

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2015-001754

RECEIVED

MAY 18 2016

SC Court of Appeals

James Chaffin and Marietta Chaffin,

Appellants,

v.

Richland County Sheriff's Department, Deputy Brian Metz,
Investigator Roy Livingston, Tallie and Devra Lackey, Individually
and as the parents to minor Miranga G.,

Respondents.

RECORD ON APPEAL

Ms. Aimee Zmroczek, Esq.

A. J. Z. Law Firm, LLC

PO Box 11961

Columbia, SC 29211

John S. Simmons, Esq.

Mr. Derek Alan Shoemake, Esq.

Mr. John Lafitte Warren, III, Esq.

1711 Pickens Street

Columbia, SC 29201

Mr. Robert David Garfield, Esq.

Mr. Andrew F. Lindemann, Esq.

PO Box 8568

Columbia, SC 29202-8568

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

James Chaffin and Marietta Chaffin,
Plaintiffs,

Civil Action No. 2014-CP-400-2209

v.

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

ORDER GRANTING
MOTION TO DISMISS
ON BEHALF OF DEFENDANTS
TALLIE AND DEVRA LACKEY,
INDIVIDUALLY AND AS THE
PARENTS TO MINOR MIRANDA
GRAY

RICHLAND COUNTY
FILED
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CLERK W. MCBRIDE
C.P. & G.S.

This matter comes before the Court on the Motion to Dismiss for Failure to State a Claim under Rule 12(b)(6) filed by Defendants Tallie Lackey ("Tal") and Devra Lackey ("Devra"), individually and as the Parents to Minor Miranda Gray (collectively the "Lackey Defendants") and the Response in Opposition filed by Plaintiffs James Chaffin ("Chaffin") and Marietta Chaffin ("Mrs. Chaffin") (collectively "Plaintiffs"). The Court held a hearing on the Lackey Defendants' Motion to Dismiss on July 21, 2014, in Columbia, South Carolina, where it heard from all parties regarding the Motion at issue.¹ John Simmons and Derek Shoemake, of the Simmons Law Firm, appeared for the Lackey Defendants, Robert D. Garfield, of Davidson & Lindemann, P.A., appeared for the remaining Defendants, and Aimee Zmroczek, of A.J.Z. Law Firm, appeared for Plaintiffs.

¹ By way of separate order, the Court has granted a motion to dismiss filed by Defendants Richland County Sheriff's Department, Deputy Brian Metz, and Investigator Roy Livingston.

For the reasons discussed below, the Court grants the Lackey Defendants' Motion and all claims against the Lackey Defendants are dismissed.²

FACTUAL ALLEGATIONS

On January 8, 2007, the Lackey Defendants' daughter – who at the time was a minor – revealed to a therapist that Chaffin had sexually abused her. Pls.' Compl. at ¶ 7. After the daughter's therapist notified police, members of the Richland County Sheriff's Department ("RCSD") interviewed the daughter and her mother, Devra. *Id.* at ¶¶ 8–9. In the course of the interviews, the daughter revealed the details of her sexual assault allegations. *Id.* at ¶¶ 11–15, 23. Investigators also interviewed the daughter's therapist. *Id.* at ¶ 10.

On February 15, 2007, RCSD investigators obtained a warrant charging Chaffin with Criminal Sexual Conduct with a Minor, and on March 9, 2007, investigators did in fact arrest him. *Id.* at ¶¶ 16–17. Chaffin was ultimately released from custody on March 13, 2007. *Id.* at ¶ 20. According to Plaintiffs' Complaint, the Richland County Solicitor's Office ultimately dismissed the charges against Chaffin on September 5, 2012. *Id.* at ¶ 24.

STANDARD OF REVIEW

A complaint is subject to dismissal under South Carolina Rule of Civil Procedure 12(b)(6) when the complaint "fail[s] to state facts sufficient to constitute a cause of

² Plaintiffs alleged nine causes of action against all Defendants, though Plaintiffs skipped from "Third" to "Fifth" in identifying their causes of action. Only the Third, Fifth, Sixth, Seventh, Ninth and Tenth Causes of Action were brought against the Lackey Defendants. Plaintiffs' Complaint does not name the Lackeys' daughter, who is now of majority age, as a Defendant. However, the arguments herein would apply equally to her.

action.” Rule 12(b)(6), SCRCP. According to the South Carolina Supreme Court, dismissal under Rule 12(b)(6) is thus appropriate if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory or show that the claim is outside the applicable statute of limitations. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987). Generally, in considering a Rule 12(b)(6) motion, the trial court must base its ruling upon allegations set forth on the face of the complaint. *Flateau v. Harrelson*, 355 S.C. 197, 201–02, 584 S.E.2d 413, 415 (Ct. App. 2003).

DISCUSSION

The Court dismisses each of Plaintiffs’ claims against the Lackey Defendants, and thus the Lackey Defendants are dismissed from this action.³

³ The Court notes that in their Response in Opposition and during oral argument Plaintiffs did little to address the merits of the arguments made by the Lackey Defendants. It appears Plaintiffs’ primary argument in opposition was to allege that Tal Lackey, the only Lackey Defendant to have been served, untimely filed the Motion to Dismiss. However, by Plaintiffs’ own concession, Tal received the Complaint by mail on April 15, 2014, and filed and served his response on May 16, 2014, thirty-one days later. Although Rule 12 sets the typical time to respond to a civil complaint at thirty days, Rule 6(e) specially affords that “[w]hen a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.” Rule 12(b)(6), SCRCP. Thus, the Motion to Dismiss was filed well within the thirty-five day window Tal had to respond. *See, e.g., Moran v. Guardian Auto. Products, Inc.*, 3:05 CV 7184, 2005 WL 1308879 (N.D. Ohio June 1, 2005) (noting that under the comparable federal rule defendant was afforded the additional days provided by Rule 6 when complaint was served by certified mail); *Tanner v. Pizatella*, 89 F.3d 846 (9th Cir. 1996) (same).

I. False Imprisonment

Plaintiffs' Third Cause of Action for false imprisonment is time-barred and, alternatively, fails to state facts sufficient to constitute a cause of action.

To prevail on a claim for false imprisonment, a plaintiff must establish the following: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 618, 521 S.E.2d 163, 167 (Ct. App. 1999).

The statute of limitations for false imprisonment in South Carolina is two years. S.C. Code Ann. § 15-3-550 (Supp. 2002). According to at least one South Carolina Supreme Court case, the limitations period begins to run at the time of the false imprisonment. *Miller v. Dickert*, 259 S.C. 1, 3, 190 S.E.2d 459, 460 (1972). However, in a more recent albeit unpublished case from the South Carolina Court of Appeals, the court stated that "[w]e embrace the rule adopted by other jurisdictions that the statute of limitations for false imprisonment begins to run when the plaintiff is released following an arrest." *Canzater v. City of Columbia*, Op. No. 2004-UP-054 (S.C. Ct. App. Filed Jan. 22, 2004). Certainly, the rule in *Canzater* embodies the majority approach. See 8 S.C. Jur. False Imprisonment § 17 (noting that it is generally held that accrual commences upon release from confinement); *Campbell v. Hyatt Regency*, 388 S.E.2d 341, 342 (Ga. Ct. App. 1989) ("An action for false imprisonment 'must be brought within two years of its accrual . . . which is from the release from imprisonment.' "); M.C. Dransfield, *When Statute of Limitations Begins to Run Against Action for False Imprisonment or False Arrest*, 49 A.L.R.2d 922 (1956) (stating the general rule is that the statute of limitations for false imprisonment "begins to run from the termination of the imprisonment and not

from the time when the proceedings under which the plaintiff's arrest occurred ended . . .").

Here, Plaintiffs ran afoul of the statute of limitations under either approach. As Plaintiffs themselves state, Chaffin was arrested on March 9, 2007, and released from custody on March 13, 2007. Pls.' Compl. at ¶¶ 17, 20. Applying either the statute of limitations invoked in *Miller* or the majority rule explained in *Canzater*, when Plaintiffs filed their Complaint on April 4, 2014, it is was more than seven years after Plaintiffs cause of action began to accrue and more than five years after the statute of limitations had run.

Even if Plaintiffs' false imprisonment claim was not time-barred, it would fail on its face. By the Complaint's own factual allegations, the Lackey Defendants did not imprison Chaffin. The daughter went to a therapist, and it was the therapist who reported the crime to police. The Complaint merely alleges Devra (and her daughter) provided statements and potential evidence to law enforcement officers after being contacted by those law enforcement officers. Pls.' Compl. at ¶¶ 8, 14–15. While a party need not physically restrain a defendant to be liable for false imprisonment, South Carolina law makes clear that a defendant must create the false imprisonment. *See Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). There is simply no support under South Carolina law for the proposition that responding to a police officer constitutes false imprisonment.

II. Malicious Prosecution

Plaintiffs' Fifth Cause of Action fails to allege sufficient facts to constitute a cognizable malicious prosecution claim against the Lackey Defendants.

“[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965); *see also Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 477, 289 S.E.2d 414, 415 (1982).

When viewing the facts alleged in the Complaint, Plaintiffs fail to make any showing of the second element for malicious prosecution. It appears undisputed that the Lackey Defendants themselves did not institute criminal proceedings, as they are private citizens. Further, when looking at the scant factual allegations against the Lackey Defendants regarding this claim, there is no allegation that criminal proceedings were instituted at their insistence. By Plaintiffs’ own admissions, after the daughter discussed Chaffin’s abuse with her therapist, the therapist reported the crime to police and Devra simply responded to interview questions from investigators and provided possible evidence she had in her possession. Pls.’ Compl. at ¶¶ 7–8, 11–14. At no point does the Complaint allege, nor can it be inferred, that the Lackey Defendants insisted on criminal charges. As the South Carolina Supreme Court has explained, in order to maintain an action for malicious prosecution, “it must be shown that [a defendant] was affirmatively active in instigating or participating in the prosecution.” *Gibson v. Brown*, 245 S.C. 547, 550, 141 S.E.2d 653, 654 (1965).

III. Defamation

Plaintiffs' Sixth and Seventh Causes of Action allege defamation and defamation *per se* against the Lackey Defendants. Both of these defamation claims are outside of the statute of limitations and, alternatively, fail to state facts sufficient to constitute a cause of action.

In bringing a claim of defamation or defamation *per se*, a Plaintiff must prove the following core elements: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998). Both defamation and defamation *per se* have two-year statutes of limitation that begin to run when the defamatory statement is made. S.C. Code Ann. § 15-3-550 (Supp. 2002); *Jones v. City of Folly Beach*, 326 S.C. 360, 367, 483 S.E.2d 770, 774-75 (Ct. App. 1997) (finding that the "date of utterance rule" and not the "discovery rule" applies in defamation actions).

Plaintiffs' defamation causes of action are untimely. The only statements referenced in the Complaint were made in 2007, more than seven years before the Complaint was filed. See Pls.' Compl. at ¶¶ 7-8, 10-15, 54. No reading of Plaintiffs' Complaint would make the defamation causes of action timely.

In the alternative, the defamation causes of action also fail to state facts sufficient to constitute causes of action. The Complaint fails to show that the Lackey Defendants

did anything more than respond to police officers investigating the daughter's statements to her therapist. See *Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946) (holding that communications and statements made by citizens to police officers or other law enforcement personnel regarding crimes that may have been committed did not constitute defamation).

IV. Abuse of Process

The factual allegations of Plaintiffs' Ninth Cause of Action fail to constitute a claim for abuse of process.

A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). As to the second element, the South Carolina Supreme Court has stated that "[s]ome definite act . . . not authorized by the process or aimed at an object not legitimate in the use of the process is required." *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107 (quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). Thus, the element comprises three components: 1) a "willful" or overt act 2) "in the use of the process" 3) that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective. *Id.* (emphasis added).

Put simply, by any reading of Plaintiffs' Complaint, the Lackey Defendants did not use process. Devra and her daughter simply responded to interview questions from investigators and provided possible evidence Devra had in her possession. Pls.' Compl. at ¶¶ 7-8, 11-14. As the South Carolina Supreme Court has explained, "an allegation that a party had a 'bad motive' or an 'ulterior purpose' in bringing an action, standing alone, is

insufficient to sustain an abuse of process claim.” *Pallares v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133 (2014) (quoting *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012)). Further, even assuming process was used, the Complaint is bereft of any supposed overt act committed by the Lackey Defendants *in the use of process*.

V. Loss of Consortium

Plaintiffs’ Tenth Cause of Action – loss of consortium on behalf of Mrs. Chaffin – fails to state facts sufficient to constitute that cause of action and, in the alternative, is untimely.

Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative. *Preer v. Mims*, 323 S.C. 516, 521, 476 S.E.2d 472, 475 (1996). However, wrongful conduct is still required on the part of a defendant. In fact, as the South Carolina Supreme Court has explained, “[g]enerally, a plaintiff spouse’s claim for loss of consortium fails if the impaired spouse’s claim fails, whether the claim is considered separate and independent from the impaired spouse’s claim or derivative in nature.” *Lee v. Bunch*, 373 S.C. 654, 663, 647 S.E.2d 197, 202 (2007) (quoting 41 Am.Jur.2d Husband and Wife § 227 (2007)).

As discussed herein, Plaintiffs have failed to adequately allege any legal wrongdoing by - or a viable cause of action against - the Lackey Defendants. Further, the loss of consortium claim states no factual allegations apart from the conduct complained of previously in the Complaint. Pls.’ Compl. at ¶¶ 74–77. Therefore, because Plaintiffs have failed to show any wrongdoing on behalf of the Lackey Defendants, Mrs. Chaffin’s loss of consortium claim fails. *See Lee*, 373 S.C. at 663, 647 S.E.2d at 202 (explaining

that while not derivative, a loss of consortium claim fails if the impaired spouse's claim fails).

Loss of consortium claims are also subject to a three-year statute of limitations. See S.C. Code Ann. § 15-3-530(5) (2009) (limiting to three years "action[s] for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545 [medical malpractice]"); *Jones v. Wesby*, No. 5:09-CV-2204-MBS, 2010 WL 3420026 (D.S.C. Aug. 26, 2010) (applying South Carolina law and holding that a loss of consortium claim is subject to a three-year statute of limitations); *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) (applying a three-year statute of limitations to loss of consortium claim). Although loss of consortium is an independent action, the right of action begins to accrue when the spouse first sustains the loss of the services, society and companionship of the spouse. *Preer*, 323 S.C. at 521, 476 S.E.2d at 475.

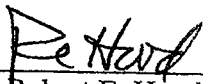
Here, Mrs. Chaffin's claim falls well outside the applicable statute of limitations. Plaintiffs' Complaint makes clear that the injuries to Mrs. Chaffin began upon Chaffin's arrest on March 9, 2007. Thus, more than seven years have passed since her cause of action began to accrue and her claim against the Lackey Defendants is time-barred.

CONCLUSION

Based upon the foregoing, Plaintiffs' Third, Sixth, Seventh and Tenth causes of action are untimely and, alternatively, fail to allege cognizable causes of action against the Lackey Defendants. Moreover, Plaintiffs failed to properly plead or state cognizable claims for their Fifth and Ninth Causes of action against the Lackey Defendants.

Therefore, the Lackey Defendants' Motion to Dismiss is **GRANTED**, all claims against the Lackey Defendants are **DISMISSED**, and the Lackey Defendants are **DISMISSED** from this action.

It is so **ORDERED** this 8 day of September, 2014.



The Honorable Robert E. Hood
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-2209

ORDER

FILED
2014 SEP -9 PM 3:51
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This matter is before the Court upon the motion of Defendants Richland County Sheriff's Department (hereinafter, "RCSD") and Deputy Brian Metz. On July 21, 2014, the Court heard these Defendants' Motion to Dismiss pursuant to Rule 12(b), SCRPC in the above-entitled action. Present at the time and presenting oral arguments were Aimee J. Zmroczek, Esq., counsel for Plaintiffs and Robert D. Garfield, Esq. counsel for these Defendants. Also appearing with regard to their respective motion was Derek A. Shoemake, counsel for Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray (hereinafter, "Lackey Defendants").

PLAINTIFFS' ALLEGATIONS

In their Complaint, Plaintiffs allege that on January 9, 2007, the Lackey Defendants' minor daughter revealed to a therapist that Plaintiff James Chaffin had sexually abused her. *See*, Comp., ¶ 7. After the daughter's therapist notified police, the Defendant investigators with the Richland County Sheriff's Department ("RCSD") interviewed the daughter and her mother, Devra. *Id.* at ¶¶ 8-9. In the course of the interviews, the daughter revealed the details of her sexual assault allegations. *Id.* at ¶¶ 11-15. The Defendant investigators also interviewed the daughter's therapist. *Id.* at ¶ 10.

On February 15, 2007, Defendant Metz obtained a warrant charging Plaintiff James Chaffin with Criminal Sexual Conduct with a Minor second degree in violation of South

Carolina Statute Number 16-3-655(C). *Id.* at ¶ 16. On March 9, 2007, the Defendant Metz placed James Chaffin under arrest. *Id.* at ¶¶ 17.

James Chaffin was released from custody on March 13, 2007. *Id.* at ¶ 20. According to Plaintiffs' Complaint, the Richland County Solicitor's Office ultimately dismissed the charges against James Chaffin on September 5, 2012. *Id.* at ¶ 24.

