

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 13-CP-37-138

LLOYD LASH Appellant,

v.

OCONEE COUNTY SHERIFF'S DEPARTMENT, et al, Respondent.

RECORD ON APPEAL

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Attorney for Appellant

Attorney For Respondent

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Lloyd Lash,)
)
 Plaintiff,)
)
 w.)
)
 Oconee County Sheriff's Department,)
 Seneca Police Department, and Detective)
 Rory Jones,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
 DOCKET NO. 2013-CP-37-00138

AMENDED COMPLAINT

(Jury Trial Requested)

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 MAR 15 P 12:44

The Plaintiff named herein, complaining of each of the defendants named herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff, Lloyd Lash, is a citizen and resident of Lexington County, South Carolina.
2. The defendant, Oconee County Sheriff's Department, hereinafter known as "Oconee County," is a governmental entity and/or political subdivision within the meaning of the South Carolina Tort Claims Act. Oconee County has facilities located at 300 S. Church Street in Walhalla, South Carolina. At all times relevant to this cause of action, this defendant acted and carried on business by and through his agents, servants, and/or employees. Additionally, these agents, servants, and/or employees were operating within the scope of their officially assigned and/or compensated duties.
3. The defendant, Seneca Police Department, hereinafter known as "Seneca," is a governmental entity and/or political subdivision within the meaning of the South Carolina Tort Claims Act. Seneca has facilities located at 205 N. Depot Street in Seneca, South Carolina. At all times relevant to this cause of action, this defendant acted and carried on business by and



STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Lloyd Lash,)

Plaintiff,)

v.)

Oconee County Sheriff's Department,)
Seneca Police Department, and Detective)
Rory Jones.)

Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
DOCKET NO. 2013-CP-37-00138

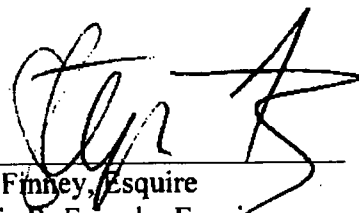
AMENDED SUMMONS

(Jury Trial Requested)

FILED OCONEE, SC
BENJAMIN H. WHITFIELD
CLERK OF COURT
2013 MAR 15 P 12:44

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE EACH HEREBY SUMMONED and required to answer the Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Amended Complaint in the subscribed Finney Law Firm, Inc., 2117 Park Street, Columbia, South Carolina, 29201, within THIRTY (30) DAYS after the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.



Jerry L. Finney, Esquire
Stephanie R. Fajardo, Esquire
THE FINNEY LAW FIRM, INC.
2117 Park Street
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Phone: (803) 254-7408
Fax: (803) 254-1941
Attorneys for the Plaintiff

Columbia, South Carolina
March 12, 2013

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N.J.C.
COMPUTER

through his agents, servants, and/or employees. Additionally, these agents, servants, and/or employees were operating within the scope of their officially assigned and/or compensated duties.

4. The defendant, Detective Rory Jones, upon information and belief is a citizen and resident of Oconee County, South Carolina. At all times hereinafter mentioned, Defendant Jones was acting individually and as the agent, servant and/or employee of Defendant Seneca.

5. This court has proper jurisdiction and venue over this action because all of the acts, omissions, and occurrences giving rise to this lawsuit occurred in Oconee County, South Carolina.

FACTUAL BACKGROUND

6. On or about February 10, 2004, George Arthur "Butch" Roberts was murdered in Oconee County, South Carolina.

7. Although the only evidence linking Mr. Lash to the murder of Mr. Roberts was an unconfirmed and uninvestigated statement which proved to be false, five years after the murder, Defendant Seneca and Defendant Jones issued arrest warrants for Mr. Lash for Attempted Armed Robbery, Possession of a Weapon in the commission of a Violent Crime, and Murder.

8. On or about May 25, 2009, Defendant Seneca and Defendant Jones arrested Mr. Lash on the charges of Attempted Armed Robbery, Possession of a Weapon in the commission of a Violent Crime, and Murder and he was booked into the Oconee Detention Center to await trial.

9. At all times relevant, Mr. Lash maintained his innocence in regards to these charges.

10. Despite Defendant Oconee County, Defendant Seneca, and Defendant Jones' lack of evidence against Mr. Lash regarding these charges, and the complete lack of probable cause for the arrest of Mr. Lash, the defendants continued and facilitated the prosecution of Mr. Lash.

11. At all times relevant to this action, Mr. Lash was incarcerated in the Oconee County Detention Center awaiting trial from May 25, 2009 until March 28, 2011.

12. On or about March 31, 2011, a jury found Mr. Lash not guilty of all charges.

13. Due to Defendant Oconee County's actions, Defendant Seneca's actions, and Defendant Jones' actions, Mr. Lash has suffered actual damages in the form of lost earnings and earning potential; degradation of his good name; degradation of his reputation; degradation of the his personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering.

FOR A FIRST CAUSE OF ACTION:
AS TO ALL DEFENDANTS

Malicious Prosecution

14. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through thirteen (13) as if fully set forth herein. The defendants, acting individually, jointly and severally as agents, servants and/or employees of each other are liable to the Plaintiff for malicious prosecution.

15. The Plaintiff, Lloyd Lash, was improperly, illegally and falsely arrested, without probable cause on May 25, 2009.

16. The prosecution of the Plaintiff, Lloyd Lash, was maintained and continued by these defendants in despite of these defendants' actual knowledge of the Plaintiff's innocence and complete lack of evidence against Mr. Lash until Mr. Lash was exonerated of all charges on March 31, 2011.

17. The defendants knew, should have known, and most likely participated in the presentation of false and inaccurate evidence supporting the prosecution of the Plaintiff.

18. The defendants' above-referenced actions were made with malice.

19. The Plaintiff was completely exonerated of all charges brought against him by the defendants on March 31, 2011.

20. As a direct and proximate result of each defendant's actions, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering. Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE (as to Defendant Jones only) damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION:
AS TO DEFENDANT JONES

Abuse of Process

21. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through twenty (20) as if fully set forth herein. Defendant Jones is liable to the Plaintiff for abuse of process.

22. Defendant Jones' actions espoused above were carried out for ulterior purposes.

23. Defendant Jones willfully used the legal process espoused above solely for such ulterior purposes.

24. As a direct and proximate result of the actions of Defendant Jones, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering as a result of the defendant's actions. Furthermore, the Plaintiff has been damaged in these specified and other ACTUAL, COMPENSATORY and PUNITIVE damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION:
AS TO ALL DEFENDANTS

Negligence

25. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through twenty-four (24) as if fully set forth herein. The defendants, acting individually, jointly and severally as agents, servants and/or employees of each other are liable to the Plaintiff for each defendant's negligence.

26. The above set forth incidents and Plaintiff's resulting injuries and damages were proximately cause by the negligent, grossly negligent, reckless, willful and wanton acts of each and every defendant herein named, individually and/or by and through each defendant's agents, servants, contractors and/or employees.

27. As a direct and proximate result of the actions of each and every defendant named herein, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, humiliation, indignity, and mental pain and suffering. Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE (as to Defendant Jones only) damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION:
AS TO DEFENDANT JONES

False Arrest

28. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through twenty-seven (27) as if fully set forth herein.

29. Although the only evidence linking Mr. Lash to the murder of Mr. Roberts was an unconfirmed and uninvestigated statement which proved to be false, five years after the murder, Defendant Jones improperly, illegally and falsely arrested Mr. Lash on May 25, 2009.

30. Mr. Lash continued to be incarcerated until he was exonerated of all charges on March 31, 2011.

31. This arrest was made although no ordinary, prudent, or cautious person under the circumstances would believe that there was probable cause to arrest Lloyd Lash at that time.

32. As a direct and proximate result of Defendant Jones' actions, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering.

Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE damages in an amount to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION:
AS TO DEFENDANT JONES

False Imprisonment

32. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through thirty-two (32) as if fully set forth herein.

33. The Plaintiff, Lloyd Lash, was improperly, illegally and falsely arrested, without probable cause on May 25, 2009.

34. Defendant Jones, through this arrest of Lloyd Lash on May 25, 2009, deprived Lloyd Lash of his personal liberty by intentionally restraining him without any lawful justification whatsoever.

35. Defendant Jones, knowingly restrained Plaintiff Lloyd Lash without probable cause or lawful authority so as to substantially interfere with his liberty and his freedom from the date of his arrest on May 25, 2009 until he was exonerated of all charges on March 31, 2011.

36. As a direct and proximate result of the false imprisonment by Defendant Jones, the Plaintiff has suffered actual damages in the form of lost earnings and earning potential; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering. Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE damages in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION:
AS TO DEFENDANT JONES

Intentional Infliction of Emotional Distress

37. The Plaintiff repeats, reasserts, re-alleges and incorporates the allegations contained in paragraphs one (1) through thirty-seven (37) as if fully set forth herein.

38. The Plaintiff, Lloyd Lash, was improperly, illegally and falsely arrested, without probable cause on May 25, 2009 without consideration for Plaintiff's rights.

39. The Plaintiff, Lloyd Lash was then improperly and illegally falsely incarcerated until he was exonerated of all charges on March 31, 2011.

40. Through the above listed conduct, Defendant Jones intentionally or recklessly inflicted severe emotional distress on Lloyd Lash, or knew that such distress would likely result from the harmful and grossly negligent conduct.

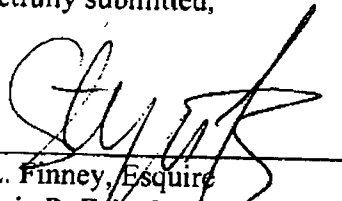
41. Defendant Jones' conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, utterly intolerable in a civilized society, and

the emotional distress suffered by Lloyd Lash was so severe that no reasonable person could be expected to endure it.

42. As a direct and proximate result of the intentional infliction of emotional distress of Defendant Jones, Lloyd Lash has suffered actual damages in the form of lost earnings and earning potential; degradation of the Plaintiff's good name; degradation of the Plaintiff's reputation; degradation of the Plaintiff's personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering. Furthermore, the Plaintiff has been damaged in these specified damages as well as other ACTUAL, COMPENSATORY and PUNITIVE damages in an amount to be determined by a jury.

WHEREFORE, the Plaintiff Lloyd Lash prays for a judgment against each and every defendant in a sum sufficient to compensate him for all ACTUAL and CONSEQUENTIAL damages that she has suffered, for such PUNITIVE damages that a jury may reasonably award against Defendant Jones individually, for the costs of this action to be taxed against each and every defendant, and for such other relief as the Court deems just and proper.

Respectfully submitted,



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Phone: (803) 254-7408
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Attorneys for the Plaintiff

Columbia, South Carolina
March 12, 2013



COPY

FILED OCONEE, SC

IN THE COURT OF COMMON PLEAS, SENeca COUNTY, OHIO
CASE NO. 2013-CP-37-00138
CLERK OF COURT

2013 MAY 1 AM 11 32

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Lloyd Lash,)
)
 Plaintiff,)
)
 v.)
)
 Oconee County Sheriff's)
 Department, Seneca Police)
 Department, Detective Rory Jones,)
)
 Defendants,)
)

AMENDED ANSWER TO THE
AMENDED COMPLAINT ON BEHALF
OF SENECA POLICE DEPARTMENT
AND RORY JONES

The Defendants, Seneca Police Department ("Seneca") and Rory Jones ("Jones"), herein amending their Answer to the Amended Complaint of the Plaintiff would respectfully show unto the Court as follows:

1. Deny each and every allegation contained in the Plaintiff's Amended Complaint not herein admitted, modified or explained.
2. Admit the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint.
3. These Defendants are without sufficient information to form an opinion or belief as to the allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint, and, therefore deny same.
4. Admit the allegations contained in Paragraph 3 of the Plaintiff's Amended Complaint.
5. Admit so much of the allegations contained in Paragraph 4 of the Plaintiff's Amended Complaint as alleges that Jones is a citizen and resident of Oconee County and at all times pertinent herein was acting as the agent, servant and/or employee of Seneca. All remaining allegations contained in said Paragraph are hereby denied.
6. Admit the allegations contained in Paragraph 5 of the Plaintiff's Amended Complaint.
7. Admit the allegations contained in Paragraph 6 of the Plaintiff's Amended Complaint.

8. Admit so much of the allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint as alleges that arrest warrants were issued for the arrest of the Plaintiff. Any remaining allegations contained in said Paragraph are hereby denied.

9. Admit so much of the allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint as alleges that the Plaintiff was arrested on or about May 25, 2009 and charged with various offenses. The remaining allegations contained in said Paragraph are denied.

10. Admit the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint.

11. Deny the allegations contained in Paragraph 10 of the Plaintiff's Amended Complaint.

12. These Defendants are without sufficient information to form an opinion or belief as to the allegations contained in Paragraph 11 of the Plaintiff's Amended Complaint and, therefore, deny same.

13. Admit the allegations contained in Paragraph 12 of the Plaintiff's Amended Complaint.

14. Deny the allegations contained in Paragraph 13 of the Plaintiff's Amended Complaint.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION**

15. In responding to the allegations contained in Paragraph 14 of the Plaintiff's Amended Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense. All allegations contained in Paragraph 14 are denied.

