

21940

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2014-001862

THEOPHILIUS HAMILTON, ... Appellant,

v.

BEAUFORT COUNTY SHERIFF'S OFFICE, ... Respondent.

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-4548

THEOPHILIUS HAMILTON

BEAUFORT COUNTY SHERIFF'S OFFICE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CARMEN MULLEN

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion and Amended Motions for Summary Judgment came before me July 29, 2014. Summary judgment is granted as to the negligent retention and supervision claim, as the statute of limitations expired approximately two months prior to the filing of the action. S.C. Code Ann. 15-3-40. Summary judgment is denied as to the malicious prosecution claim, as there exists a scintilla of evidence regarding the existence or nonexistence of probable cause at the time of the Plaintiff's arrest from which a question of fact regarding gross negligence is present.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This case remains second up for trial the week of August 4, 2014.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

2142

Judge Code

Date

8-11-14

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER

2011CP0704548

Theophilus Hamilton

2014 AUG 12 AM 8:48

Beaufort County Sheriffs
Office

Sheriff Of Beaufort
County

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

Jury trial on 8/4/2014. Jury found in favor of the Defendant.

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

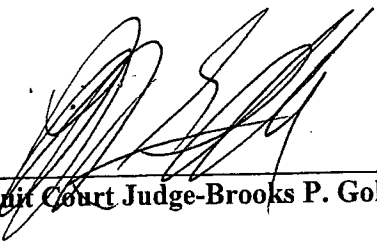
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	

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

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

4.


Circuit Court Judge-Brooks P. Goldsmith

2B9
Judge Code

8/6/14
Date

For Clerk of Court Office Use Only

This judgment was entered on 15 August, 2014, and a copy mailed first class or placed in the appropriate attorney's box on 15 August, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Theophilus Hamilton 651 Pine Arbor Rd Hardeeville, SC
29927

Mary Bass Lohr PO Box 40 Beaufort, SC 29901

Eric J. Erickson One Beaufort Town Center 2015 Boundary
Street, Suite 309 Beaufort, SC 29902

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jamie Thompson

Court Reporter-Mona Manley

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

State of South Carolina)
County of Beaufort)
)
)
)
Thophilus Hamilton)
)
Vs)
)
Beaufort County Sheriff's)
Office)
_____)

Court of Common Pleas
2014 AUG 12 2011CP0704548
AM 8:48

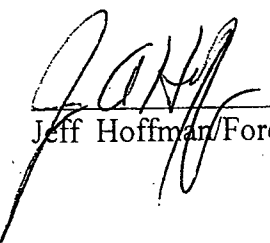
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

VERDICT FORM

We the Jury unanimously find:

_____ For the Plaintiff in the amount of \$_____ actual damages.

☒ For the Defendant.


Jeff Hoffman Foreperson

August 6, 2014
Date

State of South Carolina)
County of Beaufort)

Court of Common Pleas
2011CP0704548

Thophilus Hamilton)

Vs)

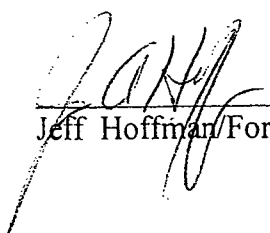
Beaufort County Sheriff's)
Office)
_____)

VERDICT FORM

We the Jury unanimously find:

_____ For the Plaintiff in the amount of \$ _____ actual damages.

☒ For the Defendant.



Jeff Hoffman/Foreperson

August 6, 2014
Date

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COUNTY OF BEAUFORT
14TH JUDICIAL CIRCUIT
CASE NUMBER: 2011-CP-07-5458

HARRY CHRIS BATTLE, JR. AND
THEOPHILUS HAMILTON

Plaintiff,

-vs-

THE SHERIFF OF BEAUFORT COUNTY

Defendant.

**CORRECTED
AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiffs, complaining of the above-named Defendant, would show the Court:

1. The Plaintiff, Chris Battle, is a resident of Charleston County, South Carolina, but was a resident in Beaufort County South Carolina at all relevant times in question. All criminal charges which are the basis for this lawsuit were investigated, filed and tried in Beaufort County, South Carolina.
2. The Plaintiff, Theophilus Hamilton, is a resident of Jasper County, South Carolina and was a resident of Beaufort County, South Carolina at all times in question. All criminal charges which are the basis for this lawsuit were investigated, filed and tried in Beaufort County, South Carolina.
3. The Defendant, the Sheriff of Beaufort County, is a governmental entity, an agency within the meaning of the South Carolina Tort Claims Act.
4. This action is brought pursuant to S.C. Code Ann, §15-78-10 to §15-78-190 (Supp. 1991) to recover damages.

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THE NIGHT OF OCTOBER 30, 2008

(Based Upon Information and Belief)

1. This entire section is based on the Beaufort County Sheriff's Office Incident Reports regarding the attack that took place on October 30, 2008. The following paragraphs are based upon information and belief.
2. On October 30, 2008, Jeffrey Wooten, his wife, Brian Lanese and his wife, Tracy Lanese, and the Lanese family were enjoying each other's company at the Lanese residence located at 8 Sugaree Drive, Bluffton, South Carolina 29910.
3. According to Mr. Wooten, when he and Mr. Lanese were exiting their house to grill steaks, three unknown males came from around the back of the residence. Two of the males assaulted Lanese and the remaining male attacked Mr. Wooten.
4. Mr. Wooten was able to fight off one of his attackers and began wrestling this individual to the ground. At the same time the individual yelled "Deuce or something similar to that" presumably signaling to the other attackers that he was in trouble.
5. Likely due to the heroic struggle of Mr. Wooten, the two attackers fled and released Mr. Lanese. While Mr. Wooten continued to struggle with the remaining attacker he realized that Mr. Lanese "was struggling to come to". In an effort to aide his friend, Mr. Wooten released the third attacker and immediately began assisting Mr. Lanese.

6. When the attackers fled they left evidence at the scene which included a red baseball hat with an "A"¹ on the front, and with "Buck Island Boys" embroidered on the rear of the hat. Also abandoned at the scene was a pellet gun.
7. All of the attackers fled into the woods behind the Lanese residence.

THE INVESTIGATION

(Based Upon Information and Belief from the Sheriff's Office Records)

8. Mr. Wooten underwent a police interview the night of the attack, and reported the aforementioned facts. In addition, Mr. Wooten reported that the attacker yelled "Deuce, or something similar to that."
9. The Beaufort County Sheriff's Office used police tracking dogs to trace the attackers. This scent leads them through a trail behind the Lanese residence to Simmonsville Road where the dogs lost their lead.
10. Derrick Dupont and Jordan Dupont live directly across the street from where the dogs lost the scent, and Kuwan Fields, their cousin, lives a few houses behind the Dupont residence.

Jeffrey Wooten

11. Following the attack, the Beaufort County Sheriff's Department interviewed Jeffrey Wooten who indicated that the attacker yelled "Deuce or something similar to that".
12. On November 5, 2008, Investigator Louis Novak filed a supplementary report stating that Wooten heard the attacker yell "Deuce, Chris or something similar to that".

¹ It is believed that the "A" stands for Atlanta Braves

13. Jeffrey Wooten testified at the juvenile adjudication in family court that the attacker yelled "Deuce or something similar to that" and his testimony conflicted with Investigator Novak's supplementary report.
14. Upon information and belief, Investigator Novak fabricated this evidence in the attempt to charge the Plaintiff, Chris Battle and to obtain a conviction.

Sheena Fields

15. A few days later on, November 7, 2008, Sheena Fields appeared at the Bluffton High School's principal's office and volunteered information regarding the case.
16. Ms. Fields informed the principal's office that she believed her cousin, Derrick Dupont was involved in the attack for several reasons which included:
 - a. He informed her that he was running from the police on the night of the attack;
 - b. She found his wet pants on the floor the day after the attack;
 - c. When questioning Derrick about his wet pants, he informed her that his pants "got wet up" because he was running from the police on the night of the attack;
 - d. He borrowed a similar red "A" hat with "Buck Island" on the back as the one found at the crime scene from her brother, Kuwan Fields;
 - e. The skeleton mask used alleged to have been used in the attack belonged to her disabled brother, Karl Fields; and,

f. The a pellet gun identical to the one located at the crime scene was missing from her family's residence after the attack.

17. During Ms. Field's interview she also came to the conclusion that her brother, Kuwan Fields, was also involved in the attack.

18. When asked if she thought anyone else was involved, Ms. Fields indicated that she thought that maybe Chris Battle and Theo Hamilton were involved in the attack because they had words with Derrick Dupont a few days earlier.

19. She also indicated that she was over at her Grandmother's house and at Kuwan's house on the night of the attack and that she did not at any time see Chris Battle or Theo Hamilton.

Interview with Mr. Anthony Fields (Kuwan Fields Father)

20. After interviewing Sheena Fields on November 7, 2008, the police interviewed Kuwan Fields' Father and he confirmed that the red "A" hat found at the scene with the words "Buck Island" was owned by Kuwan Fields. He also confirmed that that pellet rifle found at the scene looked like the rifle which was always on the front porch of their grandparent's house.

21. During the interview, Mr. Fields attempted to contact his son, Kuwan Fields. Kuwan was at his grandmother's house located at 222 Simmonsville Road, but refused to discuss the case with his Father and hung up the telephone.

22. During this time, Mr. Fields provided the police with Kuwan Fields' toothbrush for DNA analysis.

23. Acting on information regarding Kuwan's whereabouts, the police attempted to locate Kuwan at his grandmother's house, but he fled into the woods and could not be ultimately located.

Statement of Derrick Dupont, Jordan Dupont and Kuwan Fields indicates that the three were together the night of the attack.

24. Kuwan Fields, Derrick Dupont, and Jordan Dupont's statements all confirm that the three were together both before and after the attack. The statement of each individual is provided in the following paragraphs. However, Kuwan indicated that he was with his cousin, Jason Aiken as well.

a) Kuwan Fields' Statement

25. When initially questioned, Kuwan informed the police that on the night of the attack he was getting high and was with "Derrick [Dupont, his cousin], Jordan [Dupont, his cousin] and Jason [Grant, also his cousin].

b) Derrick Dupont Statement

26. On November 5, 2006, Derrick Dupont provided a statement which revealed that he was at his grandmother's house cooking deer meat and was also at his cousin's house.

c) Jordan Dupont's Statement

27. The police interviewed Jordan Dupont, cousin of Kuwan Fields and Derrick Dupont's cousin. In his written statement he stated that he was at his grandmother's house:

"It was me, Jason wasn't there the whole time, Kuwan and Derrick.

The time was around 8:30 9:00 when we was outside in the back yard. I think they left around 11:00."

28. Derrick's grandmother's house is located directly across the street from the Sugaree Subdivision and the tracking dogs lost their scent directly in front of this house.

Kuwan Fields' First Interview (November 8, 2008)

i. Important Facts Learned at this Interview which were ignored

29. When initially questioned Kuwan informed the police that on the night of the attack he was getting high and was with "Derrick [Dupont, his cousin], Jordan [Dupont, his cousin] and Jason [Grant, also his cousin].

ii. Threats and Intimidation

30. On November 8, 2008, Kuwan's father contacted the Beaufort County Sheriff's Office and informed the police that Kuwan wanted to turn himself into the police.

31. Mr. Fields brought his son to the Sheriff's Office on Hilton Head Island where Kuwan Fields was arrested.

32. The Sheriff's Office knew that Kuwan Fields testimony was obtained as the result of threats of violence and therefore was unreliable. During this interview which was

recorded on tape, Investigator Novak verbally attacked Kuwan Fields and made a series of threats. (Copies of the pertinent portion of the transcripts are provided as follows:

a) Rape by Mexicans

33. When Investigator Novak interviewed Kuwan Fields he threatened him with rape. :

You'll sit in Beaufort County [jail] for a year.
Do you know what they're doing in there?
They're sleeping in the gymnasium. All the Mexicans.
The other day a Mexican attacked another black guy.
Two of them because they wanted to have sex with him.
That's how bad it is.
We've got that ICE thing going on.
The deportation thing going on.
They're all sitting in there, man.
And they don't care two shits because they're going back to Mexico. You're gonna sleep in a hammock inside that gymnasium because there's no more rooms available in that place.
The hotel is full.
And you got no protection.
You have to sleep with one eye open.
I'm going to tell you that right now.
That's what everybody is doing.

b) Threats to Attack Kuwan's Family

34. Novak continued in the interview and threatened Kuwan's Family.

Now, you either work with me right now, or I guarantee you, man, I'm gonna make your life a living hell.
And your family.
I'll go get a frickin search warrant right now and I'll go through every one of those houses back there looking for -- I've got (inaudible).
I'll find drugs.
I'll find something in that house.
I'll go pull grandma out and put her out in the front yard and everything.
And I'll make sure the news media hears about it, and they'll be out taking pictures of all of your family standing outside while I'm searching through all their yards and inside their houses; everything.
Do you want me to do that?
Do you want me to do that?

