

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

RECEIVED
OCT 25 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.

**RESPONDENT DAWN CALDWELL'S MOTION TO DISMISS APPEAL AS TO DAWN
CALDWELL IN HER INDIVIDUAL CAPACITY, OR IN THE ALTERNATIVE,
MOTION FOR EXTENSION OF TIME TO FILE RESPONDENT'S BRIEF AND
DESIGNATION OF MATTER**

The Respondent, Dawn Caldwell, in her individual capacity, respectfully requests this Court, pursuant to Rule 240(a), SCACR, to dismiss the appeal of Appellant and to hold in abeyance the deadline for filing Respondent Caldwell's initial brief and designation of matter pending the outcome of this motion. In the alternative, this Respondent respectfully moves for an Order granting a thirty day extension of time to file Respondent's initial brief and designation of matter.

PROCEDURAL HISTORY

Appellant filed his Complaint in the Charleston County Court of Common Pleas on May 18, 2015. **Exhibit A.** Appellant alleged conversion, negligence/gross negligence, and civil conspiracy. **ID.** The Isle of Palms was granted summary judgment by an Order dated September 28, 2015 on the basis of the statute of limitations. **Exhibit B.** After a hearing on April 26, 2016, the Circuit Court, on May 11, 2016, granted summary judgment to Respondent Dawn Caldwell and the South Carolina Law Enforcement Division (SLED). **Exhibit C and D.**

On June 22, 2016, the Appellant filed a Notice of Motion and Motion for Relief from Orders Granting Summary Judgment to Defendants South Carolina Law Enforcement Division and Dawn Caldwell pursuant to Rule 60(b)(3) (hereinafter "Motion for Relief"). **Exhibit E.** That motion was denied on August 3, 2016 as being untimely filed. **Exhibit F.** On August 29, 2016, Appellant filed a notice of appeal of the orders on September 28, 2015, an "unknown date, (order not entered as of yet)" and included that the Appellant had "received written notice of entry of this order on Aug. 4, 2016." **Exhibit G.**

ARGUMENT

The Appellant had a right to file an appeal as to this Respondent within thirty (30) days of notice of the May 11, 2016 Order. The decision was immediately appealable pursuant to S.C. Code Ann. § 14-3-330. Further, under Rule 203(b), SCACR, "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."

Appellant did not file a Motion to Alter or Amend a Judgment, under Rule 59(e), SCRCR, within ten days of the receipt of the Order. Only a timely Rule 59 motion or motion for

reconsideration within ten (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).

Appellant, however, waited over thirty (30) days and then filed what he termed as a Rule 60(b)(3), SCRCF, motion. Appellant's Rule 60(b)(3) motion does not and did not extend the time for filing an appeal. When Appellant's Motion for Relief was denied on August 4, 2016, Appellant then filed a Notice of Appeal on August 29, 2016, within the thirty days allowable for an appeal. Even though the Appellant's Notice of Appeal indicates that he sought to appeal all of the Orders granting summary judgment, the only order that Appellant timely appealed was the Order denying his Motion for Relief.

A review of the Motion for Relief, **Exhibit E**, in this case indicates that although Appellant labels the Motion for Relief as one filed under Rule 60(b)(3), SCRCF, in actuality, it is an untimely Rule 59(e) motion. This is apparent when the Motion for Relief is compared with Appellant's Notice of Motion and Motion to Reconsider filed October 13, 2015 (hereinafter, "Motion to Reconsider"). **Exhibit H**. These two motions are nearly identical and provide the same basis for relief. Namely, Appellant argues in both motions that there was fraud and civil conspiracy that gave rise to Appellant's causes of action.

In the Motion to Reconsider, Appellant clearly states that the motion is filed pursuant to Rule 59(e). The subsequently filed Motion for Relief is nearly identical, but states that it is filed pursuant to Rule 60(b)(3) (presumably because it was filed well past the ten day time limit for a Rule 59(e) motion). Simply because the Motion for Relief asserts that it is made pursuant to Rule 60(b)(3) does not make it so. This is apparent in the Order denying the motion, in which the court found that the motion was not timely filed. For this reason, Appellant did not timely

appeal the Order granting Summary Judgment and did not timely file a Rule 59(e) motion, and therefore, this appeal should be dismissed.

Even assuming the Motion for Relief was actually a proper Rule 60(b)(3) motion, this appeal should still be dismissed. Appellant did not appeal the order granting summary judgment to Dawn Caldwell within the deadlines imposed by our appellate court rules. See Rule 203(b), SCACR. A Rule 60(b), SCRCR, motion does not toll the time to file a notice of appeal. Brown v. Harper, No. 2004-UP-368, 2004 WL 6331473, at *2 (Ct. App. June 10, 2004) (citing Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 5, 518 S.E.2d 56, 59 (Ct. App. 1999)).

Appellant cannot use a Rule 60(b), SCRCR, motion as a substitute for an appeal. See Tench v. S.C. Dept. of Educ., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001) (reversing the trial court's grant of a Rule 60(b), SCRCR, motion because "[a] party may not invoke this rule where it could have pursued the issue on appeal") (citing Smith Companies of Greenville v. Hayes, 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993) (finding relief from judgment is not a substitute for appeal from final judgment, particularly when it is clear that the party seeking relief could have litigated at trial and on appeal claims he now makes by motion)).

In this case, summary judgment was granted to Dawn Caldwell in both her official and individual capacities. Appellant did not file a Rule 59(e) motion (which he could have) and Appellant did not file a timely appeal (which he could have).¹ Rather, Appellant attempted to utilize a Rule 60(b) motion as a substitute for filing an appeal and is now appealing the denial of that 60(b) motion. Therefore, what we are left with essentially is an appeal of a denial of a Rule 60(b) motion that was improperly brought in the first place. This should not be allowed under our court rules and case law, and this appeal should be dismissed based on these ground.

¹ There is no allegation (or evidence) that any actions by Respondents kept Appellant from timely making a Motion to Alter or Amend or from filing a timely appeal.

For all of the reasons cited above, Respondent Dawn Caldwell, in her individual capacity, respectfully requests that this Court grant her motion to dismiss the appeal. If this Court denies Respondent Caldwell's motion to dismiss, Respondent respectfully requests a thirty day extension from the date of the Order to file her initial brief and designation of matter.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

J. Jordan Johnson

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

E-mail: jordan@dmorrison-law.com

ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

October 25, 2017

Exhibit A

David Scot Lynd v. Isle of Palms, et al.
Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

DAVID SCOT LYND,
Plaintiff,

v.

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

Defendants.

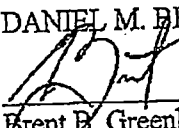
Case No.: 2015-CP-10-2824

SUMMONS
(Jury Trial Demanded)
JULIE ARASTRONG
CLERK OF COURT
2015 MAY 18 PM 2:59
FILED

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed attorney at his office at PO Box 2061, Mt. Pleasant, SC 29465 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this action.

DANIEL M. BRADLEY LAW FIRM, LLC


Brent B. Greenberg (SC Bar # 100100)
875 Lowcountry Blvd., Ste. 210
PO Box 2061
Mt. Pleasant, SC 29465
Tel: (843) 424-9817
Fax: (843) 654-1102

Mt. Pleasant, SC
May 16, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

DAVID SCOT LYND,

Plaintiff,

v.

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

Defendants.

Case No.: 2015-CP-16-2824

**COMPLAINT
(Jury Trial Demanded)**

FILED
2015 MAY 18 PM 2:58
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, complaining of the Defendants, states as follows:

1. The Plaintiff, David Scot Lynd, is a citizen and resident of Mesquite, State of Texas.
2. Defendant Isle of Palms Police Department (hereinafter referred to as "IOPPD") is a municipal police department located in Charleston County, State of South Carolina.
3. Upon information and belief, Defendant Dawn Caldwell (hereinafter referred to as "Caldwell") was at the time of the incidents complained of herein, an employee of IOPPD in that she retained the rank of Detective Dawn Caldwell while also serving as IOPPD's evidence technician. Upon information and belief, she is a citizen and resident of Charleston County, State of South Carolina.
4. Defendant South Carolina Law Enforcement Division (hereinafter referred to as "SLED") is an administrative law enforcement department of the State of South Carolina, created and acting under and by virtue of S.C. Code Ann. § 23-3-10.

5. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each of the defendants was the agent, employee, co-conspirator, joint venturer, partner, principal, employer, distributor, and/or dealer of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of the agency and employment.

6. Venue is proper with this Court because a substantial part of the events giving rise to the claims occurred in Charleston County.

7. This Court has jurisdiction over the parties and the subject matter of this action.

10. On or before 2002, Plaintiff David Lynd was the rightful owner of two (2) jet skis that he had purchased in Mesquite, Texas. Plaintiff stored these water vehicles in a storage warehouse. On January 11, 2004, Plaintiff reported the theft of these jet skis to the Garland Police Department in Texas.

11. Upon information and belief, the Garland Police Department charged Norbert Hall with the theft of Plaintiff's jet skis. Through his attorney, Norbert Hall provided an affidavit to the Garland PD stating that the jet skis were at a specific location on Isle of Palms, South Carolina. Based on the above, upon information and belief, the Garland Police Department thereafter dropped the charges against Mr. Hall and removed the jet skis in question from the NCIC database.

12. Upon receiving this information, Plaintiff spoke with Defendant Caldwell via telephone. Defendant Caldwell claimed to have gone to the address, but did not locate the stolen jet skis. Defendant Caldwell informed Plaintiff and the local Garland Police Department by letter that the stolen property was not at the address stated in the affidavit in May of 2004 and advised there was nothing more she could do. This was the last contact Plaintiff had with Defendant Caldwell until 2012.

13. Shortly thereafter, on or around June 1, 2004, Norbert Hall was stopped by Defendant Caldwell and the IOPPD on Isle of Palms. In his possession were two (2) jet skis fitting the description provided by Plaintiff. Defendant Caldwell claims to have run the serial numbers and hull numbers through the NCIC database. However, had Defendant Caldwell

actually run these numbers, she would have seen they were registered to Plaintiff, no longer listed as stolen, and would have arranged to have them returned to Texas by either Mr. Hall himself, or through the IOPPD. Instead, Defendant Caldwell took them into custody and impounded the vehicles. However, it does not appear that either Defendants Caldwell nor IOPPD ran the jet skis VIN numbers, or follow other requirements for titled property, which also would have secured Plaintiff's property. No other communication regarding the jet skis was ever provided to Plaintiff.

14. In 2012, Plaintiff, attempting to remove the two (2) jet skis from his name as assets in Texas, filed a FOIA request with the Defendant IOPPD wherein he requested the file # 04-18619.

15. Plaintiff's FOIA request went to Tracy Waldron, secretary to the IOPPD Chief of Police. Contained within her file are inter-office emails to Defendant Caldwell explaining that certain documents, including, but not limited to, destruction documents, were not in the file. Also contained therein is a reply from Defendant Caldwell stating that she has the documents on her personal flash drive, will add them to the file, and deal with Plaintiff personally.

16. Shortly thereafter, Plaintiff received a voicemail from Defendant Caldwell wherein she threatened him with a false and manufactured prosecution if he continued digging into this matter.

17. Eventually, Defendant IOPPD complied with Plaintiff's FOIA request and provided him with file # 04-18619. The file itself is dated June 1, 2004. However, the page dates jump back and forth. Upon information and belief, Plaintiff alleges that Defendant Caldwell altered this particular file on September 11, 2012. Each page of the report, though in numeric order, has different dates accompanying its entry. Pages one and three for instance have the date 6-1-2004. Pages 2 and 4 have the date 9-11-2012. Most importantly, Defendant Caldwell and IOPPD added two (2) additional pages (five and six) to the file on 9-11-2012.

18. On pages five and six of the file, Defendant Caldwell and IOPPD added a "Supplementary Report," on September 11, 2012, roughly eight (8) years after the initial report. Despite eight years having passed from the original date, Defendants Caldwell and IOPPD seem

to have a precise recollection of the events described therein. However, as will be evident from her later interview with SLED agents, Defendant Caldwell admits to fabricating a majority of the information contained on pages five and six.

19. Defendant Caldwell claims to have sent Plaintiff three (3) letters. Again, these purported letters were not present in the original file, but later altered and added by Defendants on September 11, 2012. The letters appear to be an attempt to notify Plaintiff that he had ninety (90) days to pick up his property. These letters are purportedly dated July 23, 2004, August 20, 2004, and October 28, 2004. They were allegedly sent to Plaintiff at the following address: 2605 Rustown Dr., Garland, TX 75150.

20. Contrary to statutory guidelines and standard procedure, however, Defendant Caldwell did not mail these three letters via certified mail. Furthermore, Defendant Caldwell and IOPPD sent these alleged letters to the wrong address despite having his correct address on file. Nevertheless, the file does not contain any indication these items were returned to Defendant IOPPD or Defendant Caldwell as undeliverable, as they would have had they been sent, since the address is nonexistent.

21. Defendant Caldwell and IOPPD provided a false rendition of the events that occurred in 2004 in their Supplementary Report dated September 11, 2012. Therein, they claim to have spoken with Detective Smith of the Garland Police Department. They claim that this detective was provided with a Bill of Sale showing that Plaintiff had sold the water crafts to Norbert Hall, and that there was an open insurance fraud case against Plaintiff for falsely reporting these jet skis stolen. The entirety of this assertion is false. Despite claiming to have evidence of a Bill of Sale, none is in the file or has ever been provided in this matter. Furthermore, Plaintiff was never under investigation for insurance fraud in Texas related to these jet skis. In fact, the particular water craft that are the subject of this action were not insured, so it was impossible for Plaintiff to even make an insured claim.

22. Furthermore, in their Supplementary Report, Defendant Caldwell asserts that she

had telephone contact with Plaintiff on June 24, 2004 advising him the water craft were at the IOPPD office, and that he needed to make arrangements to pick them up, that the condition of the jet skis was poor, and that he'd likely need a flat-bed tow truck to transport them, as "the trailer, and most importantly the axle was rusted to the point of breaking." See File #04-18619. pages 5-6.

23. Defendant Caldwell claims Plaintiff stated he was not coming to South Carolina to retrieve his property, which is also patently false.

24. Most importantly, Defendants Caldwell and IOPPD's rendition of the alleged facts in their Supplementary Report states that Defendant Caldwell met with an insurance adjuster on behalf of Plaintiff on July 21, 2004. As stated earlier, these particular water craft were not insured at the time of loss. No such insurance adjuster would have come out to Isle of Palms on behalf of Plaintiff. Plaintiff was not, and did not make any such insurance claim on this property. Regardless of the above, the file number does not contain any indication that any insurance adjuster ever saw the property, found it to be a total loss, or anything of the sort. This is further proof that Defendants Caldwell and IOPPD created a false rendition of the facts some eight years after the fact to cover up their malfeasance.

25. Upon receiving the file, Plaintiff requested that Isle of Palms Police Chief Buckhannon further look into this matter. On October 18, 2012, Chief Buckhannon requested that SLED review this particular case, referenced as OCA # 04-18619.

26. Defendant SLED did open an investigation, but did not notify Plaintiff of said investigation, nor did they interview him. Instead, they appear to have conducted an investigation in secret wherein they interviewed only Defendant Dawn Caldwell and reviewed file # 04-18619 without even so much as mentioning the addition of documents and reports some eight (8) years after the fact, Defendants' failure to comply with statutory notice requirements, or the numerous discrepancies contained in Defendants' many documented accounts of the events that transpired.

27. Defendant Caldwell provided a Statement to Defendant SLED on January 8, 2013 in connection with the SLED Investigation. There are numerous inconsistencies between this account, and the account provided on September 11, 2012 in the Supplementary Report.

28. On the same date, Defendant Caldwell provided an Affidavit of Fact to the Texas Parks & Wildlife Department. This statement also conflicts with her other renditions.

29. On or about August 5, 2013, Defendant SLED notified Defendants Caldwell and IOPPD that they had administratively closed their investigation without finding any wrongdoing. However, Plaintiff was not provided the same notice.

