

The Supreme Court of South Carolina

Robert Glenn Greene, Appellant,

v.

State Law Enforcement Division, and SLED Agent
Roger Heaton, Respondents.

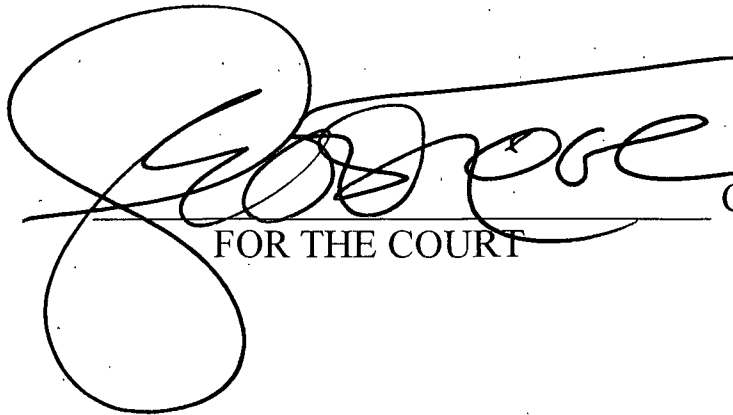
Appellate Case No. 2011-196689

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court.

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

August 30, 2012

cc:

Elloree A. Ganes

Mark V. Evans

Robert H. Hood

Robert Holmes Hood, Jr.

Deborah Harrison Sheffield

The Honorable Jenny Kitchings



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V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Calhoun Building
1015 Sumter Street
Columbia, South Carolina 29201

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Allen:

Enclosed herewith for filing, please find an original unbound, fifteen bound copies and one unbound copy of the Final Brief of Appellant regarding the referenced matter. Please file the original and return the unbound clocked copy to me in the enclosed envelope. By copy of this letter with enclosure, I am serving Robert H. Hood and Ellore A. Ganes, attorneys for Respondents.

I thank you for your kind assistance.

Sincerely,

Tracey O'Brien
Legal Assistant

Enclosures

cc: Robert H. Hood, Esquire & Ellore A. Ganes, Esquire

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SC Court of Appeals



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I thank you for your kind assistance.

Sincerely,

Tracey O'Brien
Legal Assistant

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Enclosures

cc: Robert H. Hood, Esquire & Ellore A. Ganes, Esquire

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July 20, 2012

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent Roger Heaton
C/A No. 10-CP-10-718, Charleston CP
Tracking No. 20111196689
HLF File No.1.114

Dear Ms. Kitchings:

Enclosed please find the unbound original and fifteen bound copies of the Final Brief of Respondent in the above-referenced matter. Also enclosed is our Certificate of Service. Please return a clocked-in copy of each in the envelope provided. By copy of this letter, we are serving all counsel.

Kind regards,

Yours truly,


Ellore A. Ganes

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cc: Mark V. Evans, Esquire



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RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Allen:

Enclosed herewith for filing, please find an original and one copy of Proof of Service of the Record on Appeal upon Ellore A. Ganes, attorney for Respondents, regarding the referenced matter. Please file the original and return a clocked copy to me in the enclosed envelope.

I thank you for your kind assistance.

Sincerely,

Tracey O'Brien
Legal Assistant

enclosure

cc: Ellore A. Ganes, Esquire

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SC Court of Appeals



The South Carolina Court of Appeals

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Re: Greene, Robert v. SLED
Appellate Case No. 2011-196689

Dear Counsel:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front

and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1205 Pendleton Street, Columbia, S.C. 29201. Thank you for your attention to this.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

**The State of South Carolina
In the Court of Appeals**

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Judge

Case No. 2010-CP-10-00718

Robert Glenn Greene,

Appellant,

v.

State Law Enforcement Division, and
SLED Agent Roger Heaton,

Defendants,

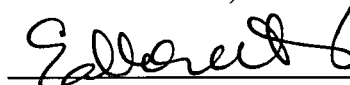
Of whom State Law Enforcement Division is

Respondent.

**RESPONDENT'S DESIGNATION OF ADDITIONAL MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 209, SCACR, Respondent designates the following item for inclusion in the Record on Appeal in addition to those designated by the Appellant: Order of dismissal as to Defendant Heaton, filed June 24, 2011. The undersigned certifies that this Designation contains no material which is irrelevant to the appeal.

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Attorneys for the Respondent

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June 6, 2012

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**The State of South Carolina
In the Court of Appeals**

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Judge

Case No. 2010-CP-10-00718

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SC Court of Appeals

Robert Glenn Greene,

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Defendants,

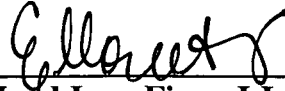
Of whom State Law Enforcement Division is

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy the Respondent's Designation of Additional Matter to be Included in the Record on Appeal and the Initial Brief of Respondent have been mailed to counsel for Appellant this 6th day of June, 2012 addressed as follows:

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Mark V. Evans, Esquire
Query Sautter, Gliserman & Price, LLC
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June 6, 2012

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent Roger Heaton
C/A No. 10-CP-10-718, Charleston CP
Tracking No. 20111196689
HLF File No.1.114

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Respondent and Respondent's Designations of Additional Matter to be Included in the Record in the above-referenced matter. Also enclosed is our Certificate of Service. Please return a clocked-in copy of each in the envelope provided. By copy of this letter, we are serving all counsel.

Kind regards,

Yours truly,



Elloree A. Ganes

EAG/jad

Enclosure

cc: Mark V. Evans, Esquire

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SC Court of Appeals

**The State of South Carolina
In the Court of Appeals**

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Judge

Case No. 2010-CP-10-00718

Robert Glenn Greene,

Appellant,

v.

State Law Enforcement Division, and
SLED Agent Roger Heaton,

Defendants,

Of whom State Law Enforcement Division is

Respondent.

INITIAL BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Trial Court properly grant summary judgment to SLED on the cause of action for gross negligence in entering incorrect information in his criminal history record where the evidence establishes that SLED only entered the information that was provided by the Charleston County Clerk of Court?
- II. Did the Trial Court properly grant summary judgment to SLED on the cause of action for defamation because SLED is entitled to a qualified privilege in operating the State's criminal history record system?
- III. Did the Trial Court properly grant summary judgment to SLED because any cognizable claim the Plaintiff might have had was barred by the applicable statutes of limitations?

STATEMENT OF THE CASE

The Plaintiff commenced this defamation and negligence action against the State Law Enforcement Division (SLED), and SLED Agent Roger Heaton, on January 28, 2010. [ROA ___; Complaint, filed January 28, 2010.] He alleged that Agent Heaton placed false information in his criminal record, and that SLED was grossly negligent in failing to insure that the information in his criminal record was accurate.

The Defendants filed their answer on April 2, 2010, denying the allegations and asserting various defenses, privileges, and immunities under the S.C. Tort Claims Act. [ROA ___; Answer, filed April 2, 2010.] After engaging in discovery, the Defendants filed a Motion to Dismiss or in the Alternative, Motion for Summary Judgment. [ROA ___, ___, ___; Motion, filed January 28, 2011; Memorandum in Support of Motion to Dismiss, filed June 15, 2011, with excerpts from Deposition of Plaintiff Robert Green, Affidavit of Roger Heaton, and Affidavit of Bethany Sorenson.] Defendants sought summary judgment on the following grounds: (1) that SLED was not grossly negligent in entering the data as it was provided by the Charleston County Clerk of Court; (2) that the alleged communication is protected by qualified privilege; and (3) the Plaintiff's claims are barred by the two-year statute of limitations.

A hearing was held on the Defendants' Motion on June 17, 2011. [ROA ___; Hearing, June 17, 2011.] Plaintiff stipulated to the dismissal of Agent Heaton, and the Trial Court granted summary judgment to SLED. [ROA ___, ___; Order of dismissal as to Defendant Heaton, filed June 24, 2011; Order granting summary judgment, filed July 6, 2011.] Thereafter, the Plaintiff timely appealed.

STATEMENT OF THE FACTS

Plaintiff alleges in his Complaint the following facts:

¶7. During 2005 and 2006, Plaintiff had been romantically involved with a woman, who was the estranged wife of Defendant Heaton.

¶8. In early February 2006, Plaintiff attempted to purchase a firearm from a dealer.

¶9. The dealer refused to sell a firearm to the Plaintiff. Plaintiff later learned this denial was based on the fact that a criminal records check by SLED purportedly indicated there was a felony conviction on Plaintiff's criminal record.

