

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Jeffrey Kennedy Respondent,

v.

Richland County School District Two, Eric Barnes, and Chuck Earles Appellants.

RECORD ON APPEAL
Volume 1
(Pages 1-406)

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

JUDGMENT IN A CIVIL CASE

CASE NO. 13 CP- 40-1460

Jeffrey Kennedy

Richland Co. School District 2

Eric Barnes, Charles Fawles
DEPENDANT(S)

PLAINTIFF(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment
by the Court: *Verdict for Plaintiff against all defendants. Post trial motions*

ORDER INFORMATION

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

*to be filed with 10 day and
response within 5 day thereafter.*

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

LLH Almer Lee
Circuit Court Judge

Judge Code

10/3/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Oct, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Oct, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

J. Goodwin / R. Peavy

ATTORNEY(S) FOR THE PLAINTIFF(S)

T. Barlow / K. Mahoney

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jeffrey Kennedy,

Plaintiff,

v.

Richland Two County School District,
Eric Barnes, Chuck Earles,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No: 2013-CP-40-01460

VERDICT

FILED
2014 OCT 10 AM 10:29
JENNIFER M. MCBRIDE
C.C.P. & G.S.

On the **Defamation** claim against **Eric Barnes**, we, the jury, unanimously find for

☒ **PLAINTIFF**

One hundred Thousand dollars (\$100,000)
Actual damages

One hundred Fifty Thousand dollars (\$150,000)
Punitive damages

☐ **DEFENDANT Eric Barnes**

If you returned a verdict in favor of Plaintiff, do you the jury unanimously find that Eric Barnes acted with actual malice?

☒ Yes

☐ No.

Foreperson

Date:

10/3/2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jeffrey Kennedy,

Plaintiff,

v.

Richland Two County School District,
Eric Barnes, Chuck Earles,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No: 2013-CP-40-01460

VERDICT

FILED
2014 OCT 10 AM 10:29
JEANETTE W. MORRIS
C.C.P. & G.S.

On the **Defamation** claim against **Chuck Earles**, we, the jury, unanimously find for

☒

PLAINTIFF

One hundred thousand dollars (\$100,000)
Actual damages

~~One~~ Two Hundred thousand dollars (\$200,000)
Punitive damages

☐

DEFENDANT Chuck Earles

If you returned a verdict in favor of Plaintiff, do you the jury unanimously find that Chuck Earles acted with actual malice?

☒ Yes

☐ No.

Foreperson

Date:

10/3/2014

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2013CP4001460**

Jeffrey Kennedy

Richland Two County School District

PLAINTIFF(S)

Katie Brochu

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 24 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Jefferson Goodwyn Jr.

Thomas Kennedy Barlow

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jeffrey Kennedy,

Plaintiff,

v.

Richland County School District Two,
Eric Barnes, and Chuck Earles,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-40-01460

ORDER

RICHLAND COUNTY
FILED
2015 FEB 24 AM 9:45
JEANETTE A. HOBBS
C.C.P. & G.S.

This matter comes before the Court on Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, for a New Trial Absolute, or, in the alternative, for a new Trial Nisi Remittitur. This case came to trial on September 29, 2014. The jury returned a verdict of \$100,000 in actual damages and \$150,000 in punitive damages against Defendant Barnes and a verdict of \$100,000 in actual damages and \$200,000 in punitive damages against Defendant Earles. Defendants filed this motion pursuant to Rules 50 and 59(e), SCRPC, on October 13, 2014. After careful consideration of the motions made, memorandum submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, for a New Trial Absolute, or, in the alternative, for a new Trial Nisi Remittitur. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

Additionally, regarding awards of punitive damages, this Court shall conduct a post-trial review to ensure that a punitive damage award is proper. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). "Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *Atkinson v. Orkin Exterminating Co.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004). The Due Process Clause of the Fourteenth Amendment prohibits states from imposing grossly excessive punishments on tortfeasors. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 562 (1996).

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The United States Supreme Court set forth three guideposts for the trial courts to consider when assessing whether an award of punitive damages violates due process. *BMW of North America v. Gore, supra*. Those guideposts are: (1) the reprehensibility of the defendant's conduct; (2) the ratio to the compensatory damages awarded (actual or potential harm inflicted on the plaintiff); and (3) comparison of the punitive damages award and civil or criminal penalties that could be imposed for comparable misconduct. *Id.* at 574.

Reprehensibility is "[p]erhaps the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 575. "This principle reflects the view that some wrongs are more blameworthy than others." *Id.* In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003).

The South Carolina Supreme Court previously employed an eight factor post-verdict review that trial courts were required to conduct to determine if a punitive damages award comports with due process. *See Gamble, supra*. However, following *Gore, supra*, and *Campbell, supra*, as well as other United States Supreme Court opinions, in *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the Court "articulate[d] the following test for our courts in conducting a post-judgment review of punitive damages awards":

1. Reprehensibility

First, any court reviewing a punitive damages award should consider the degree of reprehensibility of the defendant's conduct. ... In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

2. Ratio

Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the

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punitive damages award. ... Although the Supreme Court has been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award, and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. ... With this instruction in mind, we note that a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive punitive damages award.

3. Comparative Penalty Awards

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

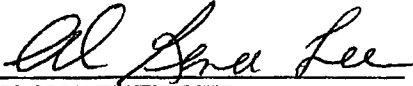
Id. at 587-89, 686 S.E.2d at 185-86. Applying the reprehensibility factors, Plaintiff suffered no physical harm from the defamation, other than perhaps distress and embarrassment. Second, there was no evidence of a reckless disregard for the health or safety of Plaintiff. Evidence was presented that Plaintiff was financially vulnerable; for example, after his termination, he cashed out his retirement. Fourth, the alleged defamation was a one-time event; however, there was repetitive conduct of rumors being spread in general in the department. Finally, Plaintiff argued, and the jury could have inferred from the evidence presented that the harm was the result of intentional malice, trickery, or deceit.

As to the ratio factor, although there is no bright-line test regarding the ratio of the actual damages to the punitive damages, the multiplier for punitive damages is low in this case, being 1.5 for Barnes and 2 for Earles. This factor weighs in favor of finding the punitive damages award appropriate.

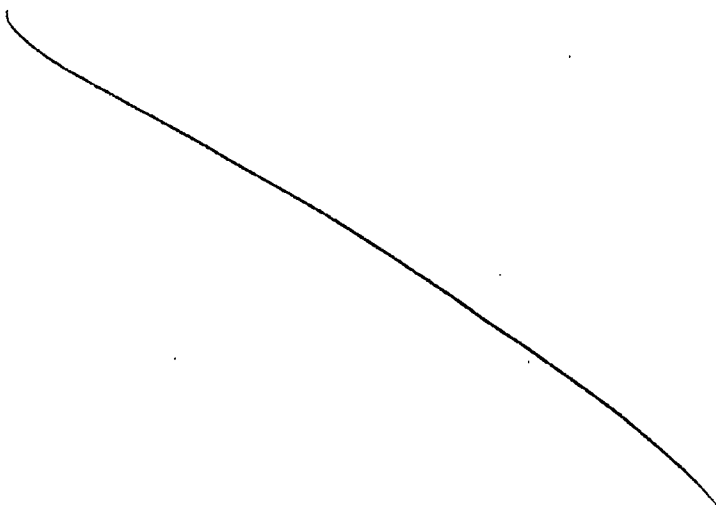
As to the comparative penalty awards factor, there are no criminal penalties for workplace defamation in South Carolina. Consequently, there is nothing against which to assess

this particular factor. Based upon all of these factors and the evidence presented, the punitive damages award does not violate constitutional due process. Defendants are not entitled to a reversal or reduction in the amount of punitive damages.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

February 23, 2015
Columbia, South Carolina


arf
#4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jeffrey Kennedy,

Plaintiff(s)

vs.

Richland Two County School District, and its
Superintendent, Dr. Katie Brochu, Eric Bonds,
Chuck Earles, Traci Batchelder, Roosevelt
Garrick, Kim Jones,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013- CP - 40- 014600

(Please Print)

Submitted By: T. Jeff Goodwyn, Jr., Esquire

Address: 2519 Devine Street, Suite A
Columbia, SC 29205

SC Bar #: 73789

Telephone #: (803) 251-4517

Fax #: (803) 251-4527

Other:

E-mail: JGoodwyn@Goodwynlaw.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☒ Other (399)	☐ Other (499)
		<u>Negligence/Defamation</u>	
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
-
Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	
-
	☐ Administrative Law Judge (980)
	☐ Public Service Commission (990)
	☐ Employment Security Comm (991)
	☐ Other (999)

Submitting Party Signature:



Date: March 7, 2013

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

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Jeffrey Kennedy,

Plaintiff,

vs.

Richland Two County School District, and
its Superintendent, Dr. Katie Brochu, Eric
Bonds, Chuck Earles, Traci Batchelder,
Roosevelt Garrick, Kim Jones,
Defendant.

Civil Action No.: 13-CP-_____

SUMMONS

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

2013 MAR 11 AM 11:38

FILED

TO: THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served on you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 2519 Devine Street, Suite A, Columbia, South Carolina, 29205, within thirty (30) days of the date of service, exclusive of the day of such service; if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Complaint.

This 7th day of March, 2013

GOODWYN LAW FIRM, LLC

By:



T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, South Carolina 29205

(803) 251-4517

(803) 251-4527 (f)

JGoodwyn@Goodwynlaw.com

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Jeffrey Kennedy,

Plaintiff,

vs.

Richland Two County School District, and
its Superintendent, Dr. Katie Brochu, Eric
Bonds, Chuck Earles, Traci Batchelder,
Roosevelt Garrick, Kim Jones,
Defendant.

Civil Action No.: 13-CP-_____

COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiff, complaining of the Defendants, would respectfully show the Court

1. The Plaintiff is a citizen and resident of Richland County, South Carolina.
2. The Defendant Richland Two School District (hereafter "Richland 2") is a governmental entity within the meaning of the South Carolina Tort Claims Act and is subject to the jurisdiction and venue of this Court
3. The Defendant Katie Brochu (hereafter "Brochu") is, upon information and belief, a citizen and resident of South Carolina and is the Superintendent of Richland 2 and is subject to the jurisdiction and venue of this Court.
4. The Defendant Eric Bonds ("Bonds") is, upon information and belief, a citizen and resident of Richland County, South Carolina and currently resides at 3023 Eastway Drive, Columbia, South Carolina 29209-4911, and is subject to the jurisdiction and venue of this Court.

2013 MAR 11 AM 11:38
FILED
JEANETTE H. HERRICK
C.C.P. & G.S.

5. The Defendant Chuck Earles ("Earles") is, upon information and belief, a citizen and resident of South Carolina and currently resides at 6402 Trenholm Road, Columbia, South Carolina 29206-2137 and is subject to the jurisdiction and venue of this Court.
6. The Defendant Traci Batchelder ("Batchelder ") is, upon information and belief, a citizen and resident of South Carolina and currently resides at 105 Clarmont Court, Lexington, South Carolina, 29072-7017 and is subject to the jurisdiction and venue of this Court.
7. The Defendant Roosevelt Garrick, Jr. is, upon information and belief, a citizen and resident of South Carolina and currently resides at 3113 Berkeley Forest Drive, Columbia, South Carolina, 29209.
8. The Defendant Kim Jones ("Jones") is, upon information and belief, a citizen and resident of South Carolina and currently resides at 25 Small Oak Court, Blythewood, South Carolina 29016-7921 and is subject to the jurisdiction and venue of this Court.
9. For many years, Plaintiff was employed by Richland 2 in a security guard capacity.
10. In or around February 2011, Plaintiff had recently received a promotion to Lieutenant, resulting in a significant pay raise.
11. At or around the time of the promotion, Plaintiff was accused by Richland 2 personnel, specifically Chuck Earles and Eric Bonds, of stealing money from Coach Tim Hunter's office at Spring Valley High School during the course of Plaintiff's regular nightly security rounds. Plaintiff denied the charges.
12. After an extensive investigation by Richland County law enforcement into the alleged theft, no charges were filed. However, Plaintiff, after statements were made by Eric Bonds and Chuck Earles and Traci Batchelder and Roosevelt Garrick, Jr. was

demoted ultimately by Roosevelt Garrick, Jr. of Richland 2 to a non-lieutenant position watching security videos, resulting in lost opportunities, loss of reputation, decreased pay and reduced benefits.

13. In or about October 2012, Defendant Jones's son – a Richland 2 student – was accused of being involved in an altercation.

14. Defendant Jones told Plaintiff that she wanted to review the security videos which were in place at the time of the alleged altercation.

15. Plaintiff informed Jones that he was incapable of sharing any video content with her due to his lack of training on this part of the system.

16. Despite Plaintiff's refusal, Jones proceeded to tell Richland 2 personnel, and others, that Plaintiff had shown her the video and/or had described to her the contents of the video footage, statements which were false and which she knew to be false. Jones also signed her name to a written statement to that effect.

17. As a result of Jones's actions, Plaintiff was placed on administrative leave by Richland 2 and his reputation has suffered greatly and he is subject to continuing rumor, gossip, and innuendo in the workplace.

18. Beginning in or around February 2011, and continuing through the present day, Richland 2, by and through the leadership and management present therein, including Superintendent, allowed the vicious and unwarranted allegations that Plaintiff "was a thief" and "could not be trusted" to be perpetrated and spread, causing defamation to the Plaintiff and resulting in a hostile workplace.

19. The actions of the Defendants, jointly and severally, caused Plaintiff to be investigated by the Richland County Sheriff's Department and caused Plaintiff to

suffer a demotion and loss of reputation in the security industry, resulting in damages including, but not limited to, loss of income, loss of reputation, loss of privacy, and general devastation to his professional livelihood and person.

Count I
Negligent Supervision and Retention
(As to Defendant Richland 2)

20. The preceding allegations are incorporated herein as if repeated verbatim.
21. At the time of the above-described actions of Bonds, Batchelder, Earles, Garrick, and Jones, Richland 2 knew or should have known of the necessity and opportunity to control the Defendants, as the above-described defamation began to escalate and as a result, they were under a duty to exercise reasonable care to control its employees, Defendants Bonds, Batchelder, Earles, Garrick, and Jones, as to prevent them from intentionally harming Plaintiff or from so conducting themselves as to create an unreasonable risk of harm to Plaintiff.
22. Richland 2 breached this duty to Plaintiff by failing to exercise reasonable care so as to control its employees during these events as to prevent them from intentionally harming Plaintiff or from so conducting himself as to create an unreasonable risk of harm to Plaintiff.
23. As a direct and proximate cause of this breach, Plaintiff sustained injury, lost wages, mental disturbance and is entitled to an award of punitive damages in an amount to be determined at trial.

Count II
Defamation
(As to All Defendants Except Richland 2)

24. The preceding allegations are incorporated herein as if repeated verbatim.

25. Defendants Katie Brochu, Eric Bonds, Chuck Earl, Tracey Baxelder, Roosevelt Garrick, Jr., and Kim Jones made and repeated numerous statements concerning the Plaintiff that he was untrustworthy; a thief; and a bad employee, all of which were untrue, such statements being uttered and/or published throughout Richland 2 and made in reckless disregard for the truth and with conscious knowledge of the falsity of the same. Further, such statements were defamatory per se imputing to the Plaintiff the possible commission of a crime and i unfitness to hold a position of security responsibility within Richland 2.
26. As a direct and proximate result of the aforesaid defamation by the Defendants, the Plaintiff has sustained loss of reputation, a loss of earning capacity, humiliation, embarrassment and emotional and mental suffering.
27. The Plaintiff is also entitled to punitive damages against the Defendants for the intentional and willful conduct described herein to punish and deter and to make an example. The Plaintiff further asks for the costs of this action to be leveed upon Defendants.

Count III
(Intentional Infliction of Emotional Distress/Outrage)
(As to All Defendants)

28. The preceding allegations are incorporated herein as if repeated verbatim.
29. The Defendants intentionally or recklessly inflicted severe emotional distress upon the Plaintiff when they spread rumor and innuendo that Plaintiff was a thief, untrustworthy, and not a good employee.
30. The Defendants' conduct was extreme and outrageous, exceeding all possible bounds of decency and was, in effect, a "witch hunt".

31. The actions of the Defendants caused the Plaintiff severe emotional distress outside the bounds of reasonableness.

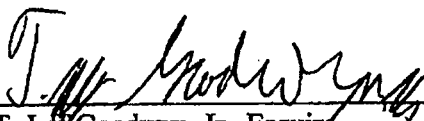
32. As a result of the intentional actions of the Defendants, Plaintiff is entitled to recover damages for this conduct.

WHEREFORE, Plaintiff requests a trial by jury and prays for judgment against the Defendants for all actual, consequential and resulting damages including, but not limited to, all lost wages, mental anguish, an award for punitive damages, and for all other damages found to be fair and reasonable as determined by this Court in an amount to be determined at trial. Plaintiff further requests that he be awarded his attorneys' fees and costs in this matter.

This 6TH day of March, 2013

GOODWYN LAW FIRM, LLC

By:



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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Jeffrey Kennedy,
Plaintiff,

C.A. No. 2013-CP-40-01460

**ANSWER AND AFFIRMATIVE
DEFENSES**

vs.

Richland Two County School District,
and its Superintendent, Dr. Katie Brochu,
Eric Bonds, Chuck Earles, Traci
Batchelder, Roosevelt Garrick, Kim
Jones,

Defendants.

Defendants, Richland School District Two, Dr. Katie Brochu, Eric Barnes (improperly identified as "Eric Bonds" in the Complaint), Chuck Earles, Traci Batchelder, Roosevelt Garrick, Kim Jones, by and through their undersigned counsel, hereby respond to the allegations of Plaintiff's Amended Complaint, in accordance with the numbered paragraphs thereof, as follows:

1. Admitted on information and belief.

2. Denied as stated. Defendants admit only that Richland School District Two is a political subdivision of the State of South Carolina with duties and responsibilities defined by State and federal law, and Defendants refer to those applicable laws as the best source of information concerning its authority and responsibilities.

3. Admitted.

4. Denied.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied as stated. Plaintiff was employed by Richland School District Two as a security officer from May 12, 2008, through October 19, 2012. Defendants deny the remaining allegations of this paragraph.

10. Denied.

11. Denied as stated. Defendants admit only that the District conducted an investigation of missing money in February/March 2011 and Plaintiff was questioned as part of the investigation.

12. Admitted in part and denied in part. Defendants admit only that Plaintiff was not charged with any crime by law enforcement in connection with the February/March 2011 investigation of missing money. Defendants deny the remaining allegations of this paragraph.

13. Admitted.

14. Admitted.

15. Denied.

16. Admitted in part and denied in part. Defendants admit only that Defendant Jones reported to administrators that Plaintiff had described the contents of a video and that Defendant Jones gave a statement as to what Plaintiff had shown her.

17. Admitted in part and denied in part. Defendants admit only that Plaintiff was placed on administrative leave as a result of concerns with his conduct. Defendants deny the remaining allegations of this paragraph.

18. Denied.

19. Denied.

Count I
Negligent Supervision and Retention
(As to Defendant Richland 2)

20. Defendants incorporate by reference its responses to Paragraphs 1 through 19 of the Complaint as if stated herein verbatim.

21. Denied.

22. Denied.

23. Denied.

Count II
Defamation
(As to All Defendants Except Richland 2)

24. Defendants incorporate by reference its responses to Paragraphs 1 through 23 of the Complaint as if stated herein verbatim.

25. Denied.

26. Denied.

27. Denied.

Count III
Intentional Infliction of Emotional Distress/Outrage
(As to All Defendants)

28. Defendants incorporate by reference its responses to Paragraphs 1 through 27 of the Complaint as if stated herein verbatim.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to set forth facts sufficient to constitute a cause of action or state a claim for relief against the Defendants.

SECOND AFFIRMATIVE DEFENSE

On information and belief, Plaintiff has failed to mitigate his alleged damages.

THIRD AFFIRMATIVE DEFENSE

Any wages Plaintiff earned by way of any subsequent employment or in any other

capacity during or following his employment with the Defendants must be off-set from his alleged lost earnings or lost earning capacity.

FOURTH AFFIRMATIVE DEFENSE

Defendants further allege as an affirmative defense the specific immunities of the Tort Claims Act, § 15-78-60, including immunity for: quasi-judicial action or inaction; administrative action or inaction of a quasi-judicial nature; compliance with any law, including written policies; and the exercise of discretionary judgment by the governmental entity or employee or the performance or failure to perform any act or services, which is in the discretionary judgment of the governmental entity or employee. See S.C. Code Ann. §§ 15-8-60(1), (2), (4), (5), (17), (23), (25), and 70(b).

FIFTH AFFIRMATIVE DEFENSE

Any defamatory, libelous, or slanderous statements allegedly made by the Defendants were true, privileged, and/or made in good faith, and do not constitute actionable defamation.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery for defamation because any alleged defamatory statements made by Defendants were true or substantially true.

SEVENTH AFFIRMATIVE DEFENSE

Any alleged defamatory statements made by Defendants were self-publicized by Plaintiff, and thus do not constitute actionable defamation.

EIGHTH AFFIRMATIVE DEFENSE

The District is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss, if any, resulted from the adoption, enforcement, or compliance with a law, rule, regulation, or written policy.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff seeks punitive damages from Defendants, an award of such

damages is precluded by the Tort Claims Act, and further, such an award would violate Defendants' rights to due process and equal protection under the Constitution of the United States and South Carolina.

TENTH AFFIRMATIVE DEFENSE

All actions by Defendants were taken for legitimate business reasons.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's third cause of action is barred by the doctrine of worker's compensation exclusivity.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by contributory/comparative negligence in that Plaintiff contributed to any negligence or gross negligence, which is denied, to a greater degree than any Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

At all times, Defendants acted reasonably and in good faith within the scopes of their employment with Defendant Richland School District Two.

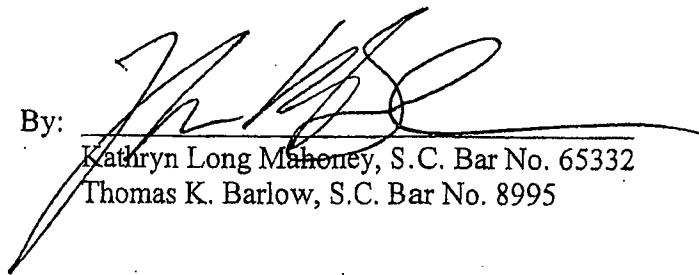
FOURTEENTH AFFIRMATIVE DEFENSE

At all relevant times, Plaintiff was an at-will employee.

WHEREFORE, having fully answered the Complaint, Defendants respectfully pray that the Court dismiss Plaintiff's claims against them, with all costs and expenses awarded to the Defendant, together with any and all further relief that the Court deems equitable and just.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

Kathryn Long Mahoney, S.C. Bar No. 65332
Thomas K. Barlow, S.C. Bar No. 8995

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tbarlow@childs-halligan.net

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendants

May 16, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 16th day of May, 2013:

T. Jeff Goodwyn, Esq.
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

Lonna Coufal

Lonna M. Coufal

RICHLAND COUNTY
FILED
JAN 20 AM 11:07
JANETTE W. MCBRIDE
C.C.P. & C.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Jeffrey Kennedy,)
)
Plaintiff,)

C.A. No. 2013-CP-40-01460

vs.)

**STIPULATION OF DISMISSAL AS TO
DEFENDANTS KATIE BROCHU,
ROOSEVELT GARRICK, AND
TRACI BATCHELDER**

Richland Two County School District,)
and its Superintendent, Dr. Katie Brochu,)
Eric Bonds, Chuck Earles, Traci)
Batchelder, Roosevelt Garrick, Kim)
Jones,)

Defendants.)

RICHLAND COUNTY
CLERK
2014 SEP 26 PM 1:57
JEANETTE W. HODGE
C.C.P. & G.S.

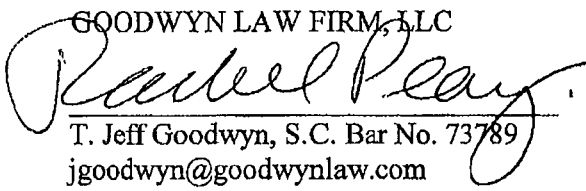
Pursuant to Rule 41(a)(1) SCRCP, Plaintiff and Defendants hereby stipulate that all
claims against Katie Brochu, Roosevelt Garrick, and Traci Batchelder in their individual
capacities are voluntarily dismissed from the above-entitled action with prejudice.

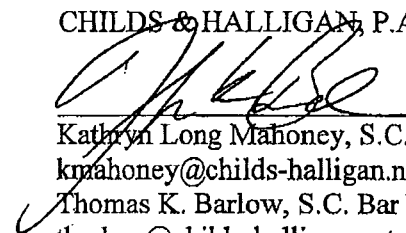
I SO MOVE:

I CONSENT:

GOODWYN LAW FIRM, LLC

CHILDS & HALLIGAN, P.A.


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Attorneys for Plaintiff

Attorneys for Defendants

September 23rd, 2014

September 26, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Jeffrey Kennedy,)

Plaintiff,)

vs.)

Richland Two County School District,)
and its Superintendent, Dr. Katie Brochu,)
Eric Bonds, Chuck Earles, Traci)
Batchelder, Roosevelt Garrick, Kim)
Jones,)

Defendants.)

C.A. No. 2013-CP-40-01460

**DEFENDANTS' MEMORANDUM OF LAW
REGARDING ADMISSIBILITY OF
OTHER INSTANCES OF PLAINTIFF'S
MISCONDUCT**

RICHLAND COUNTY
FILED
2014 OCT -2 AM 9:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

FACTS/INTRODUCTION

In this case, Plaintiff claims that, among other things, he was falsely accused of stealing money and other items at Spring Valley High School ("SVHS") during his employment at Defendant Richland County School District Two ("Richland Two"). He claims that his managers defamed him by transferring him from a third shift security guard position at SVHS to a desk job on the same shift, with the same pay, hours, and benefits, at the security office and denied him keys to access school facilities following an investigation of Plaintiff that did not result in criminal charges. Plaintiff claims that his character and reputation were impugned by the message sent by his transfer.

On September 18, 2014, Defendants became aware that Plaintiff had been investigated for similar thefts during his third shift security detail at a SCANA site, where he was working through Allied Barton, which was then his employer. The SCANA investigator was promptly identified to Plaintiff's counsel as a potential trial witness and Defendants immediately served a subpoena *duces tecum* for records related to SCANA's investigation of Plaintiff. Defendants

provided Plaintiff's counsel a copy of the SCANA subpoena response the same day the defense counsel received it.

Defendants believe that the SCANA witness and documentary evidence will show, among other things:

- 1) Plaintiff was caught on video rifling through cabinets and taking \$10 in cash and a pair of safety glasses belonging to a SCANA employee.
- 2) Plaintiff confessed to this theft when questioned by the SCANA investigator.
- 3) Plaintiff paid SCANA \$100 in restitution.
- 4) Plaintiff's employment was terminated by his employer, Allied Barton, in February 2014.
- 5) Plaintiff was arrested and will be tried for Petit Larceny on October 9, 2014, in Magistrate's Court.

A. Plaintiff Will Suffer No Prejudice From Alleged "Late Notice" Of Defendants' Identification Of A Witness And Documents Related To The Theft Investigation Regarding Plaintiff At SCANA In February/March 2014.

As outlined above, Defendants first became aware of Plaintiff's pending criminal charges and an investigation through his work at SCANA, on September 18, 2014. Defendants served supplemental interrogatory answers on Plaintiff's counsel and served subpoenas on Allied Barton and SCANA the same day. In contrast, Plaintiff has known about the SCANA investigation and his apparent employment termination since February 2014. Despite Plaintiff's investigation by SCANA and termination of his employment at Allied Barton, a security contractor for SCANA which was his direct employer, Plaintiff did not supplement discovery pursuant to Rule 26(e) or otherwise provide Defendants any notice of his status change. Since Plaintiff has known about these issues for several months longer than we have, he cannot claim

any prejudice arising from Defendants' recent discovery and immediate identification of Bill Simpson, the SCANA investigator, and other evidence of misconduct at SCANA that goes directly to character, reputation, and damages because he has raised a claim for defamation arising out of a similar investigation during his employment in Richland School District Two.

B. Plaintiff Has Placed His Character And Reputation Directly At Issue By Way of His Defamation Claim, and Under the South Carolina Rules of Evidence, Specific Instances of Other Misconduct Can Be Proved As Well As Inquired Into On Cross Examination.

As a predicate to the admissibility of evidence of specific instances of conduct, the character or character trait of the person must constitute an essential element of the charge, claim, or defense. S.C.R.E. 405(b). The Advisers' Note to rule 405 makes clear that evidence of specific instances of conduct is admissible under rule 405(b) "when character is actually in issue; that is, when character or a character trait is an operative fact which under the substantive law determines the legal rights of the parties." *Accord*, 2 Weinstein's Evidence 405(04) (1981), stating that character must be a "consequential fact" if character evidence is admissible under Fed.R.Evid. 405(b). South Carolina Rule 405(b) is identical to the federal rule and is consistent with prior South Carolina law. *State v. Amburgey*, 206 S.C. 426, 34 S.E.2d 779 (1945).

Plaintiff has directly placed his reputation and character in issue by asserting a defamation claim alleging that Defendants have caused him reputational injury and somehow lowered his status and employability in the private security community. *State v. Doherty*, 437 A.2d 876, 878 (Me. 1981) ("A prominent example of 'character in issue' is the defamation action where, to support the defense of truth, the defendant may prove that his or her allegedly defamatory communication accurately depicted the plaintiff's character."); *United States v. Keiser*, 57 F.3d 847, 856 (9th Cir. 1995) ("Character may be 'in issue,' as when a statute

specifies the victim's chastity as an element of the crime of seduction, or when the defense to a defamation action is the truth of the allegedly defamatory statement.); *Pierson v. Robert Griffin Investigations, Inc.*, 555 P.2d 843 (1976) (Appellant Pierson brought suit to recover damages for respondents' publication of an alleged document concerning Pierson. Pierson contends the district court erred in admitting into evidence criminal acts committed by him more than 10 years before the alleged libel. Pierson's reliance is misplaced. Since Pierson's character was put in issue by respondents' defense of truth, the evidence was properly admissible.); *Holiday v. Cutchin*, 305 S.E.2d 45, 47 (1983) *aff'd*, 316 S.E.2d 55 (1984) ("Therefore, character evidence is admissible when character is directly in issue as in actions involving moral intent: seducing an innocent or virtuous woman, defamation, or malicious prosecution); *Johnson v. Pistilli*, No. 95 C 6424, 1996 WL 587554 (N.D.Ill. Oct. 8, 1996) ("It is rare that character is an essential element. The typical example of such a case is defamation where injury to reputation must be proven."); *Ajouelo v. Auto-Soler Co.*, 6 S.E.2d 415, 419 (1939) ("It is generally held that the foundation of an action for defamation is the injury done to the reputation, that is, injury to character in the opinion of others arising from publication..."); *United States v. Manos*, 848 F.2d 1427, 1432 (7th Cir. 1988) (Here the district court decided that specific instances of conduct were admissible under Rule 405(b) because they demonstrated the *honesty* of the defendant, which was an essential element of the crime charged.); *United States v. Manos*, 848 F.2d 1427, 1432 (7th Cir. 1988) *Redfearn v. Thompson*, 73 S.E. 949 (1912) (permitting the jury to consider plaintiff's bad reputation in mitigation of damages); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1371-72 (11th Cir. 1998) ("Since the plaintiff's character is substantively at issue in a libel case under Georgia law, Rule 405(b) permits the admission of evidence regarding specific instances of the plaintiff's conduct on that issue."); *Government of the Virgin Islands v. Grant*, 775 F.2d 508, 511 n. 4 (3d

opinion of others arising from publication

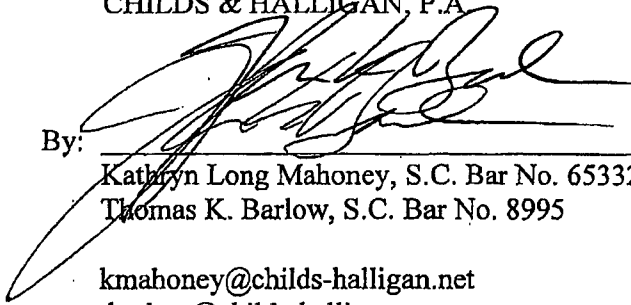
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Cir.1985); *cf. Longmire v. Alabama State Univ.*, 151 F.R.D. 414, 419 (M.D.Al.1992) (permitting discovery regarding specific incidents of misconduct because the libel plaintiff put his character in issue). As such, Defendants may inquire into such incidents of conduct on cross under Rule 405(a) and make proof of specific instances in its own case under SCRE 405(b).

The allegations of theft investigated by SCANA are practically identical to the theft allegations investigated at Spring Valley High School in 2011, after which Plaintiff was reassigned to a position receiving identical pay, benefits, and hours, which he now alleges communicated a defamatory meaning that he was a thief and not to be trusted. Defendant will proffer evidence in the form of testimony by Mr. Simpson and video evidence that establishes the truth of those alleged defamatory insinuations regarding Plaintiff. It would also be manifestly unfair to allow Plaintiff to claim a spotless reputation and character impugned only by Defendants when SCANA evidence will show that he does not possess such a character or reputation. Because the SCANA evidence is highly probative on matters directly placed at issue by Plaintiff's defamation claim, it would be error to exclude it from the trial of this action.

CHILDS & HALLIGAN, P.A.

By: 

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Attorneys for Defendants

September 29, 2014

Columbia, South Carolina

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-40-01460

Jeffrey Kennedy,

Plaintiff,

VS.

Richland Two County School District and its Superintendent, Eric Barnes, Chuck Earles, and Kim Jones,

Defendants.

MOTION IN LIMINE
CONCERNING REPORTED PETTY THEFTS

AT
SPRING VALLEY HIGH SCHOOL

RICHLAND COUNTY
 FILED
 2014 OCT -2 AM 9:11
 DEANNETTE W. MCBRIDE
 C.C.P. & G.S.
 e, exhibit and

The Plaintiff hereby submits this Motion *in Limine* to exclude all evidence, exhibits, and testimony concerning reports of petty thefts at Spring Valley High School prior to the Athletic Director incident which allegedly occurred on the evening of March 3, 2011. Specifically, Defendants seek to introduce testimony, and several statements, written or transcribed by Richland Two staff, all dated March 24, 2011, which attest to reports of petty thefts which occurred at Spring Valley beginning in Spring 2010. The statements are attached hereto as Exhibit A. These statements concern thefts that occurred in Spring 2010, Fall 2010, February 14, 2011, February 25, 2011, and sometime between February 28-March 2, 2011.

Spring Valley High School is a huge physical plant, with thousands of people going in and out of the doors every day. These allegations of other petty thefts are unproven, were never investigated by law enforcement, and were never proved (i.e. no charges were ever brought, no conviction ever secured). Accordingly, they are not relevant to whether Mr. Kennedy was properly the focus of the District's "investigation" into the allegedly missing money from the

Athletic Director's Office. Furthermore, even if deemed relevant by the Court, they are highly prejudicial as they "muddy the proverbial waters" by injecting further, unproven allegations into the jurors' minds.

Perhaps most importantly, all but one of these reports of theft occurred before Jeffery Kennedy was recommended for the promotion to supervisor; therefore, Jeffery Kennedy must **not** have been a suspect in the eyes of Richland Two at that time, otherwise he wouldn't have been promoted. To use them now, the defense seeks to prove Jeffery Kennedy was a habitual thief even when they didn't even obviously consider him to be the thief as of February 28, 2011, when Chuck Earles signed off on the promotion.

Legal Standard

"As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE." State v. Billy Wayne Cope, 405 S.C. 317, 748 S.E.2d 194 (2013). "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Furthermore, even if evidence is deemed relevant under Rule 401, SCRE, such evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . ." Rule 403, SCRE.

Furthermore, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." State v. Billy Wayne Cope, 405 S.C. 317, 748 S.E.2d 194 (2013) (citing Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)). "However, such evidence may be admissible to show motive, identity, the

existence of a common scheme or plan, the absence of mistake or accident, or intent.” Id. If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within [this] exception in Rule 404(b).” Id.

Argument

I. The Evidence Is Not Relevant Since Jeffery Kennedy Wasn’t A Suspect In These Prior Thefts

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE (cited in State v. Gilchrist, 496 S.E.2d 424, 329 S.C. 621 (Ct. App. 1998)).

The truth is Mr. Kennedy was recommended for a promotion by Richland Two on February 28, 2011. The evidence is that he was considered trustworthy by his peers and the “best candidate” for a supervisory job by his supervisors.

Furthermore, this “prior bad act” evidence does not fit within an exception in Rule 404(b). First, “if the [party] was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing.” State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008). “The connection between the prior bad act and the crime must be more than just a general similarity.” State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005). It must fall within the purview of the “common scheme and plan” exception under Rule 404(b). Id. at 583. Furthermore, the timing of the prior bad acts is crucial. Here, the District seeks to present a laundry list of reported petty thefts that began in Spring 2010 – almost a full year prior to the Athletic Director’s report. See,

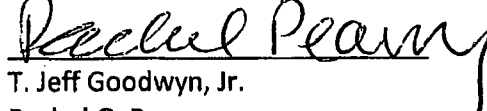
e.g., State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997) (finding that the space of one year made evidence of prior act inadmissible under the common scheme or plan exception.)

II. Even If Relevant, the Evidence is Exceeding Prejudicial

Even if deemed relevant by the Court, the Plaintiff would submit that this evidence should be excluded because "[e]vidence of similar acts has the potential to be exceedingly prejudicial." Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). Even if the Court were to determine that the evidence of the other petty thefts was relevant to how Mr. Kennedy acted – and his character – on the night in question, the evidence is so prejudicial as to deem pointless the Plaintiff's case. In short, a jury cannot be expected to ignore this evidence as evidence of Mr. Kennedy's guilt in the 2011 incident.

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." Kennedy v. Griffin, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2003). Here, the Defendants seek to prove that Jeffery Kennedy was the person who stole the \$1,000 by seeking to admit evidence that they considered him the petty thief in the prior incidents – even though they clearly did not because they were promoting him in February 2011. See, e.g., USA v. Queen, 132 F.3d 991, 996 (4th Cir. 1997) ("noting the tendency to condemn not because the accused is believed guilty of the present charge but because he has escaped unpunished from other offenses".)

GOODWYN LAW FIRM, LLC



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Attorneys for the Plaintiff

September 29, 2014

COUNTY OF RICHLAND

Civil Action No. 2013-CP-40-01460

Plaintiff,

Richland Two County School District and its Superintendent, Eric Barnes, Chuck Earles, and Kim Jones,

Defendants.

MOTION IN LIMINE
AND
MOTION TO EXCLUDE TESTIMONY
OF
BILL SIMPSON

RICHLAND COUNTY
FILED
2014 OCT -2 AM 9:11
JEANETTE W. MCBRIDE
C.C.P. & G.S.

1

Factual Background

Plaintiff was hired as a security guard for Richland Two in 2008. In February 2011, he was recommended for a promotion to supervisor on the security staff by Defendant Chuck Earles, security director.

In early March 2011, the Athletic Director at Spring Valley High School, Tim Hunter, reported that he had left cash out in his office one evening after 10 p.m. and returned the next morning to find it gone. Mr. Hunter had collected cash from a tournament that week, and had placed approximately \$7,000 in the safe in his office but reported that he left \$1,000 out because he wasn't feeling well and wasn't sure if he would be in the next day, and wanted his staff to have access to the money for use with the change boxes over the weekend. However, Mr. Hunter did end up reporting for work early the next day and reported that the \$1,000 was missing.

At that point, Richland Two security staff proceeded to review the security footage and the time stamps from the evening/morning in question.

It was undisputed that the baseball team returned late from a game (after Mr. Hunter had left for the evening) and set off the alarm. It was undisputed that other individuals had keys and access to the athletic department and the AD's office after Mr. Hunter left. Finally, it was undisputed that there was no video footage showing anyone entering or leaving the Athletic Director's office on the night/early morning the alleged theft occurred. It was further undisputed that Jeffery Kennedy was working the evening/morning in question and had been responsible for setting the alarm and also for turning it off a little before 6 a.m. It is further undisputed that the

records of Richland Two show that Jeffery Kennedy only took seconds to turn the alarm on, and that when he disabled the alarm shortly before 6 a.m., the time logs recorded him spending over 5 minutes in the Athletic Department. Finally, the testimony of Richland Two security staff is that "everyone had keys" and that the security supervisory staff, Defendants Earles and Barnes, in fact, did not control, or even have a list of, who possessed keys to either the Athletic Department or the AD's office. Keys were handled by the school administration at Spring Valley.

The Security Department, led by Messrs. Earles and Barnes, proceeded to focus on Jeffery Kennedy exclusively and handed over the video/time footage to the Richland County Sheriff's Department. The Sheriff's Department conducted an investigation and declined to press charges. Richland Two's Chief Human Resources officer, Mr. Roosevelt Garrick, acknowledged to Plaintiff that other individuals had access and opportunity to the AD's office. Nevertheless, to counsel's knowledge, no other individuals were investigated or charged.

Nevertheless, on June 15, 2011, Defendant Earles sent an email to the security supervisory staff stating that Plaintiff was not to have keys and would be assigned to the watch room – desk duty, essentially. The email, while marked confidential, was not safeguarded or kept confidential; rather, it was printed out and left in the open for all to see. Witness testimony demonstrates that those who saw the memo concluded that Mr. Kennedy was deemed "not to be trusted" and "was considered a thief."

Mr. Kennedy proceeded to work without incident; he requested that his promotion be reinstated, however, the request was denied. On October 2012, Plaintiff was terminated from Richland Two as a result of an allegation that he showed video footage of a student to the student's mother – Kim Jones, a Richland Two bus driver. Mr. Kennedy denied doing so.

On March 25, 2014 – over 3 years since the alleged theft at the AD's office – Mr. Kennedy was arrested and charged with a misdemeanor larceny charge. This is merely a charge; there has been no adjudication. The incident occurred while he was employed by Allied Barton as a security officer, working under its contract with SCANA. The charges allege that Mr. Kennedy stole a pair of safety goggles (valued at \$5.00) and \$10.00 in cash from a room at a SCANA location.

Legal Standard

"As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE." State v. Billy Wayne Cope, 405 S.C. 317, 748 S.E.2d 194 (2013). "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Furthermore, even if evidence is deemed relevant under Rule 401, SCRE, such evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . ." Rule 403, SCRE.

Furthermore, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." State v. Billy Wayne Cope, 405 S.C. 317, 748 S.E.2d 194 (2013) (citing Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)). "However, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Id. If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within [this] exception in Rule 404(b)." Id.

Finally, "specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility . . . may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified." Rule 608(b), SCRE.

ARGUMENT

I. Trial by Ambush Is Not Allowed.

Bill Simpson of SCANA, identified as a witness on September 18th, should be excluded from testifying because it is highly prejudicial to the Plaintiff. See Amisub of South Carolina v. SC DHEC, No. 10-AJ-07-0767-CC (ALC Sept. 13, 2011) (granting motion to exclude witness on the basis that late identification and designation was prejudicial to the respondents).

At his deposition on September 17, 2013, Mr. Kennedy testified that he was employed at Allied Barton, working at a SCANA location. Pl. Dep. at p. 8. In June 2014, Defendants served a subpoena on Allied Barton, requesting that it produce all employment records related to Jeffery Kennedy. On July 17th, defense counsel forwarded copies of the records to Plaintiff's counsel pursuant to counsel's request. The records reflect that Plaintiff was on the payroll beginning in April 2013 through the pay period ending February 28, 2014. (See Bates No. DEFS 000753 thru DEFS 000758). The same records show that Mr. Kennedy returned his uniform to Allied Barton on February 26, 2014. (See Bates No. DEFS 000760). Accordingly, defense counsel had notice in July 2014 at the latest that Mr. Kennedy had not been receiving a paycheck from Allied Barton since February. However, Defendants failed to identify a witness related to the alleged SCANA

incident which led to his separation from Allied Barton until late in the day on September 18th, when it named Bill Simpson, a SCANA security official. This left Plaintiff's counsel no opportunity to examine the witness or conduct further investigation. Defense counsel failed to promptly investigate the reason for his separation in July 2014, and now seek to rehabilitate their position by naming the SCANA witness approximately ten (10) days prior to trial.

Furthermore, the exclusion of Mr. Simpson from testifying will meet the stated goal of discovery rules: "to prevent a trial by ambush." Walker v. West Publishing Corp., Civil Action No. 5:09-cv-00723 (S.D. W. Va. Aug. 19, 2011); See also Morris v. Ms USA, Civil Action No. 2:09-CV-1267-DCN (D.S.C. Jan. 11, 2011) (granting plaintiff's motion to exclude a witness and videotape on the grounds of "trial by ambush" because the witness and tape were identified one week prior to a discovery deadline and resulted in surprise and prejudice).

II. The SCANA evidence is not relevant as it concerns events that occurred 3 years into the future.

This case concerns a defamation – an accusation – that took place in March 2011. Therefore, it concerns WHO Jeffery Kennedy was in March 2011, and in the years leading up to that. How Mr. Kennedy acted in 2014 – 3 years later – cannot be relevant to his actions three (3) years prior. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE (cited in State v. Gilchrist, 496 S.E.2d 424, 329 S.C. 621 (Ct. App. 1998)).

The truth is Mr. Kennedy was recommended for a promotion by Richland Two in February 2011. The evidence is that he was considered trustworthy by his peers and the "best candidate"

for a supervisory job by his supervisors. Actions taken in 2014 are irrelevant to who Mr. Kennedy was in 2011. Pending charges are inadmissible for the same reason. Furthermore, the SCANA events are not even in close proximity to the Spring Valley incident and clearly cannot speak to Mr. Kennedy's state of mind back in 2011. See State v. Gilchrist, supra (finding that evidence of a defendant's statement was relevant as it showed his state of mind when such statement was made in close proximity to the commission of the crime in question.). Here, there is no such temporal relation, as the SCANA incident is three years after the Spring Valley incident.

III. Even if relevant, the Evidence Is Unfairly Prejudicial and Must Be Excluded

"Evidence of similar acts has the potential to be exceedingly prejudicial." Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). Even if the Court were to determine that the evidence of the SCANA incident was relevant to how Mr. Kennedy acted – and his character – in 2011, the evidence is so prejudicial as to deem pointless the Plaintiff's case. In short, a jury cannot be expected to ignore this evidence as evidence of Mr. Kennedy's guilt in the 2011 incident.

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." Kennedy v. Griffin, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2003). Here, the Defendants seek to prove that Jeffery Kennedy was a thief in 2011 by seeking to admit evidence that he was charged with larceny of the safety goggles and \$10 in 2014. In Kennedy, the Court held it was error for evidence to be admitted that the plaintiff tested positive for marijuana at the time of the accident because there was no correlation between the between the marijuana and the accident. The Court held that the marijuana evidence was more prejudicial than probative, given that the test did not measure the quantity of marijuana in the plaintiff's system or how recently he had been

exposed to it. 595 S.E.2d at 251. See also USA v. Queen, 132 F.3d 991, 996 (4th Cir. 1997) (“noting the tendency to condemn not because the accused is believed guilty of the present charge but because he has escaped unpunished from other offenses”).)

Similarly, here, submitting the fact that Kennedy has been charged, three years later, with taking a pair of \$5 safety goggles and \$10 in cash is highly prejudicial to the jury given that these pending charges relate to a \$15 crime; are 3 years after the Spring Valley incident; and have not been shown to be true by clear and convincing evidence.

In State v. Lyle, the Supreme Court considered the exclusion of evidence which was from 10 days to 7 weeks removed from the crime charged. The Court asked, “what is there in the alleged passing of forged checks at widely separated points . . . prior to the commission of the crime charged that tends, in a legal sense, to identify the defendant as the man who uttered the forged paper....? True, such evidence strongly tends to induce the jury to believe that, merely because the defendant was guilty of the former crimes, he was also guilty of the latter, but that is the precise inference the general rule was wisely designed to exclude . . . There is no connection of time and place . . .” 118 S.E. at 808 (holding evidence was improperly allowed).

IV. The “Evidence” Should Be Excluded As It is Not Sufficiently Similar To the Crimes Charged

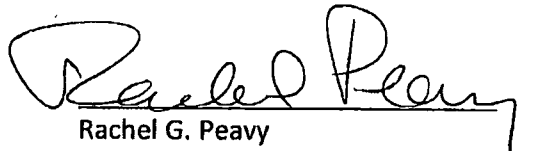
The Defendants seek to introduce evidence concerning an event that occurred three years after the Spring Valley incident in hopes of proving that 1.) Jeffery Kennedy was the Spring Valley thief and 2.) Jeffery Kennedy is a dishonest person of bad character. Because the SCANA events occurred subsequent to the Spring Valley incident and were dissimilar to Spring Valley in terms of scope and motive, the evidence of the SCANA incident should be excluded as unfairly

prejudicial. State v. Cope, 405 S.C. 317, 748 S.E.2d 194. In Cope, the Supreme Court held that there was no abuse of discretion in the trial judge's exclusion of evidence of other crimes under Rule 404(b) where the other crimes occurred subsequent to the murder at issue and there were "many distinctions" as well, although there were also some similarities. Furthermore, the subsequent crimes at issue in Cope occurred within 6 weeks of the underlying murder.

Here, the subsequent "act" was 3 years removed from the Spring Valley incident. Furthermore, the difference in the amount of money alleged to have been stolen (\$10 vs. \$1,000) is considerable. Finally, the Plaintiff respectfully reminds the Court that these SCANA allegations are just that – unproven allegations.

Respectfully submitted this 27th day of September, 2014.

GOODWYN LAW FIRM, LLC



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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jeffrey Kennedy,)

☐ Plaintiff)

v.)

Richland Two County School District,)

Eric Barnes, and Chuck Barles)

☒ Defendants)

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-40-01460

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

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☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **Motion for Judgment Notwithstanding the Verdict or, in the Alternative,
for New Trial Absolute, or in the Alternative, for New Trial Nisi
Remittitur**

Estimated Time Needed: **30 minutes**

Court Reporter Needed: **YES**

SECTION II: Motion Type

☒ Written motion attached ☐ Form Motion --

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

Signature of Attorney for Plaintiff / Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: **\$25.00**

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

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

Name of Court Reporter: _____

☒ Other: _____

JUDGE'S SECTION

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

☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED:

☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003) (c&h)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Jeffrey Kennedy,
Plaintiff,

C.A. No. 2013-CP-40-01460

vs.

Richland Two County School District,
Eric Barnes, and Chuck Earles,
Defendants.

**DEFENDANTS' MOTION FOR
JUDGMENT NOTWITHSTANDING THE
VERDICT OR, IN THE ALTERNATIVE,
FOR NEW TRIAL ABSOLUTE, OR IN
THE ALTERNATIVE, FOR NEW TRIAL
NISI REMITTITUR**

TO: T. JEFF GOODWYN, ESQ. AND RACHEL G. PEAVY, ESQ., ATTORNEYS FOR
PLAINTIFF

Please take notice that pursuant to Rule 50 of the South Carolina Rules of Civil Procedure, Defendants, Richland School District Two, Chuck Earles, and Eric Barnes (Defendants) respectfully request that the Court enter judgment notwithstanding the verdict (JNOV) for the reasons set forth herein. In the alternative, Defendants respectfully request, pursuant to Rules 50 and 59 of the South Carolina Rules of Civil Procedure, that the Court grant Defendants a new trial absolute, or in the alternative, a new trial *nisi remittitur*.

The grounds for these motions are set forth below, and any grounds asserted during and prior to trial in this matter not herein listed or discussed should be considered renewed herein as if set forth verbatim.

I. PROCEDURAL BACKGROUND

A jury was selected on September 29, 2014, and the parties called the following witnesses:

Plaintiff: Jeffery Kennedy, Barry Mitchell, John Reid, Anthony Permenter, Eric Barnes, and Chuck Earles¹

Defendants: Tim Hunter, Larrine Jackson, Kim Jones, Jim Childers, Traci Batchelder, Roosevelt Garrick

The Court granted Defendants' motion for directed verdict on Plaintiff's claim for Intentional Infliction of Emotional Distress and his claim for defamation against Kim Jones at the close of Plaintiff's case. The Court granted Defendants' motion for directed verdict on Plaintiff's Negligent Supervision claim upon the close of all the evidence.

On October 3, 2014, the jury returned a verdict of \$100,000 in actual damages and \$150,000 in punitive damages against Defendant Eric Barnes and a verdict of \$100,000 in actual damages and \$200,000 in punitive damages against Defendant Chuck Earles.

The Court granted Defendants' request for ten days to file post-trial motions, with the consent of Plaintiff's counsel. Defendants timely file their post-trial motions and submit that they are entitled to the relief requested for the reasons set forth herein and during the trial of the case.

