

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4002679

Valeria Farr

Leon Lott

PLAINTIFF(S)

Richland County Sheriff
DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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

RICHLAND COUNTY
 CLERK OF COURT
 2016 NOV 14 PM 3:38
 JENNIFER W. BRIDGE
 & G.

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Nov, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Mark Weston Hardee

Robert David Garfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. Bridge

RECEIVED

DEC 14 2016

SC Court of Appeals

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Valeria Farr,

Plaintiff,

v.

Leon Lott In his capacity as
Richland County Sheriff and the
Richland County Sheriff's Department,

Defendants.

) IN THE COURT OF COMMON PLEAS

) Civil Action No.: 2015-CP-40-2679

ORDER

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SC Court of Appeals

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JEANETTE M. MORRIS
C.C.P. & G.S.

This matter came before this Court by way of the Motion for Summary Judgment on behalf of the Defendants pursuant to Rule 56, SCRPC. A hearing relating to this motion was held on October 11, 2016 at the Richland County Judicial Center. Present at the time and presenting oral arguments at the hearing were counsel for Defendant, Robert D. Garfield, Esq. and for Plaintiff, Mark W. Hardee, Esq.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Taking the facts in a light most favorable to Plaintiff, on May 15, 2013, Plaintiff was driving her mother's car, and noticed that the brakes were not working properly. She had trouble stopping the vehicle and had to pull into a restaurant parking area next to a Kangaroo gas station located on Two Notch Road in Richland County. Plaintiff walked over to the Kangaroo gas station to purchase an item, when she was approached by RCSD Deputy Tracy Stephens. Deputy Stephens questioned her and asked for her driver's license. Plaintiff panicked and ran from Stephens. Plaintiff was eventually apprehended by Stephens, arrested for multiple criminal and/or traffic infractions, and placed in the back of his marked vehicle en route to the Alvin S. Glenn Detention Center.

While in his vehicle, Stephens explained to Plaintiff that they could "work something out." Stephens then pulled off to the side of the road on I-77 Southbound, and inquired if she had any weapons or anything of the sort. In particular, Stephens asked, "what's that bump in front of your dress," at which time Plaintiff replied that it was her private area. Stephens then

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asked to see it, while he was shining his flashlight in between Plaintiff's legs. Terrified, she did not resist and allowed Stephens to view between her legs.

After a period of time, Stephens then started again onto the highway. During this time, he advised that he "would work something out" with Plaintiff if she would "help him out." Stephens then stopped his vehicle on Bluff Road, exited the vehicle, and opened the passenger door to again shine his flashlight between Plaintiff's legs. Stephens then asked what was inside of her vagina, and then shined the light on it. Continued to be frightened, Plaintiff inserted her finger into her vagina and rubbed herself while Stephens watched by way of flashlight. During this time, Plaintiff became so terrified that she began shaking.

Stephens restarted the vehicle and proceeded onward to the detention center advising her, "Yeah, I'm going to help you out. You will be able to work something out." Specifically, Stephens assured her that he would drop one of the violations when they appeared to court.

Stephens then pulled over for a third time. On this occasion, he pulled over on the street that leads into the detention center in front of a bail bonding office. Stephens opened the door of the vehicle and asked Plaintiff if she needed to rub and check her upper thighs to see if they were all right. He then asked her what she had in her top. Plaintiff then patted her chest area with her handcuffed hands to demonstrate to Stephens that she had no weapons. Despite her assurances, Stephens claimed that he had not seen enough, and insisted on seeing more. Plaintiff then pulled down her top exposing her breast while Stephens was shining his flashlight watching her.

Stephens eventually restarted the vehicle and proceeded to the detention center. At or about the time of booking, Plaintiff informed two detention officers that she was being sexually harassed by Stephens. Detention center officials initiated protocols for Plaintiff to file an official complaint against Stephens. Stephens attempted to remove Plaintiff from the detention center, but was prohibited from doing so by detention center officers. Stephens then left the area.

Stephens was subsequently fired by the Defendant Sheriff and arrested by the Sheriff's investigators for Criminal Sexual Conduct (Third Degree) and Misconduct in Office.

Plaintiff brought the instant action in this Court alleging that Stephens acted unlawfully and engaged in a serious of acts of sexual misconduct. Based upon these allegations, Plaintiff asserts causes of action against the Defendants Lott in his capacity as Richland County Sheriff and

Richland County Sheriff's Department (hereinafter, "RCSD") for negligence and assault and battery against pursuant to the South Carolina Tort Claims Act.¹

II. STANDARD OF REVIEW

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

III. ANALYSIS

A. Generally

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

¹ It is clear under the laws of the State of South Carolina, including the State Constitution, that the Sheriff of Richland County is the proper legal entity subject and amenable to suit. *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992). Under the laws of the State of South Carolina, there is no entity known as the RCSD. The proper entity to be sued would be the Defendant Richland County Sheriff.

