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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Circuit Court Case No. 2012-CP-40-04652
S.C. Court of Appeals Case No. 2014-000663

ORIGINAL
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APR 27 2015
SC Court of Appeals

James W. Trexler,

Appellant,

v.

The Humane Society for the
Prevention of Cruelty to Animals,
and Wayne Brennessel, individually
and as Executive Director of
The Humane Society for the
Prevention of Cruelty to Animals,

Respondents.

RECORD ON APPEAL

William H. Johnson
Law Offices of William H. Johnson, LLC
411 North Brooks Street
Post Office Box 137
Manning, South Carolina 29102
(803) 435-0909 (telephone)
(803) 435-2858 (facsimile)

-and-

W. Westbrook Wills III
Law Office of W. Westbrook Wills III
PO Box 822
Folly Beach, SC 29439
(843) 805-6300 (telephone)
(866) 922- 8596 (facsimile)

-and-

Matthew D. Hamrick
Attorney at Law
Tidewater Executive Center
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 693-4700 (telephone)
(877) 524-5023 (facsimile)
ATTORNEYS FOR APPELLANT

Other counsel of record:

Roopal S. Ruparelia, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
P.O. Box 11889
Columbia, SC 29211-1889

William O. Sweeny, III, Esquire
John E. Tyler, Esquire
SWEENEY, WINGATE & BARROW, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, SC 29211
ATTORNEYS FOR RESPONDENTS

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The South Carolina Court of Appeals

James W. Trexler, Appellant,

v.

The Humane Society for the Prevention of Cruelty to
Animals, Wayne Brennessel, individually and as
Executive Director of the Humane Society for the
Prevention of Cruelty to Animals, Respondents.

Appellate Case No. 2014-000663

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2012CP4004652

ORDER

The time for serving and filing the respondents' initial brief and designation of
matter is hereby extended until October 23, 2014.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

FILED

9-24-14

William H. Johnson, Esquire
Warren W. Wills, III, Esquire
Matthew David Hamrick, Esquire
William O. Sweeny, III, Esquire
John Earle Tyler, Esquire

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2012CP4004652**

James W Trexler

Humane Society For The Prevention Of Cruelty To Animals

PLAINTIFF(S)

Wayne Brennessel

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. 10); ☐ 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 : _____

INFORMATION FOR THE JUDGMENT 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
		\$
		\$
		\$

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

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

Circuit Court Judge

Judge Code _____

Date

2/5/2014

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 10 day of Feb, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

William H. Johnson

William O. Sweeny III

Roopal S. Ruparella

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

vs.

The Humane Society for the Prevention of
Cruelty to Animals, Wayne Brennessel,
individually and as Executive Director of
the Humane Society for the Prevention of
Cruelty to Animals,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-04652

ORDER

RICHLAND COUNTY
FILED
2014 FEB 10 AM 9:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on September 6, 2013 at a hearing on Defendants The Humane Society for the Prevention of Cruelty to Animals (HSPCA) and Wayne Brennessel's Motion for Summary Judgment. Present at the hearing were William Johnson, Esquire, Brook Wills, Esquire, and Matthew Hamrick, Esquire, counsel for Plaintiff; and John Tyler, Esquire, Bill Sweeny, Esquire, and Roopal Ruparelia, Esquire, counsel for Defendants. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendants' Motion for Summary Judgment is **GRANTED**.

FACTS

This matter arises out of an investigation the HSPCA made regarding ill treatment to horses and subsequent events resulting from this investigation. On February 25, 2008, at 1820 Zeigler Road South in Eastover, Richland County, South Carolina, the HSPCA and Richland County Sheriff's Department ("RCSD") searched the property pursuant to a search warrant. The search resulted in the HSPCA and the RCSD confiscating twenty-three horses from the property. On February 26, 2008, the HSPCA and RCSD led a search pursuant to a search warrant at 412 Derby Lane, Hopkins, Richland County, South Carolina. The search resulted in five horses being confiscated. On February 27, 2008, Plaintiff, along with his brother, Terry Trexler, and his mother, Hazelene Trexler, were arrested and charged with five counts of misdemeanor mistreatment of animals arising from the horses kept on the Derby Lane property. On March 13, 2008, Plaintiff, Terry Trexler, and Hazelene Trexler were indicted on five counts of ill treatment

of animals. The South Carolina Attorney General entered a deal with Terry Trexler where he would plead no contest to ill treatment of animals, and he, Hazelene Trexler, and the Plaintiff would relinquish all ownership interest in the seized horses. On July 15, 2010, this Court nolle prossed the charges against the Plaintiff. Defendant Wayne Brennessel, president of the HSPCA, was present in the courtroom when the charges were nolle prossed. Brennessel reported to the media "the Trexlers pleaded no contest." This statement was referenced in an article published on WLTX's website on February 1, 2011 entitled "Neglected Horses Still up for Adoption." Through the entire course of events, Plaintiff denied that he owned any of the horses.

On July 5, 2012, Plaintiff filed a complaint against Defendant with two causes of action. The first cause of action is for malicious prosecution related to the criminal charges against the HSPCA, and the second cause of action is for defamation related to the WLTX website article against the HSPCA and Wayne Brennessel. Defendant answered on August 16, 2012 and filed an Amended Answer on September 17, 2012. On July 18, 2013, Defendant filed a Motion for Summary Judgment.

STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRPC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

DISCUSSION

I. Malicious Prosecution

In a malicious prosecution action, the plaintiff bears the burden to establish each of the following elements: (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. *Law v. S.C. Dep't of Corrections*, 368 S.C. 424, 435, 629 S.E.2d 642 (648) (2006). Plaintiff argues all six elements are met; Defendant maintains the HSPCA had probable cause as a matter of law. "Probable cause" is defined as a good faith belief that a person is guilty of a

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crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, 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). Ordinarily the existence of probable cause is a question for the jury to decide in South Carolina. *See Jones*, 301 S.C. at 65, 389 S.E.2d at 663.

It is undisputed that the HSPCA, through its agent Elizabeth Perry, instigated original judicial proceedings against Plaintiff. Defendant argues probable cause exists as a matter of law because the Grand Jury “true billed” the indictments against Plaintiff, relying on *Law v. S.C. Dep’t of Corrections*. True bills of indictment are prima facie evidence of probable cause. *Law v. S.C. Dep’t of Corrections*, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2008). Plaintiff maintains that true bills only create a rebuttable presumption of probable cause because in *Law*, the Court held that probable cause existed as a matter of law where the indictments against the plaintiff were true billed by the Grand Jury and where the underlying facts supported probable cause to instigate or pursue criminal charges. *See Law*, 368 S.C. at 437, 629 S.E.2d at 649. In the present case, Plaintiff claims that the underlying facts did not support probable cause to instigate or pursue criminal charges. In the affidavits Elizabeth Perry submitted to obtain arrest warrants for the Plaintiff, the basis for the arrest warrants was that Plaintiff owned the five horses on the 412 Derby Lane Property. Plaintiff has submitted Perry’s deposition as evidence that Perry cannot state the reasons why she believed Plaintiff was the owner of the horses and did not search ownership records of the horses to determine if Plaintiff owned them, so the statements in the affidavit were untrue. Defendants contend that the statements in the affidavits were supported by property ownership records indicating that Plaintiff owned the 412 Derby Lane property, and therefore, the inference can be made that Plaintiff owned the horses. Although Plaintiff contends that he had transferred ownership interest to his mother and brother two years prior, he was still paying for the utilities and taxes at the time of the underlying events. 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 believes them to be.” *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982). Though Plaintiff claims to have transferred his interest in the property to his mother and

and
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brother's business two years earlier, the fact that Plaintiff owned the property where five of the horses were stabled would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that Plaintiff was the owner of the horses. Based upon this evidence, probable cause existed, and the Motion for Summary Judgment as to malicious prosecution is **GRANTED**.

II. Defamation

In an action for defamation, the burden is on the plaintiff to prove: "(1) a false and defamatory statement was made; (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 Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Defendant argues that Plaintiff's claim for defamation fails as a matter of law because the statement was true or substantially true. If an alleged defamatory statement is true or substantially true, then a defamation claim must fail. *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). Furthermore, the South Carolina Supreme Court has held that requiring a strict adherence to legal terminology is unreasonable. *Id.* at 80, 221 S.E.2d at 773. Plaintiff claims the statement "the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said" is defamatory. Plaintiff contends the statement refers to him when it says "the Trexlers," and that he did not plead no contest, but rather was nol prossed. Based upon the *Ross* case, this Court finds that the statement was substantially true, as a strict adherence to legal terminology is not required. Additionally, Terry Trexler did plead no contest, and the statement does not specifically reference Plaintiff.

Furthermore, public figures may recover for defamation only upon clear and convincing evidence that the false and defamatory statement was made with knowledge that it was false or a reckless disregard for the truth. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The Court has held Plaintiff to be a public official in a previous action arising out of the same facts and circumstances, and this Court defers to that ruling. *See Order Granting Summary Judgment, James W. Trexler v. The Associated Press, Barrington Broadcasting S.C. Corp., Raycom TV Broadcasting, Inc., The Spartanburg Herald Journal, Inc., and the Pacific & Southern Co., Inc.*, No. 2010-CP-40-1249 (Oct. 30, 2012). Plaintiff has submitted no evidence to support a finding that the statement was made with knowledge that it was false or a reckless disregard for the truth.



III. Defendant Wayne Brennessel

Finally, regarding Brennessel, South Carolina law mandates that a judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. S.C. Code Ann. § 33-56-180. A "charitable organization" is defined in Section 33-56-170 as a society "which is exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) (2010)." It is undisputed that the HSPCA is a 501(c)(3) tax exempt organization and Wayne Brennessel is its Executive Director. Plaintiff has alleged insufficient facts to support a charge that Brennessel's statement was made recklessly, willfully, or with gross negligence, and therefore, Brennessel should be dismissed from this action. For these reasons, Defendant's Motion for Summary Judgment as to defamation is **GRANTED**.

ORDER

For the reasons stated above, it is therefore **ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 5, 2014

and
#5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES W. TREXLER

Plaintiff(s)

vs.

THE HUMANE SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS, ET
AL

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 40-

4152

Submitted By: WILLIAM H. JOHNSON
Address: PO BOX 137, MANNING, SC 29102

SC Bar #: 15167
Telephone #: 803-435-0909
Fax #: 803-435-2858
Other:
E-mail: william@whjohnsonlaw.com

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

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☒ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: July 2, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

James W. Trexler,)
Plaintiff,)

Vs.)

The Humane Society for the)
Prevention of Cruelty to Animals,)
Wayne Brennessel, individually and)
As Executive Director of the Humane)
Society for the Prevention of Cruelty)
to Animals,)
Defendants.)

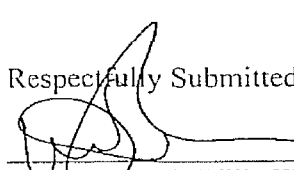
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
DOCKET NUMBER: 2012-CP-40-_____

SUMMONS
(Jury Trial Demanded)

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your answer to the said Complaint on the subscribers, The Law Offices of William H. Johnson, LLC, at their offices at 411 North Brooks Street, Manning, South Carolina, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully Submitted,


W. Westbrook Wills III
Law Office of W. Westbrook Wills III
38 Broad Street, Suite 200
Charleston, SC 29401
(843) 805-6300 - tel.
(843) 278-9333 - fax
wwills@austinfowlerwills.com

SEE PAGE TWO FOR ADDITIONAL ATTORNEY INFORMATION

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

James W. Trexler,)

Plaintiff,)

vs.)

The Humane Society for the)
Prevention of Cruelty to Animals,)
Wayne Brennessel, individually and)
as Executive Director of the Humane)
Society for the Prevention of Cruelty)
to Animals,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No.: _____

COMPLAINT
(Jury Trial Demanded)

PARTIES AND JURISDICTION

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

2. Defendant The Humane Society for the Prevention of Cruelty to Animals ("HSPCA") is a 501 (c)(3) non-profit organization existing pursuant to the laws of South Carolina with a principal place of business located at 121 Humane Lane, Columbia, South Carolina 29209. Service may be made upon the HSPCA through its Executive Director Wayne Brennessel at the foregoing address.

3. Defendant Wayne Brennessel ("Brennessel") is the Executive Director of the HSPCA. Brennessel may be served with process at the headquarters of the HSPCA located at 121 Humane Lane, Columbia, South Carolina 29209.

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

5. Venue is proper in this Court.

FACTUAL BACKGROUND

6. In early 2008, Plaintiff was an employee of the South Carolina Department of Agriculture working in an administrative capacity, charged with overseeing budget and procurement, and information technology systems. His position was not an elected or appointed position, but rather earned as result of twenty-seven years of service in state government.

7. 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").

8. Plaintiff has never had any interest in the ownership or operation of Carolina Arabian, or the horses owned by the company.

9. 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.").

10. Plaintiff previously lived at the 412 Derby Ln. residence but moved to New Zion, South Carolina in 2007. 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.

11. Upon information and belief, in late 2007 or early 2008, Josh Gowans, then director of the HSPCA, hired Elisabeth Perry ("Perry") to head its newly formed cruelty investigation unit. At that time, the cruelty investigation unit consisted of Ms. Perry and a part time cruelty investigator, Michele Hart ("Hart").

12. The objective of the cruelty investigation unit was to investigate reports of cruelty and neglect of animals, and to aid in the prosecution of offenders.

13. In February of 2008, the HSPCA allegedly received a report of malnourished horses at the Zeigler Rd. property from an individual claiming she noticed the horses when she entered upon that property to inquire whether it was for sale.

14. Following up on that report, on February 13, 2008, part time cruelty investigator Hart scaled a fence and trespassed on the Zeigler Rd. property in an attempt to obtain photographs of the allegedly malnourished horses belonging to Plaintiff's mother and brother.

15. Upon information and belief, Hart was unable to obtain the photographs she sought or to determine the condition of the horses because the horses were too far away in the pasture.

16. When Plaintiff's brother, Terry Trexler, noticed a stranger climbing the fence and entering into the pasture where he maintained Carolina Arabian horses, he told his mother to call the Richland County Sherriff's Department ("RCSD") and report the

occurrence while he approached the stranger, who was later identified as Hart, to find out what her business was on the land. Hart attempted to flee across an appurtenant pasture to her vehicle, which she had parked in a neighbor's driveway. To prevent Hart from leaving until the authorities were able to respond to his mother's call, Plaintiff's brother drove his vehicle to the neighbor's driveway and parked it behind Hart's vehicle, blocking her vehicle in.

17. Plaintiff's brother blocked Hart's vehicle, but in no way confined Hart's person, and she was free to walk away from the scene had she so chosen. Nevertheless, as a result of the February 13th action of blocking Hart's vehicle, the RCSD charged Plaintiff's brother with felony kidnapping.

18. Following the February 13, 2008 occurrence, the RCSD partnered with the HSPCA to investigate the reported malnourished horses, which had yet even to be qualified as such.

19. On February 19, 2008, Hart and Perry from the HSPCA, Holly Wagner ("Wagner") of the RCSD, and Mary Ellen Tobias, a colleague of Plaintiff's at the South Carolina Department of Agriculture arranged a special meeting to discuss the alleged "kidnapping," and to formulate a strategy for investigating Plaintiff's mother and brother's horses. Upon information and belief, the group decided at that meeting they needed to obtain a search warrant to enter the property and evaluate the horses.

20. When the February 19th meeting described in paragraph 20 was arranged, neither the HSPCA nor the RCSD had observed any horses at the Zeigler Rd. property,

and neither organization had any evidence to substantiate the original report of malnourished horses.

21. Nevertheless, upon information and belief, Mary Ellen Tobias was present at the February 19th meeting as the individual who would arrange for, or otherwise facilitate, the placement of the subject horses with foster caretakers when the HSPCA and the RCSD confiscated them.

22. Upon information and belief, the HSPCA and the RCSD decided the horses would be confiscated prior even to possessing any evidence of their neglect or mistreatment.

23. On February 25, 2008, after obtaining the search warrant anticipated in the February 19th meeting, the HSPCA and the RCSD led a search of the Zeigler Rd. property in which over 16 agents or employees from the two organizations participated. Additionally, the HSPCA and RCSD invited the media to be present for the search of the property, and even invited friends not legally permitted to participate in the search to assist them.

24. The February 25th search of the Zeigler Rd. property resulted in the HSPCA and the RCSD confiscating every one of the twenty-three horses Plaintiff's mother and brother maintained at that property.

25. The search of the Zeigler Rd. property and the confiscation of the twenty-three horses lasted several hours during which Plaintiff's mother arrived on the scene and spoke with members of the HSPCA, the RCSD, and the media.

26. At the time of the search and confiscation of the horses at the Zeigler Rd. property, the HSPCA and the RCSD had information that Plaintiff's mother and brother owned the horses they were confiscating.

27. Furthermore, when Plaintiff's mother arrived on the scene of the search and confiscation, she stated to the HSPCA, the RCSD, and the media in no uncertain terms that she owned all of the horses being confiscated from the Zeigler Rd. property.

28. Upon information and belief, on February 25, 2008, sometime during the search of the Zeigler Road property, the HSPCA allegedly received an "anonymous tip" that more undernourished horses were seen at 412 Derby Ln., where Plaintiff's mother and brother resided.

29. Notwithstanding the HSPCA's stated policy that it does not accept anonymous tips, the HSPCA and the RCSD jointly decided to obtain a search warrant for 412 Derby Ln.

30. On February 26, 2008, Hart of the HSPCA obtained a search warrant for 412 Derby Ln., which authorized the search of the residence and surrounding curtilage.

31. That same day, the HSPCA and the RCSD executed a search of 412 Derby Ln., and confiscated each of the five horses they found at the property alleging the horses were neglected, without food and water, and that the investigators found no evidence whatsoever the horses were being fed.

32. The HSPCA and the RCSD again invited the media to be present for the search of 412 Derby Ln. and the confiscation of the horses there.

33. With regard to the search of the Zeigler Road property and 412 Derby Ln., Kelly Graham, spokesperson for the HSPCA, gave a televised statement to the media in which she stated, "if we could have found any evidence [the Trexlers] were feeding these animals there may have been a different outcome...[but] there wasn't any."

34. However, when deposed on January 19, 2012 for another case, Elisabeth Perry, who was instrumental in the search and seizure of the horses at both the Zeigler Road property and 412 Derby Ln., stated just the opposite. Ms. Perry testified in her January 19, 2012 deposition as follows:

Q. When you all went out there [412 Derby Ln.] for that search warrant did you all look in the garage of the house for any food?