Do you want me to pull every one of your families out there on
Simmonsville Road?
Do you really?
Put your mom and everybody through that?

35. Later in the interview, Investigator Novak continued making threats to
Kuwan's family.

Don't make me put your grandmother out in the street like that.
Especially, since it's getting ready to rain.
Don't make me put you on the front page.
That media is gonna be knocking on their doors.

c) Threats of Execution

36. Novak continued in the interview and stated that he planned to execute Kuwan.

By the way, I'm Investigator Novak, the guy you ran from yesterday.
I'm the one who got the warrant on you.
I'm the one about to put you away for the next thirty years of your life.
Thirty years I'm going to ask for, to life.
If this guy dies, I'm gonna ask for the chair.

d) General Intimidation

37. Novak continued in the interview and screamed incessantly.

Fuck this kid right here because I got his balls in a sack.
He wants to sit there and fucking laugh, fuck that shit.
You are going to fucking jail for a long fucking time.
You want to keep that fucking smirk on your face?
And I'm going to tell the victim today how you fucking laughed. You
laughed.
You smiled.
A fucking guy in the hospital fighting for his life and you don't even
(inaudible)?
Don't give me that fucking look because I'm done.
I'm putting you away.
I'm going to ask for a fucking life sentence on you.
I'm going to be here every fucking day looking at you in fucking jail
because you don't want to help yourself.
You're gonna put your family and put the other guy's family through this
shit?

Kuwan's Second Interview (November 24, 2008)

38. On November 23, 2008, the DNA test was returned to the Sheriff's department which was alleged to show Kuwan Fields' DNA was located on the red "A" hat at the scene of the crime.
39. On November 24, 2008, Sergeant Riley and Investigator Novak appeared at the Fields' residence located at 27 Kitty Road, Bluffton, South Carolina to interview Kuwan Fields.
40. At this interview the police took a buccal swab for further DNA testing from Kuwan Fields.
41. The police began to interrogate Kuwan Fields and indicated that when the DNA came back showing a positive match that Fields was going to jail for a long time.
42. When Sergeant Riley and Investigator Novak began the interview, Kuwan initially indicated that Chris Battle was the sole person in the attack. However, later the Sheriff's Office coached him into his confession, telling him on several occasions that the Sheriff's Office was looking for three people.

i. Coaching by Investigator Novak

43. At the beginning of this interview, it appeared that Investigator Novak spoke with Kuwan's family and indicated that they were attempting to name Chris Battle

because early in the interview one of Kuwan's relatives² yelled "tell them Chris Battle did it."

44. During Kuwan's "confession", he initially indicated that there were only two people involved in the attack. Investigator Novak and Sergeant Riley had to provide a great deal of coaching to get Kuwan to eventually add a third attacker.

45. At one point of the interview Investigator Novak assisted him with his story and stated:

"There was three".

"And I know there was a third person there."

46. Kuwan's story lacked so much detail that Sergeant Riley stated the following to Kuwan's family:

In other words, if he -- he needs to me the, the intimate details that only he knows so that I will understand.

Then I know he can't be lying to me because nobody else knows it.

Do you follow what I'm saying?

...

And there was three people, not just two.

47. Kuwan told a "story" that the three people were traveling to Preston Oates house to purchase weed, and that Preston was not home so they took a shortcut through the woods.

48. Further, during his alleged "confession" Kuwan stated that he was not a part of the attack and a man [presumably, Jeffrey Wooten] grabbed him and he attempted to run away.

49. After a lengthy interrogation, Kuwan finally provided the name of the "alleged" third attacker. The transcript from this portion of the interview is as follows:

² It appears that Kuwan's Mother was the party who made the statement, but we cannot confirm the speaker at this time.

SERGEANT RILEY: Who was with Chris?

KUWAN FIELDS: (Inaudible) cousins. I don't know (inaudible). Said it was his cousin.

SERGEANT RILEY: What did he call his cousin?

KUWAN FIELDS: I don't know his name. He said it was his cousin. I don't even know (inaudible).

SERGEANT RILEY: Would you know him if you saw him?

ANTHONY FIELDS: If you know anything (inaudible). If you see somebody (inaudible).

SERGEANT RILEY: Chris -

ANTHONY FIELDS: (Inaudible.)

ANTHONY FIELDS: I know you know, Kuwan.

ANTHONY FIELDS: (Inaudible.)

KUWAN FIELDS: (Inaudible) hat.

ANTHONY FIELDS: (Inaudible.)

KUWAN FIELDS: (Inaudible) I don't know.

ANTHONY FIELDS: Think Kuwan. Think.

KUWAN FIELDS: That's what I'm saying. I ain't trying to (inaudible), know what I'm saying. (Inaudible) Theo but I don't know (inaudible).

INVESTIGATOR NOVAK: Theo who?

KUWAN FIELDS: I don't know his name.

INVESTIGATOR NOVAK: You just told us his name. Theo who? Theo who?

KUWAN FIELDS: I'm trying to think.

INVESTIGATOR NOVAK: You were just getting ready to pronounce it and you stopped. Theo who?

KUWAN FIELDS: I don't know (inaudible). I don't know (inaudible).

INVESTIGATOR NOVAK: (Inaudible) get home?

KUWAN FIELDS: I don't know. I ran. I just kept running (inaudible).

ii. Investigator Novak Knew, or Should have Known, the Statement was false

50. After obtaining Kuwan Fields "confession", Investigator Novak, Anthony Fields and it appears Sergeant Riley, walked outside and presumably forgot to turn off the recorder. A portion of the transcript of the conversation is copied from the transcript and is provided as follows:

INVESTIGATOR NOVAK: Yeah, Derrick is the bigger threat. I st[i]ll don't understand --

ANTHONY FIELDS: He protecting somebody.

INVESTIGATOR NOVAK: I am still a little skeptical on the third person (inaudible). I am, where is the loyalty at there? I a[m] going to give up Chris, but I am not going to give up my family members. You know what I am saying.

SERGEANT RYNYON³: Theo is family.

ANTHONY FIELDS AND INVESTIGATOR NOVAK: No.

INVESTIGATOR NOVAK: Derrick is, Derrick had wet pants, wet pants that next night, the same with his wet coat. Maybe Derrick did, it, (inaudible) Derrick. We are not going to hammer them, as long as they cooperate, if they don't then all bets are off you know what I am saying.

SHERIFF SUPERVISOR⁴: I forgot about Derrick, I forgot about that while we were in there. (Inaudible)

INVESTIGATOR NOVAK: I got that in writing from Shenna and Derrick even admitted to me that his pants were wet, I fell behind [] my grandmother's house in a hole, there was no rain. Two people telling same story, That is (inaudible) and (inaudible) so I know the story is true. (Background talking and noise.)

INVESTIGATOR NOVAK: I am still skeptical about Derrick. Why did Sheena tell me that the pants were wet. That is two people that did not know about that story, I know, I told them that they were hindering my

Galvin Law Group, Inc.
P.O. Box 887
Burlington, SC 29910
(843) 227-2231
(800) 362-0714 Fax

³ This appears to be a scrivener's error. It is believed that this should read, "Sergeant Riley"

⁴ It is believed that this is Sergeant Riley

investigation. We are writing a written statement now. He is telling me that that pellet gun is Chris Battle's (inaudible he was the lookout.

51. This prior discussion reveals that Investigator Novak knew Kuwan Fields' "confession" was untrue and that Derrick Dupont was clearly involved in the attack.

Charges Filed Against Hamilton and Battle

52. On November 25, 2008, Investigator Novak secured arrest warrants for Harry Chris Battle, Jr. and Theo Hamilton, charging them with: (1) Assault with Intent to Kill, (2) Burglary; and (3) Conspiracy.

53. Hamilton and Battle were charged as adults, as a result their mug shot photos were prominently displayed on the front page of the local paper.

54. In addition, their bond hearing was recorded and interviews were published on the local news condemning Hamilton and Battle.

The Police Knew that Chris Battle did not Commit the Crime

i. Intimidation of Fields

55. Although all indications point to Kuwan Fields as one of the attackers. The police had so thoroughly intimidated and coerced Kuwan, as a result, they knew, or should have known, that any statement which he provided would likely be the direct result of the threats and coercion and thus not credible.

56. While being recorded, the Sheriff's Office threatened Fields with death, rape, destruction of his family and other direct threats to his family.

57. The Sheriff's Office knew or should have known that Fields was scared and would likely say anything to avoid execution, ruination of his family and rape.

58. Even after the confession the Sheriff's Office knew that the confession was untrue because Fields did not provide any details and because they knew that Derrick Dupont was involved in the crime. All too telling, Fields' story did not include Derrick Dupont.

ii. Fabrication of Evidence

59. During the police interview just after the attack, Mr. Wooten reported that the attacker yelled "Deuce, or something similar to that."

60. It is believed that Derrick Dupont's nickname is Deuce.

61. Investigator Novak and the Defendant was under great political pressure due to the media coverage..

62. Upon information and belief, Investigator Novak intentionally falsified, or did not properly verify, evidence by filing a supplemental police report indicating that the attacker yelled "Chris or Deuce, or something similar to that." It is believed that Investigator Novak falsified this information in order to attempt to make a case against Chris Battle.

63. During the criminal trial, Jeffrey Wooten testified that the attacker yelled "Deuce, or something similar to that" and did not state that the attacker yelled "Chris" as reported by Investigator Novak.

64. Upon information and belief, Investigator Novak created this evidence in an attempt to frame Chris Battle for the crime.

iii. Evidence Pointing to Derrick Dupont and that Kuwan was protecting his family

65. When investigating the case, the police suspected that Derrick Dupont was involved in the attack because of several factors including:

- a. His pants were wet; and,
- b. Several persons indicated that he was with Kuwan the night of the attack; and,
- c. He was seen the day before wearing a red hat and red jacket; and,
- d. He admitted to Sheena Fields that he was running from the police on the night of the attack; and,
- e. He lived a few houses down from Kuwan and was one of Kuwan's cousins and close friends.

iv. Lack of corroborating evidence

66. According to the Beaufort County Sheriff's Office, they did not have any physical evidence showing Chris Battle was at the scene, or even any evidence showing Theo Hamilton was at the scene.

67. The Sheriff's Office did not have any evidence or testimony that Fields and Battle were with Kuwan on the night of the attack, or that they were even friends with Kuwan.

v. *Officers Attempt to Obtain a Conviction After Learning that Field's Perjured Himself*

68. During the trial, Kuwan Fields testified that he was with Chris Battle and Theo Hamilton on the night of the attack.

69. However, in the middle of the Family Court trial a jail phone call from Kuwan Fields to who is believed to be his cousin Darryl Richardson, was played in which Fields stated that he saved his friend Jason's ass from being placed on the front page of the paper. In this jail recording, Fields states that the police still do not know who hit Mr. Lanese. A portion of the transcript is below⁵:

Kuwan Fields	Them other young boys out.
Unknown Speaker	Yeah, I know they out. They out on bond and shit. They've been out since December.
Kuwan Fields	Yeah.
Unknown Speaker	Man. That n*gger just trying God-damned -- they trying to figure who hit 'em and shit, man. Oh. They don't know who hit my man?
Kuwan Fields ⁶	Nah. You know what I'm saying? They don't know who hit 'em and shit, man, so. You know what I'm saying?...

70. In the same phone call Kuwan Fields states that he saved two people from being charged for attacking Brian Lanese. A portion of this call is below⁷:

Kuwan Fields	Where the fuck is Jason at? That n*gger -- that n*gger should be home.
Unknown Speaker	Yeah, man.
Kuwan Fields	God-damned. Still be on that dumb shit?
Kuwan Fields ⁸	No. Yeah, I -- they had told me one time them boys be doing that

⁵ Some Offensive language was modified.

⁶ This should have been marked in the transcript as Kuwan Fields' Statement, but due to a scrivener's error it was not marked as such.

dumb shit. I done got there and rescued them boys one time. I saved them boys this time.

Kuwan Fields (Inaudible).

Kuwan Fields I done saved them boys this time here. That was supposed to be they ass on the front page of that paper with me.

Kuwan Fields (Laughs.)

Unknown Speaker (Inaudible) it.

Kuwan Fields I saved they asses one time, yeah.

Unknown Speaker I tell them boys they some dumb mother*ckers, man.

71. At the trial Fields testified that he was never on the front page except for in the criminal case and maybe one time for football.

72. A copy of the article on the front page of the Island Packet is attached and made a part hereof as Exhibit "A". The article specifically states that Chris Battle was arrested for the crimes and Theo Hamilton was also arrested.

73. After the recording was played, Investigator Novak and the Beaufort County Sheriff's Office failed to reinvestigate the case and continued attempting to obtain a conviction even though they knew that Kuwan Fields' had perjured himself and it was apparent that Chris Battle was innocent.