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

B. Immunity under S.C. Code Ann. §15-78-60(17)

S.C. Code Ann. §15-78-60(17) provides that governmental entities are not liable for a loss resulting from “employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” This Court recognizes that the Defendant Sheriff is a constitutional officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina. Thus, the determination by this Court as to any potential liability on the part of the Defendant Sheriff turns solely on the clear language of the South Carolina Tort Claims Act.

Plaintiff's claims in her Complaint exclusively center on the alleged actions of Tracy Stephens, who was acting as a RCSD Sheriff's Deputy. In his motion, the Defendant Sheriff avers that, based upon the record in this matter, Stephens' actions clearly fall under this relevant exception prescribed by the Tort Claims Act. Therefore, this Court is tasked with deciding as a matter of law whether Stephens' conduct at the relevant times were (1) undertaken outside of the scope of his official duties; or that which constituted (2) actual malice; or (3) an intent to harm Plaintiff.

ISSUE: SCOPE OF OFFICIAL DUTIES

The Act's definition of an “employee” refers to “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C. Code Ann. § 15-78-30(c).

The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. “The provisions of [the Act] establishing limitations on and

exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15–78–20(f); *see also, Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct. App.1998) (noting that § 15–78–20(f) limits coverage to employees acting within the scope of official duty). According to the Act, “‘Scope of official duty’ or ‘scope of state employment’ means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C. Code Ann. § 15–78–30(i).

In the present case, on May 23, 2013, Stephens was arrested for Criminal Sexual Conduct (Third Degree) and Misconduct in Office. On September 11, 2013, these felony charges were True Billed by a Richland County Grand Jury. Accordingly, by way of the allegations in the Complaint as well as the separate determinations of probable cause, it is uncontroverted that Stephens: (1) sexually harassed and molested Plaintiff; (2) expressly forced and coerced her to expose herself and fondle herself; (3) committed an assault and battery on Plaintiff; and (4) offered to drop charges against her in exchange for sexual favors.

The Defendants argue that a law enforcement officer who explicitly commits an unlawful act (*i.e.*, Stephens using coercion to engage in a sexual battery upon a subject and by offering to dismiss charges in exchange for sexual favors) is not only exceeding his authority but clearly acting in contravention with the official business of the Sheriff.² This Court agrees.

“If scope of employment is a broader term than scope of official duties -- the term used in the governmental immunity statute -- it follows that acts not within the scope of employment are not within the scope of official duties.” *See, Frazier v. Badger*, 361 S.C. 94, 102, 603 S.E.2d 587, 591 (2004). *Respondeat Superior* applies in situations where the employee conduct *is within the scope* of his official duties. Where the servant is not serving the master’s business purpose, the relationship is suspended. No matter the length of time. *See, Doe v. Smith*, No.2014-UP-267, 2014 WL 2968925, at *1 (June 30, 2014).³

² *See, Crittenden v. Thompson–Walker Co.*, 288 S.C.112, 341 S.E.2d 385 (Ct. App. 1986) (distinguishing scope of servant's employment from scope of servant's authority and holding acts outside servant's authority are still within his scope of duty if done in furtherance of master's business).

³ Courts have generally recognized that *respondeat superior* holds master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant’s employment. *See, e.g., Froneburg v. Smith*, 406 S.C. 37, 743 S.E.2d 625, 633 (Ct. App. 2013). However, if the servant steps outside from the master’s business for some wholly disconnected purpose, the

South Carolina courts have specifically considered whether an employee was acting within the scope of his employment when he commits a sexual assault. The weight of authority advances the proposition that an employee's sexual harassment and/or assault is not within the employer's scope of employment. *See, e.g., Frazier, Supra* (holding an assistant principal was acting outside the scope of his employment when he made sexual advances on a teacher).

This analysis has been similarly applied to law enforcement officers. In *Doe v. S.C. State Budget & Control Bd.*, 329 S.C. 214, 494 S.E.2d 469 (1998), the Court reviewed the employer's exposure in light of a police officer's sexual assaults of women during traffic stops. In the underlying facts, the officer would stop female motorists on suspicion of DUI and give them the option of being arrested or having sexual intercourse. The Court observed that "no cogent argument could be made" that this police officer "was furthering the business of his employer at the time he sexually assaulted" the females. *Id.*, at 473. Therefore, the officer's acts were not within the scope of his official duties, and therefore the general tort liability policy did not provide coverage for the female subject's injuries. *Id.*, at 472.