II. ARGUMENT

A. The Court Should Enter Judgment Notwithstanding The Verdict.

1. JNOV is Warranted Because Plaintiff Did Not Carry His Burden of Proving Each Element of His Defamation Claim.

A Motion for JNOV is a renewal of the directed verdict motion. *See Roland v. Palmetto Hills*, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992); *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 439 S.E.2d 266 (1993). Directed verdict is a test of the sufficiency of the evidence. *Carolina Home Builders, Inc. v. Armstrong Furnace Co.*, 259 S.C. 346, 191 S.E.2d

¹

Plaintiff called Barnes and Earles in his case, and Defendants proceeded to direct examination with each witness.

774 (1972) (when evidence presented at trial raises no issue for the jury as defendant's liability, a motion for a directed verdict based on the sufficiency of the evidence should be granted); *see also e.g., Tucker v. Pure Oil Co. of Carolinas*, 191 S.C. 60, 3 S.E.2d 547 (1939) (remarking that review of a trial court's failure to grant directed verdict is a test of the sufficiency of the evidence). A court should grant a JNOV when the evidence presented at trial is insufficient to support the jury's verdict. *See Rogers v. Norfolk S. Corp.*, 343 S.C. 52, 59, 538 S.E.2d 664, 668 (Ct. App. 2001), *aff'd as modified*, 356 S.C. 65, 71, 588 S.E.2d 87 (2003).

To prove a defamation claim, a plaintiff carries the burden of proving: "(1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm." *Williams v. Lancaster Cnty. Sch. Dist.*, 369 S.C. 293, 302-03, 631 S.E.2d 286, 292 (Ct. App. 2006). "The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

Plaintiff did not meet his burden of proving an unprivileged publication by either Defendant Earles or Defendant Barnes. First, the only possible defamatory communication Plaintiff identified at trial was the June 15, 2011 email from Defendant Earles addressed to the following individuals: Angelia Permenter, Eric Barnes, Gerome Young, Lelith Zerzycki, and Rick Groves, with a copy to Traci Batchelder. It was undisputed that each of the recipients was a supervisory-level employee in the security department, with the exception of Ms. Batchelder, who was a director of human resources. The email, titled "**CONFIDENTIAL**," was admitted into evidence as Plaintiff's Exhibit 4 and reads as follows:

THE INFORMATION CONTAINED IN THIS EMAIL IS
CONFIDENTIAL AND WILL ONLY BE SHARED
WITH OTHER DISTRICT SECURITY SUPERVISORS,

AS NEEDED, WHEN THEY WILL BE SUPERVISING
MR. KENNEDY

Mr. Kennedy will be reporting to work tomorrow night
(Thursday, June 16) to work on third shift, weekdays. This
will be his permanent assignment.

I have told him that he will be assigned to work in
the watch room answering phones and performing
whatever other duties are necessary in the watch room.

He is NOT to be given any assignment that involves
having keys to any District facility.

Thank you.

Plaintiff and witnesses testified that they saw printed copies of the email in a security department truck as well as in an office in the Security Services building. No witness testified: (1) that Earles or Barnes² was responsible for distributing the email or placing it in the locations it was found; (2) that Earles or Barnes discussed the email or the subject matter of the investigation with any third party not addressed in the email itself; or (3) that Earles or Barnes knew the email was seen by others prior to this litigation. As the Court recognized during directed verdict arguments at the conclusion of the evidence, the mere fact that non-supervisor witnesses may have seen the confidential email is not sufficient evidence for the jury to conclude *ipso facto* that Barnes or Earles was responsible for its printing or circulation beyond the email's addressees. Proof of a defamatory publication requires publication by the defendant, not speculation that an addressee of the email may have ignored the directive of the email to maintain confidentiality. It is not a permissible inference to speculate that Barnes or Earles was responsible for issuing the communication to a third party (*i.e.*, outside the group of supervisory addressees) just because it was printed out and seen by Plaintiff and his witnesses.

The proof of publication offered by Plaintiff in this case was similar to the proof the Court of Appeals rejected in *Williams v. Lancaster Cnty Sch. Dist.*, 369 S.C. 293, 631 S.E.2d 286 (Ct. App. 2006). In that case, the plaintiff argued that because a rumor existed that the plaintiff coach was having an affair with a secretary, the school principal, who had confronted the plaintiff coach about being in a bathroom alone with the secretary, must have been responsible for publishing the rumor. However, the Court of Appeals found:

Based on the evidence of record, there were numerous individuals who were aware of the . . . incident besides [the Principal]. Any one of those people could have been responsible for the rumor of an illicit relationship between Philip and Cheryl. The record simply does not support the Williamses' assertion that the only individuals who had knowledge of the incident were [the principal and the assistant principal]. Thus, the rumors cannot be said to have only been possibly attributable to [the principal] and the Williamses' argument concerning indirect evidence fails.

Williams, 369 S.C. at 304, 631 S.E.2d at 292.

At trial, Plaintiff offered no direct or circumstantial evidence that either Barnes or Earles was responsible for printing out the email or any further distribution of the email beyond the addressees. There was no evidence presented at trial regarding how or who printed out the email. In addition, Plaintiff's own witnesses testified that they first heard that Plaintiff had been accused of theft and was under investigation *from Plaintiff himself*. As such, Plaintiff failed to prove by a preponderance of the evidence any defamatory publication by Earles or Barnes and JNOV is warranted for that reason.

Likewise, the evidence introduced at trial did not establish the "fault" element on the part of either Defendant Barnes or Defendant Earles without proof that they published the email beyond the list of addressees. As a matter of law, the language of the email itself demonstrates

² There was no evidence at trial that Barnes contributed to preparation of the email, sent the email, printed the email, or copied the email.

that Earles took reasonable precautions to assure its confidentiality. The fact that Earles could have gone to each supervisor individually or not sent the email at all does not negate the reasonableness of the precautions demonstrated by Earles' testimony and the text of the email itself. Plaintiff offered no evidence to suggest that any of the addressees were likely to violate confidentiality or had a tendency to ignore directives to keep employee information confidential. An employer is not obligated to maintain a "rumor free" workplace, particularly in the absence of any evidence that the email addressees were likely to disclose confidential information. Accordingly, there was insufficient evidence of a false and defamatory publication by Defendant Earles or Barnes, or fault on behalf of Earles or Barnes in any such disclosure made by another employee, to warrant submitting the defamation claim to the jury and Defendants are entitled to JNOV.

**2. Any Allegedly False and Defamatory Statement Published
by Either Defendant Regarding Plaintiff was Subject to a
Qualified Privilege and Plaintiff Produced Insufficient
Evidence to Support a Jury Verdict that Any Publication
Was Made with Actual Malice.**

The Court properly determined that a qualified privilege applied to communications by Defendants Earles and Barnes as a matter of law. A statement made in connection with an employer's bona fide inquiry into possible employee misconduct is qualifiedly privileged. *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 507 (Ct. App. 1989). "Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business." *Murray v. Holnam, Inc.*, 344 S.C. 129, 141 542 S.E.2d 743, 749 (Ct. App. 2001).

Where a Defendant is entitled to a qualified privilege, a Plaintiff can recover for defamation only if he or she can show that the Defendant was motivated by actual malice in the publication of the allegedly defamatory statements. *Richardson v. McGill*, 273 S.C. 142, 145, 255 S.E.2d 341, 342 (1979). In the defamation context in South Carolina, "actual malice" means

that the defendant acted “with ill will toward the plaintiff or that [he] acted recklessly or wantonly, meaning with conscious indifference toward plaintiff’s rights.” *Padgett v. Sun News*, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). South Carolina law also requires, in order to prove actual malice, that “at the time of his act or omission to act, the tortfeasor be conscious, or chargeable with consciousness of his wrongdoing.” *Id.* Both ill will and consciousness of wrongdoing must be shown by more than a scintilla of evidence. *See Austin v. Torrington Co.*, 810 F.2d 416, 425 (4th Cir. 1987) (applying South Carolina law). Relevant factors may include whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited, and whether the statement was sent only to the proper parties. *See Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999). The issue of malice is for the jury only when a reasonable juror could draw more than one inference from the evidence. Otherwise, the issue becomes a question of law for the court. *Bell v. Bank of Abbeville*, 211 S.C. 167, 173, 44 S.E.2d 328, 330 (1947) (“*Bell II*”).

It is clear that the plaintiff must show *the publication* was made with actual malice. *See Murray*, 344 S.C. at 143-44, 542 S.E.2d at 750-51. The South Carolina Supreme Court in *Bell II* framed the issue as follows:

Assuming the statements in question to be slanderous in character, were they uttered in good faith in the pursuit of the business of the bank by and to persons who had a right to hear and consider such statements, at a time and place and in a manner and under circumstances which effectually negative the existence of a purpose to injure and defame the respondent; or were the statements made maliciously, or without any proper occasion for the making of the same, and in such manner or under such circumstances that it may be reasonably inferred that the object of the parties was not to bona fide act in the pursuit of the business of the appellant, but to use the excuse of a meeting of the officers and directors to injure and defame the respondent?

Bell II, 211 S.C. at 173, 44 S.E.2d at 330 (1947).

Plaintiff has offered no evidence from which the jury could conclude that any statements were made with the design to injure him, as opposed to a design to communicate operational instructions for supervisory employees in the security department and advise them of the conditions of plaintiff's return to employment. South Carolina appeals courts and federal courts applying South Carolina law have not hesitated to grant summary judgment, directed verdict, or JNOV when evidence of actual malice was lacking. See *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989) (summary judgment granted for defendant; lack of evidence of actual malice). *Bell v. Evening Post Pub. Co.*, 318 S.C. 558, 459 S.E.2d 315 (Ct. App. 1985) (directed verdict upheld for lack of evidence of actual malice); *Bell II*, 211 S.C. 167, 44 S.E.2d 328 (1947) (reversal of jury verdict on appeal because evidence of mere false statement and strained relations was insufficient to send issue of actual malice to jury); *Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987) (applying South Carolina Law and reversing lower court's denial of directed verdict because evidence insufficient to demonstrate actual malice as a matter of law).

As in those cases, Plaintiff offered no evidence that Earles, the drafter of the confidential email, was motivated by ill will or desire to injure Plaintiff, in either drafting the email or sending it to the addressees, as opposed to being motivated by legitimate operational concerns regarding Plaintiff's return to work from leave. Earles' undisputed testimony was that he communicated to the supervisors by electronic mail because security runs three round-the-clock shifts and in-person communication was too difficult. Even more tenuous is Plaintiff's claim that Barnes was motivated by malice or ill will in any communication, because Plaintiff simply did not offer any evidence of any communication by Barnes regarding Plaintiff's job status or suspected involvement in the Spring Valley thefts to any other employee other than the Spring Valley administrators, Hunter and Childers, or to law enforcement investigating the matter.

In contrast, the great weight of evidence negated any suggestion of ill will or desire to harm Plaintiff by way of the communications regarding Plaintiff's return to work. Prior to the

Spring Valley thefts, it was undisputed that Plaintiff had been recommended for promotion by Barnes and Earles. There was no evidence of prior animosity between the defendants and Plaintiff. Either Barnes' or Earles' mere unexpressed belief that Plaintiff had a role in the Spring Valley thefts and could not be trusted is insufficient to establish actual malice. *See Bell II*, 211 S.C. at 174, 44 S.E.2d at 330 (1947) ("in answering these questions we are not concerned with the guilt or innocence of the respondent in respect to the matters charged in the alleged slanderous statements quoted in the complaint and disclosed by the testimony.")³ It was further undisputed that upon his return to work at the same pay, same hours, and same benefits, Plaintiff did not receive any warnings or reprimands for the next 14 months and that the termination of Plaintiff's employment was not a defamatory communication. In summary, Plaintiff did not offer even a scintilla of evidence that Barnes or Earles acted with ill will or conscious indifference to Plaintiff's rights when Earles made a very limited, confidential email communication to the supervisors to whom Plaintiff would be reporting once he returned to work. JNOV is thus proper on qualified privilege grounds.

3. The Court Should Enter JNOV in Favor of Each Individual Defendant Because Plaintiff Produced Insufficient Evidence that Either Defendant Acted Outside the Scope of His Employment or with "Actual Malice" as Applied Under the Tort Claims Act.

The term "actual malice" under the Tort Claims Act has been interpreted by the courts to mean "constitutional malice." *See Gause v. Doe*, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (Ct. App. 1994). In at least three other cases, courts in South Carolina have applied the constitutional "actual malice" standard when addressing immunity under the Tort Claims Act. *Thompson v. Univ. of S.C.*, No. 04-219, 2006 WL 2583595, at *15 & n. 6 (D.S.C. Sept. 5, 2006); *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640, 643 (S.C.1991); *Seaton v. City of N. Charleston*, 2:10-

³ In fact, that belief was also shared by Garrick, Childers, and Hunter, neither of whom Plaintiff sued in this action.

CV-03186-DCN, 2012 WL 6186158 (D.S.C. Dec. 12, 2012). To meet the constitutional malice standard, the plaintiff must show that at the time the alleged defamatory statement was made, either that the defendant knew the statement was false or that the defendant made the statement with reckless disregard of its falsity. *Gause*, 317 S.C. at 42, 451 S.E.2d at 409 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). This is a higher standard than the common law “actual malice” standard which Plaintiff did not prove for the reasons set forth above. There was simply no showing that Barnes or Earles published any defamatory statement or insinuation about Plaintiff with either knowledge of its falsity or reckless disregard of its falsity under the actual malice standard applicable to the Tort Claims Act immunity. As such, Plaintiff did not carry his burden of proving “actual malice” sufficient to maintain individual capacity claims against Barnes and Earles under the Tort Claims Act. Plaintiff’s claims against Barnes and Earles in their individual capacities should not have been allowed to go to the jury under S.C. Code Ann. § 15-78-70(b) and they are entitled to JNOV on this additional ground.

4. The Court Should Enter JNOV Regarding Punitive Damages Because Plaintiff Did Not Prove by Clear and Convincing Evidence Any Defamation by Barnes or Earles That Was Willful, Wanton, or in Reckless Disregard of Plaintiff’s Rights.

Notwithstanding the unconstitutionality of the punitive damages award in this case, *see infra*, the Court should grant JNOV on the issue of whether there was sufficient evidence to allow the jury to consider punitive damages. In South Carolina, punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant’s actions were willful, wanton, malicious, or in reckless disregard of the plaintiff’s rights indicating a failure to exercise even the slightest care. S.C. Code Ann. § 15-33-135 (Supp. 1999): *Taylor v. Medenica*, 324 S.C. 200, 470 S.E.2d 35 (1996). A plaintiff cannot recover punitive damages based on merely negligent conduct. *See Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). Recklessness is distinguished from negligence. *Berberich v. Jack*, 392 S.C. 278,

287, 709 S.E.2d 607, 612 (2011). While negligence is the failure to use due care, recklessness is a higher degree of culpability and responsibility and signifies a conscious failure to exercise due care. *Id.*

A finding of such conduct by Barnes or Earles is inconsistent with the Court's rulings granting directed verdict on Plaintiff's claim for intentional infliction of emotional distress and negligent supervision. In granting the directed verdict on the negligent supervision claim, the Court noted that the School District, through Earles, had a reasonable expectation that the email would be kept confidential and there was no reason to believe supervisors would violate the confidentiality directive. As with the actual malice analysis, the great weight of the evidence shows the lack of any willful, wanton, or malicious conduct by either Barnes or Earles, and certainly not reckless disregard of truth or falsity. Barnes and Earles had recommended Plaintiff for a promotion shortly before his implication in the Spring Valley thefts. Following the police investigation by the Richland County Sheriff's Department, Plaintiff returned to his job for 14 months without reprimand, warning, or negative impact on his pay, work hours, or benefits that can be attributed to Barnes or Earles. The ultimate termination of Plaintiff's employment for reasons not attributable to the theft investigation, or to Barnes or Earles at all, appears to have been a likely, but completely impermissible, basis for the jury's award of punitive damages. Accordingly, there was insufficient evidence to send the punitive damages issue to the jury and the punitive damages awards must be set aside as a matter of law.

5. The Jury's Identical Actual Damages Verdict Against Both Defendants Constitutes an Impermissible Double Recovery and Must be Reformed to a Single Recovery.

The Court instructed the jury that no double recovery would be permitted, but not to concern itself with awarding a double recovery because the Court would properly reform the verdict. Defendants submit that this resulted in an unduly liberal verdict for which, at a minimum, a new trial *nisi remittitur* is warranted (*see infra*). In the alternative, even without

consideration of a new trial *nisi remittitur*, Plaintiff can only recover once for a single wrong and the verdict must be conformed accordingly. It is “almost universally held that there can be only one satisfaction for an injury or wrong.” *Truesdale v. S.C. Highway Dep’t*, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). *Collins Music Co. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998) (“It is well settled in this state that there can be no double recovery for a single wrong and a plaintiff may recover his actual damages only once.”) (internal quotation marks omitted)). The determination of whether a verdict grants a double recovery begins with the trial court’s responsibility to interpret the verdict in order to ascertain the jury’s intent. *Keeter v. Alpine Towers Int’l, Inc.*, 399 S.C. 179, 198, 730 S.E.2d 890, 900 (Ct. App. 2012). While it is difficult to ascertain what motivated the jury’s verdict in this case, Plaintiff clearly cannot recover the same actual damages from both Barnes and Earles. Accordingly, Plaintiff’s total actual damages award must be limited to \$100,000 total to prevent double recovery.

B. The Court Should Grant Defendants A New Trial Absolute.

1. Exclusion of Evidence or Cross-Examination Regarding Plaintiff’s Thefts and the Resulting Termination of His Employment at SCANA Was Prejudicial Error.

Under Rule 59(a), the Court may grant a new trial, in an action tried by a jury, for any of the reasons for which new trials have been granted in actions at law in our courts, including prejudicial error in the admission or exclusion of evidence. *See Howard v. State Farm Mut. Auto. Ins. Co.*, 316 S.C. 445, 450 S.E.2d 582 (1994). The Court granted Plaintiff’s motion *in limine*, which was submitted on the first day of trial, barring any evidence or cross examination on specific instances of similar misconduct Plaintiff committed during recent employment with Allied Barton, his subsequent employer, while on duty at SCANA. On the same date they learned of the information, Defendants timely identified Bill Simpson, an investigator employed with SCANA, as a witness who would testify to his investigation of Plaintiff for thefts that

occurred at SCANA in February 2014, Plaintiff's confession to some of the thefts, Plaintiff's payment of restitution for the thefts, Plaintiff's termination of employment from SCANA and Allied Barton. Mr. Simpson was prepared to authenticate a video recording showing Plaintiff in the act of committing petty thefts during his third shift security work at SCANA. The Court excluded the testimony of Mr. Simpson and the desired cross-examination as inadmissible character evidence under Rules 404 and 403 of the South Carolina Rules of Evidence on the grounds that the evidence was not a "prior" bad act of Plaintiff; that it was unrelated in time to Plaintiff's alleged defamation by Defendants; that it would be more prejudicial than probative; and that Rule 404 requires clear and convincing evidence of other crimes, wrongs, or acts that are not the subject of a criminal conviction.

Defendants respectfully submit that the Court erred by excluding the evidence because Plaintiff's defamation claim placed his reputation and character for petty theft directly in issue under Rules 404 and 405, SCRE, and the evidence was highly probative to Defendant's truth defense, Plaintiff's damages for alleged loss of reputation, causation of Plaintiff's alleged damages for lost reputation and alleged special damages, and Plaintiff's failure to mitigate damages. Neither the South Carolina appellate courts nor any other court interpreting the identical federal rule have ever applied a "clear and convincing" standard under Rule 405 to cases in which character is a direct issue in the claim or defense. Because Plaintiff placed his character and reputation squarely in issue with his defamation claim, the evidence was not *unfairly* prejudicial to his claims under Rule 403, even though it was highly probative of his lack of character or trustworthiness and diminished reputation. *See State v. Lee*, 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012) ("All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be scrutinized under Rule 403.") (internal quotations omitted, emphasis in original). The exclusion of the SCANA evidence effectively allowed Plaintiff to extol his character and reputation and claim continuing damages allegedly suffered due to the Defendants' conduct,

while at the same time, insulating his character and reputation from legitimate questioning and attack based on a nearly identical theft committed at his place of work while his current lawsuit was still pending.

SCRE 405 provides:

Rule 405. Methods of Proving Character

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

The South Carolina appellate courts do not appear to have addressed the applicability of Rules 404 and 405 to a defamation case where character has been directly placed in issue. However, pre-rules cases clearly provide that a defamation claim puts character directly in issue and character evidence is admissible in defamation cases. *See Sheriff v. Cartee*, 121 S.C. 143, 113 S.E. 579 (1922) ("the plaintiff's character is directly put in issue by the action of slander, and the defendant may, in mitigation, give in evidence his general bad character . . .") (citing *Buford v. McLuny*, 1 Nott & McC. 268, 1818 WL 878 (Nov. 1818)). "This court expressly recognizes that an action for libel or slander is embraced within the exception to the general rule that 'reputation, good or bad, may not be pleaded or proved' in a civil action. *Id.*, citing *Smith v. Lafar*, 67 S.C. 495, 46 S.E. 333 (1903). Further, "[O]ne of disparaged fame is not entitled to the same measure of damages with one whose character is unblemished, and it is competent to show that by evidence." *Id.*

Cases from other states and federal courts interpreting the identical versions of Rule 405 uniformly recognize a clear exception from normal character evidence rules that applies to defamation or slander cases when character and reputation are directly placed in issue. *See State v. Doherty*, 437 A.2d 876, 878 (Me. 1981) ("A prominent example of 'character in issue' is the defamation action where, to support the defense of truth, the defendant may prove that his or her allegedly defamatory communication accurately depicted the plaintiff's character."); *United States v. Keiser*, 57 F.3d 847, 856 (9th Cir. 1995) ("Character may be 'in issue,' as when a statute specifies the victim's chastity as an element of the crime of seduction, or when the defense to a defamation action is the truth of the allegedly defamatory statement."); *Pierson v. Robert Griffin Investigations, Inc.*, 555 P.2d 843 (1976) (Appellant Pierson brought suit to recover damages for respondents' publication of an alleged document concerning Pierson. Pierson contends the district court erred in admitting into evidence criminal acts committed by him more than 10 years before the alleged libel. Pierson's reliance is misplaced. Since Pierson's character was put in issue by respondents' defense of truth, the evidence was properly admissible.); *Holiday v. Cutchin*, 305 S.E.2d 45, 47 (N.C. Ct. App. 1983) *aff'd*, 316 S.E.2d 55 (N.C. 1984) ("Therefore, character evidence is admissible when character is directly in issue as in actions involving moral intent: seducing an innocent or virtuous woman, defamation, or malicious prosecution."); *Johnson v. Pistilli*, No. 95 C 6424, 1996 WL 587554 at n. 5 (N.D. Ill. Oct. 8, 1996) ("It is rare that character is an essential element. The typical example of such a case is defamation where injury to reputation must be proven."); *Ajouelo v. Auto-Soler Co.*, 6 S.E.2d 415, 419 (Ga. Ct. App. 1939) ("It is generally held that the foundation of an action for defamation is the injury done to the reputation, that is, injury to character in the opinion of others arising from publication...."); *United States v. Manos*, 848 F.2d 1427, 1432 (7th Cir. 1988) (Here the district court decided that specific instances of conduct were admissible under Rule 405(b) because they demonstrated the honesty of the defendant, which was an essential element of the

crime charged.); *Redfearn v. Thompson*, 73 S.E. 949 (Ga. Ct. App. 1912) (permitting the jury to consider plaintiff's bad reputation in mitigation of damages); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1371-72 (11th Cir. 1998) ("Since the plaintiff's character is substantively at issue in a libel case under Georgia law, Rule 405(b) permits the admission of evidence regarding specific instances of the plaintiff's conduct on that issue."); *Government of the Virgin Islands v. Grant*, 775 F.2d 508, 511 n. 4 (3d Cir.1985); cf. *Longmire v. Alabama State Univ.*, 151 F.R.D. 414, 419 (M.D.Al.1992) (permitting discovery regarding specific incidents of misconduct because the libel plaintiff put his character in issue).

The rationale for admission of other acts evidence in defamation cases is that "The hazards of prejudice, surprise, and time consumption implicit in this manner of proof are more tolerable when character is itself in issue than when this evidence is offered as an indirect indication of how [the party] behaved on a specific occasion." *See Character in Issue*, 1 McCormick on Evidence, s 187 (7th Ed.). "[T]he possibility that specific acts may be inquired into on cross examination (which may prompt barring specific act evidence when character is not in issue) is hardly of concern, since the door to such evidence is already open." *Id.* "For example, testimony concerning a defendant's reputation for truthfulness is admissible in a defamation action, and evidence of specific instances of a plaintiff's conduct is admissible in a libel action because the plaintiff's character is substantively at issue." 32 C.J.S. Evidence § 664.

Plaintiff's complaint alleges that he suffered "loss of reputation in the security industry" as a result of Defendants' alleged defamatory statements. (Compl. ¶¶ 19, 26.) In addition to coming to trial with the door wide open, Plaintiff further opened the door to evidence of Plaintiff's loss of employment at SCANA, the reasons for that loss of employment, and accusations of theft at SCANA on multiple occasions by:

- 1) Introducing evidence regarding Plaintiff's subsequent, current employment at GEO without any testimony about his tenure at Allied Barton or SCANA.

- 2) Eliciting Plaintiff's hearsay testimony that he had "recently" overheard a former student saying that Plaintiff had stolen items from Spring Valley High School.
- 3) Cross-examining Defendants' witnesses on the issue of whether Plaintiff had been accused of other thefts after the Court had ruled to exclude such evidence.
- 4) Eliciting Plaintiff's testimony regarding alleged financial damages incurred following his October 2012 termination from Richland Two, the causation of which Defendants were unable to effectively challenge without being able to question Plaintiff as to his SCANA separation. The SCANA accusations and employment termination would be an obvious alternative cause of his alleged financial difficulties or current state of his reputation or character.
- 5) Closing argument seeking a wage-based damages award.

Finally, Rule 405 draws no distinction between "prior bad acts" and "subsequent bad acts." Federal and state courts interpreting the identical rule have noted this lack of a distinction and have not distinguished between prior and subsequent bad acts when evaluating admissibility under either Rule 404 or 405. *See State v. Weaverling*, 337 S.C. 460 523 S.E.2d 787 (Ct. App. 1999) (affirming admission of both prior and subsequent wrongful acts to show common scheme or plan); *U.S. v. Lighty*, 616 F.3d 321 (4th Cir. 2010) (no distinction between prior and subsequent bad acts for purposes of rule 404(b)); *U.S. v. Cardenas*, 32 F.3d 563 (4th Cir. 1994) (copy attached) ("We have consistently recognized that under Rule 404(b), a court may admit subsequent bad acts to establish prior intent or knowledge."); *United States v. Hadaway*, 681 F.2d 214, 217 (4th Cir. 1982) ("subsequent conduct may be highly probative of prior intent. That one has thought in a particular illegal way over a period of time is evidence that one's thought patterns had already been so developed and were so operating on another previous occasion."); *see also Fielder v. Magnolia Beverage Co.*, 757 So. 2d 925, 930 (Miss. 1999) ("the analysis as to the admissibility of specific instances of conduct on cross-examination under Rule 405 appears to apply equally to prior and subsequent acts. Similar to Rule 404, Rule 405 makes

no distinction between prior and subsequent specific instances.”) (citing *United States v. Latney*, 108 F.3d 1446, 1449 (D.C. Cir. 1997); *Bullock v. Commonwealth of Virginia*, 498 S.E.2d 433, 437 (1998) (holding that the same principle of admission of prior bad acts “applies equally in cases of subsequent bad acts.”)). In the context of defamation or slander, Plaintiff’s subsequent misconduct at SCANA was directly probative on the truth defense (that Plaintiff is not trustworthy/is prone to petty theft), as well as Plaintiff’s reputation at the time of the damages award, causation of his alleged reputational damages, and his failure to mitigate damage to his reputation. It was also relevant to show absence of mistake or common scheme or plan under Rule 404(b), as his third shift rifling through SCANA employees’ desks and cabinets was practically identical to the manner, method of operation, and type of thefts reported at Spring Valley in 2011. As a result of the exclusion of the evidence, Plaintiff was able to present himself as someone with a reputation of trustworthiness in the security industry who had only been accused of workplace theft in late February and early March 2011, without permitting Defendants to challenge that false representation or to challenge Plaintiff’s claim that Defendants, rather than another source, were the proximate cause of that alleged reputational injury. Accordingly, it was prejudicial error to exclude the evidence and a new trial is warranted.

2. Exclusion of Evidence of Prior Thefts at Spring Valley was also Prejudicial Error.

For the same reasons it was error to exclude subsequent bad acts committed at SCANA, it was error to exclude evidence of prior related thefts at Spring Valley. This was particularly the case because Plaintiff’s counsel repeatedly opened the door to such evidence by asking defense witnesses to confirm that Plaintiff had not been accused of any thefts prior to February 2011, and attempting to obtain agreement from defense witnesses that it would be unusual for Plaintiff to have started committing petty thefts in February 2011 when he had been working at the school for a number of years. This questioning clearly opened the door to such evidence of earlier thefts at Spring Valley and its exclusion prevented Defendants from challenging Plaintiff’s “no prior

thefts” argument. In addition, the exclusion of this evidence, despite Plaintiff’s counsel’s repeated “opening the door” to the evidence, left unnecessary redactions and interruptions to witness testimony that the jury apparently held against Defendants.

**3. Plaintiff’s Counsel’s Wage-Based Damages Calculation
Urged During Closing Deprived Defendants of a Fair
Verdict.**

As a general rule, inflammatory remarks which are calculated to appeal to the passions or prejudices of a jury should be affirmatively condemned. *South Carolina State Highway Dep’t. v. Nasim*, 255 S.C. 406, 411, 179 S.E.2d 211, 213 (1971). “[W]hether or not the particular arguments are so prejudicial as to constitute reversible error depends upon the nature of the utterances and the circumstances under which they were made.” *Id.* Under certain circumstances, this Court will grant a new trial despite the aggrieved party’s failure to contemporaneously object to the argument if the prejudice caused by the argument is clear. *Dial v. Niggel Assoc., Inc.*, 333 S.C. 253, 256, 509 S.E.2d 269, 271 (1998); *Toyota of Florence, Inc., v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994).

It was completely improper for Plaintiff’s counsel to request a wage-based calculation of \$400,000 in damages – 10 years at \$40,000 per year where: (1) Plaintiff’s employment termination was not part of the case and no evidence of current or future lost wages was offered or proven; and (2) the Court’s complete exclusion of SCANA evidence was based on the representation and ruling that Plaintiff was not seeking damages for the current or future effects of Plaintiff’s alleged reputational injury.

The prejudice to Defendants from these arguments was compounded by the Court’s refusal to instruct the jury that Plaintiff’s termination from employment was not part of the case. These errors invited the jury to award damages based on matters outside the evidence and to “send a message” for reasons of passion or prejudice, rather than evidence presented at trial.

4. The Court Should Grant a New Trial Absolute Because the Size of the Verdict Demonstrates that it was Motivated by Caprice, Passion, or Prejudice.

“If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute.” *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003) (internal quotation marks omitted) (quoting *O’Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)). “If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute.” *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 241, 734 S.E.2d 148, 159 (2012). The Court should grant a new trial absolute when the verdict rendered is so “shockingly disproportionate to the injuries suffered” that it must have been motivated by passion, prejudice, and caprice. *See Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 762 (Ct. App. 2000).

The size of this verdict should shock the conscience of this Court. In this case, the undisputed testimony was that, despite being questioned and placed on administrative leave with full pay during a criminal investigation which did not result in charges, Plaintiff’s employment was not terminated. Rather, he was returned to his job with the same pay, benefits, and hourly schedule. Plaintiff received no warnings or reprimands for the next fourteen months until his employment was terminated. Plaintiff conceded that his ultimate termination was not part of the case and he had not been defamed in the process of or by the act of termination. During the fourteen months Plaintiff remained employed with Richland Two, he liked his job and did not apply for any positions outside Richland Two. Following his termination from Richland Two, Plaintiff immediately secured a job making a higher hourly wage at Allied Barton. He remained in that job until he “resigned” his employment in February 2014. He promptly found another job

at GEO. It was further undisputed that neither defendant gave Plaintiff a negative job reference or took any action to prevent him from securing comparable employment.

Plaintiff produced no witness testimony or other evidence that anyone's opinion of him had changed following Richland Two investigation and reassignment to a position in which he testified he was performing "supervisory" duties. Two of Plaintiff's three witnesses testified that *Plaintiff himself* was the source of their knowledge that Plaintiff had been accused of theft at Spring Valley and was under investigation.

Moreover, Plaintiff offered no testimony or evidence that either Barnes or Earles had told anyone other than the addressees of the CONFIDENTIAL email that Plaintiff was not a supervisor upon his return to work. It was also undisputed that Roosevelt Garrick, who was in charge of human resources, denied Plaintiff the promotion for which Defendants had selected him and that neither Defendant was responsible for the denial of the promotion. Plaintiff produced no evidence of special damages and testified only to his own hurt feelings and embarrassment at being accused of and investigated for the Spring Valley thefts. Any special damages alleged by Plaintiff (*i.e.*, cashing out retirement, living out of his car) would have been attributable to the termination of his employment from the School District or SCANA, and thus not recoverable as proximately caused by the alleged defamation. *See Wardlaw v. Peck*, 282 S.C. 199, 205-06, 318 S.E.2d 270, 275 (Ct. App. 1984) ("special damage must consist of some provable material loss to the plaintiff as a result of the injury to his reputation.")

Despite this paucity of liability and damages evidence, the jury awarded Plaintiff \$200,000 in actual damages and \$350,000 in punitive damages. Given the evidence presented at trial, the sheer amount of the verdict clearly shows forces at work other than a legitimate review and assessment of the evidence of liability and damages presented at trial. Accordingly, the verdict must be set aside and a new trial absolute granted under Rule 59.

5. The Cumulative Effect of all of the Above Issues Warrants a New Trial Absolute Under Rule 59.

Even if none of the individual grounds justifies a new trial, the cumulative effect of the reasons JNOV should be granted, the errors identified, and the passion, prejudice, caprice, and lack of evidence supporting the jury's verdict cumulatively justify a new trial absolute.

6. The Court Should Grant a New Trial Pursuant to the Thirteenth Juror Doctrine Because the Evidence at Trial Did Not Justify the Verdict.

South Carolina's thirteenth juror doctrine allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict. *Norton v. Norfolk S. Rwy. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851 854 (2002); *Trivelas v. S.C.D.O.T.*, 357 S.C. 545, 551 (Ct. App. 2004); *Duncan v. Hampton Cnty. Sch. Dist. No. 2*, 335 S.C. 535, 547, 517 S.E.2d 449, 455 (Ct. App. 1999) ("[T]he trial court may grant a new trial absolute when, sitting as the thirteenth juror, it concludes the jury's verdict is not supported by the evidence."). The effect of this relief is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror essentially "hangs" the jury. When a civil jury fails to reach a verdict, a new trial is ordered. *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990); *Vinson v. Hartley*, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App. 1996). The trial judge need not explain his or her reasons for granting a new trial when sitting as the thirteenth juror. *Folkens*, 300 S.C. at 254-5, 387 S.E.2d at 267. For all of the reasons set forth above and out of fundamental fairness to the Defendants, the Court should invoke the Thirteenth Juror doctrine and order a new trial.

C. At A Minimum, Defendants Are Entitled To A New Trial Nisi Remittitur.

If the verdicts were not the result of passion, caprice, or prejudice, they were at least excessive and Defendants also submit that they are entitled to a remittitur. "The trial judge alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993); see

also *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. App. 1997) (stating “[t]he trial judge has the discretionary power to grant a new trial *nisi*”). When a party moves for a new trial *nisi*, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice. *Vinson*, 324 S.C. at 404, 477 S.E.2d 715 at 723 (citing *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993)). Even assuming the award was not actuated by passion, caprice, prejudice, or matters outside the evidence, its undue liberality is patently obvious given that Plaintiff offered no evidence of special damages arising from the alleged defamatory publication and punitive damages were completely inappropriate for the reasons previously stated and for the reasons set forth below.

D. Defendants Are Entitled to A Reversal Or Reduction In the Amount Of Punitive Damages Because They Do Not Comport With Constitutional Due Process.

To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Solanki v. Wal-Mart Store No. 2806*, 2012-213247, 2014 WL 4087911 (S.C. Ct. App., Aug. 20, 2014). The awards of punitive damages in this case do not comport with constitutional due process. See *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); *BMW N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589 (1996). The practice of awarding punitive damages originated in principles of criminal law “to deter the wrongdoer and others from committing like offenses in the future.” *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 393, 134 S.E.2d.206, 210 (1964) (internal citation omitted). Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Atkinson v. Orkin Exterminating Co.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004); see also *Gore*, 517 U.S. at 568, 116 S. Ct. at 1595 (“The Due Process Clause of the Fourteenth

Amendment prohibits a State from imposing a grossly excessive punishment on a tortfeasor.”)
(internal quotations omitted).

The United States Supreme Court has set forth three guideposts that trial courts must apply to an award of punitive damages to determine whether the award violates due process. *Gore*, 517 U.S. at 575, 116 S. Ct. at 1599. Those guideposts include: (1) the reprehensibility of the defendant’s conduct; (2) the ratio to the compensatory damages awarded (actual or potential harm inflicted on the plaintiff); and (3) comparison of the punitive damages award and civil or criminal penalties that could be imposed for comparable misconduct. *Gore*, 517 U.S. at 574, 116 S. Ct. at 1598.

Reprehensibility is “[p]erhaps the most important indicium of the reasonableness of a punitive damages award.” *Gore*, 517 U.S. at 75, 116 S. Ct. at 1599. “This principle reflects the view that some wrongs are more blameworthy than others.” *Id.* In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003); *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009).

Each of the *Campbell/Fortis* factors demonstrates that the punitive damages the jury awarded Plaintiff were constitutionally impermissible. First, Plaintiff suffered no economic harm from the alleged defamation and certainly no physical harm. Second, there was no evidence of a reckless disregard for the health or safety of Plaintiff, who kept his job after the alleged thefts without reprimand, warning, or any desire on his part to leave the job. Third, while Plaintiff may have been financially vulnerable in a vacuum, the alleged defamation by

Barnes and/or Earles had no financial impact on him as shown above. Fourth, the alleged defamation was a one-time event and Plaintiff continued working for fourteen months after the alleged defamatory email to supervisors, segueing directly into another job with a better per-hour pay rate upon his discharge from Richland Two for unrelated reasons. Finally, there was no trickery, deceit, or intentional malice even if a jury could somehow find from the evidence that Earles or Barnes was responsible for any communications about Plaintiff's trustworthiness outside the supervisory chain addressed in the CONFIDENTIAL email. The conduct of Barnes and Earles was at worst, negligent. The evidence presented at trial was that other witnesses who were not named Defendants, including Roosevelt Garrick, Tim Hunter, and Jim Childers, similarly believed that Kennedy was responsible for the Spring Valley thefts and that they communicated that belief internally among supervisors who had a legitimate need to know the information. Moreover, the undisputed testimony was that it was the decision of Garrick, not Barnes or Earles, to deny Kennedy the promotion to lieutenant originally recommended by Barnes and Earles. Earles merely effectuated that decision by returning Kennedy to work and reassigning his position, which was communicated only to supervisors.

As to the second *Gore* factor, the Supreme Court has indicated that the reasonableness of a punitive damages award cannot be determined solely by comparing the punitive damages award to the actual damages award; rather, the touchstone of the inquiry is reasonableness. *Gore*, 517 U.S. at 575, 116 S. Ct. at 1599. While the multiplier for punitive damages is low in this case, the unreasonable amount of actual damages based on the lack of evidence presented by Plaintiff makes the amount of the punitive damages award completely unreasonable.

As to the final *Gore*, factor, *i.e.*, comparison of the punitive damages award to civil fines and criminal penalties that could be imposed for similar conduct, there are no criminal penalties for workplace defamation in South Carolina. Consequently, there is nothing to assess this particular factor against.

Moreover, application of the eight factors set forth by our own state Supreme Court, in *Gamble v. Stevenson* for a post-verdict review of due process of punitive damages awards also warrants reversal of the jury's punitive damages awards against Defendants.

The *Gamble* factors are:

- (1) defendant's degree of culpability;
- (2) duration of the conduct;
- (3) defendant's awareness or concealment;
- (4) the existence of similar past conduct;
- (5) likelihood the award will deter the defendant or others from like conduct;
- (6) whether the award is reasonably related to the harm likely to result from such conduct;
- (7) defendant's ability to pay; and
- (8) other factors deemed appropriate.

Id. at 111-12, 406 S.E.2d at 354.

Defendants' analysis of the *Campbell* reprehensibility factors disposes of the first four *Gamble* factors. Defendants' conduct was, at worst, negligent and numerous other employees participated in or made decisions regarding Plaintiff's employment and shared Defendants' belief that Plaintiff was not to be trusted; the alleged defamatory communication was a one-time event, as Plaintiff did not show any prior or subsequent defamation and could not sustain a negligent supervision claim as a matter of law. In fact, Plaintiff continued in his job without complaint or incident for another fourteen months after reinstatement. Any communications Defendants made were limited in scope to proper parties on a proper occasion and related to business operations.

With regard to the final four factors, Plaintiff offered no evidence whatsoever of the Defendants' ability to pay. As noted above, the punitive damages award is not likely to deter

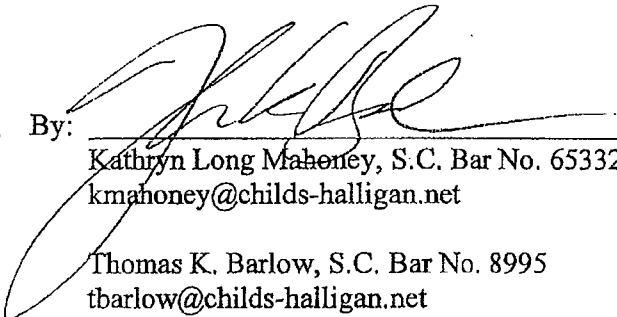
future workplace defamation because the award of punitive damages was completely unpredictable and bore no reference to the alleged culpability of Defendants, who were merely acting as part of a larger organizational decision. Finally, the award is not reasonably related to the harm likely to arise from the alleged defamatory communication in this case. As such, the punitive damages awards in this case do not comport with due process and should be set aside or reduced.

III. CONCLUSION

For all the foregoing reasons, Defendants are entitled to JNOV, or in the alternative, a new trial absolute or a new trial *nisi remittitur*, which should include striking the punitive damages award as unconstitutional based on the evidence at trial.

Respectfully submitted,

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Attorneys for Defendants

October 13, 2014

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, FOR NEW TRIAL ABSOLUTE, OR IN THE ALTERNATIVE, FOR NEW TRIAL NISI REMITTITUR** by serving a copy of same via hand-delivery to the following on this 13th day of October, 2014:

T. Jeff Goodwyn, Jr., Esq.
Rachel G. Peavy, Esq.
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205


Lonna M. Coufal

FORWARDED
FILED
2014 OCT 13 PM 12:20
JANETTE M. MOORE
CLERK, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jeffrey Kennedy,

Plaintiff,

vs.

Richland Two County School District, Eric
Barnes, and Chuck Earles,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 13-CP-40-01460

MEMORANDUM IN OPPOSITION TO
DEFENDANTS' POST-TRIAL MOTIONS

2014 OCT 20 PM 4:38
JANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The Plaintiff hereby submits this Memorandum in Opposition to Defendants' post-trial motions.

Factual Background

The trial of this matter commenced on Monday, September 29th and lasted through Friday, October 3, 2014. The jurors considered testimony from twelve (12) witnesses and numerous exhibits were entered into evidence. The Court heard and granted directed verdict to the Defendants on two of the three causes of action in the complaint; the sole cause of action that was considered by the jury was a claim for defamation against Eric Barnes and Chuck Earles, individually and as employees of Defendant Richland Two County School District. Most of Defendant's post-trial motions represent what is essentially a re-argument of the Defendants' directed verdict motions at trial; however, for purposes of preserving the record, Plaintiff will respond in kind. Plaintiff further incorporates by reference all prior arguments and memoranda that were before the Court at trial.

Argument in Response

I. Defendants' JNOV Motion Should Be Denied Because The Court Correctly Ruled That There Was Sufficient Evidence To Go To The Jury On The Defamation Claim.

"In ruling on a motion for directed verdict and JNOV, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party." The trial court should deny the motion where either the evidence yields more than one inference or its inference is in doubt. [The appellate court] will reverse the trial court's ruling on a directed verdict motion only where there is no evidence to support the ruling or where the ruling is controlled by an error." Clark v. S.C. Dept. of Public Safety, 362 S.C. 377, 608 S.E.2d 573 (2005) (internal citations omitted).

Defendants argue that Plaintiff failed to "meet his burden of proving an unprivileged publication by either Defendant Earles or Defendant Barnes." Def. Motion at p. 3. **This is the exact argument which the defense made in their motion for directed verdict and which the Court properly denied.** At the trial, the undisputed testimony was that the email marked "confidential" was printed out and left out in the open for other Richland Two employees to see. While the Defendants (who were the author and a recipient of the email) testified that they didn't print out the email, the credibility of such testimony was for the jury to decide. Furthermore, Eric Barnes specifically testified at trial that he had to let everyone know that that Mr. Kennedy could not have keys in case there was a shift change and someone thought Mr. Kennedy should get keys. This testimony suggests either verbal or written communication to other staff members regarding the contents of the email.

Incredibly, the Defendants argue that "Plaintiff offered no evidence to suggest that any of the addressees [of the email] were likely to violate confidential confidentiality or had a tendency to ignore directives to keep employee information confidential." Def. Mot. At p. 6. This statement is in direct conflict with the evidence presented at trial – that Chuck Earles considered Richland Two's security division to be a rumor mill and both he and Eric Barnes required employees to sign a "Change of Culture" memorandum stating that they would not gossip, among other things.

Because there was testimony in the record from which the jury could have found that, by either the words or a combination of words and conduct, it was communicated to Richland Two employees that Messrs. Barnes and Earles considered Jeffery Kennedy to be a thief, there was sufficient evidence to constitute proof of publication and directed verdict was properly denied. See Mains v. K-Mart Corp., 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988) (holding that the jury could have found that "words or conduct or the combination of words and conduct can communicate defamation" and therefore there was no error in the denial of defendant's motion for directed verdict or JNOV) (citing Tyler v. Macks Stores of South Carolina, Inc., 275 S.C. 456, 272 S.E.2d 633 (1980)).

With respect to Defendant's second argument relating to the applicability of a qualified privilege, any qualified privilege which attached to communications by Defendants Earles and Barnes was exceeded (and therefore lost) when the memorandum was left out in the open for rank and file Richland Two employees to observe. See Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) (noting that whether the publication went too far beyond what the occasion required, resulting in the loss of the qualified privilege, was properly for the jury).

The undisputed testimony at trial was that the printed out email was left out in vehicles and in Richland Two offices for employees other than the recipients of the email to observe. Accordingly, directed verdict was properly denied and Defendant's JNOV motion should likewise be denied. See Abofreka v. Alston Tobacco Co.; 288 S.C. 122, 341 S.E.2d 622 (1986).

Furthermore, there was sufficient evidence of actual malice presented during the trial to go to the jury. "Common law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference toward the plaintiff's rights." Murray, 542 S.E.2d at 750. "Malice may be proved by direct or circumstantial evidence . . . Whether malice is the incentive for a publication is ordinarily for the jury to decide. Proof that statements were published in an improper and unjustified manner is sufficient evidence to submit the issue of actual malice to a jury." Id. at 750-751.

During the trial, the Plaintiff submitted evidence that Richland Two security division was a veritable "rumor mill" and that both Chuck Earles and Eric Barnes conducted what could be characterized, at best, as an extremely limited investigation into the thefts. Both men testified that they never interviewed the other people who had opportunity and access to the athletic director's office when the theft allegedly occurred. Additionally, both Defendants testified that it would be harmful to Jeffery Kennedy if their "no keys" mandate became known beyond Mr. Kennedy's supervisors. Eric Barnes testified with great emotion that he strongly believed that Mr. Kennedy was responsible for the theft and should have been fired. Finally, it was undisputed that the Richland County Sheriff's Department did not believe that there was sufficient evidence to arrest and charge anyone in the theft, including Mr. Kennedy. Taken together, the jury could have found this evidence demonstrated a reckless disregard for Mr.

Kennedy's rights and reputation when the defendants let it be known that they believed Mr. Kennedy could not be trusted and was a thief. See Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999) (holding that the granting of directed verdict was in error when comments made by the defendant about the plaintiff's credit-worthiness could arguably be considered to have been made in bad faith and with an intent to mislead).

With respect to Defendant's third JNOV argument beginning on page 9 of their Motion, Plaintiff argues that Defendants are not entitled to JNOV because of a failure by the Plaintiff to prove "constitutional malice". This argument fails because the Defendant never argued or requested a charge on "constitutional malice" at the trial stage. Furthermore, the case upon which Defendants rely, Gause v. Doe, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994), is inapplicable because it concerns the standard applicable where the case involves defamation of a public official.¹ See also Goodwin v. Kennedy, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001) (holding that defendant was not entitled to a "constitutional malice" charge because the plaintiff, an assistant school principal, was not a public official.)

With respect to Defendant's fourth JNOV argument beginning on page 10 of their Motion, the Defendants again re-argue their directed verdict motion in support of their JNOV motion as to punitive damages. "A new trial absolute should be granted only if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motives." Smalls v. SC Dept. of Education, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000) (internal citations omitted). As previously discussed, the evidence in the record was that

¹ It goes without saying that no evidence was presented at trial the Mr. Kennedy was a public figure.

the investigation conducted by the Defendants – two longtime law enforcement employees – was minimal; that the security division was a “rumor mill”; and that no one else who had access to the Athletic Director’s office on the night in question was ever even questioned. The jury heard undisputed testimony that “everyone had keys” at Spring Valley; that Chuck Earles and Eric Barnes did not even know who had keys to which offices on the dates in question; and that no one had even saved the majority of the video footage which was apparently so crucial in their targeting of the Plaintiff. The jury also heard testimony that the Defendants did not even speak with the shift supervisor, Lt. Gerome Young, who was on duty on the night in question.

Finally, there was evidence that there was a “right” way to conduct such a sensitive investigation, as demonstrated by the testimony of Assistant Principal Jim Childers regarding his dealings with Larraine Jackson, the night custodian. Human Resources Director Roosevelt Garrick testified that Richland Two strived for a “culture of excellence” which was demonstrated by the discretion and sensitivity of Assistant Principal Childers. Taken together, the glaring contrast between the actions of Messrs. Earles and Barnes and the “best practices” espoused by Richland Two were certainly sufficient to show recklessness on the part of the Defendants. Messrs. Earles and Barnes let it be known that they thought Mr. Kennedy was a thief and could not be trusted, regardless of the fact that he was never arrested or convicted of any crime. This shows maliciousness on the part of the Defendants.

Furthermore, Mr. Kennedy’s own testimony, which was apparently believed by the jury, could accurately be described as heartbreaking and certainly sufficient to support an award of punitive damages. Mr. Kennedy testified that because of the smear on his reputation – because he was branded a thief – his marriage of 14 years broke down; he was essentially

"shunned" at church; and he was the subject of stares and gossip. He further testified that he lost his house, cashed in his pension, and was forced to live in his car. This testimony and supporting exhibits were entered without objection from the defense.

The Defendants argue that the "ultimate termination of Plaintiff's employment for reasons not attributable to the theft investigation, or to Barnes or Earles at all, appears to have been a likely, but completely impermissible, basis for the jury's award of punitive damages." Def. Mot. At p. 11. Again, the Defendants ignore the evidence which showed that Mr. Kennedy was already considered untrustworthy (due to the theft investigation) by Mr. Garrick and Ms. Batchelder at the time when Kim Jones made her allegations. Accordingly, the Richland Two administration was predisposed to discount Mr. Kennedy's rendition of events surrounding the video, and the testimony supported this scenario. The jury could have reasonably concluded that one of Mr. Kennedy's damages as a result of the defamation was that the administration believed Kim Jones instead of him.

With respect to Defendant's fifth JNOV argument beginning on page 11 of their Motion, Plaintiff argues that the verdict is proper and full payment of the judgment would not represent a double recovery. The Defendants were named separately in the lawsuit and the evidence before the jury as to each defendant was separate and distinct. Defense counsel specifically requested that the verdict form reflect two separate, individual defendants, with separate questions as to whether the individual acted with actual malice, hence the two verdict forms. There was no single, general verdict form for precisely this reason. The trial judge specifically charged the jurors that they were to consider each defendant individually and repeated this charge in response to a question by the jury during deliberations.

Defendants now argue that because the jury awarded actual damages against each Defendant in the amount of \$100,000, there is an impermissible "double recovery". However, the Defendants fail to address what is crystal clear - that the jury awarded Plaintiff \$300,000 against Chuck Earles and \$250,000 against Eric Barnes - two different dollar amounts. Therefore, the only reasonable interpretation of the verdict is that the jury intended to award damages against each Defendant based upon his specific culpability.