16. Deny the allegations contained in Paragraphs 15 through 20 of the Plaintiff's Amended Complaint.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION**

17. In responding to the allegations contained in Paragraph 21 of the Plaintiff's Amended Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense. Deny the allegations contained in Paragraph 21.

18. Deny the allegations in Paragraphs 22 through 24 of the Plaintiff's Amended Complaint.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION**

19. In responding to the allegations contained in Paragraph 25 of the Plaintiff's Amended Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense. Deny all allegations contained in said Paragraph.

20. Deny the allegations contained in Paragraphs 26 and 27 of the Plaintiff's Amended Complaint.

**FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION**

21. In responding to the allegations contained in Paragraph 28 of the Plaintiff's Amended Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

22. Deny the allegations contained in Paragraphs 29 through 32 of the Plaintiff's Amended Complaint.

**FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION**

23. In responding to the allegations contained in Paragraph 32 (*sic*) (Plaintiff has two paragraphs designated as Paragraph 32 in the Amended Complaint) of the Plaintiff's Amended Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

24. Deny the allegations contained in Paragraphs 33 through 36 of the Plaintiff's Amended Complaint.

**FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION**

25. In responding to the allegations contained in Paragraph 37 of the Plaintiff's Amended Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

26. Deny the allegations contained in Paragraphs 38 through 42 of the Plaintiff's Amended Complaint.

**FOR A SECOND DEFENSE
TO ALL CAUSES OF ACTION**

27. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

28. These Defendants would show that the Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action against these Defendants and that the alleged claim for relief so stated in said Amended Complaint fails to state a claim upon which relief can be granted and, therefore, said claim for relief should be dismissed pursuant to Rule 12(b)(6) of the S.C. Rules of Civil Procedure.

**FOR A THIRD DEFENSE
TO ALL CAUSES OF ACTION**

29. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

30. These Defendants plead the provisions of the S.C. Tort Claims Act, S.C. Code §15-78-10, *et seq.*, (1976, as amended), including all of the immunities, limitations and defenses granted or preserved by the Act.

**FOR A FOURTH DEFENSE
TO ALL CAUSES OF ACTION**

31. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

32. These Defendants would show that any causes of action in favor of the Plaintiff against these Defendants, if any, are barred by the passage of time and the applicable Statute of Limitations under the laws of the State of South Carolina.

**FOR A FIFTH DEFENSE
TO ALL CAUSES OF ACTION**

33. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

34. The Defendants plead the doctrine of sovereign immunity as a complete bar to the Plaintiff's action.

FOR A SIXTH DEFENSE
TO ALL CAUSES OF ACTION

35. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

36. The Defendants would show that all times relevant hereto they did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, with corrupt motives or with deliberate indifference to the rights of the Plaintiff and, therefore, are immune from suit.

FOR A SEVENTH DEFENSE
TO ALL CAUSES OF ACTION

37. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

38. Any and all actions taken in this matter by Jones were done within the course and scope of his official duty and, consequently, the Plaintiff is barred from bringing a suit against Jones individually.

FOR AN EIGHTH DEFENSE
TO ALL CAUSES OF ACTION

39. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

40. That even if the Defendants were negligent, grossly negligent, reckless, willful and wanton, which is denied but admitted solely for the purpose of this defense, the Plaintiff was also negligent, grossly negligent, reckless, willful and wanton and the negligence, gross negligence, recklessness, willfulness and wantonness of the Plaintiff was more than 50% of the direct and proximate cause of the accident and injuries and damages complained of and, therefore, the Plaintiff is barred from any recovery from these Defendants.

41. Alternatively, the Defendants would show that in the event the Plaintiff's negligence, gross negligence, recklessness, willfulness or wantonness is determined to have been fifty percent (50%) or less of the direct and proximate cause of the accident

and injuries and damages, if any, any recovery by the Plaintiff should be reduced by the percentage of the Plaintiff's negligence, gross negligence, recklessness, willfulness and wantonness.

**FOR A NINTH DEFENSE
TO ALL CAUSES OF ACTION**

42. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

43. At all times relevant thereto, the individual Defendant, Jones, was a governmental official engaged in the performance of his official duties, performing discretionary functions and actions which would reasonably have been thought consistent with the rights of the Plaintiff and of which he is alleged to have violated. Therefore, Jones is entitled to immunity from suit as a matter of law.

**FOR A TENTH DEFENSE
TO ALL CAUSES OF ACTION**

44. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

45. The Defendants plead all statutory, regulatory, and/or common law authorizations and privileges as a complete defense and bar to any and all of the Plaintiff's Amended Complaint.

**FOR AN ELEVENTH DEFENSE
TO ALL CAUSES OF ACTION**

46. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

47. The Defendants would show that they were not liable under any circumstances for punitive damages under S.C. Code Ann. §15-78-120(b).

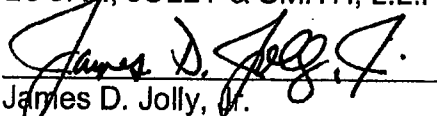
**FOR A TWELFTH DEFENSE
TO ALL CAUSES OF ACTION**

48. These Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

49. The Plaintiff's action is barred by the public duty rule.

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

LOGAN, JOLLY & SMITH, L.L.P.



James D. Jolly, Jr.

1805 North Boulevard (29621)

Post Office Box 259

Anderson, SC 29622

(864) 226-1910

(864) 226-1931 (fax)

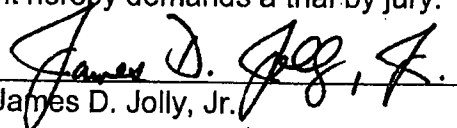
Attorneys for Defendant, Seneca Police

Department and Rory Jones

Anderson, South Carolina

Date: 4/30/2013

The Defendant hereby demands a trial by jury.



James D. Jolly, Jr.

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BEVERLY H. WHITFIELD
CLERK OF COURT
2013 APR 1 AM 11 32

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

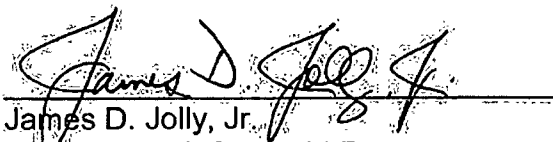
IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-37-00138

Lloyd Lash,)
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Plaintiff,)
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v.)
)
Oconee County Sheriff's)
Department, Seneca Police)
Department, Detective Rory Jones,)
)
Defendants,)
)

MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF
SENECA POLICE DEPARTMENT
AND DETECTIVE RORY JONES

YOU WILL PLEASE TAKE NOTICE that the Defendants, Seneca Police Department and Detective Rory Jones, by and through their undersigned counsel, hereby moves this Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Summary Judgment in favor of these Defendants. This motion is based upon the grounds that 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 as to the Plaintiff's claims, and that, therefore, this Defendant, is entitled to judgment as a matter of law. This Motion is further based upon such authority as will be set forth in the Memorandum that will be filed in support of the Motion.

Respectfully Submitted,



James D. Jolly, Jr.
Logan, Jolly & Smith, LLP

Post Office Box 259
Anderson, SC 29621

(864) 226-1910
(864) 226-1931 (fax)

Attorney for Defendants, Seneca Police
Department and Detective Rory Jones

Date: 10/7/13

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-37-00138

Lloyd Lash,)
)
Plaintiff,)
)
v.)
)
Oconee County Sheriff's)
Department, Seneca Police)
Department, Detective Rory Jones,)
)
Defendants,)
)
_____)


CERTIFICATE OF SERVICE

The undersigned does hereby certify that he is one of the attorneys for the Defendants, Seneca Police Department and Rory Jones, in the above-entitled action; that he has this date served a copy of the Motion for Summary Judgment on behalf of Seneca Police Department and Detective Rory Jones upon the Plaintiff by depositing the said copies in the United States Mail, addressed as follows:

Jerry L. Finney
Stephanie R. Fajardo
Finney Law Firm, Inc.
2117 Park Street
Columbia, SC 29201

Victor McDade
Doyle Tate & McDade
Post Office Box 2125
Anderson, SC 29621

LOGAN, JOLLY & SMITH, L.L.P.



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Post Office Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (fax)
Attorneys for Defendant, Seneca Police
Department and Rory Jones

Anderson, South Carolina
Date: 10/7/13

Lloyd Lash,

2014 FEB 20 PM 2 49

Plaintiff,

v.

Oconee County Sheriff's
Department, Seneca Police
Department, Detective Rory Jones,

Defendants,

MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT BY DEFENDANTS,
SENECA POLICE DEPARTMENT
AND DETECTIVE RORY JONES

The Defendants, Seneca Police Department ("Seneca") and Detective Rory Jones ("Jones"), have moved this Court for an Order granting summary judgment in their favor on all causes of actions raised against them in the above captioned matter. These Defendants submit this memorandum in support of such motion.

BACKGROUND

Arthur Roberts was murdered in the City of Seneca on February 10, 2004. On May 25, 2009, the Plaintiff was arrested pursuant to warrants issued by the Municipal Court for the City of Seneca for murder (Exhibit 1), attempted robbery while armed with a deadly weapon (Exhibit 2), and possession of a weapon while in the commission of a crime (Exhibit 3). The Plaintiff was acquitted of these charges on March 31, 2011. This suit was initially filed against Rory Jones and the Oconee County Sheriff's Office on February 20, 2013. Seneca was added as a Defendant in the Amended Complaint on March 15, 2013.

The Complaint contains six (6) causes of action: malicious prosecution, abuse of process, negligence, false arrest, false imprisonment and intentional infliction of

emotional distress. Seneca and Jones timely answered denying the material allegations of the Plaintiff's Complaint and raising a number of defenses. These Defendants have moved for summary judgment as to all allegations made by the Plaintiff on the grounds set forth below.

ARGUMENTS AND AUTHORITIES

I. **The Statute of Limitations bars all of Plaintiff's claims except malicious prosecution.**

The South Carolina Tort Claims Act is the exclusive remedy for any tort committed by a governmental entity or its employees. S.C. Code Ann. §15-78-70(a) (1976, as amended). The statute of limitations applicable to this lawsuit is two years. S.C. Code Ann. §15-78-100 (1976, as amended) unless a verified claim is filed, which extends the period to three (3) years. Since no verified claim was filed, the two year statute applies. Even if a verified claim had been filed or the Tort Claims Act did not apply, the regular Statute of Limitations would be three years under S.C. Code Ann. §15-3-530 (4)(1976, as amended) and still would have run before this suit was filed.

With respect to the accrual of a cause of action under the Tort Claims Act, "the statute of limitations begins to run when the Plaintiff should know that he might have a potential claim against another, not when he develops a full blown theory of recovery." *Joubert v. S.C. Department of Social Services*, 341 S.C. 176, 190, 534 S.E. 2d 1,8 (SC App. 2000). S.C. Code Ann. §15-78-110(a). The date on which discovery should have been made is an objective, not subjective question. *Kruetner v. David*, 320 S.C. 283, 465 S.C. 2d 88 (1995). "A cause of action accrues when the Plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." *Brooks v. City of Winston Salem, N.C.*, 85 F 3d 178 (4th Cir. 1996) (quoting

Nasim v. Warden, Md. House of Correction, 64 F 3d 951 (4th Cir. 1995) (en banc), cert. denied 516 US 1177 (1996). Since Plaintiff knew of his arrest on May 25, 2009, the statute of limitations began to run on such date. Therefore, the Plaintiff's two year time period for filing suit expired on May 25, 2011. As Plaintiff did not file his initial suit in this matter until February 20, 2013, the Defendants are entitled to summary judgment based upon the statute of limitations as to all causes of action pled by the Plaintiff with the exception of malicious prosecution. Defendants concede for purposes of this motion that since one of the elements Plaintiff must prove to establish malicious prosecution is termination in the Plaintiff's favor, the statute arguably did not start to run until March 31, 2011, when the Plaintiff was acquitted. However, malicious prosecution, along with all of the other causes of action, is barred by the conclusive existence of probable cause.

2. **All of the Defendants' causes of action, including malicious prosecution, are barred by the existence of probable cause as a matter of law.**

If these Defendants had probable cause to arrest the Plaintiff, all of the Plaintiff's causes of action are barred. Malicious prosecution, abuse of process, false arrest, and false imprisonment all require the lack of probable cause as one of their elements. See *McBride v. School District of Greenville County*, 389 SC 546, 698 SE 2d 845 (SC App. 2010); *Jordan v. Deese*, 317 SC 260, 452 SE 2d 838 (1995); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 SC 171, 456 SE 2d 429 (SC App. 1995); *Wortman v. Spartanburg*, 310 SC 1, 425 SE 2d 18 (1992). Assuming probable cause, there would be no breach of any duty by the Defendants to the Plaintiff so as to preclude negligence. Likewise, there would be no wrongful intentional infliction of emotional

distress if the Defendants acted pursuant to probable cause. In this case, probable cause is clearly established as a matter of law.

First, the Plaintiff was arrested pursuant to warrants issued by the municipal court for the City of Seneca. The Fourth Amendment to the U.S. Constitution precludes the issuance of a warrant in the absence of showing of probable cause. 5 Am. Jur. Second Arrest §16. Therefore, the fact that the municipal court Judge issued arrest warrants for the Plaintiff is *prima facie* evidence that probable cause existed for his arrest.