A. Go inside the garage or look inside the garage?

Q. Either.

Q. Okay. Did you see anything in the garage?

A. Yes.

Q. What did you see?

A. Horse food.

35. Following the search of 412 Derby Ln. and seizure of the horses at that location, the HSCPA, with the full knowledge 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.

36. Specifically, Perry of the HSPCA swore as fact in 5 arrest warrant affidavits that Plaintiff owned and mistreated the subject horses, despite having no evidence whatsoever to support the allegations or any reason to believe the allegations were true.

37. Perry swore as fact Plaintiff owned the subject horses despite both the HSPCA and the RCSD having actual knowledge that Plaintiff's mother claimed ownership of all the horses Plaintiff was accused of owning and the land from which those horses were seized.

38. Furthermore, despite having personally seen horse food in the garage at 412 Derby Ln. during the February 26, 2008 search, Perry swore to the magistrate "[t]here was no food or hay found on the property." Copies of the five warrants for Plaintiff's arrest are attached to the Complaint as Exhibits "B.1 – B.5."

39. On February 27, 2008, despite having no ownership interest in any horse or the land from which they were seized, Plaintiff was arrested and charged with five counts of misdemeanor mistreatment of animals.

40. At no time prior to Plaintiff's arrest did anyone from the HSPCA or the RCSD attempt to contact Plaintiff to inquire about the horses at 412 Derby Ln. and whether he owned them.

41. Upon information and belief, prior to Plaintiff's arrest, no one from the HSPCA or the RCSD performed any search of the tax records or deed for 412 Derby Ln. to determine if Plaintiff owned the property.

42. Upon information and belief, prior to obtaining warrants for Plaintiff's arrest, no one from the HSPCA or the RCSD checked any records whatsoever to determine if Plaintiff was the owner of the horses they confiscated from 412 Derby Ln.

43. On or about February 27, 2008, Plaintiff submitted to the proper authorities at Alvin S. Glenn Detention Center a written request for a preliminary hearing on the matter. However that request was denied, and no preliminary hearing was held.

44. 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.

45. Thereafter, the HSPCA continued to work closely with the RCSD and assistant solicitor Jill Andrews in the prosecution of the case against Plaintiff. Allegedly based on reports from the HSPCA concerning their 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.

46. The HSPCA, and its agents, worked directly with the office of the solicitor, and ultimately the office of the Attorney General, in the prosecution of the case over the next 28 months.

47. On July 15, 2010, the Richland County Court of General Sessions dismissed all charges then pending against Plaintiff on the merits.

48. Wayne Brennessel, president of the HSPCA was present in the courtroom on July 15, 2010 when the court dismissed the charges against Plaintiff.

49. From the inception of the HSPCA and the RCSD's prosecution of Plaintiff until the court dismissed all charges on July 15, 2008, Plaintiff maintained his innocence, and pleaded accordingly.

50. Nevertheless, following the court's dismissal of the case against Plaintiff, Brennessel reported to the media Plaintiff had pleaded no contest to the charges.

51. On February 1, 2011, WLTX published a story in which it reports Plaintiff pleaded no contest to the charges of animal cruelty against him. A copy of the WLTX article is attached to the Complaint as Exhibit "A."

52. WLTX's report that Plaintiff pleaded no contest to the charges of animal cruelty against him was false.

53. WLTX never retracted or corrected the story, which is still viewable on the Internet for any and all to read.

54. As a result of the publication, Plaintiff has suffered, and continues to suffer, embarrassment, humiliation, and ill repute.

55. As a further consequence of the publication, Plaintiff appears to the public to have admitted being involved with the ownership and abuse of horses, and Plaintiff therefore has been denied the right to have his name cleared and his reputation restored in the community.

56. As a further result of the publication, Plaintiff continues to suffer extreme humiliation and damage to his reputation in the community and in state government.

57. The publication has contributed to Plaintiff's inability to be rehired.

FOR A FIRST CAUSE OF ACTION
AGAINST THE HSPCA
(Malicious Prosecution)

58. Each and every factual allegation contained in paragraphs 1-58 of Plaintiff's Complaint is incorporated herein by reference.

59. The HSPCA, in conjunction with the RCSD, 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.

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

61. Furthermore, in order to obtain arrest warrants for Plaintiff, the HSPCA, with the full knowledge, condonation, and participation of the RCSD, swore as fact to the magistrate, facts it knew were not true, including that after searching 412 Derby Ln., the investigators found no food on the property.

62. At the time the HSPCA swore to the truth of facts in the arrest warrant affidavits, 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.

63. In providing false information to a magistrate to obtain the arrest warrants against Plaintiff, the HSPCA acted improperly, illegally, and with reckless disregard for Plaintiff's clearly established Constitutional and common law rights.

64. The HSPCA 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 he was charged for allegedly mistreating.

65. The HSPCA, in conjunction with the RCSD and the Office of the Solicitor for the Fifth Circuit and the Office of the Attorney General, 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.

66. Upon information and belief, the HSPCA 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.

67. Upon information and belief, the HSPCA's participation in the continuation of Plaintiff's prosecution was done, inter alia, for purposes of covering up its involvement with the RCSD in obtaining and executing against Plaintiff improperly obtained arrest warrants.

68. The HSPCA played an active role in the instigation and continuation of criminal proceedings against Plaintiff for a period of nearly 2 years and 4 months.

69. All charges brought and obstinately prosecuted by or with the full participation of the HSPCA were dismissed on July 15, 2010. A copy of the Order for Destruction of Arrest Records entered by Judge Cooper indicating the dismissal of the charges against Plaintiff is attached to the Complaint as Exhibit "C."

70. As a result of the malicious prosecution by the HSPCA and its 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.

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

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

73. As a result of the intentional, reckless, and malicious prosecution of Plaintiff by the HSPCA, Plaintiff is entitled to punitive damages in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION AGAINST
THE HSPCA AND WAYNE BRENNESSEL
(Defamation)

74. Each and every factual allegation contained in paragraphs 1-74 of Plaintiff's Complaint is incorporated herein by reference.

75. Wayne Brennessel, as president of the HSPCA, published to third parties the statement that Plaintiff pleaded no contest to the charges of mistreatment of animals, which charges were dismissed on July 15, 2010.

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

77. At the time of the publication, Defendants had actual knowledge the statements were false, or acted with reckless disregard toward the truth or falsity of the statements.

78. As a result of the publication Plaintiff has suffered serious damage, including the continued inability to be rehired in like employment, a continued severe diminution of his ability to provide for his family, and continued damage to his personal and professional reputation.

79. As compensation for the damage Plaintiff suffered as a result of the defamation, Plaintiff is entitled to actual damages against Defendants the HSPCA and Wayne Brennessel, individually, in an amount to be determined by a jury.

80. Furthermore, because Defendants defamed Plaintiff with actual malice or extreme recklessness, Plaintiff is entitled to punitive damages against the HSPCA and Wayne Brennessel, individually, in an amount to be determined by a jury.

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, for prejudgment interest, and for such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



W. Westbrook Wills III
Law Office of W. Westbrook Wills III
38 Broad Street
Suite 200
Charleston, SC 29401
(843) 805-6300 - tel.
(843) 278-9333 - fax
wwills@austinfowlerwills.com

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

Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
(843) 693-4700 - tel.
(877) 524-5023 - fax
matt@matthamricklaw.com
ATTORNEYS FOR PLAINTIFF

This ____ day of June 2012
Charleston, South Carolina



Neglected Horses Still up for Adoption

11:30 PM, Feb 1, 2011 | comments

Written by
Sydney Cummins

FILED UNDER
News

Columbia, SC (WLTX) — Some horses seized three years ago still need permanent homes.

In 2008, the Humane Society began taking horses from Richland County properties owned by the Trexler family, saying the animals were neglected and malnourished. In court, the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said.

"As big and as majestic and as strong as they are, if they're not cared for properly, their health deteriorates rapidly," Brennessel said.

Originally there were 45, but after some horses had babies, there were a total of 51. Today, 23 horses still need owners.

"When they were removed, they were in really terrible shape — halters were grown into their skin, their hooves were splayed," Brennessel said.

By this summer, they were back in shape

with good nutrition and lots of care and the Humane Society paying their boarding costs.

"The horses that remain are still in great shape, tip-top health, but they've never had any socialization," Brennessel said. "They've always lived as a part of a herd and with that herd mentality, they need to be worked with and socialized."

It takes a special home to care for these horses, one that the Humane Society is hoping to find for all of them by the end of the year.

The Humane Society is accepting donations to help with the cost of caring for the horses. You can reach them at 121 Humane Lane, Columbia, SC 29209 or by phone at (803) 783-1267.

Advertisement



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Dynamics

1-891847

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #: _____

Prosecuting Agency: Humane / The 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: 47-11-0040(A)

This warrant is CERTIFIED FOR SERVICE in this

☐ County/ ☐ Municipality of

is to be executed 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 _____

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 for 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 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 witnesses 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 for 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 as soon thereafter as is practicable.

Sworn in and subscribed before me

on 02/27/2008

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803) 576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIG. L. ORIGINAL ORIGINAL ORIGINAL ORIGINAL



1-891848

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

Against:

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #: _____

Prosecuting Agency: 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: 47-01-8040(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be executed 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

AFFIDAVIT

Richland / Olympia Magistrate

Personally appeared before me this 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 W 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 (B+). 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

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 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 his execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 02/27/2008

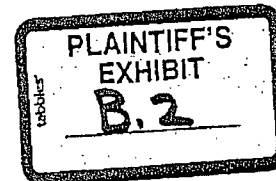
Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803) 576-2550

Issuing Court ☒ Magistrate ☐ Municipal ☐ County

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL



1-891849

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: SEN.

Sex: M Race: W Height: 5'11" Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency (NPI):

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

is to be served and brought before me by the

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

M. J. C.

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

using duly sworn depositions and says that defendant James W Trexler

is 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 Magistrate 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. A Plaintiff 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 Humant 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 for 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 capture, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 02/27/2008

Signature of Affiant Elisabeth Perry (L.S.)

Harold A. Cull

Judge Code: 5906

Judge's Address: 1601 - D Shop Road

Columbia, SC 29201-4847

Judge's Telephone: (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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1-891850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address: 412 Derby Lane
Hopkins, SC 29061

Phone: SSN: _____

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028572

DOB: 1/14/1960 Agency ORI #: _____

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / (II) treatment of animals, in general,
overworking - 1st offense (Tried)

Offense Code: 0610

Coder/Grainance No.: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date: _____

RETURN

A copy of this 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

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 / (II) 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 (II) Treatment of Animals in that he is the owner of a 7 year old Black Stallion with a body score of 4 (432).
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 food 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

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 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 / (II) 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 apprehension, or to
some other person as is practicable.

Sworn to and subscribed before me
on 02/27/2008 (L.S.)

Signature of Issuing Officer Harold A. Cull

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847

Judge's Telephone (803) 576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ County

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL



1-891851

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5' 11" Weight: 130

DL State: SC DL #: QUR028522

DOB: 1/14/1960 Agency URI #:

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

This occurred

is to be arrested and brought before me by the

dealt with according to the law.

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James W. Trexler

on 02/27/08

Elisabeth Perry

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

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

State of South Carolina for 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 (B311). 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 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 for ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate

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 his sworn to and subscribed before me

on 02/27/2008

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Judge Code: 5906

Harold A. Carr



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

THE STATE OF SOUTH CAROLINA



IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

Race CAU Sex M Age 50
DOB 01-14-60 SSN R51-15-6945

SID # 933765

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☒ General Sessions

VS.
James William Trexler
Defendant

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 pressed* or the defendant was found not guilty on 07-15-2010
- ☐ § 17-22-150(a). The charge was *not pressed* on by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program (PTI). Director must attest to eligibility for expungement.
- ☐ § 17-22-530(A). The charge was *not pressed* on by the Solicitor because the defendant successfully completed the Alcohol Education Program (AEP). 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 within 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. Bang
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).

Director PTI / Director AEP/Summary Court Judge (circle one)

P. M. Cape, Jr.
Circuit Court Judge

[Signature]
Defendant / Attorney for Defendant (Circle One)

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

James W. Trexler,

Plaintiff

v.

**The Humane Society for the Prevention of
Cruelty to Animals, Wayne Brennessel,
individually and as Executive Director of
the Humane Society for the Prevention of
Cruelty to Animals,**

Defendants

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2012-CP-40-4652

**DEFENDANTS' ANSWER TO
COMPLAINT**

The Defendants, above named, answering the Complaint of the Plaintiff:

FOR A FIRST DEFENSE

1. Admit, upon information and belief, the allegations contained in Paragraphs 1, 2, 3, 4 and 5 of the Complaint concerning the residency and nature of the parties and the venue in the case.
2. Answering Paragraphs 6 through 57, these Defendants deny these allegations therein inconsistent with their defenses herein.
3. Further, answering Paragraph 58, these Defendants deny the allegations inconsistent with their defenses herein as to the first cause of action.
4. Denies the allegations contained in the first cause of action inconsistent with their defenses herein in Paragraph 59, 60, 61, 62, 63, 64, 65, 66, and 67.
5. Denies the allegations contained in the second cause of action inconsistent with their defenses herein.

FOR A SECOND DEFENSE

1. The Defendants would show that the Plaintiff's Complaint is barred either in whole or in part by the applicable statute of limitations and, therefore, the Plaintiff may not recover herein.

FOR A THIRD DEFENSE

1. The Defendants would show that such communications it made if any, were qualified to be privileged or absolutely provided and, therefore, the Plaintiff may not recover herein.

FOR A FOURTH DEFENSE

1. The Defendants would show that such statements that were made by them were true or substantially true, and, therefore, the Plaintiff may not recover herein.

FOR A FIFTH DEFENSE

1. The Defendants would show that the Plaintiff fails to state a cause of action upon which relief can be granted, and, therefore, the Plaintiff may not recover herein.

FOR A SIXTH DEFENSE

1. The Defendants allege that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

2. The Defendants allege that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3

of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

3. The Defendants allege that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

4. The Defendant allege that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

5. Defendants would show, upon information and belief, that the Plaintiff's claim for punitive Damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates Defendants' rights to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the

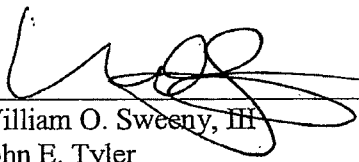
Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed, with costs, and for such other and further relief as may be just and proper.

The Defendants demand a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



William O. Sweeney, III
John E. Tyler
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
August 15, 2012

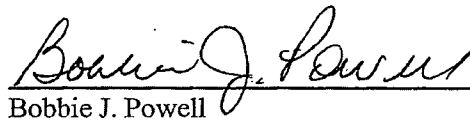
CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Pleading in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

W. Westbrook Wills, III, Esquire
38 Broad Street, Suite 200
Charleston, SC 29401
Attorney for Plaintiff James W. Trexler

William H. Johnson, Esquire
Law Offices of William H. Johnson, LLC
411 North Brooks Street
Post Office Box 137
Manning, SC 29102
Attorney for Plaintiff James W. Trexler

Matthew D. Hamrick, Esquire
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
Attorney for Plaintiff James W. Trexler


Bobbie J. Powell

Columbia, South Carolina
August 15, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff

v.

The Humane Society for the Prevention of
Cruelty to Animals, Wayne Brennessel,
individually and as Executive Director of
the Humane Society for the Prevention of
Cruelty to Animals,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-40-4652

DEFENDANTS' AMENDED ANSWER
TO PLAINTIFF'S COMPLAINT

The Defendants, above named, amending their answer the Complaint of the Plaintiff pursuant to SCRCP 15(a):

FOR A FIRST DEFENSE

1. Admit, upon information and belief, the allegations contained in Paragraphs 1, 2, 3, 4 and 5 of the Complaint concerning the residency and nature of the parties and the venue in the case.
2. Answering Paragraphs 6 through 10, these Defendants are without sufficient information to either deny or affirm these allegations.
3. Answering Paragraph 11, these Defendants admit to hiring Elizabeth Perry. These Defendants deny the remaining allegations of Paragraph 11.
4. Answering Paragraph 12, these Defendants admit that investigating reports of cruelty and neglect of animals and aiding in the prosecution of offenders are among the objectives of the cruelty investigation unit.
5. Admit the allegations contained in Paragraph 13.

15. Admit the allegations contained in Paragraph 25.
16. Answering Paragraph 26, these Defendants admit that the HSPCA had information that Plaintiff's mother and brother owned horses being confiscated. The remaining allegations of this paragraph are denied.
17. These Defendants are without sufficient information to respond to the allegations contained in Paragraph 27, and therefore deny the same.
18. Answering Paragraph 28, these Defendants admit to receiving a report(s) of malnourished horses located at 412 Derby Lane. The remaining allegations of this paragraph are denied.
19. Deny the allegations contained in Paragraph 29.
20. Admit the allegations contained in Paragraph 30 upon information and belief.
21. Answering Paragraph 31, these Defendants admit to finding neglected horses at the subject property. The remaining allegations of this paragraph are denied.
22. These Defendants are without sufficient information to respond to the allegations contained in Paragraph 32, and therefore deny the same.
23. Deny the allegations contained in Paragraph 33.
24. These Defendants are without sufficient information to respond to the allegations contained in Paragraph 34, and therefore deny the same.
25. Deny the allegations contained in Paragraphs 35, 36, 37, 38, 39, 40, 41, and 42.
26. These Defendants are without sufficient information to respond to the allegations contained in Paragraphs 43, 44, and 45, and therefore deny the same.

27. Deny the allegations contained in Paragraph 46 and 47.

28. Answering Paragraph 48, these Defendants admit that Wayne Brennessel was present at the Richland County Courthouse on July 15, 2010. The remaining allegations of this paragraph are denied.

29. These Defendants are without sufficient information to respond to the allegations contained in Paragraph 49, and therefore deny the same.

30. Deny the allegations contained in Paragraphs 50, 51, and 52.

31. These Defendants are without sufficient information to respond to the allegations contained in Paragraph 53, and therefore deny the same.

32. Deny the allegations contained in Paragraphs 54 – 80.

FOR A SECOND DEFENSE

33. The Defendants would show that the Plaintiff's Complaint is barred either in whole or in part by the applicable statute of limitations and, therefore, the Plaintiff may not recover herein.

FOR A THIRD DEFENSE

34. The Defendants would show that such communications it made if any, were qualified to be privileged or absolutely privileged and, therefore, the Plaintiff may not recover herein.