The undisputed testimony showed that Defendant Earles was clearly the supervisor and Mr. Barnes was his deputy. The jurors could have elected to award greater damages against Mr. Earles because he was the boss, or perhaps because they chose to believe that Mr. Earles printed out the "confidential" email. The jurors could have elected to have award more punitive damages against Defendant Earles because he was the author of the "Change of Culture" directive. Whatever the case, there were two separate defendants who came across differently to the jury. Put simply, there is no "single act" here and therefore the verdicts against both defendants are proper. See Boiter v. S.C. Dept. of Transportation, 393 S.C.123, 712 S.E.2d 401 (2011) (holding that identical jury award against the DOT and the Department of Public Safety did not constitute a "double recovery" because the jury could have found DOT negligent, and DPS not negligent, and the verdict against the one defendant would still stand). Just like the situation presented in Boiter, here the jurors were free to consider the evidence and culpability of both defendants just as the Court instructed them to do. In the event the jury felt only one man had defamed Mr. Kennedy and acted with actual malice, it was free to enter

verdicts reflecting such a decision. There was no double recovery and the individual verdicts must stand.²

Furthermore, any "defect in the form of a verdict must be presented at the time it is published, and failure to do so waives the right to raise that matter later." Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 560 S.E.2d 894 (2002). Defendants did not object to the verdict form at the time the verdict was published and therefore any objection is waived. "Once the jury in a civil case is discharged, the trial judge has little power to correct or amend a jury's verdict which, on its face, is unambiguous." Vinson v. Jackson, 327 S.C. 290, 491 S.E.2d 249 (1992). As a result, Defendants' Motion for JNOV on this basis should be denied.

II. The Trial Court Properly Excluded Evidence As to the Alleged SCANA Theft Pursuant to Rules 403, 404, and 405 of the Rules of Evidence.

Again, the Defendants reargue that Plaintiff's *Motion in Limine* should have been denied. Because the Court correctly ruled that the SCANA evidence should be excluded, the Defendants' Motion for a New Trial Absolute should be denied.

On March 25, 2014 — over 3 years since the alleged theft at the AD's office — Mr. Kennedy was arrested and charged with a misdemeanor larceny charge. The incident occurred while he was employed by Allied Barton as a security officer, working under its contract with SCANA. The charges allege that Mr. Kennedy stole a pair of safety goggles (valued at \$5.00) and \$10.00 in cash from a room at a SCANA location. The case is pending and Mr. Kennedy has

² Defendants' reliance upon the case of Collins Music Co. v. C.W. Smith, 332 S.C. 145, 503 S.E.2d 481 (Ct. App. 1998) is misplaced. In Collins, the plaintiff sued two defendants — one with which it had a contract, and one which it alleged interfered with such contract. The Court found that Collins was only entitled to the damages which he had proved — those which were the direct and natural consequence of the breach of contract. Therefore, the Court essentially held that the plaintiff had not submitted sufficient evidence to collect awards against both Defendants because the contract and tort claims were "co-extensive". In the instant case, the Plaintiff specifically pleaded and proved each Defendant's defamatory conduct and accordingly, there is no double recovery.

pleaded not guilty. At trial, the Defendants sought to introduce evidence of the SCANA investigation, and the Plaintiff sought to exclude any mention of the SCANA incident pursuant to a *Motion in Limine*.

Plaintiff argued that that any mention of the SCANA incident and the pending charges would result in extreme prejudice and, further, were irrelevant as they concerned future events – three years down the road – that were not in existence at the time this action arose. Plaintiff further argued that the Defendants were trying to prove what they were unable to prove (or even charge) over three years ago. The Court granted the Plaintiff's *Motion in Limine* and excluded any mention of the SCANA incident.

"The trial judge has wide discretion in determining the relevancy of evidence, and [the court's] decision to admit or reject evidence will not be reversed on appeal absent an abuse of that discretion." Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004).

In the instant case, the Court determined that even if it were to assume that the evidence of the SCANA incident was relevant under Rule 401, SCRE, such evidence was properly excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . ." Rule 403, SCRE.

Furthermore, the Court properly considered whether the SCANA evidence fit within the exceptions found in Rule 404, SCRE. "[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." State v. Billy Wayne Cope, 405 S.C. 317, 748 S.E.2d 194 (2013) (citing Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)). "However, such evidence may be admissible to show

motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Id.

The Court specifically reviewed Rule 608(b), SCRE, which holds that “specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility... may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.”

Finally, the Court held that the SCANA evidence was not admissible under Rule 405, SCRE, because it was neither relevant to the case nor could it be deemed to not be unfairly prejudicial to the case.

This case concerns a defamation – an accusation of theft – that took place in March 2011. “Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE (cited in State v. Gilchrist, 496 S.E.2d 424, 329 S.C. 621 (Ct. App. 1998)).

The SCANA events were not in close proximity to the Spring Valley incident and clearly cannot speak to Mr. Kennedy’s state of mind back in 2011. See State v. Gilchrist, supra (finding that evidence of a defendant’s statement was relevant as it showed his state of mind when such statement was made in close proximity to the commission of the crime in question.).

Here, there was no such temporal relation, as the SCANA incident is three years after the Spring Valley incident.

Even if relevant, the Court Properly Ruled the Evidence Was Unfairly Prejudicial and Must Be Excluded

"Evidence of similar acts has the potential to be exceedingly prejudicial." Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). Even if the Court were to instruct the jury otherwise, the evidence was so prejudicial as to deem pointless the Plaintiff's case. In short, a jury could not be expected to ignore this evidence as evidence of Mr. Kennedy's guilt in the 2011 incident.

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." Kennedy v. Griffin, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2003). In Kennedy, the Court held it was error for evidence to be admitted that the plaintiff tested positive for marijuana at the time of the accident because there was no correlation between the between the marijuana and the accident. The Court held that the marijuana evidence was more prejudicial than probative, given that the test did not measure the quantity of marijuana in the plaintiff's system or how recently he had been exposed to it. 595 S.E.2d at 251. See also USA v. Queen, 132 F.3d 991, 996 (4th Cir. 1997) ("noting the tendency to condemn not because the accused is believed guilty of the present charge but because he has escaped unpunished from other offenses".)

Similarly, here, submitting the fact that Kennedy has been charged, three years later, with taking a pair of safety goggles (valued at \$5.00) and \$10 in cash is highly prejudicial to the jury given that these pending charges relate to a \$15 crime; are 3 years after the Spring Valley incident; and have not been shown to be true by clear and convincing evidence.

In State v. Lyle, the Supreme Court considered the exclusion of evidence which was from 10 days to 7 weeks removed from the crime charged. The Court asked, "what is there in the alleged passing of forged checks at widely separated points . . . prior to the commission of the crime charged that tends, in a legal sense, to identify the defendant as the man who uttered the forged paper....? True, such evidence strongly tends to induce the jury to believe that, merely because the defendant was guilty of the former crimes, he was also guilty of the latter, but that is the precise inference the general rule was wisely designed to exclude . . . There is no connection of time and place . . ." 118 S.E. at 808 (holding evidence was improperly allowed).

The "Evidence" Should Be Excluded As It is Not Sufficiently Similar To the Crimes Charged

The Defendants seek to introduce evidence concerning an event that occurred three years after the Spring Valley incident in hopes of proving that 1.) Jeffery Kennedy was the Spring Valley thief and 2.) Jeffery Kennedy is a dishonest person of bad character. Because the SCANA events occurred subsequent to the Spring Valley incident and were dissimilar to Spring Valley in terms of scope and motive, the evidence of the SCANA incident should be excluded as unfairly prejudicial. State v. Cope, 405 S.C. 317, 748 S.E.2d 194. In Cope, the Supreme Court held that there was no abuse of discretion in the trial judge's exclusion of evidence of other crimes under Rule 404(b) where the other crimes occurred subsequent to the murder at issue and there were "many distinctions" as well, although there were also some similarities. Furthermore, the subsequent crimes at issue in Cope occurred within 6 weeks of the underlying murder.

Rule 405 Still Requires That Evidence Be Relevant And Not So Unfairly Prejudicial

Defendants do not cite a single case from South Carolina which is on-point with the facts presented here. Instead, the Defendants seek to circumvent the plain language of Rules 403 and Rule 404, SCRE.

The Defendants sought to introduce evidence of other petty thefts at Spring Valley High School which occurred in Spring 2010 and Fall 2010 (theft of air freshener aerosol can), and again beginning in February/March 2011. The trial court, for the reasons addressed *supra*, properly excluded any evidence of the 2010 thefts. The Plaintiff argued that Spring Valley High School was a huge physical plant, with thousands of people going in and out of its doors every day.³ The allegations of these other petty thefts were unproven, were never investigated by law enforcement, and were never proved (i.e. no charges were ever brought, no conviction ever secured). Accordingly, they were not relevant to whether Mr. Kennedy was properly the focus of the District's "investigation" into the allegedly missing money from the Athletic Director's Office in March 2011. Furthermore, even if deemed relevant by the Court, they are highly prejudicial as they "muddy the proverbial waters" by injecting further, unproven allegations into the jurors' minds. Finally, the 2010 thefts all occurred before Jeffery Kennedy was recommended for the promotion to supervisor; therefore, Jeffery Kennedy must **not** have been considered a suspect in the eyes of Richland Two at that time, otherwise he wouldn't have been promoted. The Plaintiff argued that by using these allegations now, the defense was seeking to prove Jeffery Kennedy was a habitual thief even while they were promoting him in February 2011.

³ Indeed, at trial, Jim Childers estimated there were probably 100 thefts a year at Spring Valley.

Furthermore, this “prior bad act” evidence does not fit within an exception in Rule 404(b). First, “if the [party] was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing.” State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008). “The connection between the prior bad act and the crime must be more than just a general similarity.” State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005). It must fall within the purview of the “common scheme and plan” exception under Rule 404(b). Id. at 583. Furthermore, the timing of the prior bad acts is crucial. Here, the District sought to present a laundry list of reported petty thefts that began in Spring 2010 – almost a full year prior to the Athletic Director’s report. See, e.g., State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997) (finding that the space of one year made evidence of prior act inadmissible under the common scheme or plan exception.) As a result, Defendant’s Motion for a New Trial Absolute on this basis should be denied.

The Closing Argument of Plaintiff’s Counsel Was Proper

In response to Defendant’s argument that Counsel’s closing argument was not proper. (Def. Motion at p. 19). Plaintiff’s counsel would argue that Defendant’s objection has been waived, and further that the argument was entirely proper. The general rule is that the lack of a contemporaneous objection to an improper argument acts as a waiver. Varnadore v. Nationwide Mutual Ins. Co., 289 S.C. 155, 345 S.E.2d 711 (1986). Without a contemporaneous objection as is the case here, Defendant must show that the argument was a flagrant violation and the vicious or inflammatory nature of the argument resulted in clear prejudice. South Carolina Highway Dept. v. Nasim, 255 S.C. 406, 179 S.E.2d 211 (1977). The argument made by Plaintiff’s counsel in this case was neither vicious nor inflammatory. Counsel asked the jury to

return a verdict that would send a message: that it believed that the Defendants were wrong and that Jeffery Kennedy had been unfairly slandered. Plaintiff's counsel asked the jury to look back at the evidence, to look back at Jeffery Kennedy's tearful testimony, when it considered whether to award a verdict. Plaintiff's counsel also asked that the jury consider what would be a reasonable amount, an amount that sent a message. To assist the jury in its calculations, Plaintiff's counsel suggested a figure of \$400,000, and to help them put this amount in perspective, suggested that they could view it in terms of being approximately 10 years of Kennedy's salary at Richland Two. Mr. Kennedy testified that he was earning approximately \$1,700 to \$1,800 every pay period. This suggested amount was certainly reasonable in light of the evidence before the jury.⁴ The jury ignored counsel's suggestion, apparently finding the conduct of the Defendants even more reprehensible and choosing to award \$550,000. As a result, Defendant's Motion for a New Trial Absolute on this basis should be denied.

In response to Defendants' fourth argument for a new trial absolute beginning on page 20 of their motion, Plaintiff would show that the size of the verdict did not demonstrate improper motive. The Plaintiff testified that he lost his marriage, his standing at Church, and his position with a youth mentor group, among other damages, when he was accused of being a thief by Mr. Barnes and Mr. Earles. The credibility of the witnesses was for the jurors to consider: the jurors sat and listened as Mr. Barnes became quite distraught over what he believed to be Richland Two's deficiencies in failing to immediately fire Mr. Kennedy. The jurors sat and listened as Chuck Earles stated that he never interviewed anyone else about the

⁴ Counsel would note that the Defendants apparently never considered this case to be a serious matter and, in fact, represented to Plaintiff that mediation would be fruitless. Plaintiff did make a demand in the amount of \$300,000 prior to trial, to which Defendants responded with an offer of judgment in the amount of \$5,000. In short, Plaintiff's counsel made the argument in closing that the defamation was extremely serious and should be addressed accordingly. This is the same argument that was made throughout the trial.

AD department theft, despite there being other people with "access and opportunity" (to quote the Richland Two HR director, Roosevelt Garrick). Perhaps the jurors thought Mr. Earles and Mr. Barnes were smug. Perhaps the jurors thought that their "investigation" was a sham and conducted maliciously. Perhaps the jury thought the Defendants printed out the email and posted it themselves for all to see because they were angry that Mr. Garrick chose not to fire Mr. Kennedy. Whatever the reason, the jury chose to award an amount which spoke to the seriousness of the claim and their perception of the wrongdoing perpetrated by the Defendants. Case law abounds of \$500,000 + verdicts in defamation lawsuits which were upheld on appeal. See, e.g., Miller v. City of West Columbia, 322 S.C. 224, 471 S.E.2d 683 (1996) (upholding award of \$250,000 actual damages and \$500,000 in punitive damages); Constant v. Spartanburg Steel Prods., 316 S.C. 86, 447 S.E.2d 194 (upholding jury verdict of \$400,000 in actual damages and \$100,000 in punitive damages); Wilhoit v. WCSC, Inc., 293 S.C. 34, 358 S.E.2d 397 (Ct. App. 1987) (upholding an award of \$1 million in actual damages and \$45,000 in punitive damages). For these reasons, Defendants' Motion for a New Trial Absolute should be denied.

In response to Defendants' 6th argument for a new trial absolute beginning on page 22, Plaintiff argues that the 13th Juror Doctrine is not warranted because the verdict is properly supported by the evidence. Under the 13th juror doctrine, the trial court may take its own view of the evidence and grant a new trial if it disagrees with the jury's verdict. Parker v. Evening Post, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994). Here, again, the Defendants essentially ask the Court to grant their directed verdict motion on the defamation cause of action. Because there was sufficient evidence for the jury to consider the defamation claim and award damages

that spoke to the seriousness of the allegations and the pain inflicted upon Mr. Kennedy, the Court should deny the request for a new trial pursuant to the 13th juror doctrine.

III. A New Trial *Nisi* or a Remittitur Is Unsupported Because The Damages Award Is Proper.

“There is no formula or standard that can be used as a measure for assessing punitive damages.” Austin v. Specialty Transportation Svs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004). Addressing the suggested factors for the Court to consider – as outlined in Gamble v. Stevenson and BMW v. Gore and relied upon by the Defendants in their Motion - Plaintiff again submits that there was clear evidence of the reprehensibility of the Defendants’ conduct and of the Plaintiff’s damages for the jury to consider.⁵ Furthermore, the Plaintiff would submit that the ratio of actual damages to punitive damages in this case is well within the “single digit multiplier” espoused by both State and Federal Courts. See Austin, supra at p. 877 – 878 (and cases cited therein) (noting that single-digit multipliers, while not binding, are more likely to comport with due process and finding that a punitive damages award of 2.5 times actual damages was not excessive).

While the Defendants apparently didn’t see their actions as serious or harmful, the evidence before the jury was that Mr. Kennedy suffered greatly as a result of being labeled a “thief” in a workplace environment that was best described as a “rumor mill” according to the “Change of Culture” memo distributed by Defendants. Mr. Kennedy testified that his marriage broke down; he lost his position as a youth mentor at his church; he lost the trust and faith of his fellow parishioners; he was forced to cash in his retirement; and he was subject to rumor

⁵The Plaintiff would note that the South Carolina Supreme Court has characterized the *Gamble* factors as factors to “provide guidance” and are not to be considered “hard and fast” requirements. See Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587, 5963 (2004).

and innuendo that continued to this day. In short, just because the Defendants apparently never took the case seriously does not mean that the jury was not free to do so. See Wilhoit v. WCSC, Inc., 293 S.C. 397, 358 S.E.2d 397 (Ct. App. 1987) (holding that the trial judge properly refused to set aside the award of \$1 actual damages and \$45,000 punitive damages where there was no evidence that the jury was motivated by passion, caprice, or prejudice and, in fact, the evidence showed that the defendants falsely implied that plaintiff committed a crime). The facts in the instant case were essentially undisputed at trial: the Defendants focused their investigation solely on Jeffery Kennedy to the exclusion of all other suspects and, when law enforcement declined to press charges, chose to go ahead and let everyone know that they considered Kennedy guilty regardless. They failed to safeguard confidential information and they failed to control the very "rumor mill" that they acknowledged existed at Richland Two. Furthermore, the argument that the Defendants' conduct was not reprehensible because "Plaintiff continued in his job without complaint or incident for another fourteen months after reinstatement" is not supported by the evidence. See Def. Mot. at p. 26. In fact, Mr. Kennedy tried to get his promotion reinstated and had his lawyer write letters to Roosevelt Garrick to that effect.

Finally, the jury heard testimony that the night custodian, Ms. Jackson, was also subject to an investigation due to having opportunity and access, but her investigation was kept strictly confidential and her reputation survived intact. The jury could have compared and contrasted the actions of Jim Childers with the actions of Defendants Barnes and Earles.

Furthermore, there is substantial precedent for large verdicts in defamation lawsuits, including punitive damages, given that one's reputation can be damaged irrevocably through a

single action that reverberates for years. See, e.g., Lynch v. Toys R Us, 375 S.C. 654 S.E.2d 541 (Ct. App. 2007) (upholding jury award of \$50,000 in actual damages and \$250,000 in punitive damages); Miller v. City of West Columbia, 322 S.C. 224, 471 S.E.2d 683 (1996) (upholding verdict in the amount of \$250,000 actual damages and \$500,000 punitive damages as appropriate where defamatory (and unsupported) statement that police officer had sexually harassed a co-worker effectively destroyed his reputation and ended a distinguished career); King v. Santee Resort Condominium Association, et al., 2013 WL 8691349 (S.C. Com. Pl. Clarendon County Dec. 5, 2013) (\$890,000 verdict in favor of the plaintiff on defamation claim arising out of defendants' erroneous, and repeated, identification of plaintiff as a registered sex offender).⁶

In Lynch v. Toys R Us, the Court of Appeals upheld the trial court's denial of Toys R Us's motion for JNOV or *nisi remittitur* based on the jury's award of \$50,000 in actual damages and \$250,000 in punitive damages. The Court of Appeals noted that the plaintiff was arrested without justification and in full view of customers, and the combination led to humiliation, sleeplessness, and emotional pain, which constituted actual damages. Further, the punitive damages award was upheld "as a warning and example to deter the wrongdoer and others from committing like offenses in the future." 654 S.E.2d at 552. In the instant case, the jury may have wanted the punitive damages award to send a message that the Defendants needed to be much more careful in the future when handling sensitive information related to their employees.

⁶ A copy of the verdict form in the Santee Resort case is attached as Exhibit A and incorporated herein.

Similarly, in Miller v. City of West Columbia, the Court of Appeals held that the trial court properly denied the defendants' motion for a new trial and to strike the punitive damages award where the evidence showed that the city administrator carelessly investigated a dispatcher's claims of sexual harassment against the plaintiff, a longtime city police officer, and furthermore made a statement, not based on evidence and in the presence of others, that the plaintiff had, in fact, harassed the dispatcher. Based upon the evidence, the Court held that the jury award in the amount of \$250,000 actual damages and \$500,000 punitive damages was "appropriate and necessary" under Gamble.

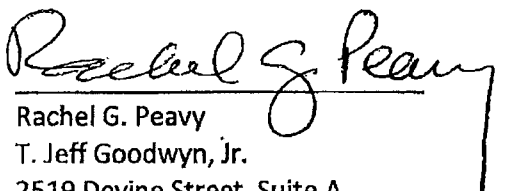
Here, the jury awarded actual damages of \$200,000 and punitive damages of \$350,000. This is well within the bounds of constitutionality, is reasonable given the evidence, and is in line with other jury awards for defamation.

Conclusion

Wherefore, for the reasons above-stated, the Plaintiff respectfully request that the Court DENY the Defendants' post-trial motions.

Respectfully submitted this 20th day of October, 2014.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy
T. Jeff Goodwyn, Jr.
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorneys for the Plaintiff

VERDICT FORM

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CLARENDON

) CASE NO. 2011-CP-14-00541

James E. King,

Plaintiffs,

vs.

Santee Resort Condominium Association,
Inc., Leah Londeree, and James Kinser,

Defendants.

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2013 DEC -5 PM 2:24

VERDICT

1. On the sole cause of action of defamation as to the defendant Leah Londeree, we unanimously find for

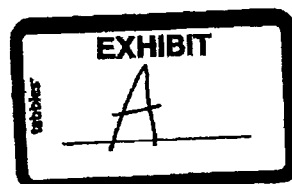
☒ the plaintiff in the amount of \$ 350,000.00 actual damages.

☐ the defendant Leah Londeree.

2. On the sole cause of action of defamation as to the defendant, James Kinser, we unanimously find for:

☒ the plaintiff in the amount of \$ 200,000.00 actual damages.

☐ the defendant James Kinser.



3. Do you find that the plaintiff has established by clear and convincing evidence that he is entitled to an award of punitive damages against James Kinser?

 No.

 ✓ Yes, in the amount of \$ 100,000.00 punitive damages

4. Do you find that the plaintiff has established by clear and convincing evidence that he is entitled to an award of punitive damages against Leah Londeree?

 No.

 ✓ Yes, in the amount of \$ 240,000.00 punitive damages.

I certify that this decision is the unanimous decision of the jury.

Sylvia McFadden
Sylvia McFadden, Foreperson

December 5, 2015
Date

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2013-CP-40-01460

Jeffrey Kennedy,

Plaintiff,

vs.

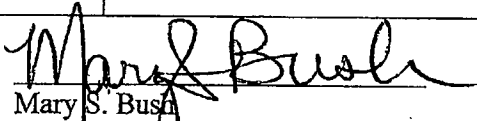
Richland Two County School District, Eric
Barnes and Chuck Earles,

Defendant(s).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **October 20, 2014**, a copy of the foregoing **Memorandum in Opposition to Defendants' Post-Trial Motions** has been served on the following party(s) via hand delivery to the addresses as follows:

Thomas K. Barlow, Esquire Kathryn Long Mahoney, Esquire Childs & Halligan 1301 Gervias Street, Suite 900 Columbia, SC 29211	The Honorable Alison Renee Lee Richland County Judicial Center 1701 Main Street, Room 324 Columbia, SC 29202
The Honorable Jeanette W. McBride Clerk of Court Richland County Judicial Center 1701 Main Street Columbia, SC 29202	


Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr. and Rachel G.
Peavy
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Honorable Alison Renee Lee, Circuit Court Judge

C.A. No.: 2013-CP-40-01460

Richland School District Two, Eric Barnes and Chuck Earles..... Appellants,

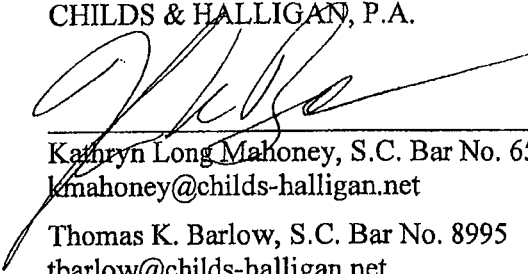
v.

Jeffrey Kennedy Respondent.

NOTICE OF APPEAL

Defendants, Richland School District Two, Eric Barnes and Chuck Earles appeal the Order of the Honorable Alison Renee Lee denying their Motion for Judgment notwithstanding the Verdict, or in the Alternative for a New Trial Absolute, or in the Alternative, a New Trial *Nisi Remittitur*, filed February 24, 2015. Appellants received written notice of the entry of this order on March 2, 2015.

CHILDS & HALLIGAN, P.A.


Kathryn Long Mahoney, S.C. Bar No. 65332
kmahoney@childs-halligan.net

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1301 Gervais Street, Suite 900
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(803) 254-4035

Attorneys for Appellants

March 13, 2015

Other Counsel of Record:

T. Jeff Goodwyn, Esq.
Rachel G. Peavy, Esq.
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4001460

Jeffrey Kennedy

Richland Two County School District

PLAINTIFF(S)

Katie Brochu

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 24 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Jefferson Goodwyn Jr.

Thomas Kennedy Barlow

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jeffrey Kennedy,

Plaintiff,

v.

Richland County School District Two,
Eric Barnes, and Chuck Earles,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-40-01460

ORDER

2015 FEB 24 AM 9:45
FILED
RICHLAND CO. SC
CLERK

This matter comes before the Court on Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, for a New Trial Absolute, or, in the alternative, for a new Trial Nisi Remittitur. This case came to trial on September 29, 2014. The jury returned a verdict of \$100,000 in actual damages and \$150,000 in punitive damages against Defendant Barnes and a verdict of \$100,000 in actual damages and \$200,000 in punitive damages against Defendant Earles. Defendants filed this motion pursuant to Rules 50 and 59(e), SCRCF, on October 13, 2014. After careful consideration of the motions made, memorandum submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, for a New Trial Absolute, or, in the alternative, for a new Trial Nisi Remittitur. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

Additionally, regarding awards of punitive damages, this Court shall conduct a post-trial review to ensure that a punitive damage award is proper. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). "Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *Atkinson v. Orkin Exterminating Co.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004). The Due Process Clause of the Fourteenth Amendment prohibits states from imposing grossly excessive punishments on tortfeasors. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 562 (1996).

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The United States Supreme Court set forth three guideposts for the trial courts to consider when assessing whether an award of punitive damages violates due process. *BMW of North America v. Gore, supra*. Those guideposts are: (1) the reprehensibility of the defendant's conduct; (2) the ratio to the compensatory damages awarded (actual or potential harm inflicted on the plaintiff); and (3) comparison of the punitive damages award and civil or criminal penalties that could be imposed for comparable misconduct. *Id.* at 574.

Reprehensibility is "[p]erhaps the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 575. "This principle reflects the view that some wrongs are more blameworthy than others." *Id.* In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003).

The South Carolina Supreme Court previously employed an eight factor post-verdict review that trial courts were required to conduct to determine if a punitive damages award comports with due process. See *Gamble, supra*. However, following *Gore, supra*, and *Campbell, supra*, as well as other United States Supreme Court opinions, in *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the Court "articulate[d] the following test for our courts in conducting a post-judgment review of punitive damages awards":

1. Reprehensibility

First, any court reviewing a punitive damages award should consider the degree of reprehensibility of the defendant's conduct. ... In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

2. Ratio

Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the

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punitive damages award. ... Although the Supreme Court has been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award, and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. ... With this instruction in mind, we note that a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive punitive damages award.

3. Comparative Penalty Awards

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

Id. at 587-89, 686 S.E.2d at 185-86. Applying the reprehensibility factors, Plaintiff suffered no physical harm from the defamation, other than perhaps distress and embarrassment. Second, there was no evidence of a reckless disregard for the health or safety of Plaintiff. Evidence was presented that Plaintiff was financially vulnerable; for example, after his termination, he cashed out his retirement. Fourth, the alleged defamation was a one-time event; however, there was repetitive conduct of rumors being spread in general in the department. Finally, Plaintiff argued, and the jury could have inferred from the evidence presented that the harm was the result of intentional malice, trickery, or deceit.

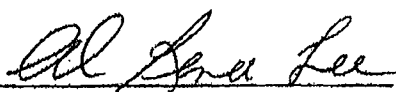
As to the ratio factor, although there is no bright-line test regarding the ratio of the actual damages to the punitive damages, the multiplier for punitive damages is low in this case, being 1.5 for Barnes and 2 for Earles. This factor weighs in favor of finding the punitive damages award appropriate.

As to the comparative penalty awards factor, there are no criminal penalties for workplace defamation in South Carolina. Consequently, there is nothing against which to assess

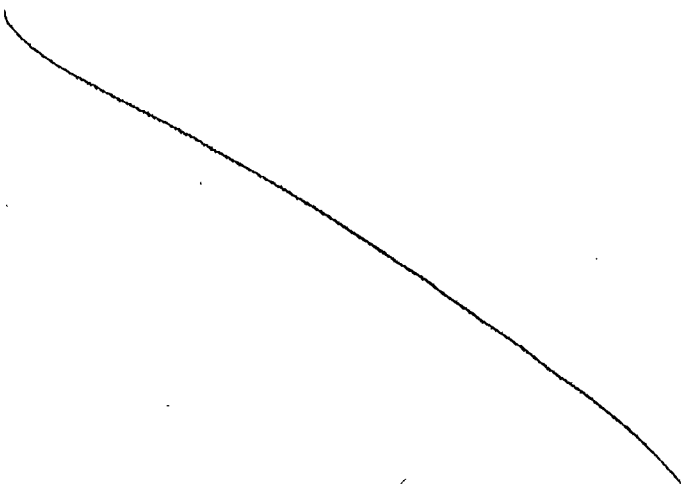
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this particular factor. Based upon all of these factors and the evidence presented, the punitive damages award does not violate constitutional due process. Defendants are not entitled to a reversal or reduction in the amount of punitive damages.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

February 23, 2015
Columbia, South Carolina


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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Honorable Alison Renee Lee, Circuit Court Judge

C.A. No.: 2013-CP-40-01460

Richland School District Two, Eric Barnes and Chuck Earles..... Appellants,

v.

Jeffrey Kennedy Respondent.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL on counsel for Respondent, by depositing a copy of it in the U.S. Mail, postage prepaid, on March 13, 2015, addressed to counsel of record as follows:

T. Jeff Goodwyn, Esq.
Rachel G. Peavy, Esq.
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

CHILDS & HALLIGAN, P.A.


Kathryn Long Mahoney, S.C. Bar No. 65332
kmahoney@childs-halligan.net

Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@childs-halligan.net

1301 Gervais Street, Suite 900
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035

Attorneys for Appellants

1 with the trial. We should hopefully be concluded with
2 our legal issues at that time.

3 When you come back from lunch, I'll explain to
4 you about how the trial will progress; and then we will
5 actually get started. If you'll report back to this
6 jury room at 2:45. Thank you.

7 (The jury panel is excused at 1:05 P.M.)

8 THE COURT: I believe we have some pretrial
9 issues which we need to take up at this time?

10 MS. PEAVY: Yes, Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. PEAVY: Good afternoon, Your Honor.

13 Rachel Peavy here on behalf of the plaintiff,
14 Mr. Jeffrey Kennedy. We have submitted two motions in
15 limine. I will start with the motion in limine as to
16 excluding testimony and related documents related to
17 Bill Simpson of SCANA.

18 Your Honor, we're moving to exclude all
19 evidence and testimony related to pending charges and an
20 alleged theft at SCANA which arouse out of plaintiff's
21 employment with Allied Barton, which had a security
22 contract with SCANA.

23 The SCANA witness was identified by defense
24 counsel in the late afternoon of September 18, 2014. We
25 promptly objected as it being late on the eve of trial.

1 Furthermore, we contend that because these alleged SCANA
2 events -- and these are pending charges. Nothing has
3 been adjudicated.

4 THE COURT: So they are formal criminal
5 charges?

6 MS. PEAVY: There is a pending charge, yes,
7 ma'am, for, I believe, it's petty larceny for the theft
8 of a pair of safety goggles valued at \$5, and \$10 in
9 cash.

10 These SCANA events occurred three years after
11 the events which formed the basis of this lawsuit. We
12 would submit, Your Honor, that any mention of this SCANA
13 incident and the pending charges would result in such
14 extreme prejudice to our client, Mr. Kennedy, that we
15 would be unable to properly present our case to the
16 jury.

17 Furthermore, we would contend that they are
18 irrelevant because they concerns events that happened
19 three years in the future. This lawsuit is about what
20 happened in March of 2011, who Jeffrey Kennedy was in
21 March of 2011.

22 Your Honor, I think what this demonstrates,
23 this newly named witness, is that the defendants are now
24 trying to prove, by seeking to admit evidence of these
25 pending charges, what they were unable to prove or even

1 charge Mr. Kennedy with over three years ago.

2 Mr. Kennedy was never convicted of any crime,
3 hasn't been convicted of any crime. He hasn't had his
4 day in court for the SCANA charges, and he is innocent
5 obviously until proven guilty.

6 I've written a section on the background of
7 this case. I can certainly go through that, Your Honor,
8 if you'd like.

9 THE COURT: I've read that part.

10 MS. PEAVY: Okay. Then I'll go straight to
11 the rules of evidence which we believe support our
12 motion, Your Honor.

13 THE COURT: Let me just ask this: As I
14 briefly went through the complaint, we're talking with
15 causes of action, negligent supervision.

16 MS. PEAVY: As to Richland County School
17 District.

18 THE COURT: Outrage and defamation, slander.

19 MS. PEAVY: Yes, defamation, slander, yes.

20 THE COURT: All right. What is next?

21 MS. PEAVY: First, Your Honor, as a threshold
22 matter, the trial court is charged with determining
23 whether the evidence is even relevant under Rule 401.
24 Even if the evidence is deemed relevant under Rule 401,
25 it can be excluded if the probative value is

1 substantially outweighed by the danger of unfair
2 prejudice, confusion of the issues, or misleading the
3 jury.

4 I can't think of another example of something
5 that would be more misleading for the jury, if in this
6 lawsuit here where we're saying that he was accused
7 in 2011, his reputation was ruined, if now they are able
8 to present evidence that there are new charges pending
9 against him three years later.

10 Evidence of a crime or other act or wrong is
11 not admissible to prove the character of a person in
12 order to show that they acted that way. Here you don't
13 even have a crime. You just have a pending charge. It
14 can show motive, identity, existence of a common scheme;
15 but you still have to show that it fits within the
16 exception under Rule 404(b).

17 Finally, Your Honor, we think that specific
18 instances of conduct in this case, trying to attack
19 Mr. Kennedy's credibility by putting in these charges
20 that happened three years after the allegation that's
21 the crux of this lawsuit, it's just not probative.

22 First, Your Honor, as well, I'd like to point
23 out that we received information regarding that they
24 wanted to name Mr. Simpson of SCANA as a witness on
25 September 18th, the eve of trial.

1 The case law is clear that a motion to exclude
2 a witness's testimony is properly excluded on the basis
3 that the late identification of the witness was
4 prejudicial. That is Amisub of South Carolina versus
5 DHEC.

6 Some background about Mr. Kennedy's employment
7 history since leaving Richland Two, he was deposed on
8 December 17th of last year, a year ago. He testified
9 that he was employed at Allied Barton and was working at
10 SCANA as their security contractor.

11 In June of 2014, June of this year, defendants
12 served a subpoena on Allied Barton requesting all of the
13 records relating to Jeffrey Kennedy. On July 17th we
14 received copies of what defense counsel had received
15 from Allied Barton.

16 The records showed that plaintiff,
17 Mr. Kennedy, had been on the Allied Barton payroll
18 beginning in April of 2013 through the pay period ending
19 February 28, 2014. The same records show that
20 Mr. Kennedy returned his uniform to Allied Barton on
21 February 26th of this year.

22 Accordingly, Your Honor, we would submit that
23 this is a classic case of trial by ambush because the
24 defense counsel had noticed that he was no longer
25 working at Allied Barton as of July at the latest, but

1 they failed to pursue that.

2 They failed to identify any witness to testify
3 about his separation from Allied Barton until late in
4 the day on September 18th when they named Bill Simpson,
5 a SCANA security official. Along with naming
6 Mr. Simpson, they also produced records they received
7 from SCANA pursuant to a subpoena and provided those to
8 us as well.

9 Plaintiff's counsel has had no opportunity to
10 examine the witness or conduct a further investigation.
11 Defense counsel had plenty of time to investigate the
12 separation back in July at the latest. Now they're
13 seeking to rehabilitate their position by naming the
14 SCANA witness about ten days prior to trial.

15 The stated purpose of the discovery rules are
16 to prevent situations such as this. We would request
17 that because this information is only coming out,
18 they've only followed up on it, we're only being
19 notified September 18th, we would ask that the Court
20 limit the testimony, exclude it.

21 Our second point, Your Honor, which I'll go to
22 is that we don't believe it's relevant what SCANA is
23 alleging. We don't believe these pending charges are
24 relevant because they happened three years after the
25 incident which is the crux of this lawsuit.

1 This case concerns an accusation that
2 Mr. Kennedy was a thief when he was working at Richland
3 Two as a member of the School District. So it's about
4 who he was in March of 2011. The evidence is going to
5 show Richland Two, the security leadership, had actually
6 recommended him for promotion prior to this allegation.

7 Your Honor, I would submit to you pending
8 charges in 2014, three years later, don't speak to who
9 Mr. Kennedy was, what his character was, who he was in
10 March of 2011.

11 All it's going to do is have the jury look at
12 it and say, "Well, gosh, looks like they were accusing
13 him of this in February 2011. They couldn't prove it.
14 Here is someone else accusing him of it."

15 It's pending charges, never been proved, no
16 adjudication, in 2014. "Well, he must have done it in
17 2011 if he did it in 2014. They must have been right to
18 say he was a thief in 2011 because SCANA brought charges
19 in 2014." It's just so prejudicial, Your Honor, and
20 it's so confusing for the jury.

21 Your Honor, I would just address your
22 attention to the fact that our Supreme Court has stated
23 black letter law: Evidence of similar acts has the
24 potential to be exceedingly prejudicial. That's exactly
25 what this is.

1 No juror is going to be expected to ignore the
2 SCANA charges when they are considering whether my
3 client was defamed in 2011. Again, Your Honor, I would
4 say that the nexus of this case, the claims in this
5 case, are about who Mr. Kennedy was in 2011. I would
6 request that Your Honor exclude this evidence.

7 THE COURT: Thank you.

8 Mr. Barlow?

9 MR. BARLOW: Yes, Your Honor. I'll address
10 the timing issue first. One of our witnesses actually
11 found out about this SCANA investigation on
12 September 18th, the day that Ms. Peavy mentioned.

13 We didn't know about it until one of our
14 witnesses brought it to our attention when we were
15 preparing. As soon as we found out about this, we
16 provided notice. I will note that Ms. Peavy named a
17 damages witness, who is the plaintiff's ex-wife, on the
18 very same day. We haven't objected to that at all.

19 Of course, they've had time to talk to
20 Mr. Simpson. I spoke to Mr. Simpson recently. He
21 mentioned he had a call from Mr. Peavy and discussed
22 what he was likely to testify to as well.

23 We did not receive in the subpoena response
24 that we got from Allied Barton any separation paperwork
25 with regard to Mr. Kennedy. So we didn't know he had

1 been fired from Allied Barton.

2 Going back and looking at the pay records, we
3 did see that he had been terminated in February; but
4 then again that's something Mr. Kennedy has known about
5 since February.

6 There is no prejudice here at all except
7 Mr. Kennedy may not have bothered to share this with his
8 legal counsel until we named Bill Simpson, but he has
9 known that he has been under investigation.

10 We would proffer that Mr. Simpson is going to
11 testify that Mr. Kennedy confessed to these events back
12 in February or March in this timeframe. So the fact
13 that he has known about it since February and we are
14 just finding out about it last week or the week before,
15 there is no prejudice at all that he has notification of
16 Bill Simpson as a potential witness in this case.

17 THE COURT: So what exactly did he allegedly
18 confess to? Taking the things or not returning them or
19 what?

20 MR. BARLOW: Confessed to stealing the safety
21 glasses and the \$10.

22 MS. PEAVY: Your Honor, I would object to that
23 being labeled a confession. There are typewritten notes
24 in the SCANA documents provided to us prepared by SCANA
25 which --

1 THE COURT: I'll give you a chance to respond.

2 MS. PEAVY: Okay.

3 MR. BARLOW: Anyway, that would be an
4 admission by a party opponent. Certainly, Mr. Simpson
5 is free to testify as to what Mr. Kennedy's response was
6 when he interrogated him.

7 There is also a video where Mr. Simpson was
8 able to position a camera. It shows the plaintiff
9 actually taking items from cabinets in the linemen's
10 supply room. So that's what Mr. Simpson will offer.

11 Now, Ms. Peavy mentioned briefly that this was
12 his reputation at issue. That's really what this turns
13 on, Your Honor. You can't claim defamation and argue
14 that your character and reputation have been ruined and
15 then insulate that from any possible attack.

16 The case law is very solid on that. We
17 submitted a memorandum of law. We just got the motion
18 in limine today but anticipated that this was going to
19 come up. We submitted a memorandum of law today on this
20 very issue.

21 It is uniform in the cases that we cited in
22 there that under Rule 405, it says: "Methods of proving
23 character, reputation, or opinion." It says, "In all
24 cases in which evidence of character or a trait of
25 character of a person is admissible, proof may be made

1 by testimony as to reputation or by testimony in the
2 form of an opinion. On cross examination inquiry is
3 allowable into relevant specific instances of conduct."

4 THE COURT: Well, the question becomes at what
5 point in time? I mean, if the allegations are that
6 in 2011, when the allegations by the School District
7 were made against him, certainly whatever information
8 may have existed at that particular time regarding other
9 similar acts, prior bad acts, or other character
10 evidence at that particular time would be relevant.

11 How is this relevant to his allegations that
12 at the time that the School District made these
13 allegations, "You know, I have a good reputation and
14 therefore I was defamed."

15 MR. BARLOW: It goes directly to his damages.
16 He is claiming that we have caused him reputational
17 injury by what we did -- okay -- when there is an event
18 that happened this year, less than two years from his
19 termination.

20 THE COURT: Well, that's after the fact.
21 Isn't his damages --

22 MR. BARLOW: It's a failure to mitigate them.
23 He can't claim that his reputation and character are
24 solid when this is out there. I mean, it goes
25 directly -- he is going to ask the jury to award him

1 damages because, "They called me a thief, and they said
2 I'm not trustworthy."

3 We have a truth defense. We should be
4 entitled to prove that this gentleman is not
5 trustworthy. He has put his character directly in issue
6 in this case, as all the cases we have cited, cite
7 Rule 405 to 7.

8 THE COURT: So basically what you're saying is
9 that because something happened two years later, it
10 should refer back to what happened in March of 2011 and
11 therefore he should not be able to ask for any damages?

12 MR. BARLOW: Certainly. It's his reputation
13 that he is putting in issue. We think this goes
14 directly to that reputation and his character and
15 whether he ought to get damages.

16 He is asking the jury, "Award me damages for
17 what Richland Two did to me." Okay. The jury needs to
18 know that's not the only thing out there that may be
19 affecting his reputation and character in the community.
20 He has got a pending charge.

21 You know, whether there is a charge or not, we
22 can certainly get into this evidence without saying,
23 "Are you up for trial on October 9th with regard to that
24 specific charge," which is the case. They didn't ask
25 for a continuance of this case. They're ready to go

1 forward with it. So that's what it goes to.

2 There is a way to ask these questions without
3 getting into criminal aspects. It also bears mentioning
4 that it's the very same scheme or plan that we suspected
5 he was doing at Richland Two at Spring Valley. We'll
6 introduce evidence to that effect.

7 So it's just not fair to the defense, Your
8 Honor, to let him come in here claiming that he's got
9 good character, good reputation; and any damage to it at
10 all is totally our fault. That's what all the cases
11 that look at this say.

12 THE COURT: And so the allegations and the
13 charges as it relates to SCANA did not occur until this
14 year; is that correct?

15 MR. BARLOW: They occurred --

16 MS. PEAVY: Yes, Your Honor.

17 MR. BARLOW: That's right.

18 THE COURT: So he would have damages
19 presumably from Richland County if he is able to prove
20 that up until this year.

21 MR. BARLOW: Right. But how is the jury going
22 to know that unless we're allowed to introduce evidence
23 of that fact? He has failed to mitigate. If you are
24 claiming that somehow Richland Two injured you, you have
25 to act in conformance with what you think your character

1 and reputation are.

2 If he goes out and does something to further
3 injure his reputation, that's a failure to mitigate
4 damages. Mr. Kennedy went out, right as soon as he left
5 Richland Two, and got a job at Allied Barton making
6 about the same amount of money that he made at Richland
7 Two.

8 Yet he's claiming Richland Two injured his
9 reputation. Allied Barton fired him. I mean, certainly
10 we're allowed to get into the fact that Allied Barton
11 fired him.

12 That is directly what he is claiming, that we
13 injured his reputation by terminating him when, in fact,
14 he has been terminated by another company; and
15 presumably his reputation would be injured by that as
16 well.

17 THE COURT: Anything else?

18 MR. BARLOW: I think that speaks to that
19 particular issue. It's Rule 405 that controls this.
20 The cases are clear that when you put your character and
21 reputation in issue, the defendant is entitled to attack
22 that character and reputation at issue.

23 THE COURT: Any response, Ms. Peavy?

24 MS. PEAVY: Briefly, Your Honor, if I may.
25 They talk about that they're entitled to get into this.

1 They are entitled to get into it even if they don't get
2 into the criminal aspect, if they don't say that his
3 hearing date on the SCANA charges is October 9th.

4 Your Honor, they are neglecting to note that
5 this case, where we are today, the allegations against
6 Richland Two, that's March of 2011. Yes, he was
7 terminated from Allied Barton in February of 2014.

8 So we are saying he was damaged by Richland
9 Two. We are saying his reputation was damaged. We are
10 going to ask for damages. That's our, right. In March
11 of 2011, there were no SCANA charges.

12 They're talking about projecting out into the
13 future to prove that he was something three years prior.
14 That's not what the rule is for. The rule is for
15 contemporaneous, timely instances, not for projecting
16 into the future, not for prejudicing the jury by
17 presenting evidence where the jury is going to look at
18 it and say, "You know what? Gosh, Richland Two said
19 this in 2011; and they're saying SCANA is saying it
20 again in 2014. That's a pretty big coincidence."

21 Your Honor, I don't think that's what Rule 405
22 provides for at all.

23 THE COURT: I'll consider it. I can tell you
24 that I'm having a pretty hard time making the
25 connection. I understand -- I've heard the argument

1 about mitigation of damages, and I've heard the argument
2 about you being terminated.

3 I'm not sure that the allegations of what
4 occurred three years later is directly relevant to what
5 his character was at the time that these events occurred
6 in 2011.

7 I may need to hear some testimony. I'll be
8 happy to hear a proffer at the appropriate time. But at
9 this particular point, I'll give it some thought; but
10 I'm leaning towards limiting some of it, if not all of
11 it. I'll review the rules and look at it in light of
12 the arguments.

13 Let's go to the other motion.

14 MS. PEAVY: Thank you, Your Honor.

15 MR. GOODWYN: Just for the record, can you
16 make a ruling on the timeliness of the offer to make
17 the -- as to when they offered the witness ten days
18 before the trial just for the record?

19 THE COURT: From what's been stated is that
20 when they learned of it, they put everybody on notice.
21 I understand that certainly he was employed at Allied
22 Barton at the time they deposed him.

23 Apparently he wasn't fired from Allied Barton
24 or he wasn't terminated, whatever, until after his
25 deposition was taken in the first part of this year.

1 MR. GOODWYN: It was the discovery responses
2 that they sent us and the subpoena they got back in July
3 that showed he had been terminated. They didn't
4 investigate back in July, what the reason for his
5 termination was. They wait until ten days before the
6 trial to bring this in. We haven't had a chance to
7 depose him.

8 MR. BARLOW: Your Honor, in response to that,
9 I would just state that we had an interrogatory
10 proffered to them basically asking: Name all your
11 employers, all your supervisors, the reason you were
12 terminated.

13 We didn't get any supplement under Rule 26(e)
14 to show that he had been terminated from Allied Barton.
15 Again, the Allied Barton paperwork had nothing about him
16 being terminated.

17 It showed a pay log that looked like his pay
18 might have ended in February, but that's not the same as
19 notice that he was terminated from Allied Barton, which
20 they knew about since February.

21 THE COURT: As I indicated, I understand that
22 it may be late, but there are remedies for that. I
23 understand that the parties -- you have talked to
24 Mr. Simpson about his proposed testimony? He may not
25 have been under oath but you talked to him?

1 MS. PEAUVY: Your Honor, when I received the
2 notice from Mr. Barlow, that was the first I had heard
3 of it. I too had received the records indicating that
4 Mr. Kennedy was no longer employed at Allied Barton and
5 that his uniform had been returned.

6 I did call Mr. Simpson at SCANA, asked him
7 what this was about. He told me that his legal
8 department was hooked in with it and just gave me
9 general -- general statements about the allegation.

10 THE COURT: And what other steps did you take
11 after you learned that information?

12 MS. PEAUVY: What other steps did I take?

13 THE COURT: Yes, ma'am.

14 MS. PEAUVY: I wrote to Mr. Barlow to let him
15 know that we objected on the grounds of the late
16 identification and also on the grounds that are outlined
17 in the motion in limine. Obviously, we think three
18 years down the road, it's not properly before the jury.

19 MR. BARLOW: 'I'm going to let this go, Your
20 Honor, I promise. The three years down the road, part
21 of what they are claiming is when he was terminated in
22 October 2012, he was also defamed by that. So it's not
23 really three years down the road. It doesn't go all the
24 way back --

25 THE COURT: Okay. So it's two years, three

1 years?

2 MR. BARLOW: Eighteen months.

3 THE COURT: Let's just agree --

4 MR. BARLOW: Sure.

5 THE COURT: -- that the information as it
6 relates to Allied Barton is after any incidents with the
7 School District and any allegations made by the School
8 District and after his employment with the School
9 District.

10 MR. GOODWYN: I think we do have one more
11 motion.

12 THE COURT: Yes, sir.

13 MS. PEAVY: Your Honor, thank you. We also
14 filed a motion in limine concerning reports of petty
15 thefts at Spring Valley High School. We're looking to
16 exclude reports that were generated of petty thefts at
17 Spring Valley High School prior to the Athletic Director
18 incident, which allegedly occurred on the evening of
19 March 3rd, into the early morning hours of March 4,
20 2011.

21 The defendants are seeking to introduce
22 testimony and witnesses, written statements, as exhibits
23 that are all dated March 24, 2011, which attest to
24 reports of petty thefts which occurred at Spring Valley
25 beginning in the Spring of 2010.

1 They concern thefts that occurred in
2 Spring 2010; Fall 2010; February 14, 2011; February 25,
3 2011; and sometime between February 28th and March 2nd
4 of 2011.

5 These reports, Spring Valley High School has a
6 huge physical plant. You have got a couple thousand
7 students going to school there. You've got
8 administration, staff teachers, coaches, everything.

9 Accordingly, you can expect, as part of being
10 a huge company, essentially a huge company, a huge
11 plant, thousands of people, that there are going to be
12 petty thefts that occur.

13 I don't know if it's on a regular basis. I
14 don't know if it's every other month. People misplace
15 things. Things go missing. I don't dispute that. But
16 they're not relevant to whether Mr. Kennedy was properly
17 the focus of the District's investigation into the
18 missing money from the Athletic Department Office.

19 The reason why is because on February 28,
20 2011, Mr. Kennedy was recommended for a promotion by the
21 defendant, Chuck Earles, the security head that he
22 reported to.

23 Mr. Earles signed off on this promotion. He
24 has testified in his deposition he thought Mr. Kennedy
25 was the best man for the job. So at that point a lot of

1 these petty thefts apparently had already taken place.

2 On February 28, 2011, they thought Mr. Kennedy
3 was the best man for the job. We can assume they
4 thought he was trustworthy. We can assume they didn't
5 think that he was responsible for these thefts because
6 they were promoting him.

7 He was going to get a better assignment,
8 better hours, more pay. He was moving up at Richland
9 Two. So, Your Honor, after the theft at the Athletic
10 Director's Office reported on March 4, 2011, they start
11 to look around.

12 They start to say, "Wow, Jeffrey was working
13 that night." What do they do? They go and gather
14 statements from all these Richland Two employees
15 attesting to petty thefts that occurred months or years
16 prior.

17 And now they want to say, "Well, that's why we
18 looked at Jeffrey so hard. That's why we took away his
19 keys. That's why we pulled the promotion. That's why
20 we thought he was a thief."

21 Well, no, they didn't because on February 28,
22 2011, they thought he was promotable. They thought he
23 was trustworthy. So, again, they're trying to inject
24 after the fact evidence into what really is a very
25 discrete time period.

1 February 28, 2011, Chuck Earles, Director,
2 signs off on the promotion. Eric Barnes, his deputy,
3 another defendant, he agrees with the promotion, thought
4 Jeffrey was the best man for the job. That's their
5 testimony.

