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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Kristi Lea Harrington, Presiding Circuit Court Judge

Appellate Case No. 2016-002024

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OCT 23 2017

SC Court of Appeals

David Scot Lynd,

Appellant

v.

Isle of Palms, Dawn Caldwell, Individually and in her capacity
as an officer of the Isle of Palms Police Department, and South
Carolina Law Enforcement Division,

Respondents

**MOTION TO DISMISS APPEAL AS TO THE ISLE OF PALMS
AND TO STAY THE DEADLINE FOR FILING OF
ISLE OF PALMS' RESPONDENT'S BRIEF
AND DESIGNATION OF MATTER**

Isle of Palms, a municipality, hereby requests this Court dismiss the appeal as to it and to hold in abeyance the deadline for filing the Isle of Palms' responsive brief and designation of matter pending the outcome of this motion. (Technically, the parties are currently awaiting Lynd to fix procedural deficiencies in his brief, but he will presumably fix those defects while this motion is pending.) Mr. Lynd's appeal was not timely as to the Isle of Palms and this is a jurisdictional defect as to the Isle of Palms requiring dismissal.

The Isle of Palms was granted summary judgment by an order of dated September 28, 2015 on the basis of the statute of limitations. (See attached Exhibit A). No appeal was filed within 30 days. On May 11, 2016, summary judgment was granted as to the remaining two defendants---Dawn Caldwell and the South Carolina Law Enforcement Division (SLED). (Exhibit B and C) Lynd did not file a Rule 59 or other motion to reconsider nor did he file an appeal within 30 days of notice of May 11, 2016 orders. On June 22, 2016, the plaintiff filed a Rule 60(b) (3) motion for relief from the orders granting summary judgment to Dawn Caldwell and SLED. (Exhibit D, without voluminous attached supporting documents). That motion was denied on August 3, 2016. (During this entire time, Lynd was represented by counsel and notice to his counsel of the orders was provided to all counsel of record by the Clerk of Court. No appellate time limits are based on when Lynd himself received notice of an Order.)

The plaintiff had a right to file an appeal as to the Isle of Palms within 30 days of notice of the September 28, 2015. The decision was immediately appealable pursuant to S. C. Code Ann. § 14-3-330. As a matter of logic and policy, once one party is granted summary judgment, they are no longer participating in discovery or hearings and an appeal should have to be initiated immediately as to that party.

However, under Rule 54 of the South Carolina Rules of Civil Procedure, there is some basis for Lynd to argue the September 28, 2015 order in favor of Isle of Palms could have been appealed within 30 days of summary judgment being granted to all remaining defendants. However, Lynd did not do that either.

Instead, Mr. Lynd waited over 30 days and then filed a Rule 60(b)(3) motion. Mr. Lynd's 60(b)(3) motion does not and did not extend the time for filing an appeal. Only a timely Rule 59 motion or motion for reconsideration within 10 days would stay the time for filing an appeal. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772 (2004)

And more importantly, Lynd's Rule 60 motion was only directed to Defendants Caldwell and SLED and as to the summary judgment granted to Caldwell and SLED. (This is potentially because the order in favor of the Isle of Palms was now more than a year old which is an absolute time limit for most Rule 60 motions.) Lynd cannot bootstrap an appeal of the September 28, 2015 order granting the Isle of Palms summary judgment via a Rule 60 motion filed against two parties other than the Isle of Palms. And there can be no appeal as to the Isle of Palms from the decision of August 3, 2016 because the motion was not directed to the Isle of Palms.

To accept Lynd's appeal as timely would allow anyone to file a Rule 60 motion within a year of the final judgment then bootstrap an appeal of an otherwise unappealed final order.

The Isle of Palms requests Lynd's appeal as to it be dismissed as untimely and that the portion of the appeal relating to the order of September 28, 2015 be dismissed as untimely. The requirement to timely appeal is a jurisdictional matter which cannot be extended by estoppel or agreement or other arguments. (See Exhibit D) The Rule 60 motion was only directed at Dawn Caldwell and SLED.