STANDARD OF REVIEW

In ruling on a motion to dismiss, the Court must view the pleadings in the light most favorable to the nonmoving party. *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 274–75 (Ct. App. 1997). A motion to dismiss must be granted if the facts and inferences reasonably deductible from them show that the plaintiff cannot prevail on any theory of the case. *Id.* In considering a motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court must base its ruling solely upon the allegations set forth on the face of the plaintiff's complaint. *Doe v. Greenville County Sch. Dis.*, 375 S.C. 63, 66–67, 651 S.E.2d 305, 307 (2007). A 12(b)(6) motion will not be granted if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n.*, 407 S.C. 67, 753 S.E.2d 846, 850 (2014).

DISCUSSION

A. Immunity for Sheriff's employees

The South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). Further, an employee of a governmental entity is immune from liability for tortious acts committed within the scope of his official duties. *See, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Such an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. *See*, S.C. Code Ann §15-78-70(a) and (b).

Plaintiffs allege that "at all times material to the allegations contained" in the Complaint, the Defendant Metz was "acting within the course of and scope of (his) employment and/or agency as (a) police officer employed by Defendant, RCSD. *See*, Comp., ¶ 9.

Thus, given Plaintiffs' averment that the Defendant Metz acted within the course and scope of his official duties as a criminal investigator with the RCSD, this Defendant in his individual capacity, is clearly entitled to employee immunity under S.C. Code Ann. § 15-78-

70(a) and (b) and Plaintiffs' claims with regard to the Defendant Metz must be dismissed as a matter of law.¹

B. Private Right of Action

In their first cause of action, Plaintiffs claim that these Defendants violated their civil rights pursuant to the South Carolina Constitution, Article 1, § 10. *See, Comp.*

In their motion to dismiss, these Defendants assert that the Plaintiffs fail to allege facts sufficient to state such a cause of action since there is not a private right of action in this state. The Defendants argued that there is no statutory scheme in South Carolina which enables a citizen to bring a private right of action for civil damages under the state constitution. This Court agrees. No viable cause of action exists where, as here, the state Constitution does not provide for a private cause of action for civil rights violations and the legislature has not enacted a statute enabling this type of action. *See, e.g., Gibbs v. S.C. Dept. of Probation, Parole, and Pardon Services, et al., 2002-UP-363 (Ct. App. 2002)(Unpublished).*

C. Statute of Limitations

In their third and eighth causes of action, the Plaintiffs allege false imprisonment/arrest and assault and battery, respectively. *See, Comp.*

Under the South Carolina Tort Claims Act, a state law claim must be brought within two years of the date of incident. *See, S.C. Code Ann. § 15-78-100(a), § 15-78-110. (See also, S.C. Code Ann. § 15-3-530, which sets forth a two year statute of limitations for false imprisonment state law actions).*

In their Complaint, Plaintiffs allege that on February 15, 2007, RCSD investigators obtained a warrant charging James Chaffin with Criminal Sexual Conduct with a Minor, and on March 9, 2007, these investigators placed him under arrest. *See, Comp., at ¶¶ 16-17.*

Hence, the two-year statute of limitations elapsed on or about March 9, 2009. This Plaintiffs' state court action, however, was not filed in this Court until April 4, 2014. Clearly, Plaintiffs have not brought this action within two years of the relevant dates asserted in their Complaint, much less the date that they knew, or should have known, that they had a cause of

¹ This Court acknowledges that the Defendant RCSD is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case. Instead, the proper entity is the Sheriff of Richland County in his official capacity and that it is subject to jurisdiction under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

action. Therefore, Plaintiffs' claims for false imprisonment/arrest and assault and battery² are time barred as a matter of law, and these Defendants are dismissed with prejudice.

D. Viability of Punitive Damages

Plaintiffs' claim for punitive damages is barred by the S.C. Tort Claims Act. "No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment." S.C. Code Ann. § 15-78-120(b).

CONCLUSION

IT IS, THEREFORE ORDERED that the Defendant Brian Metz is dismissed as a party to this action pursuant to the provisions of S.C. Code Ann. § 15-78-70(c).

IT IS, FURTHER ORDERED that the Defendant Richland County Sheriff's Department ("RCSD") is dismissed with prejudice as a party defendant from this action.

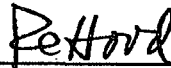
IT IS, FURTHER ORDERED that Leon Lott, in his official capacity as Sheriff of Richland County be substituted as the sole law enforcement party-Defendant in this matter.

IT IS, FURTHER ORDERED that the Plaintiffs' first cause of action for deprivation of their state civil rights is dismissed since no private cause of action for damages exists or may be inferred from the South Carolina Constitution for violations of such rights.

IT IS, FURTHER ORDERED that the Plaintiffs' third and eighth causes of action for false arrest and assault and battery, respectively, are time barred by the applicable statutes of limitation.

IT IS, FURTHER ORDERED that the Plaintiffs' claims for relief in the form of costs and/or punitive damages are dismissed pursuant to S.C. Code Ann. § 15-78-120(a).

IT IS SO ORDERED.



The Honorable Robert E. Hood
Circuit Judge, Fifth Judicial Circuit

September 8, 2014
August 8, 2014
Columbia, South Carolina

² According to their Complaint, Plaintiffs' assault and battery claim centers on the police "placing (James Chaffin) in handcuffs, physically searching him, and escorting him through the jail, and physically detaining him." See, Comp., ¶ 65. All of these actions purportedly occurred during the course of arresting James Chaffin on March 9, 2007 and therefore this cause of action is similarly barred by the applicable statute of limitations on the foregoing bases.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-40-2209
Richland County Sheriff's Department

PLAINTIFF(S)

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 Dismissed without prejudice
- ☐ 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 : Plaintiff's Motion to Reconsider is Denied

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
		\$
		\$
		\$

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 K. Hood Judge Code 2164 Date July 14, 2015

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of July, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Zmroczek

Derek Shoemake

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES AND MARIETTA CHAFFIN

Plaintiff(s)

vs.

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
LACKEY AND DEBRA LACKEY,
INDIVIDUALLY AND AS THE PARENTS TO
MINOR MIRANDA GRAY DEPARTMENT,

Defendant(s)

Submitted By: Aimee J. Zmroczek, Esq.

Address: P.O. Box 11961, Columbia, SC 29211

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014CP4002209

SC Bar #: 7719.3

Telephone #: 803.400.1918

Fax #: 803.403.8005

Other:

E-mail: ajzlawfirm@gmail.com

NOTE: The coversheet 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 coversheet 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. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☒ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399) malicious prosecution | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

SCCA / 234 (06/2013)

Date: April 4, 2014

Page 1 of 3

17

SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES CHAFFIN and MARIETTA CHAFFIN,

Plaintiffs,

vs.

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
And DEVRA LACKEY, individually and as the
Parents to Minor MIRANDA GRAY,

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL
) CIRCUIT
) CASE NO: 14-CP-38-_____

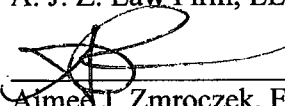
SUMMONS

RICHLAND COUNTY
FILED
2014 APR -4 PM 2:28
JEANETTE L. WILSON
Clerk of Court

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

A. J. Z. Law Firm, LLC


Aimee J. Zmroczek, Esquire

S.C. Bar #77193

P.O. Box 11961

Columbia, South Carolina, 29211

803.400.1918-telephone

803.403.8005-facsimile

ajzlawfirm@gmail.com

Attorney for the Plaintiffs

Columbia, South Carolina
April 4, 2014.

SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL

) CIRCUIT

COUNTY OF RICHLAND

) CASE NO: 14-CP-38-_____

JAMES CHAFFIN and MARIETTA CHAFFIN,

)

Plaintiffs,

)

vs.

)

RICHLAND COUNTY SHERIFF'S

)

DEPARTMENT, DEPUTY BRIAN METZ,

)

INVESTIGATOR ROY LIVINGSTON, TALLIE

)

And DEVRA LACKEY, individually and as the

)

Parents to Minor MIRANDA GRAY,

)

Defendants

)

)

COMPLAINT
(Jury Trial Demanded)

2015 APR -4 PM 2:28

RICHLAND COUNTY
FILED

JURISDICTION

1. Plaintiffs, James Chaffin (hereinafter "J. Chaffin") and Marietta Chaffin (hereinafter "M. Chaffin") are citizens and residents of Fleming County, State of Kentucky.

2. Defendant, Richland County Sheriff's Department (hereinafter RCSD), is a political subdivision, department, or agency of the state of South Carolina within the meaning of §15-78-30(a) South Carolina Code of Laws, and as such, qualifies for treatment under the South Carolina Tort Claims Act, §15-78-10 et. sec. At all times herein after alleged the Defendant acted through its employees (as defined by §15-78-30(c) of the South Carolina Code of Laws) and is liable for the actions and omissions of its agents or employees performed in the scope of their employment pursuant to the doctrine of respondeat superior.

3. Deputy Brian Metz, was at all times relevant to this complaint, an employee of Richland County Sheriff's Department.

4. Investigator Roy Livingston, was at all times relevant to this complaint, an employee of Richland County Sheriff's Department.

5. Tallie Lackey and Devra Lackey (hereinafter "D. Lackey") are citizens and residents of Lexington County, State of South Carolina, and are the custodial parents of Minor, Miranda Gray (hereinafter "Minor").

6. The acts giving rise to this action were committed, either in whole or in part, in Richland County, South Carolina and, therefore, venue is appropriate in this court, pursuant to §15-78-100 of the South Carolina Code of Laws.

RELEVANT FACTS

7. On or about June 20, 2006, Defendant Minor began counseling with Post Trauma Resources, and on or about January 9, 2007, Minor revealed allegations concerning Plaintiff, J. Chaffin.

8. On or about February 8, 2007, Defendants Deputy Metz (hereinafter "Metz") and Investigator Livingston (hereinafter "Livingston") interviewed and took statements from Devra Lackey and Minor.

9. At all times material to the allegations contained herein, all of the Defendants Metz and Livingston were acting within the course of and scope of their employment and/or agency as police officers employed by Defendant, RCSD.

10 On or about February 8, 2007, Defendants Metz and Livingston spoke with a counselor at Post Trauma Resources who provided a different account alleging that Minor had said Plaintiff James Chaffin masturbated after trying to have sexual intercourse with Minor.

11. On or about February 8, 2007, Minor gave a statement to Defendants Metz and Livingston stating Plaintiff, James Chaffin, while at 1128 Old Eastover Road, Eastover, County of Richland, State of South Carolina, started touching and feeling on her and pulled Minor's pants down and tried to have sexual intercourse with her. Additionally she alleged Plaintiff, J. Chaffin, was having sex with another cousin, Brooks Spearman, also a Minor. Minor also alleged he wanted to take nude photographs to publish on the internet.

12. On or about February 8, 2007, Minor stated Plaintiff, J. Chaffin, had a condom on when he tried to have sexual intercourse with her and that she remembered he put the condom in the barn and Minor gave it to Defendant, D. Lackey after she photographed its location.

13. On February 12, 2007, Minor provided Defendant Metz a sworn statement alleging sexual acts committed by Plaintiff, James Chaffin. (See attached Exhibit "A")

14. On or about February 12, 2007, Defendant D. Lackey provided Defendants Metz and Livingston a six (6) page statement containing allegations against Plaintiffs. (See attached Exhibit "B") and provided Defendant Livingston a condom which they logged into evidence. (See attached Exhibit "C")

15. Minor and Defendant D. Lackey stated that Minor remembered and located exactly the condom used by Plaintiff J. Chaffin which was photographed prior to being collected and delivered to Defendant Livingston.

16. On February 15, 2007, Defendant Metz obtained a warrant charging Plaintiff James Chaffin with Criminal Sexual Conduct with a Minor second degree in violation of South Carolina Statute Number 16-3-655(C) without probable cause or proper investigation.

17. On March 9, 2007, Defendant Metz, stopped a black 2004 Chevy Pick-up driven by Plaintiff James Chaffin, with no probable cause for the stop and placed Plaintiff J. Chaffin under arrest by placing handcuffs on Plaintiff J. Chaffin and placing him in the Defendant's officer's patrol car and was transported to the Lower Richland Substation Columbia, South Carolina. While in the police car, Plaintiff J. Chaffin was told that he was being placed under arrest for Criminal Sexual Conduct with a Minor second degree in violation of South Carolina Code of Laws Annotated Statute Number 16-3-655(C).

18. Upon his arrival at the Richland County Detention Center, Plaintiff J. Chaffin was booked, photographed, fingerprinted, forced to wear a Richland County Detention Center jumpsuit, and was confined to a jail cell, where he remained until the following day.

19. At approximately 3:30 p.m. on March 9, 2007, Plaintiff J. Chaffin had a bond hearing and was issued a bond in the amount of \$40,000.00 surety. After the hearing, Plaintiff J. Chaffin was transported back to a jail cell.

20. At approximately 5:00 p.m. on March 13, 2007, Plaintiff J. Chaffin was allowed to leave the Richland County Detention Center under the conditions of his bond, which had been issued March 9, 2007, after retaining the services of ABC Bonding Company, Inc.

21. As a requirement of his bond, Plaintiff J. Chaffin was ordered to appear for the term of General Sessions at the Richland County Courthouse on April 23, 2007, and August 30, 2007.

22. As a result of this charge Plaintiff J. Chaffin had to retain attorney, William H. Burris of Columbia, South Carolina to defend him.

23. On March 28, 2008, RCSD conducted a DNA analysis of the condom submitted by Minor and Defendant D. Lackey which **eliminated** Plaintiff J. Chaffin as a contributor.

24. On September 5, 2012, Richland County Solicitor's Office dismissed the charge against Plaintiff J. Chaffin because there was no credible evidence with which to prosecute this case.

FOR A FIRST CAUSE OF ACTION

(Violation of the South Carolina Constitution, Article 1, § 10)
(against Defendants Richland County Sheriff's Department,
and Defendants Metz and Livingston)

25. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

26. Pursuant to the South Carolina Constitution art. I, § 10, Plaintiff J. Chaffin has the right to be secure in his person against unreasonable searches and seizures and unreasonable invasions of his privacy.

27. On March 9, 2007, Defendants RCSD, Metz and Livingston seized and arrested Plaintiff J. Chaffin in an unreasonable manner and without any legal justification.

28. The March 9, 2007 seizure and arrest constituted an unreasonable invasion of Plaintiff J. Chaffin's privacy.

29. On March 9, 2007, Defendants RCSD, Metz and Livingston held, restrained, and detained Plaintiff J. Chaffin with no probable cause to stop his vehicle.

30. As a direct and proximate result of Defendants' RCSD, Metz ,and Livingston's conduct, Plaintiff J. Chaffin was deprived of his rights, privileges, and immunities secured by South Carolina Constitution art. I, § 10.

31. In the course of conducting an unreasonable seizure of Plaintiff J. Chaffin's person, Defendants RCSD, Metz, and Livingston acted with deliberate indifference to the Plaintiff J. Chaffin's constitutional rights.

32. No reasonable law enforcement officer could have believed that the unreasonable seizure and arrest of Plaintiff J. Chaffin comported with South Carolina Constitution art. I, § 10, clearly established rules for such arrests.

33. At the time of Plaintiff J. Chaffin's arrest, the legal rules establishing the requirement that law enforcement officers must have a warrant, probable cause, or other legal justification in order to search and/or arrest a private citizen were clearly established.

34. At the time of Plaintiff J. Chaffin's imprisonment, the legal rules establishing the requirement that law enforcement officers must have a warrant, probable cause, or other legal justification in order to search and/or arrest a private citizen were clearly established.

35. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A SECOND CAUSE OF ACTION
(Wrongful Failure To Train And Supervise Police Officers)
(Defendant Richland County Sheriff's Department)

36. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

37. Defendant RCSD had a duty to hire, train, and supervise persons hired to serve as police officers with due care to ensure that its officers complied with state laws.

38. Defendant RCSD breached its duty to adequately hire, train, and supervise its officers involved with and/or making the arrest and detention of the Plaintiff J. Chaffin in the following particulars:

a. By failing to instruct the officers in the nature of fundamental rights protected by the Constitution of the State of South Carolina;

b. By failing to instruct the officers in the nature of rights to personal privacy and security protected by state law;

c. By failing to instruct the officers in the proper manner of, and the legal requirements for the detention and/or arrest of Plaintiff J. Chaffin;

d. By failing to instruct the officers in the proper manner of releasing Plaintiff J. Chaffin after discovering that the Defendant RCSD's officers had no lawful reason to detain and/or arrest Plaintiff J. Chaffin;

e. By failing to adequately supervise the officers to ensure that they did not violate the procedural and substantive guarantees of the South Carolina Constitution;

f. By failing to adequately supervise the officers to ensure that the officers complied with the published policies and procedures regarding police procedure of the State of South Carolina and Richland County;

g. By failing to institute procedures designed to detect and/or prevent violations of constitutional and statutory guarantees of fundamental civil and property rights, and if such procedures and methods were instituted, by failing to follow them; and

h. In other such particulars as the evidence may show.