74. Based on a continuance Ordered by the presiding Family Court Judge, the police had approximately one week from the date of this testimony to dismiss the charges, but the Sheriff's Office refused to dismiss, or reinvestigate the case and the office continued to press the prosecution of the case.

⁸ Due to a scrivener's error the speaker is identified as an unknown speaker. However, a review of the tape reveals that the transcript identify the speaker as Kuwan Fields.

75. After the trial, the Sheriff's Office waited until after Theo Hamilton and Chris Battle were acquitted the Sheriff's Office concluded that Battle and Hamilton were guilty and the prosecutor announced the same in the newspaper.

vi. *After the acquittal Statements are made in the Island Packet claiming that Chris Battle was guilty of the crime even though the Court had acquitted the Plaintiffs.*

76. On August 10, 2010, Battle and Hamilton were acquitted of all charges.

77. Without listening to the tape, finding any additional evidence, the Sheriff announced that he believed that Chris Battle was guilty of the crime. Preston J. Tanner stated On Thursday, August 12, 2010, he made the following statement to the Island Packet Newspaper:

"We need to go back and listen to the entire recording"...but it could be saying that there's another person involved --- a fourth person --- who was not arrested."

INJURY TO THE PLAINTIFFS

78. These charges and the entire criminal proceedings caused a great deal of injury to the Plaintiffs, including, but not limited to a loss of their reputations, loss of the ability to continue with their education, and loss of their liberty.

79. In addition, the Plaintiffs were confronted with the possibility that he could spend the next 45 years in prison for a crime which he did not commit.

80. The Plaintiffs continue to suffer injury.

81. In addition, the Plaintiffs were removed from high school and deemed a pariahs to the community. As a result of the charges, Chris Battle was forced to move to Charleston and has faced discrimination as a result of the charges.
82. As a direct and foreseeable consequence of these deprivations, Plaintiffs have suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education, and irreparable harm to his reputations.
83. As a further consequence of these deprivations, Plaintiffs were required to retain counsel to represent them in the criminal proceedings pursued against them, and incurred expenses associated with defending against the unlawful criminal proceedings initiated and sustained by Defendants.

FOR A FIRST CAUSE OF ACTION
Malicious Prosecution

84. Plaintiffs reallege and reincorporate all paragraphs into this cause of action.
85. That the Beaufort County Sheriff's Office instituted proceedings against Chris Battle and Theophilus Hamilton by indicting them for the charges of Assault with Intent to Kill, Conspiracy and Burglary.
86. The Plaintiffs were acquitted of all charges and the proceedings terminated in their favor.
87. The Sheriff's Office lacked probable cause to seek prosecution of the Plaintiffs at any time during the investigation.
88. Further, the lead investigator did not even believe Kuwan Field's "confession" and his conclusions were presumably based on his own fabricated evidence. As a result, there was no probable cause to arrest the Plaintiffs.

89. The Plaintiffs are not required show actual malice to prevail on a claim for malicious prosecution.

90. The Beaufort County Sheriff's Office proceeded with an ill-regulated mind and was not sufficiently cautious before causing injury to the Plaintiffs by among other issues described in the complaint:

- a. Making statements to Kuwan Fields and his family that the Sheriff's office knew that the Plaintiffs committed the crime;
- b. Relying on Kuwan Fields' statements even though the Sheriff's Office and its employees knew, or should have known, that the statement was unreliable and not corroborated by the evidence;
- c. Failing to verify the statements made in Kuwan Fields;
- d. Failing to reinvestigate the case after being presented with the phone call of Kuwan Fields;
- e. Relying on the statements made by Officer Louis Novak even after the Sheriff's Office knew that he had a history of dishonesty; and
- f. Using suggestive techniques when interviewing Kuwan Fields which the Defendant knew, or should have known could lead to false confessions.

91. During the trial, a jail call was played in which Kuwan Fields discussed the crime. He indicated that two other people should have been on the front page of the paper with him. This call revealed that the Plaintiffs were innocent and that two other people participated in the crime. However, even after this evidence was presented, the police continued to try to obtain a conviction and failed to re-investigate the case.

92. All of these acts were within the scope of Investigator Novak's position as an officer of the Beaufort County Sheriff's Office.

93. The Plaintiffs suffered extreme damage as a result of the institution of proceedings against them and continues to suffer.

94.

FOR A SECOND CAUSE OF ACTION
Negligent Retention and Supervision

95. Plaintiff realleges and reincorporates all paragraphs into this cause of action.

96. The Defendant knew of problems with Investigator Novak and knew that he was dishonest.

Further, the Defendant knew that in the past he had lied to the Defendant to attempt to cover up his own wrongdoing.

97. Further, the Defendant knew or should have known that Investigator Novak used intimidation and threats when speaking with potential witnesses.

98. The Defendant owed a duty to the Plaintiffs to oversee and supervise Investigator Novak.

99. The Defendant violated or breached its duty to the Defendant by retaining and/or failing to supervise Investigator Novak when the Defendant knew or should have known that Investigator Novak was dishonest, was untrustworthy, and could not be relied upon for honest and forthright performance of his duties. Further, the Defendant should have known that investigator Novak intimidated witnesses and therefore witness statements were likely unreliable.

100. It is likely that these problems with Investigator Novak would cause harm to third parties.

101. The Defendant had the ability to control its employee, but failed to control and supervise Investigator Novak.

102. The Defendant's negligent hiring, supervision and retention of Investigator Novak caused the Plaintiff harm by causing him to be charged with a crime, was forced to endure negative media scrutiny, was removed from school and suffered additional injuries.

PRAYER FOR RELIEF

WHEREFORE AS TO ALL CLAIMS: The Plaintiffs pray that this Court enters an Order awarding actual and punitive damages against the Defendant as following:

- a) damages in an amount to be established at trial as compensation for deprivations; past and future economic loss, physical harm, emotional trauma, loss of privacy, and loss of reputation; loss of education; and expenses associated with defending against the criminal proceedings initiated and sustained by Defendants' unlawful conduct; and,
- b) damages in an amount to be established at trial to punish Defendants for outrageous conduct pursued out of actual malice that recklessly and callously disregarded and was deliberately indifferent to Plaintiffs' constitutional rights, to discourage them from engaging in similar conduct in the future, and to deter others similarly situated from engaging in similar misconduct; and,
- c) An award of attorneys' fees; and,
- d) An award for reasonable and customary costs, expenses, and interest incurred in pursuit of this action; and,
- e) Any and all additional relief the Court may deem proper.

Respectfully submitted this 15th day of Oct, 2012.

Bluffton, South Carolina
15th day of October, 2012

GALVIN LAW GROUP, INC.

Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, SC 29910
843-227-2231
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ggalvin@galvinlawgroup.com

JURY DEMAND

The Plaintiffs demands a Jury Trial.

Gregory Michael Galvin, Esq.

Galvin Law Group, Inc.
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3 arrested in beating case

Teens allegedly attacked 2 men outside a greater Bluffton home Oct. 30

By GENE DUDLEY
dudley@blufftonpost.com
843-705-8138

Two Bluffton High School students were arrested at the school Tuesday morning and charged in the brutal beating of a greater Bluffton man in his backyard Oct. 30.

A third suspect also was arrested and charged with attacking the second victim in the incident.

All three suspects are being charged as adults.
The Bluffton County Sheriff's Office charged Christopher D. Hamilton, a sophomore, and Harry C. Battle, a junior, both 17, in the attack on 33-year-old Brian Lanese, who suffered major injuries in the beating and was hospitalized for nearly a month.

The Sheriff's Office charged Kuwan Fields, 18, with attacking 24-year-old Jennifer Wooten, who suffered minor injuries.

The three teens were taken to the Beaufort County Detention Center, where they face the following charges:

• Hamilton, of 6 Guerrera Ave., burglary, criminal conspiracy, and assault and battery with intent to kill.

• Battle, of 36 Raleigh Blvd., burglary, criminal conspiracy, and assault and battery with intent to kill.

• Fields, of 2011 S. Kings Highway, burglary, criminal conspiracy, and assault and battery with intent to kill.

Battle and Fields were arrested around 11:30 a.m. Tuesday at the Bluffton High School after a tip from a Bluffton High School parent of the Sheriff's Office around 9 p.m.

Battle's parents must wait a detective in the parking lot of the Sheriff's Office about two hours after their son was arrested.

During that sometimes heated conversation, they maintained their son's innocence, saying he was at home with two younger siblings on the night of the attack.

They declined comment for this article.

Please see ARRESTED on 11A

BLOOD DRIVE HONORS LANESE

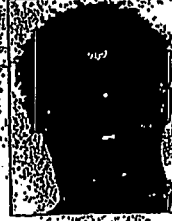
A blood drive was held Tuesday in honor of Brian Lanese, 33.



Christopher Hamilton, charged with burglary, criminal conspiracy, and assault and battery with intent to kill.



Harry Battle, charged with burglary, criminal conspiracy, and assault and battery with intent to kill.



Kuwan Fields, charged with burglary, criminal conspiracy, and simple assault and battery.



Brian Lanese, Jennifer Wooten, and their children in this family portrait. Special to the Post.

Victim expected to leave hospital today

By GENE DUDLEY
dudley@blufftonpost.com
843-705-8138

Nearly a month after the brutal attack that left him critically injured, 33-year-old Brian Lanese is scheduled to leave a Savannah hospital and return to his greater Bluffton home today.

Lanese, who spent several weeks in the intensive care unit of Memorial Health University Medical Center, suffered major

head injuries in the Oct. 30 beating. While in the hospital, he also suffered serious internal bleeding. Surgeons operated on him multiple times to stop that bleeding.

Lanese's wife, Tracy, has remained with him, spending most nights sitting awake beside his hospital bed. Receiving hospital rules, nurses allowed Tracy to spend the night in the room because her husband was calm when she was there, Tracy

said Tuesday.

She said doctors are astounded by Brian's progress, which some of them called "miraculous." Still in a medically-induced coma just more than a week ago, Brian can now walk down the hospital's halls and eat solid foods.

"He said 'Happy Thanksgiving' to us today," she said. "Every day in our life is Thanksgiving now."

Please see VICTIM on 11A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-07-04548

HARRY CHRIS BATTLE, JR. AND
THEOPHILUS HAMILTON,

Plaintiff,

vs.

BEAUFORT COUNTY SHERIFF'S
OFFICE,

Defendant.

12 NOV 15 PM 3:02
CLERK OF COURT
BEAUFORT COUNTY SHERIFF'S
OFFICE ANSWER TO PLAINTIFFS'
CORRECTED AMENDED COMPLAINT

The Defendant, Beaufort County Sheriff's Office, answering the Corrected Amended Complaint of the Plaintiffs would allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation contained in the Plaintiffs' Corrected Amended Complaint not specifically admitted hereinafter is denied and strict proof demanded thereof.
2. The Defendant admits allegations set forth in Paragraph 1 of the Plaintiffs' Corrected Amended Complaint.
3. The Defendant admits allegations set forth in Paragraph 2 of the Plaintiffs' Corrected Amended Complaint.
4. The Defendant admits allegations set forth in Paragraph 3 of the Plaintiffs' Corrected Amended Complaint.

5. The Defendant admits allegations set forth in Paragraph 4 of the Plaintiffs' Corrected Amended Complaint.

THE NIGHT OF OCTOBER 30, 2008

1. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

2. That the Plaintiff has not asserted any allegations within Paragraph 1 of the Plaintiffs' Corrected Amended Complaint, and therefore no response is required by this Defendant.

3. The Defendant admits only so much of Paragraph 2 as alleges the Lanese residence is located at 8 Sugaree Drive, Bluffton, South Carolina, 29910 and is without sufficient information or belief to either admit or deny the remaining allegations contained in Paragraph 2 of the Plaintiffs' Corrected Amended Complaint.

4. The Defendant admits allegations set forth in Paragraph 3 of the Plaintiffs' Corrected Amended Complaint.

5. The Defendant admits allegations set forth in Paragraph 4 of the Plaintiffs' Corrected Amended Complaint.

6. The Defendant admits only so much of Paragraph 5 as alleges he realized that Mr. Wooten realized that Mr. Lanese "was struggling to come to" and in an effort to aide his friend, Mr. Wooten released the third attacker and immediately began assisting Mr. Lanese, but is without sufficient information or

belief to either admit or deny the remaining allegations contained in Paragraph 5 of the Plaintiffs' Corrected Amended Complaint.

