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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2014-000194

Evalena Catoe, individually and as personal
Representative of the Estate of Richard L.
Catoe, Jr., deceased,

PETITIONER,

v.

The City of Columbia and Leon Lott,
in his official capacity as Sheriff of
Richland County

Defendants,

Of whom Leon Lott in his official capacity
as Sheriff of Richland County is the

Respondent.

RECORD ON APPEAL

Pamela R. Mullis
MULLIS LAW FIRM
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577
Counsel for PETITIONER

Robert David Garfield
Andrew F. Lindemann
DAVIDSON & LINDEMANN, P.A.
P.O. Box 8568
Columbia, SC 29202
(803) 806-8222
Counsel for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Evalena Catoe, individually and as
Personal Representative of the Estate
of Richard L. Catoe, Jr., deceased,

Plaintiff,

v.

The City of Columbia
and Leon Lott, in his official capacity
as Sheriff of Richland County,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: ~~09-CP-40-5132~~

13

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ORDER

RICHLAND COUNTY
FILED
2014 JAN 14 PM 1:41
JEANETTE V. McBRIDE
C.C.P. & G.S.

This matter came before this Court by way of the Motion for Summary Judgment on behalf of the Defendant Sheriff Leon Lott pursuant to Rule 56, SCRCP. A hearing on this motion was held on November 13, 2013 in Columbia, South Carolina. Present at the time and presenting oral arguments were counsel for Defendant Sheriff, Robert D. Garfield and for the Plaintiff, Pamela R. Mullis.

I. RELEVANT BACKGROUND

Taking the facts in a light most favorable to the Plaintiff, on July 22, 2007, at approximately 8:00 a.m., Richland County Sheriff's Department ("RCSD") deputies received an 'officer in need of assistance' call from the Columbia Police Department ("CPD"). A RCSD squadron proceeded in a back-up capacity to a residence at 69 Samson Circle, in the City of Columbia. Upon their arrival, deputies approached the house where the Plaintiff's decedent ("Catoe") was located in the front yard, holding a knife to his throat.

A CPD officer briefed deputies as to two incidences occurring moments before the deputies' arrival. First, that Catoe threatened one of the CPD officers with a knife and, as a

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result, had been shot once in the torso. Secondly, Catoe was threatening to kill any officer who tried to arrest him.

The joint assemblage of officers from the two agencies discussed strategy which centered on potentially administering the Taser devices if in a tactically favorable position. The proposed plan was for the RCSD deputies to obtain a position at the rear of the residence and attempt to maneuver around the side of the house. Thus, by establishing the element of surprise, police may theoretically be in sufficient range to tase and apprehend Catoe.

At that time, RCSD deputies Todd White and Kellye Hendrick positioned themselves at the left rear corner of the house. Initially, both officers had their Tasers drawn. However, after approximately twenty (20) minutes, the deputies were instructed to transition their role from non-lethal to lethal. In so doing, Hendrick holstered her Taser and drew her service weapon, a Model 23 Glock .40 caliber.

At some point, a trained CPD Negotiator arrived and began attempting to negotiate with Catoe. Catoe was provided a chair in which to sit and upon doing so, White no longer had a clear shot with which to administer the Taser. At some point, Bright and Hendrick were informed via radio that a more dynamic approach would be undertaken by CPD SWAT team and that they should maneuver to the side of the house and not give up their position.

While situated at the side of the house, the deputies learned that there was a family confined within the house. Hendrick and her fellow RCSD deputies successfully extricated the family members from the house, removed them to a safe position, and then returned to their position at the side of the house.

CPD officials then sought to utilize a "flash-bang" device in hopes of distracting and subduing Catoe by way of a SWAT ballistic shield. The deputies were informed that upon

deploying the "flash-bang," to be on the lookout for Catoe as he might flee to the rear of the house. In such an event, the deputies should be prepared to take appropriate action.

The "flash-bang" was deployed and the SWAT team directed Catoe to get down on the ground. Catoe failed to comply and proceeded to run into the backyard, at which point he was actively pursued by the SWAT members.

Deputy White was situated the front right corner of the house, holding his Taser. Deputy Hendrick was positioned at the right rear corner of the house, holding her service weapon. As Catoe ran around the corner, Hendrick re-positioned herself at the corner of the house to expand her view as to include the backyard.

As Catoe rapidly approached Hendrick and without delay, Hendrick loudly identified herself as a Sheriff's Deputy and gave clear verbal commands for Catoe to drop the knife. Catoe ignored these repeated and unequivocal instructions and quickly advanced in Hendrick's direction, grasping the knife in an elevated, striking position. At that precise moment, Hendrick brought her service weapon up from the ready position, aimed at Catoe, and fired once. Despite being struck with the bullet, Catoe again quickly closed the distance between himself and Hendrick. Hendrick fired a second round and again struck Catoe. This caused Catoe to turn, ambulate several yards, and then fall to the ground.

Based upon the foregoing events, the Plaintiff brought an action in this Court alleging in the Complaint that Catoe "did not possess the proper mental or physical ability to pose a danger to the armed police officers and deputies present." Accordingly, there existed less violent methods of dealing with the situation. The Plaintiff, Catoe's wife at the time of these events, thereafter brought a wrongful death claim against both the City of Columbia and Sheriff Lott in his official capacity pursuant to the South Carolina Tort Claims Act. The damages include

culpability for Catoe's death, his pain and suffering, and loss of consortium on the part of the Plaintiff.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

III. SOUTH CAROLINA TORT CLAIMS ACT

A. Generally

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant

may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. *See*, S.C. Code Ann. §15-78-40.

B. Section 15-78-60(6)

The Act further continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit. S.C. Code Ann. § 15-78-60(6) provides that a governmental entity is not liable for a loss resulting from "civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing police or fire protection."

In *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998), the Court of Appeals recognized that a scrivener's error resulted in the omission of the word "or." After revisiting the legislative history, the Court concluded that sovereign immunity under Section 15-78-60(6) extends to "the failure to provide or the method of providing police or fire protection." *Id.*, p. 750.

In his summary judgment motion, the Defendant Sheriff argued that he is entitled to absolute sovereign immunity for the Plaintiff's negligence claim which arise out of actions undertaken to provide police protection. This Court agrees.

C. Authority pursuant to *Huggins v. Metts*

In support of its motion, the Defendant Sheriff primarily relied upon the factual background and authority pursuant to *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct.App. 2006). In *Huggins*, the Lexington County Sheriff's Department responded to a call stating that Huggins had threatened to burn down several homes and to commit suicide. After officers could not locate him at his home, bloodhounds discovered Huggins at in the woods behind his residence. When the officers approached Huggins, they observed that he was armed with two large butcher knives. Officers ordered Huggins to drop the knives. Not only did he fail to do so, he stated to the officers that they were going to have to kill him.

Officers then unsuccessfully attempted introducing a negotiator in an attempt to speak with Huggins. After a period of time, officers radioed for a taser to subdue Huggins; however, upon hearing this, Huggins exclaimed: "you're not going to tase me." Huggins indicated that he was "going home" and began walking towards his residence. Officers attempted to position themselves between Huggins and the house while continuing to demand that Huggins drop the knives. When Huggins continued to advance towards one of the officers, he was expressly warned "do not come any closer or I will shoot." Huggins, still armed with two large butcher knives, continued to approach the officer. Once he closed in within fifteen (15) feet, the officer discharged his service weapon and shot Huggins. After being shot, Huggins continued to advance in the direction of the officer at which point two other officers shot Huggins. Huggins died as a result of these gunshot injuries.

Applying the exception set forth in S.C. Code Section 15-78-60(6), the *Huggins* Court observed that:

Because the Act specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection, we need not address Huggins's other claims. Even were we to accept all of Huggins's assertions as true, it would not remove the immunity which the legislature has bestowed on the Police in this situation. We find no genuine issues of material fact, and, therefore, we affirm the circuit court's granting of summary judgment.¹

Id., at 467.

Thus, the Court of Appeals held that the immunities as promulgated by the South Carolina Tort Claims are not waived concerning the method of providing police protection.

D. Analysis

The record before this Court reflects that the following events had transpired, even when taken in a light most favorable to the Plaintiff: Officers had repeatedly requested Catoe to put down his knife to no avail. Thereafter, a trained negotiator had tried for an extended period to get Catoe to comply without success. Moreover, the presence of or threat to administer the Taser device was rendered ineffective. Hendrick was aware of Catoe's previous announcement that he

¹ The personal representative initially brought state law causes of action in the United States District Court contending, *inter alia*, that deadly force should be used only when all other alternatives have been exhausted. See, *Huggins v. Weider, et al.*, 3:02-cv-02361-JFA. In dismissing these state claims, the Honorable Joseph F. Anderson, Jr. held:

The constitutional test, however, is not whether other alternatives were available to the officers, but whether *at the moment they fired their weapons*, the officers reasonably believed they were in imminent threat of harm. The Fourth Circuit holds that "the Fourth Amendment's objective reasonableness' standard require[s] that the officer's liability be determined exclusively upon an examination and weighing of the information [the officers] possessed *immediately prior to and at the very moment [they] fired the fatal shot[s].*" (See, *Greenridge v. Ruffin*, 927 F.2d 789,792 (4th Cir. 1991), *reaff'd* *Drewitt v. Pratt*, 999 F.2d 774, 780 (4th Cir. 1993) (internal quotations omitted)).

would try to kill any law enforcement officer who attempted to apprehend him. (This proclamation was made despite having been shot by a CPD officer before her arrival).

Hendrick issued loud, clear, and repeated warnings to Catoe that he would be shot if he advanced toward her. Hendrick observed Catoe rapidly closing in on her without hesitation. He was armed with a straight bladed, hunting-type knife raised up to strike her. Despite the warnings, Catoe advanced and was shot and killed. At the time Hendrick fired her service weapon, Catoe was less than half such distance and as close as 6-7 feet. Finally, Hendrick's testimony included: "I know that the actions taken by the subject not only put me in fear for my life but, also, put the other officers and the citizens who had gathered out in the street in grave danger ... If I had not been able to stop him, there is no doubt in my mind that others who were nearby could have been seriously hurt by the subject." This Court views these observations by Hendrick and her beliefs formulated at the moment she fired the fatal shot was not only reasonable and justified, but uncontroverted by the record in this matter.

This Court agrees with the Defendant Sheriff that the precedent as set forth in *Higgins* is authoritative with respect to the instant matter. Similar to the *Huggins*' Court evaluation, the key issue in the case at bar centers on the manner in which Hendrick chose to provide police protection. The Tort Claims Act contains clear, plain, and unambiguous language specifically exempting the police from liability concerning the methods which the officer chose to utilize. See, e.g., *Curiel v. Hampton County E.M.S.*, 401 S.C. 646, 737 S.E.2d 854 (Ct App. 2012). Accordingly, this Court recognizes that Hendrick's decision to fire her weapon in order to stop the threat as an act of self-defense or in defense of third parties constitutes an immune function. Therefore, the Defendant Sheriff is entitled to absolute sovereign immunity for the Plaintiff's

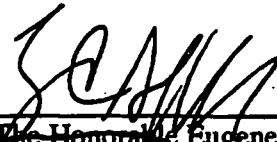
negligence claim which arises out of these specific actions undertaken to provide police protection.²

IV. CONCLUSION

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

IT IS THEREFORE ORDERED that the Motion for Summary Judgment with respect to Defendant Leon Lott, in his official capacity as Sheriff of Richland County is **GRANTED** and that the pending causes of action against this Defendant are hereby dismissed with prejudice.

IT IS SO ORDERED.



The Honorable Eugene C. Griffith, Jr.
Circuit Court Judge

January 9th, 2014

Columbia, South Carolina

² The Defendant Sheriff has alternatively argued that he cannot be held liable under a negligence theory for the intentional acts of his deputies. This Court concurs. In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The *Wyatt* Court held that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation. Therefore, since an allegation of intent to commit a wrongful act is irrelevant in a negligence action, the Defendant Sheriff cannot be held liable for its intentional acts at the relevant times and there is no claim for negligence flowing therefrom.

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JAN 21 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 09-CP-40-5132

Evalena Catoe, individually and as)
Personal Representative of the Estate)
of Richard L. Catoe, Jr., deceased,)

Plaintiffs,)

CONSENT ORDER

v.)

The City of Columbia,)
Richland County Sheriff's Department,)
and Richland County, South Carolina,)

Defendants.)

RICHLAND COUNTY
FILED
2010 SEP 14 AM 11:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER COMES BEFORE THE COURT pursuant to a Notice of Motion and Motion to Dismiss in the above matter filed by the Defendants Richland County Sheriff's Department, and Richland County, South Carolina on February 12, 2010.

By and with the consent of the parties, it is agreed that the Defendants Richland County Sheriff's Department (RCSD) and Richland County, South Carolina are not the proper party defendants in this case based in part due to pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et. seq.* (1976) as well as applicable South Carolina case law. It is further stipulated that the proper defendant is Leon Lott, in his official capacity as Sheriff of Richland County and, therefore, this party should be substituted as the proper party Defendant in this matter pursuant to the South Carolina Tort Claims Act Section 15-78-10 *et. seq.*

It is further agreed that all references with respect to joint and several liability and punitive damages are to be stricken in the Amended Complaint on the grounds that such are not

cognizable and/or recoverable against a governmental entity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et. seq.* (1976) as amended.

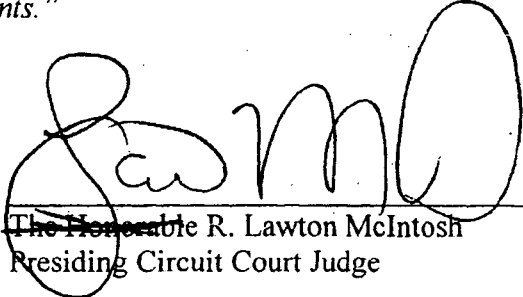
IT IS, THEREFORE ORDERED that the Defendants Richland County Sheriff's Department, and Richland County, South Carolina are dismissed with prejudice as party defendants from this action.

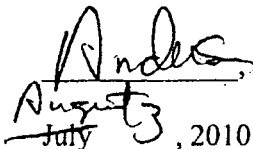
IT IS, FURTHER ORDERED that Leon Lott, in his official capacity as Sheriff of Richland County be substituted as the party Defendant in this matter.

IT IS, FURTHER ORDERED that any and all references to joint and several liability and punitive damages are to be stricken within the Amended Complaint.

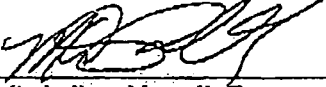
IT IS, FURTHER ORDERED that the Clerk of Court amend the above caption so as to state, "*Evalena Catoe, individually and as Personal Representative of the Estate of Richard L. Catoe, Jr., deceased, Plaintiff, v. The City of Columbia and Leon Lott, in his official capacity as Sheriff of Richland County, Defendants.*"

AND IT IS SO ORDERED.


The Honorable R. Lawton McIntosh
Presiding Circuit Court Judge


[Name], South Carolina
August 3, 2010

WE CONSENT:



Mitchell A. Norrell, Esq.
Mandy D. Powers-Norrell, Esq.
Counsel for Plaintiff

WE CONSENT:

Robert G. Cooper, Esq.
Counsel for Defendant
The City of Columbia

WE CONSENT:

Robert D. Garfield, Esq.
Counsel for Defendants
Richland County Sheriff's
Department and Richland County

Consent Order
C/A No. 09-CP-40-5132
Page Three

WE CONSENT:

Mitchell A. Norrell, Esq.
Mandy D. Powers-Norrell, Esq.
Counsel for Plaintiff

WE CONSENT:

Robert G. Cooper
Robert G. Cooper, Esq.
Counsel for Defendant
The City of Columbia

WE CONSENT:

Robert D. Garfield
Robert D. Garfield, Esq.
Counsel for Defendants
Richland County Sheriff's
Department and Richland County

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2009CP4005132

IN THE COURT OF COMMON PLEAS

Evalena Catoe

vs.

Columbia Police Department

Plaintiff

Defendant

CHECK ONE:

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

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

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

IT IS ORDERED AND ADJUDGED:

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

Dated at Columbia, South Carolina, this ____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 2010, and a copy mailed first class this 14th day of September, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Mitchell A. Norrell

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H Davidson II
Robert David Garfield
Robert G. Cooper

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

SCRPC APP-24/FORM 4

SCANNED

15.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NUMBER: 09-CP-40-5132

Evalena Catoe, individually, and as)
Personal Representative of the Estate of)
Richard L. Catoe, Jr., deceased,)

Plaintiffs,)

vs.)

The City of Columbia, Richland County)
Sheriff's Department, and Richland County,)
South Carolina,)

Defendants.)

**AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)**

2018 JAN 29 AM 10:53
JEANETTE W. MCBRIDE
C. D. & G. S.

The Plaintiff, above-named, complaining of the Defendants herein, would respectfully show unto the Court as follows:

1. That the Plaintiff, Evalena Catoe, is a citizen and resident of the County of Richland, State of South Carolina.
2. That Richard L. Catoe, Jr. died intestate with one heir, his wife, Evalena Catoe.
3. That the Estate of Richard L. Catoe, Jr. is under the probate jurisdiction of the Probate Court of the County of Richland, State of South Carolina, and that Evalena Catoe is the Personal Representative of the Estate.
4. That, upon information and belief, Defendant City of Columbia is a government subdivision located in the County of Richland, State of South Carolina.
5. That, upon information and belief, Defendants Richland County Sheriff's Department, and Richland County, South Carolina are government subdivisions located in the County of

Richland, State of South Carolina.

6. That on or about Sunday, July 22, 2007, Richard L. Catoe, Jr. was at his home in the Sampson Circle Community in Richland County when authorities were called to investigate a fire at the home.

7. That, upon information and belief, Columbia Police arrived on the scene at approximately 8:00 a.m. and found Richard L. Catoe, Jr. at his home holding a pocket knife, and shot him in the abdomen.

8. That the Richland County Sheriff's Department then arrived on the scene and both departments surrounded Richard L. Catoe, Jr.

9. That officers from both departments watched while Richard L. Catoe, Jr. suffered and bled from the gunshot wound he had received.

10. That Richard L. Catoe, Jr. was injured, disoriented, confused, and otherwise did not possess the proper mental or physical ability to pose a danger to the armed police officers and deputies present. Nonetheless, after two hours, a Sheriff's Deputy shot Richard L. Catoe, Jr. again multiple times, thus killing him.

11. That Police Chief H Dean Crisp, Jr. failed to properly keep control of or secure the scene and allowed members of his family to roam in the secured area.

12. That at the time and place mentioned above, the Defendants City of Columbia, Richland County Sheriff's Department, and Richland County, South Carolina were negligent, reckless, willful and wanton, and grossly negligent in one or more of the following particulars, to wit:

a. Defendants City of Columbia, Richland County Sheriff's Department, and

Richland County, South Carolina had a duty to secure the scene and avoid the use of unnecessary violence, and in failing to do so, breached that duty.

b. Defendants City of Columbia, Richland County Sheriff's Department, and Richland County, South Carolina had a duty to Richard L. Catoe, Jr. to get him the proper medical attention after wounding him with the initial gun shot to the abdomen and in failing to do so, breached that duty.

c. Defendants City of Columbia, Richland County Sheriff's Department, and Richland County, South Carolina had a duty to Richard L. Catoe, Jr. and to all citizens within their jurisdictions to protect and serve them and provide law enforcement services in a manner consistent with their profession, and in failing to do so, breached that duty.

d. Defendants City of Columbia, Richland County Sheriff's Department, and Richland County, South Carolina either knew or should have known that the officers at the scene were either too inexperienced or lacked the proper training, direction, and leadership to avoid unnecessary violence and injury.

e. Defendants City of Columbia, Richland County Sheriff's Department, and Richland County, South Carolina lacked the experience, training and expertise necessary to properly handle the situation and control the actions of inexperienced officers to avoid unnecessary violence and injury.

f. Defendants breached their duties to Richard L. Catoe, Jr. by failing to discover the above facts and by failing to protect Mr. Catoe from the dangers they presented..

g. Defendants breached their duties to Richard L. Catoe, Jr. by failing to take

precautions to keep him reasonably safe.

h. Defendants breached their duties to Richard L. Catoe, Jr. by failing to maintain proper control over the situation and the scene;

i. Defendants breached their duties to Richard L. Catoe, Jr. by failing to properly equip their officers with less-violent and less-deadly tools; and, if so properly equipped, in failing properly to properly train such officers in the use of such tools;

j. Defendants breached their duties to Richard L. Catoe, Jr. by failing to take any evasive action, by any means, to keep from taking his life;

k. Defendants breached their duties to Richard L. Catoe, Jr. by failing to properly observe their departments' own protocol for dealing with such scenes and situations;

l. Defendants breached their duties to Richard L. Catoe, Jr. by failing to properly deal with Richard L. Catoe, Jr. with due regard for the fact that the Defendant knew, or should have known, that Mr. Catoe was weak, injured, confused, disoriented, and bleeding from the initial gunshot wound to his abdomen that he had from the City of Columbia Police Department;

m. Defendants breached their duties to Richard L. Catoe, Jr. by failing to secure medical assistance for him after the initial gun shot wound to the abdomen.

n. Defendants breached their duties to Richard L. Catoe, Jr. by shooting him multiple times when there were less violent, and less deadly methods of dealing with the situation.

14. That all of any of the particulars enumerated above were the direct and proximate cause of the injuries, damages, suffering, and death suffered by Richard L. Catoe, Jr. herein, said

acts being in violation of the statute laws of the State of South Carolina.

15. That as a direct and proximate result of the Defendants' negligence, recklessness, willfulness and wantonness, and gross negligence as aforesaid, Richard L. Catoe, Jr. suffered great bodily injury, pain, medical expenses, and death.

16. The Plaintiff is informed and does believe that it is entitled to judgment against the Defendants, jointly and severally, for actual and consequential damages as follows: for the pain and suffering endured by the decedent, Robert L. Catoe, Jr., due to the acts and omissions of the Defendants; for the wrongful death of the decedent Robert L. Catoe, Jr., for the loss of consortium of Evalena Catoe, widow of Robert L. Catoe, Jr., and for such other and further relief as the Court may deem just and proper.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court grant it judgment against all Defendants, jointly and severally, for all actual, consequential and punitive damages, attorney fees and costs, and for such other and further relief as this Court deems just and proper.

NORRELL & POWERS-NORRELL, LLC



Mitchell A. Norrell
Mandy Powers Norrell
Attorneys for the Plaintiff
Post Office Box 994
Lancaster, South Carolina 29721
Telephone: 803-289-1800

January 28, 2010
Lancaster, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Evalena Catoe, individually and as	)	
Personal Representative of the Estate	)	Civil Action Number: 09-CP-40-5132
of Richard L. Catoe, Jr., deceased,	)	
	)	
Plaintiff,	)	
	)	ANSWER ON BEHALF OF
v.	)	DEFENDANTS RICHLAND COUNTY
	)	SHERIFF'S DEPARTMENT AND
	)	RICHLAND COUNTY
Columbia Police Department, The City	)	
of Columbia, Richland County Sheriff's	)	
Department, Richland County, South	)	
Carolina and Harold Dean Crisp, Jr.,	)	
	)	
Defendants.	)	
	)	

The Defendants Richland County Sheriff's Department (hereinafter "RCSD") and Richland County, South Carolina answer the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. These Defendants are immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically, § 15-78-60 (4), (5), (6), and (20).