CLAWSON and STAUBES, LLC



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Attorney for Respondent, Isle of Palms

Charleston, South Carolina

October 20, 2017

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
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TIMOTHY ALAN DOMIN
126 SEVEN FARMS DR STE 200
DANIEL ISLAND SC 29492-8144

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

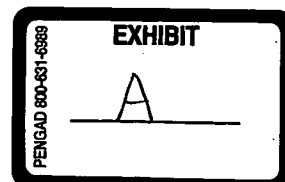
Order/Granting Defnt Isle of Palms' mot for sum judg

CASE NO: 2015CP1002824

David Scot Lynd VS Isle of Palms Police Department

This judgment was entered on the 29th day of September, 2015, and notice mailed first class on Wednesday, September 30, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

David Scot Lynd,

Plaintiff,

vs.

ISLE OF PALMS, DAWN CALDWELL,
individually and in her capacity as an
officer of the Isle of Palm Police
Department, and SOUTH CAROLINA LAW
ENFORCEMENT DIVISION,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-2824

ORDER GRANTING DEFENDANT
ISLE OF PALMS'
MOTION FOR SUMMARY JUDGMENT

FILED
2015 SEP 29 PM 12:01
JULIE B. STUBBS
CLERK OF COURT

This matter came before the Court on September 2, 2015 on Defendant Isle Palms' motion for summary judgment on the grounds of the statute of limitations. This action against the Isle of Palms is governed by the South Carolina Tort Claims Act. S.C. Code § 15-78-10 *et seq.* All torts committed by a government employee while acting within the scope of an employee's official duties must be brought against the government entity. S.C. Code § 15-78-200. The Tort Claims Act provides a two year statute of limitations, unless a verified claim is filed within one year. S.C. Code § 15-78-110. No verified claim was filed in this case within one year, thus a two year statute applies. "[T]he statute of limitations begins to run when a person of common knowledge and experience would be on notice a claim might exist, not when the plaintiff discovers a witness to support or prove the case." Bayle v. SC DOT, 344 S.C. 115, 542 S.E. 2d 736 (Ct. App. 2001).

In the present case, Mr. Lynd asserts that Defendants' acts and omissions resulted in the loss of two jet skis which the Isle of Palms took into its possession in

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2004. Lynd contends he was not provided with proper notice to pick up the jet skis and the destruction or disposition of the jet skis was improper and resulted in a loss to him. He alleges he made a request for records in 2012 and obtained records relating to their alleged destruction. He also alleges police officer Dawn Caldwell made threats to intimidate him from pursuing any matter related to the jet skis. He further alleges false information was put into reports to discredit him and injure his reputation. Mr. Lynd's Complaint was originally filed May 18, 2015. It named the Isle of Palms Police Department instead of the Isle of Palms. The Plaintiff amended his Complaint June 10, 2015 to name the Isle of Palms.

However, the general facts Lynd alleges in his Complaint are the same issues and are based on the same operative facts he raised in e-mails to the Chief of Police of Isle of Palms more than two years prior. In September 2012, Lynd wrote:

"Lynd's Jet skis and Trailer were purportedly destroyed incorrectly, and without supporting documentation, or any form of notice and documentation to Lynd on their destruction as the law requires. . . . Lynd's rights were ignored, and Lynd's property was destroyed at a great loss to Lynd, without his consent or knowledge." (p. 4)

"I must have run across something that was not handled correctly, I recorded detective Caldwell's voice mail and played it for my attorneys, all of which say that it is clear threat of false and manufactured prosecution." (p. 1)

"The supplemental report dated 6-6-12 is not even close to accurate. . . .
. 1. Nobody contacted Lynd that the skies had been dropped off . . . 2.

The insurance fraud charged is an attempt to try to discredit Lynd . . ."

(p. 2)

The Isle of Palms turned Lynd's September 2012 e-mail over to SLED for investigation which ultimately found no evidence of wrongdoing. The Isle of Palms mailed Lynd a letter notifying Lynd that SLED had completed an investigation, that no wrongdoing had been found, and the Isle of Palms considered the matter closed. Lynd wrote back to the Chief of Police on May 16th. Lynd questioned any purported SLED investigation and stated: "I have contacted a dozen or so Charleston attorneys . . . They pretty much all say the same thing that it is a very easy case to win . . . Be sure you inform the City Council, I tried to handle this without a suit, you choose to have one, and threaten and attempt to intimidate me."