¶10. According to the "arrest record" compiled and maintained by SLED, Plaintiff had a previous conviction for the offense of "committing a lewd act upon a child under 16" and had, in fact, served time in prison for the crime.

¶11. SLED's criminal records information regarding Plaintiff indicating that he had been charged, convicted and sentenced to prison for committing a lewd act upon a child, was a total fabrication, as it never occurred.

¶12. Plaintiff made inquiry into the denial to purchase a firearm and on August 2, 2006, the U.S. Department of Justice responded to his inquiry. The letter indicated Plaintiff may or may not be the individual with the subject conviction so he assumed there had been a mistake or that the letter was referring to "another individual."

¶13. Plaintiff first learned that there was in fact untrue information contained in his criminal record during unrelated litigation in February 2008.

¶14. Plaintiff was ultimately able to get SLED to remove the false information from his records in March 2008.

¶15. Upon information and belief, Defendant Heaton, a SLED employee, either intentionally placed or allowed another person to place the untrue information on the Plaintiff's criminal record in order to damage his reputation in the community.

[ROA ___ - ___; Complaint.]

Evidence of the entry of the charge in the SLED criminal records database

Bethany Sorenson, a SLED employee, who maintained the criminal records for SLED, personally researched the matter and submitted documentation of SLED access data of the Plaintiff's criminal record between the dates of January 1, 2006, and March 31, 2008. [ROA ___; Affidavit of Bethany Sorenson, with Exhibit A.] As established by Ms. Sorenson's testimony, information that Plaintiff Robert Glenn Greene had been convicted on a charge of committing a lewd act upon a child was provided to SLED by State Court Administration from the Charleston County Clerk of Court, on or about February 10, 2006. In fact, a Robert *Jerome* Green had been convicted of committing a lewd act on a minor, while about the same time, the Plaintiff Robert *Glenn* Greene had a charge for criminal domestic violence of a high and aggravated nature. [ROA ___; Exhibit A, Res (1st supp) 0007-0008.] On or about February 17, 2006, the Charleston County Clerk of Court resubmitted the information to SLED, but it was still incorrect. [ROA ___; Exhibit A - 0004.] Later, Charleston County made a correction to its files, but SLED was not provided with notice of the change. Ms. Sorenson corrected the Plaintiff's record in the SLED data records by deleting the charge of committing a lewd act on a minor in March 2008, when the Plaintiff finally raised the issue with SLED. [ROA ___; Sorenson Affidavit.] Agent Heaton has never had access to or authority to enter, delete or alter any information on criminal records. [ROA ___; Sorenson Affidavit.]

Evidence relating to the Denial of the Plaintiff's Attempt to Purchase a Firearm

By way of background, federal law mandates a criminal history background check on any person who attempts to purchase a firearm from a Federal Firearms Licensee. The

Brady Handgun Violence Prevention Act of 1993, codified at 18 U.S.C. Section 921 et seq. The Brady Act established the NICS, a system comprising data on persons who are prohibited from purchasing or possessing a firearm under the Brady Act or under state law. The NICS is accessed by the FBI or a state point of contact (POC) prior to transferring a firearm. [See Background Checks for Firearm Transfers, 2006 - Statistical Tables; <http://bjs.ojp.usdoj.gov/content/pub/pdf/bcft06st.pdf>.]

The evidence of record does not establish exactly when the Plaintiff applied to purchase the firearm as alleged in Paragraph 8 of his Complaint; however, if it was early February as alleged, then the lewd act charge would not have yet been in his criminal history. As the Plaintiff alleges, he did receive a letter from the Federal Bureau of Investigation, U.S. Department of Justice, dated August 2, 2006. [ROA ___; Greene 23-25.] This letter established that the Plaintiff had inquired about the denial to purchase a firearm, and put the Plaintiff on notice that the purchase had been denied because

... either you or another individual with a similar name and/or similar descriptive features has been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

[ROA ___; Greene 23.] The FBI letter advised the Plaintiff that he could obtain a copy of his record and also explained the process by which he could challenge the denial if he disputed his criminal record: "If you believe that you are not the individual whose FBI identification record is on file, you must also submit positive proof of your identity." [Id.] Plaintiff did not avail himself of the available process. In fact, Plaintiff took no action in response to the letter.

ARGUMENT

Summary Judgment ~ Standard of Review

Rule 56(c), SCRCP, mandates that summary judgment be granted when the movant shows “that there is no genuine issue as to any material fact and that the movant is entitled to summary judgment as a matter of law.” When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857, 860 (2002). An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56. Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (2001).

I. SLED was not grossly negligent by entering the information provided by the Charleston County Clerk of Court.

Under the S.C. Tort Claims Act, SLED can only be held liable for exercising its responsibility or duty in a grossly negligent manner. S.C. Code Ann. § 15-78-60(25).

Gross negligence is “the failure to exercise slight care”:

It has also been defined as ‘the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.’ Gross negligence ‘is a relative term, and means the absence of care that is necessary under the circumstances.’

Plyler v. Burns, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007) (quoting Steinke v. S.C. Dep’t of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142, 152 (1999)).

Gross negligence is a mixed question of law and fact, ordinarily presented to the jury “*unless the evidence supports only one reasonable inference.*” Worsley Companies, Inc. v. Town of Mount Pleasant, 339 S.C. 51, 57, 528 S.E.2d 657, 661 (2000)(affirming grant of summary judgment finding of no gross negligence).

Here, the Plaintiff originally alleged that Agent Heaton caused the false information to be entered into his record out of personal animosity, but the evidence shows that SLED correctly entered the information as provided by the Charleston County Clerk of Court. Despite this evidence, the Plaintiff alleges that SLED was grossly negligent in failing to verify the accuracy of the conviction information it received. As the Trial Court correctly stated, however, SLED's duty is to maintain and keep the records. The Trial Court properly rejected the Plaintiff's contention that SLED has responsibility to check all the information submitted to their office, and correctly found that SLED has the right to rely on the law enforcement agencies that are providing it the information. [ROA ___ - ___; Transcript 10:18 – 11:4.]

SLED is charged by statute with operating a criminal justice information system:

There is hereby established as a department within the State Law-Enforcement Division a statewide criminal information and communication system, hereinafter referred to in this article as "the system," with such functions as the Division may assign to it and with such authority, in addition to existing authority vested in the Division, as is prescribed in this article.

S.C. Code Ann. § 23-3-110. A corresponding statute compels all law enforcement agencies and court officials to report criminal data to SLED:

(A) All law enforcement agencies and court officials must report all criminal data and related information within their respective jurisdictions to the State Law Enforcement Division's Central Record Repository at such times and in such form as the State Law Enforcement Division requires.

S.C. Code Ann. § 23-3-120; see also S.C. Code Regs. 73-30. In addition, SLED is authorized to establish rules and regulations to carry out its commission:

The State Law-Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23-3-120, and the methods by which such

information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

S.C. Code Ann. § 23-3-130. Accordingly, SLED has promulgated Regulations, S.C. Code Ann. Regs. 73-20 to 73-28; and certain policies. [ROA ___; Res (2d Supp) RFP 0001-0010.]

To fulfill its responsibility, SLED has established the Criminal Justice Information System Department (SLED/CJIS) to act as the State's central criminal justice information repository and to collect, process, and store criminal history record information "as provided to SLED/CJIS by other criminal justice agencies." S.C. Code Ann. Regs. 73-2; SLED Policy No. 7.1. SLED/CJIS also operates "a telecommunications system to assist in the dissemination of criminal justice information and record with due regard to the privacy interests of individuals and shall strive to maintain and disseminate only accurate and complete records." SLED Policy No. 7.1 [ROA ___; Res (2nd Supp) RFP 0002.]

Regulation 73-21 provides that: "The SLED/CJIS will collect, process, maintain, and disseminate information and records with due regard to the privacy of individuals, and will maintain and disseminate only accurate and complete records." Regulation 73-22, entitled "Completeness and Accuracy of Records" directs that: "A. The Criminal Records Department will maintain complete and accurate criminal history record information *as submitted by criminal justice agencies.*" S.C. Code Ann. Regs. 73-23 (emphasis added).

Accepting for the purposes of summary judgment, but without conceding, that SLED's regulations and policy create a duty to maintain accurate records, SLED's duty

was to enter accurately the information submitted by the Charleston County Clerk of Court and the evidence establishes that SLED complied with that duty. As the Trial Court noted, SLED is not duty bound to check the accuracy of all the information submitted to it. And, even assuming for the sake of argument that there was some duty, there is no evidence of gross negligence in the case at hand. Accordingly, the grant of summary judgment should be affirmed.