FOR A THIRD DEFENSE

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

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4. That as to Paragraphs One (1) and Two (2), these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny these paragraphs and demand strict proof thereof.

5. That as to Paragraph Three (3), these Defendants crave reference to the Order of the Probate Court of Richland County, South Carolina as to the best evidence of what is contained therein. These Defendants further crave reference to the Code of Laws of the State of South Carolina as to the Plaintiff's capacity in bringing this matter.

6. Paragraphs Four (4) and Five (5) contain allegations against other Defendants, and therefore, requires no response by these Defendants. To the extent that these paragraphs contain factual allegations against these Defendants, these Defendants deny same and demand strict proof thereof.

7. As to Paragraph Six (6), these Defendants deny that the RCSD is a legal entity of the State, but assert that the proper entity is the Sheriff of Richland County in his official capacity and that it is subject to jurisdiction under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* Further answering, these Defendants admit that Richland County is a governmental entity as similarly set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act. Except as stated herein, these Defendants deny Paragraph Six (6) as stated and demand strict proof thereof.

8. That as to Paragraphs Seven (7) and Eight (8), these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny these paragraphs and demand strict proof thereof.

9. That as to Paragraphs Nine (9), Ten (10), and Eleven (11), these Defendants only admit upon information and belief that on July 22, 2007, one or more RCSD deputies responded

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to the incident location in Richland County, South Carolina whereupon Plaintiff's decedent was located in the front yard holding a knife to his throat. Further answering and upon information and belief, one or more RCSD deputies were informed by City of Columbia police officers ("CPD") that Plaintiff's decedent had earlier threatened one of their officers with the knife, and as a result, Plaintiff's decedent had been shot once by CPD in the area of his torso. The CPD further advised that Plaintiff's decedent was threatening to kill any law enforcement officer who tried to arrest him. These Defendants further assert that after numerous attempts to bring the situation under control, Plaintiff's decedent at some point moved toward one RCSD deputy with the knife raised up to strike her. Ignoring multiple loud verbal commands by the RCSD deputy, Plaintiff's decedent continued to close the distance between he and the deputy causing the deputy to fear of imminent serious bodily harm or death. At this point, the RCSD deputy fired her service weapon once at Plaintiff's decedent and when the threat was not stopped, the deputy fired a second time. Except as stated herein, these Defendants deny these paragraphs and demand strict proof thereof.

10. Paragraph Twelve (12) contains allegations against other Defendants, and therefore, requires no response by these Defendants. To the extent that this paragraph contains factual allegations against these Defendants, these Defendants deny same and demand strict proof thereof.

11. To the extent that Paragraph Thirteen (13) and its multiple subparts contain allegations against other Defendants, and such requires no response by these Defendants. To the extent that Paragraph Thirteen (13) and its multiple subparts contain factual allegations against these Defendants, these Defendants categorically deny same and demand strict proof thereof.

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

13. To the extent that Paragraph Sixteen (16) and its multiple subparts contain allegations against other Defendants, and such requires no response by these Defendants. To the extent that Paragraph Sixteen (16) and its multiple subparts contain factual allegations against these Defendants, these Defendants categorically deny same and demand strict proof thereof.

14. That as to Paragraph Seventeen (17), these Defendants expressly deny same and demand strict proof thereof.

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

FOR A FOURTH DEFENSE

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

FOR A FIFTH DEFENSE

17. The Defendant Richland County, South Carolina alleges that it is not the proper party defendant in this case since it is not liable for the actions of the Sheriff of Richland County.

FOR A SIXTH DEFENSE

18. These Defendants allege, upon information and belief, that any actions of the Defendant RCSD deputy with respect to the firing of her service weapon were done in an effort to protect herself and/or third parties from physical harm, and therefore, these Defendants plead self defense and/or defense of others as a complete bar to these claims.

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FOR A SEVENTH DEFENSE

19. These Defendants, upon information and belief, allege that any injuries or damages allegedly suffered by Plaintiff's decedent, without admitting same to be true, were due to and caused entirely by the negligence of Plaintiff's decedent or Plaintiff's decedent's negligence which is more than these Defendants' negligence, and that such is a complete bar to the Plaintiff's recovery herein. Further, these Defendants, upon information and belief, allege that if Plaintiff's decedent's negligence was less than these Defendants' negligence, that such negligence should be compared to that negligence of these Defendants, so as to apportion the relative fault as to each party.

FOR AN EIGHTH DEFENSE

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

FOR A NINTH DEFENSE

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

FOR A TENTH DEFENSE

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

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FOR AN ELEVENTH DEFENSE

23. As to the state cause of action against these Defendants for the intentional infliction of emotional distress, these Defendants allege that such claim is barred by the South Carolina Tort Claims Act, Section 15-78-30(f) of the Code of Laws of the State of South Carolina, 1976 as amended.

FOR A TWELFTH DEFENSE

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

FOR A THIRTEENTH DEFENSE

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

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

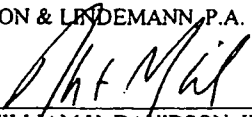
[Signature block on following page]

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DAVIDSON & LYNDEMANN, P.A.

BY:


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

*Counsel for Defendants
Richland County Sheriff's Department
and Richland County, South Carolina*

Columbia, South Carolina

August 13, 2009

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Evalena Catoe, individually and as)
Personal Representative of the Estate of)
Richard L. Catoe, Jr., deceased,)

Plaintiff,)

v.)

Columbia Police Department, The City of)
Columbia, Richland County Sheriff's)
Department, Richland County, South)
Carolina and Harold Dean Crisp, Jr.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 09-CP-40-5132

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants Richland County Sheriff's Department and Richland County, South Carolina, does hereby certify that service of the Answer on Behalf of Defendants Richland County Sheriff's Department and Richland County in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 13th day of August, 2009, addressed as follows:

Mitchell A. Norrell, Esquire
Mandy D. Powers-Norrell, Esquire
Norrell and Powers-Norrell, LLC
206 South Main Street
Post Office Box 994
Lancaster, South Carolina 29721

Shelley E. Staggard

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Evalena Catoe, individually and as
Personal Representative of the Estate of
Richard L. Catoe, Jr., deceased,

Plaintiff,

v.

The City of Columbia and Leon Lott,
in his official capacity as Sheriff of
Richland County,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 09-CP-40-5132

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT
AND/OR TO STRIKE ON BEHALF
OF DEFENDANT SHERIFF LOTT

PRIORITY MATTER

TO: MANDY D. POWERS-NORRELL, ESQUIRE AND PAMELA R. MULLIS, ESQUIRE,
ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Leon Lott, in his official capacity as Sheriff of Richland County, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an order, pursuant to Rule 56, SCRCF, granting summary judgment to this Defendant and dismissing with prejudice the causes of actions set forth in the Plaintiff's Complaint.

The Defendant Lott's motion is based upon the following grounds:

1. Granting summary judgment on the grounds that this Defendant's deputy acting on behalf of the Sheriff of Richland County acted in self-defense.
2. Granting summary judgment on the grounds that this Defendant's deputy acted reasonable under the facts and circumstances presenting themselves at the time she used force in dealing with the Plaintiff's decedent.

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3. Granting summary judgment as to the action for negligence, since the Plaintiff has failed to state a claim as South Carolina law does not recognize a cause of action for a negligent shooting on the part of a law enforcement officer;

4. Granting summary judgment on the grounds that the actions of the Plaintiff's decedent was the sole negligence giving rise to his injuries and/or death.

5. Granting summary judgment on the grounds that the actions of the Plaintiff's decedent when viewed in a light most favorable to the Plaintiff, exceed any culpable conduct (which is specifically denied) on the part of this Defendant's deputy to such a degree as would constitute a complete bar to any action he might have against this Defendant.

6. Granting summary judgment as to the action for intentional infliction of emotional distress, pursuant to South Carolina Code Ann. §15-78-30 (1976) as amended.

7. This Defendant is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(6).

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

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

The Defendant Sheriff's motion is based upon the pleadings filed in this case, the Affidavit of Kelley E. Hendrick and the exhibit thereto, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY:


ROBERT D. GARFIELD
1611 Devonshire Drive
Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendant Leon Lott in his
official capacity as Sheriff of Richland County*

Columbia, South Carolina

September 22, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Evalena Catoe, individually and as)
Personal Representative of the Estate of)
Richard L. Catoe, Jr., deceased,)

Plaintiff,)

v.)

The City of Columbia)
and Leon Lott, in his official)
capacity as Sheriff of Richland County,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 09-CP-40-5132

**AFFIDAVIT OF
KELLYE E. HENDRICK**

PERSONALLY APPEARED BEFORE ME, KELLYE E. HENDRICK, who first being duly

sworn deposes and states as follows:

1. On or about July 24, 2007, I provided a voluntary statement to the State Law Enforcement Division. This typed statement is entitled, "Voluntary Statement (Not Under Arrest)" and consists of four (4) pages bearing my signature at the end of the statement. [See, Exhibit A]
2. The contents of Exhibit A are true and correct and, upon information and belief, accurately characterizes my observations and involvement in the events of Sunday, July 22, 2007.

FURTHER AFFIANT SAYETH NOT.

Kellye E Hendrick
Kellye E Hendrick

SWORN TO BEFORE ME THIS THE
22nd DAY OF SEPTEMBER, 2011.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

COMMISSION EXPIRES: Nov. 2, 2016

EXHIBIT A

AFFIDAVIT OF KELLYE E. HENDRICK

Civil Action Number: 09-CP-40-5132

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, KELLYE E. HENDRICK, am not under arrest for, nor am I being detained for, any criminal offenses concerning the events I am about to make known to Special Agent James Flowers and Lt. Tommy Robertson, both of the South Carolina Law Enforcement Division (SLED). I understand that I am not under arrest for, nor am I being detained for, any criminal offenses concerning the events I am about to make known. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I graduated from Conway (SC) High School in 1997 and from Lander College, in Greenwood, SC, in 2003. I was hired by the Richland County Sheriff's Office in 2003 and graduated from the South Carolina Criminal Justice Academy in 2004. I am a certified law enforcement officer in the State of South Carolina.

On Sunday morning, July 22, 2007, I was on duty as a Deputy Sheriff of Richland County, South Carolina. At approximately 0800 hours, Richland County Sheriff's Department received a 10-78 (officer needs assistance) call from the City of Columbia Police Department. My squad and I had just finished eating breakfast and, upon receipt of the call, proceeded to 69 Samson Circle, which is in the City of Columbia.

Upon arrival at said location, my fellow squad members and I approached the house where a subject was located in the front yard, holding a knife to his throat. A City of Columbia officer had already advised us that the subject had threatened one of their officers with the knife and, as a result, had been shot once in the torso. The same officer told us that the subject was threatening to kill any officer who tried to arrest him.

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PAGE NO 2 OF 4 PAGES

The City officers asked several of our Deputies if we had Tasers, and upon being advised that some of us were so equipped, requested that we tase the subject, if we had a clear shot to do so. I responded that I was not going to do anything until my immediate Supervisor gave me an order. Columbia Police asked if we could get to the rear of the house and try to come around the side, catch the subject off guard, and get close enough to tase him. Once my Supervisor, Cpl. Bright, arrived on the scene I advised him that Master Deputy White and I believed that we could, in fact, get to the rear of the house, catch the subject off-guard and get close enough to tase him. With Cpl. Bright's approval, Master Deputy White and myself positioned ourselves at the left rear corner of the house. Both of us had our Tasers out, but, after twenty minutes or so, Master Deputy White told me to transition from non-lethal to lethal, meaning that I was to holster my Taser and draw my service weapon, a Model 23 Glock .40 caliber. Being hidden by the house, we could not see where the subject was all of the time. At some point, a Negotiator with Columbia Police Department arrived and began attempting to negotiate with the subject. The subject was provided a chair in which to sit and, when he did so, Master Deputy Sheriff White no longer had a clear shot with the Taser. We remained at the rear of the house for some period of time until Cpl. Bright, who was in radio contact with the officers in the front yard, advised us that Columbia Police were going to move in on the subject. He told us to move to the side of the house and not give up our position. Cpl. Bright further advised us to stand by while the City's SWAT team devised their plan. We waited on the side of the house for quite some time. While waiting, we heard a noise from within the house. Master Deputy White asked one of our officers if the subject had gone inside the house and was told "no"; that the house in question was not the subject's home, and; that there was a family inside the house. We were asked to see if we could get them out of the house without making too much noise. With the assistance of two of our other officers, we were able to get the family out safely

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PAGE NO 3 OF 4 PAGES

without compromising our position. Cpl. Bright then told us that the City was going to throw a "flash-bang" to distract the subject and then a team was going to utilize the SWAT ballistic shield and subdue the subject. We waited for quite some time and, finally, were told to stand by because the team was about to deploy. Master Deputy White was at the front right corner of the house, still holding his Taser. I was at the right rear corner of the house, still holding my service weapon. We were told that when they deployed the "flash-bang", to watch for the subject; that he may run to the rear of the house, and; to be prepared to take appropriate action. The next thing I knew, the "flash-bang" was deployed and I heard the SWAT team telling the subject to get down on the ground. I was still covering the right rear corner of the house and I saw the subject running into the back yard, with the SWAT team not far behind him. As the subject came around the corner, I moved so that I could see the whole back yard. As the subject got closer, he saw me standing at the corner of the house. I immediately loudly identified myself as a Sheriff's Deputy and gave loud verbal commands for the subject to drop the knife. The subject continued to come directly at me, holding the knife up in a striking position. I continued to give the same loud verbal commands, but the subject kept right on coming at me. Realizing that the subject had already made the announcement that he would try to kill any officer who attempted to arrest him, even though he had been shot by a Columbia officer earlier that day, and seeing him closing in on me without hesitation, with his knife raised up to strike me, I was placed in fear of immediate serious bodily harm or death at his hands. I brought my service weapon up from the ready position, aimed at the subject, and fired once. The subject never wavered and continued to quickly close the distance between himself and me. I fired again and the subject turned, ran some seven or eight yards, and fell. I know that the actions taken by the subject not only put me in fear for my life but, also, put the other officers and the citizens who had gathered out in the street in grave danger. If I had not been able to stop

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PAGE NO 4 OF 4 PAGES

him, there is no doubt in my mind that others who were nearby could have been seriously hurt by the subject.

Cpl. Bright advised Master Deputy White to escort me to his patrol car and wait for further instructions. I then went and sat in Deputy White's patrol car until instructed to return to the Sheriff's Department.

X Kellye E. Hendrick
Signature of person giving voluntary statement

SWORN TO AND SUBSCRIBED before me
this 24th day of July, 2007

Witness

(SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

Witness

My Commission Expires:

I certify that I have been given a copy of this statement consisting of four pages.

EXHIBIT B

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AND/OR TO STRIKE
ON BEHALF OF DEFENDANT SHERIFF LOTT**

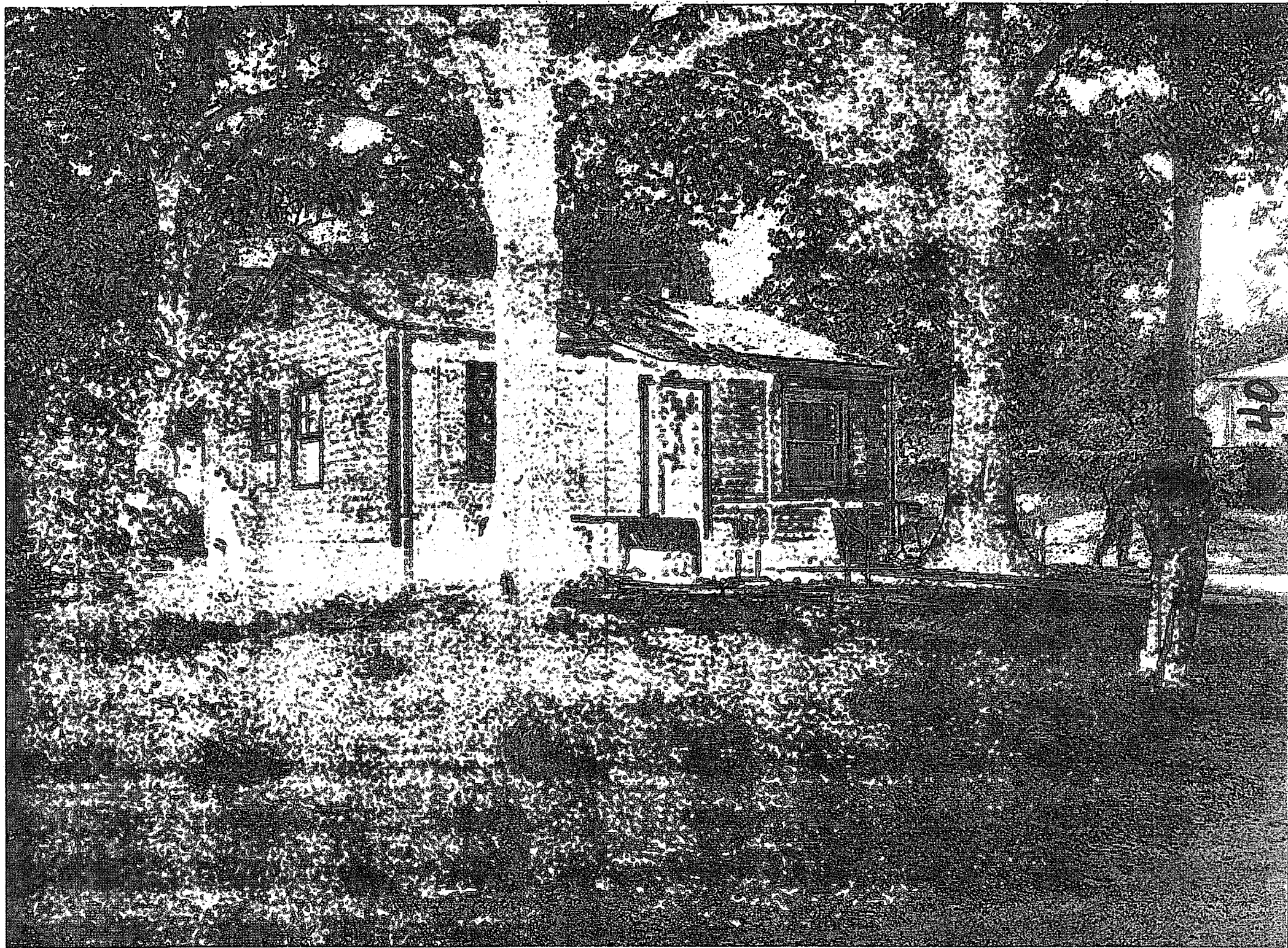


EXHIBIT C

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AND/OR TO STRIKE
ON BEHALF OF DEFENDANT SHERIFF LOTT**

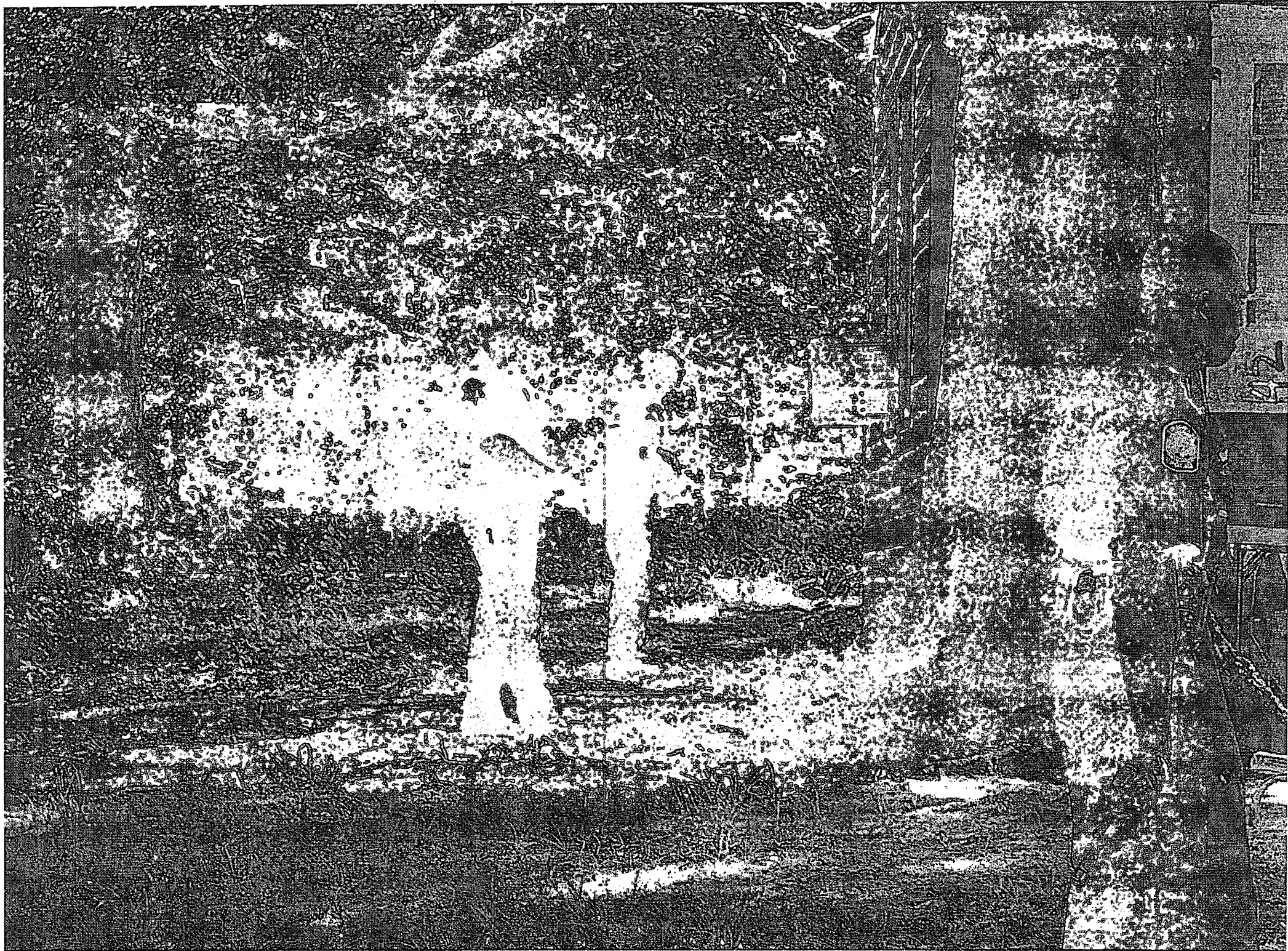


EXHIBIT D

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AND/OR TO STRIKE
ON BEHALF OF DEFENDANT SHERIFF LOTT**

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 COUNTY OF RICHLAND) C/A #: 2009-CP-40-5132

Evalena Catoe, individually)
 and as Personal Representative)
 of the Estate of Richard L.)
 Catoe, Jr., deceased,)

Plaintiff,)

v.)

The City of Columbia and Leon)
 Lott, in his official capacity)
 as Sheriff of Richland County,)

Defendants.)
 _____)

DEPOSITION OF

KELLYE ELIZABETH HENDRICK

Friday, May 17, 2013
 10:14 a.m. - 12:16 p.m.

