

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

G. Thomas Casper Jr. Circuit Judge

RECEIVED

JUL 29 2016

SC Court of Appeals

Case No. 2013-CP-32-3371

To Pradubscri Appellant,

v.

The Lexington County Sheriff's Department Respondant.

RECORD ON APPEAL

To Pradubscri
990 Wisacky Hwy
Bishopville, S.C. 29010
Pro se

Justin T. Baswell
P.O. Box 8568
Columbia, S.C. 29202
Attorney for Respondant

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ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Jo Pradubsri,)

Plaintiff,)

v.)

The Lexington County Sheriff's)
Department,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-3371

ORDER

This matter came before this Court by way of a motion filed by the Plaintiff to alter or amend the Court's prior order granting summary judgment in favor of the Defendant Lexington County Sheriff's Department. The Defendant has filed a response in opposition to the Plaintiff's motion. The Court has reviewed the parties' submissions and has determined, pursuant to Rule 59(f), SCRPC, that oral argument would not assist the Court in ruling on the Plaintiff's motion. After carefully considering the arguments made and the entirety of the matters on file in this case, the Court finds that summary judgment in favor of the Defendant was appropriate and that the Plaintiff's motion to alter or amend should be denied.

DISCUSSION

The Plaintiff makes three arguments in challenging the Court's order granting the Defendants' motion for summary judgment and denying the Plaintiff's motion. First, the Plaintiff contends that summary judgment is inappropriate in this case pursuant to Rule 38(a), SCRPC. Rule 38(a) provides:

The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of

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money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

Id. While it is true that both the Plaintiff and the Defendant have requested a trial by jury in this case, this fact does not preclude the Court from considering the Defendant's motion for summary judgment. The Plaintiff contends that the Court has violated his constitutional right to have a trial by jury by granting summary judgment in favor of the Defendant. Although Rule 38(a), SCRCF, does provide for a trial by jury in certain cases, Rule 56, SCRCF, provides for summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In essence, Rule 56 allows for an efficient disposition of a case when there is no need for it to go to a jury. In this case, the Plaintiff's right to a jury trial has not been violated by the granting of summary judgment. To hold otherwise would mean that whenever a jury demand is made, summary judgment is no longer an option.¹

Next, the Plaintiff contends that the Defendant failed to adequately oppose the Plaintiff's motion for summary judgment, thus entitling the Plaintiff to summary judgment. Rule 56(e), SCRCF, requires a party opposing summary judgment to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 320, 548 S.E.2d 854, 856 (2001) (citing Rule 56(e), SCRCF). In this case, the Defendant did properly oppose the Plaintiff's motion for summary judgment by coming forward with material to show that the Plaintiff was not entitled to judgment as a matter of law. Specifically, the Defendant relied upon the investigative file generated at the time of the

¹ The South Carolina Court of Appeals has considered the relationship between Rule 38(a), SCRCF, and Rule 56, SCRCF. In *Waterford Place Homeowners Ass'n of Lexington, Inc. v. Barnes*, No. 2006-UP-289, 2006 WL 7286101, at *2 (S.C. Ct. App. June 21, 2006), the Court of Appeals rejected a Plaintiff's argument that the trial court's grant of summary judgment against him violated his constitutional right to have a trial by jury. While the Court recognizes that unpublished opinions of the appellate courts have no precedential value, the concept discussed by the Court of Appeals can be looked to as persuasive authority.

Plaintiff's arrest and a certified copy of the Plaintiff's criminal file showing that he was convicted of the crimes for which he was arrested at the time the money was confiscated. Included in this material was the affidavits completed by the investigating officer and submitted to a magistrate judge when arrest warrants were obtained against the Plaintiff. The Defendant did not rely upon the mere allegations or denials of its pleading to oppose the Plaintiff's summary judgment motion, but rather brought forth admissible evidence to refute the Plaintiff's motion. This evidence more than satisfied the Defendant's obligations in opposing the Plaintiff's motion and clearly demonstrated that the Plaintiff is not entitled to judgment as a matter of law in this case.

Finally, the Plaintiff contends that the Court erred in finding that a genuine issue of material fact exists regarding the Plaintiff's claims, thus precluding summary judgment being granted in the Plaintiff's favor. Contrary to the Plaintiff's contention, the Court has found based upon the record before it that "there is no dispute of facts and the inferences to be drawn from the evidence are susceptible to only one reasonable interpretation." As the Court has previously held, the record demonstrates that the confiscation of the funds by the Defendant Lexington County Sheriff's Department at the time of the Plaintiffs arrest was not unlawful, and that the Defendant had no ability—much less a responsibility—to initiate forfeiture proceedings regarding those funds in light of the South Carolina Supreme Court's holding in *Farmer v. Florence County Sheriff's Office*, 401 S.C. 606, 738 S.E.2d 473 (2013). The Plaintiff has presented no evidence to demonstrate that the Defendant breached a duty owed to him in this case. Accordingly, as the Court has previously held, summary judgment in favor of the Defendant is appropriate.

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CONCLUSION

After careful consideration of the record in this case and the submissions of the parties, the Court finds that no legally sufficient basis exists to alter or amend its Order filed on August 3, 2015, in this case.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion to Alter or Amend is DENIED.



The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge, Fifth Judicial Circuit

September 8 2015

COLUMBIA, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Jo Pradubsri,)

Plaintiff,)

v.)

The Lexington County Sheriff's)
Department,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-3371

ORDER

2015 AUG -3 P 4:07

FILED

This matter is before the Court on cross motions for summary judgment filed by the Plaintiff Jo Pradubsri and the Defendant Lexington County Sheriff's Department. Additionally, the Plaintiff filed a motion to compel and a motion for appointment of counsel. A hearing on was held on these matters before the undersigned on June 16, 2015, at the Lexington County Judicial Center in Lexington, South Carolina. The Plaintiff was present at the hearing *pro se*, and Justin T. Bagwell, Esquire, was present and presented arguments on behalf of the Defendant. After carefully considering the arguments made and the entirety of the matters on file in this case, the Court finds that summary judgment should be granted in favor of the Defendant and this matter should be dismissed with prejudice.

BACKGROUND

The record before the Court shows that on November 9, 2008, the Plaintiff was arrested and charged with trafficking crack cocaine, possession with intent to distribute crack cocaine within proximity to a school, and unlawful carrying of a firearm following a traffic stop. At the time of the Plaintiff's arrest, a sum of money totaling \$728.00 was located on the Plaintiff's person and was seized as evidence. These funds have been held by the Lexington County Sheriff's Department in an account maintained for holding such seized funds. After initially being tried and convicted on all

...ultimately reversed and remanded. See *State v. Pradubsri*, 403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013), *reh'g denied* (June 20, 2013), *cert. denied* (June 25, 2014). Since that time, the Plaintiff has been retried and convicted of the offenses for which he was charged stemming from his November 9, 2008, arrest.