30. Upon information and belief, Defendant IOPPD continued having issues with evidence missing from their evidence room / locker, and proceeded to audit their evidence room. Pursuant to their findings, on or about July 8, 2014, Defendant Caldwell was arrested by Defendant SLED for allegedly selling evidence, and her service weapon, to a pawn shop while she was still employed with the police department. She was charged with breach of trust with fraudulent intent over \$2,000 and misconduct in office in connection with alleged falsification of items while she worked as an evidence technician for the department. Court records indicate that Defendant Caldwell, while employed as a police captain with the IOPPD, fraudulently pawned and sold a number of items taken from the police department's evidence room to the Money Man Pawn Shop. Nevertheless, during the pendency of this second SLED investigation into her malfeasance, IOPPD arranged to have Defendant Caldwell transferred to another department, the North Charleston Police Department, instead of punishing her themselves.

31. As a direct and proximate result of the numerous negligent acts and omissions by Defendant Caldwell, Defendant IOPPD, and Defendant SLED, Plaintiff's property has been concealed, destroyed, or otherwise converted. Plaintiff has suffered a loss of property, and will continue to incur such damages and costs to investigate this matter. Plaintiff is entitled to an award of all actual, incidental, consequential, and punitive damages.

FOR A FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS
(Conversion)

32. Plaintiffs reallege paragraphs 1 through 31 as though fully set forth in this First Count.

33. Defendants admittedly took unlawful possession of the personal property that is

the subject of this action.

34. Defendants have maliciously converted Plaintiff's personal property in that they either allowed for Plaintiff's property to be destroyed without providing him with the required statutory notice requirements, sold Plaintiff's property to an unknown buyer, or otherwise improperly disposed of said personal property.

35. Plaintiff seeks monetary compensation for the value of the personal property that Defendants willfully converted.

FOR A SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS
(Negligence / Gross Negligence)

36. Plaintiffs reallege paragraphs 1 through 35 as though fully set forth in this Second Count.

37. Defendants admittedly took unlawful possession of the personal property that is the subject of this action.

38. Defendants failed to comply with their own standard practices and procedures in safeguarding Plaintiff's personal property as described herein.

39. When confronted about their negligent acts and omissions, Defendant Caldwell and IOPPD falsified police records and fabricated an insurance fraud situation in an attempt to discourage Plaintiff from pursuing the recovery of his personal property.

40. As a result of Defendants' willful breaches of duty, Plaintiff has now been deprived of his personal property. Plaintiff is entitled to actual damages against Defendants in an amount to be determined by the trier of fact, and an award of punitive damages in an amount sufficient to impress upon Defendants the seriousness of their conduct and to deter such similar conduct in the future.

FOR A THIRD CAUSE OF ACTION AS TO DEFENDANTS IOPPD AND
CALDWELL
(Fraud)

41. Plaintiffs reallege paragraphs 1 through 40 as though fully set forth in this Third Count.

42. In an effort to discourage Plaintiff from digging into these matters, Defendants have admittedly falsified police records some eight (8) years after the fact.

43. The representations made by Defendants were false and material.

44. Defendants made these representations with the intent that the Plaintiff act in reliance upon them.

45. Plaintiff, while questioning the authenticity of the records, was ignorant of the falsity of the representations, and had the right to rely upon the fact that Defendants would accurately and honestly report the true facts of the open investigation.

46. Plaintiff acted in reliance upon Defendants false and fraudulent misrepresentations.

47. As a direct result of the Defendants' fraudulent conduct, the Plaintiff has been injured by, among other things, being deprived of his personal property, he has experienced severe emotional distress.

48. Plaintiff is entitled to actual damages against Defendants in an amount to be determined by the trier of fact, and an award of punitive damages in an amount sufficient to impress upon Defendants the seriousness of their conduct and to deter such similar conduct in the future.

FOR A FOURTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Civil Conspiracy)

49. Plaintiffs reallege paragraphs 1 through 48 as though fully set forth in this Fourth Count.

50. Defendants Caldwell, IOPPD and SLED acted in concert or combination to defraud and cause monetary injury to Plaintiff.

51. Defendants' actions resulted in injury inflicted upon the Plaintiff by Defendants pursuant to a common scheme.

52. Plaintiff has suffered special damages in that he has experienced severe emotional

distress and financial hardship because of the conspiracy itself.

53. Plaintiff is entitled to recover actual, compensatory, incidental and punitive damages along with attorney's fees and costs.

FOR A FIFTH CAUSE OF ACTION AS TO DEFENDANTS IOPPD AND CALDWELL
(Defamation/Libel/Slander)

54. Plaintiffs reallege paragraphs 1 through 53 as though fully set forth in this Fifth Count.

55. Defendant Caldwell has maliciously falsified police reports as described herein. She has willfully and intentionally manufactured a scenario in which she wrongfully accuses Plaintiff of being involved in an insurance fraud scheme, despite admittedly having no first hand knowledge of that fact.

56. Defendant Caldwell and IOPPD, with reckless disregard for the truth, accuse Plaintiff of attempting to sell the personal property to another individual, only to later claim the property was stolen, in an attempt to collect insurance proceeds. They claim in official police records to have met with and discussed the personal property at length with an insurance adjuster that does not exist.

57. When pressed on their inconsistencies, Defendant Caldwell, acting within the scope of her employment as an IOPPD Officer, called Plaintiff and threatened to have him prosecuted if he continued digging.

58. Defendants' actions resulted in injury inflicted upon the Plaintiff by Defendants in that they have caused serious and irreprehensible damage to his reputation. Plaintiff has suffered further damages in that he has experienced severe emotional distress as a result of these false statements.

59. Plaintiff is entitled to recover actual, compensatory, incidental and punitive damages along with attorney's fees and costs.

WHEREFORE, Plaintiff prays that:

- A. Plaintiff recovers actual damages, consequential damages, and punitive damages against all Defendants or, alternatively, against some of the Defendants in an amount to be determined by the trier of fact;
- B. Plaintiff recovers the costs and expense of this suit;
- C. Plaintiff recovers prejudgment interest and attorney's fees; and
- D. Plaintiff be awarded any other remedy it is entitled to at law or at equity.

Respectfully submitted,

DANIEL M. BRADLEY LAW FIRM, LLC



Brent B. Greenberg, Esquire (#100100)
875 Lowcountry Blvd., Ste. 210
PO Box 2061
Mt. Pleasant, SC 29465
Tel: (843) 424-9817
Fax: (843) 654-1102
ATTORNEYS FOR PLAINTIFFS

May 16, 2015
Mt. Pleasant, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
DAVID SCOT LYND,

PLAINTIFF,

Vs.


ISLE OF PALMS POLICE
DEPARTMENT, DAWN CALDWELL,
individually and in her capacity as an
officer of the law, and SOUTH
CAROLINA LAW ENFORCEMENT
DIVISION,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-2824

FILED
2015 MAY 18 PM 3:00
JULIE S. KRISTINA
CLERK OF COURT
BY _____
VERIFICATION

PERSONALLY appeared before me David Scot Lynd who, being first duly sworn, deposes and says that he is the Plaintiff in the within action; that he has read the foregoing VERIFIED COMPLAINT and that all matters alleged therein are true to the best of his knowledge, save and except those matters alleged on information and belief, and, as to those, he believes them to be true.


David Scot Lynd

SWORN to before me this
18th day of May, 2015

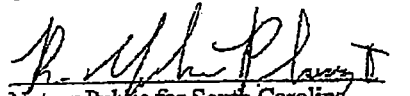

Notary Public for South Carolina
My Commission Expires: 3/10/2018

Exhibit B

David Scot Lynd v. Isle of Palms, et al.

Appellate Case No. 2016-002024

Case No. 15-CP-10-2824

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
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

RMDT/1

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.

PM 12/2

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.

8/12 Markley Dennis, Jr.
R. Markley Dennis, Jr.
Presiding Judge

Charleston, South Carolina
September 28, 2015

PM001/4

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

Exhibit C

David Scot Lynd v. Isle of Palms, et al.
Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

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 41a, 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 MAY 11 PM 1:57
BY JULIE STRONG
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: 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 :

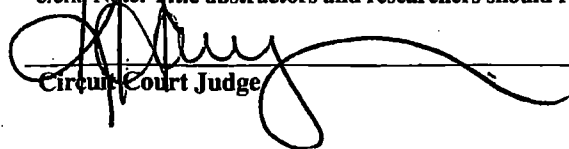
INFORMATION FOR THE JUDGMENT INDEX

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

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).