7. The Defendant admits allegations set forth in Paragraph 6 of the Plaintiffs' Corrected Amended Complaint.

8. The Defendant admits allegations set forth in Paragraph 7 of the Plaintiffs' Corrected Amended Complaint.

9. The Defendant admits allegations set forth in Paragraph 8 of the Plaintiffs' Corrected Amended Complaint.

10. The Defendant admits allegations set forth in Paragraph 9 of the Plaintiffs' Corrected Amended Complaint.

11. The Defendant admits allegations set forth in Paragraph 10 of the Plaintiffs' Corrected Amended Complaint.

12. The Defendant admits allegations set forth in Paragraph 11 of the Plaintiffs' Corrected Amended Complaint.

13. The Defendant admits allegations set forth in Paragraph 12 of the Plaintiffs' Corrected Amended Complaint.

14. The Defendant admits allegations set forth in Paragraph 13 of the Plaintiffs' Corrected Amended Complaint.

15. The Defendant denies the allegations set forth in Paragraph 14 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

16. The Defendant admits allegations set forth in Paragraph 15 of the Plaintiffs' Corrected Amended Complaint.

17. The Defendant admits allegations set forth in Paragraph 16 of the Plaintiffs' Corrected Amended Complaint.

18. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 17 of the Plaintiffs' Corrected Amended Complaint.

19. The Defendant admits allegations set forth in Paragraph 18 of the Plaintiffs' Corrected Amended Complaint.

20. The Defendant admits allegations set forth in Paragraph 19 of the Plaintiffs' Corrected Amended Complaint.

21. The Defendant admits allegations set forth in Paragraph 20 of the Plaintiffs' Corrected Amended Complaint.

22. The Defendant admits allegations set forth in Paragraph 21 of the Plaintiffs' Corrected Amended Complaint.

23. The Defendant admits allegations set forth in Paragraph 22 of the Plaintiffs' Corrected Amended Complaint.

24. The Defendant admits allegations set forth in Paragraph 23 of the Plaintiffs' Corrected Amended Complaint.

25. The Defendant admits allegations set forth in Paragraph 24 of the Plaintiffs' Corrected Amended Complaint.

26. The Defendant admits allegations set forth in Paragraph 25 of the Plaintiffs' Corrected Amended Complaint.

27. The Defendant admits allegations set forth in Paragraph 26 of the Plaintiffs' Corrected Amended Complaint.

28. The Defendant admits allegations set forth in Paragraph 27 of the Plaintiffs' Corrected Amended Complaint.

29. The Defendant admits allegations set forth in Paragraph 28 of the Plaintiffs' Corrected Amended Complaint.

30. The Defendant admits allegations set forth in Paragraph 29 of the Plaintiffs' Corrected Amended Complaint.

31. The Defendant admits allegations set forth in Paragraph 30 of the Plaintiffs' Corrected Amended Complaint.

32. The Defendant admits allegations set forth in Paragraph 31 of the Plaintiffs' Corrected Amended Complaint.

33. The Defendant denies the allegations set forth in Paragraph 32 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

34. The Defendant denies the allegations set forth in Paragraph 33 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

35. The Defendant denies the allegations set forth in Paragraph 34 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

36. The Defendant denies the allegations set forth in Paragraph 35 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

37. The Defendant denies the allegations set forth in Paragraph 36 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

38. The Defendant denies the allegations set forth in Paragraph 37 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

39. The Defendant admits allegations set forth in Paragraph 38 of the Plaintiffs' Corrected Amended Complaint.

40. The Defendant admits allegations set forth in Paragraph 39 of the Plaintiffs' Corrected Amended Complaint.

41. The Defendant admits allegations set forth in Paragraph 40 of the Plaintiffs' Corrected Amended Complaint.

42. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 41 of the Plaintiffs' Corrected Amended Complaint.

43. The Defendant denies the allegations set forth in Paragraph 42 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

44. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 43 of the Plaintiffs' Corrected Amended Complaint.

45. The Defendant denies the allegations set forth in Paragraph 44 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

46. The Defendant denies the allegations set forth in Paragraph 45 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

47. The Defendant denies the allegations set forth in Paragraph 46 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

48. The Defendant admits allegations set forth in Paragraph 47 of the Plaintiffs' Corrected Amended Complaint.

49. The Defendant admits allegations set forth in Paragraph 48 of the Plaintiffs' Corrected Amended Complaint.

50. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 49 of the Plaintiffs' Corrected Amended Complaint.

51. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 50 of the Plaintiffs' Corrected Amended Complaint.

52. The Defendant denies the allegations set forth in Paragraph 51 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

53. The Defendant admits allegations set forth in Paragraph 52 of the Plaintiffs' Corrected Amended Complaint.

54. The Defendant denies the allegations set forth in Paragraph 53 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

55. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 54 of the Plaintiffs' Corrected Amended Complaint.

56. The Defendant denies the allegations set forth in Paragraph 55 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

57. The Defendant denies the allegations set forth in Paragraph 56 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

58. The Defendant denies the allegations set forth in Paragraph 57 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

59. The Defendant denies the allegations set forth in Paragraph 58 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

60. The Defendant admits the allegations set forth in Paragraph 59 of the Plaintiffs' Corrected Amended Complaint.

61. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 60 of the Plaintiffs' Corrected Amended Complaint.

62. The Defendant denies the allegations set forth in Paragraph 61 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

63. The Defendant denies the allegations set forth in Paragraph 62 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

64. The Defendant admits the allegations set forth in Paragraph 63 of the Plaintiffs' Corrected Amended Complaint.

65. The Defendant denies the allegations set forth in Paragraph 64 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

66. The Defendant admits the allegations set forth in Paragraph 65 of the Plaintiffs' Corrected Amended Complaint.

67. The Defendant denies the allegations set forth in Paragraph 66 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

68. The Defendant denies the allegations set forth in Paragraph 67 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

69. The Defendant admits the allegations set forth in Paragraph 68 of the Plaintiffs' Corrected Amended Complaint.

70. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 69 of the Plaintiffs' Corrected Amended Complaint.

71. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 70 of the Plaintiffs' Corrected Amended Complaint.

72. The Defendant admits the allegations set forth in Paragraph 71 of the Plaintiffs' Corrected Amended Complaint.

73. The Defendant admits the allegations set forth in Paragraph 72 of the Plaintiffs' Corrected Amended Complaint.

74. The Defendant denies the allegations set forth in Paragraph 73 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

75. The Defendant denies the allegations set forth in Paragraph 74 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

76. The Defendant denies the allegations set forth in Paragraph 75 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

77. The Defendant admits the allegations set forth in Paragraph 76 of the Plaintiffs' Corrected Amended Complaint.

78. The Defendant denies the allegations set forth in Paragraph 77 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

79. The Defendant denies the allegations set forth in Paragraph 78 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

80. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 79 of the Plaintiffs' Corrected Amended Complaint.

81. The Defendant denies the allegations set forth in Paragraph 80 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

82. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 81 of the Plaintiffs' Corrected Amended Complaint.

83. The Defendant denies the allegations set forth in Paragraph 82 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

84. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 83 of the Plaintiffs' Corrected Amended Complaint.

85. That the Plaintiff has not asserted any allegations within Paragraph 84 of the Plaintiffs' Corrected Amended Complaint, and therefore no response is required by this Defendant.

86. The Defendant denies the allegations set forth in Paragraph 85 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

87. The Defendant admits the allegations set forth in Paragraph 86 of the Plaintiffs' Corrected Amended Complaint.

88. The Defendant denies the allegations set forth in Paragraph 87 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

89. The Defendant denies the allegations set forth in Paragraph 88 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

90. Paragraph 89 is a statement of the law, therefore the Defendant is not required to either admit or deny.

91. The Defendant denies the allegations set forth in Paragraph 90 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

92. The Defendant denies the allegations set forth in Paragraph 91 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

93. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 92 of the Plaintiffs' Corrected Amended Complaint.

94. The Defendant is without sufficient information or belief to either admit or deny the allegations contained in Paragraph 93 of the Plaintiffs' Corrected Amended Complaint.

95. Paragraph 94 is skipped.

96. That the Plaintiff has not asserted any allegations within Paragraph 95 of the Plaintiffs' Corrected Amended Complaint, and therefore no response is required by this Defendant.

97. The Defendant admits only so much of Paragraph 96 as Novak's personnel file contained an episode where Novak's truthfulness in that circumstance was at issue, but this incident was not in the course of a criminal investigation performed by Novak. The Defendant denies all remaining

allegations contained in Paragraph 96 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

98. The Defendant denies the allegations set forth in Paragraph 97 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

99. The Defendant admits the allegations set forth in Paragraph 98 of the Plaintiffs' Corrected Amended Complaint.

100. The Defendant denies the allegations set forth in Paragraph 99 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

101. The Defendant denies the allegations set forth in Paragraph 100 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

102. The Defendant denies the allegations set forth in Paragraph 101 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

103. The Defendant denies the allegations set forth in Paragraph 102 of the Plaintiffs' Corrected Amended Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

104. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

105. In further answering the Complaint, herein, the Defendant alleges and says that the imposition of punitive damages on the basis of the accident giving rise to this lawsuit is not authorized pursuant to the South Carolina Tort Claims Act.

FOR A THIRD DEFENSE

106. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

107. This Defendant is immune from suit and/or protected from liability pursuant to the South Carolina Tort Claims Act. This Defendant does affirmatively plead the South Carolina Tort Claims Act, as well as its rights, privileges, limitations and immunities as a full and complete defense to all causes of action asserted by the Plaintiff including but not limited to SC Code Ann. § 15-76-60 (23) of the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE

108. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

109. That these Defendants would show that the claims of the Plaintiffs are barred by the relevant statute and/or statutes of limitations.

WHEREFORE, the Defendant prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing this matter, with an award of attorneys fees and costs to the Defendant.

HOWELL, GIBSON & HUGHES, P.A.

By: T. Biddle (for)

Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant

Beaufort, South Carolina

November 12, 2012

12 NOV 15 PM 3:02
CLERK OF COURT
BEAUFORT COUNTY, S.C.

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 12th day of November, 2012.

By: T. Biddle (for)
Mary Bass Lohr

08-08-1030.0704

LAW OFFICE OF SCOTT W. LEE

1214 King Street
Post Office Box 2124
Beaufort, South Carolina 29901-2124

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12/26/08
Copies made
pg. 1, 2, 3, 6, 7 & 8
E. R.

December 11, 2008

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

Re: State -v- Theophilus D. Hamilton
Indictment Nos. 08-GS-07-2736, -3737, -2738
Charges: Burglary 2d, ABWITK, Conspiracy
Arresting Officer:
File: #08-1209

Dear Sir:

I represent the above referenced defendant on the indicated charges. In connection with this matter you will find enclosed a Rule 5 Request on behalf of my client.

Thank you for your cooperation and assistance in this matter.

Very truly yours,



Scott W. Lee

SWL:bw
Enclosure
cc: I. McDuffie Stone, III, Solicitor

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

STATE OF SOUTH CAROLINA)

IN GENERAL SESSIONS COURT

COUNTY OF BEAUFORT)

Indictment Nos. 08-GS-07-2736, -3737, -2738

(Burglary 2d, ABWITK, Conspiracy)

STATE OF SOUTH CAROLINA)

-versus-

RULE 5 REQUEST

BRADY MOTION

THEOPHILUS HAMLTON)

Defendant

COMES NOW the Defendant who requests pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure the following:

- A. Permit the inspection and copying of any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the Government, and the substance of any oral statements made by the Defendant whether before arrest, or after arrest in response to interrogation by any Government official, officer, agent, and/or employee.
- B. Furnish to the Defendant a copy of his prior criminal record, if any.
- C. Permit the inspection and copying of books, papers, documents, photographs, incident reports, witness statements, tangible objects, charts, maps, drawings, buildings or places, or copies thereof, which are within the possession, custody, or control of the Government, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant.
- D. Permit the inspection and copying any results or reports of physical or mental evaluations, and of scientific tests or experiments, or copies thereof which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial

This request is deemed to be continuing pursuant to the provision of Section (c) of Rule 5. If the above requested disclosure is denied, restricted, or deferred, or in other ways not complied with, the Defendant hereby moves for relief according to the provisions of Sections (d)(1) and/or (d)(2) of Rule 5.

The Defendant further requests the State to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

Beaufort, South Carolina

12/11, 2008

Certified to be a true and correct
copy of the original document on file
Respectfully submitted,
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

Scott W. Lee
Attorney for Defendant

CERTIFICATE OF MAILING

The undersigned hereby certifies that s/he has served counsel of record with the foregoing document(s) by placing said documents in a post-paid envelope to the person hereinafter named at the place and address stated below and by depositing said envelope in the United States Mail on this 11 day of December, 2008.