The Plaintiff filed this action on or about September 19, 2013. In his Complaint, he has asserted several causes of action against the Lexington County Sheriff's Department regarding the seizure of funds following his arrest. Specifically, the Plaintiff seems to allege that money was seized from him without the initiation of the required forfeiture proceedings. The Defendant admits that it has been in possession of the funds that were seized from the Plaintiff's person at the time of his arrest but denies that the seizure of those funds was unlawful.¹ Furthermore, the Defendant has asserted that it has fulfilled its statutory duty of taking reasonable steps to maintain the seized property and that it lacked any authority to institute forfeiture proceedings relative to the seized funds. For the reasons set forth herein, the Court finds that the Defendant's motion for summary judgment should be granted, and the Plaintiff's claims dismissed with prejudice.

DISCUSSION

Motions for Summary Judgment

As an initial matter, it is clear as a matter of law that the money seized from the Plaintiff at the time of his arrest on November 9, 2008, was subject to forfeiture, and thus not unlawful. South Carolina law provides that "all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time

¹ On September 8, 2014, an Order was issued by this Court allowing the Lexington County Sheriff's Department to return the seized money to the Plaintiff. However, the Plaintiff has refused to accept the money. As a result, the Defendant requested an Order allowing it to deposit the seized funds, plus accrued interest, with the Clerk of Court pending a resolution of this matter. An Order to this effect was recently entered in this matter on May 18, 2015.

G/C #2

of arrest or search involving violation of [South Carolina's Narcotics and Controlled Substances law]" are subject to forfeiture. S.C. Code Ann. § 44-53-520(a)(8). Certified copies of the arrest warrants and true billed indictments issued following the Plaintiff's arrest were presented to the Court at the time of the hearing in this case and demonstrate that the Plaintiff was arrested and charged with two offenses pursuant to South Carolina's Narcotics and Controlled Substances law, namely Possession with Intent to Distribute Crack Cocaine within Proximity of a School and Trafficking Crack Cocaine. As such, it is clear that the \$728.00 found in the Plaintiff's possession at the time of his arrest was subject to forfeiture. Thus, the confiscation of the funds by the Defendant Lexington County Sheriff's Department at the time of the Plaintiff's arrest was not unlawful.

The question of the Defendant's responsibilities following the Plaintiff's arrest presents a different issue. The forfeiture provisions of South Carolina's Narcotics and Controlled Substances law found in S.C. Code Ann. § 44-53-520 provides that "[l]aw enforcement agencies seizing property under this section shall take reasonable steps to maintain the property" and that "[a]ny monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner." S.C. Code Ann. § 44-53-520(i). It further provides that "[w]hen property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency." There has been no allegation by the Plaintiff that the Defendant failed to maintain the seized funds or report to the appropriate prosecution agency that the seizure had taken place.² Instead, the Plaintiff seems to assert only that

² Even if the Plaintiff had alleged that the Defendant had failed to report to the appropriate prosecution agency, the incident reports and certified copies of the Plaintiff's arrest warrants presented to the Court at the time of the hearing conclusively demonstrate that the Lexington County Sheriff's Department fulfilled its responsibility to report the seizure to the appropriate prosecution agency.

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the Lexington County Sheriff's Department breached a duty owed to the Plaintiff by failing to initiate forfeiture proceedings regarding the seized money.

The forfeiture provisions allow for seizure to be made without process if the seizure is incident to an arrest, as it was in this case. See S.C. Code Ann. § 44-53-520(b)(1). However, in those situations, proceedings under S.C. Code Ann. § 44-53-530 regarding forfeiture and disposition are to be instituted within a reasonable time. See S.C. Code Ann. § 44-53-520(c). Section 44-53-530(a) provides in relevant part that “[f]orfeiture of property must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized.” While § 44-53-520 does not explicitly identify the party who is to bring the forfeiture proceedings, § 44-53-530 is quite clear in its language requiring that the Attorney General or his designee or the circuit solicitor or his designee initiate the forfeiture proceedings.

In the case of *Farmer v. Florence County Sheriff's Office*, 401 S.C. 606, 738 S.E.2d 473 (2013), the South Carolina Supreme Court considered the responsibility of a law enforcement agency with respect to seized property subject to forfeiture. There, the owner of counterfeit goods that were seized from the owner's store filed suit against the Florence County Sheriff's Office, asserting claims of negligence, conversion, civil conspiracy, and damages arising from the seizure of the goods. As seems to be the case here, the Plaintiff in *Farmer* asserted that the Florence County Sheriff's Office breached a statutory duty in failing to initiate forfeiture proceedings regarding the goods within a reasonable time. Interpreting § 44-53-530, the Supreme Court held that the Florence County Sheriff's Office had no statutory authority, much less “mandated responsibility,” to commence forfeiture proceedings regarding the seized goods. See *Farmer*, 401 S.C. 606, 612, 738 S.E.2d 473, 477. As such, the Court found that the obligation to initiate a forfeiture action in a reasonable time rests with “the Attorney General or his designee or the circuit solicitor or his designee,” rather than with the law enforcement agency. *Id.* at 612, 738 S.E.2d at 476.

In light of the Supreme Court's decision in *Farmer*, it is clear that the Defendant Lexington County Sheriff's Department had no ability, much less responsibility, to initiate forfeiture proceedings regarding the \$728.00 that was seized from the Plaintiff at the time of his arrest. If a duty to initiate forfeiture proceedings was breached in this case, it was not a duty that was owed by the Defendant. As such, the motion for summary judgment filed on behalf of the Defendant Lexington County Sheriff's Department should be granted and the Plaintiff's claims dismissed.³

Plaintiff's Motions for Appointment of Counsel and to Compel Discovery

In light of the Court's finding that the Defendant's motion for summary judgment should be granted, the Plaintiff's motion for appointment of counsel and motion to compel have been rendered moot. However, even if the Plaintiff's motions were not moot, the Court would note that this Court has previously denied a request made by the Plaintiff for appointment of counsel as there exists no provision to appoint counsel for the Plaintiff in a civil action seeking money damages. See Order of the Honorable William P. Keesley dated October 20, 2014. Moreover, regarding the Plaintiff's motion to compel discovery, documents presented to the Court at the time of the hearing demonstrate that the Defendant did timely and appropriately respond to the Plaintiff's discovery requests at issue.

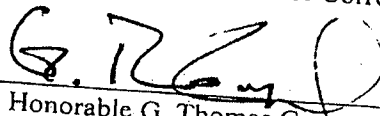
CONCLUSION

The Court has considered the parties' written submissions as well as oral arguments in this matter. Based upon the evidence and all inferences that can be reasonably drawn from the evidence viewed in the light most favorable to the Plaintiff, this Court finds that there is no dispute of facts and the inferences to be drawn from the evidence are susceptible to only one reasonable interpretation. Consequently, this Court finds that based upon the forgoing reasons and the laws of the State of

³ The Defendant's motion for summary judgment also included several other grounds in support of its argument that the Plaintiff's claims should be dismissed, including an argument that the Plaintiff's claims are barred by the applicable statute of limitations and the equitable doctrine of unclean hands. However, because the Court finds that the Plaintiff's claims should be dismissed for the reasons set forth above, the Court does not need to address the additional grounds asserted by the Defendant in support of its summary judgment motion.