6 March 4, 2011, the Athletic Director says he
7 left \$1,000 out in his office unsecured, came in the
8 next morning, it was gone. What links Jeffrey to the
9 Athletic Director's Office staff is one thing.

10 He was on night duty. He was in the building
11 that night. That's undisputed, undisputed. Other than
12 that, no video of Jeffrey or anyone else going into the
13 AD's Office, no recovery of any cash. They referred the
14 matter over to the Richland County Sheriff's Department.

15 The investigation went nowhere. No charges
16 were brought, nothing. So now after the fact, they're
17 trying to put in these statements of these other
18 Richland Two employees saying that their desks were
19 rifled through, \$15 was missing, a ring from the lost
20 and found went missing, what have you.

21 We don't think it's relevant to what happened
22 on March 4, 2011, when Jeffrey was targeted. So we
23 would ask Your Honor that because Jeffrey, as of
24 February 28, 2011, wasn't a suspect in these prior
25 thefts at the time he was promoted, they can't now go

1 back and say, "Oh, wait. No, we wanted to throw light
2 on these thefts; and we think we can link Jeffrey to
3 them because he was working that night, because he was
4 in the building that night."

5 He was supposed to be in the building. He was
6 a security guard. He is supposed to be there at night.
7 He works the third shift. So, Your Honor, we would
8 again say that these statements and testimony as to
9 these prior petty thefts should be excluded.

10 THE COURT: Mr. Barlow?

11 MR. BARLOW: All right, Your Honor. First of
12 all, there is nothing from the Spring of 2010 that has
13 anything to do with this case. We're not trying to
14 introduce any evidence of petty thefts that occurred in
15 the Spring of 2010. Okay.

16 The Fall of 2010, air freshener starts going
17 missing. A couple of witnesses are going to testify
18 that they noticed an air freshener was going missing.
19 They looked at the video. They saw Mr. Kennedy leaving
20 with what looked like a can of air freshener. That
21 would be the Fall of 2010.

22 Everything else they are going to testify
23 about as to why they were not trusting Jeffrey Kennedy
24 at this time happened in a about a two or three-week
25 timeframe between February 24th and the March 3rd,

1 March 4th wherein \$1,000 went missing from Tim Hunter's
2 office.

3 So we're not talking about a huge spread of
4 time. It's like about two weeks where things started
5 going missing in the administrative hall at Spring
6 Valley. The administration at Spring Valley starts
7 looking at the cameras.

8 They're going to say, "Look. What is Jeffrey
9 Kennedy doing in this particular area for this amount of
10 time on the security camera?" That's where the stuff
11 went missing. He happened to be in there.

12 Then eventually Mr. Kennedy is asked to
13 explain his actions. He gives an explanation to
14 Mr. Garrick here that is not consistent with what was
15 observed on the video. This is all late February 2011.
16 Okay.

17 The main incident that they're talking about
18 is the theft from Tim Hunter's office, the Athletic
19 Director, which happens over the evening of March 3rd,
20 March 4, 2011. So there's really only about a couple of
21 week's timeframe there.

22 The witnesses really need to testify about
23 this because it's the whole picture. We start seeing
24 things go missing late February. We look back and then
25 we remember, "Hey, he was the guy taking the air

1 freshener back in the fall. Maybe we should look a
2 little more closely at him."

3 So then there is scrutiny coming on him as of
4 that timeframe, late February, which culminates in the
5 missing money that goes out of Tim Hunter's office.
6 Again, the witnesses will testify that based on what
7 they observed on the videotape, Mr. Kennedy is engaging
8 in irregular activity; and he needs to be able to
9 explain what he was doing in there.

10 So that's kind of where that testimony comes
11 in. It's not a big timeframe. It's all needed to
12 address why these people were suspicious of Mr. Kennedy
13 and why they did not trust him at that time and transfer
14 him to a different position.

15 MS. PEAVY: Your Honor, they have submitted
16 exhibits, proposed exhibits, that are statements that
17 reference thefts that occurred in the Fall of 2010,
18 going into -- they reference Spring of 2010.

19 These are typewritten statements that
20 reference prior dates, not dates that are right up smack
21 against March 4, 2011. Specifically what I'm referring
22 to -- and I'm trying to put my hands on it...

23 MR. BARLOW: I see the statement here that
24 there is a reference in a Dorothy Loiodice statement,
25 "Had money taken at the end of the previous school year,

1 May 2010, in the amount of \$15, same location, my desk."
2 We're happy to redact that or take that out.

3 MS. PEAUVY: Your Honor, they're talking about
4 February 14th. They're talking about in Chuck Earles's
5 notes. They're talking about February 24th.

6 MR. BARLOW: These are all the same year.
7 They're two weeks prior to the theft from Tim Hunter's
8 office.

9 MS. PEAUVY: Jim Childers, who is an Assistant
10 Principal, made a statement to the defendant, Eric
11 Barnes dated March 24, 2011: "We have been experiencing
12 a number of thefts. It began last spring -- the Spring
13 of 2010 -- when Dorothy Loiodice reported that \$15 was
14 missing. This is Fall 2010. So these documents are not
15 contemporaneous with March 4th, Your Honor.

16 February 25th they're saying Dorothy Loiodice
17 reported \$20 cash missing, of this year, February 25th
18 of 2011. Three days later they're recommending Jeffrey
19 for a promotion, signing off on February 28th.

20 So they can't have it both ways. They can't
21 admit that they put in a recommendation for a promotion,
22 thought he was trustworthy, thought he was a good guy,
23 thought he was the one for the position, and then come
24 back and say, "Oh, no, no. We suspected him in a
25 February 25th theft."

1 I mean, it's just so prejudicial and it
2 doesn't make sense to the jury, Your Honor. I don't
3 think it's relevant because their actions are such that
4 they did not allege he was a thief until after
5 March 4th, on and after March 4th.

6 THE COURT: Your motion references an Exhibit
7 A which I did not receive in any of the documents
8 attached.

9 MS. PEAVY: And I apologize for that, Your
10 Honor.

11 THE COURT: I need to look at it. Then on
12 these statements, are all the witnesses who made these
13 statements coming in to testify?

14 MR. BARLOW: We were not planning to bring all
15 of the witnesses in if counsel would stipulate to that.
16 That would be four or five ten-minute witnesses.
17 They're all part of the investigation.

18 They were submitted to Mr. Childers and
19 Mr. Earles in the course of the investigation.
20 Certainly, you know, the fact that these statements are
21 dated March 24th, I mean, this is all during the course
22 of investigating something that happened earlier that
23 month.

24 THE COURT: Sure.

25 MR. BARLOW: It wasn't wrapped up in a couple

1 of days. There were criminal charges pending at that
2 time. They're trying to take a look and evaluate what
3 was going on.

4 MS. PEAVY: There was no criminal charges
5 pending. He was never charged.

6 MR. BARLOW: Well, they were thinking about it
7 at least, that he would be investigated by the police as
8 well.

9 THE COURT: And I understand that the
10 statements relating to the March incidents would be
11 after that fact. I'm just looking at...

12 MS. PEAVY: If I can hand up the exhibits that
13 may be helpful, Your Honor.

14 I'll just let Mr. Barlow quickly look at them.
15 (Attorneys confer.)

16 MS. PEAVY: This is what was supposed to be
17 attached as Exhibit A. I apologize, Your Honor.

18 (Hands to Court.)

19 THE COURT: Okay. Any further arguments at
20 this time?

21 MR. BARLOW: I would say that it's all part
22 and parcel of an investigation of Mr. Kennedy, and it's
23 necessary to the testimony of the people who were in
24 charge of employees and security of the School District
25 to be able to testify as to why they didn't trust

1 Mr. Kennedy and moved him to a different position to
2 give him an opportunity to get their trust back.

3 THE COURT: I'll review the information. I'll
4 defer a ruling at this particular point as to both of
5 the motions.

6 I would suggest that you make sure that they
7 are not mentioned during the course of the opening
8 statements or any information relating to these
9 witnesses. I'll consider those. We'll take a lunch
10 break, and we'll come back at 2:45.

11 MR. BARLOW: Just to clarify that, the
12 February incidents, there is to be no mention of the
13 February incidents during opening statement?

14 THE COURT: You can --

15 MR. BARLOW: February of 2011? I mean, I'm
16 certainly happy not to mention anything that happened
17 prior to February 14, 2011, which is, you know, three
18 weeks before the money goes missing in Tim Hunter's
19 office; and there are other items going missing during
20 that timeframe.

21 MS. PEAVY: Your Honor, those are thefts that
22 occurred before he was recommended for the promotion on
23 February 28th. So it's just --

24 MR. BARLOW: By people who -- sorry. I'm
25 sorry.

1 MS. PEAVY: You know, this is Richland Two
2 security. Supposedly they're getting -- they have
3 knowledge of reported petty thefts. They have knowledge
4 of what's going on in their own physical plant.

5 They're in charge of security. February 28,
6 2011, after these petty thefts occurred, they're
7 promoting Jeffrey. I'm assuming they are not promoting
8 him if they thought he was a thief.

9 THE COURT: What I'm telling you is that
10 during your opening statements, you shouldn't talk about
11 any of these. You can talk about whatever incident with
12 the Athletic Director but not talk about specific
13 instances.

14 I'd talk in generalities because I have not
15 had a chance to review them to determine whether or not
16 they should be admissible and under what circumstances.
17 So there could be some problems as to whether or not
18 statements made during opening would be prejudicial to
19 the point where the jury could be tainted.

20 MS. PEAVY: Thank you, Your Honor.

21 THE COURT: I am not making a ruling as to
22 whether or not those statements are admissible at this
23 particular point. I'm just telling you for purposes of
24 your opening statement, and that should get us
25 through -- we'll probably get through some of the

1 being first duly sworn, testifies as follows:

2 THE CLERK: State your full name for the
3 record.

4 THE WITNESS: My name is Jeffrey Kennedy.

5 (Plaintiff's Exhibits Number 1-9 are marked
6 for identification.)

7 DIRECT EXAMINATION

8 BY MS. PEAVY:

9 Q Mr. Kennedy, can you state your full name for the
10 record for the jury.

11 A Jeffrey William Kennedy.

12 Q And where were you born, Mr. Kennedy?

13 A Columbia, South Carolina.

14 Q Okay. Did you go to school here?

15 A Yes, I went to high school here.

16 Q Where did you graduate from?

17 A W.J. Keenan High School.

18 Q And after high school, what did you do?

19 A Went in the military, Army.

20 Q Oh, okay. Where were you stationed?

21 A I did basic at Fort Benning, Georgia. Then I also
22 went to jump school, airborne school. Then from
23 there to Korea and back here.

24 Q How long were you in the military for?

25 A Two years.

- 1 Q Okay. And discharged honorably?
- 2 A Yes, ma'am.
- 3 Q Since getting discharged from the Army, what have
- 4 you been doing professionally?
- 5 A Mostly security work.
- 6 Q Did you go to college at all or did you just do the
- 7 military?
- 8 A Just military, yes, ma'am.
- 9 Q Okay. And were you previously married?
- 10 A Yes, ma'am.
- 11 Q And do you have any kids?
- 12 A Yeah, I got two sons.
- 13 Q What are their names?
- 14 A Jeremy and Jeffrey.
- 15 Q Any grandkids?
- 16 A I've got six grandkids, five boys and one girl.
- 17 Q One girl?
- 18 A One girl.
- 19 Q I bet she is spoiled. Have you been a member of a
- 20 church here in the Columbia area?
- 21 A Yes, ma'am.
- 22 Q In 2008 you applied for a security job at Richland
- 23 Two; is that correct?
- 24 A Yes, ma'am.
- 25 Q You got the job; correct?

- 1 A Yes, ma'am.
- 2 Q Okay. Who interviewed you?
- 3 A Chief Propst and Captain Z.
- 4 Q Do they call her Captain Z --
- 5 A Yes, ma'am.
- 6 Q -- because her last name is hard to pronounce?
- 7 A Yes, ma'am.
- 8 Q What shift were you given when you were hired on?
- 9 A Third shift.
- 10 Q And what is that shift?
- 11 A That is 11:00 to 7:00 in the morning.
- 12 Q What was your rate of pay back when you were hired?
- 13 A Probably I think maybe 11.77 or something like
- 14 that.
- 15 Q An hour?
- 16 A Yes.
- 17 Q Okay. Were you entitled to earn overtime if you
- 18 worked extra events?
- 19 A A lot of overtime, yes, ma'am.
- 20 Q Was that part of your earning capability?
- 21 A Yes, ma'am. I used to do traffic, and traffic is
- 22 like an extra \$30 a pay period. So I did traffic
- 23 at Joseph Keels.
- 24 Q For special events and tournaments?
- 25 A Yeah.

1 Q And did the job at Richland Two, did that come with
2 retirement benefits?

3 A Yes, ma'am.

4 Q Okay. Did you take advantage of that?

5 A Yes, ma'am.

6 Q And did you also receive health insurance through
7 the District?

8 A Yes, ma'am.

9 Q I'm going to show you what's been marked as
10 Plaintiff's Exhibit 1. It's titled an Offer of
11 Employment. Does this accurately reflect when you
12 came on at Richland Two as a security officer?

13 A Yes, ma'am.

14 Q Okay. And what date is that dated?

15 A May 15, 2008.

16 Q Okay. Let's talk about the third shift, 11:00 to
17 7:00, or thereabouts. I'd like you to describe for
18 the members of the jury what your responsibilities
19 are as a member of the third shift, who the people
20 are that you're working with, and kind of what you
21 do during those hours.

22 A Third shift normally is the lockdown shift. When
23 we come in, because most schools have a lot of
24 activities -- you've got custodians in the building
25 and stuff like that -- so we come in at 11:00 to

1 7:00.

2 We have to go around and check all the doors,
3 check all the windows, cut the alarms on. We also
4 answer alarms. If we have a burglar alarm or a
5 fire alarm or something at night, we're the first
6 to respond. We also open up all the schools in the
7 morning and be the ones to do traffic in the
8 morning.

9 Q All right. So when you're inside a building at
10 night, when you come to put the alarm on, when
11 you've come to make sure the outside doors are
12 locked, do you also check all the inside doors to
13 see if the people who work in those offices have
14 locked the doors?

15 A No, ma'am, we just check the outside doors.

16 Q So that's not part of a security person's
17 responsibility?

18 A No, ma'am.

19 Q And in order to get this position at Richland Two
20 as a member of the Security Division, you had to
21 prevent -- you had to present to Richland Two that
22 you had a clean SLED record; correct?

23 A Yes, ma'am. Yes, ma'am.

24 Q So you had passed a SLED check and a background
25 check when you were hired at Richland Two; correct?

- 1 A Yes, ma'am.
- 2 Q Okay. When you're on this third shift, can I say
- 3 that you're essentially the night watchman?
- 4 A Yes, ma'am.
- 5 Q Is that fair?
- 6 A Yes, ma'am.
- 7 Q Okay. You're driving around in a District truck;
- 8 correct?
- 9 A Yes, ma'am.
- 10 Q You're wearing a District uniform?
- 11 A Yes, ma'am.
- 12 Q Okay. Is every night the same or is every night
- 13 different?
- 14 A No, every night is different. We have different
- 15 activities and different things going on, different
- 16 games. Every night is different.
- 17 Q Okay. And what about when there's not a game? Do
- 18 you have an established pattern or do you kind of
- 19 mix it up every night?
- 20 A No, try not to set no set patterns, try not to go
- 21 the same route every night, try not to check the
- 22 same schools in order. You do it differently.
- 23 Q Okay.
- 24 A Just so you don't have no pattern.
- 25 Q Okay. So you don't want to have a pattern because

1 you don't want people to be able to track your
2 movements; is that right?

3 A Yes, ma'am.

4 Q And sometimes when you get inside a building and
5 you're inside a building, do you walk the halls?

6 A Sometimes a lot of lights are on. We have to turn
7 the lights off. Basically when you get to a school
8 and the alarm is not set, then you don't know if
9 nobody is in the school or not. So you want to
10 walk through the school, check bathrooms and stuff
11 like that, make sure ain't nobody in there, and
12 then check outside doors.

13 Q So when you're on your shift, you're going around
14 to all these different Richland Two schools?

15 A Yes.

16 Q And I had mentioned to the members of the jury, but
17 why don't you tell me what schools you would go to
18 on a regular basis?

19 A Spring Valley High School is my base school. I had
20 Polo Road. I had Lonnie B. Nelson, had E.L.
21 Wright. I had Spears Creek Elementary, and I had
22 the adult ed off Clemson Road, and I had Windsor
23 Elementary and Polo Road.

24 Q Okay. So you were out and about going to different
25 buildings all the time every single shift? Is that

1 fair to say?

2 A Yes, ma'am.

3 Q Is it also fair to say that some nights you might
4 be in the Administration Building for five minutes?
5 Some nights you might be there for two minutes? Is
6 that correct?

7 A Correct.

8 Q Okay. And that's because there might be a light on
9 one night or you might have to hear a sound and
10 investigate and what have you?

11 A Yeah. Also, in the Administration Building that's
12 where our spare batteries for the radios are kept.
13 That's where the phone is being charged and the
14 phone is on the charger. So we have to go in there
15 every night to change batteries and get the phone
16 off the charger.

17 Q Okay. When we're talking about an administrative
18 building, is that like what we would consider where
19 the school office is?

20 A By the Principal office, Assistant Principal and
21 all that, yes, ma'am.

22 Q Are there classrooms there too?

23 A No, ma'am, just administrative offices.

24 Q All right. And over the course of this shift --
25 it's about an eight-hour shift, I think you

1 testified -- do you try to space things out a
2 little bit?

3 A Yes, ma'am.

4 Q What's the reason for that?

5 A Because you don't want to finish too fast. Then
6 you don't have nothing to do. You'll be in one
7 place too long. You space things out so you don't
8 get to the same school at the same time every
9 night. You don't finish at the same time. You
10 just don't set no pattern or no routine.

11 Q And when you're on third shift and you're visiting
12 these different schools, checking things out, et
13 cetera, occasionally do you use the rest room?

14 A Yes, ma'am.

15 Q Occasionally, will you, you know, grab a soda or
16 flip through a newspaper someone has discarded?

17 A Yes, ma'am.

18 Q So there's some downtime where maybe you take a
19 couple minutes, check your phone, what have you?

20 A Yes, ma'am. They want you to spend at least, say,
21 anywhere from 45 minutes or so at a school.

22 Q Okay.

23 A Some schools, like an elementary school, you might
24 can check that school in like 15 minutes.

25 Q Okay. So they want you to do a thorough job when

1 you get to that school?

2 A Yes, ma'am.

3 Q And what's the reason for that?

4 A They want to make sure everything is locked up and
5 everything is secured.

6 Q During the time you were working for Richland Two,
7 starting in May of 2008, you were supporting your
8 family; is that correct?

9 A Yes, ma'am.

10 Q Okay. Who was staying with you and your then wife?

11 A Me and my wife, my baby son and his son, my
12 grandson.

13 Q So you were a family of four at that time?

14 A Yes, ma'am.

15 Q And was you son contributing to the household or
16 were you guys kind of --

17 A No, ma'am, he was going to school.

18 Q Okay. So you were helping him by providing a place
19 to live and all that?

20 A Yes, ma'am.

21 Q Okay. Now, you mentioned previously when you got
22 hired at Richland Two originally back in May
23 of 2008, you were hired by someone named Chief
24 Propst?

25 A Yeah, Chief Propst.

1 Q And you were also hired by Captain -- I will call
2 her Captain Z -- it's a Polish last name and it's a
3 little difficult to pronounce.

4 A Yes, ma'am.

5 Q At some point the leadership in the Security
6 Division at Richland Two changed; is that correct?

7 A Yes, ma'am.

8 Q Okay. Who left?

9 A Chief Propst.

10 Q Did he tell you why he was leaving?

11 A Yeah, they fired him.

12 Q They did?

13 A Yes, ma'am.

14 Q Okay. Who came on?

15 A Chuck Earles was already there, but he took the
16 position as being in charge.

17 Q And after Mr. Earles assumed the leadership
18 position of the Security Division, did he send out
19 a notice to everyone in the Security Division,
20 which I've marked as Plaintiff's Exhibit 2?

21 A Yes, ma'am.

22 Q Is that your signature on the bottom there?

23 A Yes, ma'am.

24 Q Okay. And Mr. Earles sent out this Change of
25 Culture memo to the Security Division staff; is

- 1 that correct?
- 2 A Yes, ma'am.
- 3 Q And he wanted y'all to sign it; right?
- 4 A Yes, ma'am.
- 5 Q And you did sign it; right?
- 6 A Yes, ma'am.
- 7 Q Okay. Will you read for the members of the jury
- 8 just the underlined portion?
- 9 A "Mind your own business. Do your job. Leave your
- 10 personal life at home. Do not listen to or repeat
- 11 rumors. Always be honest."
- 12 Q And this is entitled Change of Culture from this
- 13 day forward?
- 14 A Yes, ma'am.
- 15 Q So this is Mr. Earles's mandate at this point --
- 16 A Yes, ma'am.
- 17 Q -- in your opinion?
- 18 A Yes, ma'am.
- 19 Q And your impression. Okay. And you were working
- 20 under Mr. Earles now; right?
- 21 A Yes, ma'am.
- 22 Q Did he bring on anyone with him?
- 23 A Eric Barnes came on.
- 24 Q Was he his sort of deputy?
- 25 A Yeah, and they used to work together prior to that.

1 Q Okay. What was the change when Mr. Earles and
2 Mr. Barnes took over?

3 A They pretty much tried to run the security company
4 like the Richland County Police instead of
5 security.

6 Q Okay. And there's a -- you worked in security a
7 long time?

8 A Yes, ma'am.

9 Q So you know there's a big difference between the
10 Richland County Sheriff's Department and Richland
11 Two School District Security Department?

12 A Yes, ma'am.

13 Q Is that fair?

14 A Yes, ma'am.

15 Q Okay. Y'all aren't tasked with making arrests,
16 hunting down suspects, and banging out suspicious
17 vehicles and all that, are you?

18 A No, ma'am.

19 Q Okay.

20 A We carry a flashlight.

21 Q All right. What did you say? You have a
22 flashlight?

23 A We carry a flashlight.

24 Q All right. Back in February of 2011, can you tell
25 the jury what was going on with your position at

- 1 Richland Two?
- 2 A When?
- 3 Q Back in February 2011.
- 4 A Oh, that's when I applied for the lieutenant
- 5 position that came open.
- 6 Q Okay.
- 7 A And it was given to me.
- 8 Q Okay. This was a promotion obviously to
- 9 lieutenant?
- 10 A Yes, ma'am.
- 11 Q What was better about this job than where you moved
- 12 from?
- 13 A I was coming off third shift going to supervise
- 14 second shift, a pay raise.
- 15 Q Okay.
- 16 A I got a little more time home instead of being away
- 17 at night.
- 18 Q What is second shift?
- 19 A Second shift is from 3:00 to 11:00.
- 20 Q Okay. So it's a little more family friendly. Who
- 21 recommended you for the promotion?
- 22 A Chuck Earles.
- 23 Q Okay. Who else did you meet with about the
- 24 promotion?
- 25 A Eric Barnes and Captain Permenter.

1 Q Angela Permenter?

2 A Yes, ma'am.

3 Q So you met with Chuck Earles, who was the head of
4 security, you met with Eric Barnes, who was his
5 deputy, and you met with Captain Permenter --

6 A She was captain of the second shift.

7 Q Who was the supervisor?

8 A Yes.

9 Q And they all thought you were the best guy for the
10 job?

11 A Yes, ma'am. After my interview they said they had
12 three more people to interview, but they called me
13 before I got home and told me the job was mine.

14 Q Okay. Must have been a good day?

15 A Yes, it was.

16 Q And part of the way Richland Two works is that they
17 put in the recommendation for a promotion to the HR
18 Department; is that correct?

19 A Yes, ma'am.

20 Q Okay. I'm going to show you Plaintiff's Exhibit 3
21 and ask you to identify what this is, not the
22 handwriting, but just the typewritten form.

23 A It's the recommendation for my promotion.

24 Q Okay.

25 A To lieutenant.

1 Q Okay.

2 A Patrol supervisor.

3 Q And what day is that dated?

4 A It's dated the 28th of February, 2011.

5 Q So you knew Chuck Earles was putting this in for
6 you after y'all had met; right?

7 A Yes, ma'am.

8 Q And it says you were supposed to start on
9 March 7th; is that correct?

10 A Yes, ma'am.

11 Q Okay.

12 A I had already started going to supervisor meetings
13 and stuff.

14 Q Had they introduced you as, Hey, we gave the job to
15 Jeffrey. He is going to be moving up?

16 A Yes, ma'am.

17 Q So your colleagues knew you had been recommended?

18 A Yes, ma'am. They had gave me the photos of all my
19 employees, all the information, and everything,
20 notes from prior meetings.

21 Q So you must have been feeling pretty good?

22 A I was.

23 Q Okay. Let's talk about Spring Valley High School.

24 Did the Security Division of Richland Two, which
25 Chuck Earles was the head of, the manager of, did

1 security control who had the keys to Spring Valley
2 based on your experience?

3 A No, ma'am.

4 Q Who controlled that?

5 A I don't think they had no control. Everybody had
6 keys. You asked for keys, they gave them to you.

7 Q Okay. Who would you go to as the person at Spring
8 Valley, either a staff member or a parent or
9 student? Who would you go to?

10 A Either the Principal or Assistant Principal.

11 Q The Principal or the Assistant Principal. Okay.
12 So the Security Division, Richland Two security,
13 y'all didn't know who had keys to what; is that
14 correct?

15 A No, ma'am.

16 Q Okay.

17 A Spring Valley was run different from any other
18 school.

19 Q I'm sorry?

20 A Spring Valley was run different from any other
21 school.

22 Q In Richland Two?

23 A Yes, ma'am.

24 Q Was that because the Principal's Office controlled
25 the keys?

1 A Yeah, they were special.

2 Q Okay. Based on your three years of experience
3 working at Richland Two -- we're now into 2011 --
4 did it appear to you that everyone had keys at
5 Spring Valley?

6 A Yes, ma'am.

7 Q Did custodians?

8 A Yes, ma'am.

9 Q Teachers?

10 A Yes, ma'am.

11 Q Administration obviously?

12 A Yes, ma'am.

13 Q Members of security when they were on shift;
14 correct?

15 A Yes, ma'am.

16 Q All right. Did coaches have keys?

17 A Coaches had keys.

18 Q Okay. Did you observe kids having keys?

19 A Yes, ma'am. You would see the coaches give their
20 kids or the teacher give the keys to the kids. You
21 would see them going in and out of buildings, going
22 in and out of classrooms.

23 Q What about parents? Did you ever see any Spring
24 Valley parents with keys?

25 A The booster club, yes, ma'am.

1 Q All right. Now, I want to get into what happened
2 next, what happened after February 28, 2011. Okay.
3 Sometime on or after March 4, 2011, did you receive
4 a call from Eric Barnes?

5 A I did.

6 Q And you weren't working that day; correct?

7 A No, ma'am, I was off. I worked Thursday through
8 Sunday. I was on Fridays and Saturdays.

9 Q Where were you on the day when Eric Barnes called
10 you?

11 A On my way to Charleston, me and my wife.

12 Q So y'all were just going to get away for the night?

13 A Yes, ma'am.

14 Q And that was your day off?

15 A Yes, ma'am.

16 Q Okay. What did Eric Barnes say?

17 A He called me and told me he wanted to talk to me,
18 needed me to come in about my promotion.

19 Q Sometime after that did you learn that, in fact,
20 Eric Barnes wanted to talk to you about what Tim
21 Hunter was saying went missing in the Athletic
22 Department?

23 A Yes, ma'am. My mother called me and said there was
24 about three or four carloads of police at the
25 house. Eric Barnes, she put Eric Barnes on the

1 phone; and he told my momma he was there to talk to
2 me about my promotion.

3 So she called me and put him on the phone. He
4 was talking about he was there because he needed to
5 see me. I asked why he had the police with him.
6 He told me he couldn't talk to me right then. He
7 told me he would call me back. About 20 minutes
8 later he called me and told me that I was on
9 administrative leave until further notice.

10 Q Did he tell you that was because Athletic Director
11 Hunter was reporting this \$1,000 --

12 A No, ma'am.

13 Q So you didn't know at that point?

14 A No, ma'am, I didn't know.

15 Q But some time after that, after Eric Barnes reached
16 out to you, you learned that Tim Hunter was
17 reporting that he had left a thousand dollars out
18 in his office sometime the evening of March 3rd,
19 into early morning March 4th?

20 A Yes, ma'am.

21 Q And that when he came back, it was missing; is that
22 correct?

23 A Yes, ma'am.

24 Q So that's what you knew at that point?

25 A Yes, ma'am..

1 Q Okay. I'd like to take us back to the night of
2 March 3, 2011. Tell me about it, to the best of
3 your recollection, what your movements were as they
4 related to the Athletic Department building.

5 A I normally used to work anywhere from 30 to 20
6 minutes early every night. So I got there early
7 and Lieutenant Reid -- he was Officer Reid then --
8 he was second shift. He was working and he hadn't
9 checked Spring Valley High School yet.

10 So I walked the school with him. We checked
11 the school. We walked over to the Bates Hall.
12 That's where the Athletic Director office is. I
13 opened the door and cut the alarm on. Then me and
14 him went on around and finished checking the doors.

15 We talked for a little bit. He left at 11:00
16 o'clock. So I finished, go ahead and do the rest
17 of my checks. I guess about 11:30 or a quarter to
18 12, I got a call from Lieutenant Young saying that
19 the alarm was going off over at Bates Hall.

20 Q Where the Athletic Department is?

21 A Where the Athletic Director office is, yes, ma'am.

22 Q Where you had set the alarm with the coworker
23 earlier that evening?

24 A Yes, ma'am. So I drove over there and I seen the
25 bus and the baseball team coming back, which

1 Officer Reid already told me that the baseball team
2 was coming back late. They had an away game.

3 So they was over there. A couple of players
4 was going in the school. The coaches went in the
5 school. I sat out in the truck until they all came
6 out. They came out. I seen the coach set the
7 alarm. They came out and left.

8 I walked around and checked the doors. I went
9 back and parked back down by Spring Valley until it
10 was time for me to leave and go check my other
11 schools.

12 Q Okay. So the baseball team comes back. They set
13 the alarm off. You're called from the shift room
14 saying, "Hey, the alarm is going off at Bates Hall
15 where the Athletic Department is"?

16 A Yes, ma'am.

17 Q You come over in your truck and you observed that
18 baseball team is in there?

19 A Yes, ma'am.

20 Q Okay. About how many people did you see at that
21 time?

22 A In all or just inside the building?

23 Q It was the whole bus emptying out?

24 A Yeah, it was the whole baseball team.

25 Q All right.

1 A Some of them was getting in their personal cars.

2 Parents was there to pick them up. So a lot of

3 parents were out there waiting, yes, ma'am.

4 Q And some kids and coaches were inside the building?

5 A Yes.

6 Q Okay. Did you -- you weren't the one to cut that
7 alarm off though; right? The coach knew how to do
8 that?

9 A The coaches had codes, yeah.

10 Q All right. So that's around midnight or so to the
11 best of your recollection?

12 A Yes, ma'am.

13 Q And then you're out back on your shift back
14 visiting the schools, and then it's around
15 5:45 A.M.?

16 A Yes, ma'am.

17 Q So that's towards the ends of your shift? Right
18 about the end?

19 A It was about the time we start opening up the
20 schools, yes, ma'am.

21 Q All right.

22 A We started opening up. That's when I leave Spring
23 Valley and go start opening up the rest of the
24 schools.

25 Q What did you do then?

1 A When I first do that, when I'm at Spring Valley, I
2 open up all the gates. I go cut the alarm off in
3 the main school. Then I go to Bates Hall and cut
4 the alarm off, and then I leave there and go out to
5 the other schools.

6 Q On the night in question, you went back to the
7 Athletic Department and turned off the alarm; is
8 that correct?

9 A I did, yes, ma'am.

10 Q Now, you testified it only took about a minute, 30
11 seconds to turn the alarm on; is that correct?

12 A Yes, ma'am.

13 Q When you came back, Richland Two says you were in
14 the building five or six minutes.

15 A Yes, ma'am.

16 Q You were cutting the alarm off? What were you
17 doing?

18 A I cut the alarm on and the light was on in the
19 waiting room. The waiting room was back there by
20 the alarm. So I went in the weight room and cut
21 the light off. By that time Lieutenant Reid -- I
22 mean, excuse me -- Lieutenant Young called me and
23 told me I need to go open up the gate at Polo Road.

24 Q Okay.

25 A For the cafeteria I'm managing.

1 Q Did you take a break that night while you were at
2 the Athletic Department -- I mean -- that early
3 morning when you got there? Did you take a break?

4 A Yeah. When I cut the light off, I was in the
5 waiting room a few minutes. Then the phone rung.
6 I talked to Lieutenant Young. Then I came out and
7 went to Polo Road and opened that gate.

8 Q So you were in the waiting room? You had a glass
9 of water or something?

10 A Yes, ma'am.

11 Q Is that pretty standard to take a couple minutes
12 throughout the night and maybe have water or look
13 at the newspaper?

14 A Yes, ma'am.

15 Q Okay. So that's what happened that night; right?

16 A Yes, ma'am.

17 Q Okay. You've already testified but you were
18 instructed by your supervisors that you were to be
19 locking the halls of these buildings; is that
20 correct?

21 A Yes, ma'am. They don't want you sitting in the
22 truck with the truck just running. So you can go
23 in the school, check the school. You can go in
24 like the break rooms and take a break until it's
25 time for you to leave.

1 Q Now, when you went in to the Athletic Building that
2 night to turn the alarm off and turn off that light
3 in the waiting room, did you go into the Athletic
4 Director's Office?

5 A No, ma'am.

6 Q And do you check the inside doors of the Athletic
7 Department?

8 A No, ma'am.

9 Q So you had no idea if that door was locked or
10 opened --

11 A No, ma'am.

12 Q -- to that office; is that correct?

13 A That's right.

14 Q Do you know if the baseball coaches went into the
15 Athletic Director's Office?

16 A I didn't see them go in there so I can't speak on
17 that.

18 Q And you don't know if anyone else did; right?

19 A No, ma'am.

20 Q Okay. At this point Eric Barnes has called you.
21 You're headed down to Charleston with your wife,
22 get away for a night. He is telling you you're on
23 administrative leave. Then I assume you meet with
24 Richland Two security with Human Resources. And
25 what do they say to you?

- 1 A That they had some money missing from the AD
2 Office.
- 3 Q Okay. And did they ask you if you took it?
- 4 A Yes, ma'am.
- 5 Q What did you tell them?
- 6 A I told them I didn't.
- 7 Q Okay. What else did you tell them? Did you tell
8 them that, you know, yeah, you were in the building
9 that night?
- 10 A Yes, ma'am, yeah.
- 11 Q But you didn't take the money?
- 12 A Yes, ma'am.
- 13 Q So did they say to you that they had viewed the
14 videotape; and they saw that you were in the
15 building for five minutes, instead of 30 seconds?
- 16 A They didn't tell me that at that time, no, ma'am.
- 17 Q Did they ask you about other people you had seen in
18 the building that night?
- 19 A No, ma'am, they asked me about nobody.
- 20 Q Okay. Did they ask you if you knew who else had
21 keys?
- 22 A No, ma'am, they didn't ask.
- 23 Q Did they ask about the baseball team?
- 24 A No, ma'am.
- 25 Q Okay. All right. To your knowledge did they ever

1 question anyone else about this Athletic Director's
2 Office theft?

3 A No, ma'am.

4 Q Okay. Now, at a certain point, they referred the
5 matter over to the Sheriff's Department, didn't
6 they?

7 A Yes, ma'am.

8 Q Did you meet with the investigator from the
9 Sheriff's Department?

10 A Yes. Investigator Joe Clark called me and told me
11 he wanted to meet with me about --

12 MR. BARLOW: Objection, Your Honor, hearsay.

13 THE COURT: He can talk about having a
14 meeting. He can't talk about what was discussed during
15 the meeting.

16 MS. PEAVY: Okay.

17 THE COURT: He can certainly tell who he met
18 with.

19 MR. BARLOW: Sure.

20 BY MS. PEAVY:

21 Q You met with a Richland County Sheriff's Department
22 investigator; is that correct?

23 A Yes, ma'am. Yes, ma'am.

24 Q And what was the result of that?

25 A Nothing was found. I wasn't accused of nothing or

1 charged with nothing.

2 Q Okay.

3 A He said only that he did two days investigation and
4 he didn't see nothing that --

5 MR. BARLOW: Your Honor, hearsay objection.

6 THE COURT: I sustain.

7 MR. BARLOW: Move to strike.

8 BY MS. PEAVY:

9 Q No charges were brought by the Sheriff's
10 Department; right?

11 A No, ma'am.

12 Q And, in fact, at that point did you hope that
13 things were going to move on?

14 A Oh, yes, ma'am.

15 Q Did you hope that you were going to move forward in
16 your new position?

17 A Yes, ma'am.

18 Q At that point what did happen?

19 A To me I was punished for something I didn't do. I
20 couldn't go into my school no more. They took me
21 from Spring Valley, and they put me over in the
22 control office.

23 I was doing the work that the supervisor did.
24 So I felt like I didn't get the promotion, but I
25 still did the work because my supervisor was doing

1 the job that they gave me. That's what he was
2 doing.

3 Q Okay. Did you start hearing things?

4 A Oh, yes, ma'am.

5 Q I know this might be difficult, but I'd like you to
6 tell the members of the jury what you started to
7 hear at Richland Two following this incident.

8 A I heard that I didn't get my promotion. They said
9 I was the thief. I was the one that stole the
10 money out of the Athletic Director's Office.

11 Q Okay. I'm going to show you an exhibit, and I've
12 enlarged it so the jury can take a look at it.
13 This is marked as Plaintiff's Exhibit 4. I'd like
14 you to take a look at that. Over here, this is
15 just a blowup of it.

16 A Yes, ma'am.

17 Q At some point on or after June 15, 2011, which is
18 the date of this confidential memo, did you see
19 that lying around?

20 A Yes, ma'am.

21 Q Where did you see it?

22 A I seen it lying around in the security vehicle, and
23 I also seen it lying around in the offices.

24 Q And it says you are not to have keys anymore;
25 correct?

1 A Yes, ma'am.

2 Q Who wrote that memo?

3 A Chuck Earles.

4 Q Okay. When you read that memo, what does it tell
5 you?

6 A It tells me that they didn't trust me, and they
7 thought that I took the money from Spring Valley.
8 So they was punishing me, which they said they
9 wasn't, but it was obvious. I couldn't go back to
10 my regular job. If they felt I was innocent, I
11 could have went back to Spring Valley.

12 Q So this was lying out. You said you saw it in the
13 break room and in the truck?

14 A In the security vehicle.

15 Q And in the security vehicle. When y'all are on
16 shift, y'all are in Richland Two vehicles; correct?

17 A Yes, ma'am.

18 Q So they're not your personal car?

19 A No, ma'am.

20 Q Okay. So people are in and out of those vehicles;
21 is that correct?

22 A Yes, ma'am.

23 Q Okay. So in 2010 we have a Change in Culture:
24 "Don't ever discuss anyone else's personal life or
25 situation. Do not ever discuss another employee's

1 job performance with anyone, other than that
2 employee or the supervisor and never do it where
3 others can hear it." Is that the Change in Culture
4 memo?

5 A Yes, ma'am.

6 Q Okay. And June 15, 2011, this is sitting out in
7 the break room?

8 A Yes, ma'am.

9 Q Okay. Now, you weren't just meeting with
10 Mr. Earles or Mr. Barnes at this point. You were
11 also meeting with Mr. Roosevelt Garrick; is that
12 correct?

13 A Yes, ma'am.

14 Q And Mr. Garrick is the gentleman sitting here in
15 the courtroom today?

16 A Yes, ma'am.

17 Q At the time when this all was happening, he was the
18 Human Resources person; is that correct?

19 A Yes, ma'am.

20 Q Okay. I'm going to show you what's been marked as
21 Plaintiff's Exhibit 5, which is a letter to you
22 from Mr. Roosevelt Garrick. I'd like you to take a
23 look at it. I'm going to ask you about it.

24 A Yes, ma'am.

25 Q Okay. So in this letter Mr. Garrick is saying you

1 have behaved suspiciously. "And you've given us
2 answers that we don't think are trustworthy." Is
3 that the essence of it?

4 A Yes, ma'am. Yes, ma'am.

5 Q And specifically it looks like he is asking you --
6 or he is telling you that he asked you about
7 certain instances when you went out a back door
8 instead of a front door or when you were in a
9 building for 18 minutes instead of whatever minutes
10 they wanted you there on that specific day. He is
11 saying that he met with you May 15th and June 15th
12 of 2011?

13 A Yes, ma'am.

14 Q Is it fair to say that on those dates you might not
15 remember what exact door you went out of and what
16 exact building back in February when someone said
17 that a ring was taken from the back of a desk? Is
18 that fair to say?

19 A Yes, ma'am.

20 Q And is it also fair to say that you change up your
21 routines, and you don't check with your supervisor
22 first before you decide to do an extra round?

23 A No, ma'am.

24 Q You don't check with your supervisor first if you
25 decide that you're going to pick up your radio

1 battery and go back out the back door and then loop
2 back around instead of going out the front door; is
3 that correct?

4 A Well, that back door where we go get the radios,
5 that's where we go in. To get the radios and the
6 phone, you have to drive around to the front
7 because that's where the keypad is at to set the
8 alarm.

9 Q Okay. So this letter is saying that they have
10 shown you these videotapes and you don't really
11 have a good explanation for what you were doing on
12 those nights; is that correct?

13 A Yes, ma'am.

14 Q Okay. What did you tell them?

15 A I told them just what I just said. I said I would
16 go in that back door to get the battery for the
17 radio and get the phone and have to go around to
18 the front of the school to set the alarm.

19 They have a lot of lights on in front of the
20 school sometimes. So Captain Z wants you to cut
21 those lights off, go upstairs or whatever and cut
22 those lights off, then come back and set the alarm
23 and come out.

24 Q Okay. And if you told them that you thought you
25 went through one door one night and, in fact, the

1 videotape showed that you went through a different
2 door, would you be surprised by that?

3 A I mean, I go through all kinds of doors. I could
4 forget. I go through a bunch of doors at night.

5 Q Right, right. And in this letter Mr. Garrick tells
6 you something else, doesn't he? Does Mr. Garrick
7 write you that he has found that other individuals
8 did enter into many of these areas, with some of
9 them having keys to the appropriate secured areas;
10 is that correct?

11 A Yes, ma'am.

12 Q So he is acknowledging in the letter to you that
13 you're not the only one?

14 A Yes, ma'am.

15 Q That other people have keys. That other people
16 were there. Correct?

17 A Yes, ma'am.

18 Q He doesn't like your answers. He thinks you --
19 what you're responding to two months after the fact
20 doesn't match up with what he is looking at on the
21 videotape. But he is acknowledging, Yeah, there
22 are other folks; correct?

23 A Yes, ma'am.

24 Q Okay. At some point you had hired a different
25 attorney, a Mr. Brown, to communicate with

- 1 Mr. Garrick; is that correct?
- 2 A Yes, ma'am.
- 3 Q Okay. Did you direct your -- Mr. Brown to ask to
- 4 get your promotion reinstated?
- 5 A Yes, ma'am.
- 6 Q Okay.
- 7 A And I had him go in there to the Sheriff's
- 8 Department with me.
- 9 Q And Mr. Garrick still said no; is that correct?
- 10 A Yes, ma'am.
- 11 Q Okay. That was his decision. So at this point
- 12 you've been denied the promotion. You're on desk
- 13 duty?
- 14 A Yes, ma'am.
- 15 Q There's a confidential memo sitting out. You're
- 16 testifying you're hearing people talking about you?
- 17 A Yes, ma'am.
- 18 Q That must have been pretty stressful?
- 19 A It was.
- 20 Q Pretty upsetting actually?
- 21 A Yes, ma'am.
- 22 Q But you stayed, didn't you?
- 23 A Yes, ma'am, I needed a job.
- 24 Q And jobs aren't that easy to come by, are they?
- 25 A No, ma'am, they're not.

1 Q I say that. Jobs with health insurance, State
2 retirement benefits, those aren't that easy to come
3 by; right?

4 A That's right.

5 Q At that point you've got you wife, your son who is
6 in school and your grandson. They're all staying
7 with you?

8 A Yes, ma'am.

9 Q Let's talk about Ms. Kim Jones and what happened in
10 October of 2012. I want you to tell the jury in
11 your own words what happened with you and
12 Ms. Jones.

13 A Ms. Jones used to come in in the mornings when I
14 was working in the office in there. She drove a
15 bus. She stopped by in the mornings. We have to
16 check. As a matter of fact, we changed phone
17 numbers and we used to talk.

18 So this particular morning she came in. She
19 said her son had got in something at school, and
20 they said that he was on camera. She wanted to see
21 it. I told her I don't know how to run the cameras
22 back and do that.

23 Lieutenant Young, my supervisor, I asked
24 Lieutenant Young could he do it. He messed with
25 the computer a little while. He said he couldn't

1 do it. I asked my Captain Groves that night could
2 he get it.

3 Captain Groves didn't come in that night so I
4 didn't ask him. So she came in that morning. I
5 told her we couldn't get it. I'm the one who told
6 her to go talk to the Principal and, "See if the
7 Principal might show it to you since you're a
8 mother." I mean, here is his mother.

9 She left. Then Lieutenant Young told me he
10 could do it but he wasn't going to do it because
11 he, like, got in trouble doing that one time
12 before. I didn't know how to do it. So I never
13 showed her a film.

14 Q Okay. Since she was a mother, she was a work
15 colleague, she was a fellow Richland Two employee,
16 y'all were friendly the way coworkers are. She had
17 to get there early in the morning. You were there
18 early in the morning. Did you feel you had to try
19 and help her?

20 A If I know how to do it. Like I told them, if I
21 know how to do it, I would have showed her because
22 I didn't know I wasn't supposed to show her.
23 Didn't nobody tell me that, I wasn't supposed to.
24 But if I know how to pull that video up, I would
25 have showed it to her.

1 Q Because she was the mom and you felt she had a
2 right to see what was going on?

3 A I didn't know of no policy or nothing. Nobody
4 never told me that. They just gave me that job.
5 They didn't tell me nothing about that.

6 Q But you had never been trained on that system?

7 A No, I wasn't trained on nothing.

8 Q And you tried to get a couple of other people to
9 show her. They all said they didn't know how to do
10 it either; correct?

11 A Yes, ma'am.

12 Q But at some point Ms. Jones told the
13 administration -- she told you that she told the
14 administration that, in fact, she had seen the
15 video?

16 A Yes, ma'am.

17 Q Okay. Do you know why she did that?

18 A She did that -- she said she did that because she
19 thought the Principal might would show her the
20 video herself since she had seen it.

21 Q Oh, okay. So she told you she wanted it to appear
22 like she had already seen it?

23 A Yes, ma'am.

24 Q In hopes that the Principal would actually show it
25 to her?

1 A Yes, ma'am.

2 Q But she wasn't supposed to do that, was she?

3 A No, ma'am.

4 Q So y'all both didn't really understand what the
5 Richland Two policy was about viewing these
6 videotapes?

7 A I didn't.

8 Q Okay. And then Ms. Jones realized that maybe she
9 had done something?

10 A Yeah.

11 Q Is that correct?

12 A She said, "The Principal must have called Chuck
13 Earles in security." Then they had called her in,
14 Traci Batchelder and them, had called her in and
15 questioned her about that. So she found that, you
16 know, she was going to get in trouble.

17 Q So she told you that?

18 A Yes, ma'am.

19 Q Okay. So she was worried because she had kind of
20 breached this protocol; correct?

21 A She wanted to know had they called and talked to
22 me, and I told her nobody had talked to me at that
23 time.

24 Q Okay. Do you think she told them that you showed
25 her the video because she was nervous about her

1 job?

2 A Yes, ma'am.

3 Q Okay. And that's based on your communications with
4 her; correct?

5 A Yes, ma'am.

6 Q She was nervous?

7 A Yes, ma'am.

8 Q Okay. Now, at that point in October 2012, Richland
9 Two told you that you had breached their policy
10 about showing this video allegedly?

11 A Yes, ma'am.

12 Q And they told you that they weren't happy with the
13 answers you gave when they interviewed you about
14 the video incident; is that correct?

15 A Yes, ma'am.

16 Q And they gave you the opportunity to resign, didn't
17 they?

18 A Yes, ma'am.

19 Q Okay. What did you say when they told you that?

20 A That I wasn't going to resign. They had to fire me
21 because I hadn't done nothing.

22 Q Okay.

23 A And I asked why they believed her word over mine.

24 Q Did they tell you?

25 A No, they didn't say nothing.

1 Q Okay. So in October 2012, you're terminated from
2 Richland Two?

3 A Yes, ma'am.

4 Q Okay. How did that impact your life? Can you
5 describe that for the jury a little bit?

6 A Yes, ma'am. My wife was already going through a
7 few things. After I lost my job, we got evicted
8 out of the house. I got my car repossessed. She
9 moved in with her mother, with the grandbaby and my
10 son. I slept on my couch for a while until I got
11 my retirement back, and then I found me an
12 apartment.

13 Q Okay. So you weren't seeing your son and your
14 grandchild the way you did?

15 A (Indicating in the negative.) No, ma'am.

16 Q And your marriage was really under stress?

17 A (Nods in the affirmative.)

18 Q And did you and Mia ended up splitting?

19 A Yes, ma'am.

20 Q How long had y'all been married for?

21 A We was together 28 years and we was married 14.

22 Q That's a long time. Okay. Let's talk about
23 church. You used to be a mentor in the Godly Men's
24 Project; is that correct?

25 A Yes, ma'am.

1 Q Or Godly Men's Program, I'm sorry.

2 A Yes, ma'am, from boys to Godly men.

3 Q Can you describe for the jury what that is, what it
4 means to be a mentor in the Godly Men's?

5 A It was like a group of young boys, teenagers, that
6 most of them was in single parent homes. A bunch
7 of guys at the church, we got together and started
8 the ministry.

9 Because, you know, if a child never seen a
10 man, how does he know how to be a man. We tried to
11 help them out, show them what it is to be a strong
12 man and how they're supposed to be, how they're
13 supposed to act.

14 Q And at this church where the Godly Men's Program
15 was, was there a Richland Two employee who
16 worshiped there?

17 A There's several employees at Spring Valley went to
18 church there, yes, ma'am.

19 Q And what happened?

20 A It got back to the church about the incident in the
21 AD Office that I was accused of stealing that
22 money. I also was security for the pastor and I
23 used to be security for the offering when they
24 picked it up.

25 Q Okay.

- 1 A They stopped putting me on the schedule.
- 2 Q Okay.
- 3 A Nobody said nothing. They stopped putting me on
- 4 the schedule.
- 5 Q So they kind of froze you out?
- 6 A Yes, ma'am.
- 7 Q That must have been painful to have given so many
- 8 hours and then suddenly --
- 9 A Yes, ma'am.
- 10 Q -- you're just not welcome anymore. Things got
- 11 pretty bad. I think you did testify that you did
- 12 end up getting evicted?
- 13 A Yes, ma'am.
- 14 Q Is that correct?
- 15 A Yes, ma'am.
- 16 Q Was you property manager at that time for your
- 17 house Blue Bird Property Management?
- 18 A Yes, ma'am.
- 19 Q And I'm going to show you what's marked as
- 20 Plaintiff's Exhibit 7. Does this show how you had
- 21 fallen behind on the rent?
- 22 A Yes, ma'am.
- 23 Q So you all had to leave that?
- 24 A Yes, ma'am.
- 25 Q And, in addition, you made a decision that you

1 needed to get some cash, get some money. You
2 weren't working. Did you cash out your retirement
3 fund?

4 A Yes, ma'am.

5 Q I'm going to show you Plaintiff's Exhibit 6. Does
6 that accurately reflect what you received?

7 A Yes, ma'am.

8 Q Okay. Had you been planning on cashing out this
9 retirement?

10 A No, ma'am.

11 Q Okay. Now, you're currently working now; correct?

12 A Yes, ma'am.

13 Q Where are you employed?

14 A GEO Care.

15 Q Are you working security at GEO Care?

16 A Yes, ma'am.

17 Q And even though you've left Richland Two, even
18 though you were terminated, you're working now at
19 GEO Care, still a security officer. Do you get
20 benefits or retirement with GEO Care?

21 A No, ma'am.

22 Q Okay.

23 A You get stock, 401(k), but there is no retirement
24 or nothing like that.

25 Q Okay. No kind of pension?

1 A No, ma'am. Insurance is so high you can't afford
2 it.

3 Q Was there an occasion a few months ago when this
4 Spring Valley incident popped up in your life again
5 in a very real way?