II. SLED is entitled to a qualified privilege in operating the State's criminal history record system.

“The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff.” Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 748 (Ct. App. 2001) (citing Fleming v. Rose, supra; and Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999)). To prevail on a defamation claim, the plaintiff must establish four elements: (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. Murray v. Holnam, 542 S.E.2d at 748.

“In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege to a defamation claim. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused.” *Id.* (quoting Swinton Creek Nursery v. Edisto Farm Credit,

supra.) A communication is qualifiedly privileged if it is “made in good faith on any subject matter in which the person communicating has an interest or duty” and “made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable.” Murray v. Holnam, Inc., 542 S.E.2d at 749.

The essential elements of a conditionally privileged communication are: (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. Conwell v. Spur Oil Co. of W. S. Carolina, 240 S.C. 170, 125 S.E.2d 270, 275 (1962). However, a defendant may lose the privilege if he goes beyond what his duty requires, and is unnecessarily defamatory of the plaintiff. Murray v. Holnam, 542 S.E.2d at 749 (“The protection of a qualified privilege may be lost by the manner of its exercise.”)

The question of whether the statement is privileged is a question for the trial judge, while the question of whether the publication went too far is a question for the jury. *Id.* However, if there is no controversy as to the facts, the trial court may determine whether or not the privilege has been exceeded. *Id.* Here, the evidence establishes that SLED had a qualified privilege because it acted in accordance with its legislative mandate by entering the information provided by the Charleston County Clerk of Court in good faith, and providing access only to law enforcement agencies and other proper authorities.

The Plaintiff argues that SLED is not protected by the privilege because the false criminal record was used against him in 2007 when he was the victim of a crime in Berkeley County. According to the Plaintiff, a Berkeley County Sheriff’s Detective (Maggie Carver) told his girlfriend (Patty Hesseltine) that he was a convicted sex

offender. [ROA ___; Greene Dep. 35:9-37:7.] He further testified that even though he was a victim, he had been treated poorly (“like a sex offender”) by the law enforcement detectives, the solicitor, the judge and even the advocate for victims of violent crimes. He speculates that he was treated in this manner because the individuals had seen the lewd act conviction on his criminal record. [ROA ___; Greene Dep. 35:23 – 36:6.] The Plaintiff’s testimony and supposition do not support his contention that SLED is not entitled to qualified privilege. To the extent that Berkeley County (and the FBI) accessed the information through the SLED/CJIS, they were proper parties with a proper purpose. SLED cannot be held to have exceeded the privilege because someone in Berkeley County allegedly misused the information.

While there are no reported appellate decisions in South Carolina dealing with the qualified privilege as applied to communications between law enforcement agencies, the decision in White v. State of California, 17 Cal. App. 3d 621, 95 Cal. Rptr. 175, 176 (Ct. App. 1971), supports the grant of summary judgment to SLED in this case. There, the plaintiff brought an action against the State of California and its Bureau of Criminal Identification and Investigation, asserting claims for libel and negligence based on allegations that the Bureau negligently disseminated erroneous information that had been negligently placed on his record. The court held that the dissemination was conditionally or qualifiedly privileged:

The information came from a law enforcement agency, and the Bureau was under a statutory duty to record and disseminate such information to authorized persons. Thus, we hold that the Bureau's dissemination of information was conditionally privileged.

Id. at 181. Finding no evidence of any malice to negate the privilege, the trial court granted a nonsuit after opening statements and the appellate court affirmed.

In the case at hand, the information came from the Charleston County Clerk of Court and SLED was under a statutory duty to record and disseminate the information to such authorized persons as the FBI and Berkeley County. Accordingly, SLED established the elements of the defense of qualified privilege, and the entry of summary judgment should be affirmed.

III. The Plaintiff's claims are barred by two-year statute of limitations.

The Plaintiff has pled causes of action for defamation and gross negligence. Both claims are subject to two-year statutes of limitations. S.C. Code Ann. § 15-3-550; §15-78-100. The judgment in favor of SLED can be affirmed on the additional ground that the statute of limitations began to run in February 2006 and had expired long before the Plaintiff filed this action in January 2010.

Plaintiff seeks to avoid the barring of his action based on the statute of limitations with the argument that the discovery rule applies and that he did not learn that there was a charge of committing a lewd act on a minor until February 2008 when his private attorney "pulsed" his record in connection with a civil action. [ROA ___; Greene Dep. 35:17-23; Appellant's brief, p. 9.] Notwithstanding any factual dispute about when the Plaintiff actually learned of the lewd act charge on his record, the Plaintiff's claims are still barred because: ONE – the discovery rule does not apply to defamation statute of limitations; and TWO - Plaintiff could have and should have learned of that the charge on his record in 2006 if he had used reasonable diligence and responded to the letter sent to him by the FBI.

In Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645, 647 (1996), the Supreme Court discussed the discovery rule:

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the “exercise of reasonable diligence” to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.

The date on which discovery should have been made is an objective, not subjective, question. Thus, the question is not whether the plaintiff actually knew he had a claim, but whether “the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.” Young v. S. Carolina Dept. of Corr., 333 S.C. 714, 511 S.E.2d 413, 416 (Ct. App. 1999).

While the discovery rule is applicable to actions brought under the Tort Claims Act, *id.*, South Carolina appellate courts have not adopted the discovery rule in libel and slander cases. Jones v. City of Folly Beach, 326 S.C. 360, 483 S.E.2d 770, 775 (Ct. App. 1997). Thus, the statutory two-year period begins to run at the time of the publication of the defamatory statement. In this case, that would be when SLED entered the information it received from the Charleston County Clerk of Court in the database in February 2006.

Plaintiff claims, however, that the statute did not begin to run until he discovered that there was false information on his criminal history record in March 2008, citing Austin v. Torrington Co., 611 F.Supp. 191, 195 (D.S.C.1985), *rev'd on other grounds*, 810 F.2d 416 (4th Cir.), *cert. denied*, 484 U.S. 977 (1987). In Austin v. Torrington, the

federal district court discussed, in pure dicta, when the statute of limitations might be tolled in a defamation case because of fraudulent concealment:

Under other circumstances, fraudulent concealment of a defamatory statement has been held to toll the running of the statute of limitations. Three elements are necessary to toll the statute under this doctrine: (1) fraudulent concealment by the party raising the statute, (2) the failure of the innocent party to discover the facts which are the basis of his cause of action, and (3) the exercise of due diligence on his part.

Id. at 194 (citations omitted). In that case, the plaintiffs were employees of Torrington. The Torrington personnel manager told the personnel manager of another company that he would not recommend the plaintiffs for employment for certain defamatory reasons; and a “blacklist” was created and maintained by the personnel manager. One of the plaintiffs found out about the list and filed suit within one month of discovering the existence of the list prior to the statute of limitations expiring, while other employees did not file until after the two-year period had expired. However, they all had causes of action for blacklisting that were commenced timely within the then applicable six-year statute of limitations. Since the jury returned a general verdict for the plaintiffs on both causes of action, the statute of limitations was effectively mooted. Nevertheless, the district court proclaimed: “While the Supreme Court of South Carolina has never spoken on this issue, this Court is confident that if presented with this same question it would rule that Plaintiffs' slander actions were not time-barred.” Id. at 195. As the district court itself recognized, the discussion was purely academic, and moreover, its prediction was disproven in Jones v. City of Folly Beach, 483 S.E.2d at 775, wherein the Court of Appeals noted the district court's decision in Austin v. Torrington, but clearly declared that: “The trial court was correct in granting [defendant's] motion for summary

judgment because South Carolina has not adopted the discovery rule in libel and slander cases.”

Even, if for the sake of argument, fraudulent concealment could toll the defamation statute of limitations, the Plaintiff has no evidence that SLED fraudulently concealed the information or that he exercised due diligence. Again, SLED only entered the information provided by the Charleston County Clerk of Court, and it was not “concealed” to the extent that the Plaintiff could have reviewed his information in the database at anytime.

SLED Reg. 73-24, entitled “Access and Review of Criminal Record Information” allows individuals to check the information in their criminal history and challenge any alleged inaccuracies:

A. Individual right of access and review:

(1) Upon verification of his or her identity, an individual will be entitled to review, without undue burden to either the agency or the individual, specific portions of criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction.

Regulation 73-24(C) contains detailed procedures for challenging the correctness of the criminal history information, record verification and review, administrative review, and administrative appeals to a Criminal History Administrative Appeal Board. The Plaintiff did not avail himself of this process.