It is clear based on the e-mails of Mr. Lynd that he not only had sufficient information to be on notice a claim might exist before May 18, 2013; he threatened to bring suit for these very matters more than two years before the lawsuit was filed.

For the reasons stated, the motion for summary judgment of the Isle of Palms on the issue of the statute of limitations is granted.

Furthermore, the Tort Claims Act provides that if an employee is acting within the scope of his or her official duties, the action can only be brought against the government entity. Thus, as to any claims against Dawn Caldwell, co-defendant, those acts or omissions within the scope of her official duties can only be brought against the Isle of Palms and those claims are time-barred and dismissed.

However, reading the Complaint liberally, it is also alleged in the Complaint that Caldwell acted for her own benefit with respect to converting the jet skis to her own use

and allegedly trying to cover this conversion with false police reports and/or threats. If any of those allegations could be proven, they would be outside the scope of her official duties per the affidavit of the Chief of Police. Any claims outside the scope of Caldwell's official duties can be brought against her individually. Thus, it is not proper to dismiss Dawn Caldwell at this time (and no motion has been filed at this time), but it is proper to dismiss as time-barred those claims within the scope of her official duties which must be brought against the Isle of Palms. Plaintiff may proceed against Caldwell only as to claims that are outside the scope of her official duties.

No motion was filed and I have not made any ruling with respect the statute of limitations as to any claims against the South Carolina Law Enforcement Division (SLED) or Dawn Caldwell individually for allegations of conduct outside the scope of her official duties.

8/R Markley Dennis, Jr.
R. Markley Dennis, Jr.
Presiding Judge

Charleston, South Carolina

September 28, 2015

PM007/4

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.R. D.S. & F.C.
[Signature]
DEPUTY CLERK

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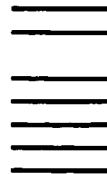
Handwritten signature or name in the middle right area.

Main body of the document containing several lines of extremely faint, illegible text, possibly a letter or official communication.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
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Timothy Alan Domin
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

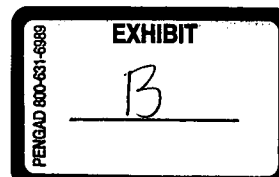
Order/defnt SC Law Enforcement mot for sum judg is granted

CASE NO: 2015CP1002824

David Scot Lynd VS Isle of Palms Police Department

This judgment was entered on the 11th day of May, 2016, and notice mailed first class on Thursday, May 12, 2016, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.



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MAY 16 2016

BY: 20140190

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-2824

David Scot Lynd,

Isle of Palms; Dawn Caldwell individually and in her
 capacity as an officer of the Isle of Palms Police

Department, and South Carolina Law Enforcement
 Division

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	<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 South Carolina Law Enforcement Division's Motion for Summary Judgment filed March 7, 2016 is granted.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

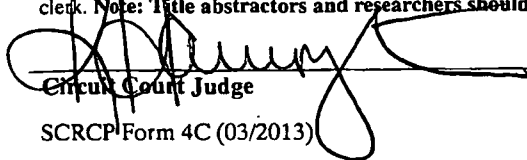
INFORMATION FOR THE JUDGMENT INDEX

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)
N/A		\$
		\$
		\$

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

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


 Circuit Court Judge

2151

Judge Code

May 10, 2016

Date

FILED
 2016 MAY 11 PM 1:57
 CLERK OF COURTS
 ARNOLD
 JULE

did not notify him when the investigation was closed. Following Plaintiff's receipt of the requested records, Plaintiff notified the Chief of Police of the Isle of Palms of his concern that the records he received were insufficient or false. The Chief of Police asked Defendant South Carolina Law Enforcement ("SLED") to investigate. SLED began their investigation in October of 2012 and subsequently closed the investigation in April of 2013. Plaintiff's Complaint alleges causes of action for Conversion, Negligence/Gross Negligence, and Civil Conspiracy against SLED.