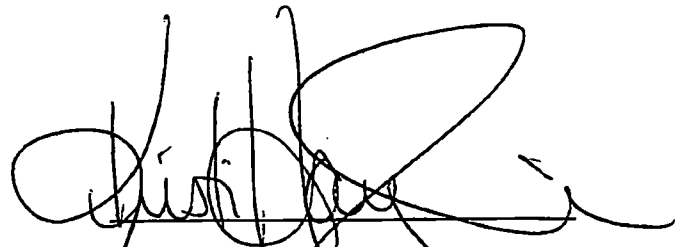
The statute of limitations imposed by the Tort Claims Act applies to Plaintiff's claims against Defendant Caldwell whether asserted against her individually or in her capacity as an officer of the Isle of Palms Police Department. No verified claim was filed in this case within one year, and thus, the 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

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 Narrington
Judge, Ninth Judicial Circuit

May 11, 2016
Charleston, South Carolina

Exhibit D

David Scot Lynd v. Isle of Palms, et al.
Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

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 : Plaintiff or Defendant
 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 :

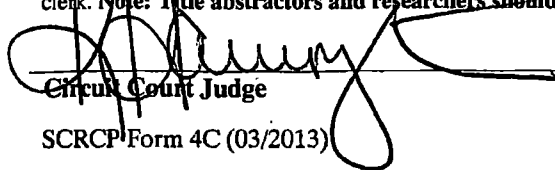
INFORMATION FOR THE JUDGMENT INDEX

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
SCRPC Form 4C (03/2013)

2151
Judge Code

May 10, 2016
Date

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

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

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

THIS MATTER COMES BEFORE THE COURT upon Defendant South Carolina Law Enforcement Division's Motion for Summary Judgment filed March 7, 2016.

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

Factual Background

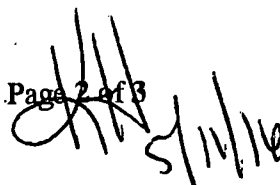
Plaintiff filed a complaint on May 18, 2015, asserting that Defendants' acts and omissions resulted in the loss of two jet skis which the Isle of Palms took possession of in 2004. Plaintiff contends he was not provided with proper notice to take the jet skis, and the destruction or disposition of the 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 South Carolina Law Enforcement Division ("SLED"), Plaintiff's Complaint alleges SLED did not notify him of their investigation into Plaintiff's claims, failed to interview him, and

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).

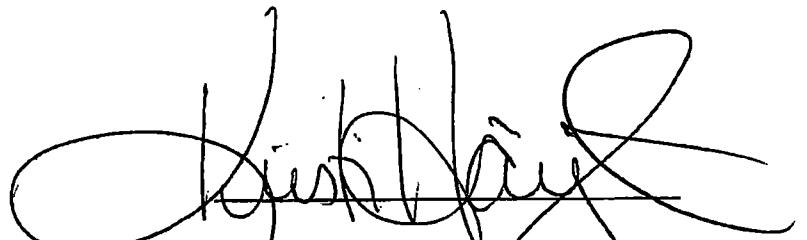
This Court finds Plaintiff was notified by certified letter sent in April of 2013 that SLED had been contacted, conducted an investigation, and had closed the investigation. Plaintiff acknowledged receipt of this letter in an e-mail dated May 16, 2013, in which he stated he had contacted his attorneys 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

Handwritten signature and date 5/14/16

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

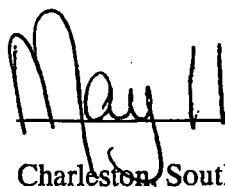
 , 2016
Charleston, South Carolina

Exhibit E

David Scot Lynd v. Isle of Palms, et al.

Appellate Case No. 2016-002024

Case No. 15-CP-10-2824

RECEIVED JUN 23 2016

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

DAVID SCOT LYND,)

PLAINTIFFS,)

Vs.)

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
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-2824

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR RELIEF FROM
ORDERS GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
SOUTH CAROLINA LAW
ENFORCEMENT DIVISION AND
DAWN CALDWELL PURSUANT TO
RULE 60(B)(3)**

NOW COMES Plaintiff, David Scot Lynd, by and through counsel, hereby moving this Court, pursuant to Rule 60(B)(3) of the South Carolina Rules of Civil Procedure, for relief from its Orders granting Defendants South Carolina Law Enforcement Division (hereinafter referred to as "SLED") and Defendant Dawn Caldwell's Motion(s) for Summary Judgment on the basis of misrepresentation.

Grounds for this motion are as follows:

1. This matter was commenced on May 18, 2015 by Plaintiff filing a Verified Summons and Complaint for damages based on alleged negligent conduct of Defendants in converting his personal property (two jet skis).
2. Defendants SLED and Caldwell filed Motions for Summary Judgment, and the same were heard on April 26, 2016.
3. Among other things, Defendants presented some emails Mr. Lynd had sent to them in September, 2012 and May, 2013. Based upon the contents of these emails presented to

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

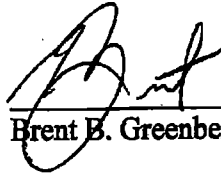
CERTIFICATE OF SERVICE

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



ISLE OF PALMS POLICE DEPARTMENT

THOMAS E. BUCKHANNON, III
CHIEF OF POLICE

30 JC LONG BOULEVARD
POST OFFICE DRAWER 508
ISLE OF PALMS, SOUTH CAROLINA 29451
PHONE (843) 886-6522 FAX (843) 886-6527
www.iup.net

April 26, 2013

David Scot Lynd
2605 Rustown Drive
Mesquite, Texas 75150

Dear Mr. Lynd,

Upon receiving your complaint containing allegations of misconduct against Captain Dawn Caldwell regarding the improper disposal of personal watercraft delivered to the Isle of Palms Police Department in 2004, an inquiry into the matter was initiated.

All documentation, including your complaint was forwarded to the South Carolina Law Enforcement Division (SLED). As an independent agency, inquiry into incidents involving Law Enforcement Officers falls within their purview, as a matter of course.

After a three month investigation into the matter, no wrongdoing was found, and the case is now closed. The allegations and results of the investigation have been shared with the elected and appointed administration of the City. It is not expected that there will be any further communication regarding this investigation.

Sincerely,

Thomas E. Buckhannon, III
Chief of Police

OVER

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

1. Article Addressed to:

David Scot Lynd
 2605 Fustown Drive
 Mesquite, Texas
 75150

2. Article Number (Transfer from service label) 7010 3670 0003 1858 8526

3. Signature: *David Lynd* Agent
 Address:
 B. Received by (Printed Name) C. Date of Delivery
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type:
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail O.D.D.

4. Restricted Delivery? (Extra Fee) Yes

Tim Domin

From: Linda Tucker <tucker@iop.net>
Sent: Tuesday, September 01, 2015 12:58 PM
To: Tim Domin
Subject: certified letter

From: david scot [mailto:davidscot@yahoo.com]
Sent: Thursday, May 16, 2013 5:20 PM
To: chibbuckhanan@iop.net
Cc: barbara@scott@icloud.com; sandystone@islandrealty.com; bettel@bellsouth.net; mloftus@comcast.net; dick4972@aol.com; crabapplelover@aol.com; jimmy@hummicarroll.com; delmrt@aol.com; rbuckhanan@iop.net; huckler@iop.net
Subject: certified letter

Sir

I received your certified letter no 70101670 0001 1858 8526, dated 4-26-13.

At no time did you tell me of an investigation by this SLED agency. If so I would have fwd to them the new proof I have found. This is the 1st mention of it, and your letter claims it has been a 3 month investigation. Hummm...strange.

I have contacted Sled and they can find no record of an investigation under my name, Det. Caldwell's, yours, or the Jet ski hull I.D. Numbers. So please provide the documentation of this investigation, and findings.

Seems odd that a three month long investigation took place, and they never contacted me, by mail, phone, e-mail, etc. not a single inquiry. In my own discussions with them of starting my own inquiry, I was informed I would have been contacted if one had taken place. So I am glad you sent that by certified mail, stating it did.

No investigation could have taken place with the facts as they are, and clear wrong doing not been found. Unless... the facts they were given are some how different now, as the file showed someone attempted to add stuff to it years later and modify it, and that is without dispute.

I tried to resolve this with you amicably, but have been threatened, intimidated, and lied too.

I have contacted a dozen or so Charleston attorneys, that my attorneys gave me information on, some with ongoing suits against IOP, others past suits, and a few large firms that have offices both here and Charleston. They pretty much all say the same thing that it is a very easy case to win, covering both the value of the skies at the time, the interest, loss of use, and years of rental fees to IOP. I guess ya'll didn't think we would discover that last one.