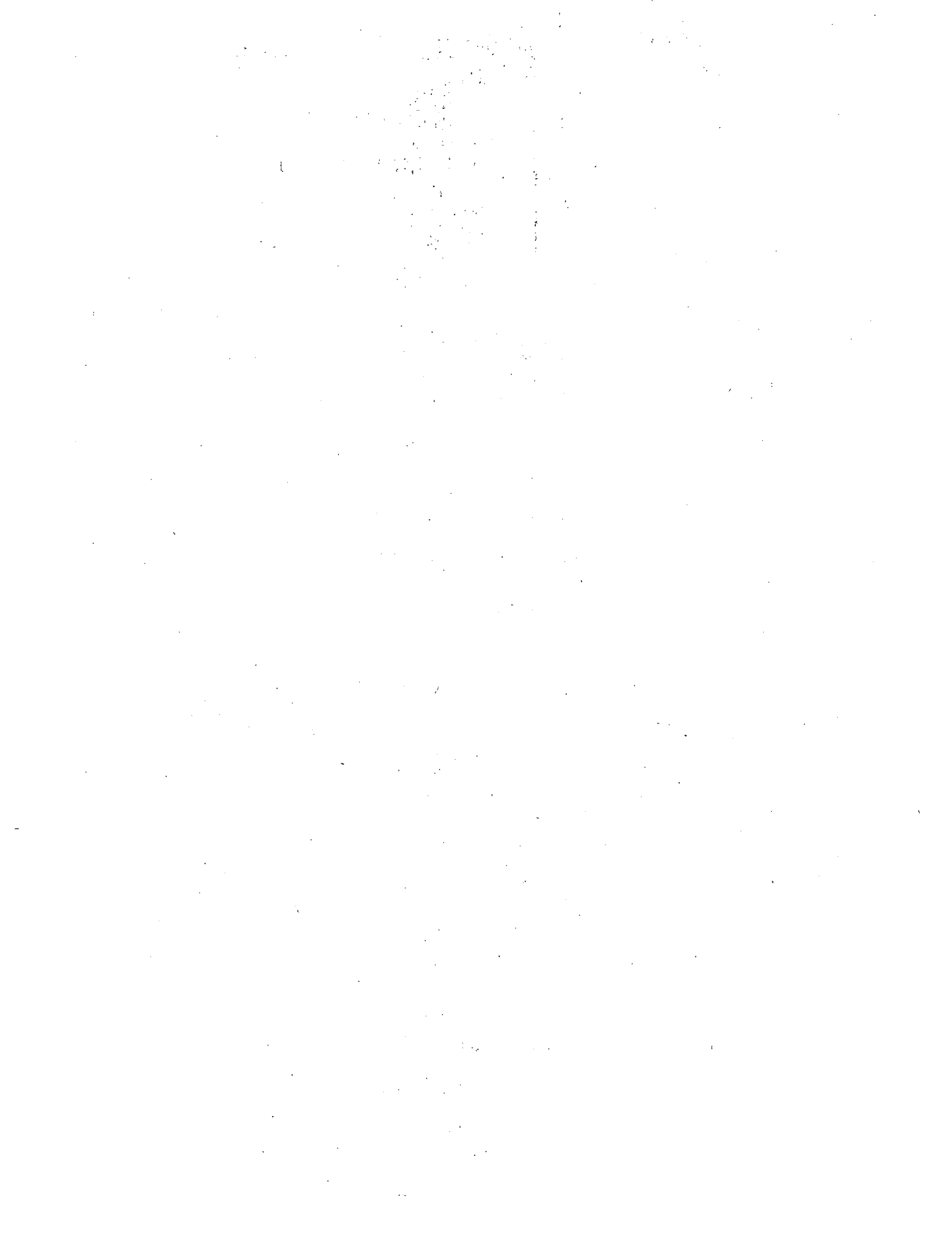
South Carolina, the Defendant is entitled to summary judgment as a matter of law as to the Plaintiff's claims as set forth in his Complaint in this matter. This Court further finds for the reasons set forth above that the Plaintiff's motion for appointment of counsel and motion to compel have been rendered moot.

IT IS, THEREFORE, ORDERED that the Defendants' Motion for Summary Judgment be GRANTED and the above-entitled action is dismissed with prejudice. As the Defendant has petitioned this Court for an Order allowing it to return to the Plaintiff the \$728.00 that was seized, plus accrued interest, and received leave of Court to deposit those funds with the Lexington County Clerk of Court, the Clerk of Court is directed to release the funds to the Plaintiff, care of his Cooper Trust Fund account maintained by the South Carolina Department of Corrections.



The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge, Fifth Judicial Circuit

July 7, 2015
Charleston, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

JO PRADUBSRI,
Plaintiff

VS

THE LEXINGTON COUNTY
SHERIFF'S DEPARTMENT,
DEFENDANT

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

FILED
CASE NO:
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LEXINGTON, SC
COMPLAINT

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2013CP3203377

The Plaintiff Complains of the defendant herein allege:

- (1) ON November 9, 2008 the defendant illegally seized 228.00 dollars from the Plaintiff Jo Pradubstri without any lawful excuse.
- (2) Defendant violated the Plaintiff 4th Amendment Rights of the United States Constitution for the illegal seizure of his property without Probable cause or Judicial Process.
- (3) Defendant violated the Plaintiff rights under article One, Section ten of the South Carolina Constitution for the illegal seizure of his property without Probable cause or Judicial Process.
- (4) Defendant violated the Plaintiff rights under the South Carolina Statutory Warrant requirement SC Code Ann § 17-13-140 for the illegal seizure of his property without Probable Cause or Judicial Process.

- (5) Defendant violated the Plaintiff Due Process rights by failing to adhere to the stipulation articulated in the forfeiture Code of laws ANN § 44-53-520 for the illegal seizure of his Property without Probable cause or Judicial Process.
- (6) Defendant violated the Plaintiff Due Process Rights of a Notice, an Opportunity to be heard.
- (7) At time material to this action the Plaintiff were citizens and resident of the county of Richland, State of South Carolina.
- (8) The Personal Property Subject of this action occurred in Lexington County South Carolina.
- (9) All of the defendant said action were without any lawful excuse or lawful reason thereof.
- (10) Defendant did these acts for the Purpose of Causing injury, discomfort, and anguish to the Plaintiff.
- (11) The defendants action have Caused injury to the Plaintiff, including but Not necessarily limited to:
- A. Loss use of Property to fund a defense
 - B. Loss use of Property to Post bail
 - C. Loss use of the right to enjoy Personal Property
 - D. Loss use of opportunity to Profit
 - E. Anxiety, anguish, and Suffering
- (12) The Plaintiff are entitled to judgement against the defendant for actual and Punitive damages.

