her there. I told Michele I had received a call from the deputy who had responded and I would follow up on the incident. We decide to meet on Monday at the Humane Society.

2/19/2008 1000

I met with Inv. Michele Hart, Inv. Liz Perry and Mary Ellen Tobias at the HSPCA to discuss getting a SW to evaluate the horses on Zeigler Rd. Michele told me the first time she went to investigate the property on Zeigler Rd no one was around and the gate was locked so she posted the property. Then she received a call from a man who said he was James Trexler with the SC Department of Agriculture. He was very belligerent and told her he owned the horses and she could not go on his property to look at the horses. That is why she had gone on Lori Stokes' property to try to take pictures of the horses. Michele also gave me a written statement about how the man calling himself James Trexler blocked her in and would not let her leave. I showed her DMV pictures of James Trexler and Terry Trexler. She immediately pointed to Terry Trexler and said that is the man who told me he was James Trexler and would not let me leave.

On 2/25/2008 at 0930 RCSD assisted the HSPCA serve a search warrant at 1248 Zeigler Rd South. RCSD secured the property. A DVM Mike Privat and HSPCA checked on the condition of the 23 horses found on the property. There was a 15-gallon water tub that only had a few inches of water in the bottom. All other tubs and buckets on the property were empty. There was no feed, hay or any evidence that there had been any hay on the property. Most of the horses were extremely

8441-A-031

underweight with ribs and hipbones showing. Some of the younger horses had on halters that had been on so long that they were growing into the skin. There were two female dogs and 5 puppies on the property. They did not have any food or water. After a preliminary evaluation of the animals and property it was decided to seize all the animals. The 23 horses, two female dogs and 5 puppies were all taken into custody by the HSPCA.

The HSPCA had information that Terry and Hazel Trexler owned the horses. Hazelene Trexler arrived on the property during the search warrant. She was very upset. At one point she yelled at Michele Hart of the HSPCA "I am going to get you" while pointing her finger at her. Hazel Trexler claimed ownership of all the horses while being interviewed by the media.

The horses were taken to Mike Privett's to be evaluated and cared for.

All the horses were numbered and photographed.

DVM Mike Privett evaluated and documented the body condition of all the horses seized.

The HSPCA had also received information that there were horses in a barn at the home of James Trexler 412 Derby Ln. Hopkins SC. The HSPCA obtained a warrant for that property. On 2/26/08, RCSD assisted the HSCPA in serving that warrant. One horse was in a pasture. Four horses were found in stalls in the barn. The horses were standing in mud soaked with urine and feces. There was no food, hay or clean water seen on the property. One of the horses was in an emaciated state with ribs and hipbones protruding. The other horses were slightly under nourished. The horses were taken into custody by the HSPCA.

The horses were taken to Mike Privett's to be evaluated and cared for.

All the horses were numbered and photographed.

DVM Mike Privett evaluated and documented the body condition of all the horses seized.

On 2/27/2008 I received the warrants from the Humane Society. I received a tip that Hazelene and Terry were in the house at 412 Derby Ln. I called Capt Lanier of the Fugitive Team and told him about the tip. The Fugitive Team responded to the location and observed a man matching the description of Terry Trexler in the house. He would not answer the door. I faxed a SW to bond court. Once I received the SW I called Capt. Lanier. I responded to 412 Derby Ln and served the SW. Hazelene and Terry Trexler were arrested. James Trexler was arrested a short time later when he returned to the house.

Case Closed By Arrest

CN

On 2/29/2008 at 1000 DVM Nicole Swineheart evaluated the 28 horses at Mike Privett's.

On 2/29/2008 Mike Privett called and told me he had received a tip that there may be more horses on Misty Meadows Rd in Hopkins. He had driven by the location and found 17 horses in a pasture.

8441-A-032

Some of the animals were malnourished. There were rib and hipbones showing. Three of the horses had hakers on so tight they were rubbing sores on their heads. The pasture was eaten down had there was no hay or grass. I made contact with Ray Adams who lives at 207 Misty Meadows Rd. He told me he had let Terry and Hazelene Trexler put some horses on his land. He said he did not have a contract with them because he had known Terry's father and they only wanted to put the horses there for a few months. Ray did not know the exact date the horses showed up but it was about two months ago. Ray gave Mike Privett and the HSPCA permission to go on his property to care for the animals until a SW could be obtained.

Ray was very nervous and wanted to make sure he was not in trouble for the animals. He said he had ask his neighbor to call the HSPCA about the horses. Ray is somewhat evasive during questioning. I believe he is a friend of the Trexler's and did not want to turn them in but wanted to make sure he was no in trouble for the condition of the horses on his property.

On 3/3/08 at 1410 a SW was served on 207 Misty Meadows Rd along with an on site seizure of the 17 horses. I gave a copy of the SW and On-site seizure to Ray's wife because he was not home. Ray came home before we had left and I spoke to him about the search warrant and seizure. He said he understood that the horses could not be taken off the property. He agreed to call the sheriff's department if he saw anyone around the horses.

Michele Hart and I went by 412 Derby Lane, in an attempt to notify James Trexler of the SW and seizure. No one would come to the door. I believe he was in the house but would not come to the door. I saw the dark truck in the garage and the bull dogs were in the back yard.

I called James Trexler's cell phone and spoke to him. I advised him of the warrant and seizure. He told me the horses on Misty Meadows Rd were his mother's and he had told his attorney Todd Rutherford about the horses and ask what he should do. He said he had fed the horses on Saturday and Sunday but they were not his and he was waiting on his attorney to tell him what to do about the horses. I ask him about the dogs at 412 Derby Ln. He told me he was taking care of them. He said the bulldogs are in the back yard right now.

I also took copies of the search warrant and on-site seizure to the office of Attorney Todd Rutherford.

3/9/2008

The 17 horses on Misty Meadows were transported to DVM Mike Privett's farm.

All the horses were numbered and photographed.

DVM Mike Privett evaluated and documented the body condition of all the horses seized.

3/10/2008

Seventeen warrants each for Terry and Hazelene Trexler were signed for the 17 horses on Misty Meadows.

8441-A-033

Exhibit “E”

HUMANE SOCIETY

FACSIMILE TRANSMITTAL SHEET

TO:

William Johnson

COMPANY:

FROM:

Wayne Brennessel

DATE:

8/15/2011

FAX NUMBER:

803-435-2858

**TOTAL NO. OF PAGES,
INCLUDING COVER:**

7

PHONE NUMBER:

803.435-0909

SENDER'S PHONE NUMBER:

(803) 783-1267

RE: JAMES TREXLER



Humane Society for the Prevention of Cruelty to Animals

Confidential Report

HSPCA Cruelty Report**282008-1000**

Date created:	2-11-2008	Contact date:	2-8-2008
Created by:	ElisabethPerry	Source:	Phone
Status:	Closed, 2-7-2009	Type:	General neglect

Address:	1248 Zeigler	County:	Richland
City:	Eastover		

Case Summary

[FEB-11-08 8:36 AM Elisabeth Perry] Neglected horses, ribs showing

Case Notes

2/11/08 Called complainant for more information. She stated that she was driving around one day looking at properties for sale in the area. She stated that she saw the "for sale" sign and the gate was open so she went up to the house but could not find anybody around. She stated that she noticed the horses were underweight and called the HSPCA.

-- [FEB-12-08 5:10 PM Michele Hines] -----

Went to address but gate was locked. Posted notice to call. Horses could be seen in pasture but too far away to see body condition.

-- [FEB-12-08 5:26 PM Michele Hines] -----

Owner called and was very rude on the phone. He stated that I have no authority to inspect his horses and he will not allow access on his property. Called Dr Privot and left message to call and he called back immediately. He stated that he would have Dr Stokes call back just as soon as she was free.

-- [FEB-18-08 2:32 PM Michele Hines] -----

2/12/08 Dr Stokes called and said that I could go on her property at any time. She told me how her property line was 72 beyond the fencing so I could walk the outside of the fence and still be on her property. She stated that I was also welcome to climb the fence to get into the pasture.

-- [FEB-18-08 2:57 PM Michele Hines] -----

2/13/08 Went to Dr Stokes and parked in front of the gate. the gate was unlocked and I was able to walk in but had to climb the fencing to get into the pasture. As I was walking across the pasture the owners saw me and started calling the horses in. I was only able to get 3 pictures before an older white female came over and started calling me a fucking whoring bitch. She demanded that I give her my camera as she continued to curse at me with the same wordage. A picture of the woman was taken as she continued to yell and curse. She did threaten to shoot me if I trespassed on her property which she said I was doing. I returned to my truck and the lady and a white male with light colored hair, blue eyes and a cyst on his cheek had blocked my truck in so that I could not leave. There was a very large ditch on both sides and there was no room to move my truck. I asked him to move his truck and he said no, that I wasn't going anywhere and that I should just try to get out. The man came up to me continuously yelling and get within inches of me. His face was less than a foot away from mine as he continued to scream at me. I asked him to back up and he refused. The two continued to verbally assault me and I had to get in my truck to get away from them. The guy continued to repeat that I wasn't going anywhere except to jail. That he was going to have a warrant signed against me for trespassing by the end of the day and that he had two witnesses that I was on his property. Before getting in my truck I tried to explain that I had permission to be on Dr Stokes property and he insisted that I was on his property. I tried to tell the female that I called the day prior but was refused entry and she called me a liar. But the male confirmed that he did talk with someone but it was not me. The Richland County Police arrived about 30 minutes later and spoke with the two first. They came up to about ten minutes later and I provided them with my call sheet, previous days notice and the phone number for Dr Stokes. The officers returned to the other two and spoke with them for another 15-20 minutes. The officers came back and asked if I wanted a case number (#1144) and I said yes. They gave me a verbal warning not to trespass on their property and advised if I had to return that I bring a deputy.

2/18/08 Dr Stokes called and stated that she spoke with the property owner confirming that the property is being leased. She gave me his name and phone number. She stated that she counted approx 26 horses this morning and she stated that about 3/4 are in bad condition. She stated that several are high 1's or low 2's. She said that she took some pictures with her camera phone but was going to go out and try to get some better ones.

-- [FEB-23-08 9:26 AM Michele Hines] -----

2/19/08 Dr Stokes e-mailed pictures taken. Search Warrant signed by Judge Valerie Stroman-Boyd.

-- [MAR-02-08 10:50 AM Michele Hines] -----

2/25/08 Execution of Search Warrant

Accompanied by

Richland Co Sheriff's Dept

Inv Wagner

Inv Spears

Inv Thompson

Dep Tena Goff

Dep Newman

Dep Wamsley

HSPCA

Josh Gowans

Inv Elisabeth Perry

Kelly Graham

Veterinarian

Dr Michael Privett

Other Volunteers

Mary Ellen Tobias

Jackie Sisson

Alicia Morgan

Lauren Kinard

Leon Jackson

At approximately 0930hrs the property was approached. The front gate was locked with a chain and padlock so bolt cutters were used to gain entry. No one was located on the premises. Twenty-three (23) horses were found contained in a fenced-in field behind the paddock containing the barn. The fencing was poorly constructed with posts and two strands of barbed wire. Many of the posts had exposed nails on the inside which is hazardous and could easily cause injury to a horse.

It was immediately noted that many of the horses were underweight with spine, ribs and hip bones visible. Many also had tight halters. Dr Privett drove into the paddock looking for a food and water source. No food was found in the paddock and the grass was eaten down to the roots. The paddock had no trees or structures that would provide shelter for any of the horses. A small container, approx 15 gallons, was found but it was only half full. The surrounding grounds and structures (barn, shed and house) were searched but no food was found. Dr Privett stated that the horses were not in imminent danger of death but that they were underweight and/or in poor condition. Based on our findings the decision was made to seize the horses. The horses were then herded into the smaller paddock containing the barn. The horses gave little resistance entering the paddock and immediately started grazing the grass. The horses were then loaded into the trailers for transport.

While loading the horses Hazelene Trexler drove up in a dark blue pick-up truck. She began yelling and started making phone calls. At one point she spotted me, Inv Hart, and pointed her finger at me twice stating "I'm going to get you". Inv Perry and Inv Wagner both witnessed this action. Inv Wagner advised Ms Trexler that she needed to stop making threats or she would be arrested. Ms Trexler was then escorted to another area of the property by two uniformed officers where she spoke with them and the media. A copy of the search warrant was given to Hazelene Trexler by the uniformed officers.

Once the horses were loaded they were transported to Dr Privett's farm for evaluation. Blood was drawn from each horse for a coggins and CBC testing. Each horse was paint-branded and photographed. See files for horse description and BSC.

Horses were boarded at Dr Privett's farm pending Show Cause hearing scheduled for 3/3/08 @ 1000 hrs.

-- [MAR-02-08 11:50 AM Michele Hines] -----

2/28/08 During further investigation it was found that Terry and Hazelene Trexler were wanted in Jefferson County Georgia for a combined 61 counts of animal cruelty. The Georgia Department of Agriculture and Jefferson Co Police were contacted to confirm the charges. Spoke with Judy Whetsell at the GA Dept of Agriculture. She stated that they originally recieved a call for a dead horse on the Trexler's Ga property. Once they arrived they found approximately 72 horses. She stated that they had two seizures and impounded a total of 29 horses and the remaining were placed under quarantine. She stated that 10 were sold without permission and the rest were removed from the property. She stated that Ms Trexler said that she inherited the horses after her uncle died in Waycross GA.

I asked for a copy of their case and she stated that a written request would be needed for an open case record. She said to send the request to the the GA Dept of Agriculture, 19 MLK Jr Dr, Agriculture Bldg Rm 133, Atlanta GA 30334. Case #FY08-0550

2/26/08 Arrest Warrants signed for Terry and Hazelene Trexler. 23 counts each for ill-treatment of animals.

2/28/08 Sumter Co Police called reporting that several graves sites have been found on the property that the Trexler's recently owned on Brewington Rd. I responded to 920 Brewington Rd and met with Sgt Randy Wright. It was dark but he showed me a couple of grave sites with exposed bones. Arrangements were made to meet the next morning at 9am.

2/29/08 Called Randy Lockwood with the ASPCA in NY City about using their CSI team. He relayed the information to Dr Merck in Ga and she quickly contacted me. Due to the long drive, arrangements were made for her and her asst to deploy on 3/1/08.

3/1/08 Dr Merck arrived at approx 1000hrs and evaluated the scene. With Sgt Wright's assistance they mapped out the scene and excavation was started. Nine (9) grave site were located and excavated removing the deepest leg bone for bone marrow testing. One grave contained the remains of 3 horses. Insect and plant samples were also taken from some of the sites for testing. During the excavation, Connie Dickman from Indiana arrived stating that she had sold James Trexler a horse approx 2.5 years ago. She stated that he bought the horse for \$10,000 but only paid her \$5,000. She stated that she has been trying to contact him for years without success. She stated that Terry Trexler is the one who accepted delivery of the horse. She described the horse to be a 20 yo grey stallion approx 14.3 hands high. She stated that when he was last seen he was starting to show flea-bitten markings and that he has a growth/lump/callous on his left hock. Ms Dickman provided paperwork including contract, registration papers and attempted coorespondence with the Trexler's. Ms Dickman stated that she can identify her horse and would like to take custody of him. Inv Perry made arrangements with Ms Dickman for identification. 3/1/08 With Dr Merck we arrived at 1248 Zeigler Rd at approx 1630 hrs. meeting with Dr Privett and Inv Perry. With the landlords permission we entered the property and found three grave sites. The horses buried still had intact flesh, skin and fur. From two of the sites, one leg was removed for testing and insect samples were taken. The doctors decided not to take samples from the third site because the foal was too young for testing.

-- [MAR-12-08 4:02 PM Michele Hines] -----

Dr Merck just called with 3 test results. She explained that the marrow test should be 60% or higher.

The test results are as followed.

Site 1 grave 1

.8%

Site 1 grave 6

31.4%

Site 1 grave 9

63.1%

So two out of the three were starved, the first one severely. She is still waiting for other reports and the plant and insect results to come in and will keep me posted.

Josh, Liz & Holly notified via e-mail. Mary Ellen Tobias, Dr Privett and Jill Andrews notified by phone.

[MAR-16-08 6:02 PM Michele Hines] 3/13/08 Received e-mail from Dr Merck with prelim report. Only change in report is that grave 1 was from site 2 (Zeigler Rd). Report was e-mailed to Josh, Holly, Liz, Mary Ellen and Dr Privett. Jill was called with the results.

[MAR-19-08 4:24 PM Michele Hines] Spoke with Dr Mitch Lowrey who owns Equine Medical Services in Bluffton SC, 843-442-3584. He stated that on 11/17/07 and 11/18/07 he traveled to Jefferson Co Ga to pull coggins tests on approx 42 horses belonging to the Trexler. He stated that he is licensed in both states and the Trexler told him that Hazelene Trexler was very ill and wasn't expected to live much longer and they were in a hurry to get the tests so they could sell the horses before she passed away. He stated that Hazelene wrote 2 checks on a closed account for just under \$1,500.00. She asked him to hold the checks for a week and he did. He attempted numerous times to contact them without success. He stated that on the first day it was just Hazelene, Terry and himself rounding up the horses. On the second day it was Hazelene, Terry, James and 2 hispanic males helping with the horses. He stated that the Hispanic males were very rough with the horses. He stated that one horse tried jumping the fencing and injured himself which he treated free of charge. He stated that he provided all the coggins tests to the GADA and that he would mail me a copy as well.