Second, the Oconee County Grand Jury returned true bill indictments against the Plaintiff on all three (3) of the charges for which warrants were issued (Exhibit 4). State and federal courts have consistently held a true bill of indictment is *prima facie* evidence of probable cause. *McBride v. School District of Greenville County*, 389 SC 546, 698 SE 2d 845 (SC App 2010); *Kinton v. Mobile Home Industries, Inc.*, 274 SC 179, 262 SE2d 727 (1980); *Durham v. Horner*, 690 F 3d 183 (4th Cir. 2012); *Gerstein v. Pugh*, 420 US 103 (1995). In *Durham*, the Fourth Circuit stated, "it has long since been settled by the Supreme Court that 'an indictment, fair upon its face, returned by a properly constituted grand jury,' conclusively determines the existence of probable cause." *Id* at 189. (citing *Gerstein v. Pugh*, 420 US 103, 117 n. 19 (1975)).

Finally, in the criminal trial of this case, the defense made a motion at the conclusion of the evidence for a directed verdict on the basis of insufficiency of the evidence that the Plaintiff was guilty of any charges. The Court denied that motion and stated "there is more than enough evidence for the jury to decide." (Exhibit 5). This affirmed the finding of probable cause necessarily found when the Judge issued the

warrants and conclusively decided by the grand jury when it returned its indictment. For all of these reasons, as a matter of law, probable cause existed for the Plaintiff's arrest in this case. Therefore, all of the Plaintiff's causes of action are barred and the Defendants are entitled to summary judgment as a matter of law.

3. **The Tort Claims Act prohibits the Plaintiff's cause of action for intentional infliction of emotional distress.**

The South Carolina Tort Claims Act does not waive sovereign immunity for the tort of intentional infliction of emotional harm/ emotional distress. Section 15-78-50 states:

Any person who may suffer **loss** proximately caused by a tort of the state, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as herein after provided. (Emphasis added).

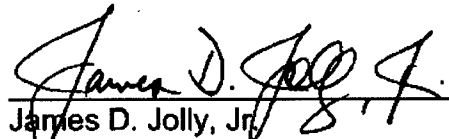
Section 15-78-30(f) of the South Carolina Tort Claims Act specifically states that a "loss" does not include the intentional infliction of emotional harm. See *Wilkes v. Young*, 28 F 3d 1362 (4th Cir. 1994) (stating in footnote 4 that "The South Carolina Tort Claims Act would appear to preclude recovery for any loss resulting from intentional infliction of emotional harm"). Therefore, the City of Seneca and Jones cannot be sued for intentional infliction of emotional distress.

In addition, with respect to Seneca, S.C. Code Ann. §15-78-60(17) states that governmental entities are not liable for "employee conduct outside the scope of his official duties which constitutes actual fraud, actual malice, intent of harm, or a crime involving moral turpitude." The tort of intentional infliction of emotional distress includes intent to harm. Therefore, the South Carolina Tort Claims Act bars such cause of action against the City of Seneca.

CONCLUSION

For all of the reasons set for the above, these Defendants are entitled to summary judgment as to all claims made by the Plaintiff.

LOGAN, JOLLY & SMITH, L.L.P.



James D. Jolly, Jr.
1805 North Boulevard
Post Office Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (fax)
Attorneys for Defendants, Seneca
Police Department, Detective
Rory Jones

Anderson County, South Carolina

Date: 2/14/14

ARRES. WARRANT

J-452416

STATE OF SOUTH CAROLINA

County/ Municipality of
SENECA

THE STATE
against

EXHIBIT

1

STATE OF SOUTH CAROLINA

County/ Municipality of
SENECA

Personally appeared before me the affiant JONES, RORY who
being duly sworn deposes and says that defendant LASH, LLOYD ANDREW
did within this county and state on 02/10/2004 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of SENECA)
in the following particulars:

DESCRIPTION OF OFFENSE:
MURDER - 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THE DEFENDANT, LLOYD ANDREW LASH, DID WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF ARTHUR
ROBERTS. THIS DID OCCUR AT 517 LIVINGSTON CIRCLE WITHIN THE CITY OF SENECA AND THERE IS A WRITTEN
REPORT ON FILE WITH THE SENECA POLICE DEPARTMENT, CASE NO. 04000529..

LASH, LLOYD ANDREW

Address: 2201 TWO NOTCH RD
LEXINGTON SC 29072

Pr 03-667-8772 SSN: 248652853

Se. Race: B Height: _____ Weight: _____

DL State: SC DL#: 101289829

DOB: 10/18/1986 Agency ORI #: SC0370100

Prosecuting Agency: CITY

Prosecuting Officer: RORY JONES

Offense: MURDER - 16-3-10

Offense Code: _____

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

OCONEE / SENECA The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Da. _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____

on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DANNY SINGLETON
225 E. N. 1ST STREET
SENECA SC 29678

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of
SENECA

Affiant's Address 205 N DEPOT ST
SENECA, SC

Affiant's Telephone 864-885-2718

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 02/10/2004 defendant LASH, LLOYD ANDREW

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of SENECA) as set forth below:

DESCRIPTION OF OFFENSE:
MURDER - 16-3-10

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on _____ (L.S.)

Signature of Issuing Judge

Judge Code: 421

Judge's Address 225 E. N. 1ST STREET
SENECA SC 29678

Judge's Telephone 864-885-2731

Issuing Court: Magistrate Municipal Circuit

AFFIDAVIT

Approved by
S.C. Attorney General
April 21, 2003

COPY

0025

AUDIT COPY

ARREST WARRANT

J-452417

STATE OF SOUTH CAROLINA

County/ Municipality of
SENECA

THE STATE

against

LASH, LLOYD ANDREW

Address: 2201 TWO NOTCH RD

LEXINGTON SC 29072

Phone: 803-667-8772 SSN: 248652853

Sex: M Race: B Height: Weight:

DL State: SC DL#: 101289829

DOB: 10/18/1986 Agency ORI #: SC0370100

Prosecuting Agency: CITY

Prosecuting Officer: RORY JONES

Offense: ATTEMPTED ROBBERY WHILE

Offense Code:

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

OCONEE / SENECA The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

D.

RETURN

A copy of this arrest warrant was delivered to
defendant _____

on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DANNY SINGLETON
225 E. N. 1ST STREET
SENECA SC 29678

EXHIBIT

2

STATE OF SOUTH CAROLINA)

County/ Municipality of
SENECA)

Personally appeared before me the affiant JONES, RORY
being duly sworn deposes and says that defendant LASH, LLOYD ANDREW

did within this county and state on 02/10/2004 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of SENECA)
in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED ROBBERY WHILE ARMED WITH DEADLY WEAPON - 16-11-330

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THE DEFENDANT, LLOYD ANDREW LASH, WHILE ARMED WITH A GUN, DID ATTEMPT A LARCENY BY POINTING A GUN
AT ARTHUR ROBERTS AND DEMANDING MONEY, BY USE OF THREAT OR FORCE. THIS DID OCCUR AT 517
LIVINGSTON CIRCLE WITHIN THE CITY OF SENECA. THERE IS A WRITTEN REPORT ON FILE WITH THE SENECA POLICE
DEPARTMENT, CASE NO. 04000529.

Signature of Affiant

Affiant's Address 205 N DEPOT ST

SENECA, SC

Affiant's Telephone 864-885-2718

STATE OF SOUTH CAROLINA)

County/ Municipality of
SENECA)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 02/10/2004 defendant LASH, LLOYD ANDREW

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of SENECA) as set forth below:

DESCRIPTION OF OFFENSE:

ATTEMPTED ROBBERY WHILE ARMED WITH DEADLY WEAPON - 16-11-330

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 02/10/2004

Signature of Issuing Judge (L.S.)

Judge Code: 421

Judge's Address 225 E. N. 1ST STREET
SENECA SC 29678

Judge's Telephone 864-885-2731

Issuing Court: Magistrate Municipal Circuit

AFFIDAVIT

COPY

Approved by
C. Attorney General
21, 2003
CCA 618

who

0026

AUDIT COPY

ARREST WARRANT

J-452418



STATE OF SOUTH CAROLINA

County/ Municipality of SENECA

THE STATE

against

LASH, LLOYD ANDREW

Address: 2201 TWO NOTCH RD LEXINGTON SC 29072

Ph: 803-667-8772 SSN: 248652853

S Race: B Height: Weight:

DL State: SC DL#: 101289829

DOB: 10/18/1986 Agency ORI #: SC0370100

Prosecuting Agency: CITY

Prosecuting Officer: RORY JONES

Offense: POSS. WEAPON WHILE IN

Offense Code: 549

Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

OCONEE The Accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

D.

RETURN

A copy of this arrest warrant was delivered to defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DANNY SINGLETON 225 E. N. 1ST STREET SENECA SC 29678

STATE OF SOUTH CAROLINA

County/ Municipality of SENECA

AFFIDAVIT



0027

Personally appeared before me the affiant RORY JONES being duly sworn deposes and says that defendant LASH, LLOYD ANDREW did within this county and state on 02/10/2004 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of SENECA) in the following particulars:

DESCRIPTION OF OFFENSE:

POSS. WEAPON WHILE IN COMMISSION OF CRIME - 16-23-490

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: THE DEFENDANT, LLOYD ANDREW LASH, DID POSSESS A FIREARM WHILE IN COMMISSION OF A VIOLENT CRIME (MURDER AND ATTEMPTED ARMED ROBBERY). THIS DID OCCUR AT 517 LIVINGSTN CIRCLE WITHIN THE CITY OF SENECA AND THERE IS A WRITTEN REPORT ON FILE WITH THE SENECA POLICE DEPARTMENT, CASE NO. 04000529.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

SENECA

Affiant's Address 225 E. N. 1ST STREET

SENECA SC 29678

Affiant's Telephone 864-885-2731

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 02/10/2004 defendant LASH, LLOYD ANDREW

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of SENECA) as set forth below:

DESCRIPTION OF OFFENSE:

POSS. WEAPON WHILE IN COMMISSION OF CRIME - 16-23-490

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

Signature of Issuing Judge (L.S.)

Judge Code: 421

Judge's Address 225 E. N. 1ST STREET SENECA SC 29678

Judge's Telephone 864-885-2731

Issuing Court: Magistrate Municipal Circuit

AUDIT COPY

DOCKET NO. 2009GS37 **01025**

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2009 AUG 24 P 2:39

WITNESSES

JONES, B. Seneca Police Department

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

AUG 24 2009

Term

ARREST WARRANT NUMBER

J452417

THE STATE

vs.

Lloyd Andrew Lash

ACTION OF GRAND JURY

Irvin Bell

DRW

Indictment for

Foreperson of Grand Jury
Date: AUG 24 2009

VERDICT

ATTEMPTED ARMED, OR ALLEGEDLY ARMED,
ROBBERY

SC Code: 16-11-0330(B)
CDR Code: 0026

Foreperson of Petit Jury

Date: 3/31/11



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Index

Witnesses

Page

No witnesses were called.

Defense Motion for Directed Verdict	3
Court's Ruling on Motion for Directed Verdict	3
Certificate of Court Reporter	4

Exhibits

No.	Description	Id.	Ev.
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No exhibits were introduced.

1 ** Start of Requested Partial Certified Transcript **

2 (Whereupon, the following occurred outside the
3 presence of the Jury at approximately 10:21 a.m.)

4 **THE COURT:** All right, Mr. Burr. Any Motions?

5 **MR. BURR:** Yes, Your Honor. The Defense would move
6 for a Directed Verdict. There's been no evidence placed
7 into evidence that would indicate Mr. Lash is guilty of
8 any of these charges.

9 **THE COURT:** All right. I'm gonna deny your motion.
10 I think there is good evidence to indicate -- there is
11 more than enough evidence for the Jury to decide.

12 ** End of Requested Certified Portion of Transcript **

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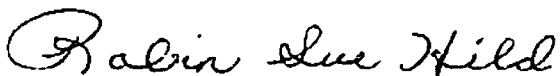
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete requested portion of the Transcript of Record of the proceedings had during the trial of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 30th day of March, 2011.

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

September 8, 2013



Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Lloyd Lash,)
)
 Plaintiff,)
)
 vs)
)
 Oconee County Sheriff's Department,)
 Seneca Police Department, and Detective)
 Rory Jones,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
 DOCKET NO. 2013-CP-37-138

**MEMORANDUM IN OPPOSITION
 TO DEFENDANTS' SENECA POLICE
 DEPARTMENT'S AND RORY JONES'
 MOTION FOR SUMMARY JUDGMENT**

Because the Plaintiff has raised a genuine issue of material fact in the above-referenced case as to Defendant Jones' and Defendant Seneca Police Department's (hereinafter referred to as Defendant Seneca) lack of probable cause for arrest, detainment, and prosecution, as well as to their entitlement to immunity, Plaintiff opposes Defendant's Motion for Summary Judgment.