FOR A FOURTH DEFENSE

35. The Defendants would show that such statements that were made by them were true or substantially true, and, therefore, the Plaintiff may not recover herein.

FOR A FIFTH DEFENSE

36. The Defendants would show that the Plaintiff fails to state a cause of action upon which relief can be granted, and, therefore, the Plaintiff may not recover herein.

FOR A SIXTH DEFENSE

37. The Defendants would show that the recovery of the Plaintiffs must be limited because of the charitable status of the Defendants.

FOR A SEVENTH DEFENSE

38. The Defendants allege that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

39. The Defendants allege that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

40. The Defendants allege that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

41. The Defendant allege that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

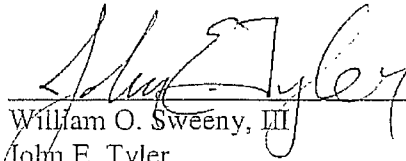
42. Defendants would show, upon information and belief, that the Plaintiff's claim for punitive Damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates Defendants' rights to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed, with costs, and for such other and further relief as may be just and proper.

The Defendants demand a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line.

William O. Sweeney, III
John E. Tyler
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
September 17, 2012

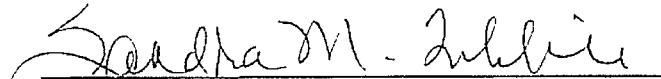
CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Amended Answer in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

W. Westbrook Wills, III, Esquire
38 Broad Street, Suite 200
Charleston, SC 29401
Attorney for Plaintiff James W. Trexler

William H. Johnson, Esquire
Law Offices of William H. Johnson, LLC
411 North Brooks Street
Post Office Box 137
Manning, SC 29102
Attorney for Plaintiff James W. Trexler

Matthew D. Hamrick, Esquire
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
Attorney for Plaintiff James W. Trexler


Sandra M. Tribble

Columbia, South Carolina
September 17, 2012

SERVICE INVOICE

ELIZABETH B. HARRIS, CVR-M
Official Court Reporter
414 Autumn Circle
Columbia, SC 29206

email: EHarris@sccourts.org
 Phone: (803) 422-5236

RECEIVED
 JUN 23 2014

SERVICE FOR:
 William H. Johnson, Esquire
 P.O. Box 137
 Manning, SC 29102

INVOICE NUMBER 140620.1
 ORDER NUMBER 620.1
 TAX NUMBER 9092
 JOB DESCRIPTION Transcript
 DATE June 20, 2014

INVOICE FOR:
 William H. Johnson, Esquire
 P.O. Box 137
 Manning, SC 29102

10-108Wm
 Trexler

SERVICE DESCRIPTION	PAGES	RATE	AMOUNT
TRANSCRIPT OF HEARING: TREXLER V. THE HUMANE SOCIETY			
ORIGINAL	35	3.25	113.75
PREPAID AMOUNT	1	-150.00	-150.00
DATE TAKEN: 9-6-13 CASE NUMBER: 2012-CP-40-4652 BEFORE: THE HON. ALISON R. LEE			
REIMBURSEMENT CHECK ENCLOSED.			
			(\$36.25)

ELIZABETH B HARRIS
 414 AUTUMN CIR
 COLUMBIA, SC 29206-4982

8441

67-776/532 9448
 3852905102

6-20-14

Date

Pay to the Order of William H. Johnson \$ 36.25
Thirty-six and 25/100 Dollars



Wells Fargo Bank, N.A.
 South Carolina
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EB Harris

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Perkins Clarke

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State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2012-CP-40-4652

James W. Trexler,
Plaintiff,

vs.

The Humane Society for the
Prevention of Cruelty to Animals;
Wayne Brennessel, individually
and as Executive Director of the
Humane Society for the Prevention
of Cruelty to Animals,
Defendants.

Transcript of Record

RECEIVED
JUN 23 2014

September 6, 2013
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

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

Matthew D. Hamrick, Esquire
William H. Johnson, Esquire
W. Westbrook Wills, III, Esquire
Attorneys for the Plaintiff

Roopal S. Ruparelia, Esquire
William O. Sweeny, Esquire
John E. Tyler, Esquire
Attorneys for the Defendants

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Motion by Defense	4
Certificate Page	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
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No Exhibits Introduced.

1 THE COURT: The next matter is *James Trexler vs.*
2 *Humane Society, et al.*, docket number 2012-CP-40-04652.
3 The plaintiff is represented by?

4 MR. JOHNSON: Your Honor, I'm -- I think I'm named.
5 I'm William Johnson, Your Honor. I'm here. Also have
6 co-counsel: Brook Wills and Matt, Matthew Hamrick.

7 MR. WILLS: Good morning, Your Honor.

8 THE COURT: What were your names?

9 MR. WILLS: Brook Wills, Your Honor.

10 THE COURT: Brook Wheels?

11 MR. WILLS: Wills, W-i-l-l-s.

12 THE COURT: Oh. Okay, and?

13 MR. HAMRICK: Matt Hamrick. Matthew, M-a-t-t-h-e-w
14 and then Hamrick is H-a-m-r-i-c-k.

15 THE COURT: Thank you.

16 And then for the defendants?

17 MR. TYLER: John Tyler of Sweeny, Wingate, and Barrow
18 for the Humane Society, and Bill Sweeney for the same
19 clients. And then we have co-counsel. Present today is,
20 well...

21 MS. RUPARELIA: Ruparelia.

22 THE COURT: Roopal Ruparelia.

23 MS. RUPARELIA: Yes.

24 THE COURT: Okay, and so, Mr. Tyler, you represent all
25 defendants?

1 MR. TYLER: Yes, Your Honor.

2 THE COURT: And we're here on the defendants' motion
3 for summary judgment. Is that correct?

4 MR. TYLER: Yes, Your Honor.

5 THE COURT: Okay. I have received a copy of the
6 defendants' memorandum in support of their summary
7 judgment. Are there any documents from the plaintiff?

8 MR. WILLS: Your Honor, I, I have a memo as well I'd
9 like to hand up if -- and I provided a copy of it to
10 opposing counsel.

11 THE COURT: And I remind both of you. When you get
12 your notices, make sure you read them. Your memos were due
13 last week, and it would have been helpful to have them
14 before the hearing. I received one by email yesterday.
15 Considering it was 54 pages, I didn't print it out.

16 MR. TYLER: My apologies, Your Honor.

17 THE COURT: I am familiar with the allegations. I did
18 read what was in the file, so I'm familiar with the basic
19 allegations even though the summary judgement doesn't list
20 the grounds. I briefly scanned the defendants' memorandum
21 this morning when I received a copy of it.

22 Yes, sir.

23 MR. TYLER: May it please the court, Your Honor? As
24 you are familiar with the facts, I'll just do a brief
25 overview. There are two periods of time in question

1 brought into the plaintiff's complaint. They filed two
2 claims: one for malicious prosecution and one for
3 defamation. Your Honor, I would incorporate our brief into
4 the record.

5 The facts related to the claim for malicious
6 prosecution relate to investigations that occurred in 2008
7 as to the maltreatment of approximately fifty horses in the
8 Richland County and surrounding area.

9 THE COURT: Let me jump over to what actually occurred
10 with respect to the prosecution. As I understand from what
11 I skimmed this morning, there were three persons arrested
12 in connection with charges arising out of the seizure of
13 the horses. And as I understand what I read, ultimately
14 only one person pled to those charges to negotiated --
15 negotiations with the state. And what happened with the
16 other two?

17 MR. TYLER: The other two were nolle prossed.

18 THE COURT: And that would include ---

19 MR. TYLER: That would include ---

20 THE COURT: --- the charges that were pending against
21 Mr. James Trexler. Is that correct?

22 MR. TYLER: That's correct.

23 THE COURT: Okay, and so that's how the malicious
24 prosecution arises. Is that correct?

25 MR. TYLER: That's my understanding, Your Honor.

1 THE COURT: Yes, sir.

2 MR. TYLER: And after, after the removal -- well,
3 during the time of, of the investigation, the Humane
4 Society entered three separate properties and took pictures
5 of horses. They had veterinary examinations of horses
6 done. The horses were ultimately seized.

7 One piece of -- one of the three pieces of the
8 property is 412 Derby Lane, which was owned by the
9 plaintiff. He claims he had no ownership interest at this
10 time. He does admit that he, that he lived there through
11 December 2007, and somehow did not live there when the
12 investigation was occurring, but then lived there again
13 shortly after the investigation.

14 THE COURT: So, is it your position or is it Mr.
15 Trexler's position that he didn't own the property, or that
16 he didn't own the horses that were on the property?

17 MR. TYLER: He, he claims both, Your Honor. What was,
18 what was reasonable to the Humane Society at the time,
19 based on their investigation and their, particularly their
20 investigation into ownership of horses and, and property
21 ownership, that, that he and his wife owned 412 Derby Lane.
22 The plaintiff and his wife owned 412 Derby Lane and that
23 there was a horse, Prose Cognac, who had been sold to James
24 Trexler. Those documents for contract for sale and such
25 have been produced to the other side with, with the

1 plaintiff's name on those. Plaintiff was deposed on those
2 issues, and he claims that he, he never owned the horse.

3 But the Humane Society investigated. They have
4 documentation showing horse ownership; they had
5 documentation showing property ownership. Mr. Trexler
6 admitted that he was paying property taxes and maintenance
7 and such on the 412 property during the times of these
8 investigations. And we have plenty of pictures of horses
9 that were kept at 412 Derby Lane that have been produced to
10 the other side. I have them with me today if you're
11 interested in reviewing them. They just -- they show, they
12 show the malnourished horses and, and offer proof of the
13 Humane Society's investigation.

14 March 13th of 2008, a grand jury issued a true bill of
15 indictment on five counts for the ill treatment of animals
16 against the plaintiff. Your Honor is, is, is aware that a
17 true bill of indictment is prima facie evidence of probable
18 cause. In order to prove a claim for malicious
19 prosecution, the plaintiff must meet all of the elements
20 for probable -- for malicious prosecution.

21 One of those is that there is a -- there's malice in
22 instituting such proceedings, and another element is that
23 there was a lack of probable cause. It's well established
24 in South Carolina that, that when a grand jury hears the
25 evidence presented and issues a true bill of indictment,

1 that probable cause exists as, as a matter of law. Your
2 Honor, Exhibit 1 to our brief shows the true bills of
3 indictments.

4 As a housekeeping matter that perhaps I should have
5 brought up at the beginning of the hearing, Your Honor, do
6 you wish to proceed on discussing both of the plaintiff's
7 claims, or discussing the malicious prosecution claim and
8 then discussing the defamation claim?

9 THE COURT: No. I can go ahead and hear both of them.

10 MR. TYLER: Okay. Your Honor, on the defamation
11 claim, defamation in South Carolina has, has four elements:
12 false and defamatory statement, unprivileged publication,
13 fault on the part of the publisher, and actionability of a
14 statement irrespective of special harm or the existence of
15 special harm caused by the publication.

16 As we have argued in our brief and as is attached as
17 an exhibit to that brief, Exhibit 4, this court has already
18 held Plaintiff Trexler to be a public figure for the
19 purposes of the issue in question in this case. Therefore,
20 he's held to a heightened standard. The plaintiff must
21 show clear and convincing evidence that the false and
22 defamatory statement was made with knowledge, and that it
23 was false or a reckless -- or with a disregard for the
24 truth.

25 That case involved a claim that Mr. Trexler made

1 against multiple broadcasting agencies, multiple members of
2 the media -- the Associated Press, Barrington Broadcasting,
3 Greycom, *Spartanburg Herald Journal* -- all relating to
4 libel, slander, defamation-type claims against them for
5 publishing.

6 Your Honor, we've not been involved with that case,
7 but according to the, to the order, those are, those are,
8 those are the grounds. And it's all based on him -- his
9 public-figure status is based on him having served as the
10 assistant to the commissioner of agriculture for the state
11 of South Carolina.

12 The -- Judge Strickland in that case found on page 13
13 of the order:

14 It seems clear beyond doubt that plaintiff is a
15 public official in the context of this
16 litigation. He acknowledged in his letter of
17 resignation filed by defendants in support of
18 their motion that he was an assistant
19 commissioner of agriculture, that he helped to
20 lead to the agency.

21 Plaintiff testified in his deposition on and on
22 regarding his, his duties. And then into the next
23 paragraph on page 14:

24 Plaintiff himself acknowledged in his deposition
25 that he had an important position in the agency.

1 And, and ultimately, ultimately the court held in the
2 conclusion on page 15, starting with the last sentence:

3 Plaintiff was a public official, official for
4 purposes of this action, but his responses to the
5 motion would not have been adequate to establish
6 the existence of a genuine issue of material fact
7 of the malice of the defendants even if he were a
8 private figure.

9 Your Honor, the same is, is true in this case. The
10 alleged defamatory incident, though it occurred in February
11 of 2011, it was related entirely to the investigation and
12 the outcome of that investigation which happened back in
13 2008 and then ultimately in 2010, July 2010 when, when the
14 case was nolle prossed.

15 I'd like to read the actual language of, of this
16 article that is allegedly defamatory. It says, and it's
17 attached as Exhibit 2 to, to the brief:

18 Some horses seized three years ago still need
19 permanent homes. In 2008, the Humane Society
20 began taking ---

21 THE COURT: You don't have to read the whole thing to
22 me. I can read it.

23 MR. TYLER: Okay. Your Honor, particularly in that
24 one paragraph, it, it references the horses owned by the
25 Trexler family. Tripp, Terry Trexler, and Hazelene Trexler

1 owned these horses. And though James Trexler claims he had
2 no ownership in the horses, the Humane Society's
3 investigation showed that, that he may have. He still
4 denies it, and then it says, and it's not a direct quote.
5 It says:

6 In court, the Trexlers pleaded no contest and
7 gave up rights to the horses, Humane Society
8 director Wayne Brennessel said.

9 Nowhere in this article is James Trexler mentioned.
10 The article, not printed and not reviewed by Mr. Brennessel
11 prior to its, to its publication -- the, the, the article,
12 not only does it not mention James Trexler, but it, it's
13 substantially true anyway. The Trexlers owned horses and
14 pleaded no contest.

15 Your Honor, one of the Trexlers did plead no contest.
16 Hazelene did not plead no contest, and Jim Trexler did not
17 plead no contest, but they did give up their ownership
18 rights to the horses, and one of them did plead no contest.

19 THE COURT: Well, who -- what was the source of the
20 information that was provided in this article? Was the
21 writer present at the hearing, or was it through interviews
22 that were conducted?

23 MR. TYLER: Your Honor, the writer interviewed Wayne
24 Brennessel of -- who is the executive director of the
25 Humane Society.

1 The, the courtroom, the courtroom incident took place
2 in July of 2010, and this interview took place in February
3 of 2011. Mr. Brennessel was, was present in the courtroom
4 that day. Whether he was, whether he was in the room when
5 the plea went, went through is -- Your Honor, I can't
6 testify on his behalf on that, on that issue. But he was,
7 he was here and, and he is not an attorney, and he, he
8 explained, he explained what happened, and this is what the
9 news publication printed.

10 THE COURT: And in your brief, you talk about there
11 being a privilege. Can you explain to me how there is a
12 privilege?

13 MR. TYLER: Well, Your Honor, as executive, as
14 executive director of the, the Humane Society, he was -- he
15 is asked an issue of public interest. And the court has
16 held in, in the Swinton Creek Nursery that:

17 When one has an interest in the subject matter of
18 a communication, and the person to whom it is
19 made has a corresponding interest, every
20 communication honestly made in order to protect
21 such common interest is privileged by reason of
22 the occasion. The statement, however, must be
23 such as the occasion warrants, and must be made
24 in good faith to protect the interest of the one
25 who makes it and the person to whom it is

1 addressed.

2 An occasion gives rise to a qualified conditional
3 privilege is, is one of law for, for the court. It's
4 warranted here because WLTX interviewed the director of the
5 Humane Society, an organization responsible for preventing
6 cruelty to animals in a, in a interest -- a matter of
7 public interest.

8 In his, his, his testimony essentially -- or not his
9 testimony, Your Honor, his -- the publication that, that --
10 his alleged quote, he gives information about, about
11 matters of mistreatment to animals and about the outcome of
12 prosecution related to these particular horses that were
13 still up for adoption.

14 THE COURT: Anything further?

15 MR. TYLER: No, Your Honor, not on privilege.

16 THE COURT: Anything further on your argument?

17 MR. TYLER: Yes. Yes, Your Honor. The Solicitation
18 of Charitable Funds Act would also require that Wayne
19 Brennessel be dismissed as, as a individual defendant,
20 South Carolina 33-56-180. The Humane Society is a
21 charitable organization as defined under section 170 of the
22 same act as a 501(c)(3) nonprofit.

23 There's no specific set of facts to support that Mr.
24 Brennessel's statement was made recklessly, willfully, or
25 with gross negligence. Again, what he said, Your Honor,

1 was substantially true and, therefore, he cannot, he cannot
2 be sued individually under the Solicitation of Charitable
3 Funds Act.

4 THE COURT: Thank you.

5 On behalf of the plaintiff?

6 MR. WILLS: May it please the court?

7 THE COURT: Yes, sir.

8 MR. WILLS: Your Honor, as a preliminary matter, Mr.
9 Trexler, our client, has, has been in the unfortunate
10 circumstance of having had charges brought against him for
11 which -- the prosecution of which caused him to lose his
12 employment, caused him to lose his, his retirement, his
13 pension. He worked with the state; he was one year away
14 from retiring.

15 The damages in this case have been determined by an
16 expert to be in the neighborhood of \$1 million. That's
17 only his financial loss. That has nothing -- that's not --
18 not to mention at all his reputational loss, both
19 professional and personal.

20 He was prosecuted for two and a half years on these
21 charges, and then the charges were dismissed, and there
22 must be an opportunity for Mr. Trexler to have redress for
23 this, for this, at least the opportunity for it to be heard
24 by a jury who could decide.

25 I'll address the issues one by one. As to our claim

1 for malicious prosecution, the facts as they are, are
2 stated in, in opposing counsel's brief are chronologically
3 out of order. And they are important to the extent that,
4 that one of the issues in the case -- and this is going to
5 jump in the heart of why we are arguing that there is
6 material issue -- genuine material issues of fact, and this
7 is, this is borne out in, in the, in the confusion of the,
8 of the factual circumstances.

9 One thing that's going to become important in this is
10 that there was a, a very short period of time between,
11 between the time that the Humane Society began
12 investigating cruelty against the animals, the horses that
13 belonged to, to Mr. Trexler's brother and his mother. The
14 order of the circumstances goes directly to whether or not
15 probable cause and the facts supporting the probable cause
16 can be established.