In subsequent rulings, a Sheriff was found to be acting outside the scope of his employment when he sexually assaulted subordinates. *See, Loadholt v. S.C. State Budget & Control Bd.*, 528 S.E.2d. 670 (Ct. App. 2000). Although the Sheriff made the victims report to his office to discuss county business and was working in his county office, the *Loadholt* Court found that his official duties did not encompass all conduct he engaged in while on duty, including the alleged sexual assault as he was not furthering the business of his employer at that time. Correspondingly, in *Padgett v. S.C. Ins. Reserve Fund*, 531 S.E.2d 305 (Ct. App. 2000), the Court of Appeals held that a professor was acting outside the scope of his official duties when he sexually assaulted a student.⁴

Therefore, this Court rules in accordance with prevailing South Carolina law that, "sexual harassment by a government employee is not within the employee's 'scope of employment.'" *Frazier*, 603 S.E.2d at 591.

master/servant relationship is temporarily suspended. No matter how short the time. *See, Kase v. Ebert*, 392 S.C. 57, 61-62, 707 S.E.2d 456, 458 (Ct. App. 2011).

⁴ *See, e.g., South Carolina Med. Malpractice Lab. Ins. J.U.A. v. Ferry*, 291 S.C. 460, 663, 354 S.E.2d 378, 381 (1987) (explaining that the scope of professional services does not include all forms of conduct simply because the person in the profession engages in such conduct).

ISSUE: ACTUAL MALICE AND INTENT TO HARM

“Malice is the deliberate intentional doing of a wrongful act without just cause or excuse.” *See, Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982). “Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person.” *See, Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Actual Malice has been found where the “defendant actuated by ill will in what he did with the design to causelessly and wantonly injure the plaintiff.” *See, Swicegood v. Lott*, 379 S.C. 346, 353, 665 S.E.2d 211, 213 (Ct. App. 2008).

That as to the intent to harm element, the Court of Appeals has held that an “intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in misconduct towards an adult. *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 9, 530 S.E.2d 132, 136 (Ct. App. 2000).

Notably and by way of responses to Defendants’ Request to Admit pursuant to Rule 36, SCRCF, Plaintiff has adopted the position in this litigation that Stephens’ actions with respect to Plaintiff as alleged in the Complaint constituted both actual malice and intent to harm. Moreover, in Plaintiff’s own deposition testimony, she repeatedly characterized Stephens’ state of mind as “sick” and stipulated that Stephens acted with an intent to harm and actual malice.

In this action, Plaintiff elected to not name as a party-defendant the specific person who she claims committed the various illegal acts and/or torts upon her.⁵ Instead, Plaintiff identified the Richland County Sheriff, the law enforcement agency which employed Stephens at the relevant times. Taking the facts in a light most favorably to Plaintiff, the principal or sole RCSD employee whose acts or omissions with respect to these criminal and intentional acts was Stephens. Yet, Stephens was never named as a party-defendant. Therefore, the Defendant Sheriff -- the only law enforcement party-defendant in this action -- is entitled to absolute sovereign immunity for any such alleged loss resulting from his employee’s conduct constituting actual fraud and/or intent to harm pursuant to §15-78-60(17).

⁵ Pursuant to S.C. Code Ann §15-78-70(a) and (b), an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

C. Negligent hiring, training, supervision, and retention

The Defendants additionally argue that they are entitled to summary judgment with respect to Plaintiff's cause of action asserting negligent hiring, negligent training, negligent supervision, and negligent retention.

In *James v. Kelly Trucking Co.*, 377 S.C. 628; 661 S.E.2d 329, (2008), the Supreme Court held that:

Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort. In circumstances *where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public*, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public. As this recitation suggests, the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct.

See Id., at 330-331, (Internal citations omitted) (Bolded for emphasis)

"To state a claim for negligent retention, a plaintiff must allege the employer had knowledge of its employee's habit of prior wrongdoings, and despite the foreseeability of the harm to third parties, the employer failed to terminate the offending employee before he caused the harm." *See, Callum v. CVS Health Corp.*, 137 F.Supp.2d 817, 860 (D.S.C. 2015).

However, our Courts have addressed the type of wrongdoing which would provide suitable notice to the employer. Thus, any prior act must bear key similarities to the consequent ultimate harm, *to wit*:

Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements -- knowledge of the employer and foreseeability of harm to third parties. These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. *From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.* Such factual considerations -- especially questions related to proximate cause inherent in the concept of foreseeability -- will ordinarily be determined by the fact finder, and not as a matter of law.

Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.

See, Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447, 450 (Ct. App. 2005).

