

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

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Case No. 2010-CP-08-4453

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Berkeley County Sheriff's  
Department and H.  
Wayne Dewitt,

Respondent,

v.

L.G. Elrod,

Appellant.

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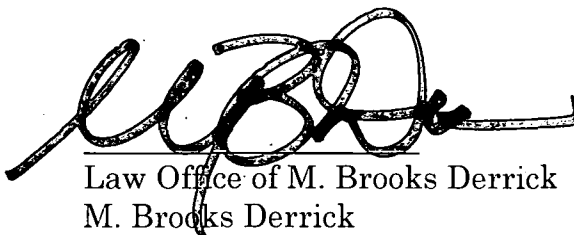
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**SC Court of Appeals**

BRIEF OF APPELLANT

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September 28, 2012



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TABLE OF CONTENTS

Statement of the Issue on Appeal	1
Statement of the Case	1
Statement of Undisputed Facts	3
Statement of Disputed Material Facts	5
Standard of Review on Appeal	6
Argument	7
<i>I. The lower court erred in applying the two-year statute of limitations because there is a genuine issue of material fact as to whether Respondents were acting within the scope of their official duties.</i>	7
<i>A. There is a genuine issue of material fact as to whether Respondents were acting within the scope of their official duties.</i>	7
<i>B. The applicable statute of limitations is three years pursuant to § 15-3-540 of the Code of Laws of South Carolina.</i>	10
Conclusion	13

TABLE OF AUTHORITIES

Cases

*Allen v. Fidelity & Deposit Co. of Maryland*, 515 F. Supp. 1185, 1188  
(1981).....13

*Frazier v. Badger*, 361 S.C. 94, 102, 603 S.E.2d 587, 591 (2004) .....9

*Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d  
650, 655 (2006). .....8, 13

*McCall v. Williams*, 52 F. Supp. 2d 611, 615 & n.4 (1999).....13

*Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747  
(2004).....7

*Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005)....7

*Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005)  
.....7

Statutes

S.C. Code Ann. § 15-3-540 .....2, 11

S.C. Code Ann. § 15-7-30(i).....9

S.C. Code Ann. § 15-78-110 .....1, 2, 3, 11

S.C. Code Ann. § 15-78-20(b).....8, 11

S.C. Code Ann. § 15-78-20(f).....8

S.C. Code Ann. § 15-78-70(b).....11

S.C. Code Ann. § 23-13-280 .....9

### STATEMENT OF THE ISSUE ON APPEAL

The South Carolina Tort Claims Act does not provide immunity for governmental entities or their employees for acts committed while acting outside the scope of their official duties. There is clearly a genuine issue of material fact as to whether Respondents were acting within the scope of their official duties. Did the lower court err in granting Respondents summary judgment motion and shielding Respondents from liability?

### STATEMENT OF THE CASE

Plaintiff/Appellant L.G. Elrod ("Appellant") filed this case *pro se* in the South Carolina Court of Common Pleas for Berkeley County on December 16, 2010. Appellant brought the action for False Imprisonment and Unlawful Detention-Abuse of Process against Defendants Berkeley County, Berkeley County Sheriff's Department, and H. Wayne Dewitt (Berkeley County Sheriff).

Defendants moved the court on January 11, 2011 for an order dismissing the action pursuant to 12(b)(6) on the grounds that Appellant's Complaint failed to state facts sufficient to constitute a cause of action. Defendants' motion was based on the grounds that, pursuant to the South Carolina Tort Claims Act, the applicable two-year statute of limitation (S.C. Code Ann. § 15-78-110) barred Appellant's claims. However,

Appellant argued that the applicable statute of limitations was three years pursuant to § 15-3-540 of the Code of Laws of South Carolina because Defendants' actions were not within the scope of their official duties and therefore outside the shield of the Tort Claims Act.

The Honorable Deadra L. Jefferson granted the motion as to Defendant Berkeley County, but denied the motion as to Defendants' Berkeley County Sheriff's Department and H. Wayne Dewitt. The court stated that the allegations in Appellant's Complaint gave rise to competing inferences on a question of material fact as to whether the Berkeley County Sheriff's Department and H. Wayne Dewitt were acting in their official capacity and whether their actions were within the scope of their duties.

Berkeley County Sheriff's Department and H. Wayne Dewitt ("Respondents") filed a Motion to Reconsider on June 22, 2011, and the court denied Respondents' Motion to Reconsider on June 30, 2011.

Respondents filed a Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure on January 17, 2012. During that hearing, the non-moving party presented matters outside the pleadings. Counsel for Respondents moved that the motion should be treated as one for summary judgment as prescribed in Rule 56 of the South Carolina Rules of Civil Procedure. However,

Appellant, at that time, was appearing *pro se* and in order to provide all parties involved a reasonable amount of time to present all pertinent materials, the Honorable Roger M. Young continued the converted motion.

Respondents' Motion for Summary Judgment was heard on May 9, 2012 before the Honorable Roger M. Young. The court granted Respondents' Motion for Summary Judgment stating that S.C. Code Ann. § 15-78-110 (and the applicable two year statute of limitations) applied, because the court found no evidence in the record that Respondents were acting outside the scope of their official duties the Appellant's Complaint was barred by the applicable two-year statute of limitations.

On May 24, 2012, Appellant received written notice of entry of the summary judgment order, and on June 19, 2012, Appellant served his Notice of Appeal.

#### **STATEMENT OF UNDISPUTED FACTS**

The following facts are not in dispute:

1. On January 10, 2008, Appellant L.G. Elrod and Jerry Williams put a "No Trespassing" sign on Appellant's property following a civil dispute with Comcast over the use of Appellant's property. (Ex. 1, L.G. Elrod Aff. ¶ 14.)

2. Later that day, Comcast arrived at the property and tried to access the cable box that was on Appellant's property, and Appellant told

them that they couldn't come on the property without a court order or it was trespassing. (Ex. 1, L.G. Elrod Aff. ¶ 16.)

3. Appellant called Berkeley County Sheriff's Department to inform them that Comcast was trying to trespass on his property. (Ex. 1, L.G. Elrod Aff. ¶ 17.)

4. Deputy Randal Timmons arrived, spoke to Comcast, and asked Appellant to let them on the property, but he refused. (Ex. 1, L.G. Elrod Aff. ¶ 19.)

5. Following that conversation, Deputy Timmons spoke with Comcast again, and they left. (Ex. 1, L.G. Elrod Aff. ¶ 19.)

6. Later that day (January 10, 2008), Sheriff H. Wayne DeWitt sent two squad cars and several deputies from the Berkeley County Sheriff's Department out with their lights flashing to assist Comcast in trespassing on Appellant's property. (Ex. 1, L.G. Elrod Aff. ¶ 22.)

7. Deputy Clifford McElvogue informed Appellant that this equipment belonged to Comcast and that Comcast had a right to work on it. He then told Appellant that if he interfered with Comcast, the Sheriff's Department would "lock him up." (Ex. 1, L.G. Elrod Aff. ¶ 23.)

8. The Police Reports from this day reflect that the Deputies were there on a civil matter only. (Ex. 2, M. Derrick Aff. Ex. 2 p. 3 and Ex. 3 p. 1.)

9. The Sheriff's Department restrained Appellant while Comcast trespassed on Appellant's property. (Ex. 1, L.G. Elrod Aff. ¶ 24.)

10. The Sheriff's Department did not provide a court order authorizing the use of Appellant's property. (Ex. 1, L.G. Elrod Aff. ¶ 25.)

11. On January 15, 2008, Appellant turned the cable box off again because of another civil dispute with Comcast over the use of Appellant's property. (Ex. 1, L.G. Elrod Aff. ¶ 32.)

12. Once again, Sheriff H. Wayne DeWitt sent out Berkeley County Sheriff's Deputies, without a court order, to restrain Appellant while Comcast trespassed and worked on Appellant's property. (Ex. 1, L.G. Elrod Aff. ¶ 33.)

13. The Police Reports from this day also reflect that the Deputies were there on a civil matter only. (Ex. 2, M. Derrick Aff. Ex. 2 p. 3 and Ex. 3 p. 1.)

#### **STATEMENT OF DISPUTED MATERIAL FACTS**

The following facts cited by Respondents are in dispute:

1. Respondent Sheriff H. Wayne DeWitt stated that his "Deputies who interacted with Appellant on January 10 and 15, 2008 were acting within the scope of their official duties . . . ." (Ex. 3, H. W. DeWitt Aff. ¶ 4.) However, Sheriff H. Wayne DeWitt informed Mr. Elrod that he had sent his Deputies to Mr. Elrod's property on a civil matter to

permit Comcast to trespass on Mr. Elrod's property (Ex. 1, L.G. Elrod Aff. ¶ 29); as such there is a material fact in dispute as to whether or not Sheriff H. Wayne DeWitt was acting within his official duties.

2. Deputies Clifford McElvogue and Randal Timmons of the Berkeley County Sheriff's Department both stated that "[a]t all times relative to my interaction with the Appellant, and which is the subject of his Complaint, I was acting as an employee of the Berkeley County Sheriff's Department and within the scope of my official duties as a Berkeley County Sheriff's Deputy." (Ex. 4, R. Timmons Aff. ¶ 8; Ex. 5, C. McElvogue Aff. ¶ 8.) However, the Deputies did not acquire a court order prior to permitting Comcast to trespass on Mr. Elrod's property. (Ex. 1, L.G. Elrod Aff. ¶ 25; Ex. 6, J. Williams Aff. ¶ 5.) Moreover, the Deputies in their reports state that they were only at Mr. Elrod's property on a "civil matter." (Ex. 2, M. Derrick Aff. Ex. 2 p. 3 and Ex. 3 p. 1.) Therefore, there is a material fact in dispute as to whether or not the Deputies were acting within their official duties.

#### STANDARD OF REVIEW ON APPEAL

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure: Summary judgment is proper when there is no genuine issue as to any material fact

and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn from them must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). In determining whether this drastic remedy should be invoked, "the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

#### ARGUMENT

**I. The lower court erred in applying the two-year statute of limitations because there is a genuine issue of material fact as to whether Respondents were acting within the scope of their official duties.**

A. *There is a genuine issue of material fact as to whether Respondents were acting within the scope of their official duties.*

Although the South Carolina Tort Claims Act is the exclusive remedy for any tort committed by a governmental entity, its employees or its agents, it is not meant to shield an employee's conduct that was *not*

*within the scope of his official duties* or constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-20(b). Moreover, § 15-78-20(f) of the South Carolina Code of Laws expressly limits coverage of the Tort Claims immunity to employees “acting within the scope of official duty.” Therefore, nothing in the Tort Claims Act may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was *not within the scope of his official duties*.

The South Carolina Supreme Court has held “that the term ‘scope of employment’ as used in an insurance policy is broader than the term ‘scope of official duties’ as used in the Tort Claims Act. *Frazier v. Badger*, 361 S.C. 94, 102, 603 S.E.2d 587, 591 (2004). Moreover, the Tort Claims Act provides a two-part test to determine whether a government employee is acting within the scope of his official duty or employment: The employee must be (1) “acting in and about the official business of the government entity,” and (2) “performing official duties.” S.C. Code Ann. § 15-7-30(i).

Here, although the lower court held that there was “no evidence in the record that [Respondents] were acting in any other capacity of than in their official capacities as Sheriff and/Sheriff’s deputies of Berkeley County (Ex. 7, Transcript p. 12; Ex. 8, Order p. 4.),” it is clear from the record that there is a genuine issue of material fact as to whether the

Sheriff and his deputies were acting within the scope of their official duties. (Disputed Facts ¶ 1, 2.) The rights, power, and duties of a deputy sheriff are outline in § 23-13-280 of the Code of Laws of South Carolina. Nowhere in the Code does it state that an official duty of a deputy sheriff is to assist in a civil dispute. In addition, although the Deputies state that they were acting within the scope of their official duties, they admit in their reports from both days that they were there on a civil matter **only**. (Undisputed Facts ¶ 8, 13.)

Appellant originally called the Sheriff's Department in an attempt to prohibit Comcast from trespassing on his property. (Undisputed Fact ¶ 3.) Deputy Randall Timmons asked Appellant to allow them on his property, but Appellant refused. (Undisputed Fact ¶ 4.) When Appellant would not permit Comcast to use his property, deputies of the Sheriff's Department restrained Appellant (without a court order) multiple times to permit Comcast to trespass on his property. (Undisputed Facts ¶ 6, 7, 9, 10, and 12.)

Although Respondents contend that the Deputies were only on the scene because threats had been made towards the Comcast workers (Ex. 7, Transcript p. 10; Ex. 8, Order p. 4.), the Deputies did more than that. They permitted a company to trespass on the property owned by Appellant in order to allow them to set up a business without a court

order. (Undisputed Fact ¶ 10.) In addition, their reports are replete with references to them responding only to a “civil dispute.” (Undisputed Facts ¶ 8, 13.)