17 The true chronology of the facts was that on February,
18 on -- in February of 2008, the Humane Society began
19 investigating a property that was in Eastover. Mr. Trexler
20 had absolutely nothing to do with that property, and that
21 was property that was leased by Mr. Trexler's brother and
22 his mother, who were running a for-profit horse -- Arabian
23 horse breeding operation. His mother and his brother also
24 had another property that they kept horses on, and that's
25 the 412 Derby, Derby Lane property, and that's where

1 plaintiff's mother and brother were living.

2 There's a semantical -- there's a semantic difference.
3 I think we've cleared it up. Mr. Trexler argues that, that
4 he neither owned the property at 412 Derby Lane, nor did he
5 own any horses that were at 412 Derby Lane, nor did he live
6 at the property during any of the time relevant to this
7 action.

8 Mr. Trexler had transferred interest in that property
9 some two years earlier to his mother, and he had no
10 ownership interest in the property. That's going to become
11 important in the determination of what investigation the
12 members of the Humane Society and of the Richland County
13 Sheriff's Department did in order to establish probable
14 cause to arrest Mr. Trexler.

15 THE COURT: And there are public records that would
16 have designated or shown that the property had been
17 transferred?

18 MR. WILLIS: That's correct, Your Honor. The deed was
19 not in Mr. Trexler's, Mr. Trexler's -- when I speak of Mr.
20 Trexler, I'm speaking of James Trexler.

21 THE COURT: Yes, sir.

22 MR. WILLIS: The deed was not in James Trexler's name.

23 THE COURT: But it was recorded in the public record,
24 so it could have been ascertained?

25 MR. WILLIS: Correct, Your Honor.

1 THE COURT: And so you say that that goes to the issue
2 of while you cannot go back and say what in hindsight it
3 should have revealed, you're claiming that that goes to
4 what would have been reasonably available to law
5 enforcement at the time that they were conducting the
6 investigation?

7 MR. WILLS: That's correct, Your Honor, and as to the
8 elements of, of the malicious prosecution, the plaintiff
9 must establish that the institution or, or continuance of a
10 judicial proceeding was at the instance of the defendant,
11 and I don't believe that's in question. That's undisputed.
12 That the termination of such proceeding was in plaintiff's
13 favor, I believe that's undisputed as well.

14 THE COURT: Well, just because a case has been nolle
15 prossed does not necessarily mean that that's in the
16 plaintiff's favor. I mean, there are other elements that
17 go into determining whether or not it was within ---

18 MR. WILLS: Correct, Your Honor, and that the -- and
19 South Carolina law states that if, if a nolle -- if charges
20 are nolle prossed and the facts and circumstances give the
21 indication that, that the nolle pross was due to something
22 other than a plea bargain or some -- or something giving --
23 indicating the charge was dropped because there was no
24 reason to have it, then that can support a favorable, a
25 favorable outcome for the purposes of malicious

1 prosecution. That would also create a question of fact as
2 to whether those circumstances existed.

3 THE COURT: And you would agree that at least as far
4 as the probable cause was concerned, the indictment by the
5 grand jury would provide some evidence that there was
6 probable cause?

7 MR. WILLS: Your Honor, I agree that the indictment by
8 the grand jury creates a presumption of prima facie showing
9 of probable cause. It is a rebuttable presumption.

10 What we have to look at is what were the facts that
11 were used to initiate the proceeding. And, and, and to
12 that point, I would direct Your Honor to the Humane
13 Society's -- the first initiation of the proceeding would
14 be the Humane Society's affidavit that it swore out through
15 its agent Elizabeth Perry to the magistrate judge in order
16 to obtain an arrest warrant for Mr. Trexler.

17 And in that arrest warrant, the Humane Society agent
18 has sworn as true to the magistrate facts that, that agent
19 did not know to be true. And moreover, she swore as fact
20 facts that were not true, that she knew not to be true,
21 and ---

22 THE COURT: So, you're saying she intentionally lied?

23 MR. TYLER: Your Honor, I'm saying that she
24 intentionally lied. In our brief, we have submitted the
25 deposition testimony of that agent, Elizabeth Perry.

1 First, if I could direct Your Honor to, to the, to the
2 affidavit, the arrest warrant itself. We can, we can
3 see ---

4 THE COURT: Is that attached?

5 MR. WILLS: Your Honor, that's attached to defendants'
6 memorandum at ---

7 MR. TYLER: Exhibit 1, Your Honor.

8 MR. WILLS: Exhibit 1 and in the affidavit section,
9 Your Honor, at the top here in the middle portion it's
10 signed by Elizabeth Perry. That's the investigator for the
11 Humane Society, and it says that:

12 The crime set forth and the probable cause is
13 based on the following facts.

14 Not the following understanding. Not the following --
15 the following facts and reads that:

16 On February 26 while at 412 Derby Lane in Olympia
17 Magistrate District of Richland County, one James
18 Trexler did commit the crime of ill treatment of
19 animals in that he is the owner of a
20 twenty-year-old gray stallion with a body score
21 of 3.5.

22 Having a hard time reading this.

23 He knowingly and intentionally deprived the
24 animal of necessary quantities of wholesome food
25 stuffs suitable for the species.

1 Then it goes down and says: There was no food or hay
2 on the property. And then talks about a bucket with some
3 blood and whatever.

4 This, this is an affidavit that Elizabeth Perry swore
5 out after Elizabeth Perry and an agent from the Richland
6 County Sheriff's Department executed a search warrant out
7 at 412 Derby Lane. In -- when I took Ms. Perry's
8 deposition, I asked her, and the excerpts are here attached
9 to my memorandum. I asked her what knowledge she had that
10 these horses belonged to the plaintiff, James Trexler. And
11 she responded that she didn't, she didn't, she don't -- she
12 didn't recall what knowledge she had that the horses
13 belonged to Mr. Trexler.

14 I asked her why, then, did she believe and swear in
15 this affidavit that the horses belonged to Mr., Mr., Mr.
16 Trexler, and her response was -- at Exhibit A to our
17 memorandum, her response was: Because they were on his
18 property.

19 I said: Well, did you base that fact -- did you
20 base saying -- representing him as the owner only
21 on the fact that it was on his property that --
22 on property that allegedly belonged to him?

23 She says: No, not only on that, no.

24 I said: What else then?

25 She says: I couldn't tell you; I don't remember.

1 Earlier when I spoke of the chronology of events, this
2 is why it became important. The Humane Society had never
3 heard of James Trexler. And, and Elizabeth Perry had never
4 heard of James Trexler until two days before this when they
5 got an anonymous tip that there were some horses on a
6 property at 412 Derby Lane, and that that property belonged
7 to James Trexler.

8 I ask Ms. Perry if she did any investigation into
9 whether or not Mr. Trexler actually owned that property.
10 She said: No, I didn't. At Exhibit B...

11 (A PAUSE.)

12 MR. WILLIS: I must not have attached that portion, but
13 I asked her if she did any research into the property and
14 who owned the property, and she said that she didn't have
15 -- that the Humane Society didn't have the capacity, the
16 capabilities of looking into those records, so that they
17 didn't do any property search.

18 THE COURT: I think it started down on Exhibit A, down
19 at the bottom of page 108, but it doesn't continue over to
20 give the full answer on 109. I don't have a 109.

21 MR. WILLIS: Your Honor, would I be -- would you allow
22 me to supplement the record with that additional page?

23 THE COURT: Yes, sir.

24 MR. WILLIS: The -- both the search of 412 Derby Lane
25 and the seizure of the horses there and the arrest warrant

1 were, were done in partnership and collaboration with the
2 Richland County Sheriff's Department. Investigator Holly
3 Wagner had been involved with this investigation with the
4 Richland -- with the Humane Society every step of the way.

5 We also took Holly Wagner's deposition in a separate
6 case. In that deposition -- and this is reflected in
7 Exhibit B of our memorandum. I asked Holly Wagner if she
8 ever -- if she had any knowledge whether the Humane Society
9 did any investigation into whether -- into the ownership of
10 the property. And she, and she says:

11 I don't know what investigation was done by the
12 Humane Society, never.

13 I said: But to your knowledge, you don't know of
14 any, of any investigation that was done?

15 She said: Never.

16 So, so, it's our, our first contention that there was
17 there was a, there was a duty to investigate on the part
18 of the HSPAC because they had received an anonymous tip
19 from someone who was possibly unreliable -- the facts
20 would have to bear that out -- who was possibly unreliable,
21 and probable cause, the law here in South Carolina says
22 that:

23 Where a person instituted a prosecution against
24 another without probable cause, it's difficult to
25 conceive any other but a malicious one. One who

1 instigates prosecution based solely on
2 information received from another acts without
3 probable cause. The failure of a person who has
4 received information tending to show the
5 commission of a crime, to make such further
6 inquiry or investigation as an ordinary, prudent
7 man would have in the same circumstances before
8 instituting a proceeding renders him liable for
9 proceeding without probable cause.

10 This is one aspect of why we're contending that there
11 was no probable cause. The most important, however, is the
12 boldfaced lie that was told, that was sworn to the
13 magistrate with regard to the food, with regard to the
14 conditions at 412 Derby Lane.

15 THE COURT: And you're claiming that because the
16 warrant came after there was a search warrant, and the
17 search warrant revealed that there was feed on the
18 premises, right?

19 MR. WILLS: Your Honor, the search warrant, the search
20 warrant -- the affidavit for the arrest warrant came after
21 the search warrant. In the affidavit, it was attested to,
22 sworn to that there was no food on the property.

23 THE COURT: Yes, sir.

24 MR. WILLS: And then I -- in the deposition that I
25 took of that investigator, Elizabeth Perry, I asked her

1 about her investigation out there at the house. This is
2 reflected in our Exhibit F.

3 THE COURT: And the claim is is that there was food,
4 and that was revealed when they executed the search
5 warrant. They found food on the property, and so her
6 statements in the arrest warrant would not have been true.

7 MR. WILLS: That's correct, Your Honor.

8 THE COURT: Tell me about the defamation claims.

9 MR. WILLS: If I may just briefly touch on the grand
10 jury indictment as well? Pass up -- before I get to
11 probable cause, there is evidence, and I hope this is
12 undisputed, that there were no facts presented to the grand
13 jury. That only the indictment was read, and the
14 indictment just listed the charges. So, the grand jury
15 wouldn't have had the opportunity to weigh the facts and
16 circumstances, and if they relied ---

17 THE COURT: Well, how would you know what the grand
18 jury considered, considering that they are secret
19 proceedings?

20 MR. WILLS: That's, that is, that's a good question,
21 and let's see how I can do this procedurally.

22 (PLAINTIFF'S COUNSELORS CONFER.)

23 MR. WILLS: Okay, I'll move on to defamation, Your
24 Honor. To sum up malicious prosecution, we, we would
25 allege that, that there is a genuine issue of material fact

1 with regard to whether probable cause existed, and that is,
2 that is a question for the jury. And that while questions
3 of -- for what are probable cause are essentially questions
4 of fact and ordinarily for the jury, unless there is an
5 overwhelming showing that there is no facts that would
6 support otherwise.

7 With regard to defamation, Your Honor, the -- I'll
8 first address defendants' claimed that Mr. Trexler was a
9 public official. It is true, Your Honor, that this court
10 did find Mr. Trexler was a public official for purposes of
11 defamation at the time of the -- of a defamatory statement
12 against Mr. Trexler when he was a public official. That
13 was in 2008, and it, and it was specifically linked to his
14 role and capacity as a public official.

15 I will note that we have appealed that ruling, and
16 that is under -- up at the Court of Appeals, but understand
17 that that is a final ruling at this point.

18 How this differs is that the defamatory material that
19 was, that was stated by Mr. Brennessel was in 2011. Mr.
20 Trexler was no longer a public official. He was only a
21 public official by virtue of having worked at the
22 Department of Agriculture, and by this time this, this is
23 two years later after he's been fired from the Department
24 of Agriculture. So, he, he can no longer be considered a
25 public official for the purposes of defamation, especially

1 considering that the content of the defamatory statement
2 had nothing to do whatsoever with Mr. Trexler as a public
3 official or his capacity or in the role of a public
4 official.

5 As Your Honor has seen, the statement says the
6 Trexlers pled no contest. That has nothing to do with Mr.
7 Trexler as a public official. He wasn't a public official
8 when that separate defamatory statement was made, and that
9 defamatory statement had absolutely nothing to do with the
10 defamatory statements that were uttered while Mr. Trexler
11 was a public official.

12 The -- it is true that Mr. Trexler is a public
13 official. Then he, then he must prove actual malice with
14 regard to the defamatory statement. Actual malice, Your
15 Honor, is defined as: A statement made with knowledge that
16 it was false, or with a reckless disregard for the truth.

17 We contend firstly that if Mr. Trexler is not a public
18 official, then if Mr. Brennessel uttered a statement and it
19 was false and it injured Mr. Trexler, then, then he is
20 liable to Mr. Trexler under the common law of malice.
21 Malice is presumed here because we have a defamatory
22 statement regarding a crime -- or injuries presumed,
23 rather.

24 But even if Mr. Trexler is considered a public
25 official and the heightened standard of actual malice does

1 apply, we still have another aspect of the analysis. We
2 still have to show that Mr., that Mr. Brennessel uttered
3 the statements with knowledge that it was false. And there
4 -- it has been undisputed until this time, but I -- there
5 may be some question now about whether Mr. Brennessel was
6 in the courtroom at the time the, the disposition of the
7 charges were made known. But up until this point, we, we
8 have understood that he was in the courtroom. If he wasn't
9 in the courtroom, that's a, that's a question of fact.

10 So, now with regard to the defamation, we have a
11 material issue of fact, a genuine issue of material fact
12 with regard to whether or not Mr. Brennessel had actual
13 knowledge that Mr. Trexler did not, did not plead no
14 contest. That's a question of fact that would have to be
15 decided by the jury. It can't be decided on summary
16 judgement.

17 With regard to the contention that Mr. Trexler is not
18 specifically named in the article -- and it only states
19 that the Trexlers pled no contest. Defamation law doesn't
20 require that an individual be named specifically as long as
21 the facts and circumstances can be -- as long as the people
22 who hear the utterance can, can deduce from the facts and
23 the circumstances who the individual is that the statement
24 is, is concerning.

25 Here since 2008, every article that was ever published

1 in any newspaper about the mistreatment of horses by the
2 Trexlers included all three Trexlers. Many of them refer
3 to them as a trio. That's been the biggest problem is that
4 everybody is clumping Mr. James Trexler in with his mother
5 and brother.

6 Every article -- not one single article, and there
7 have been hundreds, have ever addressed Mr. Terry Trexler
8 separately from Hazel Trexler and James Trexler or Hazel
9 and James Trexler -- Hazel and Terry Trexler separate from
10 Jim Trexler. As a matter of fact, most of the articles
11 focus on Jim Trexler because he was in the -- under the
12 spotlight for being the assistant commissioner of
13 agriculture. So, when Mr. Brennessel comes out and says
14 the Trexlers plead no contest, the public, just like they
15 have for the entire, for the entire time, hears the
16 Trexlers. They associate that with all three Trexlers.

17 Now, substantially true, one Trexler pled no contest.
18 Two Trexlers were nolle prossed. That means that as to
19 James Trexler, it is 100 percent false if the insinuation
20 is that the Trexlers pled no contest. As to all three,
21 it's two-thirds wrong. So, the defamatory statement is
22 nowhere near substantially true.

23 The intentional implication is -- and this is where
24 the question of fact is revisited, revitalized -- the
25 intentional implication is that all three Trexlers pleaded

1 no contest because the Humane Society has been, has been
2 persecuting these people for the last two and a half years,
3 and now they're asking for donations in their article.
4 Well, if they've been persecuting all of these, these
5 Trexlers and now two-thirds of them were, were -- the
6 charges were dismissed, and they're asking for donations.
7 Well, that doesn't -- there's a question of fact there as
8 to motivation and, and certainly not substantially true.

9 THE COURT: Talk to me about the privilege.

10 MR. WILLS: The privilege issue, Your Honor, I'll
11 address it. I believe in the article at issue, we've got
12 two parts. We have got a portion that addresses a public
13 interest: having to do with the well-being of the horses,
14 how they're doing; they're up for adoption; the progress of
15 the horses, and the progress the Humane Society has made
16 with regard to those horses. The second part of that is
17 the, the announcement that the Trexlers pleaded no contest.

18 The public interest part has to do with the horses.
19 It doesn't have to do with the Trexlers pleading no
20 contest. If it does, that's all the more reason why it's
21 defamatory. If that's the focus of the article and it's
22 wrong, well that's all the more reason why this is
23 defamatory and harmful. It's all the more consequential.
24 So, the public interest, the public interest privilege
25 doesn't apply to the defamatory nugget.

1 But even if it did, Your Honor, even if it does, we
2 still have, we still have a heightened level to show you
3 can't just have a privilege and say whatever you want. We
4 still have to show that they acted recklessly or with
5 actual knowledge of falsity. And that, again, is our
6 question of fact. Did Mr. Brennessel know that Mr. James
7 Trexler did not plead no contest? But he did because he
8 was in, he was in the, in the courtroom.

9 We don't have any affidavit here to say that he
10 wasn't; we don't have any affidavit to say that he didn't
11 mean all three Trexlers. So, all we've got is an article
12 that's indisputable as to what it says.

13 The question of fact comes as to what the implication
14 is, what it -- what the understanding is. And, of course,
15 when in defamation law, when a defamatory statement is
16 susceptible to more than one interpretation, the question
17 is for the jury. If the statement is -- has only but one,
18 one possible meaning -- and if the statement has one
19 possible meaning, then the court could find that, that --
20 at the summary judgment level that it's either defamatory
21 or not. But the court should only grant summary judgment
22 in a defamation case if it can't determine that the
23 publication is incapable of having any other meaning except
24 the one that is explicitly on the page. Otherwise, it
25 becomes a question for the jury.

1 THE COURT: I notice that your brief doesn't address
2 the issue related to the charitable statute, and so I'll
3 give you a chance to make an argument about that.

4 MR. WILLS: Thank you, Your Honor. We -- the
5 defendants have not moved to be dismissed under this act,
6 and that would be the appropriate mechanism rather than
7 summary judgement if this act applies. But our contention
8 is that for purposes of defamation and certainly for
9 purposes of vicarious liability, the individual who utters
10 the statement must be, must be liable before the agency for
11 which he works can be liable.