39. As a direct and proximate result of the reckless, grossly negligent, negligent, and careless acts and omissions of Defendant RCSD, Plaintiffs suffered injuries and damages, which include but are not limited to, false imprisonment, false arrest, malicious prosecution, severe emotional distress, lost time, humiliation, embarrassment, mental anguish and suffering, pain and suffering, inconvenience, and was forced to incur unnecessary costs and expenses in defending himself against this charge.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment as to all Defendants)

40. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

41. Plaintiffs are informed and believe that Defendants intentionally caused Plaintiff J. Chaffin to be restrained against his will and without his consent.

41. Plaintiffs are informed and believe that Defendants' actions were unreasonable and unlawful in that Defendants' knew, or should have known, that Plaintiff J. Chaffin had not committed any criminal offense.

43. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in retaining a bonding company and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

44. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A FIFTH CAUSE OF ACTION
(Malicious Prosecution as to all Defendants)

45. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

46. The duty of Defendants RCSD, Metz, and Livingston is to comply with industry standards, which require a competent and thorough investigation before referring anyone for prosecution.

47. Plaintiffs are informed and believe that based upon the facts and circumstances known to Defendants at the time, Defendants lacked probable cause to institute and present criminal proceedings against Plaintiff J. Chaffin.

48. Plaintiffs are informed and believe that Defendant acted intentionally without just cause or excuse in instituting and presenting criminal proceedings against Plaintiffs.

49. As a direct and proximate result of Defendants' willful, wanton, intentional, and malicious acts, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in retaining and bondsman and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

50. Plaintiffs are informed and believe that Defendants instituted unnecessary criminal judicial proceedings with malice.

51. Plaintiffs are informed and believe that the proceedings terminated in Plaintiffs' favor.

52. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A SIXTH CAUSE OF ACTION

(Defamation/Slander/Libel as to Defendants TALLIE And DEVRA LACKEY, individually and as the Parents to Minor MIRANDA GRAY)

53. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

54. Plaintiffs are informed and believe that Defendants T. Lackey, D. Lackey, and Minor communicated to law enforcement and possibly other unknown persons, through their words, writings, and conduct, that Plaintiffs were engaged in the act of criminal sexual conduct.

55. Plaintiffs are informed and believe that Defendants' communications impeached Plaintiffs honesty, integrity, virtue, and reputation and thereby exposed them to public hatred, contempt, ridicule, obloquy, and humiliation.

54. Plaintiffs are informed and believe the words, writings, and actions of Defendants were made with actual malice in that Defendants had knowledge of the falsity of such communications or were made with reckless disregard for the truth of such communications, or were made with implied malice.

56. Defendants' communications were and are false.

57. As a direct and proximate result of Defendants' defamation of Plaintiffs, Plaintiffs sustained the following damages:

a) Embarrassment;

- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in traveling to Charleston and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

58. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A SEVENTH CAUSE OF ACTION

(Defamation/Slander/Libel per se)
(Defamation/Slander/Libel as to Defendants TALLIE And DEVRA LACKEY,
individually and as the Parents to Minor MIRANDA GRAY)

59. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

60. Defendants' communications involved the commission of a crime (slander per se), and thus general damages are presumed.

61. As a direct and proximate result of Defendants' defamation of Plaintiffs, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in traveling to Charleston and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

62. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiff missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A EIGHT CAUSE OF ACTION

(Assault & Battery)

(against Defendants Richland County Sheriff's Department,
and Defendants Metz and Livingston)

63. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

64. Plaintiffs are informed and believe Defendants intentionally put Plaintiff J. Chaffin in reasonable apprehension of immediate harmful or offensive touching to which Plaintiff did not consent.

65. It is reasonably foreseeable that by informing law enforcement that Plaintiff committed a crime, law enforcement would use all necessary force to arrest Plaintiff J. Chaffin, including, but not limited to: placing him in handcuffs, physically searching him and escorting him through the jail, and physically detaining him.

66. Plaintiff J. Chaffin was harmed and offensively touched as alleged herein.

67. As a direct and proximate of Defendants' conduct, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;

- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Physical discomfort;
- i) Costs and expenses incurred in retaining bondsman and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

68. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiff missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A NINTH CAUSE OF ACTION

(Abuse of Process as to Defendants TALLIE And DEVRA LACKEY, individually and as the Parents to Minor MIRANDA GRAY))

69. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

70. Plaintiffs are informed and believe that Defendants threatened caused criminal proceedings to be brought against Plaintiff J. Chaffin with the ulterior purpose of punishing Plaintiffs for some leverage in the family estate.

71. Plaintiffs are informed and believe that Defendants' acts and threats were not authorized by process and were aimed at an objective not legitimate in the use of the process.

72. As a direct and proximate result of Defendants' willful, wanton, intentional, and malicious acts, Plaintiffs have sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Physical discomfort;
- i) Costs and expenses incurred in retaining a bondman and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

73. Plaintiffs are informed and believe they are entitled to actual and punitive damages, attorney fees, and the costs of this action.

FOR A TENTH CAUSE OF ACTION
(Loss of Consortium)

74. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

75. Plaintiff M. Chaffin is the spouse of Plaintiff J. Chaffin.

76. As a result of Plaintiff J. Chaffin's injuries and arrest, she has lost the right to the companionship, aid, society, services, comfort and support of her spouse.

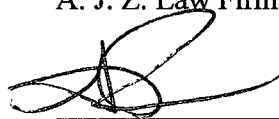
77. As a result of all the Defendants acts and omissions, Plaintiff M. Chaffin has suffered a loss of consortium for which Defendants are liable pursuant to S.C. Code Ann. § 15-78-20 (1976, as amended).

78. Accordingly, Plaintiff M. Chaffin is entitled to a judgment for actual damages for her loss of consortium.

WHEREFORE, Plaintiffs pray judgment against all Defendants for actual, incidental, and consequential, and general damages, punitive damages, the costs of this action, prejudgment interest, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A. J. Z. Law Firm, LLC



Aimee J. Zmroczek, Esquire
S.C. Bar #77193
P.O. Box 11961
Columbia, South Carolina, 29211
803.400.1918-telephone
803.403.8005-facsimile
ajzlawfirm@gmail.com
Attorney for the Plaintiffs

Columbia, South Carolina
April 4, 2014.

COPY

SOUTH CAROLINA

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

COUNTY OF RICHLAND

) CASE NO: 14-CP-40-02209
)

JAMES CHAFFIN and MARIETTA CHAFFIN,

)

)

)

Plaintiffs,

)

CERTIFICATE OF SERVICE

)

vs.

)

)

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
And DEVRA LACKEY, individually and as the
Parents to Minor MIRANDA GRAY,

)

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Defendants

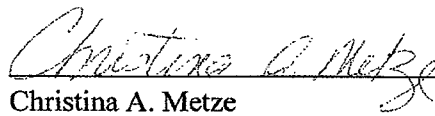
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)

RICHLAND COUNTY
FILED
2014 MAY 20 AM 10:01
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I certify that on April 12, 2014 I served a copy of the Summons and Complaint in this action dated April 4, 2014, upon Defendants Richland County Sheriff's Department, Deputy Brian Metz and Investigator Roy Livingston by certified mail addressed to the counsel for the Richland County Sheriff's Department as follows:

Mr. Scott Hayes
RCSD
5623 Two Notch Road
Columbia, SC 29223


Christina A. Metz

May 13, 2014

UNITED STATES POSTAL SERVICE

SC 290

12 APR '14

PM 11

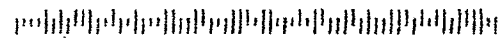


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211

Re: Chaffin



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X  ☐ Agent ☐ Addressee	
1. Article Addressed to: Mr. Scott Hayes RCSD 5623 Two Notch Rd Columbia, SC 29223		B. Received by (Printed Name) SURRA, BOB	C. Date of Delivery 4/12/14
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☒ Yes	
2. Article Number (Transfer from service label)		7012 1010 0000 8005 9378	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>Tallie Lackey</i> ☐ Agent ☒ Addressee	
1. Article Addressed to: <i>Tallie Lackey</i> <i>109 Tamwood Circle</i> <i>Cayce, SC 29033</i>		B. Received by (Printed Name) <i>Tallie Lackey</i>	C. Date of Delivery <i>4-15-14</i>
		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☒ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☒ Yes	
2. Article Number (Transfer from service label)		7012 1010 0000 8005 9392	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

UNITED STATES POSTAL SERVICE



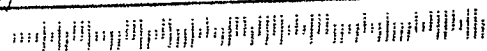
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

**A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211**

Re: Chaffin

11196151



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,
Plaintiffs,

v.

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-2209

ANSWER ON BEHALF OF RICHLAND
COUNTY SHERIFF'S DEPARTMENT AND
DEPUTY BRIAN METZ

(Jury Trial Demanded)

The Defendants, Richland County Sheriff's Department and Deputy Brian Metz, not waiving but expressly reserving all rights under the Notice of Motion and Motion to Dismiss served contemporaneously herewith, answer the Complaint of the Plaintiff as follows:

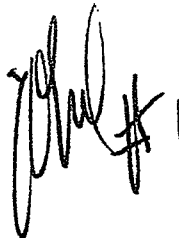
FOR A FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. The Defendants Richland County Sheriff's Department and Deputy Brian Metz deny each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to paragraph 1, the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore deny same and demands strict proof thereof.



4. As to paragraph 2, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof. By way of further explanation the more properly known entity would be the Office of Sheriff of Richland County.

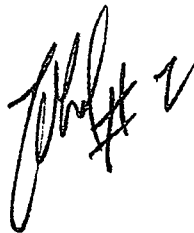
5. As to paragraphs 3 and 4, the Defendants would admit that Brian Metz and Roy Livingston, at all times herein, were acting in the course and scope of their employment with the Richland County Sheriff.

6. As to paragraph 5, the Defendants lack 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.

7. As to paragraph 6, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

8. As to paragraph 7, the Defendants lack sufficient information upon which to form a belief as to the nature, extent and duration of any counseling minor-Defendant might have received. These Defendants would admit that during the process of such counseling she revealed allegations concerning alleged improper conduct on the part of the Plaintiff James Chaffin.

9. As to paragraph 8, the Defendants would admit that statements were taken from minor-Defendant and Defendant Lackey.

A handwritten signature in black ink, appearing to be "John #2", is located below the text of paragraph 9.

10. As to paragraph 9, the Defendants would admit that officers for the Richland County Sheriff's Department were acting in the course and scope of their employment with the Sheriff of Richland County.

11. As to paragraph 10, the Defendants would admit that Officers Metz and Investigator Livingston spoke with the counselor at Post-Trauma Resources but as to the remaining allegations the Defendants would deny same as stated and demand strict proof thereof.

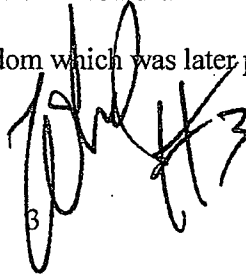
12. As to paragraph 11, the Defendants would admit that on or about February 8, 2007, minor-Defendant gave a statement to the Richland County Sheriff's Departments and these Defendants would crave reference to such statement as to the exact nature and details of such statement and the allegations placed against the Plaintiff James Chaffin.

13. As to paragraph 12, the Defendants would crave reference to the statement given by minor-Defendant regarding allegations against the Plaintiff James Chaffin concerning a condom and sexual intercourse as well as the events surrounding the location of the condom.

14. As to paragraph 13, the Defendants would admit that the minor-Defendant provided a sworn statement on or about February 12, 2007, however, the Complaint to this action did not contain any exhibits and therefore these Defendants would neither admit nor deny those references.

15. As to paragraph 14, the Defendants would admit that on or about February 12, 2007. Officers for the Richland County Sheriff's Department received a statement from Defendant D. Lackey and a condom which was logged into evidence, however, the Complaint to this action did not contain any exhibits and therefore these Defendants would neither admit nor deny those references.

16. As to paragraph 15, the Defendants would admit that the Defendants did provide information concerning the location of the condom which was later photographed.

A handwritten signature in black ink, followed by the number '3'.

17. As to paragraph 16, the Defendants would admit that an arrest warrant was issued by a neutral magistrate in accordance with the laws of the State of South Carolina and with probable cause.

18. As to paragraph 17, the Defendants would admit that on or about March 9, 2007, the Plaintiff James Chaffin was arrested pursuant to a validly issued arrest warrant. The Defendants would crave reference to warrant as to the exact terms and conditions of same.

19. As to paragraphs 18 and 19, the Defendants would admit that Plaintiff James Chaffin was booked in accordance with the proper procedures of the Richland County Detention Center and that subsequent to that a bond was issued for his release. The Defendants would crave reference to the bond documents as to the exact nature and extent of same.

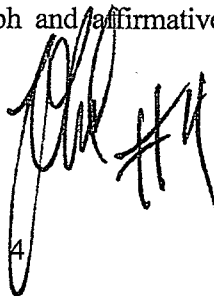
20. As to paragraph 20, the Defendants would admit that on or about March 13, 2007, Plaintiff James Chaffin was released pursuant to the bond.

21. As to paragraphs 21 and 22, the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore deny same and demands strict proof thereof.

22. As to paragraph 23, the Defendants would crave reference to the DNA analysis submitted in regard to the Plaintiffs in this matter.

23. As to paragraph 24, the Defendants would admit that on or about September 5, 2012, the Richland County Solicitor's Office dismissed the charges. That as to the remaining allegations these Defendants would deny same and demand strict proof thereof.

24. As to paragraphs 25, 36, 40, 45, 53, 59, 63, 69, and 74, the Defendants would reiterate and reallege each and every paragraph and affirmative defenses as if set forth herein verbatim.

A handwritten signature in black ink, appearing to be 'J. Chaffin', is written over the text of paragraph 24. Below the signature, the number '4' is handwritten.

25. As to paragraph 26, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

26. As to paragraphs 27, 28, 29, 30, and 31, the Defendants would deny same.

27. As to paragraphs 32, 33, and 34, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

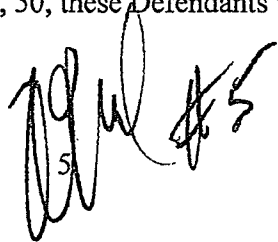
28. As to paragraph 35, these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore denies same and demands strict proof thereof.

29. As to paragraph 37, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

30. As to paragraphs 38, 39, 41, 41(second numbered paragraph), 43, and 44 these Defendants would deny same.

31. As to paragraph 46, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof

32. That as to paragraphs 47, 49, 50, these Defendants would deny same.

Handwritten signature and initials, possibly reading "JW #5", with a small "5" written below the signature.

33. That as to paragraph 51, these Defendants lack 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.

34. That as to paragraph 52, these Defendants would deny same.

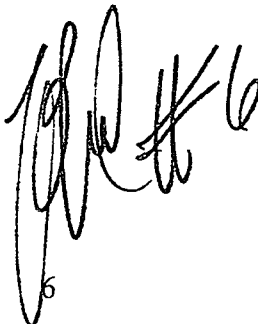
35. That as to paragraphs 54, 55, 54(second paragraph), 56, 57, 58, 60, 61, and 62, these Defendants would allege that such allegations are directed to a co-defendant and require no responses on the part of these Defendants. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

36. That as to paragraph 64, the Defendants would deny same.

37. That as to paragraph 65, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

38. That as to paragraph 66, the Defendants would deny same and demand strict proof thereof.

39. That as to paragraphs 67, 68, 70, 71, 72, and 73, these Defendants would allege that such allegations are directed to co-defendants which require no response on the part of these Defendants. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

A handwritten signature in black ink, appearing to be "J. W. H. 6", is written over the number 6 at the bottom of the page.

40. That as to paragraph 75, these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore deny same and demands strict proof thereof.

41. That as to paragraph 76, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof

42. That as to paragraphs 77 and 78, the Defendants would deny same.

FOR A THIRD DEFENSE

43. The Defendants would allege all and all claims for punitive damages against these Defendants should be stricken pursuant to the common law and statutory law of the State of South Carolina including § 15-78-10 et seq. of the Code of Laws of the State of South Carolina, 1976 as amended.

FOR A FOURTH DEFENSE

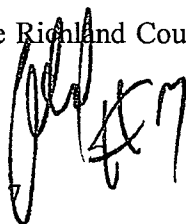
44. The Defendants would allege that they are immune from suit pursuant to the terms, conditions and limitations of the South Carolina Tort Claims Act, including § 15-78-60 (3), (4), (5), (6), (20), and (23).

FOR A FIFTH DEFENSE

45. The Defendants would allege that these causes of actions are barred by the applicable statute of limitations in so far as these Defendants are concerned.

FOR A SIXTH DEFENSE

46. Defendant Metz would allege that in so far as he is sued in the course and scope of his employment as a deputy sheriff with the Richland County Sheriff and that he is immune



suit pursuant to the terms, conditions, and limitations of the South Carolina Tort Claims Act, § 15-78-10 et seq. of the Code of Laws of the State of South Carolina, 1976 as amended.