Clearly there is a genuine issue of material facts as to whether these acts constitute official duties of the Sheriff and his Deputies. (Disputed Material Facts ¶¶ 1,2.) What would be the outcome if an entrepreneur decided that the corner of your property would be the ideal spot for a sandwich shop, a pizzeria, or even a pub? Would it be in the official duties of the Sheriff and his Deputies to restrain you while this company built its business? Is it the landowner’s duty to file suit to make them stop, or is it the duty of the Sheriff and his Deputies to make sure all parties are safe while the courts determine the outcome of the “civil dispute.”

*B. The applicable statute of limitations is three years pursuant to § 15-3-540 of the Code of Laws of South Carolina.*

The Tort Claims Act provides that an action “brought pursuant to this chapter is forever barred unless an action is commenced within two years . . . .” S.C. Code Ann. § 15-78-110. Although the Tort Claims Act addresses circumstances under which a governmental entity is liable for the tortious conduct of its employees, immunity will not extend to an employee’s conduct that is “*not within the scope of his official duties or*

that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (emphasis added). As such, if the alleged acts of Respondents were not within their official duties, the applicable statute of limitations is not two years and they are not shielded from liability. S.C. Code Ann. §§ 15-78-20(b) and 15-78-110.

In addition, § 15-3-540 of the Code of Laws of South Carolina provides that the applicable statute of limitations is three years for “[a]n action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty . . . .” As such, if the Sheriff’s Department was acting within its official capacity but were not acting within the scope of its official duties, the applicable statute of limitations would be three years pursuant to § 15-3-540 of the Code of Laws of South Carolina. *Allen v. Fidelity & Deposit Co. of Maryland*, 515 F. Supp. 1185, 1188 (1981); see also *McCall v. Williams*, 52 F. Supp. 2d 611, 615 & n.4 (1999) (holding that the statute of limitations for assault and battery was applicable where the Sheriff was acting outside of the scope of his official duties but within his individual capacity and not his official capacity (emphasis in original)).

Here, there is an issue of material fact as to whether the Sheriff and his Deputies were acting within their official capacity but not within the scope of their official duties. (Disputed Material Facts ¶¶ 1,2.)

Although the Deputies state that they were acting within the scope of their official duties, they admit in their reports from both days that they were there on a civil matter **only**. (Undisputed Facts ¶ 8, 13.) In ruling on a motion for summary judgment, the lower court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). Therefore, there are issues of material fact that must be construed in favor of Appellant of whether the Sheriff and his Deputies were acting within their official capacity and whether their actions were within the scope of their duties.

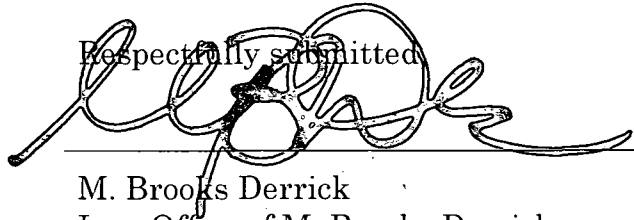
Furthermore, § 15-3-540 of the Code of Laws of South Carolina provides Appellant the right to bring a suit against Respondents and is the applicable statute to be used. When an employee of the state is acting within its official capacity but not acting within the scope of its official duties, the employee will be held liable under this section. As such, the applicable statute of limitations under this section is three years.

The Deputy Sheriffs were acting within their official capacity as deputies from the Berkeley County Sheriff's Department. However, the deputies were not acting within the scope of their official duties. The Sheriff, and by extension, his deputy sheriffs, cannot be said to be acting within the scope of their official duties when they are simply responding to civil disputes.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the circuit court.

Respectfully submitted,



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*Attorney and Counselor for  
Appellant*

Charleston, South Carolina  
September 28, 2012



6. Years later, Comcast bought Storer Cable and continued to use the property, and I continued to receive television in exchange for the use of my property.

7. In December 2007, some of my channels began to turn off, and I called Comcast to let them know the situation.

8. The customer service lady informed me that all of my channels were being turned off, and when I told her of our agreement, she said I needed to speak with Mr. Anthony Douglas who was out of town for a week.

9. When I spoke to Mr. Douglas, he told me that I wasn't going to be getting "free" television service anymore, and I told him that my service was not "free." The service was provided for me in exchange for the use of my property, and through that use, Comcast was able to provide service to 15 to 20 customers and was making money by doing so.

10. He said they were going to remove the box when they decided where to reroute the lines.

11. I told him he needed to leave my service on as long as they used my private property, and he wouldn't agree.

12. At the end of our conversation, I informed him that if they didn't turn my service back on they were in breach of the agreement and couldn't use my private property any longer.

13. More importantly, I was going to turn the service off on the box, and they wouldn't be able to access the box to turn the service back on.

14. On January 10, 2008, my son, Jerry Williams, helped me put a "No Trespassing" sign by the pole that the cable box was on, and I wrote Comcast Cable, my initials, and took pictures.

15. Then, I turned the box off.

16. Later that day, Comcast arrived at the property and tried to get on the property to access the cable box, and I told them they were on trespass notice and couldn't come on the property without a court order.

17. Then, I called Berkeley County Sheriff's Department and told them Comcast was on trespass notice and trying to get on the property

18. I requested a deputy to advise them that they needed a court order to get on the property as it was private property and they had been put on trespass notice.

19. Deputy Randal Timmons came out, talked to them, and asked me to let them on the property. I told him no.

20. Following that conversation, he spoke with Comcast again, and they left.

21. Days later, I learned through his incident report that he told them to come back later instead of telling them that they needed a court order.

22. Later that day (January 10, 2008), 2 squad cars, and several deputies from the Berkeley County Sheriff's Department came out with their lights flashing to assist Comcast.

23. Deputy Clifford McElvogue informed me that this equipment belonged to Comcast, and they were going to work on it. He then told me that if I interfered with Comcast, the Sheriff's Department would "lock me up."

24. The Sheriff's Department restrained me with the threat of jail while Comcast worked on my private property right over the "No Trespassing" sign.

25. I requested Deputy Clifford McElvogue to provide me with the court order authorizing their actions, but I was ignored.

26. When the Sheriff's Department left, Deputy Clifford McElvogue informed me that if I tampered with the Comcast equipment they would come back and "lock me up."

27. After this incident, I called Sheriff H. Wayne DeWitt at his office and asked him for an explanation as to why he sent deputies out to my private property to restrain me on a civil matter without a court order.

28. He informed me that some of the customers had their phone service with Comcast, and when the service was turned off, they could no longer access the 911 service.

29. I told him that this was a civil matter and that the Sheriff's Department should not be involved with civil matters. Moreover, the 911 service had not been interrupted.

30. In addition, when I requested this information, Lieutenant Clifford McElvogue told me that the 911 service had in fact not been interrupted.

31. On January 14, 2008, Attorney Mary Leigh Arnold faxed a Cease and Desist from any further trespass to Comcast.

32. On January 15, 2008, I turned the box off again as the service to my home had not been restored.

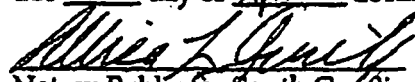
33. And again, Berkeley County Sheriff's Department sent out squad cars and deputies, without a court order, to restrain me while Comcast trespassed and worked on my private property directly above the "No Trespassing" sign.

34. And this time, I was recording with my audio/video camera.

This 24 day of April 2012.

  
\_\_\_\_\_  
L.G. Elrod

Sworn to and subscribed before me,  
this 24<sup>th</sup> day of April 2012.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires 4-20-2017

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

) THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-08-4453

L.G. ELROD,

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Defendants.

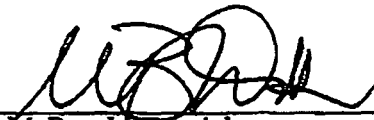
AFFIDAVIT OF M. BROOKS  
DERRICK, ATTORNEY FOR  
PLAINTIFF

PERSONALLY APPEARED before me, M. Brooks Derrick, being first duly sworn, deposes and says that:

1. The contents of this statement are true and stated under the penalty of perjury.
2. I am the attorney of record for Plaintiff L.G. Elrod.
3. The attached documents are in the possession of the parties.
4. Plaintiff produced the attached documents in response to Defendant

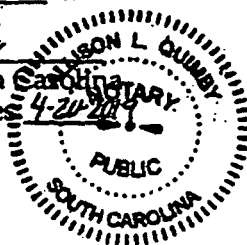
First Set of Interrogatories and Requests for Production.

This 8 day of May 2012.

  
M. Brooks Derrick  
Attorney and Counselor for Plaintiff

Sworn to and subscribed before me,  
this 8 day of May 2012.

  
Notary Public for South Carolina  
My Commission Expires 4-20-2013



318

AGENCY I.D.  
SC0080000

INCIDENT REPORT

CASE NUMBER  
200801001318  
N N

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PRELIMINARY TYPE	CRIME TYPE	TYPE VEHICLE
1. INFORMATION (INF)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			<input type="checkbox"/> Includes <input type="checkbox"/> Plaintiff Inv. <input type="checkbox"/> Government <input type="checkbox"/> Bus, Corp. <input type="checkbox"/> Bus/Pickup <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Other
2.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
3.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

REC'D JAN 14 2008

224 ELROD DRIVE, GOOSE CREEK SC 29445

DATE	TIME	DATE	TIME	DATE	TIME	DATE	TIME	LOCATION NO.
01/10/2008	10:00	01/10/2008	11:00	01/10/08	11:13	12:13	13:14	4/235

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)  
ELROD, LG.

RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
N

DAYTIME PHONE (B-49) 853-4689

EMERGENCY PHONE

ADDRESS  
307 ELROD DR GOOSE CREEK SC 29445

VEHICLE MAKE (MAKE, MODEL, YEAR)  
ELROD, LG.

RELATIONSHIP TO SUBJECT  
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VEHICLE MAKE (MAKE, MODEL, YEAR)  
ELROD, LG.

RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
N

DAYTIME PHONE (B-49) 853-4689

EMERGENCY PHONE

VEHICLE MAKE (MAKE, MODEL, YEAR)  
ELROD, LG.

RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
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RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
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VEHICLE MAKE (MAKE, MODEL, YEAR)  
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RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
N

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EMERGENCY PHONE

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ELROD, LG.

RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
N

DAYTIME PHONE (B-49) 853-4689

EMERGENCY PHONE

VEHICLE MAKE (MAKE, MODEL, YEAR)  
ELROD, LG.

RELATIONSHIP TO SUBJECT  
S O U W M 79

ETHNICITY  
N

DAYTIME PHONE (B-49) 853-4689

EMERGENCY PHONE

ON 01/10/2008 DEPUTY RESPONDED TO THE ABOVE LOCATION IN REFERENCE TO COMPLAINANT NOT WANTING COMCAST ON HIS PROPERTY OR CONDUCTING SERVICES ON THEIR SERVER BOX LOCATED ON POWER POLE ON THE CORNER OF HIS RESIDENCE. UPON ARRIVAL COMPLAINANT HAD HIS VEHICLE PARKED IN FRONT OF THE POLE AND WAS SEATED ON THE TAILGATE. DEPUTY SPOKE WITH MR ELROD WHO WAS VERY DISTURBED AND ADAMANT THAT COMCAST WAS NOT GOING TO CONDUCT SERVICES. DEPUTY ASKED COMPLAINANT IF COMCAST COULD PARK THEIR WORK TRUCK ON THE ROADWAY, EXTEND THEIR BUCKET TO THE POLE AND CONDUCT SERVICES IN THE PRESENCE OF OFFICERS ON SCENE AND ELROD AGREED. UPON HAVING COMCAST APPROACH THE RESIDENCE ELROD QUICKLY DECLINED THE AGREEMENT. THE COMPLAINANT BECAME BELLIGERENT AND STATED THAT, "IF WE ARRESTED HIM WE WOULD HAVE PROBLEMS." AT THAT TIME DEPUTY CONVINCED COMCAST TO ATTEMPT TO COME BACK AT A LATER DATE. NOTHING FURTHER AT THIS TIME.

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

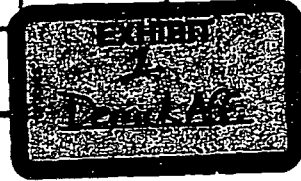
DATE  
11-15-10

Berkeley County Sheriff's Office

PROPERTY EST. TYPE (OWNER)  
OWNER

DATE  
11-15-10

Berkeley County Sheriff's Office



REPORTING OFFICER	DATE	OFFICER NUMBER	OFFICER NAME	DATE	OFFICER
TIMMONS, RANDAL	01/10/08	124	DREW, CASSANDRA	01/11/08	
THOMAS, TABATHA	01/10/08	159			



AGENCY I.D.  
SC0086000

SUPPLEMENTARY REPORT

CASE NUMBER

2 0 0 8 0 1 0 0 1 3 1 8

REC

PC UNIT  
N N

<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIM	<input type="checkbox"/> ADDITIONAL PROBLEM PROPERTY	DATE	1
<input type="checkbox"/> MODIFIED ORIGINAL	<input type="checkbox"/> CASE RECORDS CORRECTED	<input type="checkbox"/> ADDITIONAL OFFENSES	<input type="checkbox"/> RECORDED PROPERTY		

REFERENCE INFORMATION REPORT

VICTIM: ELROD, LG

MODIFICATION: CORRECTION/MODIFIED THE INCIDENT LOCATION

THE INCIDENT LOCATION ON THE ORIGINAL REPORT THAT WAS FILED BY OFFICER TIMMONS IS INCORRECT. THE CORRECT INCIDENT LOCATION SHOULD BE 233 ELROD DRIVE. THIS SUPPLEMENTAL WILL SHOW THE CORRECTED INCIDENT LOCATION.