Beyond the fact of these public regulations, the Plaintiff was placed on notice when he received the FBI letter in August 2006. As noted above, the FBI letter advised the Plaintiff that he could obtain a copy of his record and also explained the process by which he could challenge the denial if he disputed his criminal record: “If you believe

that you are not the individual whose FBI identification record is on file, you must also submit positive proof of your identity.” [ROA ___; Greene 23.] Under the objective discovery rule, a reasonable person exercising any diligence would have at least made inquiry after receiving the FBI letter in August 2006. However, despite the fact that the Plaintiff assumed there was a mistake, Plaintiff did not avail himself of the process to inquire or attempt to fix the mistake. Accordingly, the discovery rule is of no avail, and his claims are barred by the statute of limitations.

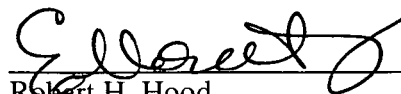
CONCLUSION

The Trial Court properly granted summary judgment to SLED because the Plaintiff did not present any evidence to create an issue to be presented to the jury in support of his claims that SLED was grossly negligent and defamed him where the evidence establishes that SLED only entered the information that was provided by Charleston County Clerk of Court. The Trial Court’s entry of summary judgment can be affirmed on the additional grounds that SLED is entitled to a qualified privilege in operating the State’s criminal history record system and any cognizable claim the Plaintiff might have had was barred by the applicable statutes of limitations.

WHEREFORE, based on the foregoing, the Defendant respectfully requests that the Court affirm the Trial Court’s judgment.

Respectfully Submitted,

HOOD LAW FIRM, LLC



Robert H. Hood

Ellore A. Ganes

Deborah H. Sheffield, *Of Counsel*

172 Meeting Street ~ P.O. Box 1508

Charleston, South Carolina 29402

Phone: (843) 577-4435

Facsimile: (843) 722-1630

June 6, 2012

**Attorneys for the Respondent
State Law Enforcement Division**



The South Carolina Court of Appeals

JENNY ABBOTT
KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 23, 2012

Ms. Elloree A. Ganes
Mr. Robert H. Hood
Mr. Robert Holmes Hood, Jr.
PO Box 1508
Charleston SC 29402-1508

Ms. Deborah Harrison Sheffield
117 Brook Valley Rd.
Columbia SC 29223

Re: Greene, Robert v. SLED
Appellate Case No. 2011-196689

Dear Counsel:

The following order has been endorsed on your motion for extension of time to file respondents' brief and designation of matters to be included in the record on appeal in the above matter.

"Granted.

By s/ V. Claire Allen, Deputy Clerk
For the Court

May 23, 2012."

Please be advised the respondents' initial brief and designation of matter must be served and filed no later than June 6, 2012.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Mark V. Evans

64106

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

C/A No. 10-CP-10-718

RECEIVED

MAY 4 2012

SC Court of Appeals

ROBERT GLENN GREENE,

Appellant,

v.

STATE LAW ENFORCEMENT DIVISION, AND SLED AGENT ROGER HEATON,

Respondents.

MOTION FOR EXTENSION OF TIME TO FILE RESPONDENTS' BRIEF AND
DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 234(b) of the South Carolina Appellate Court, Respondents, with the consent of the attorney for the Appellant, respectfully requests a thirty day extension of time to file the Respondents' Brief and Designation of Matters to be Included in the Record on Appeal. Respondents' brief is currently due on May 7, 2012. Respondents' request an extension until June 6, 2012.

The basis for this request is that the attorneys for the Respondents', Robert H. Hood, Robert H. Hood, Jr., Deborah H. Sheffield, and Ellore A. Ganes, have several other appellate briefs due and were unable to prepare their brief in this matter.

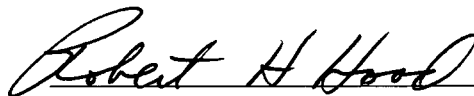
2nd
5/7/12
6/6/12

Accordingly, Respondents', with the attached consent of the Appellant, respectfully requests a thirty (30) day extension of time until June 6, 2012 in which to file its brief and designations.

Dated this 3 day of May, 2012.

Respectfully submitted,

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com



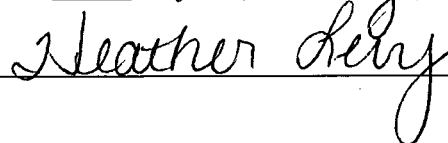
Robert H. Hood
Robert H. Hood, Jr.
Deborah Harrison Sheffield
Ellore A. Ganes

Attorneys for Respondents
State Law Enforcement Division and SLED Agent
Roger Heaton

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 3 day of May, 2012.



GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED

5-23-12 LAF

Julie Dunn

From: Mark Evans [mvevans14@gmail.com]

Sent: Thursday, May 03, 2012 1:13 PM

To: Julie Dunn

Subject: RE: 1.114/Greene v SLED/Heaton

For you Julie ----Yes I consent. ☺

From: Julie Dunn [mailto:julie.dunn@hoodlaw.com]

Sent: Thursday, May 03, 2012 12:51 PM

To: MEvans14@bellsouth.net

Cc: Ellore Ganes

Subject: 1.114/Greene v SLED/Heaton

Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent
Roger Heaton

C/A No. 10-CP-10-718, Charleston CP
Tracking No. 20111196689
HLF File No.1.114

Mark - we need to file a motion for another extension for our brief/designations in this case. We have several other briefs due that we have been swamped trying to finish. Do we have you consent to another extension? Please email me back so we can attach the email to the motion. Thanks so much. Julie

Julie A. Dunn
Legal Assistant
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401
843.577.1220

ROBERT H. HOOD
MARY AGNES HOOD CRAIG
ROBERT H. HOOD, JR.
(SC & NC)
BARBARA WYNNE SHOWERS
(SC, PA, NJ, TN)
J. BLANTON O'NEAL, IV
CHILTON GRACE SIMMONS
JENNIFER F. NUTTER
ELLOREE A. GANES
JAMES B. HOOD

HOOD LAW FIRM, LLC

ATTORNEYS AT LAW

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EMAIL: Bobby.Hood@hoodlaw.com
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WILLIAM M. O'NEIL
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(SC & MS)
ELIZABETH W. BALLENTINE
BRIAN E. JOHNSON
H. COOPER WILSON, III
T. HAPPEL SCURRY
JEFFREY M. BOGDAN
R. DAVIS RICE
ANNE S. REID
A. WALKER BARNES
BRIAN JAMES KERN
BLAKE A. MCKIE

OF COUNSEL

DEBORAH HARRISON SHEFFIELD

May 3, 2012

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
MAY 4 2012
SC Court of Appeals

Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent Roger Heaton
C/A No. 10-CP-10-718, Charleston CP
Tracking No. 20111196689
HLF File No.1.114

Dear Ms. Kitchings:

The Respondents' brief and designations are currently due May 7, 2012 pursuant to our letter request for an extension. Due to other deadlines and commitments, we are unable to complete our brief by this due date. Enclosed for filing is an original and seven (7) copies of a Motion for an Extension to file and serve the initial brief and designations on behalf of the Respondents. I have consulted with counsel for the Appellant and he has no objection to the extension request. I am enclosing herewith the \$25.00 filing fee. Please return a clocked-in copy in the envelope provided. Thank you for your cooperation and consideration in this regard.

Kind regards,

Yours truly,



Robert H. Hood

RHH/jad
Enclosure

cc: Mark V. Evans, Esquire

The South Carolina Court of Appeals

Robert Glenn Greene,

Appellant,

v.

State Law Enforcement Division, and
SLED Agent Roger Heaton,

Respondents.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2010-CP-10-00718

ORDER

For good cause having been shown, the time for the Respondents' Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until May 7, 2012.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY

Jenny A. Kitchens
CLERK

Columbia, South Carolina

cc: Mark V. Evans, Esquire
Ellore A. Ganes, Esquire

FILED

4-11-12 CAP



MARK V. EVANS
Attorney and Counsellor at Law

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April 2, 2012

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Summerville, SC 29484
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(fax) (843) 821-2359

VIA FACSIMILE 803-734-1839 & US Mail

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Allen:

Appellant Glenn Greene, through undersigned counsel, hereby consents to Respondent's request for a thirty (30) day extension to file its brief in this matter.