6 A Yes, ma'am.

7 Q Okay. Did that happen at Wal-Mart?

8 A Yes, ma'am.

9 Q Can you tell the jury what happened at Wal-Mart?

10 A I was in Wal-Mart and I seen a couple of students
11 that were going to Spring Valley. I heard one of
12 them say, "Yeah, that's the man that they accused
13 of stealing the money at the Athletic Department."

14 Q Okay. Looking back on everything that happened at
15 Richland Two here today, do you feel like you were
16 treated fairly?

17 A No, ma'am.

18 Q Do you feel like they conducted an investigation?

19 A Against me, nobody else.

20 Q Did you ever hear about anyone else being
21 investigated?

22 A No, ma'am. Even after I told them about the other
23 people, they still didn't talk to them.

24 Q Even though Roosevelt Garrick, their Chief Human
25 Resources person, is telling you there are other

1 people, that wasn't good enough for them; correct?

2 A That wasn't good enough for them, yes, ma'am.

3 MS. PEAVY: Okay. I beg the Court's
4 permission for just a minute to check my notes.

5 THE COURT: Okay.

6 MS. PEAVY: One moment.

7 (Pause.)

8 BY MS. PEAVY:

9 Q Mr. Kennedy, sitting here today, how does it make
10 you feel to know that Richland Two, Chuck Earles,
11 Eric Barnes -- they're not here today -- but they
12 consider you to be a thief?

13 A It makes me feel bad.

14 Q Do you walk around with that every day?

15 A Yes, ma'am.

16 Q Okay. And I want to talk a little bit more about
17 the way things worked at Richland Two, the way
18 things worked at Spring Valley. Because
19 Mr. Garrick is telling you that you aren't the only
20 one, that other people had access, other people had
21 keys. He recognizes that. He knows that.

22 You're testifying and other witnesses have
23 testified there were a lot of other people there
24 that night, a lot of other people. So I want to
25 talk to you about the fact that there are these

1 other people who have access, and that includes the
2 custodial staff; is that correct?

3 A Yes, ma'am.

4 Q Okay. What time does the custodial staff come on
5 usually?

6 A They normally start coming in about 5:30, 5:45.

7 Q In the morning?

8 A Yes, ma'am.

9 Q Okay. So they try to clean before the kids get
10 there?

11 A Yes, ma'am. Whatever they can't do that night,
12 they try to get there early in the morning and do
13 it.

14 Q So they have to have some keys on them; correct?

15 A Yes, ma'am.

16 Q And do you have any knowledge of what time the
17 first people arrive in the Athletic Department
18 building or you're already gone?

19 A I'm already gone to my other school by the time
20 they come.

21 Q Okay.

22 A I usually get back there probably right at 6:45,
23 something like that. You see some cars over there.

24 Q Okay. And this confidential e-mail that was
25 printed out, Mr. Earles wrote this to people who

1 were supervisors; is that correct?

2 A Yes, ma'am.

3 Q Okay. But it wasn't just in an office where
4 supervisors went; correct?

5 A No, ma'am.

6 Q Okay. It was in an office where?

7 A Everybody goes.

8 Q Everybody goes?

9 A Everybody takes a break, yes, ma'am.

10 Q And it was in cars that the staff drives?

11 A Yes, ma'am.

12 Q Not just supervisors?

13 A Yes, ma'am.

14 Q Mr. Kennedy, I appreciate your time today. I'm
15 going to turn you over to the defense. Thank you.

16 THE COURT: Ladies and gentlemen, this would
17 be a good time to take a break for the evening. I'm
18 going to remind you of the instructions I have given
19 you; that is, not to begin to discuss this matter among
20 yourselves as you still don't have all the evidence that
21 has to be presented in this matter.

22 Please remember as you come and go from the
23 courthouse not to allow anyone to approach you to
24 discuss this matter with you. Again, if someone
25 attempts to do that, please tell them that you are a

1 juror. You cannot discuss it. I ask that you report it
2 as soon as possible.

3 Please also remember not to listen to
4 conversations that you may hear in the hallways, again
5 for the reason, that you have to make decisions based
6 upon the evidence that you've heard here in this
7 courtroom and not based upon conversations that you
8 overhear.

9 Now, additionally, ladies and gentlemen, I'm
10 going to ask that you follow some additional
11 instructions overnight. I know that your family and
12 friends will want to know what you're doing on jury
13 duty, whether you've been selected.

14 Certainly you can tell them you've been
15 collected as a juror in the case, but I ask that you not
16 discuss the testimony that you heard or seen at this
17 particular point.

18 Oftentimes, when you discuss things with
19 family and friends, they may ask you questions. They
20 may make comments to you. That has the potential to
21 influence how you view the evidence.

22 While they are not strangers that come up to
23 you and talk to you about the case, it's still
24 inappropriate for you all to have a conversation with
25 them about what you've heard or seen.

1 So, please tell them that I have asked you not
2 to discuss the matter with them at this particular time.
3 When you all have rendered a verdict in this case, you
4 can discuss it as you see fit. Please tell them I've
5 asked you not to discuss it until that time.

6 Additionally, ladies and gentlemen, I don't
7 believe that there will be any media reports. But if
8 there's anything on television or in the paper or radio,
9 I ask that you not listen to, watch, or read any of
10 those reports.

11 Again, that's someone else's recitation of
12 what they have heard, what they have seen. Again, you
13 have to be guided by what you have heard and what you
14 have seen so far throughout the course of this trial. I
15 ask that you not listen to, watch, or read any of these
16 reports.

17 Finally, ladies and gentlemen, I ask that you
18 not engage in any independent research or investigation.
19 To the extent that you may have access to either
20 individuals or through your computer or other searches
21 or other information that you may have available to you
22 about some of the things you have heard so far in this
23 trial, I ask that you not go out and look at that
24 material, search for, or ask questions of any
25 individuals who may have access or resources available

1 to them for you to gain additional information about
2 this matter.

3 The things that you need to know about this
4 trial will be presented to you throughout the course of
5 the trial. It's inappropriate for you all to engage in
6 any independent research or investigation.

7 That's not evidence in this case and cannot be
8 considered by you all in rendering your verdict in this
9 particular matter. Again, you have to base your
10 decision based upon the evidence presented here in this
11 courtroom and not based upon outside information.

12 Ladies and gentlemen, I'm going to ask that
13 you report tomorrow morning to the same jury room where
14 you reported this afternoon. When you come into the
15 building, they will scan your bandages on the first
16 floor. Do not stay there. Come on up to the second
17 floor and come back to the same jury room.

18 When you all assemble at 9:30 tomorrow
19 morning, we'll be ready to continue on with the trial of
20 this matter. Thank you. Have a good evening. We'll
21 see you at 9:30.

22 We may run a little bit later tomorrow,
23 between 5:00 and 6:00 just to give you an idea. I try
24 not to do that on the first day, but I like to give you
25 a heads up. If there are any conflicts, please let me

1 know in the morning; but that's the plan, to stay a
2 little bit later tomorrow. Thank you.

3 (Whereupon the jury is excused for the day at
4 5:06 P.M.)

5 THE COURT: Mr. Kennedy, during this break,
6 I'll remind you that you have not concluded your
7 testimony. So it will be inappropriate for you to
8 discuss it with anyone, including your own attorneys,
9 this evening. So I ask that you not discuss your
10 testimony overnight or with anyone. Thank you.

11 Anything we need to take up before we break
12 for the evening?

13 MR. GOODWYN: Just one issue. I'd like to
14 move to admit exhibits that were introduced. I don't
15 think they were actually formally offered to be
16 admitted.

17 MS. LONG-MAHONEY: There's no objection from
18 the defendant on that.

19 MR. BARLOW: We are not objecting to the
20 exhibits.

21 THE COURT: So numbers 1 through 6, I believe.

22 MR. GOODWYN: One through 7.

23 (Plaintiff's Exhibits Number 1-7 are received
24 into evidence.)

25 MR. BARLOW: Your Honor, I would just note

1 that I believe they opened the door to the testimony
2 about SCANA. They left out a whole employer, talking
3 about GEO Care and a Wal-Mart incident that happened
4 very recently, as in months ago.

5 The SCANA stuff all happened February 2014. I
6 think they're putting him up on a pedestal for his
7 reputation and character. I think that's directly
8 relevant to that.

9 THE COURT: I'll consider the information, and
10 I'll give you a ruling tomorrow.

11 MR. BARLOW: Thank you, Your Honor.

12 MS. PEAVY: Your Honor, I would like to note
13 that the Wal-Mart incident concerns one specific student
14 who went to Spring Valley. It's totally unrelated to
15 SCANA.

16 I'd also like to note that I think I am
17 entitled to establish that Mr. Kennedy is currently
18 employed. Obviously, whatever happened at SCANA,
19 whatever those allegations are, he is gainfully employed
20 now.

21 The reason he is is because the charges are
22 pending and he's got a clean SLED record. So, again,
23 Your Honor, we would just renew our motion strongly to
24 exclude the evidence of SCANA.

25 THE COURT: As I stated, I'll give you an

1 answer in the morning.

2 MS. PEAVY: Thank you.

3 THE COURT: I'll see you back tomorrow at
4 9:30. Thank you.

5 (Court Reporter's Note: Plaintiff's Exhibits
6 8 and 9 are withdrawn.)

7 (Whereupon the proceedings are concluded for
8 September 29, 2014.)

9 (The following proceedings are reported on
10 September 30, 2014.)

11 THE COURT: Counsel, I have had the
12 opportunity to consider the arguments that were made
13 yesterday in reference to the admission of evidence
14 relating to an event that occurred at SCANA after
15 Mr. Kennedy's employment with the Richland School
16 District.

17 I considered it under Rules of Evidence 404,
18 as well as 405. My conclusion is this. I do not
19 believe that the information relating to what occurred
20 at SCANA is -- while it may be relevant -- I don't
21 believe that it's admissible under 404 or 405.

22 Under 404 basically it has to be what we call
23 Lyle type of evidence. It has to go to show certain
24 things: Motive, intent, identity, common scheme or
25 plan. I can't remember the other one off the top of my

1 head.

2 But I have looked at the allegations that were
3 discussed as to what occurred at SCANA; and I find that
4 it does not meet any of those qualifications, not even
5 under common scheme or plan because it's not -- common
6 scheme or plan seems to denote that the proof of one is
7 proof of the other.

8 Certainly, it requires that acts that are not
9 subject to a conviction must be proven by clear and
10 convincing evidence, and also basically where the case
11 law describes it that the proof of one is absolutely
12 proof of the other.

13 I find that it's not temporally related to the
14 events that occurred in 2011. The acts at SCANA
15 occurred in 2014. They are not so similar in nature
16 that one, in fact, proves the other.

17 Additionally, while in a defamation case, the
18 character traits of the plaintiff may be at issue in
19 terms of -- in this particular case -- truth, veracity,
20 honesty -- the case law that seems to allow admission of
21 other acts, those acts usually occur before the alleged
22 defamation.

23 Because what is important in defamation cases,
24 the character, the person's character, as it existed at
25 the time that the defamation occurred. These events,

1 the ones at SCANA, occurred a number of years
2 afterwards.

3 Additionally, the thrust of the defamation
4 case is the publication. Certainly, the defendant can
5 present witnesses who can testify as to what the
6 plaintiff's character was at the time of the event, the
7 alleged event, occurred as it relates to the School
8 District and what his traits were as to honesty and
9 truthfulness.

10 Certainly, that would be relevant. But to
11 have an employer come in and testify as to what their
12 investigation may have yielded about certain events,
13 first of all, that's not a publication. So it's not for
14 the general public and not related to what his
15 reputation in the community might have been.

16 So I would have to agree with the plaintiff.
17 But it tends to go more towards those prohibitive
18 inferences that because he is accused of doing acts with
19 SCANA or SCANA may have found that there was reason to
20 send it to the police and the police may have
21 information to warrant going forward, therefore he did
22 the same thing back in 2011.

23 That's exactly what 404 prohibits. And let's
24 just say even if the higher court were to determine that
25 it would be relevant and probative, I think the

1 prejudicial value outweighs the probative value for this
2 reason.

3 Number one, the danger that there is an
4 improper inference by the jury that because of any
5 instances related to SCANA, therefore he must have
6 committed the offense. He must have taken the money
7 from the School District or the other acts that have
8 been discussed or will be discussed.

9 I think while the defense has argued that it
10 goes to his damages and it goes to how he was damaged,
11 the essence of the defamation damages is really the
12 publication, what damage the publication has.

13 And to be able to tell the jury: Well, you
14 can only consider this information to show in terms of
15 determining whether or not he has any continuing damages
16 or there has really been damage to his reputation after
17 2014, I think the jury would not be able to make the
18 distinction. I think it's too confusing to try to
19 explain to them what they can consider it for and what
20 they can't consider it for.

21 Additionally, while I am ruling that the
22 specific instances with SCANA cannot come in, certainly
23 there can be cross examination relating to his
24 employment and when he was employed, what he did at
25 SCANA, what his pay were, those things that would tend

1 to show that he was not in any worse position than he
2 was when he was with the School District because he made
3 the same pay. He had the same type of job.

4 I would even go so far as to allow cross
5 examination that he was terminated from SCANA but just
6 not the reasons for the termination. So I think that's
7 my ruling with respect to the information on the
8 admissibility of other instances of plaintiff's
9 misconduct.

10 I think anything that occurs -- let me also
11 say in the memorandum that the defense provided, I
12 looked at several of the cases that were cited. Most of
13 the ones that I looked at -- I looked at four or five or
14 six of them -- most of the information was prior bad
15 acts.

16 For example, in Pearson versus Robert Griffin,
17 even in the parenthetical it says: "There are criminal
18 acts committed by the plaintiff more than ten years
19 before the alleged libel."

20 In the United States versus Manus, which is a
21 Seventh Circuit Case, the prior bad act consisted of a
22 timecard reprimand which occurred in 1982, when there
23 were crimes that occurred in 1984, and then trial was in
24 1986.

25 In other cases they talk about what the

1 opinions that are relevant for purposes of defamation
2 and libel are for the opinions of others arising from
3 the publication.

4 That's what we are focused on here is the
5 publication. The Redfern versus Thompson case, a 1912
6 case, was prior acts existing at the time the event that
7 led to the trial. So I think there is a reason why they
8 call it prior bad acts. It's prior bad acts, not
9 subsequent bad acts.

10 While the case law seems to indicate that on a
11 occasion subsequent acts can be used, I don't believe
12 that this is one of those cases in which the subsequent
13 act is relevant to the issues specifically. It usually
14 occurs in criminal cases in which one of the Lyle
15 criteria is a factor, and I don't think that's a factor
16 in this particular case.

17 Are there any questions at this point?

18 MR. BARLOW: Yes, Your Honor. I have got one.
19 The testimony that we expect for why he left SCANA is
20 that he quit. They were going to reassign him somewhere
21 else, and he just quit. So I'm assuming the ruling
22 would apply if asked, "Why did you leave SCANA?"

23 "I quit," but he didn't go into why he quit.

24 MS. PEAVY: In fact, he wasn't employed
25 directly by SCANA. He had been employed at Allied

1 Barton through the SCANA contract.

2 THE COURT: I will let you weigh in. Are you
3 going to respond?

4 MR. BARLOW: Our information we have is that
5 he was terminated from Allied Barton. As far as SCANA,
6 whether he was terminated from SCANA or not --

7 THE COURT: Well, when I say SCANA, I am
8 referring to the SCANA incident, that particular job
9 when he worked. Whether it was for Allied Barton or for
10 SCANA, it's the same thing in my view.

11 MS. PEAVY: Yes, ma'am.

12 THE COURT: It's an incident that arose out of
13 working at SCANA or working at those facilities,
14 regardless of whether his employer was SCANA or his
15 employer was Allied Barton.

16 MR. BARLOW: Sure. At least as far as for
17 mitigation and other issues related to his post Richland
18 Two employment, I am allowed to inquire as to his
19 employment at Allied Barton; correct?

20 THE COURT: Sure. I think it is proper to ask
21 questions as to what he did there and what his pay scale
22 was and what his responsibilities were. I think all
23 that is relevant in terms of whether or not he was
24 sufficiently damaged after leaving Richland School
25 District.

1 MR. BARLOW: And whether he said he quit or it
2 was a forced quit, I think is relevant too.

3 MS. PEAVY: Your Honor, I would object to
4 that. The fact is that our client's testimony will be
5 that Allied Barton offered him another position at a
6 lower pay rate and he declined that, and the employment
7 ended. As a result, he resigned. I think it's valid
8 and relevant for that, "You worked at Allied Barton.
9 You were under a contract there, and you changed jobs --

10 MR. BARLOW: But it's --

11 MS. PEAVY: Well --

12 COURT REPORTER: One at a time, please.

13 THE COURT: I think it's relevant as to
14 whether he quit or whether he was terminated. The
15 reasons for the termination --

16 MS. PEAVY: -- are not --

17 THE COURT: -- I'm not going to allow. Simply
18 as it relates to what I called the alleged theft is not,
19 but I think that it is relevant. I think that clearly
20 goes to credibility and what the jury determines whether
21 he calls it a quit and Allied Barton says he was fired,
22 I think that is relevant.

23 MR. GOODWYN: As a practical matter, I don't
24 think anybody from Allied Barton is prepared to testify.
25 The witness they have identified, Bill Simpson, he can't

1 testify as to whether he was terminated or quit.

2 MR. BARLOW: The SCANA witness certainly can.

3 MS. PEAVY: He is not Allied Barton.

4 MR. BARLOW: He works with Allied Barton. He
5 recommended him for termination.

6 MS. PEAVY: He didn't want him working at
7 SCANA anymore, but he doesn't direct Allied Barton.
8 Allied Barton directs --

9 THE COURT: I think your information is going
10 to have to come from someone who has direct knowledge.

11 MS. PEAVY: So that would be Allied Barton?

12 THE COURT: I don't have the information. You
13 all have the information.

14 MS. PEAVY: His paycheck came from Allied
15 Barton.

16 THE COURT: It has to be information, direct
17 knowledge, or it has to be documentation that indicates
18 that he has received it, that he is aware of. So
19 however you all handle it, let's make it clear.

20 MS. PEAVY: Thank you.

21 THE COURT: If it's a witness, it's a witness.
22 If it's documentation that he has seen that he is aware
23 of, then it can be documentation that he would have
24 received. I mean, there are papers that say, "You are
25 relieved," in his personnel file or whatever.

1 Anything else?

2 MR. GOODWYN: This is our next witness. Does
3 he need to sit outside?

4 MR. BARLOW: He think he needs to sit outside.

5 THE COURT: If that's what you all agree on.
6 There has been no motion to sequester the witnesses.

7 (Attorneys confer.)

8 THE COURT: Ms. Peavy, oftentimes when your
9 client was answering, when the witness was answering
10 questions, you also talked over the witness. I did
11 notice it a few times yesterday. I know for a fact that
12 the court reporter can only record one person.

13 MS. PEAUVY: I apologize for that, Your Honor,
14 I will look out for it today.

15 THE COURT: I want to make sure you are aware.
16 I'm not trying to call you out specifically.

17 MS. PEAUVY: That's okay.

18 THE COURT: You were asking the questions
19 yesterday.

20 MS. PEAUVY: I think I have that tendency. So
21 I appreciate it, Your Honor.

22 THE COURT: Anything else?

23 MR. BARLOW: No, Your Honor.

24 MS. PEAUVY: No, Your Honor.

25 THE COURT: We can ask the jury to come in

1 please.

2 (The jury returns to the courtroom at
3 9:45 A.M.)

4 BAILIFF: The jury panel is all accounted for,
5 Your Honor.

6 THE COURT: Good morning, ladies and
7 gentlemen.

8 THE JURY: Good morning.

9 THE COURT: Mr. Kennedy, you may resume the
10 witness stand. I remind that you are still under oath
11 from yesterday.

12 THE WITNESS: Yes, ma'am.

13 JEFFREY WILLIAM KENNEDY,
14 having been previously duly sworn, resumes the witness
15 stand and testifies as follows:

16 THE COURT: Any further questions by plaintiff
17 before we go on?

18 MS. PEAVY: No, Your Honor.

19 MR. BARLOW: May it please the Court.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. BARLOW:

23 Q Good morning, Mr. Kennedy.

24 A Good morning. How are you doing?

25 Q I'm doing fine. Before you started working at

1 Richland Two, you had a job at Providence; is that
2 right?

3 A Yes, I worked at Providence.

4 Q And you got terminated from that job at Providence?

5 A Yes, sir.

6 Q For excessive absenteeism and tardiness; right?

7 A Yes, sir.

8 Q And after you left Richland Two, you got a job with
9 Allied Barton; is that right?

10 A Yes, sir.

11 Q You didn't testify about that yesterday at all, did
12 you?

13 A I don't think so.

14 Q You worked for Allied Barton Security until
15 February of this year; right?

16 A Yes, sir.

17 Q Of 2014?

18 A Yes, sir.

19 Q Is that right? You got fired from Allied Barton
20 too, didn't you?

21 A No, sir, I resigned.

22 Q You resigned in lieu of termination, didn't you,
23 sir?

24 A No, I resigned.

25 Q Because you were asked to either resign or --

1 MS. PEAVY: Objection, Your Honor.

2 MR. GOODWYN: Objection. We just went through
3 this.

4 THE COURT: You can ask the question, and
5 that's the last time you can ask the question.

6 BY MR. BARLOW:

7 Q Your last paycheck from Allied Barton was
8 February 28, 2014? Does that sound right?

9 A I don't recall. It could be.

10 Q You made \$13.26 an hour at Allied Barton?

11 A Yes, sir.

12 Q And you worked security at the SCANA campus?

13 A Yes, sir.

14 Q You worked the third shift there too?

15 A Yes, sir.

16 Q Now, you have not sued Allied Barton?

17 A No, sir.

18 Q Didn't sue Providence?

19 A No, sir.

20 Q Have not sued SCANA either?

21 A No, sir.

22 Q Now, let's talk about Spring Valley. When you
23 worked the third shift, you were alone for the
24 entire shift?

25 A Yes, sir.

1 Q There was no one else there?

2 A Sometimes the captain came and ride around with you
3 and walk the school with you or either the
4 lieutenant.

5 Q But most of the time you are the only one there for
6 the entire shift?

7 A Unless you are training somebody, yes, sir.

8 Q Sure. And you don't dispute that you went in the
9 back door of the administrative hall at Spring
10 Valley High School and stayed in there for more
11 than 20 minutes on February 24, 2011?

12 A I did that on a regular basis. That's where we
13 kept the batteries and the telephone, and that's
14 where we did our breaks at Spring Valley.

15 Q You did the same thing on March 1, 2011?

16 A I can't recall if I did that. Like I said, it was
17 basically a lot of occasions.

18 Q All right. And there was a theft from the Athletic
19 Director's Office?

20 A Yes, sir.

21 Q You don't dispute that money was taken over there,
22 do you?

23 A I didn't say that money was taken.

24 Q You are not accusing Tim Hunter of stealing that
25 money, are you?

1 A I'm not accusing nobody of taking that. I don't
2 know nothing about it.

3 Q You are not accusing the custodian of taking that
4 money, are you?

5 A I'm not accusing nobody.

6 Q There is not a camera on the Athletic Director's
7 Office?

8 A I wouldn't know.

9 Q You work in that building, don't you?

10 A Yes, I work in the building. You can see the
11 camera, but...

12 Q So your testimony is you did not know there was a
13 camera --

14 A There's a camera right by the door. There's three
15 cameras in that area.

16 Q Sir, let me finish my question.

17 A I'm sorry.

18 Q Your testimony is that you did not know that there
19 was no camera showing Tim Hunter's door?

20 A I said there's three cameras in the building in
21 that area. Whether they show his door or not, I
22 don't know where the camera is pointing at.

23 Q The Athletic Director's Office is about three or
24 four steps from the keypad, isn't it?

25 A Yes, sir, right across from it.

1 Q And you have a master key that opens the Athletic
2 Director's door or at least you did when you worked
3 there?

4 A I don't know if it fit that door. I have a master
5 key to all the doors at Spring Valley.

6 Q Your key opened all the doors at Spring Valley?

7 A As far as I know, yes, sir.

8 Q All right. And it takes about 20 seconds to arm
9 and disarm an alarm in a school?

10 A I guess so, yes, sir.

11 Q You punch four keys?

12 A Yes, sir.

13 Q And that's all do and then you are gone? Open the
14 door back up and leave?

15 A It depends on if you've got to do something, if
16 they got something going on where you cut the
17 lights or something like that or the alarm. It
18 varies. If there is something is going on in the
19 building you need to check, you go and check it
20 out.

21 Q The weight room is about two or four steps from the
22 keypad?

23 A Yes, sir.

24 Q And you were at Bates Hall before 6:00 A.M. for
25 more than five minutes on the morning of March 4,

1 2011, weren't you?

2 A Yes, sir.

3 Q It was still dark outside?

4 A Yes, sir.

5 Q The weight room is right across from the AD's
6 Office, isn't it?

7 A Yes, sir, smack across.

8 Q You knew there was a big soccer tournament at
9 Spring Valley that weekend?

10 A They have it every year.

11 Q And you knew specifically at that time there was a
12 soccer tournament going on?

13 A I don't know if I knew about it because I wasn't
14 working that weekend.

15 Q After March 4th or that particular day, you went to
16 Charleston, didn't you?

17 A Yes, sir.

18 Q And that wasn't a planned trip, was it?

19 A No, it was just a spare-of-the-moment trip. We
20 talked about it. We wasn't sure we was going.

21 Q Where did you stay?

22 A We normally stay at the Marriott.

23 Q Do you know where you stayed that time?

24 A It was like three years ago. I don't know exactly.

25 Q Where did you eat?

1 A A lot of places, Hyman's down there on Meeting
2 Street, went to RB's in Mount Pleasant, different
3 places.

4 Q Is that where you ate that particular time?

5 A I can't recall.

6 Q What did you do down there at that time?

7 A Laid around, relaxed, enjoyed my wife's company.

8 Q There was an investigation into the Spring Valley
9 money that went missing from Bates Hall; right?

10 A If you want to call it an investigation, yes, sir.

11 Q You were on administrative leave; is that right?

12 A Yes, for four months.

13 Q You got paid the whole time, didn't you?

14 A Yes, sir.

15 Q You told coworkers that you were being investigated
16 for what was going on at Spring Valley, didn't you?

17 A No, sir.

18 Q You didn't tell any of your coworkers?

19 A No, sir.

20 Q You didn't tell Anthony Permenter that?

21 A That what?

22 Q That you were being investigated for Spring Valley?

23 A I told him that they accused me of taking the money
24 out of that office.

25 Q Right. You told Anthony Permenter that?

- 1 A Yes, sir.
- 2 Q And you told Barry Mitchell that too, didn't you?
- 3 A I talked to him.
- 4 Q Yes?
- 5 A Yes.
- 6 Q Now, you met with the police and your lawyer?
- 7 A Yes, sir.
- 8 Q You had a lawyer at that time, didn't you?
- 9 A Yes, sir, I hired a lawyer at that time.
- 10 Q That was Franchot Brown?
- 11 A Yes, sir.
- 12 Q You didn't do any investigation yourself on your
13 own, did you?
- 14 A No, sir.
- 15 Q Now, in the spring you met with Chuck Earles,
16 Mr. Garrick, and Ms. Batchelder?
- 17 A Yes, sir.
- 18 Q And you told Mr. Garrick that you did not enter the
19 front of the building after you had been in the
20 administrative hall for 20 minutes, didn't you?
- 21 A No, sir, I don't recall.
- 22 Q You don't recall telling him --
- 23 A I don't recall. If I cut the alarm on, I went
24 through the front door. That's where the alarm pad
25 is at.

1 Q Did you tell Mr. Garrick that you not do that, that
2 you only went in the back of the administrative
3 hall --

4 MR. GOODWYN: I will object. Can we be clear
5 on which event we are talking about? There's a lot of
6 different little events. It's not clear to me what day
7 he is referring to here.

8 THE COURT: Rephrase the question.

9 MR. BARLOW: Sure.

10 BY MR. BARLOW:

11 Q On March 1st did you tell Mr. Garrick that the
12 night of March 1st that you -- after going into the
13 administrative hall through the back door and
14 stayed for 20 minutes that you did not come back
15 around the front and set the alarm?

16 A I don't recall.

17 Q After you were transferred to Support Services --
18 you testified about that yesterday?

19 A Yes, sir.

20 Q The same pay?

21 A Not the same pay. I didn't get the overtime I got.
22 I got a lot of overtime when I was at Spring
23 Valley.

24 Q Your testimony is you didn't get any overtime when
25 you worked --

- 1 A Not the overtime I used to get.
- 2 Q But you got overtime, didn't you?
- 3 A Some, yes, sir.
- 4 Q Sure. You were allowed to work football games and
- 5 other things like that?
- 6 A Yes, sir, the ones I didn't have to have a key. I
- 7 couldn't go fill in at a school like I used to. I
- 8 couldn't work another shift like I used to.
- 9 Q Same base pay? Worked the same shift?
- 10 A Yeah. But if you work overtime, you make 19.23 an
- 11 hour. It's a big difference.
- 12 Q But you did get paid overtime, didn't you?
- 13 A Yeah. I worked 51 to 60 hours of overtime when I
- 14 was working at Spring Valley. Again, I dropped
- 15 down to just getting 30 or 20 after I went to
- 16 Support Services.
- 17 Q You stayed at that job until October 2012?
- 18 A Yes, sir.
- 19 Q You didn't apply for a job anywhere outside of
- 20 Richland Two for that whole time?
- 21 A I enjoyed my job. I needed a job. I had a family
- 22 to support.
- 23 Q You liked your job, didn't you?
- 24 A I like working with kids.
- 25 Q You liked it even after you got transferred over?

1 A Not really but I needed a job. I didn't like the
2 way they did it. I was doing the supervisor job
3 that I was promoted for and wasn't getting paid for
4 it. I was doing the job my supervisor was doing
5 before they put me in there.

6 Q Are you saying you didn't like that job?

7 A I said I needed a job.

8 Q Do you recall giving a deposition in this case?

9 A Yes, sir.

10 Q Do you remember talking to me on September of 2013?

11 A Yes, sir.

12 Q About your employment and whether you looked for a
13 job anywhere else after Spring Valley?

14 A Yes, sir.

15 Q Do you remember telling me that you liked your job
16 out at --

17 A I told you I liked the job. I liked my job.

18 Q You didn't get any reprimands or warnings between
19 June 2011 and October of 2012, did you?

20 A I don't recall.

21 Q October 2012, your employment ended with Richland
22 Two, October 2012; right?

23 A Yes, sir.

24 Q You tried to show Ms. Jones a video of a fight?

25 A No, I did not.

1 Q You would have if you could have though?

2 A If I could have, I would have.

3 Q Because you thought Ms. Jones was cute, didn't you?

4 A She was cute.

5 Q And you were happy to watch the movie and give her
6 details of it?

7 A I did not watch the movie. I did not watch the
8 video. I didn't know how to watch the video.

9 Q You did not give Ms. Jones details of that video?

10 A No, I did not.

11 Q While you were on administrative leave or after a
12 meeting, you called Ms. Jones and told her, "You
13 can't tell them you talked to me because I didn't
14 show you a video."

15 A Ms. Jones had called me and I returned her call.
16 When I came out the meeting, I had a missed call
17 from her. I told her that I read her statement.
18 She told me -- I read her statement that she say I
19 showed her a video, and she know I didn't show her
20 a video.

21 Then she told me to go ahead and say that I
22 showed her the video. I said, "I'm not going to
23 say that because they are trying to terminate me by
24 showing you a video. You know I didn't show you no
25 video." That's when she hung up in my face, and

1 then she told Chuck Earles that I called her.

2 Q Your testimony is she called you?

3 A Yes, sir.

4 Q You told Traci Batchelder and Chuck Earles that she
5 called you too?

6 A Yes, she did call me.

7 Q You tried to intimidate her though, didn't you?

8 A No, I did not. No, sir.

9 Q After you left Richland Two, you don't have any
10 reason to believe that anybody at Richland Two gave
11 you a bad job reference?

12 A Yes, they did. Every time I put Richland Two down
13 when I applied for a job, I didn't get it,
14 especially when I put Eric Barnes or Chuck Earles
15 name down.

16 Q We talked about that deposition, sir?

17 A Yes, sir.

18 Q That you gave back in September?

19 A Uh-huh.

20 Q September of 2013. I was there. The court
21 reporter was there taking down my questions and
22 your answers?

23 A Yes, sir.

24 Q Ms. Peavy was there also?

25 A Yes, sir.

1 MR. BARLOW: Your Honor, may I approach?

2 THE COURT: Yes, sir.

3 (Counsel opens the deposition.)

4 BY MR. BARLOW:

5 Q I provided you a copy of that deposition
6 transcript. I want you to turn to page 62.

7 A (Witness complies.)

8 Q Line 14. I will read this and I want you to follow
9 along with me. "Question: Do you have any
10 knowledge of what was communicated by anybody at
11 Richland Two to anywhere you inquired?"

12 Your answer is: "I wish I knew, no."

13 Did I read that right?

14 A Yes, sir.

15 Q Now, after you left you started working for Coastal
16 International Security in October of 2012?

17 A Yes, sir.

18 Q And they later became Allied Barton?

19 A Yes, sir.

20 Q So your job started in October?

21 A It didn't really. I mean, I had to go through drug
22 screen and orientation and all that. So I didn't
23 really get a first check until after January.

24 Q Mr. Kennedy, are you on LinkedIn?

25 A On where?

1 Q LinkedIn. It's a website that professional people
2 put their sort of résumé and professional
3 information on, that sort of thing.

4 A I don't know. I could be. I was applying for
5 jobs. I might have did that.

6 Q I will show you something here and ask you to take
7 a look at that. This says, "Jeffrey Kennedy,
8 security officer at Coastal International
9 Security." Is that you?

10 A Yes, sir.

11 Q And it has experience on here. It says, "Security
12 officer, Coastal International Security"?

13 A Yes, sir.

14 Q October 2012 to the present, two years; right?

15 A Yes, sir.

16 Q Right below that it says, "Richland School District
17 Two, February 2007 to October 2012." is that right?

18 A Yes, sir.

19 Q And that job paid more than Richland Two, didn't
20 it?

21 A Not without the overtime. It paid more an hour,
22 but I made more at Richland Two. I'd bring home
23 like 900-and-some-dollars every two weeks there.
24 I'd bring home 16-, \$1,700 at Richland Two.

25 Q When you applied with Coastal, you said that you

1 left Richland Two because you wanted a better job;
2 isn't that right?

3 A I can't recall what I put.

4 Q Let me see if I can refresh your recollection about
5 that. I will show you what I would represent to
6 you is an Allied Barton Security Services
7 application. I want you to look at the third page
8 of that document, page 3 of 8.

9 A (Witness complies.)

10 Q Okay. I want you to look at where it says,
11 "Position held." Do you see where that is?

12 A SCANA.

13 Q That's rate. Pay rate, 12.77 hourly?

14 A Yes, sir.

15 Q And look a couple of line down there, "Reason for
16 leaving." What does what it say on there?

17 A "Career advancement." I was looking for a job. I
18 was looking for a better job.

19 Q So you left Richland Two for career advancement?

20 A I left Richland Two because they fired me.

21 Q Now, if something goes missing at Spring Valley
22 during the nighttime between 11:00 P.M. and
23 7:00 A.M., that's on your watch, isn't it?

24 A That's my hours of working, yes, sir.

25 Q That's all I have for you.

1 A Yes, sir.

2 MS. PEAVY: A few questions on redirect.

3 THE COURT: I'm sorry?

4 MS. PEAVY: A few questions on redirect.

5 THE COURT: Yes, ma'am.

6 REDIRECT EXAMINATION

7 BY MS. PEAVY:

8 Q Mr. Kennedy, we went over this yesterday. When
9 Mr. Garrick was asking you in his meetings with you
10 in May of 2011 and June of 2011 about your actions
11 on specific nights in February and March, did you
12 specifically recall those evenings?

13 A Not exactly, no, ma'am.

14 Q Okay. So if you testified or told Mr. Garrick that
15 you thought you had gone in one door at one time,
16 but in fact the videotape showed you going through
17 a different door, you didn't say that
18 intentionally, you had just forgotten because it
19 was several months ago; correct?

20 A Yes, ma'am.

21 Q Now, you testified about Ms. Jones. You wanted to
22 help her. You thought she was a cute lady; is that
23 correct?

24 A Yes, ma'am.

25 Q She was also a mother and a coworker; correct?

1 A Yes, ma'am.

2 Q Okay. In fact, you have no way of knowing what
3 Richland Two told the people who called for a
4 reference; is that correct?

5 A Correct.

6 Q So in your deposition when you said, "I wish I knew
7 but, no," what you are saying is maybe you had a
8 feeling?

9 A Yes, ma'am.

10 Q Okay.

11 MS. PEAVY: That's all I have. Thank you.

12 THE COURT: Thank you.

13 MR. BARLOW: No recross, Your Honor.

14 THE COURT: You may step down.

15 (Witness leaves the witness stand.)

16 THE COURT: You may call your next witness.

17 MS. PEAVY: Your Honor, the plaintiff calls
18 Mr. Barry Mitchell.

19 (The witness comes forward.)

20 BARRY MITCHELL, being
21 first duly sworn, testifies as follows:

22 CLERK: Have a seat in the witness stand,
23 please.

24 MR. GOODWYN: Your Honor, would you mind if I
25 step out to call our next witness.

1 THE COURT: No, sir.

2 CLERK: State your name for the record.

3 THE WITNESS: Barry Mitchell.

4 DIRECT EXAMINATION

5 BY MS. PEAVY:

6 Q Mr. Mitchell, thank you for being here today.

7 A Yes, ma'am.

8 Q We have met before at your deposition. I'm Rachel
9 Peavy, the attorney for Mr. Kennedy. I believe
10 Mr. Barlow, sitting there, was the attorney for the
11 defense at your deposition. I would like to just
12 introduce you to the jury a little bit. Where were
13 you born, sir?

14 A Washington, DC.

15 Q And where do you currently reside?

16 A In Irmo, South Carolina.

17 Q Okay. How long have you been living in South
18 Carolina?

19 A March of '90 when I got out of the military.

20 Q And obviously you graduated from high school. Was
21 that in Washington, DC?

22 A Yes, ma'am.

23 Q And where did you enlist in the military? What
24 division?

25 A Second AD, Second Army Division in the Army.

1 Q And how many years were you in the military for?

2 A Just a little under six.

3 Q Okay. Did you receive an honorable discharge?

4 A Yes, ma'am.

5 Q During your time in the military, where were you
6 stationed?

7 A I did my basic training at Fort Dix in New Jersey,
8 did my AIT, advance training, in Aberdeen,
9 Maryland. From there I went to Fort Hood, spent a
10 little bit of time in Wisconsin validating TMs,
11 technical manuals, for about six months. Then I
12 went to Fort Hood, and I spent my time at Fort Hood
13 until I DTS'ed out of Fort Hood.

14 Q And after your military service, were you employed
15 at the Alvin S. Glenn Detention Center?

16 A Yes, ma'am.

17 Q How many years were you a corrections officer
18 there?

19 A I worked there about 15 months.

20 Q And following Alvin S. Glenn, where did you become
21 employed?

22 A I was part-time at the School District. During
23 that time I have been part-time at the School
24 District since, I think, around 2007.

25 Q When you say the School District --

1 A Richland School District Two. When I left Alvin S.
2 Glenn, I took a full-time position at the School
3 District at Spring Valley High School.

4 Q So we are here today because Jeffrey Kennedy has
5 brought a lawsuit against the School District and
6 against Mr. Chuck Earles, Mr. Eric Barnes, and
7 Ms. Kim Jones regarding the loss of his reputation
8 arising out of certain incidents that occurred back
9 in the Spring of 2011. None of those individuals
10 are sitting here today, but do you know Mr. Chuck
11 Earles?

12 A Yes, ma'am.

13 Q Do you know Mr. Eric Barnes?

14 A Yes, ma'am.

15 Q Did you know Ms. Kim Jones?

16 A No.

17 Q Okay. Now, you had occasion to work or overlap
18 with Jeffrey Kennedy at Richland Two; is that
19 correct?

20 A Yes, ma'am. He relieved me. I worked the 3:00 to
21 11:00 shift. He came on at 11:00 o'clock and
22 relieved me.

23 Q Did you also work games together?

24 A Yes, ma'am.

25 Q Okay. When you started at Richland Two, who was

1 the head of security?

2 A Chief Propst. I might not be saying or pronouncing
3 it correctly, but Chief Propst.

4 Q Was Captain Z, was she a supervisor at that time?

5 A Yes, ma'am.

6 Q At a certain point, did Chief Propst leave Richland
7 Two?

8 A Yes, ma'am, very abruptly.

9 Q What happened next? Who came on?

10 A One day he left and Mr. Earles came in in his
11 position. No one ever really know why he left. No
12 one told us. They just told us that he was gone,
13 and Mr. Earles was placed in that position.

14 Q And did Mr. Earles bring along Eric Barnes with
15 him?

16 A I think about a few months later he brought Eric
17 Barnes with him. They both came from the Sheriff's
18 Department, Richland County Sheriff's Department.

19 Q Okay. So they were -- I guess you would refer to
20 them -- as ex-law enforcement?

21 A Yes, ma'am. Their boss, Rick McGee, who also was
22 terminated after Chief Propst, he was also from
23 Richland County. So he brought Chuck Earles over,
24 hired him, and then Earles hired Mr. Barnes.

25 Q Sometime in February of 2011, did you learn that

1 Jeffrey Kennedy had been recommended for a
2 promotion?

3 A Yes, ma'am.

4 Q And do you recall that he was introduced as a
5 supervisor?

6 A My recollection is that once he had gotten
7 promoted, they brought him into the supervisor's
8 meeting and introduced him as the new supervisor.

9 Q Okay. And going back to that same time period,
10 March 2011, thereabouts, do you recall hearing that
11 a theft of a thousand dollars was being reported
12 from the Athletic Director's Office?

13 A Yes, ma'am.

14 Q Did you speak to Mr. Tim Hunter, the Athletic
15 Director, about it?

16 A Kind of indirectly, you know.

17 Q You chatted?

18 A Yeah. It was one of those things where Tim Hunter
19 was the only who knew the money was gone. No one
20 else could really verify it because he was the only
21 one that claims the money was missing.

22 So he claims he went in his office and, you
23 know, that general thought was -- well, for me,
24 let's say -- was if you went in your office with
25 that kind of money, why would you not put it in the

1 safe? Why would leave it out? Just that in itself
2 seemed suspicious. Your safe is less than two feet
3 from you.

4 Q Okay.

5 A Why would you leave it out?

6 Q So you were a little bit baffled by it?

7 A Yes, pretty much. A lot of people were.

8 Q Oh, okay. And based on your years of experience at
9 Spring Valley and your observations in the daily
10 course of your routine business, were there a lot
11 of keys circulating at Spring Valley?

12 A Yes, ma'am.

13 Q Okay.

14 A There were a lot of keys circulating. You had
15 staff that let students hold their keys to go open
16 doors. You had keys that were generated pretty
17 much and flowing around.

18 Q So coaches had keys?

19 A Yes.

20 Q Some children would have keys at certain times?
21 Custodians? Is that all accurate?

22 A Yes.

23 Q Okay. And getting back to Mr. Hunter's report that
24 this thousand dollars that he says he left out went
25 missing, did you have occasion to hear about this

1 from certain supervisors at Richland Two that
2 Jeffrey Kennedy was considered the person who had
3 taken that money?

4 A Indirectly, yeah.

5 Q Okay.

6 A Not even that. It was the fact, you know, that he
7 was promoted and then put in the office. So
8 everybody, you know -- it was kind of common
9 knowledge once he got put in the office from being
10 promoted and he couldn't work schools anymore. So
11 it was kind of common knowledge.

12 Q Okay. So it was obvious to you and other members
13 of the security staff that Jeffrey Kennedy had been
14 taken down a notch?

15 MR. BARLOW: Objection, Your Honor. I don't
16 think he can testify to what was obvious to everybody
17 else.

18 BY MS. PEAVY:

19 Q It was obvious to you --

20 A Yes, ma'am.

21 Q -- that they considered Jeffrey Kennedy persona non
22 gratis; is that correct?

23 A Yes, ma'am.

24 Q And continuing from that was it obvious to you,
25 based on your professional experience, based on

1 your years at Richland Two, your years at Spring
2 Valley, that Mr. Earles and Mr. Barnes considered
3 Jeffrey to be a thief?

4 MR. BARLOW: Objection, Your Honor. What they
5 considered is not something he can testify to.

6 MS. PEAVY: I'm asking him to testify to his
7 impression based on personal knowledge of what they were
8 demonstrating to the staff members who they supervised.

9 THE COURT: Rephrase the question so that it's
10 based upon his personal knowledge and what he saw and
11 what he observed and what he did.

12 BY MS. PEAVY:

13 Q Based on your personal knowledge, going back to
14 those days and months around March 2011, personally
15 was it obvious to you that Mr. Earles and
16 Mr. Barnes thought that Jeffrey was not to be
17 trusted?

18 A Yes, ma'am. Once they promoted him to lieutenant
19 and then demoted him to a desk job, it was rather
20 obvious that he was under investigation for it.

21 Q I am going to show you what has been previously
22 marked as Plaintiff's Exhibit 4.

23 A Yes, ma'am.

24 Q You have seen that before; correct?

25 A Yes, ma'am.

1 Q Where did you see this before?

2 A There is an office in the support service center
3 where we have a file cabinet where we keep our time
4 sheets.

5 Q Okay.

6 A And I was going in to do my time sheet, and it was
7 laying on the desk.

8 Q So that office is not a secure area?

9 A No.

10 Q Staff goes in and out of there?

11 A Yes, ma'am.

12 Q How did you interpret this letter that was lying
13 out?

14 A I interpreted it as some specific instructions for
15 the supervisor as far as Mr. Kennedy's working
16 situation from that day forward.

17 Q And so the letter says that he is not to have keys?

18 A Yes, ma'am.

19 Q Are you interpreting that how?

20 A He was not to be trusted.

21 Q A security guard without keys really isn't a
22 security guard?

23 A Worthless.

24 Q I'm sorry?

25 A Is worthless, for what we do. If you can't use

1 keys, you can't work.

2 Q Okay. And you yourself at some point ended up
3 resigning from Richland Two after several years; is
4 that correct?

5 A Yes. Mr. Barnes and Mr. Earles, I just had some
6 differences of opinions as to where they were
7 taking the District and kind of voiced it. One day
8 I was training someone and Traci Batchelder called
9 me to tell me that this supposedly trainee had
10 taped our full eight-hour day unknowing to me,
11 taped, you know, our day of training.

12 They felt that my behavior was unprofessional,
13 as they say; but it was things that I spoke with
14 the trainee concerning, you know, training
15 Mr. Barnes had with us concerning searching
16 suspicious vehicles.

17 It was something we have never done before.
18 We would always, if there was a suspicious vehicle
19 on the campus, we would get on the radio or our
20 cell phone and call the office and have them send a
21 deputy out.

22 But they wanted us to go up to a vehicle, you
23 know, in the dead of night with a flashlight; and I
24 didn't see where that made any sense when it comes
25 to my safety or any other officer's safety. So I

1 had some differences of opinions.

2 When Mr. Earles came over, traffic is one of
3 the things we do at all of our schools. He came
4 over with this notion that there were schools he
5 didn't feel necessarily needed an officer to do
6 traffic; and Dent Middle School was one.

7 Once they removed the officer, a child was
8 struck by a car a few weeks later and died,
9 subsequently died. I really had some issues with
10 that. Then after this incident happened, then they
11 put the officer back, which was a four-lane highway
12 with a median on Decker Boulevard.

13 Q Which is the intersection of Decker and North
14 Trenholm?

15 A Yes, ma'am.

16 Q Okay.

17 A So I had some issues with where they were trying to
18 take the District, the security part of it. It was
19 like they wanted us to act as though we were
20 deputies.

21 Q Okay.

22 A And we weren't trained for that nor were we
23 equipped for that. I somewhat became...

24 Q You were dissatisfied?

25 A I was dissatisfied, and I think they were

1 dissatisfied with me.

2 Q Okay.

3 A And they put me in a situation where it was like I,
4 you know, saw what was coming. They were going to
5 attempt to terminate me; so I just resigned.

6 Q So you decided to move on?

7 A Yes, ma'am.

8 Q At the time when Mr. Kennedy -- and this may seem
9 obvious because you just testified he had been
10 promoted back in February or so of 2011 -- but at
11 the time when Tim Hunter said that this money had
12 gone missing, was it your opinion as a fellow
13 coworker that Mr. Kennedy was a good employee for
14 Richland Two?

15 A Yes, ma'am.

16 Q And he had a reputation of being a good, valued
17 security guard in your opinion?

18 A Yes, ma'am.

19 Q In fact, you would recommend him for other
20 positions down the road; correct?

21 A Yes, I have. The position he holds now is one that
22 I recommended him to my boss that I have.

23 Q And that was Mr. Kennedy is working at what is GEO
24 Care now?

25 A Yes, ma'am, and been there going on about a year

1 now.

2 Q Mr. Mitchell, thank you so much. I believe
3 Mr. Barlow may have some questions for you.

4 THE COURT: Any cross?

5 MR. BARLOW: Yes, Your Honor.

6 CROSS EXAMINATION

7 BY MR. BARLOW:

8 Q Good morning.

9 A Good morning. How are you doing?

10 Q I'm doing fine. I wanted to show you the
11 Exhibit 4. You have that in front of you already;
12 right?

13 A Right.

14 Q Now, this document should not have been left out by
15 anybody because it says confidential; right?

16 A Yes, sir.

17 Q One of the supervisors that it's addressed to could
18 have possibly walked out and left it?

19 A Possibly, yes, sir.

20 Q Sure. You never heard anybody else say that they
21 had received this e-mail?

22 A No. Not particularly, no.

23 Q Right. Because you weren't supposed to see it?

24 A I wasn't supposed to see it. When I saw it, I
25 didn't tell anybody I saw it until I spoke to you

1 all.

2 Q So the first time you told anybody that you had
3 seen this confidential memorandum e-mail was when
4 you gave the deposition?

5 A Yes, sir.

6 Q Now, Mr. Kennedy was -- he talked openly with you
7 about being investigated at Spring Valley, didn't
8 he?

9 A Yes, we talked about it at some later time.

10 Q In fact, he's the first person you have ever talked
11 to?

12 A As far as him being investigated by it?

13 Q Sure, or that he had been accused.

14 A Yeah. Pretty much, yeah, because he relieved me;
15 so we talked in briefing.

16 Q And you didn't have any communication with Chuck
17 Earles about the accusations or investigation, did
18 you?

19 A No.

20 Q Or with Eric Barnes?

21 A No.

22 Q You were not part of the investigation?

23 A No.

24 Q You didn't offer to give a statement or anything
25 like that?

1 A They didn't ask and I didn't offer.

2 Q You're not saying Tim Hunter took the money, are
3 you?

4 A What I'm saying is that Tim Hunter is the only one
5 that can attest that the money is gone.

6 Q Do you have any reason to believe that Tim Hunter
7 is lying about that or making that up?

8 A No.

9 Q You never filed a grievance or anything like that
10 at Richland Two?

11 A No.

12 Q So you resigned in lieu of being terminated? Is
13 that fair?

14 A I resigned because I saw where they were taking it
15 to, which I figured, you know, if you don't want
16 me, I'm not going to stay around for you to
17 terminate me. So I just decided to leave.

18 Q Sure. You'd agree that supervisors are bosses and
19 have the right to call shots on how things are
20 around you?

21 A Sure.

22 Q Right. Now, at one time you got a reprimand,
23 didn't you, for putting a sticky note over a
24 camera?

25 A At Richland Northeast where our office was, I don't

1 even know why -- it was a common break area -- why
2 they would have a camera up there. It was late at
3 night. It was where we kept our radios and whatnot
4 in there.

5 Q Richland Two security takes video cameras
6 seriously? Is that fair?

7 A You could say that.

8 Q Thank you. I appreciate it.

9 A Uh-huh.

10 THE COURT: Any redirect?

11 MS. PEAVY: No, Your Honor. We would ask that
12 Mr. Mitchell be allowed to be excused.

13 THE COURT: You may step down and you may be
14 excused.

15 THE WITNESS: Thank you.

16 (Witness leaves the witness stand.)

17 THE COURT: You may call your next witness.

18 MR. GOODWYN: Like to call John Reid, Your
19 Honor.

20 (The witness comes forward.)

21 JOHN HOWARD REID, being
22 first duly sworn, testifies as follows:

23 CLERK: Have a seat in the witness stand,
24 please, and state your full name.

25 THE WITNESS: John Howard Reid.

1 DIRECT EXAMINATION

2 BY MR. GOODWYN:

3 Q Mr. Reid, my name is Jeff Goodwyn. I'm one of the
4 attorneys representing Jeffrey Kennedy in this
5 case. I will ask you a few questions about what
6 you know about this case and the situation that is
7 going on. I will ask a few background questions
8 first. Where did you grow up?