233 ELROD DRIVE

GOOSE CREEK, SC 29645

WADFORD A13

REC'D JAN 17 2008

SEARCHED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	INDEXED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	SERIALIZED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	FILED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	AGENCY SC 01	DATE 01/17/08
SEARCHED BY WADFORD, GREGHA		INDEXED BY THOMAS, TABATHA		SERIALIZED BY BLANCHARD, MELISSA	
SEARCHED ON 01/17/08		INDEXED ON 01/17/08		SERIALIZED ON 01/17/08	
SEARCHED AT WADFORD A13		INDEXED AT WADFORD A13		SERIALIZED AT WADFORD A13	

1385

COPY

AGENCY I.D.  
SC0080000

INCIDENT REPORT

CHGD JAN 17 2008

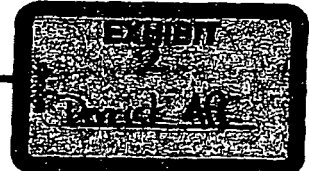
200801001385

NIN

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VEHICLE
INFORMATION ONLY (INF)		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Residence/Home		<input type="checkbox"/> Bus/Truck <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Auto, Van, etc. <input type="checkbox"/> Semi/Truck <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police/Vol
2. RECD JAN 15 2008		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
3.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
INCIDENT LOCATION (COMMERCIAL, RESIDENTIAL AND BUSINESS, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
233 ELROD DRIVE, GOOSE CREEK				29445		
REPORT DATE	TIME ELAPSED	TO DATE	IN ELAPSED	REPORT DATE	REPORT TIME	LOCATION NO.
01/10/2008	11:00	01/10/2008	20:58	01/10/08	20:58	4/235
COMPLAINANT NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
MCKEONAL, JONATHAN			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U	W	M	32
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
4400 BELLE OAKES		NCHARLESTON	SC	29418	S	
VEHICLE MAKE (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
COMCAST CABLE			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U			
WEAPON	WEIGHT	HAIR	EYES	EXCERPTS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PEDALIMENTS, ETC.		
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
4400 BELLE OAKES DRIVE		NCHARLESTON	SC	29405	S	
WORKER MAKE (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U			
COMPLAINANT MAKE (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U			
SUBJECT MAKE (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
ELROD, LOUIE, G			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U	W	M	71
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
307 ELROD DR		GOOSE CREEK	SC	29445	4/235	
SUBJECT MAKE (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U			
SUBJECT MAKE (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT	RESIDENT	RACE	SEX	AGE
			<input checked="" type="checkbox"/> J <input type="checkbox"/> O <input type="checkbox"/> U			

ON 1/10/08 THIS DEPUTY WAS DISPATCHED TO THE BALL FIELD ON LUCY DRIVE TO MEET WITH COMCAST CABLE IN REFERENCE TO GIVING THE COMPLAINANT A ESCORT TO 224 ELROD DRIVE IN ORDER TO CONDUCT SERVICE TO THEIR CABLE BOX. THE COMPLAINANT REQUESTED A ESCORT DUE TO THE SUSPECT MAKING THE COMMENT THAT HE WOULD DO WHATEVER IT TAKES TO PREVENT ANYONE FROM TRESPASSING ON HIS PROPERTY. THIS DEPUTY, PFC SAUNDERS, THE COMPLAINANT AND SEVERAL WORKERS FROM COMCAST ARRIVED ON SCENE. THE COMPLAINANT QUICKLY USED HIS BUCKET TRUCK AND EXTENDED TO THE POLL TO ATTEMPT TO RESTORE SERVICE TO SEVERAL FAMILIES THAT WERE OUT CABLE, INTERNET, AND PHONE SERVICE. WHILE THE COMPLAINANT WAS WORKING ON THE BOX DEPUTY OBSERVED THE POLE BEING APPROXIMATELY 5 TO 8 FEET IN THE GRASS FROM THE HIGHWAY. THE COMPLAINANT OBSERVED THE SUSPECT DRIVING UP IN HIS TRUCK, THE COMPLAINANT THEN LOWERED HIS BUCKET TO PREVENT A CONFRONTATION WITH THE SUSPECT. THE

PROPERTY EST.	TYPE (MOTOR)	VEHICLE	CLAIMED	DAMAGED	RECOVERED	INDEXED	
SEARCHED INDEXED		SERIALIZED		INDEXED		FILED	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
APPROVED OFFICER		DATE	APPROVED OFFICER	DATE	APPROVED OFFICER		DATE
MCELVOGUE, CLIFFORD		01/11/08	C116	GEIGER, JAMES			01/11/08



AGENCY I.D.  
SC0080000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER  
2 0 0 8 0 1 0 0 1 3 8 8

ACC  
N N

<input type="checkbox"/> ORIGINAL REPORT	<input type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VEHICLE	<input type="checkbox"/> ADDITIONAL VEHICLE PROPERTY
<input type="checkbox"/> RECORDED OFFENSE	<input type="checkbox"/> THIS OFFENSE OFFENSE	<input type="checkbox"/> ADDITIONAL OFFENSE	<input type="checkbox"/> ADDITIONAL VEHICLE PROPERTY

VEHICLE I.D. CHECK-LOW	COMPLAINT	PROPERTY DAMAGE		VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW

VEHICLE I.D. CHECK-LOW	COMPLAINT	PROPERTY DAMAGE		VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
	VEHICLE	YEAR	MAKE	MODEL	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW

COMPLAINANT WAS CONCERNED ABOUT THE SUSPECTS ACTIONS DUE TO A PRIOR INCIDENT WITH HIS WORKERS EARLIER THAT DAY. THIS DEPUTY ADVISED THE COMPLAINANT TO CONTINUE WORKING ON THE CABLE BOX DUE TO SEVERAL FAMILIES WOULD NOT BE ABLE TO CALL 911 IF THEY HAD A EMERGENCY. THE SUSPECT ARRIVED AT THE LIGHT POLE AND JUMPED OUT OF HIS TRUCK HOLDING A CAM CORDER, THE SUSPECT WALKED UP TO DEPUTY AND GOT APPROXIMATELY 2 INCHES FROM DEPUTIES FACE AND STARTED RECORDING. THIS DEPUTY ADVISED THE SUSPECT TO STEP BACK OUT OF DEPUTIES FACE, THE SUSPECT PROCEEDED TO GET CLOSER TO DEPUTY WITH THE RECORDER. THIS DEPUTY USED A OPEN HAND AND PUSHED THE CAMERA OUT OF DEPUTIES FACE, INFORMING HIM THAT HE COULD RECORD AT A DISTANCE BUT NOT IN DEPUTIES FACE.

VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW

VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW
VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW	VEHICLE I.D. CHECK-LOW

AGENCY I.D. CHECK-LOW: SC0080000  
 DATE: 01/11/08  
 OFFICER: GEIGER, JAMES  
 APPROVING OFFICER: [Signature]

AGENCY I.D.  
SC0080000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER: 200801001385  
 NCS: INC. N, EXT. N  
 PAGE 3 of 3

ORIGINAL REPORT  
 SUPPLEMENTAL REPORT  
 ADDITIONAL VICTIMS  
 ADDITIONAL STOLEN PROPERTY  
 MODIFIED REPORT  
 CASE STATUS CHANGE  
 ADDITIONAL OFFENDERS  
 ADDITIONAL RECOVERED PROPERTY

**COMPLAINANT** NAME (LAST, FIRST, MIDDLE) \_\_\_\_\_ VEHICLE (CHECK ONE)  NONE  OTHER \_\_\_\_\_  
 VEHICLE MAKE, MODEL, YEAR, COLOR, VIN, LICENSE NO., MAKE, MODEL, YEAR, COLOR, VIN, LICENSE NO.  
 ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_ LOCATION NO. \_\_\_\_\_ DAY PHONE \_\_\_\_\_ EXTENSION PHONE \_\_\_\_\_  
 VICTIM NO. \_\_\_\_\_ VEHICLE MAKE  NO  YES  COMPLAINT OF NON-VISIBLE DAMAGE  NO  YES  VICTIM WAS ALCOHOLIC  NO  YES  UNK.  TWO-WAY VEHICLE  DETECTIVE/PLANE  ALONE  
 JAIL  OTHER  ONE-WAY VEHICLE  OTHER  ADMITTED  
 DAMAGE  NO  YES  TYPE \_\_\_\_\_  UNK.

**COMPLAINANT** NAME (LAST, FIRST, MIDDLE) \_\_\_\_\_ VEHICLE (CHECK ONE)  NONE  OTHER \_\_\_\_\_  
 VEHICLE MAKE, MODEL, YEAR, COLOR, VIN, LICENSE NO., MAKE, MODEL, YEAR, COLOR, VIN, LICENSE NO.  
 ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_ LOCATION NO. \_\_\_\_\_ DAY PHONE \_\_\_\_\_ EXTENSION PHONE \_\_\_\_\_  
 VICTIM NO. \_\_\_\_\_ VEHICLE MAKE  NO  YES  COMPLAINT OF NON-VISIBLE DAMAGE  NO  YES  VICTIM WAS ALCOHOLIC  NO  YES  UNK.  TWO-WAY VEHICLE  DETECTIVE/PLANE  ALONE  
 JAIL  OTHER  ONE-WAY VEHICLE  OTHER  ADMITTED  
 DAMAGE  NO  YES  TYPE \_\_\_\_\_  UNK.

**NARRATIVE**

THE SUSPECT BECAME ANGRY AND ADAMANT THAT COMCAST WAS NOT GOING TO TURN THE CABLE BACK ON. AFTER SPEAKING WITH THE COMPLAINANT THE COMPLAINANT INFORMED DEPUTY THAT THE SUSPECT HAD BEEN AND STILL IS RECEIVING FREE CABLE FROM COMCAST BECAUSE THEY HAD THEIR BOX ON A BERKELEY ELECTRIC POLE ON HIS PROPERTY. DEPUTY CONFRONTED THE SUSPECT ABOUT THE DEAL BETWEEN HIM AND COMCAST. THE SUSPECT STATED THAT WHAT THE COMPLAINANT STATED WAS TRUE. THE SUSPECT STATED THAT COMCAST REMOVED TWO CHANNELS FROM HIS PLAN AND HE STATED THAT WAS A BREACH OF CONTRACT. DEPUTY INFORMED THE SUSPECT THAT THE VERBAL AGREEMENT BETWEEN HIM AND COMCAST WAS A CIVIL MATTER AND THE ONLY REASON DEPUTIES WERE ON SCENE WAS BECAUSE OF THE THREATS THAT

**VEHICLE INFORMATION**

VEHICLE MAKE, MODEL, YEAR, COLOR, VIN, LICENSE NO., MAKE, MODEL, YEAR, COLOR, VIN, LICENSE NO.  
 YEAR OF REGISTRATION \_\_\_\_\_ YEAR OF EXPIRATION \_\_\_\_\_ YEAR \_\_\_\_\_ MAKE \_\_\_\_\_ TYPE \_\_\_\_\_  
 MODEL \_\_\_\_\_ STYLE \_\_\_\_\_ COLOR \_\_\_\_\_ BRAND NAME \_\_\_\_\_ CALIBER \_\_\_\_\_  
 INC. NO. \_\_\_\_\_ ORIGINATOR \_\_\_\_\_ GRADE \_\_\_\_\_ SECURITY CODE \_\_\_\_\_  
 MISCELLANEOUS \_\_\_\_\_

TYPE	QUANTITY	TOTAL VALUE
STOLEN		
RECOVERED		
DAMAGED		
RECOVERED		
OTHER		

**APPROVALS**

REPORTING OFFICER: MCELVOGUE, CLIFFORD DATE: 01/11/08  
 APPROVING OFFICER: GEIGER, JAMES DATE: 01/11/08  
 SEARCHED FOR OTHER VICTIMS, CLAIMANTS, & OFFENSES:  YES  NO  PARTIAL  
 SEARCHED FOR OTHER OFFENSES:  YES  NO  PARTIAL  
 SEARCHED FOR OTHER VICTIMS, CLAIMANTS, & OFFENSES:  YES  NO  PARTIAL  
 SEARCHED FOR OTHER OFFENSES:  YES  NO  PARTIAL



AGENCY I.D.  
SC0080000

### SUPPLEMENTARY REPORT

CASE NUMBER

200801001386

ICD

NO. OF PAGES  
N N

<input type="checkbox"/> ADULT	<input checked="" type="checkbox"/> DOMESTIC VIOLENCE	<input type="checkbox"/> ADULTUAL	<input type="checkbox"/> ADULTUAL
<input type="checkbox"/> CHILD	<input type="checkbox"/> CHILD ABUSE	<input type="checkbox"/> ADULTUAL	<input type="checkbox"/> ADULTUAL
<input type="checkbox"/> YOUTH	<input type="checkbox"/> YOUTH ABUSE	<input type="checkbox"/> ADULTUAL	<input type="checkbox"/> ADULTUAL
<input type="checkbox"/> ELDER	<input type="checkbox"/> ELDER ABUSE	<input type="checkbox"/> ADULTUAL	<input type="checkbox"/> ADULTUAL

#### REFERENCE INFORMATION REPORT

SUSPECT: ELROD, LG

MODIFICATION: CORRECTION/MODIFIED THE INCIDENT LOCATION

THE INCIDENT LOCATION ON THE ORIGINAL REPORT THAT WAS FILED BY OFFICER CC MCELVOQUE INCORRECT. THE CORRECT INCIDENT LOCATION SHOULD BE 233 ELROD DRIVE. THIS SUPPLEMENTAL WILL SHOW THE CORRECTED INCIDENT LOCATION.