With kind regards,

Mark V. Evans

MVE/tob

cc: Ellore A. Ganes, Esquire

RECEIVED
APR 04 2012
SC COURT OF APPEALS

ROBERT H. HOOD
MARY AGNES HOOD CRAIG
ROBERT H. HOOD, JR.
(SC & NC)
BARBARA WYNNE SHOWERS
(SC, PA, NJ, TN)
J. BLANTON O'NEAL, IV
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ELLOREE A. GANES
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DAVID RICE
ANNE S. REID
A. WALKER BARNES
BRIAN JAMES KERN
BLAKE A. MCKIE

OF COUNSEL

DEBORAH HARRISON SHEFFIELD

April 2, 2012

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

~~RECEIVED~~
~~APR 30 2012~~
~~SC Court of Appeals~~

Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent Roger Heaton
C/A No. 10-CP-10-718, Charleston CP
Tracking No. 20111196689
HLF File No.1.114

Dear Ms. Kitchings:

The Initial Brief of Appellant and Designations in the above-referenced matter were served on March 7, 2012 and therefore, the Respondents' brief and designations are due April 6, 2012. Due to other deadlines and commitments, we are unable to complete our brief by the due date. I am respectfully requesting a 30-day extension to file and serve the initial brief and designations on behalf of the Respondents. I have consulted with counsel for the Appellant and he has no objection to the extension request, per the attached email correspondence. I am enclosing herewith the \$25.00 filing fee. Thank you for your cooperation and consideration in this regard.

Kind regards,

Yours truly,

Elloree A. Ganes

Elloree A. Ganes

EAG/jad
Enclosure

cc: Mark V. Evans, Esquire

4/6/12
5/7/12
1st

Julie Dunn

From: Ellore Ganes
Sent: Monday, April 02, 2012 11:22 AM
To: Julie Dunn
Subject: FW: Greene v. SLED

From: Mark Evans [mailto:MEvans@qsglawyers.com]
Sent: Monday, April 02, 2012 11:19 AM
To: Ellore Ganes
Cc: bevans@ccprc.com
Subject: RE: Greene v. SLED

Hi Ellore,
Yes to 30 days and yes to a very Happy Easter from us to y'all ! ☺
Mark

From: Ellore Ganes [mailto:elloree.ganes@hoodlaw.com]
Sent: Monday, April 02, 2012 10:45 AM
To: Mark Evans
Subject: Greene v. SLED

Hi Mark. I hope you are doing well. I will be requesting an extension of 30 days for filing the respondent's brief in this case. Will you please consent to the extension and send a quick letter to the Court of Appeals indicating your consent? I hope you and Barbara and the family have a very Happy Easter!

Ellore

Ellore A. Ganes, Esq.

Partner

Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401

843-577-4435 (phone)
843-722-1630 (fax)

This email transmittal may be protected by the attorney/client, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately, and do not forward this message to any other person or entity. Thank you very much for your cooperation.

4/2/2012



The South Carolina Court of Appeals

JENNY A. KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 15, 2012

Mark V. Evans, Esquire
147 Wappoo Creek Dr., Ste 202
Charleston, SC 29412

Re: Greene, Robert v. SLED
2011196689

Dear Mr. Evans:

We have received the Appellant's Initial Brief and Designation of Matter in the above case. However, our records indicate that the caption should read as follows:

Robert Glenn Greene,	v.	Appellant,
State Law Enforcement Division and SLED		
Agent Roger Heaton,		Respondents.

Any future filings by any party to this appeal must feature the above caption.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JAK/laf

cc: Ellore A. Ganes, Esquire

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS**

THE HONORABLE R. MARKLEY DENNIS, JR., PRESIDING JUDGE

CASE NUMBER: 2010-CP-10-718

ROBERT GLENN GREENE,

PLAINTIFF/APPELLANT,

vs.

STATE LAW ENFORCEMENT DIVISION, and SLED AGENT ROGER HEATON,

DEFENDANTS/APPELLANTS.

**DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON
APPEAL**

1. Order Granting Summary Judgment filed July 6, 2011;
2. Judgment dated June 30, 2011;
3. Complaint;
4. Answer;
5. Transcript of June 16, 2011;
6. Motion for Summary Judgment dated January 28, 2011;
7. Memorandum in Support of Motion for Summary Judgment dated June 15, 2011;
8. SLED's Supplemental Answers to Plaintiff's First Interrogatories served January 18, 2011;

9. Defendants' Answers to First Interrogatories and Defendants' Responses to Plaintiff's First and Second Supplemental Requests for Production all served on April 12, 2011 (includes relevant SLED policies and list of times Plaintiff's criminal record was checked);
10. FBI letter of August 2, 2006;
11. Plaintiff deposition excerpts: pgs. 35-40, 43; and
12. Plaintiff's criminal record in February 2008 and March 2008.

Mark V. Evans

Mark V. Evans, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-762-6640
Facsimile: 843-762-1500
Attorney for Plaintiff/Claimant

Dated: March 7, 2012
Charleston, South Carolina

CERTIFICATION

I, Mark V. Evans, as attorney for Appellant hereby certify that the Designation of Matters to be Included in the Record on Appeal contains no matter which is irrelevant to the appeal.

Mark V. Evans

Mark V. Evans, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. MARKLEY DENNIS, JR., PRESIDING JUDGE

CASE NUMBER: 2010-CP-10-718

ROBERT GLENN GREENE,

PLAINTIFF/APPELLANT,

vs.

STATE LAW ENFORCEMENT DIVISION, and SLED AGENT ROGER HEATON,

DEFENDANTS/APPELLANTS.

PROOF OF SERVICE

I, the undersigned, hereby certify that I served a copy of the foregoing document upon Ellore A. Ganes, attorney for Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Ellore A. Ganes, Esquire
Hood Law Firm, LLC
172 Meeting Street
Post Office Box 1508
Charleston, South Carolina 29402

(Design. of Matter)

Dated: March 7, 2012

Mark H. Evans

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. MARKLEY DENNIS, JR., PRESIDING JUDGE

CASE NUMBER: 2010-CP-10-718

ROBERT GLENN GREENE,

PLAINTIFF/APPELLANT,

vs.

STATE LAW ENFORCEMENT DIVISION, and SLED AGENT ROGER HEATON,

DEFENDANTS/RESPONDENTS,

Of Whom STATE LAW ENFORCEMENT DIVISION is RESPONDENT

PROOF OF SERVICE

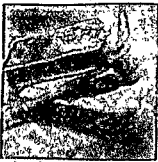
I, the undersigned, hereby certify that I served a copy of the foregoing document upon Ellore A. Ganes, attorney for Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Ellore A. Ganes, Esquire
Hood Law Firm, LLC
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Post Office Box 1508
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(Initial Brief of Appellant)

Dated: March 7, 2012

Mark W. Evans



MARK V. EVANS
Attorney and Counsellor at Law

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S. C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

March 7, 2012

RE: Greene, Robert v. SLED
2011 196689

Dear Clerk,

Enclosed for filing please find Initial Brief of Appellant in above case, along with Designation of matter to be included in the Record on Appeal and Certification (and Proof of Service of both).

By copy of this letter, I am serving these filings on Elloreë Ganes, Esq., attorney for Respondent SLED. Thank you for your attention to this matter.

With kind regards,

Mark V. Evans

Mark V. Evans

Cc: Elloreë Ganes, Esquire

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. MARKLEY DENNIS, JR., PRESIDING JUDGE

CASE NUMBER: 2010-CP-10-718

ROBERT GLENN GREENE,

PLAINTIFF/APPELLANT,

vs.

STATE LAW ENFORCEMENT DIVISION, and SLED AGENT ROGER HEATON,

Of Whom STATE LAW ENFORCEMENT DIVISION is
DEFENDANT/RESPONDENT.

BRIEF OF APPELLANT

Mark V. Evans, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-762-6640
Facsimile: 843-762-1500
Attorney for Plaintiff/Appellant

Dated: March 7, 2012
Charleston, South Carolina

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Does SLED owe a duty of care to the citizens of South Carolina to verify the accuracy of convictions placed on their criminal records in this State?

2. Does qualified privilege protect SLED from a claim of defamation that is based on dissemination of a false conviction in Appellant's criminal record? If not, should the "date of discovery" rule for commencing the statute of limitations apply under the facts of this case?

STATEMENT OF THE CASE

Appellant commenced this action on January 28, 2010, alleging causes of action for defamation and gross negligence against Defendants State Law Enforcement Division (SLED) and SLED Agent Roger Heaton. Appellant alleged Defendants were responsible for false information being placed on his criminal record. Defendants filed an Answer asserting defenses which included governmental privilege and the statute of limitations.

On June 16, 2011, the trial judge heard and granted Defendant SLED's motion for summary judgment, finding that SLED owed Appellant no duty to verify the accuracy of a conviction placed on his record by Charleston County. A written order granting the motion was filed on July 6, 2011. Appellant had earlier agreed to a dismissal of Defendant Heaton from this case.