The deposition of KELLYE ELIZABETH HENDRICK,
 taken on behalf of the Plaintiff at the law offices
 of Davidson and Lindemann, P.A., 1611 Devonshire
 Drive, Columbia, South Carolina, on the 17th day of
 May, 2013 before Jennifer L. Cash, Court Reporter and
 Notary Public in and for the State of South Carolina,
 pursuant to Notice of Deposition and/or agreement of
 counsel.

1 **A:** **I don't recall.**

2 **Q:** Okay. Could you -- had you stepped -- could
3 you see the whole back yard from where you were
4 standing at that point?

5 **A:** **I could.**

6 **Q:** Okay. And could you see the entire back yard
7 from where you were standing at that point?

8 **A:** **Yes.**

9 **Q:** He -- did -- was he knocked all the way to the
10 ground?

11 **A:** **On his back, yes.**

12 **Q:** Okay. How long was he on the ground?

13 **A:** **I don't -- few seconds maybe. I don't recall.**
14 **I mean, few seconds, roughly.**

15 **Q:** Did he get immediately back up?

16 **A:** **It was very shortly after he got knocked to the**
17 **ground that he got right back up.**

18 **Q:** Did anyone catch up to him?

19 **A:** **No.**

20 **Q:** So he was knocked to the ground by one
21 individual -- one individual, but no one else
22 caught up to him, other than that one
23 individual?

24 **A:** **No.**

25 **Q:** Okay. And then what happened?

1 **A:** When he got up off the ground he turned and saw
2 me standing here. I loudly identified myself
3 as a Sheriff's Deputy, asked him to drop the
4 knife. He came up in a striking position and
5 ran towards me.

6 **Q:** Where did he have the knife positioned?

7 **A:** Up over his shoulder in a striking position.

8 **Q:** Okay. And that doesn't show up in a
9 transcript, so you'll have to tell us what a
10 striking position is.

11 **A:** Up over his shoulder in a position to where he
12 could strike somebody.

13 **Q:** Okay. And was moving forward, is that correct?

14 **A:** Forward towards me, yes.

15 **Q:** Okay. And was he running?

16 **A:** Yes.

17 **Q:** Okay. And you said you identified yourself?

18 **A:** Identified myself as a Richland County
19 Sheriff's Deputy and that he needed to drop the
20 knife.

21 **Q:** Okay. And what did you say exactly?

22 **A:** Richland County Sheriff's Department, drop the
23 knife.

24 **Q:** Did you say it once?

25 **A:** I said it several times.

1 Q: Twice?

2 A: I don't recall how many. I said it several
3 times.

4 Q: All right. And then what happened?

5 A: When he did not drop the weapon, I moved my
6 position from the ready position, which was
7 pointed at the ground and put it on my target.

8 Q: Okay.

9 A: I fired a shot, he did not stop coming at me.
10 I then fired another shot.

11 Q: Okay. And when you fired the first shot where
12 was he in the back yard?

13 A: He was probably here, give or take a few
14 inches.

15 Q: And where was the next closest stack City of
16 Columbia officer to him?

17 A: They were back here, to the best of my
18 recollection.

19 Q: Show me.

20 A: They were probably back here from where he
21 first was knocked to the ground.

22 Q: You think he's here?

23 A: I guess. I mean, I don't really recall.

24 Q: Near to where he was knocked to the ground.

25 A: Initially, yes.

1 Q: Okay. And you don't recall when you initially
2 pulled up seeing any media or the media vans
3 initially. Do you remember seeing media after
4 the event when you went and sat down?

5 A: I don't recall.

6 Q: Okay. We're going to mark this as Plaintiff's
7 Exhibit Two.

8 (Plaintiff's Exhibit Number Two was marked for
9 identification purposes.)

10 Q: You said that Bright would have been the
11 Richland County Sheriff's Deputy that you would
12 have been taking instructions from on the
13 scene. Was there a higher ranking commander on
14 the scene that you would have been taking
15 instructions from at any point?

16 MR. GARFIELD: Object to the form. Go ahead.

17 A: Corporal Bright was the only one on the scene.

18 Q: Okay.

19 A: That I recall.

20 Q: Okay. Did that ever change at any point?

21 A: No.

22 Q: Okay. How close did you get to Mr. Catoe
23 before you fired the second shot?

24 A: Less than four or five feet.

25 Q: What about the first shot?

1 **A:** Six, seven foot, maybe.

2 **Q:** How far do you think he was from you when he
3 hit the ground? That may be harder.

4 **A:** I don't -- I don't recall. Seven, eight feet
5 maybe. I don't -- I don't recall.

6 **Q:** Okay. You're better at distance than I am.
7 Did you know any of the other firefighters,
8 EMS, individuals on the scene?

9 **A:** No.

10 **Q:** Okay. When you initially came on the scene and
11 saw Mr. Catoe could you tell that he was
12 injured?

13 **A:** I could tell that he had some injury to his
14 upper torso.

15 **Q:** How?

16 **A:** He had his shirt off and there was a red spot
17 on his torso.

18 **Q:** Okay. He already had his shirt off when he
19 came onto the scene?

20 **A:** Yes.

21 **Q:** Okay. And you could tell that he had been
22 shot, is that correct?

23 **A:** After I was told that he was shot, yes.

24 **Q:** You were told that he was shot, is that
25 correct?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED

SEP 30 2003

LARRY W. PROPPS, CLERK
COLUMBIA, SC

Charles W. Huggins, Jr., personal representative)
of Charles Walter Huggins, III,)

Plaintiff,)

v.)

Sergeant Don Weider, Deputy Shane Lucas,)
Reserve Deputy Henry Dukes, and Captain)
Melvin Seboe,)

Defendants.)

C/A No. 3:02-2361-17

ENTERED

SEP 30 2003

ORDER

This case comes before the court on the defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The defendant officers argue when viewing the facts in the light most favorable to the plaintiff, they complied with the Fourth Amendment's reasonableness requirement when they shot and killed Charles Walter Huggins, III ("Huggins"). U.S. CONST., amend. IV. The court heard oral argument on the motion on September 25, 2003. At the conclusion of the argument, the court took the motion under advisement. For the reasons stated herein, the defendants' motion for summary judgment is granted.

FACTS

The plaintiff asserts a cause of action under 42 U.S.C. § 1983 against officers Sergeant Don Weider ("Weider"), Deputy Shane Lucas ("Lucas"), and Reserve Deputy Henry Dukes ("Dukes") for

While the Fourth Amendment provides for officers to exercise some force in effecting an arrest, courts must examine the "totality of the circumstances and determine whether the use of force was 'reasonable' from the perspective of a reasonable officer in the same situation." *Id.* "Generally, an officer may not use deadly force unless he has probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others." *James v. City of Chester*, 852 F. Supp. 1288, 1294 (D.S.C. 1994) (citing *Garner*, 471 U.S. at 11). "If the suspect threatens the officer with a weapon, deadly force may be used if necessary to prevent escape and if, where feasible, some warning has been given." *Id.*

No witnesses other than the deputies at the scene observed the shooting. The defendants' affidavits state that at the moment shots were fired, each defendant feared either for his own safety or for officer Weider's. Huggins, armed with two knives, threatened to kill himself or the officers at the scene. The defendants warned Huggins to halt and Huggins was shot only after he advanced in a threatening manner toward Weider. The defendants' allegations satisfy the *Graham* test and are supported by affidavits attesting: (1) the severity of the crime at issue (officers were called to scene because Huggins threatened arson and suicide; then Huggins threatened himself and officers with knives); (2) that Huggins posed an immediate threat to the safety of the officers or others (Huggins was armed with two knives and advancing in a threatening manner toward Weider); and (3) Huggins was either actively resisting arrest (as attested by the defendants) or attempting to evade arrest by flight (as alleged by the plaintiff).²

² As noted previously, the only eyewitnesses to the event were police officers. The plaintiff (the decedent's father) did not witness the shooting or the events that led up to it.

The plaintiff contends that deadly force should be used only when all other alternatives have been exhausted. The plaintiff cites no authority for this proposition. The crux of the plaintiff's complaint appears to be that the officers failed to continue to keep Huggins at bay and at a safe distance and that the officers failed to use a more benign method of subduing Huggins other than shooting him. The constitutional test, however, is not whether other alternatives were available to the officers, but whether *at the moment they fired their weapons*, the officers reasonably believed they were in imminent threat of harm. The Fourth Circuit holds that "the Fourth Amendment's objective reasonableness' standard require[s] that the officer's liability be determined *exclusively* upon an examination and weighing of the information [the officers] possessed *immediately prior to and at the very moment [they] fired the fatal shot[s]*." *Greenridge v. Ruffin*, 927 F.2d 789, 792 (4th Cir. 1991), *reaff'd* *Drewitt v. Pratt*, 999 F.2d 774, 780 (4th Cir. 1993) (internal quotations omitted).

Under *Greenridge* and *Drewitt*, the court must focus only upon the reasonableness of the defendant officers' conduct at the moment they made the decision to use deadly force. The failure to exhaust all other nondeadly measures, the decision not to leave Huggins alone passed out in the woods, and the failure to await a tazer or other nondeadly weapons to arrive are not relevant points of inquiry. See *James v. City of Chester*, 852 F. Supp. 1288, 1295 (D.S.C. 1994) (finding the following conduct of police officers irrelevant: failure to station a guard at decedent's apartment during search; failure to employ proper back up and use a flashlight; and failure to display a badge).

The court must review the reasonableness of Weider, Dukes and Lucas' decision to use deadly force at the moment Huggins advanced in the woods after the defendants ordered him to halt. Taking the facts in the light most favorable to the plaintiff, at the moment of the shooting, Huggins was armed with a large kitchen knife and threatening to kill himself or the officers. The defendants had

repeatedly requested Huggins to put down his weapon to no avail. A trained negotiator had tried for thirty minutes to get Huggins to comply without success. The defendants warned Huggins he would be shot if he advanced toward Weider. Huggins advanced despite the warning and was shot and killed. Under these facts, the court finds that the defendants had probable cause to believe that Huggins posed a significant threat of serious bodily injury to themselves and others at the moment they shot him.

II. *§ 1983 Claim Against Defendant Seboe (Supervisory Liability)*

The plaintiff also asserts a supervisory liability claim against Captain Seboe, the officer in charge at the scene at the time of the shooting. Yet, if the plaintiff's claims against officers Weider, Dukes and Lucas fail as a matter of law, it follows that the claims for supervisory liability must also fail. "There is no liability on the part of supervisory officials in the absence of a constitutional violation on the part of the person supervised." *James*, 852 F. Supp. at 1297 (citing *City of Los Angeles v. Heller*, 475 U.S. 796 (1986); *Temkin v. Frederick County Commr's*, 945 F.2d 716, 724 (4th Cir. 1991); *Belcher v. Oliver*, 898 F.2d 32, 36 (4th Cir. 1990)).

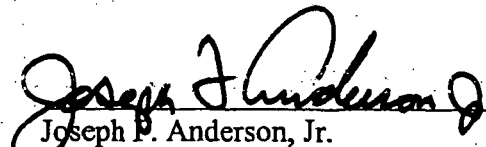
III. *State Law Claims*

Finally, the plaintiff asserts a wrongful death and a survival action under South Carolina state law. Under 28 U.S.C. § 1367(c)(3), a federal court may decline to exercise supplemental jurisdiction when the court has dismissed all claims over which it has original jurisdiction. Because the court has determined that all of the plaintiff's federal causes of action must be dismissed, the court will exercise its discretion to decline jurisdiction over the supplemental state law claims.

CONCLUSION

For all of the foregoing reasons, the defendants' motion for summary judgment is granted as to the § 1983 claims for excessive force and supervisory liability: all claims asserted in those causes of action are dismissed with prejudice. The court declines to exercise supplemental jurisdiction over the state-law claims asserted and dismisses those causes of action without prejudice. This matter is now ended.

IT IS SO ORDERED.


Joseph P. Anderson, Jr.
United States District Judge

September 30, 2003
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Evalena Catoe, individually and as
Personal Representative of the Estate
of Richard L. Catoe, Jr., deceased,

Plaintiff,

v.

The City of Columbia
and Leon Lott, in his official capacity
as Sheriff of Richland County,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 09-CP-40-5132

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AND/OR TO STRIKE ON BEHALF
OF DEFENDANT SHERIFF LOTT**

STATEMENT OF FACTS

Taking the facts in a light most favorable to Plaintiff,¹ on Sunday, July 22, 2007, at approximately 8:00 a.m., Richland County Sheriff's Department ("RCSD") deputies received an 'officer in need of assistance' call from the Columbia Police Department ("CPD"). A RCSD squadron proceeded in a back-up capacity to a residence at 69 Samson Circle, in the City of Columbia. Upon their arrival, deputies approached the house where Plaintiff's decedent ("Catoe") was located in the front yard, holding a knife to his throat.

A CPD officer briefed deputies as to two incidences occurring moments before the deputies' arrival. First, that Catoe threatened one of the CPD officers with a knife and, as a result, had been shot once in the torso. Secondly, Catoe was threatening to kill any officer who tried to arrest him.

¹ All of the ensuing facts are obtained from Exhibit A, Notice of Motion and Motion for Summary Judgment filed September 5, 2013.

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The joint assemblage of officers from the two agencies discussed strategy which centered on potentially administering the Taser devices if in a tactically favorable position. The proposed plan was for the RCSD deputies to obtain a position at the rear of the residence and attempt to maneuver around the side of the house. Thus, by establishing the element of surprise, police may theoretically be in sufficient range to tase and apprehend Catoe. See, e.g., Exh. B.

At that time, RCSD deputies Todd White and Kellye Hendrick positioned themselves at the left rear corner of the house. Initially, both officers had their service weapons drawn. However, after approximately twenty (20) minutes, the deputies were instructed to transition their role from non-lethal to lethal. In so doing, Hendrick holstered her Taser and drew her service weapon, a Model 23 Glock .40 caliber.

At some point, a trained CPD Negotiator arrived and began attempting to negotiate with Catoe. Catoe was provided a chair in which to sit and upon doing so, White no longer had a clear shot with which to administer the Taser. At some point, Bright and Hendrick was informed via radio that a more dynamic approach would be undertaken by CPD SWAT team and that they should maneuver to the side of the house and not give up their position.

While situated at the side of the house, the deputies learned that there was a family confined within the house. Hendrick and her fellow RCSD deputies successfully extricated the family members from the house, removed them to a safe position, and then returned to their position at the side of the house.

CPD officials then sought to utilize a "flash-bang" device in hopes of distracting and subduing Catoe by way of a SWAT ballistic shield. The deputies were informed

that upon deploying the "flash-bang," to be on the lookout for Catoe as he might flee to the rear of the house. In such an event, the deputies should be prepared to take appropriate action.

The "flash-bang" was deployed and the SWAT team directed Catoe to get down on the ground. Catoe failed to comply and proceeded to run into the backyard, at which point he was actively pursued by the SWAT members.

Deputy White was situated the front right corner of the house, holding his Taser. Deputy Hendrick was positioned at the right rear corner of the house, holding her service weapon. See, e.g., Exh. C. As Catoe ran around the corner, Hendrick re-positioned herself at the corner of the house to expand her view as to include the backyard.

As Catoe rapidly approached Hendrick and without delay, Hendrick very loudly identified herself as a Sheriff's Deputy and gave clear verbal commands for Catoe to drop the knife. Catoe ignored these repeated and unequivocal instructions and quickly advanced on Hendrick, grasping the knife in an elevated, striking position.

At that precise moment, Hendrick was placed in fear of immediate serious bodily harm or death at Catoe's hands. She brought her service weapon up from the ready position, aimed at Catoe, and fired once. Despite being struck with the bullet, Catoe never wavered and again quickly closed the distance between himself and Hendrick. Hendrick fired a second round and again struck Catoe. This caused Catoe to turn, ambulate several yards, and then fall to the ground.

Based upon the foregoing events, Plaintiff brought an action in this Court alleging that Catoe "did not possess the proper mental or physical ability to pose a danger to the

armed police officers and deputies present." Accordingly, there existed less violent methods of dealing with the situation. Plaintiff, Catoe's purported wife at the time of these events, thereafter brought a wrongful death claim against both the City of Columbia and Sheriff Lott in his official capacity pursuant to the South Carolina Tort Claims Act. The damages include culpability for Catoe's death, his pain and suffering, and loss of consortium on the part of Plaintiff.

The Defendant Sheriff now moves for summary judgment pursuant to Rule 56, SCRPC, based upon the following grounds:

- I. THE DEFENDANT SHERIFF IS ENTITLED TO ABSOLUTE SOVERIGN IMMUNITY FROM THE PLAINTIFF'S TORT CLAIMS**
 - (a) Generally / Tort Claims Act
 - (b) Generally / S.C. Code Ann. §15-78-60(6)
 - (c) Authority pursuant to *Huggins v. Metts*
 - (d) Application of instant matter to *Huggins* opinion
- II. PLAINTIFF HAS NOT STATED A NEGLIGENCE CLAIM SINCE SHE HAS FAILED TO DEMONSTRATE THAT THE DEFENDANT SHERIFF OR HIS DEPUTIES' CONDUCT CONSTITUTED ANY NEGLIGENT ACT**
- III. THE DEFENDANT SHERIFF IS ENTITLED TO SOVEREIGN IMMUNITY FOR PLAINTIFF'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

DISCUSSION

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

inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), (citations omitted), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

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

(a) Generally / Tort Claims Act

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

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As

a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. See, *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. See, S.C. Code Ann. §15-78-40. Additionally, the Act continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit.

(b) Generally / S.C. Code Ann. §15-78-60(6)

The Defendant Sheriff maintains that he is entitled to absolute sovereign immunity for the Plaintiff's negligence claim which arise out of actions undertaken to provide police protection.

S.C. Code Ann. § 15-78-60(6) provides that a governmental entity is not liable for a loss resulting from "civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing police or fire protection." See, S.C. Code Ann. § 15-78-60(6).

In *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998), the Court of Appeals recognized that a scrivener's error resulted in the omission of the word "or." After looking at the legislative history, the Court concluded that sovereign immunity under Section 15-78-60(6) extends to "the failure to provide or the method of providing police or fire protection." *Wells*, 501 S.E.2d at 750.

(c) Authority pursuant to *Huggins v. Metts*

FACTS GIVING RISE TO LITIGATION

In *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct.App. 2006), the Lexington County Sheriff's Department ("officers") responded to a call from Plaintiff stating that Huggins had threatened to burn down several homes and to commit suicide. After officers could not locate him at his home, bloodhounds discovered Huggins at in the woods behind his residence.

When the officers approached Huggins, they observed that he was armed with two large butcher knives. Officers ordered Huggins to drop the knives. Not only did he fail to do so, he stated to the officers that they were going to have to kill him.

Officers then unsuccessfully attempted introducing a negotiator in an attempt to speak with Huggins. After a period of time, officers radioed for a taser to subdue Huggins; however, upon hearing this, Huggins exclaimed: "you're not going to tase me." Huggins indicated that he was "going home" and began walking towards his residence. Officers attempted to position themselves between Huggins and the house while continuing to demand that Huggins drop the knives.

When Huggins continued to advance towards one of the officers, he was expressly warned "do not come any closer or I will shoot." Huggins, still armed with two large butcher knives, continued to approach the officer. Once he closed in within fifteen (15) feet, the officer discharged his service weapon and shot Huggins. After being shot, Huggins continued to advance in the direction of the officer at which point two other officers shot Huggins. Huggins died as a result of these gunshot injuries.

FEDERAL COURT ACTION

The personal representative initially brought state law causes of action in federal court contending, *inter alia*, that deadly force should be used only when all other alternatives have been exhausted. See, Exh. E [*Huggins v. Weider, et al.*, 3:02-cv-02361-JFA]. In dismissing these state claims, United States District Court Judge Joseph Anderson held, "The plaintiff cites no authority for this proposition (of exhausting alternatives). The crux of the Plaintiff's Complaint appears to be that the officers failed to continue to keep Huggins at bay and at a safe distance and that the officers failed to use a more benign method of subduing Huggins other than shooting him." See, *Id.*

Critically, Judge Anderson ruled:

The constitutional test, however, is not whether other alternatives were available to the officers, but whether ***at the moment they fired their weapons***, the officers reasonably believed they were in imminent threat of harm. The Fourth Circuit holds that "the Fourth Amendment's objective reasonableness' standard require[s] that the officer's liability be determined exclusively upon an examination and weighing of the information [the officers] possessed ***immediately prior to and at the very moment [they] fired the fatal shot[s].***"²

Under *Greenridge* and *Drewitt*, the court must focus only upon the reasonableness of the defendant officers' conduct at the moment they made the decision to use deadly force. The failure to exhaust all other nondeadly measures, the decision not to leave Huggins alone passed out in the woods, and the failure to await a taser or other nondeadly weapons to arrive are not relevant points of inquiry. The court must review the reasonableness of [the officers'] decision to use deadly force at the moment Huggins advanced in the woods after the defendants ordered him to halt.

See, *Id.*

² *Greenridge v. Ruffin*, 927 F.2d 789,792 (4th Cir. 1991), *reaff'd* *Drewitt v. Pratt*, 999 F.2d 774, 780 (4th Cir. 1993) (internal quotations omitted).

Judge Anderson discerned the following facts, all of which were taken in a light most favorable to the Plaintiff:

- At the moment of the shooting, Huggins was armed with a large kitchen knife and threatening to kill himself or the officers.
- The defendants had repeatedly requested Huggins to put down his weapon to no avail.
- A trained negotiator had tried for thirty minutes to get Huggins to comply without success.
- The defendants warned Huggins he would be shot if he advanced toward the officer.
- Huggins advanced despite the warning and was shot and killed.

See, id.

Consequently, the Court found that based upon the above facts, "the defendants had probable cause to believe that Huggins posed a significant threat of serious bodily injury to themselves and others at the moment they shot him." *See, id.*

STATE COURT ACTION

Following the dismissal of the claims in federal court, Plaintiff brought claims against Sheriff Metts in the Lexington Court of Common Pleas. Thereafter, the trial court granted summary judgment in favor of the Sheriff and Plaintiff appealed.

At the appeal stage, Plaintiff argued that the pertinent inquiry before the Court should center on "the preparation and events leading up to the time immediately preceding the shooting of Deceased." The Court of Appeals disagreed with this contention finding that the factual basis "concern(ed) the manner in which the police chose to provide police protection." Applying the exception set forth in S.C. Code Section 15-78-60(6), the Court observed that:

Because the Act specifically exempts the Police from liability **concerning the methods which they choose to utilize to provide police protection**, we need not address Huggins's other claims. Even were we to accept all of Huggins's assertions as true, it **would not remove the immunity which the legislature has bestowed on the Police in this situation**. We find no genuine issues of material fact, and, therefore, we affirm the circuit court's granting of summary judgment.

See, *Huggins v. Metts*, at 467 (Ct.App. 2006) (bolded for emphasis).

Thus, in affirming the lower court's dismissal, the Court of Appeals held that the immunities as promulgated by the South Carolina Tort Claims are not waived concerning the method of providing police protection.

(d) Application of instant matter to Huggins opinion

That portion of Deputy Hendrick's May 17, 2013 deposition which is most instructive to the summary judgment analysis is as follows:

Q: So he [Catoe] was knocked to the ground by one individual -- one individual, but no one else caught up to him, other than that one individual?

A: No.

Q: And then what happened?

A: When he got up off the ground he turned and saw me standing here. I loudly identified myself as a Sheriff's Deputy, asked him to drop the knife. He came up in a striking position and ran towards me.