233 ELROD DRIVE

GOOSE CREEK, SC 29645

WADFORD A13

REC'D JAN 17 2008

<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO
SEARCHED	INDEXED	SERIALIZED	FILED	SEARCHED	INDEXED	SERIALIZED	FILED
WADFORD A13				WADFORD A13			
SEARCHED BY				SEARCHED BY			
INDEXED BY				INDEXED BY			
SERIALIZED BY				SERIALIZED BY			
FILED BY				FILED BY			
DATE				DATE			
OFFICER				OFFICER			
WADFORD, GRESHA				WADFORD, GRESHA			
01/17/08				01/17/08			
WADFORD, MELISSA				WADFORD, MELISSA			
OFFICER				OFFICER			

2023

AGENCY I.D.  
SC0080000

INCIDENT REPORT

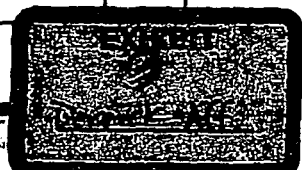
CASE NUMBER

200801002023

DEPT

N N

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	LIMITS ENTERED	TYPE VICTIM																																										
1. INFORMATION ONLY (INF)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	Highway/Road/Alc		<input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Public <input type="checkbox"/> Other																																										
2. REC'D JAN 18 2008		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> Public <input type="checkbox"/> Other																																										
3.		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> Public <input type="checkbox"/> Other																																										
INCIDENT LOCATION (STREET, PO BOX, RAILROAD, ETC.)				ZIP CODE	WEAPON TYPE																																											
233 ELROD DRIVE, GOOSE CREEK				29445																																												
INCIDENT DATE	TIME CLOCK	TO	DATE	TIME CLOCK	DATE	LOCATION NO.																																										
01/15/2008	13:30		01/15/2008	14:30	01/15/08	4/235																																										
DEPARTMENT (STATE, LOCAL, FEDERAL)		NO. OFFICERS TO REPORT	REPORTER	RACE	SEX	AGE																																										
CARROLL, DAVID, MICHAEL		01	J S O U	W	M	39																																										
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.																																											
113 ELAINE STREET		GOOSE CREEK	SC	29445	4/235																																											
VICTIM (NAME, LAST, FIRST, MIDDLE)		RELATIONSHIP TO REPORTER	REPORTER	RACE	SEX	AGE																																										
COMCAST CABLE,			J S O U																																													
ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.																																												
4400 BELLE OAKES DRIVE	N. CHARLESTON	SC	29405	STATE																																												
NARRATIVE																																																
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TIMMONS, RANDAL	01/15/08	124	SGT. DREW		70																																											



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
 )  
 L.G. Elrod, ) C/A No. 10-CP-08-4453  
 )  
 Plaintiffs, )  
 )  
 Versus )  
 )  
 Berkeley County Sheriff's Department, and H. )  
 Wayne Dewitt, )  
 )  
 Defendants. )

**AFFIDAVIT OF SHERIFF  
 H. WAYNE DE WITT**

FILED  
 2012 MAY -4 PM 1:29  
 CLERK OF COURT  
 BERKELEY COUNTY SC

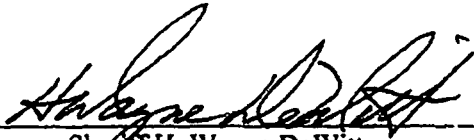
PERSONALLY APPEARED before me, SHERIFF WAYNE DEWITT, who, being duly sworn, deposes and says as follows:

1. I, Wayne DeWitt, am employed by the Berkeley County Government and am a named Defendant in this case.
2. I was elected Sheriff of Berkeley County in 1994 and continue to hold this position. As the Chief Law Enforcement Officer of Berkeley County, I am responsible for enforcement of County, State and Federal laws.
3. I have reviewed the Complaint against me in this case. I have reviewed the Berkeley County Sheriff's Office Incident Reports relative to the Plaintiff's Complaint.
4. Based upon my investigation of the matter, all Berkeley County Sheriff's Deputies who interacted with Plaintiff on January 10 and 15, 2008 were acting in the scope of their official duties as Sheriff's Deputies with the Berkeley County Sheriff's Office. At all times relative to the Plaintiff's Complaint I was acting in the scope of my official duties as Sheriff of Berkeley County.
5. Other than my review of the case materials cited above, I had no personal interaction with Mr. Elrod related to the facts alleged in his Complaint.

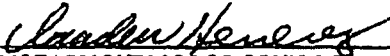
[signature page follows]

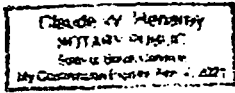


WHEREFORE AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Sheriff H. Wayne DeWitt

SWORN TO BEFORE THIS  
27 day of April, 2012.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: FEB 4, 2021



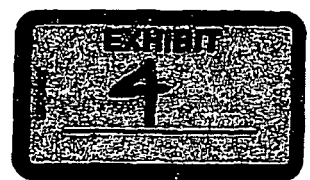
STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
 )  
 L.G. Elrod, ) C/A No. 10-CP-08-4453  
 )  
 ) Plaintiff, )  
 )  
 ) Versus )  
 )  
 Berkeley County, Berkeley County Sheriff's )  
 Department, and H. Wayne Dewitt, )  
 )  
 ) Defendants. )

2011 APR 21 PM 2:11  
 FILED  
 HARRY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.

**AFFIDAVIT OF  
 RANDAL TIMMONS**

PERSONALLY APPEARED before me, Randal Timmons, who, being duly sworn,  
 deposes and says as follows:

1. My name is Randal Timmons. Although I am currently employed with the Moncks Corner Police Department, I was employed with Berkeley County Sheriff's Department for approximately seven years. I was an employee of Berkeley County Sheriff's Department in January, 2008, during the timeframe of the events alleged in Plaintiff's Complaint.
2. I am familiar with the facts of this case and have reviewed the Complaint filed by the Plaintiff. I authored two Incident Reports relative to my interactions with Plaintiff. (both attached).
3. On January 10, 2008, at approximately 12 pm, I was dispatched to Elrod Drive in response to a call received from Plaintiff about his not wanting Comcast employees on his property. Apparently, Plaintiff, or someone at his direction, had disabled service to the Comcast server box located on the utility pole located at the corner of his property.
4. Restoration of service was of high importance due to the fact that, in addition to numerous households' loss of cable television and internet, telephone service had also been disabled which included access to emergency services such as 9-1-1.
5. When Comcast employees approached the property to work on the server box, Plaintiff became belligerent and stated that if we arrested him "we would have problems." Rather than provoke the Plaintiff further and have the situation escalate, I convinced Comcast to attempt to come back a later date. (See Incident Report #1 for further details).
6. Five days later, on January 15, 2008, two other officers and myself again responded to Plaintiff's address in reference to a request by Comcast Cable to have officers on scene as Comcast placed a lock on its server box disconnect so that it could not be disabled again. (See Incident Report #2 for further details).



7. I stand behind each and every additional detail of my attached Incident Reports.

8. At all times relative to my interaction with the Plaintiff, and which is the subject of his Complaint, I was acting as an employee of the Berkeley County Sheriff's Department and within the scope of my official duties as a Berkeley County Sheriff's Deputy.

9. At no time did I act in a grossly negligent manner towards Plaintiff, nor did I act or fail to act in such a manner as to violate his constitutional rights.

WHEREFORE AFFIANT SAYETH NOT!

  
\_\_\_\_\_  
Randal Timmons

SWORN TO BEFORE THIS

21 day of April, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 06/2015

# Incident Report #1

(January 10, 2008)

---



AGENCY I.D.  
SC0080000

SUPPLEMENTARY REPORT

CASE NUMBER

200801001318

NIC

NO.	ENTR.
N	N

<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY
<input type="checkbox"/> MODIFIED ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFF OFFICERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY

REFERENCE: INFORMATION REPORT

VICTIM: ELROD, LG

MODIFICATION: CORRECTION/MODIFIED THE INCIDENT LOCATION

THE INCIDENT LOCATION ON THE ORIGINAL REPORT THAT WAS FILED BY OFFICER TIMMONS IS INCORRECT. THE CORRECT INCIDENT LOCATION SHOULD BE 233 ELROD DRIVE. THIS SUPPLEMENTAL WILL SHOW THE CORRECTED INCIDENT LOCATION.

233 ELROD DRIVE

GOOSE CREEK, SC 29445

WADFORD A13

NARRATIVE

REC'D JAN 17 2008

ADMINISTRATIVE

SUBJECT IDENTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		SUBJECT LOCATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		ACTIVE <input checked="" type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNPROCESSED <input type="checkbox"/>		ARRESTED UNDER 14 <input type="checkbox"/> ARRESTED 14 AND OVER <input type="checkbox"/>		EX-CLEAR UNDER 14 <input type="checkbox"/> EX-CLEAR 14 AND OVER <input type="checkbox"/>	
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFICER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> AVAILABLE - NO CUSTODY									
REPORTING OFFICER			DATE	UNIT NUMBER	APPROVING OFFICER			DATE	UNIT NUMBER
WADFORD, GRESHA			01/17/08		BLANCHARD, MELISSA			01/17/08	8
THOMAS, TABATHA			01/10/08	159	FOLLOWUP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				

# Incident Report #2

(January 15, 2008)

---

AGENCY I.D.  
SC0080000

INCIDENT REPORT

CASE NUMBER

NCIC

200801002023

NO.	EXTD.
N	N

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. INFORMATION ONLY (INF)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	Highway/Road/Alle		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc. Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Of.
2. RECD JAN 18 2008	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			
3.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) ZIP CODE WEAPON TYPE

233 ELROD DRIVE, GOOSE CREEK 29445

INCIDENT DATE	START CLOCK	TO	DATE	IN HR CLOCK	REPORT DATE	REPORT TIME	REPORT DATE	REPORT TIME	LOCATION NO.
01/15/2008	13:30		01/15/2008	14:30	01/15/08	14:35	01/15/08	15:30	4/235

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) RELATIONSHIP TO SUBJECT RESIDENT RACE SEX AGE ETH. DAYTIME PHONE EVENING PHONE

CANNON, DAVID, MICHAEL J S O U W M 39 N (843) 296-2382

ADDRESS CITY STATE ZIP CODE LOCATION NO.

113 ELAINE STREET GOOSE CREEK SC 29445

VICTIM'S NAME (LAST, FIRST, MIDDLE) RELATIONSHIP TO SUBJECT RESIDENT RACE SEX AGE ETH. DAYTIME PHONE EVENING PHONE

COMCAST CABLE, J S O B

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOO, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS CITY STATE ZIP CODE LOCATION NO.

4400 BELLE OAKS DRIVE N.CHARLESTON SC 29405 STATE

VEHICLE PLATE (VCL)  YES  NO EXPLAIN -- COMPLAINT OF ANY NON-VEHICLE PLATE:  YES  NO

VICTIM (REL. TO USING: ALCOHOL  YES  NO UKE  DRUGS  YES  NO UKE  TYPE

TWO-WHEEL VEH.  ONE-WHEEL VEH.  DETECTIVE/PLATE  OTHER  ALONE  ASSAULTED  J - This Applicable B - Birth O - Out of State U - Unknown

SUSPECT NAME (LAST, FIRST, MIDDLE) RACE SEX AGE ETH. DATE OF BIRTH HEIGHT WEIGHT HAIR EYES

ELROD, LOUIE, G W M 71 N 12/06/36 509 176 GR Y BRO

FACIAL HAIR, SCARS, TATTOO, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS CITY STATE ZIP CODE LOCATION NO.