FOR A SEVENTH DEFENSE

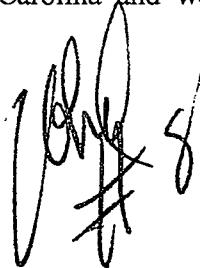
47. These Defendants, upon information and belief, alleges that any injuries or damages allegedly suffered by Plaintiff, without admitting same to be true, were due to and caused entirely by the negligence of Plaintiff, or Plaintiff's negligence is more than the alleged negligence of these Defendants,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

FOR AN EIGHTH DEFENSE

48. These Defendants would allege, upon information and belief, that any damages alleged to have been caused by these Defendants, which are specifically denied, must be apportioned between these Defendants and other tortfeasors pursuant to S.C. Code Ann. § 15-78-100(c).

FOR A NINTH DEFENSE

49. The Defendant would allege, upon information and belief, that during the performance or nonperformance of its employees' duties, its employees were not guilty of either corruption, bad faith, or malicious motives. Moreover, at all times referenced in the Plaintiff's Complaint, Defendant's employees were exercising their discretionary authority as public employees and officers of the State of South Carolina and were acting in good faith and, therefore, the Defendant is immune from suit.

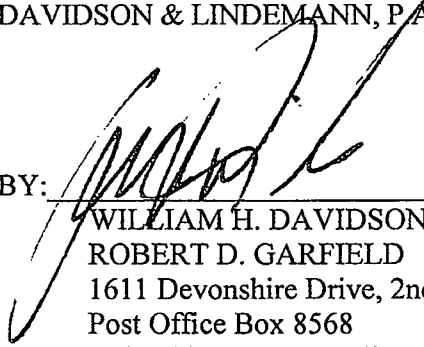
A handwritten signature in black ink, appearing to be 'J. R. S.', is written over the bottom right portion of the text in paragraph 49.

FOR A TENTH DEFENSE

50. The Defendant would allege that any claims for punitive damages are barred under the common law of the State of South Carolina, as well as under the South Carolina Tort Claims Act, § 15-78-120.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the 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: 

WILLIAM H. DAVIDSON, II
ROBERT D. GARFIELD
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
Facsimile: (803) 806-8855
Email: wdaavidson@dml-law.com
rgarfield@dml-law.com

ATTORNEY FOR DEFENDANTS RICHLAND
COUNTY SHERIFF'S DEPARTMENT AND DEPUTY
BRIAN METZ

Columbia, South Carolina
May 9, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

☐ Plaintiffs,

v.

Richland County Sheriff's Department, Deputy
Brian Metz, Investigator Roy Livingston, Tallie
and Devra Lackey, individually and as the Parents
to Minor Miranda Gray,

☒ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.

14-CP-40-2209

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiffs' Attorney:
Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
Post office Box 11961
Columbia, South Carolina 29211
T: 803-400-1918
F: 803-403-8005
ajzlawfirm@gmail.com

Defendant's Attorney:
William H. Davidson, II, Esquire
Robert D. Garfield, Esquire
Davidson & Lindemann, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568
T: 803-806-8222;
F: 803-806-8855
Email: wdavidson@dml-law.com and
rgarfield@dml-law.com

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

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

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Motion to Dismiss	
Estimated Time Needed: 15 minutes	Court Reporter Needed: ☒ YES / ☐ NO
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant	<u>May 9, 2014</u> Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00	
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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	
Collected by: _____	
Date Filed: _____	
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-2209

**NOTICE OF MOTION AND MOTION TO
DISMISS ON BEHALF OF DEFENDANTS
RICHLAND COUNTY SHERIFF'S
DEPARTMENT AND DEPUTY BRIAN
METZ**

TO: AIMEE J. ZMROCZEK, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Richland County Sheriff's Department and Deputy Brian Metz will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, on the tenth (10th) day after service hereof at 10:00 a.m., or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order, pursuant to Rule 12, dismissing this matter on the following grounds:

1. The Plaintiff fails to allege facts sufficient to state a cause of action against these Defendants under first cause of action as in there is not private right of action and therefore the Plaintiffs' claim must be dismissed.

2. Defendant Brian Metz is entitled to immunity under the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-

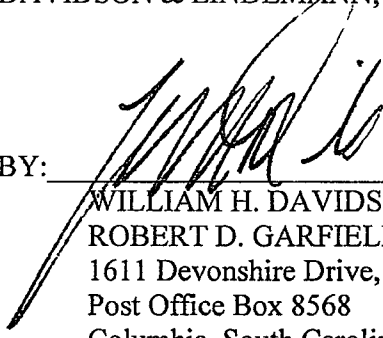
78-70(a). An employee of a governmental entity is immune from liability for tortious acts committed within the scope of his or her official duties. *See, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Therefore, the Plaintiff's allegations, as to these Defendants, must be dismissed as a matter of law.

3. Defendant Brian Metz is not a proper party to this suit pursuant to the provisions of S.C. Code Ann. § 15-78-70(c).

4. The Plaintiff's claims for relief in the form of costs and/or punitive damages must be dismissed pursuant to S.C. Code Ann. § 15-78-120(a).

This motion is based on the pleadings, South Carolina Rules of Civil Procedure, the Laws of the State of South Carolina, the Case Law of the State of South Carolina, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: 

WILLIAM H. DAVIDSON, II
ROBERT D. GARFIELD
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
Facsimile: (803) 806-8855
Email: wdavidson@dml-law.com
rgarfield@dml-law.com

ATTORNEY FOR DEFENDANTS RICHLAND
COUNTY SHERIFF'S DEPARTMENT AND DEPUTY
BRIAN METZ

Columbia, South Carolina
May 9, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES AND MARIETTA CHAFFIN)

Plaintiff,)

vs.)

RICHLAND COUNTY SHERIFF'S)
DEPARTMENT, ET AL.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-2209

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Aimee J. Zmroczek, Bar No. _____ Address: 2003 Lincoln Street, Columbia, SC 29201 Phone: 803-400-1918 Fax 803-403-8005 E-mail: ajzlawfirm@gmail.com Other: _____		Defendant's Attorney: Derek Shoemake, Bar No. _____ Address: 1711 Pickens Street, Columbia, SC 29201 Phone: 803-779-4600 Fax 803-254-8874 E-mail: dshoemake@simmonsllawfirm.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss/12(b)(6) Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 May 16, 2014 Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ 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			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

RICHLAND COUNTY
FILED

2014 MAY 16 PM 2:13

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriffs Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**NOTICE OF MOTION AND MOTION
TO DISMISS ON BEHALF OF
DEFENDANTS TALLIE AND DEVRA
LACKEY, INDIVIDUALLY AND AS
THE PARENTS TO MINOR
MIRANDA GRAY**

RICHLAND COUNTY
FILED
2014 MAY 16 PM 2:13
JANETTE W. MOBRIDE
C.C.P. & G.S.

TO: AIMEE J. ZMROCZEK, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray (the "Lackey Defendants") will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, on the tenth (10th) day after service hereof at 10:00 a.m., or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order pursuant to South Carolina Rule of Civil Procedure 12(b)(6), dismissing all causes of action applicable to the Lackey Defendants in this matter on the following grounds:

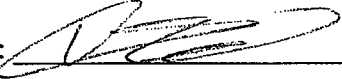
1. Plaintiffs James Chaffin and Marietta Chaffin ("Plaintiffs") have failed to state facts sufficient to constitute a cause of action against the Lackey Defendants under the Third, Sixth, Seventh and Tenth causes of action because those claims fall outside of the applicable statute of limitations and, in the alternative Plaintiffs have failed to

otherwise properly plead or state cognizable causes of action. Therefore, these claims must be dismissed.

2. Plaintiffs have failed to state facts sufficient to constitute a cause of action against the Lackey Defendants under the Fifth and Ninth causes of action because Plaintiffs failed to properly plead or state cognizable claims for malicious prosecution and abuse of process. Therefore, these claims must be dismissed.

This motion is based on the pleadings, South Carolina Rules of Civil Procedure, the Laws of the State of South Carolina, the Case Law of the State of South Carolina, and such other matters as may be properly presented to the Court at the time of the hearing.

SIMMONS LAW FIRM, LLC

By:  _____

John S. Simmons
Email: jsimmons@simmonsfirm.com
Derek A. Shoemake
Email: dshoemake@simmonsfirm.com
1711 Pickens Street
Columbia, SC 29201
Tel: (803) 779-4600
Fax: (803) 254-8874

Attorneys for Defendants Tallie and Devra Lackey,
individually and as the Parents to Minor Miranda
Gray

May 16, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriffs Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

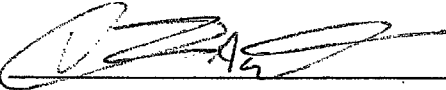
2014 MAY 16 PM 2:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

The undersigned employee of Simmons Law Firm, attorneys for the Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray, do hereby certify that service of the Notion of Motion and Motion to Dismiss on Behalf of Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray filed in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 16th day of May, 2014, addressed as follows:

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
Post office Box 11961
Columbia, South Carolina 29211

William H. Davidson, II
Robert D. Garfield
Post Office Box 8568
Columbia, South Carolina 29202

By: 

Derek A. Shoemake

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO: 14-CP-40-2209

)

)

)

PLAINTIFFS' MEMORADUM OF

)

LAW IN OPPOSITION TO

)

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DEFENDANTS' RCSD and METZ

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MOTIONS TO DISMISS

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2014 JUL 21 AM 10:51
JANETTE H. MORRIS
CONF. 03.

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CONF. 03.

upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995); Bergstrom, 352 S.C. at 233, 573 S.E.2d at 811; see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) (trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); Williams, 347 S.C. at 233, 553 S.E.2d at 499 (trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. See Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); Stiles, 318 S.C. at 300, 457 S.E.2d at 602-03; see also Baird, 333 S.C. at 527, 511 S.E.2d at 73 (if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (motion to dismiss cannot be sustained if facts alleged in complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any theory of the case). In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. See Gentry, 337 S.C. at 5, 522 S.E.2d at 139; see also Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

Here, Plaintiff James Chaffin was accused and establishes that charges were *nolle prossed* for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained. McKenney v. Jack Eckerd Co., 304 S.C. 21, 402 S.E.2d 887

(1991) The Supreme Court, Chandler, J., granted certiorari and held that entry of *nolle prosequere*, for reasons which imply or are consistent with innocence, is sufficient termination of criminal prosecution to support action for malicious prosecution. McKenney, 304 S.C. 21, 402 S.E.2d 887 (1991)

Although “South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution,” Kinton v. Mobile Home Indus., Inc., 274 S.C. 179, 182, 262 S.E.2d 727, 728 (1980), it is only prima facie evidence and not conclusive. See 54 C.J.S. Malicious Prosecution § 34 at 555 (1987) (stating that “where the result of the preliminary examination before a magistrate or other judicial officer is unfavorable to the accused, and he is held, or committed . . . this is prima facie evidence of probable cause, but not conclusive.”).

In Melton v. Williams, 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984), we concluded that, even though an arrest warrant was issued, “[u]nder the circumstances it was for the jury to say whether or not there was probable cause for the swearing out of the warrant by Williams.” *Id.* at 187, 314 S.E.2d at 615; see also Parrott v. Plowden Motor Co., 246 S.C. 318, 323, 143 S.E.2d 607, 609 (1965); Millhouse v. Food Lion, Inc., 289 S.C. 203, 203, 345 S.E.2d 739, 739 (Ct. App. 1986); *cf. Gist v. Berkley County Sheriff’s Dep’t*, 336 S.C. 611, 616, 521 S.E.2d 163, 165 (Ct. App. 1999) (finding error in a trial court’s grant of summary judgment in an action for false imprisonment because the arrest warrant was insufficient and did not establish probable cause).

The motion cannot be sustained if facts alleged in the Complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case Camp v. Springs Mortg. Corp., 307 S.C. 283, 414 S.E. 2d 784 (Ct. App. 1991). If, on a motion

asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Rule 12, SCRCPS.C. R. Civ. P. 12

CONCLUSION

Based on the preceding points and authorities, Plaintiffs request that the Court deny Defendants Richland County Sheriff's Department and Brain Metz's Motion to Dismiss.

Respectfully submitted,

A. J. Z. Law Firm, LLC



Aimee J. Zmroczek, Esquire
S.C. Bar #77193
P.O. Box 11961
Columbia, South Carolina, 29211
803.400.1918-telephone
803.403.8005-facsimile
ajzlawfirm@gmail.com
Attorney for the Plaintiffs

Columbia, South Carolina
July 21, 2014.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO: 14-CP-40-2209

)

CERTIFICATE OF SERVICE

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RICHLAND COUNTY
FILED
2014 JUL 21 AM 10:51
JEANETTE W. NORMAN
Clerk

I certify that on this date I served the PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' RCSD and Brian Metz Motion to Dismiss in the above-captioned case on Attorneys by delivering copies of these documents to William H. Davidson, II and Robert D. Garfield, attorneys of record for Defendants Richland County Sheriff's Department and Deputy Brian Metz and John S. Simmons and Derek A. Shoemake attorneys for Defendants Tallie and Devra Lackey, individually and as the parents to Minor Miranda Gray, by hand delivering said copies at the Richland County Judicial Center, Second Floor, 1701 Main Street, Columbia, South Carolina 29201.

A.J.Z. Law Firm, LLC


Aimee J. Zmroczek, Esq.
2003 Lincoln Street
P.O. Box 11961
Columbia, South Carolina
(803) 400-1918 telephone
(803) 405-8005 fax
ajzlawfirm@gmail.com

Columbia, South Carolina

This 21st day of July, 2014

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO: 14-CP-40-2209

)

)

CERTIFICATE OF SERVICE

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(

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RICHARD ROBERT
FELT
2014 JUL 21 AM 10:51
LEARNETTE W. ROBERT
PO BOX 65
DALLAS, TEXAS 75206

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IN THE STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES CHAFFIN and MARIETTA CHAFFIN,

Plaintiffs,

vs.

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
And DEVRA LACKEY, individually and as the
Parents to Minor MIRANDA GRAY,

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO: 14-CP-40-2209
)
)
)

) PLAINTIFFS' MEMORANDUM OF
) LAW IN OPPOSITION TO
) DEFENDANTS' LACKEY *et al.*
) MOTIONS TO DISMISS
) AND
) REQUEST FOR ENTRY OF
) DEFAULT
)

RICHLAND COUNTY
FILED
2014 JUL 21 AM 10:52
CLERK OF COURT
J. H. HENDERSON
CLERK OF COURT
SOUTH CAROLINA

Defendants' Lackey *Et Al.* Motion To Dismiss Pursuant To 12(B)(6), SCRPC Should Be Denied Because It Did Not Satisfy The Pleading Requirements For Affirmative Defenses In Accordance With Rule 8(C), SCRPC Because It Was Not Timely Filed.

APPLICABLE FACTS

Plaintiffs, by and through their attorney, filed the Summons and Complaint which is the subject of this motion on April 4, 2014. (See Attached Exhibit A) Defendant Tallie Lackey signed for the same on April 15, 2014. (See Attached Exhibit B) On May 16, 2014, John S. Simmons and Derek A. Shoemake filed and mailed a Notice of Motion and Motion to Dismiss (pursuant to Rule 12(B)(6) SCRPC) on behalf of Defendants Tallie and Devra Lackey, individually and as the parents to Minor Miranda Gray. (See Attached Exhibit C) On May 17, 2014, Devra Lackey's service was returned but no defense of insufficient service was filed. (See Attached Exhibit D) On June 11, 2014, John S. Simmons and Derek A. Shoemake filed and

mailed a Memorandum in support of the above referenced Motion to Dismiss. (See Attached Exhibit E)

APPLICABLE LAW

The first three sentences of Rule 12(a) SCRCP state the general proposition that a party must respond to a complaint within thirty days of service. A Defendant may assert affirmative defenses in a reply pleading to a preceding pleading. Rule 8(c), SCRCP The rule states :

a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses. Rule 8(c), SCRCP

The calculation of the thirty-day period to respond to the summons and complaint is governed by Rule 6(a) SCRCP stating:

- (a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

The mailing of pleadings subsequent to the summons and complaint adds an additional five days from the date of the mailing to the response time under Rule 6(e), SCRCP. However, that provision does not extend the time to respond to a summons and complaint served by mail under Rule 4(d)(8) SCRCP, which is calculated from receipt by the defendant.

Service by Certified Mail. Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules. Rule 4(d)(8) SCRCP.

The presentation of defenses as listed in Rule 12(b), SCRCP lists eight defenses that the pleader has the option of raising by motion before the first answer or in the first responsive pleading. The detail required is not state in the rule, but precedent suggests that the defect should be made clear. Unisun Ins. Co. v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000). Rules 12(g) and (h) SCRCP require the pleader to raise all Rule 12(b) defenses at the same time. Unasserted defenses based on challenges including insufficiency of process are waived if they are not included in the Rule 12(b) motion. Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993).

Here, the relative time calculation is as follows:

From and including: Tuesday, April 15, 2014

To and including: Friday, May 16, 2014

Result: 32 days

It is 32 days from the start date to the end date, end date included

Or 1 month, 2 days including the end date

There were no legal holidays.

An Entry of Default against Defendants' Lackey *Et Al.* Pursuant to Rule 55, SCRCP Should Be Entered Because They Did Not Satisfy The Pleading Requirements For Affirmative Defenses In Accordance With Rule 12 (a) SCRCP Because It Was Not Timely Filed.