Law and Analysis

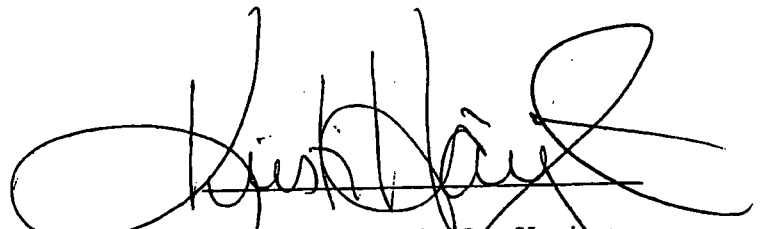
The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq*, provides the "exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). The Tort Claims Act imposes a two year statute of limitations, unless a verified claim is filed within one year. S.C. Code Ann. § 15-78-100(a). The statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct.App. 2001). To determine when the statute begins to run, the court considers whether a person of common knowledge and experience would be put on notice of the potential existence of a claim, based on the circumstances of the case. *Young v. South Carolina Department of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct.App. 1999).

This Court finds Plaintiff was notified by certified letter sent in April of 2013 that SLED had been contacted, conducted an investigation, and had closed the investigation. Plaintiff acknowledged receipt of this letter in an e-mail dated May 16, 2013, in which he stated he had contacted his attorneys and was aware of potential claims he could raise. As a governmental agency, the claims brought against SLED must be filed pursuant to the Tort Claims Act and its

statute of limitations. No verified claim was filed in this case within one year, thus the two year statute applies. The statute of limitations begins to run when a person of common knowledge and experience is on notice of the existence of a potential claim. This Court further finds that based on the circumstances, a person of common knowledge would be put on notice of any potential claims against SLED arising from the factual allegations asserted by Plaintiff when Plaintiff received the letter in April of 2013. Moreover, Plaintiff confirmed his receipt of the letter and stated his belief that a cause of action existed on May 16, 2013. Plaintiff's claims against Defendant SLED were untimely filed on May 18, 2015, after the expiration of the two-year statute of limitations.

Based on the above, it is therefore,

ORDERED, ADJUDGED, AND DECREED that Defendant South Carolina Law Enforcement Division's Motion for Summary Judgment is hereby **GRANTED**.



The Honorable Kristi Lea Harrington
Judge, Ninth Judicial Circuit

May 11, 2016
Charleston, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-2824

David Scot Lynd,

Isle of Palms; Dawn Caldwell individually and in her
capacity as an officer of the Isle of Palms Police

Department, and South Carolina Law Enforcement
Division

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, 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

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 2016 MAY 11 PM 1:57
 CLERK OF COURT
 ISLE OF PALMS

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

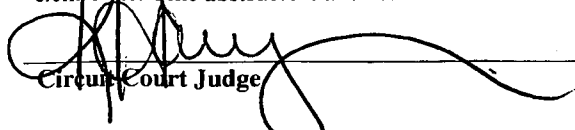
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant Dawn Caldwell's Motion for Summary Judgment filed March 3, 2016 is granted.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

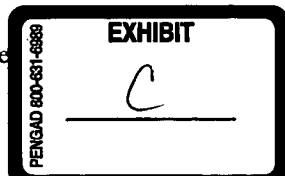
INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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


 Circuit Court Judge

2151
Judge Code

May 10, 2016
Date



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DAVID SCOT LYND,

Plaintiff,

v.

ISLE OF PALMS; DAWN CALDWELL,
INDIVIDUALLY AND IN HER
CAPACITY AS AN OFFICER OF THE
ISLE OF PALMS POLICE DEPARTMENT
AND SOUTH CAROLINA LAW
ENFORCEMENT DIVISION,

Defendants.

IN THE COURT OF COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-2824

ORDER

2016 MAY 11 PM 1:57
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

THIS MATTER COMES BEFORE THE COURT upon Defendant Dawn Caldwell's
Motion for Summary Judgment filed March 3, 2016.