ORIGINAL

FOR A THIRD CAUSE OF ACTION

- (23) Each assertion set forth in this Pleadings that is consistent with the following is incorporated herein by reference as if here set forth verbatim.
- (24) Defendant intentionally illegally seized Personal Property belonging to the Plaintiff
- (25) The Plaintiff are entitled to recover actual and Punitive damages from the defendant for the illegal seizure.

FOR A FOURTH CAUSE OF ACTION

- (26) Each assertion set forth in this Pleadings that is consistent with the following is incorporated herein by reference as if here set forth verbatim.
- (27) At all times material here to the Plaintiff were actually or constructively in lawful possession of the Property at issue in this action.
- (28) Defendant voluntarily and without permission or legal authority to seized the Property
- (29) The Plaintiff are entitled to recover actual and Punitive damages from the defendant for the Trespass

FOR A FIFTH CAUSE OF ACTION

- (30) Each assertion set forth in this Pleadings that is consistent with the following is incorporated herein by reference as if here set forth verbatim

ORIGINAL

(39) Defendant conduct was extreme and outrageous and exceeded all bounds of decency and was atrocious and ~~utterly~~ intolerable in a civilized society.

(40) AS a result Plaintiff Jo Prachursi suffered extreme emotional distress.

(41) AS a direct and proximate result Plaintiff Jo Prachursi is entitled to recover actual damages, Punitive damages and the cost of this action.

Wherefore, the Plaintiff Pray:

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(A) For judgement against the defendant awarding the Plaintiff actual damages;

(B) For judgement against the defendant awarding the Plaintiff Punitive damages;

(C) For judgement against the defendant awarding the Plaintiff the cost of this action;

(D) For such other and further relief as the Court deem just and proper.

McCormick, South Carolina
September 13, 2013

Respectfully Submitted
Jo Prachursi

To Prachursi,
386 Redemption way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
Jo Pradubsri,)
)
Plaintiff,)
)
v.)
)
The Lexington County Sheriff's)
Department,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-3371

ANSWER

(Jury Trial Demanded)

The Defendant hereby answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Plaintiff's Complaint fails to state a claim against the Defendant upon which relief could be granted, and therefore the Defendant must be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A SECOND DEFENSE

2. The Defendants deny each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to Paragraph 1 of the Plaintiff's Complaint, the Defendant denies same as stated and demands strict proof thereof.

4. As to Paragraphs 2, 3, 4, 5, and 6 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

5. As to Paragraph 7 of the Plaintiff's Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same, and therefore denies same and demands strict proof thereof.

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6. As to Paragraph 8 of the Plaintiff's Complaint, the Defendant would admit same upon information and belief.
7. As to Paragraphs 9 and 10 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.
8. As to Paragraph 11 of the Plaintiff's Complaint, including subparts (A) through (E), the Defendant denies same and demands strict proof thereof.
9. As to Paragraph 12 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.
10. As to Paragraph 13 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.
11. As to Paragraphs 14, 15, and 16 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.
12. As to Paragraph 17 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.
13. As to Paragraphs 18, 19, 20, 21, and 22 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.
14. As to Paragraph 23 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.
15. As to Paragraphs 24 and 25 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.
16. As to Paragraph 26 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.
17. As to Paragraphs 27, 28, and 29 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

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18. As to Paragraph 30 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.

19. As to Paragraphs 31 and 32 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

20. As to Paragraph 33 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.

21. As to Paragraphs 34 and 35 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

22. As to Paragraph 36 of the Plaintiff's Complaint, the Defendant would re-allege and reiterate each paragraph and affirmative defense as if set forth herein verbatim.

23. As to Paragraphs 37, 38, 39, 40, and 41 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

24. As to the Paragraph of the Plaintiff's Complaint beginning "Wherefore," including subparts (A) through (D), the Defendant denies same and demands strict proof thereof.

25. The Defendant denies that the Plaintiff is entitled to the relief requested, or any other relief, from the Defendant in this matter.

FOR A THIRD DEFENSE

26. The Defendant alleges that it is immune from suit and liability under the doctrine of sovereign immunity.

FOR A FOURTH DEFENSE

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

FOR A FIFTH DEFENSE

28. The Defendant asserts the defense of sovereign immunity as to all claims for money damages.

FOR A SIXTH DEFENSE

29. The Defendant asserts that there is no private right of action for money damages for the alleged violations of the South Carolina Constitution, that there is no state law equivalent to 42 U.S.C. § 1983.

FOR A SEVENTH DEFENSE

30. The Plaintiff's claims are, in whole or in part, barred by the Plaintiff's failure to exhaust his state law and/or administrative remedies.

FOR AN EIGHTH DEFENSE

31. The Plaintiff's claims are, in whole or in part, barred based upon the defense of waiver.

FOR A NINTH DEFENSE

32. The Plaintiff's claims are, in whole or in part, barred based upon the defense of estoppel.

FOR A TENTH DEFENSE

33. The Plaintiff's claims are barred by the applicable statute of limitations.

FOR AN ELEVENTH DEFENSE

34. The Defendant alleges, upon information and belief, that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, are due to and caused by the sole negligence, recklessness, willfulness, wantonness, carelessness, and gross negligence of the Plaintiff, and were not caused by the Defendant, which the Defendant pleads as a complete bar to the Plaintiff's attempt to recover from the Defendant.

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FOR A TWELFTH DEFENSE

35. The Defendant is immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, and specifically, § 15-78-60 (1), (2), (3), (4), and (5).

FOR A THIRTEENTH DEFENSE

36. The Defendant asserts the defense of sovereign immunity, including but not limited to the damages caps set forth in S.C. Code Ann. § 15-78-120 and the bar on punitive damages.

FOR A FOURTEENTH DEFENSE

37. The Defendant asserts that the alleged seizure of the Plaintiff's property was supported by probable cause.

FOR A FIFTEENTH DEFENSE

38. The Defendant asserts that insofar as the Plaintiff has attempted to allege a cause of action for intentional infliction of emotional distress, such claim must be dismissed as same is barred by the South Carolina Tort Claims Act.

FOR A SIXTEENTH DEFENSE

39. The Defendant alleges that at all times herein, the Defendant is not a person amenable to suit under 42 U.S.C. § 1983.

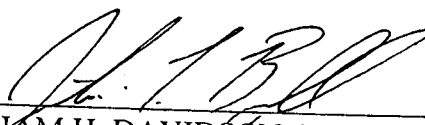
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WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the Plaintiff's Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

By:


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j bagwell@dml-law.com

Counsel for the Defendant

Columbia, South Carolina
November 21, 2013

JTB
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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

To Pradubsri,
Plaintiff

v

The Lexington County
Sheriff's department,
Defendant,

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No. 2013 - CP - 3203371

MOTION TO ALTER OR AMEND

The Plaintiff motion to alter or amend judgment of the circuit court granting the Lexington County Sheriff's dept. motion for summary and denying the Plaintiff Pradubsri motion for summary judgment.