The entry of default is the ministerial act recognizing that a party has not completed a required action in the time provided under the rules. Beckham v. Durant, 300 S.C. 329, 331 n.2,

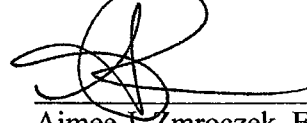
387 S.E.2d 701, 702 n.2 (Ct. App. 1989). Rule 55, SCRCP requires a showing of the default by affidavit or otherwise. Here, Defendants Tallie and Devra Lackey, individually and as the parents to Minor Miranda Gray have failed to meet deadlines. The defendants had thirty days from the date of service to answer or otherwise plead. Rule 12(a) SCRCP (see argument and exhibits referenced above).

CONCLUSION

Based on the preceding points and authorities, Plaintiffs request that the Court deny Defendants Tallie and Devra Lackey, individually and as the parents to Minor Miranda Gray Motion to Dismiss and additionally, enter a default against the same defendants.

Respectfully submitted,

A. J. Z. Law Firm, LLC



Aimee J. Zmroczek, Esquire
S.C. Bar #77193
P.O. Box 11961
Columbia, South Carolina, 29211
803.400.1918-telephone
803.403.8005-facsimile
ajzlawfirm@gmail.com
Attorney for the Plaintiffs

Columbia, South Carolina
July 21, 2014.

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JAMES CHAFFIN and MARIETTA CHAFFIN,

Plaintiffs,

vs.

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
And DEVRA LACKEY, individually and as the
Parents to Minor MIRANDA GRAY,

Defendants

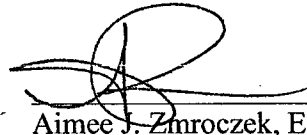
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO: 14-CP-40-2209
)
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CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2014 JUL 21 AM 10:52
JEANETTE G. JORDAN
C.C.P. & G.S.

I certify that on this date I served the PLAINTIFFS' MEMORADUM OF LAW IN
OPPOSITION TO DEFENDANTS' LACKEY et al. MOTIONS TO DISMISS AND
REQUEST FOR ENTRY OF DEFAULT in the above-captioned case on Attorneys by delivering
copies of these documents to John S. Simmons and Derek A. Shoemaker, attorneys of record for
Defendants Tallie and Devra Lackey, individually and as the parents to Minor Miranda Gray by
hand delivering said copies at the Richland County Judicial Center, Second Floor, 1701 Main
Street, Columbia, South Carolina 29201.

A.J.Z. Law Firm, LLC



Aimee J. Zimroczek, Esq.
2003 Lincoln Street
P.O. Box 11961
Columbia, South Carolina 29211
(803) 400-1918 telephone
(803) 405-8005 fax
ajzlawfirm@gmail.com

Columbia, South Carolina

This 21st day of July, 2014

COUNTY OF RICHLAND

JAMES AND MARIETTA CHAFFIN

Plaintiff(s)

vs.

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
LACKEY AND DEBRA LACKEY,
INDIVIDUALLY AND AS THE PARENTS TO
MINOR MIRANDA GRAY. DEPARTMENT,

Defendant(s)

Submitted By: Aimee J. Zmroczek, Esq.
Address: P.O. Box 11961, Columbia, SC 29211

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014CP4002209

SC Bar #: 7719.3

Telephone #: 803.400.1918

Fax #: 803.403.8005

Other:

E-mail: ajzlawfirm@gmail.com

NOTE: The coversheet 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 coversheet 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. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☒ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399) malicious prosecution | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature:

SCCA / 234 (06/2013)

Date:

April 4, 2014

Page 1 of 3

71

SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES CHAFFIN and MARIETTA CHAFFIN,

Plaintiffs,

vs.

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, DEPUTY BRIAN METZ,
INVESTIGATOR ROY LIVINGSTON, TALLIE
And DEVRA LACKEY, individually and as the
Parents to Minor MIRANDA GRAY,

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL
) CIRCUIT
) CASE NO: 14-CP-38-_____

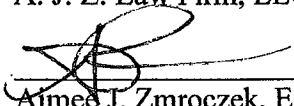
SUMMONS

RICHLAND COUNTY
FILED
2014 APR - 4 PM 2:28
JENNIFER L. HARRISON
C.D. & C.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

A. J. Z. Law Firm, LLC


Aimee J. Zmroczek, Esquire
S.C. Bar #77193
P.O. Box 11961
Columbia, South Carolina, 29211
803.400.1918-telephone
803.403.8005-facsimile
ajzlawfirm@gmail.com
Attorney for the Plaintiffs

Columbia, South Carolina
April 4, 2014.

SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL

) CIRCUIT

COUNTY OF RICHLAND

) CASE NO: 14-CP-38-_____

JAMES CHAFFIN and MARIETTA CHAFFIN,

)

)

Plaintiffs,

)

)

vs.

)

)

RICHLAND COUNTY SHERIFF'S

)

DEPARTMENT, DEPUTY BRIAN METZ,

)

INVESTIGATOR ROY LIVINGSTON, TALLIE

)

And DEVRA LACKEY, individually and as the

)

Parents to Minor MIRANDA GRAY,

)

)

)

Defendants

)

)

COMPLAINT
(Jury Trial Demanded)

2014 APR 30 PM 2:28
JEANETTE L. GRIFFIN
CLERK OF COURT
RICHLAND COUNTY
FILED

JURISDICTION

1. Plaintiffs, James Chaffin (hereinafter "J. Chaffin") and Marietta Chaffin (hereinafter "M. Chaffin") are citizens and residents of Fleming County, State of Kentucky.

2. Defendant, Richland County Sheriff's Department (hereinafter RCSD), is a political subdivision, department, or agency of the state of South Carolina within the meaning of §15-78-30(a) South Carolina Code of Laws, and as such, qualifies for treatment under the South Carolina Tort Claims Act, §15-78-10 et. sec. At all times herein after alleged the Defendant acted through its employees (as defined by §15-78-30(c) of the South Carolina Code of Laws) and is liable for the actions and omissions of its agents or employees performed in the scope of their employment pursuant to the doctrine of respondeat superior.

3. Deputy Brian Metz, was at all times relevant to this complaint, an employee of Richland County Sheriff's Department.

4. Investigator Roy Livingston, was at all times relevant to this complaint, an employee of Richland County Sheriff's Department.

5. Tallie Lackey and Devra Lackey (hereinafter "D. Lackey") are citizens and residents of Lexington County, State of South Carolina, and are the custodial parents of Minor, Miranda Gray (hereinafter "Minor").

6. The acts giving rise to this action were committed, either in whole or in part, in Richland County, South Carolina and, therefore, venue is appropriate in this court, pursuant to §15-78-100 of the South Carolina Code of Laws.

RELEVANT FACTS

7. On or about June 20, 2006, Defendant Minor began counseling with Post Trauma Resources, and on or about January 9, 2007, Minor revealed allegations concerning Plaintiff, J. Chaffin.

8. On or about February 8, 2007, Defendants Deputy Metz (hereinafter "Metz") and Investigator Livingston (hereinafter "Livingston") interviewed and took statements from Devra Lackey and Minor.

9. At all times material to the allegations contained herein, all of the Defendants Metz and Livingston were acting within the course of and scope of their employment and/or agency as police officers employed by Defendant, RCSD.

10 On or about February 8, 2007, Defendants Metz and Livingston spoke with a counselor at Post Trauma Resources who provided a different account alleging that Minor had said Plaintiff James Chaffin masturbated after trying to have sexual intercourse with Minor.

11. On or about February 8, 2007, Minor gave a statement to Defendants Metz and Livingston stating Plaintiff, James Chaffin, while at 1128 Old Eastover Road, Eastover, County of Richland, State of South Carolina, started touching and feeling on her and pulled Minor's pants down and tried to have sexual intercourse with her. Additionally she alleged Plaintiff, J. Chaffin, was having sex with another cousin, Brooks Spearman, also a Minor. Minor also alleged he wanted to take nude photographs to publish on the internet.

12. On or about February 8, 2007, Minor stated Plaintiff, J. Chaffin, had a condom on when he tried to have sexual intercourse with her and that she remembered he put the condom in the barn and Minor gave it to Defendant, D. Lackey after she photographed its location.

13. On February 12, 2007, Minor provided Defendant Metz a sworn statement alleging sexual acts committed by Plaintiff, James Chaffin. (See attached Exhibit "A")

14. On or about February 12, 2007, Defendant D. Lackey provided Defendants Metz and Livingston a six (6) page statement containing allegations against Plaintiffs. (See attached Exhibit "B") and provided Defendant Livingston a condom which they logged into evidence. (See attached Exhibit "C")

15. Minor and Defendant D. Lackey stated that Minor remembered and located exactly the condom used by Plaintiff J. Chaffin which was photographed prior to being collected and delivered to Defendant Livingston.

16. On February 15, 2007, Defendant Metz obtained a warrant charging Plaintiff James Chaffin with Criminal Sexual Conduct with a Minor second degree in violation of South Carolina Statute Number 16-3-655(C) without probable cause or proper investigation.

17. On March 9, 2007, Defendant Metz, stopped a black 2004 Chevy Pick-up driven by Plaintiff James Chaffin, with no probable cause for the stop and placed Plaintiff J. Chaffin under arrest by placing handcuffs on Plaintiff J. Chaffin and placing him in the Defendant's officer's patrol car and was transported to the Lower Richland Substation Columbia, South Carolina. While in the police car, Plaintiff J. Chaffin was told that he was being placed under arrest for Criminal Sexual Conduct with a Minor second degree in violation of South Carolina Code of Laws Annotated Statute Number 16-3-655(C).

18. Upon his arrival at the Richland County Detention Center, Plaintiff J. Chaffin was booked, photographed, fingerprinted, forced to wear a Richland County Detention Center jumpsuit, and was confined to a jail cell, where he remained until the following day.

19. At approximately 3:30 p.m. on March 9, 2007, Plaintiff J. Chaffin had a bond hearing and was issued a bond in the amount of \$40,000.00 surety. After the hearing, Plaintiff J. Chaffin was transported back to a jail cell.

20. At approximately 5:00 p.m. on March 13, 2007, Plaintiff J. Chaffin was allowed to leave the Richland County Detention Center under the conditions of his bond, which had been issued March 9, 2007, after retaining the services of ABC Bonding Company, Inc.

21. As a requirement of his bond, Plaintiff J. Chaffin was ordered to appear for the term of General Sessions at the Richland County Courthouse on April 23, 2007, and August 30, 2007.

22. As a result of this charge Plaintiff J. Chaffin had to retain attorney, William H. Burris of Columbia, South Carolina to defend him.

23. On March 28, 2008, RCSD conducted a DNA analysis of the condom submitted by Minor and Defendant D. Lackey which **eliminated** Plaintiff J. Chaffin as a contributor.

24. On September 5, 2012, Richland County Solicitor's Office dismissed the charge against Plaintiff J. Chaffin because there was no credible evidence with which to prosecute this case.

FOR A FIRST CAUSE OF ACTION

(Violation of the South Carolina Constitution, Article 1, § 10)
(against Defendants Richland County Sheriff's Department,
and Defendants Metz and Livingston)

25. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

26. Pursuant to the South Carolina Constitution art. I, § 10, Plaintiff J. Chaffin has the right to be secure in his person against unreasonable searches and seizures and unreasonable invasions of his privacy.

27. On March 9, 2007, Defendants RCSD, Metz and Livingston seized and arrested Plaintiff J. Chaffin in an unreasonable manner and without any legal justification.

28. The March 9, 2007 seizure and arrest constituted an unreasonable invasion of Plaintiff J. Chaffin's privacy.

29. On March 9, 2007, Defendants RCSD, Metz and Livingston held, restrained, and detained Plaintiff J. Chaffin with no probable cause to stop his vehicle.

30. As a direct and proximate result of Defendants' RCSD, Metz, and Livingston's conduct, Plaintiff J. Chaffin was deprived of his rights, privileges, and immunities secured by South Carolina Constitution art. I, § 10.

31. In the course of conducting an unreasonable seizure of Plaintiff J. Chaffin's person, Defendants RCSD, Metz, and Livingston acted with deliberate indifference to the Plaintiff J. Chaffin's constitutional rights.

32. No reasonable law enforcement officer could have believed that the unreasonable seizure and arrest of Plaintiff J. Chaffin comported with South Carolina Constitution art. I, § 10, clearly established rules for such arrests.

33. At the time of Plaintiff J. Chaffin's arrest, the legal rules establishing the requirement that law enforcement officers must have a warrant, probable cause, or other legal justification in order to search and/or arrest a private citizen were clearly established.

34. At the time of Plaintiff J. Chaffin's imprisonment, the legal rules establishing the requirement that law enforcement officers must have a warrant, probable cause, or other legal justification in order to search and/or arrest a private citizen were clearly established.

35. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A SECOND CAUSE OF ACTION
(Wrongful Failure To Train And Supervise Police Officers)
(Defendant Richland County Sheriff's Department)

36. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

37. Defendant RCSD had a duty to hire, train, and supervise persons hired to serve as police officers with due care to ensure that its officers complied with state laws.

38. Defendant RCSD breached its duty to adequately hire, train, and supervise its officers involved with and/or making the arrest and detention of the Plaintiff J. Chaffin in the following particulars:

a. By failing to instruct the officers in the nature of fundamental rights protected by the Constitution of the State of South Carolina;

b. By failing to instruct the officers in the nature of rights to personal privacy and security protected by state law;

c. By failing to instruct the officers in the proper manner of, and the legal requirements for the detention and/or arrest of Plaintiff J. Chaffin;

d. By failing to instruct the officers in the proper manner of releasing Plaintiff J. Chaffin after discovering that the Defendant RCSD's officers had no lawful reason to detain and/or arrest Plaintiff J. Chaffin;

e. By failing to adequately supervise the officers to ensure that they did not violate the procedural and substantive guarantees of the South Carolina Constitution;

f. By failing to adequately supervise the officers to ensure that the officers complied with the published policies and procedures regarding police procedure of the State of South Carolina and Richland County;

g. By failing to institute procedures designed to detect and/or prevent violations of constitutional and statutory guarantees of fundamental civil and property rights, and if such procedures and methods were instituted, by failing to follow them; and

h. In other such particulars as the evidence may show.

39. As a direct and proximate result of the reckless, grossly negligent, negligent, and careless acts and omissions of Defendant RCSD, Plaintiffs suffered injuries and damages, which include but are not limited to, false imprisonment, false arrest, malicious prosecution, severe emotional distress, lost time, humiliation, embarrassment, mental anguish and suffering, pain and suffering, inconvenience, and was forced to incur unnecessary costs and expenses in defending himself against this charge.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment as to all Defendants)

40. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

41. Plaintiffs are informed and believe that Defendants intentionally caused Plaintiff J. Chaffin to be restrained against his will and without his consent.

41. Plaintiffs are informed and believe that Defendants' actions were unreasonable and unlawful in that Defendants' knew, or should have known, that Plaintiff J. Chaffin had not committed any criminal offense.

43. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in retaining a bonding company and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

44. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A FIFTH CAUSE OF ACTION
(Malicious Prosecution as to all Defendants)

45. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

46. The duty of Defendants RCSD, Metz, and Livingston is to comply with industry standards, which require a competent and thorough investigation before referring anyone for prosecution.

47. Plaintiffs are informed and believe that based upon the facts and circumstances known to Defendants at the time, Defendants lacked probable cause to institute and present criminal proceedings against Plaintiff J. Chaffin.

48. Plaintiffs are informed and believe that Defendant acted intentionally without just cause or excuse in instituting and presenting criminal proceedings against Plaintiffs.

49. As a direct and proximate result of Defendants' willful, wanton, intentional, and malicious acts, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in retaining and bondsman and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

50. Plaintiffs are informed and believe that Defendants instituted unnecessary criminal judicial proceedings with malice.

51. Plaintiffs are informed and believe that the proceedings terminated in Plaintiffs' favor.

52. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A SIXTH CAUSE OF ACTION

(Defamation/Slander/Libel as to Defendants TALLIE And DEVRA LACKEY, individually and as the Parents to Minor MIRANDA GRAY)

53. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

54. Plaintiffs are informed and believe that Defendants T. Lackey, D. Lackey, and Minor communicated to law enforcement and possibly other unknown persons, through their words, writings, and conduct, that Plaintiffs were engaged in the act of criminal sexual conduct.

55. Plaintiffs are informed and believe that Defendants' communications impeached Plaintiffs honesty, integrity, virtue, and reputation and thereby exposed them to public hatred, contempt, ridicule, obloquy, and humiliation.

54. Plaintiffs are informed and believe the words, writings, and actions of Defendants were made with actual malice in that Defendants had knowledge of the falsity of such communications or were made with reckless disregard for the truth of such communications, or were made with implied malice.

56. Defendants' communications were and are false.

57. As a direct and proximate result of Defendants' defamation of Plaintiffs, Plaintiffs sustained the following damages:

a) Embarrassment;

- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in traveling to Charleston and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

58. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiffs missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A SEVENTH CAUSE OF ACTION

(Defamation/Slander/Libel per se)

(Defamation/Slander/Libel as to Defendants TALLIE And DEVRA LACKEY,
individually and as the Parents to Minor MIRANDA GRAY)

59. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

60. Defendants' communications involved the commission of a crime (slander per se), and thus general damages are presumed.