The Court hereby **GRANTS** Defendant's Motion for Summary Judgment.

Factual Background

Plaintiff filed a complaint on May 18, 2015, asserting that Defendants' acts and omissions resulted in the loss of two jet skis which the Isle of Palms took possession of in 2004. Plaintiff contends he was not provided with proper notice to take the jet skis, and the destruction or disposition of the jet skis was improper and resulted in damages to Plaintiff. Plaintiff alleges he requested and obtained records relating to the alleged destruction of the jet skis in 2012. As to Defendant Dawn Caldwell, Plaintiff alleges Defendant Caldwell made threats to prevent him from pursuing this matter and that false information was entered into the reports to discredit and injure his reputation.

Page 1 of 3
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Law and Analysis

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70(a), states in pertinent part: "An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." Subsection (b) provides that government employees acting outside of the scope of official duty or engaging in conduct constituting actual fraud, malice, intent to harm, or a crime involving moral turpitude shall not receive immunity under the statute.

The Tort Claims Act provides a two year statute of limitations, unless a verified claim is filed within one year. S.C. Code Ann. § 15-78-100(a). The statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct.App. 2001). To determine when the statute begins to run, the court considers whether a person of common knowledge and experience would be put on notice of the potential existence of a claim, based on the circumstances of the case. *Young v. South Carolina Department of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct.App. 1999). The two-year statute of limitations also applies to claims brought against government employees not receiving immunity under the statute. See *Flateau v. Harrison*, 355 S.C. 197, 208, 584 S.E.2d 413, 419 (Ct.App. 2003).

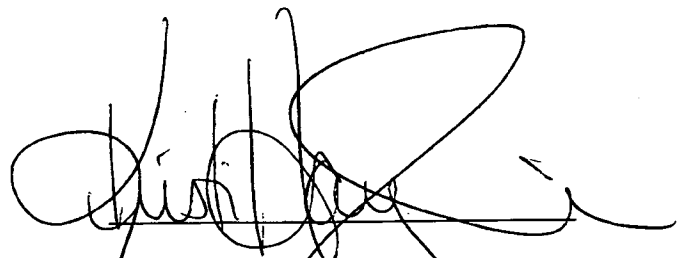
The statute of limitations imposed by the Tort Claims Act applies to Plaintiff's claims against Defendant Caldwell whether asserted against her individually or in her capacity as an officer of the Isle of Palms Police Department. No verified claim was filed in this case within one year, and thus, the two year statute applies. This Court finds the general facts giving rise to the claims asserted by Plaintiff are the same issues and facts raised in e-mails to the Chief of Police of Isle of Palms, sent by Plaintiff in September of 2012. Within these e-mails, Plaintiff

Page 2 of 3
5/11/16

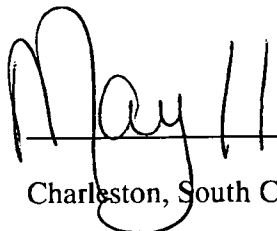
asserts he has contacted his attorneys, and he further states he has been informed him that Defendants' actions demonstrate a threat of false prosecution. The statute of limitations begins to run when a person of common knowledge and experience is on notice of the existence of a potential claim. This Court finds that based on the circumstances and Plaintiff's e-mails, a person of common knowledge would be put on notice of any potential claims against Defendant Caldwell as of September 2012. Moreover, Plaintiff states in his e-mails that he believes a cause of action exists in September of 2012, and thus the statute of limitations began to run at this time. Plaintiff's claims against Defendant Caldwell individually or within her official capacity were untimely filed on May 18, 2015, after the expiration of the statute of limitations.

Based on the above, it is therefore,

ORDERED, ADJUDGED, AND DECREED that Defendant Dawn Caldwell's Motion for Summary Judgment is hereby **GRANTED**.



The Honorable Kristi Lea Harrington
Judge, Ninth Judicial Circuit

 _____, 2016
Charleston, South Carolina

the Court dated May 16, 2013, this Court granted Summary Judgment for Defendants SLED and Caldwell on the issue of the statute of limitations.