Case: State v. Theophilus Hamilton

Document(s): Rule 5 Request/Brady Motion
Warrant J-346912

Served:
Records Department
Beaufort County Sheriff's Office
P.O. Box 1758
Beaufort, SC 29901

I. McDuffie Stone, III, Esquire-
Solicitor, 14th Judicial Circuit
P.O. Box 2226
Beaufort, SC 29901

Andrea Wagner

Beaufort, South Carolina

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

AFFIDAVIT OF SERVICE

I, Staff Sergeant Jacqueline D. LeGree, of the Beaufort County Sheriff's Office, hereby certify that I have this 2nd day of January 2009 caused to be served a copy of the complete file of the State of South Carolina vs. Theophilus Hamilton requested by Rule 5, on the below listed by first class U.S. Mail with proper postage affixed and addressed as follows:

Law Office of Scott W. Lee
P.O. Box 2124
Beaufort, SC 29901

and notice was sent to:

The Beaufort Solicitor's Office
Post Office Box 2226
Beaufort, South Carolina 29901

Beaufort, South Carolina

Sworn to before me this
2nd day of January 2009.

Notary Public, State of South Carolina
My Commission expires: November 7, 2015

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.
Michael M. Hatfield
Warrants: J-337165-6264
Chief Deputy, Beaufort County Sheriff's Office



P. J. Tanner
Sheriff

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

AREA CODE (843)

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

Date: December 31, 2008

Attention: Scott W. Lee, Esq.
Law Office of Scott W. Lee
Post Office Box 2124
Beaufort, South Carolina 29901

Reference: State vs. Dana Lea Abrishaman
State vs. Theophilus Hamilton

Dear Mr. Lee:

The following is an invoice detailing the copy fees for reports/evidence pursuant to your Rule 5 request from the Beaufort County Sheriff's Office.

Invoice Date	Case Number	1st Page \$1.00	# of Add'l Pages .25 ea.	Color Scans \$1.00	DVD \$2.50	CD's/ Floppy Discs \$1.50	VHS Tapes \$2.00	Total
12/31/08	2008-1208-0287	1	13			2		\$ 7.25
	2008-1030-0704	1	48			12	1	\$ 33.00
							Total Due	\$ 40.25

Payment is due within 30 days upon receipt of invoice

Please make your check payable to the Beaufort County Sheriff's Office. Also, please reference the case number and mail your check to the address listed above. If you have any questions, please feel free to contact me at 843-470-3202.

Sincerely,

Jacqueline D. LeGree, Staff Sergeant
Beaufort County Sheriff's Office
General Sessions Coordinator

*Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.*

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

08-1030-0704

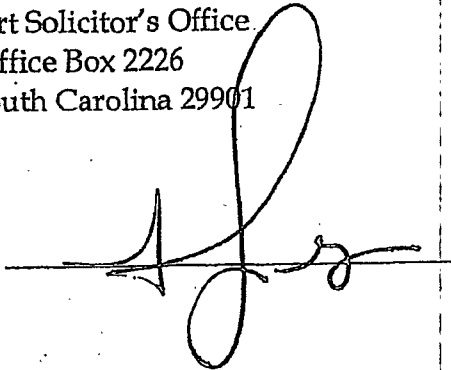
AFFIDAVIT OF SERVICE

I, Staff Sergeant Jacqueline D. LeGree, of the Beaufort County Sheriff's Office, herby certify that I have this 8th day of January 2009 caused to be served a copy of the complete file of the State of South Carolina vs. Theophilus Hamilton requested by Rule 5 on the below listed.

Beaufort County Public Defender
Human Resources Building
1905 Duke Street, 2nd Floor, RM. 210
Post Office Box 525
Beaufort, South Carolina 29901

and notice was sent to:

The Beaufort Solicitor's Office
Post Office Box 2226
Beaufort, South Carolina 29901



Beaufort, South Carolina

Sworn to before me this
8th day of January 2009.

Notary Public, State of South Carolina
My Commission expires: November 7, 2015

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Warrant(s): J-337165, 63, 64,

08-1030-0704

AFFIDAVIT OF SERVICE

I, Staff Sergeant Jacqueline D. LeGree, of the Beaufort County Sheriff's Office, hereby certify that I have this 8th day of January 2009 caused to be served a copy of the complete file of the State of South Carolina vs. Kuwain Fields requested by Rule 5 on the below listed.

Beaufort County Public Defender
Human Resources Building
1905 Duke Street, 2nd Floor, RM. 210
Post Office Box 525
Beaufort, South Carolina 29901

and notice was sent to:

The Beaufort Solicitor's Office
Post Office Box 2226
Beaufort, South Carolina 29901

Beaufort, South Carolina

Sworn to before me this
8th day of January 2009.

Notary Public, State of South Carolina
My Commission expires: November 7, 2015

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Warrant(s): J-337156, 58, 57

WITNESS TESTIMONY OF THEOPHILIUS HAMILTON'S POLICE **EXPERT CHARLES DRAGO**;

DIRECT EXAMINATION BY MARY LOHR, ESQ.

1 that. Is that the only basis for your opinion with
2 regard to prior to the arrest of Theophilus Hamilton is
3 the February 2006 incident with the alcohol on the credit
4 card and the untruthfulness when questioned, is that the
5 basis of your opinion that Beaufort County Sheriff's
6 Office negligently retained Lou Novak?

7 A. Prior to the arrest, yes.

8 Q. Okay. Do you have any other opinions with
9 regard to negligent supervision and retention as it
10 relates to Mr. Novak?

11 A. Yes.

12 Q. Okay. Let's talk about those.

13 A. Mr. Novak, of course, was found to be untruthful
14 and have lied in this official investigation within the
15 police department.

16 During the course of the investigation involving
17 Mr. Lanese and Mr. Hamilton and Mr. Fields, Mr. Novak's
18 conduct in the investigation was improper, contrary to
19 all protocols and procedures for dealing with suspects in
20 a criminal investigation.

21 Namely his interview of Mr. Kuwan Fields, the
22 first interview he had with Kuwan Fields where quite
23 clearly he was attempting to intimidate and coerce a
24 confession out of Mr. Fields by threatening him,
25 threatening his family, acting violently in front of

1 Mr. Fields to intimidate him.

2 Officers understand that they're tainting their
3 interview and any subsequent confessions greatly when
4 they do that type of -- when they act that way because
5 anything that that suspect says after that will be
6 tainted and will be suspect if anybody is arrested from
7 that point on.

8 And the reason I bring that up as it relates to
9 negligent supervision is that he was sitting in the room
10 with one of his supervisors for a good part of that.

11 That's another example prior to the arrest of
12 his supervisors condoning his behavior. They condoned it
13 on a department level when they allowed him to lie and
14 then continue to conduct criminal investigations and then
15 they allowed him to threaten, intimidate and coerce a
16 suspect or in their own words at that point someone they
17 considered a witness and then condone it by allowing it
18 to occur and continue.

19 In terms of negligent supervision, it continues
20 throughout Mr. Novak's career. I don't know if you want
21 to get into that at this point yet or not.

22 Q. Sure. Let's kind of item by item let's go
23 through and you tell me what you see are the instances of
24 negligent supervision and retention, just so I make sure
25 we covered everything with you.

1 trial of Mr. Hamilton.

2 And the major is talking about misconduct in a
3 criminal investigation. I don't know what that was. I
4 have no information regarding that. Again, I've never
5 seen a memo written by a commanding officer addressing
6 misconduct by an officer where he's so vague and doesn't
7 stipulate as to what policies are violated, et cetera,
8 yet he sustained charges for whatever it was and advised
9 in that memo that he would seek counseling of Mr. Novak.

10 So there is either evidence of or evidence of in
11 terms of mention of numerous violations regarding
12 Mr. Novak's conduct and -- or misconduct and his
13 untruthfulness throughout his years with the department
14 and prior to the department allowing him to get on the
15 stand and testify as a reliable witness in the Hamilton
16 case.

17 In terms of, again, negligent supervision and
18 retention, I bring out another point that I want to
19 mention. And that is Mr. Novak's police report.

20 Q. Okay.

21 A. In his police report he mentions that the
22 witness, Mr. Wooten, stated that the subject he was
23 fighting with during this incident yelled out the name
24 Deuce or Chris. This police report was written after the
25 arrest of Chris Battle and Theo Hamilton.

1 supervision and retention at this point.

2 Q. Okay. Now, with regard to the claims of -- the
3 other claim was -- I mean, the other opinion you stated
4 was that you believe that Beaufort County Sheriff's
5 Office was involved in the malicious prosecution of
6 Theo Hamilton. Will you give me the basis for those
7 opinions, please.

8 A. My basis for that is the fact that the
9 detectives, Novak in this case, did not have probable
10 cause to arrest Mr. Hamilton or Mr. Battle in this case.

11 They relied entirely on a statement provided by
12 one of the individuals they believed involved in the
13 crime. An individual who lied to them repeatedly,
14 repeatedly, repeatedly, changed the story repeatedly, an
15 individual who was coerced, intimidated, threatened, an
16 individual who identified two individuals involved with
17 him in the crime only after the names were provided by
18 Detective Novak in the first interview, and only after
19 the detectives continuously told Mr. Fields how many
20 suspects he should come up with.

21 In other words, Mr. Fields provided --
22 eventually provided one name, and the detectives
23 continuously interrogated him, telling him we need a
24 third name, we need a third name, which they eventually
25 -- which Mr. Fields eventually provided.

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

THEOPHILUS HAMILTON

PLAINTIFF

VERSUS

COPY

JULY 29, 2014

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

BEAUFORT COUNTY SHERIFF'S OFFICE

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFF
THEOPHILUS HAMILTON:

HON. ERIC J. ERICKSON
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ON BEHALF OF DEFENDANT
BEAUFORT COUNTY SHERIFF'S OFFICE:

HON. MARY BASS LOHR
HON. J. ANDREW YOHO
HOWELL, GIBSON & HUGHES, P.A.
25 RUE DU BOIS, LADY'S ISLAND
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mlohr@hghpa.com

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EXHIBITS

No exhibits were admitted.

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

1 BEGINNING 1:37 P.M.

2 BY THE COURT:

3 THE COURT: All right. This is Defense's motion for
4 summary judgment. Is that correct?

5 MS. LOHR: Yes, ma'am.

6 THE COURT: All right.

7 MS. LOHR: Your Honor, I'm Mary Lohr. I'm here
8 today on behalf of the Beaufort County Sheriff's Office.
9 I apologize for my voice. I've been fighting this
10 little tickle in it for days, and I sometimes get into a
11 coughing fit.

12 We have a case that your Honor will remember the
13 facts of, I'm sure. It's kind of been ongoing here in
14 Beaufort County for awhile. This arises out of the
15 assault on Mr. Lenese, way back in 2008. This case is
16 -- there are two claims that are left in this case
17 brought by Theophilus Hamilton. And I'll call him Theo
18 Hamilton, because I think that's what he normally goes
19 by. He has a malicious prosecution claim and a
20 negligent supervision/retention claim left in the case.

21 With regard to the malicious prosecution claim, the
22 allegations, both in the -- there's two complaints. The
23 corrected, amended complaint is the one we're currently
24 operating off of.

25 THE COURT: Can I ask you a question first, Ms.

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

1 Lohr. You said there are two causes of action left?

2 MS. LOHR: Yes, ma'am.

3 THE COURT: Were any of these argued prior in front
4 of another judge, or it was just by agreement? How was
5 --

6 MS. LOHR: There was a motion to dismiss initially
7 in front of Judge Dukes.

8 THE COURT: Okay. And what did he grant so far?

9 MS. LOHR: He granted negligent -- no -- false
10 arrest was dismissed.

11 THE COURT: Okay.

12 MS. LOHR: I believe he allowed amendment to the
13 negligence suit for -- no, the malicious prosecution
14 claim.

15 THE COURT: Okay.

16 MS. LOHR: There was a defamation claim that was
17 dropped.

18 THE COURT: Okay.

19 MS. LOHR: And I feel like there might have been,
20 like, a negligence, a gross negligence claim that might
21 have been dropped, as well.

22 THE COURT: Okay. So, has he heard anything as to
23 malicious prosecution claim or no?

24 MS. LOHR: Only originally as the motion to -- at
25 the motion to dismiss, where he allowed amendment.

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

1 THE COURT: Got it. At the motion to dismiss, not
2 a summary judgment stage. Got it.

3 MS. LOHR: Yes, ma'am.

4 THE COURT: Okay.

5 MR. ERICKSON: The only one I would allow in that
6 is the abuse of process, I believe, was --

7 MS. LOHR: Oh, abuse of process, and that was, I
8 think, dismissed.

9 THE COURT: Okay. Well, let me ask you this, and
10 let's kind of -- and again, I've read your all's briefs.
11 I appreciate it, and I'm certainly familiar with the
12 case. And maybe if we could just cut to the chase a
13 little bit, I'll ask you a couple of questions; you tell
14 me.

15 MS. LOHR: Right.

16 THE COURT: Going through and looking at the first
17 cause of action for malicious prosecution, I think we
18 can all sit here and agree the statute of limitations
19 tolls between the time he's a minor and he turns 18.

20 MS. LOHR: Right. Right.

21 THE COURT: We all get that. And then, he has one
22 year to file.

23 MS. LOHR: Well, that's the negligent supervision
24 claim with the statute of limitations, not the malicious
25 prosecution claim.