307 ELROD DR GOOSE CREEK SC 29445 4/235

SUBJECT (REL. TO USING: ALCOHOL  YES  NO UKE  APPEARED NEAR OFFENSE SCENE  YES  NO DATE/TIME OF OFFENSE DATE/TIME OF ARREST

DRUGS  YES  NO UKE  TYPE TOTAL # ARRESTED

ON 01/15/2008 LT. MCELVOGUE, PFC. COLLINS AND THIS DEPUTY RESPONDED TO 233 ELROD DRIVE IN REFERENCE TO A CIVIL MATTER. COMCAST CABLE CONTACTED THE BERKELEY COUNTY SHERIFF'S OFFICE FOR OFFICERS TO STANDBY AT PEARL AND ELROD DRIVE IN REFERENCE TO SERVICES THAT NEEDED TO BE CONDUCTED FOR THEIR COMPANY. LT. MCELVOGUE ADVISED MR. ELROD THAT COMCAST CABLE WAS THERE TO PUT A LOCK ON THEIR DISCONNECT SWITCH DUE TO THE FACT THAT NOBODY WILL BE ABLE TO CUT SERVICES OFF AND WAS NOT GOING TO REMOVE ANY EQUIPMENT. MR. ELROD ADVISED LT. MCELVOGUE THAT HE WANTED TO GO AND GET HIS CAM CORDER SO HE COULD DO A VIDEO OF THE WORK BEING DONE WHICH HE DID. MR. ELROD & JERRY WILLIAMS CAME ON SCENE BUT DID NOT GET INVOLVED. COMCAST CABLE COMPLETED THEIR WORK AND LEFT THE SCENE. LT. MCELVOGUE ADVISED MR. ELROD FOR HIM NOT TO TOUCH COMCAST CABLES EQUIPMENT.

JURISDICTION OF TRAFFIC LAW ENFORCEMENT AGENCY JURISDICTION OF RECEIVED LAW ENFORCEMENT AGENCY

Certified True and Correct  
BERKELEY COUNTY, SC  
Date: 11-15-10  
Berkeley County Sheriff's Office

REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH 2. NO PROSECUTION 3. EXTRADITION DENIED 4. VICTIM DECLINES COOPERATION 5. APPEALS - NO CUSTODY

REPORTING OFFICER	DATE	LIST NUMBER	APPROVING OFFICER	DATE	LIST NUMBER
TIMMONS, RANDAL	01/15/08	124	SGT. DREW		70

FOLLOW-UP INVESTIGATION  YES  NO OFFICER

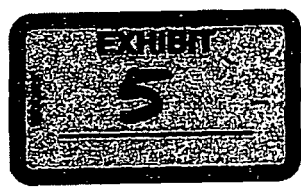
STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
 )  
 L.G. Elrod, ) C/A No. 10-CP-08-4453  
 )  
 Plaintiff, )  
 )  
 Versus )  
 )  
 Berkeley County, Berkeley County Sheriff's )  
 Department, and H. Wayne Dewitt, )  
 )  
 Defendants. )

FILED  
 2011 APR 21 PM 2:12  
 CLIFFORD C. McELVOGUE  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.

**AFFIDAVIT OF  
 CLIFFORD C. McELVOGUE**

PERSONALLY APPEARED before me, Clifford C. McElvogue, who, being duly sworn,  
 deposes and says as follows:

1. My name is Clifford C. McElvogue. Although I am currently serving with the National Guard, I have been employed with the Berkeley County Sheriff's Department for approximately seven and one-half years.
2. I am familiar with the facts of this case and have reviewed the Complaint filed by the Plaintiff. I authored an Incident Report relative to my interactions with Plaintiff. (attached)
3. On January 10, 2008, at approximately 9 pm, I was dispatched to meet with a representative from Comcast Cable in reference to their request for an escort to 224 Elrod Drive in order to restore service to their equipment which had apparently been disabled by Plaintiff.
4. Restoration of service was of high importance due to the fact that, in addition to numerous households' loss of cable television and internet, telephone service had also been disabled which included access to emergency services such as 9-1-1.
5. It is my understanding that Plaintiff had threatened Comcast employees earlier that day, during their attempts to restore service to Comcast equipment, that he would "do whatever it takes" to prevent anyone from trespassing onto his property. Apparently, the utility pole at issue is located on Plaintiff's property, approximately 5 to 6 feet from the public roadway.
6. Although Plaintiff arrived on scene and confronted myself and the Comcast employees, service was eventually restored. Plaintiff advised myself and those around me that when we left, service would again be disrupted. I advised Plaintiff that further vandalizing property that was not his could result in criminal charges. Plaintiff stated that he "did not care if he went to jail."



7. I stand behind each and every additional detail of my attached Incident Report.

8. At all times relative to my interaction with the Plaintiff, and which is the subject of his Complaint, I was acting as an employee of the Berkeley County Sheriff's Department and within the scope of my official duties as a Berkeley County Sheriff's Deputy.

9. At no time did I act in a grossly negligent manner towards Plaintiff, nor did I act or fail to act in such a manner as to violate his constitutional rights.

WHEREFORE AFFLIANT SAYETH NOT!

---

  
Clifford C. McElvogue

SWORN TO BEFORE THIS

21 day of April, 2011.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 06/2015

AGENCY I.D.  
SC0080000

INCIDENT REPORT

CASE NUMBER

200801001385

INC. TYPE  
N N

**COPY**

CHSD JAN 17 2008

RECD JAN 15 2008

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. INFORMATION ONLY (INF)		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Residence/Home (		<input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relg. Corp. <input type="checkbox"/> Sch./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Other	
2.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
3.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
RESIDENT LOCATION (BLOCK/SECTION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE	
233 ELROD DRIVE, GOOSE CREEK					29445		
INCIDENT DATE	IN HR. CLOCK	TO	DATE	IN HR. CLOCK	WEEK TYPE	24 HR. CLOCK	LOCATION NO.
01/10/2008	11:00		01/10/2008	20:58	01/10/08	20:58	4/235
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT		RESIDENT	RACE	SEX	AGE
MCKEOWN, JONATHAN				<input checked="" type="checkbox"/> J <input type="checkbox"/> U <input type="checkbox"/> W <input type="checkbox"/> M			32
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
4400 BELLE OAKES		N.CHARLESTON		SC	29418	S	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUSPECT		RESIDENT	RACE	SEX	AGE
COMCAST CABLE				<input checked="" type="checkbox"/> J <input type="checkbox"/> U <input type="checkbox"/> W <input type="checkbox"/> M			
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL IDENTIFIERS, ETC.			
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
4400 BELLE OAKES DRIVE		N.CHARLESTON		SC	29405	S	
VEHICLE PLATE (YES/NO) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		EXPLAIN --		COMPLAINANT OF ANY NON-VEHICLE DAMAGE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
VEHICLE (NO. 1) (MAKE) (MODEL) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		LINE <input type="checkbox"/> DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WAS <input type="checkbox"/> TYPE			
FINGERPRINT YES <input type="checkbox"/>		OTHER HAND YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ESTER/PLASTIC <input type="checkbox"/> OTHER <input type="checkbox"/>		ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>		*J - This Jurisdiction. S - State. O - Out of State. U - Unknown	
SUBJECT NO. 1		SUBJECT NO. 2		SUBJECT NO. 3		SUBJECT NO. 4	
ELROD, LOUIE, G		RACE		AGE	ETH.	DATE OF BIRTH	HEIGHT
W		M		71	N	12/08/38	509
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL IDENTIFIERS, ETC.							
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
307 ELROD DR		GOOSE CREEK		SC	29445	4/235	
SUBJECT (NO. 1) (MAKE) (MODEL) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WAS <input type="checkbox"/> TYPE		ARRESTED (YES/NO) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DATE/TIME OF OFFENSE	
SUBJECT NO. 2		SUBJECT NO. 3		SUBJECT NO. 4		SUBJECT NO. 5	
SUBJECT NO. 3		SUBJECT NO. 4		SUBJECT NO. 5		SUBJECT NO. 6	
SUBJECT NO. 4		SUBJECT NO. 5		SUBJECT NO. 6		SUBJECT NO. 7	
SUBJECT NO. 5		SUBJECT NO. 6		SUBJECT NO. 7		SUBJECT NO. 8	
SUBJECT NO. 6		SUBJECT NO. 7		SUBJECT NO. 8		SUBJECT NO. 9	
SUBJECT NO. 7		SUBJECT NO. 8		SUBJECT NO. 9		SUBJECT NO. 10	
SUBJECT NO. 8		SUBJECT NO. 9		SUBJECT NO. 10		SUBJECT NO. 11	
SUBJECT NO. 9		SUBJECT NO. 10		SUBJECT NO. 11		SUBJECT NO. 12	
SUBJECT NO. 10		SUBJECT NO. 11		SUBJECT NO. 12		SUBJECT NO. 13	
SUBJECT NO. 11		SUBJECT NO. 12		SUBJECT NO. 13		SUBJECT NO. 14	
SUBJECT NO. 12		SUBJECT NO. 13		SUBJECT NO. 14		SUBJECT NO. 15	
SUBJECT NO. 13		SUBJECT NO. 14		SUBJECT NO. 15		SUBJECT NO. 16	
SUBJECT NO. 14		SUBJECT NO. 15		SUBJECT NO. 16		SUBJECT NO. 17	
SUBJECT NO. 15		SUBJECT NO. 16		SUBJECT NO. 17		SUBJECT NO. 18	
SUBJECT NO. 16		SUBJECT NO. 17		SUBJECT NO. 18		SUBJECT NO. 19	
SUBJECT NO. 17		SUBJECT NO. 18		SUBJECT NO. 19		SUBJECT NO. 20	
SUBJECT NO. 18		SUBJECT NO. 19		SUBJECT NO. 20		SUBJECT NO. 21	
SUBJECT NO. 19		SUBJECT NO. 20		SUBJECT NO. 21		SUBJECT NO. 22	
SUBJECT NO. 20		SUBJECT NO. 21		SUBJECT NO. 22		SUBJECT NO. 23	
SUBJECT NO. 21		SUBJECT NO. 22		SUBJECT NO. 23		SUBJECT NO. 24	
SUBJECT NO. 22		SUBJECT NO. 23		SUBJECT NO. 24		SUBJECT NO. 25	
SUBJECT NO. 23		SUBJECT NO. 24		SUBJECT NO. 25		SUBJECT NO. 26	
SUBJECT NO. 24		SUBJECT NO. 25		SUBJECT NO. 26		SUBJECT NO. 27	
SUBJECT NO. 25		SUBJECT NO. 26		SUBJECT NO. 27		SUBJECT NO. 28	
SUBJECT NO. 26		SUBJECT NO. 27		SUBJECT NO. 28		SUBJECT NO. 29	
SUBJECT NO. 27		SUBJECT NO. 28		SUBJECT NO. 29		SUBJECT NO. 30	
SUBJECT NO. 28		SUBJECT NO. 29		SUBJECT NO. 30		SUBJECT NO. 31	
SUBJECT NO. 29		SUBJECT NO. 30		SUBJECT NO. 31		SUBJECT NO. 32	
SUBJECT NO. 30		SUBJECT NO. 31		SUBJECT NO. 32		SUBJECT NO. 33	
SUBJECT NO. 31		SUBJECT NO. 32		SUBJECT NO. 33		SUBJECT NO. 34	
SUBJECT NO. 32		SUBJECT NO. 33		SUBJECT NO. 34		SUBJECT NO. 35	
SUBJECT NO. 33		SUBJECT NO. 34		SUBJECT NO. 35		SUBJECT NO. 36	
SUBJECT NO. 34		SUBJECT NO. 35		SUBJECT NO. 36		SUBJECT NO. 37	
SUBJECT NO. 35		SUBJECT NO. 36		SUBJECT NO. 37		SUBJECT NO. 38	
SUBJECT NO. 36		SUBJECT NO. 37		SUBJECT NO. 38		SUBJECT NO. 39	
SUBJECT NO. 37		SUBJECT NO. 38		SUBJECT NO. 39		SUBJECT NO. 40	
SUBJECT NO. 38		SUBJECT NO. 39		SUBJECT NO. 40		SUBJECT NO. 41	
SUBJECT NO. 39		SUBJECT NO. 40		SUBJECT NO. 41		SUBJECT NO. 42	
SUBJECT NO. 40		SUBJECT NO. 41		SUBJECT NO. 42		SUBJECT NO. 43	
SUBJECT NO. 41		SUBJECT NO. 42		SUBJECT NO. 43		SUBJECT NO. 44	
SUBJECT NO. 42		SUBJECT NO. 43		SUBJECT NO. 44		SUBJECT NO. 45	
SUBJECT NO. 43		SUBJECT NO. 44		SUBJECT NO. 45		SUBJECT NO. 46	
SUBJECT NO. 44		SUBJECT NO. 45		SUBJECT NO. 46		SUBJECT NO. 47	
SUBJECT NO. 45		SUBJECT NO. 46		SUBJECT NO. 47		SUBJECT NO. 48	
SUBJECT NO. 46		SUBJECT NO. 47		SUBJECT NO. 48		SUBJECT NO. 49	
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SUBJECT NO. 81		SUBJECT NO. 82		SUBJECT NO. 83		SUBJECT NO. 84	
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SUBJECT NO. 89		SUBJECT NO. 90		SUBJECT NO. 91		SUBJECT NO. 92	
SUBJECT NO. 90		SUBJECT NO. 91		SUBJECT NO. 92		SUBJECT NO. 93	
SUBJECT NO. 91		SUBJECT NO. 92		SUBJECT NO. 93		SUBJECT NO. 94	

AGENCY I.D.  
SC0080000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER  
200801001385

NO. EXT. NO.  
N N

ORIGINAL REPORT     SUPPLEMENTAL REPORT     ADDITIONAL VICTIMS     ADDITIONAL STOLEN PROPERTY    PAGE 2 OF \_\_\_\_\_ PAGES.