Q: Where did he have the knife positioned?

A: Up over his shoulder in a striking position.

Q: And that doesn't show up in a transcript, so you'll have to tell us what a striking position is.

A: Up over his shoulder in a position to where he could strike somebody.

Q: And was moving forward, is that correct?

A: Forward towards me. Yes.

Q: And was he running?

A: Yes.

Q: And you said you identified yourself?

A: Identified myself as a Richland County Sheriff's Deputy and that he needed to drop the knife.

Q: And what did you say exactly?

A: "Richland County Sheriff's Department! Drop the knife!"

Q: Did you say it once?

A: I said it several times.

Q: Twice?

A: I don't recall how many. I said it several times.

Q: And then what happened?

A: When he did not drop the weapon, I moved my position from the ready position, which was pointed at the ground and put it on my target -- I fired a shot, he did not stop coming at me. I then fired another shot.

...

Q: How close did you get to Mr. Catoe before you fired the second shot?

A: Less than four (4) or five (5) feet.

Q: What about the first shot?

A: Six (6), seven (7) feet, maybe.

See, Exh. D.

Thus, the undisputed record reflects that, at the moment Hendrick fired her service weapon, she had observed or formed a reasonable belief in the following:

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- Officers had repeatedly requested Catoe to put down his knife to no avail.
- A trained negotiator had tried for an extended period to get Plaintiff to comply without success.
- The presence of or threat to administer the Taser device was rendered ineffective.
- Catoe had previously made the announcement that he would try to kill any law enforcement officer who attempted to apprehend him. (This proclamation was made despite having been shot by a CPD officer before her arrival).
- Hendrick's loud, clear, and repeated warnings to Catoe that he would be shot if he advanced toward her.
- Hendrick observed Catoe rapidly closing in on her without hesitation.
- Observed Huggins armed with a straight bladed, hunting-type knife raised up to strike her
- Despite the warnings, Catoe advanced and was shot and killed.

See, Exh. A.

Moreover, in *Huggins*, the subject brandished weapons fifteen (15) feet in distance from the officers at the point initial shots were fired. In the present matter, the record is undisputed that at the time Hendrick fired her service weapon, Catoe was less than half such distance and as close as 6-7 feet. See, *Id.*

Similar to the *Huggins'* Court evaluation, the key issue in the case at bar centers on the manner in which Hendrick chose to provide police protection. Hendrick has testified that, "I know that the actions taken by the subject not only put me in fear for my life but, also, put the other officers and the citizens who had gathered out in the street in grave danger." Hendrick has additionally attested that, ***"If I had not been able to stop him, there is no doubt in my mind that others who were nearby could have been seriously hurt by the subject."*** See, *Id.*

In *Curiel v. Hampton County E.M.S.*, 401 S.C. 646, 737 S.E.2d 854 (Ct App. 2012), the Court of Appeals recognized that:

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. If a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. When interpreting a statute, the court must read the language 'in a sense that harmonizes with its subject matter and accords with its general purpose. An inclusion in [a] statute of certain specified exclusions leaves the inference that the Legislature intended no other exclusions from the exemption.

Id., at 856 (internal citations omitted).

The Tort Claims Act contains clear, plain, and unambiguous language specifically exempting the police from liability ***concerning the methods which the officer chose to utilize***. Thus, that Hendrick decided to fire her weapon in order to stop the threat as an act of self-defense or in defense of third parties constitutes an immune function. Stated differently, the Defendant Sheriff is entitled to absolute sovereign immunity for the Plaintiff's negligence claim which arises out of these specific actions undertaken to provide police protection.

II. PLAINTIFF HAS NOT STATED A NEGLIGENCE CLAIM SINCE SHE HAS FAILED TO DEMONSTRATE THAT THE DEFENDANT SHERIFF OR HIS DEPUTIES' CONDUCT CONSTITUTED ANY NEGLIGENT ACT

In the present case, it is undisputed that at the relevant times, the Defendant's employee Hendrick utilized deadly force with respect to Plaintiff's Catoe.

In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant.

The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation.

Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), the Supreme Court provided that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liability for injury to person or property, when such injury is not the result of premeditation and formed intention." Thus, intent and negligence are mutually exclusive and there is no claim of negligence that flows from intentionally tortious conduct.³

The Defendant Sheriff submits that the use of any type of force, including lethal force, which are by its very nature conducted with premeditation and formed intention. Thus, these acts would fall within one of the established tort classifications of which an intent to commit the act complained of (whether or not harm is intended) is an element, such as theft or willful, wanton, or reckless conduct that causes injury to another. As a consequence, intent to commit a wrongful act (i.e. intent to harm) is not a material element of ordinary actionable negligence.

Therefore, since an allegation of intent to commit a wrongful act is irrelevant in a negligence action, the Defendant Sheriff cannot be held liable for its intentional acts at the relevant times and there is no claim for negligence flowing therefrom.

³ For example, negligence and battery are mutually exclusive, and there is no such cause of action as negligent assault and battery. See, *Restatement (Second) of Torts*, § 282 cmt. d (1965).

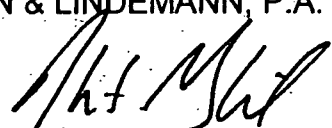
III. THE DEFENDANT SHERIFF IS ENTITLED TO SOVEREIGN IMMUNITY FOR PLAINTIFF'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff's Complaint includes the cause of action for intentional infliction of emotional distress. South Carolina Code Ann. § 15-78-30(f) provides that a "loss" recoverable under the Tort Claims Act" does not include the intentional infliction of emotional harm." Therefore, there is no remedy for the alleged intentional infliction of emotional distress and the Defendant Sheriff is entitled to summary judgment on this cause of action.

CONCLUSION

For these reasons, there is clearly an absence of evidence to support the Plaintiff's case and therefore, her causes of action against the Defendant Sheriff must be dismissed as a matter of law.

DAVIDSON & LINDEMANN, P.A.

BY: 

ROBERT D. GARFIELD
1611 Devonshire Drive
Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendant Leon Lott in his
official capacity as Sheriff of Richland County*

Columbia, South Carolina

November 13, 2013

STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS
2013-CP-40-1047R

EVALENA CATOE, INDIVIDUALLY)
AND AS PERSONAL REPRESENTATIVE)
OF THE ESTATE OF RICHARD L.)
CATOE, JR., DECEASED,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

CITY OF COLUMBIA AND LEON LOTT)
IN HIS OFFICIAL CAPACITY AS)
SHERIFF OF RICHLAND COUNTY,)

DEFENDANTS,)

November 13, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE EUGENE GRIFFITH, JUDGE.

APPEARANCES:

PAMELA R. MULLIS, ATTORNEY AT LAW
Attorney for the Plaintiff

ROBERT D. GARFIELD, ESQ.
Attorney for the Defendants

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: This is two motions? One motion for
2 summary judgment and one motion -- the motion to compel?

3 MR. GARFIELD: Yes, Your Honor.

4 THE COURT: Who filed first?

5 MR. GARFIELD: Probably the plaintiff filed her
6 motion to compel first.

7 THE COURT: Would that be the easier one to hear
8 first?

9 MS. MULLIS: Probably.

10 THE COURT: All right. I'll be glad to hear from
11 you.

12 MR. GARFIELD: Thank you.

13 MS. MULLIS: Pamela Mullis here representing the
14 plaintiff. Our motion to compel is based on the fact that
15 the officer, Kellye Hendrick, in this matter on deposition
16 testimony testified that she provided shortly after this
17 incident, prepared a statement for the sheriff's
18 department.

19 When questioned, she indicated that she had provided
20 a handwritten -- or prepared a handwritten statement for
21 the sheriff's department. I asked her specifically if she
22 had prepared a handwritten statement. She said she did.
23 I had her identify a statement and asked her if she typed
24 the statement. She said she didn't type any statement.

25 I -- we're requesting that they produce the

1 handwritten statement that she provided or that she
2 prepared. They produced only a typed statement, and we
3 think we're entitled to the handwritten statement that she
4 prepared.

5 She said that she would have left it, and that she
6 didn't retain a copy of it. So we don't know where it is.
7 She said that she would have left it with SLED, and that
8 she didn't retain a copy of it.

9 MR. GARFIELD: Your Honor, may it please the Court.
10 On this, the facts giving rise to this case was a shooting
11 here in the city in which the summary judgment -- the
12 facts, Your Honor is going to become more familiar with,
13 but there was a shooting and a SLED investigation
14 afterwards.

15 The shooter, on behalf of the sheriff's department,
16 was Deputy Hendrick. Deputy Hendrick testified at her
17 deposition that she did, in fact, prepare a handwritten
18 statement.

19 This was a SLED investigation pursuant to the SLED
20 investigator's shooting. The statement, according to the
21 deputy, most likely was turned over to one or two SLED
22 investigators at the time of their investigation.

23 Now, Your Honor, there is a typed statement,
24 four-page statement. It is attached to our summary
25 judgment as Exhibit A. That statement was generated

1 almost immediately after the shooting.

2 Kellye Hendrick testified, Judge, that someone else
3 typed this up. She signed it. She fully adopted the
4 contents of this statement, and of course, we are using
5 that in support of summary judgment.

6 Now, Kellye Hendrick was examined extensively in her
7 May 2013 deposition. If I may approach, these are just
8 the pertinent portions of her deposition in which she is
9 examined on this issue.

10 This is six years later. She testified that she
11 had -- she has not seen a handwritten statement since
12 turning it in to SLED. She can't attest to where it is,
13 and, you know, the SLED materials were subpoenaed even
14 before litigation started in this case.

15 I think that SLED materials were generated and
16 disseminated some time in 2007, 2008. That handwritten
17 statement was not part of that.

18 I will say, as an officer of the court, I never have
19 seen it. I sure would have liked to have seen it. I
20 don't have access to it, and I can't provide, quite
21 frankly, what I don't have possession of. We have her on
22 record to say that she did write it up and given it to
23 SLED. That's not uncommon. So I am at --

24 THE COURT: Shortly after that, the typewritten
25 statement was produced with her assistance, she adopted

1 that?

2 MR. GARFIELD: Exactly, Your Honor. That is --
3 that's a very good point. The typed statement was
4 generated immediately after this event, maybe 24, 72 hour
5 kind of thing.

6 That statement -- we have been working under that
7 statement for several years now. They are not prejudiced.
8 We are all on the same playing field on that statement,
9 and there is no surprise with respect to that.

10 So I've told Ms. Mullis we would be glad to turn over
11 anything we have. This certainly would not be
12 attorney/client privilege because it would have been to
13 SLED. We simply don't have it.

14 THE COURT: All right. Ms. Mullis, what can I do as
15 an officer of the court? He represents to the Court that
16 statement is some point without his control.

17 MS. MULLIS: If --

18 THE COURT: He would give it to you if he had it.

19 MS. MULLIS: If they don't have it, can we just get
20 an Order of the Court that SLED produce it if they have
21 it?

22 MR. GARFIELD: We don't have an objection to that
23 just as long as everybody can receive a copy of it.

24 MS. MULLIS: Absolutely. May we --

25 THE COURT: Sure.

1 MS. MULLIS: Thank you.

2 THE COURT: Now, the deal will be -- so the Order
3 will be conditional, if SLED has it, they must produce it.

4 MS. MULLIS: Thank you.

5 THE COURT: But no penalty if they search and do not
6 find it. I'm not going to hamstring them if they search
7 diligently and cannot find it. There won't be any type of
8 contempt action on that.

9 MS. MULLIS: Thank you, Your Honor.

10 MR. GARFIELD: Thank you.

11 THE COURT: So to that extent, your motion is
12 granted.

13 All right. Anything else on your motion to compel?

14 MS. MULLIS: That's all. Thank you.

15 THE COURT: All right. Now?

16 MR. GARFIELD: Your Honor, this is a summary judgment
17 motion on behalf of the defendant, Sheriff Lott, in this
18 case.

19 The background facts are this: This occurred on
20 July 22nd, 2007 about eight in the morning. Let me get
21 situated, Your Honor.

22 Columbia Police Department officers were called out
23 to a residence. It was the home of the plaintiff's
24 decedent, Richard Catoe. He was a 38-year-old male who
25 was living in the City of Columbia in the Greenview

1 community.

2 At that time, Columbia Police Department officers
3 came out and investigated a potential arson in which
4 Mr. Catoe's house had been severely burned, and he was
5 suspected as an arsonist.

6 Now, Your Honor, at that time, when the police
7 department arrived, they discovered Mr. Catoe outside, not
8 in front of his house but a neighbor's house. He was
9 brandishing a knife.

10 The testimony goes that he threatened one of the
11 Columbia Police Department officers with the knife and the
12 result was the officer fired a shot and struck him in the
13 torso, and despite being shot, Mr. Catoe proceeded to
14 threaten to kill quote, "a police officer, any police
15 officer" who tried to apprehend him.

16 Now, at this point, the sheriff's department, the
17 Richland County Sheriff's Department, was summoned for
18 back up. Your Honor, that's -- those are my clients. The
19 deputies arrived at the scene, and they were briefed by
20 the Columbia Police Department as to the situation and
21 quite frankly, what the strategy was.

22 This is pertinent background insofar as they were
23 trying to develop a plan. You have got a man in front of
24 the neighbor's house. Inside the house, there were
25 individuals that did not feel safe to leave. He's outside

1 the house. He had already been shot once. He is
2 brandishing a knife.

3 So in order to sort of shorten the background, I can
4 really articulate it this way: There's sort of a plan A,
5 plan B, plan C. Plan A was to use the taser, but
6 unfortunately, they felt they could not get in a favorable
7 tactical position to deploy it.

8 Plan B would have been to use a trained negotiator,
9 and they did send a negotiator out there. For whatever
10 reason, that was unsuccessful. It was a hit-or-miss
11 situation.

12 Plan C was when -- was finally utilized, and that was
13 to administer what's known as a flash bang, also known as
14 a like stun grenade. The purpose of that is -- what that
15 is, is it's a non-lethal explosive.

16 It's designed to distract the subject long enough for
17 them to do what they need to do. Here, the objective
18 would be to distract them and then subdue them because the
19 Columbia Police Department SWAT team is out there. They
20 would use ballistic shields and get them under control,
21 and that's the background, Your Honor.

22 I think the more pertinent part in this case, in
23 taking the facts in the light most favorably to the
24 plaintiff, during all of these activities, there were two
25 particular sheriff's department deputies that were

1 assigned and situated to the side of the house. One was
2 Deputy Todd White, the other is Deputy Kellye Hendrick who
3 we have already talked about.

4 Both of these individuals at the side of the house --
5 Your Honor, I would direct your attention to two exhibits
6 that we handed up as part of our memo in support that I
7 think would assist the court in kind of getting a mental
8 picture here, one is Exhibit B and one is Exhibit C.

9 What you'll see in Exhibit B is a view, kind of a
10 larger view, of the officer and the assignments. It's
11 just a -- not a very good black-and-white picture, and we
12 could supplement that with a color picture if the Court
13 desires.

14 Exhibit C is more of a closer view of the two
15 deputies where they work. Now, Deputy White was at the
16 front right corner of the house; deputy Hendrick was at
17 the rear right corner, and they were situated in what's
18 called lethal mode in which Deputy White was holding his
19 taser, and Deputy Hendrick was in a backup capacity
20 holding her service weapon, which was a .40-caliber Glock.

21 The flash bang at this point was deployed, and here
22 is where things happen. Deputy Hendrick, who is at the
23 rear corner, might say in some sense she was the last line
24 of defense.

25 Mr. Catoe ran straight in her direction. Deputy

1 Hendrick loudly announced, "Sheriff's Department". Deputy
2 Catoe -- excuse me, Mr. Catoe continued to approach with a
3 knife. Deputy Hendrick stated in a loud clear commanding
4 voice, "Drop the knife."

5 Mr. Catoe ignored her instructions and quickly
6 advanced toward her. He grasped the knife. It's in an
7 elevated striking position based on the testimony.

8 Deputy Hendrick brought up her service weapon, and
9 when he was about six to seven feet from her quickly
10 closing the distance, she fired once. Now, that didn't do
11 it because while he was hit, he didn't waiver.

12 He then came right at her again very rapidly, and
13 within about four to five feet, she fired a second time.
14 He did fall to the ground, and it was successful in that
15 he died as a result. When I say successful, she stopped
16 the threat, and he died as a result of a gunshot wound.

17 Now, the grounds for our summary judgment motion,
18 Your Honor, centers on a fact pattern with remarkably
19 similar -- a remarkably similar case with a fact pattern
20 known as Huggins vs. Metts.

21 Everything I'm about to address the Court with is
22 memorialized in the memo in support, but the facts are
23 very pertinent in that Mr. Huggins is the plaintiff's
24 decedent in the case. He was a Lexington resident.

25 This litigation took place both in federal court and

1 in state court in Lexington County. The underlying facts
2 of Huggins was that the Lexington County Sheriff's
3 Department responded to a call involving Mr. Huggins, and
4 Mr. Huggins had threatened to burn down the houses and
5 commit suicide.

6 Bloodhounds then traced or tracked Mr. Huggins to the
7 back of his house into the woods. When the officers
8 finally got there and approached Mr. Huggins, they
9 discovered he had two butcher knives. The officers
10 ordered him to drop the knives, and Mr. Huggins then
11 failed to comply.

12 Mr. Huggins, in fact, told the officers, "You're
13 going to have to kill me." A taser was unsuccessful. A
14 trained negotiator was unsuccessful. At some point,
15 Mr. Huggins advanced towards the officers.

16 He was warned that if he continued to advance, he
17 would be shot. He ignored the direction -- he ignored the
18 directive. He was shot in about a 15-foot distance. He
19 then closed in a second time, and he was shot and he was
20 killed as a result.

21 Now, in this Huggins case, it's very significant in
22 that the personal representative initially brought this
23 action in federal court, and it's -- the presiding judge
24 was Judge Joseph Anderson.

25 I discussed this in our memo in support on pages

1 eight and nine, but if you would -- Your Honor, if you
2 would go with me here to the -- really, the final exhibit,
3 Exhibit E, in which Judge Anderson rules in this case, he
4 states -- and I'm reading from page six; that he says,
5 "The constitutional test, however, is not whether other
6 alternatives were available to the officers but whether at
7 the moment they fired their weapons, the officers
8 reasonably believed they were in imminent threat of harm."

9 He goes on to say that the standard requires that the
10 officer's liability be determined exclusively, and the
11 emphasis is in the original. Exclusively upon an
12 examination and weighing of the information, the officers
13 possessed immediately prior to and at the very moment they
14 fired the fatal shots.

15 Now, at page seven at the end of that first
16 paragraph, Judge Anderson concludes that under these
17 facts, the Court finds the defendants had probable cause
18 to believe that Huggins posed a significant threat of
19 serious bodily injury to themselves and others at the
20 moment they shot him.

21 What Judge Anderson has done here, Your Honor, is
22 that he has -- he has imposed what is oftentimes caused a
23 snapshot analysis, what we're looking at at the very
24 moment that the force was used.

25 Now, this litigation proceeded to state court after

1 the dismissal of the P.R. brought it in Lexington County.
2 Judge Westbrook was the presiding judge, and he granted
3 summary judgment. That was taken up and went before the
4 Court of Appeals.

5 Part of our summary judgment asks Your Honor to look
6 very closely and examine this Huggins case in terms of the
7 South Carolina Tort Claims Act.

8 As Your Honor is aware -- and if I could just put for
9 the record -- that the Tort Claims Act obviously governs
10 all tort claims against governmental entities, and what it
11 does is that it waives sovereign immunity against the
12 State and the governmental entities of the state; and the
13 act lists 37 exceptions to the general waiver of immunity.

14 What that means is that if an employee's act or
15 omission falls within any one of these 37 exceptions, that
16 the entity itself, such as here the sheriff of Richland
17 County who is a constitutional state officer, would enjoy
18 absolute sovereign immunity from suit.

19 Now, in this Huggins case -- and I think that was
20 attached to what I provided the Court, it's Court of
21 Appeals in South Carolina. It's a published decision 640
22 S.E. 2d 465. It's a 2007 case. I'll just provide this,
23 as well.

24 What the Court of Appeals found here is that there
25 was an applicable exception; that not only did the

1 exception apply, but it was, in fact, dispositive of the
2 case.

3 What was utilized here was 15-78-60 subsection six
4 which holds that a governmental entity is not liable for a
5 loss resulting from several things, including the failure
6 to provide or the method of providing police protection.

7 What the Court of Appeals stated here was -- and I'm
8 just reading -- not for the -- this is just a copy of the
9 page, page three in the second column, the Court of
10 Appeals provided the holding that this action concerns the
11 manner in which the police chose to provide police
12 protection.

13 Now, in this case, Deputy Hendrick's testimony sets
14 forth the narrative, as I stated, extraordinarily similar
15 to that of Huggins, and I'll spare going over the -- each
16 and every nuisance and comparisons.

17 We address this in our memo. I believe it's pages 10
18 through 13, but everything from warning to put down the
19 knife, the negotiator being called, tasers being
20 considered, the threat that he would kill an officer, loud
21 clear commands to drop the knife, the fact that he ignored
22 it, the fact that he came quickly to the officer, and the
23 officer felt that there was an imminent threat of harm or
24 death. The officers in Huggins, just like Deputy
25 Hendrick, had to fire not once but twice to stop to

1 threat.

2 Now, in Deputy Hendrick's testimony, she has stated
3 and testified -- and I think I have this on page 12 of our
4 memo -- that she says that, "I noted the actions taken by
5 the subject not only put me in fear for my life but also
6 put the other officers and the citizens who had gathered
7 out in the street in great danger."

8 She additionally stated, "If I -- if I had not been
9 able to stop him, there is no doubt in my mind that others
10 who were nearby could have been seriously hurt by the
11 subject."

12 Now, Your Honor, based on the Huggins' opinion, I'll
13 continue to read where I left off, which the Court of
14 Appeals stated that because the act specifically exempts
15 the police from liability concerning the methods which
16 they choose to utilize to provide police protection, we
17 need not address Huggins' other claims.

18 The Court goes on when they state, "Even were we to
19 accept all of Huggins' assertions as true, it would not
20 remove the immunity which the legislature has bestowed on
21 the police in this situation. We find no genuine issue of
22 material fact, and therefore, we affirm the circuit
23 court's granting of summary judgment."

24 Your Honor, I would just conclude by stating that in
25 properly applying the authority in Ms. Huggins' case that

1 Deputy Hendrick decided to fire her weapon in order to
2 stop the threat not only from a self-defense perspective
3 but the defense of others, as well, that involves the
4 method that she chose to utilize in order to provide
5 police protection in this case.

6 We would allege that this constitutes an immune
7 function, and the police, quite frankly, should be
8 exempted from liability in this case, and the sheriff
9 should be entitled to absolute sovereign immunity.

10 I thank you for your attention.

11 THE COURT: All right. Ms. Mullis.

12 MS. MULLIS: Good morning. May it please the Court.
13 I'm Pamela Mullis here representing the plaintiff.

14 This exception is number six under the 37 exceptions
15 under the Tort Claims Act. The exception specifically
16 states: "Civil disobedience, riot, insurrection or
17 rebellion or the failure to provide -- or the method of
18 providing police or fire protection."

19 This exception would allow the police to have total
20 immunity for any actions ever. This would give the police
21 total immunity for anything that they do. They could
22 shoot anyone and commit gross negligence for all of their
23 actions.