Summary judgment is not appropriate in an action seeking to recover money see Rule 38(a) Right Preserved. The right of trial by jury as declared by the Constitution or as given by the statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or ~~to~~ of specific real or personal property must be tried

by a jury, unless a jury trial be waived. Art I § 14, 7th amendment. The Plaintiff nor the defendant attorney stipulated in writing that a jury trial was waived. See Shaw v. Atlantic Coast Life Ins. Co. 470 S.E. 2d 382. The defendant demanded a jury trial pursuant to Rule 38(a). See answer from defendant. Once a demand for jury trial is made, as here, may not be withdrawn without consent of both parties. Further the defendant was not entitled to summary judgment where defendant made no response to the Plaintiff's summary judgment motion, defendant did not prepare a summary judgment affidavit creating a genuine issue of material fact. Under Rule 56 when a party makes a motion for summary judgment and support it by affidavit, the adverse party may not rest on the allegation of his or her pleadings but must respond by affidavit. The

by a jury, unless a jury trial be waived. Art I § 14, 7th amendment. The Plaintiff nor the defendant attorney stipulated in writing that a jury trial was waived. See Shaw v. Atlantic Coast Life Ins. Co. 470 S.E. 2d 382. The defendant demanded a jury trial pursuant to Rule 38(a). See answer from defendant. Once a demand for jury trial is made, as here, may not be withdrawn without consent of both parties. Further the defendant was not entitled to summary judgment where defendant made no response to the Plaintiff's summary judgment motion, defendant did not prepare a summary judgment affidavit creating a genuine issue of material fact. Under Rule 56 when a party makes a motion for summary judgment and support it by affidavit, the adverse party may not rest on the allegation of his or her pleadings but must respond by affidavit. The

Plaintiff's motion cannot properly be denied by only finding a genuine issue of material fact exist as to one element of the Plaintiff's claim, rather the Court must determine that a genuine issue of material fact exists for each essential element of Plaintiff claim. Plaintiff demonstrated that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law by supporting his summary judgment by coming forward with controverting material See Exhibits A-J in Summary judgment motion.

WHEREFORE I PRAY:

that this Honorable Court grant Plaintiff's 59(e) motion

AUG 12, 2015

Respectfully Submitted

J. Prueh

Sheriff

James R. Metts, Ed.D.



LEXINGTON COUNTY SHERIFF'S DEPARTMENT

January 3, 2013

Jo Pradubsri, Inmate # 181097
McCormick Correctional Institute F4-A264
386 Redemption Way
McCormick, SC 29899

Re: Seized Money Inquiry

Dear Mr. Pradubsri:

I am in receipt of your inquiry regarding the money that was seized for warrants J-847717 and J-847718 in Lexington County. I am in the process of investigating this matter and will be in touch with you in the near future.

Best regards,

John W. Tate / MT

John W. Tate
General Counsel



6

A Nationally Accredited Law Enforcement Agency
P.O. Box 639 Lexington, South Carolina 29071 (803) 785-8230 Fax # (803) 785-1162

Sheriff

James R. Metts, Ed. D.



LEXINGTON COUNTY SHERIFF'S DEPARTMENT

February 7, 2013

Jo Pradubsri, Inmate # 181097
McCormick Correctional Institute F4-A264
386 Redemption Way
McCormick, South Carolina 29899

Re: Seized Money Inquiry

Dear Mr. Pradubsri:

We are in the process of writing a reimbursement check for seven hundred twenty-eight and No/100 Dollars (\$728.00) for the reimbursement of your seized money. I am enclosing a Release for you to sign and have witnessed and mail back to us. The legal department will need the Release before the check is mailed to you.

Best regards,

A handwritten signature in cursive script that reads "Melissa Taylor".

Melissa Taylor
Paralegal to John W. Tate

Enclosures



6

STATE OF SOUTH CAROLINA

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RELEASE AND SETTLEMENT

COUNTY OF LEXINGTON

For the sole consideration of **Seven Hundred Twenty-Eight and No/100 Dollars (\$728.00)**, the undersigned hereby releases and forever discharges James R. Metts, his department, deputies, employees and agents, known or unknown, from all claims and demands, rights and causes of action of any kind, the undersigned now has or hereafter may have on account of or in any way growing out of property loss, known or unknown to us at the present time, resulting from the seizure of my money, and does hereby covenant to indemnify and save harmless the said party or parties from and against all claims and demands whatsoever on account of, or in any way growing out of, said occurrence or its results to property. This release expresses a full and complete **SETTLEMENT** of liability claimed and the acceptance of this release shall not operate as an admission of liability on the part of anyone nor as an estoppel, waiver or bar with respect to any claim the party or parties released may have against the undersigned. Witness my hand and seal.

Date: _____

Jo Pradubsri

Witness Signature: _____

Sheriff

James R. Metts, Ed. D.



LEXINGTON COUNTY SHERIFF'S DEPARTMENT

March 7, 2013

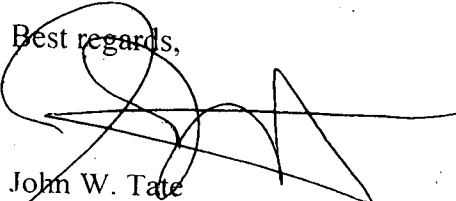
Jo Pradubsri, Inmate # 181097
McCormick Correctional Institute F4-A264
386 Redemption Way
McCormick, SC 29899

Re: Claim for seized money

Dear Mr. Pradubsri:

I am in receipt of your claim for the above-referenced matter. I am electing to forward it to the Insurance Reserve Fund (IRF). You should be receiving a letter from an insurance adjuster in the near future.

Best regards,


John W. Tate
General Counsel



6

A Nationally Accredited Law Enforcement Agency
P.O. Box 639 Lexington, South Carolina 29071 (803) 785-8230, Fax # (803) 785-1162

Sheriff

James R. Metts, Ed. D.



LEXINGTON COUNTY SHERIFF'S DEPARTMENT

April 22, 2013

Jo Pradubsri, Inmate # 181097
McCormick Correctional Institute F4-A264
386 Redemption Way
McCormick, SC 29899

Re: Claim for seized money

Dear Mr. Pradubsri:

I am in receipt of your inquiry for the Insurance Reserve Funds contact information. The adjuster handling this matter is Nancy Stevenson, Senior Claims Representative with the Insurance Reserve Fund. Their mailing address is P.O. 11066 Columbia, SC 29211.

Best regards,

John W. Tate / MT
John W. Tate
General Counsel



6

1 State of South Carolina)
2 County of Lexington)

In the Court
Of Common Pleas

3
4 Docket No. 2013-CP-32-03371

5
6 Jojuan Pradubsri,)
7 Plaintiff,)
8 vs.)
9)
10 Lexington County Sheriff's)
11 Department,)
12 Defendant.)