12 So, we would, we, we would have a contention with the
13 fact that he must be dismissed under the charitable -- I
14 can't see how, can't see how just because you work for a
15 charitable organization you're immune from making
16 defamatory statements against somebody and not liable.

17 So, if the defendants want to move to dismiss under
18 that act, then maybe we should do that at a separate time.
19 I don't think that's the appropriate mechanism here, Your
20 Honor.

21 Your Honor, one more point. The standard for holding
22 an individual liable outside of his capacity as director of
23 the Humane Society is recklessness: if he acts with
24 recklessness, then he is outside of the purview of that
25 act. And our contention is that he did act recklessly and

1 willfully in, in uttering statements that he knew was not,
2 not true. Thank you, Judge.

3 THE COURT: Thank you.

4 Briefly, Mr. Tyler.

5 MR. TYLER: Yes, Your Honor, briefly. The Charitable
6 Funds Act was raised as an affirmative defense. The facts
7 in this case clearly support that probable cause existed.
8 Opposing counsel relies on depositions which occurred years
9 later. The important thing is, is the evidence that was
10 presented to the grand jury as Your Honor has asserted,
11 which is a secret proceeding. The, the affidavit itself
12 says that there was no feed or hay on the property. The
13 animal was separately confined in a barn with three other
14 horses. Your Honor, the pictures are here. There was no
15 feed; there was no hay in the barn where those animals were
16 separately confined.

17 Counsel has raised an issue that the Humane Society
18 has been persecuting the Trexlers. Perhaps counsel has not
19 reviewed the hundreds of pictures that we have presented of
20 persecuted animals, ill-treated animals. The Trexlers ---

21 THE COURT: Well, that's not really relevant in terms
22 of the allegations that are made in this particular
23 lawsuit.

24 MR. TYLER: Your Honor, if, if I may? On the, on the
25 malicious, to wrap up the malicious prosecution issue, the

1 grand jury had the investigation in front of them. It was,
2 it was presented to them. The Richland County Sheriff's
3 Department was prosecuting the case at the time.

4 As to defamation, the role and capacity of Mr. James
5 Trexler as a public official under the prior order of this
6 court has to do with the same set of facts and
7 circumstances: that 2008 time period of the treatment of
8 this animals and their removal, which that order, of
9 course, addresses.

10 THE COURT: And just so that we're clear, the fact
11 that the Richland County Sheriff's Department may have, or
12 the solicitor's office ultimately may have been the body
13 that chose to go forward with any presentation of evidence
14 to a grand jury, that does not absolve the Humane Society
15 from prosecuting the claim by providing information and by
16 you being the complaining witness, so the speak, or the
17 complaining individual.

18 MR. TYLER: That -- that's, that's correct, Your
19 Honor, and the Humane Society performed a investigation in
20 the amount of time that such an extreme situation warrants
21 and presented that to the sheriff's department. The
22 affidavit contains information other than merely whether
23 there was food. The horses were examined. They were
24 mistreated and that, that information is -- was presented
25 before the grand jury.

1 THE COURT: I'll review the information you've
2 provided. Then I will issue an order. Thank you.

3 MR. TYLER: Thank you.

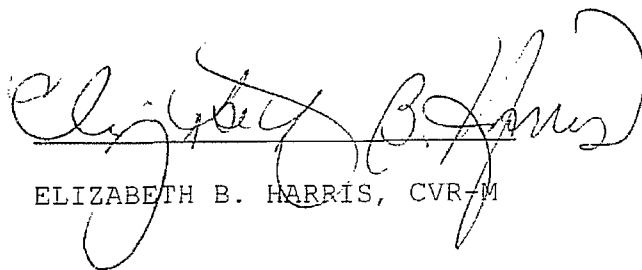
4 MR. WILLS: Thank you, Your Honor.

5 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM 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 COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 6TH DAY OF SEPTEMBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 19TH, 2014



SWEENY WINGATE & BARROW P.A.

July 16, 2013

Reply to: Main Office

John E. Tyler
(803) 256-2233 x 110
jet@swblaw.com

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

RE: James W. Trexler v. The Humane Society
Civil Action No.: 2012-CP-40-4652
File: 1395-8358

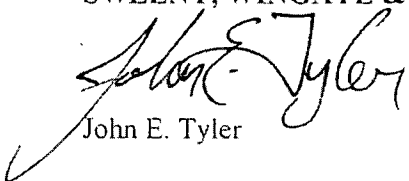
Dear Ms. McBride:

Enclosed please find the original and one copy of Defendants' Motion for Summary Judgment in the above-referenced case. Please file the original and return the clocked copy to me in the envelope provided. By copy of this correspondence to opposing counsel, I am serving them with same.

Thank you for your assistance in this matter and should you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

SWEENY, WINGATE & BARROW, P.A.


John E. Tyler

JET/smt
Enclosures

cc: William H. Johnson, Esquire
W. Westbrook Wills, III, Esquire
Matthew D. Hamrick, Esquire
Roopal Ruparelia, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff

v.

The Humane Society for the Prevention of Cruelty to Animals,
Wayne Brennessel, individually and as Executive Director of the
Humane Society for the Prevention of Cruelty to Animals,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-40-4652

MOTION COVER SHEET

name, S.C. Bar no. & address of Plaintiff's attorney

name, S.C. Bar no. & address of Defendant's attorney

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

Telephone: (803) 843-805-6300 fax: (843) 278-9222
e-mail: wwills@austinfoxwills.com other:

John E. Tyler, Esquire SC Bar #:78307
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211

telephone: (803) 256-2233 fax: (803) 256-9177
e-mail: jet@swblaw.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 20 minutes

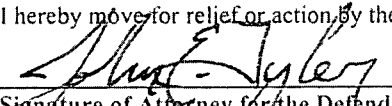
Court Reporter Needed: yes

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion - -

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


Signature of Attorney for the Defendant

7/16/13
Date Submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ Exempt: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRPC)

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

Name of Court Report: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

Judge _____

CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected By: _____
(Print Name)

DATE FILED: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff

v.

The Humane Society for the Prevention of
Cruelty to Animals, Wayne Brennessel,
individually and as Executive Director of
the Humane Society for the Prevention of
Cruelty to Animals,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-40-4652

MOTION FOR SUMMARY
JUDGMENT

TO: W. WESTBROOK WILLS, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
AND TO THE PLAINTIFF ABOVE-NAMED:

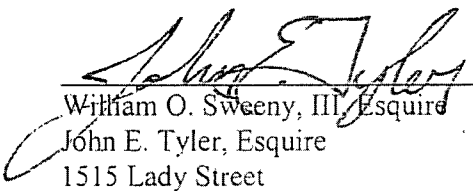
YOU WILL PLEASE TAKE NOTICE the undersigned, as attorneys for Defendants, will move before the Presiding Judge of the Richland Circuit Court, at the Richland County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting Summary Judgment in favor of Defendants, as to all claims asserted by the Plaintiff.

The grounds for the motion are that there is no genuine issue of material fact and there exists no evidence to support the Plaintiff's claims against the Defendants for malicious prosecution and/or defamation. This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and may be further supported by pleadings, discovery, affidavits, deposition testimony, and a memorandum of the law as may be submitted at or prior to the hearing in this motion.

(Signature on following page)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



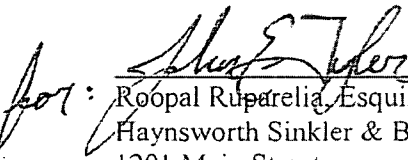
William O. Sweeny, III, Esquire

John E. Tyler, Esquire

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

for:  w/ Permission

Roopal Ruparel, Esquire

Haynsworth Sinkler & Boyd, P.A.

1201 Main Street

Columbia, SC 29201-3232

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
July 16, 2013

CERTIFICATE OF SERVICE

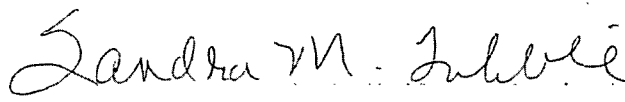
I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Pleading in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

W. Westbrook Wills, III, Esquire
38 Broad Street, Suite 200
Charleston, SC 29401
Attorney for Plaintiff James W. Trexler

William H. Johnson, Esquire
Law Offices of William H. Johnson, LLC
411 North Brooks Street
Post Office Box 137
Manning, SC 29102
Attorney for Plaintiff James W. Trexler

Matthew D. Hamrick, Esquire
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
Attorney for Plaintiff James W. Trexler

Roopal Ruparelia, Esquire
Haynsworth Sinkler & Boyd, P.A.
1201 Main Street
Columbia, SC 29201-3232



Sandra M. Tribble

Columbia, South Carolina
July 16, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2012-CP-40-4652
	)	
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF DEFENDANT'S
The Humane Society for the Prevention of	)	MOTION FOR SUMMARY
Cruelty to Animals, Wayne Brennessel,	)	JUDGMENT
individually and as Executive Director of	)	
the Humane Society for the Prevention of	)	
Cruelty to Animals,	)	
	)	
Defendant.	)	
	)	

INTRODUCTION

Defendants The Humane Society for the Prevention of Cruelty to Animals and Wayne Brennessel submit this Memorandum of Law in support of their Motion for Summary Judgment in the above-captioned action.

FACTS

In February of 2008, the Humane Society for the Prevention of Cruelty to Animals (HSPCA) responded to a complaint that horses owned by Plaintiff's family and located on property on Zeigler Road in Richland County, South Carolina, may be being mistreated. The HSPCA investigated the complaint and ultimately determined that the horses were being mistreated. Following all appropriate procedures, and in cooperation with local authorities, the HSPCA effected the removal of the horses from the Zeigler Road property. Subsequent investigations revealed additional mistreated horses located at Misty Meadows Road in Richland County. Investigation also revealed approximately five mistreated horses on Plaintiff's property located at 412 Derby Lane in Richland County. As with the Ziegler

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

Road property, the HSPCA, following all appropriate procedures, and in cooperation with local authorities, effected the removal of the mistreated horses from these locations. Finally, an investigation of property in Sumter County owned or occupied by the Plaintiff's family revealed several horse burial sites. Approximately 50 horses were seized from the three properties.

The Plaintiff, his brother Terry Trexler, and his mother Hazelene Trexler were subsequently charged with numerous criminal counts of animal cruelty. In March 2008, a Richland County Grand Jury issued a True Bill of Indictment for five separate counts of animal cruelty (see Exhibit 1). Ultimately, the Attorney General of South Carolina consummated a deal with the Plaintiff, his mother, and brother, where Terry Trexler pled no contest to ill treatment of animals, all three relinquished all ownership interest in the horses that were seized, and the criminal actions against Plaintiff and Plaintiff's mother were not pressed.

During the pendency of the criminal charges, Terry Trexler and Hazelene Trexler brought four civil lawsuits against the HSPCA, the Richland County Sheriff's Department, Solicitor Barney Giese, and other entities. They made claims for malicious prosecution, defamation, civil conspiracy, and other claims. They filed an action in Calhoun County, civil action no. 2009-CP-09-16. They filed suit in the United States District Court, District of South Carolina, Case no. 0:09-0144-RBH-PJG. They also filed two State actions in Richland County: case no. 2009-CP-40-419 and case no. 2009-CP-40-420. Terry Trexler and Hazelene Trexler dismissed these cases via stipulations of dismissal which were filed in all of the respective courts.

Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652

Much like his mother and brother, Plaintiff James Trexler has filed multiple actions in Richland County with allegations of defamation and malicious prosecution against many different defendants. In the action at hand, Plaintiff brings one claim for malicious prosecution related to the criminal charges referenced above and one claim for defamation related to a WLTX website article posted on February 1, 2011 (attached as Exhibit 2).

As mentioned *supra*, a Richland County Grand Jury issued True Bills indicting Plaintiff James Trexler for five counts of cruelty to animals. In addition to on-site inspections of multiple properties revealing malnourished horses and dogs on property owned by the Plaintiff, the HSPCA searched horse ownership records and property ownership records linking Plaintiff James Trexler to some of the horses in question and to the property where some of those horses were stabled. In his deposition, the Plaintiff admitted that he had owned the 412 Derby Lane property and that he was still paying for the utilities and taxes at the time of the underlying events.

Subsequent to the indictments, the investigation continued which included forensic examination of multiple dead horses (see page HSPCA0008 of the HSPCA's case notes attached as Exhibit 3). Subsequent investigation also revealed a witness, Connie Dickman, informing the HSPCA that she sold a horse to James Trexler (see page HSPCA0008 of Exhibit 3). While James Trexler denies that he owned any of the subject horses, the investigation established sufficient evidence for the appropriate authority to prosecute Terry Trexler, Hazelene Trexler, and Plaintiff James Trexler.

On or about July 15, 2010, Terry Trexler, as mentioned above, pled no contest to charges of animal cruelty and all ownership rights of the Trexler family to the subject horses were relinquished. During the pending criminal charges, the HSPCA spent over \$200,000

Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652

to care for the 50 horses that were seized. They took malnourished, sick animals and nourished them back to health through providing proper feed, pasture, stable, and veterinary care. As soon as the Trexler family relinquished their ownership right to the horses, the HSPCA began to offer the horses for adoption. In an effort to promote the adoption of these horses, WLTX published an article on February 1, 2011 entitled "Neglected Horses Still up for Adoption" (see Exhibit 2). This article is the complete basis for the Plaintiff's defamation claim. It states, as follows:

Some horses seized three years ago still need permanent homes. In 2008, the Humane Society began taking horses from Richland County properties owned by the Trexler family, saying the animals were neglected and malnourished. In court, the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said... "When they were removed, they were in really terrible shape – halters were grown into their skin, their hooves were splayed," Brennessel said.

(Exhibit 2).

The article does not mention James Trexler. Consistent with the article, the horses in question were owned by the Trexler family. The HSPCA has produced documentation, veterinary records, and photographs that show the terrible shape in which the horses were found. Rather than publishing that Terry Trexler pleaded no contest, WLTX published that "the Trexlers pleaded no contest and gave up rights to the horses." However, the article still does not mention Plaintiff's name and contains substantially true comments about events that transpired several years ago.

In a case that Plaintiff has brought against several press agencies, Civil Action No.: 2010-CP-40-1249, this Court granted summary judgment in favor of the Defendants. Similar to this case, the other case contained allegations of libel, slander, and/or defamation

against the news agencies for their reporting regarding the mistreatment of horses and the ensuing criminal proceedings against James Trexler. Prior to the underlying circumstances giving rise to this action, Plaintiff served as the state's Assistant Commissioner of Agriculture. Though he contended in the other case that he was a private figure, this Court by Order dated October 25, 2012, held as follows:

It seems clear beyond doubt that plaintiff is a public official in the context of this litigation. He 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... 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.***

(See pp. 13-14 of Order of Judge Joseph M. Strickland, attached as Exhibit 4).

LEGAL STANDARD

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is mandated if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" Rule 56(c), SCRCP. Our Supreme Court, citing the U.S. Supreme Court, has held that summary judgment against a defendant is mandated for any cause of action for which the plaintiff, after adequate time for discovery, fails to establish—with evidence—every essential element of the cause of action. Baughman v.

American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Baughman stated as follows:

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she had the burden of proof.

Baughman, 306 S.C. at 116, 410 S.E.2d at 545-46 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986)) (emphasis added). The moving defendant may meet its obligation of demonstrating the absence of a genuine issue of material fact by "showing – that is pointing out to the trial court – that there is an absence of evidence to support" the plaintiff's claims. Baughman, 306 S.C. at 115, 410 S.E. 2d at 545 (quoting Celotex, 477 U.S. at 325, 106 S. Ct. at 2554). A plaintiff may not rely on the allegations of her pleadings to overcome a motion for summary judgment. Rule 56(e), SCRCP.

Legal Argument

Plaintiff brought this action claiming malicious prosecution by the HSPCA and defamation by Defendant Brennessel. Based on the facts established above and the legal analysis provided below, there exists no genuine issue as to any material fact, so the Defendants are entitled to a judgment as a matter of law.

I. Plaintiff's claim for malicious prosecution fails because Probable Cause existed as a matter of law.

In a malicious prosecution action, the plaintiff bears the burden to establish each of the following elements: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." Law v. S. Carolina Dept. of Corrections, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

The Supreme Court of South Carolina has defined probable cause as "the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only 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 v. Plowden Motor Co., 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). In other words, would an ordinary person, with the information available and obtained through investigation, at the time the defendant was indicted, believe that the defendant was guilty of the crime charged? In this case, the Grand Jury said "yes."

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 River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982). When the evidence yields but one

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

conclusion, a court may decide that probable cause exists as a matter of law. Parrott at 323, 143 S.E.2d at 609.

It is well established law in South Carolina that a true bill of indictment is “prima facie evidence of probable cause in an action for malicious prosecution.” 368 S.C. at 437–38, 629 S.E.2d at 649–50. In the Law case, the Supreme Court of South Carolina found probable cause existed as a matter of law and affirmed Summary Judgment for the defendant in a malicious prosecution action. In that case, the plaintiff was indicted by a Grand Jury and underlying facts supported probable cause to pursue criminal charges. Id. at 437, 629 S.E.2d at 649. The court held that a true bill of indictment was “prima facie evidence of probable cause in an action for malicious prosecution.” Id. at 436, 629 S.E.2d at 649 (citing Kinton v. Mobile Home Indus., Inc., 274 S.C. 179, 182, 262 S.E.2d 727, 728 (1980)). Because the plaintiff did not refute the presumption of probable cause and facts objectively supported such a finding, probable cause existed as a matter of law. Id. at 437, 629 S.E.2d 649.

In this action for malicious prosecution, the plaintiff has failed to refute and cannot refute the presumption of probable cause. Much like the plaintiff in Law, the Grand Jury indicted Plaintiff under a true bill of indictment and supported probable cause with underlying facts (see Exhibit 1). Plaintiff owned the 412 Derby Lane property at the time that horses were stabled there. Though he claims to have transferred his interest in the property to his mother and to his brother’s business just prior to his divorce and just prior the removal of mistreated horses, the fact that he owned the property where five of the subject horses were stabled would *excite the belief in a reasonable mind* acting on the facts within the knowledge of the prosecutor that Plaintiff James Trexler was guilty of the

crime of mistreatment of animals. When the Grand Jury considered the facts available, they issued the indictment.