STATEMENT OF THE FACTS

On February 10, 2004, George Arthur "Butch" Roberts was murdered in Oconee County, South Carolina. Following an investigation of the murder by Defendant Oconee Sheriff's Department and Defendant Seneca, which included interviewing witnesses, neighbors, and potential suspects, the case was declared "cold" after sitting for several years unsolved. In hopes of resolving the case, Defendant Seneca assigned Defendant Jones to the investigation of the case in order to have a "fresh pair of eyes" on the case. No additional evidence was collected or tested except for a new statement from a previous suspect to the murder which was given to Defendant Jones five years after the murder on May 18, 2009. Although Defendant Seneca and Defendant Jones were aware that this statement, the third from this previous suspect, provided the only evidence linking Plaintiff to the crime, they chose to not confirm or investigate this statement and the motives behind the statement which was later determined to be false. Based

on this false statement, Defendant Seneca and Defendant Jones arrested Plaintiff on the charges of Attempted Armed Robbery, Possession of a Weapon in the Commission of Violent Crime, and Murder. At all times relevant to this action, Plaintiff maintained his complete innocence as to all charges. Armed with no further evidence and still refusing to investigate the previous subject's third statement which completely changed his story, Defendant Seneca and Defendant Jones incarcerated and prosecuted the Plaintiff for almost two years. On March 31, 2011 after a jury trial, Plaintiff was acquitted of all charges.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baughman v. American Tel. And Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Id. at 545. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). If triable issues exist, those issues must go to the jury. Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

ARGUMENTS

I. Summary Judgment is not proper at this time due to ongoing discovery.

Plaintiff would respectfully submit that Defendants' motion for summary judgment should be continued or held in abeyance until such time as discovery is completed. Although Plaintiff filed this action in March 2013, discovery has yet to be completed as Plaintiff is still attempting to take depositions in this matter. As this case is extremely fact intensive and relies on the actions and knowledge of Defendant Jones as well as Defendant Seneca, through its employees and agents, it is imperative that Plaintiff be allowed to conduct depositions prior to Defendants' being heard its summary judgment motion in order for the Court to have all necessary and proper evidence. Plaintiff has attempted to notice depositions in this matter but due to scheduling issues, holidays, and attorney travel schedules, depositions have not yet taken place. Plaintiff expects to garner information through these depositions which will present a clearer picture to the Court as to the facts in issue in this matter. As such, Plaintiff would request that Defendants' summary judgment motion be continued or held in abeyance until such time as discovery is completed.

II. When viewing the evidence in the light most favorable to the Plaintiff, there are genuine issues of material fact that must be decided by a jury.

The entirety of this case rests on the interpretation of the facts presented, especially in light of Defendant Seneca and Defendant Jones' behavior in the investigation of the 2004 murder. As demonstrated by the transcript of the Plaintiff's criminal trial, Defendant Seneca and Defendant Jones had notice of the lack of evidence linking Plaintiff to the crime as well as to the unreliability of the last minute statement of a previous subject implicating Plaintiff prior to Plaintiff's arrest as well as long after his arrest through the trial. However, Defendant Seneca

and Defendant Jones continued the arrest and prosecution of the Plaintiff with no probable cause and no evidence against him, forcing him to spend almost two years in jail and endure a trial in order to clear his name and free himself. Due to not only the complexity of the factual dispute that exists between the Plaintiff and the Defendants, but also the need for judgment of credibility of the Defendants in their testimony in this matter, this case must be submitted to the jury for a determination of liability and damages. As such, the Plaintiff opposes summary judgment on all causes of actions as the facts presented above present genuine issues of material fact on all presented causes actions that cannot be avoided. In taking the facts in a light most favorable to the Plaintiff, Mr. Lloyd Lash was arrested and prosecuted for crimes he did not commit and for which there was no reliable evidence demonstrating differently. Due to the actions of the Defendants, Mr. Lash lost not only two years of his life while he was incarcerated, but also endured emotional distress, lost wages, loss of employment opportunities, stress, and embarrassment.

(i) Malicious Prosecution and Abuse of Process

It is clear that the Plaintiff has articulated a case for malicious prosecution and abuse of process based on the facts and trial testimony in this matter. “[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965). Malice is defined as “the deliberate intentional doing of an act without just cause or excuse.” Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. at 479, 289 S.E.2d at 416. Malice may also be inferred from a want of probable cause to institute the prosecution.

Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967) details the essential elements of abuse of process as, "first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding."

It is undisputed that the Defendants participated in the institution and continuation of the proceedings against the Plaintiff in their arrest and detainment of the Plaintiff for charges he was later acquitted of by a jury of his peers. It is also undisputed that the Plaintiff was fully acquitted of the charges and the arrests expunged off of his record. Based on these undisputed facts, this element of the proceeding being adjudicated in Plaintiff's favor is satisfied. Finally, it is undisputed that Plaintiff has endured emotional and monetary damages due to his unlawful arrest and incarceration. Plaintiff was arrested and detained for almost two years of his life, preventing him from enjoying even the simplest of pleasures and causing him to be denied job opportunities, employment and wages to assist in providing for his family. Additionally Plaintiff spent two years away from his family, alone in a jail cell while the community discussed the horrific nature of his alleged crimes. Throughout this time Plaintiff was enduring stress, embarrassment, anxiety, and other emotional distresses. Even if Defendants were to dispute Plaintiff's damages, any arguments about the validity of damages would constitute a genuine issue of material fact and should be presented to the jury. As such, Plaintiff would argue that, even if the Court finds a dispute regarding the elements of malicious prosecution, when taken in a light most favorable to the Plaintiff, there exists a material issue of genuine fact and the issue must be submitted to a jury.

Regarding the issues of malice and lack of probable cause in the institution of the proceedings, review of the facts and circumstances of the charges in question demonstrate that

Defendant Jones and Defendant Seneca had no probable cause whatsoever for the arrest or the incarceration of Plaintiff. South Carolina supports the contention that the malice requirement can be satisfied through want of probable cause, allowing for both remaining elements of malicious prosecution to be satisfied through the Defendants' failure to have probable cause for the arrest and incarceration. Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Additionally, as discussed in detail above, Defendant Jones and Defendant Seneca refused to take necessary steps to properly investigate the statement given by a previous suspect implicating the Plaintiff. In addition, based on the transcript of the Plaintiff's criminal trial, there is a serious question of as to the truthfulness of the Defendants' investigation. As the main issue in question is the facts within the Defendants' purview pointing to the Plaintiff as a viable suspect, the existence of evidence questioning the honesty of the Defendants' causes their credibility, an issue which courts demand the jury make a decision regarding, to also come into question and forms a genuine issue of material fact. It is also apparent through the evidence, taken in a light most favorable to the Plaintiff, that with the severe lack of evidence against Plaintiff, that the decision to continue on with the arrest and incarceration of Mr. Lash finds its basis in malice, fraud, or intent to harm. Upon a cursory review of the background, previous statements, and circumstances surrounding these charges and the statement given by Mr. Andrew Holland, previous suspect in the murder of Butch Roberts, it is obvious and clear that this demonstrates not only a lack of probable cause but also a definite decision of malice, fraud or intent to harm. Therefore, when viewing all of the evidence in a light most favorable to the Plaintiff, the Plaintiff has articulated a complete case for malicious prosecution and Defendants' summary judgment motion should be denied.

In examining the Plaintiff's cause of action for abuse of process, the same arguments articulated above would apply. An examination of the transcript of Plaintiff's criminal trial demonstrates a genuine issue of material fact as to Defendant Jones' purpose in continuing this action against Plaintiff even without the necessary evidence. As there existed no probable cause to arrest, incarcerate and prosecute Plaintiff, the motives of Defendants, especially Defendant Jones appears to be based solely in malice, fraud, or other ulterior and improper purposes. Furthermore, as supported by the transcript, Defendant Jones assisted in withholding information such as statements and witness information from the Plaintiff and Plaintiff's counsel in furtherance of his improper purpose. As such, when viewing all of the evidence in a light most favorable to the Plaintiff, the Plaintiff has articulated a complete case for abuse of process and Defendants' summary judgment motion should be denied.

(ii) Negligence

In order to establish liability in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). Statutes, relationships formed in contract, status, property interests, or some other special circumstances have been found to create a legal duty on the part of a defendant towards a plaintiff. Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Jensen v. Anderson County Dep't of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991). In the case at hand, Plaintiff contends that Defendant Jones and Defendant Seneca acted negligently in the investigation, arrest, detainment and incarceration of Plaintiff by failing to procure any probable cause for his arrest, incarceration, and prosecution. Examination of the South Carolina Tort Claims Act, as explained in Arthurs ex rel. Estate of

Munn v. Aiken Cnty, demonstrates that, “the State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages contained herein.” South Carolina Tort Claims Act, Section 15-78-40. The Tort Claims Act goes further and states that, “... [l]iability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.” South Carolina Tort Claims Act, Section 15-78-20(a). This theory of recovery set out in the Tort Claims Act specifically creates a duty for the Defendant, in situations such as this case, to act prudently in their execution of their duties. Plaintiff would thus contend that the above detailed actions of the Defendant demonstrates the breach of Defendant’s duty of care and resulting damages incurred and endured by the Plaintiff. As detailed above, Plaintiff bases his cause of action for negligence against Defendant Jones and Defendant Seneca on far more than just a negligent investigation or a negligent arrest, but instead on multiple ignored attempts to properly investigate and prosecute this case properly which includes failing to look at all suspects and ignorance of exculpatory evidence which pointed to Plaintiff’s innocence. As such, based on the above listed arguments, the Plaintiff has raised genuine issues of material fact as to the claim of negligence and the Defendants’ motion for summary judgment should be denied.

(iii) False Imprisonment and False Arrest

South Carolina courts have held that, “the essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990); Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). In order to prevail on a claim for false imprisonment, the plaintiff must

establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 521 S.E.2d 163 (Ct.App.1999). In the same vein of torts, courts have held that the fundamental issue in determining the lawfulness of an arrest is whether there was "probable cause" for the arrest. *Id.* quoting Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992). In determining the presence of probable cause, "all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received." State v. Roper, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979); *see also* State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996) ("Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officers [sic] disposal."). The issue of probable cause is a question of fact and ordinarily one for the jury. *Id.* Both of these causes of action, when dealing with law enforcement defendants, center on whether there was probable cause for the arrest and subsequent detention. As much more fully discussed above, Defendant Jones and Defendant Seneca failed to establish probable cause to arrest and subsequent detain and incarcerate Plaintiff in this case as they not only failed to properly investigate the statements given in this matter but that they relied on information that they knew was false in order to achieve the guise of probable cause in order to move the case to trial. In taking the facts in a light most favorable to the Plaintiff, Detective Jones' sole basis for arresting, incarcerating, and prosecuting Plaintiff was a false statement given to Detective Jones by a known liar, manipulator, and suspect in the very charges he was giving a statement in regards to Mr. Lash. As such there is a genuine issue of material fact as to whether probable cause existed for the arrest and imprisonment of Plaintiff and summary judgment should be denied.

(iv) Intentional Infliction of Emotional Distress

Plaintiff's claim for intentional infliction of emotional distress, also known as a claim of outrage, grounds itself in the already heavily discussed behavior of Defendants. Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778-79 (1981) explains the test for intentional infliction of emotional distress by laying out the following elements:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.

Ford v. Hutson further explains that, "although 'severe' emotional distress is usually manifested by 'shock, illness or other bodily harm,' such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional infliction of emotional distress. 276 S.C. 157, 162, 276 S.E.2d 776, 778-79 (1981). As this cause of action is highly fact intensive, the question of whether Defendants' behavior rose to the level of the tort of intentional infliction of emotional distress is one more appropriate for a jury than for a judge. As held by the Court in Ford v. Hutson, "when evidence is in conflict and susceptible of more than one reasonable inference, it is the province of the jury to make a factual determination." Id. As discussed in regards to the Defendants' lack of probable cause in arresting, incarcerating, and prosecuting Plaintiff, neither Defendant Seneca nor Defendant Jones acted reasonably. Their actions, in their ignorance of the truth and Mr. Lash's rights, resulted in calculated and intentional decisions

causing Plaintiff physical, emotional, and financial damages. As the United States Constitution guarantees a man's right to be free of unlawful searches and seizures under the Fourth Amendment, it is undisputed that no man should be forced to endure, as Mr. Lash was forced to, the emotional distress that comes from a violation of our most sacred rights. Based on these arguments as well as the arguments enumerated above, there exists a genuine issue of material fact as to the claim of intentional infliction of emotional distress and the Defendants' motion for summary judgment should be denied

III. Defendant Seneca and Defendant Jones are not entitled to summary judgment because Plaintiff has established that genuine questions of material fact exist on the issue of Defendant's immunity.

While the South Carolina Tort Claims Act cloaks governmental agencies in immunity from suit in many aspects, the Act is clear in that there are exceptions to this immunity. South Carolina Code Ann. Section 15-78-70 specifically provides that government employees may be liable in tort actions [indicating]:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the *scope of his official duty* is not liable therefore except as expressly provided for in subsection (b).

(b) Nothing in this chapter 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* or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

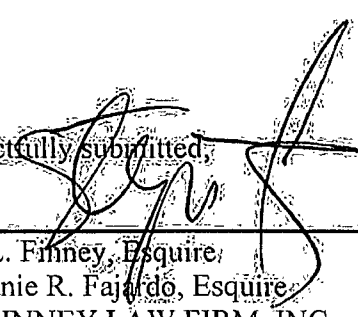
Frazier v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004).(emphasis in original). As the conduct complained of Defendant Jones and Defendant Seneca detailed above involves malice,

fraud, and intent to harm, qualified immunity would not apply. As such, the defendants' reliance on qualified immunity fails and summary judgment should not be granted on this ground.