Transcript of Record

13 June 16, 2015
14 Lexington, South Carolina

15
16 B E F O R E:

17 The Honorable R. Thomas Cooper, Judge.

18
19 A P P E A R A N C E S:

20 Jojuan Pradubsri
21 Pro Se

22 Justin T. Bagwell, Esquire
23 Attorney for the Defendant

24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

1 THE COURT: Mr. Pradubsri?
2 MR. PRADUBSRI: Yes, sir.
3 THE COURT: Tell me how to pronounce your name.
4 Pradubsri?
5 MR. PRADUBSRI: Yes, sir.
6 THE COURT: All right. These are your motions?
7 MR. PRADUBSRI: Well, a few of them is mine and I
8 believe one is --
9 THE COURT: One of them is Mr. Bagwell's.
10 MR. PRADUBSRI: Yes, sir.
11 THE COURT: All right. So you may proceed.
12 MR. PRADUBSRI: Okay.
13 THE COURT: Tell me what this case is about.
14 MR. PRADUBSRI: Well, Your Honor, this case is
15 about Lexington County Sheriff's Department illegally
16 seized money from me and they never had any judicial
17 process, no forfeiture hearing of any kind.
18 THE COURT: Where did they seize it? I mean, were
19 you under arrest or --
20 MR. PRADUBSRI: Yes, yes. Yes, sir.
21 THE COURT: Were you incarcerated?
22 MR. PRADUBSRI: Yes, sir.
23 THE COURT: Okay. And what did they seize?
24 MR. PRADUBSRI: \$728.
25 THE COURT: And where did they seize it?

1 MR. PRADUBSRI: In Lexington County in November
2 of -- the 8th of November, 2008.

3 THE COURT: 2008?

4 MR. PRADUBSRI: Yes, sir.

5 THE COURT: From -- was it in your possession in
6 the detention center?

7 MR. PRADUBSRI: No, it was off my person.

8 THE COURT: It was off your person?

9 MR. PRADUBSRI: Yes, sir.

10 THE COURT: When you were arrested?

11 MR. PRADUBSRI: Yes.

12 THE COURT: Have I got that straight?

13 MR. PRADUBSRI: Yes, sir.

14 THE COURT: So when you were arrested and they took
15 your personal possessions, they took \$728 in 2008 and never
16 gave it back to you.

17 MR. PRADUBSRI: Never gave it back.

18 THE COURT: And they had no forfeiture proceedings
19 or anything like that?

20 MR. PRADUBSRI: No, sir. No warrant, no hearing of
21 any kind.

22 THE COURT: All right. Where are you now?

23 MR. PRADUBSRI: Well, I'm at the Department of
24 Corrections now.

25 THE COURT: Where?

1 MR. PRADUBSRI: Lee County.

2 THE COURT: You're in Lee County?

3 MR. PRADUBSRI: Yes, sir.

4 THE COURT: You're asking for the money back?

5 MR. PRADUBSRI: Well, actually, Your Honor, I filed
6 this lawsuit asking for actual and punitive damages.

7 THE COURT: Okay.

8 MR. PRADUBSRI: Also along with the return of my
9 money.

10 THE COURT: Okay. All right. What's your motion
11 today?

12 MR. PRADUBSRI: Well, Your Honor, one of any first
13 motions that I would like to address is my motion for
14 appointment of counsel.

15 THE COURT: All right. I can't do that. I
16 can't -- there's no way to pay counsel in a civil suit.
17 I'm not going to appoint counsel in a civil suit.

18 MR. PRADUBSRI: Well, I mean, Your Honor, under
19 Rule 17, it says that a person in prison would be entitled
20 to a guardian ad litem.

21 THE COURT: A guardian ad litem.

22 MR. PRADUBSRI: Yes, sir.

23 THE COURT: That's not a lawyer.

24 MR. PRADUBSRI: Well, I mean, I mean a guardian ad
25 litem would be, you know, sufficient, if I could obtain

1 that.

2 THE COURT: Well, I'll hear from Mr. Bagwell.
3 There's got to be some reason to appoint a guardian ad
4 litem. He can't file papers for you.

5 MR. PRADUBSRI: Well, I mean, I can, I can pretty
6 much file my own, but as far as going through an actual
7 trial that I'm anticipating because the defendant is not
8 willing to settle.

9 THE COURT: I understand that.

10 MR. PRADUBSRI: So, you know, it's -- I have no
11 courtroom knowledge, up, so I need some type of guidance.

12 THE COURT: Mr. Bagwell, you want to offer
13 something?

14 MR. BAGWELL: Well, Your Honor, the only thing I
15 would offer is, there have been two motions to appoint
16 counsel filed in this case. Judge Keesley issued an order
17 following a status conference that there was no right for
18 Mr. Pradubsri to have counsel appointed for him in October
19 of last year. It's been considered by this Court. If you
20 remember to the extent that we need to address the merits,
21 Mr. Pradubsri has been transported numerous times to the
22 judicial center anticipating these hearings, he has filed
23 numerous motions. He has -- by all accounts been able to
24 litigate this case to a fullest extent. I'm not sure what
25 rationale --

1 THE COURT: Okay.

2 MR. BAGWELL: -- or reasoning there would be to
3 appoint an attorney for him even if that was possible.

4 THE COURT: Well, I didn't know that, I didn't know
5 that Judge Keesley already has turned you down. So I'm
6 going to turn you down again. Okay?

7 So move on.

8 MR. PRADUBSRI: Also, Your Honor, I have a motion
9 for a summary judgment. Also you -- I would like to
10 address -- Your Honor, I filed a summary judgment --

11 THE COURT: I'm looking at it.

12 MR. PRADUBSRI: Okay. And pursuant to 56 E.

13 THE COURT: What's the procedural history of this
14 case?

15 MR. BAGWELL: Your Honor, this case was filed
16 September 13th, 2013. I hate to jump ahead, there's been a
17 previous motion for summary judgment filed by the plaintiff
18 in this case already. It was heard by Judge Russo a little
19 over a year ago. I searched through my file. I can't find
20 an order on it, but plaintiff did file a 59(E) motion from
21 that order or from the order of pronouncement.

22 THE COURT: That in the clerk's file?

23 MR. BAGWELL: It is, I have a copy also if you --

24 THE COURT: No, I don't mean 59(E), I mean Judge
25 Russo's order.

1 MR. BAGWELL: I can't find any evidence that that
2 order was ever issued. But I do know it was argued on
3 April 2nd of last year and the plaintiff filed a 59(E)
4 motion from the pronouncement on that judgment.

5 THE COURT: Then he filed a motion for summary
6 judgment in May.

7 MR. BAGWELL: I believe this -- that may be the
8 defendant's motion for summary judgment in May. The second
9 one is --

10 THE COURT: You handwrite your motions?

11 MR. BAGWELL: No, sir.

12 THE COURT: I didn't think so.

13 MR. BAGWELL: But mine was filed in May also.

14 THE COURT: All right. The plaintiffs filed one
15 motion for summary judgment -- well, his second motion was
16 filed or is dated October 28th, October '14 it must be the
17 second one because this is dated May 21st. He may not have
18 served you.