In addition to owning the property in question, the following facts support the prosecution of James Trexler:

1. Plaintiff admits to living at 412 Derby Lane, the property in question, the months before and the months after the two-month period in question. He claims he did not live at 412 Derby Lane when he was investigated, arrested on Feb. 27, 2008, and charged with five counts of misdemeanor mistreatment of animals. (Depo. of J. Trexler pp. 6-8).
2. Plaintiff admits he paid utilities and taxes on the property after he allegedly transferred title to the property to his mother and his family's company and after he moved out. He even continued to visit the premises. (*Id.* at 12-16). Neither his mother, nor Carolina Arabian paid for the property he transferred. (*Id.* at 29-30). He took his son there every other weekend—two times in Jan. and two times in Feb. (*Id.* at 13-14, 35-36).
3. Around Spring of '07, plaintiff was listed on a Coggins test report for a horse named Nova which was kept at Derby Lane (*Id.* at 22, 27-29). He claims the horse belonged to his mother (*Id.* at 17).
4. Plaintiff moved back onto the property for a short period after being charged in March – April, 2008. (*Id.* at 6)
5. Horses were present on the property when he lived there, before he transferred ownership of the property to his mother's company in 2006 and after the transfer. (*Id.* at 17).
6. Plaintiff admits that HSPCA received a report of malnourished horses and that it was appropriate for them to investigate. (*Id.* at 70).
7. Plaintiff acknowledges that his pickup truck was at the Zeigler Rd. property when his brother used the truck to block in Ms. Hart, the HSPCA investigator. (74-78).
8. Plaintiff admits that he thinks there was mass confusion at the Ziegler Rd. property scene where his brother claimed to be him. (77-79).
9. James Trexler acknowledged owning the pit bulls that were kept at the house at Derby Lane when the warrant was issued (*Id.* at 95-96).

10. Plaintiff's mother purchased a horse called Pros Cognac and registered it to James Trey Trexler. When shown an email to Connie James from his account, James Trexler claimed he did not send it and said someone was evidently pretending to be him (Id. at 125). He claimed the same with regard to other emails from his account. (1 Id. at 26-128). An email on Feb 7th from his account also listed his phone number as the appropriate contact. (Id. at 128).

11. In regard to James Trey Trexler's Horse, signature on the bill of sale was "James Trey Trexler" and appeared to be an adult's signature (Id. at 130).

In opposition to the above established facts, Plaintiff argues that HSPCA employee Elizabeth Perry's claim that there was stored horse feed at the property contradicts the comment of HSPCA employee Kelly Graham who stated that the outcome of the case may have been different if the HSPCA would have found any evidence that the Trexlers were feeding the animals. (Plaintiff's Compl. ¶¶ 33-34.) However, the presence of stored feed in a locked garage is not conclusive evidence that the horses were being fed. The horses appeared malnourished, were examined, and were determined to be malnourished. Furthermore, Plaintiff denies that he owned or cared for the horses and admits that he saw the horses only when they arrived and knew nothing of whether they were being fed. (Trexler Deposition at 27:3-10; 35:4-6.)

In this case, the HSPCA's role was to investigate reports of animal cruelty and to convey the information obtained to the sheriff's department in the form of sworn affidavits. The facts obtained through their investigation combined with the Grand Jury's true bill of indictment leave no doubt that probable cause existed to prosecute Plaintiff as a matter of law, and Defendant HSPCA is entitled to summary judgment.

II. Plaintiff's Claim for Defamation fails because Plaintiff is a Public Figure and Mr. Brennessel Was Not Negligent When He Spoke to WLTX in a Privileged Communication.

In an action for defamation, the burden is on the plaintiff to prove : “(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.” Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 517, S.E.2d 497, 506 (1998) (citing Restatement (Second) of Torts § 558 (1977)). If a plaintiff fails to establish any element, the claim must fail. See, e.g., Williams v. Lancaster County Sch. Dist., 369 S.C. 293, 304, 631 S.E.2d 286, 292–93 (Ct. App. 2006) (failure to show that defamatory statement was published to a third party was fatal to defamation claim).

A. This Court has held Plaintiff to be a public official, and therefore Plaintiff's claim must fail as a matter of law.

The Supreme Court of the United States has held that public figures may recover for defamation only upon clear and convincing evidence that the false and defamatory statement was made with knowledge that it was false or a reckless disregard for the truth. Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974). This Court has held Plaintiff to be a public official in a previous action arising out of the same facts and circumstances. (See Exhibit 3).

In this case, the same public figure issue is decided under the doctrine of collateral estoppel. “[C]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” Kunst v. Loree, 404 S.C. 649, 746 S.E.2d 360, 362 (Ct.App.2013) *citing* Carolina Renewal, Inc. v. S.C. Dep’t

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009). “The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” Id. Further, mutuality of parties is not necessary when “the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Kunst at 649, 746 S.E.2d at 362, *citing* Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008).

The public figure issue was actually litigated in the other action because the Order granted summary judgment after ample time for discovery and included analysis of multiple deposition transcripts and evidence established through discovery. (See Exhibit 4, page 13-14). It was directly determined and articulated in the Court’s analysis (p. 13 “clear beyond doubt”) and in the Court’s Conclusion (p. 15 “Plaintiff was a public official for purposes of this action”). Furthermore, it was necessary to support the Court’s judgment found in the conclusion (p. 15 “Plaintiff was a public official for purposes of this action”).

Counsel for Plaintiff may argue that the prior Order of this Court has been appealed and therefore is somehow not applicable to this case. However, the Order is in effect in this case until the appellate court reverses the judgment. *See* Shaw Components Inc. v. National Bank of South Carolina, 304 S.C. 114, 403 S.E.2d 153 (1991).

Therefore, the Plaintiff has the burden to prove that the alleged false and defamatory statement was made with knowledge that it was false or a reckless disregard for the truth. As argued *infra*, the article published by WLTX was substantially true. James Trexler’s name does not appear in the publication. A simple misstatement does

not even amount to negligence, let alone the heightened standard of reckless disregard for the truth.

Therefore, Plaintiff's claim for defamation must fail as a matter of law.

B. Plaintiff's claim for defamation must fail as a matter of law because Mr. Brennessel's statement was true and/or substantially true.

Even if the heightened standard applicable to public figures does not apply in this case, the Plaintiff's claim for defamation fails because Defendant Brennessel's statement was true or substantially true.

If an alleged defamatory statement is true, then the claim must fail. Ross v. Columbia Newspapers, Inc., 266 S.C. 75, 79, 221 S.E.2d 770, 772 (1976). However, the Supreme Court of South Carolina has also held that a sufficient defense is made out where the statement is substantially true. Id. (citing Dauterman v. State-Record Co., 249 S.C. 512, 514, 154 S.E.2d 919, 919 (1967)). In that case, a plaintiff sued a newspaper for falsely reporting that he was charged with assault and battery with intent to kill when, in fact, no formal charges had been brought against him. Id. at 80, 221 S.E.2d at 772-73. However, plaintiff had been arrested and detained in connection with the shooting of his wife. Id. The South Carolina Supreme Court held that the newspaper's statement was substantially true and requiring a strict adherence to legal terminology was unreasonable. Id. at 80, 221 S.E.2d at 773.

Like the plaintiff in Ross, The Plaintiff in this action claims he was defamed by words allegedly spoken by Defendant Brennessel and published by WLTX. Specifically, Plaintiff cites the following statement in a WLTX online publication as defamatory: "the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said." (Compl. ¶¶ 51-57.) Unlike Ross, where the plaintiff made his

claim against a newspaper, the Plaintiff here claims he was defamed by a statement attributed to Mr. Brennessel that was published by WLTX. Though his first name is not mentioned and though he emphatically denies owning any of the horses which were seized, Plaintiff still contends that the statement refers to him when it says "the Trexlers."

Mr. Brennessel is not an attorney. Mr. Brennessel is not the publisher, author, or editor of the article in question. In essence, Plaintiff wants Mr. Brennessel to strictly adhere to a legal terminology standard that the South Carolina Supreme Court does not require of Brennessel. It is not contested that Plaintiff's own brother, Terry A. Trexler pleaded no contest to multiple counts of animal cruelty and the Trexler Family gave up their rights to the horses. Because the statement claiming that "the Trexlers" pleaded no contest and gave up rights to horses is substantially true, the Plaintiff's claim for defamation must fail.

C. Plaintiff's claim for defamation must fail as a matter of law because the statement by Mr. Brennessel was privileged.

The South Carolina Supreme Court has held that one who publishes a defamatory statement about another is not liable for defamation if "(1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). The court has held that the existence of the privilege depends upon the occasion and the relationship of the parties:

When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.

Id. (citing Bell v. Bank of Abbeville, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (1946)).

The question of whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. Id. at 484-85, 514 S.E.2d at 134.

Here, the occasion warranted the privilege because WLTX was interviewing the director of the HSPCA, an organization responsible for preventing cruelty to animals. WLTX's intent was to glean the status of neglected horses in need of adoption, a topic of undoubted interest to many of its readers. Additionally, Mr. Brennessel's statements were made in a good faith effort to educate the public about the hardships the horses had endured, the justice delivered to the responsible parties, and their current and future prospects for adoption. Therefore, because Mr. Brennessel's statement to the media was privileged, Plaintiff's claim for defamation fails as a matter of law.

D. Mr. Brennessel's statement was not made negligently, and therefore Plaintiff's claim fails as a matter of law.

The Supreme Court of South Carolina specifically addressed the question of proof required for a private figure to recover for defamation and held that a defamatory statement must be made at least negligently. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 510, S.E.2d 497, 501 (1998). In this case, there is every indication that Mr. Brennessel was referring to Hazelene and Terry Trexler when he stated that the Trexlers pleaded no contest and gave up rights to the horses. James Trexler is not even mentioned. Furthermore, the quote cited by WLTX was not a direct quote.

Multiple cases have been pending for more than three years, the alleged defamatory statement occurred two-and-a-half years ago, this action has been pending for 14 months, and multiple attorneys represent the Plaintiff. Despite ample time and

opportunity to establish a case against the HSPCA, Plaintiff's best evidence of a negligent statement is that an article—which does not mention the Plaintiff; which attributes to Mr. Brennessel a quote for which there is no evidence of his direct authorship; which relates to horses that Plaintiff denies ever owning—is somehow defamatory and damaging to the Plaintiff.

Therefore, the claim against Defendant Brennessel fails as a matter of law.

III. The Solicitation of Charitable Funds Act (the "ACT") Requires the Court to Dismiss Wayne Brennessel.

South Carolina law mandates that a judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. S.C. CODE ANN. § 33-56-180 (2012). A "charitable organization" is defined in § 33-56-170 as a society "which is exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) (2010). The HSPCA is a 501(c)(3) organization and enjoys the benefits of the Internal Revenue Code's tax exempt status, which is reserved for charitable organizations. Because Plaintiff can state no specific set of facts to support a charge that Mr. Brennessel's statement was made recklessly, willfully, or with gross negligence, Mr. Brennessel should be dismissed from this action.

CONCLUSION

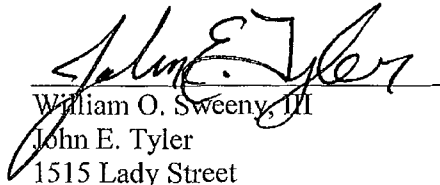
Because the Plaintiff has failed to establish at least one essential element each for malicious prosecution and defamation, summary judgment should be granted in favor of the Defendants as to all causes of action.

(Signature on following page)

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line.

William O. Sweeney, III
John E. Tyler
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Defendants

Columbia, South Carolina

September 5, 2013

1-891851

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5'11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #:

Prosecuting Agency: Hspca/ The 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

This occurred

is to be arrested and brought before the court 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 02/27/08

[Signature]

RETURN WARRANT TO:

Olympia Magistrate

1601 Ship Road

Columbia, SC 29201

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

State of South Carolina for 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 (334). 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 *[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

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina for 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

Sworn to and subscribed before me

on 02/27/2008

[Signature] (L.S.)

Judge's Address 1601 - B Ship Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ County ☐ City

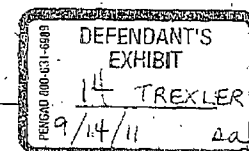
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8441-A-0204

WITNESSES

(6) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER
DP08060

ACTION OF GRAND JURY

TRUE BILL

Theresa 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

1-891850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address: 412 Dorby Lane

Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #:

Prosecuting Agency: Hspsca / 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

The accused is to be arrested and brought before the court with according to the law

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on 2-27-08

Signature of James W Trexler

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 for 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 Dorby 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 (#12). He knowingly and intentionally deprived the animal of necessary quantities of wholesome feedstuff 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

DEFENDANT'S EXHIBIT

15 TREXLER

9/14/11

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 for ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate

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 James W Trexler

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

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8441-A-0203

✓ 1-891849

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE
against

James W. Trexler

Address: 412 Derby Lane
Hopkins, SC 29061.

Phone: SSN: Sex: M Race: W Height: 5'11" Weight: 130
DL State: SC DL #: 008028522
DOB: 1/14/1960 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 of Court Clerk or Courtroom Clerk

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)

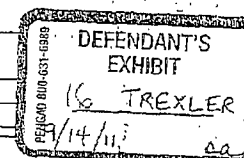
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

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 (333).
He knowingly and intentionally deprived the animal of necessary quantities of wholesome feedstuff 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 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 his apprehension or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on 02/27/2008
Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847
Judge's Telephone (803)576-2550
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Court

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8441-A-0202

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER
DP06062

ACTION OF GRAND JURY

TRUE BILL

Forperson of Grand Jury
Date: MAR 19 2008

VERDICT

Forperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-02285

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

101 MARCH TERM 2008

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

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

2008 MAR 19 10 10 AM
CLERK OF COURT
[Signature]

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

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: 412 Derby Lane

Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5' 11" Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #:

Prosecuting Agency: Hsper/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / ill treatment of animals, in general, overworking - 1st offense (Tried)

Offense Code: 9610

Code/Ordinance Sec: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in this

☐ County/ ☐ Municipality of

The warrant is to be arrested and brought before the court 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

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 for 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 (#14). 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

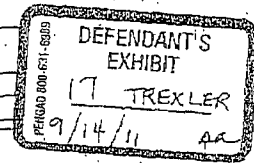
☒ County/ ☐ Municipality of

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783)126-7xx

Richland / Olympia Magistrate



ARREST WARRANT

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

If 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 for 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 Judge: Harold A. Cliff

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 .L ORIGINAL ORIGINAL ORIGINAL

8441-A-0201

WITNESSES

✓ (S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08061

ACTION OF GRAND JURY

TRUE BILL

Barbara B. ...
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 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-0362

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

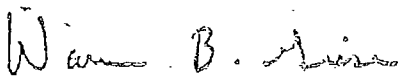
INDICTMENT

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

1-891847

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: _____

Sex: M Race: W Height: 5 11 Weight: 130

CL State: SC CL #: 018028522

DOB: 1/14/1960 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

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: _____

on: 2-27-08

RETURN WARRANT TO:

Olympia Magistrate

1601 Ship Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

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

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 (435). 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

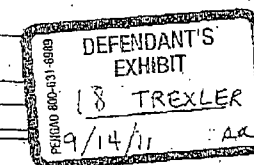
☒ County/ ☐ Municipality of

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

Signature of Judge _____

Harold A. Cull

Judge's Address 1601 - B Ship Road

Columbia, SC 29201-4847

Judge's Telephone (803) 576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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SINAL

8441-A-0200

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08059

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02282

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

Neglected horses Still up for Adoption | wltx.com

Page 1 of 1

wltx

Neglected Horses Still up for Adoption

11:30 PM, Feb 1, 2011 | comments

Written by
Sydney Cummins

FILED UNDER

News

Columbia, SC (WLTX) -- Some horses seized three years ago still need permanent homes.

In 2008, the Humane Society began taking horses from Richland County properties owned by the Trexler family, saying the animals were neglected and malnourished. In court, the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said.

"As big and as majestic and as strong as they are, if they're not cared for properly, their health deteriorates rapidly," Brennessel said.

Originally there were 45, but after some horses had babies, there were a total of 51. Today, 23 horses still need owners.

"When they were removed, they were in really terrible shape -- halters were grown into their skin, their hooves were splayed," Brennessel said.

By this summer, they were back in shape

with good nutrition and lots of care and the Humane Society paying their boarding costs.

"The horses that remain are still in great shape, tip-top health, but they've never had any socialization," Brennessel said. "They've always lived as a part of a herd and with that herd mentality, they need to be worked with and socialized."

It takes a special home to care for these horses, one that the Humane Society is hoping to find for all of them by the end of the year.

The Humane Society is accepting donations to help with the cost of caring for the horses. You can reach them at 121 Humane Lane, Columbia, SC 29209 or by phone at (803) 783-1267.

Advertisement



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<http://www.wltx.com/news/story.aspx?storyid=120632>

6/1/2012



Trexler Case File.5.09

Case #1000

Case Overview

Case Summary Trexler Case
 Contact Date 02-08-2008 Type General neglect
 Source Phone Alt Info
 Name
 Primary Phone
 Description [FEB-11-08 8:36 AM Elisabeth Perry] Neglected horses,
 ribs showing
 Priority Priority 2
 Print Cruelty Report...

Case Location

County Richland
 Address 1248 Zeigler
 City Eastover
 State SC Zip 29044
 Map Click for map...
 Other Locations?
 Address 2 412 Derby Lane Zip
 Address 3 207 Misty Meadows Zip
 Address 4 Zip

Resources

Resources consist of contacts and the /role/ that each contact plays in each case.

Add Resource

Contact Name	Type	Contact Phone	Contact Cell
Connie Dickman	Witness		(513) 646-7114
Jesse Harmon	Witness		
Johnny Harmon	Witness	(803) 353-0589	
Barbara Person	Witness	(800) 416-4364	
John Robinson	Witness	(800) 783-9418	
Michael Privett, DVM	Veterinarian	(803) 783-6999	(803) 730-2272
Mitch Lowrey, DVM	Veterinarian	(843) 442-3584	
James Trexler	Suspect		
Hazelene Trexler	Suspect		
Terry Trexler	Suspect		
Holly Wagner	Law Enforcement	(803) 576-3456	(803) 309-9358
Capt McKenzie	Law Enforcement	(843) 662-6245	(803) 609-3520
Jim Quinn	Landlord	(803) 606-0260	
John McDaniel	Landlord	(803) 600-4908	
ACO Thompson	Control officer		(803) 518-6636
Molly Hutchinson	Complainant	(803) 269-2955	

Case Details & Investigator Notes

Case Rating Level 2 Status Closed
 Follow Up 08-15-2008
 Reason Pending Charges
 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] -----

Page 1

S +



HSPCA0005

Trexler Case File.5.09

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

Page 2

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HSPCA0006

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.