61. As a direct and proximate result of Defendants' defamation of Plaintiffs, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Loss of liberty;
- i) Costs and expenses incurred in traveling to Charleston and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

62. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiff missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A EIGHT CAUSE OF ACTION

(Assault & Battery)

(against Defendants Richland County Sheriff's Department,
and Defendants Metz and Livingston)

63. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

64. Plaintiffs are informed and believe Defendants intentionally put Plaintiff J. Chaffin in reasonable apprehension of immediate harmful or offensive touching to which Plaintiff did not consent.

65. It is reasonably foreseeable that by informing law enforcement that Plaintiff committed a crime, law enforcement would use all necessary force to arrest Plaintiff J. Chaffin, including, but not limited to: placing him in handcuffs, physically searching him and escorting him through the jail, and physically detaining him.

66. Plaintiff J. Chaffin was harmed and offensively touched as alleged herein.

67. As a direct and proximate of Defendants' conduct, Plaintiffs sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;

- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Physical discomfort;
- i) Costs and expenses incurred in retaining bondsman and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

68. As a result of Defendants' tortuous conduct and that of its agents and employees, Plaintiff missed time from work, were forced to endure the poor conditions of jail, and experienced shame, humiliation, embarrassment, and mental and physical distress.

FOR A NINTH CAUSE OF ACTION

(Abuse of Process as to Defendants TALLIE And DEVRA LACKEY, individually and as the Parents to Minor MIRANDA GRAY))

69. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

70. Plaintiffs are informed and believe that Defendants threatened caused criminal proceedings to be brought against Plaintiff J. Chaffin with the ulterior purpose of punishing Plaintiffs for some leverage in the family estate.

71. Plaintiffs are informed and believe that Defendants' acts and threats were not authorized by process and were aimed at an objective not legitimate in the use of the process.

72. As a direct and proximate result of Defendants' willful, wanton, intentional, and malicious acts, Plaintiffs have sustained the following damages:

- a) Embarrassment;
- b) Humiliation;
- c) Shame;
- d) Loss of dignity;
- e) Mental anguish and suffering;
- f) Injury to personal and business reputations;
- g) Emotional distress and trauma;
- h) Physical discomfort;
- i) Costs and expenses incurred in retaining a bondman and retaining counsel to defend the charges; and
- j) Such other damages as the evidence may show.

73. Plaintiffs are informed and believe they are entitled to actual and punitive damages, attorney fees, and the costs of this action.

FOR A TENTH CAUSE OF ACTION
(Loss of Consortium)

74. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

75. Plaintiff M. Chaffin is the spouse of Plaintiff J. Chaffin.

76. As a result of Plaintiff J. Chaffin's injuries and arrest, she has lost the right to the companionship, aid, society, services, comfort and support of her spouse.

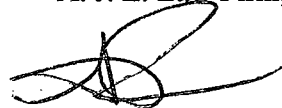
77. As a result of all the Defendants acts and omissions, Plaintiff M. Chaffin has suffered a loss of consortium for which Defendants are liable pursuant to S.C. Code Ann. § 15-78-20 (1976, as amended).

78. Accordingly, Plaintiff M. Chaffin is entitled to a judgment for actual damages for her loss of consortium.

WHEREFORE, Plaintiffs pray judgment against all Defendants for actual, incidental, and consequential, and general damages, punitive damages, the costs of this action, prejudgment interest, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A. J. Z. Law Firm, LLC



Aimee J. Zmroczek, Esquire
S.C. Bar #77193
P.O. Box 11961
Columbia, South Carolina, 29211
803.400.1918-telephone
803.403.8005-facsimile
ajzlawfirm@gmail.com
Attorney for the Plaintiffs

Columbia, South Carolina
April 4, 2014.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL
) CIRCUIT
) CASE NO: 14-CP-40-02209

) CASE NO: 14-CP-40-02209

1

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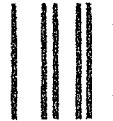
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>Tallie Lackey</i> ☐ Agent ☒ Addressee	
1. Article Addressed to: <i>Tallie Lackey</i> <i>109 Tamwood Circle</i> <i>Cayce, SC 29033</i>		B. Received by (Printed Name) <i>Tallie W Lackey</i>	C. Date of Delivery <i>4-15-14</i>
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☒ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☒ Yes	
2. Article Number (Transfer from service label)		7012 1010 0000 0005 9393	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE



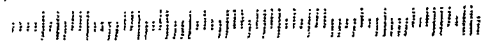
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

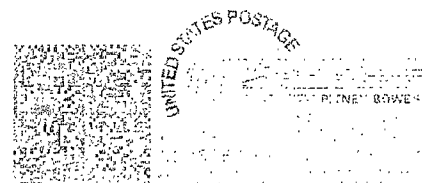
A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211

Re: Chattin

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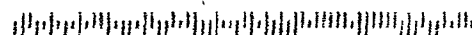



SIMMONS
LAW FIRM
1711 PICKENS STREET P.O. BOX FIVE
COLUMBIA, SC 29202



Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
Post Office Box 11961
Columbia, South Carolina 29211

29211196161



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriffs Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**NOTICE OF MOTION AND MOTION
TO DISMISS ON BEHALF OF
DEFENDANTS TALLIE AND DEVRA
LACKEY, INDIVIDUALLY AND AS
THE PARENTS TO MINOR
MIRANDA GRAY**

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

2014 MAY 16 PM 2:13

RICHLAND COUNTY
FILED

TO: AIMEE J. ZMROCZEK, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray (the "Lackey Defendants") will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, on the tenth (10th) day after service hereof at 10:00 a.m., or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order pursuant to South Carolina Rule of Civil Procedure 12(b)(6), dismissing all causes of action applicable to the Lackey Defendants in this matter on the following grounds:

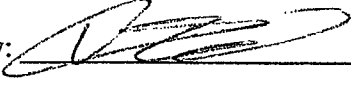
1. Plaintiffs James Chaffin and Marietta Chaffin ("Plaintiffs") have failed to state facts sufficient to constitute a cause of action against the Lackey Defendants under the Third, Sixth, Seventh and Tenth causes of action because those claims fall outside of the applicable statute of limitations and, in the alternative Plaintiffs have failed to

otherwise properly plead or state cognizable causes of action. Therefore, these claims must be dismissed.

2. Plaintiffs have failed to state facts sufficient to constitute a cause of action against the Lackey Defendants under the Fifth and Ninth causes of action because Plaintiffs failed to properly plead or state cognizable claims for malicious prosecution and abuse of process. Therefore, these claims must be dismissed.

This motion is based on the pleadings, South Carolina Rules of Civil Procedure, the Laws of the State of South Carolina, the Case Law of the State of South Carolina, and such other matters as may be properly presented to the Court at the time of the hearing.

SIMMONS LAW FIRM, LLC

By: 

John S. Simmons

Email: jsimmons@simmonsllawfirm.com

Derek A. Shoemake

Email: dshoemake@simmonsllawfirm.com

1711 Pickens Street

Columbia, SC 29201

Tel: (803) 779-4600

Fax: (803) 254-8874

Attorneys for Defendants Tallie and Devra Lackey,
individually and as the Parents to Minor Miranda
Gray

May 16, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-2209

JAMES AND MARIETTA CHAFFIN)

MOTION AND ORDER INFORMATION

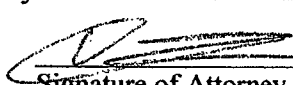
Plaintiff,)

FORM AND COVERSHEET

vs.)

RICHLAND COUNTY SHERIFF'S)
DEPARTMENT, ET AL.)

Defendant.)

Plaintiff's Attorney: Aimee J. Zmroczek, Bar No. _____ Address: 2003 Lincoln Street, Columbia, SC 29201 Phone: 803-400-1918 Fax 803-403-8005 E-mail: ajzlawfirm@gmail.com Other: _____		Defendant's Attorney: Derek Shoemake, Bar No. _____ Address: 1711 Pickens Street, Columbia, SC 29201 Phone: 803-779-4600 Fax 803-254-8874 E-mail: dshoemake@simmonsllawfirm.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss/12(b)(6) Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		May 16, 2014 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ 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			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

RICHLAND COUNTY
FILED

2014 MAY 16 PM 2:13

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriffs Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

2014 MAY 16 PM 2:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

The undersigned employee of Simmons Law Firm, attorneys for the Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray, do hereby certify that service of the Motion to Dismiss on Behalf of Defendants Tallie and Devra Lackey, individually and as the Parents to Minor Miranda Gray filed in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 16th day of May, 2014, addressed as follows:

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
Post office Box 11961
Columbia, South Carolina 29211

William H. Davidson, II
Robert D. Garfield
Post Office Box 8568
Columbia, South Carolina 29202

By: 

Derek A. Shoemake

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Devra Lackey
109 Tamwood Circle
Cayce, SC 29033

2. Article Number

(Transfer from service label)

7012 101 0000 8005 9385

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

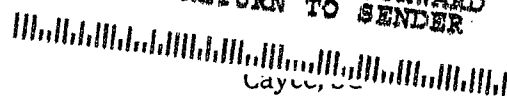
A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211

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05/26/14

RETURN TO SENDER
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Cayce, SC

First Name
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7012 1010 0000 8005 9385



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E.E

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

James Chaffin and Marietta Chaffin,)

Plaintiffs,)

v.)

Richland County Sheriff's Department,)
Deputy Brian Metz, Investigator Roy)
Livingston, Tallie and Devra Lackey,)
individually and as the Parents to Minor)
Miranda Gray,)

Defendants.)

Civil Action No. 2014-CP-400-2209

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS BY
DEFENDANTS TALLIE AND
DEVRA LACKEY**

2016 JUN 11 PM 4:13
JEANETTE W. MORRIS
& O.S.

RICHLAND COUNTY
FILED

Defendants Tallie Lackey ("Tal") and Devra Lackey ("Devra") (collectively "the Lackeys") submit this Memorandum in support of their Motion to Dismiss filed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. As discussed more fully below, each of the claims brought by Plaintiffs James Chaffin ("Chaffin") and Marietta Chaffin ("Mrs. Chaffin") (collectively "Plaintiffs") against the Lackey Defendants have failed to state facts sufficient to constitute a cause of action.

SUMMARY OF THE CASE

Chaffin was arrested for sexually abusing the Lackey's daughter in 2007, although prosecutors ultimately decided not to go forward with the case. In the present civil action, Chaffin and his wife allege various causes of action not only against the Lackeys – the parents of Chaffin's victim – but also against the Richland County Sheriff's Department, and various law enforcement officers.

Plaintiffs' allegations¹ against the Lackeys fail for the following reasons:

- The false imprisonment claim (Third Cause of Action) is time-barred as Chaffin was released from custody more than seven years ago. Alternatively, the false imprisonment claim fails because the Lackeys did not imprison Chaffin.
- The malicious prosecution allegation (Fifth Cause of Action) fails because the Complaint shows that a judicial proceeding was not instituted by the Lackeys or at their insistence.
- The defamation causes of action (Sixth and Seventh Causes of Action) are untimely as the alleged defamatory statements were made more than seven years ago. In the alternative, the Lackeys are protected as their statements were made to law enforcement officials.
- The abuse of process claim (Ninth Cause of Action) is without merit because the Complaint shows that the Lackeys never used process nor committed any overt act.
- The loss of consortium claim (Tenth Cause of Action) fails because Plaintiffs have failed to adequately allege any wrongdoing by the Lackeys. Additionally, the claim is time-barred as more than seven years have passed since Mrs. Chaffin's cause of action began to accrue.

RELEVANT FACTUAL ALLEGATIONS

On January 8, 2007, the Lackeys' daughter² – who at the time was a minor – revealed to her therapist of nearly seven months that Defendant Chaffin had sexually abused her. Pls.' Compl. at ¶ 7. After the daughter's therapist notified police, members of the Richland County Sheriff's Department ("RCSD") interviewed the daughter and her mother, Devra. *Id.* at ¶¶ 8–9. In the course of the interviews, the daughter revealed the details of her sexual assault allegations and Devra provided investigators with a condom

¹ Plaintiffs alleged nine causes of action against all Defendants, though Plaintiffs skipped from "Third" to "Fifth" in identifying their causes of action. Only the Third, Fifth, Sixth, Seventh, Ninth and Tenth Causes of Action are applicable to the Lackeys.

² Plaintiffs' Complaint does not name the Lackeys' daughter, who is now of majority age, as a Defendant nor has she been served in this action. However, the arguments herein would apply equally to her.

believed to be used by Chaffin, though Plaintiffs allege that later DNA results did not link him to the condom. *Id.* at ¶¶ 11–15, 23. Investigators also interviewed the daughter’s therapist. *Id.* at ¶ 10.

On February 15, 2007, RCSD investigators obtained a warrant charging Chaffin with Criminal Sexual Conduct with a Minor, and on March 9, 2007, investigators did in fact arrest him. *Id.* at ¶¶ 16–17. Chaffin was ultimately released from custody on March 13, 2007. *Id.* at ¶ 20. According to Plaintiffs’ Complaint, the Richland County Solicitor’s Office ultimately dismissed the charges against Chaffin on September 5, 2012. *Id.* at ¶ 24.

STANDARD OF REVIEW

A complaint is subject to dismissal under South Carolina Rule of Civil Procedure 12(b)(6) when the complaint “fail[s] to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRPC. According to the South Carolina Supreme Court, dismissal under Rule 12(b)(6) is thus appropriate if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory or show that the claim is outside the applicable statute of limitations. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Flateau v. Harrelson*, 355 S.C. 197, 201–02, 584 S.E.2d 413, 415 (Ct. App. 2003).

DISCUSSION

As discussed more thoroughly below, each of Plaintiffs' claims against the Lackeys should be dismissed.

I. False Imprisonment Claim is Time-Barred and Without Merit

Plaintiffs' Third Cause of Action for false imprisonment is plainly time-barred and also fails on its face.

To prevail on a claim for false imprisonment, a plaintiff must establish the following: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 618, 521 S.E.2d 163, 167 (Ct. App. 1999).

The statute of limitations for false imprisonment in South Carolina is two years. S.C. Code Ann. § 15-3-550 (Supp. 2002). According to at least one South Carolina Supreme Court case, the limitations period begins to run at the time of the false imprisonment. *Miller v. Dickert*, 259 S.C. 1, 3, 190 S.E.2d 459, 460 (1972). However, in a more recent albeit unpublished case from the South Carolina Court of Appeals, the court stated that "[w]e embrace the rule adopted by other jurisdictions that the statute of limitations for false imprisonment begins to run when the plaintiff is released following an arrest." *Canzater v. City of Columbia*, Op. No. 2004-UP-054 (S.C. Ct. App. Filed Jan. 22, 2004). Certainly, the rule in *Canzater* embodies the majority approach. See 8 S.C. Jur. False Imprisonment § 17 (noting that it is generally held that accrual commences upon release from confinement); *Campbell v. Hyatt Regency*, 388 S.E.2d 341, 342 (Ga. Ct. App. 1989) ("An action for false imprisonment 'must be brought within two years of its accrual . . . which is from the release from imprisonment.' "); M.C. Dransfield, *When*

Statute of Limitations Begins to Run Against Action for False Imprisonment or False Arrest, 49 A.L.R.2d 922 (1956) (stating the general rule is that the statute of limitations for false imprisonment “begins to run from the termination of the imprisonment and not from the time when the proceedings under which the plaintiff’s arrest occurred ended”).

Here, Plaintiffs run afoul of the statute of limitations. As Plaintiffs themselves state, Chaffin was arrested on March 9, 2007, and released from custody on March 13, 2007. Pls.’ Compl. at ¶¶ 17, 20. Applying either the statute of limitations invoked in *Miller* or the more plaintiff-friendly majority rule explained in *Canzater*, when Plaintiffs filed their Complaint on April 4, 2014, it is was more than seven years after Plaintiffs cause of action began to accrue and more than five years after the statute of limitations had run.

Even if Plaintiffs’ false imprisonment claim were not time-barred, it would fail on its face. By the Complaint’s own factual allegations, the Lackey Defendants did not imprison Chaffin. As the Complaint alleges, Devra (and her daughter) merely provided statements and potential evidence to law enforcement officers after being contacted by those law enforcement officers. Pls.’ Compl. at ¶¶ 8, 14–15. While a party need not physically restrain a defendant to be liable for false imprisonment, South Carolina law makes clear that a defendant must create the false imprisonment. *See Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). There is simply no support under South Carolina law for the proposition that responding to a police officer constitutes false imprisonment.

II. Claim for Malicious Prosecution Fails to State Sufficient Facts

Plaintiffs' Fifth Cause of Action fails to allege sufficient facts to state a cognizable malicious prosecution claim against the Lackeys.

"[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965); *see also Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 477, 289 S.E.2d 414, 415 (1982).