19 MR. PRADUBSRI: Well, there may be a third then
20 because --

21 THE COURT: I know.

22 MR. BAGWELL: -- I have one that's dated on
23 February 18th, 2015.

24 THE COURT: Has summary judgment been rendered one
25 way or the other?

1 MR. BAGWELL: It has not, Your Honor.

2 THE COURT: It has not been heard? -- I mean
3 there's no summary judgment order in the file either for
4 the plaintiff or the defendant?

5 MR. BAGWELL: There is not, Your Honor.

6 THE COURT: Thank you.

7 Go ahead Mr. Pradubsri.

8 MR. PRADUBSRI: Yes, Your Honor, I filed the motion
9 seeking judgments on each one of my claims.

10 THE COURT: All right. Your claim is -- other than
11 the taking of the \$728, what's your other claim.

12 MR. PRADUBSRI: Yeah, I have a claim for -- fork
13 negligence, trespass --

14 THE COURT: What's negligence? Tell me about
15 negligence.

16 MR. PRADUBSRI: Well, they breached the statutory
17 duty of going through the forfeiture process.

18 THE COURT: Okay.

19 MR. PRADUBSRI: And the trespass is the wrongful
20 seizing of my property. And also I have a conversion for
21 the intentional taking of my property. I also have one for
22 continuing nuisance, conscious --

23 THE COURT: I'm listening -- continue.

24 MR. PRADUBSRI: Intentionally withholding the funds
25 from me. And also I filed one for misfeasance.

1 THE COURT: For what?

2 MR. PRADUBSRI: For misfeasance. They omitted
3 doing the duty. They was obligated to give me some type of
4 judicial process that they failed to do.

5 THE COURT: Okay.

6 MR. PRADUBSRI: And I also have a claim for
7 deprivation, depriving me of my property.

8 THE COURT: All right. Is that it?

9 MR. PRADUBSRI: Yes, sir.

10 THE COURT: Mr. Bagwell?

11 MR. BAGWELL: Yes, sir, Your Honor, let me back up
12 just a little bit to explain a little more about the
13 procedural history and the background on this case. Mr.
14 Pradubsri was arrested November 9th, 2008. I believe it
15 was late evening, November 8th, early morning of November
16 9th. And the defendant, the sheriff's department does
17 admit that the \$728 was seized from him at that time.
18 However, we do dispute that money was illegally seized from
19 him. And Your Honor, if we look at the forfeiture -- well,
20 let me back up a little bit before that.

21 What Mr. Pradubsri was arrested for was possession
22 of a weapon, unlawful possession of a weapon, trafficking
23 in crack cocaine and possession with intent to distribute
24 in proximity to a school.

25 Your Honor, if we go to the forfeiture statute --

1 and I have a copy for Your Honor if I can find it in my
2 stack of paperwork. The code section is Section 44-53-520.

3 If I may approach?

4 THE COURT: Yes.

5 MR. BAGWELL: Your Honor, the general assembly has
6 allowed a procedure by which money seized in proximity to
7 forfeitable narcotics may be seized by a law enforcement
8 agency and that is found in 44-53-520, Section A and it
9 will be Number 8 and that reads the following are subject
10 to forfeiture: All money seized in close proximity to
11 forfeitable controlled substances, drug manufacturing or
12 distributing paraphernalia, or in close proximity to
13 forfeitable records of the importation manufacturing or
14 distribution of controlled substances and all money seized
15 at the time of arrest or search involving violation of this
16 article.

17 Your Honor, I pulled from the clerk's office and I
18 have a certified copy for Your Honor and copies that had
19 not been certified for Mr. Pradubsri evidencing the arrest
20 warrants at the time of his arrest and I will submit to you
21 that for whatever reason, there was only \$725 mentioned in
22 the arrest warrants, but we do concede that there was \$728
23 found on him. And Mr. Pradubsri was not only indicted by a
24 grand jury but was found guilty early, earlier this year in
25 what was actually a retrial of those offenses.

1 If I may approach, Your Honor?

2 THE COURT: Yes, sir.

3 MR. BAGWELL: These are copies that I just provided
4 Mr. Pradubsri. These are the certified copies of them but
5 they are -- should be the same thing. These arrest
6 warrants and the true-billed indictments show that Mr.
7 Pradubsri was arrested, true billed and the sentencing
8 sheets that I have given to you show that he was found
9 guilty earlier this year of these three offenses. Thereby
10 making the money that was seized in his possession subject
11 to forfeiture. Your Honor, it's my understanding that Mr.
12 Pradubsri is trying to say that the sheriff's department
13 had some duty in initiating the forfeiture proceedings.

14 And I apologize, my rebuttal to his summary
15 judgment is really overlapping my argument in favor of
16 summary judgment for the sheriff's department, so I'm going
17 to try to cover everything with one set of argument.

18 THE COURT: That's --

19 MR. BAGWELL: But if we look, the South Carolina
20 Supreme Court has considered the forfeiture proceeding and
21 the responsibilities of a law enforcement agency in the
22 case of Farmer versus Florence County Sheriff's Office that
23 I will hand to Mr. Pradubsri a copy of that court decision
24 as well as the statutory provision that deals with
25 forfeiture proceeding that's addressed by the Supreme Court

1 and I have a copy also for Your Honor.

2 Your Honor, the statutory provision that I have
3 handed is the following section to the forfeiture
4 proceeding for narcotics that I handed up a moment ago and
5 it sets forth the procedure in Section A of that statute
6 provide that the forfeiture defined in 44-53-520 must be
7 accompanied by petition of the attorney general or his
8 designee or the circuit solicitor or his designee to court
9 of common pleas for the jurisdiction where the item was
10 seized.

11 This provision has been considered by the Supreme
12 Court in Farmer versus Florence County Sheriff's Office.
13 It is a 2013 decision and, Your Honor, the case actually
14 dealt with the forfeiture of counterfeit goods but this
15 forfeiture proceeding that we find in 44-53-530 is actually
16 the same for both narcotics and for counterfeit guns. And
17 if we flip over and look at what the Court decided in
18 Farmer, and it is on page 5, the end of page five of what I
19 handed up, it was essentially the same argument being
20 proffered in the Farmer case in that Mr. Pradubsri is
21 offering here that the sheriff's department was under some
22 sort of duty to initiate these forfeiture proceedings and
23 the Supreme Court disagreed with the plaintiffs in Farmer
24 finding that it's not up to the law enforcement agency, but
25 the words of the statute give that responsibility to the

1 attorney general or to circuit solicitor. And if we look
2 over at page 6, the following page, it's actually the first
3 full paragraph of that page, the Court opined that is, We
4 agree with the petitioner, in this case the law enforcement
5 agency, but it has no statutory authority, much less
6 mandated responsibility to commence forfeiture proceedings.
7 That rests within the attorney general or his designee or
8 the solicitor and his designee. If we look back at
9 44-53-520, it actually does set forth what it is that law
10 enforcement is supposed to do when it seizes money pursuant
11 to that section and it is subsection I. It's the very last
12 page of that statutory text that I handed up.