24 It makes all other exceptions under the Tort Claims
25 Act completely irrelevant. This is a summary judgment

1 motion, so all facts are interpreted in the light most
2 favorable to the nonmoving party, and our burden is a mere
3 scintilla of evidence.

4 Opposing counsel has put before you some facts and
5 some of those facts we dispute. Ricky Catoe was in his
6 own neighborhood that day. He was there in his own
7 neighborhood within a couple of houses of his own house,
8 okay.

9 The police officer that he was near never indicated
10 that he threatened him. In fact, he was holding the knife
11 to his own throat, and he never directly threatened that
12 police officer.

13 His indications were that he was going to kill
14 himself, and he was holding the knife to his own throat.
15 He never got within six feet of the initial police officer
16 that shot him, and the initial police officer that shot
17 him was a City of Columbia police officer. That City
18 police officer that shot him first then shot him and
19 pursued him until he sat down in a house that was near
20 this scene.

21 There's a significant amount of footage of this that
22 I'll show you. The sound on it has a lot of commentary
23 from not only neighbors but -- this is the scene, but
24 Sheriff Lott, Sheriff Crisp, the neighbors, a play by play
25 going on.

1 So I'm not going to play the sound primarily because,
2 again, it was a lot of hearsay going on, but it gives you
3 an idea of what was going on at the scene -- there were --
4 this is the house.

5 Chief Crisp was on the scene not initially but came
6 on the scene shortly after, and the neighbor is being
7 interviewed. WIS probably, probably WLTX, cameras are on
8 the scene. Sheriff Lott came onto the scene.

9 Maybe I will fast forward it. This is a shot of
10 Mr. Catoe coming up.

11 They had fire trucks that responded. That was the
12 house, and Mr. Garfield indicated that the initial
13 response was in response to a report of an arson but after
14 investigation appeared to be an electrical fire in the
15 home.

16 This is in law enforcement what would be considered a
17 stack. That is a set of law enforcement individuals that
18 generally would train together in a single agency.

19 The significant thing about that set of individuals
20 is that they are not from a single agency, and you'll note
21 that some are Richland County sheriff's deputies and some
22 are from the City of Columbia Police Department, and only
23 half of the people involved in that stack are in what you
24 would consider riot gear.

25 The first individual has a shield and has a helmet

1 on, but these individuals get together and they train
2 extensively to do this type of action where they go in a
3 line like this to do this type of action where they deploy
4 what's called a flash bang which is a percussion --
5 it's -- I don't know what you would call it.

6 It releases smoke and a loud flash. You normally do
7 them indoors. It distracts the individual. They release
8 them indoors because they also release smoke. The first
9 individual has a shield. They have shield among their
10 bodies, and they have helmets on.

11 Each individual in the stack has communication with
12 the other individual, and then they have ear pieces on.
13 So they're in communication with each other.

14 They train together and they work together
15 extensively, and they're all well trained and coordinated
16 to work together. They are supposed to train together in
17 order to work together because they -- when they -- they
18 do these types of operations, they're generally going into
19 an area with someone that's highly dangerous, okay.

20 Well, here what you've got is City of Columbia police
21 officers and Richland County deputies, and the Richland
22 County deputies are not in riot gear, don't have helmets,
23 aren't in direct communication with the other people in
24 the stack and don't even have helmets on.

25 These are people that they don't know that they

1 haven't trained with, okay. So that's significant in that
2 picture. The issue here and what opposing counsel is
3 raising is that the Tort Claims Act and the cases that
4 they're relying on is a single exception to give total
5 immunity to the police for the failure to provide the
6 method of providing police and fire protection.

7 The case that he's basing this on -- or the two cases
8 that he's basing this on are the Huggins case, and the
9 second case that mentions the failure to provide police
10 protection is the Jones vs. Lott case which are the only
11 two cases that talk that.

12 I'm going to pass up a response to the motion for
13 summary judgment, exhibits, and an affidavit in this. The
14 only two cases that have discussed the method of providing
15 police protection since the passage of the Tort Claims Act
16 were the Jones vs. Lott case which raised the method of
17 providing police protection under the two-issue rule
18 where, frankly, it was just a case that discussed the
19 two-issue rule because the attorney didn't appeal the
20 issue.

21 Huggins vs. Metts, the holding of that case, frankly
22 was that the federal and state claims were identical and
23 that the federal court dismissal was deciding the state
24 court issues.

25 The Huggins vs. Metts case was a case related to the

1 collateral estoppel and res judicata. The case was filed
2 in federal court, and Judge Anderson dismissed the federal
3 court claims and remanded the case back to state court.

4 Judge Westbrook dismissed the state court claims at
5 summary judgment under collateral estoppel and res
6 judicata without any kind of finding related to a finding
7 on -- directly related to whether or not the method of
8 providing police protection related to the case or a
9 finding on whether or not that related to the Tort Claims
10 Act and the facts of the case on summary judgment. So we
11 don't think that that case is dispositive of this issue.

12 We think that the defendants have the burden of
13 establishing this exception. They have the duty. They
14 have the burden of proof. They have the burden of
15 establishing and proving whether the Tort Claim Act
16 applies and whether the exception applies.

17 So they have to prove whether or not there was a
18 method, and they have to prove method under the plain
19 meaning of the rule for the plain meaning of the statute.

20 A method is: "A procedure, a technique, or a way of
21 doing something in accordance with a definite plan, a
22 systematic way of instruction, order or system in doing
23 anything, an orderly or systematic arrangement or sequence
24 or the like."

25 This is the plain meaning of the word method. The

1 method, mode, way, means, or technique. A method refers
2 to a settled kind of procedure usually according to a
3 definite established logical or systematic plan.

4 A method refers to a procedure, technique or way of
5 doing something in accordance with a definite plan. There
6 was no systemic plan for the joint operation between these
7 two agencies. There was no method of providing police
8 protection here on this scene. There was no method to
9 this madness.

10 You have in front of you exhibits, and they're in
11 blue, and deposition excerpts. Sergeant Christopher
12 Bruce, the Columbia Police Department SWAT, I asked him
13 about Catoe's movements.

14 We asked him which direction the guy was moving, and
15 he said that he was moving backwards with his knife
16 raised, and he was still -- I -- question, "Was he facing
17 me with his knife raised?"

18 "He was still facing me moving backwards, yeah. He
19 never stopped."

20 "Were you running?"

21 "I was. He was running backwards with a knife." The
22 issue was what movement Catoe was.

23 Again, I asked him, "Did he ever move towards the
24 officer that was shooting him? Did he ever move towards
25 Kellye Hendricks?"

1 "No."

2 "Okay."

3 "Several shots were fired from my left. I turned
4 briefly and observed a female deputy discharging rounds at
5 the suspect who hit several times."

6 "You know one hit Catoe?"

7 "I do not know."

8 "At least one hit him?"

9 "Yes."

10 "Were you close enough to Mr. Catoe for the blood to
11 hit you that came from the bullet?"

12 "Yes."

13 "Was the bullet at all traveling in your direction?"

14 "It passed, I guess, over my left shoulder from what
15 I remember because I heard several go by."

16 "You heard several bullets go by your head?"

17 "I heard the whiz as they went past."

18 "Okay."

19 "Right."

20 "More than one?"

21 "Yes."

22 "Did that helmet you have on have one -- did that
23 helmet you have on stop bullets? Does that helmet you
24 have on stop bullets?"

25 "The one I have on now does."

1 "Did the one you had on at the time?"

2 "No."

3 Issue: "Who was in charge of the scene?" I asked
4 him about that.

5 "Who was your on-scene commander that day?"

6 "My next level of chain, Immediate supervisor; that
7 would be Lieutenant Auld."

8 "Auld?"

9 "A-U-L-D. I think he was a sergeant at the time."

10 "So then who was his?"

11 "Marsh."

12 "And Marsh's was Dodson?"

13 "Correct."

14 "And Dodson's was Crisp?"

15 "I believe so."

16 So when asked who was in charge of the scene,
17 Sergeant Roberts says that he was answering to Auld; Auld
18 was answering to Marsh; Marsh was answering to Dodson; and
19 Dodson believes that Crisp was on the scene.

20 I asked about the command to holster weapons.

21 "And your radio, in your radio communications, did
22 you ever hear the instruction for individuals to holster
23 their weapons?"

24 "I personally" --

25 "Yes."

1 -- "did not."

2 Exhibit 2, Kellye Hendrick, when asked who she
3 answers to, "The City officers asked several" -- oh, I'm
4 sorry. When asked who was in charge, "The City officers
5 asked several of our deputies if we had tasers, and upon
6 being advised that some of us were so equipped requested
7 that we tase the subject if we had a clear shot to do so.
8 I responded that I was not going to do anything until my
9 immediate supervisor gave me an order."

10 So the Richland County sheriff's deputy was on --
11 deputies were on the scene, but they were only there to
12 respond to Richland County sheriff's deputies.

13 Issues as to holster their weapons: "We waited for
14 quite some time, and finally, we were told to stand by
15 because the team was about to deploy. The subject
16 continued to come directly at me holding the knife in a
17 striking position.

18 I continued to give the same loud verbal commands,
19 but the subject kept right on coming at me. Seeing him
20 closing in on me without hesitation with his knife raised
21 up to strike me, the subject never wavered and continued
22 to close -- to quickly close the distance between himself
23 and me. I fired again and the subject turned and ran some
24 seven to eight yards and fell."

25 Investigator Todd, Exhibit 3. This is the Richland

1 County sheriff's deputy with Hendrick. He is from the
2 sheriff's department. "Were you in radio contact with the
3 Columbia Police Department?"

4 "No."

5 The Columbia Police Department and the sheriff's
6 deputies on the scene were not in radio contact. The
7 number one rule that we learned after 9/11 was that we
8 have to have radio contact with everyone on a single
9 scene.

10 "Were you in radio contact with any of the
11 individuals in command control like Chief Crisp or Dodson
12 from the Columbia Police Department?"

13 "No."

14 "What about anyone from SWAT?"

15 "No."

16 "Were y'all communicating with them?"

17 "No."

18 "Were you communicating with anybody else on your
19 radio that you recall at that time?"

20 "No."

21 "Okay. So the decision for you to move from behind
22 Mr. Catoe -- to move from behind Mr. Catoe back to the
23 side of the house, would that have been your decision?"

24 "Yes."

25 So the Richland County Sheriff's Department

1 investigator, sergeant on the scene, was making decisions
2 on his own not under anyone else's direction on the scene.

3 "And would you have directed Officer Hendrick to do
4 the same?"

5 "Yes."

6 And directing other officers on the scene on his own.
7 He showed me pictures of where they are. They are on one
8 side of the house under no one else's direction on the
9 scene.

10 How is this a method, procedure, technique or way of
11 doing something in accordance with a definite plan?

12 There is no plan.

13 "Okay. Was the stack pursuing him?"

14 "Yes."

15 "Okay. And then heard -- okay. And then heard
16 somebody yelling that he's running. Was there anything
17 going on over the radio at the time?"

18 "Not on our radio."

19 "Did you ever hear a command to holster weapons on
20 your radio?"

21 "No."

22 "So at no time on your radio did you get a command to
23 holster weapons; is that correct?"

24 "Yes."

25 "Okay. And did anyone tell you verbally to holster

1 your weapon?"

2 "No."

3 "Did you hear anyone instruct Officer Hendrick to
4 holster her weapon?"

5 "No."

6 "I watched the subject keep going, maybe 20, 30 feet
7 through the wood line and then fell down."

8 "When you saw her gun recoiling, was he at the wood
9 line yet?"

10 "No. He was running facing forward."

11 "I don't know a better way of asking that."

12 "He was kind of maybe caddy corner, I guess kind of
13 angled maybe at a 45-degree angle."

14 "Maybe he wasn't facing straight the way he was
15 running?"

16 "No."

17 "Okay. He was swinging the knife in her direction?"

18 "I don't recall."

19 "Was he swinging the knife in the direction of the
20 SWAT guy that was pursuing him?"

21 "I don't remember that."

22 "Do you ever remember seeing him swinging the knife
23 at the SWAT guy that was pursuing him?"

24 "In the initial strike from the very beginning, yes."

25 "Okay. And I'm talking about now in the instance

1 when you saw him again coming down the backyard."

2 "No."

3 "Across the backyard, okay. So you -- so you're
4 saying that he was at an angle facing towards the house or
5 away from the house?"

6 "Facing towards the house."

7 "Was he running toward Deputy Hendrick in that
8 direction? Was Deputy Hendrick blocking his escape route
9 into the wood line?"

10 "No."

11 Michael Ernest Johnson, Columbia Police Department
12 captain.

13 THE COURT: Let me -- I'm not going to --

14 MS. MULLIS: I have Exhibit 4.

15 THE COURT: Yes. Tell me what all of this tells me.
16 Where is the scintilla or question of fact? I mean, tell
17 me that without reading all of this to me.

18 MS. MULLIS: Okay. What I have is -- and as we move
19 through them, it becomes more apparent. They had no
20 procedure, technique, or way of doing something in
21 accordance with a definite plan.

22 As we go through them, the -- it becomes obvious
23 because Johnson is the captain who at this point is going
24 to testify about who is in charge of the perimeter.

25 Crisp is then going to testify about who he thinks is

1 in charge of the perimeter, and then Dodson because these
2 last three people are really significant in who is in
3 charge. They literally do not know who is in charge.

4 They can't possibly formulate a plan or a method of
5 providing any police protection if they don't even know
6 who is in charge. They're instructing people to holster
7 their weapon before they deploy anything which they're not
8 even deploying correctly because they can't do this.

9 THE COURT: So they can't do it, or they didn't do it
10 properly?

11 MS. MULLIS: Sir?

12 THE COURT: You're saying they can't do this, or they
13 didn't do it properly?

14 MS. MULLIS: I'm saying they can't even do this.
15 This isn't even a plan. They have to prove a procedure,
16 technique or way of doing something in accordance with a
17 definite plan. There wasn't a definite plan. They have
18 the burden of showing that they had a procedure,
19 technique, or way of doing something in accordance with a
20 definite plan. That's what a method is.

21 They can't just say, "We're the police, and we get
22 immunity because we're the police. So we did something."
23 They can't run around and shoot people in the back and get
24 automatic immunity.

25 They have to demonstrate a method of doing something.

1 So they have to demonstrate a method of doing something to
2 get immunity, because if not, we grant the police total
3 immunity from everything, for every action that they do,
4 completely. It makes all other of the 37 exceptions under
5 the Tort Claims Act irrelevant. There has to be some
6 stopgap to it.

7 THE COURT: So your contention is that the scintilla,
8 question of fact is --

9 MS. MULLIS: No.

10 THE COURT: -- some of the semblance of method of
11 plan in taking Mr. Catoe into custody, they had a
12 semblance of a plan which you said was not functional, nor
13 efficient, nor within -- just not laid out very well
14 according to what you're presenting to me through the
15 deposition facts.

16 MS. MULLIS: They have the burden of establishing a
17 plan.

18 THE COURT: Okay. Your position is y'all had a plan?

19 MR. GARFIELD: That's what I'd like to address
20 briefly, and I know there's a bunch of people behind me
21 waiting to have things heard. I'll try to keep things
22 brief.

23 Really, just really three points before I get to the
24 plan. This whole idea with subsection six, I think
25 strongest part of her argument, with Ms. Mullis' argument,

1 is sort of what we hear also, we call it a parade harvest.
2 Well, gosh, if you go ahead and give carte blanche to law
3 enforcement here, what could it mean down the road?

4 Well, I can say that I've been in law enforcement for
5 12 or 13 years now. It -- this is such -- I don't want to
6 say a novel, but there's such a derth of cases in
7 authority on this on purpose.

8 Certainly, there's temptation anytime you have a case
9 that there's a use of force, execution of a bench warrant,
10 police pursuit to raise subsection six because
11 technically, you could say it's police protection.

12 The Huggins' case was -- was litigated or advocated
13 by my partners, Andrew Lindemann and Will Davidson.
14 That's over ten years ago.

15 The Jones case that Ms. Mullis refers to is a case
16 that I tried in this courtroom before Judge Young in 2005
17 in that the subject commandeered a police car and drove
18 directly at the police officers in which they dispatched
19 their firearms and stopped the threat.

20 Since that time, there's been, really, no
21 consideration. I think five or six years by the Court of
22 Appeals because of the clear and unambiguous language that
23 the Court of Appeals has put on this, which is the method
24 of providing police protection. There's black letter law.

25 From what Ms. Mullis' point is, this is not just

1 Ditka in this Huggins decision with the Court of Appeals.
2 The larger part of the quote, it says in the second column
3 of the second page -- or third page, Your Honor, Huggins
4 argued before the circuit court that unlike the federal
5 claim, this state claim, okay, was about the preparation
6 and events leading up to the time immediately preceding to
7 the shooting of the deceased. That's exactly Ms. Mullis'
8 argument.

9 She is asking this court to hyper-analyze the
10 planning, the choreograph, the events that lead up to
11 this, but Court of Appeals was very specific. They said
12 huh-uh. This actually concerns the manner in which the
13 police chose to provide police protection.

14 So, Your Honor, to answer the Court's inquiry is that
15 whether the method was a successful method or whether it
16 was a poorly executed method, or as she says that there
17 wasn't a definite plan, that doesn't make a difference
18 because you could always go back in hindsight here six or
19 seven years after the fact in a courtroom in -- with a
20 magnifying glass and say that there wasn't a T crossed
21 hours before. That does not give rise to a negligence
22 claim. There's no such thing. It's legal anomaly to
23 assume that there is a -- such a thing as a negligent
24 investigation or a negligent execution of a crime scene.

25 This squarely falls into the method. So if we're

1 going to quibble about the method itself, then clearly,
2 that folds right into our argument that we should be
3 entitled to immunity because if it does get down to the --
4 not whether the method was of such a quality but that
5 there was a meth that they chose to use, which in this
6 case Deputy Hendrick -- the last point I'll make is
7 certainly Ms. Mullis can try to overcome summary judgment,
8 dispute of facts.

9 There were tens of officers out there. There is
10 video. There is leadership. There is slick sleeved
11 officers. There is a presence out there. Certainly,
12 there's going to be one or two people that are going to
13 have a different view of what happened.

14 What is undisputed is that the moment -- the snapshot
15 analysis of the moment the force was used, that the fatal
16 shot was fired, what was going on? The immediate time
17 from that snapshot was that Deputy Hendrick felt she was
18 in imminent threat of harm of death.

19 For instance, this one case in which she points out
20 Officer Roberts -- this is the only point I'll make here
21 is that she furnishes sound bias to the Court saying that
22 he wasn't running in her direction, this man was asked not
23 in any sort of order, this officer -- all the things that
24 happened, what she -- what's conspicuously omitted from
25 this is page 31 in which the officer says that he was

1 coming out with a knife over his head.

2 So that's still -- just because there's a dispute of
3 fact doesn't mean that there is a genuine issue of
4 material fact.

5 I haven't heard from Ms. Mullis, with all due
6 respect, any sort of material fact that's in dispute as to
7 what happened at that time and the method that was chosen
8 by Deputy Hendrick, not by all these officers out there
9 that may or may not have been executing the perfect plan.
10 That's the only point I wanted to make, and we definitely
11 believe that summary judgment is warranted. Thank you.

12 THE COURT: Okay.

13 Okay. I will review your submissions and the cases
14 and let you know of my decision.

15 MR. GARFIELD: Thank you, Your Honor.

16 MS. MULLIS: Thank you.

17 (Whereupon, the proceedings were concluded.)
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 13th day of
November, 2013.

February 28, 2013

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 COUNTY OF RICHLAND) C/A #: 2009-CP-40-5132

Evalena Catoe, individually)
 and as Personal Representative)
 of the Estate of Richard L.)
 Catoe, Jr., deceased,)

Plaintiff,)

v.)

The City of Columbia and Leon)
 Lott, in his official capacity)
 as Sheriff of Richland County,)

Defendants.)

DEPOSITION OF
 KELLYE ELIZABETH HENDRICK

Friday, May 17, 2013
 10:14 a.m. - 12:16 p.m.

The deposition of KELLYE ELIZABETH HENDRICK,
 taken on behalf of the Plaintiff at the law offices
 of Davidson and Lindemann, P.A., 1611 Devonshire
 Drive, Columbia, South Carolina, on the 17th day of
 May, 2013 before Jennifer L. Cash, Court Reporter and
 Notary Public in and for the State of South Carolina,
 pursuant to Notice of Deposition and/or agreement of
 counsel.

1 A: I had my service weapon in my hand.

2 Q: Okay. Were you in radio contact with anybody
3 at this point?

4 A: No.

5 Q: Okay. Did you have a radio on you?

6 A: Yes.

7 Q: Okay. Why were you not in radio contact with
8 anyone?

9 A: Because we were told to stay behind the house
10 and not try to give up on our position on where
11 we were positioned at the house.

12 Q: Okay. And who was giving you instructions?

13 A: Corporal Bright.

14 Q: And do you know who Corporal Bright was in
15 contact with?

16 A: White. I guess, I mean I don't ---

17 Q: Okay.

18 A: --- I don't know. It wasn't me.

19 Q: Okay. So you were taking instructions from
20 Master Deputy White?

21 A: He relayed.

22 Q: How did Master Deputy White give you
23 instructions?

24 A: I don't understand your question.

25 Q: Was Master Deputy White just verbally giving



1 Q: Okay. And how did Bright tell White that?

2 A: I assume they could see each other.

3 Q: Thank you. But you don't know if they were in
4 radio contact or not?

5 A: Not that I recall, no.

6 Q: Okay. Do you know who was giving Bright
7 instructions?

8 A: No.

9 MR. GARFIELD: Object to the form.

10 Q: Okay. But both you -- but you have a radio and
11 could have been in contact with White and
12 Bright, is that correct?

13 A: Yes.

14 Q: Okay. All right. At the bottom of the first
15 page of the statement it says the same officer
16 told us the subject was threatening to kill any
17 officer who tried to arrest him. At any point
18 during this incident on July 22nd of 2007, did
19 you attempt to arrest Mr. Catoe?

20 A: No.

21 Q: Okay. Did you ever have a clear shot to take
22 Mr. Catoe?

23 A: No.

24 Q: Your immediate supervisor on the scene when you
25 first arrived was who?



1 A: My immediate supervisor was White.

2 Q: Okay. And his immediate supervisor was ...

3 A: Off that day.

4 Q: Oh, okay. So when he first got on the scene
5 who was his immediate supervisor then?

6 A: We didn't have one.

7 Q: Okay.

8 A: Until Corporal Bright ---

9 Q: Bright got there.

10 A: --- responded and was the highest ranking
11 officer there.

12 Q: All right. Okay. When the Columbia police
13 asked if y'all could go to the rear of the
14 house and try to come around the side and catch
15 the subject off guard, do you know -- and I --
16 I think I asked you this, do you have any idea
17 who it was that asked y'all to do that?