Spoke with Barbara Person at Markel Ins Co, 4600 Cox Rd, Glen Allen VA, 23058, 800-416-4364. She stated that the Trexlers did have insurance with their company about 6 years ago but a subpoena would be needed. Jill Anderson was given the information.

Spoke with Jarvis Ins Co in Ohio, 440-248-5330. He stated that they did have a policy on Amore back in 2001 but the records have been purged.

Spoke with Johnny (803-799-6001(w) or 803-353-0589(h) and Jesse Harmon (803-600-2016). Johnny stated that on 10/7/07 him and Jesse saw a large stock trailer at Bunkys that was overcrowded with horses. He stated that 3 of the horses were on the floor being stomped by the others and one was gasping for air. He told the Trexlers but they didn't seem to care so he called the Sheriff's Dept. He stated that James did move a couple of horses to the smaller trailer that they had with them. Before the police could arrive the Trexlers left so they followed them and called the police back. He stated that they followed them into Hunting Creek Subdivision. He stated that James got out of his truck and started beating on the Harmon's truck and Hazelene was calling 9-1-1 claiming that she was being raped. James claimed to be an attorney and a Richland Co officer and Hazelene claimed that she was Sheriff Lotts secretary. Once the police arrived Hazelene filed charges that they had fondled her. Both Harmon's said that they taped the incident and gave Officer Woods with the RCSD a copy. Johnny Harmon also stated that the next day he saw all three Trexlers on Misty Meadows with some horses. Jesse Harmon stated that he would meet with me next week with a copy of the tape and pictures that he has of the incident. He works at Blanchard's, 711 Buckner Rd. in Columbia. Jesse also stated that an ACO with Richland Co issued the Trexlers a ticket.

[MAR-20-08 2:51 PM Michele Hines] Spoke with Capt McKenzie with SLED. He reported working a case where a horse named Autumn Blaze was purchased by Terry Trexler from CA in the fall of 2001. In May 2002 a \$70K mortality claim was filed with Markel. He is trying to obtain a copy of their case for Inv Wagner.

Spoke with John Robinson with National Equine Claims. He stated that James Trexler was paid for 4 claims filed bx 2003-2005. Subpeona is being sent for those records.

[MAR-20-08 3:43 PM Michele Hines] Spoke with RCACO Thompson who stated that he issued James Trexler a notice on Oct 7, 2007 during the horse trailer incident involving the Harmon's. He

will be dropping off the report at the HSPCA.

[MAR-21-08 4:53 PM Michele Hines] Called Walterboro Auction and left a message to call.

[MAR-21-08 4:55 PM Michele Hines] E-mailed Charlotte (VA State Vet) asking that she search her database for the Trexler family.

Case Details

Case rating: *	Result:	File charges
Verbal Warning:	Refer to:	
Written Warning:	Follow up:	

* Level 0: Undocumented cruelty, no action. Level 1: Requires compliance, action educate. Level 2: Requires intervention, action prosecute. Level 3: Results in death, action prosecute

Resources

Type	Contact Name	Contact Phone
Witness	<u>Connie Dickman</u>	
Witness	<u>Jesse Harmon</u>	
Witness	<u>Johnny Harmon</u>	(803) 353-0589
Witness	<u>Barbara Person</u>	(800) 416-4364
Witness	<u>John Robinson</u>	(800) 783-9418
Veterinarian	<u>Michael Privett, DVM</u>	(803) 783-6999
Veterinarian	<u>Mitch Lowrey, DVM</u>	(843) 442-3584
Suspect	<u>James Trexler</u>	
Suspect	<u>Hazelene Trexler</u>	
Suspect	<u>Terry Trexler</u>	
Law Enforcement	<u>Holly Wagner</u>	(803) 576-3456
Law Enforcement	<u>Capt McKenzie</u>	(843) 662-6245
Landlord	<u>Jim Quinn</u>	(803) 606-0260
Landlord	<u>John McDaniel</u>	
Control Officer	<u>ACQ Thompson</u>	
Complainant	<u>Molly Hutchinson</u>	(803) 269-2955

Seized Animals

Type	Name	Action
Horse	13	Foster
Horse	12 Bonaparte's Fancy	Foster
Horse	49 BA Passionette	Foster
Horse	51	
Horse	50	
Horse	47 Jabask Gdancer	Euthanize
Horse	46 Safanadd	
Horse	45	Foster
Horse	43 April's Royal Isis	
Horse	42 RF Fancy Free	Foster
Horse	35	
Horse	34	
Horse	33 Camelo V	
Horse	32	Foster
Horse	31 Amoree	
Horse	23	

Horse	22 Hucks Jubilee	
Horse	21	Foster
Horse	20 Amoree Promotion	
Horse	17 Khandi Berry Bey	
Horse	16 Ju Beylee	Foster
Horse	15 Summer's Charm	
Horse	14	
Horse	11	
Horse	08 April Delight	
Horse	06	
Horse	05	
Horse	04	Foster
Horse	03	
Horse	02 Elita MSC	
Horse	01 SH Mhadiya	
Horse	53 Zabaska	Foster
Horse	44 Mics Fantasia	Foster
Horse	41 Fiery Nova	Foster
Horse	18 OA Sweet Promise	Foster
Horse	10 Blazing Passion V	Foster
Horse	09 DA Reflectinns	Foster
Horse	07 RF Gllory Bey	Foster
Dog	Dog_01 (Riggins)	Foster
Horse	57	Foster
Horse	19	Foster
Horse	52	Foster
Horse	48	Foster
Dog	Dog_03	Foster
Horse	54	Foster
Horse	56	Foster
Horse	55	Foster
Dog	Dog_02	
Dog	Dog_04	
Dog	Dog_05	
Type	Name	Action
Dog	Dog_07 (Jazzy)	
Dog	Dog_06 (Lola)	

Supervisor's Notes

Exhibit “F”

1-958851

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Hopkins Magistrate

THE STATE

0802114413

against

Terry Alfred Trexler

Address

Sumter, SC 29153-

Phone

SSN

Sex: M Race: Height: Weight:

DL State: CR DL #

DOB

Agency ORI # 04000

Prosecuting Agency Richland County Sheriff Department

Prosecuting Officer: Holly Wagner - 1209

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec 16-03-0910

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 the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant
on

RETURN WARRANT TO:

Hopkins Magistrate
6108 Cabin Creek Road
Hopkins, SC 29061

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Richland / Hopkins Magistrate

Personally appeared before me the affiant Holly Wagner

being duly sworn deposes and says that defendant Terry Alfred Trexler

did within this county and state on or about 02/13/2008

violate the criminal laws of

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Hopkins Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping / Kidnapping

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

That on February 13, 2008, while at 1134 Zeigler Rd South in the Hopkins Magisterial District of Richland County, it is believed that the defendant did commit the crime of Kidnapping because he willfully and unlawfully confined the victim, Michele Hart against her will by driving a 2002 dark blue Ford Truck (SC tag 323TMP) up behind her vehicle to block her in, and refused to let her leave. The victim asked the defendant, Terry Alfred Trexler to move his truck so she could leave and he told her there was no way he was going to let her leave. Defendant was so upset because Michele Hart is an investigator with the HSPCA and she was taking pictures of his horses from the adjoining property. The defendant has provided a written statement describing the incident. The R/O deputy confirmed the vehicle being blocked in by the defendant's truck. Affiant and others are witness to prove same. RCSD Case #08024114413

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Hopkins Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

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

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

on or about 2/13/2008

defendant Terry Alfred Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Hopkins Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

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

Sworn to and subscribed before me

on 02/26/2008

Signature of Issuing Judge
V R Stroman-Boyd (L.S.)

Judge Code: 5021

Judge's Address 6108 Cabin Creek Road

Hopkins, SC 29061-

Judge's Telephone (803)576-2530

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

8441-A-0177

328



Exhibit “G”

1 State of South Carolina) Court of Common Pleas
 2 County of Richland) Fifth Judicial Circuit
 3 No.: 2010-CP-40-1343
 4

5 James W. Trexler,)
 6 Plaintiff,)
 7 vs.) Deposition of
 8 McClatchy Newspapers,) **ELISABETH E. PERRY**
 9 Inc., Richland County,)
 10 and the Richland County)
 11 Sheriff's Department,)
 12 Defendants.) January 17, 2012

13 Deposition on oral examination of Elisabeth E.
 14 Perry, reported by Jeffrey M. Thomas, Registered
 15 Professional Reporter and Notary Public in and for
 16 the State of South Carolina; said deposition taken
 17 pursuant to agreement and in accordance with the
 18 South Carolina Rules of Civil Procedure, at the
 19 Offices of Sweeny, Wingate & Barrow, P.A., 1515 Lady
 20 Street, Columbia, South Carolina, on January 17,
 21 2012, at the hour of 4:06 p.m.

22
 23 GARBER REPORTING SERVICE, INC.
 24 POST OFFICE BOX 12348
 25 COLUMBIA, SOUTH CAROLINA 29211
 (803) 256-4500

GARBER REPORTING SERVICE



Appearances

Representing the Plaintiff:

W. WESTBROOK WILLS, III, ESQUIRE
Austin, Fowler & Wills, LLP
38 Broad Street, Suite 200
Charleston, South Carolina 29401

Representing Richland County Sheriff's Department:

ROBERT GARFIELD, ESQUIRE
SCOTT HAYES, ESQUIRE
Davidson & Lindemann, P.A.
1611 Devonshire Drive, Second Floor
P.O. Box 8568
Columbia, South Carolina 29202

Representing McClatchy Newspapers, Inc., Associated
Press, Pacific & Southern Company, Barrington
Broadcasting, and Raycom:

JAY BENDER, ESQUIRE
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
P.O. Box 8057
Columbia, South Carolina 29202

Representing Human Society:

JOHN E. TYLER, ESQUIRE
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211

GARBER REPORTING SERVICE

ELISABETH E. PERRY

1 Q. Okay. Did you ever accompany them on --
2 during the execution of warrants?

3 A. No.

4 Q. Prior to starting your work at the
5 H.S.P.C.A. here in Columbia had you ever -- had you
6 ever executed search warrants?

7 A. No.

8 Q. Had you ever executed any arrest warrants?

9 A. No.

10 Q. Had you ever taken out any search warrants
11 or arrest warrants prior to working --

12 A. No.

13 Q. -- at the H.S.P.C.A. in Columbia?

14 A. Not me personally.

15 Q. Okay. Did the H.S.P.C.A. provide the
16 cruelty investigators with any type of law
17 enforcement training after hiring them?

18 A. Law enforcement training? No.

19 Q. Okay. Did the H.S.P.C.A. provide cruelty
20 investigators any training in criminal law or
21 procedure after being hired?

22 MR. TYLER: Object to the form of the
23 question.

24 THE WITNESS: Rephrase that?

25 BY MR. WILLS:

GARBER REPORTING SERVICE

ELISABETH E. PERRY

1 understand what I'm saying?

2 Q. I understand, but I understand there was a
3 complaint for the Zeigler Road property. And then
4 now we are talking about an entirely different
5 property in a different county. So do you recall if
6 there were two separate complaints or whether there
7 was one complaint for Zeigler Road and that led into
8 the second?

9 MR. BENDER: I object to the form of
10 the question. I think Zeigler Road and Derby Lane
11 are in the same county.

12 MR. WILLS: Oh, okay. My apology if
13 they are in the same county, but they are in
14 different --

15 BY MR. WILLS:

16 Q. I don't know this area, but it seems they
17 are in different towns.

18 A. Right.

19 Q. Do you have any knowledge of whether or
20 not all of the investigation of the Zeigler Road
21 property and the Derby Lane property stemmed from
22 the same complaint?

23 A. It involved the same people, yes. I mean,
24 there were more horses on -- it was the second
25 property with horses on it that allegedly belonged

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1 to the Trexlers.

2 Q. And do you have any knowledge about how it
3 is that anybody at the H.S.P.C.A. discovered that
4 there was any relation with the two properties?

5 A. I don't remember.

6 Q. Okay. Let me show you this. I'm going to
7 hand you what is Exhibit -- Plaintiff's Exhibit
8 Number 5.

9 MR. TYLER: Is this the last one,
10 Brook?

11 MR. WILLS: Yes. I mean, this is all
12 I can -- this is the last I'm going to do today if
13 this is all I can get in today. You know, we may
14 have some more later.

15 BY MR. WILLS:

16 Q. Do you recognize those documents?

17 A. Yes, I do.

18 Q. Okay. What are -- I'll represent to you
19 that Plaintiff's Exhibit Number 5 is comprised of
20 five different arrest warrants, but they are all
21 arrest warrants. Do you recognize all five of those
22 arrest warrants?

23 A. This is an affidavit. Is that the same
24 thing as an arrest warrant? Yes, I do. I recognize
25 them.

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1 Q. Okay. Those -- are those arrest warrants
2 that you took out?

3 A. I don't have the power to arrest anybody.

4 Q. Okay. Are those arrest warrants to which
5 you swore an affidavit?

6 A. Yes.

7 Q. Okay. Do you recall going to the
8 Magistrate to give that affidavit?

9 A. I do.

10 Q. Okay. Did you give that affidavit to the
11 Magistrate?

12 A. Yes.

13 Q. Personally?

14 A. Yes.

15 Q. Okay. Did you go alone to the Magistrate?

16 A. I believe so, yes.

17 Q. Okay. If you look at the affidavit
18 section, okay, and that is your name -- excuse me.
19 Before I get to that, that is your signature on
20 that?

21 A. Yes.

22 Q. Okay. If we look at the affidavit
23 section, I'll read the first line. It says, I
24 further state that there is probable cause to
25 believe that the Defendant named above did commit

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1 the crimes set forth and that probable cause is
2 based on following facts, correct?

3 A. Correct.

4 Q. Okay. Now, the next section where you
5 gave the facts, correct?

6 A. Correct.

7 Q. Okay. That on 2/26/2008 while at Derby --
8 412 Derby Lane in the Olympia Magisterial District
9 of Richland County one James Trexler did commit the
10 crime of ill treatment of animals in that he is the
11 owner of a two-year-old bay female with a body score
12 of 1.5. Did I read that correctly?

13 A. Correct.

14 Q. Okay. So my question to you is what
15 information did you have when you made this
16 affidavit that James Trexler was the owner of the
17 horse that is indicated in this affidavit?

18 A. From what I remember it was on his
19 property.

20 Q. Okay. Did you have any specific knowledge
21 that he was the owner of that horse --

22 A. I don't remember.

23 Q. -- when you made this affidavit?

24 A. I don't remember.

25 Q. Okay. Did you do any investigation before

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1 making this affidavit into whether Mr. Trexler owned
2 the horse?

3 A. They were on his property so -- I mean --

4 Q. Did you base that fact that -- did you
5 base saying that fact representing him as the owner
6 only on the fact that it was on property that
7 allegedly belonged to him?

8 A. No. Not only on that fact, no.

9 Q. What else then?

10 A. I couldn't tell you. I don't remember.

11 Q. Okay. What makes you think -- what made
12 you think at this point even that James Trexler or
13 that the horses were on James Trexler's property?

14 A. I witnessed the horses on his property.

15 Q. Okay.

16 A. I touched them.

17 Q. What information did you have?

18 MR. GARFIELD: Hold on. I'm sorry,
19 Brook. Were you through with your answer?

20 THE WITNESS: Yes.

21 MR. GARFIELD: Okay. I'm sorry.

22 BY MR. WILLS:

23 Q. Okay. What information did you have that
24 that property belonged to James Trexler?

25 A. I can't tell you the information I had

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1 BY MR. WILLS:

2 Q. Did you know he owned them or did you not
3 know?

4 A. If that is what I put, then that is the
5 truth.

6 Q. Okay. And my question then is how did you
7 know that he owned the horses?

8 MR. TYLER: Object to the form.

9 MR. GARFIELD: Same objection.

10 THE WITNESS: I can't tell you
11 specifically how I knew back in 2008 how I knew. I
12 don't --

13 BY MR. WILLS:

14 Q. Okay. But you don't recall doing any
15 investigation into who owned the horses yourself?

16 A. I don't remember.

17 Q. Okay. And you don't recall -- did you do
18 any record search on the property?

19 A. I don't have the -- we didn't have the
20 ability to do that.

21 Q. Okay. Did you do any record search on the
22 horses?

23 A. No.

24 Q. Okay. Did you talk to anybody about
25 whether -- who owned those horses?

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1 A. I don't remember.

2 Q. Okay. Did you talk to James Trexler about
3 whether he owned those horses before making this
4 affidavit?

5 A. Before? No.

6 Q. Okay. Did you talk to him after?

7 A. I spoke to him a few days later.

8 Q. And what did he tell you?

9 A. I spoke to him about his dogs that were on
10 the property.

11 Q. Did he tell you anything about not owning
12 any horses?

13 A. I don't remember anything like that.

14 Q. All right. And you don't recall -- and
15 you don't recall anything about who gave any tip
16 about these horses being out there?