Plaintiff served a Notice of Appeal on Defendants' counsel on August 4, 2011. An Amended Notice of Appeal, including the filing fee and a copy of the appealed order, was served on August 12, 2011. Plaintiff/Appellant received a copy of the transcript on January 5, 2012.

STATEMENT OF THE FACTS

In February 2006, Appellant's attempt to purchase a firearm was denied. On August 2, 2006, the U.S. Department of Justice sent Appellant a letter stating he was denied because "**either you or another individual with a similar name and/or similar descriptive features**" has been matched with certain "federally prohibitive criteria". (ROA p.__) Appellant believed his arrest for criminal domestic violence in 2005 was

the reason for denial (Plaintiff deposition, p. 43). Plaintiff did not provide a set of fingerprints to the FBI to verify his criminal record at that time.

Later, in September 2007, Appellant was the victim of an assault. Plaintiff subsequently hired an attorney to initiate a civil lawsuit and he pulled Appellant's criminal record in February 2008 (Plaintiff deposition, p. 35-36). After discovering the conviction ("lewd act upon a child") on his record, Appellant contacted SLED and it was eventually removed in March 2008.

When Appellant learned the conviction had appeared on his criminal record in early 2006, he recalled that he had been dating the estranged wife of a SLED Captain at that time. He testified to watching her log in to various law enforcement sites on her husband's laptop computer. Appellant could not imagine any other possible way for a conviction, particularly this type of conviction, to suddenly appear on his criminal record. When SLED finally responded to discovery requests regarding its investigation as to the source of the false information, Appellant agreed to dismiss the SLED Captain from the lawsuit. SLED reported the conviction had originated from Charleston County, allegedly because Appellant had a similar name as the convicted individual.

ARGUMENT

1. Does SLED owe a duty of care to the citizens of South Carolina to verify the accuracy of convictions placed on their criminal records in this State?

In his Complaint (par. 27), Appellant alleged "SLED has a duty to create, maintain and review safeguards adequate to protect the citizens of South Carolina from any harm resulting from inaccurate and false criminal records information." In Steinke v.

S.C. Dept. of Labor, Licensing, 336 S.C. 373, 520 S.E. 2d 142 (S.C. 1999), the Supreme

Court stated:

In a negligence action, a plaintiff must show that the (1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages. (citations omitted)

SLED's own policies outline its duties with respect to the collection, processing and storage of criminal justice information. Policy 7.1 "Criminal Justice Information System Department" sets forth general responsibilities of SLED pursuant to S.C. Code Sections 23-3-110 et. seq. Section 23-3-120 (A) requires that "court officials must report all criminal data "to SLED "...in such forms as [SLED] requires." Pursuant to section (B), the fingerprints of a person arrested for a state offense must be submitted to SLED within three days "...for the purposes of identifying record subjects and establishing criminal history record information." Section 23-3-130 authorizes SLED "to determine the specific information to be supplied by ... court officials pursuant to Section 23-3-120, and the methods by which such information shall be compiled, evaluated and disseminated."

SLED Policy 7.2 "Information Entered Into the SLED/CJIS and FBI/NCIC Computer Files" prescribes uniform procedures for entering data into these files. SLED's stated "Policy" is as follows:

POLICY: The Division feels strongly that it is necessary to implement uniform procedures for the entry of all data to the SLED/CJIS and FBI/NCIC files in order to ensure all entries are made on a timely basis and are complete and accurate.

The trial judge ruled that SLED had no duty to review the criminal record information it receives for accuracy. SLED's own policies and the referenced statutes, however, mandate that SLED determine the statewide procedures necessary to collect, send and maintain accurate information; that SLED receive fingerprints of all arrested persons within three days for authentication of criminal records it maintains; and that SLED determine the methods by which it receives criminal information so that criminal records "are complete and accurate."

Appellant contends there is evidence that creates a genuine issue of material fact as to whether SLED breached its duties to Appellant. First, the conviction placed on Appellant's criminal record belonged to an individual with a different name, race, birth date, and social security number. Second, there was no corresponding arrest on Appellant's records that the conviction could be based upon. Third, the procedures set up by SLED to maintain accurate information allowed for a situation where SLED claims Appellant's record was corrected by Charleston County, but SLED received no notice of the correction.

2. Does qualified privilege protect SLED from a claim of defamation that is based on dissemination of a false conviction in Appellant's criminal record? If not, should the "date of discovery" rule for commencing the statute of limitations apply under the facts of this case?

In Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E. 2d 743, 748 (Ct. App. 2001), the court stated:

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. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E. 2d 497 (1998) (Toal, Jr., concurring in result in separate opinion); *Fleming, supra*. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. *Fleming, supra*.

It is undisputed that elements (1) and (4) have been met in this case. Element (3) is addressed in the previous argument. Respondent argues that qualified privilege is a defense to Appellant's defamation claim in that the records produced indicate that "every time that they (SLED) provide that information it was to a law enforcement agency." Trans. P. 6.

The Murray court quoted from Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E. 2d 126 (S.C.1999), as to the law of qualified privilege:

In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. Restatement (Second) of Torts § 593 (1977); see *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E. 2d 641 (1946). In *Bell*, this Court held:

In determining whether or not the communication was qualifiedly privileged, regard must be had to the occasion and to 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.

In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. 50 Am. Jur. 2d *Libel and Slander* § 276 (1995). However, the question whether the privilege has been abused is on for the jury. *Id.* Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused. *Id.*; see also Restatement (Second) of Torts §§ 599-610. In *Fulton [v. Atlantic Coast Line R.R.]*, 220 S.C. 287, 67 S.E. 2d 425 (1951)], this Court held that it was a question for the jury to determine if the publication went beyond what the occasion required and was unnecessarily defamatory. *Fulton*, 220 S.C. at 297, 67 S.E. 2d at 429; cf. *Woodward*, 277 S.C. at 32-33, 282 S.E. 2d at 601 (“While abuse of privilege is ordinarily an issue for the jury, ... in the absence of a controversy as to the facts ... it is for the court to say in a given instance whether or not the privilege has been abused or exceeded.”).

Swinton Creek Nursery, 334 S.C. at 484-85, 514 S.E. 2d at 134..

The trial judge did not specifically rule on SLED’s claim that it is protected by qualified privilege in this case. As to the defense argument of no publication, however, Appellant submits that there is evidence the false criminal record was used against him. First, Appellant often wondered why his 2007 assailant only got a slap on the wrist for almost cutting off his hand and causing a permanent loss of use of the hand. All of the Berkeley County law enforcement involved in the assault case (police, prosecutor, judge, victim advocate, etc.) believed Appellant had served time in prison for sexual misconduct on a minor. Second, law enforcement contacted Appellant’s then-girlfriend to warn her about the conviction (though she did not tell him until much later). Finally, Appellant testified that he learned of the false conviction after his private attorney pulsed his record in February 2008 (Plaintiff depo. P. 35-40). Appellant has a copy of the letter from

SLED to his attorney enclosing his criminal record, yet SLED's records state this February 2008 request was made by SLED. (SLED Answers to First Interrogatories, response no. 2).

These facts create genuine issues for the jury as to whether there has been an abuse of a qualified privilege.

As to the statute of limitations defense, one need look no further than to the arguments of SLED's counsel at the summary judgment hearing to find that this is not the traditional defamation case. On the one hand, SLED's attorney correctly noted that "the statute (Sec. 15-3-550) runs from the moment of utterance." Trans. P. 4, l. 24. On the other hand, however, counsel argues "there is just no publication." Trans. P. 6, l. 23-24. A federal court in South Carolina, confronted with very similar facts, ruled in Austin v. Torrington Co., 611 F. Supp. 191 (D.S.C. 1985), that there is a limited exception to "the date of utterance rule which applies in the traditional slander case." Id. at 195. The Austin court held that, "a surreptitious slander which results in harm is close akin to a false credit claim which injures, although unknown to the injured party." Id. The same reasoning should apply to false and harmful information hidden in a criminal record.

The trial judge did not rule on the statute of limitations, but Appellant notes that it took six months after the denial of the firearm purchase for the FBI to send Appellant the August 2006 letter. One would have to speculate to determine how long it would have taken for the FBI to respond to Appellant had fingerprints been submitted to them in the Fall of 2006.

CONCLUSION

Appellant requests that this Court reverse the grant of summary judgment to Respondent SLED on the grounds there are genuine issues of material fact for the jury to decide regarding SLED's duties to ensure the accuracy of criminal records in this State and whether qualified privilege protects SLED from a defamation claim for publication of a false criminal conviction.