CONCLUSION

Because the Plaintiff has raised genuine issues of material fact and because the Defendants are not entitled to immunity, the Defendants' motion for summary judgment should be completely and totally denied.

Respectfully submitted,



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Attorneys for the Plaintiff

Columbia, South Carolina
February 14, 2014

1 A. Yes.

2 Q. Okay. In all of those three warrants, it's
3 based on witness statements that -- the information, witness
4 statements or I'll read it specifically.

5 It says that this did occur at 517 Livingston
6 Circle within the city of Seneca and there is a written
7 report, sorry, on file with the Seneca Police Department, and
8 it says the same thing here, there's a written report on file
9 and there's a written report on file on all three warrants;
10 is that correct?

11 A. Yes, sir.

12 Q. What's that written report?

13 A. It would be the incident report as well as any
14 reports obtained -- associated with that case number.

15 Q. Okay. With respect to the information contained
16 on the warrant, is there any information contained on the
17 face of the warrant for the magistrate to sign that would be
18 any information that you received from a specific witness in
19 this case?

20 A. One more time, please.

21 Q. Is there any information contained on the face
22 of these warrants that I'm showing you that the magistrate
23 could read and see that this murder charge and those other
24 two charges were based on a specific witness statement?
25 Like, for example, a witness saw the defendant kill the

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1 never located him?

2 A. I conversated with him over the phone.

3 Q. Over the phone. All right. We'll get to him in
4 a minute.

5 Did you take a written statement from
6 Mr. Whitner?

7 A. Yes, sir.

8 Q. Did you ever threaten -- I think you said the
9 first time Mr. Whitner didn't want to have anything to do
10 with it, right?

11 A. That's correct.

12 Q. Okay. Did you follow up with him with making
13 any threats against him to arrest him, incarcerate him if he
14 was not cooperative with you?

15 A. Just made it known to him if it was proven if he
16 was part of this incident that possible charges could follow
17 if proven.

18 Q. I understand that. And could you also
19 understand that someone receiving that could become afraid
20 because they might feel that you're going to arrest them?

21 A. I didn't tell him I was going to arrest him.

22 Q. I understand.

23 A. I just advised him of the situation and if it
24 was proven that he attempted to help or helped in any way
25 before or after, that charges could follow.

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18

1 and/or at work.

2 Q. Was -- did she give you any information that
3 Mr. Lash had confessed the murder to her?

4 A. There was something in her statement to the
5 effect of -- at the end of her statement that there was a
6 doubt that, you know, a suspicion that something could be.

7 Q. And I'm familiar with that.

8 A. Yeah.

9 Q. Did she ever say to you, "My brother told me he
10 shot and killed Mr. Roberts"?

11 A. No.

12 Q. Okay. Did you inform Ms. Williams that the same
13 thing that you informed Mr. Whitner of, that if you found out
14 she was involved, she would be charged?

15 A. Who is Ms. Williams?

16 Q. I'm sorry, Tonette.

17 A. I did advise her the same.

18 Q. The same thing?

19 A. Yes, sir.

20 Q. Very good. Just so to be accurate, what's
21 Tonette's last name?

22 A. Whitner now.

23 Q. Whitner?

24 A. It was Bowen then.

25 Q. Got you.

1 A. I did, yes, sir.

2 Q. Is that where they both live?

3 A. Yes, sir.

4 Q. And so those conversations took place in
5 Charlotte?

6 A. First one with Terrell did. The second one with
7 Terrell -- the second one with Terrell was Oconee County.

8 Q. I believe when you talked to Tonette, you told
9 her, also, not only if you found out she was involved that
10 you would charge her, but I believe is it -- isn't it true
11 you told her she would be charged with conspiracy and that
12 her kids could be taken away from her if she was locked up?

13 A. I advised both of them as any -- if they're
14 charged with this type of crime, DSS could potentially get
15 involved, yes.

16 MR. FINNEY: Okay. Let's mark this.

17 (PLF. EXH. 1, Arrest Warrant, was marked for
18 identification.)

19 (PLF. EXH. 2, Arrest Warrant, was marked for
20 identification.)

21 (PLF. EXH. 3, Arrest Warrant, was marked for
22 identification.)

23 MR. JOLLY: Is this his copy?

24 MR. FINNEY: I'm going to attach them to his
25 deposition.

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1 that he acted -- Mr. Holland acted as a middleman between
2 Josh Hunter and Lloyd Lash; is that correct?

3 A. That's correct.

4 Q. With respect to the passing of the murder
5 weapon, correct?

6 A. Yes.

7 Q. All right. Did Josh Hunter become a suspect in
8 this murder case at that time?

9 A. I attempted to conversate with him and meet up
10 with him for an interview, and he refused and did not
11 cooperate at all.

12 Q. So, is the answer yes or no?

13 A. No.

14 Q. All right. Was Lloyd Lash still a suspect at
15 that time?

16 A. Yes.

17 Q. And that would have been in 2009?

18 A. Yes, sir.

19 Q. What was Mr. Holland's criminal background at
20 the time you reinterviewed him?

21 A. I'm not sure the extent of it without it in
22 front of me.

23 Q. Do you know that he did have a criminal
24 background at the time you reinterviewed him?

25 A. Yes.

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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF OCONEE)	Case No(s) : 2013CP3700138
)	
Lloyd Lash,)	
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Oconee County Sheriff's)	
Department, et al,)	
)	
Defendant.)	
)	

July 28, 2014
Walhalla, South Carolina

B E F O R E:

HONORABLE R. LAWTON MCINTOSH, Judge.

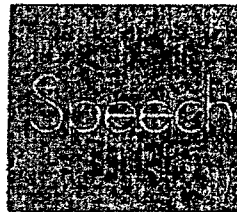
A P P E A R A N C E S:

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I N D E X

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EXHIBITS PAGE

NO.

DESCRIPTION

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 (WHEREUPON, the proceedings begin on the 28th
3 day of July, 2014 at approximately 4:21 p.m.)

4 **THE COURT:** Lloyd Lash, has he appeared
5 before me before? Has he been a pro se litigant
6 on multiple occasions?

7 **MS. FAJARDO:** I'm not sure, Your Honor. I
8 know that he no longer lives in this county. I
9 know he lives in Lexington county. I'm not sure
10 how long. At least -- I can say at least a
11 year. Probably a year and a half. I know since
12 this litigation has been going on, he's been in
13 Lexington county.

14 **THE COURT:** Oh, he has? Okay. I'm thinking
15 about somebody else.

16 **MR. JOLLY:** Judge, the reason the name may
17 be familiar to you is this civil suit arises
18 from a criminal case in which Mr. Lash was
19 acquitted and you were the trial judge.

20 **THE COURT:** Really? Well, let me ask you
21 this. Does anybody feel like I need to recuse
22 myself on this matter?

23 **MR. JOLLY:** I don't, Judge.

24 **THE COURT:** Well, let me -- let me do
25 this. Instead of me breathing down your neck,

1 the proper way for me to do is step out and let
2 you think about it.

3 **MS. FAJARDO:** Okay.

4 **THE COURT:** I don't have a specific, uh,
5 memory of Mr. Lash. But obviously, I have some
6 memory of him because when it was brought up,
7 his name rang a bell with me. So that being
8 said, let me step out. You consider if you want
9 me not to hear it. Give me a reason for it and
10 I will be glad not to. Okay.

11 **MS. FAJARDO:** Thank you, Your Honor.

12 **THE COURT:** Or you. Okay.

13 (WHEREUPON, there is a pause.)

14 **THE COURT:** I was just coming in to ask
15 y'all -- I'm going to get some documents. Would
16 y'all send word back when you've been able to
17 converse with whoever you need to talk to?

18 **MR. JOLLY:** Yes, sir. I'm ready.

19 **MS. FAJARDO:** Uh, I'm ready.

20 **THE COURT:** Okay.

21 **MS. FAJARDO:** I'm ready.

22 **THE COURT:** You sure?

23 **MS. FAJARDO:** I needed to call Jerry
24 Finney to make sure I was giving you the
25 correct answer.

1 **THE COURT:** Okay. All right. All right.
2 Back on the record in Lash versus Seneca Police
3 Department and Detective Rory Jones. And the
4 question was raised by the court as to whether
5 or not there was a sound basis for me, for a
6 motion for me to recuse myself. And if there
7 was, whether or not that was being requested by
8 either side. Mr. Lash apparently came to trial
9 before me -- or was it a plea?

10 **MS. FAJARDO:** It would have been a trial.

11 **THE COURT:** Trial. And obviously, was
12 found guilty of -- was not found guilty.

13 **MS. FAJARDO:** He was found not guilty.

14 **MR. JOLLY:** He was acquitted, Judge.

15 **THE COURT:** Acquitted. Okay. As a result,
16 this action follows, is that correct?

17 **MS. FAJARDO:** Yes, Your Honor.

18 **THE COURT:** Okay. For the record, you are
19 please, ma'am?

20 **MS. FAJARDO:** Stephanie Fajardo of the
21 Finney Law Firm for the plaintiff.

22 **THE COURT:** Okay. And you've had ample
23 opportunity to discuss this matter with
24 whomever you felt needed to hear it?

25 **MS. FAJARDO:** Yes, Your Honor. We feel

1 comfortable moving forward. I'd spoken with
2 Attorney Jerry Finney. I'd appeared before you,
3 so has Attorney Finney. We are confident that
4 you can remain impartial in deciding the
5 issues.

6 **THE COURT:** Okay. I will state for the
7 record that I feel like I can. I just wanted to
8 make sure.

9 Mr. Jolly, have you had a chance to speak
10 with whomever or you need to make a call.

11 **MR. JOLLY:** No. No, sir. We're fine going
12 forward.

13 **THE COURT:** All right. So this is your
14 motion for summary judgement?

15 **MR. JOLLY:** Yes, sir.

16 **THE COURT:** Okay, sir.

17 **MR. JOLLY:** Thank you, Judge.

18 **THE COURT:** Yes, sir.

19 **MR. JOLLY:** I represent all the defendants
20 in this case. Judge, as we just mentioned, this
21 was a case that was tried, uh, -- it was a
22 murder case. It arose from, uh, an individual
23 by the name of Arthur Roberts who was murdered
24 in the City of Seneca back in 2004. The
25 plaintiff, Lloyd Lash, was arrested for that.

1 murder and charged with several crimes related
2 to the murder on May 25th of 2009. He was
3 acquitted of those charges on March 31st, 2011.
4 This suit was initiated on February 20th, 2013,
5 so almost four years after the date of arrest.

6 We have several grounds for our motion for
7 summary judgement as to all causes of action.
8 The first ground is that the statute of
9 limitations expired as to all causes of action,
10 except malicious prosecution. There were six
11 causes of action in this civil complaint. In
12 addition to malicious prosecution, there was
13 abuse of process, negligence, false arrest,
14 false imprisonment and intentional infliction
15 of emotional distress. It's our position that
16 the statute of limitations bars all of the
17 plaintiff's claims except malicious
18 prosecution.

19 **THE COURT:** What would trigger running of
20 the statute of limitations as to the other
21 five?

22 **MR. JOLLY:** It's our position that the
23 arrest triggers the statute of limitations.
24 That is because the cases that we have cited in
25 our brief, first of all, I guess it's

1 pronounced Joubert versus DSS, the court said
2 that the statute of limitations begins to run
3 when the plaintiff should know that he might
4 have a potential claim against another, not
5 when he develops a full-blown theory of
6 recovery. Obviously, he knew when he was
7 arrested, if he truly didn't do it, he knew he
8 didn't do it. So he knew he had a potential
9 claim at that point.

10 Another case we cited says a cause of
11 action accrues when the plaintiff possesses
12 sufficient facts about the harm done to him
13 that reasonable inquiry will reveal his cause
14 of action. Uh, it is our position that the
15 plaintiff obviously knew of his arrest on May
16 25th, 2009 and the statute of limitations would
17 begin to run on that day. There's a two-year
18 statute of limitations since it's a tort claims
19 case and there was no verified claim. However,
20 even if the Tort Claims Act didn't apply -- and
21 I don't think that's really contested -- the
22 three-year statute would have run as well.

23 Our second ground for summary judgement,
24 uh, apart from the statute of limitations and
25 as to the merits, is that all of the causes of

1 action in the plaintiff's complaint, including
2 malicious prosecution require, as one of their
3 elements, the lack of probable cause.

4 Therefore, the existence of probable cause
5 would bar all of the causes of action.

6 Our position is that probable cause has
7 been conclusively determined in this case.
8 That's based on several things. First of all,
9 this plaintiff was arrested pursuant to
10 warrants issued by a municipal court for the
11 city of Seneca. While that is not conclusive,
12 the Fourth Amendment and the U.S. Constitution
13 and the State Constitution procludes the
14 issuance of a warrant in the absence of a
15 showing of probable cause. At least there's an
16 implication in the issuance of a warrant of
17 probable cause.