17 A. No.

18 Q. So I'm to understand that somebody gave
19 you a tip that there were horses out here. And one
20 day after you all got the tip you all go out there
21 and search and find horses. And that very day you
22 make this affidavit that James Trexler owns the
23 horses?

24 MR. TYLER: Objection to the form.

25 MR. GARFIELD: Object to the form.

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1 THE WITNESS: If that is what
2 happened, that's what -- I mean.

3 BY MR. WILLS:

4 Q. When you all went out there for that
5 search warrant did you all look in the garage of the
6 house for any food?

7 A. Go inside the garage or look inside the
8 garage?

9 Q. Either.

10 A. I looked in the glass, yes.

11 Q. Okay. Did you see anything in the garage?

12 A. Yes.

13 Q. What did you see?

14 A. Horse food.

15 Q. You saw horse food in the garage?

16 A. A bag of horse food, yes.

17 MR. TYLER: Brook, we are 15 minutes
18 over.

19 BY MR. WILLS:

20 Q. Prior to the arrest --

21 MR. WILLS: And I've only got just a
22 few more questions. Prior to -- Mr. Bender's
23 favorite saying; I've only got two more questions.

24 MR. BENDER: That is not my favorite
25 saying. I dispute that it's ever been true.

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Exhibit “H”

1 Q. And when is the last time you spoke with her?

2 A. Last week.

3 Q. Last week. So, do you know where she is?

4 A. I don't know where she is right now. I mean, do I --
5 do I know where she lives?

6 Q. Are you in contact with her?

7 A. I know, yes.

8 Q. Okay. Where is she now? I mean, not where is she
9 living, but where is -- what is she doing now?

10 A. Oh, I don't know what she does now.

11 Q. Is she still with the Humane Society?

12 A. Not to my knowledge, no.

13 Q. Did you talk to her about this case a week ago?

14 A. Oh, no. No.

15 Q. Okay. Now, the next name on here is Mary Ellen
16 Tobias. Why was she at this meeting?

17 A. I don't know.

18 Q. And do you -- do you know who Mary -- do you know Mary
19 Ellen Tobias?

20 A. That was the first time I had met her.

21 Q. Okay.

22 A. I think I have may have met her two or three times.

23 Q. Did you come to know who she was at the meeting?

24 A. Yes.

25 Q. Okay. Did you come to know why she was at the

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1 meeting?

2 A. No.

3 Q. She never mentioned -- nobody ever mentioned what her
4 involvement -- well, let me ask first. Was she
5 involved as opposed to just being present?

6 A. She was.

7 Q. Okay. How was she involved?

8 A. Well, I don't know how it was that she came in contact
9 with the Humane Society or whether the Humane Society
10 contacted her. I don't know how any of that happened,
11 but she was at that meeting because these were
12 supposedly Arabian horses, and Mary Ellen Tobias has
13 something to do with the -- from what I can
14 understand, has something to do with Arabian horses
15 and also has something to do with promoting horses in
16 the state of South Carolina through the Department of
17 Agriculture.

18 Q. Okay. Do you know, and you may not, do you know if
19 the promotion of horses through the South Carolina
20 Department of Agriculture incorporated whatever
21 involvement she had with Arabian horses or whether
22 that was something that was separate?

23 A. I have no idea.

24 Q. Okay.

25 MR. GARFIELD: Not to mess up your

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1 MR. GARFIELD: Brook, I'm sorry.

2 I forgot to wear my diaper today.

3 We're going to have to take a break

4 or we're going to be in trouble.

5 MR. WILLS: All right.

6 MR. GARFIELD: Thank you.

7 (OFF THE RECORD).

8 EXAMINATION BY MR. WILLS CONTINUED:

9 Q. I just want to -- I just want to back up. We may have
10 gone over this. I just wanted to ask you just in case
11 we didn't before the break. Did -- when you all were
12 meeting with Mary Ellen Tobias on February 19th, 2008
13 at the Humane Society, did Mary Ellen Tobias ask
14 whether you all believed James Trexler was involved
15 with the mistreatment of horses?

16 A. Not that I recall.

17 Q. Okay. Did she say -- do you recall her saying
18 anything about Terry Trexler?

19 A. I want -- I think she did speak of him. I think she
20 had some knowledge of the family. I think she said
21 something about he had been an attorney before, but
22 he's not attorney any more. I got the impression she
23 didn't care for him very much. But, you know, I can't
24 tell you exactly what was said because I don't -- I
25 don't recall that, but I know -- I do remember that

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1 she had said something about that he used to be
2 attorney, he's not any more, something along that
3 line.

4 Q. Do you recall if she mentioned anything about Terry
5 Trexler with regards to -- to the care-taking of
6 horses?

7 A. I don't recall that, no. You know, I would back up
8 and say I don't -- on the -- the DMV photo thing, I
9 don't recall for certain, but I may have because I
10 knew she knew James. I may have shown her the picture
11 and said, you know, -- is this James or is this Terry
12 -- because I wanted to get absolute clarification from
13 someone other than Michelle to make sure that, when I
14 got the Warrant for kidnapping, it was going to be the
15 right person. So, I probably did show her a DMV photo
16 of the two of them to see if she could ---

17 Q. Okay. Now, ---

18 A. -- tell me who was who.

19 Q. -- the DMV photo has the name under the photo, doesn't
20 it?

21 A. Yeah, but you don't show them that part.

22 Q. Okay.

23 A. You know, you kind of, like, that sort of thing, the
24 picture. (Witness indicates)

25 Q. Well, why would -- why would you have had any question

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1 at that point that you needed verification from Mary
2 Ellen Tobias if you had the DMV photos?

3 A. I think just because she had mentioned she knew James;
4 so, I said, "That's the James we're talking about"?

5 Q. Okay.

6 A. It was probably something like that.

7 Q. Did she wonder why you were showing her the picture?

8 MR. GARFIELD: Object to the form.

9 A. I don't think so.

10 Q. I mean, did you tell her why you were showing her the
11 picture?

12 A. To -- I don't remember if I told her specifically, no.
13 I don't know that.

14 Q. I mean, when you showed her the picture, did you --
15 did you tell her that you were looking -- you were
16 going to file an Arrest Warrant or get an Arrest
17 Warrant for kidnapping and you wanted ---

18 A. No.

19 Q. -- to be sure you were going to get the right brother?

20 A. No.

21 Q. Okay. At that point in time at that meeting, after
22 everybody looked at the pictures and made the
23 identification, is it your opinion that there was no
24 more mistakes as to the identity of who it was that
25 allegedly kidnapped Michelle Hart?

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1 A. Yes.

2 Q. Okay. Okay. Why did you not -- once you had made the
3 positive identification of who the perpetrator was,
4 why did you not seek an Arrest Warrant for kidnapping
5 immediately?

6 A. I think I did.

7 Q. Well, let's look down here. That was on February
8 19th. Your next entry is from February 22nd.

9 A. Oh, okay. Okay. Why did I not get one immediately --
10 because I wanted to make sure, I mean, like -- like
11 many people, you know, there's an awful lot of law out
12 there, and she -- they came around and parked a truck
13 behind her and he told her, you know, she wasn't going
14 anywhere, he was on the phone with the police. I
15 wanted to make sure I had done a thorough
16 investigation and, also, because most of think of
17 kidnapping as somebody's got a knife or a gun or
18 something and they're holding someone and won't let
19 you go. I mean, she's sitting in her pickup truck,
20 you know, in a driveway. So, I wanted to make sure
21 that this met the statutory requirement for a
22 kidnapping charge and, also, you know, he had said
23 that they -- the reporter he said or something about
24 the police told him not to let her go or something.
25 Yeah, yeah. He told her he had called the police, and

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1 the police had told him to keep him there. So, I
2 wanted to get, you know, hear whether that was true or
3 not, you know, do a thorough investigation, and I
4 think it also says in here -- actually, I called the
5 Solicitor's Office to make sure that kidnapping would
6 be an appropriate charge for the circumstances we were
7 dealing with.

8 Q. So, on February 22nd, 2008, you didn't know yet
9 whether there was a kidnapping had occurred?

10 A. I felt like there had, but I wanted to be thorough and
11 make sure that the Solicitor's Office was going to
12 support my line of thinking.

13 Q. I see. What is your understanding of what the Statute
14 says with regard to kidnapping?

15 A. The Statute of South Carolina kidnapping is holding
16 someone against their will.

17 Q. Okay. In any respect?

18 A. In any respect.

19 Q. Okay. From the circumstances that occurred, did you
20 get the impression that -- that whoever the
21 perpetrator was, and now we know it's Terry, that he
22 held Investigator Hart against her will?

23 A. Yeah, he wouldn't let her leave.

24 Q. Okay. Now, did he do anything to constrain her
25 physically?

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1 A. He parked his truck and she couldn't drive away; he
2 blocked her in the driveway.

3 Q. Could she have walked away?

4 A. She could have walked away.

5 Q. Okay.

6 A. She said she felt -- I mean, like I said, she -- he --
7 they were so much up in her face yelling at her that
8 she got in her truck and locked the doors and rolled
9 up the windows and sat there. So, I think she -- I
10 think that's the reason she didn't walk away.

11 Q. Okay. But she did have the choice to walk away?

12 MR. GARFIELD: Object to the form.

13 A. She may not have felt she had that choice. I can't --
14 I can't answer that. I'm assuming, I mean, it just
15 depends on what -- people are all different, you know;
16 I may have walked away and you may have walked away,
17 and somebody else of a different disposition might sit
18 in their truck and not go anywhere they are afraid to
19 move. So, that's how I would answer that.

20 Q. Would Deputy Simpson upon responding to this situation
21 have considered that an act of kidnapping?

22 MR. GARFIELD: Object to the form.

23 A. I don't know.

24 Q. Did she consider it an act of kidnapping, to your
25 knowledge?

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1 A. I would guess not or she would have arrested him on
2 site.

3 Q. Back to the narrative form under -- under your heading
4 for February 22nd, 2008. Second paragraph. You say,
5 "I called the ELA number and spoke to Andrew Rogers.
6 We discussed the incident and possible charges. He
7 told me the incident met the statutory requirements of
8 Probable Cause for kidnapping." First, who is Andrew
9 Rogers?

10 A. He's an Assistant Solicitor.

11 Q. Okay. Is he still an Assistant Solicitor?

12 A. I don't know.

13 Q. Do you know Andrew Rogers? I mean, what led you to
14 call him?

15 A. He was the one that had their 24 -- the ELA is
16 something -- something on call. I don't know what ELA
17 stands for. I just know that that's what they call
18 it. The ELA is the solicitor on call. Why it's not
19 the SOC, I don't know, but ELA is the solicitor on
20 call and they have a phone. He had the phone that
21 week, So, when I called the solicitor on call, that's
22 who I got.

23 Q. And -- and what did he tell you with regard to the
24 Statute for kidnapping?

25 A. What we just discussed, that if she were held against

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1 her will, then that would meet the statutory
2 requirement and that I believe this was where I
3 learned that kidnapping does not have a minimum
4 required penalty. There's just a maximum, which means
5 that when it goes to trial and it gets, -- you know,
6 how the Judge determines the sentencing, everything's
7 taken, -- the circumstances are taken into account.
8 So, you know, it would be different for somebody in
9 this kind of a situation as it would be to somebody
10 that actually had a gun and had somebody tied up and
11 bound in their house for a week, which is what most of
12 us think, you know, that kidnapping is they grab a kid
13 out of the bedroom and drag them off somewhere and
14 hold them or, you know, they have somebody tied up in
15 their house; that's the first thing that comes to mind
16 when you hear kidnapping. But it can also be just
17 holding somebody against their will for a very small
18 amount of time, and then that would be taken into
19 consideration in sentencing. That's kind of how that
20 conversation went.

21 Q. Is there a misdemeanor kidnapping?

22 A. There is not.

23 Q. So, Terry was eventually charged with felony
24 kidnapping?

25 A. Yes.

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1 who were supposed to be on the property who were
2 living there? Was anyone there when you all arrived?

3 A. No.

4 Q. Okay. Did anyone who lived at the property ever
5 arrive during the course of the execution of the
6 Search Warrant?

7 A. No, I don't believe so.

8 Q. If we look in the narrative section of this -- of this
9 Incident Report, about three-quarters of the way down
10 on the front page, it's marked, "The HSPCA had
11 information that Terry and Hazel Trexler owned the
12 horses." What knowledge do you have of that
13 information that the HSPCA had about the ownership of
14 the horses?

15 A. None.

16 Q. Okay. Did it appear to you that the HSPCA thought
17 that the HSPCA had information to suggest that Terry
18 and Hazel Trexler owned those horses?

19 A. Say that again.

20 Q. Was there any question about who owned the horses and
21 the land at Zeigler Road property?

22 A. I don't believe so.

23 Q. Okay. You've also marked down here in the last
24 sentence, "That Hazel Trexler spoke to the media and
25 Hazel Trexler claimed ownership of all horses while

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1 being interviewed by media".

2 A. Correct.

3 Q. Did you hear her claim ownership of the horses?

4 A. I heard her say it on TV. I don't recall if I was
5 standing right there when -- she was yelling quite a
6 bit, "These are my horses; y'all get out of here".

7 Q. Right.

8 A. I do, yeah, but her specifically when she was yelling
9 at the media or when they took her over and they were
10 talking to her, I was busy.

11 Q. Okay.

12 A. So, ---

13 Q. At this point on February 25th, 2008, there's no --
14 there was no question about whose horses these were in
15 your mind?

16 A. No.

17 Q. And the owners were Terry and Hazel?

18 A. Correct.

19 Q. All right. Was there any sign whatsoever at that
20 Zeigler property or during the Search -- execution of
21 the Search Warrant at the Zeigler property to indicate
22 that James Trexler was in any way involved with those
23 horses?

24 A. Not to my knowledge.

25 Q. Okay. I'd like -- I'd like you to flip to the second

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1 page of this report if you would. The second page of
2 this is -- is marked -- it's titled "Supplemental
3 Incident Report." How does a Supplemental Incident
4 Report work? Is that something you add later to ---

5 A. Actually, it's marked "Original Report".

6 Q. Have you got the same one I got?

7 A. Uh-huh (affirmative response). It's marked right
8 here, "Original Report." Right there. "Original
9 Report."

10 Q. Oh, I see. I was looking right over here. (Counsel
11 indicates).

12 A. Yeah. That's -- that's the title on that second page,
13 but it's -- the second page can be many things.

14 Q. Okay.

15 A. It can be part of an investigative follow-up or
16 supplemental report, whatever. This second page is
17 actually part of the original report where it was a
18 continuation of it.

19 Q. Okay.

20 A. And also a continuation of the narrative.

21 Q. The first -- the first line of the narrative says,
22 "That they also received information that there were
23 horses in a barn at the home of James Trexler, 412
24 Derby Lane." Do you know who they refers to?

25 A. Yeah, the Humane Society.

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1 Q. Okay. What do you know about the information that the
2 Humane Society had that there were horses in a barn at
3 412 Derby Lane?

4 A. I'm not sure how they got that information.

5 Q. You don't know if it was -- you have no -- no idea
6 where they came about that information?

7 A. No.

8 Q. Did you ask why they have that information or where
9 they got it?

10 A. I probably did, but I don't recall right now exactly
11 where or how they got the information.

12 Q. Okay. So, I'm trying -- help me understand. The
13 first that anybody ever hears of horses is when
14 Michelle Hart goes out on February 13th and she
15 doesn't get any conclusive evidence. You all get a
16 Search Warrant and execute it on -- on February 25th.

17 MR. GARFIELD: Object to the form.

18 Q. That's correct? You executed the Search Warrant on
19 February 25th?

20 A. Correct.

21 MR. GARFIELD: Same objection.

22 A. Right.

23 Q. Is that the first time that you had an opportunity to
24 even evaluate the horses at Zeigler?

25 A. Yes.

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1 Road?

2 A. I spoke to that neighbor, but I didn't -- I mean, this
3 was not my investigation. This was an investigation
4 of the Humane Society. I was there assisting them.
5 So, I spoke to people and I knew things, but it wasn't
6 my investigation. So ---

7 Q. What investigation did anyone do to determine whether
8 James Trexler lived at 412 Derby Lane at that point in
9 time?

10 A. I don't know.

11 Q. What investigation did anyone -- did you do to
12 determine who owned the horses that you confiscated at
13 412 Derby or that the HSPCA confiscated?

14 A. I didn't do any investigation on those horses.

15 Q. Okay. What investigation did anyone do with regards
16 to the ownership of the horses that were confiscated
17 at 412 Derby Lane?

18 A. I don't know.

19 Q. Would anybody else at the Richland County Sheriff's
20 Department have done any work on this case without
21 your knowledge?