13 It provides that law enforcement seizing property
14 under the statute shall take reasonable steps to maintain
15 the property. It discusses equipment and conveyances, but
16 it particularly addresses monies and says that any money
17 seized must be deposited in an interest bearing account
18 pending final disposition by the Court unless the seizing
19 agency determines the monies to be of an evidential nature
20 and provides for security in another manner.

21 Your Honor, the monies that were seized from Mr.
22 Pradubsri are still being held by the Lexington County
23 Sheriff's Department in their narcotics fund. They have
24 tried to return the monies to Mr. Pradubsri. In fact,
25 Judge Keesley has signed an order allowing the sheriff's

1 department to pay those monies in Court since Mr. Pradubsri
2 won't accept them from us. But based on the statutory
3 text, I'm not sure what else the sheriff's department can
4 do. They have no authority to initiate a forfeiture
5 action. All they can do is maintain the money in their
6 account as provided by the statute which is precisely what
7 they have done.

8 There are other grounds raised in our summary
9 judgment motion. I'll be glad to the address or if Mr.
10 Pradubsri would like to respond or if Your Honor has any
11 questions I'd be glad to address those.

12 THE COURT: Mr. Pradubsri.

13 MR. PRADUBSRI: Yes, I'd like to respond to that.
14 One of the main issues that I have Your Honor, is that the
15 police officer never established probable cause to seize
16 this money. I mean, as far as initiating, they still have
17 some type of process, some type of guidelines they have to
18 go by and that's seeking a warrant or establish probable
19 cause, some type of due process. I mean you just seize my
20 money and put it in your account without me being able to
21 be heard for the returns of my funds. I was getting no
22 process. But as far as case laws Your Honor, Ronald
23 (Phonetic) versus Gibson says the purpose to have
24 forfeiture hearing is to confirm that the State had
25 probable cause to seize the property forfeited, you know,

1 and Matlock versus 119, 85 Jeep Cherokee (Phonetic) says
2 that statutory standard for seizing property under Section
3 44-53-520 is probable cause and nobody seek a probable
4 cause of termination in this matter.

5 THE COURT: All right. I'll take a look at it.
6 Mr. Bagwell if you'll want to submit an order, I'll
7 consider it.

8 MR. BAGWELL: Yes, sir, Your Honor. And just so we
9 don't find yourselves back before the Court or Your Honor,
10 Mr. Pradubsri has also filed a motion to compel. It's on
11 the roster if Your Honor would like to hear it. I mean,
12 I'm prepared to address it.

13 THE COURT: Well, all right. I overlooked that.
14 What is your motion to compel?

15 MR. PRADUBSRI: Well, Your Honor, this motion to
16 compel, I'm not sure about which motion that is. I don't
17 know if that's the one I filed earlier that's supposed to
18 be reheard? I mean --

19 THE COURT: Well, let me see if I can find it in
20 here. Motion to compel discovery that you filed on
21 December 11th, 2014. I'm looking for --

22 MR. PRADUBSRI: December --

23 THE COURT: Rules, policies of the Lexington County
24 Sheriff's Department, policies about additional penalties
25 for failure of the sheriff to pay money after demand.

1 That's your motion to compel?

2 MR. PRADUBSRI: Yes, sir, yes, sir.

3 THE COURT: I got it.

4 MR. PRADUBSRI: Okay. Well, one of my reasons for
5 filing the motion is because the defendant is failing to
6 reveal any information. I mean, I'm asking them to show me
7 some type of procedure, some type of rule, some type of
8 guideline they filing to disclose, provide me with any
9 information.

10 THE COURT: How about it, Mr. Bagwell?

11 MR. BAGWELL: Yes, Your Honor. These requests were
12 served October 22nd, 2016 or 2014. The sheriff's
13 department responded on December -- November 21st, 2014, I
14 have a copy of the sheriff's office's responses, if I may
15 approach. Your Honor, Mr. Pradubsri requested, or
16 submitted three requests for production to the defendant,
17 first requests rules, regulations and policies of the
18 sheriff's department pertaining to the interest rate how
19 the interest rate should be applied to seized money. I
20 responded by saying that it seeks a legal conclusion first
21 and foremost --

22 THE COURT: All right. When did you file this?
23 November 21st is the date on it.

24 MR. BAGWELL: Yes, sir.

25 THE COURT: I can look in the file --

1 MR. BAGWELL: Well, it was not filed, it's just a
2 discovery response, it was served on November 21st.

3 THE COURT: But it was served on --

4 MR. BAGWELL: Yes, sir, it should be the last page
5 of that package.

6 THE COURT: All right. Mr. Pradubsri, he says he's
7 already sent it to you.

8 MR. PRADUBSRI: If you read his response Your
9 Honor, he's objecting to this request.

10 THE COURT: I know, but he still answers.

11 MR. PRADUBSRI: I mean but the answer is evasive
12 Your Honor. He answered it but he's not providing me with
13 any rules, any regulations.

14 THE COURT: Well, he provided you with the statute.
15 Says number two it seeks a legal conclusion and that
16 defendant is unaware of any rules regulations or policies
17 of the Lexington County Sheriff's Department responsive to
18 this request and then he says in response number 3 that
19 they're insured -- they are insured under Carolina
20 Insurance Reserve Fund. So that seems to be -- to answer
21 your questions.

22 MR. PRADUBSRI: He answered the questions for
23 number 3, Your Honor.

24 THE COURT: Okay.

25 MR. PRADUBSRI: As far as --

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THE COURT: All right. Thank you very much,
Counsel.

MR. BAGWELL: Thank you. Ten days for proposed
orders?

THE COURT: Ten days for proposed orders.

* * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina)

2 County of Aiken.)

Certificate of Reporter

RECEIVED

JUL 29 2016

SC Court of Appeals

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Eleventh Judicial Circuit
8 of the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 11th day of June, 2015.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 31st day of March, 2016.
19
20
21

22 *Brenda J. Sigwald*

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

G. THOMAS COOPER JR. Circuit Judge

Case no. 2013-CP-32-3371

To Pradubssi Appellant,

✓

The Lexington County Sheriff's Department - Respondant

CERTIFICATE OF COUNSEL

The undersigned certied that this ^{Record on Appeal} ~~Final Brief~~ Com-
plies with Rule 211(b) SCACR.

August 16, 2016

To Pradubssi

To Pradubssi
990 Wisacky Hwy
Bishopville, S.C. 29010

THE STATE OF SOUTH CAROLINA

IN The Court OF Appeals

APPEAL FROM LEXINGTON COUNTY

Court OF COMMON Pleas

G. Thomas COOPER Jr. Circuit Judge

Case No. 2013-CP-32-3371

To Pradubseri Appellant,

v

The Lexington county sheriff's department . . Respondent

PROOF OF SERVICE

I certify that I have served the Record on Appeal
by depositing a copy of it in the United States mail
Postage Prepaid on August 16, 2016 address as follows:

Justin T. Baswell P.O. 8568 Columbia, S.C. 29202.

August 16, 2016

To Pradubseri

To Pradubseri:
990 Wisacky Hwy
Bishopville, S.C. 29010