18 Second, and more importantly, the Oconee
19 County Grand Jury returned true bill
20 indictments against the plaintiff on all three
21 charges that the defendants made in this case.
22 I've cited authority to the court, both state
23 authority and federal authority, that says that
24 a Grand Jury indictment fair on its face --
25 there's no evidence that this one was not fair

1 on its face -- conclusively determines the
2 existence of probable cause.

3 Then the final reason is in this criminal
4 case, at the close of all the evidence, the
5 defendant or the plaintiff in this case, made a
6 motion to have the charges dismissed on the
7 grounds that there was insufficient evidence to
8 send it to a jury. And the court -- that's an
9 exhibit in this case. All the things I
10 mentioned, the warrants, the true billed
11 indictment and this, uh, from the trial court
12 in this case -- said that there was more than
13 sufficient evidence to submit it to the jury.
14 So we've got a municipal court judge finding
15 enough to issue warrants. We've got a county
16 grand jury sitting and issuing true bill
17 indictments and the trial court saying there's
18 more than sufficient evidence to submit it to
19 the jury to determine.

20 As the court is aware, the police are not
21 charged with only arresting guilty people.
22 That's not up to them. That's up to the court
23 system. What they are charged with is making
24 sure there's probable cause to charge that
25 person.

1 In this case, we had three judicial or
2 semi-judicial entities look at this. Of course,
3 our position would be how many does there have
4 to be, uh, to have probable cause. We say it's
5 conclusive when the Grand Jury issues a true
6 billed indictment. In this case, we even have
7 more than that from the trial, uh, of the case,
8 criminal trial of the case.

9 Now, there's a -- what I consider sort of a
10 subsidiary or a secondary cause as to their
11 cause -- grounds for summary judgement as to
12 their cause on intentional infliction of
13 emotional distress. And I set that out in the
14 brief. So I won't cover it in detail because I
15 think it's already covered in the first two.
16 But we submitted law that says under the Tort
17 Claims Act, there is no allowable cause of
18 action for infliction of emotional harm because
19 a loss under the Tort Claims Act is defined as
20 an actual physical injury. I submitted the
21 appropriate, I mean, the supportive cases in
22 that. That would be our case.

23 **THE COURT:** The last cause of -- the last
24 basis argued by counsel, do you agree there's
25 cases out there that says there's got to be

1 actual loss?

2 **MS. FAJARDO:** I would disagree -- I agree
3 that there is a case that states that. But I
4 don't believe that that would -- that would
5 prevent us from pleading intentional infliction
6 of emotional distress based on that an
7 emotional can manifest itself as a physical
8 injury, which we feel would be present in this
9 case as an issue of damages. Therefore, that
10 would, in my opinion, be a loss under the Tort
11 Claims Act.

12 **THE COURT:** Okay. Go ahead. I want to hear
13 you on the rest of the arguments being made.
14 First, give me -- what's your response to the
15 argument that the statute of limitations was
16 triggered on his arrest. If he was not guilty,
17 then he should have known that at the time.
18 Therefore, that should trigger the time for
19 running the statute of limitations at that
20 point.

21 **MS. FAJARDO:** Yes, Your Honor. Obviously,
22 we don't feel the statute of limitations was
23 triggered until the time of the trial based on
24 -- and I'll get into a little more detail --
25 the factual aspects of this case. It wasn't

1 until trial that a lot of these facts came out
2 about the investigation about the actions of
3 the investigator, Defendant Jones. So we feel
4 that it wasn't until the trial that the
5 plaintiff was able to actually come to the
6 realization of, you know, him being a person of
7 common knowledge that his right had been
8 invaded and that he had a claim against another
9 party. We would also submit --

10 **THE COURT:** Well, be a little more
11 specific if you don't mind.

12 **MS. FAJARDO:** Sure. This goes into why we
13 say that there was not a probable cause, it
14 came out at the trial, witnesses testified that
15 they had been pressured into making statements
16 against my client by investigator, by Defendant
17 Jones. That they would not have made those
18 statements. They had told the investigator that
19 they didn't know anything about it. And that
20 due to the threats that he made against them
21 being arrested and their children being taken
22 from them, they did make the statements. As
23 well as there was a statement from another
24 party that was previously a suspect in the case
25 when, I believe, Defendant Jones said he never

1 considered him a suspect, but made multiple
2 statements and the reality of the lies that --
3 his girlfriend -- kind of be more specific.

4 There was a man Andrew Holland that made
5 several statements that implicated Mr. Lash.
6 Mr. Holland's girlfriend, Kimberly Sullivan,
7 also testified at the trial and revealed that
8 she was told exactly what to say by Andrew
9 Holland. That was something that was not known
10 by the plaintiff until trial as well as -- when
11 it's said under oath, we think that that's a
12 lot different than there being a rumor in the
13 community that Andrew Holland is lying or his
14 girlfriend is lying. So the reality of this
15 situation and what had been done in the
16 investigation really didn't come to light until
17 trial.

18 Also, with the instances of our other
19 causes of action, false arrest, false
20 imprisonment, the abuse of process, while it is
21 not an essential element of acquittal,
22 obviously with false arrest and false
23 imprisonment, if it's a lawful arrest, until
24 the fraud can be demonstrated that it was not a
25 lawful arrest, it was not a lawful

1 imprisonment. And to get to that, a lot of
2 times, it has to have an acquittal.

3 Mr. Lash has no control over when it went
4 to trial. He was arrested. He sat for two years
5 in jail until this case went to trial. You
6 know, if the statute is triggered at the time
7 of arrest, before a person gets discovery or
8 any information, the prosecution can drag the
9 case out for over two years, which is possible
10 in South Carolina. It does happen. And then
11 there's no civil remedy that that person has
12 for being denied, you know, not only due
13 process but also the ability to move forward on
14 a civil action if that is appropriate. We don't
15 feel -- obviously, it's undisputed that
16 malicious prosecution, he did have to be
17 acquitted before we could move forward. But we
18 do feel with the rest of the causes of action,
19 it was not triggered until trial because he was
20 not aware that his rights had been invaded
21 until that time.

22 **THE COURT:** Thank you, ma'am.

23 **MS. FAJARDO:** Moving on to the issues of
24 -- we would agree the main issue really is was
25 there probable cause. All of the causes of

1 action with the exception of intentional
2 infliction of emotional distress, which I
3 discussed and I do think is highly factual and
4 would need to go to the a jury, the other four
5 causes of action, the main issue is was there
6 probable cause. That's what I'm going to
7 concentrate on.

8 As I said in the beginning, uh, it's a very
9 factual in-depth case. This murder occurred in
10 2004. It was fully investigated by the Oconee
11 County Sheriff's Department as well as Seneca
12 Police Department. Uh, Investigator Jones was
13 placed on the case to get a fresh pair of eyes
14 on the case. Right after he gets on the case,
15 suddenly, although Mr. Lash had been
16 interviewed, there were statements. DNA had
17 been submitted. He was not able to be arrested,
18 prosecuted, anything.

19 When Defendant Jones gets on the case,
20 suddenly all this new information comes up. He
21 admits in his testimony he went and spoke to
22 people that had previously given statements,
23 specifically with Carina Whitener, I think she
24 was known as Tonette as well, as well as her
25 husband, Terrell Whitener. That's the sister

1 and the brother-in-law of Mr. Lash. Both of
2 them previously said they had no information
3 leading to Mr. Lash being incarcerated or being
4 arrested or that he had anything to do with it.
5 And even said that they didn't want to be
6 involved. They wanted to be left alone.

7 Defendant Jones admits in his deposition he
8 did tell them that they could be arrested. He
9 continued to pressure them. He told Mrs.
10 Whitener that, uh, she could be arrested, her
11 kids could be taken from her from DSS if she
12 didn't help out.

13 Mr. Whitener was then arrested in North
14 Carolina and brought to South Carolina where --
15 and he had already spoken to Defendant Jones
16 one time and told him I don't know anything. I
17 don't want to be involved. Then Defendant Jones
18 went to him again and said now that you're in
19 jail, what more information do you have. At
20 that point, both of them did give statements.

21 I don't believe that their statements,
22 especially Mrs. Whitener, I don't believe it
23 gave any new information. She has one line at
24 the end of her statement that says she thought
25 maybe Mr. Lash did have something to do with it

1 but really didn't give any evidence. Mr.
2 Whitener did provide information that was
3 involved in a conversation with the client
4 which was highly prejudicial which did look
5 like Mr. Lash was involved in the murder.

6 The flip side to that is, ironically, as I
7 said, Andrew Holland gave another statement. He
8 had previously given a statement, had given
9 information and, in fact, had given information
10 that Mr. Lash may have had a gun, the same kind
11 of gun that was involved in the murder. He
12 suddenly, after staying silent for several
13 years, comes up with a new statement which was
14 not investigated. It was admitted that although
15 Mr. Holland named several other people that
16 were involved, none of them were considered
17 suspects. None of them were investigated.

18 In fact, one Josh Hunter, I believe, was
19 named as being involved, having the gun and
20 hiding the murder weapon, was contacted by
21 Defendant Jones. He refused to cooperate. So
22 Defendant Jones left him alone.

23 We just think that in looking at Mr.
24 Holland's statement, the facts don't make
25 sense. It completely defies common sense and

1 logic. Mr. Holland alleged things that were --
2 there's no way they could be true. But he said
3 he knew where the murder weapon was but
4 couldn't find the murder weapon. We submit --
5 and I believe this did come out at the trial
6 that Mr. Holland knew all these things because
7 he was the one that was involved in the murder.

8 After getting the statement from Mr.
9 Holland which strangely went exactly with Mr.
10 Whitener's statement, which we believe was
11 pressured by Defendant Jones, then Mr. Lash was
12 arrested. There was talk of the arrest warrant.
13 If you look at the arrest warrants in this
14 case, there actually is no description of what
15 the probable cause is. It just refers the
16 magistrate to look at the case file that's
17 stored in the sheriff's department. We don't
18 believe that that is adequate. We're not sure
19 what was presented. We don't feel that the full
20 file may have been presented a magistrate for a
21 magistrate to be able to look at all the
22 evidence and decide if there was probable
23 cause. That argument --

24 **THE COURT:** That's just pure speculation
25 on your part.

1 case, it was not a very large case, especially
2 with this much investigation. It had gone into
3 five years of investigation and several
4 statements being made. A lot of people didn't
5 come to court to testify. We think that that is
6 relevant in this case to look at whether this
7 investigation was 100 percent truthful in its
8 presentation.

9 The big issue we feel as I have said on
10 several occasions is whether Defendant Jones
11 was proper in his investigation because he was
12 the lead investigator when the case went to
13 trial after Mr. Lash was arrested. We do think
14 it's an integral part of the case. It's a part
15 of the case that the jury needs to hear and
16 needs to make a decision. We don't feel that
17 summary judgement is appropriate at this time.

18 **THE COURT:** Let me ask you this. At what
19 point do you contend that summary judgement,
20 not summary judgement, the statute of
21 limitations would probably begin to run? Do you
22 have any date or time frame where that statute
23 would begin under your scenario?

24 **MS. FAJARDO:** I mean, I believe that I had
25 stated in my brief, March 31st, 2000--

1 **MS. FAJARDO:** That is pure speculation.

2 **THE COURT:** Okay.

3 **MS. FAJARDO:** In Defendant Jones'
4 deposition, we asked would he present it. He
5 wasn't sure. He just referred that that's what
6 the warrants said and that's what was told. We
7 do think that this really leads -- there's so
8 many factual questions. And because we are
9 pleading that there was fraud, malice and
10 intent to harm and we're calling into question
11 the credibility of one of the defendants,
12 that's a job for the jury to decide.

13 We think that the jury needs to hear this
14 case because it is so factually based and
15 because there is a question of whether the
16 defendant is telling the truth in what occurred
17 in the investigation especially in light of
18 what occurred at the criminal trial with
19 several people coming forward and saying they
20 were pressured into statements that wasn't
21 actually their testimony.

22 Obviously, Mr. Lash was acquitted. None of
23 the people that were previously named by
24 Defendant Holland, they weren't subpoenaed to
25 come to court and testify. The prosecution's

1 **THE COURT:** I do not have a brief from
2 you. So I need to get that.

3 **MS. FAJARDO:** Oh, I think I handed it up
4 at the beginning of the hearing.

5 **THE COURT:** Okay.

6 **MS. FAJARDO:** And it's similar to my
7 previous brief. There's a few things added
8 because we did a deposition. But, I mean,
9 obviously, I believe the first day of trial was
10 the 20th, right? Or the 30th?

11 **THE COURT:** Well, the first day of trial?
12 That seems a little bit arbitrary. What do you
13 base the first day of trial on?

14 **MS. FAJARDO:** That's why I picked March
15 31st, 2011 because that's the day that the
16 verdict came in. That would have been the
17 conclusion of the trial. I picked that date
18 because I felt that that time was actually went
19 all of the testimony had come out from the
20 prosecution. There was not significant
21 testimony from the defense. I can certainly
22 check. It may have been March 30th. I can
23 submit that to the judge. I apologize for not
24 coming prepared with that.

25 **THE COURT:** No, no, no. Let me ask you

1 this. Mr. Jolly says that all the causes of
2 action including malicious prosecution have an
3 element requiring probable cause. Do you agree
4 with that?