22 A. I don't know. I wouldn't think so, but I don't know.

23 Q. If someone else had done any investigative work in
24 this case with regard to the ownership of these horses
25 or the residence of Jim Trexler, would that have shown

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1 A. Okay.

2 MR. GARFIELD: Well, object to the
3 characterization and the foundation. Go
4 ahead. Sorry.

5 Q. Between -- to your knowledge, between February 26th
6 during the execution of the Search Warrant and the
7 time period that James Trexler -- at the time that
8 James Trexler was arrested on the next day, no
9 investigation to your knowledge was done into whether
10 James Trexler owned the horses or James Trexler lived
11 at the property; is that fair to say?

12 A. I don't know what investigation was done by the Humane
13 Society, no.

14 Q. Okay. But to your knowledge, you don't know of any
15 that was done?

16 A. No.

17 Q. Okay. To your knowledge, during the February 26th
18 Search Warrant execution, did anyone try to contact
19 James Trexler?

20 A. I don't know. I don't recall.

21 Q. You didn't try to contact James Trexler on the 26th of
22 February?

23 A. No, I -- no, I did not.

24 Q. Nobody told you, did they that they had tried to
25 contact him?

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.

1 Affidavit was provided by Elizabeth Perry; is that
2 correct?

3 A. Yes.

4 Q. Okay. And Elizabeth Perry is -- is an investigator
5 with the HSPCA; is that correct?

6 A. She was.

7 Q. Was. Yeah. Okay. Were you with Elizabeth Perry when
8 she swore these Affidavits out?

9 A. I was not.

10 Q. Okay. Did Elizabeth Perry talk to you about getting
11 Arrest Warrants for James Trexler prior to obtaining
12 them on -- on February 27th, 2008?

13 A. I'm sure she did.

14 Q. Okay. Did Elizabeth Perry talk to James Trexler
15 before obtaining -- to your knowledge, did she talk to
16 James Trexler?

17 A. I don't know.

18 Q. Prior to these Arrest Warrants. Okay. Tell me if you
19 will, when a -- when a law enforcement agency or other
20 agency goes before a Judge and makes an Affidavit to
21 the Judge in order to obtain an Arrest Warrant or a
22 Search Warrant, does the -- how does the Judge in your
23 experience decide whether or not to issue the Warrant
24 that's sought?

25 A. I don't know how they make that determination.

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.

1 Q. Okay. Have you ever known a Judge to do any kind of
2 independent investigation into the facts that are
3 being told to him before issuing a Warrant?

4 A. Not to my knowledge.

5 Q. Okay. So, in other words, the Affiant or the Affiant
6 could say pretty much whatever they want under oath in
7 order to get a Warrant and a Judge will either believe
8 it or they don't; is that -- is that correct?

9 MR. GARFIELD: Object to the form.

10 A. I would guess that's true.

11 Q. Okay. If an Affiant goes before a Judge and swears to
12 facts that they know are false in order to obtain an
13 Arrest Warrant, would that be improper?

14 A. Yes.

15 Q. Okay. Would it be improper in your experience for an
16 Affiant to go before a Judge and swear as true facts
17 that they do not know are true? Would that be
18 improper?

19 A. Sure.

20 Q. Okay. If you could look at these Arrest Warrants then
21 made by Elizabeth Perry and just read what the
22 Affidavit portion that she -- that she has provided in
23 order to obtain these Search Warrants. "That on
24 February 26th, 2008, while at 412 Derby Lane in
25 Olympia Magisterial District of Richland County, one

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
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James Trexler did commit the crime of ill treatment of animals in that he is the owner of a two year old Bay female with a body score of 1.5." Now, the question is, at this point in time, did you know that James Trexler was the owner of any of these horses?

A. No.

Q. Okay. To your knowledge, did Elizabeth Perry know for sure that James Trexler was the owner of these horses?

MR. GARFIELD: Object to the form.

A. I don't know. No.

Q. Did Elizabeth Perry ever call you or communicate to you in any way that she had evidence that James Trexler owned the horses that were confiscated at 412 Derby Lane?

A. No.

Q. So, if James Trexler did not own these horses and this was not true, that this Affidavit says that he was the owner, and Elizabeth Perry did not know he was the owner but represented that he was the owner, would that be improper in order to obtain a Search Warrant?

A. Well, I mean, if she absolutely knew it was improper, but it says that they have Probable Cause to believe. You don't have to know a hundred percent, you just believe that he is the owner of those animals.

Q. Okay.

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
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1 well as other grounds. Go ahead and answer it.

2 MR. WILLIS: Object to ---

3 MR. GARFIELD: Well, you can object to my
4 objection. Go ahead and answer the question.
5 And I'd really prefer you not raising your voice
6 to me again.

7 MR. WILLIS: Well, look, we'll be cool if
8 you just don't interrupt me every five seconds
9 and put your head down and make all kinds of
10 sighing noises and exasperation noises.

11 MR. GARFIELD: Go ahead, answer the
12 question. Let's go.

13 A. I don't remember the question now.

14 Q. The question is, if this had not said that James
15 Trexler was the owner but may have said that he might
16 or might not have anything to do with these horses,
17 you don't know yet, but you found a horse on a
18 property that he might or might not live on, would
19 that have given enough Probable Cause to arrest him?

20 A. No.

21 Q. No?

22 MR. GARFIELD: Object to the form.
23 And she answered before I was able to
24 enter an objection. I object to the
25 form of that last question. Thank you.

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.

1 Q. -- in the investigation or do they have access? Okay.

2 I'll take the two part. Yes.

3 MR. GARFIELD: And wait until he's
4 through with his question before you
5 answer.

6 A. I know.

7 MR. GARFIELD: I know it's getting
8 late. Go ahead.

9 Q. Would Chris Cowan or anybody in the public information
10 office have access to these ACISS reports or any other
11 -- the other Incident Reports that are in a database,
12 would they have access and be able to look at those?

13 A. They do.

14 Q. Do they ever look at those reports in order to get the
15 information for the press release?

16 MR. MOKEBA: Object to the form.

17 A. I don't know.

18 Q. Okay. This press release -- oh, why don't I ask this.
19 Did you ever read this press release before it being
20 sent out to press on February 27th, 2008?

21 A. No.

22 Q. Okay. Do you recall anybody ever calling you to ask
23 about the facts that were in this press release prior
24 to the day it was sent out?

25 A. Yes.

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.

1 Q. They were tied?

2 A. No.

3 Q. How were the dogs -- how did you find the dogs when
4 you got there?

5 A. They were in crates in the barn.

6 Q. Okay. Were they in a crate together or separately?

7 A. Together.

8 Q. Okay. Now, subsequent to the arrest of James Trexler
9 on February 27th, 2007, and subsequent to his release,
10 did you have some communication with him regarding
11 those dogs?

12 A. I think I did.

13 Q. Okay. Do you know Jill Andrews?

14 A. I do.

15 Q. Okay. How well do you know Jill Andrews?

16 A. She is a -- she was a Solici -- an Assistant Solicitor
17 at the Solicitor's Office. That's how I met her, and
18 I worked -- worked with her on this case and on the
19 dogfighting case.

20 Q. Okay. Is she -- is she known for handling cases
21 involving animals?

22 A. She was.

23 Q. Okay. Do you know if she is involved with any
24 organizations such as PETA or the HSPCA?

25 A. I don't know. I know she used to be on the Board of

**JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.**

1 the HSPCA.

2 Q. Okay. At that time, at the time of the arrest, was
3 she on the Board of the HSPCA?

4 A. I don't know if she was or not.

5 Q. Did Jill Andrews decide to continue with the
6 prosecution of James Trexler after he was released on
7 Bond subsequent to his arrest?

8 MR. GARFIELD: Hold on a second. I
9 want to take one moment before she answers
10 that question. First, I'd like to talk to
11 my client for a moment. That question is
12 still on the table.

13 (OFF THE RECORD).

14 MR. GARFIELD: Yeah, I had a -- just for
15 the record, a conference with counsel. The
16 Deponent walked out accidentally. I didn't
17 intend to talk to her. I was going to talk
18 to counsel about the question on the table.
19 I can put the grounds on the record or not,
20 Brook, it's your choice because I don't want
21 to suggest anything to the Deponent. However,
22 we would instruct the Deponent not to answer
23 the question that you have. There has been --
24 it has taken, quite frankly, two hours and
25 forty-five minutes to get to ask questions of

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.

1 MR. GARFIELD: I thought you were through.

2 MR. WILLS: No, you can ---

3 MR. GARFIELD: I thought it was a yes or no
4 question. Go ahead.

5 Q. Did you provide evidence to a Grand Jury pertaining to
6 Jim Trexler's ownership of horses?

7 MR. GARFIELD: Subsequent to my earlier
8 grounds, Brook, I'm going to instruct
9 Investigator Wagner not to answer the
10 question.

11 Q. Okay. And then, the next question is, did you provide
12 evidence or testimony to a Grand Jury that -- that
13 James Trexler had physical control of the horses that
14 were confiscated at 412 Derby Lane?

15 A. I don't recall.

16 Q. You don't recall that?

17 A. I don't.

18 Q. Do you recall testifying to a Grand Jury?

19 A. I testify to the Grand Jury about once a month.

20 Q. Okay.

21 A. On about sixty or seventy cases a year, and I don't
22 specifically recall that.

23 Q. Okay. Subsequent to James Trexler's arrest and
24 release, did you do any further investigation to
25 determine whether James Trexler lived at 412 Derby

JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
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1 Lane?

2 A. I don't recall.

3 Q. Subsequent to James Trexler's arrest and release, did
4 you do any further investigation with regard to the
5 ownership of the horses that you confiscated at 412
6 Derby Lane?

7 A. I don't believe so.

8 Q. Okay. Are you aware that James Trexler was -- that
9 the charges ultimately against James Trexler were --
10 for these counts -- for the counts for which he was
11 arrested, are you aware that those charges were
12 ultimately dismissed?

13 A. I am.

14 Q. Do you have any knowledge as to why there were two
15 Grand Jury Indictments involved with James Trexler --
16 for James Trexler on these charges?

17 A. I don't.

18 Q. Okay.

19 MR. WILLS: That's all the questions
20 I have. Thank you for your time that
21 you've given me. I appreciate your answers.

22 MS. WAGNER: Thank you. You're welcome.

23 EXAMINATION BY MR. MOKEBA:

24 Q. I do have just maybe two questions. I want to ask you
25 a question related to knowledge of Trexler -- how Jim

**JAMES W. TREXLER V. THE ASSOCIATED PRESS, ET AL.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.**

Exhibit “I”

Statement

State of South Carolina)

Date: 02/19/2008

) S. S.
County of Richland)

Time: 1015

Personally appeared before me this 19 day of February, 2008, at 1015 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Michele Hart Day time telephone number 803-783-1267 Who makes the following statement under oath to wit:

Q: Inv. H. S. Wagner

A: Michele Hart

Q: Where are you currently employed?

A: The Humane Society for the Prevention of Cruelty of Animals. I work for the office in Columbia SC.

Q: Tell me what happened on February 13, 2008 at 1134 Zeigler Rd South in Eastover SC.

A: I was responding to a complaint about some horses in bad condition on Zeigler Rd. I was on the adjoining property with the permission of the owner Lori Stokes. While I was attempting to take pictures a man and woman started moving the horses out of range. The woman came over to the fence and started yelling at me. She was cursing and calling me all kinds of names. She demanded I give her my camera and insisted I was on her property. I realized I could not get any more pictures so I went back over to my truck to leave. It took me a few minutes to walk back over there. When I got over to my truck they had parked their truck behind mine so I could not leave. The man is against the gate writing something down. The woman is with him. He comes over and gets up less than a foot from my face yelling at me. Telling me I was trespassing on his property. When he would stop yelling she would start. I attempted to explain to them that I was on the Stokes property not theirs. I told them I was with the Humane Society and gave the woman my card. They continued to yell at me. The man got so close and was so upset that I got nervous and went to get into my truck. I asked him to move his truck. He yelled at me, "You ain't going anywhere." He told me the police had told him to keep me there and that I needed to call my family because I was going to jail. It seemed like 20 minutes before the sheriff's department showed up. The deputy talked to them for a while. The deputy then came up and talked to me. I showed her my call log and my badge from the Humane Society. I also gave her my card. Then she talked with them again and they left.

Q: Was there anyway you could have driven your truck around theirs to get away?

A: No, I was in a driveway and there were two ditches to each side. I could not have driven away.

Q: Is there anything else you want to add to this statement?

A: No

*****end of statement*****

This statement was made in the presence of Inv. H. S. Wagner of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2008

Signed: Michele Hart

Witness: Inv. H. S. Wagner

Witness: _____

Notary Public for South Carolina
My commission expires _____

Page 1



8441-A-03

Exhibit “J”

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF RICHLAND COUNTY, SOUTH CAROLINA.

It is appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises.

DESCRIPTION OF PREMISES
(PERSON, PLACE OR THING TO BE SEARCHED)

The residence and surround curtilage to be searched is located at 1248 Zeigler Road, in the County of Richland, South Carolina. The residence is further described as a single family home, white in color, and is in close proximity to the intersection of Old Eastover Road and Zeigler Road. The search also includes any and all buildings, offices, outbuildings, vehicles, shelters, barns, shanties or stables where animal life and/or records and/or items used in the care and keeping of such animals may be housed or kept.

NOW, THEREFORE, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found.

DESCRIPTION OF PROPERTY

Any and all living vertebrate creatures (except homo sapiens), including but not limited to, equines, and any other domestic animals, any animal carcasses, unborn young, or remains of any type or species, located on said premises; and, any and all foodstuff, medications, any and all documentation, including but not limited to bills of sale, registration documents, veterinary medical records, and any other documents or items related to the care, treatment, and keeping of said animals.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Judge V.R. Stuman-Boyd within ten (10) from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known, or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia SC
February 19 2008
1.16 p.m.

V.R. Stuman-Boyd
Signature of Judge



8441-A-0130

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

Personally appeared before me, _____, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976, Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all living vertebrate creatures (except homo sapiens), including but not limited to, equines, and any other domesticated animals, any animal carcasses, unborn young, or remains of any type or species, located on said premises; and, any and all foodstuff, medications, any and all documentation, including but not limited to bills of sale, registration documents, veterinary medical records, and any other documents or items related to the care, treatment, and keeping of said animals.

DESCRIPTION OF PREMISES
(PERSON, PLACE OR THING TO BE SEARCHED)

The residence and surround curtilage to be searched is located at 1248 Zeigler Road, in the County of Richland, South Carolina. The residence is further described as a single family home, white in color, and is in close proximity to the intersection of Old Eastover Road and Zeigler Road. The search also includes any and all buildings, offices, outbuildings, vehicles, shelters, barns, shanties or stables where animal life and/or records and/or items used in the care and keeping of such animals may be housed or kept.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See attachment labeled "Exhibit A" attached hereto and made a part hereof by reference.

Sworn to and Subscribed before me)
this 19th day of Feb, 2008)

[Signature]
Signature of Judge

[Signature]

Affiant

Address:

1:16p.m.

8441-A-0131

EXHIBIT "A"

Your affiant states that she is an agent for the Humane Society for the Prevention of Cruelty to Animals, (hereinafter HSPCA), and in that capacity is acting on complaints, as well as additional documentation of neglect and ill-treatment in reference to the animals, owned, leased, managed, boarded, or otherwise maintained at a residence located at 1248 Zeigler Road in the County of Richland, and State of South Carolina.

On or about February 8 2008, a complaint of horses in bad condition was received by the HSPCA. On or about February 12 2008, affiant went to the address, but the gate was locked. A notice to call was posted. On or about February 12 2008, the affiant spoke with the owner of the horses by phone and was refused access to the property to view the horses. On or about February 13 2008, the affiant traveled to 1134 Zeigler Rd and entered the property with prior permission from Dr Stokes. A confrontation with the horse owners occurred and only 3 pictures were taken at that time. There was no food or water seen. On February 18 2008, Dr Stokes was able to take pictures of the horses and e-mailed them to the affiant. The pictures show that many of the horses are in substandard condition. Dr Stokes reports approximately 26 horses were seen and that approximately $\frac{3}{4}$ of the herd are in substandard condition.

Based on this information and photographic evidence, it is believed that the horse owners are in violation of South Carolina State Code Title 47.

Dated: _____

Michele Hart
Michele Hart

V.R. Struman - Boyd
2/19/08
1:16 pm

8441-A-0132

RETURN

I have received the attached Search Warrant on Feb 19, 2008, and have executed it as follows:

On Feb 25, 2008, at 0930 o'clock A.M. I searched (the person) described in the warrant and (the premises).