4. The Orders granting summary judgment base their reasoning on the following statements Plaintiff made in an email to Chief Buckhannon: Lynd questioned any purported SLED investigation and stated "I have contacted a dozen or so Charleston attorneys... They pretty much all say the same thing that it is a very easy case to win... Be sure you inform the City Council, I tried to handle this without a suit, you choose to have one, and threaten and attempt to intimidate me."

5. The entire email is attached hereto as Exhibit A. In it, Mr. Lynd states, "At no time did you tell me of an investigation by this SLED agency. If so I would have fwd to them the proof I have found... I have contacted Sled and the[y] can find no record of an investigation under my name, Det. Caldwells, yours, or the Jet ski hull I.D. Numbers. So please provide the documentation of this investigation, and findings... In my own discussions with them of starting my own inquiry, I was informed I would have been contacted if one had taken place.... Please fwd to me this investigation record and findings you claim to have..."

6. In the present case, Mr. Lynd began digging into the facts surrounding the disappearance of his personal property by filing a FOIA Request with the Isle of Palms Police Department in late 2012. Contained within that file were numerous discrepancies, including, but not limited to, additions from some eight years after the incident, unsupported claims that the property had been abandoned, declared a total loss, and destroyed.

7. Upon receiving this information, Mr. Lynd went about contacting Chief Buckhannon, who, without Mr. Lynd's knowledge, referred the investigation to SLED. No one from Isle of Palms nor SLED ever informed Mr. Lynd that a SLED investigation was ongoing.

8. The first mention to Mr. Lynd about this SLED investigation occurred on April 26, 2013, wherein Chief Buckhannon informed Mr. Lynd he had turned over the investigation to SLED, and that they had conducted a three month investigation into the matter, found no wrongdoing, and closed the case. In this letter, Chief Buckhannon makes mention of sharing the results of the investigation with the elected and appointed administration of the City, and further states that it is not expected that there will be any further communication regarding this investigation.

9. Chief Buckhannon, while admitting that he shared the results of the investigation with others, refused to provide Mr. Lynd with the results of the investigation outside of stating there was no wrongdoing.

10. As Mr. Lynd's email in response to this letter dated May 16, 2013 makes clear, Mr. Lynd contacted SLED and was informed at that time that no investigation regarding this matter had occurred, if one had been conducted, he would have been contacted, and further requested that since Isle of Palms had the results of the investigation, that they kindly forward to him for review.

11. As of May 16, 2013, Mr. Lynd did possess knowledge of an injury (the loss of his jet skis). However, Mr. Lynd, was not on notice of the specific facts constituting a cause of action against any of the Defendants, including SLED and Caldwell. The Isle of Palms claims that Mr. Lynd abandoned the property, and that they complied with the notice requirements before disposing of said allegedly abandoned property by way of destruction. Mr. Lynd would have gladly welcomed an investigation by SLED officers, and would have cooperated to the fullest extent, had he been apprised of the same.

12. As stated above, Mr. Lynd contacted SLED and requested information regarding the investigation, and was initially told that no such investigation had taken place. He did not officially receive a copy of the SLED investigation until the fall of 2013.

13. Upon receiving a copy of the SLED Investigation, Mr. Lynd learned that SLED did not in fact administratively close their investigation on or before April 26, 2013, as Chief Buckhannon states in his certified letter to Plaintiff. The SLED letter to Isle of Palms is dated *August 5, 2013. See Exhibit B.*

14. Furthermore, the SLED investigation appears to gloss over Defendant Caldwell's admitted failures, despite her providing a voluntary written statement (attached hereto as Exhibit C) contradicting SLED's findings. It must be noted again that Mr. Lynd was never contacted during the pendency of this investigation to verify the information being provided, including most notably, the existence of an insurance adjuster that assessed the property as a total loss, or the alleged letters that were not sent via certified mail, and to a dubiously wrong address. *See Exhibit C.*