1 THE COURT: Okay. But just so I'm sure, because
2 this is what my problem is, is that, as part of one of
3 the elements of malicious prosecution, you've got to be
4 successful in prosecu -- or you know, in the outcome
5 being good to you for the plaintiff. And that didn't
6 occur until when?

7 MS. LOHR: Well, we're not asserting statute of
8 limitations on the malicious prosecution claim. We're
9 only asserting statute of limitations on the negligent
10 supervision claim.

11 THE COURT: Then, that makes more sense. That
12 makes life much easier. But are you alleging anything
13 as far as summary judgment on that?

14 MS. LOHR: On the malicious prosecutions claim,
15 yes, ma'am, we are.

16 THE COURT: What is your basis?

17 MS. LOHR: The basis for the malicious prosecution
18 claim is that the allegations by the plaintiff, the
19 plaintiff's expert, and in the plaintiff's complaint
20 have to do with the intent to harm, specifically with
21 the intent to harm, and the malicious actions of Officer
22 Novak toward Theo Hamilton.

23 THE COURT: Are you saying their expert is not
24 saying there was an intent to harm?

25 MS. LOHR: Their expert is saying specifically

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

1 there was an intent to harm, and that the actions of
2 Novak were malicious.

3 THE COURT: How does that not get him past summary
4 judgment?

5 MS. LOHR: Well, because, your Honor, the *Tort*
6 *Claims Act* says the Sheriff's Office can't be held
7 liable for intentional acts and malicious acts.

8 THE COURT: Okay.

9 MS. LOHR: So, the correct party to have sued would
10 have been Officer Novak under a 1983 claim, for
11 instance.

12 THE COURT: So, does he say there's any gross
13 negligence on behalf of Novak at all?

14 MS. LOHR: There's no allegations of that. There's
15 the -- specifically, it's all framed, and I have for you
16 Pages 16, 17, and 21 of --

17 THE COURT: And whose deposition was that? We had
18 a little hard time figuring that out.

19 MS. LOHR: Chuck Drago.

20 THE COURT: And that is?

21 MS. LOHR: That's the plaintiff's expert.

22 THE COURT: Okay.

23 MS. LOHR: The whole basis of the claim, your
24 Honor, is that Mr. Novak knew that Theo Hamilton didn't
25 commit this act, ignored the facts, and intentionally

1 framed them. Coerced Kuwan Fields into stating that --
2 stating that they had -- I'm sorry, this tickle in my
3 throat has me distracted.

4 THE COURT: That's okay.

5 MS. LOHR: The complaint's replete with references
6 of fabricating evidence, coaching testimony, as is Mr.
7 Drago's deposition testimony. He specifically states
8 that there's malice, intent to harm, that Mr. Novak
9 falsifies records, and that he was seeking to frame the
10 plaintiff.

11 THE COURT: Does he anywhere in here say that he
12 was grossly negligent, or is everything he alleges is
13 it's intentional?

14 MS. LOHR: It's intentional acts, all of it. That
15 it was a knowing act. In fact, he asserts that Mr.
16 Novak knew someone else did it, and proceeded to frame
17 Theo Hamilton for it.

18 THE COURT: Okay. All right. Mr. Erickson, you
19 need to show me somewhere in this deposition of your
20 expert that he believes that Novak was grossly negligent
21 and not intentionally framing.

22 MR. ERICKSON: The point I was going to proceed on
23 that, to answer your question, no, there's none from my
24 expert. And the way I was going to tackle this was just
25 the way I wrote it in the summary judgment, was that

1 there's a different conclusion as to each side. The
2 Sheriff's Office does not allege they did anything wrong
3 or lied, per Robert Bromage.

4 THE COURT: The question is, is to be able to prove
5 under the *Tort Claims Act* that the Sheriff's Department
6 is in some way responsible, you have to allege gross
7 negligence on their behalf. It can't be intentional,
8 and it can't be simple negligence. It's got to be gross
9 negligence, and usually, you have an expert that
10 understands the difference. And again, shocking,
11 because most experts will opine whatever needs to be
12 said to be able to get you past summary judgment. But
13 you can't -- you could allege that it's either
14 intentional and/or grossly negligent, but you can't say
15 he wasn't grossly negligent. I mean, if he can't give
16 that opinion, I don't see how you survive on this cause
17 of action.

18 MR. ERICKSON: I'm saying it's somewhere between.

19 THE COURT: But you need to show me where that is
20 in his testimony or in an affidavit, or -- and again, I
21 haven't read the whole transcript. I mean, I don't know
22 if you can go through it and point out.

23 MR. ERICKSON: I'm just using the basis of Bob
24 Bromage, who testified that Novak did not lie. That's
25 the opposite conclusion as to what my expert said, and

1 the case law is clear on that. When you have two --

2 THE COURT: Mr. Bromage said he did not lie.

3 MR. ERICKSON: That's right.

4 THE COURT: And they claim that he did.

5 MR. ERICKSON: Correct.

6 THE COURT: Okay. How can Bromage opine that
7 someone did not lie? I mean, do you have testimony from
8 Novak that says he did not lie? I mean, have you taken
9 his deposition?

10 MR. ERICKSON: From whom?

11 THE COURT: From Novak, the officer.

12 MR. ERICKSON: No, I tried to subpoena him. I had
13 a P.I. out there. We could not find him.

14 THE COURT: Does he no longer work for Beaufort?

15 MR. ERICKSON: And Ms. Lohr couldn't find him.

16 MS. LOHR: No, ma'am.

17 THE COURT: Okay.

18 MS. LOHR: My understanding is he's out of state
19 somewhere.

20 THE COURT: Okay.

21 MR. ERICKSON: But I would just -- just like I said
22 in my summary judgment here, that, when you have two
23 different conclusions, that would equal a jury question.
24 That's on Page 3 of my response, Judge.

25 THE COURT: Can you, Mr. Erickson, go through

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

1 Bromage's deposition and just show me places where he
2 says that Novak was not intentional in what he did; and
3 I guess, therefore, you can construe it as being grossly
4 negligent? And again, I have a hard time of him giving
5 that opinion, because he's not an expert, but.

6 MS. LOHR: Your Honor, ma'am?

7 THE COURT: Yeah.

8 MS. LOHR: Mr. Bromage testified that he actually
9 had nothing to do with this investigation, with the
10 exception of running some DNA up to the lab in Columbia,
11 and that he got called with the results back.

12 THE COURT: Okay.

13 MS. LOHR: He was asked specifically by Mr.
14 Erickson about a statement. Officer Cooler stated in
15 his initial report that Mr. Wooten told him that the
16 person who he had pinned to the ground before he got up
17 and let him go, so he could help Mr. Lenese, Mr. Wooten
18 was the brother-on-law who was in the yard.

19 THE COURT: Okay.

20 MS. LOHR: Just to help you remember.

21 THE COURT: Thank you.

22 MS. LOHR: Mr. Wooten said he yelled Deuce, or
23 something similar to that. Mr. Novak --

24 THE COURT: Mr. Wooten said someone yelled Deuce?

25 MS. LOHR: Or something similar to that.

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

1 THE COURT: Okay.

2 MS. LOHR: Okay?

3 THE COURT: Okay.

4 MS. LOHR: Mr. Novak, in his report, said he spoke
5 with Mr. Wooten, and Mr. Wooten said Deuce or Chris or
6 something similar.

7 THE COURT: Okay.

8 MS. LOHR: And Mr. Erickson asked Bob Bromage:

9 *Doesn't that sound like a lie to you?*

10 And he said, that doesn't sound like someone lying
11 That sound -- he was -- what his point was --

12 THE COURT: He was just rephrasing whatever he
13 thought he heard.

14 MS. LOHR: Right. He said they -- it could have
15 been two different interviews at different times. It
16 wasn't -- that's not necessarily a lie. That's just two
17 people hearing two different things. So, that's the
18 context of the --

19 THE COURT: Thank you. Okay.

20 MR. ERICKSON: I read that as non-intentional.
21 That's how I see that, and I have that on Page 23 of
22 Robert Bromage's deposition.

23 THE COURT: Just so we can complete this circle for
24 me, is Mr. Hamilton -- does he go by Chris, or does he
25 go by Deuce? Or is that what they're saying is, is that

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

1 they've got the wrong person because they're calling him
2 either Deuce or Chris or someone else?

3 MS. LOHR: His co-defendant was named Chris.

4 THE COURT: Okay. Thank you. Can I ask you just
5 very quickly. I remember that Bob Armstrong is the one
6 that heard this case in family court, and he found him
7 not guilty beyond a reasonable doubt. What was it? Was
8 it jail testimony? There was something I heard that was
9 -- what was the problem in the case? What was it?

10 MS. LOHR: It was, at the end of the case, your
11 Honor, Defense counsel did a very diligent job, and went
12 through and listened to every phone call that Kuwan
13 Fields made from jail.

14 THE COURT: Okay.

15 MS. LOHR: And I really have to hand it to Greg
16 Galvin. That was a -- I think it was Greg who did it.
17 That was a Herculean effort, because I've listened to
18 the phone calls. But he went through and listened to
19 all these phone calls, and about a year after Kuwan
20 Fields was in jail, maybe not quite a year, maybe ten
21 months, he made a phone call to his cousin and asked
22 about is Jason there? And then, they started talking
23 about these boys, those boys out doing that stupid shit.
24 And he said:

25 *They should have been on the cover of*

1 the paper with me. I hauled their ass out
2 of this one. I saved their ass.

3 Blah, blah, blah, blah, blah. So, it made Judge
4 Armstrong think --

5 THE COURT: Question whether or not Hamilton was
6 the co-defendant.

7 MS. LOHR: Yes, ma'am. Right.

8 THE COURT: To Fields.

9 MS. LOHR: It gave reasonable doubt as to whether
10 Theo and Chris were the actual people who committed it,
11 along with Kuwan.

12 THE COURT: Right. Right. As opposed to not Jason
13 or whomever the whatever.

14 MS. LOHR: Right.

15 THE COURT: Not Jason, but the whatever this guy.

16 MS. LOHR: Right. Yeah, whatever. Yes, ma'am.

17 THE COURT: Now I remember. Okay. Thank you.
18 Okay. Okay.

19 So, Mr. Erickson, is there anywhere in your
20 expert's deposition that he states that Novak did
21 anything or the Beaufort County Sheriff's Office did
22 anything that could be construed as gross negligence?

23 MR. ERICKSON: Not with those two words.

24 THE COURT: Okay, he doesn't have to say gross
25 negligence. He's not a lawyer. But the actions can be

1 construed as gross negligence.

2 MR. ERICKSON: Well, let me do a second review --

3 MS. LOHR: Your Honor?

4 THE COURT: Yes?

5 MS. LOHR: He does allege negligent supervision on
6 the part of the Beaufort County Sheriff's Office.

7 THE COURT: As to the negligent supervision?

8 MS. LOHR: That's the other cause -- yes. That's
9 the other cause of action. But with regard to the
10 actual handling of evidence, fabrication of evidence,
11 coercion of witnesses, that sort of thing, that's all
12 related to the malicious prosecution claim. That's all
13 directed at Novak specifically.

14 THE COURT: I'm just having a hard time believing
15 that somewhere in his deposition there wasn't out there
16 that somehow Novak was grossly negligent.

17 MS. LOHR: He didn't opine reckless disregard for
18 the truth. He opined intentional harm. And that's why
19 I followed up during the course of the deposition,
20 because I was surprised that he wasn't opining reckless
21 disregard, and was specifically opining intent to act,
22 frame, specific malice, so.

23 THE COURT: Okay.

24 MR. ERICKSON: I think I'm going back to the key
25 statement in the whole case when we allege some

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

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

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

12 THE COURT: Okay.

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

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

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

1 limitations.

2 MS. LOHR: Yes, ma'am.

3 THE COURT: Thank you. Okay.

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

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

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

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

12 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

9 The issue was fraud in that case.

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

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

25 They knew that they had a negligent supervision

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

11 THE COURT: Okay. Mr. Erickson.

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

1 house.

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

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

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

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

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

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

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

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

7 MS. LOHR: October 31, 2011.

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

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

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

15 MS. LOHR: October 31, 2011.

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

18 MADAM CLERK: The FOIA request was in March.

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

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

23 MS. LOHR: Right.

24 THE COURT: Okay. Of 2011.

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

1 they had a negligent supervision claim.

2 THE COURT: Right.

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

8 THE COURT: Okay.

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

12 THE COURT: Okay.

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

14 MR. ERICKSON: Objection.

15 THE COURT: No, no.

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

17 THE COURT: Let her finish.

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

23 THE COURT: Okay.

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

1 THE COURT: Okay.

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

6 THE COURT: Okay.

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

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

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

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

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

24 THE COURT: That was a criminal case.

25 MR. ERICKSON: Right. Juvenile court.

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1 THE COURT: Criminal case, again.