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.

Please fwd to me this investigation record and findings you claim to have, as well as the letter to the TP&W dept, letter you sent, so they can be "matched up" to what we already have. Thank you

David Lynd

469-323-1751

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



NIKKI R. HALEY
Governor



MARK A. KEEL
Chief


August 5, 2013

Thomas Buckhannon, Chief of Police
Isle of Palms Police Department
30 JC Long Boulevard
Post Office Box 508
Isle of Palms, South Carolina 29541

Re: Caldwell, Dawn (S) / Lynd, David (V)
SLED File #: 31120085

Dear chief Buckhannon:

The South Carolina Law Enforcement Division (SLED) was requested to investigate the above referenced matter in the Isle of Palms, Charleston County. Special Agent Teresa J. Beacham was assigned to the investigation. A report was submitted to the Isle of Palms Police Department as requested for review and handling. As such, SLED has administratively closed this file.

It has been our pleasure looking into this matter for you. Should you have any questions or need anything further, please do not hesitate to contact me at 843-782-3822 (office) or 803- (cell). We look forward to working with you again in the future.

With kindest regards, I am

Sincerely,

Capt. Ryan Neill
South Carolina Law Enforcement Division
Investigative Services - Low Country Region



An Accredited Law Enforcement Agency



P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

McCORMACK, Captain D. M. Caldwell

Re: 04-18819

01/18/13

TO: Chief Buckhannon,

1. Sgt. Riley advised me that he had spoken with Detective Smith with the Garland, TX Police Department to let them know that HALL had dropped the jet-skies off at our office, and that Detective Smith was calling LYND to let him know that HALL had dropped off the jet-skies.

I never spoke to HALL or Detective Smith.

2. I did call LYND on 06/24/04 to "remind him" that he needed to come pick up his property. I say "remind him" because I assumed Detective Smith had made a call to LYND as per his (Detective Smith) conversation with Sgt. Riley.
3. The information regarding a bill of sale and investigations into LYND for insurance fraud I obtained from the original report. These are things I did not have first-hand information of.

I learned that LYND was being investigated for insurance fraud from LYND himself during a telephone conversation with him. During the same conversation, he accused Garland Police Department of falsely accusing him of fraud. I advised LYND that I did not have any knowledge of information the Garland Police Department had obtained during their investigation, or about how the allegations even began.

4. The jet-skies were checked through NCIC at the time HALL delivered them to IOPPD. There was no return showing them as being reported stolen, nor was there any outstanding warrants for HALL. In Section 3 of HALL's letter to you he stated, "Det. Caldwell was instrumental in that action, through her investigation and discover of the lies in the affidavit." I never read an affidavit of any kind, nor did I ever speak with HALL. This being the case, I do not know what I was "instrumental" in accomplishing.

5. There was no investigation, on our behalf that was ever conducted. The Incident Report is an Information Report, the property was shown not to have been stolen via NCIC nor was HALL wanted. All things being considered, an investigation, on our behalf was not warranted. As far as I was concerned, we were merely securing property.

6. Hand-written case notes were not added to the Supplementary Report, as they should have been. Nor was information documented, as I would document now as a seasoned investigator. I did fail to send the letters as registered or certified. I saved them on a xerox and sent a printed copy to LYND when he spoke with Tracy Wadler on about getting a copy of the report. The address that I sent the letters to was from the Garland Police Department for the allegation (Section 8 of the same letter sent to you by LYND) that I sent the letters to a non-existing address in my very welfare file case however, it is the address that I obtained for LYND from a legal document.

Dawn Caldwell 01-18-13

pg 2 de 5

J. J. Beacham 01/18/13

- DMC*
7. In Section 6 of his letter, he implies that I just made up the fact that an adjuster responded to the IOPPD to look at the property. Lt. Ray Wright can verify that I met with an adjuster. ~~It is my fault that I failed to document the adjuster's information.~~
 8. At no time did I falsify any information or intend to intimidate LYND by inquiring for additional information, in response to his request for information. Me asking him for additional information was so that I could add it to our report.
 9. As a newly assigned investigator in 2004, in looking back some 8 years, I admit that I did not document this information as it should have been. Again, it was an Information Report that I did not put any time into because of the information I had and that it was my understanding, from that information, that our involvement was to hold the property for safekeeping. I admit I did not understand, then, the proper procedure for disposing of titled, serial numbered property.
 10. ~~I did not intentionally not document the occurrences, correspondence, etc.~~
 11. I am not attempting to "cover up" anything, falsifying any documents or maliciously provide information to the Garland Police Department so they could prove or disprove their insurance fraud investigation. ~~I don't ever recall talking to anyone at that department.~~ As stated above, I assumed Sgt. Riley spoke with them and I didn't have any reason to contact them.
 12. The allegations being made by LYND is preposterous and the majority of the "facts" he documents as proof of my "suspect" involvement in his matter is false.
 13. ~~I do take the responsibility that I did not document the events or correspondence as I should have. As I've mentioned to you, honest, dumb mistakes of a new investigator and evidence custodian.~~ I will submit to a polygraph or any other processes of your investigation in this matter.

Between you and I, and I would not say this to anyone but you, should LYND not be satisfied that his name is being removed from the property via Texas, and he continues to make slanderous statements about me to you accusing me of something I would never do, and causing you to doubt my performance, merit, honesty, integrity and dignity, I will resign to relieve my Department and City of any "bad press", and then contact an attorney on my own behalf to handle LYND. *DMC*

Dan M. Adams

pg 3 of 5

J. J. Beacham 01/18/13



ISLE OF PALMS POLICE DEPARTMENT

OCA # 04-18619

Done
06/01/04: Original Report Date and date Norbert Hall dropped the property off at IOPPD.

06/01/04: Patrol Duty Sgt. John Riley advised that he contacted the Garland (Texas) Police Department to advise that Hall had dropped of the property for a David Lynd to pick-up.

06/24/04: I called David Lynd to advise him that he needed to make arrangements to pick-up the property, and that since the property was taken into IOPPD custody for safekeeping and not evidence, he had 90 days to pick-up the property. I, further, advised Lynd that the condition of the watercraft was poor and the trailer was rusted, so he would more than likely have to make arrangements to transport them on a flatbed trailer. Lynd stated that he was not coming to South Carolina to pick-up the watercraft.

07/21/04: I met with an insurance adjuster who had responded to IOPPD from a local insurance company at the request of a sister agency in Texas. Lt. Ray Wright (Assistant Chief of Police at the time) was also present. I spoke with Lynd on this date to remind him that he needed to make arrangements to pick-up the watercraft, in hopes that he would provide the insurance company information, or perhaps a claim he had filed so that I could have the information for our report. At that time, Lynd stated to me, again, that he was not coming to S. C. to pick-up the watercraft and that it would be up to the City of Garland, TX or the Garland (Texas Police Department) to pick them up, and "you can do whatever you want to with them, I'm not coming".

07/23/04: I mailed a letter to Lynd advising him that he had 90 days to pick-up the watercraft.

08/20/04: I drafted a second letter to Lynd advising him that he now had 60 days to pick-up the watercraft. Sent on 10/28/04

10/28/04: I drafted a third, and final letter to Lynd advising him that he had 30 days to pick-up the watercraft. Thereafter, the property would be disposed of as per IOPPD Policy and Procedures.

~~NOTE: I did not send the letters certified or registered, nor did I receive any return letters. The address that I mailed the letters to was from the Garland (Texas) Police Department.~~

Dann McAllen

J. J. Beacham 01/18/13

pg 4 de 5

DMC

Report of which I confirmed with Lynd during our first conversation on 06/03/04 at 2505 Rustown Drive, Mesquite, TX 75150.

On the same date, I met with Lt. Wright and advised him of the lack of communication with Lynd. I was advised to dispose of the property as per policy and procedure should Lynd fail to respond.

11/28/04: East Cooper Salvage responded to take control of the property to dispose of. Lt. Wright was also present.

06/05/12: Records Clerk Waldron received a request for a copy of our Incident Report from Lynd. It was mailed on 06/07/12.