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Trexler Case File.5.09

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 indentification.

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.

Page 4

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HSPCA0008

Trexler Case File.5.09

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 Recieved 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 Trexler's 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 Bunky's 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 Trexler's 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 Trexler's 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 Trexler's a ticket.

Trexler Case File.5.09

[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.

Result	File charges
Agency	
Warrant Date	04-01-2008
Arrest Date	
Court Date	08-15-2008
Charge	
Fines	
	Bond Amount
	Conviction
	Sentence

Seized Animals

Add Animal

Name	Type	Body Score	Microchip	Action	Contact - Name
01 SH Mhadiya	Horse	1	0006A9D299		
02 Elita MSC	Horse	3	0006AB2E02		
03	Horse	3	0006A9EEC2		
04	Horse	3	0006A9CF53	Foster	
05	Horse	4	0006A9C6AB		
06	Horse	3	480E6E410B		
07 RF Gllory Bey	Horse	3	0006AA06C1	Foster	
08 April Delight	Horse	4	0006A9DEF7		
09 DA Reflectinns	Horse	4	0006A9A169	Foster	
10 Blazing Passion V	Horse	3	0006ADD0C8	Foster	
11	Horse	4	480A3C2250		
12 Bonaparte's Fancy	Horse	4	480A08606A	Foster	
13	Horse	3	0006A9E2BD	Foster	
14	Horse	3	0006A9A907		
15 Summer's Charm	Horse	2	0006ADE05C		
16 Ju Beylee	Horse	3	00069CC971	Foster	
17 Khandi Berry Bey	Horse	3	0006ADA225		
18 OA Sweet Promise	Horse	3	0006ADBC47		
19	Horse	2	0006ADB08B	Foster	
20 Amoree Promotion	Horse	3	48120667		
21	Horse	3	0006ADC7A6	Foster	
22 Hucks Jubalee	Horse	3	00069CC606		
23	Horse	4	480A7F1411		
31 Amoree	Horse	3	0006A9B15D		
32	Horse	4	0006ABEA01	Foster	
33 Camelo V	Horse	3	0006ADAAA3		
34	Horse	4	480B0F1241		
35	Horse	1	0006ADCEA0		

Trexler Case File.5.09

41 Fiery Nova	Horse	3	0006A9F03C	Foster
42 RF Fancy Free	Horse	5	0006ADC203	
43 April's Royal Isis	Horse	3	0006ADAB27	
44 Mics Fantasia	Horse	3	0006A9ECA9	
45 Horse	3	0006ADF530	Foster	
46 Safanadd	Horse	2	0006ADD1FB	
47 Jabask Gdancer	Horse	2	480F0C193F	
48 Horse	3	0006AD91E1	Foster	
49 BA Passionette	Horse	3	0006ADD267	
50 Horse	3	0006ADCD32		
51 Horse	3	00069CC8B0		
52 Horse	3	0006ABCB75	Foster	
53 Zabaska	Horse	4	0006A9BFF9	
54 Horse	3	0006A9C28D	Foster	
55 Horse	3	0006ABC5CE	Foster	
56 Horse	3	006AA06DE	Foster	
57 Horse	4	0006AE0ABD	Foster	
Dog_01 (Riggins)	Dog			
Dog_02	Dog			
Dog_03	Dog		Foster	
Dog_04	Dog			
Dog_05	Dog			
Dog_06 (Lola)	Dog			
Dog_07 (Jazzy)	Dog			

Owner: Elisabeth Perry
 Created: FEB-11-2008 8:36 AM (EST)
 Last Modified: FEB-07-2009 5:12 PM (EST) by Kaney, Denise

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

v.

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-40-1249

ORDER GRANTING
SUMMARY JUDGMENT

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



plaintiff's deposition. Plaintiff's counter-affidavits addressed only his status as a public official.

Rule 56(e), SCRPC 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), SCRPC. 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?

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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.

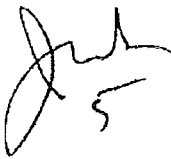
The second issue then is, did the Amended Complaint which for the first time identified these defendants as parties "relate back" to an earlier filed complaint which did not name these defendants, but listed thirteen (13) defendants identified individually by name and "ALL MEDIA COMPANIES THAT PRODUCED 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 (1996). 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*.

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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

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 he 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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Case No.: <u>2012-CP-40-4652</u>
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
	)	
The Humane Society for the	)	
Prevention of Cruelty to Animals,	)	
Wayne Brennessel, individually and	)	
as Executive Director of the Humane	)	
Society for the Prevention of Cruelty	)	
to Animals,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff James W. Trexler ("Plaintiff") pursuant to Rule 56 (e), SCRCP, and responds to the Humane Society for the Prevention of Cruelty to Animals and Wayne Brennessel, individually and as Executive Director of the Humane Society for the Prevention of Cruelty to Animals's (collectively "Defendants") Motion for Summary Judgment as follows:

INTRODUCTION

This is a malicious prosecution that arises out of the Humane Society for the Prevention of Cruelty to Animals' ("HSPCA") 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. This case also involves defamation arising out of statements Wayne Brennessel, Executive Director of the Human Society for the Prevention of Cruelty to Animals ("Brennessel") made to the media regarding the final disposition of the

misdemeanor and felony charges of ill treatment of animals against Plaintiff.

Plaintiff alleges that the HSPCA partnered with the Richland County Sheriff's Department in the malicious instigation and continuation of legal process against him without probable cause, and with actual or constructive knowledge Plaintiff was not involved with the activity and ownership upon which the charges against him were brought. Plaintiff further alleges Brennessel and the HSPCA defamed him by reporting to the media that he pleaded "no contest" to the charges when they had actual knowledge the charges against Plaintiff were dismissed, which report intentionally implied Plaintiff's guilt rather than announce his innocence. Plaintiff alleges that as a direct result of malicious prosecution and defamation by the Defendants, 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 as to both causes of action claiming there is no genuine issue of material fact as to both Plaintiff's causes of action, and they are entitled to summary judgment as a matter of law. Defendants' motion is without merit as ample evidence of disputed material facts exists in the record as to each cause of action, and 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"). Plaintiff has never had any interest in the ownership or operation of Carolina Arabian, or the horses owned by the company. 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. 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.

In February of 2008, the HSPCA allegedly received a report of malnourished horses at the Zeigler Rd. property. The HSPCA then partnered with the Richland County Sheriff's Department ("RCSD") to investigate the reported malnourished horses. On February 19, 2008, Hart and Perry from the HSPCA, Holly Wagner ("Wagner") of the RCSD, and Mary Ellen Tobias, a colleague of Plaintiff's at the South Carolina Department of Agriculture arranged a special meeting to formulate a strategy for investigating Plaintiff's mother and brother's horses and decided they needed to obtain a search warrant to enter the property and evaluate the horses.

On February 25, 2008, after obtaining the search warrant anticipated in the February 19th meeting, the HSPCA and the RCSD led a search of the Zeigler Rd. property in which over 16 agents or employees from the two organizations participated. The February 25th search of the Zeigler Rd. property resulted in the HSPCA and the RCSD confiscating every one of the twenty-three horses Plaintiff's mother and brother maintained at that property. At the time of the search and confiscation of the horses at the Zeigler Rd. property, the HSPCA and the RCSD had information that Plaintiff's

mother and brother owned the horses they were confiscating. Furthermore, when Plaintiff's mother arrived on the scene of the search and confiscation, she stated to the HSPCA, the RCSD, and the media in no uncertain terms that she owned all of the horses being confiscated from the Zeigler Rd. property.

On February 25, 2008, sometime during the search of the Zeigler Road property, the HSPCA allegedly received an "anonymous tip" that more undernourished horses were seen at 412 Derby Ln., where Plaintiff's mother and brother resided. Notwithstanding the HSPCA's stated policy that it does not accept anonymous tips, the HSPCA and the RCSD 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., which authorized the search of the residence and surrounding curtilage. That same day, the HSPCA and the RCSD executed a search of 412 Derby Ln., and confiscated each of the five horses they found at the property alleging the horses were neglected, without food and water, and that the investigators found no evidence whatsoever the horses were being fed. Following the search of 412 Derby Ln. and seizure of the horses at that location, the HSCPA, with the full knowledge 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.

On February 27, 2008, despite having no ownership interest in any horse or the land from which they were seized, Plaintiff was arrested and charged with five counts of misdemeanor mistreatment of animals. Prior to obtaining warrants for Plaintiff's arrest,

no one from the HSPCA or the RCSD checked any records whatsoever to determine if Plaintiff was the owner of the horses they confiscated from 412 Derby Ln.

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. Thereafter, the HSPCA continued to work closely with the RCSD and assistant solicitor Jill Andrews in the prosecution of the case against Plaintiff. Allegedly based on reports from the HSPCA concerning their 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.

On July 15, 2010, the Richland County Court of General Sessions dismissed all charges then pending against Plaintiff on the merits. Wayne Brennessel, president of the HSPCA was present in the courtroom on July 15, 2010 when the court dismissed the charges against Plaintiff. From the inception of the HSPCA and the RCSD's prosecution of Plaintiff until the court dismissed all charges on July 15, 2008, Plaintiff maintained his innocence, and pleaded accordingly. Nevertheless, following the court's dismissal of the case against Plaintiff, Brennessel reported to the media the Trexlers had pleaded no contest to the charges.

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.

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 HSPCA had Probable Cause to Arrest and Continue to Prosecute 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, 143S.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, Section 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, it is undisputed the HSPCA, through its agent Elizabeth Perry, instigated original judicial proceedings against Plaintiff. See Arrest Warrants for Plaintiff attached to his Complaint as Exhibits “B.1”- “B.2.” It is also undisputed that termination of such proceedings was in Plaintiff’s favor. See Dismissal of Charges attached as Exhibit “C” to Plaintiff’s Complaint. Plaintiff has also alleged monetary and reputation damage directly resulting from prosecution instigated and continued by the HSPCA. See Complaint at paragraphs 71 and 72.

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 the Grand Jury “true billed” the indictments against Plaintiff, creating “prima facie” evidence of probable cause. For this proposition, Defendants rely on Law v. S. Carolina Dept. of Corrections, 365 S.C. 424, 629 S.E.2d 642 (2006). However, in applying the law as set out in Law to the case at hand, Defendants overlook the crucial second half of the proposition. In Law, 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. In fact, in Law, the Court found the facts and circumstances underlying the instigation of proceedings against the Appellant supported the presumption of probable cause created by true-billed indictments by the Grand

Jury. The Law Court determined original proceedings against Appellant followed, and were the result of, a thorough investigation, included the interviews of over forty witnesses, and based on actual knowledge of historical conspiracy. Law at 437, 647.

Here, unlike in Law, evidence exists to show the HSPCA not only instigated proceedings against Plaintiff based on unreliable information from other individuals, without any performing independent investigation whatsoever, but it also obtained Plaintiff's arrest warrant by swearing as true facts in an affidavit to a Magistrate facts it did not know to be true. Elizabeth Perry, Cruelty Investigator for the HSPCA, 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 Elizabeth Perry, in fact, did not know, as she swore she did, that James Trexler 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.

In her deposition taken on January 17, 2012, counsel for Plaintiff asked Ms. Perry if she did any investigation before making the affidavit into whether Plaintiff owned the horses. Ms. Perry responded "they [horses] were on his property so -- I mean --" (Perry Depo. at 108:3, January 17, 2012). An excerpt of the forgoing is attached hereto as Exhibit "A." 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 that was not the only reason why, but she could not recall any other reasons. See id. at 108:4-13. In a separate case against the Richland County Sheriff's Department ("RCSD") for malicious prosecution based on the same operative facts (case number 2010-CP-40-1343), counsel for Plaintiff took the deposition of RCSD Investigator Holly Wagner who worked hand in hand with Elizabeth Perry and the HSPCA in the investigation and prosecution of Plaintiff. Counsel for Plaintiff asked 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. Investigator Wagner indicated to her knowledge, she did not know of any investigation that was done by the HSPCA into whether Plaintiff owned the horses he was accused of abusing. (Wagner Depo. 105:5-16, November 3, 2011). An excerpt of the foregoing is attached hereto as Exhibit "B." 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. (Wagner Depo. 112:11-15). An excerpt of the foregoing is attached hereto as Exhibit "C." When Counsel for Plaintiff asked Ms. Perry if she did any investigation into 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 Depo. 111:17-20). Ms. Perry also admitted she did no search of the ownership records of the subject horses to determine if Plaintiff owned them. See id. at 111:22-23. An excerpt of the foregoing is attached hereto as Exhibit "D."

More troubling still is the evidence that Elizabeth Perry lied in her affidavit to obtain an arrest warrant for Plaintiff. Ms. Perry's affidavit states that upon the HSPCA's search of the property purportedly belonging to Plaintiff, no food or hay was found on the property. 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 Depo. 113: 7-14). An excerpt of the foregoing is attached hereto as Exhibit "E."

RCSD Investigator Wagner admitted in her deposition that it would be improper for an

affiant, in order to obtain an arrest warrant, to swear to a judge as true facts he or she knew were false. (Wagner Depo. 111:11-14). An excerpt of the foregoing is attached hereto as Exhibit "F."

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.

Defendants claim that probable cause exists because the Grand Jury true-billed the indictments after evaluation of the underlying facts supporting the indictments. However, evidence exists that no facts at all were presented to the Grand Jury. Plaintiff has alleged, and it is undisputed that Holy Wagner presented the indictments to the Gran Jury and that she did nothing but read the indictments, and presented no underlying facts whatsoever. Therefore, evidence exists to support the proposition that the Grand Jury true-billed the indictments against Plaintiff based solely on the falsified information the HSPCA provided the magistrate in the affidavit to obtain his arrest warrant.

Unlike in Law cited by Defendants, the HSPCA did little to no investigation as to Plaintiff's ownership 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 of the arrest warrant obtained through falsehoods. As such, this Court should deny Defendants' motion for summary judgment as to Plaintiff's cause of action for malicious prosecution.

III. Plaintiff's Cause of Action for Defamation Must Survive Summary Judgment Because a Genuine Issue of Material Fact Exists as to Whether the HSPCA and Brennessel Acted Negligently or With Reckless Disregard for the Truth in Reporting the Trexlers pleaded No Contest

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).

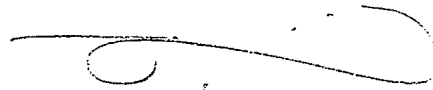
“[T]o prevail in a defamation action, a plaintiff must establish that the defendant's statement referred to some ascertainable person, and that the plaintiff was the person to whom the statement referred. Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (S.C.Ct.App.1997). Surrounding circumstances, however, 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 is a public official and must show that the HSPCA and Brennessel made the defamatory statements with actual malice. "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).

Plaintiff argues that he is not required to meet the heightened standard of actual malice to show defamatory intent because at the time the statements were made and published to third parties, Plaintiff was no longer a public official, having been fired from his post some two years earlier. Nevertheless, even were Plaintiff to be considered a public official, the inquiry into whether the HSPCA and Brennessel engaged in actual malice in defaming him is a question of fact for the jury to weight the circumstances and make a determination thereon. It is undisputed that Brennessel was present at in court for the disposition of all the charges against each Trexler. Brennessel had actual knowledge that Plaintiff did not plead no contest, and neither did

Plaintiff's mother. In reporting the Trexlers pleaded no contest, Brennessel published defamatory information which was not only not substantially true, but was totally wrong with regard to Plaintiff and two thirds wrong with regard to the three. Each and every article that was written about the Trexler involvement with the mistreatment of horses since February of 2008 included each Trexler, including Plaintiff. A question of fact exists as to whether the statement related to all Trexlers. Because genuine issues of material fact exist with regard to the defamation claim and the Plaintiff's status as a public official, this Court should deny Defendants' motion for summary judgment with regard to defamation.



W. Westbrook Wills III
Law Office of W. Westbrook Wills III
38 Broad Street
Suite 200
Charleston, SC 29401
(843) 805-6300 - tel.
(843) 278-9333 - fax
wwills@austinfowlerwills.com

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

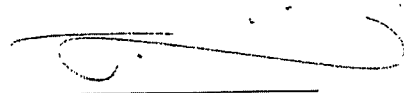
Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
(843) 693-4700 - tel.
(877) 524-5023 - fax
matt@matthamricklaw.com

This 6th day of September 2013
Charleston, South Carolina

Certificate of Service

I hereby certify that I have served a copy of the forgoing on counsel of record by hand delivery, and by U.S. Mail.

Dated: September 6, 2013


W. Westbrook Wills III

EXHIBIT

A

ELISABETH E. PERRY

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

GARBER REPORTING SERVICE



EXHIBIT

B

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.



EXHIBIT

C

1 James Trexler did commit the crime of ill treatment of
2 animals in that he is the owner of a two year old Bay
3 female with a body score of 1.5." Now, the question
4 is, at this point in time, did you know that James
5 Trexler was the owner of any of these horses?

6 A. No.

7 Q. Okay. To your knowledge, did Elizabeth Perry know for
8 sure that James Trexler was the owner of these horses?

9 MR. GARFIELD: Object to the form.

10 A. I don't know. No.

11 Q. Did Elizabeth Perry ever call you or communicate to
12 you in any way that she had evidence that James
13 Trexler owned the horses that were confiscated at 412
14 Derby Lane?

15 A. No.

16 Q. So, if James Trexler did not own these horses and this
17 was not true, that this Affidavit says that he was the
18 owner, and Elizabeth Perry did not know he was the
19 owner but represented that he was the owner, would
20 that be improper in order to obtain a Search Warrant?

21 A. Well, I mean, if she absolutely knew it was improper,
22 but it says that they have Probable Cause to believe.
23 You don't have to know a hundred percent, you just
24 believe that he is the owner of those animals.

25 Q. Okay.

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



EXHIBIT

D

ELISABETH E. PERRY

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?

GARBER REPORTING SERVICE



EXHIBIT

E

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.
JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.



EXHIBIT

F

ELISABETH E. PERRY

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.

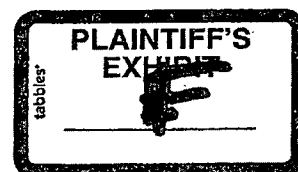
19 BY MR. WILLS:

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.