2 MR. ERICKSON: Right.

3 THE COURT: Okay.

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

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

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

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

14 MS. LOHR: Okay.

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

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

1 expert who will only say it's intentional, but I do
2 think that there is the tiniest scintilla of evidence,
3 and I mean, the tiniest Scintilla of evidence, for that
4 cause of action to survive. I don't know if it's based
5 clearly on the argument. It could be the simple fact
6 that -- I don't know if I'm making this up or not -- but
7 a deputy should have clearly heard what was being said.
8 It sounds like he was doing a lot of other things at the
9 same time. But again, if he wasn't sure what it was,
10 maybe he shouldn't have put it in his report. And
11 again, I find that to be a big stretch.

12 MS. LOHR: Your Honor, I don't understand.

13 THE COURT: Yes, go ahead.

14 MS. LOHR: If you were to review the expert's
15 deposition, I don't even think that the facts lend
16 itself to that theory. You know, I'm happy for your
17 Honor to take some time and go over that, because, if
18 you feel like there's something out there that --

19 THE COURT: What I keep asking Mr. Erickson for is
20 someone to give me this deposition and show me in there
21 where, in any way, shape or form, your expert opines
22 that Novak was grossly negligent, as opposed to
23 intentionally or simply negligent. That's just --
24 that's what I want to see.

25 So, let's do this. I'm going to reserve judgment

1 on that cause of action until -- Mr. Erickson, I'm going
2 to have you go through, re-read your expert's
3 deposition, and I want you to highlight for me anywhere
4 where you say that it can be construed that there is the
5 tiniest bit of evidence that Novak was grossly
6 negligent. Because I don't want to go through and read
7 the whole deposition looking for something that Ms. Lohr
8 tells me does not exist.

9 So, anything that you, when you read it, you
10 construe is, just highlight it and forward it to me at
11 my office, and I'll take a look at it.

12 Additionally, if you think that there is any other
13 deposition testimony where -- and again, I don't think
14 Bromage can opine, other than he is a supervisor, or
15 was, I guess, up the chain of Novak, where he says in
16 any way or admits in any way that Novak was grossly
17 negligent. I don't know if there would be any other
18 deposition that would say anything to that effect. But
19 either one of those depositions, or if you have any
20 other deposition that would show in any way, arguably,
21 that Novak was grossly negligent, you can go ahead and
22 forward that to me.

23 How long is it going to take you, Mr. Erickson?
24 How about this? Can I have it by Friday? Is that okay?

25 MS. LOHR: Your Honor, --

1 THE COURT: Yes.

2 MS. LOHR: -- the problem is, we're number two for
3 trial on Monday. I was going to ask your Honor for a
4 date certain in the future, anyway.

5 THE COURT: Okay.

6 MS. LOHR: Just because we have experts to bring in
7 from out of town. And obviously, the case -- preparing
8 my case depends on what causes of action we have, what
9 gets argued, what evidence I use, what witnesses I use.
10 So, I was going to ask for a date certain, but, you
11 know. And obviously, we have an issue with regard to
12 the order. I mean, you know, if he's going to appeal
13 and all that good stuff, too, that kind of throws the
14 dates off, anyway, so. I'm fine with Friday, as long as
15 we aren't trying a case on Monday morning.

16 THE COURT: Well, I could ask him to get it to me
17 by tomorrow afternoon, and if I don't need to grant a
18 motion, you're just going forward on a single cause of
19 action, which is not appealable, so.

20 MR. ERICKSON: I just -- you know, Mary Lohr gets
21 up right in the middle of your order about not granting
22 the motion on a malicious prosecution and totally
23 changes your opinion. And, you know --

24 THE COURT: Well, I don't think she totally changed
25 my opinion. I'm just finding it amazing, Mr. Erickson,

1 that your expert --

2 MR. ERICKSON: Right.

3 THE COURT: -- did not say somewhere in here that
4 Novak was grossly negligent, because it's such a simple
5 hurdle to get over, if it, in fact, exists, that I just
6 have a hard time believing that he didn't somewhere in
7 that deposition. And if he didn't, then, you didn't ask
8 him the right questions in the end to save your expert,
9 which we all know that you have to do as a plaintiff's
10 lawyer, if they're making an opinion that doesn't
11 coincide with your case.

12 So, she hasn't changed my -- again, I find it very
13 hard to believe that your expert wasn't smart enough or
14 versed well enough or instructed well enough to allege a
15 grossly negligent act by Novak. That's why I'm giving
16 you the opportunity to show me where it is. Just show
17 me where it is. Again, you can't go through --

18 Again, it's under the *Tort Claims Act*. It can't be
19 an intentional act. It can't be a negligent act. It's
20 got to be grossly negligent, and that's what the statute
21 provides for. And again, I'm finding it so hard to
22 believe that an expert did not state that in his
23 deposition, and that you didn't ask him the question.

24 So, again, I'm giving you the opportunity to show
25 me.

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1 MR. ERICKSON: All right. Well, I had a question
2 as to whether we even need an expert for trial, if this
3 case even requires an expert, and I don't think we have
4 to, anyway. And there was a question whether I was even
5 going to use my expert at trial.

6 THE COURT: Well, where's your testimony that he
7 was grossly negligent? I mean, who are you going to get
8 that testimony from? I mean, you could argue gross
9 negligence to a jury, but who -- I mean, is Mr. Hamilton
10 going to testify that he was grossly negligent? I'm
11 trying to -- I'm just trying to figure out who all of
12 your witnesses are. I don't even know, other than Mr.
13 Hamilton, and maybe Mr. Fields.

14 MR. ERICKSON: Well, all the officers. It's more
15 -- it's mainly officers.

16 THE COURT: Okay.

17 MR. ERICKSON: Seven or eight of them. And the
18 officers are going to testify that he wasn't lying.

19 THE COURT: How many officers responded to this?

20 MS. LOHR: There were a lot of officers there, your
21 Honor. Only Cooler and -- only Cooler and Novak
22 actually talked to Mr. Wooten that night, but there were
23 a number of officers who worked on the case, along and
24 along. Runyon, Riley, Holmes. There were a number of
25 them that worked on the case.

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1 THE COURT: Well, let's just do this. Do you want
2 to try this on Monday, Mr. Erickson?

3 MR. ERICKSON: I've been current with every date
4 that you gave me on that order.

5 THE COURT: My question is, do you want to try it
6 on Monday, yes or no?

7 MR. ERICKSON: I'm ready to do it.

8 THE COURT: If you're ready to do it, and you both
9 make sure that you can get your experts here, if that's
10 what you need, you're on the calendar. There's no other
11 day certain, because you probably are going to be first
12 up.

13 MS. LOHR: There was a date certain. Did it
14 settle?

15 THE COURT: It's gone.

16 MS. LOHR: Okay.

17 THE COURT: It's gone. Yes, it's gone.

18 MS. LOHR: Oh, no. It was Andrew Countryman. I
19 spoke with him on Friday.

20 THE COURT: You're talking about August 4th, right?

21 MADAM CLERK: Yes.

22 THE COURT: I've got nothing on my calendar. Now,
23 that doesn't mean we haven't missed it. Do you have
24 anything, Jamie, for --

25 MADAM CLERK: I do.

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1 THE COURT: Mr. Countryman?

2 MADAM CLERK: I do.

3 THE COURT: What kind of case?

4 MADAM CLERK: It's a motor vehicle accident.

5 THE COURT: Who's on the other side?

6 MADAM CLERK: It is --

7 MS. LOHR: Rob Metro.

8 MADAM CLERK: Yeah, Rob Metro is plaintiff's
9 counsel, and Andrew is defendant's counsel.

10 THE COURT: So, I guess you guys would be the
11 second up.

12 MS. LOHR: That was what was causing the problem in
13 terms of, you know, they couldn't really tell me how
14 long the trial would last. I couldn't figure out when I
15 needed to get my expert here.

16 THE COURT: I got you.

17 MS. LOHR: Also, I didn't know if, you know, he
18 would have to appeal. It would be immediately
19 appealable if you struck a cause of action, so I didn't
20 want to try the case when his time for appeal hadn't
21 expired either.

22 THE COURT: He wants to try the case.

23 MS. LOHR: Well, if he's going to waive his appeal,
24 right to appeal, that's fine.

25 MR. ERICKSON: I just need to make sure I have a

1 case to go forward with.

2 THE COURT: I understand. I mean, what I would
3 like to do, I would like to keep it on next weeks's
4 roster, and you'll be second up on it. And in that
5 case, I'm going to ask you, Mr. Erickson, if you've got
6 to get a case ready for trial on Monday, I need you to
7 go back your office right now, and by 5:00 o'clock
8 tomorrow, which is Wednesday, forward me a copy of any
9 deposition testimony from Bromage, your expert,
10 whomever, that shows gross negligence. And make sure
11 you send Ms. Lohr a copy of what you're alleging is, and
12 make sure that whatever you send to me, I want the
13 entire transcript so I can make sure I have it in
14 context, not just pieces of it. But make sure you
15 highlight it for me, so I can kind of go to it, read the
16 pages around it. And I'll let you all know something,
17 you know, as quickly as I can at that point, so you know
18 and be ready for next week. And I suggest you talk to
19 Mr. Metro and Mr. Countryman.

20 MS. LOHR: He felt certain it was going to trial,
21 but you know, I don't like to rely on that.

22 THE COURT: Jamie, have you talked to them, how
23 long they said they could try that case?

24 MADAM CLERK: They haven't told me how long yet. I
25 left it certain.

1 THE COURT: How is it we have a date certain that I
2 know nothing about, and you do know nothing -- or you do
3 know something about, but I don't know how long it's
4 going to take, because I would never have even set it if
5 I knew how many days it was going to take.

6 MADAM CLERK: Do you want me to pull the order?

7 THE COURT: So, can you just call them and see how
8 long they think it's going to try?

9 MADAM CLERK: Yes, ma'am.

10 OFF-THE-RECORD DISCUSSION,

11 THE COURT AND MADAM CLERK.

12 MS. LOHR: I think it's damages.

13 THE COURT: You think it's damages. Because I've
14 never seen Rob try a case up in circuit court, so.

15 MS. LOHR: Well, my thought was, it was going to
16 settle, probably, but.

17 THE COURT: That's what I would have thought, too,
18 if there's a mediation coming up, because I just haven't
19 seen him ever try anything up here. So, and again, I
20 know he's a very good lawyer in Family Court, no
21 question. I've just never seen him in Circuit Court,
22 so.

23 All right. Try to find that out for me, Jamie.

24 MADAM CLERK: Yes, ma'am.

25 THE COURT: I just suggest you all touch base with

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1 both those attorneys, as well, to see what they think.

2 And Jamie's going to see what they say for her. Okay?

3 But that's where I'd like to be next week. I mean,
4 this case doesn't sound like it would take too terribly
5 long to try. I mean, I'm guessing two or three days,
6 maybe.

7 MS. LOHR: Well, and that was why, with not knowing
8 how long the first one was going, you know, if they did
9 try the other one, that was why --

10 THE COURT: Yeah.

11 MS. LOHR: -- I wasn't really sure if we were going
12 to do it, or if -- when to have my experts. You know, I
13 just --

14 THE COURT: Yes.

15 MS. LOHR: It's a lot of questions.

16 THE COURT: Right. We just need to get going, and
17 we need to try something, because we certainly haven't
18 tried much here lately, I can tell you all, in the last
19 two or three months. So, it's time to start doing some
20 cases. How old is this case?

21 MS. LOHR: It's October 31, 2011.

22 THE COURT: Well, it's 2014, so I really think it's
23 time to move this one. You all have mediated this, yes?

24 MS. LOHR: We did mediate it originally, with Mr.
25 Galvin. Mr. Galvin then was removed as counsel, and Mr.

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1 Erickson was added after mediation. We did an early
2 mediation so that --

3 THE COURT: Okay. Who was your mediator?

4 MS. LOHR: John Austin.

5 THE COURT: Okay.

6 MS. LOHR: But, since Mr. Erickson's involvement,
7 we haven't done anything.

8 THE COURT: Okay. All right. Well, we're going to
9 see if Jamie can find you all some answers to help you,
10 as to roughly when your experts need to be here. But I
11 do think it's a case we need to get rid of, and if it
12 needs to be tried, it needs to be tried. So, again,
13 5:00 o'clock tomorrow. I'll be here to take a look at
14 whatever you have. We'll go from there. Okay?

15 MR. ERICKSON: All right, Judge.

16 THE COURT: All right.

17 MS. LOHR: See you tomorrow.

18 THE COURT: Sure.

END PROCEEDING 2:19 P.M.