I left a copy of the Warrant with Hazelene Trexler, name of person searched or "at the place of search" with, together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the Warrant:

<u>2 Bay juvenile</u>	<u>3 juv. Bay</u>
<u>2 adult grey</u>	<u>3 ad. Bay</u>
<u>2 adult Bay</u>	<u>1 ad. chestnut</u>
<u>1 juv. Bay</u>	
<u>2 juv. grey</u>	<u>2 ad. female dogs</u>
<u>3 ad. grey</u>	<u>5 puppies</u>
<u>1 juv. Bay</u>	

This inventory was made in the presence of Inv. Wagner, Inv. Spears, Inv. Thompson and Tena Goff
Deputy Newman, Dep. Wamsley. I swear that this inventory is a true and detailed account of
all the property taken by me on the warrant. Elizabeth Perry, Josh Gowan, Mary Ellen Tobias
Dr. Michael Privett, Kelly Graham, Jackie Sisser, Trixy Sullivan, Alicia Morgan,
Lauren Edward, Leon Jackson

SWORN to before me this
26th day of February, 2008.

V.R. Struman - Supl
Signature of Judge

Michelle Hart
Signature of Officer Executing Warrant

Phone: _____
(12:07 p.m.)

Exhibit “K”

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SEARCH WARRANT

Date: 02/26/2008

412 Derby Lane
Hopkins, SC 29061

OLYMPIA MAGISTRATE
2008 FEB 26 PM 2:12

OLYMPIA MAGISTRATE
2008 FEB 27 PM 4:09



8441-A-0134

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF RICHLAND COUNTY, SOUTH CAROLINA.

It is appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises.

DESCRIPTION OF PREMISES
(PERSON, PLACE OR THING TO BE SEARCHED)

The residence and surround curtilage to be searched is located at 412 Derby Lane, in the County of Richland, South Carolina. The residence is further described as a single family home, dark in color, and is in close proximity to the intersection of Saddlebrook Lane and Derby Lane. The search also includes any and all buildings, offices, outbuildings, vehicles, shelters, barns, shanties or stables where animal life and/or records and/or items used in the care and keeping of such animals may be housed or kept.

NOW, THEREFORE, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found.

DESCRIPTION OF PROPERTY

Any and all living vertebrate creatures (except homo sapiens), including but not limited to, equines, and any other domestic animals, any animal carcasses, unborn young, or remains of any type or species, located on said premises; and, any and all foodstuff, medications, any and all documentation, including but not limited to bills of sale, registration documents, veterinary medical records, and any other documents or items related to the care, treatment, and keeping of said animals.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to _____ within ten (10) from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known, or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbiana, SC
26 February, 2008

[Signature]
Signature of Judge

8441-A-0135

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) AFFIDAVIT

Personally appeared before me, _____, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976, Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all living vertebrate creatures (except homo sapiens), including but not limited to, equines, and any other domesticated animals, any animal carcasses, unborn young, or remains of any type or species, located on said premises; and, any and all foodstuff, medications, any and all documentation, including but not limited to bills of sale, registration documents, veterinary medical records, and any other documents or items related to the care, treatment, and keeping of said animals.

DESCRIPTION OF PREMISES
(PERSON, PLACE OR THING TO BE SEARCHED)

The residence and surround curtilage to be searched is located at 412 Derby Lane, in the County of Richland, South Carolina. The residence is further described as a single family home, dark in color, and is in close proximity to the intersection of Saddlebrook Lane and Derby Lane. The search also includes any and all buildings, offices, outbuildings, vehicles, shelters, barns, shanties or stables where animal life and/or records and/or items used in the care and keeping of such animals may be housed or kept.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See attachment labeled "Exhibit A" attached hereto and made a part hereof by reference.

Sworn to and Subscribed before me)
this 26 day of February, 2008)

Signature of Judge

Michelle Hart
Affiant
Address:

CLERK OF MAGISTRATE
2008 FEB 26 PM 2:12

8441-A-0136

EXHIBIT "A"

Your affiant states that she is an agent for the Humane Society for the Prevention of Cruelty to Animals, (hereinafter HSPCA), and in that capacity is acting on complaints, as well as additional documentation of neglect and ill-treatment in reference to the animals, owned, leased, managed, boarded, or otherwise maintained at a residence located at 412 Derby Lane in the County of Richland, and State of South Carolina.

On or about February 8 2008, a complaint of horses in bad condition was received by the HSPCA. On or about February 12 2008, affiant went to 1248 Zeigler Road, but the gate was locked. A notice to call was posted. On or about February 12 2008, the affiant spoke with the owner of the horses by phone and was refused access to the property to view the horses. On or about February 13 2008, the affiant traveled to 1154 Zeigler Rd and entered the property with prior permission from Dr. Stokes. A confrontation with the horse owners, Terry and Hazelene Trexler, occurred and only 3 pictures were taken at that time. There was no food or water seen. On February 18 2008, Dr Stokes was able to take pictures of the horses and e-mailed them to the affiant. The pictures show that many of the horses are in substandard condition. Dr Stokes reports approximately 26 horses were seen and that approximately $\frac{3}{4}$ of the herd are in substandard condition.

On February 26, 2008, the HSPCA seized 23 horses and 7 dogs from 1248 Zeigler Rd. Eastover, SC. After finding some additional information, the HSPCA has learned that Hazelene and Terry Trexler are wanted for 61 counts of animal cruelty in Jefferson County, Georgia. We believe that there are additional horses, possibly in poor condition, on the property listed that belong to the Trexler family. James Trexler, is the brother of Terry Trexler and the son of Hazelene Trexler and the person said to be living at 412 Derby Lane.

Based on this information and photographic evidence, it is believed that the horse owners are in violation of South Carolina State Code Title 47.

Dated: 2/26/08

Michele Hart
Michele Hart

DEPT. PIA MAGISTRATE
2008 FEB 26 PM 2:12

8441-A-0137

Exhibit
“L.1 – L.5”

I-891847

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address:

Hopkins, SC 29061

Phone: _____ SSN: _____

Sex: M Race: W Height: 5' 11" Weight: 130DL State: SC DL #: _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: Hspca/ The Humane SocietyProsecuting Officer: Elisabeth Perry - 122Offense: Animals / Ill treatment of animals, in general,
overworking - 1st offense (Tried)Offense Code: 0610Code/Ordinance Sec: 47-01-0040(A)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 the law.

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant: James W Trexleron 2-27-08

RETURN WARRANT TO:

Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL

ORIGINAL

ORIGINAL

ORIG. L

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

AFFIDAVIT

Affiant's Name
100449Personally appeared before me the affiant Elisabeth Perrybeing duly sworn deposes and says that defendant James W Trexlerdid within this county and state on or about 02/26/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of Ill Treatment of Animals in that he is the owner of a 2 year old Bay Female with a body score of 1.5 (#351). He
knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at
suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed
or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of
feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the
muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

Elisabeth Perry

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below.DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as
soon thereafter as is practicable.

Sworn In and subscribed before me

on 02/27/2008

(L.S.)

Signature of Notary Public
Harold A. CultJudge Code: 5906Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847Judge's Telephone (803)576-2550Issuing Court: ☒ Magistrate ☐ Municipal ☐ CircuitPLAINTIFF'S
EXHIBIT

L. 1

8441-A-0200

381

1-891848

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE
against

James W Trexler

Address:

Hopkins, SC 29061-

Phone: SSN:

Sex: M Race: W Height: 5' 11" Weight: 130

DL State: SC DL #:

DOB: Agency ORI #:

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general,
overworking - 1st offense (Tried

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant: James W Trexler

on: 2-22-08

RETURN WARRANT TO:

Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

SC Affidavit Form
April 2003
SC1156

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008

violate the criminal laws of

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of Ill Treatment of Animals in that he is the owner of a 6 year old Bay Stallion with a body score of 4 (#34). He
knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at
suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed
or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of
feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the
muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209

Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried

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

Sworn to and subscribed before me

on 02/27/2008

(L.S.)

Signature of Judge

Harold A. Cuff

Judge Code: 5906

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Other

ORIGINAL

ORIGINAL

PLAINTIFF'S
EXHIBIT
L.2

1-891849

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE
against

James W Trexler

Address: **Hopkins, SC 29061**

Phone: _____ SSN: _____

Sex: **M** Race: **W** Height: **5' 11"** Weight: **130**

DL State: **SC** DL #: _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: **Hspca/ The Humane Society**

Prosecuting Officer: **Elisabeth Perry - 122**

Offense: **Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)**

Offense Code: **0610**

Code/Ordinance Sec: **47-01-0040(A)**

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 the law.

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant **James W Trexler** on **2-27-08**

[Signature]

RETURN WARRANT TO:

Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

AFFIDAVIT

Personally appeared before me the affiant **Elisabeth Perry**

being duly sworn deposes and says that defendant **James W Trexler**

did within this county and state on or about **02/26/2008** violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Richland / Olympia Magistrate**) in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 15-20 year old Bay Stallion with a body score of 3 (333). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant *[Signature]*

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address **121 Humane Ln**
Columbia, SC 29209

Affiant's Telephone **(783)126-7 x**

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on or about **2/26/2008** defendant **James W Trexler** did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Richland / Olympia Magistrate**) as set forth below.

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me on **02/27/2008**

[Signature] (L.S.)

Signature of Issuing Judge: **Harold A. Cuff**

Judge Code: **5906**

Judge's Address **1601 - B Shop Road**
Columbia, SC 29201-4847

Judge's Telephone **(803)576-2550**

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL ORIG. L ORIGINAL ORIGINAL

PLAINTIFF'S EXHIBIT

L.3

8441-A-0202

383

1-891850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address: Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: Agency: 122

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in this

☐ County/ ☐ Municipality of

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

(L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant James W Trexler on 2-27-08

Signature of Court Clerk

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

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ORIG. L

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

AFFIDAVIT

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler did within this county and state on or about 02/26/2008 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate) in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 7 year old Black Stallion with a body score of 4 (32). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was found wandering around on the muddy, wet property. Four other horses were confined separately inside a barn standing in 4 or more inches of feces, urine and mud. Their water buckets were filled with feces and other organic debris. Affiant and others are witness to prove same.

Signature of Affiant Elisabeth Perry

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783)126-7 x

Richland / Olympia Magistrate

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me on 02/27/2008

Signature of Issuing Judge Harold A. Cuff (L.S.)

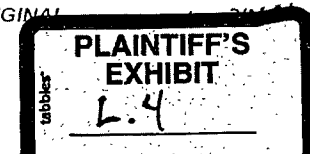
Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Court

Judge Code: 5906



I-891851

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address:

Hopkins, SC 29061-

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: DL #:

DOB: Agency ORI #:

Prosecuting Agency: Hspca/ The Humane Society.

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general,
overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant JAMES W. Trexler

on 02/27/08

Signature of Judge

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

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Signature of Plaintiff

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

AFFIDAVIT

ORIGINAL

Signature of Plaintiff

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of Ill Treatment of Animals in that he is the owner of a 20 year old Gray Stallion with a body score of 3.5 (#31).
He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and
age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was
no feed or hay on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of
feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the
muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209

Affiant's Telephone (783)126-7 x

ARREST WARRANT

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

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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below.

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

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

Sworn to and subscribed before me

on 02/27/2008

(L.S.)

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Signature of Plaintiff

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ CourtPLAINTIFF'S
EXHIBIT
L.5

385

8441-A-0204

Exhibit “M”

Exhibit

“N”

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08059

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 18 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02282

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE
vs.

James W. Trexler

Indictment for
ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class FIF

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0258



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict excessive or repeated unnecessary pain or suffering upon a 2 year old Bay filly, or by omission or commission caused this to be done, all in violation of SC Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

8441-A-0259

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08060

ACTION OF GRAND JURY
TRUE BILL

Kimberly Bringle
Foreperson of Grand Jury
Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-02283

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008
101

THE STATE
vs.

James W. Trexler

Indictment for
ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)
CDR Code: 2804
Class F/F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0260

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict excessive or repeated unnecessary pain or suffering upon a 20 year old Gray Stallion, or by omission or commission caused this to be done, all in violation of SC Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

8441-A-0261

WITNESSES

✓ (S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08061

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02284

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE

vs.

James W. Trexler

Indictment for

ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class F/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0262

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict excessive or repeated unnecessary pain or suffering upon a 6 year old Bay Stallion, or by omission or commission caused this to be done, all in violation of SC Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

8441-A-0263

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08062

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-02285

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

**THE STATE
vs.**

James W. Trexler

**Indictment for
ILL TREATMENT OF ANIMALS**

SC Code: 47-01-40(B)
CDR Code: 2804
Class F/F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C PLS. AND G.S.

8441-A-0264

Exhibit “O”

WITNESSES✓
Holly Wagner RCSO**ARREST WARRANT NUMBER**
Direct Presentment

DP09296

ACTION OF GRAND JURY
TRUE BILL*[Signature]*
Foreperson of Grand Jury
Date:**VERDICT**Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-

9627

The State of South Carolina
County of Richland**COURT OF GENERAL SESSIONS**

October _____ 2009 TERM

THE STATE
v.James W. Trexler
DOB: 1/14/1960**Indictment for****III Treatment of Animals**SC Code: 47-01-040(B)
CDR Code: 2804**PLAINTIFF'S
EXHIBIT**
tabbies**CERTIFIED TRUE COPY
OF ORIGINAL FILED***[Signature]*
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

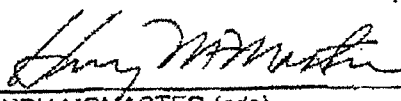
INDICTMENT FOR
ILL-TREATMENT OF ANIMALS

At a Court of General Sessions, convened on October the Grand Jurors of
Richland County present upon their oath: 14, 2009

ILL-TREATMENT OF ANIMALS

That between the dates of August 1, 2007 and March 3, 2008, James W. Trexler, did at 207 Misty Meadows Road, in Richland County, inflict excessive or repeated unnecessary pain or suffering upon animals. To wit, by omission or commission, James W. Trexler did cause repeated unnecessary suffering upon: a 6 (six) year old Chestnut Gelding (Horse #41), and/or a 10 (ten) year old Brown Filly (Horse #42) and/or an 10 (ten) year old Black Filly (Horse #43) and/or 10 (ten) year old Black Filly (Horse #44) and/or 20 (twenty) year old Gray Filly (Horse #45) and/or a 10 (ten) year old Gray Filly (Horse #46) and/or a 20 (twenty) year old Gray Filly (Horse #47) and/or 5 (five) year old Bay Filly (Horse #48) and/or a 15-20 (fifteen-twenty) year old Chestnut Filly (Horse #49) and/or a 5 (five) year old Chestnut Filly (Horse #50) and/or a 4 (four) year old Chestnut Filly (Horse #51) and/or a 4 (four) year old Chestnut Filly (Horse #52) and/or 15-20 (fifteen-twenty) year old Chestnut Filly (Horse #53) and/or a 7 (seven) year old Bay Filly (Horse #54) and/or a 4 (four) year old Bay Filly (Horse #55) and/or a 4 (four) year old Bay Filly (Horse #56) and/or a 4.5 (four and half) year old Bay Filly (Horse #57). This in violation of § 47-1-40 (B) of the S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.


HENRY MCMASTER (cds)
ATTORNEY GENERAL

✓ **WITNESSES**

Holly Wagner RCO

ARREST WARRANT NUMBER

Direct Presentment

DP09297

ACTION OF GRAND JURY

TRUE BILL

131 OCT 15 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-

9628

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

October 2009 TERM

THE STATE

v.

James W. Trexler

DOB: 1/14/1960

Indictment for

III Treatment of Animals

SC Code: 47-01-040(B)

CDR Code: 2804

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Janette W. Feride

C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR
ILL-TREATMENT OF ANIMALS

At a Court of General Sessions, convened on October the Grand Jurors of
Richland County present upon their oath: 14, 2009

ILL-TREATMENT OF ANIMALS

That between the dates of August 1, 2007 and February 26, 2008, James W. Trexler, did at 1248 Zeigler Road, in Richland County, inflict excessive or repeated unnecessary pain or suffering upon animals. To wit, by omission or commission, James W. Trexler did cause repeated unnecessary suffering upon: a 15-20 (fifteen-twenty) year old Gray Filly (Horse #1), and/or a 10-15 (ten-fifteen) year old Gray Filly (Horse #2) and/or an 8 (eight) month old Bay Stallion (Horse #3), and/or an 8 (eight) month old Bay Stallion (Horse #4), and/or a 2-3 (two-three) year old Gray Filly (Horse #5), and/or a 3.5 (three and a half) year old Bay Stallion (Horse #6) and/or a 10 (ten) year old Bay Filly (Horse #7) and/or a 5 (five) year old Bay Stallion (Horse #8) and/or a 10-15 (ten-fifteen) year old Bay Filly (Horse #9) and/or a 10-15 (ten-fifteen) year old Bay Filly (Horse #10) and/or a 4 (four) year old Bay Stallion (Horse #11) and/or a 4 (four) year old Gray Stallion (Horse #12) and/or a 4 (four) year old Gray Stallion (Horse #13) and/or a 1-2 (one-two) year old Gray Filly (Horse #14) and/or a 2 (two) year old Gray Filly (Horse #15) and/or a 10-15 (ten-fifteen) year old Bay Filly (Horse #16) and/or a 20 (twenty) year old Bay Filly (Horse #17) and/or a 20 (twenty) year old Chestnut Filly (Horse #18) and/or a 9 (nine) month old Gray Filly (Horse #19) and/or a 2 (two) year old Brown Stallion (Horse #20) and/or a 2 (two) year old Bay Filly (Horse #21) and/or a 7 (seven) year old Bay Filly (Horse #22). This in violation of § 47-1-40 (B) of the S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


HENRY MCMASTER (cds)
ATTORNEY GENERAL

WITNESSES

olly Wagner RCSO

ARREST WARRANT NUMBER

irect Presentment

DP09 298

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-

9629

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

October 2009 TERM

THE STATE

v.