MODIFIED ORIGINAL     CASE STATUS CHANGE     ADDITIONAL OFFENDERS     ADDITIONAL RECOVERED PROPERTY

**VICT/SUBJ. I.D. OVERFLOW**

COMPLAINT    NAME (LAST, FIRST, MIDDLE) \_\_\_\_\_    VICTIM RELATIONSHIP TO SUBJECT    RESIDENT    RACE    SEX    AGE    D.O.B.    ETH.

VICTIM # \_\_\_\_\_

SUBJECT # \_\_\_\_\_    HEIGHT    WEIGHT    HAIR    EYES    FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PARTICULARS, ETC.

RUMOR    ADDRESS \_\_\_\_\_    CITY \_\_\_\_\_    STATE \_\_\_\_\_    ZIP CODE \_\_\_\_\_    LOCATION NO. \_\_\_\_\_    DAY PHONE \_\_\_\_\_    EVENING PHONE \_\_\_\_\_

WANTED     VICTIM NO. \_\_\_\_\_    VEHICLE BURST?  NO  YES    COMPLAINT OF NON-PEACE?  BLAME?  NO  YES    VICTIM USING ALCOHOL?  NO  YES  UNK.    TWO-MAN VEHICLE?  DETECTIVE/PLASMA?  ALONE

WARRANT     J.A.     COPIES     SUBJECT NO. \_\_\_\_\_    USING ALCOHOL?  NO  YES     UNK.     ONE-MAN VEHICLE?  OTHER     ASSAULT

REASONS     SUBJECT NO. \_\_\_\_\_    USING ALCOHOL?  NO  YES     UNK.

**VICT/SUBJ. I.D. OVERFLOW**

COMPLAINT    NAME (LAST, FIRST, MIDDLE) \_\_\_\_\_    VICTIM RELATIONSHIP TO SUBJECT    RESIDENT    RACE    SEX    AGE    D.O.B.    ETH.

VICTIM # \_\_\_\_\_

SUBJECT # \_\_\_\_\_    HEIGHT    WEIGHT    HAIR    EYES    FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PARTICULARS, ETC.

RUMOR    ADDRESS \_\_\_\_\_    CITY \_\_\_\_\_    STATE \_\_\_\_\_    ZIP CODE \_\_\_\_\_    LOCATION NO. \_\_\_\_\_    DAY PHONE \_\_\_\_\_    EVENING PHONE \_\_\_\_\_

WANTED     VICTIM NO. \_\_\_\_\_    VEHICLE BURST?  NO  YES    COMPLAINT OF NON-PEACE?  BLAME?  NO  YES    VICTIM USING ALCOHOL?  NO  YES  UNK.    TWO-MAN VEHICLE?  DETECTIVE/PLASMA?  ALONE

WARRANT     J.A.     COPIES     SUBJECT NO. \_\_\_\_\_    USING ALCOHOL?  NO  YES     UNK.     ONE-MAN VEHICLE?  OTHER     ASSAULT

REASONS     SUBJECT NO. \_\_\_\_\_    USING ALCOHOL?  NO  YES     UNK.

**NARRATIVE**

COMPLAINANT WAS CONCERNED ABOUT THE SUSPECTS ACTIONS DUE TO A PRIOR INCIDENT WITH HIS WORKERS EARLIER THAT DAY. THIS DEPUTY ADVISED THE COMPLAINANT TO CONTINUE WORKING ON THE CABLE BOX DUE TO SEVERAL FAMILIES WOULD NOT BE ABLE TO CALL 911 IF THEY HAD A EMERGENCY. THE SUSPECT ARRIVED AT THE LIGHT POLE AND JUMPED OUT OF HIS TRUCK HOLDING A CAM CORDER, THE SUSPECT WALKED UP TO DEPUTY AND GOT APPROXIMATELY 2 INCHES FROM DEPUTIES FACE AND STARTED RECORDING. THIS DEPUTY ADVISED THE SUSPECT TO STEP BACK OUT OF DEPUTIES FACE, THE SUSPECT PROCEEDED TO GET CLOSER TO DEPUTY WITH THE RECORDER. THIS DEPUTY USED A OPEN HAND AND PUSHED THE CAMERA OUT OF DEPUTIES FACE, INFORMING HIM THAT HE COULD RECORD AT A DISTANCE BUT NOT IN DEPUTIES FACE.

JURISDICTION OF THREAT LAW ENFORCEMENT AGENCY \_\_\_\_\_    JURISDICTION OF RECOVERED LAW ENFORCEMENT AGENCY \_\_\_\_\_

**VEN. / GUN / ETC. 1**

STATUS    TYPE    VIN AND/OR LICENSE NO.    BODY MAKE NO. AND/OR REEL NO.

STOLEN     VEHICLE    SERIAL AND/OR OWNER APPLIED NO.    STATE

RECOVERED     GUN    YEAR OF REGISTRATION    YEAR OF EXPIRATION    YEAR    MAKE    TYPE

FOUND     BOAT    MODEL    STYLE    COLOR    BRAND NAME    CALIBER

TOWED     LICENSE PLATE    INC NO.    DESIGNATION    GRADE    SECURITY DATE

SUSPECT     STOLEN/RECOVERED, STOCKS    MISCELLANEOUS

VICTIM     ARTICLE

**PROPERTY EST.**

TYPE CATEGORY	QUANTITY	UNIT	TOTAL VALUE
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
OTHER			

**ADMINISTRATIVE**

SUBJECT IDENTIFIED    YES  NO     SUBJECT LOCATED    YES  NO     ACTIVE     NOT CLOSED     APPRENT UNDER 18     IS-CLEAR UNDER 18

UNEMPLOYED        APPRENT 18 AND OVER        IS-CLEAR 18 AND OVER        REASON FOR EXCEPTIONAL CLEARANCE: 1.  OFFENDER DEATH    2.  NO PROSECUTION    3.  EXTRADITION DENIED    4.  VICTIM DECLINES COOPERATION    5.  JUVENILE - NO CLEARUP

REPORTED OFFICER    DATE    USE CLASS    APPROVED OFFICER    DATE    UNIT NUMBER

MCELVOGUE, CLIFFORD    01/11/08    C115    GEIGER, JAMES    01/11/08    \_\_\_\_\_

FOLLOW-UP    OFFICER    INVESTIGATOR    YES  NO

AGENCY I.D.  
SC080000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER  
2 0 0 8 0 1 0 0 1 3 8 5

NO. ENR. N N

<input type="checkbox"/> ORIGINAL REPORT	<input type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY	PAGE 3	OF _____ PAGES
<input type="checkbox"/> MODIFIED ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY		

VICT/SUBJ. I.D. OVERFLOW	<input type="checkbox"/> COMPLAINT	NAME (LAST, FIRST, MIDDLE)		WITHIN JURISDICTION TO SUBJECT		PERMITS	RACE	SEX	AGE	D.O.B.	ETH.	
	<input type="checkbox"/> VICTIM #											
	<input type="checkbox"/> SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	<input type="checkbox"/> BURNING											
	<input type="checkbox"/> WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	<input type="checkbox"/> WARRANT											

VICT/SUBJ. I.D. OVERFLOW	<input type="checkbox"/> COMPLAINT	NAME (LAST, FIRST, MIDDLE)		WITHIN JURISDICTION TO SUBJECT		PERMITS	RACE	SEX	AGE	D.O.B.	ETH.	
	<input type="checkbox"/> VICTIM #											
	<input type="checkbox"/> SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	<input type="checkbox"/> BURNING											
	<input type="checkbox"/> WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	<input type="checkbox"/> WARRANT											

THE SUSPECT BECAME ANGRY AND ADAMANT THAT COMCAST WAS NOT GOING TO TURN THE CABLE BACK ON. AFTER SPEAKING WITH THE COMPLAINANT THE COMPLAINANT INFORMED DEPUTY THAT THE SUSPECT HAD BEEN AND STILL IS RECEIVING FREE CABLE FROM COMCAST BECAUSE THEY HAD THEIR BOX ON A BERKELEY ELECTRIC POLE ON HIS PROPERTY. DEPUTY CONFRONTED THE SUSPECT ABOUT THE DEAL BETWEEN HIM AND COMCAST. THE SUSPECT STATED THAT WHAT THE COMPLAINANT STATED WAS TRUE, THE SUSPECT STATED THAT COMCAST REMOVED TWO CHANNELS FROM HIS PLAN AND HE STATED THAT WAS A BREACH OF CONTRACT. DEPUTY INFORMED THE SUSPECT THAT THE VERBAL AGREEMENT BETWEEN HIM AND COMCAST WAS A CIVIL MATTER AND THE ONLY REASON DEPUTIES WERE ON SCENE WAS BECAUSE OF THE THREATS THAT

APPROPRIATION OF THEFT LAW ENFORCEMENT AGENCY	APPROPRIATION OF RECOVERY LAW ENFORCEMENT AGENCY
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VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	SOLD SEAL NO. AND/OR REG. NO.			
	<input type="checkbox"/> STOLEN	<input type="checkbox"/> VEHICLE	SERIAL AND/OR OTHER APPLIED NO.		STATE		
	<input type="checkbox"/> RECOVERED	<input type="checkbox"/> GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR	MAKE	TYPE
	<input type="checkbox"/> FORGONE	<input type="checkbox"/> BOAT	MODEL	STYLE	COLOR	BRAND NAME	CAUSE
	<input type="checkbox"/> TOWED	<input type="checkbox"/> LICENSE PLATE	IMO NO.	DESCRIPTION	NUMBER	SECURITY DATE	
	<input type="checkbox"/> SUSPECT	<input type="checkbox"/> SECURITY/ARMED, STOCK	MISCELLANEOUS				

TYPE ACQUISITION						TOTAL VALUE
STOLEN						
DAMAGED						
RECOVERED						
RECOVERED						
RECOVERED						

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE	ADMA CLOSED	APPREHENDED UNDER 16	EX-CLEAR UNDER 16
<input type="checkbox"/> YES	<input type="checkbox"/> YES	<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> APPREHENDED 16 AND OVER	<input type="checkbox"/> EX-CLEAR 16 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE 1. OFFENDER DEATH	2. NO PROSECUTION	3. EXTRAORDINARY CIRCUMSTANCES	4. VICTIM DECLINES COOPERATION	5. APPEALS - NO CUSTODY	
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MC ELVOGUE, CLIFFORD	01/11/08	C115	GEIGER, JAMES	01/11/08	
FOLLOWUP INVESTIGATION		OFFICER			
<input type="checkbox"/> YES		<input type="checkbox"/> NO			



AGENCY I.D.  
SC0080000

SUPPLEMENTARY REPORT

CASE NUMBER

200801001385

NCI

NO. ENTS  
N N

<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY	PAGE 1 of _____ PAGES
<input type="checkbox"/> UNOPENED ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFICERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY	

REFERENCE: INFORMATION REPORT

SUSPECT: ELROD, LG

MODIFICATION: CORRECTION/MODIFIED THE INCIDENT LOCATION

THE INCIDENT LOCATION ON THE ORIGINAL REPORT THAT WAS FILED BY OFFICER CC MCELVOGUE INCORRECT. THE CORRECT INCIDENT LOCATION SHOULD BE 233 ELROD DRIVE. THIS SUPPLEMENTAL WILL SHOW THE CORRECTED INCIDENT LOCATION.

233 ELROD DRIVE

GOOSE CREEK, SC 29445

WADFORD A13

REC'D JAN 17 2008

ADMINISTRATIVE NARRATIVE

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNPUNISHED	<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 19 AND OVER	<input type="checkbox"/> 0-CLEAR UNDER 18 <input type="checkbox"/> 0-CLEAR 19 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENSE DEATH		2. <input type="checkbox"/> NO PROSECUTION		3. <input type="checkbox"/> EXTRAJURIS DEATH		4. <input type="checkbox"/> VICTIM DECLINED COOPERATION
REPORTING OFFICER WADFORD, GRESHA	DATE 01/17/08	LIST NUMBER	APPROVING OFFICER BLANCHARD, MELISSA	DATE 01/17/08	LIST NUMBER 8	
FOLLOWUP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO						

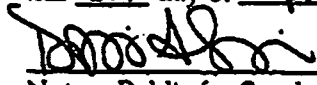


[Signature block on following page.]

This 21 day of APRIL 2012.