The Defendants argue the lack of competent evidence that Stephens engaged in previous conduct for which to place RCSD on notice that he created an unreasonable or undue risk of harm to the public. Plaintiff argues that there were two prior instances in which the Defendants are directly and independently liable in this regard.

PREVIOUS INSTANCE: MICAH SANDERS

Plaintiff contends that she is not the first person this Deputy had sexually harassed and molested. In fact, there is a pattern of this Deputy doing the same type of activities. Specifically, Plaintiff contends that Stephens had sexually harassed and molested a female subject identified as Ms. Micah Sanders.

On May 16, 2013, Ms. Sanders provided a written statement to the Defendants' Internal Affairs investigator, advising the Defendants of Stephens' actions at the time of her arrest *to wit*: On May 14, 2013, Stephens placed Ms. Sanders under arrest for shoplifting. During the transport to the detention center, Stephens asked that Ms. Sanders, "help him help her," without specifying what he meant by doing so. According to Ms. Sanders, "Stephens also stopped our ride right before we entered the (detention) center and asked once again: 'Did I have any weapons?' (He also) asked, 'What was pointing out of my chest or the bulge in my chest?' and I said, 'Nothing.' He did not do anything appropriate other than ask me the [sic] questions."

This Court finds that there is no evidence that, with respect to Ms. Sanders, Stephens acted in a similar manner with that of his alleged treatment of Plaintiff. At worst, Ms. Sanders stated that Stephens asked questions that might be construed as inappropriate or harassing in nature. However, Sanders does not contend -- nor has Plaintiff presented any evidence -- that Stephens coerced, molested, assaulted, or committed a sexual battery upon her.

Moreover, the Defendants argue that, assuming *arguendo* that Stephens treatment of Sanders did suggest that Stephens was an unreasonable risk of harm to the public, the factual timeline clearly reveals that the Defendants were never placed on actual or constructive of such risk. This Court recognizes that Ms. Sanders had interacted with Stephens hours before Stephens' arrest of Plaintiff. However and pursuant to positions adopted in discovery responses

in this matter, Ms. Sanders advised the Defendants of her involvement the day after Stephens' alleged assault upon Plaintiff. Thus, any and all pertinent information was relayed to the Sheriff after Stephens' involvement with Plaintiff and therefore, the Sheriff never had the benefit of notice of such wrongdoing.

PREVIOUS INSTANCE: STEPHENS' TEENAGED SON

Plaintiff presented evidence relating to an event in which Stephens and his teenaged son were allegedly involved in verbal exchange that turned physical in the front yard of their residence. On March 5, 2013, Stephens' wife initiated an internal affairs complaint reporting that her son was being obstinate and disrespectful to Stephens. She advised IA investigators that as Stephens grabbed their son, Stephens' hand inadvertently struck her son's eye. The three individuals -- Stephens, Mrs. Stephens, as well as the teenaged boy -- all stated that Stephens' actions were likely an accident and not intentional.

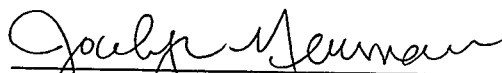
The *Doe v. ATC Court, Supra*, considered the matter of an employee inappropriately having touched the legs of, kissed, and making persistent sexual comments to a disabled adult female. The employee had a prior incident with another employee in which he made sexually inappropriate comments to her. The Court of Appeals held that, although both incidents were sexual in nature, there lacked a sufficient nexus to the ultimate harm as the prior incident was a "far cry from the reprehensible, persistent pattern of abuse" against the disabled female.

In this March 2013 event, there appears to be no dispute that Stephens was parenting a disrespectful and recalcitrant teenaged son during which time Stephens accidentally struck him in the eye. The record is devoid of evidence that Stephens acted in a deliberate and intentional manner with respect to his son. Regardless, this Court observes that these domestic-related circumstances were of a different and distinct nature for which to establish a foreseeable risk for the wrongful misconduct as is alleged in the case at bar.

As a result, Plaintiff has presented no previous circumstance in which the Defendant Sheriff had actual or constructive knowledge that Stephens -- either while on duty or otherwise -- engaged in any form of sexual harassment, discrimination, abuse, or misconduct with respect to female subjects or arrestees. Consequently and pursuant to *Doe v. ATC Court, Supra*, this Court concludes that no reasonable fact finder can find a nexus or similarity between the prior acts and the ultimate harm caused and summary judgment is warranted.

IT IS THEREFORE ORDERED that the motion for summary judgment with respect to the Defendants Sheriff Lott and the RCSD is **GRANTED** and that the above-entitled action is hereby dismissed with prejudice.

IT IS SO ORDERED.



The Honorable Jocelyn Newman
Presiding Judge, Fifth Judicial Circuit

November 9, 2016

Columbia, South Carolina