James W. Trexler

DOB: 1/14/1960

Indictment for

III Treatment of Animals

SC Code: 47-01-040(B)

CDR Code: 2804

**CERTIFIED TRUE COPY
OF ORIGINAL FILED**

Jeannette P. McPherson
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR
ILL-TREATMENT OF ANIMALS

At a Court of General Sessions, convened on October the Grand Jurors of
Richland County present upon their oath: 14, 2009

ILL-TREATMENT OF ANIMALS

That between the dates of August 1, 2007 and February 25, 2008, James W. Trexler, did at 1248 Zeigler Road, in Richland County, inflict excessive or repeated unnecessary pain or suffering upon animals. To wit, by omission or commission, James W. Trexler did cause repeated unnecessary suffering upon an adult horse aged 8 (eight) months to 2 (two) years found dead and buried at 1248 Zeigler Rd. This in violation of § 47-1-40 (B) of the S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


HENRY MCMASTER (cds)
ATTORNEY GENERAL

WITNESSES

✓ Holly Wagner RCSO

ARREST WARRANT NUMBER

DP09303

ACTION OF GRAND JURY

TRUE BILL

OCT. 15 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-

9635

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

October _____ 2009 TERM

THE STATE

v.

James W. Trexler

DOB: 1/14/1960

Indictment for

III Treatment of Animals

SC Code: 47-01-040(B)

CDR Code: 2804

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Jeanette W. McRide
Clerk of Court
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR
ILL-TREATMENT OF ANIMALS

At a Court of General Sessions, convened on October 14, the Grand Jurors of
Richland County present upon their oath: 2009

ILL-TREATMENT OF ANIMALS

That between the dates of August 1, 2007 and February 25, 2008, James W. Trexler, did at 412 Derby Lane, in Richland County, inflict excessive or repeated unnecessary pain or suffering upon animals. To wit, by omission or commission, James W. Trexler did cause repeated unnecessary suffering upon: a 20 (twenty) year old Gray Stallion (Horse #31), and/or a 7 (seven) year old Black Stallion (Horse #32) and/or a 15-20 (fifteen-twenty) year old Bay Stallion (Horse #33), and/or a 6 (six) year old Bay Stallion (Horse #34) and/or a 2 (two) year old Bay Filly (Horse #35). This in violation of § 47-1-40 (B) of the S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.


HENRY MCMASTER (cds)
ATTORNEY GENERAL

Exhibit “p”

THE STATE OF SOUTH CAROLINA

Race CAU Sex M Age 50
DOB 01-14-60 SSN R51-15-6946

VS.

SID # 933765

James William Trexler

Charges were disposed of in the court indicated below:

Defendant

☐ Magistrate ☐ Municipal ☒ General Sessions

AKA

IT APPEARS that the defendant is entitled to have all records relating to this offense expunged and destroyed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. I 891847-851

Date of Arrest

Place of Arrest RICHLAND

County, S.C.

Arrest Charge

ILL Treatment TO ANIMALS

- ☒ § 17-1-40. The charge was dismissed, *not prossed* or the defendant was found not guilty on 07-15-2010
- ☐ § 17-22-150(a). The charge was *not prossed* on by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program. *Director must attest to eligibility for expungement.*
- ☐ § 17-22-530(A). The charge was *not prossed* on by the Solicitor because the defendant successfully completed the Alcohol Education Program. *Director must attest to eligibility for expungement.*
- ☐ § 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the Fraudulent Check Law on and no additional criminal conviction as defined by § 34-11-90(e) has taken place in one year from date of conviction.
- ☐ § 44-53-450(b). The defendant was charged with first offense simple possession of marijuana or hashish on , received a conditional discharge and has successfully complied with the terms as set forth by the court.
- ☐ § 22-5-910. The defendant was convicted of a first offense for a crime carrying a penalty of not more than 30 days on , that offense did not involve the exceptions enumerated in § 22-5-910, and no additional criminal conviction as defined by § 22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for criminal domestic violence. *(Summary Court Judge must attest to eligibility).*
- ☐ § 22-5-920. The defendant was convicted of a first offense as a youthful offender on , that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by § 22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
- ☐ § 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement: ☐ Yes ☐ No SLED Date

IT IS ORDERED that all records relating to such arrest and subsequent discharge pursuant to the above referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained on each person accepted for Pre-Trial Intervention pursuant to § 17-22-130, nonpublic information retained by SC Law Enforcement Division (SLED) pursuant to § 34-11-90(e), nonpublic information retained by the Department of Narcotic and Dangerous Drugs Under SLED pursuant to § 44-53-450, nonpublic information retained by SLED pursuant to § 22-5-910 and § 22-5-920, and nonpublic information retained by SLED and Department of Public Safety pursuant to § 56-5-750 (F).

Solicitor: ☒ Consents

☐ Declines to Consent

☐ Determined Ineligible for expungement

W. B. Amy
Circuit Solicitor

Signed this 23 day of August 2010

I attest that the defendant is eligible for expungement pursuant to S.C. Code §17-22-150(a) (successful completion of PTI), §17-22-530(A) (successful completion of AEP), § 22-5-910 (summary court conviction) or § 44-53-450(b) (conditional discharge).

P. M. Camp, Jr.
Circuit Court Judge

Director PTI / Director Court Judge (circle one)

Defendant / Attorney for Defendant (Circle One)



Exhibit “Q”

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2010-CP-40-1249

James W. Trexler,

Appellant,

v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting,
Inc.; The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.,

Respondents.

NOTICE OF APPEAL

James W. Trexler appeals the orders of the Honorable Joseph M. Strickland dated October 25, 2012 and April 29, 2013, respectively. The April 29, 2013 order was a denial of Appellant's motion to reconsider, alter or amend the October 25, 2012 order, pursuant to Rule 59(e), SCRCP. Appellant received written notice of entry of the April 29, 2013 order denying Appellant's Rule 59(e) motion on June 19, 2013.



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Other counsel of record:

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(803) 779-3423

ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2010-CP-40-1249

James W. Trexler,

Appellant,

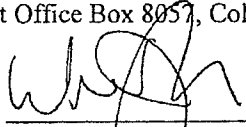
v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting,
Inc.; The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Associated Press; Barrington Broadcasting South Carolina Corp.; Raycom TV Broadcasting, Inc.; The Spartanburg Herald Journal, Inc.; and The Pacific & Southern Co., Inc., by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2013, addressed to their attorneys of record, Jay Bender, Baker, Ravenel & Bender LLP, Post Office Box 8057, Columbia, South Carolina 29202.



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-and-

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Other counsel of record:

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ATTORNEYS FOR RESPONDENTS

Exhibit “R”

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) OF THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-1343

James W. Trexler,

Plaintiff,

vs.

McClatchy Newspapers, Inc., Richland
County, and the Richland County
Sheriff's Department,

Defendants.

Deposition of CHRIS COWAN, taken by Doris Tompkins
Brown, Certified Verbatim Reporter and Notary Public
in and for the State of South Carolina, commencing at
10:13 A.M. on September 8, 2011, and taken at the
Davidson and Lindemann Law Firm, 1611 Devonshire, Columbia,
South Carolina.

APPEARANCES

FOR THE PLAINTIFF:

W. Westbrook Wills, III
Austin, Fowler & Wills,
LLP
38 Broad Street
Suite 200
Charleston, South Carolina
and
William H. Johnson
2 North Brooks Street
Manning, South Carolina



Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151
(803) 499-2434

COPY

1 football for three hours.

2 (OFF THE RECORD)

3 (BACK ON THE RECORD)

4 EXAMINATION BY MR. WILLS CONTINUED:

5 Q. I'm just going to briefly give us a reintroduction by
6 way of asking just before the break, we talked about
7 whether or not anybody at the Department signs off on
8 the press releases before they go out, and I believe,
9 correct me if I'm wrong, that you indicated that
10 nobody has the responsibility of signing off on a
11 press release apart from the person who wrote it
12 before they go out to the media. Is that correct?

13 A. We get the information and we release the information.

14 Q. Okay. And you -- and you were beginning to speak on
15 the policies that are in place for the verification of
16 the facts in the press releases before they're
17 released to the media. And could you describe
18 basically the -- the -- any policies that are in place
19 for verifying the actual facts of the press releases
20 before they go out to the media?

21 A. We receive the information from the sources, whether
22 it's investigators, whether it's an outside agency,
23 whatever the case may be. We gain that information
24 from -- from them, and we submit the release.

25 Q. Okay. There's no -- no -- no specific internal policy

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 for double-checking the facts that come in from
2 another agency, for example?

3 A. We -- as a matter of practice, we would -- we would
4 speak to the investigators or whoever we're getting
5 the information from and get that information and put
6 it in a release and send it out.

7 Q. Okay. Apart from speaking to the investigators just
8 to make sure that the facts are straight, does the
9 Department do any independent verification of the
10 facts outside of just asking the investigator or other
11 agency? Does the Department undertake to do any
12 independent verification of the facts in press
13 releases before they are released to the media?

14 A. Our sources are the source of that information.
15 They're the ones that give us that information; so,
16 they would be the ones that we would get that
17 information from and are believed to be factual.

18 Q. Okay. So, you guys do not do any independent
19 verification of the facts apart from relying on the
20 sources?

21 A. Independent how?

22 Q. For example, if -- if information came in from an
23 agency that had facts involved, would you all
24 undertake to check the facts that the -- that the
25 independent agency -- that the agency has given you

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 before releases a press release or would you solely
2 rely on the representations of the -- of that agency
3 giving the information?

4 MR. GARFIELD: Object to the form.

5 Go ahead.

6 A. They would assume to be -- we would assume that they
7 were factual because of the source that we were
8 getting them from.

9 Q. And you all do no other independent verification?

10 A. No.

11 Q. Once the press release -- once you've received the
12 information and created the press release, does the
13 Department send the press release back to that
14 assisting agency for any type of verification before
15 sending it out to the media?

16 A. It depends on the story.

17 Q. Do you ever send press releases back for verification
18 to the sources from which the information came?

19 A. Do I ever do that?

20 Q. Yes.

21 A. I have done that, yes.

22 Q. Okay. Is that a standard practice or ---

23 A. Again, we would assume that the information that we're
24 getting is factual. So, once we get that factual
25 information, we would put that out.

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 PLAINTIFF'S EXHIBIT NUMBER THIRTEEN

2 Q. I'm going to hand you Plaintiff's Exhibit Number
3 Thirteen in which contains unsequential Bates numbers,
4 but I'll mark it as one exhibit and I'll ask if ---

5 (DEPOSITION WAS STOPPED AT 11:23 A.M.

6 FOR INVESTIGATOR WAGNER'S DEPOSITION TO BE
7 TAKEN AND THEN RECOVERING OF CAPTAIN COWAN'S
8 DEPOSITION)

9 EXAMINATION BY MR. WILLS CONTINUED:

10 Q. I've broken up my order now for these and I'll
11 circulate these.

12 MR. GARFIELD: Brook, don't worry
13 about a copy for me. If you just want
14 to put your exhibit together and ask him
15 there, I can look over it.

16 MR. WILLS: There it is. All right.
17 Here's the second half of this one here.

18 Q. Okay. Plaintiff's Exhibit Number Thirteen is -- if --
19 I'll ask if you can identify those -- those documents
20 if you know what they are.

21 A. This would have been part of what is actually Exhibit
22 Eleven. They would have been my notes from a press
23 file; I keep copious notes or I try to of what I've --
24 who I've talked to and what I've done.

25 Q. Okay.

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 A. So, Eleven and Thirteen are actually one document.

2 Q. Is -- does Plaintiff's Exhibit Number Thirteen -- is
3 that your writing on these things?

4 A. Yes.

5 Q. And on both pages?

6 A. Yes.

7 Q. Okay. And is all of the writing on these two pages
8 your writing?

9 A. Yes.

10 Q. Okay.

11 A. Yeah, I don't know what that is. I don't recognize --
12 yes, that's my writing.

13 Q. Okay. Would you be able to describe what was
14 happening when you were -- yeah, how -- how were you
15 taking these notes? Did this happen because of a
16 meeting with somebody or a telephone call?

17 A. It would have been a telephone call with Kelly Graham
18 and Holly Wagner. And, again, I don't know if -- you
19 know, it's -- I had some very brief conversation with
20 -- with each about what was going on.

21 Q. Okay.

22 A. And, so, I can't tell you, you know, if one piece of
23 the information was put out at -- you know, at 4:00
24 P.M. and one was at 5:00 P.M. I can't tell, you know,
25 because, again, it's not sequential that I'm even

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 aware of.

2 Q. Would these notes have been taken all on the same day?

3 A. I can't answer that.

4 Q. Did you have more than one conversation with Kelli
5 Graham about the circumstances that were going to make
6 up the content of your press release?

7 A. I believe I did.

8 Q. Okay. And were they all by telephone or were they
9 some in person?

10 A. Oh, I never -- I never met her in person.

11 Q. Okay. How would -- if you could just tell me how that
12 process might work. Did -- would she call you and
13 tell you if you'd like to have a press release written
14 up or would -- how would that process have worked?

15 A. Based on the fact that her phone number is written
16 down here, I think that appears that I would have
17 called her and talked with her.

18 Q. Okay. And, now, is that something that you would have
19 done at the request of Holly Wagner or is it possible
20 that that is -- did she call you and leave a message
21 for you to call her back?

22 A. No, I don't believe Holly requested that -- Holly
23 conveyed to me what she had, and I believe I called --
24 I got Kelli's number and I called Kelli to -- to
25 discuss with her what was going to be put out.

**JAMES W. TREXLER VS: McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 Q. Okay. You didn't -- did you have any conversation
2 with Holly Wagner about what was going to be in the
3 press release?

4 A. Yes.

5 Q. Okay. What conversation did you have with her about
6 what was going to be in the press release?

7 A. I can't -- it's three years ago. I can't answer. All
8 I can tell you is that we had a conversation, and I
9 made notes and this is what was produced.

10 Q. Okay. If we take a look at -- this would make more
11 sense to you than it does to me because -- because I
12 wasn't in this circumstance. But if we look at this
13 -- this first page here that's Plaintiff's Exhibit
14 Number Twelve.

15 A. Number Thirteen?

16 Q. Yeah, correct. Thirteen. This is a document that has
17 listed on here 207 Misty Meadows Road in Hopkins. Is
18 that correct there?

19 A. There is an address there. 207 Misty Meadows. My
20 writing.

21 Q. Okay. And -- and so, 207 Misty -- do -- do you have
22 any understanding that 207 Misty Meadows Road was --
23 was not even on the radar before the arrest?

24 MR. GARFIELD: Object to the form.

25 A. I have no idea what that's referencing.

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 Q. Okay. How about this not up here at the top, it says,
2 "HSPCA invited WOLO and called State Paper without
3 letting RS -- RCS be known"?

4 A. Any time you have a press release which you do when
5 there are multiple agencies involved, you want to try
6 to have one voice ---

7 Q. Okay.

8 A. -- so everybody's on the same page. And I made a note
9 to myself that they were contacting the media as part
10 of this when we had agreed over the telephone that we
11 were -- we were going to be the one doing -- doing the
12 information release.

13 Q. Is that agreement in place to insure that -- that
14 there's no mix-up of facts?

15 A. Normally, it's in place so that there's one voice and
16 so that people are getting one voice, one -- one --
17 one face with the story.

18 Q. And you're saying you made this note because they went
19 outside of that agreement and -- and involved the
20 media on their own?

21 A. Yes.

22 MR. GARFIELD: Object to the form.

23 Q. Okay. We've got below here -- below that -- that in
24 bold writing there, we've got some hash marks with
25 what look like to be, and you can tell me if this is

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 what they are, are they -- are they questions that --
2 that you've written there? They -- they read, "Who
3 owns? Who charged? Why owner of property not
4 charged? What charges?" Are those questions that
5 you've marked down, or what do those represent?

6 A. I've written that. I don't know why I would have
7 written it.

8 Q. Okay. Does that appear that there is some question at
9 that point about those particular items?

10 A. You're asking me to speculate. I don't know what I
11 did three years ago. I -- I can just tell you I wrote
12 that.

13 Q. Okay. If you could flip to the second -- the second
14 page in this exhibit. This is the one that's Bates
15 labeled 8441-A-012. At the top -- and I'm wondering
16 if this came from the same -- if -- from the same
17 phone conversation because at the top you have "Kelly
18 Graham, James Trexler blocked in HSPCA investigation
19 -- investigated." Then -- then we skip over to
20 Hazelene Trexler section and -- and then down here
21 you've got, "Terry A. Trexler, one count kidnapping,
22 blocking in Humane Society investigator." Can you
23 shed some light on why those -- why there's the
24 discrepancy on this note, on this note page?