Respectfully submitted,

Mark V. Evans

Mark V. Evans, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-762-6640
Facsimile: 843-762-1500
Attorney for Plaintiff/Claimant

Dated: March 7, 2012
Charleston, South Carolina

The South Carolina Court of Appeals

Robert Glenn Greene,

Appellant,

v.

State Law Enforcement Division, and
SLED Agent Roger Heaton,

Respondents.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2010-CP-10-00718

ORDER

For good cause having been shown, the time for the Appellant's Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until March 7, 2012.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc: Mark V. Evans, Esquire
Ellore A. Ganes, Esquire

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2-7-12 LAF

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February 2, 2012

Via Facsimile

Laurie Field
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 P.O. Box 11629
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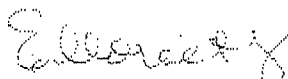
Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent Roger
 Heaton
 C/A No. 10-CP-10-718, Charleston CP
 HLF File No.1.114

Dear Laurie:

I write to confirm that I have no objection to Plaintiff obtaining a 30 day extension to file his brief in the above-referenced matter. If you should need anything further from me, please do not hesitate to contact me.

Kind regards,

Yours truly,



Elloree A. Ganes

EAG/snm

cc: Mark V. Evans, Esquire [Via E-Mail]

HOOD LAW FIRM, LLC

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FAX

TO:	Laurie Field SC Court of Appeals Mark V. Evans, Esquire	FAX NO.:	(803) 734 1496 762-1500
FROM:	Ellore A. Ganes, Esquire	PAGES:	2 (includes cover page)
EMAIL:	Ellore.Ganes@hoodlaw.com		
PHONE:	(843) 577-1208	DATE:	February 2, 2012
RE:	Robert Glenn Greene v. State Law Enforcement Division and SLED Agent Roger Heaton C/A No. 10-CP-10-718, Charleston CP HLF File No.1.114		

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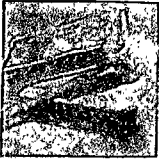
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• **Comments:**

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Attorney and Counsellor at Law

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January 24, 2012

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Tanya Gee, Clerk
V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Gee & Ms. Allen:

We hereby request a thirty (30) day extension in which to file the Initial Brief in the above matter. If granted, they Initial Brief would then be due by march 7, 2012.

Also enclosed is the \$25.00 filing fee.

Thank you.

Kind regards,

Mark V. Evans

Mark V. Evans

MVE/tob
Enclosure
cc: Ellore A. Ganes, Esquire

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JAN 27 2012
SC Court of Appeals

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3/7/12



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Tanya Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Gee:

The transcript of the summary judgment hearing in the above matter was received by our office today via email. The court reporter is also mailing a copy to us.

Pursuant to Rule 208, SCACR, the initial Brief of Appellant is to be filed and served by February 4, 2012.

Kind regards,

Mark V. Evans

MVE/tob

cc: Ellore A. Ganes, Esquire

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JAN 09 2012
SC Court of Appeals

From: Garrison, Deborah [DGarrison@sccourts.org]
Sent: Wednesday, January 04, 2012 8:19 PM
To: Tracey O'Brien
Subject: RE: Robert Glenn Greene v. SLED
Attachments: 10-CP-10-0718 Greene v SLED pdf.pdf

Importance: High

Good morning, Tracey:

My records indicate that the transcript was mailed on December 14th, from the Goose Creek Post Office to the attention of Barbie Query.

If you have not received it by the date of this e-mail, it has gone "astray".

I am attaching a pdf copy of the transcript to this e-mail for your convenience and will put another copy in the mail tomorrow to your attention.

Best regards for the New Year,

Deborah Garrison, Circuit Court Reporter
9th JUDICIAL CIRCUIT
P O Box 901
Johns Island, SC 29457
dgarrison@sccourts.org

From: Tracey O'Brien [<mailto:tobrien@qsglawyers.com>]
Sent: Tuesday, January 03, 2012 11:49 AM
To: Garrison, Deborah
Cc: Mark Evans
Subject: Robert Glenn Greene v. SLED

Ms. Garrison:

On December 8, 2011, we forwarded payment for the transcript of hearing regarding the referenced matter.

I am writing to check status of the transcript.

Please let me know if you require anything further from our office regarding this request.

Thank you for your kind assistance with this matter.

Tracey O'Brien

Legal Assistant

Query, Sautter, Gliserman & Price, LLC

147 Wappoo Creek Drive

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SC Court of Appeals

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November 8, 2011

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V. Claire Allen
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Allen:

In response to your letter dated November 2, 2011, please be advised that we have not yet received the transcript, but Ms. Ganes, opposing counsel, recently wrote a reminder of this request to the court reporter (copy attached).

Kind regards,

Mark V. Evans

Mark V. Evans

MVE/tob
Enclosure
cc: Ellore A. Ganes, Esquire

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SC Court of Appeals

ROBERT H. HOOD
MARY AGNES HOOD CRAIG
ROBERT H. HOOD, JR.
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OF COUNSEL
DEBORAH HARRISON SHEFFIELD

October 27, 2011

Via E-Mail

Deborah Garrison
Post Office Box 901
Johns Island, SC 29457


Re: Robert Glenn Greene v. State Law Enforcement Division, and SLED Agent Roger Heaton
C/A No. 10-CP-10-718, Charleston CP
HLF File No.1.114

Dear Ms. Garrison:

I am writing to follow-up on my paralegal, Melinda Accardo's e-mail to you requesting the transcript from the June 16, 2011 hearing before Judge Markley Dennis in the above-referenced case. Should you require payment in advance, please let me know. Thank you for your help.

Kind regards,

Yours truly,


Ellore A. Ganes

EAG/snm

cc: Mark V. Evans, Esquire

RECEIVED
NOV 10 2011
SC Court of Appeals



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November 9, 2011

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South Carolina Office of Court Administration
1015 Sumter Street, Suite 201
Columbia, South Carolina 29201

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Sir or Madam:

We have not yet received the transcript in the above matter, which should have been delivered by October 14, 2011.

Thank you.

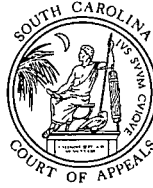
Kind regards,

Mark V. Evans

MVE/tob

cc: Ellore A. Ganes, Esquire
✓ V. Claire Allen, Court of Appeals Clerk

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NOV 10 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 2, 2011

Mark V. Evans, Esquire
147 Wappoo Creek Dr., Ste 202
Charleston, SC 29412

Re: Greene, Robert v. SLED
2011196689

Dear Mr. Evans:

Our records indicate that the transcript in the above matter should have been delivered by October 14, 2011. As of today's date, we have received no information that the court reporter has been granted an extension, nor have we received your initial brief.

If you have not yet received the transcript, you must contact the Office of Court Administration per Rule 207 of the South Carolina Appellate Court Rules. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1015 Sumter Street, Suite 201
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript with ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Ellore A. Ganes, Esquire



The South Carolina Court of Appeals

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Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Elloree A. Ganes, Esquire



MARK V. EVANS
Attorney and Counsellor at Law

James Island Office
147 Wappoo Creek Drive
Wappoo Centre, Suite 202
Charleston, SC 29412
(843) 762-6640
(843) 762-1500 (fax)

September 20, 2011

Summerville Office
107 West 5th North Street
Post Office Box 821
Summerville, SC 29484
(843) 821-3000
(fax) (843) 821-2359

The Honorable Tanya Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Gee:

In response to your letter dated September 13, 2011, regarding the transcript of the referenced matter, enclosed please find a copy of the email wherein I requested a copy of the transcript from Court Reporter D. Garrison via email on August 15, 2011. (per Rule 207)

Please contact me at the number above with any questions.

Sincerely,

Tracey O'Brien
Assistant to Mark V. Evans

Enclosure

cc: Ellore A. Ganes, Esquire
Office of Court Administration

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SEP 21 2011

SC Court of Appeals

Tracey O'Brien

From: Tracey O'Brien
Sent: Monday, August 15, 2011 2:25 PM
To: 'dgarrison@sccourts.org'
Subject: Greene v SLED (case number 2010-CP-10-718)

Ms. Garrison:

Please accept this as a request for a copy of the transcript of the Summary Judgment hearing held regarding the referenced matter on June 16, 2011, before Judge Markley Dennis at 9:30 a.m.

If you would let me know the cost of same I will have our bookkeeper send payment.

Thank you.