15. There are numerous discrepancies between Defendant Caldwell's Voluntary Statement (Exhibit C) and Defendant SLED's Investigative File (attached hereto as Exhibit D). Most notably, Caldwell admits to failing to send Plaintiff required certified letters regarding his property, and states that she met with an insurance adjuster in 2004. *See Exhibit C.* However, SLED's Investigative File makes no mention of Caldwell's failure to send the required notices via certified mail, nor that if Caldwell actually ever did mail them, they did not show up in Isle of Palms' file until 2012 *after* Plaintiff's FOIA Request. *See Exhibit D.* Additionally, Caldwell insists she met with an insurance adjuster in 2004, at the time the jetskis were allegedly

destroyed. *See Exhibit C.* Yet, SLED's Investigative File states "On July, 2012, she met with an insurance adjuster at IOPPD in regards to the skis." *See Exhibit D.* In summary, Defendant Caldwell's Voluntary Statement to SLED does not match up with SLED's findings in this matter.

15. On April 17, 2014, Plaintiff contacted the State of South Carolina Office of the Crime Victims' Ombudsman. *See Exhibit E.* Based upon the attached document, their investigation appears to be limited to contact with Isle of Palms' legal counsel, and nothing further.

15. South Carolina Code Ann. § 15-78-110 provides a two year statute of limitations for claims against State Agencies. Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. *Dean v. Ruscan Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996); S.C.Code Ann. § 15-3- 535(Supp.2004). *See also Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct.App.1997).

16. Under § 15-3-535, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. *True v. Monteith*, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997). The limitations period is intended to run against those who are neglectful of their rights and who fail to exercise reasonable diligence in enforcing their rights; however, it is not the policy of the law to unjustly deprive an injured person of a remedy. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

17. At the hearing on Defendant's Motion for Summary Judgment, counsel for Defendants read into the record mere portions of the attached email wherein Plaintiff angrily responds to Chief Buckhannon's short and avoidant investigation.

18. This cases involves allegations of fraud and a civil conspiracy against the above-named Defendants. Defendant IOP surreptitiously turning over the investigation to SLED without informing the aggrieved party so that he may cooperate in the investigation, and SLED's early denials of the existence of the same, and subsequent findings that are not in line with Defendant Caldwell's Voluntary Statement should give this Court pause for concern, and at a minimum, should allow for relief from the grant of Summary Judgment to Defendants SLED and Caldwell.

19. If this Court were to allow the granting of summary judgment to stand, it would be a tacit approval of Defendants' conduct, including, but not limited to supplementing an eight (8) year old police file, failing to run VIN numbers on titled property, failing to provide any notice, much less notice by certified mail, which was required under the law, that they were in possession of Plaintiff's property, fabricating an insurance adjuster's existence and report of total loss to the property, as well as destruction documents.

WHEREFORE PLAINTIFF DAVID SCOT LYND respectfully moves this Court to relieve him of its opinion and order in this regard and to vacate the order to reflect the denial of Defendants' Motions for Summary Judgment.

[Signature Block Follows on Next Page]

Respectfully submitted,

DANIEL M. BRADLEY LAW FIRM, LLC



Brent B. Greenberg (SC Bar # 100100)

875 Lowcountry Blvd., Ste. 210

PO Box 2661

Mt. Pleasant, SC 29465

Tel: (843) 424-9817

Fax: (843) 654-1102

Attorneys for Plaintiff

June 21, 2016
Mt. Pleasant, SC

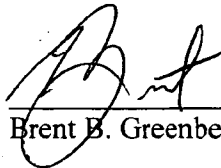
CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of June, 2016, served a copy of the foregoing *Plaintiff's Notice of Motion & Motion for Relief from Judgment Pursuant to Rule 60(B)(3)* on the following by placing same in the United States Mail, postage prepaid to:

SENN LEGAL, LLC
Christopher T. Dorsel, Esq.
PO Box 12279
Charleston SC 29422
ATTORNEY FOR SLED

MORRISON LAW FIRM, LLC
David L. Morrison, Esq.
7453 Irmo Dr., Ste. B
Columbia, SC 29212
ATTORNEY FOR DAWN CALDWELL