Since thereafter, I called Lynd to advise him that a copy of the report had been sent on 06/07/12. During that conversation, I requested the insurance company information for the watercraft, so that I could attach it in our Incident Report. It was at that time that Lynd's demeanor changed and he became hostile towards me and accused me of trying to obtain information on behalf of Garland Police Department for their insurance fraud investigation against him. *pm*

Pg 5 of 5

Tom McCallister

J. J. Beacham 01/18/13

**SOUTH CAROLINA
LAW ENFORCEMENT DIVISION**



INVESTIGATIVE FILE

Case Number: 31120085
County: Charleston
Police Officer: Caldwell, Dawn
Subject: Lynd, David Scot

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

March 11, 2013

INVESTIGATIVE REPORT

TO: File 31-12-0085
FROM: Special Agent Teresa J. Beacham
RE: Misconduct
Caldwell, Dawn (Police Officer)
Lynd, David Scot (Subject)

COUNTY: Charleston

Introduction

On October 18, 2012, the South Carolina Law Enforcement Division (SLED) received a written request (Attachment 1) from Chief Thomas E. Buckhannon, III, Isle of Palms Police Department (IOPPD), to investigate an allegation of misconduct made against IOPPD Captain (Capt.) Dawn Caldwell. According to IOPPD incident report 04-18619 and related documents (Attachment 2), on June 1, 2004, Norbert Hall of Garland, Texas turned over possession of two jet skies to IOPPD. The skies were subject of a property dispute between Hall and an acquaintance, David Lynd, of Mesquite, Texas. On January 11, 2004, Lynd reported to the Garland Texas Police Department (GPD) that Hall stole the skies from a storage unit he and Hall shared in May 2002. Hall claimed to have purchased the skies from Lynd and claimed Lynd was



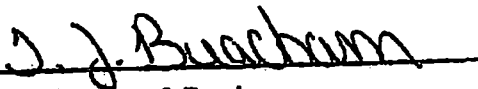
under investigation by GPD for insurance fraud for falsely reporting the skies stolen. At the time they were turned over to IOPPD, the skies were not entered into the national crime database as stolen property. Per IOPPD policy, the skies were held for safekeeping for no less than ninety days. When Lynd failed to pick up the skies, they were released to a salvage company to be destroyed. According to Lynd's written complaint (See Attachment 2), Capt. Caldwell, the IOPPD evidence custodian at the time of the incident, mishandled the skies by improperly allowing them to be destroyed when she failed to follow proper procedures and failed to give him proper notification of their impending destruction. Lynd further alleged since the destruction of the skies, Capt. Caldwell falsified reports to cover up her actions. Capt. Ryan Neill of SLED assigned Special Agent (S/A) Teresa Beacham to conduct the investigation.

Summary

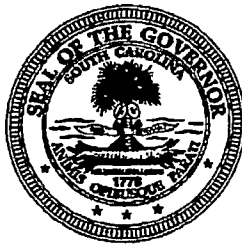
On December 5, 2012, S/A Beacham conducted an interview with Capt. Dawn Caldwell, IOPPD. Capt. Caldwell provided a voluntary written statement (Attachment 3) relating the following information: In June 2004, she was a Corporal and the Evidence Custodian at IOPPD. On June 1, 2004, Sergeant (Sgt.) John Riley, IOPPD (retired), advised her he had taken possession of the jet skies. He further advised he had spoken with Detective (Det.) Earnest Smith of GPD. Sgt. Riley told her Det. Smith would advise Lynd the skies had been dropped off at IOPPD and he needed to pick them up. On June 24, 2004, she called Lynd to remind him he needed to make arrangements to pick up the skies. She advised him the skies were taken into custody for safekeeping only and, as such, would only be held for ninety days. She also advised him of the poor condition of the skies. Lynd told her he was not coming to South Carolina to pick up the skies. On July 21, 2012, she met with an insurance adjustor at IOPPD in regards to the skies. After meeting with the adjustor, she again called Lynd to remind him he needed to make arrangements to pick them up. Lynd again stated he was not coming to pick up the skies. He further advised he was under investigation by GPD, claiming he was being falsely accused of insurance fraud. He stated it would be up to GPD to pick up the skies and he told her, "You can do whatever you want to with them. I'm not coming." On July 23, 2004, she mailed Lynd a

letter advising him he had ninety days to pick up the skies. On August 20, 2004, she mailed him a second letter advising him he had sixty days to pick them up. On October 28, 2004, she mailed him a third and final letter advising him he had thirty days to pick them up. She then met with her supervisor and advised him of Lynd's failure to respond to her attempts to get him to pick up the skies. She was advised to dispose of the skies per policy should he fail to respond to the final notice. On November 28, 2004, East Cooper Salvage responded to IOPPD. The skies were signed over to them via IOPPD Property Release Form (See Attachment 2) for destruction. On June 5, 2012, IOPPD received a request from Lynd for a copy of the incident report relating to the skies. Sometime, shortly thereafter, she called Lynd to let him know a copy of the report had been mailed. During the conversation, she inquired about the insurance company information on the skies. She had neglected to get the information from the adjustor back on July 21, 2004 and wanted to document the information on the report. As soon as she mentioned the insurance company, Lynd's demeanor changed. He accused her of trying to obtain information on behalf of GPD for the insurance fraud investigation against him. She has not attempted to cover up any of her actions regarding the handling of the jet skies and did not falsify any documents relating to them.

Upon review of this investigation by Capt. Neill, S/A Beacham has been directed to administratively close this investigation.



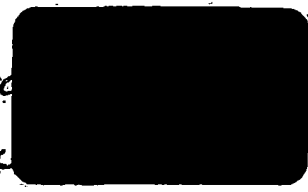
S/A Teresa J. Beacham



State of South Carolina
Office of the Governor

NIKKI R. HALEY
GOVERNOR

2. A lot
False



3. Sgt John Riley?

4. This was proven
False.
Det. Smith?

May 23, 2014

Mr. David Scott Lynd
2605 Rustown Drive
Mesquite, Texas 75150

Dear Mr. Lynd:

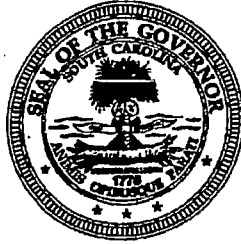
Pursuant to your request dated April 17, 2014, an inquiry was conducted by the Office of the Crime Victims' Ombudsman regarding your complaint. The following is a summary of my results.

On April 28, 2014, a letter was sent to Chief of Police Thomas E. Buckhannon, Isle of Palms Police Department, requesting additional information regarding this case.

On May 20, 2014, Chief Buckhannon responded via a letter from Isle of Palms legal counsel, Timothy A. Domin, Esquire, Clawson and Staubes, LLC. The letter addressed your concerns as follows:

- 1) In evaluating this case it was determined that Mr. Norbert L. Hall surrendered the jet skis to the Isle of Palms Police Department on June 1, 2004.
- 2) An incident report from June 1 written by Officer Phillip Muckelvaney determined that Mr. Hall had purchased the jet skis from you. Detective Earnest Smith from the Garland Police Department in Garland, Texas corroborated this information..
- 3) On June 2, 2004, Sgt. John Riley contacted the Garland Police Department and spoke to Det. Smith, who stated that he would notify you on the whereabouts of the two jet skis and would coordinate their retrieval with Detective Corporal Dawn Caldwell. The two jet skis and trailer were taken into custody and placed into Public Works.
- 4) On June 24, 2004, you were advised by Det. Smith about the whereabouts of the jet skis and that arrangements needed to be made to have them picked up. He advised you of their poor condition. Det. Smith noted that you said you were not coming to South Carolina to pick them up. Since there was no evidence in the NCIC data bank of the jet skis being stolen, there was no arrest made against Mr. Hall for being in

OFFICE OF THE CRIME VICTIMS' OMBUDSMAN
1205 PENDLETON STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-0357 | FAX: (803) 734-1428
EMAIL: CVO@OEPP.SC.GOV
WEBSITE: WWW.OEPP.SC.GOV/CVO



State of South Carolina
Office of the Governor

NIKKI R. HALEY
GOVERNOR


OFFICE OF EXECUTIVE
POLICY AND PROGRAMS

possession of stolen property. The property would be held for 90 days as prescribed by Isle of Palms policy and procedures (P&P). After that, they would be disposed of as abandoned property.