GARBER REPORTING SERVICE



THE LAW OFFICE OF
W. WESTBROOK WILLS III

W. WESTBROOK WILLS III
Admitted in Georgia & South Carolina

CIVIL TRIAL LAWYER
38 BROAD STREET
SUITE 200
CHARLESTON, SC 29401

TELEPHONE: (843) 805-6300
FACSIMILE: (866) 922-8596
wwills@wwillslaw.com

September 11, 2013

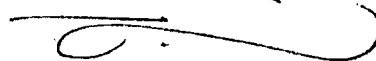
Honorable Alison R. Lee
P.O. Box 192
1701 Main Street, Room 324
Columbia, SC 29202-0192

RE: James W. Trexler v. Humane Society for the Prevention of Cruelty to Animals, et al. Civil Case No.: 2012-CP-40-4652: Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment with corrected exhibit.

Dear Judge Lee:

This letter follows the Friday, September 6, 2013 hearing of Defendants' Motion for Summary Judgment over which Your Honor presided. Immediately prior to the hearing, I handed you up Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment. During the hearing, it became apparent that we had provided the correct page number from the wrong deposition as our Exhibit D to the Memorandum. The memo defines Exhibit D as page 111 of Elisabeth Perry's deposition, and we inadvertently supplied page 111 or Holly Wagner's deposition. The Court, during the hearing allowed Plaintiff to resubmit the memorandum with the correct page as Exhibit D. Please, therefore, find enclosed a copy of the entire memorandum with the corrected Exhibit D. By copy of this letter I am providing the corrected version to opposing counsel. Judge Lee, for hearing the motion this past Friday and for your consideration of this matter.

Very truly yours,



W. Westbrook Wills III

Enclosure (as stated)

cc: John Tyler, Esq (w/enclosure)
William H. Johnson, Esq. (w/o enclosure)
Matthew D. Hamrick (w/o enclosure)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Case No.: <u>2012-CP-40-4652</u>
James W. Trexler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
	)	
The Humane Society for the	)	
Prevention of Cruelty to Animals,	)	
Wayne Brennessel, individually and	)	
as Executive Director of the Humane	)	
Society for the Prevention of Cruelty	)	
to Animals,	)	
	)	
Defendants.	)	
_____	)	

COMES NOW Plaintiff James W. Trexler ("Plaintiff") pursuant to Rule 56 (e), SCRCP, and responds to the Humane Society for the Prevention of Cruelty to Animals and Wayne Brennessel, individually and as Executive Director of the Humane Society for the Prevention of Cruelty to Animals's (collectively "Defendants") Motion for Summary Judgment as follows:

INTRODUCTION

This is a malicious prosecution that arises out of the Humane Society for the Prevention of Cruelty to Animals' ("HSPCA") 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. This case also involves defamation arising out of statements Wayne Brennessel, Executive Director of the Human Society for the Prevention of Cruelty to Animals ("Brennessel") made to the media regarding the final disposition of the

misdemeanor and felony charges of ill treatment of animals against Plaintiff.

Plaintiff alleges that the HSPCA partnered with the Richland County Sheriff's Department in the malicious instigation and continuation of legal process against him without probable cause, and with actual or constructive knowledge Plaintiff was not involved with the activity and ownership upon which the charges against him were brought. Plaintiff further alleges Brennessel and the HSPCA defamed him by reporting to the media that he pleaded "no contest" to the charges when they had actual knowledge the charges against Plaintiff were dismissed, which report intentionally implied Plaintiff's guilt rather than announce his innocence. Plaintiff alleges that as a direct result of malicious prosecution and defamation by the Defendants, 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 as to both causes of action claiming there is no genuine issue of material fact as to both Plaintiff's causes of action, and they are entitled to summary judgment as a matter of law. Defendants' motion is without merit as ample evidence of disputed material facts exists in the record as to each cause of action, and 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"). Plaintiff has never had any interest in the ownership or operation of Carolina Arabian, or the horses owned by the company. 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. 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.

In February of 2008, the HSPCA allegedly received a report of malnourished horses at the Zeigler Rd. property. The HSPCA then partnered with the Richland County Sheriff's Department ("RCSD") to investigate the reported malnourished horses. On February 19, 2008, Hart and Perry from the HSPCA, Holly Wagner ("Wagner") of the RCSD, and Mary Ellen Tobias, a colleague of Plaintiff's at the South Carolina Department of Agriculture arranged a special meeting to formulate a strategy for investigating Plaintiff's mother and brother's horses and decided they needed to obtain a search warrant to enter the property and evaluate the horses.

On February 25, 2008, after obtaining the search warrant anticipated in the February 19th meeting, the HSPCA and the RCSD led a search of the Zeigler Rd. property in which over 16 agents or employees from the two organizations participated. The February 25th search of the Zeigler Rd. property resulted in the HSPCA and the RCSD confiscating every one of the twenty-three horses Plaintiff's mother and brother maintained at that property. At the time of the search and confiscation of the horses at the Zeigler Rd. property, the HSPCA and the RCSD had information that Plaintiff's

mother and brother owned the horses they were confiscating. Furthermore, when Plaintiff's mother arrived on the scene of the search and confiscation, she stated to the HSPCA, the RCSD, and the media in no uncertain terms that she owned all of the horses being confiscated from the Zeigler Rd. property.

On February 25, 2008, sometime during the search of the Zeigler Road property, the HSPCA allegedly received an "anonymous tip" that more undernourished horses were seen at 412 Derby Ln., where Plaintiff's mother and brother resided. Notwithstanding the HSPCA's stated policy that it does not accept anonymous tips, the HSPCA and the RCSD 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., which authorized the search of the residence and surrounding curtilage. That same day, the HSPCA and the RCSD executed a search of 412 Derby Ln., and confiscated each of the five horses they found at the property alleging the horses were neglected, without food and water, and that the investigators found no evidence whatsoever the horses were being fed. Following the search of 412 Derby Ln. and seizure of the horses at that location, the HSCPA, with the full knowledge 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.

On February 27, 2008, despite having no ownership interest in any horse or the land from which they were seized, Plaintiff was arrested and charged with five counts of misdemeanor mistreatment of animals. Prior to obtaining warrants for Plaintiff's arrest,

no one from the HSPCA or the RCSD checked any records whatsoever to determine if Plaintiff was the owner of the horses they confiscated from 412 Derby Ln.

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. Thereafter, the HSPCA continued to work closely with the RCSD and assistant solicitor Jill Andrews in the prosecution of the case against Plaintiff. Allegedly based on reports from the HSPCA concerning their 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.

On July 15, 2010, the Richland County Court of General Sessions dismissed all charges then pending against Plaintiff on the merits. Wayne Brennessel, president of the HSPCA was present in the courtroom on July 15, 2010 when the court dismissed the charges against Plaintiff. From the inception of the HSPCA and the RCSD's prosecution of Plaintiff until the court dismissed all charges on July 15, 2008, Plaintiff maintained his innocence, and pleaded accordingly. Nevertheless, following the court's dismissal of the case against Plaintiff, Brennessel reported to the media the Trexlers had pleaded no contest to the charges.

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), SCRCP. 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), SCRCP.

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 HSPCA had Probable Cause to Arrest and Continue to Prosecute 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, 143S.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, Section 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, it is undisputed the HSPCA, through its agent Elizabeth Perry, instigated original judicial proceedings against Plaintiff. See Arrest Warrants for Plaintiff attached to his Complaint as Exhibits “B.1”- “B.2.” It is also undisputed that termination of such proceedings was in Plaintiff’s favor. See Dismissal of Charges attached as Exhibit “C” to Plaintiff’s Complaint. Plaintiff has also alleged monetary and reputation damage directly resulting from prosecution instigated and continued by the HSPCA. See Complaint at paragraphs 71 and 72.

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 the Grand Jury “true billed” the indictments against Plaintiff, creating “prima facie” evidence of probable cause. For this proposition, Defendants rely on Law v. S. Carolina Dept. of Corrections, 365 S.C. 424, 629 S.E.2d 642 (2006). However, in applying the law as set out in Law to the case at hand, Defendants overlook the crucial second half of the proposition. In Law, 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. In fact, in Law, the Court found the facts and circumstances underlying the instigation of proceedings against the Appellant supported the presumption of probable cause created by true-billed indictments by the Grand

Jury. The Law Court determined original proceedings against Appellant followed, and were the result of, a thorough investigation, included the interviews of over forty witnesses, and based on actual knowledge of historical conspiracy. Law at 437, 647.

Here, unlike in Law, evidence exists to show the HSPCA not only instigated proceedings against Plaintiff based on unreliable information from other individuals, without any performing independent investigation whatsoever, but it also obtained Plaintiff's arrest warrant by swearing as true facts in an affidavit to a Magistrate facts it did not know to be true. Elizabeth Perry, Cruelty Investigator for the HSPCA, 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 Elizabeth Perry, in fact, did not know, as she swore she did, that James Trexler 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.

In her deposition taken on January 17, 2012, counsel for Plaintiff asked Ms. Perry if she did any investigation before making the affidavit into whether Plaintiff owned the horses. Ms. Perry responded "they [horses] were on his property so -- I mean --" (Perry Depo. at 108:3, January 17, 2012). An excerpt of the forgoing is attached hereto as Exhibit "A." 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 that was not the only reason why, but she could not recall any other reasons. See id. at 108:4-13. In a separate case against the Richland County Sheriff's Department ("RCSD") for malicious prosecution based on the same operative facts (case number 2010-CP-40-1343), counsel for Plaintiff took the deposition of RCSD Investigator Holly Wagner who worked hand in hand with Elizabeth Perry and the HSPCA in the investigation and prosecution of Plaintiff. Counsel for Plaintiff asked 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. Investigator Wagner indicated to her knowledge, she did not know of any investigation that was done by the HSPCA into whether Plaintiff owned the horses he was accused of abusing. (Wagner Depo. 105:5-16, November 3, 2011). An excerpt of the foregoing is attached hereto as Exhibit "B." 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. (Wagner Depo. 112:11-15). An excerpt of the foregoing is attached hereto as Exhibit "C." When Counsel for Plaintiff asked Ms. Perry if she did any investigation into 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 Depo. 111:17-20). Ms. Perry also admitted she did no search of the ownership records of the subject horses to determine if Plaintiff owned them. See id. at 111:22-23. An excerpt of the foregoing is attached hereto as Exhibit "D."

More troubling still is the evidence that Elizabeth Perry lied in her affidavit to obtain an arrest warrant for Plaintiff. Ms. Perry's affidavit states that upon the HSPCA's search of the property purportedly belonging to Plaintiff, no food or hay was found on the property. 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 Depo. 113: 7-14). An excerpt of the foregoing is attached hereto as Exhibit "E."

RCSD Investigator Wagner admitted in her deposition that it would be improper for an

affiant, in order to obtain an arrest warrant, to swear to a judge as true facts he or she knew were false. (Wagner Depo. 111:11-14). An excerpt of the foregoing is attached hereto as Exhibit "F."

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.

Defendants claim that probable cause exists because the Grand Jury true-billed the indictments after evaluation of the underlying facts supporting the indictments. However, evidence exists that no facts at all were presented to the Grand Jury. Plaintiff has alleged, and it is undisputed that Holy Wagner presented the indictments to the Gran Jury and that she did nothing but read the indictments, and presented no underlying facts whatsoever. Therefore, evidence exists to support the proposition that the Grand Jury true-billed the indictments against Plaintiff based solely on the falsified information the HSPCA provided the magistrate in the affidavit to obtain his arrest warrant.

Unlike in Law cited by Defendants, the HSPCA did little to no investigation as to Plaintiff's ownership 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 of the arrest warrant obtained through falsehoods. As such, this Court should deny Defendants' motion for summary judgment as to Plaintiff's cause of action for malicious prosecution.

III. Plaintiff's Cause of Action for Defamation Must Survive Summary Judgment Because a Genuine Issue of Material Fact Exists as to Whether the HSPCA and Brennessel Acted Negligently or With Reckless Disregard for the Truth in Reporting the Trexlers pleaded No Contest

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).

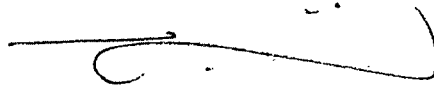
“[T]o prevail in a defamation action, a plaintiff must establish that the defendant's statement referred to some ascertainable person, and that the plaintiff was the person to whom the statement referred. Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (S.C.Ct.App.1997). Surrounding circumstances, however, 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 is a public official and must show that the HSPCA and Brennessel made the defamatory statements with actual malice. “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).

Plaintiff argues that he is not required to meet the heightened standard of actual malice to show defamatory intent because at the time the statements were made and published to third parties, Plaintiff was no longer a public official, having been fired from his post some two years earlier. Nevertheless, even were Plaintiff to be considered a public official, the inquiry into whether the HSPCA and Brennessel engaged in actual malice in defaming him is a question of fact for the jury to weight the circumstances and make a determination thereon. It is undisputed that Brennessel was present at in court for the disposition of all the charges against each Trexler. Brennessel had actual knowledge that Plaintiff did not plead no contest, and neither did

Plaintiff's mother. In reporting the Trexlers pleaded no contest, Brennessel published defamatory information which was not only not substantially true, but was totally wrong with regard to Plaintiff and two thirds wrong with regard to the three. Each and every article that was written about the Trexler involvement with the mistreatment of horses since February of 2008 included each Trexler, including Plaintiff. A question of fact exists as to whether the statement related to all Trexlers. Because genuine issues of material fact exist with regard to the defamation claim and the Plaintiff's status as a public official, this Court should deny Defendants' motion for summary judgment with regard to defamation.



W. Westbrook Wills III
Law Office of W. Westbrook Wills III
38 Broad Street
Suite 200
Charleston, SC 29401
(843) 805-6300 - tel.
(843) 278-9333 - fax
wwills@austinfowlerwills.com

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

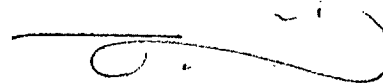
Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
(843) 693-4700 - tel.
(877) 524-5023 - fax
matt@matthamricklaw.com

This 6th day of September 2013
Charleston, South Carolina

Certificate of Service

I hereby certify that I have served a copy of the forgoing on counsel of record by hand delivery, and by U.S. Mail.

Dated: September 6, 2013

A handwritten signature in black ink, consisting of a horizontal line followed by a large, stylized loop and a final upward stroke.

W. Westbrook Wills III

EXHIBIT

A

ELISABETH E. PERRY

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.

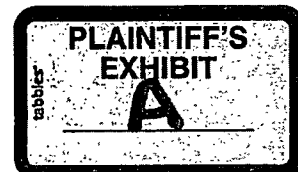
21 MR. GARFIELD: Okay. I'm sorry.

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

GARBER REPORTING SERVICE



EXHIBIT

B

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?

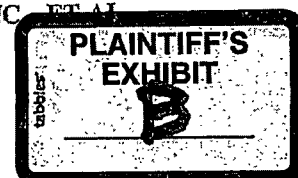
20 A. I don't know. I don't recall.

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?

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JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC. ET AL.



EXHIBIT

C

1 James Trexler did commit the crime of ill treatment of
2 animals in that he is the owner of a two year old Bay
3 female with a body score of 1.5." Now, the question
4 is, at this point in time, did you know that James
5 Trexler was the owner of any of these horses?

6 A. No.

7 Q. Okay. To your knowledge, did Elizabeth Perry know for
8 sure that James Trexler was the owner of these horses?

9 MR. GARFIELD: Object to the form.

10 A. I don't know. No.

11 Q. Did Elizabeth Perry ever call you or communicate to
12 you in any way that she had evidence that James
13 Trexler owned the horses that were confiscated at 412
14 Derby Lane?

15 A. No.

16 Q. So, if James Trexler did not own these horses and this
17 was not true, that this Affidavit says that he was the
18 owner, and Elizabeth Perry did not know he was the
19 owner but represented that he was the owner, would
20 that be improper in order to obtain a Search Warrant?

21 A. Well, I mean, if she absolutely knew it was improper,
22 but it says that they have Probable Cause to believe.
23 You don't have to know a hundred percent, you just
24 believe that he is the owner of those animals.

25 Q. Okay.

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JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.



EXHIBIT

D

ELISABETH E. PERRY

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?

GARBER REPORTING SERVICE



EXHIBIT

E

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

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JAMES W. TREXLER V. McCLATCHY NEWSPAPERS, INC., ET AL.



EXHIBIT

F

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2 independent investigation into the facts that are
3 being told to him before issuing a Warrant?

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Circuit Court Case No. 2012-CP-40-04652
S.C. Court of Appeals Case No. 2014-000663

James W. Trexler,

Appellant,

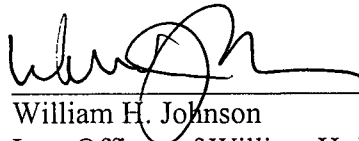
v.

The Humane Society for the
Prevention of Cruelty to Animals,
and Wayne Brennessel, individually
and as Executive Director of
The Humane Society for the
Prevention of Cruelty to Animals,

Respondents.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal (as amended) in the above-referenced case contains all material proposed to be included by any of the parties and not any other material.



William H. Johnson
Law Offices of William H. Johnson, LLC
411 North Brooks Street
Post Office Box 137
Manning, South Carolina 29102
(803) 435-0909 (telephone)
(803) 435-2858 (facsimile)

-and-

W. Westbrook Wills III
Attorney at Law
38 Broad Street
Suite 200
Charleston, SC 29401
(843) 805-6300 (telephone)
(843) 278- 9333 (facsimile)

-and-

Matthew D. Hamrick
Attorney at Law
Tidewater Executive Center
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 693-4700 (telephone)
(877) 524-5023 (facsimile)

ATTORNEYS FOR APPELLANT

Other counsel of record:

Roopal R. Samuels, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
P.O. Box 11889
Columbia, SC 29211-1889

William O. Sweeny, III, Esquire
John E. Tyler, Esquire
SWEENEY, WINGATE & BARROW, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, SC 29211

ATTORNEYS FOR RESPONDENTS

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

Alison Renee Lee, Circuit Court Judge

Circuit Court Case No. 2012-CP-40-04652
S.C. Court of Appeals Case No. 2014-000663

James W. Trexler,

Appellant,

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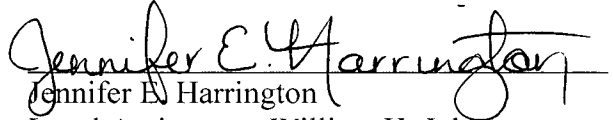
Respondents.

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 (as amended)**, 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:

William O. Sweeny, III, Esquire
John E. Tyler, Esquire
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129 – 1515 Lady Street
Columbia, South Carolina 29211

Roopal S. Ruparelia, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889 – 1201 Main St., 22nd Floor
Columbia, South Carolina 29211-1889


Jennifer E. Harrington
Legal Assistant to William H. Johnson

April 27, 2015
Manning, South Carolina