The Honorable Kristi Lea Harrington
300B California Ave.
Moncks Corner, SC 29461
PRESIDING JUDGE AT SUMMARY JUDGMENT
HEARING



Brent B. Greenberg, Esquire

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-2824

David Scot Lynd,

Dawn Caldwell, Individually and in her capacity as an
 officer of the Isle of Palms Police Department, and

PLAINTIFF(S)

South Carolina Law Enforcement Division
 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

FILED
 2016 AUG - 30
 PM 4:36
 JULIE R. ROBERTSON
 CLERK OF COURT

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: The Plaintiffs' Motion for Relief from Orders Granting Summary Judgment to Defendants South Carolina Law Enforcement and Dawn Caldwell is denied as untimely filed.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

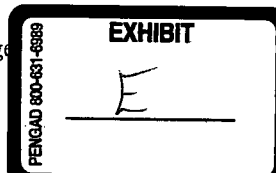
INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

[Signature]
 Circuit Court Judge

2151
 Judge Code

July 28, 2016
 Date



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-2824

David Scot Lynd,

Dawn Caldwell, Individually and in her capacity as an
officer of the Isle of Palms Police Department, and

PLAINTIFF(S)

South Carolina Law Enforcement Division
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.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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

FILED
 2016 AUG - 3
 PM 4:36
 JULIE W. STRONG
 CLERK OF COURT

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

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

David Scot Lynd
 Circuit Court Judge

2151
Judge Code

July 28, 2016
Date

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Kristi Lea Harrington, Presiding Circuit Court Judge

Appellate Case No. 2016-002024

RECEIVED
OCT 23 2017
SC Court of Appeals

David Scot Lynd,

Appellant

v.

Isle of Palms, Dawn Caldwell, Individually and in her capacity
as an officer of the Isle of Palms Police Department, and South
Carolina Law Enforcement Division,

Respondents

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2007, I have mailed Respondent's Motion To Dismiss Appeal As To The Isle Of Palms And To Stay The Deadline For Filing Of Isle Of Palms' Respondent's Brief And Designation Of Matter, regular first class mail, postage prepaid, to:

David Scot Lynd
2605 Rustown
Mesquite, TX 75150

Christopher Dorsel, Esquire
Senn Legal, LLC
PO Box 12279
Charleston, SC 29422-2279

David L. Morrison, Esquire
Morrison Law Firm, LLC
7453 Irmo Dr., Ste. B
Columbia, SC 29212-8698

CLAWSON and STAUBES, LLC



Timothy A. Domin
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126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
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Attorney for Respondent, Isle of Palms

Charleston, South Carolina

**CLAWSON
AND
STAUBES**
LLC

Timothy A. Domin
Licensed in SC
tdomin@clawsonandstaubes.com

October 20, 2017

File No.: 20170190.000

VIA US MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RECEIVED
OCT 23 2017
SC Court of Appeals

Re: David Lynd v. Isle of Palms, Dawn Caldwell, Individually and in her capacity as an officer of the Isle of Palms Police Department, and South Carolina Law Enforcement Division
Case No.: 2016-002024

Dear Ms. Kitchings:

Enclosed please find the original and a copy of Respondent's Motion to Dismiss Appeal as to the Isle of Palms and to Stay the Deadline for Filing of Isle of Palms' Respondent's Brief and Designation of Matter, along with the Certificate of Service, in the above-referenced case. Please file the original along with the other documents in this case and return the filed stamped copy to our office in the enclosed self-addressed stamped envelope. Also enclosed is our check for \$25.00 for filing fees. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC



Timothy A. Domin

TAD/paa
Enclosures

cc: Mr. David Lynd (Via e-mail & US Mail & w/enclosures)
David L. Morrison, Esquire (Via US Mail & w/enclosures)
Christopher Dorsel, Esquire (Via US Mail & w/enclosures)

RECEIVED

OCT 23 2017

SC Court of Appeals

**CLAWSON
AND STAUBES**
LLC

126 Seven Farms Drive Suite 200
Charleston, SC 29492-8144
File No.: 20140190.000

The Honorable Jenny Abbott
Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

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10/20/2017

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\$03.50⁰⁰



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