- 5) On or about July 21, 2004, your Insurance Adjuster met with Det. Smith to reaffirm the poor condition of the property and whether or not the claim was going to be paid.
- 6) On July 23, 2004 a letter was sent to you about the 90 day P&P, and requested you come collect the property.
- 7) On August 20, 2004, a 2nd letter was sent to you requesting you pick up the property.
- 8) On October 28, 2004 a 3rd and final letter was sent to you requesting you pick up the property.
- 9) On November 28, 2004, Isle of Palms Police Department authorized the release of the property to East Cooper Salvage c/o Goe Turley 1343 Deepwater Dr. Mt. Pleasant, SC 29464; phone number (843) 860-7553. The jet skis were destroyed.

Given these facts, this Office does not find evidence of misconduct by the Isle of Palms Police Department. The Office of the Crime Victims' Ombudsman has found this complaint to be unfounded. Please be advised no further activity is warranted in this case and it will be closed.

Sincerely,


Alexander Wilson
Program Assistant

5. Had no Ins
What Adjuster?
Proven false
6-7-8. Not Certified
and wrong address
Harmon? Doesn't
mention that.

OFFICE OF THE CRIME VICTIMS' OMBUDSMAN
1205 PENDLETON STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-0357 | FAX: (803) 734-1428
EMAIL: CVO@OEPP.SC.GOV
WEBSITE: WWW.OEPP.SC.GOV/CVO

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: Plaintiff
or
 Self-Represented Litigant

FILED
JUL 10 11 PM 1:00
CLERK OF COURT
JULIE ARMSTRONG

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 :

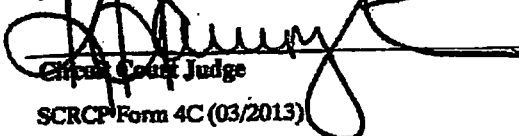
INFORMATION FOR THE JUDGMENT INDEX

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
SCRCP Form 4C (03/2013)

2161
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

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

THIS MATTER COMES BEFORE THE COURT upon Defendant South Carolina Law Enforcement Division's Motion for Summary Judgment filed March 7, 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 South Carolina Law Enforcement Division ("SLED"), Plaintiff's Complaint alleges SLED did not notify him of their investigation into Plaintiff's claims, failed to interview him, and

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

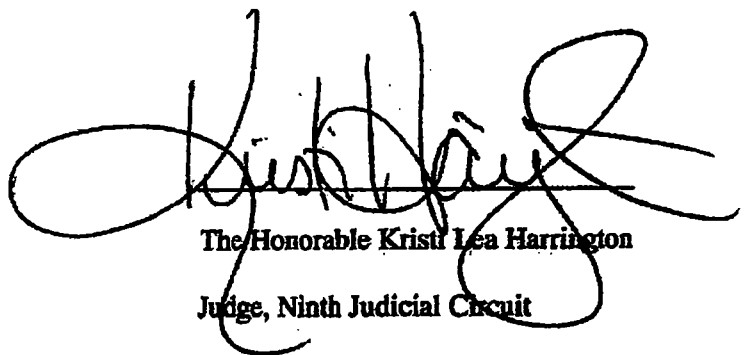
The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, provides the "exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). The Tort Claims Act imposes a two year statute of limitations, unless a verified claim is filed within 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

[Handwritten signature]
5/14/16

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), SCRCF; Rule 41(b), SCRCF (Vol. Nonsuit); Rule 43(k), SCRCF (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCF; 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 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.

[Signature]
Circuit Court Judge

2151
Judge Code

May 10, 2016
Date

FILED
2016 MAY 11 PM 1:57
BY CLERK OF COURT

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
[Handwritten signature]
5/11/16

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.

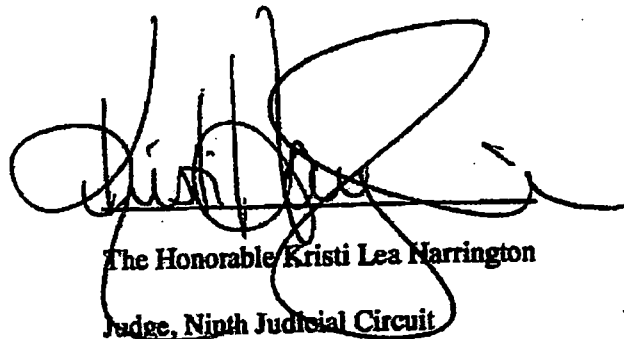
The Tort Claims Act provides a two year statute of limitations, unless a verified claim is filed within one year. S.C. Code Ann. § 15-78-100(a). The statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Bayle v. South Carolina Department of Transportation*, 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

May 11, 2016
Charleston, South Carolina

Exhibit F

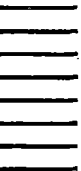
David Scot Lynd v. Isle of Palms, et al.
Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



26.0514
RECEIVED AUG 10 2016

clerkofcourt.charlestoncounty.org



70



JAMES JORDAN JOHNSON
7453 IRMO DR STE B
COLUMBIA SC 29212-8698

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

Order/ Mot for Relief fr orders granting sum judg is denied

CASE NO: 2015CP1002824

David Scot Lynd VS Isle of Palms Police Department

This judgment was entered on the 03th day of August, 2016, and notice mailed first class on Thursday, August 04, 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.

Exhibit G

David Scot Lynd v. Isle of Palms, et al.
Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

RECEIVED SEP - 1 2016

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

**Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge**

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms Police Department

South Carolina Law Enforcement Division

Dawn Caldwell

NOTICE OF APPEAL

David Lynd appeals the order of the Honorable Kristi Harrington, Circuit Court Judge Dennis Markley, Circuit Court Judge dated September 28, 2015, and unknown date, (order not entered as of yet). Appellant received written notice of entry of this order on Aug. 4, 2016.

August 27, 2016

David S. Lynd
Plaintiff
2605 Rustown Dr.
Mesquite TX 75150

Counsel for defendants

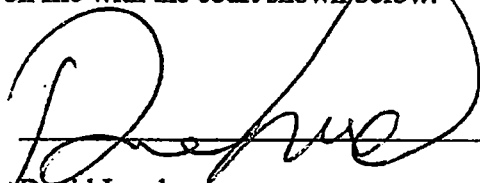
Timothy Domin
126 Seven Farms Dr.,
Ste. 200
Charleston SC 29492

Dorsel, Christopher Thomas
3 Wesley Drive
Charleston SC 29407

Morrison, David Leon
7453 Irmo Dr.,
Ste. B
Columbia SC 29212

Certificate of Service

I hereby certify that the above named parties were served this notice of appeal by certified mail on 8-29-2016 to the address on file with the court shown below.


8-29-16
David Lynd

Timothy Domin
126 Seven Farms Dr.,
Ste. 200

Charleston SC 29492

Dorsel, Christopher Thomas
3 Wesley Drive
Charleston SC 29407

Morrison, David Leon
7453 Irmo Dr.,
Ste. B
Columbia SC 29212

Exhibit H

David Scot Lynd v. Isle of Palms, et al.
Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

4. The Order granting summary judgment bases its reasoning on the following statements Plaintiff made in an email to Chief Buckhannon: Lynd questioned any pending 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 to 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 "How long did you tell me of an investigation by this SLED agency. If so I would have fwd'd you the proof I have found... I have contacted Sled and the[y] can find no record of an investigation under my name, Det. Caldwell's, 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 releasing the results of the investigation with the elected and appointed administration of the City. Chief further states that it is not expected that there will be any further communication regarding the 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 Mr. Lynd 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 Isle of Palms, or any other Defendants, at this time. The Isle of Palms advised that Mr. Lynd abandoned the property, and that they complied with the notice requirements of 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 late 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 Defendant Buckhannon states in his certified letter to Plaintiff. The SLED letter to Dale of Palmetto is dated **August 5, 2013**.

14. Furthermore, the SLED investigation appears to take Defendant Caldwell's word verbatim, despite her providing a voluntary written statement 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.

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. *Devin v. Ruscan Corp.*, 322 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. Aionteith*, 327 S.C. 105, 481 S.E.2d 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, 594 S.E.2d 671 (2000).

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

18. This case involves allegations of fraud and a civil conspiracy against the above-named Defendants. Defendant IOP surreptitiously turning over the investigation to Sheriff [redacted] without informing the aggrieved party so that he may cooperate in the investigation and IOP's early denials of the existence of the same lend further credence to a cover up.