9 A I grew up in Marlboro County, Bennettsville, South
10 Carolina.

11 Q How old are you now?

12 A I'm 58.

13 Q And where did you go to high school?

14 A Right there in Marlboro County, Bennettsville High
15 School.

16 Q Did you graduate?

17 A Yes, I did.

18 Q Do you have any other degrees?

19 A I have an Associate's degree in general studies.

20 Q Where did you get that?

21 A I did it in Europe while I was in the military.

22 Q Did you go in the military right out of high
23 school?

24 A No, about two years after I got out.

25 Q How long were you in the military?

- 1 A Twenty years and six days.
- 2 Q Did you travel around the world?
- 3 A Yes, quite a bit.
- 4 Q Did you retire from the military?
- 5 A Yes, I did.
- 6 Q Were you honorably discharged?
- 7 A Yes.
- 8 Q Since leaving the military, what did you do work
9 wise?
- 10 A I worked for 15 and a half years at the Alvin S.
11 Glenn Detention Center.
- 12 Q Out there on Bluff Road?
- 13 A Yes.
- 14 Q What did you do for them?
- 15 A I worked in the intake area.
- 16 Q All right. And you have 15 years. Did you retire
17 from there as well?
- 18 A I'm came out at 55, yes.
- 19 Q So you got some retirement?
- 20 A Yes.
- 21 Q What did you do after that?
- 22 A I took a month off, and then I went to work for
23 School District Richland Two.
- 24 Q Richland Two?
- 25 A Yes, sir.

1 Q Are you currently there?

2 A Yes, sir.

3 Q When you first started, in what capacity did you
4 work?

5 A I was a security officer at Spring Valley, second
6 shift.

7 Q Did you work just at Spring Valley or did you work
8 some of the other schools as well?

9 A Worked some of the other schools also.

10 Q Spring Valley was like a base?

11 A Yes.

12 Q You said you are still there?

13 A Yes.

14 Q Who is your boss now?

15 A I worked for Captain Permenter, second shift.

16 Q Do you work under Chuck Earles's general security?

17 A Yes. He's the manager and Eric Barnes is the
18 assistant manager.

19 Q What is your current position?

20 A I'm a lieutenant on the second shift.

21 Q So you received a promotion?

22 A Yes.

23 Q What was your position in February 2011? Had you
24 gotten the promotion to lieutenant yet or were you
25 still --

1 A No, I was just a security officer.

2 Q A security officer?

3 A Yes.

4 Q And do you know Jeffrey Kennedy?

5 A Yes. Mr. Kennedy, he was on third shift. He
6 relieved me. At that particular time, he would
7 relieve me.

8 Q Back in 2011?

9 A Yes.

10 Q February and March of 2011?

11 A Right.

12 Q And how long had you known Jeffrey prior to that?

13 A I started there in, I think it was February; and I
14 met him during that timeframe. But they would
15 relieve us and we would work different events and
16 stuff for the District.

17 Q So you knew him for a month or two?

18 A It wasn't very long, four or five months maybe,
19 something like that.

20 Q Obviously, it was before the theft in Mr. Hunter's
21 office?

22 A A couple of months or so.

23 Q What did you see in Jeffrey as a person during that
24 time as you got to know him?

25 A He was an outstanding officer. If he could help

1 you, he would. He can always be counted on to do
2 any odds and ends. If they needed him, he was
3 there.

4 Q Did he help you out?

5 A Yes, he did. The night in question -- in fact, he
6 would always show up for work early and relieve
7 you. That particular night he and I walked Spring
8 Valley together and armed it inside.

9 Q Okay. Did he ever teach you how to walk Spring
10 Valley in a quicker way?

11 A That's what he did that particular night, sir.

12 Q What do you mean? He showed you how?

13 A He just showed me how easy it was to walk the
14 school and do it in a less timeframe than what I
15 was doing it in.

16 Q Did you appreciate that?

17 A Sure.

18 Q And during that time did you have any reason to not
19 trust Jeffrey Kennedy?

20 A Never.

21 Q Do you have any reason to think he was a thief?

22 A Never.

23 Q Now, after -- well, let me back up. Did you hear
24 or did anybody ever tell you that Jeffrey Kennedy
25 had gotten promoted to lieutenant around that time?

1 A Yes. I had talked -- he was supposed to have been
2 the lieutenant to come to second shift. We didn't
3 have a lieutenant at that time. He had told me
4 that he had gotten selected and would be coming to
5 the shift the following week.

6 Q Is that the job you currently hold?

7 A Yes.

8 Q Did you get that job after Jeffrey -- the promotion
9 was withdrawn?

10 A I got the job, yes, after all that had went down.

11 Q So had none of this gone down, Jeffrey would have
12 your job?

13 A More than likely, yes.

14 Q You may have gotten promoted somewhere else but not
15 this job; correct?

16 A Correct, sir.

17 Q Was it generally known that Jeffrey had been
18 promoted to the second shift supervisor?

19 A It was a word that was going around, yes, sir.

20 Q Let me ask you about the key situation. There has
21 been a lot of testimony that there were a lot of
22 keys to Spring Valley floating around. Was that
23 your experience back in February and March 2011?

24 A Yes, it was.

25 Q Can you explain to the jury kind of what your

1 experience with the key was -- the keys were?

2 A Well, I think the incident in question went on that
3 Friday night. Then that Monday I came to work, and
4 I started at my base. Then I took off from there
5 and went out to my outlying schools, like six or
6 seven schools.

7 I got a call from Captain Permenter about 6:30
8 or 7:00 o'clock, which he told me to meet
9 Mr. Barnes back at Spring Valley at Bates Hall. I
10 met Mr. Barnes, and he and I started a
11 conversation.

12 He asked me how I was doing and everything.
13 Then he asked me what had took place when
14 Mr. Kennedy and I had entered the building. I told
15 him we came to the building. We were talking.

16 We had already walked that particular area.
17 So we went on and armed the building and went back
18 out and continued to walk the base. While he was
19 talking to me about it, he asked me did we go into
20 the office. I told him no, that we armed it at the
21 keypad.

22 Q When he said, "Did you go to the office," was he
23 pointing out --

24 A It's the office right behind the keypad,
25 Mr. Hunter's office.

1 Q Okay.

2 A I told him no, we didn't go in the office. We went
3 out and walked the rest of the school. While he
4 and I was having the conversation, a custodian came
5 up, reached in his pocket and took a key out and
6 opened the office.

7 Q Mr. Hunter's office?

8 A Yes, he did. He asked him, "Wait a minute. You
9 got a key to the office too?" And the guy say yes.
10 He say, "Good Lord."

11 Then I went on and proceed to tell him what
12 had -- what me and Mr. Kennedy did, which was
13 nothing more than walk the school; and he relieved
14 me and I went home.

15 Q Did Mr. Barnes get this custodian's name?

16 A No.

17 Q Did he ask him: Were you there the night of
18 March --

19 A He didn't ask him that. He was just surprised that
20 the custodians had keys.

21 Q Did he ask the custodian who was working that night
22 or morning?

23 A Yes. He asked me, said -- no, he didn't ask him in
24 front of me. Then he said, "Do you all have keys?"
25 The guy was going, "Yes, we have keys to different

1 areas and stuff." It wasn't nothing but a master
2 key. That one master key would open all the doors
3 at the school.

4 Q So the custodian had a master key?

5 A Yes, he did.

6 Q You don't know if Eric Barnes even questioned him
7 about --

8 A Not -- the only thing he did was ask him, "Did you
9 all have keys?" He asked him right there in front
10 of me. He was surprised. The guy told him, "Yes,
11 we have keys." And he said, "Jesus Christ," and
12 then me and him went on with our conversation.

13 Q All right. So I was asking you about the key
14 situation generally. Obviously, there is a -- we
15 know the custodians have a master key?

16 A They did at that particular time.

17 Q What about coaches to the sports teams? Do they
18 have keys to the Athletic Director's Office?

19 A Yes, they would.

20 Q Who else would have keys to that building?

21 A Well, I knew the Principal had one. We had one
22 because we had to do the security, but I did not
23 know the custodians had one either until that
24 particular night.

25 Q Was there a list anywhere?

1 A No, not to my knowledge.

2 Q There was no list saying, "These are people that
3 have keys --

4 A No.

5 Q -- and should have access to any building"?

6 A Not to my knowledge.

7 Q Did any parents have keys to the buildings?
8 Boosters?

9 A I have no idea.

10 Q Have you ever seen a parent go into one of those
11 buildings with a key?

12 A No. I mean, I just worked there as a security
13 guard. I did my thing, which was walk the
14 premises, lock doors, and escort kids out the
15 building. I wasn't there for special events and
16 stuff like that, sir.

17 Q What about the other employees that worked in the
18 AD building itself?

19 A There never was a set number of -- set individuals
20 that worked there. It was just whoever was
21 designated down there. They were given the key
22 from the head custodian to go up there and clean
23 the building.

24 Q No, I'm talking about employees, like officers who
25 were in that building.

- 1 A Yes, they would have keys also, sir.
- 2 Q Do you know a time of day the doors were unlocked?
- 3 A No, I don't. I work second shift; so I couldn't
- 4 answer that.
- 5 Q You never worked third shift?
- 6 A No.
- 7 Q Or first shift?
- 8 A No, sir, I didn't.
- 9 Q I'm saying, to know that you would have to be
- 10 there --
- 11 A Right, be there on that shift to know what time
- 12 they opened the door back up. I wasn't there for
- 13 that.
- 14 Q Do you think is a wise practice for the security
- 15 team, security office, not to even know who has
- 16 keys?
- 17 A No, I don't.
- 18 Q I think you might have answered some of these
- 19 questions but just to kind of go through it. You
- 20 testified earlier about Eric Barnes interviewing
- 21 you about the thousand dollar theft?
- 22 A He asked me questions about it.
- 23 Q When did you first learn about the theft?
- 24 A That evening when I met him there. When he called
- 25 that was the following Monday.

1 Q So the theft was a Friday night?

2 A Friday night supposedly it happened, and I came on
3 shift that evening, went out to do my schools from
4 the base, which was Spring Valley. I was called
5 and told to meet him there, and that's when he
6 started and briefed me and told he what was going
7 on.

8 Q That was on Monday?

9 A Right.

10 Q So he told you about the theft?

11 A Right.

12 Q And asked you what you and Jeffrey did?

13 A Right.

14 Q When did you first find out that Jeffrey was being
15 investigated for the theft?

16 A Well, I mean, after he asked me about it, he didn't
17 come to the shift to take the supervisor's
18 position. They moved him into the office, and all
19 he could do was answer the telephone, wasn't to
20 have any keys, wasn't to drive any vehicles.

21 Q How did you find out that he wasn't supposed to
22 have keys or drive vehicles?

23 A It was told to us. Because he came in on third
24 shift and he would relieve us, and sometimes he
25 would beat the shift supervisor to work himself.

1 So it became an issue with him relieving us. We
2 was turning over keys and stuff to him. So that's
3 when we were informed.

4 Q Who told you that he was not supposed to have keys?

5 A It was put out by Mr. Barnes.

6 Q What did you think of that?

7 A Well, you know, it's pretty obvious. I mean, a guy
8 supposed to get promoted; and all of a sudden, they
9 move. He didn't get promoted, and then he is
10 brought into the office. All he can do is answer
11 telephones. Evidently he was under suspicion for
12 something.

13 Q Was it clear to you that he under suspicion for the
14 thousand dollar theft?

15 A That's when it started. So, I mean, put one and
16 two together.

17 Q So you ended up getting the job that Jeffrey had
18 been promoted to and that was revoked?

19 A Yes, sir.

20 Q There has been some testimony that some of the work
21 that Jeffrey had been resigned to after this
22 investigation was part of that job anyway: Office
23 work, looking at the security cameras, that kind of
24 thing. Is that accurate? I am trying to figure
25 out: Did Jeffrey's job overlap with what you

1 thought your job was supposed to be as the second
2 shift supervisor?

3 A I didn't get the job until later on. But, I mean,
4 if he is there working the desk and stuff, the
5 cameras are there. He's got someone called in to
6 say there is an alarm at a school, the guy that is
7 working the desk would pull up and review the
8 cameras.

9 Q Is that something you would have -- that you would
10 do as second shift --

11 A Yes.

12 Q -- from time to time?

13 A Yes. Before you send a guy back to school, you
14 want to make sure that there is no one in there.

15 Q So Jeffrey was doing that?

16 A He relieved me. I was second; he was third.

17 Q So he was still third shift?

18 A Right.

19 Q Doing some of the supervisor type work?

20 A Yes.

21 Q If an alarm -- let's just say you are on duty. An
22 alarm goes off in a building and you are not next
23 to that building. You can't hear it going off.
24 Would that be something that the supervisor would
25 see an alarm going off?

1 A No. You get a call from the company that monitors
2 the alarm. They tell you that the alarm is going
3 off at it.

4 Q So there is a separate company that monitors --

5 A Right.

6 Q -- and it's not someone on the staff?

7 A No.

8 Q I got it.

9 A They call in and then you can bring the cameras up
10 and check that area.

11 Q Who is that company?

12 A It used to be ADT. Now it's Tyco. They've got a
13 couple of them. You got Tyco, you've got Simplex,
14 and you have Industrial.

15 Q Do you remember who was monitoring the alarms back
16 in February, March of 2011?

17 A I want to say ADT.

18 Q And ADT would have a record of the alarms?

19 A They should have.

20 Q So you could call and ask them every time the alarm
21 was set off; correct?

22 A They would always call you and tell you, You have
23 an alarm going off.

24 Q I'm saying in hindsight if you wanted to find out
25 when the alarms went off, you could just call and

1 ask for the record; correct?

2 A We have a book also that you would annotate alarms
3 and stuff like that. The person working the desk
4 would just annotate it in the book.

5 Q What is that book called, the alarm log?

6 A It just's a log book where you got all your
7 schools. They got -- the custodians are supposed
8 to call when they are leaving. You annotate that.
9 They you have a section also where if you had an
10 alarm or a motion or something at the school, you
11 would annotate that in the book also.

12 Q All right. Jeffrey testified that he got a call
13 the night that the money went missing, that the
14 alarm had been set off at the Administrative
15 Building. He got called and went over there and
16 seen the baseball team there. Have you heard about
17 that?

18 A I heard some of it, that the baseball team had came
19 back late; and he had went over to answer -- check
20 the alarm.

21 Q So there should have been a log though, both with
22 ADT and --

23 A And it should have been with the office also.

24 Q And whoever got it. I guess I'm not clear on this.
25 If ADT sees an alarm go off, do they call Jeffrey

1 to come down or would they just call --

2 A No, they calling the building at the support
3 service center. Whoever is on the desk would
4 answer the phone, and they tell you that an alarm
5 is going off at Spring Valley, Bates Hall, this
6 area or that area.

7 Q So that's what Jeffrey was doing --

8 A He was answering the desk.

9 Q -- after this?

10 A Right.

11 Q He would be the guy that received the call from
12 ADT?

13 A He was the man working the desk.

14 Q Out at Spring Valley and say, "Hey, go check it
15 out"?

16 A Right.

17 Q So if somebody investigated this theft and wanted
18 to see if the alarm had gone off that night, all
19 they'd have to do is either go to the log book or
20 call ADT?

21 A They should be able to do that.

22 Q All right. Is that very complicated?

23 A No, it's not.

24 Q In the weeks and months after the theft of the
25 thousand dollars, were there rumors going around .

1 that management thought Jeffrey was a thief?

2 A Well, not so much that they thought he was a thief;
3 but, I mean, after the incident happened, the only
4 thing he could do was answer the telephone. So he
5 wasn't allowed to do anything else.

6 Q Was it implied from their conduct that they thought
7 he was involved in this robbery?

8 A Well, I mean, they just -- I'm not going to say it
9 was implied that he knew specifically, but he was
10 the only one that had got some kind of punishment
11 or had been brought down.

12 Q Did you put one and one together?

13 A Yes, because I was questioned specifically about
14 what me and him had done.

15 Q Do you think Jeffrey stole this thousand dollars?

16 A No.

17 Q Have you done any investigation of your own or
18 heard the results of anybody else's investigation?

19 A No.

20 Q From your experience with the key situation and
21 everything else you know about the custodians, do
22 you think there were plenty of people that could
23 have taken this money, other than Jeffrey?

24 A At that particular time, yes.

25 Q Did you think it was a little suspicious that

1 Mr. Hunter didn't put the money in the safe?

2 A I mean, I was just surprised that he had left it
3 out. All of a sudden it came up missing, and all
4 of a sudden Mr. Kennedy was brought into the
5 office. He wasn't allowed to have keys and he
6 wasn't allowed to do anything.

7 MR. GOODWYN: That's all I have.

8 THE COURT: Any cross?

9 MS. LONG-MAHONEY: Yes, Your Honor.

10 CROSS EXAMINATION

11 BY MS. LONG-MAHONEY:

12 Q Mr. Reid, I'm Kathy Mahoney and I represent the
13 defendants in this lawsuit. I just have a few
14 quick questions for you. It's my understanding
15 that you were with Mr. Kennedy on the night of
16 March 3rd at Spring Valley High School. He was
17 relieving your shift; is that correct?

18 A Correct.

19 Q That would be just before about 11:00 P.M. that
20 night?

21 A It was earlier than that. He would always get
22 there early on Friday night. That particular night
23 he got there early. I told him I walked all the
24 schools, except that one. So he said, "Come on.
25 We can walk it together. We got enough time."

1 Q Okay. And it doesn't take long at all to set the
2 alarm to the Athletic Department over at Bates
3 Hall, does it?

4 A No, ma'am.

5 Q It's just a matter of going to the keypad and
6 entering a four-digit code, and that's it; right?

7 A Yes, ma'am.

8 Q So on that particular night, you and he went in,
9 entered the four-digit code, and came right back
10 out?

11 A Yes, ma'am.

12 Q So you were there in that building no more than,
13 say, a minute?

14 A Maybe a minute at the most, something like that.

15 Q And you then after that went home?

16 A No, we walked the rest of school.

17 Q Right. But after that?

18 A After that.

19 Q After you walked the rest of school?

20 A I went home, yes, ma'am.

21 Q You went home. You had no further -- you were not
22 back at Spring Valley at all that evening?

23 A No, ma'am.

24 Q Or the next day?

25 A No, ma'am. I didn't work on weekends. That was

1 Friday night.

2 Q You also didn't see Kennedy, Mr. Kennedy, again the
3 rest of that evening --

4 A No, ma'am.

5 Q -- before you went home or the next day; is that
6 right?

7 A Correct.

8 Q If I can show you what is marked as -- approach the
9 witness -- Plaintiff's Exhibit 4. I believe this
10 e-mail that was sent from Chuck Earles to some
11 supervisors was shown to you at your deposition.
12 Do you recall that?

13 A I remember this.

14 Q Right. And in your deposition, I believe, you
15 said --

16 A I never seen it.

17 Q -- you had never seen that?

18 A Yes, ma'am.

19 Q Okay. And there has been reference to keys. Is it
20 true that there are different types of keys? There
21 are keys to the outside of his office, what is
22 called an A-key? Are you familiar with that?

23 A Back at that particular time. At one particular
24 time they had keys for every door; but since that
25 particular time, they have went to and changed

1 where you have a master key that fits all outside
2 doors and inside doors.

3 Q So at that time there was not a key that was
4 referred to as the A-key?

5 A No, ma'am. I mean, there was a key -- I don't know
6 if it was an A-key or whatever, but you had a
7 keyring for every school.

8 Q But you agree there's different types of keys?

9 A Yes, ma'am.

10 MS. LONG-MAHONEY: Nothing further.

11 THE COURT: Any redirect?

12 MR. GOODWYN: No, Your Honor.

13 THE COURT: You may step down.

14 (Witness leaves the witness stand.)

15 THE COURT: Ladies and gentlemen, this would
16 be a good time to take a morning break. I remind you of
17 the instructions I have given you, not to begin to
18 discuss this matter among yourselves. You have still
19 not heard all of the evidence that is to be presented.
20 Let's take a brief break, and then we will come back.

21 (The jury retires to the jury room.)

22 MS. PEAUVY: Can we approach about scheduling?

23 THE COURT: Yes, ma'am.

24 (Whereupon there is a bench conference off the
25 record.)

1 (Whereupon there is a recess.)

2 THE COURT: Yes, sir.

3 MR. GOODWYN: Your Honor, we have a little
4 issue with one of the witnesses we are going to call
5 today. This is Mr. Chuck Earles. Yesterday they said
6 he would be able to be here today.

7 Apparently, his wife, she has Stage IV cancer.
8 She was feeling ill today and had to go to the hospital
9 today for some IV treatments and might not be available
10 today.

11 We were just talking. If he is not available
12 today and we are through with all of our other
13 witnesses, then they can start presenting their case.
14 We would not officially rest until he testifies, being
15 available tomorrow, if that's okay with you.

16 THE COURT: So you are talking about calling
17 witnesses out of order?

18 MR. GOODWYN: Right, I think after this one
19 because he's not available right now. She had to go
20 into the hospital at 12:30, for IV treatment for his
21 wife. We certainly respect that. It's not ideal for
22 us, but we want to get through with the case.

23 MS. LONG-MAHONEY: Your Honor, I can explain.
24 I have just spoken with Mr. Earles. His wife has
25 Stage IV cancer. We knew she was scheduled for Friday.

1 Apparently, she had chemo this past Friday. It has been
2 very rough on her.

3 She had to get IVs today unexpectedly. That
4 takes three hours. So what he told us he could do is
5 send a text that we could check late afternoon around
6 3:30 or 4:00. He can say, "I can come down for a little
7 while this afternoon," or not.

8 He says because of the problems she was having
9 today, they might have to do more fluids in the morning.
10 He will not know that until 4:00 o'clock this afternoon.
11 So we are doing the best we can; he is.

12 I am trying to be respectful for his very
13 difficult situation. He will be eventually available.
14 It's just that we may have to take him out of order and
15 start our case. We will work with him in whatever way.
16 We are just trying to balance everything but certainly
17 considering his family situation. He has apologized.

18 THE COURT: No problem. Just as long as we
19 all have an understanding that we can still move
20 forward. If we get done with all the other plaintiff's
21 witnesses today and we still have time, we can start
22 with defense witnesses.

23 MS. LONG-MAHONEY: Right.

24 THE COURT: No problem. You may ask the jury
25 to come in.

1 (The jury returns to the courtroom.)

2 BAILIFF: The jury panel is all present, Your
3 Honor.

4 THE COURT: You may call your next witness.

5 MS. PEAVY: The plaintiff calls Mr. Anthony
6 Permenter.

7 (The witness comes forward.)

8 ANTHONY R. PERMENTER, being
9 first duly sworn, testifies as follows:

10 CLERK: Have a seat in the witness stand,
11 please. State your name for the record.

12 THE WITNESS: Anthony R. Permenter.

13 CLERK: Spell your last name.

14 THE WITNESS: P-E-R-M-E-N-T-E-R-

15 DIRECT EXAMINATION

16 BY MS. PEAVY:

17 Q Mr. Permenter, thank you for being here today.

18 A You're welcome.

19 Q We met before at your deposition earlier in this
20 case. My name is Rachel Peavy. Myself, along with
21 my law partner, represent Mr. Jeffrey Kennedy.

22 A Yes.

23 Q The reason we are here today is because Mr. Kennedy
24 brought a lawsuit against Richland County Two
25 School District, Mr. Chuck Earles, Mr. Eric Barnes,

1 and Ms. Kim Jones. I just want to introduce you a
2 bit to the jury.

3 A Okay.

4 Q Where were you born, sir?

5 A Philadelphia, Pennsylvania.

6 Q Did you graduate from high school there?

7 A Yes.

8 Q When did you move down to South Carolina?

9 A 1993.

10 Q Okay. And you are currently married; is that
11 correct?

12 A Correct.

13 Q Your wife, Angela, is also a Richland Two employee;
14 is that correct?

15 A Correct.

16 Q Can you give me some brief information. At some
17 point after graduating from high school, you
18 started working in the security industry; is that
19 correct?

20 A A little in Philadelphia but not really until I got
21 here in South Carolina.

22 Q And you worked at DJJ as a correctional officer?

23 A Yes. I worked at a place called CCA, which was a
24 private contractor; and from there I switched over
25 to the Department of Juvenile Justice.

- 1 Q How many years did you work at DJJ?
- 2 A From '94 until 2000 when I was injured.
- 3 Q Okay. And then you went to work for Richland Two
- 4 in 2005?
- 5 A Yes.
- 6 Q And at that time your wife was working there as
- 7 well; correct?
- 8 A Yes.
- 9 Q Who hired you?
- 10 A Chief Propst.
- 11 Q And at the time you were hired, what was your
- 12 position?
- 13 A At the time they had security riding school buses,
- 14 and that's what I was doing.
- 15 Q And then after you were riding school buses, that
- 16 was your job at that time?
- 17 A Right.
- 18 Q What else did you do?
- 19 A Eventually I got put on the night shift on
- 20 weekends, Friday night from 11:00 P.M. to
- 21 11:00 A.M.
- 22 Q Uh-huh.
- 23 A And Saturday night from 11:00 P.M. to 11:00 A.M.
- 24 Q Okay. So then you went and started doing shift
- 25 work. You were a security officer; correct?

1 A Uh-huh.

2 Q And what school were you assigned to?

3 A Spring Valley.

4 Q And you have been promoted since then; is that
5 correct?

6 A Yes. I went from Saturday night and Sunday night
7 as a captain.

8 Q So now you are Captain Permenter?

9 A No. Now I'm no longer there because after seven
10 years, they decided me and my wife could no longer
11 work in the same entity. The District decided
12 that.

13 Q All right. And during the time before you got
14 promoted to captain?

15 A Right.

16 Q You testified you did shift work?

17 A Uh-huh.

18 Q Would that have been similar to the kind of shift
19 work that Jeffrey Kennedy did?

20 A Yes.

21 Q And you were on the third shift?

22 A Yes.

23 Q I want to talk to you a little bit about what
24 security guards do when they are on the night
25 shift.

1 A Okay.

2 Q We've already heard testimony that you are charged
3 with activating the alarms and turning them off at
4 the end of the shift. But there is more to that
5 job than just turning alarms on and off and making
6 sure that outside door is locked, isn't there?

7 A Yes.

8 Q What did y'all have to do when you get to a
9 building?

10 A Well, our base school would be Spring Valley or any
11 of the five high schools. You would have six to
12 seven outer schools that you would have to check;
13 but you also have to check all the doors, all the
14 windows. If there is a light turned on, you have
15 to go inside and turn it off.

16 Q Okay.

17 A So there is more than just checking the door or
18 pressing four buttons.

19 Q So y'all need to check to make sure no one left a
20 coffee pot on?

21 A Correct.

22 Q Y'all need to check to make sure no one left a
23 freezer door open?

24 A Correct.

25 Q Y'all need to make sure that a student didn't leave

1 the sink running in the rest room?

2 A Yes.

3 Q So y'all have a lot of responsibilities in these
4 buildings; correct?

5 A Correct.

6 Q Okay. You started working security at Richland
7 Two. You testified you were hired by Chief Propst;
8 correct?

9 A Uh-huh.

10 Q So were there before Chuck Earles and Eric Barnes
11 took over the Security Division?

12 A Yes.

13 Q Okay. When you started working at Richland Two,
14 did you have occasion to work with my client,
15 Mr. Kennedy?

16 A When I first worked or as the course of my
17 employment?

18 Q During your tenure.

19 A Yes, yes.

20 Q So you worked with him and then he also worked for
21 you?

22 A For me, correct.

23 Q And did you feel he performed well in his job?

24 A Yes.

25 Q Did you consider him to be a stand-up guy?

1 A Most definitely.

2 Q Now, let's go back. I know several years ago it
3 can be hard to remember exact dates; but back in
4 February 2011, I believe your testimony was that
5 you were working in Support Services. Would that
6 be about right?

7 A What day is that? Again I need to...

8 Q February of 2011 you were doing some events, but
9 you were also --

10 A I was doing some events there then. Yes, I was at
11 support but I had to go to another school. I don't
12 know what time that was.

13 Q Do you recall that it was announced in the Security
14 Division that Jeffrey Kennedy was being promoted to
15 supervisor?

16 A Yes.

17 Q And it was made known to members of the security
18 staff that he had gotten that promotion; is that
19 correct.

20 A Yes.

21 Q And at that point you worked with him for a couple
22 of years?

23 A Yes. I had -- of course, he would have worked with
24 my wife; so I knew that he was at the school.

25 Q Let's talk about Spring Valley High School.

1 A Okay.

2 Q Other people have testified in this case that a lot
3 of people had keys to Spring Valley. Is that a
4 correct assessment?

5 A Yes, ma'am.

6 Q You are giggling a little. Why is that?

7 A Because there was a lot of keys floating around the
8 District. There always have been a lot of keys
9 floating around the District. There's keys that
10 teachers have lost and, you know, other folks have
11 lost, officers have lost. So, yes.

12 Q In terms of people who had keys at Spring Valley
13 back in February, March of 2011, is it fair to say
14 the teachers had keys?

15 A Yes.

16 Q Coaches had keys?

17 A Yes.

18 Q Staff members had keys?

19 A Yes.

20 Q Okay. Did you sometimes see that kids or parents
21 were given keys to do certain activities?

22 A Not so much parents but, yes, band directors used
23 to have kids that go back to their offices and give
24 them their keys and stuff like that; so, yes.

25 Q Okay.

1 A I witnessed that a lot, yes.

2 Q And in term of the Spring Valley Athletic
3 Department, during the season, the sports seasons,
4 they're fielding teams. They've got a lot of kids
5 involved in team sports; is that correct?

6 A Correct.

7 Q And whatever sport during that sport season leading
8 up to the kickoff of the season, you've got a lot
9 of people going in and out of the Athletic
10 Department. Is that a fair assessment?

11 A Fair, yes.

12 Q When there are away games, when the kids have
13 traveled and they are coming back on the bus from
14 away games, they get back at all different times of
15 the day and night; is that correct?

16 A Yes, it varies.

17 Q And in your experience it's not unusual; is it, for
18 a team to get back late at night and go into the
19 Athletic Department to drop equipment off or figure
20 out some --

21 A No, it's not unusual. The teams will come back and
22 have to take their equipment inside or the band
23 will come back, and they have to take their
24 equipment inside; so, no.

25 Q And does Bates Hall only have the Athletic

1 Department?

2 A I do believe so.

3 Q Okay. Now --

4 A No, no. ROTC was in there as well, I do believe.

5 Q All right. I want to ask you about the specific
6 incidents that we're here about today, the crux of
7 our case, the incident in the Spring Valley
8 Athletic Department that took place allegedly in
9 March of 2011.

10 Were you aware of a report that Tim Hunter
11 made where he stated that he left a thousand
12 dollars out in his office one night and when he
13 came back the next morning that money was gone?

14 A I didn't know of the amount, but I knew of the
15 situation.

16 Q What did you hear exactly?

17 A That just the money was taken or, you know,
18 misplaced. It was gone.

19 Q Okay. And after you heard this story, did you have
20 occasion to view the video surveillance from the
21 Athletic Department from the night when Mr. Hunter
22 said that money went missing?

23 A I didn't at that time. I did after I found out who
24 they were looking at.

25 Q Okay. When you reviewed that footage from that

1 night, did the video show that there were people in
2 the hallways of the Athletic Department?

3 A The baseball team.

4 Q The baseball team. Okay. About how many people
5 did you see on the video footage?

6 A Some kids, a couple of coaches.

7 Q So maybe eight or ten people?

8 A Yes.

9 Q Ten or fifteen?

10 A About eight to ten, bringing in equipment.

11 Q Okay. Do you know which Richland Two employees
12 were investigated for this theft?

13 A Only one to my knowledge.

14 Q Who is that?

15 A That's Mr. Kennedy.

16 Q Okay. So to your knowledge he was the sole focus?

17 A To my knowledge, yes.

18 Q Jeffrey Kennedy would have been on the video from
19 that night; is that correct?

20 A If he went down that hallway, yes.

21 Q Do you recall seeing him on the video?

22 A No.

23 Q But if he was working, it would make sense that he
24 would show up on the video; correct?

25 A Yes.

1 Q And in your years of experience, working DJJ,
2 working Richland Two, when you are a security
3 guard, you know there are cameras?

4 A Most definitely.

5 Q That's part of it, that you know you are being
6 watched and that the people you are looking at are
7 being watched?

8 A Yes, ma'am.

9 Q The facilities you are guarding, that you are
10 providing security for, they are being watched;
11 correct?

12 A Yes, ma'am.

13 Q And is it fair to say that there are cameras that
14 you are aware of and also cameras that you might
15 not be aware of --

16 A Yes.

17 Q -- if you are a shift guy?

18 A Yes.

19 Q So you always know someone might be watching;
20 correct?

21 A Yes, ma'am.

22 Q And, in fact, there is a pretty good chance that
23 someone is; correct?

24 A Yes, ma'am.

25 Q All right. Did Mr. Earles or Mr. Barnes ever ask

1 you about what you saw on the video?

2 A No.

3 Q Did anyone else ever ask you about it?

4 A No.

5 Q No one else inquired from the Sheriff's Department?

6 A No.

7 Q At some point after that night in question, after
8 that early March 2011 night, were you informed that
9 Mr. Kennedy was not to have keys?

10 A I wasn't informed per se, again, because I worked
11 on the weekends; and he never worked on the
12 weekends as far as that. But it was an e-mail sent
13 out basically that we saw, you know, on the desk;
14 and so we knew that he had to just man the phones
15 and the cameras.

16 Q Okay. And I think you are referring to this
17 e-mail, Plaintiff's Exhibit 4. If you will just
18 look at that and refresh your recollection.

19 A Yes, if this is the same one you showed me.

20 Q So even though you weren't literally informed that
21 Mr. Kennedy was not to have keys, you and your
22 fellow employees learned that he was not to have
23 keys?

24 A Correct.

25 Q And where did you see this letter lying out?

- 1 A On the desk in our office.
- 2 Q When you say the office, is that the watch room?
- 3 A Yes. Like it was stated earlier, where we go and
- 4 everybody have to fill out their time sheet and
- 5 everything like that.
- 6 Q So all the Security Division employees are going in
- 7 there to do their time sheets?
- 8 A Yes.
- 9 Q Is that also where you deal with your radio?
- 10 A Yes.
- 11 Q So if you are coming in and out of your job as a
- 12 Richland Two security person, you are going into
- 13 that room?
- 14 A If you are going to do your time sheet or working
- 15 in that area, yes.
- 16 Q Was that laying out on the check-in desk?
- 17 A Just the desk where the officer sits.
- 18 Q Okay. When you read this letter that was printed
- 19 out sitting on that desk, did it let you know that
- 20 Mr. Chuck Earles did not trust Mr. Kennedy?
- 21 A It did.
- 22 Q And did it let you know that they thought he was
- 23 responsible for the Tim Hunter money?
- 24 A I knew that they suspected him.
- 25 Q Okay. You were here for Mr. Reid's testimony?

1 A Yes, ma'am.

2 Q I think he said it pretty clearly. You put two and
3 two together. It wasn't hard.

4 A No.

5 Q All right. So this was what everyone was being
6 told about Jeffrey Kennedy when that was lying out
7 on the desk?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q Did you ever see that in any vehicles?

12 A No, I didn't.

13 Q All right, Mr. Permenter. That's all I have.
14 Thank you.

15 A You're welcome.

16 THE COURT: Any cross?

17 MR. BARLOW: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BARLOW:

20 Q Mr. Permenter, you and Mr. Kennedy are friends. Is
21 that a fair statement?

22 A Yes. From working there, yes.

23 Q Now, the first time you heard that Mr. Kennedy had
24 been accused of taking money at Spring Valley was
25 from Mr. Kennedy himself, wasn't it?

1 A Yes.

2 Q You didn't have any discussion with any other
3 employees about Exhibit 4 that you looked at?

4 A No.

5 Q Because you weren't supposed to do that. It was a
6 confidential memorandum; correct?

7 A What was confidential?

8 Q The memorandum that you looked at, Exhibit 4.

9 A Confidential? It was marked confidential?

10 Q Yes, sir.

11 A Yeah. Other people discussed it because they saw
12 it.

13 Q But you didn't discuss it?

14 A I discussed it with the other people because they
15 saw it.

16 Q You gave a deposition in this case, didn't you?

17 A Yes.

18 MR. BARLOW: Do you have the original?

19 MS. PEAVY: Yes.

20 (Counsel opens the deposition.)

21 BY MR. BARLOW:

22 Q All right, sir. I want you to look at page 47.

23 A (Witness complies.)

24 Q Do you recall we were talking about some questions
25 with regard to Exhibit 4, the confidential

1 memorandum, and I asked you on line 23: "Do you
2 know who left it at the desk?" And the answer is
3 no?

4 A Uh-huh. (Indicating affirmative response.)

5 Q Is that right?

6 A Yes.

7 Q I said, "Did you have any discussions with any
8 other employees about the memo?" And your answer
9 is, "In regards, no." Is that right?

10 A That is correct.

11 Q Okay. Now, you were not involved in the
12 investigation yourself?

13 A No.

14 Q And Chuck Earles and Eric Barnes were not talking
15 to you about anything, were they?

16 A No.

17 Q And that's not something that Mr. Barnes and
18 Mr. Earles would have talked to you about?

19 A No.

20 MR. GOODWYN: Objection.

21 THE COURT: I'm sorry?

22 MR. GOODWYN: He is asking the witness to
23 testify as to what Chuck Earles and Eric Barnes would
24 have talked to him about. That calls for speculation as
25 to what they would or wouldn't do.

1 THE COURT: Rephrase the question.

2 MR. BARLOW: Sure.

3 BY MR. BARLOW:

4 Q Mr. Earles and Mr. Barnes were not in the habit of
5 talking to you about things?

6 A No.

7 Q You did not have a good working relationship with
8 Mr. Barnes and Mr. Earles, did you?

9 A No.

10 Q Now, to disarm or arm an alarm, it takes a few
11 seconds?

12 A No.

13 Q It does not take a few seconds?

14 A No.

15 Q How long does it take to arm the alarm?

16 A It depends on the alarm.

17 Q A four-digit code, how long does that take?

18 A It depends on the alarm. I can explain for you if
19 you would like. If we go to a school and the
20 school has a trouble signal or anything, any kind
21 of faults in the alarm box, you have to clear it
22 out. Generally, if you walk up to an alarm and
23 there is nothing wrong with it, yes, it takes a few
24 seconds.

25 Q That is sort of the situation I was sort of

1 contemplating when there is nothing wrong with the
2 alarm.

3 A That's why I had to explain.

4 Q I think your clarification is fine. That's fair.
5 You have no idea who left that memorandum at the
6 desk?

7 A No, sir.

8 Q You didn't leave it there?

9 A No, sir.

10 Q Now, Mr. Kennedy, we talked about the work that he
11 was doing after his reassignment?

12 A Yes.

13 Q People on other shifts had to do that same work,
14 didn't they?

15 A Yes.

16 Q Like first shift would do that work?

17 A Yeah, they have somebody to do that.

18 Q Second shift?

19 A Well, first shift has a secretary that answers the
20 phone and everything like that.

21 Q Second shift, what would you have?

22 A The second shift would do it.

23 Q How about on the weekend shifts?

24 A Yes.

25 Q Didn't you work the weekend shift?

1 A Yes.

2 Q The only time you would have really worked together
3 with Mr. Kennedy was at sporting events, wasn't it?

4 A Or if I needed him to come work for me.

5 Q Sure. Now, you reviewed the video with
6 Mr. Kennedy, the Spring Valley video?

7 A Did I view it with him?

8 Q Yes, sir.

9 A No.

10 Q Have you reviewed it in independently?

11 A Yes.

12 Q Did you tell Mr. Kennedy what was on the video?

13 A No.

14 Q You didn't tell him anything about what you saw on
15 the video?

16 A What do you mean? There was nothing on the video
17 to see.

18 Q I thought you mentioned that you saw the baseball
19 team.

20 A But why would I -- I'm not understanding your
21 question. You asked me did I talk to him.

22 Q Right.

23 A In regards to seeing a baseball team. I did that
24 on my own because I was curious.

25 Q Right. So you didn't talk to Mr. Kennedy about

1 that?

2 A No.

3 Q So the Athletic Director's Office was not on the
4 camera?

5 A No, there's not a camera facing the Athletic
6 Director's Office.

7 Q And that would have been known to whoever was
8 working in the building, wouldn't it?

9 A To whom?

10 Q Security working in that building.

11 A No.

12 Q You still work for Richland Two, don't you?

13 A Yes.

14 Q What is your job, sir?

15 A I work at Westwood High School, part of the
16 Administrative Discipline Team.

17 Q How long have you been at Westwood?

18 A Since I left security in -- two years. This is my
19 third year at the school.

20 Q You are doing fine in that job?

21 A Uh-huh.

22 Q Yes?

23 A Yes.

24 MR. BARLOW: Just a second.

25 THE COURT: Yes, sir.

1 (Pause.)

2 BY MR. BARLOW:

3 Q You were asked a question about keys?

4 A You didn't ask me.

5 Q I didn't. Ms. Peavy asked you a question about
6 keys, a lot of people having keys?

7 A Yes, sir.

8 Q There were different types of keys? You would
9 agree with that?

10 A For what?

11 Q For schools.

12 A Yes, there are different keys for different
13 schools.

14 Q A teacher would have a key to get in the teacher's
15 door?

16 A But it also opens other doors.

17 Q Are there any keys that just open a single door?

18 A A master key, grand master key.

19 Q A master key will open every door, won't it?

20 A Yes.

21 Q Security has a master key?

22 A Security has a master key, yes. At that time I
23 cannot remember if we started issuing out master
24 keys or not.

25 Q Who is we?

1 A As supervisors. See now in security, now everybody
2 has master keys. Instead of having a group of keys
3 for different schools, they have one key that opens
4 all the doors, except the portables.

5 Q And that's a key that is closely guarded with
6 security?

7 A Well, it's one key; so, yes.

8 Q In terms of this confidential memorandum here, this
9 Exhibit 4, you did not print this out?

10 A No.

11 Q And you have no evidence that Mr. Earles would have
12 printed it out?

13 A No.

14 Q Or Mr. Barnes?

15 A I have no evidence, no.

16 Q That's all I have for you, sir. Thank you.

17 THE COURT: Any redirect?

18 MS. PEAVY: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. PEAVY:

21 Q Mr. Permenter, this letter that you saw lying out
22 in the shift room?

23 A Yes.

24 Q You didn't think it was confidential if it was
25 lying out?

1 A It was laying out; correct.

2 Q So even though it has confidential at the top, it
3 was lying out for you and your coworkers to see; is
4 that correct?

5 A Correct.

6 MS. PEAVY: I have nothing further.

7 THE COURT: You may step down.

8 (Witness leaves the witness stand.)

9 THE COURT: You may call your next witness.

10 MR. GOODWYN: Eric Barnes is going to come
11 late. He may be out there right now. Can I go check?

12 THE COURT: Yes, sir.

13 (Pause.)

14 THE COURT: You may call your witness.

15 MR. GOODWYN: Call Eric Barnes.

16 (The witness comes forward.)

17 ERIC KEVIN BARNES, being
18 first duly sworn, testifies as follows:

19 CLERK: Have a seat in the witness stand,
20 please, and state your name.

21 THE WITNESS: Eric Kevin Barnes, B-A-R-N-E-S.

22 DIRECT EXAMINATION

23 BY MR. GOODWYN:

24 Q Mr. Barnes, my name is Jeff Goodwyn. We met today.
25 I understand Ms. Peavy took your deposition earlier

1 in this case; is that correct?

2 A She did.

3 Q We appreciate you coming to trial. How old are
4 you?

5 A Forty-nine.

6 Q And tell me a little bit about your background.
7 How far did you go in school?

8 A I graduated from high school at Northwestern High
9 School in Rock Hill, South Carolina. From there I
10 went to Gardner Webb, which is in Boilings Springs,
11 North Carolina. I majored in religion.

12 Then from there I went and joined the Secret
13 Service Uniform Division for a year and ten months.
14 I was stationed in DC. I met my future bride
15 around that time, and I decided I was not going to
16 raise a family in DC, that I needed to come back
17 down south. So I did.

18 I joined the Sheriff's Office here in
19 Richland County when they were on Huger Street.
20 Then from there I retired from there as a detective
21 sergeant. I spent the better part of my time as an
22 investigator. Then from there I came here to
23 Richland School District two.

24 Q So did you have any formal training in
25 investigating crimes?

1 A I did, various schools throughout my career:
2 Homicide, child abduction, interviews and
3 interrogation, things like that.

4 Q What about thefts?

5 A I spent a good portion of my time in burglary, and
6 I was a sergeant over burglary for a number of
7 years and ran a team of burglary investigators that
8 were assigned about 30 burglaries a month; and we
9 did a good job.

10 Q So it's fair to say that you feel like you know how
11 to investigate a burglary?

12 A Well, we all are human but I do my best.

13 Q You may have said this, but when did you start at
14 Spring Valley or Richland Two rather?

15 A December 2010 when I left the Sheriff's Office and
16 went to work at Richland School District Two.

17 Q What was your title at that time?

18 A Assistant Security Manager.

19 Q What is it now?

20 A Assistant Security Manager.

21 Q I understand there was a Chief Propst?

22 A Chief Propst, I think, was my predecessor. I met
23 him once at a school reunion.

24 Q Was he there when you started?

25 A No.

- 1 Q All right. So who is Chuck Earles?
- 2 A He is my boss.
- 3 Q Is there anyone above him?
- 4 A Jack Carter.
- 5 Q What is Jack's position?
- 6 A Jack is the -- I don't know the exact title -- but
- 7 he is the Director of Support Services.
- 8 Q For District Two?
- 9 A For District Two, yes.
- 10 Q So he is over?
- 11 A He is over security and outsourcing of contracts,
- 12 for Sodexo which is our cafeteria workers and our
- 13 janitors, and then the building maintenance.
- 14 Q He is not a security officer himself?
- 15 A No.
- 16 Q Chuck Earles would be the head security officer?
- 17 A Correct.
- 18 Q About how many people are on the security staff at
- 19 Richland Two?
- 20 A Right now we have a little over 80 security
- 21 officers.
- 22 Q What about back in March of 2011?
- 23 A Fifty, 50 to 60, somewhere in there.
- 24 Q Why has it increased so much?
- 25 A We realized we could not cover everything that we

1 were required to cover, mostly traffic. The better
2 part of our employees are substitute employees that
3 get no benefits at all.

4 They get no guaranty of hours. In fact, most
5 of the time the guaranty that we can give them is
6 traffic. Inevitably traffic is what we have to
7 cover, trying to get kids in and out of school and
8 traffic in and out of the school safely.

9 We have upwards of 35 places in the morning
10 and 35 places in the afternoon that we have to
11 cover. We have -- so most of those are substitute
12 employees that have -- they are kind of knitch
13 employees.

14 In their work day, they are able to set aside
15 two hours in the morning and two hours in the
16 afternoon. So that's the better part of our
17 employees. When I came on, we were having
18 significant trouble filling and staffing those
19 traffic positions. So we had to hire some more
20 people.

21 Q Did you know Jeffrey Kennedy when you first came
22 on? Did you get to know him when you first came
23 on?

24 A I got to know him, yes.

25 Q I understand his testimony. The testimony has been

1 that he worked third shift. Is that your
2 recollection?

3 A I believe so, yes, sir.

4 Q Did you know all the third shift employees?

5 A At the time I was getting to know them.

6 Q Did you work third shift as well?

7 A No, I worked at the Sheriff's Office prior to that.
8 I worked mostly days.

9 Q No, I mean, when you started at Richland Two.

10 A I worked dayshift.

11 Q Where was your office?

12 A My office at that time was down the hallway, in a
13 little office down the hallway.

14 Q Did you stay in your office during the day or were
15 you out and about?

16 A I stayed in the office and I tried to get out and
17 about, but I had paperwork to do in the office.
18 Then I would try to get out and meet some of the
19 principals and the administrators throughout the
20 District and start learning the ropes in the
21 District.

22 Q How would you get to know somebody like Jeffrey who
23 worked third shift?

24 A Passed in the hallway. I like to try to talk to
25 people. I don't recall much of our conversations

1 back then, and I don't know that we were ever
2 considered close by any stretch of the imagination.
3 It's kind of hard to do that when you're over
4 everybody, but that's how I would get to know them,
5 through the hallways.

6 Q Did you ever go with him on a shift?

7 A No. Not at that, no. I did, when I came on, I did
8 go with some of the shifts to walk that shift to
9 try to figure it out; but most of that time I was
10 dealing with the captains and lieutenants at that
11 particular shift.

12 Q You testified you reported directly to Chuck
13 Earles; correct?

14 A Correct.

15 Q Who were your immediate subordinates? Was there
16 another level of management between you and
17 somebody else?

18 A Sure. There's captains and lieutenants on each
19 shift, except for dayshift, but there are captains
20 and lieutenants on each shift.

21 Q How many captains and lieutenants were there that
22 reported to you?

23 A Five captains and four lieutenants.

24 Q Who was Jeffrey's captain or lieutenant at that
25 time? Do you recall?

1 A I recall Captain Groves as his captain at one
2 point.

3 Q And during the night shift, we know -- for somebody
4 like Jeffrey, the night watchman -- there has been
5 testimony that there is somebody at a control area
6 that would receive a call about an alarm going off
7 or something like that. Is there anybody else that
8 would be on staff at night, other than those two
9 people?

10 A Well, we have a captain and lieutenant.

11 Q Both of them there every night?

12 A You would hope they would be there as much together
13 as possible. You would have people who you were
14 sick and that sort of thing, and the lieutenant or
15 the captain would run the shift for the most part
16 by themselves.

17 They had the leeway to bring someone else in,
18 but most of the time we had the captain and the
19 lieutenant there. They can decide -- at least in
20 my mind. I don't know how this was done with Chief
21 Propst -- but in my mind they had a certain
22 latitude on how they conducted their work on the
23 shift.

24 We would hope that one would be in the office
25 handling the phone calls, handling complaints that

1 might come in, and handling any projects that might
2 come up; and the other would be out checking on the
3 troops and following up on them with their lives
4 and making sure that everything is okay. That
5 would be our hope.

6 Q So some nights there were three people, somebody
7 like Jeffrey, the watchman, and a captain and a
8 lieutenant?

9 A There would be one -- two, possibly most of the
10 time, one other, and the other supervisor being out
11 on the road.

12 Q Okay. Like checking up on Jeffrey or just checking
13 other schools, that kind of thing? When you say on
14 the road, that's what you mean?

15 A Right. Correct.

16 Q I think Jeffrey testified earlier that sometimes
17 somebody would come and walk with him or whatever.
18 That's who that would be? That's what we are
19 talking about?

20 A If that's the way the captain and lieutenant set
21 that up, sure.

22 Q Were you involved at all in February 2011 in the
23 selection process for the lieutenant promotion, the
24 second shift lieutenant promotion, that the
25 department was interviewing for?

1 A Yes.

2 Q What was your role in that hiring process?

3 A Well, I don't recall quite how that went down; but
4 I think we interviewed several people and chose
5 Mr. Kennedy based on those interviews.

6 Q How many people applied for that job?

7 A You know, I don't remember.

8 Q More than ten?

9 A I don't remember.

10 Q More than five?

11 A At the time we only had 50-something employees. I
12 would be surprised if we interviewed that many.
13 There may have been that many applications, but I
14 don't recall; but I would be surprised if it was
15 more than five.

16 Q And did you consider anybody outside of the
17 department?

18 A I think, you know, again that was so long ago. I
19 don't recall. I think the consideration, with the
20 way it's set up now, is that there is a database of
21 applications that come in. We review those
22 applications online. So those are a part of the
23 consideration process.

24 Q Jeffrey was one of those?

25 A It's kind of changed because we've gone online, but

1 I recall that we had several applications that we
2 reviewed. Then we chose out of those applications
3 that we reviewed.

4 Q You chose anyone to interview?

5 A Correct.

6 Q And then chose the winner?

7 A Sure.

8 Q And Jeffrey rose to the top. He was the one you
9 picked?

10 A He did.

11 Q And what role did you have in that process?

12 A I think I was involved in the interviews and the
13 discussions with Chuck as to the proper processes
14 to go about this because this was fairly new to me.
15 I came on in December of 2010.

16 About a few days after I came on, it was
17 winter break. We were coming back in in January.
18 So in February we are starting to have this
19 process. So I am still new and I'm bouncing things
20 off of Chuck at the time.

21 Q And Chuck had been there awhile?

22 A Chuck has been there awhile, yes.

23 Q What criteria did you use to evaluate the
24 candidates for this promotion?

25 A It's hard to remember back then. I can tell you

1 what I have honed into what I am looking for now.

2 Would that be beneficial to you?

3 Q Well, first, who had the final say on who got the
4 job? Was that Chuck or was that you?

5 A Neither one of us. This was bureaucracy, Richland
6 District Two. Unlike the Sheriff's Office, this is
7 much like the Federal Government. Okay. There is
8 an HR department. So we make recommendations and
9 then we send it up to HR.