  
\_\_\_\_\_  
Jerry R. Williams

Sworn to and subscribed before me,  
this 21 day of April 2012.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 01/03/2017

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF BERKELEY

COURT OR COMMON PLEAS  
2010-CP-08-04453

3 L.G. ELROD, )  
4 Plaintiff, )  
5 V. )  
6 BERKELEY COUNTY SHERIFF'S )  
7 DEPARTMENT, et al., )  
8 Defendants. )

TRANSCRIPT OF RECORD

9  
10 May 9, 2012  
11 Moncks Corner, South Carolina

12  
13 B E F O R E :

14 THE HONORABLE ROGER M. YOUNG, JUDGE

15  
16  
17  
18  
19 A P P E A R A N C E S :

20 Mr. M. Brooks Derrick, Esquire  
21 Representing the Plaintiff

22 Mr. Gordon Wade Cooper, Esquire  
23 Representing the Defendants

24  
25 Anne Bouley Meyer, RPR  
Circuit Court Reporter



1 THE COURT: Okay. We got a motion for summary  
2 judgment?

3 MR. COOPER: Yes, Your Honor.

4 THE COURT: All right, go head.

5 MR. COOPER: I'm Wade Cooper here on behalf of  
6 the defendants in this case, who are the Berkeley  
7 County Sheriff's Department, and H. Wayne Dewitt as  
8 Sheriff of Berkeley County.

9 To my right is Mr. Brooks Derek who is now  
10 representing Mr. Elrod, who until recently had been  
11 proceeding pro se.

12 Judge, back in January you heard a motion that I  
13 had filed, a motion for judgment on the pleadings.  
14 Basically our argument, since the case was filed, was  
15 that the case was filed too late.

16 Mr. Elrod has sued over two incidents in which  
17 Berkeley County Sheriff's Deputies were called out to  
18 his property. One of which occurred on January 10th,  
19 2008. Actually two on that same day, January 10th,  
20 2008. And another five days later on January 15th,  
21 2008.

22 The deputies were called out to initially by the  
23 request of Mr. Elrod due to his claim that Comcast  
24 Cable was trespassing on his property in order to fix a  
25 cable box on a utility pole that he had switched off.

1 Later that afternoon, Comcast Cable requested sheriff's  
2 deputies to escort them back to the property as the  
3 work to switch the box back on had not been completed  
4 earlier, it was to avoid a confrontation with Mr.  
5 Elrod.

6 The work was completed that afternoon, and five  
7 days later Comcast was again alerted that Mr. Elrod had  
8 switched the box off. They again requested, due to  
9 threats made by Mr. Elrod five days earlier, requested  
10 an escort from Berkeley County sheriff's deputies who  
11 responded and the box was turned back on.

12 Mr. Elrod filed this case in Berkeley County on  
13 December the 16th, 2010. I filed a motion to dismiss  
14 based on the fact that the defendants in this case fell  
15 within the tort claims act, and that 15-78-110  
16 establishes a two year statute of limitations.

17 Mr. Elrod, based upon the date of the incidents  
18 I gave you and the date that the complaint was filed,  
19 filed it almost three years, but not yet three years,  
20 after the incidents. And thus our argument was that  
21 the statute of limitations inherent in the tort claims  
22 act barred Mr. Elrod's action.

23 As I understand it, the opposition to our  
24 motion, the statute of limitation argument, is that  
25 there is a competing statute, statute 15-3, I believe,

1 540, which allows actions against sheriffs and  
2 constables to be brought within three years. And it's  
3 specific to the fact that those actions must be against  
4 sheriffs and constables acting outside of the scope of  
5 their official duties.

6 So the question then before the Court is whether  
7 or not, based on the evidence established so far in the  
8 record, supports the fact that the defendants, the  
9 sheriff and the two deputies, were acting outside of  
10 the scope of their official duties when they responded  
11 to these two incidents back in 2008.

12 Should the Court find that they were acting  
13 within the scope of their official duties, then they  
14 would be covered by the tort claims act. The Court has  
15 already issued an order, Judge Jefferson, establishing  
16 the fact that there was no verified complaint filed  
17 within a year. And these actors were found to be  
18 within the scope of their official duties, then the two  
19 year statute of limitations would apply.

20 If, on the other hand, they were found to be  
21 outside of the scope of their official duties, this  
22 other statute, 15-3-540, would allow the plaintiff  
23 three years and thus his complaint was timely filed.

24 So I initially filed what you heard in January,  
25 it was a motion for judgment on the pleadings.

1 Basically saying, Your Honor, take a look at what the  
2 plaintiff has alleged in this case, and specifically  
3 looking at, and not outside of, the complaint.

4 which states that the sheriff, H. Wayne Dewitt,  
5 at all times mentioned herein was the sheriff employed  
6 by defendant Berkeley County Sheriff, who was acting  
7 within the scope and course of his employment, and  
8 under color of state law.

9 So my argument has been that the complaint, on  
10 its face alone, is alleging that the sheriff is being  
11 sued in his official capacity, acting within the course  
12 and scope of his employment, i.e., his official duties  
13 as the sheriff. And thus the two year statute of  
14 limitations inherent to the tort claims act is  
15 applicable.

16 There are no allegations in the complaint  
17 specifically stating that the sheriff was acting at any  
18 time outside of the scope of his official duties.  
19 There are no allegations specific to the complaint that  
20 either of the deputies were acting outside of the scope  
21 of their official duties.

22 Nonetheless, at the last hearing discussion  
23 began with Mr. Elrod where we were discussing  
24 affidavits and incident reports, things outside of the  
25 pleadings. The rule, I believe it's rule 12(c), motion

1 for judgment on the pleadings, if the Court is to  
2 consider or if matters are brought up in the hearing  
3 outside of the pleadings, then it basically converts to  
4 a motion for summary judgment.

5 Mr. Elrod was not prepared at that time to argue  
6 a motion for summary judgment. The Court continued  
7 that motion and here we are today.

8 So this is a converted motion for judgment on  
9 the pleadings, converted to a motion for summary  
10 judgment. I would point out, Your Honor, that we have  
11 filed, a long time ago I filed the affidavits two  
12 deputies, Deputy Timmons (phonetic), and Deputy McVoy  
13 (phonetic). There is an affidavit with each of their  
14 incident reports that they authored attached to each  
15 affidavit.

16 More recently I filed an affidavit from Sheriff  
17 Dewitt. All three are consistent in that they state  
18 that each of the three were at all times acting within  
19 the course and scope of their official duties as  
20 sheriff and as deputies, deputy sheriffs of the  
21 Berkeley County Sheriff's Office.

22 So it is our position that there is no genuine  
23 fact, material fact in evidence in this case. There is  
24 nothing on the record to prove that these three  
25 individuals were acting in any other capacity than in

1 their official duties as sheriff and sheriff's deputies  
2 in this case.

3 As such, the tort claims act establishes the two  
4 year statute of limitations. And plaintiff's action is  
5 time barred as a result because it was filed more than  
6 two years, almost three years after the incidents at  
7 issue.

8 THE COURT: What was the date it was filed?

9 MR. COOPER: December 16th, 2010.

10 THE COURT: Okay.

11 MR. COOPER: Last evening I was provided, and I  
12 understand the Court was as well, a memorandum opposing  
13 the summary judgment argument. I have discussed this  
14 with Mr. Derek, and I think we have both agreed that  
15 that is the issue before the Court; is whether based on  
16 the record there is evidence to support the plaintiff's  
17 contention that these individuals were acting outside  
18 of the course and scope of their official duties.

19 THE COURT: Okay.

20 MR. COOPER: I would just point out that the two  
21 cases cited by and provided to the Court, the McCall  
22 case and the Allen case, both provided by the  
23 plaintiffs in support of their motion, one of those,  
24 the Allen case, preceded the tort claims act by about  
25 five years. And that the McCall case, actually both

1 Allen and McCall, the Court upheld the lower court's  
2 ruling that the actions were time barred against  
3 sheriffs and sheriff's deputies.

4 THE COURT: Okay.

5 MR. DEREK: Your Honor, I think that defendants'  
6 counsel has encapsulated the issue that we are facing  
7 here; is whether or not it's a three year statute of  
8 limitation or two year statute of limitations.

9 I disagree with the defendants' counsel in that  
10 there certainly is a genuine issue of material fact as  
11 to whether or not the sheriff's department was acting  
12 within the scope of their official duties at the time.

13 THE COURT: How so? They got called out.

14 MR. DEREK: The issue that was surrounding the  
15 call-out was a civil dispute between Comcast and Mr.  
16 Elrod.

17 THE COURT: Yeah, but they were asked to escort  
18 these people on because they were worried about their  
19 safety. It might have been they weren't investigating  
20 a crime, but they were still acting in their capacity  
21 as sheriff's deputies, correct?

22 MR. DEREK: I think that they were definitely  
23 acting in their capacity as sheriff's deputies, but I  
24 don't know if the actions of settling a civil dispute  
25 on private property encapsulates whether or not they

1 were acting in their official duties.

2 Is it an official duty for an officer to  
3 intervene with a civil dispute. And in their police  
4 reports that both the deputies put forward, in those  
5 report themselves it states that it was a civil matter  
6 that they were out on call for.

7 THE COURT: Yeah, but sheriff's deputies can go  
8 and respond to civil disputes, get involved in things  
9 like that and still be acting within the scope of their  
10 official duties.

11 Do you understand, if you prevail on this you  
12 don't get to sue the county anymore, you are just suing  
13 these people as individuals?

14 MR. DEREK: I understand that, Your Honor.

15 THE COURT: Usually -- okay. You really don't  
16 have much of a choice to argue otherwise, I suppose,  
17 because of the statute of limitations.

18 MR. DEREK: I would just raise the issue again  
19 that whether or not the police responding to a civil  
20 call is in their official duties would be a question  
21 for the jury and not a question for today.

22 Thank you, Your Honor.

23 THE COURT: All right.

24 MR. COOPER: Your Honor, if I could briefly  
25 respond. I'm looking at the two incident reports that

1 are -- that Mr. Derek is referencing. I guess in  
2 essence the dispute between Mr. Elrod and Comcast, and  
3 I don't think we need to get involved with what that  
4 was, but basically it was a verbal agreement that  
5 Comcast had, or its predecessor had, with Mr. Elrod to  
6 have a box on the utility pole on his property. And he  
7 had been receiving cable for 20-some-odd years for free  
8 because of it.

9 And some channels got switched off. And there  
10 was a dispute between Mr. Elrod and Comcast.

11 Now as Judge Jefferson pointed out, Mr. Elrod  
12 why don't you sue Comcast, sounds like a dispute  
13 between you and them. And it is my understanding that  
14 he did so in Charleston County and that case was  
15 settled. I'm not familiar with the settlement.

16 But the report by Deputy McVoy states, and I  
17 will quote, Deputy informed the suspect, in this case  
18 that's Mr. Elrod, that the verbal agreement between him  
19 and Comcast was a civil matter. And that the only  
20 reason deputies were on scene was because of the  
21 threats that he had made towards Comcast workers  
22 earlier.

23 So there is reference to a civil matter, but the  
24 deputy points out that whatever agreement Comcast had  
25 with Mr. Elrod, that that's not for them to decide.

1 They were there at the request initially of Mr. Elrod  
2 because of suspected trespassing. And then  
3 subsequently at the request of Comcast on two separate  
4 occasions, the 10th and the 15th, because of threats to  
5 their safety.

6 And obviously I think everyone is aware that one  
7 of the first duties of a deputy, or of any law  
8 enforcement officer, is to protect and serve. And in  
9 that respect, I think it's very clear throughout the  
10 record that both deputies and the sheriff were doing  
11 their best to keep any sort of physical confrontation  
12 from occurring and that was it.

13 They didn't get involved with the agreement  
14 between Comcast and Mr. Elrod. They were simply there  
15 on site to make sure that the earlier threats of  
16 violence did not come to bear.

17 MR. DEREK: Your Honor, I would disagree with  
18 that position. I think that they certainly were there  
19 trying to settle the civil matter. Whether or not  
20 there were threats made by Mr. Elrod would also be a  
21 question for the jury.

22 And I think they were there escorting Comcast on  
23 to private property to allow Comcast to make money on  
24 the service to 20 or 30 or 40 or 50 different houses  
25 that that box was servicing.

1 THE COURT: Didn't you allege that in the  
2 complaint, that they were acting in their capacity,  
3 official capacity?

4 MR. DEREK: He did allege in the complaint  
5 official capacity.

6 THE COURT: Okay. Well why isn't that  
7 dispositive?

8 MR. DEREK: I believe once we take the  
9 affidavits and other evidence outside of the complaint  
10 and the motion for summary judgment, that it raises a  
11 genuine issue of material fact as to whether or not  
12 they were acting within the scope of their official  
13 duties while under their official capacity.

14 THE COURT: All right. Well it's pretty clear.  
15 I think the evidence is uncontroverted based on what I  
16 have heard and the affidavits that have been submitted,  
17 that at all times they were acting within their  
18 official capacity.