18 A: No idea.

19 Q: No clue. Okay. And as close as y'all could
20 get to him you think was this 20 to 25 feet.

21 A: Uh-huh (affirmative response).

22 Q: Okay.

23 MR. GARFIELD: Is that yes?

24 A: Yes.

25 MR. GARFIELD: Okay.



1 A: Yes, I'm sorry.

2 MR. GARFIELD: That's all right. I'm just texting
3 my assistant telling her to drop it a degree in
4 here.

5 A: It's warm.

6 MR. GARFIELD: It is warm, that's why I wanted to --
7 monkey's like living in tropical climates.

8 Q: Do you know who was in charge of the scene on
9 the day of this incident?

10 A: No.

11 Q: But you were taking instructions directly from
12 White, is that correct?

13 MR. GARFIELD: Object to the form.

14 A: Master Deputy White was my supervisor. When
15 Corporal Bright arrived, he took over and told
16 us what to do after he and whomever he spoke to
17 with the City -- I don't know what happened
18 there.

19 Q: Okay. When you and Master Deputy White were
20 attempting to come around and take Catoe here
21 in the driveway, was there anyone backing
22 either of you up with lethal force ---

23 MR. GARFIELD: Object to the form.

24 Q: --- at that time?

25 A: Not at that time.



1 Q: Okay. Do you know why y'all were instructed to
2 transition from the use of -- do you know why
3 there was an instruction from the attempted
4 tasing of him here to lethal -- transition from
5 non-lethal to lethal force at this point?

6 MR. GARFIELD: Object to the form. Do the best you
7 can, please.

8 A: After about 20 minutes or so, roughly, on this
9 corner. Once we realized we did not have a
10 clear shot with the taser I was instructed by
11 Master Deputy White to holster my taser and
12 then back him up with lethal force, which was
13 drawing my firearm. Once we realized that we
14 had no shot at a taser we then were instructed
15 to move to the other side of the house because
16 the City of Columbia SWAT team, apparently, was
17 going to come and devise a plan on how to take
18 him into custody.

19 Q: Okay. Did you know anything about the plan or
20 ---

21 A: No.

22 Q: --- what they were going to do? Okay.

23 A: No.

24 Q: But it was your understanding that they were
25 going to do something else and it involved the



1 A: I don't recall.

2 Q: Okay. Could you -- had you stepped -- could
3 you see the whole back yard from where you were
4 standing at that point?

5 A: I could.

6 Q: Okay. And could you see the entire back yard
7 from where you were standing at that point?

8 A: Yes.

9 Q: He -- did -- was he knocked all the way to the
10 ground?

11 A: On his back, yes.

12 Q: Okay. How long was he on the ground?

13 A: I don't -- few seconds maybe. I don't recall.
14 I mean, few seconds, roughly.

15 Q: Did he get immediately back up?

16 A: It was very shortly after he got knocked to the
17 ground that he got right back up.

18 Q: Did anyone catch up to him?

19 A: No.

20 Q: So he was knocked to the ground by one
21 individual -- one individual, but no one else
22 caught up to him, other than that one
23 individual?

24 A: No.

25 Q: Okay. And then what happened?



1 A: When he got up off the ground he turned and saw
2 me standing here. I loudly identified myself
3 as a Sheriff's Deputy, asked him to drop the
4 knife. He came up in a striking position and
5 ran towards me.

6 Q: Where did he have the knife positioned?

7 A: Up over his shoulder in a striking position.

8 Q: Okay. And that doesn't show up in a
9 transcript, so you'll have to tell us what a
10 striking position is.

11 A: Up over his shoulder in a position to where he
12 could strike somebody.

13 Q: Okay. And was moving forward, is that correct?

14 A: Forward towards me, yes.

15 Q: Okay. And was he running?

16 A: Yes.

17 Q: Okay. And you said you identified yourself?

18 A: Identified myself as a Richland County
19 Sheriff's Deputy and that he needed to drop the
20 knife.

21 Q: Okay. And what did you say exactly?

22 A: Richland County Sheriff's Department, drop the
23 knife.

24 Q: Did you say it once?

25 A: I said it several times.



1 Q: Twice?

2 A: I don't recall how many. I said it several
3 times.

4 Q: All right. And then what happened?

5 A: When he did not drop the weapon, I moved my
6 position from the ready position, which was
7 pointed at the ground and put it on my target.

8 Q: Okay.

9 A: I fired a shot, he did not stop coming at me.
10 I then fired another shot.

11 Q: Okay. And when you fired the first shot where
12 was he in the back yard?

13 A: He was probably here, give or take a few
14 inches.

15 Q: And where was the next closest stack City of
16 Columbia officer to him?

17 A: They were back here, to the best of my
18 recollection.

19 Q: Show me.

20 A: They were probably back here from where he
21 first was knocked to the ground.

22 Q: You think he's here?

23 A: I guess. I mean, I don't really recall.

24 Q: Near to where he was knocked to the ground.

25 A: Initially, yes.



1 Q: Fair?

2 A: To the best of my recollection, yes.

3 Q: There would have been what, four or five? I
4 don't know how many there were. Do you know
5 how many there were?

6 A: I don't recall.

7 Q: Okay. So you believe the next closest
8 individual would have been behind him, is that
9 correct?

10 A: Yes.

11 Q: Okay. Is that a fair location of where the
12 next individual would have been behind him?

13 **MR. GARFIELD:** Object to the ---

14 A: To the best of my recollection.

15 **MR. GARFIELD:** Object to the form.

16 Q: Okay. So if you were shooting from your
17 position towards Mr. Catoe, would you have been
18 shooting in the direction of a City of Columbia
19 police officer?

20 A: Yes.

21 Q: Okay. More than one?

22 A: I don't recall.

23 Q: Was there more than one City of Columbia police
24 dep- -- police officer in pursuit of Mr. Catoe?

25 A: Yes.



1 Q: How many?

2 MR. GARFIELD: Object to the form, it's asked and
3 answered.

4 A: I don't recall.

5 Q: At least two?

6 MR. GARFIELD: Same objection.

7 A: At least.

8 Q: At least three?

9 MR. GARFIELD: Same objection.

10 A: I don't recall the exact number.

11 Q: Okay. When the plan was discussed for taking
12 down Mr. Catoe, was there any conversation
13 about avoiding a crossfire?

14 A: I had no contact with the people making the
15 plan in the front yard.

16 Q: Okay.

17 A: So I don't know what they did.

18 Q: Okay. You said that, when we talked earlier,
19 that there was a -- that the plan for -- for
20 taking down Mr. Catoe or the deployment of the
21 plan that they told you what they were going to
22 do, that they were going to do a stack. Was
23 there any conversation with you when they came
24 and talked to you about what they were going to
25 do about avoiding a crossfire?



1 MR. GARFIELD: Object to the form, several grounds.

2 Go ahead.

3 A: They never came to us and told us what they
4 were going to do.

5 Q: Okay. So you were never told what the plan was
6 for taking Mr. Catoe down, is that correct? Or
7 the deployment.

8 A: Not directly.

9 Q: Okay.

10 A: We were never directly instructed on what they
11 were going to do. Corporal Bright was in
12 contact with whomever was in command.

13 Q: Okay.

14 A: He advised us what they were going to do. We
15 never had direct communication with any of the
16 command staff on what their plan was, other
17 than they were going to stack up, throw a
18 flashbang and try to subdue him. That was all
19 we were told.

20 Q: How did you know that he may run around the
21 back of the house?

22 A: Instinct. Somebody's chasing you, you're going
23 to run from them.

24 Q: Did you know that before it happened or after
25 it was going to happen?



1 Q: Okay. And you don't recall when you initially
2 pulled up seeing any media or the media vans
3 initially. Do you remember seeing media after
4 the event when you went and sat down?

5 A: I don't recall.

6 Q: Okay. We're going to mark this as Plaintiff's
7 Exhibit Two.

8 (Plaintiff's Exhibit Number Two was marked for
9 identification purposes.)

10 Q: You said that Bright would have been the
11 Richland County Sheriff's Deputy that you would
12 have been taking instructions from on the
13 scene. Was there a higher ranking commander on
14 the scene that you would have been taking
15 instructions from at any point?

16 MR. GARFIELD: Object to the form. Go ahead.

17 A: Corporal Bright was the only one on the scene.

18 Q: Okay.

19 A: That I recall.

20 Q: Okay. Did that ever change at any point?

21 A: No.

22 Q: Okay. How close did you get to Mr. Catoe
23 before you fired the second shot?

24 A: Less than four or five feet.

25 Q: What about the first shot?



1 A: Six, seven foot, maybe.

2 Q: How far do you think he was from you when he
3 hit the ground? That may be harder.

4 A: I don't -- I don't recall. Seven, eight feet
5 maybe. I don't -- I don't recall.

6 Q: Okay. You're better at distance than I am.
7 Did you know any of the other firefighters,
8 EMS, individuals on the scene?

9 A: No.

10 Q: Okay. When you initially came on the scene and
11 saw Mr. Catoe could you tell that he was
12 injured?

13 A: I could tell that he had some injury to his
14 upper torso.

15 Q: How?

16 A: He had his shirt off and there was a red spot
17 on his torso.

18 Q: Okay. He already had his shirt off when he
19 came onto the scene?

20 A: Yes.

21 Q: Okay. And you could tell that he had been
22 shot, is that correct?

23 A: After I was told that he was shot, yes.

24 Q: You were told that he was shot, is that
25 correct?



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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2009-CP-40-5132

Evalena Catoe, individually)
and as Personal Representative)
of the Estate of Richard L.)
Catoe, Jr., deceased,)

Plaintiff,)

vs.)

The City of Columbia and Leon)
Lott, in his official capacity)
as Sheriff of Richland County,)

Defendants.)

COPY

DEPOSITION OF
HAROLD DEAN CRISP, JR.

Friday, October 7, 2011
2:26 p.m. - 5:08 p.m.

The deposition of HAROLD DEAN CRISP, JR., taken on behalf of the Plaintiff at the law offices of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina, on the 7th day of October, 2011 before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

1 we were trying to contact anybody that might
2 know him that could help us reason with him.

3 Q: Do you know if you talked to any of his family
4 members?

5 A: I don't recollect.

6 Q: Okay. And I may have read more of this than
7 you have, although you said you reviewed the
8 SLED investigation. Ricky's stepson is an
9 officer with the Lexington Sheriff's
10 Department. Grooms is his last name. Do you
11 recall bringing him onto the scene?

12 A: You know, I don't recall him specifically. I
13 recall that they brought some relatives to the
14 scene.

15 Q: Okay. Who was in charge of the perimeter of
16 the scene?

17 A: The SWAT team would have been. The SWAT
18 commander would have been in charge of the
19 perimeter.

20 Q: So that's Dodson again.

21 A: That's correct.

22 Q: It's my understanding there were also Richland
23 County Sheriff's Deputies on the scene.

24 A: There were.

25 Q: How were they participating in the scene at

1 all?

2 A: My understanding in observing them, they were
3 perimeter officers. They were helping us
4 contain the perimeter.

5 Q: Were they being directed by the SWAT commander?

6 A: They were being directed by their supervisor
7 who was shadowing the SWAT commander.

8 Q: Okay. How were all these individuals
9 communicating?

10 A: They were verbally communicating and via their
11 radios, communicating.

12 Q: Did all the officers have access to radios that
13 were within direct communication?

14 A: That's my understanding.

15 Q: Did you have a radio within direct
16 communication with all the officers on the
17 scene?

18 A: I had a radio. I don't know if it was my
19 personal radio that I carried out of my car,
20 because I was in my personal car, but I know
21 that Swisher had a radio, Captain Johnson had
22 a radio, Sergeant McCants had a radio, and
23 everyone of those individuals were with me at
24 all times.

25 Q: Okay. So were you in direct communication with

1 every officer on the scene?

2 A: I would have been in direct contact with
3 Captain Dodson and direct contact with all the
4 officers.

5 Q: So if you had issued a command on the scene for
6 movement or for some action, you would have
7 issued it through Dodson, is that correct?

8 A: No, I wouldn't have issued the commands, per
9 se, every detail. I left that to the SWAT
10 commander to articulate those, the moves that
11 they were making. I gave the initial okay to
12 move forward. Then he would have directed the
13 units.

14 Q: So the initial okay to move forward, what do
15 you mean by that?

16 A: Well, when it was obvious to me that Mr. Catoe
17 was not going to calm down and that he became
18 way more agitated and more dangerous and that
19 Mr. Catoe became, not only a threat to himself
20 as he was, but to a threat to those around him,
21 I made the decision that it was time to try to
22 take Mr. Catoe into custody in least lethal
23 means possible.

24 Q: Okay. And what was that plan?

25 A: Well, that plan was coordinated and plan was

1 Q: Okay.

2 A: But you have to understand, if you've got your
3 weapon at ready --

4 Q: Right.

5 A: -- you're a lot more apt to react instead of it
6 in your holster and seeing what's going on. So
7 we wanted to make sure that everybody was clear
8 of what we were trying to do.

9 Q: And when the command was issued to holster
10 weapons, do you know if that was done
11 throughout the entire scene?

12 A: It's my understanding that Richland County,
13 with Captain Dodson, was told to do the same
14 thing.

15 Q: So everyone should have holstered their
16 weapons, is that correct?

17 MR. GARFIELD: Object to the form. Go ahead.

18 A: Everyone was instructed to. We would hope that
19 compliance would have been made with that.

20 Q: And you, as the ranking law enforcement
21 individual on the scene, had command control,
22 is that correct?

23 A: I had control of the decision making process.
24 The SWAT team was commanded by Captain Dodson.
25 They were under his direction, not mine.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2009-CP-40-5132

Evalena Catoe, individually)
and as Personal Representative)
of the Estate of Richard L.)
Catoe, Jr., deceased,)

Plaintiff,)

vs.)

The City of Columbia and Leon)
Lott, in his official capacity)
as Sheriff of Richland County,)

Defendants.)
-----)

COPY

DEPOSITION OF
**INVESTIGATOR STEPHEN JERMAINE
DAUWAY**

Wednesday, October 12, 2011
3:13 p.m. - 4:14 p.m.

The deposition of INVESTIGATOR STEPHEN JERMAINE
DAUWAY, taken on behalf of the Plaintiff at the law
offices of Davidson & Lindemann, P.A., 1611
Devonshire Drive, Second Floor, Columbia, South
Carolina, on the 12th day of October, 2011 before
Jaime D. Newton, Court Reporter and Notary Public in
and for the State of South Carolina, pursuant to
Notice of Deposition.

1 effectively aim and shoot it 21 feet?

2 A: It's better to be closer than further away.

3 Q: Okay. Did he ever stop moving?

4 A: Other than stumbling, that's not really
5 stopping. He continued to move across the
6 backyard of the house.

7 Q: Okay. And he was still moving backwards at
8 this point?

9 A: Yes, when I saw him, yes.

10 Q: Was he still moving backwards when you heard
11 the three audible pops?

12 A: I don't recall. It happened so quickly, I
13 don't want to -- I don't recall.

14 Q: Okay. The last time you saw him before you
15 heard the three audible pops was he still
16 moving backwards?

17 A: Yes.

18 Q: Okay. All right, let's pick up where you were
19 and see if we've missed anything. One of the
20 two deputies in the stack, when we, the T-
21 stack, approached the white male, he began to
22 backpedal to the rear of the house. He raised
23 the knife and put it to his throat. Did y'all
24 anticipate that he would run?

25 A: No.

1 Q: Okay. So there was no attempt, as far as you
2 know, to block Mr. Catoe from retreating into
3 the backyard, is that correct?

4 A: As far as I know, no.

5 Q: Okay. I saw the officer with the shield strike
6 the suspect to no affect. The suspect stumbled
7 briefly and kept moving backwards. At this
8 time the stack had broken into a line
9 formation. You want to pick up from there?

10 A: I went to the right, to the far end away from
11 the house. I heard several shots.. I looked to
12 my left and saw Deputy Hendricks in a crouched
13 position with two hands on her weapon. The
14 suspect was still moving and then fell to the
15 ground.

16 Q: Okay.

17 A: Face first. EMS immediately placed the suspect
18 on a stretcher and rushed him to a waiting
19 ambulance. I secured the scene and waited for
20 further instructions.

21 Q: Okay. How did you participate in securing the
22 scene?

23 A: I put crime scene tape up and asked everybody
24 to step back.

25 Q: Is there anyone else that assists you in doing

1 that?

2 A: Chauncey Smith.

3 Q: Okay.

4 A: Is all I recall right now.

5 Q: Your recollection of when you first saw Deputy
6 Hendricks, she was in a crouched position, is
7 that correct?

8 A: She had her weapon aimed.

9 Q: Okay. She had both hands on her weapon?

10 A: Yes.

11 Q: And you say crouched, so I guess I'm not really
12 sure what that means.

13 A: Well, she's short. I mean, I don't know if she
14 was crouched, but she was presenting her weapon
15 as you're trained to do when you're firing it.

16 Q: Okay. How tall are you?

17 A: I'm 6'1".

18 Q: Okay. Do you know how tall she is?

19 A: I would say 5'5", 5'6" on a good day.

20 Q: Yes, she's short. Let's see. At any time when
21 you were on the scene were you in radio contact
22 with the Columbia Police Department?

23 A: No, I was not.

24 Q: Okay. Were you ever in radio contact with the
25 other members of the T-stack?

1 A: Corporal Bright and I share a channel. He's my
2 supervisor.

3 Q: Right.

4 A: So when you say radio contact, we wasn't
5 talking on the radio, but I had the ability to
6 talk to him, but he was right there.

7 Q: Okay. It's my understanding that some of the
8 other members of the SWAT team had ear pieces
9 in?

10 A: I recall seeing some ear pieces, yes.

11 Q: Did they give you an ear piece so that you
12 could communicate with the other members of the
13 T-stack?

14 A: No, I didn't have an ear piece.

15 Q: Could you have communicated with them on your
16 Sheriff's deputy radio?

17 A: We had the capabilities at that time, yes.

18 Q: Did you communicate with them on your radio?

19 A: No, I did not.

20 Q: Okay. Do you know if there are any procedures
21 that have been changed as a result of this
22 incident with the Richland County Sheriff's
23 Department?

24 A: I'm not privy to any changes as a result of
25 this incident, no.

1 Q: Okay. Did you ever talk to Deputy Hendrick
2 about this incident?

3 A: No.

4 Q: Why not?

5 A: I just didn't.

6 Q: Okay. Who on the scene that day was making
7 decisions, do you know?

8 A: Corporal Bright, as my supervisor.

9 Q: Okay. So you were taking orders from Corporal
10 Bright, is that correct?-

11 A: Instructions, yes.

12 Q: Okay. Were you taking any instructions from
13 anyone from the Columbia Police Department?

14 A: No.

15 Q: If someone from the Columbia Police Department
16 had given you instructions, would you have done
17 what they told you to do?

18 MR. GARFIELD: Object to the form. Go ahead.

19 Q: Would you have generally had to clear those
20 instructions with your supervisor before taking
21 instructions from someone that wasn't your
22 supervisor?

23 MR. GARFIELD: Same objection. Go ahead.

24 A: Yes.

25 Q: Okay. It's not a test. I'm just trying to

1 A: Sure.

2 Q: Do you need supervisor approval to use your
3 taser?

4 A: No.

5 Q: Do you need supervisor approval to use your
6 firearm to protect yourself from deadly force
7 threat?

8 A: No.

9 Q: Did you ever hear an order given over your
10 radio to holster weapons prior to the SWAT team
11 deployment?

12 A: No.

13 Q: Did you ever hear a verbal command from anyone
14 on the scene to holster weapons?

15 A: No.

16 Q: Have you ever responded to a situation where a
17 victim has been shot or wounded?

18 A: Yes.

19 Q: Any kind of situation like this with a
20 standoff?

21 A: No, not that I can recall, no.

22 Q: It's my understanding as a Sheriff's deputy you
23 participate in annual training and re-
24 certification?

25 A: Yes..

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
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The City of Columbia and Leon)
Lott, in his official capacity)
as Sheriff of Richland County,)

Defendants.)
-----)

COPY

DEPOSITION OF
THOMAS H. DODSON, JR.

Tuesday, October 11, 2011
9:20 a.m. - 10:55 a.m.

The deposition of THOMAS H. DODSON, JR., taken on behalf of the Plaintiff at the law offices of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina, on the 11th day of October, 2011 before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

1 A: Did we have that, did Sergeant Marsh and I have
2 that discussion?

3 Q: Yes.

4 A: No.

5 Q: Was there any discussion or concerns between
6 you and Sergeant Marsh concerning a crossfire
7 situation?

8 A: I do not recall one, no.

9 Q: Okay. How were the other officers on the scene
10 made aware of when the action plan was going to
11 begin?

12 A: There was a radio transmission sent out saying
13 that we're going to initiate an action plan.
14 There will be a large explosion, there may be
15 other sounds that sound like gunfire, which
16 will be the bean bag rounds being fired, and to
17 stand by.

18 Q: Okay. And why is it important to make sure all
19 the officers on the scene are aware that there
20 are going to be loud sounds that sound like
21 possibly gunfire?

22 A: Well, just for that reason. For safety. I
23 mean, we don't want any incidental gunfire. We
24 wanted our officers to be aware of what was
25 going to happen. I had been involved in

1 weapon away from the subject. Did you have any
2 conversations with Lieutenant Rowson about the
3 progress of the negotiations?

4 A: I was standing near to Lieutenant Rowson. I
5 don't recall conversations directly with him.
6 My experience says I would have, but I don't
7 recall those conversations.

8 Q: Okay. Do you know if anybody asked or had any
9 conversations with Lieutenant Rowson about
10 whether or not he believed that the
11 negotiations were progressing?

12 A: I know that the chief, Chief Crisp, was
13 standing near, Captain Johnson was near. I was
14 more involved at that particular point with the
15 SWAT element and their immediate action plan.

16 Q: Marsh was formulating the plan, consulting you
17 in regard to the plan.

18 A: Correct.

19 Q: Was Auld involved in formulating the plan as
20 well?

21 A: I'm assuming he was. But, again, assumptions
22 are, you know, based on lack of knowledge.
23 They were all together.

24 Q: Okay. Do you know if Chief Crisp was involved
25 in formulating the plan at all?

1 A: No.

2 Q: Did he have final say so on whether or not the
3 plan was what y'all were going to do or not?

4 A: He was advised of the plan and approved of the
5 plan.

6 Q: Okay. Have you ever been in a similar
7 situation where you have formulated a plan and
8 the chief has not approved of the plan?

9 A: No.

10 Q: So are your recommendations generally with an
11 action plan generally followed?

12 A: Generally.

13 Q: Okay. And is that because you have specific
14 SWAT training to formulate these types of
15 plans?

16 A: Yes, I'm assuming.

17 Q: Okay. And then I picked up from, I then moved
18 near to 69 Samson to observe the subject and
19 provide intelligence to the SWAT team. Do you
20 know what type of intelligence you were
21 providing to the SWAT team?

22 A: It would have been on his current condition,
23 negotiations, the subject's movements, actions,
24 agitations.

25 Q: Okay. And do you recall specifically what you

1 scene?

2 A: He's the Chief of Police.

3 Q: Was he the commanding officer in control of the
4 scene?

5 A: Yes.

6 Q: And if he issues a command on the scene is that
7 command followed?

8 A: If it's a lawful, legal, and ethically moral
9 ques -- yeah. Yes, as long as it's legal we're
10 going to follow his orders.

11 Q: Okay.. Because if commands aren't followed then
12 people get hurt, is that correct?

13 A: That's a very broad premise. I don't know that
14 I'll answer that as a yes.

15 Q: If officers on a scene are issued commands and
16 they decide randomly not to follow those
17 commands then individuals on the scene could
18 get hurt. Would you agree?