25 A. Shed some light how?

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 Q. I mean, if this all came out the same telephone
2 conversation, at which I -- I'm not suggesting that it
3 did, but if this -- if these are notes that you've
4 taken, up here it says, "James Trexler blocked in the
5 HSPCA," and down here, it says, "Terry Trexler blocked
6 in the HSPCA investigator". So, if this is notes of
7 communication that you're having with somebody from
8 the HSPCA, Kelli Graham, there's an obvious
9 discrepancy there, and do you have any explanation for
10 why the discrepancy is there?

11 MR. GARFIELD: Object to the form.

12 Go ahead.

13 A. I can't explain it.

14 Q. Okay. If -- if we look in this -- this middle section
15 right here, right below 412 Derby Lane on the second
16 page of Plaintiff's Exhibit Thirteen, it's listed
17 Hazelene E. Trexler, and it's got some -- some
18 identifying data there and then it's got some language
19 there. Would you -- could you read that -- those
20 notes starting with "Ill treatment"?

21 A. "22WW, ill treatment of animals, injuries, halters
22 growing into their face to malnutrition to injuries
23 that were left untreated will cause lameness."

24 Q. Okay. Is that note something that you would have
25 written down that somebody else told you?

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

1 charges were filed. And the only criminal charge that
2 was moved from one to the other was the kidnapping,
3 yes.

4 Q. And for all other purposes, did the press release --
5 I mean, there were no other corrections made?

6 A. I don't believe there were.

7 Q. Okay.

8 A. I don't believe so.

9 Q. Now, the -- the language of the press release and then
10 the Charges section, they -- they seem to be -- they
11 appear to be in two different types of fonts and --
12 and style. Did you -- do y'all have a -- how do you
13 get the -- are the charges all put on there at the
14 same time from -- in the same press release? Let me
15 rephrase. Does somebody create the text portion or
16 the narrative portion and then a separate person or a
17 separate time create the Charges section?

18 A. No.

19 Q. It's all done at the same time?

20 A. Yes.

21 Q. Okay. Is there -- is there any reason that the
22 Charges section has a different font and a different
23 style?

24 A. Yes.

25 Q. And what -- what is that reason?

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 A. It's -- it's more of a PIO thing because -- because
2 the media is only going to -- is normally going to
3 read or they are only going to be concerned with the
4 -- the top, the first few sentences when they get a
5 release, and that's -- and that's what you're trying
6 for; so, it's going to be a larger font to try to draw
7 their attention to the Release.

8 Q. Okay. Okay. How much of the text of this press
9 release did you write?

10 A. All of it.

11 Q. Okay. And you wrote it all based on conversations
12 that you had with Kelly Graham and Holly -- Holly
13 Wagner and these notes here?

14 A. Yes.

15 Q. The notes that are reflected in Plaintiff's Exhibit
16 Thirteen?

17 A. Yes.

18 Q. Okay. If we -- and the language that's -- that's
19 applied, and what I'll do is ask if you can read into
20 the record -- read the original press release that
21 went out.

22 MR. GARFIELD: Just -- if you would just
23 designate what you're reading from because these
24 are not stapled. Go ahead.

25 A. The release that I'm reading from is 8441 A as in
**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

1 Alpha, 010, the original Release that went out.
2 "Richland County Sheriff Leon Lott announced that
3 approximately 8:00 P.M. tonight, Richland County
4 Sheriff's Department Fugitive Task Force apprehended
5 Hazelene Trexler," date of birth, "Terry Trexler,"
6 date of birth, "and James Trexler," date of birth, "at
7 4112 Derby Lane in Hopkins. Richland County Sheriff
8 Leon Lott stated that Sheriff's Department and HSPCA
9 continue to investigate the severe and barbaric
10 treatment of twenty-eight horses that were in custody
11 of and supposed to have been cared for by the
12 Trexler's. Even as the trio were being arrested in
13 Hopkins tonight, investigators and veterinarians care
14 for the horses that sustained injuries ranging from
15 malnutrition to inflictions that being left untreated
16 cause lameness -- lameness to -- to halters growing
17 into the faces of horses."

18 Q. Okay. Now, this language-- you've written this, but
19 did -- where did the language for this come from?

20 A. Well, it would have come from my conversations as far
21 as, you know, with -- again, we -- when we're doing a
22 press release, we're relying on the investigators or
23 whoever to give us information and then we capsule
24 it and we try to draw the media's attention and the
25 public's attention to -- by how we phrase the --

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 phrase the words together.

2 Q. Okay. And who would have come up with the
3 construction, "Severe and barbaric treatment"?

4 A. I would have.

5 Q. Okay. Who would have come up with the -- with the --
6 the designation "the trio"?

7 A. Because any time you're doing -- I did -- because any
8 time you're doing a press release, you're not going to
9 re-list out everybody's names and you're not going to
10 -- you're not going to say the -- you know, it just --
11 it makes it too long. You've got to condense things
12 and you've got -- and then again, you asked me earlier
13 about the font. You want to try -- the only way
14 you're going to get the media to read something is if
15 it's -- it it's short. And so, all I would have been
16 doing there would have been saying -- because you've
17 got three people. It's just a reference to three
18 people.

19 Q. Right. And trio is -- suggests acting together,
20 doesn't it?

21 MR. GARFIELD: Object to the form.

22 A. That's not -- I don't believe that's what I would have
23 been doing. I would have just been saying trio, that
24 there's three people.

25 Q. Okay.

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 document. That's -- I mean, that's PIO 101 is that
2 you take the facts that you're given and you produce
3 a document, and that's what I've done.

4 Q. Okay. And this -- and you've produced this without --
5 without necessarily knowing the facts personally?

6 MR. GARFIELD: Object to the form.

7 A. I can only go based on what's told -- told to me.

8 Q. Okay. So, severe and barbaric, is that something that
9 was told to you?

10 MR. GARFIELD: Object to the form. Go
11 ahead.

12 A. I can't answer that. All I can tell you is, you know,
13 I can only based on what I'm seeing here and what's
14 written in my notes, and I don't know if somebody else
15 said that word or whether it was just something that
16 I -- I paraphrased. I -- I don't know. I can't tell
17 you what I was thinking three years ago.

18 Q. Okay.

19 A. I do twelve or thirteen, fourteen Releases a day on
20 different things. I can't speculate.

21 Q. Did somebody suggest to you that -- that James Trexler
22 was also accused of treating horses severely and
23 barbarically?

24 A. I can only tell you of what I've got, and that is that
25 I was told that there were twenty some odd counts of

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 ill treatment for the three individuals that were
2 arrested. That's all I can tell you.

3 Q. So -- so, we don't necessarily know if James Trexler
4 was grouped in with other individuals that did treat
5 animals severely and barbarically?

6 A. According to what I'm told, each one of them was
7 charged with twenty-three counts of ill treatment.

8 Q. Okay.

9 A. I don't know what counts it is.

10 Q. Does ill treatment include barbarity and severe
11 treatment?

12 A. Are you asking me for my personal opinion or are you
13 asking me based on what I was thinking then?

14 Q. Based on what you were thinking then.

15 A. I can't answer that because it was three years ago.

16 Q. How about what you think now?

17 A. Any time you ill-treat an animal, it's pretty
18 barbaric, in my opinion.

19 Q. Okay. I'm interested in -- and if you can tell me why
20 it is that these -- these press releases are -- and I
21 say press releases. I've seen other ones, but
22 specifically this one, but it seems to be -- seems to
23 be the case for all the press releases. You all refer
24 to -- to Sheriff Lott as stating -- "Sheriff Lott
25 stated that". Can you help me understand why it is

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 that Sheriff Lott is stating these facts? Did he
2 state them personally?

3 A. You're talking about a Release that's speaking on
4 behalf of the Agency as a whole or on behalf of the
5 Department as a whole. So, a press release is a
6 representation of the Agency, and the Sheriff is the
7 head of that Agency.

8 Q. And that's pretty -- pretty standard way of just
9 releasing ---

10 A. Yes.

11 Q. Yes. Do y'all do that regularly instead of saying the
12 Department -- the Richland County Sheriff's
13 Department?

14 A. Every press release is written -- is written to that
15 effect. Yeah.

16 Q. Okay. So, because it says that Sheriff Lott stated
17 that, that doesn't mean that he necessarily has that
18 knowledge?

19 A. No.

20 Q. If -- if you look at the -- the lower section of that
21 -- of the text, it tells us that the Sheriff -- that
22 "the HSPCA will continue to work with the Solicitor's
23 Office here and in Georgia to make sure the Trexler's
24 receive the punishment that they deserve and are
25 prosecuted to the fullest extent of the law." That's

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 Humane Society was giving us that information; that it
2 was -- the information was inaccurately reported. And
3 we -- and I'm in the business of making sure that the
4 correction goes out correctly, and that was that the
5 Humane Society gave that information and they did not
6 do that. They did not indicate where that erroneous
7 information came from.

8 Q. Okay. Would you mind reading that e-mail?

9 A. "Since we have a great relationship, I feel it okay to
10 say thanks for putting the hit in the eye squarely on
11 me in this morning's paper. I realize I'm responsible
12 for the news releases that go out from RCSD, and you
13 guys are worried about backlash from a possible
14 attorney. The Humane Society told you guys yesterday
15 that it was there bad information that caused the
16 error. I even got an e-mail from Kelly Davis stating
17 the same. That was what a boxer would call a low
18 blow. Easily could have been written to reflect our
19 making the corrections and the HSPCA being involved in
20 the error."

21 Q. Okay. Did -- to whom do you say you sent this?

22 A. To the paper?

23 Q. Was it "The State" paper?

24 A. "The State" paper.

25 Q. Okay. Did "The State" paper have the corrected

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 version before they wrote the story?

2 A. No. What this is -- this is only referencing the fact
3 that I wanted the paper to say where the erroneous
4 information came from; once we found out that there
5 was an error that -- that the convolution and the
6 issue for everything that -- that -- where we got
7 wrong information. Not that it was anything
8 malicious, but it was that -- that it happened, and I
9 wanted them to say -- instead of saying that the
10 Sheriff's Department put out the wrong information,
11 that there was actually the Humane Society that gave
12 the wrong information.

13 Q. I see. So, -- so, in other words, the Humane Society
14 gave you the wrong information, and you published the
15 article ---

16 A. Correct.

17 Q. -- with the wrong information?

18 A. Yes.

19 Q. What was the reaction to that e-mail?

20 A. I don't believe I got a reaction that I'm aware of.

21 QQ. Okay.

22 A. I don't -- I don't -- I can't answer that. I don't
23 know.

24 Q. But it indicates in there that -- that they could have
25 printed the story to reflect the correction.

JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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Exhibit “S”

Kelly Graham
James Trexler Blocked
in HSCA Investigation

412 Derby Ln, Hopkins

570
3456

HSCA POC
Kelly Graham
237-4579

Hazelene E. Trexler
WF (70) 7-12-37

28 wws { ill treatment
of animals
ignores hatter going into their face
to malnutrition to injure
were
That left untreated will
cause lameness

1 1/2
Baby camp
↓
4.0
Most = 3
acceptable is 4
most are 5

Terry A. Trexler
W/m 7-16-63

23 wws ill treatment
Count kidnapping
Blocking in Humane Society
2/13
Evaluation
was blocked in by Terry

James Trexler
W/m 1-14-60

5 counts ill
↑ only ones
Responsible - physical
control

Lawrence 7658

DLSCN 26/07/10



8441-A-012

HSCA
 invited wolo
 & call state per
 w/out ~~letting~~
 RCSD know

Call discovery who will
 be charged including
 owner of property

207 Nifty Meadows RD
 Hopkins

Tip that Trexler
 had more houses
 S/W & seized 17
 report/abuse

- who owns
- who charged
- why owner of
 property
 not
 charged

- what
 change
 when tip
 over to
 weekend

DLSCH 26/07/10

8441-A-04

Exhibit “T”

Since we have a great relationship I feel it ok to say thanks for putting the hit in the eye squarely on me this morning's paper – I realize I'm responsible for the news releases that go out from RCSD and you guys are worried about backlash from a possible attorney but the Humane Society told you guys yesterday that it was their bad information that caused the error – I even got an email from Kelly Davis stating same. That was what a boxer would call a low blow – easily could have been written to reflect our making the corrections and HSPCA being involved in the error.

LT, Chris Cowan
Richland County Sheriff's Department,
Senior Public Information Coordinator
5623 Two Notch Road
Columbia, South Carolina 29223
803-576-3036 (office) 803-576-3190 (fax)
PIO Pager 968-6018
ccowan@rcsd.net



DLSCN 26/07/10

8441-A-011

Exhibit “U”

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) OF THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-1343

James W. Trexler,

Plaintiff,

vs.

McClatchy Newspapers, Inc., Richland
County, and the Richland County
Sheriff's Department,

Defendants.

Deposition of LEON LOTT, taken by Doris Tompkins
Brown, Certified Verbatim Reporter and Notary Public
in and for the State of South Carolina, commencing at
2:02 P.M. on September 6, 2011, and taken at the
Richland County Sheriff's Department, 5623 Two Notch
Road, Columbia, South Carolina.

APPEARANCES

FOR THE PLAINTIFF:

W. Westbrook Wills, III
Austin, Fowler & Wills,
LLP
38 Broad Street
Suit 200
Charleston, South Carolina
and
William H. Johnson
2 North Brooks Street
Manning, South Carolina



Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151
(803) 499-2434

COPY

1 this press release..

2 Q. Okay. Is it common for the Public -- the Public
3 Information Officer to say that you have stated
4 something?

5 A. That's correct. That is common.

6 Q. What is the purpose of -- of that -- of the Public
7 Information Officer saying that you have stated?

8 A. That I am the Sheriff of the County, ---

9 Q. Okay.

10 A. -- and that this press release is coming from the
11 Sheriff's Department which I am the Sheriff of.

12 Q. Okay. So -- so, it's possible that -- that there is
13 information that says that it came from you, but it
14 didn't really come from you?

15 A. It came from the Sheriff's Department, and I'm the
16 head of the Sheriff's Department.

17 Q. Okay. So, in that -- in that respect, this just kind
18 of personifies the Sheriff's Department?

19 A. That's correct.

20 Q. Okay. I understand. So, do -- within the -- within
21 the -- if you -- if you've had a chance to read this
22 press release, did -- did you have any knowledge of --
23 of any barbaric treatment of any horses with regard to
24 this case?

25 A. Just what the Public Information Officer put it into

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
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1 the press release and he based that on information he
2 got, and I would have no reason to say it didn't
3 happen.

4 Q. Okay. But you, personally, didn't have any
5 information about that?

6 A. I didn't investigate this case.

7 Q. Okay. Now, the second paragraph of this, this press
8 release says that, "Sheriff Leon Lott added, this case
9 is disturbing because these horses are helpless to the
10 hands of their owners and the Trexler's have proven
11 time and again that they have no business of owning
12 animals. Sheriff Leon Lott stated that investigators
13 from the Sheriff's Department and the HSPCA will
14 continue to work with the Solicitor's Officer here and
15 authorities in Georgia to make sure the Trexler's
16 receive the punishment they deserve." That, again, is
17 coming from the Public Information Officer?

18 A. That's correct.

19 Q. All right. Is it common to -- in these press releases
20 -- to put in editorialized comments about -- about an
21 investigation?

22 A. Yes, sir. It happens.

23 Q. Okay. In the second paragraph of this -- in the --
24 excuse me. In the first paragraph of this press
25 release, it says, "Sheriff's County -- Richland County

**JAMES W. TREXLER VS. McCLATCHY NEWSPAPERS, INC., RICHLAND
COUNTY, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT**

From: Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson) dbenjaminlc@sccourts.org
Subject: RE: Trexler v. Richland County and Sheriff of Richland County a/k/a/ RCSD; C/A no.: 2010-CP-1343
Date: February 5, 2014 at 5:16 PM
To: W. Westbrook Wills III wwills@wwillslaw.com
Cc: Matt Hamrick matt@matthamricklaw.com, William H. Johnson william@whjohnsonlaw.com, John E. Tyler jet@swblaw.com, Robert D. Garfield rgarfield@dml-law.com



Good afternoon,

I had an opportunity to speak with Judge Benjamin. She indicated that she will accept a brief from Plaintiff's counsel addressing the issues raised by Defense counsel in its supplemental brief.