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

WHEREFORE PLAINTIFF DAVID SCOT LYND respectfully moves this Court to reconsider its opinion and order in this regard and to modify the order to reflect the denial of Defendant's Motion for Summary Judgment.

[Signature Block Follows on Next Page]

Respectfully submitted,

DANIEL M. BRADLEY LAW FIRM, LLC



Brent B. Greenberg (SC Bar # 001100)
875 Lowcountry Blvd., Ste. 210

PO Box 2661

Mt. Pleasant, SC 29465

Tel: (843) 424-9817

Fax: (843) 654-1102

Attorneys for Plaintiff

October 13, 2015
Mt. Pleasant, SC

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of October, 2015, served a copy of the foregoing *Plaintiff's Notice of Motion & Motion to Reconsider* on the following by placing same in the United States Mail, postage prepaid to:

CLAWSON & STAUBES, LLC

Timothy A. Domin, Esq.

126 Seven Farms Dr., Ste. 200

Charleston, SC 29492

ATTORNEY FOR ISLE OF PALMS

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



Brent B. Greenberg, Esquire



Brent Greenberg <brent.dblaw@gmail.com>

FW: Lynd---filed Order Dismissing Isle of Palms

Tim Domin <TDomin@clawsonandstaubes.com>

Mon, Oct 12, 2015 at 2:33 PM

To: "brent.dblaw@gmail.com" <brent.dblaw@gmail.com>, David Morrison <david@dmorrison-law.com>, "chris@sennlegal.com" <chris@sennlegal.com>

I was about to write the Judge's law clerk to say I had not seen any order, but noticed online that it was signed and filed last week. Because I didn't get a notice that it had been filed, I figured I would send a copy to all counsel in the case.

**Timothy A. Domin**

Licensed in SC

126 Seven Farms Drive, Suite 200 | Charleston SC | 29492-8144

Phone: 843 577 2026 Ext. 2221 | Fax: 843 722 2867

Website: www.clawsonandstaubes.com | Email: tdomin@clawsonandstaubes.com | Location: [Map](#)

This e-mail and the information transmitted contains PRIVILEGED and CONFIDENTIAL information and is the property of the sender. If you are not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this information, or the taking of any action in reliance on the content of this information, is strictly prohibited. If you have received this e-mail in error, please immediately contact Timothy A. Domin with CLAWSON AND STAUBES, LLC at (843) 577-2026 and please delete the original transmittal of this information.

 StreamDocAsPDF.pdf
184K

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 DISTRICT

CASE NO. 2015-CP-16-232

ORDER GRANTING DEFENDANT
ISLE OF PALMS'
MOTION FOR SUMMARY JUDGMENT

FILED
CLERK OF COURT
SEP 12 2015
9:12 AM

This matter came before the Court on September 2, 2015 on Defendant Isle of 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. 116, 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

Handwritten signature/initials

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 the 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. 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.

RNDT/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 purpose of 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. Because 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.

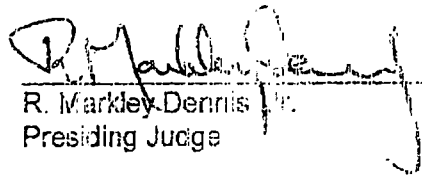
For the reasons stated, the motion for summary judgment of the Isle of Palms on the issue of the statute of limitations is granted.

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 the like. 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 to the nature 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.


R. Markley Dennis Jr.
Presiding Judge

Charleston, South Carolina

September 28, 2015

RMD/4



ISLE OF PALMS POLICE DEPARTMENT

THOMAS E. BUCKHANNON, III
CHIEF OF POLICE

30 JC LONG BOULEVARD
POST OFFICE DRAWER 508
ISLE OF PALMS, SOUTH CAROLINA 29451
PHONE (843) 886-6522 FAX (843) 886-8527
www.iop.net

April 26, 2013

David Scot Lynd
2605 Rustown Drive
Mesquite, Texas 75150

Dear Mr. Lynd,

Upon receiving your complaint containing allegations of misconduct against Cap. Dawn Caldwell regarding the improper disposal of personal watercraft delivered to the Isle of Palms Police Department in 2004, an inquiry into the matter was initiated.

All documentation, including your complaint was forwarded to the South Carolina Law Enforcement Division (SLED). As an independent agency, inquiry into incidents involving Law Enforcement Officers falls within their purview, as a matter of course.

After a three month investigation into the matter, no wrongdoing was found and the case is now closed. The allegations and results of the investigation have been shared with the elected and appointed administration of the City. It is not expected that there will be any further communication regarding this investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas E. Buckhannon III".

Thomas E. Buckhannon, III
Chief of Police

Chief

SENDER COMPLETE THIS SECTION

1. Complete items 1, 2, and 3. Also complete item 4 if you are mailing a return receipt and your name and address on the reverse.
2. Attach this label to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
David Scot Lynd
2405 Frustrated Drive
Mesquite, Texas
75150

COMPLETE THIS SECTION ON DELIVERY

A. Signature
[Handwritten signature]

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7010 1170 0001 1858 8526

Tim Domin

From: Linda Tucker <ltucker@iop.net>
Sent: Tuesday, September 01, 2015 12:58 PM
To: Tim Domin
Subject: certified letter

From: david scot [<mailto:dvdscot@yahoo.com>]
Sent: Thursday, May 16, 2013 5:20 PM
To: chiefbuckhannon@ioppd.net
Cc: barbarabergwerf@gmail.com; sandystone@islandrealty.com; bettefl@bellsouth.net; mloftus@concordia.net; dick4972@aol.com; crabpotplayer@aol.com; jimmy@jimmycarroll.com; datmrt@aol.com; chiefbuckhannon@ioppd.net; ltucker@iop.net
Subject: certified letter

Sir

I received your certified letter no 70101670 0001 1858 8526, dated 4-26-13.

At no time did you tell me of an investigation by this SLED agency. If so I would have fwd to you the new proof I have found. This is the 1st mention of it, and your letter claims it has been a 3 month investigation. Hmmmm,,strange.

I have contacted Sled and they can find no record of an investigation under my name, Don, Callie, yours, or the Jet ski hull I.D. Numbers. So please provide the documentation of this investigation, and files.

Seems odd that a three month long investigation took place, and they never contacted me, by mail, phone, e-mail, etc. not a single inquiry. In my own discussions with them of starting my own inquiry, I was informed I would have been contacted if one had taken place. So I am glad you sent that by certified mail as it did.

No investigation could have taken place with the facts as they are, and clear wrong doing not being found. Unless,,,,, the facts they were given are some how different now, as the file showed someone attempted to add stuff to it years later and modify it, and that is without dispute.

I tried to resolve this with you amicably, but have been threatened, intimidated, and lied too.

I have contacted a dozen or so Charleston attorneys, that my attorneys gave me information on some with ongoing suits against IOP, others past suits, and a few large firms that have offices both here and in Charleston. They pretty much all say the same thing that it is a very easy case to win, covering both the value of the skies at the time, the interest, loss of use, and years of rental fees to IOP. I guess ya'll didn't think we were to discover that last one.

Be sure you inform the City council, I tried to handle this without a suit, you choose to have one filed, threaten, and attempt to intimidate me.

Please fwd to me this investigation record and findings you claim to have, as well as the letter to the TP&W dept, letter you sent, so they can be "matched up" to what we already have. Thank you

David Lynd

469-323-1751

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
OCT 25 2017
SC Court of Appeals

Appellate Case No. 2016-002024
Case No. 15-CP-10-2824

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.

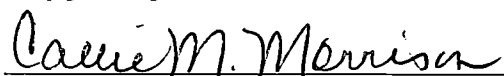
CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Respondent, Dawn Caldwell, does hereby certify that service of the **Motion to Dismiss Appeal as to Dawn Caldwell in her Individual Capacity, or in the Alternative, Motion for Extension of Time to File Respondent’s Brief and Designation of Matter** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 25th day of October, 2017, addressed as follows:

David S. Lynd
2605 Rustown Drive
Mesquite, TX 75150
Pro Se Plaintiff

Timothy A. Domin, Esquire
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
Attorney for Defendant Isle of Palms

Christopher T. Dorsel, Esquire
Post Office Box 12279
Charleston, South Carolina 29422
Attorney for Defendant SLED



Callie M. Morrison