10 Q Let me rephrase it then. Who has the final say as
11 to who you would recommend to HR for the job?

12 A Chuck would have signed off on that, and I would
13 have made a recommendation to Chuck.

14 Q And from your experience does HR generally give the
15 job to who you recommend?

16 A You know, I send it up to HR in good faith. They
17 have a great deal of latitude in HR as far as
18 background. Sometimes they will take their time in
19 processing that.

20 So I have learned over the years -- and this
21 is, like I said, one of the first ones I did --
22 I've learned over the years, you kind of just hold
23 your breath, make your recommendation based on the
24 most information you have. You hold your breath
25 and wait for HR to send it back.

1 Q How many candidates have you recommended that have
2 not gotten the job?

3 A There has been half a dozen maybe.

4 Q Half a dozen. Just based on their background
5 check?

6 A Based on their background check where they come
7 back and go, "Hey, what about this? Hey, what
8 about that? Can we get some clarification on what
9 they said here? Or this came up in the background
10 search, we need some clarification on it."

11 Then it just becomes one of those situations
12 where we just need to part ways. It's just not
13 going to work at Richland District Two.

14 Q As far as your recommendations go, was
15 trustworthiness a consideration?

16 A It is.

17 Q At the time you recommended -- or I'm assuming
18 because Jeffrey got the job that you recommended to
19 Chuck that he get the promotion?

20 A At the moment we felt pretty confident.

21 Q What made you feel confident?

22 A We felt that he was trustworthy. We felt that he
23 was the best candidate of the ones that we
24 interviewed.

25 Q All right. And there has been some discussion

1 about some other petty thefts in the week or two
2 before the thousand dollar theft from Tim Hunter's
3 office. Were you aware of those?

4 A I became aware of those within days of the final
5 situation.

6 Q What do you mean the final situation?

7 A The one we are here on. The one you are getting
8 ready to ask me about, I'm assuming.

9 Q So you had never heard of those other petty thefts
10 before March 3rd or March 4th?

11 A Correct. Chuck and I were called over to Spring
12 Valley to follow up on some of the petty thefts
13 that were going on. We were in consultation with
14 Jim Childers about what their observations were.

15 Q Who is Jim Childers?

16 A He is the Assistant Principal at Spring Valley High
17 School.

18 Q So before March 3rd, before this thousand dollar
19 theft, Jim Childers had not reported to you any
20 other petty thefts that had gone on before that?

21 A No, I didn't say that. I said that Jim Childers
22 had called us several days prior to this time of
23 the thousand dollars being stolen, and we were
24 following up on that during that timeframe.

25 Q Oh, so you did know about these other thefts before

1 the thousand dollars was stolen?

2 A A couple of days before.

3 Q But at that time it's fair to say you did not
4 suspect Jeffrey Kennedy was involved in those
5 thefts?

6 A Jeffrey Kennedy and our security guards, any time a
7 theft comes up, they are the ones in the schools.
8 So they become automatic suspects in a lot of ways,
9 and that's just the nature of it. But the common
10 denominator in these was Jeffrey Kennedy.

11 Q Okay. But at the time that you recommended him for
12 the promotion?

13 A Had no knowledge of it.

14 Q You didn't suspect him of any thefts?

15 A I didn't.

16 Q Do you believe if someone had demonstrated poor
17 character, would you have recommended them for the
18 promotion?

19 A No. Not at that time, no.

20 Q Do you believe Jeffrey Kennedy demonstrated good
21 character prior to you recommending him for the
22 promotion?

23 A As much as I knew Jeffrey Kennedy at the time and
24 the interview process that we went through, yes.

25 Q What all was involved in the interview process?

1 A We asked a series of questions to everybody in the
2 interviews. You ask the same questions of each
3 candidate. Like I said, I don't recall --

4 Q When you say you ask a series of questions, are you
5 talking about to the candidates?

6 A To the candidates, yes.

7 Q Do you ask anybody else what they think of him or
8 get opinions from other people as to what the
9 candidate is like?

10 A The way we do it now we have a board, and we are a
11 lot more systematic about it. I will have to fall
12 back on: I don't recall that particular interview.

13 Q Okay. I am not asking what you asked Jeffrey so
14 much. I am just asking did you ask other people
15 what they thought of Jeffrey? Was that part of the
16 process?

17 A I don't recall.

18 Q Is that part of the process now?

19 A We try to go, if they are employees, we try to go
20 to their supervisors to see if there is anything
21 outstanding from their employees. I say employees.
22 We go to their supervisors.

23 We try to ask them if they have any internal
24 problems within that shift that doesn't necessarily
25 come to my purview because they want to keep it on

1 the shift, but we do ask those questions. We have
2 a pretty systematic grading level at this point.

3 Q Okay. So you recommended Jeffrey for the
4 promotion. Was he introduced as the next second
5 shift supervisor to any of the other staff?

6 A He was attending our -- I believe March of that
7 year because I was new, I was having supervisor
8 meetings once a month. So I'm not quite sure when
9 I started calling those.

10 But obviously I came in in December. At the
11 most it would have been three. This would have
12 been the third one. I think it might have been --
13 it was fairly early in the process. So I'm not
14 sure.

15 We called him to have him sit in on the
16 supervisor meeting to kind of get adjusted, and I
17 think he was introduced as the next lieutenant by,
18 I believe, Captain Permenter; but I'm not totally
19 sure on that. But I believe she introduced him as
20 the lieutenant and that he would be with us from
21 now on.

22 Q Okay.

23 A At that time we were -- you know, "Hey we are
24 moving forward."

25 Q Was that before you got formal approval from HR?

1 A That was before that, yes. Yes.

2 Q Did you ever get formal approval from HR for the
3 promotion?

4 A No.

5 Q Did you or Chuck Earles revoke or withdraw your
6 recommendation for Jeffrey Kennedy?

7 A I believe your co-counsel showed me an exhibit
8 before regarding that. It was not my signature,
9 but I believe Chuck had written something on there,
10 Mr. Earles.

11 Q Right. And why was Jeffrey Kennedy's promotion
12 recommendation withdrawn?

13 A I believe it was a number of situations or a number
14 of conversations he had with HR in regards to these
15 investigations, the series of incidents that
16 happened at Spring Valley, culminating in the
17 thousand dollars being missing, and the interviews
18 with HR. I think Roosevelt Garrick interviewed
19 him.

20 Q I'm not asking you why HR made its decision. I am
21 asking why Chuck Earles withdrew his
22 recommendation?

23 A Again, I would have to go back to the investigation
24 and Chuck being privy to that investigation and
25 what he and HR were discussing.

1 Q Were you privy to that investigation?

2 A I was privy to some of it, but I was mainly the
3 liaison between the District and the Sheriff's
4 Office. The other conversations that they had on
5 the phone, they were dealing directly with Chuck in
6 a lot of respects.

7 Q I want to get into that more in a minute.

8 A Can I stop you? Can I get some water?

9 Q Absolutely.

10 (Pause.)

11 Q All right. Let's talk about the -- let's first
12 talk about what you may know about the custodians.
13 Were keys ever taken away from custodians around
14 this time that you know of?

15 A I believe Jim Childers had mentioned that they had
16 taken a key away from Ms. Jackson right around the
17 time of the internal thefts that were going on
18 prior to the thousand dollars being missing.

19 Q Who is Ms. Jackson?

20 A Ms. Jackson was the head custodian at Spring Valley
21 High School at the time.

22 Q And is it safe to assume that she had her keys
23 taken away because they suspected her in the
24 thefts?

25 A Is it safe to assume that? I think that they were

1 trying to limit their pool of suspects. I think
2 that was one of the internal things that they
3 decided to do.

4 I will have to, you know, move you to or send
5 you over to Jim Childers for some clarification
6 about why because I wasn't privy to why, and that
7 was not my employee.

8 Q Were you aware that Ms. Jackson had her keys taken
9 away?

10 A I became aware of that here recently.

11 Q But at the time you didn't know that?

12 A I don't recall knowing that at the time. I do
13 recall learning about that here recently.

14 Q Do you remember Ms. Jackson's first name?

15 A No, I don't remember Ms. Jackson's first name. I
16 always called her Ms. Jackson.

17 Q All right. This is Plaintiff's Exhibit 2. This is
18 the Change of Culture memo we discussed earlier
19 that Chuck Earles issued shortly after he started.
20 I think your testimony was that Chuck Earles had
21 been there before you started?

22 A Correct. He had been there, yes.

23 Q Did you ever see this memo?

24 A I never received this memo.

25 Q So you started at some point apparently after he

1 issued that memo, but it didn't go as part of your
2 welcome package. You know, "Welcome to the
3 department. These are our rules," that kind of
4 thing?

5 A No.

6 Q Did Chuck Earles ever tell you that there is a
7 rumor problem, "and I don't want people repeating
8 business that is not theirs and spreading rumors"?

9 A No, he wouldn't have to.

10 Q Why is that?

11 A Because that's not something that I do.

12 Q What is something you don't do?

13 A You just asked about the rumors. I try not to
14 participate in rumors.

15 Q No, and I'm not going to ask you that.

16 A Well, what are you talking about?

17 Q Were you aware that Chuck Earles believed that
18 there was a rumor problem big enough to put a memo
19 out on it?

20 A I know that memo because each employee that they
21 have has an employee file. As we are going -- as I
22 go through the files on a day-to-day basis, whether
23 somebody is leaving or we are trying to move them
24 to another shift or maybe I'm updating their files
25 with a driver's license or training or something

1 like that, I have seen that memo in those files,
2 especially from the long-time employees.

3 Q But you haven't received one of those memos
4 yourself?

5 A No.

6 Q So one of those memos isn't in your file?

7 A No, sir.

8 Q Has Chuck Earles ever given you any oral
9 instructions not to spread rumors?

10 A No.

11 Q You understand how damaging a rumor that you've
12 stolen something can be to somebody if it's not
13 true?

14 A Sure.

15 Q Do you think it's important to make sure you don't
16 go around telling people or implying that somebody
17 is a theft when they are not?

18 A Sure.

19 Q Would you agree that it's important to carefully
20 safeguard negative information about employees so
21 that other nonmanagement employees don't have
22 access to it?

23 A I try to do that.

24 Q You instruct your staff to do the same?

25 A I try to remind them any time I perceive there is a

1 problem.

2 Q Do you dispute the fact of Jeffrey's allegations
3 that a rumor got out that management, specifically
4 you and Chuck Earles, believe that he is
5 untrustworthy and that he is the one that stole the
6 thousand dollars? Do you dispute that rumor is in
7 existence?

8 A I dispute the fact that it came from me.

9 Q That's not my question. My question is: Do you
10 dispute that the rumor exists, that it's out there?
11 Do people think that y'all think he is
12 untrustworthy, and you've accused him of being this
13 thief of this thousand dollars?

14 A I don't want to argue with you, but I dispute the
15 fact that people spread rumors.

16 Q No, not generally. I'm talking about this
17 particular case. He has alleged that people
18 outside of the management team at your office know,
19 have been informed, that you and Chuck Earles
20 believe he is the thief, that he is untrustworthy;
21 and that word has spread to his church, to
22 students.

23 Everybody now thinks that y'all have done an
24 investigation and have said he is the one that
25 stole the money. He is untrustworthy.

1 A Okay. Human nature is that these rumors get
2 around, especially in a small area like security
3 within School District Two. I'm certainly not
4 disputing that rumors get around, and people will
5 give credence to a rumor or not give credence to a
6 rumor. These are out of my purview.

7 But certainly I'm not disputing the fact that
8 rumors have been -- and those rumors may have
9 gotten out. My dispute is whether those rumors
10 originated from me or Chuck.

11 Q Would you agree Plaintiff's Exhibit 2 -- or excuse
12 me -- Plaintiff's Exhibit 4, the e-mail about
13 Mr. Kennedy is not to have keys, is not to be given
14 any assignment that involves having keys to any
15 District facilities, that e-mail came from Chuck?

16 A Correct, to the supervisors.

17 Q To the supervisors?

18 A Correct, yes, sir.

19 Q And who has supervisory responsibilities over the
20 supervisors?

21 A Well, I do and Chuck does.

22 Q So the people that are addressed in this e-mail are
23 supervised by you and Chuck?

24 A Correct.

25 Q And if that e-mail was printed and left in an area

1 where all the other staff could see it, that would
2 have been somebody -- it must have been one of the
3 recipients of this e-mail; correct?

4 A I don't know who did that, if that was done.

5 Q I'm not asking if you know. Either somebody -- if
6 it wasn't you or Chuck that did that, it must have
7 been either one of the recipients of the e-mail and
8 maybe they forwarded it on to someone else who
9 printed it out and left it out; correct?

10 A The e-mail system itself is full of those types of
11 things. If someone forwarded that on to someone
12 else to be printed out or if they left it up on
13 their screen when they went to bathroom, and
14 somebody else came into the supervisor's office and
15 printed it off, I don't know. I know that when
16 that e-mail went out, it was confidential to the
17 supervisors.

18 Q And one of your staff members failed to keep it
19 confidential; correct? How else would the e-mail
20 have gotten printed out if they didn't keep it
21 confidential?

22 A Again, I'm not aware that that was even out, except
23 through this case right here.

24 Q Assuming the testimony is believed that it was
25 sitting out on a desk or in a truck.

1 A I would be -- I would find that, you know,
2 something that I wouldn't want to have happened.

3 Q Right. And would you agree that the e-mail was not
4 kept confidential by somebody, one of the
5 recipients of the e-mail?

6 A I think in a broad sense, yes, you could say that,
7 in a broad sense. I also know, again, if a person
8 is -- as small as the support center is and those
9 offices are and officers coming in and out, it
10 would not surprise me.

11 I'm not sure it would ever come to light, but
12 it would not surprise me that if my supervisor had
13 gone to the bathroom and left that up on his screen
14 that somebody didn't come in and print that off.

15 That would not surprise me that it happened.
16 If that had happened, I would say that the
17 supervisor, you know, at most was -- left that up
18 on the screen, and somebody else took liberties to
19 print it.

20 Q Do you have any evidence at all to suggest that
21 anybody else came in, saw the e-mail on somebody
22 else's screen, and printed it off and left it out?

23 A I don't have any evidence except for what y'all are
24 telling me that any of my supervisors left that
25 out.

1 Q So it's safe to say you didn't follow up with any
2 of your supervisors to ask them if they printed it
3 out and left it in the room?

4 A Again, I was not aware that this particular memo
5 went out until long, long after that.

6 Q So you didn't receive this e-mail?

7 A I'm saying I did not receive information that it
8 was left out and that somebody else had it. I
9 received the e-mail.

10 Q I understand that. After the e-mail was sent, did
11 you make any efforts to go around to your
12 supervisors and say, "Hey, did you keep this e-mail
13 confidential? Are you sure you are keeping this
14 information about Jeffrey confidential?"

15 A I did not, no.

16 Q Did you ask any of the recipients of this e-mail,
17 any of your staff that would have received it, did
18 you ask them: Have you printed the e-mail? If you
19 did, did you throw it away? Have you kept it in a
20 safe place?

21 A I did not, no.

22 Q Did you make any efforts to make sure that this
23 e-mail was kept confidential?

24 A The effort that I know of was that it had
25 confidential written at the top of the e-mail.

1 Q Other than writing confidential at the top, did you
2 make any efforts to make sure it was kept
3 confidential?

4 A No.

5 Q I want to ask you a couple of questions just about
6 the third shift, the night watchman, what his
7 duties are and how he is supposed to view those
8 duties.

9 First, let me ask you: Do you, as one of
10 Jeffrey's supervisors -- not direct supervisor --
11 but up the chain, do you give either people who
12 work the third shift or your supervisors
13 instructions about how the night watchmen are
14 supposed to do their job?

15 A I have, yes.

16 Q Jeffrey's testimony on that was that he had been
17 instructed, when he is in buildings, to spend a
18 fair amount of time in the buildings so that you
19 don't have to spend that time out in the truck
20 burning gas keeping warm, save gas. Had you ever
21 heard that?

22 A No, I have never heard that.

23 Q Does it make sense?

24 A We have told our officers that they need to spend
25 as little time in the buildings as possible. The

1 thefts come from the outside of the building for
2 the most part.

3 They need to, if they went into the schools,
4 they need to spend -- go in and set the alarm,
5 check whatever vital areas you have to check, but
6 in and out.

7 Then you are checking doors and windows as
8 you're going about your business. That
9 particular -- that's just one school. They have
10 seven, eight schools at night that they need to
11 check.

12 Q Have you ever worked a late shift?

13 A I have worked late shifts in the past.

14 Q On this job?

15 A On this job I have not worked in the rank and file.
16 That is correct.

17 Q So you don't know -- the testimony was, Yeah, you
18 have a lot of schools, but there's plenty of time
19 to do it. There is a lot of extra time beyond
20 checking doors and windows?

21 A Boredom is a problem.

22 Q His point was instead of spending that extra time
23 out in the truck burning gas keeping warm, the
24 instructions were to: Stay inside. Kill some time
25 in these buildings. Sit down in the break room.

1 Do what you've got to do. Just don't go sit out in
2 the truck and burn the company gas.

3 A I can't speak to what he had been told in the past.
4 This was early --

5 Q So it's possible that he had been --

6 A If he had been told that in the past, I don't know.
7 I know that that is not what I have been telling my
8 captains and lieutenants that they need to do.

9 Q So you would rather have him out in the truck?

10 A I would rather have him out in the truck and going
11 around the buildings and catching people that are
12 breaking in, keeping people off the property.

13 Q All right. But you don't know what the
14 instructions were around February, March of 2011?

15 A No.

16 Q Okay. Are fuel expenses significant for your
17 department?

18 A They fuel up -- each vehicle fuels up about once a
19 day.

20 Q That is, what, \$60 a day?

21 A For the most part, yes.

22 Q How many vehicles do you have?

23 A We have got five, six, seven vehicles.

24 Q Do you have any information about what Jeffrey's
25 habits were working this third shift for the first

1 couple of years that he was on the job?

2 And when I say his habits, as far as his
3 habits as to how long he would spend in the
4 buildings, would he spend five to 20 minutes in the
5 buildings instead of sitting in the truck?

6 A No, I don't have any information on what he did two
7 years prior to me coming on board. Quite frankly,
8 I didn't really keep up with Jeffrey Kennedy up
9 until those last few days.

10 I did go back into the camera system and look
11 at his habits at Spring Valley High School leading
12 up to that night in question. The night in
13 question was different than the previous nights.

14 Q I do want to ask you about that. I will get into
15 all that in just a minute. Let me ask you about
16 the athletic teams. Is it common for sports teams
17 to come home later in the evening, after
18 10:00 o'clock in the evening?

19 A It is.

20 Q I'm assuming these are away games. So they have
21 been out when they come back home?

22 A Correct.

23 Q And do they often need access to the Athletic
24 Department building?

25 A They do.

1 Q Why do they need access to that building when they
2 come home?

3 A Most of them do not have -- or some of them don't
4 have keys. Whether it be the head coach or the
5 assistant coach, whoever is bringing those kids in,
6 some of them do not have keys to get into the door.
7 Most of the time it's keys to get into the gates
8 that they have problems with.

9 Q I'm saying: Why does a sports team need to get
10 into the Athletic Department building when they
11 come back? Why not just drop the kids off and go
12 home?

13 A Well, in my experience as a coach, there are
14 sometimes where you -- if you had an office where
15 these things were stored, you want to put something
16 in there or the guys need to use the bathroom if
17 you didn't have facilities or access to facilities,
18 you could do that. Or they need to get book bags.
19 Those kids may -- they are coming home at 10:00
20 o'clock, 11:00 o'clock at night. They have
21 homework and papers due the next day.

22 Q So all that stuff would have been left in the the
23 Athletic Department?

24 A Sometimes they will. Sometimes they will leave
25 them in athletic building. Sometimes they will

1 take them with them. It just depends on the nature
2 of the visit.

3 Q So a lot of times the students need to get in there
4 to get their stuff or put equipment in there, that
5 kind of thing?

6 A Correct.

7 Q Were you aware that the baseball team had come back
8 late on the night of March 3rd, the night this
9 thousand dollars went missing?

10 A I was.

11 Q Did you know they would be coming back that night?

12 A Well, I knew the next day as we started putting the
13 events together.

14 Q Okay. Did the coaches sometimes give a student a
15 key to get in the building in your experience?

16 A Coaches sometimes do that. I don't know about this
17 particular incident or incidents, but coaches
18 sometimes do that. And when we find out about it,
19 we say something.

20 Q Is that not appropriate?

21 A Well, in this District, unlike
22 Charlotte-Mechlenburg, Charlotte-Mechlenburg's
23 police, school police, have control in a lot of
24 respects.

25 We are more a support staff role. Each school

1 has their own way of doing things, and we support
2 that role. So we bring that to their attention
3 when appropriate.

4 Q When you say bring it to their attention, are you
5 saying that you instruct them not to do that?

6 A We tell them it's not a good idea. They need to
7 have a better understanding of who has got keys or
8 whatever.

9 Q Is it that you didn't trust 16-, 18-year-old boys?

10 A Well, it's a matter of key control in that regard.
11 But we -- you know, talk about best practices, that
12 would not be a best practice to do. These things
13 happen, and we have a lot of students and a lot of
14 coaches in the District.

15 Q From your experience at Spring Valley, have
16 students ever been caught stealing out there?

17 A Oh, yeah.

18 Q How common is that?

19 A I mean that's 17-, 18 year olds. A lot of them get
20 into trouble. I have arrested a number of them
21 myself.

22 Q About how many a year? You said you --

23 A I couldn't tell you.

24 Q Are we talking hundreds?

25 A I couldn't tell you. I couldn't tell you.

1 Q You can't give us an estimate, just a ballpark?

2 A An estimate or ballpark of how many people I
3 arrested in Richland District Two?

4 Q Students.

5 A The law is not set up to where the School District
6 is made aware of every arrest.

7 Q I'm talking about the ones that you know of and
8 that y'all investigated.

9 A Number one, we don't investigate criminal acts. We
10 turn that over to the Sheriff's Office. Number
11 two, if a student is arrested and he is 17, 18
12 years old, they may not tell us about it anyway,
13 especially if it's a theft or an armed robbery off
14 campus.

15 So when you ask how many, I really can't give
16 you a number; but we have a significant number of
17 people in the northeast part of Columbia. There is
18 a significant amount of crime, and it's still
19 Richland County and everything that goes along with
20 being a capital city.

21 Q All right. Let me ask you a few questions just
22 about the theft itself in this case. When did you
23 first hear about the theft of the thousand dollars
24 the night of March 3rd?

25 A The morning that Coach Hunter, Tim Hunter, came in

1 and discovered it and notified Jim Childers. Jim
2 Childers immediately notified us.

3 Q Okay. Did you ever see any statements from Tim
4 Hunter about what happened?

5 A No, I don't recall seeing statements from Tim
6 Hunter. I recall a statement from Jim Childers
7 that was sent through me to the Sheriff's Office,
8 but I do not recall a statement from Tim Hunter. I
9 am aware that he did make a statement, that he made
10 a synopsis of what had happened; but I do not
11 recall reviewing that.

12 Q Did you talk to Tim Hunter about what happened?

13 A We were all called in to Jim Childers's office that
14 morning.

15 Q Which morning? Is this Saturday morning or the
16 next Monday?

17 A It would have been Monday, whenever the report was
18 actually made. So we were called into his office,
19 and then a synopsis of the events were then given
20 to us.

21 We quickly realized that it's not something
22 that we are going to be working. It's going to be
23 the Sheriff's Office that is going to be working
24 this, and we called the school resource officer,
25 Ben Fields, called him in; and he took it from

1 there.

2 Q So it was your plan from the outset not to even do
3 an investigation?

4 A Well, you've got to be careful about doing
5 investigations, coinciding investigations.

6 Q Why is that problematic?

7 A It can be problematic in that the investigators are
8 wanting to interview somebody, and you beat them to
9 the punch. You are given information that the
10 investigators are going to need as they are
11 interviewing them or looking for evidence.

12 You are tipping them off. So we made a
13 decision to kind of sit back and be a liaison and
14 assist the Sheriff's Office in whatever they
15 needed, and we did so.

16 Q Did they ask you to investigate anybody or
17 interview anybody?

18 A They did not.

19 Q Did you interview anybody?

20 A I don't recall interviewing anyone, other than
21 maybe an employee to kind of get a general idea of
22 what happened that night, if he knew of anything
23 that happened that night. That would have been
24 John Reid.

25 Q When you interviewed -- well, when did you

1 interview John Reid?

2 A As I recall, I interviewed John Reid on the side of
3 the sidewalk out by the Bates building at Spring
4 Valley High School. It was just kind of a, "Hey,
5 do you know anything? Was anything going on? Did
6 you see anything that night that would draw your
7 suspicion," that sort of thing?

8 Q You are not worried that you'd do exactly what you
9 said you were trying to avoid, beating the
10 Sheriff's Department to the punch?

11 A No, not in that realm. We were trying to identify
12 people that might be someone the Sheriff's Office
13 needed to check off. They needed some support.
14 These were kid-glove questions, just trying to
15 gauge whether or not if John was somebody that
16 would be needed in the interview.

17 I don't think, just in my experience, I don't
18 think those questions that I asked John would have
19 been subverting any type of questions that the
20 Sheriff's Office would have asked.

21 Q All right. Generally speaking, when you're
22 conducting a -- well, you are saying you didn't
23 conduct an investigation; correct?

24 A Correct.

25 Q Now, you did a couple of things, I think. You

1 talked with John Reid; correct?

2 A Correct.

3 Q Either you and/or Chuck Earles went back and looked
4 at the security videotape; correct?

5 A Correct.

6 Q Is there anything else that you did in the
7 investigation of this theft?

8 A We asked for Jim Childers, and I believe Tim Hunter
9 actually sent his synopsis about what his
10 recollection was. I think somewhere along the
11 lines or so, Ms. Jackson's name was given up during
12 the course of the conversations. Those were all
13 kind of a liaison role that we had.

14 Q You said "given up," you mean to the Sheriff's
15 Department?

16 A To the Sheriff's Office, yes.

17 Q What else was given to the Sheriff's Office?

18 A You know, I don't recall. Maybe you can enlighten
19 me about some other things, but I'm not recalling
20 anything more than that.

21 Q I don't know. I'm asking you what you provided the
22 Sheriff's Office.

23 A And I am saying that I don't recall anything.

24 Q The things we just talked about, that's it?

25 A Correct.

1 Q Did you let the Sheriff's Office know that the
2 baseball team had been in the building that night?

3 A I believe that was part of the conversation, the
4 initial conversation, in Jim Childers's office with
5 Ben Fields, as he was asking his questions of the
6 school resource officer.

7 Q Did you have any conversations directly with the
8 Sheriff's Department?

9 A I had direct conversations with Ben Fields and
10 Investigator Joe Clark. That was all part of those
11 conversations. Then as we identified Jeffrey
12 Kennedy as somebody that they wanted to talk to, I
13 had conversations with Joe about that. Then we had
14 follow-up conversations all through the
15 investigation.

16 Q All right. Do you know if the Sheriff's Department
17 ever talked to anybody on the baseball team, the
18 baseball coach?

19 A I'm not privy to those interviews. I don't know if
20 they did or not. You are talking about Joe Clark
21 who is the investigator?

22 Q Or whoever you talked to at the Sheriff's
23 Department. Did they ever tell you that they
24 interviewed somebody from the baseball team?

25 A I don't recall anyone telling me that they had.

1 Q Did you interview anybody from the baseball team?

2 A I did not.

3 Q Did you interview Ms. Jackson or any other
4 custodians staff?

5 A I did not.

6 Q Do you know if the Sheriff's Department interviewed
7 Ms. Jackson or anybody from the custodian
8 department?

9 A I do not.

10 Q Did you actually look at the security video from
11 that evening?

12 A I did.

13 Q And which hours did you view?

14 A I viewed all night and then specifically when John
15 Reid came in.

16 Q That was about 10:30 or so the evening before?

17 A I would have to look at those videos. Yes, the
18 night before and then the morning that it all
19 happened.

20 Q And I believe the testimony has been it was 5:30ish
21 when Jeffrey Kennedy unset the alarm and spent a
22 few minutes in the building and left. Did you see
23 that on the video?

24 A Yes. I did see when he unset the alarm or turned
25 the alarm off and left the building, yes.

1 Q And what happened after that? Did you keep
2 watching it until Tim Hunter arrived?

3 A You know, I don't recall. I don't recall that
4 part.

5 Q Did you verify --

6 A I certainly would think that would be something
7 that I have would have seen and done. I just don't
8 recall specifically seeing that.

9 Q All right. So you are unable at this point to tell
10 us what time Tim Hunter arrived?

11 A Correct.

12 Q And you are also, I'm assuming, unable to tell us
13 if anybody else entered the building before Tim
14 Hunter arrived, between the time of Jeffrey Clark
15 [sic] cutting the alarm off and the time Tim Hunter
16 arrived?

17 A Certainly could review that but I don't recall that
18 right now.

19 Q So none of that information would have been
20 reported to the Sheriff's Department; right?

21 A The Sheriff's Office received the video we had.

22 Q Which portion? What time did it cut off --

23 A They received the videos that we had. They
24 received those and were able to make inferences on
25 their investigation based on those videos.

- 1 Q I'm asking you. And the inferences that they
2 gathered did not lead to charging anyone, did it?
- 3 A Well, inferences and probable cause are two
4 different things.
- 5 Q I'm asking you: Did they charge anyone --
- 6 A You are saying based on those inferences. They are
7 not going to charge anybody based on inferences.
8 But if you are talking about probable cause, then
9 they will charge on probable cause.
- 10 Q Tell me this. Do you agree with the Sheriff's
11 Department that there was no probable cause to
12 charge Jeffrey Kennedy?
- 13 A Do I agree with the Sheriff's Office on that?
- 14 Q If you had been the police, if you had been the one
15 working this case at the Sheriff's Department,
16 would you have charged Jeffrey Kennedy?
- 17 A I don't know what all came from those interviews.
18 I don't know. I wouldn't be able to speculate on
19 that.
- 20 Q So from your point of view, as somebody not at the
21 Sheriff's Department, you didn't know what the
22 complete investigation revealed?
- 23 A Correct, because it was their investigation.
- 24 Q Well, if you don't know what the complete
25 investigation revealed, why did you and Chuck

1 punish Jeffrey Kennedy?

2 A I didn't punish Jeffrey Kennedy.

3 Q All right. Did you --

4 A You are saying I punished, as in I made that
5 decision to do that; and that's not the case here
6 at all.

7 Q Who made the decision?

8 A HR made the decision.

9 Q HR took Jeffrey's keys away?

10 A HR made the decision to take the keys away, and HR
11 did those things based on the totality of
12 everything. That would be something that Roosevelt
13 Garrick and Traci and Chuck may be able to talk to,
14 but it certainly wasn't me who took those away.

15 Q Did Chuck -- so Chuck had no say-so in the matter?

16 A Chuck had a say-so. From a say-so standpoint, I
17 had a say-so from my prospective and from my
18 conversations with Joe Clark; but certainly the
19 decision was not in my ballpark.

20 Q Did you recommend that Jeffrey be punished?

21 A I don't recall a recommendation one way or the
22 other. I recall being very frustrated of the
23 decision to keep him on because --

24 Q Say that again.

25 A I don't recall making the decision one way or the

1 other. I do recall being frustrated with the
2 decision that was made.

3 Q What do you mean? The decision to take away the
4 promotion and take away the keys or you thought the
5 punishment should have been more severe with the
6 total termination?

7 A Well, it was a tough situation from a trust
8 standpoint, when we trust someone in security; and
9 that trust has been lost. The situation that was
10 set up was one that Jeffrey could have earned some
11 of that trust back, but it was a tough situation to
12 be in. It would have been -- I certainly have my
13 viewpoints on it and having talked to Joe Clark and
14 knowing what I know, that was tough to work with.

15 Q So this theft of a thousand dollars had a lot to do
16 with your belief that Jeffrey Kennedy was no longer
17 trustworthy? Is that safe to say?

18 A It had a lot do with it, but it wasn't everything.
19 Because we had a series of thefts that led up to it
20 where he was the common denominator.

21 Q We will talk about that. But as far as the
22 thousand dollars goes itself, you have acknowledged
23 that you didn't do a investigation at all, did you?

24 A No, I did not.

25 Q And you have been trained on how to do

1 investigations; correct?

2 A I have.

3 Q That's what you did for many years you said?

4 A I did.

5 Q And had you been charged with conducting this
6 investigation, would you have interviewed the
7 baseball team or even the baseball players?

8 A I take -- when I conducted investigations, there
9 are things that happen on any given situation. You
10 try to look through the white noise of any
11 situation and get down to who is going to give you
12 the information that you are looking for and what
13 is not corroborated with the facts that you have.

14 Have I conducted investigations where I could
15 have done better? Yes. Would I have done this a
16 different way? Perhaps. But in the whole scheme
17 of things at the Sheriff's Office or when you deal
18 with the Sheriff's Office, you are dealing with a
19 whole other set of parameters.

20 Q I'm just --

21 A You asked if I would do this differently.

22 Q No, I asked you if you were in charge, would you
23 have?

24 MR. BARLOW: Objection, Your Honor. He has
25 the opportunity to explain his answer, and that wasn't

1 the question.

2 MR. GOODWYN: He is answering a different
3 question than I asked.

4 MR. BARLOW: Well, he needs to ask the
5 question.

6 BY MR. GOODWYN:

7 Q I'm just asking: Would you have wanted to know
8 what the baseball players said?

9 THE COURT: Ask the question and answer the
10 question that is asked. If you need to explain your
11 answer, you can explain your answer.

12 BY MR. GOODWYN:

13 Q If you had been in charge of the investigation,
14 would you have wanted to know what the baseball
15 players saw in the building that night?

16 A I would have.

17 Q And if one of the baseball players or coaches had
18 said, "Yeah, I really needed to go put something in
19 Tim Hunter's office." And he came out putting
20 some, what looked like, some money in his pocket,
21 would you think that would have been relevant to
22 the investigation?

23 A That would have, yes.

24 Q And would you have wanted to, if you were in charge
25 of the investigation, ask the custodial staff if

1 they had been in the building. If so, what times?

2 Who was in there, that kind of thing?

3 A Correct.

4 Q And the custodian said, "Yeah, I walked in Tim
5 Hunter's office. I was emptying trash, saw the
6 change tray sitting there and the money was still
7 there," that would have completely cleared Jeffrey
8 and the baseball team; correct?

9 A That would have been important questions.

10 Q Right.

11 A Right.

12 Q Nobody that you know even asked that. You said you
13 didn't do this investigation. You didn't ask those
14 questions; correct?

15 A I did not ask those questions.

16 Q And Chuck didn't ask those questions. Nobody in
17 your department asked those questions that you know
18 of?

19 A I don't know if Chuck asked those questions or not.

20 Q If he did, he didn't tell you though?

21 A I'm not aware of those questions being asked. I'm
22 not aware of those answers.

23 Q I think you testified earlier you never heard from
24 the Sheriff's Department if they asked questions of
25 the baseball team or the custodians?

1 A Correct.

2 Q And if the custodian had said, "I came in there,
3 emptied the trash; and there was no trays, no
4 change trays at all, anywhere where Tim Hunter said
5 he left them," that would have suggested Tim Hunter
6 just made all this up so he could cover for
7 stealing the thousand dollars, wouldn't it?

8 A Correct.

9 Q But you focused on Jeffrey Kennedy anyway; correct?

10 A We focused on Jeffrey Kennedy from the standpoint
11 of he was one of the last witnesses on the District
12 on site and the previous incidents that occurred a
13 few days before where he was the common
14 denominator.

15 Q All right. Let's talk about these other incidents.
16 You said two instances -- was it one instance or
17 two instances in the days leading up to the
18 thousand dollar theft?

19 A I want to say two. I'm confident of one but I want
20 to say two.

21 Q All right. Prior to this thousand dollar theft, it
22 seems that Ms. Jackson was kind of the focus of
23 that investigation. She had already had her keys
24 taken away; correct?

25 A You say the focus. I would say a focus.

1 Q So she and her staff maybe would have had access to
2 areas where these petty thefts had occurred?

3 A Correct.

4 Q So how can you say that Jeffrey Kennedy was the
5 common denominator when you don't even know --
6 nobody ever talked to the custodial staff about the
7 thousand dollar theft, and you know the custodians
8 had access to the other thefts? There were two
9 common denominators.

10 A He was a common denominator, and in those
11 conversations in Childers's office right after the
12 theft occurred, his name continued to come up over
13 and over again to the point where the Sheriff's --
14 by Childers and others.

15 I say Mr. Childers and I believe Mr. Hunter
16 might have brought it up because of some -- maybe
17 some issue with the baseball coach that evening.
18 There was some confrontation or something.

19 Q What are you -- are you talking about there was a
20 confrontation between Mr. Kennedy and the baseball
21 coach?

22 A You know, I believe I recall something along those
23 lines.

24 Q What type of confrontation? Just something more
25 than, Hey, why did you set the alarm off, or

1 something different?

2 A I think there was a disagreement about opening the
3 gates or something, and the inference was that
4 Mr. Kennedy was being unprofessional in the way he
5 talked to the coach.

6 Q And that has a bearing on his trustworthiness how?

7 A By being disrespectful that would have some bearing
8 on whether you are trustworthy or not, yeah. I
9 would think so, especially if you have a
10 professional role. You want to stay professional
11 in everything you do.

12 But there was a confrontation, some sort of
13 verbal confrontation. I'm not sure what that was,
14 but that was part of that conversation in the
15 office with Childers.

16 Q Okay.

17 A And Mr. Hunter.

18 Q So you don't remember if it was one or two thefts
19 in the couple of days before the thousand dollars
20 went missing?

21 A I want to say there was two, but I do recall
22 specifics about the last one and the location of
23 the camera and where it was pointed. We had to do
24 some moving of the camera to point towards that
25 office because it had not been pointed at the

1 office prior to that.

2 Q All right. The repointing of the camera would be
3 one of the things that would show you who?

4 A We would hope so but then we had the thousand
5 dollar theft.

6 Q What was missing in this theft in the couple of
7 days before this? Do you remember what it was?

8 A I believe there was some jewelry someone had hidden
9 in a back drawer, and it had to be somebody that
10 had a key to that office.

11 Q Whose jewelry was it?

12 A The bookkeeper's maybe.

13 Q How valuable was it estimated?

14 A Um...

15 Q You don't remember?

16 A I don't know. I think it was found property, and
17 they were waiting for someone to come claim it.
18 They had put it in a folder in a drawer in the
19 desk; and it was obvious that when they came in,
20 somebody had been rummaging through the drawer, and
21 that was missing.

22 Q All right. You didn't suspect the person whose
23 desk it was, I guess?

24 A No. She is the one who reported it, and it was
25 found property. It was something she was waiting

1 on somebody to come claim. It was behind a locked
2 door.

3 Q A locked door that security and the custodial staff
4 had a key to?

5 A Correct.

6 Q Now, the custodial staff, they clean behind those
7 locked doors. They clean those areas; correct?

8 A Correct.

9 Q But the security staff isn't supposed to go in
10 there; is that correct? They just check the
11 outside doors?

12 A Correct.

13 Q Do you have any evidence, direct evidence, to show
14 where Jeffrey Kennedy had ever even gone in the
15 interior door that he wasn't supposed to go into?
16 Any cameras ever show him doing that?

17 A Into her office?

18 Q I am just saying generally. Have you ever seen a
19 video where Jeffrey Kennedy went into an interior
20 office?

21 A We've got the video where Jeffrey comes into that
22 interior hallway and goes into the break room or
23 off that camera, I should say. He says it's the
24 break room.

25 Q Right.

- 1 A And stays --
- 2 Q Off camera?
- 3 A Off camera for a long period of time and then goes
- 4 back out that door, walks or drives around to the
- 5 front of the school to turn on the alarm. So
- 6 that's the video that I recall having.
- 7 Q Have you asked Jeffrey about that?
- 8 A We have.
- 9 Q What was his explanation?
- 10 A He went in there and took a break for a long period
- 11 of time.
- 12 Q Did you ask him: Is that your custom?
- 13 A We did.
- 14 Q What did he say?
- 15 A He said yes, but --
- 16 Q -- but you don't believe him?
- 17 A Huh?
- 18 Q But you don't believe him?
- 19 A I don't based on the previous videos that we saw
- 20 where he wasn't spending that much time in there.
- 21 Q How many videos did you look at?
- 22 A I don't recall how many. I recall --
- 23 Q Ballpark.
- 24 A Two or three.
- 25 Q From the same weeks?

- 1 A Yes.
- 2 Q And how much time did he spend in the other videos?
- 3 A Minutes.
- 4 Q This is for this building?
- 5 A In this section. This is the interoffice where all
- 6 the principals and the bookkeepers -- the
- 7 bookkeeper is actually in another section off
- 8 camera -- but they had, like, the test examiner has
- 9 an office near there. Childers has an office down
- 10 the hallway, that sort of thing.
- 11 Q Did you look at videos from any other buildings to
- 12 see which habits were in other buildings?
- 13 A Sure. We followed him around and through the
- 14 school and saw him come into a couple of places,
- 15 like I said, the main lobby. We saw him into the
- 16 main lobby.
- 17 Q Is this just one night where you followed him
- 18 around?
- 19 A Like I said, two or three nights.
- 20 Q Did he take breaks any other time?
- 21 A I don't recall him taking breaks in that
- 22 interoffice hallway.
- 23 Q I'm talking about anywhere. Did he take breaks
- 24 anywhere?
- 25 A I don't recall that. I recall him coming in and

1 turning off the alarms and going on about his
2 business.

3 Q Do you think it would be important if he took
4 breaks in a lot of buildings where a lot of thefts
5 didn't take place?

6 A That would be important, and I would be upset that
7 he was taking so many breaks in so many parts of
8 the school if that happened.

9 Q And if the supervisor before you had instructed him
10 to do that --

11 A To take breaks in all different parts of the
12 school? That doesn't sound right. That doesn't
13 even wash.

14 Q You are not understanding what I'm saying. You are
15 saying he took a break in the building where a
16 theft occurred. That is what made you suspicious
17 or he was off camera longer than would have needed
18 just to do his business in there in a building
19 where a theft occurred.

20 A Okay.

21 Q If his normal habit was to take breaks in buildings
22 and he had been doing that since he had been there,
23 he had been instructed to do that, that would be
24 relevant. It would make him look at least less
25 suspicious; correct? If he did that regularly?

- 1 A If he did that regularity. Of course, that is not
2 something that I witnessed.
- 3 Q Over your --
- 4 A In the times that I saw the videos and the times I
5 went back on the videos.
- 6 Q Do you have any of those videos?
- 7 A I do not have any of the videos.
- 8 Q You didn't keep them?
- 9 A I didn't.
- 10 Q You testified you really didn't make a note of
11 whether he regularly took breaks, I think. You
12 said you didn't remember?
- 13 A I don't. I don't remember. I don't remember any
14 video where he regularly took breaks, except for
15 that one in the inner hallway on the night that the
16 theft occurred in the office.
- 17 Q Do you still have any videos from --
- 18 A I do not personally have the videos.
- 19 Q Does the District have the videos?
- 20 A I would think that Chuck may have them on his
21 computer. I think the Sheriff's Office may have
22 some of that.
- 23 Q Do you think that would be important to keep?
- 24 A The Sheriff's Office definitely.
- 25 Q For y'all's sake? I mean, it's clear -- and I

1 think you may have already testified to this -- you
2 think Jeffrey stole the thousand dollars and stole
3 this jewelry from the desk; correct?

4 A I don't recall saying that statement.

5 Q I'm not asking if you said it. I am asking do you
6 think it?

7 A Do I think he stole it?

8 Q Yeah.

9 A I think there is a serious trust issue with
10 Jeffrey.

11 Q Do you think he stole the thousand dollars?

12 A I think there is a very good possibility that he is
13 the one that did it.

14 Q All right. Do you think the custodians may have
15 done it?

16 A I do not think a custodian did it.

17 Q Why not?

18 A Because she is not the common denominator through
19 all those incidents.

20 Q It's got to be the same person; right?

21 A It doesn't have to be the same person, but I don't
22 have any evidence otherwise.

23 Q Right. You have very little evidence?

24 A That's right.

25 Q So you made your decision to put it all on Jeffrey

1 and punish him --

2 A Whoa, whoa. Again --

3 Q -- based on what you have?

4 A You are saying I made that decision.

5 Q You made the recommendation to Chuck.

6 A He and I discussed our viewpoints on it, yes.

7 Q You told Joe, "I think it's Jeffrey"?

8 A Yeah.

9 Q And you are okay with this e-mail going out?

10 A Chuck didn't ask my permission to send that e-mail
11 out.

12 Q Okay. But you didn't object to it?

13 A I'll not going to object to my boss sending
14 anything out. If my boss wants to tell me to take
15 a hike, I've got to take a hike.

16 Q It sounds like y'all collaborate on a lot of
17 things.

18 A We collaborate. We're not islands until ourselves.
19 Nobody in the District is an island unto
20 themselves.

21 THE COURT: Mr. Goodwyn, I think this is a
22 good time to take a break.

23 MR. GOODWYN: Sure. Thank you.

24 THE COURT: Ladies and gentlemen, we are going
25 to take a lunch break. I am going to remind you of the

1 instructions I have given to you; that is, not to begin
2 to discuss this matter among yourselves. You still have
3 not heard all the evidence that has to be presented.

4 Please remember as you come and go from the
5 courthouse not to listen to conversations in the
6 hallways, again, for the reasons that you will to have
7 make the decisions based upon the evidence that has been
8 presented here in this courtroom.

9 Please also remember not to allow anyone to
10 approach you to discuss this matter with you. Again, if
11 someone attempts to do that, please tell them that you
12 are a juror and that you cannot discuss it. We ask that
13 you report it as soon as possible.

14 I will ask that you report back to the same
15 jury room at 2:45. When you report back at that
16 particular time, then we will be ready to continue on
17 with the trial of this matter. Have a good lunch. We
18 will see you back at 2:45.

19 (The jury is excused for lunch at 1:15 P.M.)

20 THE COURT: Mr. Barnes, you may step down.
21 During this break you should not discuss your testimony
22 with anyone. You have not concluded. So it would be
23 inappropriate for you to discuss it, even with your own
24 attorneys at this time.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: We will see back at 2:45.

2 Anything else we need to take up?

3 (There is no response.)

4 THE COURT: Please be back at 2:45.

5 (Whereupon there is a luncheon recess.)

6 THE COURT: Anything to take up before I bring
7 the jury in?

8 MR. GOODWYN: Not from the plaintiff.

9 MR. BARLOW: Not from the defendants.

10 THE COURT: You may ask the jury to come in
11 please.

12 (The jury return to the courtroom at
13 2:50 P.M.)

14 BAILIFF: The jury panel is accounted for,
15 Your Honor.

16 THE COURT: You may continue, Mr. Goodwyn.

17 MR. GOODWYN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. GOODWYN:

20 Q Mr. Barnes, let me see if I can figure out where we
21 were. I'm going to skip around a little bit.

22 There were some questions I realized I should have
23 asked you as we were kind of walking through some
24 of this. All right.

25 Let's go back to your view of the videotape of

1 the night the thousand dollars was stolen. My
2 understanding -- and correct me if it's not your
3 understanding -- is that Tim Hunter put the money
4 in his office after the soccer game, left; and then
5 around, whatever, 10:30 or so, Jeffrey Kennedy and
6 John Reid set the alarm.

7 Then Mr. Kennedy turned them on and off at
8 5:30. Mr. Hunter came in sometime Saturday morning
9 and discovered the money missing. Is that
10 generally it?

11 A My understanding, yes.

12 Q And, of course, the baseball team came in during
13 the night, and some other people may have come in
14 Saturday morning after the alarm was unset and
15 before Mr. Hunter came in. But you don't recall
16 whether they did or didn't from looking at the
17 video?

18 A Correct.

19 Q So was there some time -- well, first, let me ask
20 you this: What time, was your understanding, of
21 when Mr. Hunter put the money in the office?

22 A I don't recall.

23 Q But it sounds like it was sometime before Jeffrey
24 Kennedy set the alarm that night with John Reid.
25 Is that your understanding?

1 A If I recall correctly, yeah. That would make
2 sense.

3 Q So there was some time there before the alarm was
4 set where there wasn't an alarm set, and anybody
5 with a key could have gotten in the building and
6 found the money and taken it; is that correct?

7 A I'm sorry. Say that again, please.

8 Q It sounds like there must have been some time
9 between the time Tim Hunter put the money in his
10 office on the floor and the time Jeffrey Kennedy
11 set the safe [sic] where the building was not
12 locked and somebody with a key could have come in
13 and accessed the office and gotten the money?

14 A It sounds like that. I would have to look at the
15 videotape and see again, but it sounds like that
16 could happen.

17 Q So you don't recall if you looked at that time?
18 Did you verify what time Tim Hunter left the
19 building that night?

20 A I don't recall. I don't recall that. I recall
21 turning the video -- I recall Chuck turning the
22 video over to the Sheriff's Office.

23 Q Did you watch the video?

24 A I did watch the video and I don't recall.

25 Q That portion of it?

- 1 A That portion of it.
- 2 Q You think that would be something important to
3 know, whether somebody accessed the building during
4 that period where the alarm was not set?
- 5 A Could be, yes, sir.
- 6 Q Now, tell me this. There is a video that I've been
7 referring to this whole time, and that's a video of
8 one of the doors to the AD building; correct?
- 9 A Correct.
- 10 Q How many doors are there to the AD building where
11 Tim Hunter's office was?
- 12 A There are several doors upfront, and there is a
13 door to the back.
- 14 Q So upfront and one or two in the back?
- 15 A There is a big, long glass part in the front; and I
16 think two separate doors right there in the front.
17 There is at least one door in the back.
- 18 Q And the camera you are referring to, the video that
19 we are referring to, was covering which doors?
- 20 A Covering the doors closest -- the doors on the
21 front and then there is another camera that covers
22 down the hallway in the back.
- 23 Q And the hall, is that the hallway that Tim Hunter's
24 office is on?
- 25 A That's the hallway that Tim Hunter's office is on.

1 Tim Hunter's office is right off the lobby right
2 there. The way the camera were set up at that
3 time, the cameras turned and looked at the front
4 doors and looked down the hallway and did not look
5 at his door in particular.

6 Q And the cameras, are they inside the building
7 looking out at the front doors or are they outside
8 the building looking to see who is outside?

9 A They are on the inside, angled looking towards the
10 openings of the door.

11 Q So you would see the face of somebody walking in?

12 A Correct.

13 Q And then there is another camera that shows the
14 hallway in the building?

15 A Correct.

16 Q But nothing on the back door?

17 A I believe there is one on the back door. I would
18 just have to go back to the system. We have over
19 3,300 cameras in the District. I don't recall that
20 particular camera, but I want to say that Tim
21 Hunter and Jim Childers could probably speak better
22 on this because it's their campus. But I want to
23 say there is something covering the back door as it
24 comes in right there. There is another hallway
25 camera.

1 Q So you just don't recall what we are talking about
2 then. First of all, let me ask you this: You say
3 you reviewed the video. Is this one video that you
4 reviewed for a long period of time or did you
5 review multiple videos from multiple camera angles?

6 A I reviewed multiple camera angles as I recall.
7 But, quite frankly, I will not be able to tell you
8 what angles in any particular thing about what I
9 reviewed.

10 I recall reviewing some video of the before
11 and after. I recall the incident -- or John Reid
12 coming in with your client, and then I recall your
13 client coming back in and turning off the alarm.

14 Q And that would have been --

15 A In that particular incident. That would be the
16 camera in Bates Hall looking at the front door.

17 Q So you saw that. You saw Jeffrey Kennedy set the
18 alarm and go off camera?

19 A Uh-huh. (Indicating affirmative response.)

20 Q For about five minutes?

21 A Correct.

22 Q But you didn't check -- you don't recall
23 checking --

24 A I don't recall. By saying that I don't want you to
25 infer in any way, shape or form that I didn't do

1 it. I just don't recall doing it.

2 Q Right, right. When you form an opinion as to who
3 stole the money, I would think you would make a
4 thorough investigation, and it sounds like you
5 didn't. You acknowledge that you didn't; correct?

6 A The investigation was the Sheriff's Office because
7 it's a criminal investigation.

8 Q Well, let me ask you this --

9 A And I was a liaison trying to give some parameters
10 and some options for the Sheriff's Office, but I
11 certainly in no way tried to influence the
12 Sheriff's Office to go one way or the other.

13 Q I'm not talking about the Sheriff's Department.

14 A You are talking about an investigation, sir.

15 Q Your investigation.

16 A And I told you I did not investigate.

17 Q Right.

18 A I was a liaison.

19 Q But you concluded that somebody committed this
20 crime without even doing any investigation;
21 correct?

22 A No, sir. No, sir.

23 Q You already told me that you thought Jeffrey
24 Kennedy committed this crime.

25 A I did say that. After all -- after everything is

1 done, all said and done, looking back on it, yes, I
2 believe Jeffrey Kennedy did the crime.