Thanks,

Ashley Wheeling-Goodson
Law Clerk for The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1746
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: W. Westbrook Wills III [<mailto:wwills@wwillslaw.com>]
Sent: Tuesday, February 04, 2014 9:15 PM
To: Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson)
Cc: Matt Hamrick; William H. Johnson; John E. Tyler; Robert D. Garfield
Subject: Re: Trexler v. Richland County and Sheriff of Richland County a/k/a/ RCSD; C/A no.: 2010-CP-1343

Ashley,

Thank you. If Judge Benjamin is to consider this highly improper after-the-fact e-mail argumentation from Mr. Garfield, to which we emphatically object, then the Plaintiff should certainly have the opportunity to respond. Nevertheless, we submit such unsolicited supplementation is fully addressed in Plaintiff's memorandum of law previously submitted, which correctly sets out the law in South Carolina (as opposed to other jurisdictions) regarding this issue. We will, however, submit briefing on this issue in response to Defendant's ex post facto argument unless Judge Benjamin instructs us that it is unnecessary. Thank you

W. Westbrook Wills

On Feb 4, 2014, at 9:02 PM, "Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson)" <dbenjaminlc@sccourts.org> wrote:

Good evening,

I will share this e-mail with Judge Benjamin, and I will contact everyone once she decides whether she will consider the additional information provided by Mr. Garfield and whether she would like to receive additional briefing from Mr. Hamrick.

Thanks,

Ashley Wheeling-Goodson
Law Clerk for The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1746
Fax: 803-576-1777
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dbenjaminlc@sccourts.org

From: Matt Hamrick [<mailto:matt@matthamricklaw.com>]
Sent: Tuesday, February 04, 2014 7:20 PM
To: Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson)
Cc: 'William H. Johnson'; 'W.Westbrook Wills III'; 'John E. Tyler'; 'Robert D. Garfield'
Subject: RE: Trexler v. Richland County and Sheriff of Richland County a/k/a/ RCSD; C/A no.: 2010-CP-1343

Dear Ashley:

On behalf of the Plaintiff, we object to the Defendant's attempt to submit further argument after the summary judgment hearing via email. However, if Judge Benjamin is inclined to consider the Defendant's additional arguments the Plaintiff would respectfully request that the Court consider this response, allow Plaintiff to submit further briefing on the issue of collateral estoppel since it was not argued at the hearing, and would also request that the Court review the Plaintiff's memorandum in opposition to the motion for summary judgment, at pp. 20-21, where Plaintiff addressed the issue of the law-of-the-case doctrine and, contrary to the Defendant's assertion, cited to numerous cases for the proposition that the doctrine does not apply to an issue that is being appealed. Nor does collateral estoppel apply, as the parties to these two cases are not identical, the issue of "public official" was not fully litigated on the merits, and Judge Strickland's summary judgment ruling is currently being appealed.

Thank you for considering this response.

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Tidewater Executive Center
222 West Coleman Blvd.
Mt. Pleasant, SC 29464
tel. (843) 693-4700
fax (877) 524-5023
matt@matthamricklaw.com

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error.

From: Robert D. Garfield [<mailto:rgarfield@dml-law.com>]
Sent: Tuesday, February 04, 2014 5:19 PM
To: Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson)

TO: Benjamin, Deandra G. Law Clerk (Ashley Wheeling-Goodson)

CC: Matt Hamrick; William H. Johnson; W.Westbrook Wills III; John E. Tyler (jet@swblaw.com)

Subject: Trexler v. Richland County and Sheriff of Richland County a/k/a/ RCSD; C/A no.: 2010-CP-1343

RE: James W. Trexler v. Richland County and the Sheriff of Richland County, in his official Capacity, a/k/a Richland County Sheriff's Department
Civil Action Number: 10-CP-40-1343
Date of Incident: February 2008
Our File Number: 314.8441

Ashley:

This is a brief follow up to the January 27, 2014 hearing for summary judgment heard by Judge Benjamin in the above-referenced matter. Understanding that the hearing took longer than anticipated, this issue was not fully addressed and would kindly ask that the following be passed on to Her Honor to supplement our reply.

In pages 10-12 of our Memo in Support, we address Judge Strickland's October 25, 2012 ruling granting summary judgment to several media defendants with respect to the defamation claim. Accordingly, we asserted that the current law of the case was that Plaintiff was a public official and that the Tort Claims Act excludes Plaintiff's defamation claim against the Sheriff.

At our hearing last week, Plaintiff's counsel argued that such a ruling was not the law of the case given that the matter is presently under appeal.

There is no prevailing authority supporting such a position. To be specific, South Carolina holdings appear to be devoid of any rule which might indicate whether a ruling retains its law-of-the-case effect while an appeal is pending.

In any event, since the applicable ruling arises from a related but separate case, collateral estoppel would apply. *See, e.g., Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008) ("Under the doctrine of collateral estoppel, also known as issue preclusion, when an issue has been actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action.")

Given the dearth of authoritative cases addressing the issue, the vast majority of jurisdictions follow the rule that a judgment retains its preclusive effect even when the judgment is being appealed. *See Campbell v. Lake Hallowell Homeowners Ass'n*, 852 A.2d 1029, 1039-41 (Md. Ct. Spec. App. 2004) (discussing and adopting the majority rule "that a pending appeal does not affect the finality of a judgment" for preclusion purposes) (collecting cases); *see also, e.g., Warwick Corp. v. Maryland Dept. of Transp.*, 573 F. Supp. 1011, 1014 (D.C. Md. 1983) ("If a judgment was denied its *res judicata* effect merely because an appeal was pending, litigants would be able to refile an identical case in another trial court while the appeal is pending, which would hog-tie the trial courts with duplicative litigation."). Federal courts also adhere to the majority rule. *e.g., Tripathi v. Henman*, 857 F.2d 1366, 1367 (9th Cir. 1988) ("The established rule in the federal courts is

that a final judgment retains all of its res judicata consequences pending decision of the appeal . . .” (quoting 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4433, at 308 (1981)); *Deposit Bank of Frankfort v. Board of Councilmen*, 191 U.S. 499, 514 (1903) (holding that a final judgment of trial court is conclusive, for purposes of res judicata, until that judgment is modified or reversed).

The upshot is that Plaintiff’s contention at argument as to no preclusive effect in this instance holds no authoritative weight in South Carolina. Instead, we would respectfully assert that the majority rule -- that a judgment retains its preclusive effect unless and until overturned on appeal -- supports the application of the law-of-the-case doctrine to Judge Strickland’s ruling as to Plaintiff’s status as public official. Moreover, collateral estoppel and the majority rule provide an additional and independent source of preclusive effect for Judge Strickland’s ruling.

We certainly appreciate Her Honor’s consideration of our motion and the present supplemental information.

Robert Garfield

Robert D. Garfield
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Case No.: <u>2010-CP-40-1343</u>
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S SUPPLEMENTAL BRIEF
	)	IN OPPOSITION TO DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
	)	
Richland County and the Sheriff of	)	
Richland County, in his official	)	
Capacity, a/k/a Richland County	)	
Sheriff's Department,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff James W. Trexler ("Plaintiff") by permission of the Court, and responds to Richland County and the Sheriff of Richland County, in his official capacity, a/k/a/ Richland County Sheriff's Department's (collectively "Defendants") supplemental brief on their Motion for Summary Judgment as follows:

INTRODUCTION

On September 3, 2013 Defendants filed their Motion for Summary Judgment in which they asserted, *inter alia*, that Plaintiff's action is barred in its entirety by res judicata and/or collateral estoppel based on the decision entered in case in this Court, which is separate but related to the present case.¹ On October 20, 2013, Plaintiff filed his

¹ By Order date October 25, 2012, Judge Strickland granted media defendants summary judgment in case number 2010-CP-10-1249, which case had been consolidated with the present one for purposes of discovery and possibly for trial. Judge Strickland's October 25, 2012 Order is currently under appeal as to all issues.

memorandum in opposition to Defendants' Motion for Summary Judgment in which he set forth the argument, supported by South Carolina authority, that because Plaintiff appealed the subject issues, and the appeal is still pending, the issue is not precluded in the present case by either res judicata or collateral estoppel, and has not become the "law of the case." At the January 27, 2014 hearing on Defendants' summary judgment motion, Plaintiff reasserted the same argument against issue preclusion and the "law of the case," backed by South Carolina authority. Defendant did not respond to Plaintiff's argument on those issues by presenting any contrary authority. Subsequent to the hearing, on February 4, 2014, without any request from the Court for further briefing, counsel for Defendants sent Ashley Wheeling-Goodson by e-mail what essentially amounted to a supplemental brief to address, *ex post facto*, Plaintiff's argument against the appealed ruling in a separate case being the "law of the case" in this one, and the inapplicability of both res judicata and collateral estoppel to the present case. When counsel for Plaintiff objected to counsel for Defendants' attempt to backdoor his argument on the issue over a week after the hearing, Judge Benjamin allowed Plaintiff to submit a supplemental brief on the issue in response, which Plaintiff herewith submits.

ARGUMENT AND CITATION OF AUTHORITY

I. Judge Strickland's ruling Plaintiff is a public official for the Purposes of defamation is not the law of the case because that ruling is currently under review by the South Carolina Court of Appeals.

Defendants, in their supplemental e-mail brief, attack Plaintiff's argument against an appealed ruling establishing the law of a separate pending case by gratuitously stating there is no prevailing authority in South Carolina to support Plaintiff's position. To the

contrary, South Carolina caselaw is clear on the issue. Under the law of the case doctrine, “a party is precluded from relitigating, after and appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.” Judy v. Martin, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009) (citing Bakala v. Bakala, 352 S.C. 612, 632, 576 S.E.2d 156, 166 (2003)). An appealable order from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties on the same subject matter. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc., 326 S.C. 460, 464-65, 483 S.E.2d 796, 798 (Ct. App. 1997) rev’d 334 S.C. 324, 513 S.E.2d 617 (1999); Professional Bankers Corp. v. Floyd, 285 S.C. 607, 331 S.E.2d 362 (Ct. App. 1985). This doctrine operates **only** as to matters concluded by the **unappealed** order. Floyd at 613, 331 S.E.2d at 365 (emphasis added).

In Renaissance, as in the present case, the defendant argued the circuit court’s ruling in another case between the parties granting defendant summary judgment on the ground the contract between the parties had been terminated precluded Renaissance from obtaining a contractual rate of interest based on a terminated contract. At the time of the hearing in the Renaissance matter, the circuit court’s ruling in the other case was on appeal. The court in Renaissance stated “while we find this argument to be totally without merit, we need not address Ocean Resort’s contentions, as the court has now ruled in favor of Renaissance in the related case, reversing the grant of summary judgment in favor of Ocean Resorts.” Renaissance at 469-70, S.E.2d at 801.

Ample South Carolina authority supports the proposition, either directly or implicitly, that only unappealed rulings, or rulings finally decided on appeal become the law of the same case or related cases involving the same parties. See Williamsburg Rural Water and Sewer Co., Inc. v. Williamsburg County Water and Sewer Authority, 593 S.E.2d 154, 357 S.C. 251 (S.C. App. 2003) (rev'd on other grounds) (noting that a party in the case "did not appeal either of these findings; therefore, it is the law of this case"); Charleston Lumber Co. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (2000) (stating an unappealed ruling is the law of the case); ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997) (unappealed ruling is law of the case); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance.").

Here, as in Renaissance, at the time of the hearing on Defendants' Motion for Summary Judgment, Plaintiff had already appealed Judge Strickland's ruling on the issue of whether Plaintiff is a public official for the purposes of defamation, and that ruling cannot be the law of the case in a separate matter involving different parties. Furthermore, the issue of whether Plaintiff is a public official for the purposes of defamation is not a dispositive issue as to Defendants' liability, only as to the standard to apply to Defendants' actions. Irrespective of Plaintiff's status as a public official, a genuine question of fact remains as to whether the Defendants acted with reckless disregard for the truth in publishing defamatory statements about Plaintiff, and summary judgment on that basis is not appropriate.

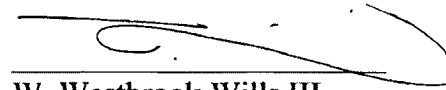
II. Judge Strickland's ruling Plaintiff is a public official for the Purposes of defamation does not bar Plaintiff's action under the doctrines of res judicata or collateral estoppel because the ruling is currently under review by the South Carolina Court of Appeals.

Defendants argue that if the law of the case doctrine does not apply then the doctrines of judicial estoppel and collateral estoppel do to bar Plaintiff's entire case based on the rulings in Judge Strickland's Order granting summary judgment to other parties in a separate action. Defendants attempt to support their argument with citation to Zucher v. Bilton, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008) ("under the doctrine of collateral estoppel, also known as issue preclusion, when an issue has been actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action.") This law does not answer the question at hand, and is inapplicable to the present situation. First, the present action is not a "subsequent action," but a contemporaneous action (the cases are consolidated). Second, and underscoring application of collateral estoppel to subsequent and not pending cases is the requirement that the doctrine be asserted as an affirmative defense. See Duckett v. Goforth, 374 S.C. 446, 465-66, 649 S.E.2d 72, 82 (Ct. App. 2007); Jordan v. Jordan, 284 S.C. 342, 346, 326 S.E.2d 416, 418 (Ct. App. 1985) (holding defensive collateral estoppel is an affirmative defense and thus, must be plead). Defendants have not, and could not have, asserted collateral estoppel as an affirmative defense, and it is therefore not available to them.

The doctrines of res judicata and collateral estoppel are, of course, two different concepts. "A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim

as to issues actually litigated and as to issues which might have been litigated in the first action.” Beall v. Doe, 281 S.C. 363, 369, 315 S.E.2d 186, 190 (Ct. App. 1984). Because, here, we are not dealing with a second action based on the same claim as to issue litigated and decided in the first action, the doctrine of res judicata is inapplicable, and not available to Defendants for summary judgment purposes. See id. Furthermore, as stated above, summary judgment on the basis of res judicata and/or collateral estoppel are not appropriate because they are not dispositive of the issue, (they only determine the negligence standard), and there remains a genuine issue of material fact as to Defendants’ degree of recklessness in publishing defamatory statements about Plaintiff.

Respectfully submitted,
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This 9th day of April 2014
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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
James W. Trexler,)
)
)
Plaintiff,)
)
)
vs.)
)
Richland County and the Sheriff of)
Richland County, in his official)
Capacity, a/k/a Richland County)
Sheriff's Department,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

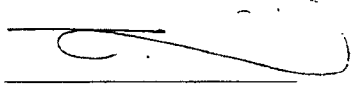
Civil Case No.: 2010-CP-40-1343

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing on counsel of record by e-mail, and by U.S. Mail as required under the South Carolina Rules of Civil Procedure addressed as follows:

Robert D. Garfield, Esq.
1611 Devonshire Drive
Second Floor
Columbia, SC 29202

Dated: April 9, 2014



W. Westbrook Wills III

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. DeAndrea Gist Benjamin, Circuit Court Judge

Circuit Court Case No. 2010-CP-40-1343
S.C. Court of Appeals Case No. 2014-002032

James W. Trexler,

Appellant,

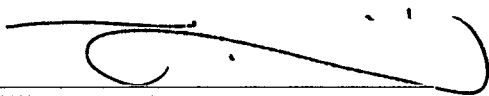
v.

Richland County and the
Sheriff of Richland County in
his Official Capacity, a/k/a
Richland County Sheriff's
Department

Respondents.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal in the above-referenced case contains all material proposed to be included by any of the parties and not any other material.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 08 2015

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. DeAndrea Gist Benjamin, Circuit Court Judge

Circuit Court Case No. 2010-CP-40-1343
S.C. Court of Appeals Case No. 2014-002032

James W. Trexler,

Appellant,

v.

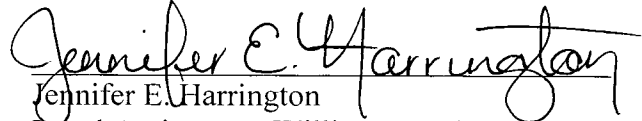
Richland County and the
Sheriff of Richland County in
his Official Capacity, a/k/a
Richland County Sheriff's
Department,

Respondents.

PROOF OF SERVICE

I, Jennifer E. Harrington, Legal Assistant to William H. Johnson, an employee of The Law Offices of William H. Johnson, LLC, attorneys for Appellant, James W. Trexler, does hereby certify that I have, on the date indicated below, served counsel below with the **Record on Appeal**, by depositing a copy of same in the United States Mail, postage pre-paid, and return address clearly indicated on said envelope, to counsel at the following address:

Andrew F. Lindemann, Esquire
Robert D. Garfield, Esquire
DAVIDSON & LINDEMANN, P.A.
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Jennifer E. Harrington
Legal Assistant to William H. Johnson

June 8, 2015
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RECEIVED
JUN 08 2015
SC Court of Appeals

William H. Johnson*

Christopher R. DuRant

June 8, 2015
(VIA HAND-DELIVERY)

The Honorable Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE: James W. Trexler v. Richland County, et al
S. C. Court of Appeals Case No. 2014-002032
Circuit Court Case No. 2010-CP-40-01343
Our File No. 10-108WM

Dear Ms. Kitchings:

Enclosed herewith, please find the original and fifteen (15) copies of the Record on Appeal, Reply Brief of Appellant, and Final Brief of Appellant for filing in regard to the above captioned case.

By copy of this letter to all counsel of record, I am serving them with a copy of same.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



William H. Johnson

WHJ/jeh
Enclosure(s)

cc: Robert D. Garfield, Esquire
Andrew F. Lindemann, Esquire
W. Westbrook Wills, III, Esquire
Matthew D. Hamrick, Esquire

*Also Admitted to Practice in North Carolina