19 Even if they were responding to a call that  
20 involved a civil matter between those two, they were  
21 always called out because they work for the sheriff's  
22 office, and they were sheriff's deputies and they were  
23 responding to a request to assist by a customer that  
24 was -- or an employee who was going out to work.

25 Now the fact that those folks might have had

1 some sort of dispute between the two of them and it  
2 might have been civil in nature, doesn't mean that that  
3 converts whatever the Berkeley County Sheriff's  
4 officers were doing when they were responding to a call  
5 to assist.

6 I think that just stretches the definition of  
7 acting outside of your course of official duties beyond  
8 its intended meaning. So I think the defendant's  
9 motion for summary judgment should be granted. And  
10 give me a chance to, if you would, prepare an order and  
11 send that to me and send it to opposing counsel. Send  
12 it to the Charleston office.

13 MR. COOPER: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. DEREK: Your Honor, is that the sheriff  
16 himself personally as well? Or is that just the  
17 Sheriff's Department?

18 THE COURT: Yes. Well technically you sued the  
19 sheriff because they were the head of the Sheriff's  
20 Department. It doesn't even say on here that he  
21 was sued individually. But to the extent that he was  
22 sued individually, he was not acting outside the scope  
23 of his authority, to the extent that he was sued in his  
24 capacity as the sheriff, and that's the proper party to  
25 name when you are suing the Sheriff's Department,

1 you're entitled to summary judgment because it's  
2 outside the statute of limitations.

3 Either way he wins.

4 MR. DEREK: Thank you, Your Honor.

5 (Whereupon, the proceedings in this matter  
6 before the Court were adjourned.)

7 \* \* \* \* \*

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C E R T I F I C A T E  
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8 I, the undersigned, ANNE BOULEY MEYER,  
9 Official Court Reporter for the Ninth Judicial  
10 Circuit of the State of South Carolina, do hereby  
11 certify that the foregoing is a true, accurate, and  
12 complete transcript of record, and of all the  
13 proceedings had and evidence introduced in the above  
14 captioned case, relative to appeal, in the Circuit  
15 Court for South Carolina, on the indicated date.

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

18  
19 -----*Anne Bouley Meyer*-----

20 Anne Bouley Meyer, RPR  
21 Circuit Court Reporter  
22  
23  
24  
25

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
 )  
 L.G. Elrod, ) C/A No. 10-CP-08-4453  
 )  
 ) Plaintiffs, )  
 )  
 Versus ) **ORDER GRANTING DEFENDANTS'  
 ) MOTION FOR SUMMARY JUDGMENT**  
 )  
 Berkeley County Sheriff's Department, and H. )  
 Wayne Dewitt, )  
 )  
 ) Defendants. )

Presiding Judge: Hon. Roger M. Young  
 Date of Hearing: May 9, 2012  
 Plaintiff's Attorney: M. Brooks Derrick, Esquire  
 Defendants' Attorney: G. Wade Cooper, Esquire  
 Court Reporter: Anne Myers

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 CLERK OF COURT  
 BERKELEY COUNTY

The instant matter came before the Court on May 9, 2012 on the Defendants' Motion for Judgment on the Pleadings / Motion for Summary Judgment pursuant to Rule 12 (c) and Rule 56 SCRPC, respectively.<sup>1</sup> Present at the hearing were the Plaintiff and his counsel, M Brooks Derrick, Esquire, as well as G. Wade Cooper, Esquire, appearing on behalf of the Defendants. In addition to oral arguments on the record, both parties presented affidavits and exhibits for the Court's consideration. For the reasons set forth below, the Defendants' Motion is granted.

**FACTUAL BACKGROUND**

The Plaintiff alleges that on or about January 10, 2008 and January 15, 2008, the Defendant Sheriff did send Berkeley County Sheriff's Deputies to Plaintiff's property and unlawfully restrained Plaintiff while allowing a third party – Comcast Cable – to restore power to its cable box on a utility pole located on Plaintiff's property. Plaintiff initiated this action by the filing of a Summons and Complaint on December 16, 2010 which sets forth causes of action

<sup>1</sup> Defendants' Motion for Judgment on the Pleadings was heard by the Court on January 17, 2012. During the hearing, matters outside the pleadings were presented by the non-moving party. Counsel for Defendants moved on the record pursuant to SCRPC Rule 12 (c) that the motion should be treated as one for summary judgment and disposed of as provided in Rule 56. As Plaintiff was, at the time, prosecuting the matter *pro se* and in order to allow the parties reasonable opportunity to present all pertinent material, this Court continued the motion for summary judgment to the next available term of court.

AMM  
 HWB  
 GWC  
 MBD

R



for False Imprisonment and Unlawful Detention – Abuse of Process. Defendants filed the instant motion pursuant to Rule 12 (c) and Rule 5, SCRPC, on the grounds that the Defendants are a governmental entity (Sheriff's Office) and employee of a governmental entity (Sheriff) as defined by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., who were at all times acting within the course and scope of their official duties with respect to Plaintiff's claims, and as such, Plaintiff's action is barred by the applicable two (2) year statute of limitations.

### **STANDARD OF REVIEW**

Summary judgment is appropriate when there is "no genuine issue as to any material fact and...the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986). A fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. Id. at 257.

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in the pleadings; rather, he must demonstrate that specific, material facts exist which give rise to a genuine issue. Id. at 324. The existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. Anderson, 477 U.S. at 252. Accordingly,

when Rule 56(e) has shifted the burden of proof to the non-movant, he must provide existence of every element essential to his action which he bears the burden of adducing at a trial on the merits.

### CONCLUSIONS OF LAW

The Tort Claims Act is the exclusive remedy available for any tort committed by a governmental entity, its employees or its agents unless the employee's conduct was not within the scope of his official duties or constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. §§ 15-78-20(b), 15-78-70(b). A governmental entity means the State and its political subdivisions. *Id.* at § 15-78-30(d). Defendant Berkeley County Sheriff's Department is a governmental entities as defined by Section 15-78-30(d). Likewise, Defendant Dewitt, as Sheriff of Berkeley County, is considered a "state official." Cone v. Nettles, 308 S.C. 109, 112, 417 S.E.2d 523, 524 (1992).

The Defendants argue that S.C. Code Ann. § 15-78-110 provides the applicable statute of limitations as to all Defendants, and, thus, summary judgment should be granted and all Defendants dismissed with prejudice for Plaintiff's failure to file the Summons and Complaint within the applicable time period. Section 15-78-110 provides in relevant part, "[A]ny action brought pursuant to [the South Carolina Tort Claims Act] is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered . . . ." S.C. Code Ann. § 15-78-110.

The Plaintiff argues that S.C. Code Section 15-3-540 should apply, which provides that actions against sheriffs, coroners or constables, upon a liability incurred by virtue of an act or omission while acting in their official capacity, must be brought within three (3) years. S.C. Code Ann. 15-3-540(0; *see also* Allen v. Fidelity and Deposit Co. of Maryland, 515 F. Supp. 1185 (D.S.C. 1981), *aff'd*, 694 F.2d 716 (4th Cir. 1982). However, to the extent the wrongful acts of a sheriff, coroner or constable fall within the South Carolina Tort Claims Act and are committed in their official capacity, they are shielded from liability. S.C. Code Ann. § 15-78-20

(b). A sheriff, coroner, or constable will not be personally liable for a tort unless their actions were not within the scope of their duties. Id. § 15-78-70 (b). Therefore, if the sheriff was acting in an official capacity and his actions were within the scope of his duties, he would be subject to the two (2) year statute of limitations from the date of discovery of loss as provided in Section 15-78-110 rather than the (3) year statute of limitations period provided in Section 15-3-540. The Plaintiff contends that Section 15-3-540 is the applicable statute because the Defendants, though acting in their official capacity at the time of the incidents, were not acting within the scope of their official duties.

Plaintiff filed the instant action in Berkeley County on December 16, 2010. A review of the Complaint indicates Plaintiff's alleged loss occurred between January 10, 2008 and January 15, 2008. (Compl. ¶¶ 6, 9.) A verified Complaint was not filed within one (1) year of the dates of the alleged loss pursuant to S.C. Code Ann. § 15-78-80. This action was filed more than two (2) years but less than (3) years after the date of alleged loss was or should have been discovered.

The Court finds no evidence in the record that the Defendants were acting in any capacity other than their official capacities as Sheriff and Sheriff's deputies of Berkeley County. Likewise, the Court can find no evidence in the record to reasonably suggest that Defendants were acting outside of the scope of their official duties with regard to the Plaintiff and these two incidents on January 10, 2008 and January 15, 2008. Plaintiff contends that the Sheriff, and by extension, deputy sheriffs, are precluded from responding to requests for service by citizens and businesses involving civil disputes with another. The Court finds this argument unpersuasive. In this instance, the record reflects that although there was an apparent civil dispute between Plaintiff and Comcast Cable concerning an agreement over use of the utility pole, the Sheriff and Deputy Sheriff's were merely responding to calls for service and acting in such manner as to ensure the safety of all. The Court finds that the Sheriff and Deputies with Berkeley County

A handwritten signature in black ink, appearing to be the initials 'Ry' or similar, located in the bottom right corner of the page.

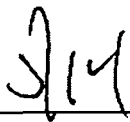
Sheriff's Office were at all times acting in their official capacities and within the course and scope of their official duties.

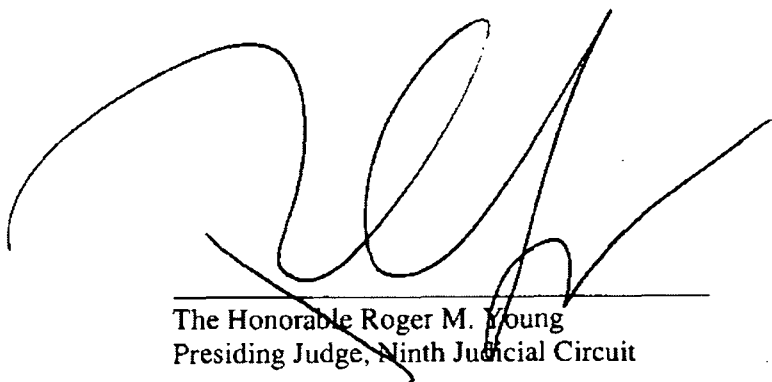
Furthermore, a careful review of the Plaintiff's Complaint appears on its face to be dispositive of this issue as well. Paragraph 3 states, "That upon information and belief, defendant H. Wayne Dewitt, (hereinafter defendant) is a citizen and resident of Berkeley County, South Carolina and at all times mentioned herein was the Sheriff employed by the defendant, Berkeley County Sheriff, who was acting within the scope and course of his employment and under color of state law. (Compl. ¶ 3)(emphasis added). Upon review of the record, the Court agrees and finds that the Sheriff and Berkeley County Deputies were at all times acting in their official capacities and within the course and scope of their official duties. Therefore, the Court finds the two (2) year Tort Claims Act statute of limitations is applicable to Defendants in this case. As such, summary judgment is appropriate as a matter of law as there is no genuine issue as to any material fact. Plaintiff's action is time barred as it was filed more than two (2) years after the date the loss was or should have been discovered.

### CONCLUSION

Based on the analysis set forth above, the Defendants' Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

  
\_\_\_\_\_, 2012  
Charleston, South Carolina

  
\_\_\_\_\_  
The Honorable Roger M. Young  
Presiding Judge, Ninth Judicial Circuit

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

---

Case No. 2010-CP-08-4453

---

Berkeley County Sheriff's  
Department and H.  
Wayne Dewitt,

Respondent,

v.

L.G. Elrod,

Appellant.

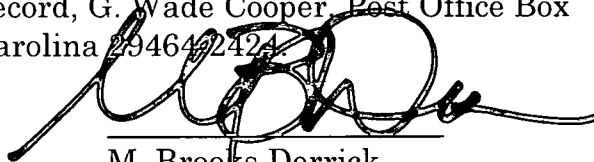
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PROOF OF SERVICE

---

I certify that I have served the Initial Appellate Brief was served on Berkeley County Sherriff's Department by depositing a copy in the United States Mail, postage prepaid, on September 28, 2012, addressed to their attorney of record, G. Wade Cooper, Post Office Box 2424, Mount Pleasant, South Carolina 29464-2424.

September 28, 2012



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September 28, 2012

**VIA FACSIMILE and U.S. MAIL**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211  
Fax: (803) 734-1839

Re: *L.G. Elrod v. Berkeley County Sheriff's Department and H.  
Wayne Dewitt*  
*Case No: 2010-CP-08-4453*

Dear Ms. Kitchings:

Please find enclosed herewith the Initial Appellate Brief in the above referenced matter. I have also enclosed a Proof of Service of the Initial Appellate Brief on the respondent.

Should you have any questions or concerns or require additional information, please do not hesitate to contact me at (843) 723-5152 or via email ([paralegal@derricklawoffice.com](mailto:paralegal@derricklawoffice.com)).

Respectfully,

Angela Koch  
*Assistant to M. Brooks Derrick*

*Enclosure(s): as stated*  
cc: *G. Wade Cooper, Esq.*

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