19 A: That's still a very broad premise.

20 Q: Okay.

21 A: If you give me a command to walk to the door
22 and I don't do it, is somebody going to be
23 injured? Not necessarily.

24 Q: Okay. But this was a tactical decision
25 command.

1 Q: For not only bystanders or individuals standing
2 around --

3 A: Depends on the command.

4 Q: Right. But it could be dangerous for the
5 police officers as well.

6 A: I think I've answered your question the best I
7 can.

8 Q: Okay. It says I communicated that fact with
9 the uniformed officers on the perimeter. How
10 did you do that?

11 A: Actually walked back and spoke with the
12 sergeant that was on the perimeter.

13 Q: What sergeant was that?

14 A: I believe Sergeant Solomon.

15 Q: Why didn't you communicate that with your
16 radio?

17 A: I walked back because he's the sergeant on the
18 perimeter. His officers are on the perimeter.
19 I wanted to make sure that he knew to relay the
20 order.

21 Q: Okay. And was Sergeant Solomon a City of
22 Columbia police officer or Richland County?

23 A: City of Columbia.

24 Q: Okay. And what did you tell him as far as what
25 the plan was or what was going to happen?

1 A: That the tactical plan was going to be
2 executed. There would be an explosion. There
3 would be sounds of gunfire and for his officers
4 on the perimeter to holster their weapons.

5 Q: Okay. So you instructed Sergeant Solomon to
6 instruct the City of Columbia police officers
7 to holster their weapons, is that correct?

8 A: Correct.

9 Q: Okay. It says Sergeant Marsh had communicated
10 that with the Richland County Sheriff's Deputy
11 officers through the deputies in their tactical
12 stack. I don't understand what you're saying
13 there.

14 A: That's the two deputies or the deputies with
15 the tasers.

16 Q: Okay.

17 A: He would have told them the same thing. To
18 make sure they relayed that via their radio.

19 Q: So why was Sergeant Solomon not giving the
20 instruction to all of the City of Columbia
21 police officers and the Richland County
22 Sheriff's deputies?

23 A: We didn't have the same communications.

24 Q: Okay. Did all of the officers on the scene
25 have radios?

1 A: Yes.

2 Q: And can all of those radios communicate
3 together?

4 A: I do not know.

5 Q: Okay. Is it uncommon to have, on one scene,
6 individuals communicating with two separate
7 command structures?

8 A: Is it uncommon?

9 Q: Yes.

10 A: Not particularly, no.

11 Q: Okay. So you had no concern that Sergeant
12 Solomon had to instruct Columbia Police
13 Department to holster their weapons and that
14 Sergeant Marsh was communicating with officers
15 you don't know --

16 A: They were the officers that were armed with the
17 tasers.

18 Q: Right.

19 A: Right.

20 Q: That they needed to holster their weapons. Was
21 there any concern that you had two separate
22 people trying to give commands to two separate
23 groups of people?

24 A: No.

25 Q: Okay. And I'm still confused, I'm sorry. Can

1 A: There were some/officers there, yes. Again,
2 it's a very fast moving process.

3 Q: Right.

4 A: Primarily, my memory is focused on seeing him
5 come out and collapse after the gunshots were
6 fired. Matter of fact again, Chief Crisp, when
7 the volley of gunfire goes off, he said bean
8 bag rounds. I said gunfire.

9 Q: So you identified them both to him as they
10 happened?

11 A: Correct.

12 Q: And did you hear the gunfire, did you hear the
13 gunshots, before you saw Mr. Catoe come around
14 the backside of the house?

15 A: No, just as he was coming out from around the
16 side of the house I heard the gunfire.

17 Q: Okay. And did you see any officers with
18 weapons drawn at that point?

19 A: I was focused on the stack and Mr. Catoe. I
20 don't recall if officers had weapons drawn.

21 Q: Okay. At that point Mr. Catoe was running away
22 from the SWAT team.

23 A: He was still moving backwards and was still
24 slashing towards the stack. Well, most
25 effectively, Corporal Roberts who was on the

1 shield, would have been leading the stack.

2 Q: Okay. So you saw him backing up and slashing
3 towards the SWAT team, is that correct?

4 A: Correct.

5 Q: And when you saw him on that side of the house
6 was he still slashing towards the SWAT team?

7 A: He was.

8 Q: And when you heard the gunshots, was he still
9 slashing towards the SWAT team?

10 A: He was.

11 Q: Okay. It was anticipated, if he fled; that the
12 tactical column would pursue him, though, is
13 that correct?

14 A: That's correct.

15 Q: Okay. The white male subject that came into
16 view and collapsed in an adjoining yard. You
17 directed him to be handcuffed and requested EMS
18 to tend to what appeared to be gunshot wounds.

19 A: Uh-huh (affirmative response).

20 Q: I added a be, sorry.

21 A: I did, I left it out.

22 Q: That's okay. Why did he need to be handcuffed
23 at that point?

24 A: He was still alive at that point. We didn't
25 know what his condition was or what his threat

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
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Plaintiff,)

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The City of Columbia and Leon)
Lott, in his official capacity)
as Sheriff of Richland County,)

Defendants.)

COPY

DEPOSITION OF
**SERGEANT CHRISTOPHER BRUCE
ROBERTS**

Wednesday, October 12, 2011
11:03 a.m. - 12:36 p.m.

The deposition of SERGEANT CHRISTOPHER BRUCE ROBERTS, taken on behalf of the Plaintiff at the law offices of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina, on the 12th day of October, 2011 before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

1 A: Correct.

2 Q: -- facing me with his knife raised, he was

3 still facing you moving backwards.

4 A: Yeah, he never stopped.

5 Q: Were you running?

6 A: I was.

7 Q: So he was running backwards with a knife.

8 A: Correct.

9 Q: Were you aware that he had been shot?

10 A: No, not at that point.

11 Q: Okay. So you weren't aware before you

12 initiated this scenario that he had already

13 been shot once.

14 A: I was not aware of that.

15 Q: Okay.

16 A: Not until after.

17 Q: Okay. All right. So he's to here.

18 A: Uh-huh (affirmative response).

19 Q: Is the stack still behind you?

20 A: I would assume so. I never turned back to

21 look, to tell you the truth. I would assume so

22 because the less than lethal shotgun rounds

23 came from behind me, past me, so they would had

24 to be behind me.

25 Q: Okay, I understand what you're saying. Facing

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1 Q: He was still moving this way.

2 A: That's correct.

3 Q: And you said about four to five feet?

4 A: Yes, roughly.

5 Q: Did he ever move towards the officer that was
6 shooting him?

7 A: No.

8 Q: Okay. Discharging the rounds of the suspect.

9 I'm sorry, pick it up from fired from my left.

10 A: Okay. Several shots were fired from my left.

11 I turned briefly and observed a female deputy
12 discharging rounds at the suspect who was hit
13 several times.

14 Q: Okay.

15 A: I observed the suspect run approximately 15
16 more yards and should be fall down. It says
17 fell down.

18 Q: That's okay.

19 A: CPD SWAT operator, Branham, then used flex
20 cuffs to secure the suspect.

21 Q: Okay. Did you approach him after he went down?

22 A: No, I did not.

23 Q: Okay. You said that he was hit several times.
24 How do you know he was hit several times?

25 A: From the amount of blood that got on me and I

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1 saw -- I thought he got hit several times, so
 2 that's why I thought.
 3 Q: Okay.
 4 A: Because of the number of rounds as well.
 5 Q: Okay. How many shots did you hear the deputy
 6 shoot? I know this happened fast.
 7 A: Right, it did.
 8 Q: And you were running.
 9 A: Very fast.
 10 Q: Okay.
 11 A: Anywhere from maybe three to five, maybe six.
 12 I know that's kind of a broad range.
 13 Q: No, I understand. And there were two shots
 14 coming from behind you that you know were less
 15 than lethal.
 16 A: Correct.
 17 Q: Okay. But as few as three and as many as six
 18 shots?
 19 A: I would say, yes.
 20 Q: Okay. Do you know how many of them hit Catoe?
 21 A: I do not.
 22 Q: You know one hit Catoe.
 23 A: I do know at least one hit him, yes.
 24 Q: And that you were close enough to Mr. Catoe for
 25 the blood to hit you that came from the bullet

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1 wound?

2 A: Correct.

3 Q: Okay. Was the bullet at all traveling in your
4 direction?

5 A: It passed, I guess, over my left shoulder from
6 what I remember. Because I heard several go
7 by.

8 Q: You heard several bullets go by your head?

9 A: I heard the whiz as they went past.

10 Q: Okay.

11 A: Right.

12 Q: More than one.

13 A: Yes.

14 Q: Okay. Did that helmet you have on stop
15 bullets?

16 A: What's that?

17 Q: Does that helmet you have on stop bullets?

18 A: The one I do now, yes.

19 Q: Did the one at the time?

20 A: No.

21 Q: Okay.

22 A: It was a fragmentation helmet.

23 Q: What does that mean?

24 A: It will stop shrapnel, but it won't stop
25 bullets.

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1 A: I'm a firearms instructor as well, so we have
2 to get a re-cert. But when we do, we're
3 basically range safety officers at the Academy.
4 I don't teach the lesson plan, but we go out
5 there and coach. Things like that.

6 Q: Okay. Who was your on scene commander that
7 day?

8 A: My next level of chain or?

9 Q: Immediate supervisor.

10 A: That would be Lieutenant Auld.

11 Q: Ault?

12 A: A-U-L-D, Auld, yeah. I think he was a sergeant
13 at the time.

14 Q: And then who was his?

15 A: I believe Marsh.

16 Q: And Marsh's was Dodson?

17 A: Correct.

18 Q: And Dodson's was Crisp.

19 A: I believe so.

20 Q: I think I got it.

21 A: Yeah.

22 Q: It's only taken me two days.

23 A: Gets confusing.

24 Q: Okay. So were you taking orders from Auld or
25 Marsh?

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1 when you're interacting with somebody in this
2 manner that's on drugs or alcohol? Would that
3 have been helpful information for you?

4 A: Not really, the mission wouldn't have changed.
5 So, not really. I mean, you know, the series
6 would have been unfolded. So, I mean, any
7 Intel you can ever get in any situation is
8 always helpful, but it doesn't necessarily
9 dictate one way or another, depending on what
10 it is.

11 Q: Okay.

12 A: You know, if I had learned that he was on
13 drugs, I'd of still hit him with the shield,
14 I'd of still done everything I did, so I don't
15 know if that answers it or not.

16 Q: No, that's fine.

17 A: Okay.

18 Q: And your radio, in your radio communications,
19 did you ever hear the instruction for
20 individuals to holster their weapons?

21 A: I personally?

22 Q: Yes.

23 A: Did not.

24 Q: Okay.

25 A: I did not.

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
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Evalena Catoe, individually)
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Lott, in his official capacity)
as Sheriff of Richland County,)

Defendants.)
-----)

COPY

DEPOSITION OF
**INVESTIGATOR CHRISTOPHER TODD
WHITE**

Wednesday, October 12, 2011
1:35 p.m. - 2:48 p.m.

The deposition of INVESTIGATOR CHRISTOPHER TODD WHITE, taken on behalf of the Plaintiff at the law offices of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina, on the 12th day of October, 2011 before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

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1 back where y'all moved from?

2 A: I don't remember.

3 Q: Okay. At that point were you still the ranking
4 officer from the Sheriff's Department on the
5 scene?

6 A: I don't know.

7 Q: If you had not been then you would have been
8 taking direction from Corporal Bright at that
9 point, is that correct?

10 A: Yes.

11 Q: Were you in radio contact with the Columbia
12 Police Department?

13 A: No.

14 Q: Were you in radio contact with any of the
15 individuals in command control like Chief Crisp
16 or Dodson from the Columbia Police Department?

17 A: No.

18 Q: What about anyone from SWAT?

19 A: No.

20 Q: Were y'all communicating with them?

21 A: No.

22 Q: Okay. Who were you communicating with on your
23 radio?

24 A: The deputies, Corporal Bright.

25 Q: So Bright, if he was at the scene at that

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1 point. Hendrick you could talk to verbally, is
2 that correct?

3 A: Yes.

4 Q: Okay. So you didn't need to communicate with
5 her on the radio.

6 A: Correct.

7 Q: Were you communicating with anybody else on
8 your radio that you recall at that time?

9 A: No.

10 Q: Okay. So the decision for you to move from
11 behind Mr. Catoe back to the side of the house
12 would have been your decision.

13 A: Yes.

14 Q: And would you have directed Officer Hendrick to
15 do the same?

16 A: Yes.

17 Q: Okay. You can just pick up from there.

18 A: I told Deputy Hendrick to cover the back corner
19 and I would cover the front. While standing
20 there we both heard a loud noise come from
21 inside the house. I asked over the radio if
22 there was anybody inside the house. I was then
23 told the homeowner was inside the house and
24 they knew what was going on. We checked to see
25 if there was a backdoor, but there was not. I

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(803) 252-3445 / (800) 822-0896

1 I lost sight of the subject and then heard
2 somebody yelling that he's running.

3 Q: Which direction did Mr. Catoe go when you lost
4 sight of him? Was he moving or were you? I'm
5 sorry.

6 A: Initially I started to come this way and that's
7 when I saw --

8 Q: Towards the front of the house.

9 A: Yes.

10 Q: Okay.

11 A: And that's when I saw that and then I lost sight
12 of him and he went this way.

13 Q: Back towards the backyard.

14 A: Yes.

15 Q: Okay. Was the stack pursuing him?

16 A: Yes.

17 Q: Okay. And then heard somebody yelling that he's
18 running. Was there anything going on over the
19 radio at that time?

20 A: Not our radio.

21 Q: Did you ever hear a command to holster weapons
22 on your radio?

23 A: No.

24 Q: So at no time on your radio did you get a
25 command to holster weapons, is that correct?

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1 A: Yes.

2 Q: Okay. And did anyone tell you verbally to
3 holster your weapon?

4 A: No.

5 Q: Did you hear anyone instruct Office Hendrick to
6 holster her weapon?

7 A: No.

8 Q: Did you still have your taser out at that point?

9 A: Yes.

10 Q: Okay, go ahead. Lost sight of the subject and
11 then heard somebody yelling he's running. Any
12 idea who yelled he's running?

13 A: No.

14 Q: Do you know what direction it came from?

15 A: No.

16 Q: Okay, go ahead.

17 A: I turned towards the back of the house and began
18 moving that way. I then began hearing multiple
19 loud popping sounds and I saw the subject
20 running from behind the house in the direction
21 of Deputy Hendrick.

22 Q: When you heard the multiple loud popping sounds,
23 could you identify what they were?

24 A: No.

25 Q: Do you know if they were gunfire or if they were

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1 when you next saw him?

2 A: When I first saw him, I was looking in this
3 direction and he came this way.

4 Q: Okay. Was the stack running behind him?

5 A: Yes.

6 Q: And how many of those individuals could you see?

7 A: I know for sure, one.

8 Q: The big guy with the shield?

9 A: Yes.

10 Q: Okay. And then what happened?

11 A: I looked at her. I don't know for what reason.
12 I just happened to look at her and I saw her gun
13 recoil and I realized that she was shooting and
14 I watched the subject kept going maybe 20, 30
15 feet through the wood line and then fell down.

16 Q: When you saw her gun recoiling, was he at the
17 wood line yet?

18 A: No.

19 Q: Was he running facing forward? I don't know a
20 better way of asking that.

21 A: He was kind of maybe caddy corner, I guess.
22 Kind of angled maybe at a 45 degree angle maybe.
23 He wasn't facing straight the way he was
24 running, no.

25 Q: Okay. Was he swinging the knife in her

1 direction?

2 A: I don't recall.

3 Q: Was he swinging the knife in the direction of
4 the SWAT guy that was pursuing him?

5 A: I don't remember that.

6 Q: Do you ever remember seeing him swing the knife
7 at the SWAT guy that was pursuing him?

8 A: In the initial strike from the very beginning,
9 yes.

10 Q: Okay. And I'm talking about now in this
11 instance when you saw him again coming down the
12 backyard.

13 A: No.

14 Q: Across the backyard. Okay. So you're saying
15 that he was at an angle. Facing towards the
16 house or away from the house?

17 A: Facing towards the house.

18 Q: Was he running towards Deputy Hendrick?

19 A: In that direction.

20 Q: Was Deputy Hendrick blocking his escape route
21 into the wood line?

22 A: No.

23 Q: Could he have run around her?

24 A: Yes.

25 MR. GARFIELD: Object to the form.

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Evalena Catoe, individually and as
Personal Representative of the Estate of
Richard L. Catoe, Jr., deceased,

Plaintiff,

v.

The City of Columbia
and Leon Lott, in his official
capacity as Sheriff of Richland County,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 09-CP-40-5132

AFFIDAVIT OF
KELLYE E. HENDRICK

PERSONALLY APPEARED BEFORE ME, KELLYE E. HENDRICK, who first being duly sworn deposes and states as follows:

1. On or about July 24, 2007, I provided a voluntary statement to the State Law Enforcement Division. This typed statement is entitled, "Voluntary Statement (Not Under Arrest)" and consists of four (4) pages bearing my signature at the end of the statement. [See, Exhibit A]

2. The contents of Exhibit A are true and correct and, upon information and belief, accurately characterizes my observations and involvement in the events of Sunday, July 22, 2007.

FURTHER AFFIANT SAYETH NOT.

Kellye E. Hendrick
Kellye E. Hendrick

SWORN TO BEFORE ME THIS THE
22nd DAY OF SEPTEMBER, 2011.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

COMMISSION EXPIRES: Nov. 2, 2016

EXHIBIT A

AFFIDAVIT OF KELLYE E. HENDRICK

Civil Action Number: 09-CP-40-5132

SLED
VS2

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VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, KELLYE E. HENDRICK, am not under arrest for, nor am I being detained for, any criminal offenses concerning the events I am about to make known to Special Agent James Flowers and Lt. Tommy Robertson, both of the South Carolina Law Enforcement Division (SLED). I understand that I am not under arrest for, nor am I being detained for, any criminal offenses concerning the events I am about to make known. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I graduated from Conway (SC) High School in 1997 and from Lander College, in Greenwood, SC, in 2003. I was hired by the Richland County Sheriff's Office in 2003 and graduated from the South Carolina Criminal Justice Academy in 2004. I am a certified law enforcement officer in the State of South Carolina.

On Sunday morning, July 22, 2007, I was on duty as a Deputy Sheriff of Richland County, South Carolina. At approximately 0800 hours, Richland County Sheriff's Department received a 10-78 (officer needs assistance) call from the City of Columbia Police Department. My squad and I had just finished eating breakfast and, upon receipt of the call, proceeded to 69 Samson Circle, which is in the City of Columbia.

Upon arrival at said location, my fellow squad members and I approached the house where a subject was located in the front yard, holding a knife to his throat. A City of Columbia officer had already advised us that the subject had threatened one of their officers with the knife and, as a result, had been shot once in the torso. The same officer told us that the subject was threatening to kill any officer who tried to arrest him.

SLED
VS2

PAGE NO 2 OF 4 PAGES

The City officers asked several of our Deputies if we had Tasers, and upon being advised that some of us were so equipped, requested that we tase the subject, if we had a clear shot to do so. I responded that I was not going to do anything until my immediate Supervisor gave me an order. Columbia Police asked if we could get to the rear of the house and try to come around the side, catch the subject off guard, and get close enough to tase him. Once my Supervisor, Cpl. Bright, arrived on the scene I advised him that Master Deputy White and I believed that we could, in fact, get to the rear of the house, catch the subject off-guard and get close enough to tase him. With Cpl. Bright's approval, Master Deputy White and myself positioned ourselves at the left rear corner of the house. Both of us had our Tasers out, but, after twenty minutes or so, Master Deputy White told me to transition from non-lethal to lethal, meaning that I was to holster my Taser and draw my service weapon, a Model 23 Glock .40 caliber. Being hidden by the house, we could not see where the subject was all of the time. At some point, a Negotiator with Columbia Police Department arrived and began attempting to negotiate with the subject. The subject was provided a chair in which to sit and, when he did so, Master Deputy Sheriff White no longer had a clear shot with the Taser. We remained at the rear of the house for some period of time until Cpl. Bright, who was in radio contact with the officers in the front yard, advised us that Columbia Police were going to move in on the subject. He told us to move to the side of the house and not give up our position. Cpl. Bright further advised us to stand by while the City's SWAT team devised their plan. We waited on the side of the house for quite some time. While waiting, we heard a noise from within the house. Master Deputy White asked one of our officers if the subject had gone inside the house and was told "no"; that the house in question was not the subject's home, and; that there was a family inside the house. We were asked to see if we could get them out of the house without making too much noise. With the assistance of two of our other officers, we were able to get the family out safely

8165-A-062

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VS2

PAGE NO 3 OF 4 PAGES

without compromising our position. Cpl. Bright then told us that the City was going to throw a "flash-bang" to distract the subject and then a team was going to utilize the SWAT ballistic shield and subdue the subject. We waited for quite some time and, finally, were told to stand by because the team was about to deploy. Master Deputy White was at the front right corner of the house, still holding his Taser. I was at the right rear corner of the house, still holding my service weapon. We were told that when they deployed the "flash-bang", to watch for the subject; that he may run to the rear of the house, and; to be prepared to take appropriate action. The next thing I knew, the "flash-bang" was deployed and I heard the SWAT team telling the subject to get down on the ground. I was still covering the right rear corner of the house and I saw the subject running into the back yard, with the SWAT team not far behind him. As the subject came around the corner, I moved so that I could see the whole back yard. As the subject got closer, he saw me standing at the corner of the house. I immediately loudly identified myself as a Sheriff's Deputy and gave loud verbal commands for the subject to drop the knife. The subject continued to come directly at me, holding the knife up in a striking position. I continued to give the same loud verbal commands, but the subject kept right on coming at me. Realizing that the subject had already made the announcement that he would try to kill any officer who attempted to arrest him, even though he had been shot by a Columbia officer earlier that day, and seeing him closing in on me without hesitation, with his knife raised up to strike me, I was placed in fear of immediate serious bodily harm or death at his hands. I brought my service weapon up from the ready position, aimed at the subject, and fired once. The subject never wavered and continued to quickly close the distance between himself and me. I fired again and the subject turned, ran some seven or eight yards, and fell. I know that the actions taken by the subject not only put me in fear for my life but, also, put the other officers and the citizens who had gathered out in the street in grave danger. If I had not been able to stop

SLED
VS2

PAGE NO 4 OF 4 PAGES

him, there is no doubt in my mind that others who were nearby could have been seriously hurt by the subject.

Cpl. Bright advised Master Deputy White to escort me to his patrol car and wait for further instructions. I then went and sat in Deputy White's patrol car until instructed to return to the Sheriff's Department.

Kelly E. Kendrick
Signature of person giving voluntary statement

SWORN TO AND SUBSCRIBED before me
this 24th day of July, 2007.

Witness

_____(SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

[Signature]
Witness

My Commission Expires:

I certify that I have been given a copy of this statement consisting of four pages.