When viewing the facts alleged in the Complaint, Plaintiffs simply fail to make any showing of the second element for malicious prosecution. It appears undisputed that the Lackeys themselves did not institute criminal proceedings, as they are private citizens. Further, when looking at the scant factual allegations against the Lackeys, there is simply no allegation that criminal proceedings were instituted at their insistence. By Plaintiffs' own admissions, after the daughter discussed Chaffin's abuse with her therapist, Devra responded to interview questions from investigators and provided possible evidence she had in her possession. Pls.' Compl. at ¶¶ 7–8, 11–14. At no point does the Complaint allege or imply that the Lackey Defendants insisted on criminal charges. As the South Carolina Supreme Court has explained, in order to maintain an action for malicious prosecution, "it must be shown that [a defendant] was affirmatively active in instigating or participating in the prosecution." *Gibson v. Brown*, 245 S.C. 547, 550, 141 S.E.2d 653, 654 (1965).

III. Defamation Causes of Action are Time-Barred and Without Merit

Plaintiffs' Sixth and Seventh Causes of Action allege defamation and defamation *per se* against the Lackeys. Both of these defamation claims are outside of the statute of limitations and, alternatively, fail on their face.

In bringing a claim of defamation or defamation *per se*, a Plaintiff must prove the following core elements: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998). Both defamation and defamation *per se* have a two year statute of limitation that begins to run when the defamatory statement is made. S.C. Code Ann. § 15-3-550 (Supp. 2002); *Jones v. City of Folly Beach*, 326 S.C. 360, 367, 483 S.E.2d 770, 774-75 (Ct. App. 1997) (finding that the "date of utterance rule" and not the "discovery rule" applies in defamation actions).

Plaintiffs' defamation causes of action are untimely. As the Complaint shows, the only statements referenced in the Complaint were made in 2007, more than seven years before the Complaint was filed. See Pls.' Compl. at ¶¶ 7-8, 10-15, 54. Even if this Court were to apply the discovery rule to Plaintiffs' case, Defendant Chaffin himself became aware of any statements when he was arrested in March 2007. Not even the most labored reading of Plaintiffs' Complaint would make the defamation causes of action timely.

The defamation causes of action also fail on their merits. The Complaint fails to show that the Lackeys did anything more than respond to police officers investigating the daughter's statements to her therapist. Communications and statements made by citizens to police officers or other law enforcement personnel regarding crimes that may have been committed are privileged and do not constitute defamation. *See Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946).

IV. Plaintiffs' Complaint Fails to State Facts to Constitute Abuse of Process

The factual allegations of Plaintiffs' Ninth Cause of Action fail to give rise to a claim for abuse of process.

A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). As to the second element, the South Carolina Supreme Court has stated that "[s]ome definite act . . . not authorized by the process or aimed at an object not legitimate in the use of the process is required." *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107 (quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). Thus, the element comprises three components: 1) a "willful" or overt act 2) "in the use of the process" 3) that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective. *Id.*

Put simply, by any reading of Plaintiffs' Complaint, the Lackeys did not use process. Devra and her daughter simply responded to interview questions from investigators and provided possible evidence Devra had in her possession. Pls.' Compl. at ¶¶ 7-8, 11-14. Further, even assuming process was used, the Complaint is bereft of any

supposed overt act committed by the Lackeys. As the South Carolina Supreme Court has explained, “an allegation that a party had a ‘bad motive’ or an ‘ulterior purpose’ in bringing an action, standing alone, is insufficient to sustain an abuse of process claim.” *Pallares v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133 (2014) (quoting *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012)).

V. Mrs. Chaffin’s Loss of Consortium Claim is Without Merit and Time-Barred

Plaintiffs’ Tenth Cause of Action – loss of consortium on behalf of Mrs. Chaffin – fails to state facts sufficient to constitute that cause of action and is untimely.

Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative. *Preer v. Mims*, 323 S.C. 516, 521, 476 S.E.2d 472, 475 (1996). However, wrongful conduct is still required on the part of a defendant. In fact, as the South Carolina Supreme Court has explained, “[g]enerally, a plaintiff spouse’s claim for loss of consortium fails if the impaired spouse’s claim fails, whether the claim is considered separate and independent from the impaired spouse’s claim or derivative in nature.” *Lee v. Bunch*, 373 S.C. 654, 663, 647 S.E.2d 197, 202 (2007) (quoting 41 Am.Jur.2d Husband and Wife § 227 (2007)).

Loss of consortium claims are subject to a three-year statute of limitations. *See* S.C. Code Ann. § 15–3–530(5) (2009) (limiting to three years “action[s] for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15–3–545 [medical malpractice]”); *Jones v. Wesby*, No. 5:09-CV-2204-MBS, 2010 WL 3420026 (D.S.C. Aug. 26, 2010) (applying South Carolina law and holding that a loss of consortium claim is subject to a three-year statute of limitations); *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475,

477 (1996) (applying a three-year statute of limitations to loss of consortium claim). Although loss of consortium is an independent action, the right of action begins to accrue when the spouse first sustains until the loss of the services, society and companionship of the spouse. *Preer*, 323 S.C. at 521, 476 S.E.2d at 475.

First, as discussed herein, Plaintiffs have failed to adequately allege any wrongdoing or a viable cause of action against the Lackeys. Further, the loss of consortium claim states no factual allegations apart from the conduct complained of previously in the Complaint. Pls.' Compl. at ¶¶ 74–77. Therefore, because Plaintiffs have failed to show any wrongdoing on behalf of the Lackeys, Mrs. Chaffin's loss of consortium claim fails. *See Lee*, 373 S.C. at 663, 647 S.E.2d at 202 (explaining that while not derivative, a loss of consortium claim fails if the impaired spouse's claim fails).

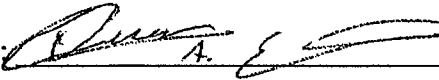
Second, Mrs. Chaffin's claim falls well outside the applicable statute of limitations. Plaintiffs' Complaint makes clear that the injuries to Mrs. Chaffin began upon Chaffin's arrest on March 9, 2007. Thus, more than seven years have passed since her cause of action began to accrue and her claim is time-barred under any possibly applicable statute of limitations.

CONCLUSION

Based upon the foregoing, Plaintiffs Third, Sixth, Seventh and Tenth causes of action are untimely on their face and, alternatively, fail to allege cognizable causes of action. Moreover, Plaintiffs failed to properly plead or state cognizable claims for malicious prosecution and abuse of process. Therefore, each of Plaintiffs' claims against the Lackeys should be dismissed.

Respectfully submitted,

SIMMONS LAW FIRM, LLC

By:  _____

John S. Simmons
Email: jsimmons@simmonslawfirm.com
Derek A. Shoemake
Email: dshoemake@simmonslawfirm.com
1711 Pickens Street
Columbia, SC 29201
Tel: (803) 779-4600
Fax: (803) 254-8874

Attorneys for Defendants Tallie and Devra Lackey

June 11, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

James Chaffin and Marietta Chaffin,) Civil Action No. 2014-CP-400-2209
)
 Plaintiffs,)
)
 v.)
)

Richland County Sheriff's Department,
 Deputy Brian Metz, Investigator Roy
 Livingston, Tallie and Devra Lackey,
 individually and as the Parents to Minor
 Miranda Gray,
 Defendants.

CERTIFICATE OF SERVICE

RICHLAND COUNTY
 FILED
 2014 JUN 11 PM 4:13
 JEANNETTE W. MCBRIDE
 C.C. & G.S.

The undersigned employee of Simmons Law Firm, attorneys for the Defendants Tallie and Devra Lackey, do hereby certify that service of the Memorandum in Support of the Motion to Dismiss on Behalf of Defendants Tallie and Devra Lackey, filed in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 11th day of June, 2014, addressed as follows:

Aimee J. Zmroczek, Esquire
 A.J.Z. Law Firm, LLC
 Post office Box 11961
 Columbia, South Carolina 29211

William H. Davidson, II
 Robert D. Garfield
 Post Office Box 8568
 Columbia, South Carolina 29202

By: 

Derek A. Shoemake

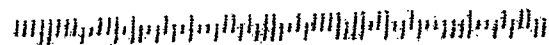


1711 PICKENS STREET P.O. BOX FIVE
COLUMBIA, SC 29202



Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
Post Office Box 11961
Columbia, South Carolina 29211

2921131961 EC99



) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO: 14-CP-40-2209

)

)

)

)

3

—

2

—

CERTIFICATE OF SERVICE

RICHARD DOWNEY JR.
FBI/DO
2014 JUL 21 AM 10:52
JEANETTE W. MCBRIDE
C.C.P. & D.S.

I certify that on this date I served the PLAINTIFFS' MEMORADUM OF LAW IN OPPOSITION TO DEFENDANTS' LACKEY et al.MOTIONS TO DISMISS AND REQUEST FOR ENTRY OF DEFAULT in the above-captioned case on Attorneys by delivering copies of these documents to William H. Davidon,II and Robert D. Garfield, attorneys of record for Defendants Richland County Sheriff's Department, Deputy Brian Metz, and Investigator Roy Livingston by hand delivering said copies at the Richland County Judicial Center, Second Floor, 1701 Main Street, Columbia, South Carolina 29201.

A.J.Z. Law Firm, LLC

Aimee J. Zmroczek, Esq.
2003 Lincoln Street
P.O. Box 11961
Columbia, South Carolina 29211
(803) 400-1918 telephone
(803) 405-8005 fax
ajzlawfirm@gmail.com

Columbia, South Carolina

This 21st day of July, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

James Chaffin and Marietta Chaffin,)

Plaintiff,)

vs.)

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
Individually and as the Parents to Minor
Miranda Gray,

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-2209

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

RICHLAND COUNTY
FILED
2014 SEP 19 PM 3:33
JEANETTE M. MCGRATH
C.C.P. & G.S.

Plaintiff's Attorney:
Aimee J. Zmroczek, Bar No. 77193
Address:
PO Box 11961, Columbia, SC 29211
Phone: 803-400-1918 Fax 803-403-8005
E-mail: ajzlawfirm@gmail.com Other: _____

Defendant's Attorney:
John S. Simmons, Bar No. _____
Address:
PO Box Five, Columbia, SC 29202
Phone: 803-779-4600 Fax 803-254-8874
E-mail: jsimmons@simmonsfirm.com Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Reconsider

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff/☐ Defendant

9/19/2014
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ _____
☐ 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, SCRPC)
☐ 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

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
Individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-2209

MOTION TO RECONSIDER

RICHLAND COUNTY
FILED
2014 SEP 19 PM 3:33
JEANNETTE V. MCBRIDE
C.C.P. & G.S.

Comes now the Plaintiffs by and through their undersigned attorney and would request a
Hearing to Reconsider the Order dismissing Defendants Tallie Lackey and Devra Lackey,
individually and as the Parents to Miranda Gray entered in this case on September 8, 2014 and
received in this office on September 15, 2014.

Respectfully submitted this 19th day of September 2014.

A.J.Z. Law Firm, LLC
PO Box 11961
Columbia, SC 29211
(803) 400-1918 (telephone)
(803) 403-8005 (fax)
ajzlawfirm@gmail.com

By: 
Aimee J. Zmroczek (SC Bar No. 77193)
Attorney for Defendant

Columbia, South Carolina
September 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Chaffin and Marietta Chaffin,

Plaintiffs,

v.

Richland County Sheriff's Department,
Deputy Brian Metz, Investigator Roy
Livingston, Tallie and Devra Lackey,
Individually and as the Parents to Minor
Miranda Gray,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-2209

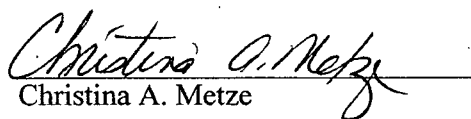
CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of two Motions to Reconsider dated September 19, 2014 by depositing same in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

William H. Davidson
PO Box 8568
Columbia, SC 29202

And

John S. Simmons
PO Box Five
Columbia, SC 29202


Christina A. Metze

Columbia, South Carolina

Dated: September 22, 2014

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

James & Marietta Chaffin,)
) PLAINTIFFS,)
VS.) TRANSCRIPT OF RECORD
) CASE 2014-CP-40-1754
Richland County Sheriff's)
Department et al,)
DEFENDANTS.)

July 21, 2014
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

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

AIMEE J. ZMROCZEK, ESQ.
ATTORNEY FOR THE PLAINTIFFS

ROBERT GARFIELD, ESQ.
DEREK SHOEMAKE, ESQ.
JOHN S. SIMMONS, ESQ.
ATTORNEYS FOR THE DEFENDANTS

WENDY WISE DERRICK
OFFICIAL COURT REPORTER

I N D E X

Argument by Mr. Garfield	3, 18
Argument by Ms. Zmroczek	10, 16
Argument by Mr. Shoemake	11, 18, 20
Order of The Court	20
Certificate of Reporter	21

E X H I B I T S

No exhibits were presented.

1 THE COURT: This is -- we have two defendant motions
2 to dismiss; is that right?

3 MR. GARFIELD: Yes, Your Honor.

4 MR. SHOEMAKE: Yes, Your Honor.

5 THE COURT: Okay. Tell me your name, sir.

6 MR. SHOEMAKE: Derek Shoemake.

7 THE COURT: Can you spell that for us?

8 MR. SHOEMAKE: I gave her a card, Your Honor.

9 THE COURT: Okay.

10 All right. And this is Rodney Garfield,
11 Mrs. Derrick. And we have John Simmons and Aimee
12 Zmroczek.

13 THE COURT REPORTER: Thank you.

14 THE COURT: Say that three times fast.

15 (WHEREUPON, there was laughter.)

16 THE COURT: All right. Very well. Who wants to
17 start?

18 MR. GARFIELD: I will, Your Honor.

19 THE COURT: Okay. Mr. Garfield.

20 MR. GARFIELD: Thank you, Your Honor. May it please
21 the Court.

22 This is our motion to dismiss based on -- or pursuant
23 to Rule 12 of the South Carolina Rules of Civil Procedure.
24 We represent two defendants identified in this case as the
25 Richland County Sheriff's Department and Deputy Ryan

1 Metts. The complaint itself that was filed in
2 April 4th of this year -- just briefly, Your Honor, and I
3 think used to relevant points to our motion. Mr. Shoemake
4 might want to extend on this a bit, but in January of 2007
5 we understand based on the complaint that the daughter of
6 the defendants, Mr. and Mrs. Lackie, revealed -- this
7 daughter revealed to a therapist that the plaintiff in
8 this case -- actually two plaintiffs -- but the plaintiff
9 James Chaffin had sexually abused her. Law enforcement
10 was subsequently notified and the Richland County
11 Sheriff's Department opened up a file, began an
12 investigation into the allegations.

13 THE COURT: Okay.

14 MR. GARFIELD: Yes, Your Honor.

15 THE COURT: Okay. So Lackie's child filed a
16 complaint against Mr. Chaffin or went to the sheriff's
17 department and said something had happened?

18 MR. GARFIELD: Based on the complaint they had
19 revealed to the therapist --

20 THE COURT: Okay.

21 MR. GARFIELD: -- and the therapist subsequently
22 notified the police as I understand it. I may be
23 corrected by other counsel here. My reading of the
24 complaint. But law enforcement was notified as a result
25 of this.

1 THE COURT: So the child is in counseling, made some
2 report that her counselor slash therapist, whoever, caused
3 all this?

4 MR. GARFIELD: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. GARFIELD: The next month, February 2007, the
7 Richland One -- Richland County Sheriff's Department
8 Investigator Ryan Metts, he pursued and obtained an arrest
9 warrant for Mr. Chaffin. And the nature of the warrant
10 was criminal sexual conduct with a minor in the
11 third-degree -- or, excuse me, second-degree.

12 The next month, March of 2007, Investigator Metts
13 served the arrest warrant on the plaintiff. The
14 plaintiffs (sic), thereafter, of course, arrested, booked
15 into Alvin S. Glenn, and he served some four days in jail
16 before getting out on a surety bond, a \$40,000 surety
17 bond. Again, I'm just taking this the black letter,
18 what's written in the complaint. He, thereafter, was
19 prosecuted by the fifth circuit solicitor for four and a
20 half years until September of 2012 in which the charge was
21 ultimately not proessed based on, what we understand,
22 insufficient evidence for trial from whatever kind of
23 determination made by the assistant solicitor at the time.

24 Now our motion to dismiss, Your Honor, just on the
25 front end does not seek complete dismissal of the

1 complaint. We instead ask the Court to assist with -- I
2 guess what we would call cleaning up the pleadings so we
3 can go forward and have substantive discovery. There are
4 three main areas, two of which deal directly under the
5 South Carolina Tort Claims Act.

6 And the first area is based on South Carolina Code
7 15-78-70 -- I believe that's subsection B -- in which the
8 Tort Claim Act provides that when a governmental employee
9 acts within the scope of his official duties, such as
10 here, in which a tort is alleged seeking money damages,
11 the appropriate party defendant would be the entity
12 itself. The complaint, Your Honor -- I believe it's
13 paragraph nine -- specifically alleges that Investigator
14 Metts had acted within the course of the scope. And I'm
15 just going to read into the record; at all times material
16 to the allegations contained herein, all of the
17 defendants, Metts and Livingston, were acting within the
18 scope of their employment and/or agency as police officers
19 employed by defendant, Richland County Sheriff's
20 Department. We would, therefore, submit that Investigator
21 Metts should not be a party defendant and the proper party
22 should be his employer, the sheriff. On this note, we
23 would ask that the defendant Metts be dismissed.