5 **MS. FAJARDO:** I do. Obviously, malicious
6 prosecution as well as abuse of process, I
7 think with both of those, obviously, if they
8 had probable cause. With the abuse of process,
9 obviously there is an ulterior motive and an
10 act outside of the process. We feel that that
11 is the fraud of Defendant Jones that he was
12 acting on behalf of Defendant Seneca as well.
13 He was within his scope of duties. He was
14 reporting to his superiors and we think that
15 they were aware of what he was doing in
16 approving his reports and nothing was done to
17 stop or to push for more investigation to
18 ensure that every's statement that was being
19 put forward was actually truthful.

20 With the false arrest and the false
21 imprisonment, I do think that while it may not
22 be a named element of probable cause, I think
23 if there was probable cause for the arrest and
24 the imprisonment, then it wouldn't fall under a
25 civil cause of action for false arrest or false

1 imprisonment.

2 In regards to the negligence, we feel that
3 the duty that is named in the negligence is
4 based on the standard of care that someone must
5 take to act prudently in their position and
6 that by moving forward without probable cause,
7 and we feel that Defendant Jones and Defendant
8 Seneca was well aware that they did not have
9 probable cause especially in light of the fact
10 that the evidence did not really change from,
11 I'd say late, you know, February of 2004 up
12 until Mr. Lash's arrest. The only evidence was
13 these three statements, I believe. And there
14 may have been some minor statements which
15 really didn't give any further information.

16 There was no actual evidence. Defendant
17 Jones testified in his deposition, I believe
18 some things were resubmitted. They did submit
19 some issues for DNA. All of it came back
20 negative. There was no footprints, no
21 eyewitnesses, no fingerprints, no DNA. There
22 was nothing linking Mr. Lash to this crime with
23 the exception of statements. All the three
24 major statements that Defendant Jones said was
25 kind of the main basis for moving forward with

1 the arrest and the prosecution are the
2 statements that we feel were procured by fraud.
3 And so I do think that that's how we bring it
4 in as far as negligence. We don't think that
5 he's acting within his standard of care in his
6 office and acting prudently when he was moving
7 forward with cases knowing that there's no
8 probable cause.

9 Obviously, this was not brought up
10 regarding the immunity. We do think there is
11 fraud, malice and intent to harm, all three of
12 that. So they would not be entitled to immunity
13 under the South Carolina Tort Claims Act and we
14 should move forward on summary judgement as
15 well.

16 **THE COURT:** He wasn't arguing that basis.
17 Were you?

18 **MR. JOLLY:** No, sir.

19 **THE COURT:** Let me ask you this. It seems
20 like there's -- especially with malicious
21 prosecution, there's a lot of cases out there
22 that if the case makes it beyond directed
23 verdict stage, that's evidence that there was
24 probable cause to go forward with the
25 indictments. Something along those lines. Isn't

1 that the law?

2 **MS. FAJARDO:** I do believe so. Part of the
3 issue is not all of this information was
4 presented at the criminal trial. I don't
5 believe that it was fully available at that
6 criminal trial. A lot of the issues of third-
7 party guilt regarding Mr. Holland, his
8 background in the case, I don't believe that
9 was brought up at the criminal trial. That
10 would be something that the court does not have
11 in examining the credibility of the defendant.

12 **THE COURT:** Well, no, no, no. No, what I'm
13 asking is this, maybe I'm not doing it very
14 articulately, but if you have probable cause
15 that is established by a Grand Jury that issue
16 true bill indictments --

17 **MS. FAJARDO:** Yes, Your Honor.

18 **THE COURT:** Then aren't there cases out
19 there saying that that's -- if you make it pass
20 the directed verdict stage and there is
21 sufficient probable cause that would obviate
22 any claim you have for malicious prosecution or
23 is that still a factual based claim after that.

24 **MS. FAJARDO:** I don't think that that case
25 and the cases that hold that contention that

1 once you get past directed verdict, that ends
2 any malicious prosecution case. I think there
3 is always the opening if there is fraud, if
4 evidence is presented to the court, to a Grand
5 Jury, to a magistrate that is untruthful and
6 that is revealed afterwards, I don't think that
7 that standard would stay. That's why this is a
8 very unique case.

9 I would agree with defense counsel that in
10 probably 99 percent of the cases, once you get
11 to directed verdict, that does severely damage
12 the malicious prosecution. But when we have
13 evidence of fraud that was not available and
14 was not known at that time to the court, I
15 don't think that that standard -- I don't think
16 that it is true. I do think that there is an
17 exception for fraud. We believe that is present
18 in this case.

19 **THE COURT:** And you argue what the basis
20 of your fraud allegations are in your brief?

21 **MS. FAJARDO:** Yes, Your Honor. And it
22 really goes to Defendant Jones' investigation
23 and him fraudulently knowing that the
24 statements that he was receiving were false and
25 that he submitted them, otherwise relied on

1 them and presented them as being true
2 statements of the parties.

3 **THE COURT:** Well, what part does discovery
4 have in this matter? I assume that trial
5 counsel for Mr. Lash filed Rule 5, Brady
6 discovery, did they not?

7 **MS. FAJARDO:** They did. It's our
8 understanding he did. He was represented by a
9 public defender. I do believe he received, we
10 believe, pretty much everything, I will say at
11 trial, on the second day of trial.

12 **THE COURT:** Well, tell me either you
13 believe you got it or you have a specific
14 allegation that you didn't.

15 **MS. FAJARDO:** Well, I know that he did not
16 get all of the discovery present in the case
17 based on the second day of trial, there was a
18 statement that was handed over to defense
19 counsel at that point regarding a, for lack of
20 a better term, a jailhouse snitch that said Mr.
21 Lash had confessed to him. They admitted that
22 they hadn't turned it over. They didn't think
23 that they had to. That also begs the question
24 of whether everything actually was turned over.

25 I believe at this point that Mr. Lash has

1 sought an expungement and therefore most of the
2 records would be -- would have been destroyed.
3 That is my -- that is my understanding from
4 previous cases when expungement -- much of the
5 information has been destroyed. Now, with the
6 public defender's office, I believe they would
7 still have a copy of the discovery. They could
8 certainly, if this case moves forward, check.

9 **THE COURT:** That's interesting Mr. Lash
10 move to have these documents destroyed. Now, he
11 is claiming that because they don't exist, I
12 have a claim against the city. That is
13 interesting.

14 **MS. FAJARDO:** I don't think his argument
15 is based on -- I don't necessarily think it is
16 necessary to have all of the documents. The
17 main documents that were presented at trial, we
18 are in possession of. I believe defense
19 counsel has given me a copy of what was the
20 case file that was turned over in discovery. I
21 reviewed that with Mr. Lash. There is nothing
22 that he said I heard there was something else.
23 There has not been a question that has come up
24 with the exception of what happened at the
25 trial at the last minute statement that

1 anything was left out. The biggest issue was
2 just that there were statements in there that
3 we believe were known to be false. At trial,
4 they were not necessarily proven false but it
5 seems that through cross-examination and other
6 evidence it was kind of brought to light that
7 they may not have been credible. Through other
8 means, there was a lot of speculation regarding
9 the fraud.

10 Defendant Jones did confirm what we had
11 been hearing from Mr. and Mrs. Whitener that
12 they had been threatened with criminal
13 prosecution if they didn't give up information.
14 They stated at trial that they felt threatened
15 and that is why they did that. Mr. Whitener
16 said he only made that statement because he
17 knew that he would continue to stay in jail
18 unless he helped out Investigator Jones.

19 Mrs. Whitener said she wanted to be done
20 with it. She wanted him to leave her alone.
21 That was the only way she did not want to lose
22 her kids. She made that statement for her
23 children.

24 **THE COURT:** How far are the parties in
25 discovery in this case?

1 **MR. JOLLY:** We are done, Judge. Except if
2 we don't get summary judgment, we are going to
3 depose the plaintiff. I don't think there
4 would be anything else we would have to do.

5 **THE COURT:** Okay. Anything further?

6 **MS. FAJARDO:** No, Your Honor. Thank you.

7 **THE COURT:** Thank you very much.

8 Mr. Jolly, anything in reply?

9 **MR. JOLLY:** Yes, sir, please. With
10 respect, Judge, to this notion that there are
11 some things that came out, some
12 inconsistencies, some changing of statements
13 during the criminal trial and that's why the
14 statute can't begin until after the criminal
15 trial was over, that's been argued and rejected
16 numerous times.

17 That is why the court said the date on
18 which discovery should have been made is an
19 objective, not subjective question. A cause of
20 action accrues when the plaintiff possesses
21 sufficient facts about the harm done to him
22 that reasonable inquiry will reveal his cause
23 of action. I defend false arrest claims all
24 the time. I got probably half a dozen now.
25 Criminal charges are still pending. There is

1 nothing that precludes a criminal defendant
2 from bringing a civil suit. That's what the
3 court has said that it begins when he knows. I
4 would like to point out -- and again, I want to
5 be careful here because I don't want to argue
6 facts.

7 **THE COURT:** Well, let me ask you this, if
8 counsel, not saying certainly by any stretch is
9 correct, what she seems to elude is this
10 information could not be known by him until the
11 actual trial because that is when the
12 information was bought out in the first place
13 of the alleged pressuring of witnesses, last-
14 minute failure to provide statements of the
15 jailhouse snitch and other things he argued
16 about happened during trial and that therefore
17 there is no way he could have known it before
18 this.

19 **MR. JOLLY:** Well, we disagree with that.
20 At the risk of arguing facts, let me just
21 address that. The two people she is talking
22 about are the plaintiff's sister and brother-
23 in-law. It is not like some unknown witness
24 that the police had been hiding from the
25 plaintiff. He can talk with them anytime he

1 wanted to. This Andrew Holland was known.
2 They could have deposed him in a civil suit.
3 These are not people -- this is not like I have
4 got the document and I won't let anybody see it
5 until the last minute.

6 The final thing -- the other thing I would
7 say about that is this, everything she
8 mentioned, the criminal trial judge heard. He
9 got to view the witnesses. By the way -- and
10 that was you. I'm not trying to say you in the
11 third person. All of the witnesses were here.
12 All of that stuff that gets fought out in trial
13 was fought out.

14 At the end of the trial, they say, Judge,
15 they should not go to the jury because there is
16 insufficient evidence. Having heard everything
17 that she just talked about, you said not that
18 it is a close call but I'm going to let the
19 jury decide. I can handle it on post-trial
20 motions if I think something goes wrong. You
21 said there is more than sufficient evidence to
22 submit this case to a jury having hearing
23 everything that she just complained about.

24 That one witness that she said was
25 determined to have lied, a lot of his.

1 statement, and this is in the criminal
2 transcript, was corroborated. Like he took
3 Rory Jones out to a field and they dug around
4 and found casings that match the casing at the
5 scene of the crime. They couldn't find a gun.
6 He took them up to the mountain and said that
7 is where we threw it, that is where he threw
8 it. Then they cannot find it.

9 These witnesses that change their mind,
10 that Rory Jones relied on in probable cause was
11 the plaintiff's own sister and brother-in-law.
12 The kind of people, close family members, that
13 are the least likely to lie. The courts
14 repeatedly said if you've got eyewitness
15 statement and you don't have any reason to
16 believe that person is lying to you, that in
17 and of itself is sufficient for probable cause
18 even though the first thing we learned in law
19 school is an eyewitness is sometimes the least
20 credible evidence. The courts said what else
21 is a police officer supposed to do.

22 This case is the poster case for why we
23 have a statute of limitations. Ten years from
24 now, some family member or friend could come up
25 and tell the plaintiff, you know what, I lied

1 or the police officer did not question me even
2 though he knew I existed. What you are doing
3 if you accept their argument is you are
4 exposing police officers to perpetual exposure
5 on civil cases.

6 As the court is aware, courts have been
7 extremely protective of that because otherwise
8 you won't get anybody to do police work because
9 they can never say 100 percent sure that a
10 person is guilty when they charge them.
11 Everything she went through, the witnesses
12 changing their testimony, the witnesses saying
13 they were pressured happens in almost every
14 case.

15 By the way, the pressure was -- and he
16 admitted this in his deposition -- I told them
17 if you are found to be hiding evidence for your
18 brother or lying to a police officer in an
19 investigation, you can be charged with a crime.
20 Absolutely correct. Absolutely nothing wrong
21 with him telling them that.

22 That is what she says is fraud,
23 fraudulently obtaining a statement because he's
24 threatening them. Telling somebody if you know
25 something and you don't tell me the truth, I

1 can charge you is not fraudulent. It's true.
2 He admitted he did that. That didn't mean they
3 have to say their brother confessed to doing
4 the murder, or their brother-in-law, in front
5 of them. They changed their story but that's
6 nothing the police officer can do about that.

7 In terms of probable cause, I think there
8 is an admission that it is an element but that
9 somehow the fact that these witnesses changed
10 their mind or that the police officer chose
11 certain evidence over the other somehow
12 vitiates probable cause. There's no basis for
13 that.