3 Q Despite the fact that a full investigation was
4 never completed by you, the Sheriff's Department,
5 or anybody else?

6 A I don't know that the Sheriff's Office didn't do a
7 full investigation.

8 Q But you don't know about the investigation. You
9 don't know what they did on their investigation, do
10 you?

11 A They didn't include me on anything they did, no,
12 sir. They didn't tell me about everything that
13 they did.

14 Q We talked about this. Did you hear anything about
15 anybody interviewing the baseball team members?

16 A No.

17 Q You didn't hear anything about any interview with
18 the custodial staff?

19 A No, sir.

20 Q You don't even know what the videotapes show about
21 who entered the building first that morning.
22 Nobody interviewed that person, and nobody even
23 knows if anybody came into the building after Tim
24 Hunter put the money in there but before the alarm
25 was set. All that would be relevant information;

1 correct?

2 A All that would be.

3 Q But you still were able to form a conclusion that
4 Jeffrey Kennedy stole this money?

5 A Not based on that alone.

6 Q But in part? In part?

7 A Yes, in part based on those. Yes, it helped me
8 form that opinion.

9 Q And then the other incident you are talking about
10 with this jewelry in an envelope in the back of the
11 drawer, you remember telling me about that?

12 A Uh-huh, yes.

13 Q It was reported on a particular day and you went
14 back and checked the video of that prior night to
15 show that Jeffrey Kennedy was in that building and
16 was off camera for a period longer than you think
17 he should have?

18 A Yes, sir.

19 Q You know if -- and I believe your testimony was the
20 person who reported this was somebody that said,
21 "This was a lost and found item in the back of the
22 desk"?

23 A Back of a drawer, yes, sir.

24 Q Back of a desk drawer. Do you know if the item was
25 just noticed missing on that particular day or had

1 they just noticed it was missing on that day, but
2 it could have been gotten stolen over the last
3 three or four weeks, but they just noticed it
4 missing that day? There is a difference. Do you
5 follow what I'm saying?

6 A I do follow what you are saying. I am trying to
7 recall that. I know that the administrators at the
8 school could speak more or give you more clarity on
9 that. I don't recall the specifics without seeing
10 paperwork of some sort in front of me.

11 Q But that would make a difference though, wouldn't
12 it? I mean, if she just happened to notice it was
13 missing on a particular day, that doesn't mean it
14 was stolen the night before. It could have gotten
15 stolen over the last few weeks, and she just didn't
16 notice it until that day?

17 A Sure.

18 Q And about how many petty thefts do you think are
19 reported a year, a school year, at Spring Valley,
20 just a ballpark, reported to your office?

21 A That would be speculation. I wouldn't have the
22 numbers on it.

23 Q I mean, are we talking more than a hundred?

24 A Again, sir, that would be speculation. I don't
25 have any numbers on it. I would be hesitant about

1 even mentioning a number.

2 Q About how many have you investigated in a year on
3 average?

4 A When I was at the Sheriff's Office?

5 Q Both, when you were at the Sheriff's Office and at
6 now that you're at Spring Valley.

7 A One.

8 Q One a year?

9 A That I would investigate.

10 Q And how many do you believe are reported a year?

11 A I don't know, sir.

12 Q Are a lot reported that you wouldn't know about?

13 A Again, sir, I don't know.

14 Q I believe you testified earlier that Jim Childers
15 told you about this other instance after the fact,
16 that he had done some investigating; but you didn't
17 know -- your unit didn't know about it. It was
18 done by Jim Childers?

19 A Correct.

20 Q Are there a number of petty thefts that are
21 reported to him that don't get to you?

22 A That would be something you have to talk to him
23 about.

24 Q From your experience do you know if petty thefts
25 are reported to him that never get to you?

1 A I don't know of any petty thefts that are reported
2 to the administrators that aren't reported to me,
3 no. If something comes up and I get wind of it,
4 then I will call that administrator and just say,
5 "What is going on?"

6 Whether it be a break-in at a canteen or
7 concession stand or whatever, those things come to
8 my knowledge. I confirm them and follow up on
9 them. But, no, I certainly don't know of any theft
10 that is reported to someone who doesn't report it
11 to me. I don't know.

12 Q All right. Again, you thought or a big reason you
13 came to the conclusion that Jeffrey Kennedy was
14 responsible for the jewelry theft and the thousand
15 dollars was that he was in both buildings the
16 nights that they were reported stolen?

17 A That would be a big reason, yes. It wouldn't be
18 the total reason, but that would be a big reason.

19 Q Is it entirely possible that two different people
20 committed these thefts? It doesn't have to be the
21 same person, does it?

22 A No, it's entirely possible. That is something that
23 we certainly didn't know and I'm drawing
24 conclusions, but there is no confession here.

25 Q Right.

1 A There is no confession here. Really when you clear
2 a case -- and just talking from my experience from
3 the Sheriff's Office -- when you clear a case,
4 sometimes you have, you know, in your gut based on
5 nonverbal things, based on other things in the
6 investigation, you know in your gut, this is our
7 primary guy, but you don't have enough to prove it.
8 That's in large measure what was going on here.

9 Based on all the cases that were brought to
10 our attention, based on the interviews or the
11 recollections of the people involved, based on the
12 conversations that I had with the Sheriff's Office,
13 I drew conclusions based on those. It's a
14 totality. It's not just one or another. It's not
15 piecemeal. It's looking at the picture as a whole.

16 Q And you would agree that your picture as a whole
17 was very limited since you didn't actually conduct
18 the investigation --

19 A That is correct.

20 Q -- if they were interviewed, you never heard
21 about --

22 A Participating in those interviews is important,
23 yes.

24 Q Nobody is trying to say in this case -- Jeffrey is
25 not trying to say -- you or anybody else can't have

1 their opinions about who took this money. Anybody
2 can have an opinion. The point is you can't just
3 go around telling people somebody is a thief.
4 That's what this case is about.

5 MR. BARLOW: Objection to the form. He is
6 testifying, Your Honor.

7 MR. GOODWYN: I just am trying to preface my
8 question --

9 THE COURT: Rephrase your question.
10 BY MR. GOODWYN:

11 Q And to that point the e-mail, this is Plaintiff's
12 Exhibit 4 that we have been talking about --

13 A This is the e-mail that I did not send?

14 Q The e-mail you did not send. The e-mail that you
15 didn't send, but would you agree that you
16 supervised the people that received the e-mail?

17 A I did.

18 Q And part of your supervisory responsibilities is to
19 make sure they abide by your and Chuck Earles's
20 commands?

21 A That would be correct.

22 Q And is it fair to say that Chuck Earles commanded
23 that this information be kept confidential?

24 A He did.

25 Q Was it kept confidential?

1 A As far as I know it was, up until you bringing it
2 to our attention.

3 Q It seems like you and Chuck Earles seem to be the
4 last ones to know a lot of things. You haven't
5 heard about it?

6 A It's lonely at the top.

7 Q That's right. That's why it's important to ask the
8 questions of your subordinates, isn't it? "Have
9 you printed this e-mail out? Have you told anybody
10 about this," that kind of thing. You testified
11 earlier that you never did that.

12 A No, I never did.

13 Q Why was it important to keep this e-mail
14 confidential, this information in the e-mail
15 confidential?

16 A We didn't want other people to know about it. We
17 don't want the rank and file to make inferences and
18 jump to conclusions and draw their own
19 dissatisfaction or their own ideas about what
20 happened and what didn't happen. We were hoping
21 that -- we were trying to make the best of a bad
22 situation.

23 Q Do you think if the rank and file did find out
24 about the information in the e-mail, it might be
25 harmful to Jeffrey?

1 A Well, we did. We wanted to -- Chuck wanted it to
2 be confidential. But at the same time, sir, you
3 know it's naive of us to believe that those
4 conclusions aren't being drawn anyway in such a
5 small department that we have.

6 But we did our best. Chuck did his best to
7 spread that around, that he wanted it confidential.
8 This is what is going on. But that doesn't stop
9 people from coming up and asking questions of other
10 people, including your client.

11 Q Sure. But it would sure help if that e-mail hadn't
12 been seen by some other employees, some of the rank
13 and file? Would you agree with that?

14 A If they saw it, yes.

15 Q The testimony in this case --

16 A Well, I haven't heard the testimony, sir.

17 Q I will represent to you that some of the rank and
18 file have testified --

19 A Okay.

20 Q -- that it was sitting --

21 A Okay.

22 COURT REPORTER: Gentlemen, I need you to talk
23 one at a time, please.

24 MR. GOODWYN: Sorry.

25 BY MR. GOODWYN:

1 Q Have there been any petty thefts reported at Spring
2 Valley since March 4, 2011?

3 A No.

4 Q Not a single one?

5 A Not that I'm aware of.

6 Q No student has stolen anything?

7 A Not that I'm aware of.

8 Q And do you attribute that to Jeffrey Kennedy
9 being -- his keys being taken away?

10 A I think you can draw inferences on that. We had a
11 series of thefts that he was a common denominator
12 in. And when we took him out of that environment,
13 we no longer had thefts in that environment.

14 Q And you also took the keys away from the custodians
15 about the same time, didn't you?

16 A I did not.

17 Q Your department. The department took the keys
18 away; right?

19 A Spring Valley, I believe, did.

20 Q Or whoever, somebody at the District or Spring
21 Valley took those keys away; correct?

22 A I believe so, yes, sir.

23 Q Do you know if Human Resources conducted any
24 investigation into the thousand dollar theft beyond
25 what y'all do, looking at the video, talking to

1 John Reid?

2 A I don't know what they did, other than I was
3 sitting in on a conversation between your client
4 and Traci Batchelder, and questions were asked
5 during that particular interview.

6 Q With Jeffrey. So you interviewed Jeffrey?

7 A Correct.

8 Q Do you know if they interviewed anybody else?

9 A I do not know. I'm not privy to any of that.

10 Q Did you think it was odd or suspicious that Tim
11 Hunter didn't just put the money in the safe and
12 give somebody else the combination, somebody he
13 trusted?

14 A That would be odd but not suspicious in my mind,
15 knowing Tim Hunter and the amount of money that he
16 is entrusted with over the course of the year.
17 That would not be odd in my mind. That would be
18 odd but not suspicious.

19 Q You said you know Tim Hunter. What do you mean by
20 that? Why would that be odd or suspicious for
21 somebody else but not Tim Hunter?

22 A Tim Hunter is in charge of a lot of things at
23 Spring Valley. He is in charge of a lot of money.
24 He is in charge of a lot of activities. He is the
25 man in a lot of respects over at Spring Valley. He

1 has a protocol that he goes by. This particular
2 day was an odd day for him.

3 Q Because?

4 A He said because he was sick. I have no reason to
5 believe that he was not sick.

6 Q Did you see him that day?

7 A The day that he went home sick? No, I saw him the
8 next morning, that Monday morning, or the morning
9 when they reported it.

10 Q Did you ask anybody else if they saw Tim Hunter
11 that day?

12 A I don't recall that conversation coming up.

13 Q Did you ask anybody if they thought he looked sick?

14 A I don't recall that conversation coming up.

15 Q Have you ever made any suggestions to the
16 administration at Spring Valley to remedy this key
17 situation, to make it so the security department
18 knows who has the keys and controls who has the
19 keys?

20 A We have expressed a concern. I have expressed a
21 concern to Chuck, my immediate supervisor, about
22 the number of keys that are across the District and
23 who has control of those.

24 Each particular school has custody and control
25 of their keys. Because we are a support staff, we

1 don't necessarily have a say-so in much of that.
2 We don't have the time or resources to open up
3 every single door at every single moment of the
4 day.

5 So keys have to be given to teachers. Keys
6 have to be given to administrators in the inner
7 workings of each school. Yes, that is a concern
8 that we bring up and that I bring up and Chuck
9 brings up through the year.

10 Q Is it challenging to keep track of things and
11 control things without knowledge of who all has the
12 keys?

13 A Yes, it's a managed chaos in some respects; but it
14 is a challenge.

15 Q Okay.

16 A We have the video system to help out and
17 corroborate some issues that come up. We have our
18 patrols to corroborate some of the issues that come
19 up, that sort of thing. So there is some
20 overlapping things that we do to try to help
21 maintain that chaos.

22 Q Let me go back and ask you a couple of questions
23 about your interview with John Reid. You
24 interviewed him at the AD building; correct?

25 A As I recall, it was on the sidewalk outside of the

1 AD building, yes, sir.

2 Q And did a custodian come up during your interview
3 with him and access Tim Hunter's office during that
4 interview?

5 A I don't recall that incident, no.

6 Q John Reid testified that he came in, opened the
7 door; and you expressed a lot of frustration that a
8 custodian had the keys to Tim Hunter's office. You
9 don't recall that?

10 A I don't recall it. I'm not saying it didn't
11 happen. I just don't recall it.

12 Q Would it surprise you to know the custodian would
13 have a key to Tim Hunter's office? Or did you know
14 that already?

15 A I didn't know that already. But, again, my control
16 is over my security desk. My frustration, I would
17 imagine -- I don't recall that -- but I also know
18 that I don't have a poker face either. So if that
19 happened in front of me, I probably would have said
20 something; but I don't recall i

21 Q Would you agree that if a security guard is openly
22 accused off being untrustworthy, that would
23 directly impact his professional career?

24 A It would definitely impact his career at the place
25 that he worked.

1 Q And possibly in getting future jobs?

2 A I don't know about that one.

3 Q I mean, if it's known, if it gets beyond the place
4 he works.

5 A I can't speak to that. I can't.

6 Q Would you hire somebody that you knew to be
7 untrustworthy?

8 A No, nor would I keep them.

9 Q You wanted to fire Jeffrey?

10 A Well, it would have made things easier, but --

11 Q Easier for you or easier for Jeffrey?

12 A Easier for everybody. But School District Two is
13 not like the Sheriff's Office. It's not -- and if
14 I can speak to that just a second.

15 MR. GOODWYN: I don't think that is responsive
16 to the question.

17 MR. BARLOW: I think it is. I mean, I think
18 he asked him a question: Would it be better for
19 everybody?

20 MR. GOODWYN: It would be better to fire
21 Jeffrey for him or for Jeffrey or for the District?

22 MR. BARLOW: He is explaining that.

23 MR. GOODWYN: He wants to talk about the
24 Sheriff's Office. I didn't ask him anything about the
25 Sheriff's Office.

1 MR. BARLOW: That is part of his answer.

2 MR. GOODWYN: It's not responsive.

3 THE COURT: I overrule your objection.

4 BY MR. GOODWYN:

5 Q Go ahead.

6 A If something comes up at the Sheriff's Office,
7 okay, or even at some of the other places I have
8 worked, if something like this came up, cut the
9 hours. You are out. See you later. Good luck to
10 you. All right.

11 School District, bless their hearts, they bend
12 over backwards for you. It's a wonderful place to
13 work. I mean, I have not worked in a place like
14 that where they just bend over backwards to try to
15 help you out.

16 And if something comes up, then they try to
17 move you to another place where you can succeed,
18 and the winds of change can blow back your way. So
19 it's a beautiful -- it's a wonderful place to work
20 in comparison to other places, and that's what
21 happened here.

22 Q After Jeffrey was -- his promotion was withdrawn
23 and his keys were taken away, he was pretty much on
24 desk duty. Is that your understanding? How would
25 you describe it?

1 A Keys are passed from person to person. Say a
2 person is working at Spring Valley, okay, and they
3 have a set of keys that open everything in the
4 District, so when they are relieved, they hand
5 those keys off. But we also have people in other
6 areas of the District, other areas and security;
7 and Jeffrey was moved to the inside to view the
8 video cameras.

9 Q When you say the inside, what you do mean?

10 A The inside of the sports center where you have the
11 supervisors. He was put in control of the cameras,
12 and actually that's a pretty powerful place to be.
13 You can keep an eye on the whole District through
14 that one office.

15 Q All right. But you don't have to be trustworthy to
16 have that position though; correct?

17 A Well, you do have the keys to actually access the
18 building.

19 Q Okay.

20 A But you can certainly, if you see something going
21 on and if you are assertive in that, you could
22 patrol that whole District. You could keep an eye
23 on that whole District and send help, call the
24 Sheriff's Office, send a security officer. It's a
25 very unique position. If done well --

1 Q -- you can direct the security efforts?

2 A You can direct the security efforts from there.

3 Q All right.

4 A And it's actually -- I look at it from an assistant
5 manager. I look at it as a very unique and
6 powerful tool that we have.

7 Q Is that where calls would come in if an alarm in a
8 building went off?

9 A Calls would come in; alarms would go off. If you
10 listen to the alarms and the types of calls coming
11 in, you could pick up on whether or not there is
12 actually entrance into those buildings with the
13 motion detectors; and you can send somebody fairly
14 quickly.

15 Q Is there a log to keep track of when alarms go off?

16 A There are.

17 Q Did you look at this log book for the AD building
18 the night the thousand dollars was stolen?

19 A I believe I did. I believe I looked at the logs as
20 far as who was on that day and who was on the other
21 days that thefts had been reported.

22 Q So that's something else you did for your
23 investigation?

24 A Well, those are things that we did for the
25 Sheriff's Office to kind of help them out, yes.

1 Q What other things did you do for the Sheriff's
2 Office to help them out, other than giving the
3 video?

4 A They expressed an interest based on that
5 information and the information that was garnered
6 from the interviews with Mr. Childers and
7 Mr. Hunter. In Mr. Childers's office, they
8 expressed an interest to speak with Mr. Kennedy.
9 We went to his house.

10 Q When you say "we," who is that? Who is we?

11 A I went to -- the investigators and I went to the
12 house that we had of record for Mr. Kennedy.

13 Q All right. Who were the investigators and how many
14 of them were there?

15 A You know, I remember Joe Clark. That's about the
16 only one I remember. I don't know if Ben Fields,
17 the school resource officer, went or not. There
18 may have been one other investigator, but I don't
19 recall who that is.

20 Q Three or four of you went to his house?

21 A It was me, okay, Joe Clark; and I believe y'all
22 have talked about in conversations with me in the
23 past there may have been one or two others. I
24 don't recall who those were, and I don't recall --
25 I just recall the lead investigator, Joe Clark,

1 being there.

2 Q Okay. Was Jeffrey there?

3 A No, it turned out that was not Jeffrey's house. It
4 was his mom's house.

5 Q So when did you go over to Ms. Jackson's house to
6 question her?

7 A I didn't go to Ms. Jackson's house.

8 Q So you weren't interested in anybody else except
9 Jeffrey?

10 A That's who the Sheriff's Office expressed an
11 interest to speak to at that moment. So we went
12 over to Jeffrey's house.

13 Q And you didn't go to the baseball coach's house,
14 did you?

15 A I certainly didn't because I was the liaison with
16 the Sheriff's Office, and Jeffrey is who they
17 wanted to see at that moment. So we went to his
18 house; and when we couldn't find him, we made a
19 phone call to him. He said he was on his way to
20 the beach, I think, for a vacation.

21 Q Okay. Now, who did Jeffrey's scheduling after he
22 was brought back from administrative leave?

23 A I'm sorry? Say again.

24 Q Who did Jeffrey's scheduling? Who scheduled his
25 hours and time? Who controlled how many hours he

1 got after he was brought back from administrative
2 leave?

3 A Well, Rick Groves, his captain, and Jerome Young,
4 his lieutenant, would be responsible for his work.
5 And if he wanted off for a vacation, for vacation
6 or sick, then he would notify them.

7 Q Do you think Jeffrey was getting more or less hours
8 or the same after he was brought back, as compared
9 to before, before the March 3rd, thousand dollar
10 theft?

11 A I think he was getting the same.

12 Q Why do you think that?

13 A Because at that particular time, the payroll,
14 full-time employees would get 40 hours a week and
15 maybe above that if they worked overtime or
16 something like that; but they would get their
17 regular 40 hours a week.

18 Q Jeffrey has testified that he got a lot less
19 overtime after he was brought back than before. Do
20 you have any knowledge about that?

21 A I don't have any knowledge of that. We'd probably
22 have to get the payroll, but overtime in the spring
23 is substantially less than overtime in the fall.

24 Q Because of sports activities?

25 A Sport activities and the need for security in those

1 sport activities historically. The spring time it
2 dries up.

3 Q Do you have any reason to doubt Jeffrey when he
4 says he was given fewer hours overtime after he was
5 brought back?

6 A I have no reason to doubt that. If you are
7 inferring that it's because of his job change, that
8 would be what I would have to counter on because
9 the nature of the business is the hours for
10 overtime are less in the springtime and the summer.
11 It dries up considerably.

12 Q I certainly understand that. But in addition to
13 not getting his promotion and taking away his keys,
14 he also effectively made less money because the
15 nature of his job had changed; correct?

16 A No, sir. He made less money because there was not
17 as many overtime opportunities in the spring and
18 summer. It had nothing to do with his change of
19 job, from being a security officer on the street at
20 one of the hubs, to being moved into inside around
21 the cameras. That doesn't stop him from getting
22 overtime in my mind.

23 Q Do you have to have any keys to work games?

24 A No.

25 Q No? There is nothing that you need?

1 A It hasn't been my experience that you need keys to
2 work the games. My captains are responsible for
3 the stadiums. They have keys. They have the keys
4 to the stadiums and gates.

5 We have hub officers that help with that. The
6 rank and file officers that work the stadiums, on
7 football stadiums and that sort of thing, they work
8 magnetometers, the metal detectors coming in.

9 They work the wands. They work the pass
10 gates. They keep an eye on the spectators in case
11 somebody falls and that sort of thing. The keys
12 are really not an issue during those sporting
13 events.

14 Q Okay. Do you know anything about the situation
15 with Kim Jones and her watching the video?

16 A I don't know Kim. I don't know about that --

17 Q You don't --

18 A Kim Jones --

19 Q Just what led us to Mr. Kennedy's firing?

20 A The only thing I know about that is I was told to
21 make a phone call over to Mr. Kennedy and put him
22 on administrative leave or something to that
23 effect. I can't remember if I called him or if I
24 had his captain call him.

25 Q Were you involved at all in the investigation --

1 A No.

2 Q -- of this incident?

3 A No, sir.

4 MR. GOODWYN: If I can have one second, Your
5 Honor.

6 (Pause.)

7 MR. GOODWYN: I think that's all I have, Your
8 Honor.

9 THE COURT: Any cross?

10 MR. BARLOW: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MR. BARLOW:

13 Q Mr. Barnes, I get up here all the time. I will try
14 to keep this relatively brief. I want to clarify a
15 few things first of all. Tim Hunter's office, the
16 thousand dollars missing from Tim Hunter's office,
17 is March 3rd, March 4th. I represent to you that
18 March 3rd was a Thursday.

19 A Okay.

20 Q Would it have been reported to you March 4th, the
21 Friday, the next day?

22 A Probably so.

23 Q I will not go back all over your training or
24 anything like that. How many years in law
25 enforcement?

- 1 A Twenty-three.
- 2 Q Twenty-three. You are married?
- 3 A I am.
- 4 Q What does your wife do?
- 5 A She's a teacher at the Center for Inquiry.
- 6 Q What does she teach?
- 7 A She teaches kindergarten and first, and then she
- 8 gets bumped back to kindergarten.
- 9 Q Do you have kids?
- 10 A I do.
- 11 Q How many kids do you have?
- 12 A Two kids.
- 13 Q Where do they go to school?
- 14 A Zack goes to Wofford, and Tiffany is working at the
- 15 church right now.
- 16 Q Now, to go back on a few things. I want you to
- 17 take a look at the exhibit that we looked at here.
- 18 Plaintiff's Exhibit 2. Take a look at that. Could
- 19 you read the last paragraph of that, please?
- 20 A "Always be honest. Do not hide the truth. Coming
- 21 forward and taking responsibility for a mistake is
- 22 always better than having your supervisor discover
- 23 it."
- 24 Q Is that important to security?
- 25 A Sure.

1 Q Has it always been important?

2 A Yes.

3 Q Now, did you have any knowledge of the petty thefts
4 that were -- he has described them as petty thefts.
5 We will talk about that in a minute. Any knowledge
6 of that prior to the recommendation for promotion
7 for Mr. Kennedy?

8 A No.

9 Q So you found out about those things after the
10 promotion --

11 A Yes.

12 Q -- had gone through?

13 A Correct.

14 Q Now, petty theft is the term used. Is it
15 considered minor for money to go missing from a
16 school?

17 A Minor, sometimes it is. From the Sheriff's
18 Office's prospective, sometimes it is.

19 Q Sure. How about from your prospective?

20 A A petty theft, a petty theft can be anything less
21 than \$2,000. It used to a thousand. Now, it's
22 less than 2,000. So if it's coming from a small
23 fund, \$2,000 would be significant.

24 Q Sure.

25 A A thousand dollars would be significant.

1 Q To you as a manager, if you suspect one of your
2 employees doing it, is it petty to you?

3 A No, it's not be petty to me, and certainly we have
4 fired for less.

5 Q Sure.

6 MR. BARLOW: I will mark this for
7 identification as Defendant's Exhibit 1, please. It's a
8 memo to Eric Barnes, dated March 24, 2011.

9 (Defendant's Exhibit Number 1 is marked for
10 identification.)

11 BY MR. BARLOW:

12 Q Mr. Barnes, I will ask you to take a look at --

13 MR. GOODWYN: Your Honor, I may have an
14 objection to this. I think we may need to review this.

15 THE COURT: Ladies and gentlemen, we have a
16 matter which we need to take up outside of your
17 presence. I'm going to ask that you retire to the jury
18 room and not begin any discussions. You still have not
19 heard all the evidence that has to be presented. We
20 will bring you back as soon as we take up these issues.

21 (The jury retires to the jury room.)

22 THE COURT: Yes, sir.

23 MS. PEAVY: Yes, Your Honor --

24 THE COURT: Let me just stop you. I noticed
25 it earlier. Mr. Goodwyn is doing the direct, and he

1 needs to be the one raising the objection.

2 MS. PEAVY: Okay, Your Honor.

3 MR. GOODWYN: This goes back to the motion in
4 limine.

5 THE COURT: Yes, sir.

6 MR. GOODWYN: There was discussion about prior
7 bad acts that they want to include. There is a couple
8 that we talked about that are temporally related, within
9 a week or two, of the March 3rd, thousand dollar theft.

10 This letter goes back and references other
11 prior bad acts from a much more distant past. I'm sure
12 you remember the motion in limine. This is what we are
13 talking about.

14 MS. PEAVY: Can we pause for a minute to
15 identify the gentlemen in the back row, if he is a
16 witness.

17 MR. BARLOW: No, the gentlemen on the back row
18 is with us. He is an insurance adjustor.

19 MS. PEAVY: Thank you.

20 MR. GOODWYN: "We have experienced a number of
21 thefts on campus in the main office and the Athletic
22 Department. It began last spring --

23 THE COURT: I'm sorry. I'm sure the court
24 reporter is not picking up any of that.

25 MR. GOODWYN: I'm sorry. Let me back up. It

1 says, "It began last spring, the Spring of 2010, when
2 someone reported the issue as missing \$15 from inside of
3 her desk." This is a theft from 2010. They are now
4 trying to suggest that our client had something to do
5 with it.

6 The next paragraph says, "Past fall one of our
7 custodians reported that someone kept removing an
8 aerosol can from the rest room." It's not even that
9 somebody stole it. It's moving it from a rest room to
10 somewhere else in the building. That's not even a
11 theft.

12 So that's -- those are the two instances we
13 are concerned about the jury hearing and seeing about
14 when they are not temporally related. One was not even
15 an alleged theft. It's just moving an aerosol can from
16 one portion of the building to another.

17 THE COURT: Yes, sir.

18 MR. BARLOW: Yes, I agree with respect to the
19 first paragraph, the prior spring. I think the aerosol
20 can is part of the idea and part of the whole testimony
21 that is going to be that that's why they suspected
22 Mr. Kennedy for some of these thefts.

23 It started out with that. It was removing the
24 aerosol can and taking them with him. They had to keep
25 replacing those. Then continuing into February,

1 certainly the February events are within several weeks,
2 a couple of weeks up to March 3rd, the incident at the
3 Bates Hall.

4 MR. GOODWYN: They don't have any evidence
5 that he -- I don't know of a tape showing him with an
6 aerosol can.

7 MR. BARLOW: We are going to call a witness.

8 MR. GOODWYN: That is going to say she saw him
9 take it?

10 MR. BARLOW: Yes.

11 MS. PEAVY: Your Honor, if I can briefly speak
12 to Ms. Jackson. She was supposed to -- she was the
13 custodial supervisor. She had knowledge that their
14 aerosol can had gone missing, the air freshener cans.

15 I believe the testimony was that she and
16 Mr. Childers viewed a -- Mr. Childers viewed a video and
17 saw Mr. Kennedy with the air freshener can. I don't
18 think it was ever adjudicated in any way.

19 MR. GOODWYN: The video wasn't even produced.

20 THE COURT: So you are saying that you have
21 never seen the video?

22 MR. GOODWYN: We have never seen the video.

23 MR. BARLOW: The video wasn't saved of that.
24 The video records over if you don't save it quickly.

25 MR. GOODWYN: Well, somebody watched it; so

1 they knew there was an issue.

2 MR. BARLOW: Sure.

3 MR. GOODWYN: They could have saved it right
4 then.

5 MR. BARLOW: There has been plenty of
6 testimony about what people have seen on videos.

7 MR. GOODWYN: I'm objecting to that.

8 THE COURT: Let me just ask: Mr. Barlow, what
9 is the purpose of the exhibit? Are you trying to
10 introduce it into evidence or are you just asking him to
11 use it to refresh his recollection?

12 MR. BARLOW: Both. I hadn't planned to get
13 into any of the first two paragraphs with this witness.
14 So I think if anything needs to be redacted from the
15 exhibit, we can certainly do that at some point. I will
16 limit my examination to February 14th on.

17 MR. GOODWYN: To redact it, that should be
18 fine. I don't know how we are going to do that. Just
19 black it out?

20 MR. BARLOW: Yeah, I would think so.

21 THE COURT: You can always put a sheet of
22 paper over those particular portions and recopy
23 portions. So are we all in agreement then?

24 MR. GOODWYN: The first two paragraphs will be
25 redacted?

1 MR. BARLOW: I think that's fine. That's
2 good.

3 MR. GOODWYN: Are we going to do that before?

4 THE COURT: Well, it can't go to the jury
5 until that has been done.

6 MR. GOODWYN: I'm a little reluctant to have
7 him show it around. I guess they will know that there's
8 two paragraphs missing. I don't want them seeing the
9 document with the paragraphs not missing and then later
10 they get it when it's missing.

11 MR. BARLOW: I don't think they would see it
12 here. I don't have it on a board or anything like that.

13 MS. PEAVY: Just to be safe, can we quickly
14 make a copy of it now?

15 MR. GOODWYN: We have to do it at some point.

16 THE COURT: Yes, it's fine. You can do that.

17 MS. PEAVY: Thank you, Your Honor.

18 (Pause.)

19 MR. GOODWYN: We also would need a ruling on
20 whether the other witnesses, Ms. Jackson, Mr. Childers
21 can testify about these issues as well. This is not
22 with this witness.

23 THE COURT: Testify about which issues?

24 MR. GOODWYN: About the aerosol issue and the
25 May or the Spring 2010 theft.

1 THE COURT: Well, I am presuming that if we
2 are redacting it that you all agree it's not going to be
3 testified to.

4 MR. GOODWYN: All right. I just wanted to
5 make sure.

6 MR. BARLOW: I don't know that we had agreed
7 to that. I think it's part of their explanation.

8 THE COURT: You all need to figure that one
9 out because if you are redacting it from here, then that
10 means it's off the table.

11 MR. BARLOW: Fair enough.

12 THE COURT: Let's take a break.

13 Again, Mr. Barnes, I will instruct that you
14 shouldn't discuss your testimony with anyone because
15 it's not been concluded. It's inappropriate for you to
16 discuss it, even with your own attorneys.

17 Let's take a break and we will come back.

18 THE WITNESS: Yes, ma'am. Thank you.

19 (Whereupon there is a recess.)

20 THE COURT: Have you got the exhibit
21 substituted? It will need to be remarked.

22 MR. GOODWYN: We have.

23 THE COURT: Anything to take up before we get
24 started?

25 MR. BARLOW: No, Your Honor.

1 THE COURT: Ask the jury to come in, please.

2 (The jury returns to the courtroom.)

3 BAILIFF: The jury panel is accounted for.

4 THE COURT: You may proceed.

5 MR. BARLOW: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. BARLOW:

8 Q Mr. Barnes, I was about to show you what is marked
9 as Defendant's Exhibit 1 and ask if you can
10 identify that document, please?

11 A This is a synopsis or a statement that was sent to
12 me by Jim Childers, who is the Assistant Principal
13 at Spring Valley High School. Because it has my
14 name at the top, people thought it was mine; but
15 it's actually Jim Childers, and I actually signed
16 Jim Childers's name on the back. That is not Jim
17 Childers's signature. That is mine notating that
18 Jim sent it to me.

19 Q So this is a memorandum to you from Jim Childers?

20 A Correct.

21 Q Dated March 24, 2011?

22 A Which I then passed on to the Sheriff's Office.

23 Q Was this provided to you on or around March 24,
24 2011?

25 A It was.

1 MR. BARLOW: We move at this time that this
2 exhibit be admitted in evidence, Your Honor?

3 MR. GOODWYN: No objection, Your Honor.

4 THE COURT: Without objection it will be
5 admitted.

6 (Defendant's Exhibit Number 1 is received into
7 evidence.)

8 BY MR. BARLOW:

9 Q Mr. Barnes, taking a look at this memorandum from
10 Jim Childers to you, does this refresh your
11 recollection as to what was reported missing from
12 Spring Valley in February and March of 2011?

13 A It does.

14 Q What was reported missing on February 14th?

15 A Joanne Cabiness, the Principal's secretary,
16 reported that someone stole \$50 in cash and a gold
17 ring with three diamonds from her office in the
18 main office.

19 The ring, which was found at a Spring Valley
20 event years ago, had been kept in her desk in case
21 anyone ever reported it missing. Would you like me
22 to continue on?

23 Q I'll just ask some questions to maybe move it
24 along. Anything in particular about where the
25 items were?

1 A Well, she stated that she had -- the odd thing was
2 that the money and the ring were hidden in two
3 different, inconspicuous areas of her desk and that
4 whoever stole the items had to have plenty of time
5 to go through her desk and was not worried about
6 anyone walking in on them.

7 She was not sure when the thefts occurred
8 because she seldom went into areas of the desk to
9 check on these items because they were so well
10 hidden.

11 Q What was reported missing on February 25th?

12 A February 25th, Dorothy Liodice reported \$20 in
13 cash and a check for \$15 had been stolen from her
14 desk.

15 Q And was there a report of any follow up done on
16 that?

17 A She evidently had reviewed some video and
18 identified Jeffrey Kennedy heading in the main
19 hall, office hall.

20 Q Now, would she have done that or would Mr. Childers
21 have done that?

22 A This says, "I examined the cameras." So that would
23 be Mr. Childers.

24 Q March 2nd what was reported missing?

25 A Sandra Watts, the bookkeeper, also has had an

1 office in the main office area. She reported \$40
2 in cash had been stolen from her office, and they
3 were located in her desk as well.

4 Q Does Mr. Childers mention the video cameras again
5 here?

6 A He also mentioned the video cameras and also
7 mentioned Mr. Kennedy being on the video cameras
8 that he saw.

9 Q Then on the next page, Mr. Barnes, this is a
10 reference to the money missing from Tim Hunter's
11 office?

12 A Correct. Thursday March 3rd, our Athletic Director
13 Tim Hunter, who has an office in the Bates Hall --
14 that's the athletic building, Bates Hall over by
15 the stadium -- had prepared the gate ticket money,
16 a thousand dollars; for the events that were going
17 to be held on Friday, March 4th.

18 He normally stores the money in a safe in the
19 office and prepares it the day of the event, but he
20 was not going to be on campus the next day. So
21 instead he set it out on the table so that Sonny
22 Uker could get it the next day for the games. He
23 checked the cameras and that was part of the
24 testimony here, that those particular camera
25 angles, showed Mr. Kennedy in the area.

1 Q Is the sequence of events here, according to your
2 conclusion, that Mr. Kennedy was the common
3 denominator here?

4 A They are.

5 Q Why is that?

6 A Because Mr. Kennedy is coming up in and around the
7 areas at the time where the thefts occurred and
8 suspicions about those particular times rang true
9 in each event.

10 Q Based on your review, was it normal for Mr. Kennedy
11 to enter and exit through the back door of the
12 administrative hall?

13 A When he did come through the back hall, he
14 certainly didn't stay for a long period of time for
15 the most part; but on at least one of those days
16 that we had watched him, that would be the
17 March 2nd day, he stayed in there a number of
18 minutes.

19 Q So would it be normal for him to stay 20 minutes in
20 the administrative hall?

21 A No, not from the video that I reviewed.

22 Q Would it be normal for him to stay in the
23 administrative hall for 20 minutes, leave through
24 the back door, and then drive around the front to
25 set the alarm?

1 A You know, I don't think it would be normal from the
2 standpoint of being 20 minutes in there. The
3 timing of setting the alarm and not setting the
4 alarm, I can't speak to that; but the 20 minutes
5 does cause us to ponder.

6 Q Tim Hunter, was Tim Hunter ever a suspect in your
7 mind?

8 A Tim Hunter, not in my mind, just because of the
9 sheer amount of money that comes through there and
10 the control and the reputation that Mr. Hunter has
11 in the District.

12 Q Who made the report?

13 A Mr. Hunter did.

14 Q Is it your experience that the person that makes
15 the report is frequently the person that does it?

16 A Not frequently, no.

17 Q Sure. What was important to you on the video that
18 you saw from the Bates Hall incident?

19 A Well, the first time we saw Mr. Reid and
20 Mr. Kennedy on the camera was innocuous. There
21 really wasn't much to it. Kennedy was training
22 Reid to set the alarm and what buttons to push and
23 how to do it.

24 But the second time when he came in later on
25 in the morning, he did disappear out of the camera

1 view. Then when he did come back into camera view,
2 it looked like he was coming from the area in
3 question.

4 It wasn't like he came in, set the alarm or
5 undid the alarm. He disappeared out of view and
6 then came back minutes later from that area, and
7 that's what was significant about that particular
8 video.

9 Q Tim Hunter's office is not picked up by the camera
10 and was not at that point?

11 A Not at that point, no.

12 Q Did Mr. Kennedy have an explanation for what he had
13 done those five minutes?

14 A If I recall correctly, it was something about going
15 into the weight room.

16 Q Any other explanation that you have ever heard?

17 A No, not that I recall.

18 Q Now, did you discuss the missing money from Spring
19 Valley with any of Mr. Kennedy's coworkers that
20 were not supervisors?

21 A No.

22 Q Did you discuss the investigation or the missing
23 money with anybody at Spring Valley, other than Jim
24 Childers?

25 A And Tim Hunter?

1 Q Anybody other than those two?

2 A I do not recall speaking with anyone else in
3 regards to that, other than Ben Fields, the school
4 resource officer, Jim Childers, and Tim Hunter.
5 Those are the only ones I actually spoke to.

6 Q After Mr. Kennedy was transferred, did you give him
7 any warnings or reprimands?

8 A I did not, no.

9 Q Did Mr. Kennedy ever make any complaints to you
10 about being transferred?

11 A I received no complaints from Mr. Kennedy.

12 Q Did you receive any complaints through anybody else
13 that Mr. Kennedy was dissatisfied with his
14 transfer?

15 A From time to time, his captain would come to me
16 looking for clarification on how to approach
17 Mr. Kennedy's working there. I would remind
18 Mr. Groves about Chuck Earles's wishes and that we
19 needed to keep him inside and away from the keys,
20 and monitoring was the best way to do that.

21 Q The confidential memorandum that you looked at from
22 Chuck Earles that is Plaintiff's Exhibit 4 here,
23 just to clarify, you didn't print that up?

24 A I did not.

25 Q You didn't leave it laying around the office?

1 A I did not.

2 Q All right. Read what it says on all caps, that is
3 the first, I guess, text in the e-mail.

4 A "The information contained in this e-mail is
5 confidential and will only be shared with other
6 District security supervisors as needed when they
7 will be supervising Mr. Kennedy."

8 Q Did you feel the need to tell your subordinates
9 that they needed to follow that?

10 A No, I felt pretty confident about those
11 subordinates and their work.

12 Q Would you expect the people who are listed on this
13 e-mail as recipients to honor what their supervisor
14 is telling them?

15 A I would expect them to do that.

16 Q Any reason to believe that they wouldn't do that?

17 A None.

18 Q Did you ever see this lying around Support
19 Services?

20 A No.

21 Q Did anybody ever tell you that it was lying around
22 Support Services?

23 A No.

24 Q And tell me what types of keys there are in the
25 School District?

1 A Security has a master key that fits every -- just
2 about every door lock in the District. We have
3 gate keys and we have traffic light keys, and we
4 have all sorts of other keys; but we do have master
5 keys. Other keys in the District that are -- you
6 want me to talk to that?

7 Q Sure.

8 A Other keys in the District would be keys that are
9 specific to those particular doors, those
10 particular areas. For instance, media center
11 teachers would have keys to the media center; but
12 those keys wouldn't necessarily open up the ninth
13 grade history teacher's door, that sort of thing,
14 or the janitor's door or the press box outside.

15 The master keys would be the ones that
16 security has, some of them; but the other keys are
17 specific to those particular locations, whether it
18 be Spring Valley or Blythewood or Sandlapper or
19 Lonnie B. Nelson or wherever. They have keys that
20 are tied to those schools specifically.

21 Now, as far as master keys themselves, I can't
22 speak to who necessarily has master keys, other
23 than I know that from what we are responsible for,
24 we are responsible to keep up with the ones that we
25 have.

1 Q Now, the teacher wouldn't get a master key?

2 A No, not to my knowledge.

3 Q Sure, but that would not be the normal practice?

4 A No.

5 Q Do you have anything against Mr. Kennedy
6 personally?

7 A Personally, no.

8 Q You wanted to promote Mr. Kennedy?

9 A I did.

10 Q That was before you found out about this?

11 A That is correct.

12 Q Have you ever gotten a job reference from
13 Mr. Kennedy?

14 A No.

15 Q Have you ever communicated anything to anyone
16 outside of Richland Two anything about Mr. Kennedy?

17 A Nope.

18 Q Now, we talked about the support people -- the
19 supervisors and Support Services -- about your
20 expectations that they would not circulate the
21 memorandum or the e-mail from Chuck Earles and that
22 they would honor the request that it be
23 confidential.

24 Would you also expect Mr. Kennedy not to be
25 initiating rumors about what's going on with that?

1 A I would expect that, yes.

2 Q Or repeating or spreading those rumors?

3 A I would expect it, yes.

4 Q You would expect Mr. Kennedy not to be telling
5 people that he is being investigated for a theft at
6 Spring Valley?

7 A That would -- I would expect that, yes.

8 Q Or that he has been talking to the police about
9 what has been missing at Spring Valley?

10 A The expectation that he would do that would be nil.
11 I would not expect him to do that. That would not
12 be in his best interest to do that.

13 Q And a potential source of rumors as well?

14 A That's correct.

15 Q I think the testimony was after Mr. Kennedy was
16 removed from Spring Valley, from working on campus
17 in Spring Valley, there were not anymore thefts
18 reported?

19 A No more thefts like these, correct.

20 Q Sure. And those happened -- that we looked at --
21 in the space of about three weeks?

22 A Correct.

23 Q And was that important to you?

24 A That is important to me, yes.

25 Q That's important for your conclusion?

1 A It is. Had it continued on, then we would be
2 looking somewhere else.

3 Q If you could just summarize here the reasons that
4 you did not trust Jeffrey Kennedy.

5 A Well, we have the three incidents documented in the
6 statement from Mr. Childers. We have the
7 statements that corroborated those, that synopsis.
8 We had Mr. Kennedy spending a whole lot of time in
9 the break room or off camera on that inner hallway
10 where the offices were, where some of those thefts
11 occurred.

12 Then we have Mr. Kennedy off camera again near
13 where the theft occurred over at Mr. Hunter's
14 office. My consultation and conversations with Joe
15 Clark indicated that -- and he is the investigator
16 from the Sheriff's Office -- indicated that there
17 was strong suspicion on his part that Jeffrey
18 Kennedy was involved. And the fact that no thefts
19 occurred in like manner at the school after we
20 moved him.

21 MR. BARLOW: Give me just a second.

22 (Pause.)

23 MR. BARLOW: We don't have any questions of
24 Mr. Barnes at this time.

25 THE COURT: Any redirect?

1 MR. GOODWYN: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. GOODWYN:

4 Q I think I am sort of confused. You testified that
5 you had not heard about any other thefts prior to
6 recommending Jeffrey Kennedy for the promotion.
7 That's what you testified to. I believe you
8 testified that you have heard about these things
9 and were investigating him when I asked you. Which
10 is it?

11 A I'm sorry. Repeat the question.

12 Q I think I heard you testify just now that you had
13 not heard about any prior thefts prior to or at the
14 time you recommended Jeffrey Kennedy for the
15 promotion?

16 A That is correct. I did not hear about these until
17 the week right before the last theft; so March 2nd
18 would be --

19 Q The date of this e-mail or memo, whatever this is,
20 is March 24th?

21 A March 24th, correct.

22 Q That's when you heard about it for the first time?

23 A No.

24 Q You heard about these sometime before that?

25 A March 3rd or 4th was when the thousand dollars was

1 taken. Okay. I think -- I believe my testimony is
2 that right prior to that, we were over at Spring
3 Valley talking to the various workers within the
4 office about incidents that they were having --

5 Q But you don't list the information about possible
6 thefts?

7 A We were told that they wanted us to reposition the
8 cameras to look at the bookkeeper's office and that
9 sort of thing because of these particular thefts.
10 We were in the process of getting with our camera
11 people to redo that, and that was a couple of days
12 prior to this theft occurring over at Bates Hall.

13 Q So this February 14th incident, the complainant
14 indicates that she was not sure when the thefts
15 occurred because she so seldom went to the areas of
16 the desk in checking these items because they were
17 so held hidden.

18 So the fact that Jeffrey Kennedy may have been
19 in the building that night and stayed longer than
20 you thought he should have is really irrelevant,
21 isn't it?

22 A I don't think it's irrelevant. It just didn't come
23 to my attention until --

24 Q It's not near as significant?

25 A Those are your words not mine.

1 Q I'm asking you. Would you agree that it's not near
2 as significant if she has no idea when it was
3 stolen?

4 A That would be a problem if she didn't have a good
5 timeline of when this thing was stolen, yes.

6 Q Isn't that same thing true for a couple of these
7 other ones, these other two?

8 A I think the other two, they felt pretty confident
9 based on the timeline and the video corroboration.
10 They felt pretty confident about those, obviously a
11 lot more than the first one.

12 Q The custodial staff actually goes into those
13 offices and cleans those areas; correct?

14 A My understanding, yes.

15 Q And the security staff doesn't even go into those
16 offices if they are doing the job right?

17 A If they're doing the job right, yeah, they
18 shouldn't be in those offices.

19 Q All right. And you don't have video to suggest
20 Jeffrey Kennedy ever went into any office?

21 A That's correct.

22 Q Just your speculation?

23 A That's correct.

24 Q All right. Here we are three years later, three
25 and a half years later. Do you have any

1 investigation at this point into how the e-mail,
2 the e-mail that we have been talking about, was
3 left out in the work area for the regular employees
4 to see?

5 A I don't know anything about that, sir. I don't
6 know about it being left out. I didn't know
7 anything about that until you all have brought it
8 up.

9 Q Did you learn about it when this lawsuit was filed?

10 A That's correct.

11 Q And is it not important to you that there are
12 reports by your own employees that say this e-mail
13 was left out?

14 A It never got me to act on it; so I don't know.

15 Q It has now. It did when this lawsuit was filed;
16 correct?

17 A Sir, I'm seeing it and you say it happened. Who
18 saw it, you have not revealed that to me who saw
19 out, who they got it from, anything like that. I
20 would be happy to follow up on some of that should
21 I hear about it.

22 Q My point is the allegations in this case were that
23 that e-mail was left out; correct? You knew about
24 that --

25 A You are alleging that, yes, sir.

1 Q And you knew that a year ago? You knew that those
2 were the allegations?

3 A I don't recall that being something that I knew,
4 no.

5 Q When did you learn that?

6 A I am just recalling that it was brought to my
7 attention here recently, in the deposition that
8 y'all took from me.

9 Q And when was your deposition taken? Do you recall?

10 A You have the notes in front of you, sir.

11 Q I have the transcript.

12 A You took the deposition or your co-counsel took the
13 deposition from me.

14 Q April 23, 2014.

15 A Okay.

16 Q So you learned about it at least by then; right?

17 A I believe that became part of the record.

18 Q And the efforts you made to correct that problem
19 was what?

20 A We have had conversations with my people yearly on
21 my expectations, and part of those expectations are
22 that they act in professional manners. I don't
23 recall addressing this thing in particular. It's
24 more of a blanket, "This is what I expect of you,"
25 and that's yearly. We do that annually.

1 Q So you have a situation where an e-mail that you
2 acknowledge would be damaging to Jeffrey if it got
3 out, gets out. There is a lawsuit filed, and you
4 don't even address your staff to say, "Hey, this is
5 important that you don't put these kind of e-mails
6 out"?

7 A I think coming from your office, sir, that you had
8 expressed or talked about not talking about a lot
9 of this stuff. I was told not to talk about
10 anything in regards to this.

11 Q I told you that?

12 A That's part of what happens in a lawsuit; right?
13 You are not to discuss this in any way. In fact,
14 had I discussed it, it would have been part of your
15 problem or part of something you could have brought
16 up. We can talk -- I did not talk to them
17 specifically about this, no.

18 Q Do you plan to?

19 A I am certain that we can talk about that.

20 Q This is three years later. You didn't do anything
21 after the sending the e-mail to ensure that your
22 staff kept it confidential?

23 Chuck sent an e-mail that says confidential on
24 it. You did nothing else, you get sued, and you
25 still do nothing; correct? You have done nothing

1 about this e-mail to ensure that it didn't get
2 out --

3 MR. BARLOW: Objection, Your Honor, relevance.
4 Again, this is --

5 MR. GOODWYN: Relevance?

6 MR. BARLOW: -- he is asking what has gone on
7 three or four years after this happened.

8 MR. GOODWYN: This is a negligent supervision
9 case. We want to show that his supervision is
10 negligent. He hasn't even addressed it three years
11 later.

12 THE COURT: I will allow the question. He can
13 answer it.

14 BY MR. GOODWYN:

15 Q So here we are, three years later, and you haven't
16 had the first conversation with anybody on your
17 staff about how that e-mail got out?

18 A You are making the assumption that this is the only
19 way to address this particular incident, to bring
20 up this particular thing. That is the assumption
21 that you make.

22 Those supervisory questions and supervisory
23 skills can be addressed in a whole other way. We
24 can talk to -- and I did this. When I talked to my
25 supervisors, we have my expectations; and we have

1 things that we go over. We do this on a regular
2 basis, and we do this annually in a written form --

3 Q So this --

4 A -- the confidentiality and professionalism is
5 discussed annually.

6 Q Just in general terms though; right?

7 A In general terms, yes.

8 Q So, I mean, if employees make mistakes, do you not
9 specifically address that mistake? You just talk
10 to them in generalities at the end of year at your
11 annual meeting?

12 A And this occurred?

13 Q 2011.

14 A 2011. And your lawsuit was earlier this year or my
15 deposition was in April of this year.

16 Q Your deposition was --

17 A So I'm telling you I didn't know about this until
18 the deposition earlier this year. Correct? All
19 right. So that what's you are saying --

20 Q That's what you are saying --

21 A The deposition, the deposition was taken earlier
22 this year. All right. In the meantime, from 2011
23 to now, I have had plenty of conversations with my
24 supervisors on what I expect and don't expect and
25 professionalism and how they are to address their

1 people and how they are to -- their personal
2 business and how to address their employees in a
3 professional manner and not to belittle them. We
4 talk about this all the time.

5 Q But nothing specific about this e-mail?

6 A No, not specifically about this because I felt like
7 in the three years since then, it's been taken care
8 of. They are on the same page.

9 Q All right. I know we have gone over this, but I
10 want to make it clear. You made -- you testified
11 you made some effort to determine what Jeffrey
12 Kennedy's normal pattern was?

13 A Correct.

14 Q And placing some significance on the fact that he
15 stayed in these buildings longer than it would take
16 just to simply walk through the building?

17 A Correct.

18 Q And how many months worth of video did you look at?

19 A The video tapes over itself. I say tapes over.
20 That's a VCR they tape over.

21 Q Well, the recording.

22 A It records over itself after so many days or after
23 the memory fills up. It just restarts over. So
24 there is only a certain amount of days that you
25 have available at any given time.