24 And also on a housecleaning note, Your Honor, she's
25 alleged one of the party defendants, the Richland County

1 Sheriff's Department, that is not a legal entity. I think
2 we've plowed this road before the Court several times.
3 And we would ask the Court to substitute a single party
4 defendant to, therefore, be the sheriff of Richland County
5 in his official capacity. And making a one law
6 enforcement party defendant, her claims would still go
7 forward. All interests would be protected. So it's more
8 of procedural or caption.

9 On that note, Your Honor, comes to her second point
10 in the Tort Claims Act. We would draw Your Honor's
11 attention to 15-78-120 of the South Carolina Code in which
12 the statute provides that punitive damages are not
13 recoverable against a governmental entity. This complaint
14 expressly alleges and seeks punitive damages in this case.
15 And we move the Court to strike reference -- any
16 references from the complaint as to punitives.

17 And then the third ground of our motion, Your Honor,
18 just going back to the complaint itself, it looks like
19 that the allegations were properly framed against law
20 enforcement. She alleges -- excuse me -- Ms. Zmroczek, on
21 behalf of her clients, allege false arrest, assault and
22 battery -- I would assume assault and battery with respect
23 to an alleged unlawful arrest being handcuffed, not a
24 forced case -- malicious prosecution and also negligent
25 hiring supervision. Of course, during the course of

1 discovery, the viability of these causes of action will be
2 determined in their time. But just looking at the four
3 corners of the complaint, all have a basis of fact with
4 the exception of one that I didn't mention, and it's in
5 the first cause of action.

6 The first cause of action alleges a violation to
7 South Carolina Constitution. That's alleged article one
8 section ten against law enforcement defendants. This
9 portion of the complaint, Your Honor, seeks redress for
10 alleged violation of the plaintiff's state civil rights.
11 And we submit that no mechanism exists in South Carolina
12 for a plaintiff to obtain monetary damages for declaration
13 of state court rights.

14 If I may, I would hand up -- it's an unestablished
15 case from 2002. It's South Carolina Court of Appeals.
16 Gibbs, G-I-B-B-S, versus South Carolina Department of
17 Probation Patrol and Pardon Services.

18 THE COURT: Thank you.

19 Let me read this first cause of action before you
20 argue that, Mr. Garfield.

21 MR. GARFIELD: Yes, Your Honor.

22 (WHEREUPON, the Court read the affidavits and/or
23 documents.)

24 THE COURT: Go ahead.

25 MR. GARFIELD: Thank you, Your Honor.

1 In this case -- I believe it's not numbered pages and
2 it's an unpublished case. I'm aware of that. It goes to
3 tab section, it's roman numeral two, in which it's
4 identified or subject heading, violation of state civil
5 rights. The Court -- I'm just going to read from this. I
6 think it's pertinent to our case -- the Court indicates
7 Gibbs argues he's entitled to damages for violation of his
8 state civil rights. Among the rights he claims were
9 violated were his due process, speedy trial, and
10 protection from unreasonable searches. On appeal Gibbs
11 argues the circuit court erred in finding no private cause
12 of action for damages may be inferred from this South
13 Carolina Constitution for violations of his state civil
14 rights. It goes on in the next page recognizing or at
15 least drawing a distinction, Your Honor, between section
16 1983 claim in federal court and state court.

17 And just the upshot, here is that it's really the
18 third page that I ask you to turn to from this section,
19 the last portion of roman numeral two. It says; we agree
20 that no viable cause of action exists where it is here.
21 The state constitution does not provide for a private
22 cause of action for civil rights violations and the
23 legislature has not enacted a statute enabling this type
24 of action.

25 Your Honor, again, this is more housecleaning from

1 our perspective because she would then still be able to go
2 forward on her other causes of action. We'd ask that
3 cause of action be dismissed.

4 THE COURT: Okay.

5 MR. GARFIELD: Thank you, Your Honor.

6 THE COURT: All right. Who wants to go next?

7 MR. SHOEMAKE: Do you want me to go?

8 MS. ZMROCZEK: Do you want me to respond to that or
9 you want me to --

10 THE COURT: However you want to do it.

11 MS. ZMROCZEK: Otherwise, I might get confused.

12 Your Honor, first I'd like to point out Rule 268 of
13 South Carolina Appellate Court Rules, Citation of South
14 Carolina Authority says that unestablished opinions have
15 no precedential value and should not be cited.

16 Your Honor, we would agree that we may have some
17 housecleaning issues that we can speak with Mr. Garfield
18 or Mr. Davidson regarding cleaning up the complaint as far
19 as names. And we would ask for 15 days to do that. Your
20 Honor, we think the motion to dismiss is certainly
21 premature as far as that case goes. Your Honor, and I
22 believe that -- I think that can be -- I think that can be
23 easily taken care of if a simple meeting and we can refile
24 that or amend that so that we make sure everybody is
25 appropriately named.

1 So we would simply remind the Court that 12(b)(6)
2 motions are based solely on the facts and not the possible
3 outcomes if there are any outcomes.

4 And, Your Honor, we would move to -- we would ask the
5 Court to dismiss this motion at this time as being
6 premature.

7 THE COURT: All right.

8 MR. SHOEMAKE: Thank you, Your Honor.

9 Our motion to dismiss is also filed under Rule 12.
10 We represent the defendants Tal Lackie, Deborah Lackie.

11 And, Your Honor, as long as we're talking
12 housekeeping, I think it's okay, but I just want to draw
13 your attention. There's a party named in the caption, her
14 name is a party who was a minor sexual assault victim.
15 She is now the age of majority. We think under the rules
16 that there's no prohibition against -- including that
17 name. There are all these rules about -- we do want to
18 point it to your attention there is a named party who was
19 a minor at the time.

20 THE COURT: Okay.

21 MR. SHOEMAKE: We're moving to dismiss all six causes
22 of action which are against the Lackie defendants pursuant
23 to 12(b)(six) on the statute of limitation grounds.

24 And what I'm doing, Your Honor, I'll just briefly go
25 through. I've submitted a memo. I don't know if you have

1 it.

2 THE COURT: Yes, I do.

3 MR. SHOEMAKE: I have a paper copy if you'd like,
4 Your Honor. Would you like a paper copy?

5 THE COURT: Thank you.

6 Do you have a copy, Ms. Zmroczek?

7 MS. ZMROCZEK: I do. Thank you, Your Honor.

8 MR. SHOEMAKE: May I approach?

9 THE COURT: Yes.

10 MR. SHOEMAKE: This is the motion, Your Honor, and
11 the support as well.

12 THE COURT: Thank you.

13 MR. SHOEMAKE: Certainly.

14 So, Your Honor, I'm going to sort of briefly
15 highlight. I think my memo does a pretty good job of
16 laying out what our arguments are. So I'll just sort of
17 briefly highlight this.

18 Going through the cause of action. Again, these are
19 the only causes of action that are applicable to our
20 defendants. We have not addressed, of course, the ones by
21 the sheriff's office.

22 The false imprisonment claim, you should know, is
23 alleged against all defendants. We would argue fails --
24 that's the third cause of action. It's time barred.
25 Really two South Carolina cases we cite in our brief that

1 one adopts the rule of the false imprisonment statute
2 begins to run upon release. The other one says upon
3 arrest. Taking either statute of limitations or released
4 on bond more than seven years ago. False imprisonment has
5 a two-year statute of limitations. So we think that
6 fails.

7 We also think it fails on the merits as discussed in
8 our memo. We'll just rely on our memo there.

9 THE COURT: Okay.

10 MR. SHOEMAKE: We don't think -- we did not cause him
11 to be imprisoned.

12 The malicious prosecution allegation, we think that
13 fails under 12(b)(6) for failure to state a claim.
14 Specifically, we believe that -- the complaint is not
15 properly alleged that any prosecution was by or at the
16 insistence of the defendant. As Mr. Garfield noted, the
17 complaint alleges my clients, the defendants, their
18 parents, their daughter told the therapist they were being
19 abused. The parents then asked questions of
20 investigators. At that point, you know, and said when the
21 daughter said I have this evidence, they said here's the
22 evidence that my daughter said she had. And that's really
23 the extent. The complaint alleges they were involved.
24 There's nothing that shows they were insisting on this
25 prosecution or they even went to the police initially. So

1 we think that's failed to show malicious prosecution.

2 As to the definition causes of action, which are the
3 sixth and seventh causes of action, those are also two
4 year statute of limitations. As you read the complaint,
5 the only statements specifically referenced in the
6 complaint were made in 2007 which are more than seven
7 years ago.

8 We'd also note those -- the defamatory statements
9 alleged the family -- were made to the law enforcement
10 officers as part of the law enforcement investigation.

11 The abuse of process claim, which is the ninth cause
12 of action, the longest -- the standard of review on abuse
13 of process is fairly lengthy one, but one of the
14 requirements is an overt act, number two in the use of
15 process. And we cited it for you in our brief. Argument
16 is just like the false imprisonment and malicious
17 prosecution, the Lackie's here never used process. They
18 simply responded to questions and relayed information.
19 They never took any overt act. They took no overt act.
20 And to the extent they have an overt act, they never did
21 that to use the process. The process was initiated by the
22 therapist. They then responded to that process.

23 The loss consortium claim, just to finish that out,
24 that's our last claim. We understand that there's South
25 Carolina law. Those are not derivative. However, because

1 those other claims fail -- we would note as quoted in our
2 brief in Lee versus Bunch -- the South Carolina Supreme
3 Court is held that generally a spouses claim for loss of
4 consortium fails if the impaired spouses claim failed as
5 well. So under the derivative, we would say the failure
6 of the initial claims caused the loss of consortium claim
7 to fail.

8 THE COURT: Okay.

9 MR. SHOEMAKE: And then, Your Honor, this morning
10 Ms. Zmroczek filed a memo that addressed another issue
11 that I'd also like to address as well.

12 She made three points as to why it should be denied.
13 I'll address each of those in turn.

14 First was a timing issue. We think the response was
15 timely filed. Tal is the only defendant who is actually
16 been served. So certainly we're timely as to Deborah.
17 She was never served. So we're now entering an appearance
18 for her.

19 Tal got the complaint on April 15th by mail,
20 certified mail, and filed his response on May 16th. Under
21 Rule 6(b), he gets five days, giving him 35 days to
22 respond. The response was filed 31 days. If you look at
23 the calendar, April 15th to May 16th, be 31 days. So he
24 was within the 35-day window.

25 And lastly, Ms. Zmroczek appears to argue that we

1 failed to properly allege our bases. Again, we think if
2 you look at the motion, it pretty plainly lays out the
3 causes of action and the reasons we are moving for
4 dismissal.

5 So for those reasons, Your Honor, we request dismiss
6 under Rule 12.

7 THE COURT: Thank you, sir.

8 Ms. Zmroczek.

9 MS. ZMROCZEK: Thank you, Your Honor.

10 I did file a lengthy motion with this in response to
11 this motion, Your Honor. And I would refer the Court to
12 South Carolina Rules of Civil Procedure, Third Edition,
13 published by James Flanagan, as well as the trial note
14 published by Ralph King Anderson which specifically
15 addresses the Rule 6(e). Your Honor, they say that Rule
16 6(e), which allows for the additional five days of
17 mailing, does not extend the time to respond to the
18 summons and complaint. Because under Rule 4(d)(8), it's
19 calculated by the receipt of the defendant.

20 Your Honor, I do note the irony of their statute of
21 limitations claims. However, it's very clear when the
22 service was perfected. And they did not -- when they
23 answered, they answered on behalf of all the defendants
24 listed. They answered on behalf -- or when they filed
25 their responsive pleading, they filed their responsive

1 pleading as attorneys for Tally and Deborah Lackie,
2 individually, as well as the parents to the minor, Miranda
3 Gray.

4 Your Honor, we would argue since they did not
5 preserve their insufficiency of service claim that that
6 carries no weight here. They did not preserve that. They
7 have not filed an answer. And I understand that they did
8 file a responsive pleading. It's our position that the
9 rule is very clear that it is filed untimely.

10 THE COURT: Okay.

11 All right. Anything further?

12 MS. ZMROCZEK: Oh, sorry.

13 Your Honor, with regard to the other claims, they're
14 clearly questions of fact, Your Honor. Just by looking at
15 the four corners of the complaint, there are overt acts
16 alleged in the complaint wherein the parents brought a
17 condom to the police officer or to the police station. We
18 would argue those are overt acts. Again, those are listed
19 in the complaint.

20 THE COURT: And my understanding is the complaint
21 says that the child told some form of a therapist and the
22 therapist told the police. Does the plaintiff disagree
23 with that?

24 MS. ZMROCZEK: There are more facts laid out in the
25 complaint, Your Honor, because the parents did make calls

1 and, like I said, went to gather evidence and made
2 statements regarding the claims.

3 THE COURT: I'm talking about the way it originally
4 gets to the police.

5 MS. ZMROCZEK: That's my understanding.

6 THE COURT: Okay.

7 Mr. Garfield.

8 MR. GARFIELD: Briefly, Your Honor. Just in response
9 to what Ms. Zmroczek brought up to the Court with response
10 to our motion.

11 We do agree that unpublished cases certainly not
12 authoritative. We do offer this to the Court. And just
13 to clarify, we're not claiming that that constitutes
14 binding authority, rather persuasive or illustrative means
15 to underscore the fact there has been no private right of
16 action carved out by statute or even by implication by
17 South Carolina courts up till now. And, again, that's
18 just want to clarify for that, the reason, Your Honor.

19 Thank you.

20 MR. SHOEMAKE: Your Honor, I would say, I think in
21 terms of Deborah, we're not arguing she hasn't been -- we
22 agree Deborah's now in the case. We're saying because she
23 wasn't served, we made an appearance for her when we filed
24 our motion. So she's timely. There's no issue she could
25 not be timely because until we filed our response, there

1 had been no service on Deborah Lackie. It's fine now
2 because we're voluntarily appearing before the Court. So
3 we're not arguing insufficient as to her.

4 And as to that, the 30-day argument, we do note on
5 the 31st day the response was filed. And I've not seen
6 the authority Ms. Zmroczek is citing. I have read other
7 authority. And I see nothing in South Carolina law that
8 would hold that. In fact, if you look at the rules, Rule
9 4 simply says; service is effective upon when you sign the
10 certified mail receipt. Agreed. That's when you start
11 counting. Rule 12 tells you you have 30 days. Then Rule
12 6, without qualification or equivocation, 6(c) says; when
13 service is made by mail or upon a statutory agency, you
14 get five days. It doesn't say registered mail, regular
15 mail. It says a service is by mail. You get 35 days or
16 five extra days. That's simply what the rule says. While
17 there may be a -- that I'm not aware -- says different.
18 The rule's pretty clear.

19 And I have found -- forgive me because I found it
20 this morning, so I haven't had a chance to make copies.
21 But I did find -- we use the same rules the federal and
22 civil procedure. I did find a case from the District
23 Court of California that sort of says that even when
24 you're served by certified mail, you still get the three
25 days under the federal rule. I can pass that up. Again,

1 I was only able to print that this morning.

2 May I, Your Honor?

3 THE COURT: Yes, sir.

4 Okay. Thank y'all very much. I'll let you know by
5 the end of the week.

6 MR. SIMMONS: Your Honor, may I have one moment?

7 THE COURT: Yes, sir. Sure.

8 MR. SHOEMAKE: Your Honor, to the extent -- sorry,
9 Your Honor, one last point. To the extent -- again, we
10 think the rule's pretty clear on the time. To the extent
11 this is read any kind of request for default, we would
12 just point out that that was served this morning. So we
13 would get three days notice of default under the rules.

14 THE COURT: Okay.

15 All right. Ms. Zmroczek?

16 MS. ZMROCZEK: And we would agree, Your Honor. We're
17 not trying the trial by ambush.

18 Simply we would also ask for the respective 15 days
19 if they would like for us to clean up as far as naming the
20 minor.

21 THE COURT: All right. Thank you very much.

22 MR. SHOEMAKE: Thank you, Your Honor.

23

24

25

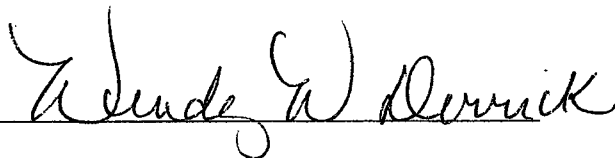
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Wendy Wise Derrick, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, Court of Common Pleas for Richland County, South Carolina, on the 21st day of July, 2014.

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



Wendy Wise Derrick, Court Reporter

My Commission Expires: 12-30-2024

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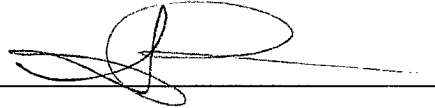
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SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 16, 2016



Aimee J. Zmroczek, Esq. , SC Bar No.: 77193
A. J. Z. Law Firm, LLC
2003 Lincoln Street (29201)
P.O. Box 11961
Columbia, SC 29211
(803) 400-1918 (telephone)
(803) 403-8005 (fax)
ajzlawfirm@gmail.com
Attorney for Appellants