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CERTIFICATE OF REPORTER

JULY 29, 2014 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

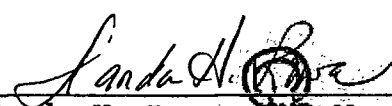
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing July 29, 2014 Transcript of Hearing, is a true, accurate, and complete record of the proceedings had on said date in the case of Theophilus Hamilton versus Beaufort County Sheriff's Office, Beaufort County, South Carolina, Court of Common Pleas, Case Number 2011-CP-07-04548; that no exhibits were admitted.

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

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature October 1, 2014.


Wanda H. Rowe, CVR-M
Official Court Reporter

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2014-001862

THEOPHILUS HAMILTON.....Appellant

v.

BEAUFORT COUNTY SHERIFF.....Respondent

DESIGNATION OF MATTER

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

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

ERICKSON LAW FIRM, LLC

By: 

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Attorney for Appellant

Beaufort, South Carolina
November 3, 2014

DESIGNATION OF MATTER TO BE INCLUDED IN THE APPEAL

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

Respectfully submitted,

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November 3, 2014

MARY LOHR'S/RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT ON THE NEGLIGENT SUPERVISION/RETENTION

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

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

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

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

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

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

HOWELL, GIBSON & HUGHES, P.A.

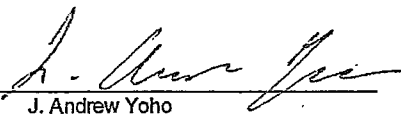
By: 
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Post Office Box 40
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Attorney for Beaufort County Sheriff's
Office

Beaufort, South Carolina

July 11, 2014

CERTIFICATE OF SERVICE

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

By: 

J. Andrew Yoho

RULE 11 CERTIFICATION

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

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

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

1 office best controlled employee Novak?

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

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

7 A. Yes, sir, it was.

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

11 A. Yes.

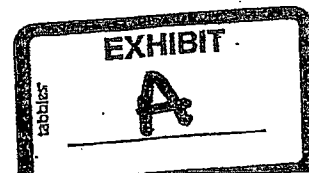
12 Q. And how so?

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

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

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

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



1 effect.

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

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

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

9 A. Chris Battle?

10 Q. Yes.

11 A. I believe so, yes.

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

14 A. Yes.

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

16 A. He was smaller, thinner.

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

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

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

23 A. No, sir.

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

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

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July 22, 2014

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

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

Dear Ms. Roseneau:

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

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

Thank you for your attention in this matter.

Sincerely,

ERICKSON LAW FIRM, LLC

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

EJE/tbe
Enclosures
cc: Mary Lohr, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THEOPHILUS HAMILTON

Plaintiff,

vs.

BEAUFORT COUNTY SHERIFF'S
OFFICE,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-07-04548

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTIONS FOR
PARTIAL SUMMARY JUDGMENT
AND AMENDED MOTION FOR
SUMMARY JUDGMENT**

2014 JUL 22 PM 2:54
CLERK OF COURT

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

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

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

Summary Judgment:

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

which reasonable minds cannot differ, summary judgment should be granted.” Ellis v.

Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App 2004). However, summary judgment is *not* appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649, (Ct. App. 2006).

“Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Nelson v. Charleston

County Parks & Recreation Comm’n, 362 S.C. 1, 605 S.E.2nd 744 (ct. App. 2004).

Negligent Supervision and Retention:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ERICKSON LAW FIRM, LLC



By: _____

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

Beaufort, South Carolina
July 22, 2014

AFFIDAVIT OF THEOPHILUS HAMILTON/APPELLANT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

FOURTEENTH JUDICIAL CIRCUIT

THEOPHILUS HAMILTON)

CIVIL ACTION NUMBER: 2011-CP-07-04548

Plaintiff,)

VS)

**AFFIDAVIT OF
THEOPHILUS HAMILTON**

BEAUFORT COUNTY SHERIFF'S
OFFICE,)

Defendant.)

2014 JUL 22 PM 2:54
CLERK OF COURT
BEAUFORT COUNTY, SC

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

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

PLAINTIFF EXHIBIT # D 1 | Page Of 2

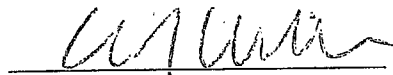
FURTHER AFFIANT SAYETH NOT!



Theophilus Hamilton

Sworn to and subscribed before

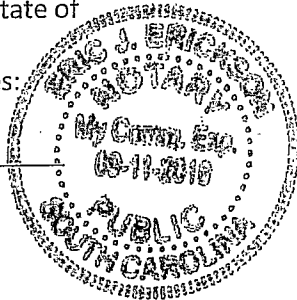
me this 21 day of July, 2014



Notary Public for the State of
South Carolina

My Commission Expires:

(Notary Seal affixed)



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

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

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

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

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

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

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

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

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

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

WITNESS:

CLIENT:

Josephine Hamilton

DEPOSITION OF P.J. TANNER

1 be between '06 and '09.

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

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

7 Q. Do you remember any details about that?

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

11 Q. Was that against his wife?

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

14 Q. All right.

15 A. I believe it was a girlfriend.

16 Q. Was Mr. Novack arrested?

17 A. No, sir.

18 Q. Why not?

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

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

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

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

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

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

7 Q. What's that recommendation by Baxley?

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

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

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

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

15 A. No, sir.

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

18 A. No, sir.

19 Q. Why not?

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

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

1 anything about Louie Novack's judgment?

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

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

11 MS. LOHR: No objections.

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

14 BY MR. ERICKSON:

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

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

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

20 A. It was for insubordination.

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

23 A. He failed to follow a direct order.

24 Q. And what was that order?

25 A. To appear at a meeting that the chief



OFFICE OF SHERIFF
BEAUFORT COUNTY

POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

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

P.J. Tanner
Sheriff

June 11, 2010

To: Corporal Louis Novak

From: Major M. Morrison

Subj: Formal Counseling

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

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

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

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

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

Professionally,

Marvin R. Morrison, Major
Enforcement Division

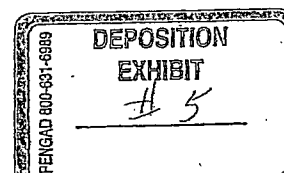
I fully understand and received a copy of this counseling.

Louis Novak

6-11-10
Date

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Haskins
Chief Deputy, Beaufort County Sheriff's Office





P.J. Tanner
Sheriff

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

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3192
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL RECORDS	255-3188
JUDGMENTS	255-3189
FAX #	255-9405
WEB SITE	www.bcsa.net

April 11, 2011

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

Dear Mr. Novak:

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

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

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

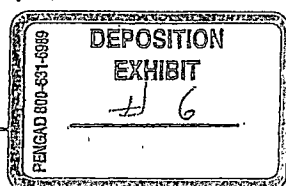
Your contributions to the Sheriff's Office have been appreciated. It is with regret that we are forced to make this personnel decision.

Sincerely,

Michael M. Hatfield
Michael M. Hatfield
Chief Deputy

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office



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

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

3 Q. That's all?

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

6 Q. There was no dishonesty involved in that?

7 A. I don't recall any dishonesty.

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

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

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

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

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

24 BY MR. ERICKSON:

25 Q. Alone?

1 A. Absolutely.

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

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

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

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

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

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

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

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

TRANSCRIPT OF RECORD JUVENILE TRIAL FAMILY COURT

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT)
3 THE STATE OF SOUTH CAROLINA)
4 VS.)
5 HARRY CHRISTOPHER BATTLE and)
6 THEOPHILUS HAMILTON,)
7 DEFENDANTS.)
8 _____)

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

TRANSCRIPT OF RECORD

August 10, 2010
Beaufort, South Carolina

BEFORE:

THE HONORABLE ROBERT S. ARMSTRONG, JUDGE

APPEARANCES:

Jean K. McCormick, Esquire
Assistant Solicitor

Gregory M. Galvin, Esquire
Attorney for Defendant Battle

Scott W. Lee, Esquire
Attorney for Defendant Hamilton

Deborah A. Anderson
Family Court Reporter

PLAINTIFF EXHIBIT # B

pgs 2-9

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INDEX

The Court's Ruling page 3

Certificate of Reporter page 9

EXHIBITS

None

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

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

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

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

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

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

1 know, when you prosecute pirates you need to use pirates as witnesses. That may be true.
2 Mr. Fields, despite his role, was charged with burglary second, simple assault and
3 battery, even under the theory the hand of one, the hand of all, he could have been charged
4 with assault and battery with intent to kill and the conspiracy. He was eventually allowed to
5 plead to the burglary second.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MS. MCCORMICK: Thank you, your Honor.

6 END OF TRANSCRIPT OF RECORD - - -

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

6 I do further certify that I am neither of kin, counsel nor interest to any party hereto.
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February 11, 2011

Deborah A. Anderson

FREEDOM OF INFORMATION REQUEST BY GREG GALVIN



FOIA

March 14, 2011

Via U.S. Mail

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

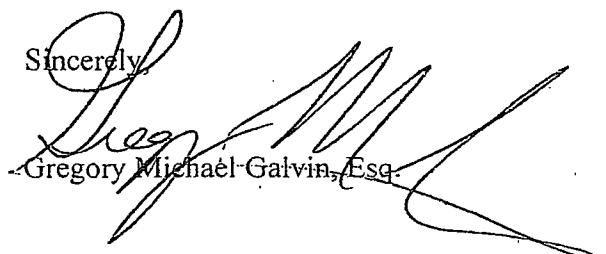
Dear Beaufort County Sheriff's Office:

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

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

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

Sincerely,


Gregory Michael Galvin, Esq.

TRANSCRIPT OF SUMMARY JUDGMENT MOTION HEARING
CONDUCTED BY JUDGE CARMEN MULLEN

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

THEOPHILUS HAMILTON

PLAINTIFF

VERSUS

ORIGINAL

JULY 29, 2014

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

BEAUFORT COUNTY SHERIFF'S OFFICE

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFF
THEOPHILUS HAMILTON:

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attorney@ericjericksonlaw.com

ON BEHALF OF DEFENDANT
BEAUFORT COUNTY SHERIFF'S OFFICE:

HON. MARY BASS LOHR
HON. J. ANDREW YOHO
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EXHIBITS

No exhibits were admitted.

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

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

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

12 THE COURT: Okay.

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

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

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

1 limitations.

2 MS. LOHR: Yes, ma'am.

3 THE COURT: Thank you. Okay.

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

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

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

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

12 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

9 *The issue was fraud in that case.*

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

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

25 *They knew that they had a negligent supervision*

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

11 THE COURT: Okay. Mr. Erickson.

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

1 house.

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

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

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

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

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

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

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

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

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

7 MS. LOHR: October 31, 2011.

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

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

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

15 MS. LOHR: October 31, 2011.

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

18 MADAM CLERK: The FOIA request was in March.

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

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

23 MS. LOHR: Right.

24 THE COURT: Okay. Of 2011.

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

1 they had a negligent supervision claim.

2 THE COURT: Right.

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

8 THE COURT: Okay.

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

12 THE COURT: Okay.

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

14 MR. ERICKSON: Objection.

15 THE COURT: No, no.

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

17 THE COURT: Let her finish.

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

23 THE COURT: Okay.

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

1 THE COURT: Okay.

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

6 THE COURT: Okay.

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

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

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

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

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

24 THE COURT: That was a criminal case.

25 MR. ERICKSON: Right. Juvenile court.

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

1 THE COURT: Criminal case, again.

2 MR. ERICKSON: Right.

3 THE COURT: Okay.

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

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

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

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

14 MS. LOHR: Okay.

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

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

JUDGE CARMEN MULLEN'S ORDER -SUMMARY JUDGMENT
MOTION

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-4548.

THEOPHILIUS HAMILTON

BEAUFORT COUNTY SHERIFF'S OFFICE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CARMEN MULLEN

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion and Amended Motions for Summary Judgment came before me July 29, 2014. Summary judgment is granted as to the negligent retention and supervision claim, as the statute of limitations expired approximately two months prior to the filing of the action. S.C. Code Ann. 15-3-40. Summary judgment is denied as to the malicious prosecution claim, as there exists a scintilla of evidence regarding the existence or nonexistence of probable cause at the time of the Plaintiff's arrest from which a question of fact regarding gross negligence is present.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This case remains second up for trial the week of August 4, 2014.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

8-7-14

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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One Beaufort Town Center
2015 Boundary Street, # 309
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F 843.842.3326

May 5, 2015

Clerk of Court Jenny Kitchings
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

MAY 07 2015

SC Court of Appeals

Re: Theophilus Hamilton vs. Beaufort County Sheriff's Office
Appellate Case No.: 2014-001862

Dear Ms. Kitchings:

Enclosed for filing please find our original (1) **unbound copy** and fourteen (14) copies of our **Record on Appeal** in the above aforementioned case.

By copy of this letter we are also mailing a copy to the opposing party Mary Lohr, Esquire.

Sincerely,



Temple B. Erickson, Legal Assistant

EJE/tbe
Enclosures

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