

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

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

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**RECEIVED**  
NOV 22 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.

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**RESPONDENT DAWN CALDWELL'S REPLY TO APPELLANT'S RETURN TO HER  
MOTION TO DISMISS APPEAL**

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The Respondent, Dawn Caldwell, in her individual capacity, respectfully submits this reply to Appellant's return to her Motion to Dismiss Appeal. Appellant's return has numerous inconsistencies which attempts to confuse and mislead the Court as to the sequence of events giving rise to this appeal and the issues in the same. For the sake of clarity, this Respondent will attempt to make clear the record in this matter which essentially is an appeal of the denial of an untimely Rule 59(e) motion, improperly couched as a Rule 60(b) motion to avoid the time bar.

First, Appellant did not file a Rule 59(e) motion with the trial court within ten (10) days of the Order granting summary judgment to this Defendant on May 11, 2016, as proscribed by the South Carolina Rules of Civil Procedure, Rule 59(e).

Second, Appellant did not file a notice of appeal of the Order granting this Respondent summary judgment within thirty (30) days of May 11, 2016, as proscribed by the South Carolina Appellate Court Rules, Rule 203(b).

Third, Appellant filed the instant motion with the trial court on June 22, 2016. This motion, although styled as seeking relief pursuant to Rule 60(b)(3), was titled as a Notice of Motion and Motion for Relief from Orders Granting Summary Judgment and in actuality sought relief under Rule 59(e).

Fourth, because Appellant styled the motion as a Rule 60(b)(3) but argued his motion under Rule 59(e), the Court denied his motion as being untimely filed. He has appealed that denial.

Thus, 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). 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 which attempted to re-argue summary judgment. Therefore, what we are left with essentially is an appeal of a denial of an untimely Rule 59(e) motion, improperly styled as a Rule 60(b) motion due to it not stating any facts or law proper in the consideration of a Rule 60(b)(3) motion. The court obviously understood this and denied the motion as untimely. This should not be allowed under our court rules and case law, and this appeal should be dismissed based on these ground.

Appellant cannot use a Rule 60(b), SCRPC, 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), SCRPC, 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)).

Fifth, Appellant believes that the Court denied the motion for other reasons, such as the Respondents' counsels being attorneys and the Appellant being pro se, and goes on to state "Nowhere was the motion ever argued that it was untimely, not ruled on as untimely, . . ." This is blatantly false and is intentionally misleading to the Court by the Appellant. The Form 4 Order denying his Rule 60(b) motion very clearly states, "denied as untimely filed." This Respondent has attached the Form 4 again herein as **Exhibit A**.

Sixth, whether or not this Respondent has "never mention that **Lynd was represented by counsel during trial and the start of this appeal**" is completely irrelevant. The second half of Appellant's Return addresses what he believes to be ineffective assistance of counsel. Appellant was represented by counsel during the summary judgment motions and arguments, and represented by counsel at the outset of this appeal. Further, this Court has recognized and given the Appellant numerous extensions based off of his being a pro se Appellant after his counsel withdrew from representation.

No matter what or how the Appellant attempts to muddy the waters in the case, the facts remain the same. He did not file a Rule 59(e) motion. He did not file a notice of appeal. He labeled his Rule 60(b)(3) motion as such in an attempt to evade the filing deadlines that he

missed. The lower court recognized this attempt and denied the motion as untimely. Thus, this matter should be dismissed as a matter of law.

MORRISON LAW FIRM, LLC

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

November 22, 2017

# Exhibit A

**(Form 4 Order filed 8/3/16)**

*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,

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

PLAINTIFF(S)

South Carolina Law Enforcement Division  
DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

FILED  
 JUL 28 2016  
 4:36 PM  
 STRONG  
 COURT

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

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: The Plaintiffs' Motion for Relief from Orders Granting Summary Judgment to Defendants South Carolina Law Enforcement and Dawn Caldwell is denied as untimely filed.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Circuit Court Judge

2151  
Judge Code

July 28, 2016  
Date



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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as an officer of the Isle of Palms Police Department and  
South Carolina Law Enforcement Division ..... Respondents.

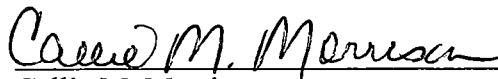
**CERTIFICATE OF SERVICE**

The undersigned employee of Morrison Law Firm, LLC, attorney for the Respondent, Dawn Caldwell, does hereby certify that service of the **Respondent Dawn Caldwell's Reply to Appellant's Return to Her Motion to Dismiss Appeal** 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 22<sup>nd</sup> day of November, 2017, addressed as follows:

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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