Tracey O'Brien

Legal Assistant

Query, Sautter, Gliserman & Price, LLC

147 Wappoo Creek Drive

Wappoo Centre, Suite 202

Charleston, SC 29412

Telephone: (843) 795-9500

Facsimile: (843) 762-1500

tobrien@qsglawyers.com

• Please consider the environment before printing this email.

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney's office. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, which may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

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SEP 21 2011
SC Court of Appeals



The South Carolina Court of Appeals

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TELEPHONE: (803) 734-1890
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www.sccourts.org

September 13, 2011

Mark V. Evans, Esquire
147 Wappoo Creek Dr., Ste 202
Charleston, SC 29412

Re: Greene, Robert v. SLED
2011196689

Dear Mr. Evans:

Our records indicate that the transcript in the above matter should have been ordered by August 15, 2011. As of today's date we have not received notification of the request or the Appellant's Initial Brief and Designation of Matter.

You must file a Motion to Order the Transcript Out of Time within ten (10) days of this letter, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Ellore A. Ganes, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. MARKLEY DENNIS, JR., PRESIDING JUDGE

CASE NUMBER: 2010-CP-10-718

RECEIVED

AUG 1 2011

SC Court of Appeals

ROBERT GLENN GREENE,

PLAINTIFF/APPELLANT,

vs.

STATE LAW ENFORCEMENT DIVISION, and SLED AGENT ROGER HEATON,

DEFENDANTS/APPELLANTS.

AMENDED NOTICE OF APPEAL

Notice is hereby given that Robert Glenn Greene, Plaintiff in the above-captioned case, appeals to the South Carolina court of Appeals from the Order Granting Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment entered in this action on the 6th day of July 2011.

Respectfully submitted,

Mark V. Evans

Mark V. Evans, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-762-6640
Facsimile: 843-762-1500
Attorney for the Plaintiff

Dated: August 12, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. MARKLEY DENNIS, JR., PRESIDING JUDGE

CASE NUMBER: 2010-CP-10-218

ROBERT GLENN GREENE,

PLAINTIFF/APPELLANT,

vs.

STATE LAW ENFORCEMENT DIVISION, and SLED AGENT ROGER HEATON,

DEFENDANTS/APPELLANTS.

PROOF OF SERVICE

I, the undersigned, hereby certify that I served a copy of the foregoing document upon Ellore A. Ganes, attorney for Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Ellore A. Ganes, Esquire
Hood Law Firm, LLC
172 Meeting Street
Post Office Box 1508
Charleston, South Carolina 29402

Dated: 8-12-11



RECEIVED
AUG 17 2011
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) FOR NINTH JUDICIAL CIRCUIT

Robert Glenn Greene,

) C/A No. 10-CP-10-718
)

Plaintiff,

) **ORDER GRANTING DEFENDANTS'**
) **MOTION TO DISMISS OR, IN THE**
) **ALTERNATIVE, MOTION FOR**
) **SUMMARY JUDGMENT**

Versus

State Law Enforcement Division, and
SLED Agent Roger Heaton,

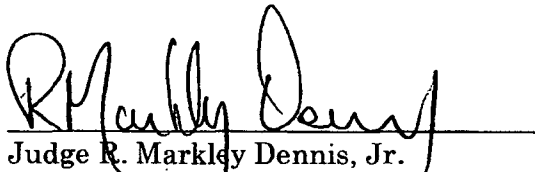
)
)
)
)

Defendants.)

FILED
2011 JUL -6 PM 1:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before the court on the Defendants' Motion to dismiss or, in the alternative, Motion for Summary Judgment on June 16, 2011. After hearing arguments made on behalf of the Defendant State Law Enforcement Division¹ and the Plaintiff, the Court hereby grants the Defendants' Motion and enters summary judgment in favor of the Defendant State Law Enforcement Division.

IT IS SO ORDERED.



Judge R. Markley Dennis, Jr.

June 29, 2011
Charleston, South Carolina
J:\docs\1.114\Order (MTD-MSJ).doc

¹ Plaintiff consented to the dismissal of SLED Agent Roger Heaton prior to the hearing.

FORM 4
STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
Robert Glenn Greene

versus

Case No.: 2010-CP-10-00718
State Law Enforcement Division etal

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

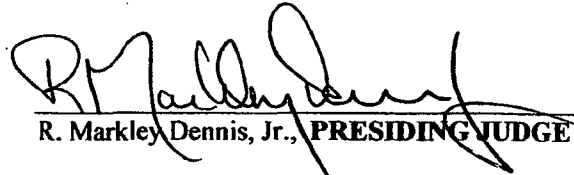
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
 - DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. nonsuit)
 Rule 43(k), SCRPC(Settled); Other -
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
 2011 JUN 20 AM 8:59
 JULIE ARMSTRONG
 CLERK OF COURT

IT IS ORDERED AND ADJUDGED: See attached order. (Formal order to follow)
 Statement of Judgment by the Court:

Motion to Dismiss and for Summary Judgment granted.

Dated at Charleston, South Carolina, this 16th day of June, 2011.


 R. Markley Dennis, Jr., **PRESIDING JUDGE**

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



MARK V. EVANS
Attorney and Counsellor at Law

James Island Office
147 Wappoo Creek Drive
Wappoo Centre, Suite 202
Charleston, SC 29412
(843) 762-6640
(843) 762-1500 (fax)

August 12, 2011

Summerville Office
107 West 5th North Street
Post Office Box 821
Summerville, SC 29484
(843) 821-3000
(fax) (843) 821-2359

The Honorable Tanya Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Gee:

Pursuant to your letter dated August 9, 2011, enclosed herewith for filing, please find the original and one copy of an Amended Notice of Appeal regarding the referenced matter along with check number 25874 in the amount of \$100.00 for associated filing fees and a copy of the "Order Granting Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment". Please file the original Amended Notice of Appeal and return the clocked copy to me in the enclosed envelope. By copy of this letter with enclosure, I am serving Ellore A. Ganes, attorney for the Defendant.

Please contact me at the number above with any questions.

Sincerely,

Mark V. Evans

Enclosures

cc: Ellore A. Ganes, Esquire

RECEIVED
AUG 17 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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FAX (803) 734-1839
www.sccourts.org

August 9, 2011

Mark V. Evans, Esquire
147 Wappoo Creek Dr., Ste 202
Charleston, SC 29412

Re: Greene, Robert v. SLED
2011196689

Dear Mr. Evans:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

According to Rule 203 of the South Carolina Appellate Court Rules a filing fee of \$100 must accompany the Notice of Appeal.

Furthermore, the Notice of Appeal shall contain the name of the judge from which the appeal is taken. Also, a copy of the court order being challenged on appeal was not filed with the appeal. It will be necessary that you provide an Amended Notice of Appeal, a copy of the court order, and the filing fee within ten (10) days of the date of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

V. Claire Allen, Deputy
Tanya A. Gee
CLERK

TAG/laf

cc: Ellore A. Ganes, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
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August 9, 2011

Mark V. Evans, Esquire
147 Wappoo Creek Dr., Ste 202
Charleston, SC 29412

Re: Greene, Robert v. SLED
2011196689

Dear Mr. Evans:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Ellore A. Ganes, Esquire
The Honorable Julie J. Armstrong

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a copy of the foregoing document upon Ellore A. Ganes, attorney for Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Ellore A. Ganes, Esquire
Hood Law Firm, LLC
172 Meeting Street
Post Office Box 1508
Charleston, South Carolina 29402

Dated: 8.4.11



RECEIVED

AUG 08 2011

SC Court of Appeals



MARK V. EVANS
Attorney and Counsellor at Law

James Island Office
147 Wappoo Creek Drive
Wappoo Centre, Suite 202
Charleston, SC 29412
(843) 762-6640
(843) 762-1500 (fax)

August 4, 2011

Summerville Office
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Summerville, SC 29484
(843) 821-3000
(fax) (843) 821-2359

The Honorable Tanya Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Glenn Greene v. SLED
Case number: 2010-CP-10-718

Dear Ms. Gee:

Enclosed herewith for filing, please find the original and one copy of a Notice of Appeal regarding the referenced matter. Please file the original and return the clocked copy to me in the enclosed envelope. By copy of this letter with enclosure, I am notifying the Clerk of Court for the Ninth Judicial Circuit Court of Common Pleas and I am serving Ellore A. Ganes, attorney for the Defendant.

Please contact me at the number above with any questions.

Sincerely,


Mark V. Evans

Enclosures

cc: Ellore A. Ganes, Esquire
The Honorable Julie J. Armstrong
Glenn Greene

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