14 All I'm saying is we've now had probable
15 cause implied at the warrant stage, determined
16 that the true bill stage and after a judicial
17 officer got to see all of the witnesses, see
18 all of the documents, hear all that she is
19 talking about, said there was more than
20 sufficient evidence. If that's the case, I
21 don't know how a police officer would ever
22 charge someone if it turns out that person is
23 acquitted and they can be sued civilly. Not
24 only sued civilly, but gone after for
25 intentional acts for which they wouldn't even

1 be covered.

2 It's our position that good criminal
3 defense lawyers, good any kind of lawyers can
4 always make their points. They can always find
5 inconsistencies. They can always get witnesses
6 to equivocate. That is what we all do for a
7 living. Probable cause has been determined.
8 It is just like if you've got a jury verdict
9 and then years later a witness change their
10 mind, that doesn't expose the person to a civil
11 suit. Once it's determined, probable cause is
12 determined and that shield is in place and
13 there is nothing in this case that should take
14 that protection away from the police
15 department. Thank you.

16 **MS. FAJARDO:** And I just -- I just want to
17 clarify. My argument is not based on the fact
18 that witnesses changed her testimony in trial.
19 I would concede that happens often in criminal
20 cases but that they changed their testimony and
21 admitted that they were forced into the
22 statements by derendant --

23 **THE COURT:** Well, how do you respond to
24 what Mr. Jolly said that what the officer said
25 is the correct statement of the law. If you

1 purger yourself or you withhold information
2 from us, you can be prosecuted.

3 **MS. FAJARDO:** And I believe if that is
4 true, if that is the only thing that he said,
5 then that is a fair statement. That is the
6 law. I agree with that. It's not our position
7 that that is what was said. I believe he
8 stated in his deposition -- I have a copy of
9 his deposition for the direct. But we feel,
10 and based on what has been said by Mr. and Mrs.
11 Whitener, that it was not just, hey, you are
12 going to be arrested but if you don't tell me
13 something, I'm going to arrest you. To Mr.
14 Whitener, you are going to stay in jail. And
15 to Mrs. Whitener, DSS is coming to get your
16 kids. He admitted that he said obviously if
17 you are arrested, DSS will get your kids.

18 We don't feel -- and it's kind of an
19 ongoing thing -- when credibility is an issue
20 and we have got two different sides of the
21 story, we don't feel that the case needs to be
22 dismissed at summary judgment when that would
23 be a jury question. I believe what he said as
24 far as the trial judge that you had heard
25 everything, I don't think that that is correct.

1 I don't think that a trial judge in a criminal
2 case is in a position to judge the credibility
3 of a witness at that point. Because a witness
4 may not be telling the truth. A witness may
5 say anything on the witness stand.

6 **THE COURT:** Existence or nonexistence of
7 probable cause or the one inference that is in
8 the case for the jury is different from
9 credibility of witnesses. It is a different
10 analysis.

11 **MS. FAJARDO:** I understand, Your Honor. I
12 just wanted to clarify our basis is more on the
13 fraud in the investigation which was revealed
14 at trial which is why we are starting the
15 statute of limitations there.

16 **THE COURT:** Okay.

17 **MS. FAJARDO:** Thank you.

18 **THE COURT:** Thank you very much.

19 **MR. JOLLY:** Thank you, Your Honor.

20 **THE COURT:** Thank you, counsel. I will
21 certainly read all of this and then I will give
22 you my decision.

23 **MS. FAJARDO:** Thank you.

24 **MR. JOLLY:** Thank you.

25 **THE COURT:** Thank you.

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(WHEREUPON, the proceedings conclude at
approximately 5:06 p.m.)

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-37-00138

Lloyd Lash,)
)
Plaintiff,)
)
v.)
)
Seneca Police Department,)
Detective Rory Jones,)
)
Defendants,)
_____)

ORDER GRANTING SUMMARY
JUDGMENT TO THE DEFENDANTS

2013 SEP 10 10 55 AM
CLERK OF COURT
COURT OF COMMON PLEAS
1000 W. BROAD ST.
COLUMBIA, SC 29201
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This matter is before the Court on the Motion for Summary Judgment of Defendants, Seneca Police Department and Detective Rory Jones. For the reasons set forth below, the Court grants summary judgment to both Defendants as to all causes of action raised by the Plaintiff. The Court finds the statute of limitations ran prior to the filing of the Plaintiff's Complaint on all causes of action except malicious prosecution. Furthermore, the Court finds that the Defendants are entitled to summary judgment as to all causes of action, including malicious prosecution, based upon the existence of probable cause to arrest, detain and try the Plaintiff. Additionally, the Court finds that the Plaintiff's claim for intentional infliction of emotional distress is barred by the South Carolina Torts Claim Act.

FACTS PRESENTED

Arthur Roberts was murdered in the City of Seneca on February 10, 2004. On February 25, 2009, the Plaintiff was arrested pursuant to warrants issued by the Municipal Court for the City of Seneca for murder, attempted robbery while armed with a deadly weapon, and possession of a weapon while in the commission of a crime. The Plaintiff was acquitted on all of these charges on March 31, 2011. This suit was initially

filed against Rory Jones and the Oconee County Sheriff's Office on February 20, 2013. The City of Seneca was added as a Defendant in the Amended Complaint on March 15, 2013. The Oconee County Sheriff's Office was subsequently dismissed from the case.

The Complaint contains six causes of action: malicious prosecution, abuse of process, negligence, false arrest, false imprisonment and intentional infliction of emotional distress. The Plaintiff contends that he has always maintained his innocence of any involvement in the murder of Mr. Roberts and argues he was arrested without probable cause because the evidence relied upon to establish probable cause consisted primarily of unreliable statements by his sister (Corina Whitner), his brother in law (Terrell Whitner), and an individual by the name of Andrew Holland. The Plaintiff argues the statements by Mr. and Mrs. Whitner are insufficient to create probable cause because the two of them testified at trial that they signed the statements because they were warned they could be criminally charged for withholding information and, thus, risk losing their children. The Plaintiff argues Holland's statement is insufficient because it was different from previous statements given by him. With regard to the statute of limitations, the Plaintiff argues that the statute did not begin to run until either the date of acquittal or, at the earliest, sometime during the criminal trial when the Whitners testified as to the circumstances of their statements.

The Defendants, for purposes of their motion, acknowledge that the statute of limitations for malicious prosecution would not begin to run until the day of acquittal but argue the statute began to run as to all other causes of action on the day the Plaintiff was arrested. With respect to probable cause, the Defendants argue the Plaintiff's arrest was made pursuant to lawfully obtained warrants; that the Plaintiff was

subsequently indicted by the county grand jury on all charges; and that the trial court in the criminal case, when asked to dismiss the case for insufficient evidence, found that there was more than sufficient evidence to send the case to the jury for determination.

APPLICABLE LAW AND ANALYSIS

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Id.* at 545. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sumner v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). If triable issues exist, those issues must go to the jury. *Young v. South Carolina Department of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

Summary judgment is appropriate when it is clear there is no genuine issue of material fact. *McClanahan v. Richland County Council*, 350 SC 433, 567 SE 2d 240 (2002).

Statute of Limitations

The Defendants contend that all the Plaintiff's causes of actions are barred by the applicable Statute of Limitations except malicious prosecution. This Court agrees. The South Carolina Tort Claims Act is the exclusive remedy for any tort committed by a governmental entity or its employees. S.C. Code Ann. §15-78-70(a) (1976, as amended). Under the Act, the statute of limitations is two years unless a verified claim is filed, which extends the period to three (3) years. S.C. Code Ann. §15-78-100 (1976, as amended). Since no verified claim was filed, the two year statute applies. Even if a verified claim had been filed or the Tort Claims Act did not apply, the regular Statute of Limitations would be three years under S.C. Code Ann. §15-3-530 (4)(1976, as amended) and still would have run before this suit was filed.

With respect to the accrual of a cause of action under the Tort Claims Act, "the statute of limitations begins to run when the Plaintiff should know that he might have a potential claim against another, not when he develops a full blown theory of recovery." *Joubert v. S.C. Department of Social Services*, 341 S.C. 176, 190, 534 S.E. 2d 1,8 (SC App. 2000); S.C. Code Ann. §15-78-110 (1976, as Amended). The date on which discovery should have been made is an objective, not subjective question. *Kruetner v. David*, 320 S.C. 283, 465 S.C. 2d 88 (1995). "A cause of action accrues when the Plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." *Brooks v. City of Winston Salem, N.C.*, 85 F 3d 178 (4th Cir. 1996) (quoting *Nasim v. Warden, Md. House of Correction*, 64 F 3d 951 (4th Cir. 1995) (en banc), cert. denied 516 US 1177 (1996)).

The Plaintiff was arrested on May 25, 2009. On June 29, 2009, the Plaintiff received the State's discovery responses in the criminal case which included the statements of the Whitners and Andrew Holland. The Court finds the statute of limitations as to all causes of action, except malicious prosecution, began on June 29, 2009, when the Plaintiff received the evidence on which his arrest was based. Therefore, under the Tort Claims Act, the statute of limitations expired on June 29, 2011. Since the Plaintiff's Complaint was not filed until February 20, 2013, all causes of action except malicious prosecution are time barred.

Probable Cause

Even if the Plaintiff had timely filed his Complaint the Defendants are entitled to summary judgment as to all causes of action, including malicious prosecution. By Plaintiffs admission, the lack of probable cause is necessary for Plaintiff to establish any of his causes of action. *McBride v. School District of Greenville County*, 389 SC 546, 698 SE 2d 845 (SC App. 2010); *Jordan v. Deese*, 317 SC 260, 452 SE 2d 838 (1995); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 SC 171, 456 SE 2d 429 (SC App. 1995). The Court finds probable cause existed to arrest, detain and try the Plaintiff.

The Plaintiff was arrested pursuant to warrants issued by the municipal court for the City of Seneca. The Fourth Amendment to the U.S. Constitution precludes the issuance of a warrant in the absence of showing of probable cause. 5 Am. Jur. Second Arrest §16.

The Oconee County Grand Jury returned true bill indictments against the Plaintiff on all three (3) of the charges for which warrants were issued. A true bill of indictment

is *prima facie* evidence of probable cause. *McBride v. School District of Greenville County*, 389 SC 546, 698 SE 2d 845 (SC App 2010); *Kinton v. Mobile Home Industries, Inc.*, 274 SC 179, 262 SE2d 727 (1980).

Finally, in the criminal trial of this case, the defense made a motion at the conclusion of the evidence for a directed verdict. The standard for ruling on a motion for a directed verdict by a Defendant in a criminal case requires the trial judge to submit a case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *State v. Mitchell*, 341 SC 406, 409, 535 SE2d 126, 127 (2000) (quoting *State v. Martin*, 340 SC 597, 533 SE2d 572 (2000)). The trial Court determined there was sufficient evidence to allow the case to go to the jury.

Intentional Infliction of Emotional Distress

Additionally, summary judgment is granted as to this cause of action based on the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act does not waive sovereign immunity for the tort of intentional infliction of emotional harm/ emotional distress. Section 15-78-50 states:

Any person who may suffer **loss** proximately caused by a tort of the state, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as herein after provided. (Emphasis added).

Section 15-78-30(f) of the South Carolina Tort Claims Act specifically states that a "loss" does not include the intentional infliction of emotional harm. See *Wilkes v. Young*, 28 F 3d 1362 (4th Cir. 1994) (stating in footnote 4 that "The South Carolina Tort Claims Act would appear to preclude recovery for any loss resulting from intentional

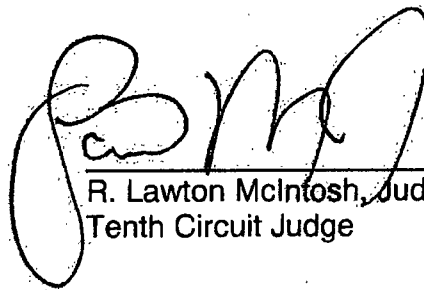
infliction of emotional harm"). Therefore, the City of Seneca and Jones cannot be sued for intentional infliction of emotional distress.

CONCLUSION

Wherefore, based upon the foregoing, this Court grants the Defendants' Motion for Summary Judgment as to all causes of action in the Plaintiff's Complaint.

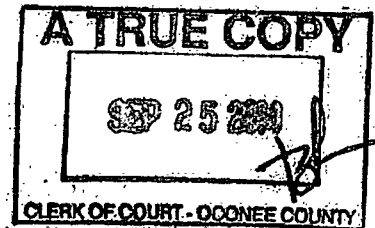
IT IS SO ORDERED.

This 15 day of Sept, 2014.



R. Lawton McIntosh, Judge
Tenth Circuit Judge

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BE
CLERK OF COURT
2014 SEP 25 PM 1 35



Lloyd Lash

Oconee County Sheriff's Department et al 1 41

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

Defendant's Motion for Summary Judgment is granted. Mr. Jolly to prepare formal order within ten (10) days from the date of this Order. *Order instructions e-mailed to Obj's*

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 (List amount(s) below)
		\$
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts ~~and~~ ^{and} ~~in~~ ⁱⁿ 2014 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.**

ATTEST COPY
 CLERK OF COURT - OCONEE COUNTY

[Signature]
 Circuit Court Judge

2155
 Judge Code

7-30-14
 Date

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 26, 2015

A handwritten signature in black ink, appearing to read "E. Franklin-Best", written over a horizontal line.

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