VOLUNTARY STATEMENT

CASE # 32-07-0099

LEAD #

LAST NAME <u>HURTADO</u>		FIRST NAME <u>RUBEN</u>		MIDDLE NAME <u>RENE</u>	AGE <u>29</u>	D.O.B. <u>[REDACTED]</u>
NICKNAME/AKA <u>N/A</u>		M ☒ F ☐	SSN <u>[REDACTED]</u>	STREET ADDRESS <u>#1 JUSTICE SQ.</u>		
CITY <u>COLUMBIA</u>		STATE <u>SC</u>	ZIP <u>29201</u>	MAILING ADDRESS IF DIFFERENT		
HOME TELEPHONE <u>[REDACTED]</u>	WORK TELEPHONE <u>(803) 545-3500</u>	CELL TELEPHONE		OCCUPATION <u>POLICE OFFICER</u>		
EMPLOYER <u>CITY OF COLUMBIA POLICE DEPT.</u>		EMPLOYER ADDRESS <u>#1 JUSTICE SQ.</u>				
DRIVER'S LICENSE NUMBER/STATE <u>011467359 / SC</u>		DATE AND TIME OF INTERVIEW <u>7/22/07 1:46 PM</u>				
LOCATION OF INTERVIEW						
INTERVIEWING AGENT <u>S/A Flowers</u>		DEPARTMENT <u>Midlands</u>		INTERVIEWING AGENT		DEPARTMENT

I, RUBEN R. HURTADO understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 12th grade in school.

ON 7/22/07 AT APPROX. 0745 HRS I WAS ASSISTING OFFICER'S CARTER, PERAS AT A DOMESTIC INCIDENT AT 4002 MARGARET RD. ONCE THE SITUATION WAS UNDER CONTROL I RESPONDED TO 6200 FARM RD TO ASSIST OFF. HASSELL AND SGT SOLAMON. THE TYPE OF CALL WAS "UNKNOWN PROBLEM". I WAS TRAVELING NORTHBOUND ON MAIN ST, APPROX 6:00 CLOCK WHEN I HEARD A VERY CLEAR THAT CALL. AS I APPROACHED WILKES RD. I OBSERVED BROWN SMOKE EMITTING FROM A NEIGHBORHOOD OFF OF WILKES. I RAN TO OFF. HASSELL IF HE OBSERVED THE SAME OR KNEW ITS LOCATION. AS HE STATED THAT HE DID NOT, BUT WOULD FIND IT, I OBSERVED WHILE AT WILKES/DELAN ST. THE RESIDENCE AT 69 SAMSON CIRCLE. IT APPEARED TO BE FRESH IN NATURE. I TRANSMITTED ALL INFORMATION AND REQUESTED ADDITIONAL UNITS. I CHECKED THE SIDES/REAR OF THE BURNING HOUSE, THE FIRE GREW IN INTENSITY AND I WAS UNABLE TO CHECK THE INTERIOR. I MADE THE DECISION TO EVACUATE THE NEIGHBOR'S HOUSE, WHICH IS EAST OF THE BURNING HOUSE. OFF. HASSELL EVACUATED THE HOUSE TO THE WEST. OFF. HASSELL AND I STOOD IN THE ROADWAY (SAMSON CIRCLE) DIRECTLY IN FRONT OF 69 SAMSON CIRCLE AND WE WERE DISCUSSING THE FIRE AND THE POSSIBILITY OF IT BEING ARSON AND THAT THE SUSPECT MAY BE NEAR. AT THAT TIME OFF. HASSELL STATED "THERE HE GO RIGHT THERE!". I THEN OBSERVED A N/M, 5'9, 150, SALT/PEPPER HAIR, DARK SHORT BEARD, WALKING FROM WHAT APPEARED TO BE A BACKYARD OF A HOUSE ON THE SAME SIDE OF THE

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 7/22/07 Time: 1:46

Signature of person giving voluntary statement

WITNESS:

WITNESS:

I certify that I have been given a copy of this statement consisting of 3 pages.

EXHIBIT #	<u>1</u>
DATE	<u>10-11-11</u>
DEPONENT	<u>Hurtado</u>
PROFESSIONAL REPORTERS	800.376.1006

VOLUNTARY STATEMENT
SUPPLEMENTAL

RUBEN R. HUSMOR
Statement of, Continued.

STREET THAT 69 SANSON CIRCLE IS. I YELLED OUT "HEY", HE THEN
BEGAN TO RUN EASTBOUND IN THE ROADWAY TOWARDS PAUL ST. HE WAS
APPROX 20-25 FEET, THEN ABRUPTLY MADE A "BUTTER-HOOK" TYPE TURN TO
HIS LEFT AND I NOTICED HE HAD A KNIFE (SILVER BLADE) IN HIS RIGHT
HAND. IT WAS VERY OBVIOUS THAT HE WAS UNDER THE INFLUENCE OF
SOMETHING. HE WAS STAGG, TAKING 2-3 SIDE AND FORWARD STEPS,
WHILE TALKING SO SAYING THINGS SUCH AS WHAT DO YOU WANT AND
YELLING FOR US TO GO AHEAD AND KILL HIM. ONCE I OBSERVED THE
KNIFE I DREW AND PRESENTED MY SERVICE ISSUE PISTOL, AS WELL AS OFF. HUSMOR
I YELLED FOR HIM TO DROP THE KNIFE AND THEN TO PLEASE DROP THE
KNIFE, NUMEROUS TIMES, OFF. HUSMOR STATED THE SAME AND SIMILAR
COMMANDS. WHILE HE WAS FIRST MAKING THREATS TOWARDS US AND
HIMSELF HE WAS APPROX 75-80 FEET AWAY. HE FURTHERMORE MADE
QUICK SIDE STEPS, THE KNIFE CHANGED POSITIONS FROM HIS NECK, POINTING
AT US, THEN AGAIN TO HIS NECK. HE REPEATED THIS NUMEROUS TIMES.
I HAD A STRONG FEAR FOR MY SAFETY AND LIFE, TO INCLUDE
OFF. HUSMOR AND THE PEOPLE ACROSS THE STREET WERE OBSERVING THE
INCIDENT. HE MADE (2) SEPARATE, SWIFT MOVEMENTS/LUNGES TOWARDS
ME, EACH TIME I STATED TO STAY BACK, PUT THE KNIFE DOWN
AND NOT TO MAKE ME SHOOT HIM. MY STATEMENTS HAD NO EFFECT,
THE THIRD AND FINAL TIME HE MADE (3) QUICK STEPS
TOWARDS ME, HIS ENDING DISTANCE WAS 6-8 FEET. I WAS
IN FEAR FOR MY LIFE WHEN HE DID THAT, I DID NOT HESITATE,
I ENGAGED HIM WITH ONE ROUND. HIS POSITION WAS TRACED AT
A 45 DEGREE ANGLE TOWARDS ME. THE CENTER MASS WAS HIS LEFT
TORSO AND THAT IS WHERE I ENGAGED HIM. ONCE HIT, HE
RETRAINED A FEW STEPS AND WHINNED. IT WAS OBVIOUS IT HAD NO EFFECT.
I IMMEDIATELY CALLED THAT HE WAS HIT AND REQUESTED EMS, I HAD ALREADY
STATED "10 75" MAN WITH A KNIFE WHEN I FIRST OBSERVED IT.
AT THAT POINT HE RETREATED TO THE DRIVEWAY ACROSS THE STREET.
OFFICERS HUSMOR, DEUBLE, SGT SOLIMAN WERE NOW PRESENT, ALONG WITH
NUMEROUS DEPUTIES. DURING THIS TIME HE HAD THE KNIFE TO
HIS THROAT AND WAS SAYING HE CAME HERE TO DIE AND THAT
HE WAS "LOST AND GONE" AS HE HIT HIS FOREHEAD.

SLED
CF003 5/95PAGE NO 3 OF 8 PAGESVOLUNTARY STATEMENT
SUPPLEMENTALRUBEN R. HERNANDEZ

Statement of, Continued.

HE STARED FLEXING HIS LEFT HAND AND STATED HE WAS THIRSTY AND WANTED TO SPEAK TO HIS SON. OFF DENOUE RETRIEVED HIS CELLPHONE AND OFFERED HIM WATER AND THE PHONE IF HE PUT THE KNIFE DOWN. HE BECAME IRATE STATING THAT WOULD NOT HAPPEN. AS HE FLEXED HIS HAND/ARM AGAIN HE LOOKED AT ME AND SAID YOU SHOULD OF SHOT ME HERE, POINTING TO THE CENTER OF HIS CHEST. HE ALSO ASKED IF I HAD EVER SHOT A MAN THAT WANTED TO DIE. I DID NOT RESPOND. AT THAT POINT MR SCOTT PULLED ME BACK AND I WAS TOLD TO STAND BY AT NORTH REGION. ONCE I OBSERVED THE KNIFE TO THE POINT THAT I ENGAGED HIM I WAS IN FEAR OF MY LIFE AND THE OTHERS AROUND ME AND

EUS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-40-5132

Evalena Catoe, individually and as
Personal Representative of the Estate
of Richard L. Catoe, Jr., deceased,

Plaintiff,

v.

The City of Columbia and Leon Lott,
in his official capacity as Sheriff of
Richland County,

Defendants.

AFFIDAVIT OF JON B. BLUM

NOW COMES the Affiant, Jon B. Blum, under oath and testifies as follows:

1. My name is Jon B. Blum and I have been retained by the Plaintiff to provide expert testimony in connection with this lawsuit.
2. A true, accurate, complete and current copy of my Curriculum Vitae is attached as **EXHIBIT A** to this Affidavit.
3. A true, accurate, complete and current list of all evidentiary items I reviewed in this matter is attached to this Affidavit as **EXHIBIT B**.
4. This affidavit accurately reflects my observations, conclusions, and opinions concerning the Defendant's actions that resulted in Plaintiff's unnecessary death. I used all of my education, training, and twenty-two (22) years of experience in law enforcement practices to reach conclusions contained herein. This includes, but is not limited to the use of force, high risk situations, and joint agency operations. This personal knowledge and familiarity was gained through my experience as a sworn Police Officer in the State of North

Carolina, SWAT team member, and use of force instructor for the North Carolina Department of Justice.

5. The Defendants, including command level personnel, failed to provide, render, or otherwise do everything possible to secure immediate medical aid to Plaintiff who had been seriously injured by Defendant's use of deadly force. On scene law enforcement personnel testified that they could clearly see the extent of plaintiff's injuries first hand.

- a. "Any use of force, lethal or non-lethal, carries the responsibility to render immediate aid to any injured party. Any injury that is reported will be considered to be of sufficient gravity for the officers on the scene to summon medical assistance."¹
- b. "Serious Injury: great bodily injury that creates substantial risk of death or which causes serious, permanent disfigurement, or protracted loss of impairment of the function of any bodily member or organ."²
- c. "An individual complaining of, or suffering from, an injury as a result of a use of force by a deputy, shall receive appropriate medical attention as soon as possible after the scene has been brought under control."³

6. Defendants failed to establish any semblance of command and control needed for joint operations. On-scene personnel failed to establish consistent and clear lines of communication throughout the event. Reports and statements by on-scene personnel place blame on others, deny accountability, or show uncertainty about who was in charge. There was no clear understanding as to who is actually in command of the scene. There

¹ CPD Use of Force Policy; Section 6.0 Officer Responsibility;

² RCSO Use of Force Policy; Section D. Definitions; 8. Serious Physical Injury;

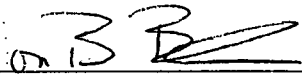
³ RCSO Use of Force Policy; Section G. Rendering Medical Assistance

was no established method or action plan for coordinating efforts between agencies on the same scene.

7. The Defendants had no established procedure, protocol, or systematic plan within reasonable law enforcement standards on July 22, 2007. The lack of command and control hindered decision making altogether whereby contributing to Plaintiff's death.
8. I have carefully reviewed the contents of this Affidavit and attached Exhibits and testify that this Affidavit states the truth based upon my personal knowledge of the matters contained herein.

FURTHER THE AFFIANT SAYETH NOT.

This the 13th day of November, 2013.

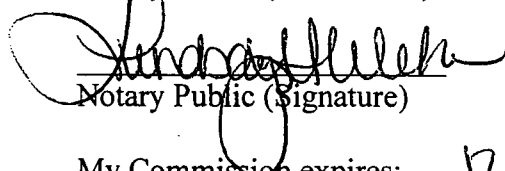

Jon B. Blum, Affiant

COUNTY OF Johnston

STATE OF NORTH CAROLINA

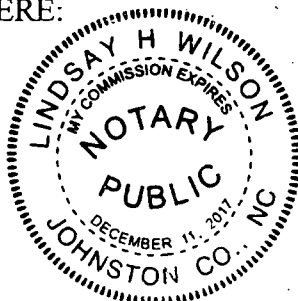
I, the undersigned Notary Public, attest that on this the 13th day of November, 2013, Jon B. Blum appeared personally before me and, under oath, executed the foregoing Affidavit.

Lindsay H Wilson
Notary Public (Print Name)


Notary Public (Signature)

My Commission expires: 12/11/2017

AFFIX SEAL HERE:



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JON B. BLUM

Jon.Blum@force-concepts.com • 919.524.2191
PO Box 1088 • Angier • NC • 27501

Recognized law enforcement professional with 22 years of experience in police practices, training and personnel development. Published author of mandated licensing and continuing education materials for public safety officials.

AREAS OF EXPERTISE

- Use of Force
- Report Writing
- Public Information
- Training & Development
- Policy & Procedure
- Recruitment & Retention

PROFESSIONAL EXPERIENCE**FORCE CONCEPTS**

Trainer & Consultant (2005-Present): Privately held company provides consulting, instructional design, and training services to public safety agencies. Develop training curricula, policies, procedures, surveys, and testing instruments. Publish training programs, manuals, and end user materials for eLearning, classroom and blended delivery mediums. Training courses are approved for continuing education credit in 30+ states. More than 50K publications sold in US & Canada. Provide expert witness analysis and testimony on public safety practices and procedures.

NC DEPARTMENT OF JUSTICE

Adjunct Instructor (2002-Present): Deliver specialized use of force and physical fitness train-the-trainer certification courses. Current Curriculum Committee member for the NC Specialized Physical Fitness Instructor (SPFIT) and Subject Control & Arrest Techniques (SCAT) Instructor courses.

NC DEPARTMENT OF HEALTH & HUMAN SERVICES

Sr. Technical Writer (2011-2012): State government agency responsible for providing health, nutrition, and related financial services for residents in need. Lead a blended team of 25+ to develop and deliver new NC FAST software training program to 15k end users in 100 counties. Collaborate with 3rd party consulting (Accenture) and software architect (IBM) vendors to publish training materials using ILT, e-learning and LMS platforms. Create functional designs, process flows, test scripts, and other document templates for team members. Perform on-going research and job task analyses to determine how software functionality will be used to complete business processes. **Achievements**: Completed conversion of ILT lessons to eLearning platforms on time while software functionality was still in development.

TOWN OF GARNER POLICE DEPARTMENT

Personnel Manager & PIO (2002-2005): Internationally accredited agency with 68 full-time employees protecting and serving 26,000 residents. Responsible for all agency recruitment, personnel development, training and related compliance record systems. Implement comprehensive short and long-term strategies to enhance community relations, manage department's overall image and create agency brand. Authored and distributed press releases in a Top 20 market. Grant print, previously recorded, and live television interview request from media. **Achievements**: Overhauled job applicant selection process using quantifiable candidate skill and accountability instruments. Created social media and electronic platforms for cohesive messaging, timeliness, and efficiency. Managed all PIO requests for nationally publicized and unsolved homicide of 17 year old resident.

JON B. BLUM

NC DEPARTMENT OF JUSTICE

Director of Training (1999-2002): Internationally accredited agency responsible for State's certification curriculums and training approximately 23K criminal justice personnel annually throughout North Carolina and United States. Project manager for 17 week Basic Law Enforcement Training (BLET or POST) licensing curriculum. Collaborate with 300+ SMEs and practitioners to develop and maintain 33 individual lessons. Develop practical skill exercise scripts and testing instruments. Provide technical assistance to 72 training academies across the State. Chair 16 member committee, establish agendas and use consensus building skills to secure agreements. Report research findings and make recommendations to NC Criminal Justice Education & Training Commission. **Achievements**: Engineered state-wide electronic distribution systems for training materials; Delivered Academy's first distance learning course; NC Attorney General's Award for BLET leadership.

WINSTON-SALEM POLICE DEPARTMENT

Corporal/Police Officer (1991-1999): Internationally accredited agency with 720 full-time employees protecting and serving 198K residents. Enforce criminal laws, investigate violations and arrest offenders. Conduct interviews, complete official reports and testify in both state and federal courts. First-line supervisor for 10 patrol division officers. Other duty assignments included SWAT, Planning & Research Unit, Field Training Officer, Academy Instructor, and Accreditation Coordinator. **Achievements**: Recruit Class XXIX Colleague/Tise Award; Promotion to Corporal in 1995; DWI Enforcement Award; Citizen Satisfaction Award.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Adjunct Instructor (2000-2007): A nonprofit R&D organization with 20K members serving law enforcement executives in 100+ countries. Provide technical assistance, curriculum development and delivery for law enforcement executives on *Use of Force, Report Writing, Media Relations* and *Wellness Programs*.

EDUCATION

MASTER OF PUBLIC ADMINISTRATION - Communications
University of North Carolina at Greensboro

BACHELOR OF SCIENCE - Criminal Justice
University of North Carolina at Charlotte

MEMBERSHIPS

- Subject Control Arrest Techniques Curriculum Committee
North Carolina Department of Justice / Justice Academy
- Physical Fitness Curriculum Committee
North Carolina Department of Justice / Justice Academy
- International Association of Law Enforcement Firearms Instructors
IALEFI
- International Law Enforcement Educators & Trainers
ILEETA

JON B. BLUM

CERTIFICATIONS & TRAINING

BASIC LAW ENFORCEMENT TRAINING (BLET)

North Carolina Department of Justice

ADVANCED LAW ENFORCEMENT CERTIFICATE

North Carolina Department of Justice

GENERAL INSTRUCTOR (BLET)

North Carolina Department of Justice

SPECIALIZED SUBJECT CONTROL INSTRUCTOR

North Carolina Department of Justice

SPECIALIZED PHYSICAL FITNESS INSTRUCTOR

North Carolina Department of Justice

HEALTH & WELLNESS INSTRUCTOR

American College of Sports Medicine

PUBLIC SAFETY FITNESS SPECIALIST

Cooper Institute for Aerobics Research

OLEORESIN CAPSICUM SPRAY INSTRUCTOR

Federal Laboratories

REDMAN SIMULATOR INSTRUCTOR

H&K Industries

TASER INSTRUCTOR

Taser International

BATON INSTRUCTOR

ASP International

FEATURED PRESENTATIONS

- *Suicide by Cop*
International Association of Law Enforcement Firearms Instructor ATC; West Palm Beach, Florida
- *Investigative Reports on the Use of Force*
North Carolina Internal Affairs Investigator's Association ATC; Raleigh, North Carolina
- *Police/Sheriff Liability in North Carolina*
Lorman's Seminars; Raleigh, North Carolina
- *Developing Control Option Policies*
International Association of Law Enforcement Firearms Instructor ATC; Reno, Nevada
- *Documenting the Use of Force*
International Association of Law Enforcement Firearms Instructor ATC; Orlando, FL & San Diego, CA

JON B. BLUM

PUBLICATIONS

- Handguns: Ownership & Safety
ISBN# 0-9786592-1-X
- Domestic Violence Investigations
ISBN# 1-932990-16-X
- Documenting the Use of Force: Corrections
ISBN# 1-932990-60-7
- Documenting the Use of Force: Police
ISBN# 1-932990-15-1
- Image is Everything
Trainer Magazine
- Using Force
Firearms Instructor, Volume 34
- Motor Skill Performance
Firearms Instructor Volume 31
- Physical Training for Law Enforcement
Trainer Magazine

CASE VITAE

Case	#	Issues	
<i>Jones v. City of Durham, et. al</i>	02CVS-2620	Vehicle Operations; Training;	R, D
<i>Hastings Massasoit v. Sheriff Lane Carter</i>	04CV-0151	Force; Training;	
<i>Denton v. Franklin County Sheriff's Dept.</i>	05CVS-0298	Force; Training;	
<i>Blair v. County of Davidson</i>	05CV-0011	Force; Training;	R, D
<i>Gentry v. Goforth & Davidson County Sheriff</i>	07CVS-1586	Deadly Force; Training;	R
<i>McCloud v. Hildebrand & City of Hickory</i>	07CVS-2544	Deadly Force; Training;	R, D
<i>Absher v. Wilkes County Sheriff, et al.</i>	08CV-0107	Force; Training; Policy	R, D
<i>Cook v. County of Bladen</i>	08CVS-0303	Deadly Force; Training;	R
<i>Lunsford v. Franklinton Police Department</i>	08CVS-0567	Vehicle Operations; Training;	R
<i>Lyons v. Kings Mountain Police Department</i>	08CVS-1373	Force; Training;	R
<i>Barber v. City of Concord</i>	09CVS-16400	Vehicle Operations; Training;	R
<i>Robinson v. Bladen County Sheriff's Office</i>	7:10 CV146	Force; Training;	R
<i>Catoe v. City of Columbia, SC</i>	09CP4005132	Deadly Force; Training	
<i>Michael Pyrtle v. Rockingham County Sheriff</i>	1:10 CV0683	Force; Training	R, D
<i>Patricia Jackson v. Wal-Mart</i>	CP-26-02175	Unlawful Restraint; Training	R,D,T
<i>Ramsey v. Marion County</i>	19407	Force; Training	R
<i>Wallace, vs. City of Spring Lake</i>	10CVS-6793	Force; Search; Training	R, D
<i>Ballentine v. Town of Coats</i>	5:11-cv-524	Force; Training;	R
<i>Strickland v. Town of Coats</i>	5:12-cv-630	Force; Training; Taser	R
<i>Foster v. Bradley County Tennessee</i>	1:12-CV-00179	Deadly Force; Training	R
<i>Truhan v. Walston</i>	12: CVS-450	Vehicle Operations;	R
<i>Booth v. Town of Weldon</i>	4:12-CV-117-D	Force	
<i>Smith v. Phillip Redmond, et al.</i>	5:12-cv-153	Arrest; Training; Retention	R, D

*Column indicates R=Report or Affidavit submitted; D=Deposition taken; T=Trial Testimony

EXHIBIT B

Exhibits and materials were provided by Plaintiff's counsel. Opinions contained in the affidavit were formed after analyzing items listed in the table below.

	Exhibit / Materials	Notes
1	Complaint & Responses	36 pages
2	SLED Report	280 pages
3	RCSO 911 Audio files	53 files; 20:00 minutes
4	CPD 911 Log	6 pages
5	RCSO Use of Force Policy	49 pages
6	CPD Use of Force Policy	8 pages
7	RCSO / CPD scene photos	294 images
8	Personnel Files	339 pages

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FEB 10 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-000194

Evalena Catoe, individually and as personal
Representative of the Estate of Richard L.
Catoe, Jr., deceased,

Appellant,

v.

The City of Columbia and Leon Lott,
in his official capacity as Sheriff of
Richland County

Defendants,

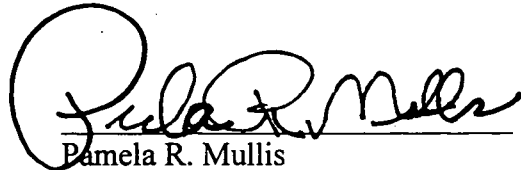
Of whom Leon Lott in his official capacity
as Sheriff of Richland County is the

Respondent.

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 10, 2015



Pamela R. Mullis
MULLIS LAW FIRM
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577
Counsel for Appellant